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## Senate

The Senate met at 1 p.m. and was called to order by the President pro tempore [Mr. THURMOND].

The PRESIDENT pro tempore. Our prayer this morning will be led by Father Paul Lavin of St. Joseph's on Capitol Hill. We are pleased to have you with us.

### PRAYER

The guest Chaplain, Father Paul E. Lavin, pastor, St. Joseph's on Capitol Hill, Washington, DC, offered the following prayer:

In Psalm 86, David sings:

*Teach me, Lord, your way that I may walk in your truth, single hearted and revering your name.*

*I will praise you with all my heart, glorify your name forever, Lord, my God.*

*Your love for me is great; you have rescued me from the depths of Sheol.—Psalm 86: 11–13.*

Let us pray:

We stand before you, O Lord, conscious of our sinfulness but aware of Your love for us.

Come to us, remain with us, and enlighten our hearts.

Give us light and strength to know Your will, to make it our own, and to live it in our lives.

Guide us by Your wisdom, support us by Your power, keep us faithful to all that is true.

You desire justice for all: Enable us to uphold the rights of others; do not allow us to be misled by ignorance or corrupted by fear or favor.

Glory and praise to You for ever and ever. Amen

### RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Thank you, Mr. President.

### SCHEDULE

Mr. LOTT. Mr. President, before I talk about today's schedule, I do want to commend a number of Senators who have been doing yeomen's work over the past 2 days. Even though we haven't had a lot of recorded votes, we have been making good progress. I remind the Senate that we did come to an agreement after actually at least 3 years of going back and forth on a bipartisan Amtrak bill, which passed on Friday on a voice vote. That now will be in conference, and I think there is even a chance that we could get an agreement on that conference report before we go out. If we don't, it will be something we should reach early agreement on in conference when we come back after the first of the year.

Also, the Senate did agree to pass a fix with regard to ISTEA, or the highway infrastructure bill, which is now before the House for their consideration.

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JOHN WARNER, *Chairman*.

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The Senate yesterday passed by an overwhelming vote of 91 to 4 the very large and important Labor, Health and Human Services, and Education appropriations bill conference report, and just last night we reached an agreement after a lot of good work by a lot of Senators, including Senator CHAFEE, Senator ROCKEFELLER, Senator ROTH, Senator GRASSLEY, Senator CRAIG, who really did the great work in bringing the divergent parties together, Senator DEWINE and others, on the foster care-adoption issue. I think this will be, frankly, one of the things that we will be most proud of when this year is concluded. We did that last night. Once, again, after a lot of hard work and good cooperation, that passed last night on a voice vote.

Today, continued effort will be made to get an agreement in conference for the Food and Drug Administration reform bill. Probably 12 or 14 times we reached agreement and closed the conference, all to find that something was misplaced along the way or the agreement was not what others had thought it would be, and so it is still alive. I talked again to interested Senators this morning, and they will be working on it today. This, again, is something we need to do before we leave. So there is a lot happening in terms of Senators meeting; in the case of FDA reform, the House and Senate Members meeting on the conference report. I am looking forward to that agreement being reached.

Later on today, there is a good possibility that we will consider an omnibus appropriations bill to be offered by the chairman and the ranking member of the Appropriations Committee. We do not now have a fixed time agreement, and there is no certainty whether or not there will be a rollcall vote or when that would be. There is still some discussion going on with regard to that bill. But in any event, once a decision is made on that legislation, if a rollcall vote is required, Senators will be notified 1 hour prior to that first vote.

We are also continuing to work to see if we can get an agreement to move the District of Columbia appropriations bill through the Senate on a voice vote and through the House, so it can go down separately for the President's consideration to sign or veto it or to line-item veto the scholarship portion of it, which I think would be a big mistake. That still could come up either on a voice vote or perhaps a recorded vote would be required on that, as well as the omnibus appropriations bill.

In addition, the Senate could expect to consider other Legislative or Executive Calendar items. The Executive Calendar now is down to just a very few nominations. Several of them are being held at this time because of holds on other nominations. Today is the day when Senators need to consider if, in fact, they want to hold these nominations up for the remainder of the year and over into next year. We have worked very assiduously with inter-

ested Senators on both sides of the aisle. The administration tried to clear as many of these as possible, and we will do so again today.

The House of Representatives is, at this point, scheduled to consider the fast-track legislation late this afternoon or early evening. I have spoken to House leaders. There is no certainty at this time as to when that vote will occur. It looks to me like it will certainly be late afternoon or into the night. Therefore, the Senate can do nothing more really on fast track other than await the action in the House. If they should not pass the bill, then it would be my intent, and I believe it would be agreed to by leaders on both sides of the aisle, not to go further in the Senate with fast track. If it passes, then we have to make an assessment as to how we can bring it to a conclusion in the Senate. That could be tonight, it could be Monday, or it could be something else, which I don't even want to mention at this point.

We also have the three remaining appropriations bills—Commerce, State, Justice; District of Columbia; and foreign operations. All of those still have an item or two that are in contention. We don't know whether we will move on the omnibus appropriations bill or whether the House will decide to go ahead and act on the bills separately and send them to us. But we will be working throughout the day to try to ascertain when we will get those appropriations bills and in what form.

I think then the bottom line is, we do not expect a recorded vote any time soon. Senators will be notified 1 hour in advance should a recorded vote be required this afternoon. All Senators should be aware, and they need to keep their schedules clear, so that we can perhaps still have an opportunity to conclude this year's session today or tonight.

I now ask that there be a period for the transaction of morning business—

Mr. LEAHY. Mr. President, before he does that, will the majority leader yield?

Mr. LOTT. I withhold, and I will be glad to yield, Mr. President, to the Senator from Vermont.

Mr. LEAHY. Mr. President, my friend from Mississippi has raised the issue of the appropriations bills. Senators, as he knows, have been working very, very hard on that—the distinguished chairman of the committee, Mr. STEVENS, the distinguished ranking member, Mr. BYRD, and those of us who are either ranking or chairmen of the appropriate subcommittees that are involved, in this case three key ones.

Mr. President, I note, as we have discussed privately, that there will not be a perfect piece of appropriations legislation, I say to my friend from Mississippi, from anyone's point of view. It is not precisely what he would write if he were to write it solely by himself; it is not precisely what I would write if I wrote it solely by myself, and we could

say that with the other 98 men and women in this body.

At some point, when you are down to the last few hours of the session, we have to allow the committee system and the leadership system to work, where senior Members, especially of appropriations, where senior Members in both parties, in both bodies have to come together and reach an agreement, realizing that not every single Member on the left or on the right is going to like it. But you have to trust at some point some question of seniority in putting this together.

I didn't care much for the seniority system when I came here 23 years ago, but having studied it for 23 years, I understand it so much better now. I say to my friend, the majority leader, and I think he would agree with me, that in the last few days of the session, especially with appropriations, you are not going to get a bill that is going to please every single Member 100 percent, but we have to get something done because at some point you have to fish or cut bait.

I just mention that because I know the distinguished majority leader has been working as hard on this as anybody else to get us to this point.

Mr. LOTT. I have used those exact words, I might say, "fish or cut bait."

I will note again, we made tremendous progress in the past week on appropriations bills and other issues. I mentioned Amtrak, the highway bill, FDA, adoption and foster care, and I believe even on appropriations bills basically everything has been worked out but one issue. Obviously, we concluded an acceptable compromise on the Labor-HHS appropriations conference report involving the testing language.

I believe we have an agreement worked out with regard to the census language that would be incorporated in the Commerce, State, Justice appropriations bill.

I believe the two remaining issues for the year boil down to this: Can the House get the votes for fast track, since the Senate has already spoken overwhelmingly with votes of 68 and 67 for cloture motions to limit the debate so we can get to final passage, and the other one is the foreign operations bill, which includes a number of very important issues. Obviously, it involves the funds for our foreign operations; it involves the agreement with regard to how much would be paid for the U.N. arrearages; it involves the State Department authorization and reform and reorganization bill; it involves funds for the International Monetary Fund. But the one issue that is holding it all up, basically, boils down to whether or not the taxpayers' dollars will be used to promote and encourage foreign governments to encourage abortions. The bill that I thought we had agreed to provided a waiver where the President could waive that, but it would affect the funds.

It has gotten down to a very narrow issue. You are right, we are not going

to come to an agreement that every Senator will agree to, but I think we are close enough on that issue that we ought to be able to reach agreement and bring the foreign operations appropriations conference report to a conclusion. And if we can get that agreement and fast track, we will have completed the year on a very high note and one that the American people, I think, will be proud of and of which we could be proud.

The taxpayers of the United States have had a pretty good year. We would like to end up with agreements on these important issues. Certainly, it won't be perfect, as the Senator has said, but we have tried compromise after compromise after compromise. So far, none of them have taken hold. But I have faith that on Sunday, we will find a way to do that. Certainly, I do think that senior Members and leaders have to step up to these challenges and get the job done.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business until the hour of 1:30 p.m., with Senators permitted to speak for up to 10 minutes each.

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

Mr. LOTT. I yield the floor.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

#### THANKING THE SENATE STAFF

Mr. LEAHY. Mr. President, I will be very brief because I see other Senators waiting to take the floor. I will note a couple of things. The distinguished majority leader has mentioned that it is Sunday. The guest Chaplain today, Father Paul Lavin of St. Joseph's Church, is my pastor when I am away from my home in Vermont, which is not often on a Sunday.

But this Sunday is extraordinary, that is, being in Washington and not in Vermont.

Father Lavin also prayed for, in the mass this morning which my wife and I attended, the Congress and the Government, and so forth, as we all do.

Sometimes we have to be careful we don't get too much of what we pray for, but I think it would probably be safe to say, as I look around at the staff and everybody else here, that they were probably praying that it would come to a conclusion.

In that respect, I note, Mr. President, as I have in other years, that while I may joke about Senators being nothing but constitutional impediments to the staff, the fact is, the U.S. Senate, the greatest parliamentary body in the world, could not exist without the extraordinarily talented men and women who work on Capitol Hill for Members on both sides of the aisle, for commit-

tees, for the Senate itself, and those who take the notes of our proceedings, to those who keep the procedures of the Senate moving.

I say a special compliment to the young men and women who come here and serve as pages, come from all over the country and serve here as pages. I have been fortunate to have had a series of some of the most exemplary young men and women from Vermont who have served here as pages. They go through a rigorous screening process. Only the best get picked. And they go back to be the best among our citizens in our own State.

The people in this country oftentimes do not realize the extraordinary dedication of the men and women who work here who sometimes put in literally around-the-clock hours and days, who literally give of themselves more than any private industry could ever expect of anyone. And that is what makes the Senate work.

My friend from Mississippi and I were discussing earlier putting together this last-minute legislation. Well, we can make some policy decisions, but it is these people who have to then pull it together. For Foreign operations, Tim Rieser, from my staff, carries out my duties as ranking member on that. There are dozens of others on both sides that have to do this—Robin Cleveland for Senator MCCONNELL, who is the chairman of that subcommittee.

And it is the same with all the subcommittees, trying to pull these pieces together and actually have the paper. We stand up and say "aye" or "nay," but they have to have the papers on the floor in perfect condition for us to vote on them.

Then, whether it is the people in the Cloakroom, the people back at our offices, or anybody else, they also give up their family time to be here for the good of the country.

#### FOREIGN AID

Mr. LEAHY. Mr. President, I hope we can complete these foreign aid bills. I would also say to my friend from Mississippi, he mentioned whether we should use taxpayers' money for abortion in the foreign aid bill. There is a specific prohibition against any U.S. dollars being used for abortions abroad in the foreign aid bill.

In fact, as Senator Mark Hatfield, former chairman of the Appropriation Committee, and I pointed out on the floor earlier—he was very much a right-to-life, antiabortion Senator, consistent in that—pointed out that the family planning moneys that have gone in the foreign aid bill have dramatically decreased the number of abortions in those areas where they were used.

An example was Russia where abortion was used as a form of birth control, where we gave them family planning money and the number of abortions dropped dramatically.

So I hope that we will continue to do that and realize, while family planning

is something available to most people in the United States, in a lot of other countries it is not available because of costs, because of techniques, because of training, for whatever reason. Unfortunately, in those countries oftentimes abortions are a means of family planning. So I hope that those who are against abortion would realize family planning money can help us prevent that.

#### NOMINATIONS

Mr. LEAHY. Then lastly, Mr. President—I will probably speak on this again this afternoon. If we go out, it means there will not be a chance to confirm a number of judges who are pending, who have been pending for a considerable period of time; one in particular, who has been voted out of our committee twice, once last year and again this year, Margaret Morrow, one of the most qualified people, man or woman, ever to be nominated to be a district court judge.

We also have what I think is the shocking situation of Bill Lann Lee, who has been subjected to some of the most scurrilous charges—charges, unfortunately, repeated even by Members of the Senate. The charges have been refuted, but need to be refuted in a hearing. We have asked for a further hearing on Bill Lann Lee just so those charges can be refuted. We have been told that we cannot have that hearing.

I renew the request. We should have it.

We talk about civil rights in this country. The civil rights of this country are determined by having strong laws and strong people to enforce those laws. I do not believe in the better natures of our souls as Americans that all of us would support the civil rights of all others simply in a vacuum. Many of us would; others do need the requirement of a law to do that.

I would like to think that I am a person who would never break into an unlocked, unguarded warehouse in the middle of the night to steal things. But we have laws and locks to prevent others who may not feel as strongly motivated to obey the commandment: "Thou shalt not steal."

By the same token, we set up laws that say: "You shall not discriminate. You shall protect the civil rights of all Americans." Those laws need to be enforced. We do not have a chief enforcer now. The President has nominated Bill Lann Lee, a most qualified person for that position.

Unfortunately, the debate on this fine nominee took a decidedly partisan turn when the Speaker of the House chose to intervene in this matter and urge the Senate Republican leader to kill this nomination. He waited until after the confirmation hearing to raise and mischaracterize a case about which no member of the Senate Judiciary Committee, Republican or Democrat, had asked a single question. Indeed, apparently unaware of the decision of his

party leaders to defeat this nominee, Chairman HATCH predicted on the weekend news programs following the hearing that the nomination would be reported favorably by the Judiciary Committee but might face tough going on the Senate floor.

In his unfortunate letter, Speaker GINGRICH unfairly criticized Mr. Lee and accused him of unethical conduct. Since that letter Speaker GINGRICH's charges have been repeated over and over again. Indeed, Senator HATCH devoted an entire section of his statement last Tuesday opposing Mr. Lee to the Tipton-Whittingham case. Because of the mischaracterizations of this case and the misstatements of Mr. Lee's record and because Republican opponents are now distorting and contorting Mr. Lee's views, testimony and work, I thought it appropriate to request an opportunity for Bill Lee to respond to the false charges and impression being espoused by his opposition. I thought it only fair.

On behalf of and along with the other minority members of the Judiciary Committee, I sent Senator HATCH a letter yesterday formally requesting such a hearing. The chairman refused our request for a hearing. That is unfortunate. He explained on a Sunday talk show morning that all the questions that would be raised at an additional hearing had already been covered and implied that questions about the Tipton-Whittingham case had been asked in the extensive written questions to Mr. Lee that followed the hearing.

In fact, no Senator asked a single question about the Tipton-Whittingham case at the October 22 hearing and, although, Mr. Lee was sent page after page of written questions following the hearing, only Senator HATCH asked about the case. Unfortunately, Senator HATCH's question and its answer have been ignored by those opposing Mr. Lee. Speaker GINGRICH and others are making false charges and the nominee has been given no fair opportunity to set the record straight.

Let me explain what the Tipton-Whittingham case is about. I regret having to discuss this matter at all since it remains a pending matter in the District Court for the Central District of California. The case includes serious allegations of sexual harassment and gender and racial discrimination involving the Los Angeles Police Department arising in part from an association of officers, called "Men Against Women," which was apparently organized by former Los Angeles Police detective Mark Fuhrman.

The allegations of wrongdoing carelessly lodged against Mr. Lee are contradicted by the Republican mayor of Los Angeles, Richard Riordan, as well as the vice-president of the Los Angeles Police Commission, T. Warren Jackson, the assistant city attorney, Robert Cramer, and the city attorney, James K. Hahn. I ask unanimous consent that their letters be printed in the

RECORD at the conclusion of my statement.

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

(See exhibit 1.)

Mr. LEAHY. Mr. President, I recall when times were different. I recall when charges were raised against Clarence Thomas and the Judiciary Committee held several days of additional hearings after that nomination had already been reported by the Judiciary Committee to the full Senate. There was a tie vote in committee on the Thomas nomination, which would not have even been reported to the Senate had we not also voted virtually unanimously, with six Democrats joining seven Republicans, to report the Thomas nomination to the floor without recommendation. Of course, ultimately the nomination of Judge Thomas to become Justice Thomas was confirmed by the Senate.

Over the last decade and one-half Republicans have pioneered and developed procedures whereby the Judiciary Committee has reported to the Senate for its consideration nominations on which the committee had come to a tie vote and even, in the case of Judge Bork's nomination to the Supreme Court, an overwhelmingly negative vote.

I recall for example the nomination of Daniel Manion which was reported to the Senate after a tie vote and was ultimately approved by the Senate. I recall, as well, the nomination of Clarence Thomas to the Supreme Court which was reported after a tie vote and ultimately approved by the Senate.

Time after time during the Reagan and Bush years the Republicans on the Judiciary Committee urged that the full Senate be permitted to decide these questions. Senator Thurmond argued in favor of reporting an executive branch nomination on which the committee had voted negatively, noting:

As long as I am a member of this Committee, I will give an opportunity, whether it is majority or minority, to send the nominations to the Senate. I think the Senate is entitled to the recommendation [of the Committee], and you made the recommendation by the vote just taken. But I think the Senate is entitled to a vote on this matter. I think the President is entitled for the Senate to vote, and I think the country is entitled for the Senate to vote. I would hope it would be sent to the Senate and let the full Senate act.

I have been one, frankly, who has not always supported such action. It took a while to bring me around. But I joined in voting to report the Thomas nomination after a tie vote.

It remains my hope that we will find a way to show Bill Lee the same fairness that we showed Clarence THOMAS and allow his nomination to be debated and voted upon by the U.S. Senate. It would be ironic if, after the Senate proceeded to debate and vote on the Thomas nomination—one that included charges that he engaged in sexual harassment, the Republican leadership prevented the Senate from considering a nominee because he has worked to

remedy sexual harassment and gender discrimination.

I feel confident that this nomination, the first Asian-American to head the Civil Rights Division, would be confirmed by the majority of the Senate. I believe that when the facts and record are reviewed fairly and dispassionately he will be confirmed. When the country has had an opportunity to focus on this important nomination and Senators have had a chance to consider how their constituents feel, I am confident that a positive outcome will be assured.

From all that I have seen over the past week, it appears to me that the Republican leadership is intent upon seeking to kill this nomination and determined to kill it in this committee and never give the Senate an opportunity to consider it. I do not think that it is fair or right or right for the country. We need Bill Lee's proven problem-solving abilities in these difficult times.

No one can argue that the President has sent to us a person not qualified by experience to lead the Civil Rights Division. Bill Lee's record of achievement is exemplary. He is a man of integrity and honor and when he said to this committee that quotas are illegal and wrong and that he would enforce the law, no one should have any doubt about his resolve to do what is right. The Senate should be given the opportunity to debate and vote on this outstanding nominee and then give Bill Lee the chance to serve the country and all Americans.

I think the Senate has committed a great wrong to him in blocking his nomination, that is absolutely wrong.

#### EXHIBIT 1

CITY OF LOS ANGELES,  
OFFICE OF THE MAYOR,  
Los Angeles, CA, March 20, 1997.

ERSKINE BOWLES,  
Chief of Staff, Office of the President,  
The White House, Washington, DC.

Re: Bill Lann Lee, Candidate for Assistant Attorney General, Civil Rights Division, United States Department of Justice.

DEAR MR. BOWLES: I am writing to support the appointment of Bill Lann Lee to the United States Department of Justice position of Assistant Attorney General, Civil Rights Division. Throughout his distinguished career as a civil rights lawyer, Mr. Lee has worked to advance the civil rights progress of the nation and of our richly diverse city of Los Angeles.

In my opinion, Bill Lee is an astute lawyer who is superbly qualified to enforce our national civil rights laws. Mr. Lee's candidacy offers the President an excellent opportunity to reaffirm his strong support of women's rights and civil rights laws.

Mr. Lee first became known to me as opposing counsel in an important civil rights case concerning poor bus riders in Los Angeles. As Mayor, I took a leading role in settling that case. The work of my opponents rarely evoke my praise, but the negotiations could not have concluded successfully without Mr. Lee's practical leadership and expertise.

I know that his expertise is the result of working twenty-two years in the "All Star" leagues of civil rights litigators. His track record is nationally renowned and speaks for

itself. Beyond the many victories, what makes his work special is that he has represented clients from every background, including poor whites, women and children suffering from lead poisoning. His admirable ability to win the trust of so many communities is evident in the broad coalition of civil rights and women's rights experts who are backing his candidacy for this position.

Mr. Lee has practiced mainstream civil rights law. He does not believe in quotas. He has pursued flexible and reasonable remedies that in each case were approved by a court.

Mr. Lee is an outstanding citizen of Los Angeles. He has my enthusiastic support and strongest recommendation for the position of Assistant Attorney General for Civil Rights.

Sincerely,

RICHARD J. RIORDAN,  
Mayor.

LOS ANGELES POLICE COMMISSION,  
Los Angeles, CA, November 5, 1997.

Hon. ORRIN G. HATCH,

Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: As Vice-President of the Los Angeles Police Commission, and a Governor Wilson appointee to the California Fair Employment & Housing Commission (the state's civil rights enforcement agency), please allow me to clarify the record and give my unqualified support for Bill Lann Lee to be Assistant Attorney General for Civil Rights. The clarification involves a case entitled *Tipton-Whittingham, et al. v. City of Los Angeles*, wherein allegations of sexual harassment and sex discrimination in the Los Angeles Police Department ("LAPD") have been asserted. This case appears to have become an issue in the nomination of Mr. Lee.

The allegations in *Tipton-Whittingham*, while disputed in some respects, are serious matters that the LAPD are committed to addressing. Issues of gender bias and harassment have been raised not only by these plaintiffs but also by independent and respected voices such as the Christopher Commission. The parties engaged in arms length negotiations for more than a year before a proposed partial consent decree was submitted for approval to the Los Angeles City Council and then the Court.

The proposed decree was presented to the federal magistrate only after being vetted by the Police Commission, the Mayor's office, the City Council and the City Attorney's office. While members of the Police Commission, including this Commissioner, and the Mayor's office initially objected to specific provisions of the proposed consent decree, those objections were fully heard and addressed before the decree was presented.

As you know, that proposed consent decree has not been approved by the Federal Court. In the meantime, the parties are engaged in mediation before Charles G. Bakely, Jr. in the hopes of reaching a complete settlement of the lawsuit. Hopefully, any settlement will ensure that the LAPD of the future is free of racial and gender bias and sexual harassment, and any consent decree will neither on its face nor in operation require or induce unlawful preferences. I hasten to add, however, that the proposed partial consent decree previously submitted to the Federal Court had that same objective.

As a final matter, in my role as Assistant General Counsel for Hughes Electronics responsible for labor and employment law matters, I have opposed Mr. Lee in employment litigation. I was then and continue to be impressed by his balance, ethics, intelligence and commitment to reaching practical solutions. In my view, he would be an outstanding addition to the Department of Justice.

Should you have any questions regarding the above, please do not hesitate to call me.

Sincerely,

T. WARREN JACKSON,  
Vice-President.

OFFICE OF THE CITY ATTORNEY,  
Los Angeles, CA, October 29, 1997.

Hon. TRENT LOTT,

Senate Majority Leader, Washington, DC.

Re: Bill Lann Lee Confirmation.

DEAR MR. MAJORITY LEADER: As an Assistant City Attorney for the City of Los Angeles—and opposing counsel to Bill Lann Lee in recent federal civil rights litigation—I read with concern the October 27 letter to you from the Speaker of the House of Representatives. I believe the Speaker has been misinformed about many of the facts set out in that letter, and therefore the conclusions he reaches about Mr. Lee's fitness for public office, and in particular for the position of Assistant Attorney General for Civil Rights, are unwarranted.

The Speaker's letter begins by asserting that Mr. Lee "attempted to force through a consent decree mandating racial and gender preferences in the Los Angeles Police Department." This assertion is erroneous. In the course of representing the City of Los Angeles, I have for the past seventeen years monitored the City's compliance with consent decrees affecting the hiring, promotion, advancement, and assignment of sworn police officers. I have negotiated on the City's behalf two of those decrees. Of those two, Mr. Lee was opposing counsel on the first, and was associated with opposing counsel on the second. None of these decrees mandates the use of racial or gender preferences. In fact, each of them contains provisions forbidding the use of such preferences.

For the same reasons, the Speaker's statement that the use of racial and gender preferences "would have been a back-door thwarting of the will of the people of California with regard to Proposition 209 (the California Civil Rights Initiative)" is inapposite. Because the decrees with which Mr. Lee was associated do not call for racial or gender preferences, and in fact forbid them, these decrees do not violate the requirements or the intent of Proposition 209.

Of particular concern to me is the Speaker's reference to "the allegation that Mr. Lee apparently employed dubious means to try to circumscribe the will of the judge in the case." This allegation is wholly untrue. The case being referred to is presently in litigation in the district court. Mr. Lee was not at any time a named counsel in the case, but was associated with opposing counsel because of his involvement in the negotiation of a related consent decree. Neither Mr. Lee nor any opposing counsel attempted in any fashion to thwart the will of the judge supervising the litigation. The matter had been referred by the court to a magistrate judge appointed by the court to assist in the resolution of the case. Each counsel had advised the district judge at all points about the progress of the matter. Upon reconsideration, the district judge elected to assert direct control over the litigation. Nothing in Mr. Lee's conduct reflected any violation of the court's rules, either in fact or by appearance.

Bill Lann Lee and I have sat on opposite sides of the negotiating table over the course of several years. Although we have disagreed profoundly on many issues, I have throughout the time I have known him respected Bill's candor, his thorough preparation, his sense of ethical behavior, and his ability to bring persons holding diverse views into agreement. He would, in my view, be an out-

standing public servant and a worthy addition to the Department of Justice.

Very truly yours,

ROBERT CRAMER,  
Assistant City Attorney.

CITY ATTORNEY,  
Los Angeles, CA, November 4, 1997.

Hon. DIANNE FEINSTEIN,

U.S. Senator, Washington, DC.

DEAR SENATOR FEINSTEIN: As City Attorney of the City of Los Angeles I feel compelled to correct the inaccurate and defamatory allegations in the October 27th letter from Speaker Newt Gingrich about Bill Lann Lee.

The Speaker's letter charges that Mr. Lee "attempted to force through a consent decree mandating racial and gender preferences in the Los Angeles Police Department." That assertion is wrong. Mr. Lee participated in two lawsuits against the Los Angeles Police Department several years ago that were resolved by consent decrees, but neither decree mandates the use of racial or gender preferences. In fact, each of them contains provisions forbidding the use of preferences.

What is most outrageous about Mr. Gingrich's letter is his reference to "the allegation that Mr. Lee apparently employed dubious means to try to circumscribe the will of the judge in the case." There is simply no truth to this allegation. The facts are these. This case, known as *Tipton-Whittingham*, is presently in litigation in district court. There are serious allegations of discrimination and harassment being made by the plaintiffs in this case who are women police officers in LAPD. Mr. Lee was not at any time a named counsel in the case, but was associated with opposing counsel because of his involvement in the negotiation of a related consent decree. Neither Mr. Lee nor any opposing counsel attempted in any fashion to thwart the will of the judge supervising the litigation. The matter has been referred by the court to a magistrate judge appointed by the court to assist in the resolution of the case. Each counsel had advised the district judge at all points about the progress of the matter. Upon reconsideration, the district judge elected to assert direct control over the litigation. Nothing in Mr. Lee's conduct reflected any violation of the court's rules, either in fact or by appearance.

Bill Lann Lee and I have been on opposite sides of the negotiating table over the years and we have not always agreed. Yet I respect him for his keen intellect, his profound sense of ethics, and his ability to negotiate an outcome that achieves justice and fairness.

The United States Senate should not countenance the kind of character assassination based on erroneous information that has occurred in this confirmation process. I'm glad I can help clear the record in this regard.

Bill Lann Lee is an outstanding lawyer who embodies the highest ethical traditions of that profession and will be vigilant in his defense of the Constitution and the laws of the United States. He should be confirmed as Assistant Attorney General for Civil Rights.

Very truly yours,

JAMES K. HAHN,  
City Attorney.

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

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

#### TRIBUTE TO JOHN LUNDY

Mr. COCHRAN. Mr. President, I want to bring to the attention of the Senate the fact that one of our finest and brightest and best-liked members of staff, from the State of Mississippi, is leaving the Senate and going back to Mississippi at the end of this month to join one of the leading law firms in our State. I am talking about John Lundy, who is chief of staff for my distinguished State colleague, Senator LOTT.

John Lundy came to Washington in 1987 to work as a legislative assistant on the House side of the Capitol. He distinguished himself right away with his hard work, his ability to get along with staff members and Members of the House on both sides of the aisle, as well as work effectively with Senate staffers from our State and Members of the Senate.

He had a lot to do with the writing of the 1990 farm bill as a member of the staff of LARRY COMBEST, Congressman from Texas, who is a Member of the Agriculture Committee in the House.

John is originally from Leland, MS. He graduated from Mississippi State University in 1983 with a degree in agricultural economics. After graduation, he went to work as a research assistant at the Mississippi State University Delta Branch Agricultural Experiment Station in Stoneville, MS, near his hometown of Leland. He then worked for a while as a loan officer with a farm credit institution in the Mississippi Delta.

When he joined Senator LOTT's office, he became someone with whom I had an opportunity to work closely over the years. When Senator LOTT was elected majority leader, he made John Lundy his chief of staff. John has been one of my favorites and a good friend to me and to all of the Members of our delegation. We are going to miss him and his lovely wife, Hayley, very much, and their daughter, Eliza. They are moving to Jackson, as I indicated, toward the end of this month.

But I wanted to take this opportunity to let other Senators know about his decision to go back to Mississippi and to congratulate him on his distinguished service here in the U.S. Senate as a member of our staff and the House of Representatives staff as well, and to wish him all of the best in his new undertaking. I am confident that he will be a tremendous success in his new association with the law firm in Jackson.

We wish him well. We will miss him.

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.

#### LANDMINES

Mr. LEAHY. Mr. President, in one of the newspapers I was reading this morning, there was an editorial speaking about the U.S. position in saying that they will work to lead an effort toward the demining of antipersonnel landmines around the world, an effort that is already well underway in a number of countries, which is supported partly by the United States in the millions of dollars in humanitarian demining efforts.

I agree with the President. I agree with the administration's efforts to seek more money for demining.

We have so many millions of landmines in the ground in 60 to 70 countries that nobody even knows how many landmines are out there. Very often the way we find out where they are is when a child or some other non-combatant steps on a landmine, touches a landmine, and is either crippled, maimed, or killed from the explosion.

We also know, whether these are \$3, \$4, or \$5 antipersonnel landmines stuck in the ground, they can cost a considerable amount of money to take them back out depending on where they are—anywhere from an average of \$100 on up to as much as \$1,000 per landmine.

I agree that the United States, as the most powerful and wealthiest Nation on the Earth, should do everything possible to try to take landmines out of the ground. But I note the obvious, Mr. President. It is like trying to bail out the ocean, if you continue to put new landmines down.

Next month, in Ottawa, over 100 nations will come together to sign a treaty banning the placement and use of antipersonnel landmines. One of the most notable exceptions to the signers will be the United States of America. I think that is a bad mistake. I think if the United States wishes to have leadership and credibility on this issue they should do both—help in the demining, but do the right thing, and that is help stop further mining.

Until the use of antipersonnel landmines is treated the same way we treat the use of chemical weapons then we will continue to see them and we will continue to see the use of antipersonnel landmines against innocent civilians. They have become more and more—if not exclusively, at least primarily—a weapon against civilians. Worse than that, they are weapons that stay long after the war is over. Peace agreements are signed, tanks pull away, guns are unloaded, armies march away, and 5 years later a child on the way to school is destroyed and nobody even remembers who was fighting, nobody knows who put the weapon there.

I just mention, Mr. President, while I support our continued efforts to demine and while I take pride in writing much of the legislation to get the money for the United States to be in-

volved in humanitarian demining up to this point, I note it falls short of the ultimate goal until we have a real ban on the use of antipersonnel landmines. I yield the floor.

The PRESIDING OFFICER. The Senator from the great State of Florida.

Mr. GRAHAM. I appreciate the courtesies of my colleague and good friend from Vermont.

#### COMMERCIAL SPACE ACT OF 1997

Mr. GRAHAM. I rise today to speak in support of legislation which Senator MACK and I filed last night, legislation that will bolster one of the most important components of our Nation's high-technology economic future, the space industry.

For more than 40 years, my home State of Florida has been pleased, proud, and gratified to have been the launching pad for our Nation's exciting adventure in space. Our friend and colleague, Senator JOHN GLENN's historic *Friendship 7* mission was launched from Cape Canaveral. So were Neil Armstrong, Edwin Aldrin, and Michael Collins on their way to the first manned Moon landing.

For the last 16 years, the world has watched intently as dozens of space shuttle missions have started at the Kennedy Space Center.

But as we prepare for the increasingly high-technology, dynamic world of the 21st century, space will be more than just a place of exploration. In the 4 decades since the Soviet Union launched sputnik in October 1957, space has become a site for tremendous scientific innovation. Ball-point pens, velcro, and numerous other consumer products that make our lives easier are a direct result of the space program.

Medical research has also reaped tremendous benefits from our time in space. And satellite technology has led to revolutionary advances in the way we forecast weather, protect the environment, and communicate with each other.

Space may also revolutionize the way we transport goods and services and pursue other economic and business opportunities. In recognition of these advances, Senator CONNIE MACK and I are introducing the Commercial Space Act of 1997.

Cape Canaveral is also home to the Florida Spaceport Authority, which is set to launch its first commercial payload from Launch Complex 46 in January 1998. This will be a milestone event in our State's history, and the bill that I am introducing today aims to modernize the laws that govern the United States' emerging commercial space industry.

It is urgent that we develop a clear Federal policy for this important enterprise. For much of the last 40 years, our Nation's experiment in space has been in the exclusive domain of the National Aeronautics and Space Administration [NASA].

The legislation I am offering today recognizes that space is now a public

and private sector place and enterprise. It aims to create a stable business environment for an industry that employs thousands of Americans and generates billions of dollars in economic activity each year.

Our bill pursues this goal in several important ways.

First, it will reduce the bureaucracy and redtape that plagues our regulation of the commercial space industry. Currently, the oversight of space-related businesses is scattered among multiple federal agencies, and burdens businesses with complex, confusing, and often conflicting rules. It is not an environment that encourages progress and innovation.

This bill takes the first step toward clarity by requiring each relevant federal agency to clearly state its requirements for commercial space licensing. That requirement will help space businesses in their efforts to raise capital, develop a consistent business plan, and create new job opportunities within the commercial space industry.

Second, our bill encourages federal agencies to act in a more efficient manner by increasing the private sector's involvement in servicing and launching space hardware, in addition to their current role in building rockets and satellites. This will bolster the expansion of the commercial space industry, while at the same time reducing Government costs and saving tax dollars.

For example, this legislation would call for NASA to look at the role the private sector may play in operating, maintaining, and supplying the international space station. It would also encourage the conversion of old ballistic missiles into launch vehicles, a use that will reduce storage costs and provide for less expensive commercial space launches.

Finally, it is imperative that we update existing Federal law to reflect the rapid pace of technological change. Mr. President, we cannot hope to prepare for the high-tech 21st century if the Federal Government maintains a 20th century mentality. Our laws should be flexible enough to adapt to a world in which new science and technology is created every minute.

These goals will be difficult to achieve, however, if we do not recognize the role of State and local governments in reducing space costs. This is especially relevant to Florida. I am hopeful that our legislation will spur a robust and energized commercial space industry. Within 8 years, the number of launches in Florida are expected to double. But this potential growth can only be achieved if there exists a productive working relationship among all entities involved in the commercial space industry, including state and local governments.

Mr. President, I would like to take a moment to tell you exactly what this legislation will accomplish:

This bill will require NASA to submit a report that identifies and examines

the prospects for commercial development, augmentation, or servicing of the international space station by the private sector. Private sector involvement in the commercial space industry is likely to reduce the costs of operating, maintaining and supplying the space station and will allow State governments to act as potential brokers in reducing space station costs.

We amend the Commercial Space Launch Act and to give the Federal Government the authority to license commercial space reentry activities. This is an essential portion of the bill. Without this legal authorization, commercial reusable launch vehicles will not be allowed to re-enter the atmosphere, a restriction that would stymie the realization of important technological developments and investments by the commercial space industry.

This bill reaffirms our Nation's plans to make the Global Positioning System [GPS] a world standard. GPS is a space-based system that individuals can use to determine their precise position on Earth. Although it began as a military/defense system, the GPS applications have expanded to other sectors. In addition, foreign governments are interested in entering this lucrative global market. Therefore, in an effort to protect our economic interests and our national security, it is imperative that we encourage our President to enter into regional agreements with foreign governments to secure U.S. GPS as the unquestioned global standard.

The legislation further requires the Federal Government to purchase both space hardware and transportation services from the private sector. This will encourage innovation within the commercial space industry, while simultaneously promoting greater cost efficiency and protecting our national security.

This legislation allows the conversion of excess ICBM's into space transportation vehicles. These missiles cannot be used for defense purposes due to the START treaty. The conversion of these missiles could save taxpayer dollars by eliminating storage costs and providing cost effective launches for small scientific and educational payloads.

Mr. President, I was extremely pleased when the House passed its version of this legislation earlier this week. It is my understanding that this legislation will be a priority for the Senate Commerce Committee when Congress returns from recess in 1998.

I look forward to working with Chairman MCCAIN, subcommittee Chairman FRIST, my colleague, Senator MACK, and other members of the committee and the Clinton administration, to enact this important commercial space legislation.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

#### EXTENSION OF TIME FOR MORNING BUSINESS

Mr. GREGG. I ask unanimous consent the period for morning business continue until 2:30.

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

#### THE BUDGET SURPLUS AND PAYROLL TAX BURDEN

Mr. GREGG. Mr. President, I rise to address an issue which has far-reaching concerns for our Nation. Many of our colleagues have heard of the improving economy and have participated in the improving economy and recognize as a result of this improving economy it is likely that the Federal Government will incur a budget surplus in the very near future. This comes about because of a lot of hard work by this Congress, especially this Republican Congress, in controlling the rate of growth of the Federal Government. It is something that is unusual, obviously, not having occurred in the last 25 years.

Not only will we have a budget surplus, but it is projected by OMB that the budget surplus will continue well into the first decade of the next century.

So, I think that we need to discuss how we address this issue. This is an unfamiliar situation, as I mentioned, for Washington. We certainly do not have much experience in dealing with surpluses so there is naturally some perplexity as to how best to address it. To my mind the answer is pretty clear: The surplus should result in relief to the American taxpayers.

Needless to say this is the right answer on economic grounds. If the Government takes in more revenue than it needs to finance its operation, the answer is not for the Government to spend that; rather, it only makes economic sense to return the extra revenues to the private economy that bears the burden of supporting the Government. Not only that, but in this particular case, the appropriateness of tax relief could not be more clear. Let none of us forget what has enabled Congress to accomplish this goal of balancing the budget. It has in large part been the dramatic growth of the economy.

If the private sector in this country had not come through with a surge of productivity, then the budget negotiators might not have been able to reach the agreements necessary to accomplish a surplus to reach a balanced budget. It would, therefore, be ungracious of us, at the least, not to return that surplus to the taxpayers who have earned it.

I rise, Mr. President, today to voice a specific hope—that this Congress will consider, when that time comes, when we have reached a surplus, including a cut in the payroll tax as the appropriate way to address the returning of this surplus to the American taxpayer.

There are several reasons for this—all of them, I believe, noble. First of



all, the payroll tax is the most regressive component of our tax burden. There are no deductions, no personal exemptions in figuring of the payroll tax. It's assessed directly on the first dollar of workers' wages, and from there it goes upward until it reaches the wage cap.

Moreover, the payroll tax has been the fastest growing component of the Federal tax burden. When one includes the employer's share of this tax, we find that the majority of Americans pay more in payroll taxes than they do in income taxes. The payroll tax has grown dramatically from a level of approximately 1 percent for each employee and employer a little more than a generation ago, to today where it is approximately 15.3 percent. So while Federal revenues have stayed roughly constant as a percentage of the National economy, an ever-larger proportion of the burden of taxes has been carried by the wage earner in the form of payroll taxes.

But an equally important point is that these payroll taxes were never intended to finance the general operations of Government, as it is doing today. Quite the contrary. The payroll taxes are supposed to finance the operations of the Social Security system and the Medicare system.

I know my colleagues do not need to be reminded of the enormous unfunded liability that exists with respect to the long-term obligations of the Social Security and Medicare systems. These enormous payroll tax burdens, I regret to say, are not being used to reduce that long-term liability. Surplus payroll taxes today are used to buy Government securities, which must be redeemed by the Federal Government in the future to pay back Social Security programs. That money will, of necessity, come from taxation again, to create the general revenues necessary to redeem the bonds.

A review of the figures is startling. Right now, Social Security's total income is \$451.3 billion and total outflow is \$370.8 billion. This leaves a surplus in the Social Security trust fund of \$80 billion. Of that total, \$43.6 billion is in the form of interest payments by the Federal Government to itself, and the other \$36.9 billion represents the annual operating surplus in the Social Security trust fund.

So each year, we run an annual operating surplus in Social Security that is slightly more than 1 percent of the national payroll. That surplus is combined with interest payments to increase the size of the Social Security trust fund. That trust fund is projected by the trustees to grow each year until it reaches a peak value of \$2.89 trillion in the year 2019.

I ask my colleagues to think about what that \$2.89 trillion means. That \$2.89 trillion is not only assets owned by Social Security; more importantly, it is a debt owed by the Federal Government to Social Security. In order to pay the benefits to future beneficiaries,

the Federal Government will need to tax the American public, through general tax revenues, to come up with this \$2.89 trillion.

Every year that we collect these surplus payroll taxes, we create several significant events. We add to the trust funds, and thus we add to the debt owed by the Federal Government. We take payroll taxes from hard-working Americans today and, instead of really saving them, we convert them into a tax burden on the Americans of tomorrow. This certainly is no way to run a government, a country—or a railroad, for that matter.

In order to fully understand the bizarre situation in which we are placing ourselves, I ask my colleagues to consider the trustees' projections for the period 2012 through 2019. In the year 2012, we will see the first year of operating deficits within the Social Security trust fund. That means that, in that year, annual Social Security revenues will amount to less than promised benefits.

In other words, it will require cash from the general Treasury in that year just to meet the current benefit payments to Social Security recipients.

Yet, in that same year, interest compiled by the Social Security trust fund will be an enormous \$140 billion. So we will need to take \$9 billion of that interest payment from the general fund and use it to pay beneficiaries immediately. The other \$131 billion will be credited to the Social Security trust fund, so that the trust fund will grow, theoretically at least, from \$2.2 to \$2.4 trillion in that year, even as the program is running annual operating deficits. This obviously doesn't work.

Think about what will be happening at the same time. We will need money from the general Treasury just to pay current beneficiaries, and billions in assets will be added to the Social Security trust fund—but that doesn't exist—and the trust fund, continuing to grow, will earn even more interest in the next year, to be paid from the general Treasury.

So each year—from 2012 through 2019—the Federal Government will make larger and larger contributions to Social Security, in current benefit payments and interest payments. In the year 2018, for example, the Social Security operating deficit will be \$147 billion. That means it will have to pay out \$147 billion more than it takes in. So, of the \$171 billion in interest payments that will be due that year from the Federal Government, \$147 billion will be needed right away to pay benefits, and only the remaining \$24 billion will continue to build the trust fund.

It's in the year 2019, however, that the roof really starts to fall in. Then, even with all the interest payments from the general Treasury and all the current payroll taxes and benefit taxation, there will still not be enough money to pay the Social Security beneficiaries, and we will have to begin to redeem the principal on Social Security

trust fund T-bills in order to pay the benefits.

Every year that we continue to collect surplus payroll taxes, and thus swell the size of the trust fund, is a year that we add to the unfunded liabilities that we are piling on the heads of our children and their children, the American taxpayers to come.

It is largely for this reason that I believe that payroll tax relief is needed. I have introduced a piece of legislation, S. 321, that would give 1 percent of the payroll tax back to the wage earners; in other words, it would be a tax cut, to be saved in an individually owned retirement account. This would give us a Head Start on prefunding some of the massive liability, by moving it off the Government ledger and into genuine savings, because, you see, the basic problem here is that the Social Security system is a pay-as-you-go system. That creates a huge unfunded liability. Until we start to prefund that liability, we are not going to get out from underneath that unfunded liability. The best way to prefund that liability is to take the surplus that we are presently running in the Social Security system, cut taxes, give wage earners back their money, and allow them to save it for their retirement so that they have a savings account, identified to them, in their name, which they can use to benefit them at retirement and, thus, turn a contingent liability into an actual savings vehicle.

If we were to pass this bill today, S. 321, we would not solve all of Social Security's problems, but it would eliminate approximately 78 percent of Social Security's projected insolvency. That is a pretty good chunk. We would, however, vastly reduce the burden on tomorrow's economy. For example, whereas, under present law, Social Security will absorb more than 17 percent of the national payroll tax base by the year 2030, under this legislation, it would absorb closer to 14 percent. That is a major drop—3 percent—in our national economy, which will at that time be multiple trillions. That is part of the gain that comes from prefunding Social Security's liability, instead of simply continuing to collect and spend surplus payroll taxes, leaving tomorrow's obligations for another day.

It is critical, as we debate the issue of the surplus which is coming, that we make a thoughtful decision on how to handle it. I think a thoughtful decision involves some obvious facts. What is our most significant, looming fiscal problem as a nation? It is the burden of our pension plans, which are unfunded. What is the most significant unfunded pension plan in America? It is the Social Security system.

The second logical effort that should be addressed in addressing the surplus is, who gave us the money in the first place? Who has the best right to claim that money? That is clearly the taxpayers of America. We can address both of these issues by following the course that I have outlined here today—cut



the Social Security tax, return it to the wage earner, allow the wage earner to start to preinvest, to presave for their retirement, with the taxes which are now going into a fund that is on a cash-flow basis. The taxes are now being used to operate the Government, the general Government, instead of being used and identified as the savings of the Social Security recipients. This is a good policy approach to what is looming as one of the major policy debates that we will confront as a Congress as we move toward the next century.

Mr. President, I yield the floor.

Mr. DURBIN addressed the Chair.

The PRESIDING OFFICER. The Senator from the great State of Illinois is recognized.

Mr. DURBIN. I thank the Chair for recognizing me. I thank my colleague for his statement on the future of Social Security. He is recognized in this Chamber as one who has studiously addressed himself to this and many other challenges.

I hope that next year my colleague will lead a bipartisan effort to take a serious look at the future of Social Security and Medicare, and so many entitlement programs that we worry about, in terms of long-term solvency. I thank my colleague for his remarks. Though I may not agree with every particular, I certainly do respect the fact that he continues to stick with this issue through thick and thin, as he should. The Senate should address it, and, hopefully, we can do it together in a bipartisan fashion.

Mr. GREGG. Mr. President, I appreciate that kind comment. The Senator from Illinois has certainly made a serious effort in a number of areas in this Chamber. I have enjoyed working with him, for example, on the tobacco issues. And I look forward to working with him on this. I also believe this must be resolved in a bipartisan manner.

#### JUVENILE CRIME

Mr. DURBIN. Mr. President, I am, as you know, concluding my first year in the U.S. Senate. Within a few days, we may be able to go home, and the sooner the better.

As I reflect on my first year, I think back on one particular issue, which I didn't anticipate being of great importance and now has turned out to be of major importance on my legislative agenda. I was appointed to the Senate Judiciary Committee and, as a result of that appointment, I decided to really focus on the issue of crime, particularly juvenile crime, in the United States.

This past year, I made my visits back to Illinois coincide with an effort to study the problem of juvenile crime. During the course of 1997, I visited jails and prisons, detention centers, have met with judges and law enforcement officials, have been to drug rehab facilities, have been to many, many

schools in the State of Illinois, have met with young people and their parents, and I have tried as best I could to come to grips with some of the problems that we have in this Nation as it relates to crime.

I find it very curious to consider the following: The United States has one of the strongest economies in the world. I daresay that you could not travel across the world and find another country so widely admired as the United States. No matter where you go, people talk about us—the way we live, our music, our art, our culture, our economy. We should take great pride in that. We also know for a fact that, if we were to lift all restrictions on immigration and say the borders of the United States are wide open, we would be inundated with people from all over the world who would walk away from their cultures, their families, and their traditions, many of them just hoping they would have a chance to come to America and be part of this great democratic experiment.

Having said that, though, the one thing that is curious to me, despite all of these positive things, is, why is it that the United States of America has the largest percentage of its population imprisoned, incarcerated, of any country in the world except one—Russia? Why is it, over the last 10 years, we have seen such a dramatic increase in incarceration and imprisonment in America? Is there something genetic about living in America that leads more people to commit crime? I question that. I don't think that's true. But what is it about our country that is engendering more imprisonment and more incarceration?

Now, let's be fair and look at both sides of the ledger. We have found that, as incarceration rates have gone up and the State and Federal prisons have grown in size, the crime rate has gone down.

So there is a positive side to this. If people who are committing crimes are being taken off the streets to make those streets safer for our families, our communities, and our neighborhoods, that is a positive development. I do not want to suggest at all that we should step back from that commitment. If someone is guilty of crime, they should do the time. It is not just the slogan; it is a fact. And in America, more and more people are doing time.

But is there an answer to this dilemma, or challenge, which goes beyond the obvious, the enforcement of crime, the imprisonment of criminals? Can we as a nation aspire to a goal where we see a continued reduction in crime and a reduction in incarceration? Because imprisonment is a very expensive undertaking for a society. First, we measure it in dollar terms. In the Federal prison system it is probably \$20,000 a year to keep a prisoner there. Roughly the equivalent of what it takes to go to some of the best colleges and universities we spend each year to put men and women in prison and keep

them there at the State level. It goes as high as \$30,000 in my own State of Illinois. It is an expensive commitment.

Don't forget this important fact. There is not a person in prison today who didn't get there because he or she created a victim. So in order for that process to work its way through, someone was victimized. Someone may have been killed, assaulted, raped, or burglarized—whatever it might be.

So when we talk about reducing prison populations, it is more than saving money. It is also a question of sparing victims, but doing it in a way that still reduces crime.

I have taken a look in my State at some of the things that are being discussed. I have talked to some of the leaders across the Nation. I have come up with some things that I hope this Congress can address on a bipartisan basis. Let's start at the very beginning.

We now know through research, which has been proven time and again, that one of the most critical areas in the life of an individual is the very first few months of life. We used to think that those gurgling, babbling little kids were so cute. We would diaper them, feed them, laugh at them, try to guess who they looked like in the family, and we didn't realize that while we were doing that, this child's brain was developing at a rapid pace. In fact, in the first 18 months of life, some 75 percent of a child's brain has developed.

The reason I raise that is because I think there is a link between the development of our children, how well they develop, and what they turn out to be. My parents believed that. I believe that. My wife and I did, as do our children. I think it is a fact.

When I visited the Cook County Juvenile Detention Center about 6 months ago and saw the hallways filled with teenage kids, mainly boys, walking back and forth, it looked like a high school with 14- to 15-year-olds filing back and forth in uniform. But, of course, these weren't just high-school-age kids; these kids had been convicted of a crime.

I asked the prison psychologist. I said, "Who are these children?" He said, "Senator, these children I could describe in about four or five characteristics." First, they come from broken homes, almost invariably. Second, they have a learning disability. They were falling behind in school. They weren't learning as well, either because of poor nutrition before they were born in their mother's womb, or poor nutrition after they were born, exposure to narcotics, exposure to abuse. These children are basically "unattached." That is a term that is used in psychology about which many people would just shake their heads and say, "How could this be?" But it basically means a child coming into this world does not receive the most fundamental and basic emotional bonding with a parent or a loved one.

How many parents automatically, instinctively grab that baby, pull the

baby up to their arms and cradle it while they are feeding the baby, nursing the baby, feeding it with the bottle, with the warmth of the mother, or even the father, and a little communication going on there as part of this bonding attachment? These kids missed that. These kids didn't go through this emotional maturation that leads to a normal functioning adult, and, as a sequence of this, they are missing a piece of that.

He said there is something else about these kids, too. He said these kids "don't know how to resolve conflicts." You "Dis me, I kill you. I've got a gun to do it." In America everybody has a gun to do it, unfortunately.

So when I started looking into these "problem children," as we might call them, and then back to the beginning, I started thinking about what we can do as a society to address it. Clearly, we have to start at the beginning.

Now, with more than half of the mothers in America working and relying more and more on custodial care, whether it is day care or babysitters, shouldn't we be asking a very fundamental question as to what kind of care our kids are receiving when they are in custodial care?

I don't think it is any accident that this au pair case in Massachusetts attracted so much national attention. It is a sad reality that we lose children in America every day to abuse and neglect. Yet, this case, which was so prominent in the headlines, captured America's attention for weeks, I think, because more and more people instinctively are worried about their own children in custodial care. You leave them there 8 or 10 hours a day. What is happening to them? Are they safe? Are they being treated right?

So, when the President calls a national conference on child care, I hope that we will look beyond the fact that it is a political setting to the fact that this is a very real family challenge. It is interesting in this Nation that we decided that public education was so important to the future of this country that we are going to make a public commitment to it. We understood that some wealthy parents could afford to educate their own children, but most parents could not. So we said, if we are going to have well-educated children who become good citizens, we as a nation will commit to them. We will commit at every level—local, State, and Federal level—to make sure we have a system of public education.

We have a new challenge, my friends. What about the years before kindergarten? What about these developmental years? What commitment are we prepared to make as a nation to make certain that those developmental years are right?

Some children are blessed to have a parent who can stay home and raise them. I count myself as one of the fortunate parents. My wife was able to do that. I don't think we could have given our children a better gift than to have

her there every day while they were growing up, reading to them, living experiences with them, teaching them. But in some homes that can't happen for economic reasons and other reasons that a parent can't stay home.

So, that parent wants to make sure that his or her child also gets good care. You look at day care in America today, and it is a very mixed bag. There are some extraordinarily good day care centers—some private, some public. But let's be honest. There are some that aren't very good at all. There are some that are mere babysitters—diapers, bottles, and little more.

You look at the training requirement. In Illinois, for example, a day care worker needs 2 years of college—an associates degree. That is good, but it could be a lot better. We could be making sure that the men and women in day care really understand what is going on in that young mind and bring these children along as they should be. But it will cost money. You can't bring people in for that kind of professional training and professional care without paying. Working families say, "That is great, Senator; a great idea. Who is going to pay for it? Who will pay? What is the bottom line?" Honestly, we expect the families to contribute, and they do—many of them making great sacrifices for day care. But clearly there must be more. We as a nation must make a contribution to this, too, to make certain that these children have a fighting chance.

There is another element that I think is important, too. As I traveled around Illinois, I visited a program called Lincoln's Challenge. It is in 15 different States now. The National Guard in Illinois runs this program and invites in 400 students who are high school dropouts in the State of Illinois. They must come voluntarily. They must be between the ages of 14 and 18. They must be drug free and not pregnant. If they then come into the program, they are in for 10 weeks of military style training. They are in uniforms. They shine their shoes every morning, make their beds. It is "yes, sir"; "no, sir" and they go to class. These high school dropouts that other people have given up on are brought into classrooms. In the course of 10 weeks, 71 percent of these kids, high school dropouts, earn the GED degree—in 10 weeks. All of a sudden, they are out of the neighborhood. They are focused. They are in a disciplined environment. And they have people who care around them. It works.

Kids who would have been casualties on the streets of Chicago, or Springfield, now have a chance because of one other factor. One of the important features of this program is one that I have come to believe is essential if we are going to deal with reducing crime and saving our kids. When those young men and women finish this program, they go back to their hometowns, but with one important difference. Each one has

an adult mentor. Each one has an adult outside their family that they can call on for advice or encouragement or support, for counsel. "How am I going to get a job? Can I get into the Army? What should I do next if I want to go to the community college?" So there is somebody who cares. Of all of the programs I have seen, the most successful I have run into time and again—whether government programs or private sector—are mentoring programs.

We had a juvenile court judge from the State of Georgia, from the city of Atlanta. I am sure Senator WELLSTONE remembers when she spoke to our conference of Senate Democrats. She told the story of coming out of private law practice and becoming a juvenile court judge and going back to the big law firm in Atlanta and saying, "I want you lawyers, whether you are corporate or criminal lawyers, to volunteer to come to my courtroom and represent these kids." She knew the kids would get better representation. She also knew something else. Relationships would begin. Attorneys meeting young men and women would start to care. Those young men and women, sensing that caring, would finally have a voice that they could listen to, someone they could talk to.

So, I have come to believe that, as we talk about reducing crime and helping kids, it is not just early childhood development, but making certain that kids, particularly those facing problems, have an opportunity for mentoring.

We also need to think about some basics. Why in God's name do schools quit at 3 in the afternoon? This might have made sense 50 years ago when kids went back to Ozzie and Harriet settings, and mother was home with milk and cookies. But, boy, that is the exception, not the rule. Most kids who are turned loose at 3 in the afternoon have two options: television or trouble. We have to start thinking about school days that reflect the reality of America's families.

Most American families come in at probably 5 o'clock or 6 o'clock, if they are lucky, weary from a day of work. That is the time when they can finally give their children a little bit of attention and, hopefully, have some good time with them. But what happens between 3 and 6? What is happening with these kids? In more communities, more and more that I visit, schools are doing things after the regular school hours: some recreation, some arts and crafts, and music, and some, of course, regular school activities, but a safe environment. Shouldn't that be the first rule that we as a nation adopt? Our kids are going to be safe all day long?

One of the last points I want to make is about prisons themselves. I visit a lot of them. In fact, I went down to the Marion Prison in southern Illinois. It is rather infamous—or famous, depending on your point of view—as having been in a lockdown for almost 5 years now. Two prison guards were killed, and, as

a result, most of the prisoners who are brought there spend most of their time in their cells. In fact, the only prisoners there have, first, committed a violent crime to get into prison, and, second, broken a law once they were in prison. So these are a pretty tough bunch of characters.

Listen to what they do when they come to the Marion Federal Prison. The first year of their life there is very predictable. The first year of their life, out of a 24-hour day they will spend 23 hours of that day in a cell alone. They get 1 hour to come out of their cell, but with no socialization. They don't speak to anyone. The guard watches them as they walk around the yard. If they get through that year and they have not broken the rules, then they start bringing them out and giving them a chance to take a little course here on this, or go to a prison industry, or maybe eat in a room with some other prisoners.

They have a dramatic success rate. You can imagine this is pretty tough. It is one of our toughest Federal prisons.

As I talked to the warden and the officers there—and I want to give high praise to them because I think they run a very good operation—and talked to people in other prisons about who these prisoners are and whether they are likely to come back, there is one factor that just comes roaring through at you. That factor is this: If you invest in educating these prisoners while they are in prison, the likelihood that they will return to prison is cut dramatically. There is one in four chances that they will be recidivists, commit another crime and come back, if you educate them.

Unfortunately, we as a nation for whatever reason, budgetary or otherwise, have not made this commitment to education. We somehow think that we are punishing the prisoners by not making education classes available so that they can become literate, so that they can develop a skill. I am not so sure we are punishing the prisoners as much as we are punishing ourselves. These prisoners, most of them, will be back on the street and without an education and without basic skills. I am afraid they are destined to commit crimes. In fact, statistically we know they are, by a rate of 4 to 1, from those prisoners who pick up education and skills. We have not made that commitment in our prison system and we should. It is absolutely essential that we do it.

I went to the juvenile maximum prison in Illinois and met with the principal of the high school there. And I looked at all of the young men who were in the classrooms at this prison, and I said, "How is this working out?" He said, "Well, amazingly well. Most of these young men"—all men at this prison—"missed something in their basic education and became so frustrated that they basically dropped out; they stopped paying attention and fell behind." He said, "We test them to find

out what they missed. We go back," he said, "and fill in that gap and they come roaring forward toward a GED." To many of them, it is sad that it took this track for them to reach this fulfillment, but it is a fact and one that we should reflect on, how time spent in prison, if it is done constructively, can start to turn a life around, can make this a safer America and reduce the number of victims that we might see.

People think that in an age where all we talk about is balancing the budget many of us in Washington really don't reflect enough on some of the important social goals we should have in this country. I don't think there is anything more important than our children, and if it means making certain that we have quality day care for childhood development, if it means making certain that we are committed to a school day that reflects the reality of our families, if it means making certain that the kids who need someone to talk to have an opportunity, whether it is through Big Brother, Big Sister, the Boys and Girls Clubs, whatever it happens to be, if it means making certain that our prison system now starts to be more responsive to real human needs, I think those are things we as a Senate and a House should address.

I hope that next year, even in a busy election year, we have the time to do just that.

I want to address two other topics very quickly. I see my friend from Minnesota is here. I just want to address them very quickly because they are important and I hope somewhat timely.

#### NOMINATION OF BILL LANN LEE

Mr. DURBIN. Mr. President, late this week we will have an executive committee meeting of the Senate Judiciary Committee. We will return to a nomination made by President Clinton, one that I think has become a source of major controversy. The gentleman's name is Bill Lann Lee. Mr. Lee has been named by the President to be head of the Civil Rights Division of the U.S. Department of Justice.

I had never met Bill Lann Lee until about a month ago when he came by my office. He made a very positive impression in the short time we had to speak to one another. Then I read his background and sat through his confirmation hearing, and I want to say that I hope Mr. Lee will get the chance he deserves.

Bill Lann Lee is the son of Chinese immigrants who came to this country to New York virtually penniless. His mother and father started a hand laundry. He and his brother, who is now a Baptist minister, worked in that laundry with their parents. His mother sat, as he said, in a front window of the laundry every day at a sewing machine. His father was back doing washing and ironing, refusing, incidentally, to teach his sons how to iron. That's the major skill in a hand laundry. He

didn't want his sons to know how to iron. He didn't want them to work there. He wanted them to think beyond the laundry.

When World War II started, Bill Lann Lee's father, who was 36 years old and could have escaped the draft just by claiming an age deferment but did not do it, volunteered and went in the Army Air Corps and had a very interesting experience because he came back from the war to his family and said, "That was a good thing to do, not just for the Nation but good for me."

For the first time, Bill Lee's father said, he was treated like an American, not like someone from China living in America. But when he came back from the war, as a returning veteran after World War II he found that job discrimination and housing discrimination was still very, very strong against Chinese-Americans. So he returned to his hand laundry but more determined than ever that his sons would have a better chance.

When Bill Lann Lee reached college age, it happened that Yale University decided they wanted to diversify their student body. They gave him a chance and said come to Yale and see if you can prove yourself. Well, he sure did. He graduated from Yale with high honors and then went to Columbia Law School and graduated with high honors.

With that kind of background, Bill Lee could have easily gone with a major law firm in New York, Los Angeles, wherever he happened to want to live, but he didn't. Bill Lee had learned a lesson in life, a lesson from his parents, and he decided that he wanted to fight discrimination. So for 23 years he has worked for the NAACP legal defense fund filing lawsuits when people are discriminated against.

The interesting thing about it is, when you think of these lawsuits, many times they are the most controversial lawsuits you can imagine. You know the headlines in the papers when they start talking about housing questions and school questions and questions involving gender or race or religious persuasion. Those are tough cases. But out of 200 cases that Bill Lee handled, only six ever went to trial. He was able to work out agreements in all the other cases.

In fact, one of his leading opponents, Richard Riordan, who is the Republican mayor of Los Angeles, wrote a letter about Bill Lee and said, "I was on the other side of a lawsuit, and I want to tell you something. We never would have settled it without Bill Lee there. He practices mainstream civil rights law."

I tell you, my friends, he is exactly the kind of person we need serving in the Department of Justice as the representative of the Office of Civil Rights. But I am sorry to report to you that in the last week some extreme political folks have set their sights to try to nail Bill Lee. They are trying to stop his appointment as the head of the

Civil Rights Division, and that is an unfortunate development. It is unfortunate because, first, all he is asking is to be judged fairly. That is all he has ever asked in his life. And second, the things they are saying about him really do stretch the truth.

One of the leading conservative columnists in America, George Will, a man whom I really respect not just because he was raised and went to school in Illinois but because I think he is a pretty bright fellow, wrote a column in the middle of October and said we should turn down Bill Lee as "a payback"—his words, "a payback"—because the Senate Democrats, when they controlled the Judiciary Committee, turned down one of the civil rights appointments of a Republican President 10 years ago.

Please, let us not do that to Mr. Lee. Let us not do that to the Senate. Let us give him his chance to stand on his own feet and have an opportunity to serve this country. And so I hope those of you who think that when the Senate goes home and the House adjourns our work is done will realize there are still many men and women waiting for confirmation and one of the most important and highest is Bill Lann Lee. He would be the highest-ranking Asian American ever appointed, and I am glad that the President has named him and I hope that we can find just two, just two Republican Senators on the Judiciary Committee who will join the Democrats in supporting his nomination.

#### CONSOLIDATION OF FEDERAL FOOD INSPECTION SERVICES

Mr. DURBIN. Mr. President, yesterday I introduced with Senator TORRICELLI a bill, which I hope the Senator from Minnesota will join me in sponsoring, that would consolidate all of the food inspection services of the Federal Government in one independent agency.

Mr. President, 33 million Americans each year have some sort of a foodborne illness, and out of that number some 9,000 will die. You read about the cases, whether it is E. coli or salmonella. We have a good food inspection system but it can be much better. Our food inspection system evolved from Upton Sinclair's novel "The Jungle," when we decided the Federal Government had to step in and make sure the food, meat in particular, that came to our table was safe for our families. But now I am afraid we have gone overboard. We have 12 different Federal agencies involved in food inspection—12—6 in a major way.

I am joining with Congressman VIC FAZIO of California to consolidate these into one independent agency which will be guided by the best science in keeping food safe for Americans. I hope that this, too, will be part of our agenda next year when we return to Washington, DC. It is an important issue, not just for the industries that are affected

but for every family that wants to be certain when they buy that meat or poultry, fish or whatever product it might be, fruits and vegetables and beyond, it is safe for their family to consume.

Mr. President, I yield back the remainder of my time.

Mr. WELLSTONE addressed the Chair.

The PRESIDING OFFICER (Mr. THOMAS). The Senator from Minnesota.

Mr. WELLSTONE. Might I ask what the parliamentary situation is?

The PRESIDING OFFICER. It is the Chair's understanding we are in morning business. Senators are allowed to speak for up to 10 minutes.

Mr. WELLSTONE. Mr. President, I ask unanimous consent that I be able to speak for 20 minutes.

The PRESIDING OFFICER. Is there objection? The Chair hears none, and it is so ordered.

Mr. WELLSTONE. Before I start, I also wanted to find out how long we will be in morning business and whether or not there will be opportunities to introduce amendments to the fast-track bill?

In other words, I understand the amendment will be laid aside, but I want to know whether there are opportunities to introduce the amendments to fast track.

The PRESIDING OFFICER. That is a parliamentary issue that will be handled by the majority leader. We are not prepared to answer that question.

Mr. WELLSTONE. I will just say in the Chamber and I will check with the leader, I do have an amendment on human rights that I would like to offer. We may or may not get to fast track, but this would be an opportunity I think to have the discussion.

#### WELFARE, HEALTH CARE, AND CAMPAIGN FINANCE REFORM

Mr. WELLSTONE. Mr. President, I wanted to take this time Sunday afternoon as we approach the end of this session to talk about some unfinished business for the Congress and I think for the Nation. I really was moved, and I do not usually use that word, by the eloquence of my colleague, Senator DURBIN, from Illinois. As I came in, I heard Senator DURBIN talk about children and talk about early years and talk about early childhood development and talk about whether or not we as a nation are going to make a commitment to affordable child care.

I want to talk about a really difficult issue for the Senate, for the Congress, and I think for the White House, and when we come back for me this will be one of the first items of business. I want us to have discussion and I would like to see whether or not we would be willing to perhaps take some important action.

I am talking about the bill that was passed which was called welfare reform. Mr. President, some of what was in that bill represented over \$50 billion

of cuts in the name of deficit reduction in the major food nutrition program in the country, food stamps—20 percent cut for families, most of them working families, most of the recipients children. And the other part was the cuts in benefits to legal immigrants, some of which has been corrected, some of which has not.

What worries me—and I have traveled the country and spent quite a bit of time in low-income communities. I haven't just focused on welfare, but I have been to the delta in Mississippi with Congressman BENNIE THOMPSON; I have been to eastern Kentucky, to Letcher County, Whitesburg, KY; I have been to Chicago in housing projects, and, of course, I have been in Minnesota, both urban and rural, and I have been to L.A., East L.A., and Watts. One of the things that worries me is that I see in many articles and too much of the media coverage and certainly too much of what I hear from both Democrats and Republicans in Washington that welfare reform has been a success as defined by reduction of caseload. Any Democrat, any Republican, or any fool can knock people off the welfare rolls. That has nothing to do with reform. The only way reform can be defined is not by reduction of caseload but by reduction of poverty. Are these families, in the main headed by women and children, better off?

I heard my colleague from Illinois talk about child care, and if my colleague was here I would tell him about some just very emotional experiences that I have had, meeting with some of the women who have now been told they are to work, and they work. But their concern is about what happens to their children. You know, just because they are poor, just because they are welfare mothers, doesn't make them, or doesn't make their children, any less worthy, any less important.

In Los Angeles, for example, in L.A., one city, they have a waiting list of 30,000 families for affordable child care. That is before the welfare bill. The question I ask colleagues is, where are these children? Fine, the mothers are now working. Do we know where the children are? Where are they? Who is taking care of them? Is it developmental child care? Is it just custodial? Or are they even in harm's way? We don't know. But we should know. We passed the legislation.

I met a woman, and this story of this one mother unfortunately is the story of other mothers. She said to me, "I want to work." By the way, almost all the people I meet want to work. That's a big thing to people in our country, to be able to work and make a decent wage and support your family. And also to be able to give your children the care you know they need and deserve. But I am meeting some of these mothers. We told them we would sort of delegate this to the States and they would work.

Here is what they say to me, what this one mother in L.A. said. I then visited actually where she lived, public

housing in east L.A. She said to me: "I want to work but I am so frightened because my first grader goes home alone every day. I worry about what happens to her from the time she leaves school to when she gets back to the apartment"—public housing. "There are gangs, there is violence. I tell her to go into the apartment, lock the door, and don't take any phone calls."

I would like to ask Senators, how many of you would like for your first graders, whether they are your children or your grandchildren, to go home alone? Actually, to go home to wherever you live, much less in the neighborhoods and communities that are so dangerous. In the debate that we had on welfare reform, did anybody ever talk about these children? I never heard a word.

We talk a lot about early childhood development, which is very important. We talk a lot about after-school programs for teenagers, which is critically important. But what about these first and second graders? I think there are too many children in our country right now, because of what is happening around the country, who are in danger. And I think it is our responsibility to know what is going on. Speeches do not suffice.

When I was in Letcher County, KY, I spent quite a bit of time with Carroll Smith, who is the county executive, Republican—county Judge, which is like the county executive; just a great, great guy. It was interesting, though. He and others were saying to me, did anyone ever mention the word "rural" when you all passed that bill? Because in the absence of access to capital and our seeing economic development in our community, we don't know where the jobs are going to be.

The Wall Street Journal had—I haven't even had a chance to read the article from cover to cover—a very long, extensive piece about Delta, MS, where lots of people can't find jobs, or have to drive 60, 70 miles. Again, you have two things going on here. No. 1, there are not the jobs where people live in rural America. No. 2, the jobs that quite often these women are getting maybe pay \$6 an hour. They are going to be worse off than they were before, because there will not be health care after a while, and they don't know what to do by way of child care.

It seems to me that one of the things that we need to do is at least call on the States to provide us with an evaluation, maybe every 6 months or every year, on how families are doing toward attaining the goal of economic self-sufficiency. Because if we don't do that, 4 years from now all these families are off all assistance. Don't you think, before we have some tragedy, we ought to at least know what is going on? I am going to have an amendment, a piece of legislation which I will bring to the floor of the Senate and we will have that vote.

Mr. President, I go to the communities. It has been very moving. I hope

to get a chance to write a long piece about what I have learned from people. But I don't find that the issues that people in low-income communities are talking about are really different than issues that other working families are talking about. The first question is: Where are the jobs that pay a decent wage? This is still one of the most important challenges for most families in our country. It is an important challenge in poor communities: Where are the jobs? And we are going to have to have an urban jobs program if we are serious about reducing poverty and making sure that families have a chance. Also, we are going to have to do a lot better by way of making sure that, if people work 40 hours a week, 52 weeks a year, they are not poor. If people play by the rules of the game and they work hard, they ought not to be poor. That is where child care fits in. That is where health care fits in. And not just for low-income families, but for the vast majority of families in our country.

I heard my colleague from Illinois speak. I was so pleased to hear what he said. But I would like to challenge both Republicans and Democrats, because I think that what is going on here is we have a debate that, in a way, may take us nowhere, or at least certainly not connect very well with a lot of people in our country.

On the one hand my friend Jeff Faux has written a very interesting piece where he argues this. I will take a piece of what Jeff says. On the one hand, for example, we have the majority party, the Republican Party, which argues—at the risk of getting the Chair angry at me—which argues, when it comes to some of these most pressing issues, for example affordable child care, there is nothing the Government can or should do. My argument is that is a great philosophy if you own your own large corporation and you are wealthy, but it doesn't work for most of the people in the country. On the other hand, you have the Democratic Party that says we are all for the children, we are all for education, we are all for job training. But, do you know what? Politically there is not anything we can do either. We just have to cut taxes because politically that is the only way we can make it. In which case neither party has a whole lot to say to the very families we are talking about, at least if you get beyond speeches and conferences.

We have had enough speeches. We have had enough conferences. The question is whether or not we are going to go beyond the speeches and the conferences and dig into our pockets and make the kind of investment that we need to make as a nation. I think the question for all of us is how can we renew our national vow of equal opportunity for every child in America? That is the goodness of our country. That ought to be the central goal of public policy here in the Congress. I make a commitment, as a Senator

from Minnesota, to bring that kind of legislation out on the floor, working with others, with the financing, with the investment, so this isn't empty rhetoric. We ought not to separate the budgets we introduce from the words that we speak.

Finally, let me make one other point. My training is as a political scientist—I was a college teacher before I became a U.S. Senator—not as a political economist, although I am interested in political economy. There is something very interesting and very important going on in our country, which is now we have reports about record low levels of unemployment. The GDP looking great. Productivity is up. But real wages of most families are down. The economy of American families is not measured by GDP, it is not measured by all these official statistics. It is measured by real family income. It is measured by whether or not people can purchase the things that make life richer in possibilities. It is measured by opportunities. It is measured by security or insecurity. And it is measured by our expectations for our children and our grandchildren. And by that criterion, a whole lot of families could be doing better and we could be doing better as a nation.

One of the issues that I think is a living-room issue in America, a kitchen-table issue, that we are going to have to have the courage to take on, is health care. We can have patient protection—I am all for that. We can have provider protection—I am all for that. We can try to control some of these large insurance companies that own and control most of the managed care plans—I am all for that. But the fact of the matter is, we have now moved from 40 to 44 million people or thereabouts without any health insurance since we first started talking about this 3 years ago; more than twice that number of underinsured, and the vast majority of people in the country, not just low-income—either people are not old enough for Medicare, and Medicare doesn't cover prescription drug costs, it doesn't cover catastrophic expenses, or people aren't poor enough for medical assistance and they are not lucky enough to be able to work for an employer who provides them with good health care coverage.

We ought to have humane, dignified, affordable health care for every man, woman, and child in our Nation. For me, next session, that will be my priority—with the financing, clear with people in the country how you pay for it. But I am telling you, large insurance companies don't like it. And there are a whole bunch of other powerful interests that don't like it. But the majority of people in this country know that this system is in big-time crisis. It is time we get back to this issue as a Congress.

I really do think that, as we think about what we have done and what we have not done—I will just talk a little bit about what we haven't done in the

few minutes I have left. I think these standard of living issues are the critical issues. I think, unfortunately, Jeff Faux is right, neither party is telling the story that gives people any confidence that much is going to happen that is good for them. And I think we could do better, all of us.

And in addition, the one other issue that we did not get the job done on, and it is critically important, is campaign finance reform. When I go into cafes in Minnesota, this is one thing I don't gloat about. I am not even pleased to say it, but it is true. Because it is aimed at me. It is aimed at all of us. The vast majority of people I talk to in cafes believe both parties now—they just sort of view the Government as being controlled by wealthy financial interests. They just feel locked out. They feel like it is for big players and heavy hitters. And, you know what, all of us have to raise money. That's what we have to do. That's not the point. I did. We all do. That's the system right now.

We should change this. We didn't, not this time. We come back to it next year. But this is a real important issue and it is not that people don't care about it. They care about it deeply and desperately. And I think they want to believe in the political process. They want to believe in Government. But we are going to continue to see a tremendous amount of cynicism and apathy and disengagement and disillusionment unless we get as much of this money out of politics as possible. We know what the criterion is. We have talked about it enough. It is time to really move forward. It can't just be like a piece of legislation where we maybe do one thing but then all the money shifts somewhere else. Then people will just be even more disillusioned. I think this is a core issue.

There are a lot of good things all of us could do here. A lot of good things get trumped by big money in politics.

Mr. President, I will conclude—how much time do I have left?

The PRESIDING OFFICER. The Senator has 1 minute and 41 seconds.

Mr. WELLSTONE. Let me just conclude by thanking all the conferees on the Labor, Health and Human Services appropriations bill, especially for all the women and men in the Parkinson's community who worked so hard to make sure that we have some clear directive to NIH about making sure that there will now be some real investment of resources in research to find the cure to Parkinson's disease. It has been one of the greatest lobbying efforts I have ever seen here. It was citizen lobbyists, people who struggle with this disease, who once upon a time were kind of embarrassed to be public and be out and about. People have been there.

All of you in the Parkinson's community, you have set a really good model for the Nation. Because if we had more people like you coming to Washington, DC, it would be a better Congress.

We need to get a lot more ordinary citizens coming to Washington or

meeting with us back in our States. I just hope more and more people will be like that. It was a really fine victory.

Mr. President, I presume then there will not be an opportunity—my colleagues are on the floor as well—we are not going back to fast track, is that correct?

The PRESIDING OFFICER. Correct.

Mr. WELLSTONE. And there is not an opportunity to offer amendments? I ask the majority party as to when I might have an opportunity to offer an amendment to fast track? I will do it later—I see my colleagues on the floor—but will there be an opportunity?

The PRESIDING OFFICER. As was indicated to the Senator, the Chair does not think that has been arranged, and it will depend upon the instructions from the leader.

Mr. WELLSTONE. I yield the floor.

#### EXTENSION OF MORNING BUSINESS

Mr. ROTH. Mr. President, I ask unanimous consent that morning business be extended until 3:30 p.m.

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

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

#### UNANIMOUS-CONSENT REQUEST— H.R. 2676

Mr. KERREY. Mr. President, I ask unanimous consent that the Senate proceed immediately to H.R. 2676, the IRS Restructuring Act of 1997 by discharging this legislation from the Senate Finance Committee to which it was referred on Thursday; that the bill be read a third time and passed and the motion to reconsider be laid upon the table.

The PRESIDING OFFICER. Is there objection?

Mr. ROTH. Mr. President, I rise to object to the unanimous-consent request made by my distinguished colleague, Senator BOB KERREY. The process of his seeking a UC agreement and my objecting is into its fourth day now. I do want to say publicly that I appreciate the civil and courteous manner in which the process has unfolded.

It is my opinion that what unites Senator KERREY and me is more significant than what divides us. His successful commission has done essential work in uncovering weaknesses and shortcomings within the IRS. The 3 days of hearings we held in the Finance Committee disclosed others. Both of us are well aware of the changes that must be made within the agency.

Senator KERREY is right when he says the vast majority of our colleagues would vote to pass the legislation which passed the House by a vote of 426 to 4. Indeed, when one looks at the abuses and inefficiency of the IRS,

it is hard to resist the argument that any reform is better than no reform at all. Senator KERREY is correct in saying that the legislation he proposes would make important reforms to the IRS, but he is also right in saying that the legislation is not complete. It has weaknesses, and I must emphasize very, very serious weaknesses.

Mr. President, the simple truth is that I am not willing to compromise on real reform. I am not willing to rush into legislation that does not go far enough to address the changes that must take place within the agency, especially when rushing in will adversely impact the potential of passing real reform later. The fact is, this reform falls short of what we need to accomplish.

The New York Times reports that "tax experts across the country say the practical benefits of the [legislation advocated by Senator KERREY] will be minor." According to Stuart E. Seigel, a former chief counsel of the IRS, "Most of the bill's provisions are very limited and will not have a significant impact on most taxpayers."

Senator KERREY suggests that each day the Senate delays in passing what the New York Times calls minor changes, some 150,000 people will be affected as they continue to receive notices from the IRS. Yet, another report in the Times makes it clear that "the provisions in [this 'watered down'] bill are [so] narrowly drawn [that it] would affect relatively few people."

Senator KERREY himself has made it clear that "this [bill] doesn't go far enough." The Wall Street Journal of November 3, 1997. And Newsweek reports that the strong measures aimed at reform have been eviscerated.

The question all of this begs is simple: Why compromise? If Senator KERREY suggests this bill doesn't go far enough, if we have a growing consensus among tax practitioners, taxpayers, and the media that the bill is deficient, and if we have the conviction in Congress and the sentiment at home that something significant must be done, why are we willing to compromise?

The bottom line, Mr. President, is that I am not willing to compromise. Some would suggest that half a loaf is better than none; that we can come back and stiffen up this legislation later.

Well, we know where that will lead. If we pass this reform legislation, then those who are not anxious to pass further reforms will resist a new bill. The truth is that we will get only one real chance to reform the IRS, and we had better do it right.

There are several significant issues we need to address. We should begin by giving the oversight board called for in this legislation, and if we adopt such a board, the authority to look at audit and collection activities. More than 70 percent of Americans think poor treatment in audits occurs fairly regularly, yet this legislation expressly prohibits the oversight board from having jurisdiction over audits and enforcement.

This is just the beginning, Mr. President. Let's include a provision to ensure that all taxpayers have due process and that the IRS does not abusively use its liens-and-seizure authority. Let's give the taxpayer advocate greater independence. Likewise, the IRS should have the benefit of an independent inspector general. Let's strengthen the legislation to require signatures on all IRS-generated correspondence, and let's curb the use of false identifications by agency employees and ban the use of statistics and goals in determining their performance.

These changes are only a beginning of what needs to be done. Yet, the legislation advocated by my distinguished colleague does not address even these most fundamental needs. If we are unprepared at this time to add these things, then let's be patient. Let's not pass a bill that Senator KERREY has already suggested "doesn't go far enough."

The PRESIDING OFFICER. Objection is heard.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, first of all, let me return the compliment. I have high praise for the chairman. He has done exceptional work on this issue, especially the 3 days of hearings which penetrated the section 6103 veil and issues that are protected under normal circumstances by privacy laws.

Let me also respectfully disagree with his characterization of this as a watered-down bill, citing the Washington Post, the New York Times, et cetera. They are apt to object to many of the things that the distinguished Senator from Delaware wants to do as well.

This piece of legislation has the full endorsement of America's accountants, America's enrolled agents, the National Federation of Independent Business, the National Treasury Employees Union. It is by no means small reform. I intend this afternoon to go through the bill. It was sitting at the desk a couple of days ago. We could have taken this thing up a couple of weeks ago and had a full debate on it. We would have had plenty of opportunity to amend it, to improve it and to change it, but we didn't. I am going to go through this bill and let my colleagues decide on behalf of their taxpayers whether or not they want to change the law.

It looks like we only have a day or two left, but all we have to do is bring it up here to the floor. All we have to do is have no objection raised, and we can pass this piece of legislation. I am going to show some of the new things this law would provide to the American taxpayers as they consider whether or not this piece of legislation is watered-down.

Mr. REID. Will the Senator yield without losing his right to the floor?

Mr. KERREY. I will be pleased to yield.

Mr. REID. Mr. President, I appreciate my friend yielding. I have another matter to attend to in a short period of time. I wanted to come to the floor and spread on the Record of this Senate that the Senator from Nebraska should be commended and applauded for the work that he has done on this issue. He chaired the Entitlement Commission, of which I had the good fortune to serve as a member. It was a tremendous experience. One of the things I will never forget is the testimony that was taken during those hearings about the Internal Revenue Service.

We have heard figures that it costs at least \$200 billion a year just for people to fill out their forms. That is only part of it. We had testimony during those hearings that the cost of the Internal Revenue Code itself is up to \$400 billion. It is lots of money, we recognize that.

I worked hard to write the taxpayer bill of rights. It is now the law. It was a help, but it didn't go far enough. We need to do better.

What this legislation will do—which has received the almost unanimous support of the House of Representatives, 426 to 4, and the President of the United States supports this legislation—this legislation would give the Internal Revenue Service some meaning. The employees of the Internal Revenue Service support this legislation, former Commissioners of the Internal Revenue Service support this legislation. The Senator from Nebraska has done the right thing by moving beyond the Entitlement Commission, to the Kerrey-Portman Commission which studied specifically the Internal Revenue Service, and now is responsible for the bill having passed the House and now in the Senate where it should pass.

This is good, elementary legislation. It is legislation that will make the American people feel good about an important institution of Government, the Internal Revenue Service, which is now a hiss and a byword. People should not feel that way about the Internal Revenue Service, even though they do. This legislation, which should be passed by unanimous consent, would allow the American public to feel better about the Internal Revenue Service.

So I say to my friend from Nebraska, you are on the right track again with this legislation. This is something that is necessary, it is important, it is important because it creates this oversight board. It is important because it allows recovery of attorneys fees. It allows recovery of damages. There is a toll free number to register complaints. It improves the operation of the Taxpayer Advocate Office. It is good legislation. I do hope the Senator will go through this legislation and explain to the American public why it is so important we pass it and pass it now.

Mr. KERREY. I thank the Senator from Nevada, especially for his earlier work on the taxpayer bill of rights and taxpayer bill of rights II. Prior to the

enactment of those laws, the taxpayer had almost no authority at all coming up against the IRS. With the enactment of those two bills, the taxpayer now has a substantial amount of power which was previously denied, and those who predicted there would be a big decline in collections—which, as you know, was the case—those predictions did not turn out to be true.

This really gets right to the heart of it. This is not just an agency collecting money in order for us to be able to pay the bills, whatever it is we declare in law we are going to use taxpayer money to pay for. This really gets to the heart of Government of the people, by the people, and for the people. If people don't trust that they are getting a fair shake with the tax laws, with those 8 out of 10 who voluntarily comply—actually 83 percent of the American taxpayers comply, down from 93 percent 10 years ago. To those 83 out of 100 who voluntarily comply, they need to know, are they going to get the information they need to pay their taxes; are they going to get a fair shake if there is a dispute; are they going to face an agency that has the capacity to be managed in a way that is comparable to what the private-sector financial institutions demonstrate on their behalf?

The answer right now is no in all three cases. More people pay taxes than vote in this country and their dissatisfaction with this agency is broad, it is deep and it is urgent, not just for the sake of being able to say we have done all we can to get this agency running correctly, but it is essential for the sake of people's confidence in their Government that we enact these changes.

I heard, again, the distinguished chairman of the committee, whose willingness to hold hearings on this subject has been terribly important to examine beyond the privacy veil some of the additional problems that go on with the IRS, say this is a watered-down piece of legislation. That is not true, Mr. President. It may be true in the eyes of people who are opposed to the bill. Indeed, of the four opponents of the legislation in the House—426 voted in favor of it, 4 voted against—the people who voted against it thought it went too far.

He cited yesterday, and again today, editorials that were objecting not to the bill because it didn't do enough, but because it went too far. These are people who don't want change at all. That don't want any change in the way the IRS is run. They think it is run just fine.

So for those of us who have heard our citizens say that they call the IRS up and they can't get an answer to what becomes one of the most important questions they have when they are doing financial planning—which is, how much do I owe the Government?—for those citizens who find themselves in receipt of a notice of collection because they have been told that



they haven't paid enough and find themselves wondering whether or not they are going to be able to withstand the IRS's assault on them, and for those who watch this agency continue to try to come into the electronic world and fail time after time after time, for all those and many more besides, this piece of legislation solves their problems. It solves their problems, Mr. President.

I suspect that it is not likely that my colleagues on the other side of the aisle are going to come down here and say, "For gosh sakes, let's get this thing passed." I mean, on the House side it has the support of the Speaker, of DICK ARMEY, of BILL ARCHER. In fact, the percentage of Republicans supporting it in the House is 100 percent. The only people who opposed it are those who believe this legislation has gone too far, not that I did not go far enough.

There are five titles, Mr. President, in this piece of legislation. It is again worth noting, for those who say, "Well, can't we just hire a private-sector person, as we just did with Mr. Rossotti to run the IRS? Isn't that enough? Don't we just need to manage it a little better?" you know, this is a nation of laws. The IRS doesn't exist because somebody decided to put it out there. It was created by the U.S. Congress. It operates as a consequence of what the law says, not just the Tax Code but the other laws that enabled that agency to be created in the first place. So it is a creature of law. It is the law that determines whether or not we are going to be able to get satisfaction for our citizens.

So for those who are wondering why we are talking about the law here, we are talking about the law because the IRS was created by the law, and many things that people have come and asked for, the IRS can't do because the law does not allow it. So we have to change the law in order to be able to do the things that people have been coming to us saying needs to be done.

Mr. President, title I is called the "Executive Branch Governance and Senior Management of the Internal Revenue Service." It sounds innocuous enough. Indeed, most of the debate about this piece of legislation, regrettably, has been focused on the first half of title I, and that is the executive branch governance.

There was resistance early to having a public board governing the IRS and have control and authority over the IRS. We finally persuaded the President that this was a good idea. This public board does have real authority to develop a strategic plan to make budget recommendations and make comment on the acceptability of the IRS Commissioner—tremendous authority under the law.

There are some people who would like to go further. As I said, most of the people that have looked at this, if they have any objection at all, they object to it going too far. They object and say that the President should not have

agreed to it, that he should not have said yes to us in this regard.

We felt that having a public board—in this case a 9-person public board—with authority over the developing and strategic plan was crucial in order to be able to develop some consensus between the Congress and the executive branch about what the IRS was going to do.

What is the plan? If you don't have a plan, then it is going to be very, very difficult to have any kind of an implementation strategy.

The distinguished chairman says they want to be able to go and look at audit information. I do not believe this board ought to be looking at returns, nor do I think it ought to be getting into the details of audits. Should it be able to look at the standards of audits? Absolutely.

Indeed, in one of the other titles of this legislation we require the IRS to publish the standards of audits. If people say, "Gosh, don't they already?" I say, no. I say to citizens who are concerned about this, we had only one full study on the basis of audits, the way audits are conducted by the IRS, only one study by a woman at the University of Syracuse who got the information through a Freedom of Information Act request.

And every time she publishes her report, which is highly critical of the IRS—saying that the audit is done on one basis in Arizona and a different basis in Nebraska, that their subjective determinations are rampant throughout, that there does not appear to be consistency from one State to another, that it depends on where you live as to whether or not you are going to be audited, all kinds of criticism of this audit—every time she surfaces those criticisms, the IRS attacks her. "Oh, no. You're wrong. You're just some flake up there at Syracuse. Don't trust the information." We have all heard that before.

When you have an agency like the IRS, they are able to say they have the power. Since they have the information, they can just say the citizen is wrong.

This law requires the IRS to publish the standards of their audits. Let us decide. Let the citizens decide. Let the people examine this information to determine whether or not there is an objective basis for the audit and whether or not the public supports it. Don't let the IRS sort of do it on their own because it leaves open the possibility that you get what we have right now, which is a very substantial lack of confidence from one State to the next as to whether or not the citizen, the taxpayer is getting a fair shake. Again, back to what I said before, this is the way the IRS strikes at the heart of citizen confidence in Government of, by, and for the people.

We are not talking about reform in the EPA here or the USDA that touches a much smaller number of people or even the Federal Election Commission

that touches only individuals who chose to run for office. This agency touches almost every single household. Every single American has some contact with the IRS on an annual basis.

The second half of this title which is crucial—and this is one that if I ever come down here and offer my unanimous consent request, and the bill gets discharged, and we vote on it, my guess is it is going to go 100 to nothing, or close to it. And one of the reasons I believe that is the section in title I that deals with management of the Internal Revenue Service senior management.

People are surprised when they hear that the Commissioner has no authority to hire, to fire, to bring on their own team. Now, we make certain that veteran preferences are maintained, that the Commissioner has to follow the employment regulations of the Federal Government, especially the civil rights regulations. But significantly, though, this strengthens the Commissioner's ability to be able to manage, to be able not only to use punitive penalties for those who are not doing a good job but put positive incentives in place.

Mr. Rossotti is from the private sector who came and talked to the Senate Finance Committee, when we held his confirmation hearings, and told us all the wonderful things he was going to do to manage the agency. The law does not give him the authority to do it, does not enable him to do the things he wants to do. We said, you can hire 25 more people. We gave him the authority to hire 25 more people, the only thing is they won't have any authority.

Those of us who have had the opportunity to serve our country in the Armed Services understands one of the first things we were taught is the difference between responsibility and authority; that I can delegate authority, but responsibility always stays with me. One of the worst situations you can have in life is to be given a lot of responsibility but no authority.

And that is what he has. He has the responsibility—everybody comes to him and complains when the agency isn't being run right—but he does not have the authority under the law to manage the agency, either with penalties or with affirmative incentives in place to reward people for doing a good job, to reward people for their high-performance in meeting the objectives and performance standards that he has set out in this law to present to the board and to present to the Congress.

Title II deals with electronic filing. I can see why some people who have been commenting on this bill, as if they have read it, ignore this particular section. It is kind of boring—electronic filing. Electronic filing does not sound like it is a very exciting piece of information.

I tell you, for the American people who pay for this agency, \$7.3 billion a year to run it, and for those who are filing tax returns out there, who spend \$200 billion a year to complete the forms, electronic filing is a big deal.

Why? It is a big deal, Mr. President, because we discovered—our restructuring commission that held 12 public hearings and thousands of meetings with employees and with former employees, as well as with all the people that help private-sector people, citizens to fill out their tax returns—we discovered that the error rate in the paper world is 25 percent and the error rate in electronic filing is less than 1 percent. And we change that in this law.

We still have a provision in there that requires under law that you have to actually put a signature document with your electronic filing, even though when we went down and visited the service centers and we talked to service center employees about this signature document—this piece of paper that has to still be filed, it is a requirement of the Department of Justice. The truth is, if you sign in black, the copiers are not so good anymore and it will not stand up in a court of law as to whether it is the real signature or a copy. So these stacks of papers they have down there are not worth anything. It is still required under law, but it is a nuisance to the taxpayer. Even with that paper having to be filed, the error rate is less than 1 percent.

Mr. President, when it comes to doing any piece of work, whether it is preparing your own or trying to make the tax collection agency run efficiently, an error is money. It costs the taxpayers twice. It costs them first in an agency that is more inefficient than it ought to be, and it costs them a second time because it adds to the \$200 billion. Some fraction of that \$200 billion is there because it is inefficient, because it is difficult to get the information, because it takes longer than it otherwise would have.

For those who sort of are trying to, in their own minds, scratch their head and figure out what I am talking about—which is not altogether easy sometimes—most of us in our billfolds, our purses will have a thing called an ATM card, a little piece of plastic that the private sector has developed. They developed it to make it easier to make financial transactions, to do business with your bank or financial institution. Lord knows, it is a lot easier. It is lots more convenient. It enables you to do things that otherwise you would have to actually physically go in while the bank was opened to get done.

Well, you ask yourself, "How come the IRS has not done that?" The answer, Mr. President, again, is the law. There are insufficient incentives and there is no way to achieve consensus.

We started this thing in 1995, 2 years ago, when Senator SHELBY and I stood on the floor managing the Treasury-Postal bill. And we fought against the IRS because they had just been determined by the General Accounting Office to have wasted \$4 billion in purchasing computers.

We discovered in our restructuring commission these computers can't even

talk to one another. You have a stove pipe organization, and one stove pipe doesn't talk to the other stove pipe, and it doesn't talk to the other stove pipe, and you can't get the information you need. It can take months and months and months to get information you need.

Mr. President, time for the American taxpayer is money. And they pay for it twice. So this section in here, electronic filing. Again, I understand why it has been ignored by people who write editorial pieces, because it is not very glamorous. It is not, you know, a very hot issue. It is not the sort of thing that sort of gets the blood boiling. But it is the sort of thing that will save taxpayers an awful lot of time and an awful lot of money.

Let me get to the third title. Those who say, "Well, how about all those concerns we hear in the Finance Committee that taxpayers were raising?" Title III deals with taxpayer protection and rights. I am willing to go further. Had this bill been brought to the floor a couple weeks ago, we could have, in fact, strengthened the Taxpayer Advocate Office.

I am willing to make it more independent than it currently is even in this law, which gives the Taxpayer Advocate a lot more independence and a lot more power than they currently have. Hardly watered down, hardly insufficient, hardly minor if you are one of the taxpayers who get affected in here. We shift the burden of proof when you go to Tax Court—a big deal.

Today the presumption is that the taxpayer is guilty. If you get a notice, if you are one of the 135,000 people every single day who received, in addition to other sorts of things in the mail, a little thing that says "Internal Revenue Service," there isn't any feeling quite like that to wake you up in the morning. You get that little piece of notice in the mail and your hands shake. And you open it up, and it says, you owe \$100, you owe \$500, \$1,000, whatever the number is.

Under current law, the presumption is you are wrong; they are right. The burden is on you. You have to prove they are wrong, if you want to try to prove it. If you agree with them, fine, you send them a check. But if you say, "My gosh, I did this myself. I had an accountant help me. I had somebody else help me. I didn't make any mistake. I don't owe any additional money," welcome to the club. Now it is for you to prove that you are right, they are wrong.

We did not go as far as some would have liked to say, that you go immediately and shift the burden of proof so that the IRS has to prove you are wrong, because we felt that would punish and penalize the 83 out of 100 people who voluntarily comply who aren't receiving a notice; but we said, if you reach Tax Court, if you are unable to settle this thing and you reach Tax Court, it does shift now to the IRS. They have to prove that you are guilty,

as is the case in every other court of law. This is not a minor change. Even though it was only several thousand people a year that end up in Tax Court, Mr. President, I will guarantee you, if you are one of those several thousand people, this is not a small change. This is a big change. And it will likely have a tremendous impact on your capacity to get a fair hearing before a U.S. Tax Court.

In subtitle B of title III there are a number of things dealing with what is called proceedings by taxpayers. It expands the authority to award costs and fees. We earlier had a discussion yesterday of this.

Today, you cannot get your attorney fees if you are found not to owe anything. Under this provision, the answer would be you would get attorney fees. You have the opportunity to be awarded up to \$100,000 of civil damages if the IRS can be demonstrated to be negligent. Today, if the IRS is negligent or the IRS makes a mistake or the IRS is at fault, they don't have to worry about it. There is no penalty in place under the law to the IRS if they make a mistake.

Under this law there would be. It changes their attitude. It puts them in the frame of mind of saying, "My gosh, if I'm going to send a letter out to somebody and say they owe money, I better make sure they owe money, I better be reasonably certain I can make the case in Tax Court and better be reasonably certain, because if I'm demonstrated to be wrong, we could be out of some dough here. And if I'm negligent," which is very often the case, "if I'm negligent, we're going to have to pay a price for it."

We all understand that there needs to be some sort of negative sanction against behavior that could put people at risk. This law does that in a reasonable, responsible way, but certainly not in an insignificant way for those individuals out there—again, 135,000 every single working day—that are going to receive a notice of collection. This is not a small item for them.

There is a title in here called "Elimination of Interest Rates Differential on Overlapping Periods of Interest on Income Tax Overpayments and Underpayments." I will not go into this at length on the floor here this afternoon. Again this is not a small item. We have taxpayers out there saying, "My gosh, I don't understand it. You have given me a bill, I am in dispute, and I have to settle early because if I don't there is a possibility I could end up with a huge penalty." In no court of law do you have that. In no court of law do you have a situation where a citizen says, "I better make up my mind in a hurry here, otherwise I could end up with an enormous penalty. I could be penalized as a consequence of trying to make my case."

Other titles here are "Protections for Taxpayers Subject to Audit or Collection Activities," "Privilege of confidentiality extended to taxpayer's

dealing with nonattorneys authorized to practice before Internal Revenue Service," "Expansion of authority to issue taxpayer assistance orders," "Limitation on financial status audit techniques," "Limitation authority to require production of computer source code," "Procedures relating to extensions of statutes of limitation by agreement," or "Offers-in-compromise," "Notice of deficiency to specify deadlines for filing Tax Court petition," "Refund or credit of overpayments before final determination," "Threat of audit prohibited to coerce Tip Reporting Alternative Commitment Agreements."

Mr. President, these are not small items. I would be surprised if there is a single Senate office that has not heard a taxpayer bring one, if not several, of these things to the attention of a Member. These are not small. These are not insignificant. These are changes that could shift and cause taxpayers to say, "Finally, you are doing something that makes sense." The IRS cannot do it today. They are prohibited from doing these things. Again, we are a nation of laws, and once the laws are changed, the IRS will behave in the way the law directs.

There is a subtitle, "Disclosures to Taxpayers." What is the big deal? We had at least one witness before the Senate Finance Committee, a woman, who came and said she was surprised to discover that after her husband had divorced her and hit the road, she ended up being liable for his tax bill. We all heard it and said it was terrible, it shouldn't be the case. She was terrorized by the IRS. They put her and her new husband in jeopardy. She ended up getting divorced, Mr. President, over this because she was better off divorced. It is terrible. Change the law.

Well, bring the bill up and vote on it. You want to wait until next year? You want to put these people at risk? You don't want to solve a problem you know you can solve by changing the law? I don't understand it. I simply don't understand it. I don't understand what benefit is gained by delaying. We have a bill that we can bring up today—today. All it would take is the majority leader persuading the Republicans on that side. Every single Democrat is ready to bring it up. As I say once it is here for a vote, my guess is it is unanimous. Once people start looking at the details of the bill and see what is in this bill itself, I don't think they will object to this. I don't think they will come down here and say, gee, these are small, these are insignificant, these aren't anything that is going to have an impact on people.

Subtitle G is called "Low Income Taxpayer Clinics." I say there are people who are working, people in the work force, people out there trying to figure out how to read the Tax Code. There must be something out there available to them. The answer is there is not. We are not spending a lot of money, but we are saying keep the

playing field level, give people the opportunity to get their questions answered in the same way you can get a question answered if your income is high enough that you can hire an accountant to get the job done for you.

Mr. President, these are not small items in this legislation.

The next title in this bill is "Congressional Accountability for the Internal Revenue Service." As I said earlier, as much praise as I got from the chairman after 3 days of hearings, we discovered for the first time in 21 years the subcommittee held a hearing. We had people criticize us. I guess every 21 years is too often. This is a requirement every 6 months for the Joint Tax Committee to meet and hold a hearing with this new public board. Why? Not just for oversight, but so we can get consensus on what the strategic plan is going to be.

Every single private-sector person, every other government agency that talked to us about the technology investments, Mr. President—that is the key question. How do you make an investment in computers, and especially the software and operating system, for this 110,000-person agency that processes over 200 million returns a year? How do you do it when the processing occurs over a 150- or 180-day period? Every person that came to us said, unless you know where you are going, unless you have consensus on a strategic plan and understand the IRS currently has a board of directors that includes every single Member of Congress, 535 people on its board of directors—we heard witness after witness come to us and say the problem very often is not the IRS, but the Congress.

You have to give better oversight, more consistent oversight so they know what they are supposed to do. Congress is giving permission. We are not saying there will be a blank check. Congress still retains the authority to cut, to do whatever it wants, in response to things it sees the IRS doing or not doing. Congress still retains the authority to authorize and appropriate money. We have to have a mechanism to improve the oversight that Congress gives the IRS.

You say it is a small item. It is a big item. Mr. Rossotti will tell you it is a big item. There is one speed bump, and he is heading for Niagara Falls. When he will have 200 million returns filed, he hits one speed bump and he will come before six committees—three in the Senate and three in the House—to answer questions about what he did or didn't do and why he didn't solve the problems that he was supposed to solve.

Mr. President, this piece of legislation has many other things, and I will probably have an opportunity to talk further about this. Members need to understand what is in the bill. You have heard complaints and concerns coming from citizens at home. This piece of legislation will solve an awful lot of those concerns. You will go home

and your taxpayers will say to you, "For gosh sakes, what did you gain by delay?" I stand here and predict the statements didn't go far enough. We need to do more. My guess is all we are doing by waiting another 150 or whatever the days are, and we will pass a piece of legislation roughly the same. This is a very strong piece of legislation.

I ask unanimous consent to have printed in the RECORD an IRS reform index that shows the cost of delay and shows the kind of support it has on the House side and the kind of support it has in the private sector.

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

#### THE IRS REFORM INDEX

As of Sunday, November 9, number of consecutive days on which Senate Republican leadership has blocked Senator Bob Kerrey's attempt to bring up his IRS reform bill: 4.

Number of Senate Democrats who have urged Majority Leader Trent Lott to pass Kerrey bill before adjournment: 42.

Number of collection notices the IRS has mailed since Senate Republican leadership first blocked consideration of Kerrey bill: 396,000.

Number of taxpayers who have tried to call the IRS during that time: 825,000.

Number of collection notices that will be mailed before Senate returns January 26, the next date at which IRS reform could be considered if Republican leaders continue to block consideration of Kerrey bill: 9,504,000.

Number of taxpayer calls before Senate reconvenes: 19,800,000.

Number of those callers who, according to national averages, will be unable to get through: 9,702,000.

Number of those who do get through whose questions will be answered incorrectly: 807,840.

Vote by which House version of Kerrey bill passed: 426-4.

Percentage of House Republicans, including Newt Gingrich, Dick Armey and Bill Archer, supporting that bill: 100.

Amount Majority Leader Trent Lott called the "teeny" price of a phony "poll" Republicans propose to send out with all tax returns to assess taxpayer attitudes toward the same IRS they are objecting to reforming: \$30 million.

Number of Nebraskans whose entire annual income tax bills would be required to finance that "teeny" sum: 11,033.

Number of members of Congress who ought to know their constituents are fed up with the IRS without spending between \$30 and \$80 million on an unscientific survey: 535.

Mr. KERREY. I hope in the time remaining, all it will take is my friends on the Republican side simply not objecting to bringing this bill up, for us to act on it and get it to the President with his signature.

#### EXTENSION OF TIME FOR MORNING BUSINESS

Mr. ROTH. Mr. President, I ask unanimous consent that morning business be extended until 4 o'clock p.m.

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

The Senator from Oregon.

Mr. WYDEN. I ask unanimous consent to speak for up to 10 minutes.

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

Mr. WYDEN. Thank you, Mr. President.

#### FEDERAL MEDDLING IN OREGON

Mr. WYDEN. Mr. President, I rise today to take a few minutes to discuss Federal meddling in the internal affairs of my home State of Oregon.

As many of my colleagues know, the people of my State have been discussing at length the concept of assisted suicide. In fact, the people of Oregon have spoken twice on this issue. It is a very difficult issue, and after months of thoughtful debate and intense media scrutiny, the voters of my State have voted to allow physicians to assist their terminally ill patients in ending their lives.

Mr. President and colleagues, let me say that I have deep personal reservations about the concept of assisted suicide. I have voted twice as a private citizen against assisted suicide, and once on the floor of the U.S. Senate I voted against Federal funding of assisted suicide. But let me also say that the voters of my State in a recent ballot measure have voted no on the question of repealing the matter of assisted suicide they voted for earlier.

My question today is, what part of no does the Federal Government fail to understand? We saw just a few hours after the Oregon vote some of the most powerful Members of the U.S. Congress and the Clinton administration looking to overturn the popular will of the people of Oregon. Within hours of the Oregon vote, a letter emerged from the Drug Enforcement Administration to the Members of Congress who control the budget for the Drug Enforcement Administration. In effect, the Drug Enforcement Administration indicates they want to declare war on physicians in Oregon and those they serve by threatening to revoke the drug dispensing privileges of any physician who abides by the law that Oregon has now passed on two separate occasions. In effect, the Drug Enforcement Administration is interested in thwarting the will of Oregonians.

Now, Mr. President and colleagues, let me repeat again, I have deep personal reservations about assisted suicide. Going back to my days with senior citizens as codirector of the Oregon Gray Panthers, I have been most interested in looking at medical advances in pain management and hospice care, and I don't think there has even been a beginning at those efforts, and certainly those are the first efforts that governmental bodies at every level ought to be trying to support.

But when the people have spoken, and in this case the people of my State have spoken twice, it is time for the Federal Government to back off. It is not as if this town doesn't have enough to do already on this floor. It is obvious that important legislation needs to be passed as it relates to a number of

Federal agencies. Certainly, the Drug Enforcement Agency has important work to do. I don't see any evidence that they have stemmed the flow of cocaine and heroin and methamphetamine to our kids. It seems to me the Clinton administration and the Drug Enforcement Administration has plenty to do right now other than to meddle in the internal affairs of the State of Oregon.

Now, I have great respect for the Members of Congress who are interested in this issue. A number of them are personal friends and individuals with whom I have worked on a bipartisan basis on health care legislation such as the Food and Drug Administration and health care legislation to protect our youngsters. I have great respect for the Members of Congress, the leaders of the committees that have jurisdiction over the budget for the Drug Enforcement Agency, and I respect them and have worked with them on many occasions.

However, I say to those Members of Congress and to the Clinton administration that it is an inappropriate exercise of our responsibilities to impose personal or religious views on the voters of Oregon. Those voters have spoken. My personal views notwithstanding, I want the Federal Government to get that fairly simple concept known as "No." The people of Oregon have spoken on this issue, and it seems to me if there were a constitutional question involved, perhaps you could understand why the Congress and the Clinton administration would be interested in this Oregon ballot initiative. But in fact, a Federal court has recently ruled against a constitutional challenge to Oregon's law, and the Supreme Court of the United States upheld that ruling.

Mr. President, the citizens of my home State have now made law with respect to what they consider to be compassionate care on the part of Oregon physicians. It was not a rush to judgment. There were two very extensive debates in my State, and I have already indicated that my view with respect to assisted suicide is that I still have deep reservations about the concept.

But the voters of my State have spoken. It would be wrong for those at the Federal level to meddle with that decision. It would be wrong to override the judgment of Oregon voters. And it is my view, Mr. President, that neither this Congress, nor the Clinton administration, nor the DEA, should trample on the judgment of Oregon voters on an issue that the courts have already decided is a matter that should be decided in my home State of Oregon.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

#### REDUCING THE RISK OF UNAUTHORIZED OR ACCIDENTAL LAUNCH OF BALLISTIC MISSILES

Mr. DASCHLE. Mr. President, as hard as it is for me to believe, it was 8 years ago this month that the Berlin Wall came tumbling down. Who among us can forget the stirring pictures of that moment? The entire world watched as jubilant Germans, separated for 38 years by a man-made scar running the length of their country, breached this once impregnable barrier. In so doing, they not only united Germany, they brought together a continent.

The dismantlement of the wall dramatically symbolized to all that democracy had at last triumphed over totalitarianism. The fall of the wall set in motion a series of incredible events. In June 1991, Boris Yeltsin became the first democratically elected Russian President. Two months later Yeltsin disbanded the Communist Party. By the end of 1991, the Soviet Union itself ceased to exist. And the Warsaw Pact, the once fearsome military alliance established to counter and defeat NATO, was officially dissolved.

After five decades of tension, the loss of thousands of lives, and the expenditure of several trillion dollars, the cold war was over. However, as the euphoria of this historic occasion began to melt away, leaders in the United States, Europe, and Russia began to realize that the national security paradigms they had used for nearly half a century no longer applied. They would be required to think anew—a task that presented both challenges and opportunities.

President George Bush took the first steps toward aligning our national security posture with the emerging post-cold war realities in September 1991.

Acting on the advice of Gen. George Butler, the commander in chief of the U.S. Strategic Command, President Bush ordered the U.S. Air Force to stand-down the portion of our strategic bomber force it had kept ready to fly at a moment's notice for most of the cold war. Shortly thereafter, the nuclear weapons on-board these planes were removed and placed in storage. President Bush would also take off alert status those strategic missiles earmarked for elimination under the START I Treaty.

President Clinton has also contributed to solving our post-cold war security concerns. Under his leadership, the Senate ratified the START II Treaty, which limits the United States and Russia to no more than 3,500 strategic weapons. President Clinton completed negotiations on the Chemical Weapons Convention and secured the Senate's approval this past April. The CWC treaty would eliminate the scourge of chemical weapons from the face of the Earth. And finally, just 1 month ago, President Clinton submitted to the

Senate the Comprehensive Test Ban Treaty. If enacted, this treaty would be a useful tool in our efforts to stem proliferation. I hope the Senate will be allowed to act on this treaty when we return.

While we have made some progress in realigning our national security policies to more fully reflect the realities of the post-cold war world, we still have much more to accomplish. Perhaps the most startling and dramatic indicator of how far we have to go is the fact that, as I stand here today—8 years after the fall of the Berlin Wall—the United States and Russia still possess roughly 14,000 strategic nuclear weapons and tens of thousands more tactical nuclear weapons. And even more alarming, both sides keep the vast majority of their strategic weapons on a high level of alert.

In a recent editorial, former Senator Sam Nunn and Dr. Bruce Blair assert that each nuclear superpower maintains roughly 3,000 strategic nuclear warheads ready to launch at a moment's notice. According to Nunn and Blair, while this practice may have been necessary during the cold war, "today [it] constitutes a dangerous anachronism."

Mr. President, I believe we can and must do much more to address the threat posed by nuclear weapons. On September 17, I sent a letter to the Congressional Budget Office asking them to assess the budgetary and security consequences of a series of measures designed to reduce the spread of nuclear weapons and the likelihood they would ever be used.

I expect to receive preliminary results from this inquiry by early next year. In addition, I conducted a meeting earlier this week to explore one particular means of reducing the risk of unauthorized or accidental use of nuclear weapons—removing from alert status some fraction of the strategic ballistic missile force.

As a result of this meeting and a series of discussions with Senator Nunn, Dr. Blair, and General Butler, I am convinced that it is time to seriously consider de-alerting at least a portion of our strategic ballistic missile. I say this for several reasons. First, the likelihood of a surprise, bolt-out-of-the-blue attack of our strategic nuclear forces is unimaginable if not impossible in today's world.

Keeping large numbers of weapons on high alert status fails to recognize this reality.

Second, concerns are growing about the reliability and condition of the Russian early warning and command and control systems. United States security depends on the Russians' ability to accurately assess the status of United States forces and to control their own forces. Public reports indicate their early warning sensors are aging and incomplete, their command and control system is deteriorating, and the morale of the personnel operating these systems is suffering as a result of

the lack of pay and difficult working conditions.

It is in our interest to have Russian missiles taken off alert and Russian leaders given more time to interpret and respond to events.

Third, de-alerting a portion of our strategic missile force now could strengthen the hand of those in the Russian Duma who support START II and other United States-Russian security measures. De-alerting some United States strategic missiles could send an important signal at a crucial stage in Russia's consideration of the START II Treaty. In addition, when President Bush took unilateral action to de-alert a portion of our strategic forces, President Gorbachev reciprocated by removing from alert a number of Russian land- and sea-based missiles.

Finally, de-alerting a portion of our strategic missile force would not sacrifice U.S. security. The United States has already indicated a willingness to reduce its total strategic force to as few as 2,000 weapons. Even if we were to de-alert the entire MX force, the United States would retain roughly 2,500 weapons on alert status, and several thousand more could be made ready to launch. Moreover, should circumstances warrant, the United States could reverse any de-alerting measures it may take.

Mr. President, despite the fact that the Soviet Union dissolved and the cold war ended, the risks posed by nuclear weapons persist and evolve.

I plan to do what I can to explore options for reducing these risks. I believe de-alerting a portion of our missile force merits further study in this regard. I look forward to working with my colleagues and the administration in the next session of Congress to fully explore this measure as well as any other that could lessen the dangers of nuclear weapons.

Mr. President, I yield the floor.

Mr. ROCKEFELLER addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

#### ORDER OF PROCEDURE

Mr. ROCKEFELLER. Mr. President, I thank the minority leader, and I thank the Presiding Officer.

Mr. President, I ask unanimous consent that I might be able to speak as if in morning business for up to 20 minutes, and I further ask unanimous consent that at the completion of my remarks Senator BOXER be recognized.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. ROCKEFELLER. I thank the Presiding Officer.

#### FAST-TRACK LEGISLATION

Mr. ROCKEFELLER. Mr. President, there has been a lot of debate on the floor over the last several days about fast-track authority, and a lot of it has

run against my grain. I don't think it has been at a very high level. What I would like to do is respond to a few of the main arguments that have been used against it that I have heard from some of my colleagues about both the nature of fast-track authority and the need for fast-track authority.

Before I begin I would like to say that West Virginia's economy depends and will continue to depend enormously on strong growth in its exports. So any vote which is taken which does not support the proposition of promoting exports from West Virginia is one that I would question. Indeed, the U.S. economy is moving very strongly forward. I don't believe myself that the growth will continue in West Virginia as strongly as it might have if fast track does not pass this Congress, if we do not give that authority to the President. West Virginia had \$1.3 billion in exports in 1996. That's about a 35-percent increase in exports since 1992. That is quite remarkable. West Virginia's specific exports to Japan, which is our second-largest export market, went up 128 percent in 3 years. Just think about that, Mr. President—a 128 percent in 3 years; increasing exports increases West Virginia—and that dramatic increase has been with just one country—Japan. And, in fact, that means West Virginia exports to Japan totaled about \$116 million in 1996, which is not a lot in some States, but it is a lot in West Virginia. U.S. exports increased by \$125 billion last year alone—a lot of this because of trade arrangements.

One thing is undeniably true—denying the President fast-track authority will not create a single new job in West Virginia. Nobody can make that argument with a straight face. It won't save a single job either to deny the President fast-track authority. It will only hamper our ability to sell goods to new markets, which is what this is about, and hurt the growth of a critical sector of our economy, and one that I have personally been working on very hard over the last 10 to 15 years.

I think most of the arguments about the revolutionary provisions of fast track are highly overstated, and highly dramatized. Fast-track authority isn't anything new. And, because it is a procedural mechanism, I don't think there is anything to be feared about it. I recognize that others don't think so. Some have good arguments. Most have rather poor arguments, I think. Fast track is a mechanism simply that helps the United States keep up with the changing world economy and deal with our trading partners in 21st century management.

So, let me take a moment to respond to a few of the persistent arguments which are used against fast track. These are just a few of them.

Is there sufficient congressional consultation accompanying fast-track authority? Very big contentious deal. Right? We are ceding all of our authority to the President of the United

States. We will no longer be a Senate. We will just be a tool of the Presidency.

That is ridiculous. Congressional consultation is required in order for the administration to have and to retain fast-track authority and it has been significantly strengthened, I would say powerfully strengthened, from what was required under the legislation granting the last fast-track authority in 1988. New requirements for the administration are imposed under this bill which the House, and some Democrats in particular, don't seem to have the guts to be able to vote for it. It has all been passed through the Senate Finance Committee in order to ensure the administration carefully coordinates and consults with Congress at every stage of the process. Listen to me on this.

The 1988 act required that the President provide written notice to the Finance Committee and the House Ways and Means Committee of bilateral trade agreements at least 60 days before providing notice to the Senate and the House of his intention to enter into an agreement—and, remember, this is the last fast-track authority—and to consult the Senate Finance Committee and the House Ways and Means Committee regarding the negotiations.

The bill that we passed out of the Senate Finance Committee and which the Senate has voted by a vote of 69 to 31 to take up, the President to provide written notice to the Congress as a whole of his intention to begin multilateral and bilateral negotiations at least 90 days in advance.

That notice, Mr. President, must specify the date the President intends to begin such negotiations, the specific objectives of the negotiations, and whether the President intends to negotiate a new agreement, or, on the other hand, to modify an old or existing agreement. Any failure of the President to provide notice can result in the introduction and consideration of a "procedural disapproval resolution" which would deny fast track for the trade agreement, if the resolution were approved.

This bill also requires the President to consult with the Finance Committee and the House Ways and Means Committee, and with other committees, before and after providing the notice of his intention to begin negotiations.

Already we are in advance of where we were in 1988.

The President must consult with all other committees that have any jurisdiction or participation in this matter that request consultations if a committee wants to be consulted. If it wants to be consulted, it can request consultation, and the President must consult with them in writing.

In addition, the Senate Finance Committee's fast-track bill requires the President to consult with the private sector advisory committees established under the 1974 Trade Act, as the President deems it appropriate, before be-

ginning negotiations. This consultation takes place before the trade negotiations have even begun.

Before the President is permitted to enter into a trade agreement, the President must consult with the Senate Finance Committee, the House Ways and Means Committee, as well as other committees of jurisdiction over legislation involving subjects that would be affected by the trade agreement, in addition to the consultation requirements of the 1988 act, which includes discussions about the nature of the agreement and a detailed assessment of how the agreement meets the objectives and purposes of the act.

Now the Senate Finance Committee bill requires the President to consult the Congress on all matters related to the implementation of the agreement.

Free trade agreement negotiations must include an overview of the macroeconomic environment of the countries with which the President intends to negotiate and a discussion of effects on exchange rates—on exchange rates. It is a good idea included in response to concerns raised by certain Members—and it is in the fast-track authority.

These consultations must be continuous as negotiations of the trade bill are continuous. What additional requirements for consultation do the opponents of this want? Another new consultation requirement was added in response to Senate Members' concerns about side agreements that were entered into during previous free trade agreements, like NAFTA and the United States-Canada Free Trade Agreement. The new requirement mandates the President consult with respect to any other agreement he has entered into, or intends to enter into with the countries party to the agreement.

This would include all kinds of agreements: Formal side agreements, exchange of letters, and any preagreed interpretations of the provisions of a trade agreement entered into in conjunction with a trade agreement.

Advisory committee reports are required.

What provision of the extensive consultation requirements am I on? No. 7, No. 8? I have no idea what number I am on of all these new provisions which give strength to the congressional role in forging trade agreements.

Advisory committee reports are required to be submitted not more than 30 days after the President notifies Congress of his intention to enter into a trade agreement.

I know going through this amount of detail sounds arcane. But I just want to in a sense ridicule the arguments that are being used that somehow we are ceding all power to the President. Is it the U.S. Senate which is important in this, or is it jobs for workers in West Virginia and across the country which are important in this? What comes first here?

Further, the Senate Finance Committee fast-track bill requires the USTR to consult regularly, promptly,

and closely with congressional advisors for trade policies and negotiations, and with the Senate Finance and House Ways and Means Committee whole membership, and to keep both the advisors and the committees fully informed every step of the way through the negotiations process.

Ambassador Barshefsky is over there doing negotiating, which is really done in secrecy—most of it.

No. 9. We have to be consulted on the progress of the negotiations of any trade agreement eligible for fast track so the Congress can evaluate the negotiations at each stage virtually at each hour.

I do not know what more Members might require in the form of consultation.

Because negotiations traditionally become most intense at the conclusion of the negotiation process, the Senate Finance Committee further expects that the USTR will enter into a formal agreement in the form of procedures similar to those agreed by the executive branch in 1975 that will ensure that congressional advice and committee advice will be able to be fully taken into account as in the past.

Again, this next provision must be the tenth or eleventh requirement for consultation—

As a condition of fast track authority, the U.S. Trade Representative will commit to a set of procedures that afford Members and cleared staff—not just Members but cleared staff—with necessary documents, classified, or unclassified. They will have access to things such as cables, statements of executive branch position, and formal submission from other countries. The USTR staff will work with the Senate Finance Committee to set up a system of briefings for Members during these negotiations, and appropriate staff to be included in the final rounds of the trade negotiation agreement.

And the President is required to notify Congress before initialing a trade agreement which might even be eligible for fast-track authority. He can't even put his initials on it before he consults with Congress. Once the agreement is initialed by the President, the President then has 60 days to provide the Congress with any and all changes required to U.S. law to implement the agreement.

Well, I have another two pages on that, all of them, Mr. President, simply showing that the Senate has adequate consultation—the question is how much negotiating room the President has with all these consultation requirements. No problem with the Senate.

Now, some people make this argument. Some argue fast-track authority is not needed to move trade agreements. It is absolutely true that there have been hundreds of trade-related agreements and declarations which the U.S. Trade Office has concluded during this administration. From January 1993 to just last month that has been the case.

But, let me give my colleagues some examples of these many trade deals that the opponents of this bill point to to suggest that trade agreements continue to be made and that fast-track authority is not really necessary; in other words, you don't have fast track authority to have trade agreements. Well, a lot of these agreements which have been agreed to and negotiated are very peripheral in nature. One, a bilateral investment treaty with Albania. Great. And then an agreement regarding processed chicken quotas with Canada. A memorandum of understanding on trade in bananas with Costa Rica. Wonderful. A trade and intellectual property rights agreement with Estonia. Historic. An agreement on a temporary waiver of Hungary's WTO export subsidy schedule. Wow. Harmonized chemical tariffs with Japan. All right, that's good. An agreement on trade in textiles and textile products with Lesotho. Wonderful. And it goes on and on and on.

I hope that my colleagues will agree that as important as having bilateral agreements with any given country may be—and some of the examples I listed have, in fact, real economic impact; they have real impact on important industries in my State and other States—not many of these agreements are major trade deals. That is my point. In fact, very few are major trade agreements in the sense they are not opening up new markets.

Here rests my argument. What we are talking about is opening up new markets. What the opponents are talking about is totally removed and off base.

I do not mean to say that negotiating with individual countries and establishing bilateral agreements isn't a very important part of improving the trade environment. These individual product or industry-specific agreements with different countries do help improve U.S. trade. I have no doubt about that at all. But they do not make significant expansions in our export markets that America and West Virginia need desperately in order to improve.

Ensuring that U.S. goods and services can be available on a level playing field to the 96 percent of consumers in this world who are not Americans happens to be very important. Trade agreements make sure that we have access to new markets under reasonable conditions. In our increasingly global world, that means we have to have multilateral agreements like GATT and the Uruguay round, and free trade agreements with areas like Latin America and Asia are needed. Why? Because they are growing enormously, and their middle class is growing and their ability to purchase goods is growing.

An up-or-down vote on a multilateral trade agreement makes sense to me because it how we expand our markets. As the U.S. Trade Representative, Charlene Barshefsky, told the Finance

Committee, in the two fastest growing regions of the world, Latin America and Asia, governments are seeking preferential trade agreements. "They are forming relationships around us, rather than with us, and they are creating new exclusive trade alliances to the detriment of U.S. interests."

Then Ambassador Barshefsky goes on to say, "In Latin America and Asia alone over 20 such agreements have been negotiated since 1992, all of them without us."

Well, I can't imagine that doesn't bother the opponents of fast track. I care about the effect of trade on jobs in my State. And there is plenty of protection for the Senate and the Congress in this fast-track authority. You cannot negotiate a trade deal with 100 Members of the Senate and a foreign country or set of countries. It cannot be done. Fast track makes sense.

Can you imagine people coming in and saying, well, we have to.

What are other countries doing on trade agreements while the U.S. debates fast track? Where is the United States at a disadvantage if we don't pass fast track, as they may not in the House? Again, primarily due mostly to my own party.

I have talked about the fact that major markets are negotiating trade agreements and the United States is not in the picture. Let's just look at the major world markets:

No. 1, Uruguay, Brazil, Argentina, and Paraguay have formed a common market called MERCOSUR. MERCOSUR has a GDP of about a \$1 trillion and includes a population of 200 million people. It wants to expand its market to the rest of South America. The sheer numbers of people and dollars in this market makes it the largest economy in Latin America. MERCOSUR has agreements with Chile and Bolivia, and is talking with Colombia and Venezuela, in addition to Caribbean nations. The EU and MERCOSUR plan to complete a reciprocal agreement by 1999. We are on the outside of all that.

No. 2, Latin American nations are meeting with members of the Central American Common Market [CARICOM] to discuss free trade negotiations.

No. 3, Chile, with one of South America's leading economies has already signed agreements with Bolivia, Colombia, Ecuador, Mexico, Granada, Venezuela, and MERCOSUR countries. That means Chile has a preferential trading relationship with every major trading country in our hemisphere except the United States. How do the opponents of fast track feel about that?

There are seven members of the South Asian Association for Regional Cooperation [SARC]—Bangladesh, Nepal, Sri Lanka, India, Pakistan, and Maldives—they have set 2001 as the date they would like to create a free-trade area. Right now, SARC is only 1 percent of world trade, but it has 20 percent of the world's population which means this is another important market to the United States in the future.

I talked about Latin America earlier and want to underscore why that market is so important to our trading future. Projections are that Latin America will exceed Western Europe and Japan combined as an export market for the United States in the next decade—and that's under current conditions where tariff barriers average three to four times the average United States tariff. Put simply, Latin America is one of the largest emerging markets, of the 30 million people who join the middle class annually, three-fourths of those 309 million people are currently in emerging markets and low- and middle-income markets.

I am almost at an end. The Asian Pacific Rim is our second fastest growing export market. Meanwhile, our industrial competitors continue to make agreements that put U.S. goods at a disadvantage. Canada has a new trade agreement with Chile. The EU is in a position to take better advantage of the transition economies of Central and Eastern Europe. The EU is also working on getting a free-trade agreement with MERCOSUR.

China is zeroing in on Latin America and Japan is working on its ties to Asia and Latin America through closer commercial ties and a greater commercial presence.

Mr. President, I simply make these remarks because I think it will be such high and deep folly if the House declines to vote on—or if voting, votes down—fast-track authority. I think some of the arguments made in this body have made it easier for Members of the House to say, "Look what so-and-so said in the U.S. Senate."

It is a question: Do we want to expand trade? Or do we want to just keep all inside of ourselves? This has been an age-old problem with the United States. We cycle back and forth from one view to another. This is the time to cycle for an expansionist trade point of view.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mrs. BOXER. Mr. President, I had the floor, as I understand it, following the conclusion of Senator ROCKEFELLER's remarks?

The PRESIDING OFFICER. The Senator from California is correct. Under the previous order, the Senator from California is to be recognized.

The Senator from California.

Mr. SPECTER. Mr. President, might I ask unanimous consent—I have been waiting here for some time to speak for up to 5 minutes.

Mrs. BOXER. Following my remarks?

Mr. SPECTER. No, at the present time. I have been here on the floor.

Mrs. BOXER. I have been waiting for at least 2 hours, on and off.

The PRESIDING OFFICER. Objection is heard. The Senator from California.

Mr. SPECTER. May I inquire of the Senator from California how long she will be speaking?

Mrs. BOXER. I would say about 15 minutes, I say to my friend.



Mr. SPECTER. Then I ask unanimous consent that I might be recognized to speak up to 5 minutes at the conclusion of her remarks.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. BOXER. I say to my friend from Pennsylvania, I may finish sooner than that, and I will endeavor to do so.

#### LOOKING AHEAD

Mrs. BOXER. Mr. President, I think the Senator from West Virginia, Senator ROCKEFELLER, made a very strong plea for giving the President fast track. I find it interesting that those who support fast track say those who do not, in this case, oppose trade. I think the truth is there are those who support fast track on any given occasion, and there are some who oppose it on every given occasion. I find myself in the middle of the road here, where I have given fast-track authority to Presidents when I felt it was in the best interests of our country, of our working people, and of our environment. That is usually when trade is being negotiated with countries that have decent labor standards, decent prevailing wages, and decent environmental standards.

So on that topic, I think it is simplistic to say that either you are for trade or against it. I think we are all for trade. I think the question is, is it fair to America? Will it result in good-paying jobs or will it put the squeeze on jobs? And should we give up our authority here in the Senate and the House, should we give that up regardless of whether it is a President of my own party or another party? Or should we hold on to that authority so we can, in fact, stand up for American values and American workers and American interests?

As we reach the end of this session of Congress, I would like to comment on a couple of the issues that we have taken up in the Senate and look ahead for some issues I hope we will take up when we return. As one of the two Senators from the largest State in the Union, every single thing that we do here and every single thing we fail to do here has a major impact on my State. It has 33 million people, more seniors than any other State, more young people than any other State, more workers than any other State, more women than any other State, more infants than any other State. So whatever issue we turn to here impacts my people enormously.

I share pride in knowing that I was able to work with a majority of my colleagues to bring a balanced budget, but one with a heart, to the U.S. Senate and to the President's desk for signature. The march toward fiscal responsibility in this country was actually started when President Clinton took the oath of office. I remember that day because we were filled with promise and hope that we could finally tackle some of our problems. And we did.

I might say it was a tough year for Democrats, because we didn't get any bipartisan help in that budget. But that budget in 1993 was the budget that led us to fiscal responsibility. It took us down that fiscally responsible track. I remember, because I am on the Budget Committee, hearing the comments of my Republican friends at that time that this budget was a disaster, that President Clinton's policy would lead to unemployment, recession, depression—everything bad that you could think of. We persevered and we believed in what we were doing, and I am happy to say that this year we finished the job with our Republican friends. Gone are the days of Government shutdowns, because the American people spoke out in that last shutdown and said: You were sent here to do your job. We want fiscal responsibility but we are not going to have our budget balance on the backs of our grandmothers and grandfathers, our children, the most vulnerable people. We are not going to balance the budget while hurting education and the environment. So the budget agreement took all that into consideration. I think we all have a lot to be proud of.

As we moved forward on the fiscal responsibility front, unfortunately I saw us move backward in a number of areas. I want to touch on those.

In 1973, Roe versus Wade was decided. It is the law of the land. Yet this Congress is constantly trying to roll the clock back to the days when women were in deep trouble in this country because abortion was illegal. We know that there is not the will to have a vote to outlaw abortion because the votes are not there, and the American people would be stunned if a woman's right to choose was completely denied. So what the opponents of a woman's right to choose have done is to chip away at that right. And there are many women in this Nation who have their choice imperiled. Who are these women? Women in the military, women in the Federal work force, poor women in America—all women in America, because fewer and fewer hospitals are teaching doctors how to perform safe, legal abortion.

I don't know why we have to keep turning back the clock to the days when women were in trouble in this country. Why don't we move on? I have a bill that would codify Roe versus Wade. I am looking forward to talking more about that next year. It seems like there is a group that wants to reopen that battle all the time. They want to reopen the battle over Medicare. They want to fight us on issues that already were fought in the 1950's. That's when Dwight David Eisenhower said the National Government ought to have a role in education. In the 1960's, that's when President Johnson said Medicare is important. In the 1970's, that's when President Nixon said we need an Environmental Protection Agency.

I think America does better when we move forward. So I am hoping when we

get back here we will complete some unfinished business. First of all, we should fill up all the judgeships that are languishing. Justice delayed is justice denied. We have very fine people waiting to be confirmed by this U.S. Senate. I am very pleased that we did pass a number through, but there are a number left to go. I am very pleased Senator LOTT has worked with Senator DASCHLE and we will have a vote on Margaret Morrow. But we need to do it. We must also confirm the nomination of Bill Lann Lee to be Assistant Attorney General for Civil Rights. We cannot allow this important position to remain unfilled while such a superb nominee is ready, willing, and able to assume to the job.

We also need the IRS reform that Senator BOB KERREY spoke about so eloquently. And we need passage of campaign finance reform, the McCain-Feingold bill.

Let's place some national standards on our HMO's and ensure that all Americans enrolled in managed care plans receive quality treatment and are always treated fairly by insurance companies.

We need to pass the transportation bill, not just for 6 months, but for 6 years. Our people need highways built. They need transportation systems that work. We owe it to them.

We must make stopping gun violence a national priority. Junk guns have no place on our streets. And we must ensure that all handguns in America are sold with a safety lock. Taking this step would save hundreds of lives every year.

Let's make a national priority of health research. That is what the people want. They want a cure for Alzheimer's, AIDS, breast cancer, prostate cancer, scleroderma, ovarian cancer—these are the things they so worry about with their families today. Let's make a priority of health research.

He is our leader on doubling the National Institutes of Health. He has teamed up with Senator CONNIE MACK on this. It is time that we do this. The American people need it.

We need some minimum standards for day care. Senator DURBIN was on the floor today eloquently speaking about the needs of those infants and those toddlers and how the brain develops. By age 3, 90 percent of the brain is developed. Yet, we have no national standards for child care in this Nation.

So I think it is time that we looked at certain issues. We say children are our priority. Let's pass the Children's Environmental Protection Act and protect them from pollution. We have seen a 30-percent increase in brain tumors among our young children in the last 10 years.

We need national standards for education. We had a good compromise in the U.S. Senate, and the House would not accept it. What are we afraid of? Why wouldn't we want our parents to have a chance to see whether their children are reading at the proper

level, doing math at the proper level? If we really care about our children, let's put some responsibility on the teachers, and this is one way I think we ought to do it.

Superfund reform. We have toxic waste dumps all over this country. We need to clean them up. The law needs to be refined. Too much money goes to attorneys and not enough to clean up the mess. The polluter has to pay. We can't allow the taxpayers to pick up the tab. We need to move forward.

In closing, I want to say this. We are going to be celebrating Veterans Day on November 11. It is a special, special day. It also happens to be my birthday, and I am very proud to share it with the veterans.

Year in and year out, we hear about how many of the homeless in our streets are veterans. Mr. President, how can we, as the United States of America, celebrate Veterans Day knowing that so many of our vets have been turned aside?

I hope we will move on that and on the gulf war syndrome. We cannot turn our back on veterans who served our Nation in wartime and came back sick.

We did it in Vietnam when our veterans were exposed to agent orange. We did it again with gulf war syndrome. We ought to hold our heads up as a nation this Veterans Day.

I really look forward to coming back here and righting some of these wrongs. Senator ROCKEFELLER has a great bill. It says if you are a gulf war veteran and suffer from a disease, you don't have to prove anything except you were in that war theater and you are now disabled in order to qualify for disability benefits. It seems to me if we stand for anything around here, it ought to be standing by our veterans when they are sick and when they are homeless.

So I leave here with a good feeling about a lot of what we did and a little bit of regret about some other things I didn't agree with. But I am excited as I think about coming back here, because I think you heard me describe that there are a number of issues we ought to address that will make life better for all of our people in the context of a balanced budget that has a heart.

Thank you very much, Mr. President. I yield the floor.

The PRESIDING OFFICER. Under the previous order, the Senator from Pennsylvania is recognized.

Mr. SPECTER. I thank the Chair. I have sought recognition to discuss briefly two matters: First, the pending fast-track issue and, second, the pendency of our judicial confirmations.

#### FAST TRACK

Mr. SPECTER. Mr. President, I will begin on the question of fast track with a statement made by the distinguished Senator from West Virginia saying that it would be disingenuous to believe that trade agreements would

not be rewritten in the U.S. Senate. I say to my colleagues that I consider it unlikely that trade agreements would be rewritten in this body, considering how hard it is to get 51 votes against a committee report or against an administration position or that we might have the structure on amendments made so that it would require passage of a bill then subject to veto by the President and then subject to a two-thirds override. But if, in fact, trade agreements would be rewritten on the floor of the U.S. Senate or on the floor of the House of Representatives, then it might be something which is desirable.

I oppose fast track, although I am not opposed to free-trade agreements, because I do favor such agreements and supported NAFTA, the North American Free-Trade Agreement, and GATT, notwithstanding very considerable constituent opposition in my own State. Being elected in Pennsylvania, with 12 million constituents, it is my view that I ought to have standing as a Senator to offer amendments, and because we have had a certain amount of wisdom coming from Members of Congress on issues of trade, which are matters of very, very considerable importance.

I will analogize the activity of the Senate regarding trade agreements to what we do on treaties in general, where a two-thirds vote is required. If amendments could be offered to trade agreements, it could be of some substantial value to the President, and the executive branch in negotiating agreements with foreign powers saying, "Well, we understand your position, but you have to understand ours, and there are certain political realities in the U.S. Congress."

We have a variety of protocols where you have executive agreements which look very much like treaties which are not subject to ratification by the Senate. A very complicated agreement was entered into with North Korea which involved very substantial issues on nuclear power. That was the subject of a letter from the chairman of the Foreign Relations Committee, the chairman of the Interior Committee and myself, in my capacity last year as chairman of the Intelligence Committee, asking for Senate action. So there are precedents for having the Senate exercise its judgment and I think we have some substantial judgment in the field.

I recall very well in 1984, when the International Trade Commission came down with a decision which was in favor of the American steel industry. At that time the issue arose as to whether President Reagan would overrule the decision of the International Trade Commission. Senator Heinz, my late departed colleague, a great Senator, and I went to talk to then Secretary of Commerce Mack Baldridge who thought that we were right, the American steel industry ought to have that favorable decision from the International Trade Commission. Bill

Brock, the trade representative, agreed. We then talked to Secretary of State George Shultz and Secretary of Defense Caspar Weinberger who disagreed.

The President overruled the International Trade Commission and made the decision which was based really on foreign policy and defense policy. The American steel industry paid a very high price which should have been paid out of the general revenues. Western Pennsylvania especially, but eastern Pennsylvania, too, with Bethlehem Steel, suffered very substantially.

Right now, my distinguished colleague, Senator SANTORUM, and I are working very hard on trying to get Cigna fair access to the Japanese markets. Notwithstanding certain commitments by the executive branch and the trade representatives, we have not been able to accomplish that.

So it seems to me that there is a very good reason on principle why matters which come to the Congress on trade issues ought to be subject to amendment. We have some understanding of the trade issues, and we have some understanding of our States' stakes. I think it would be entirely appropriate for us to be able to offer those amendments and not to have to simply vote yes or no, take it all or leave it.

The PRESIDING OFFICER. The time of the Senator from Pennsylvania has expired.

Mr. SPECTER. I ask unanimous consent for 2 additional minutes.

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

#### MY GRANDDAUGHTER SILVI

Mr. SPECTER. Before commenting briefly on judges, I have a very brief personal note. Yesterday, I spoke about the appropriations bill on Labor, Health and Human Services. My 3-year-old granddaughter, Silvi, was watching the screen on C-SPAN 2, perhaps one of the few watching. She said to her father, my son, Shanin, "Why doesn't he say hi?"

I told her I might speak this afternoon and alerted her, although the time is somewhat delayed. I do not think it is somewhat inappropriate to say hi to my granddaughter, Silvi. I know in the old days, they said you couldn't do that. But without objection, I say hi to her.

#### JUDGES

Mr. SPECTER. Mr. President, I want to say a word or two about judges.

It is a very difficult matter getting judges confirmed in the Senate. I congratulate my distinguished colleague, Bruce Kauffman, a former Supreme Court Justice in Pennsylvania, for his confirmation yesterday.

I understand the distinguished Pennsylvanian from Wilkes-Barre, A. Richard Caputo, Esquire, is subject to confirmation with no objection.

I urge my colleagues to support the confirmation of Judge Frederica

Massiah-Jackson, for the eastern district of Pennsylvania, Federal court. Judge Massiah-Jackson has a very distinguished record on the State Court of Common Pleas in Philadelphia County. Although some questions have arisen, a couple of intemperate remarks, I think, do not disqualify her. If intemperate remarks were disqualifiers, there wouldn't be any Federal judges, there wouldn't be any Senators or anybody in any other positions. Questions have arisen about her sentencing. Out of 4,000 cases, 95 appeals were taken and reversals in only 14 cases. I urge my colleagues to support Judge Fred-erica Massiah-Jackson so we can fill a vacancy on the Federal court.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

#### UNANIMOUS-CONSENT AGREE- MENT—CONFERENCE REPORT AC- COMPANYING S. 830

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate now turn to the conference report accompanying the FDA reform bill; that it be considered as having been read; that there be 30 minutes for debate equally divided between the chairman and ranking minority member, with an additional 5 minutes for Senator REED of Rhode Island; and that following the conclusion or yielding back of time, the Senate proceed to vote on the adoption of the conference report, all without further action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. As I understand this, we now have an hour of debate?

Mr. JEFFORDS. Half hour; 30 minutes.

Mr. HARKIN. And then we will vote.

Mr. JEFFORDS. Right.

Mr. HARKIN. It will be a recorded vote.

Mr. JEFFORDS. No, it will not be. It depends on the body, but it is intended to be a voice vote.

Mr. HARKIN. Thirty minutes of debate, a voice vote and then there will be no pending business after that? What will the pending business be after that voice vote?

The PRESIDING OFFICER. The pending business is the fast-track bill.

My understanding of the request of the Senator from Vermont was 30 minutes equally divided, plus an additional 5 minutes for the Senator from Rhode Island.

Mr. HARKIN. Mr. President, since everybody else seems to be getting in line, I wonder if I can amend that to ask unanimous consent that after the disposition of this bill, after the voice vote, which I understand is included in your disposition, after the disposition of this bill, that the Senator from Iowa be recognized.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, I was wondering if we could ask for 40 minutes. I have a couple of Senators on our side who would like time, who have been very active on this issue. Perhaps we could have a few more minutes so that we could accommodate their requests. Would that be agreeable?

Mr. JEFFORDS. Does that include the Senator from Iowa?

Mr. HARKIN. No.

Mr. KENNEDY. No.

Mr. JEFFORDS. Yes. I have an objection to the request from the Senator from Iowa.

Mr. KENNEDY. Mr. President, could we have 40 minutes then on the bill?

Mr. JEFFORDS. I have no objection to the Senator from Iowa being recognized as in morning business for a period of 10 minutes after the vote.

Mr. HARKIN. I understand that after the vote on this bill, the pending bill is the fast-track bill.

The PRESIDING OFFICER. The Senator is correct.

Mr. HARKIN. I ask unanimous consent that after disposition of this bill, the Senator from Iowa be recognized to speak on the fast-track bill. That is all.

The PRESIDING OFFICER. Is there objection to the request?

Mr. JEFFORDS. It would have to be in morning business.

Mr. HARKIN. I don't understand why it has to be in morning business.

Mr. JEFFORDS. It is my understanding from the majority leader that the 10 minutes the Senator is requesting should occur as in morning business. That is all I can tell you.

Mr. KENNEDY. If the Senator would be recognized for 10 minutes—

Mr. JEFFORDS. I believe the Senator would be recognized for 10 minutes, but it would be in morning business.

Mr. HARKIN. I want to ask unanimous consent that the Senator from Iowa be recognized for up to 20 minutes after the disposition of this bill.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. JEFFORDS. Objection. I object.

Mr. HARKIN. Then I will object to that unanimous-consent request.

The PRESIDING OFFICER. Objection is heard.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate now turn to the conference report to accompany the FDA bill, and the conference report be considered as having

been read, and that there be 40 minutes of debate equally divided, and that following the conclusion or yielding back of time, the Senate proceed to a vote for adoption of the conference report, all without further action or debate.

The PRESIDING OFFICER. Is there objection?

Several Senators addressed the Chair.

Mr. HARKIN. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. REED. Reserving the right to object, I don't know what I did, but a few minutes ago I had 5 minutes. There wasn't 5 minutes—

Mr. JEFFORDS. Then I will amend it to ask unanimous consent to add an additional 5 minutes for the Senator from Rhode Island, Senator REED.

Mr. REED. I thank the Senator.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request?

Mr. HARKIN. Reserving the right to object, I ask unanimous consent to amend that unanimous consent so the Senator from Iowa would be allowed 20 minutes in morning business after the disposition of it.

The PRESIDING OFFICER. Is there objection to the unanimous-consent request by the Senator from Iowa?

The PRESIDING OFFICER. Without objection, the entire unanimous-consent request is agreed to.

#### FOOD AND DRUG ADMINISTRATION MODERNIZATION ACT OF 1997— CONFERENCE REPORT

Mr. JEFFORDS. Mr. President, I submit a report of the committee of conference on the bill (S. 830) to amend the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act to improve the regulation of food, drugs, devices, and biological products, and for other purposes, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 830), have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The Senate proceeded to consider the conference report.

(The conference report is printed in the House proceedings of the RECORD of November 9, 1997.)

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, before us is the conference report on S. 830, the Food and Drug Administration Modernization Act. This is really an excellent moment to bring this up and consider what has been accomplished.

This bill represents the first major reform of the Food and Drug Administration in some 30 years. For our committee, it is the second major reform

that we have accomplished this session, the first one being special education, which was the first major reform for that program in some 20 years.

I am very pleased to be able to say to my colleagues that the FDA measure embodies the objectives we originally sought to accomplish.

This legislation achieves two important goals.

First, it helps the FDA to get medicine and medical devices to patients and doctors sooner and safer.

And, second, it will extend and improve the Prescription Drug User Fee Act, commonly known as PDUFA.

I am pleased to report that the conference report has the unanimous support of the conferees. It deserves the unanimous support of this body as well.

The conference report is the culmination of 3 years of hard work by dozens of Senators. It offers the most substantial reform of the Food, Drug and Cosmetic Act in decades and will have a positive impact on the lives of millions of Americans for decades to come.

Think how the world of medicine has changed over the past two or three decades. The law that governs much of that world, and nearly \$1 of every \$3 spent by consumers, must change and adapt as well.

The measure makes scores of changes in the law that ensures the safety of the food we eat, of the drugs we use to fight disease, and the medical devices we use to improve the health of Americans. It will help patients gain access to new therapies sooner without weakening either safety requirements or the authority of the FDA. It gives the agency needed tools and resources to manage an increasing workload more efficiently. In addition, it contributes to our maintaining America's technological leadership in producing pharmaceuticals and medical devices.

Achieving these reforms is a win-win situation for consumers, for the FDA, and for manufacturers. It is a win for patients and consumers, who will gain access to previously unavailable information and obtain better therapy sooner. It is a win for the FDA, which will receive new, sorely needed resources and streamlining and modernization of bureaucratic processes that have not changed in decades. And it is a win for the manufacturers, who will have a certainty that the review and approval processes applied to their innovative products will be applied in a collaborative and consistent manner.

About 10 months ago, Mr. President, we embarked anew on an effort that some characterized as foolish—an effort to modernize the regulatory processes of the FDA. Many thought it could not be done. Some urged we merely extend PDUFA or we tackle only a few issues related to drug regulation and leave the comprehensive modernization to another day.

I am glad we did not choose either of these paths. Instead, we chose to forge

a bill with broad, bipartisan support, one that took a broad view of the changes needed at the FDA.

In that regard, I particularly want to acknowledge the Democratic members of the Labor Committee, and especially Senators DODD, MIKULSKI, WELLSTONE, and MURRAY. They have made countless contributions to this legislation, large and small. Their tireless support has been critical in our success.

This measure is the result of the process to consult with individuals of all points of view and to benefit from the expertise needed to craft legislation on this complex issue. Patients, physicians, consumer groups, the FDA, and the manufacturers of medical devices and pharmaceuticals all contributed to this effort through their participation in hearings and in discussions with the staffs.

This effort was parallel to that of our colleagues in the House of Representatives, which, under the outstanding leadership of Chairman BLILEY, also produced a strong bipartisan bill with overwhelming support. The collaboration and consensus building has continued right up to the present, and the quality of this conference report we are considering today reflects that process.

Mr. President, we would not be here today if it were not for the effort of my predecessor as the chair of the Labor and Human Resources Committee, Senator Kassebaum. Her efforts to advance reform in the last Congress paved the way for our work here today. We owe her an enormous debt.

This year, there have been many Members in both Chambers who have contributed to this effort. Foremost among them has been Senator COATS. The list of provisions of this bill that bear his imprint is far too long to recite. But, as an example, the third-party review provision has been developed under his leadership, and he has played an important role in advancing FDA modernization throughout this process.

Senator GREGG is to be commended for his proposals to streamline the FDA process for consideration of health claims based on Federal research and his amendments to establish uniformity for the over-the-counter, OTC, drugs and cosmetics. Senator MCCONNELL also suggested improvements in the regulation of food.

I am especially grateful to Dr. FRIST. He and Senator MACK led the way to compromise on the issue of the dissemination of medical information to health professionals, an important advance forward.

Senator DEWINE, joined by Senator DODD, offered an important amendment to establish incentives for the conduct of research into pediatric uses for existing and new drugs, a needed change. The bill was improved by Senator HUTCHINSON's amendment to establish a rational framework for pharmacy compounding, which respects the State regulation of pharmacy while allowing an appropriate role for the FDA. And

Senator HARKIN has made many contributions to this legislation.

Finally, the ranking minority member, Senator KENNEDY, has played an important role in bringing this conference report to the floor in a manner that draws support from all quarters.

In the House, Chairman BLILEY and Congressmen DINGELL, BURR, BURTON, GREENWOOD and WHITFIELD have contributed immense energy and leadership in reaching this agreement.

Mr. President, it has been a remarkable year, crowned by a remarkable, bipartisan achievement. And I thank my colleagues for their support.

Mr. President, I yield the floor and reserve my time.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, we have waited a very considerable time for this moment this afternoon in the U.S. Senate as well as action in the House of Representatives and, hopefully, the President's signature in the next few days on a matter of very significant importance to the issues of quality health for the American people.

It has been a very considerable process that we have followed over a number of years to get to this point.

I congratulate the chairman of our committee, Senator JEFFORDS, for his leadership all along this long and difficult passage, because I think without his perseverance, without his knowledge and awareness and his strong commitment on this issue, we would not have this important legislation available for the Senate and for the American people.

Mr. President, one could wonder why it has taken so much time. But we have a natural tension between bringing new innovation and creativity and breakthroughs in the areas of pharmaceutical drugs and medical devices to the market and, on the other hand, protecting the public by approving only safe and efficacious products. We have well-intentioned, brilliant medical researchers in our country who are absolutely convinced that their particular product can provide life-saving opportunities for our fellow citizens, members of our families, who are suffering extraordinary illness. And we have brilliant researchers at FDA that examine scientific information and clinical studies and believe that a very significant potential danger is out there for those who might use a particular pharmaceutical or medical device. Achieving a balance between these two concerns is a difficult task.

The one who has really balanced these conflicting views has been our chairman, Senator JEFFORDS, working diligently with other members of the committee, Democrats as well as Republicans, over a long period of time.

I am convinced that as a result of this legislation the health of the American people will be enhanced through faster availability to pharmaceutical drugs and medical devices while maintaining important protections for the

American people. I join in supporting this landmark FDA conference report.

This is a very important piece of legislation. I think in many respects this will be one of the most important pieces of legislation of this year, and possibly of this Congress.

Mr. President, I want to commend Chairman BLILEY, JOHN DINGELL, as well as Chairman BILIRAKIS, SHERROD BROWN and other members of the House committee for their bipartisan work. We had a good conference where Members were knowledgeable and very committed in terms of finding common ground. I believe as a result of this conference we have an even stronger bill than was passed earlier.

In addition, I commend the Patients' Coalition and Public Citizen, who worked to assure that the needs of patients were fully and fairly considered in the legislation. I appreciate the assistance of the Massachusetts biotechnology and medical device industries, who provided me with valuable insight into these complex issues and their concerns.

I also commend Secretary Shalala, the dedicated men and women at the FDA, and the Clinton administration for their skillful and impressive role in developing so many aspects of these needed reforms.

The most important part of the bill is the extension of the Prescription Drug User Fee Act [PDUFA] which was originally enacted in 1992. PDUFA is one of the most important FDA reform measures ever enacted. It provides funds for FDA to hire hundreds of new reviewers who, in turn, are able to expedite the review and approval of pharmaceutical products. A critical element of PDUFA's success was the establishment of measurable performance targets, which was negotiated between the industry and the FDA.

Under the PDUFA provisions in this bill, in addition to moving products through the regulatory process more quickly, the FDA and industry will also establish a cooperative working relationship and shorten drug and device development times, which now represent the most significant delay in bringing new products to market.

In addition, the bill includes a number of other constructive provisions to enhance cooperation between industry and the FDA to improve regulatory procedures.

I am particularly gratified that the bill includes broader use of fast-track drug approval. The streamlined accessibility procedure now available primarily to cancer or AIDS will be available for drug treatments for patients with all life-threatening diseases.

The bill provides for expanded access to drugs still under investigation for patients who have no other alternatives. The compromise combines protections for patients with expanded access to new investigational therapies, without exposing patients to unreasonable risks.

The bill includes a new program to provide access for patients to informa-

tion about clinical trials for serious or life-threatening diseases.

It provides incentives for research on pediatric applications of approved drugs and for development of new antibiotics to deal with emerging, drug-resistant strains of disease.

It requires companies to give patients advance notification of discontinuance of important products. And in that connection, I am disappointed that we were not able to address the issue of assuring that asthma patients and others will not be put at risk by any abrupt discontinuance of inhalers containing CFCs. I have been informed by FDA that no notice of proposed rulemaking will be issued before this summer, which will give Congress plenty of time to return to this question, if necessary.

Mr. President, the current legislation is an improvement over the bill approved by the Labor Committee earlier this year—that bill included a number of provisions that as originally proposed could have jeopardized public health.

The original bill provided a pilot program for third-party review under which private third parties, certified by the Food and Drug Administration but selected and paid by the manufacturer, would have reviewed the safety and effectiveness of medical devices to determine whether or not they could be sold.

The original proposal would have included many of the most complex and risky devices, such as digital mammography machines, and a host of other devices to detect and treat cancer and other dread diseases.

Under the final bill, these devices may not be included in the pilot program.

The original bill required the Food and Drug Administration to approve devices for marketing even if the Food and Drug Administration knew defects in the manufacturing process would make the devices unsafe or ineffective. The final legislation eliminates this requirement.

The original bill would have prevented the Food and Drug Administration from looking behind the label proposed by a device manufacturer seeking approval of a product, even if the product was false or misleading. The final legislation assures that the Food and Drug Administration will be able to require full and complete information for physicians and consumers on any potential use of the device, not just the one claimed on the label submitted with the application for approval.

And the final legislation preserves the State authority to regulate cosmetics, an area of significant potential hazard to consumers.

The legislation includes an important compromise on information on off-label use of drugs. This compromise will allow companies to circulate reputable journal articles about off-label use of drugs but will ultimately en-

hance the public health and safety because the FDA will be given the opportunity to review, comment on, and approve articles which the companies will circulate. The compromise also requires companies to undertake studies on the safety of their drugs for the specific off-label use and submit applications to the FDA for approval of their drugs for these uses within 3 years. Currently, too many off-label uses of drugs have never been reviewed for safety and effectiveness.

The bill assures the Food and Drug Administration will continue to conduct appropriate environmental impact statements, rather than be exempted from the standards that apply to every other governmental agency.

The compromise included in the bill assures the Nutrition Labeling Act is not undercut or weakened, and any health claims by food manufacturers have to be substantiated.

The legislation maintains existing standards for approval of supplemental use of drugs while streamlining the process by which they can be approved.

In summary, the current legislation is a vast improvement over the bill approved by our committee earlier this year. As a result of extensive discussion since then, including the 3 weeks of debate in the full Senate and our subsequent negotiations with the House, I believe every one of these problem issues has been resolved satisfactorily.

The bill we enact will get safe and effective products to market while assuring the Food and Drug Administration will have the tools it needs for public health. It is a landmark achievement. I urge all of my colleagues to support it.

Mr. JEFFORDS. Mr. President, I yield 4 minutes to the Senator from Tennessee.

Mr. KERRY. Mr. President, my understanding is when this business is completed that Senator HARKIN has unanimous consent for 20 minutes, and I ask unanimous consent, following Senator HARKIN, I be permitted to speak in morning business for 20 minutes.

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

Mr. COATS. Reserving the right to object, I don't intend to object, but I know there is an effort underway to try and bring the omnibus appropriations bill forward and I know a lot of Members are waiting around so they can take that vote. In fact, I was discussing that.

This isn't my call, but I ask the Senator if he could withhold until we can get some understanding of when that vote might be. It might be that it won't come before the Senator's 20 minutes, but if we add time here, 20 minutes there, and an additional 20 minutes, it could delay past the time when they now have commitments. I want to make sure we check that out.

Mr. KERRY. If I could allow my order to stand, I would be sensitive to

the need for a vote, and if need be, I will respond.

Mr. COATS. I accept that, and withdraw my objection.

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

The Senator from Tennessee is recognized.

Mr. FRIST. Mr. President, 3 years of hard work, which was begun by Senator Nancy Kassebaum, have resulted in the passage of the conference report to the Food and Drug Administration Modernization Act of 1997 in the Senate today. This legislation represents the first major, comprehensive reform effort since the initial amendments outlining regulation for drugs in 1962 and for medical devices in 1976. This major reform will help improve the FDA by strengthening its efficiency, accountability, and its ability to safeguard the public health.

There are several provisions contained in this bill that constitute significant reform and improvements to increase the efficiency of product review. For example, this legislation gives FDA authority to increase its access to scientific and technical expertise outside the Agency by allowing interagency collaboration with Federal agencies such as the NIH and CDC, and with the National Academy of Sciences. Also, the bill gives FDA the explicit authority to contract with outside reviewers and expand its current third party medical device review pilot program.

To help alleviate the confusion and frustration that many applicants feel when working with the FDA, the bill will require the FDA to codify evidence requirements for new drug and medical device application submissions and encourages improved communication between the agency and industry. And after 60 years, the FDA will be made more accountable by giving it a mission statement and requiring the FDA to develop a plan of action to meet its requirements under law. The bill will also reauthorize for 5 years the Prescription Drug User Fee Act, known as PDUFA, which has been tremendously successful in improving and speeding the review of much needed pharmaceutical products.

Most importantly, the bill Congress sends to the President will help patients. Individuals with a serious life-threatening disease or condition will have access to a new clinical trial database providing information on investigational therapies. Patients will benefit from the expansion of the fast-track drug approval process for new drugs intended for the treatment of serious or life-threatening conditions built on the existing program for AIDS and cancer drugs. And, patients that have no other alternative but to try an unapproved investigational product will have access to investigational therapies and medical devices.

The bill also includes a provision that will allow reprints of scientifically, peer-reviewed medical journal

articles and medical textbooks about off-label uses of FDA-approved drugs and devices to be shared with physicians and other health care practitioners. This provision will help get life-saving information to doctors, so they can be better informed when making decisions about how to treat their patients.

As a physician, I have used off-label uses to treat my patients in the past and understand its tremendous importance to the patient. Over 90 percent of treatments for cancer patients are off-label and the American Medical Association has estimated that between 40 percent and 60 percent of all prescriptions are for off-label uses of prescription drugs. I would like to acknowledge the tremendous work on this provision during the last few years by my friend, Senator CONNIE MACK and Mark Smith of his staff.

There are a number of people who worked hard to insure passage of this reform effort. I would like to thank Senator JEFFORDS, the chairman of the Labor and Human Resources Committee, for leading the bipartisan effort on FDA Reform in the Senate. I also acknowledge the leadership of Senator COATS, who has done significant work on provisions affecting medical devices in the bill. I also thank Senators GREGG, DEWINE, DODD, MILKULSKI, KENNEDY and HARKIN and their staffs for their hard work in conference. I would like to thank our House colleagues and their staffs who worked with us in conference and I especially recognize the able leadership of the chairman of the House Commerce Committee Representative TOM BLILEY and the ranking member JOHN DINGELL. I would also like to acknowledge and thank Secretary Donna Shalala and the FDA for working with us to help modernize and improve the FDA.

In particular, I would like to thank Jay Hawkins, Mark Powden, and Sean Donahue of Senator JEFFORDS' staff, Vince Ventimiglia of Senator COATS' staff, and Kimberly Spaulding of Senator GREGG's staff who were critical to the development of the bill. I thank them for their dedication and tireless effort on this important bill.

I especially want to thank the tireless work and outstanding leadership of Sue Ramthun, my staff director for health affairs, who has been so instrumental in passage of this bill.

I believe we have made a step in the right direction that will improve patient care and that this bill begins the debate on the long-term investment necessary to move the agency forward in areas such as regulatory research, professional development, and collaborative efforts between Government and academia, and I hope to continue working with my colleagues in a bipartisan manner to further improve the FDA in the following years.

Mr. KENNEDY. I yield 2 minutes to the Senator from Maryland.

Ms. MILKULSKI. Mr. President, I am so happy this day has finally come, in

which the U.S. Senate, and I believe the House, will pass a conference report to modernize the Food and Drug Administration and to bring it into a 21st century framework.

I want to thank Senator JEFFORDS for the patient leadership he has provided in moving this bill, and a special thanks for the collegiality of his staff in working with mine. I also would like to acknowledge the special role that Senator COATS has played. I have enjoyed working with him these last 3 years. We will miss him here as he undertakes next year a new life in encouraging faith-based community groups to become more involved. I think in this bipartisan collegial exchange we have come up with an outstanding bill that is going to save lives, save jobs in the United States of America, give us a product to export around the world that is translingual, transcultural, but certainly helps our people and at the same time puts patients first.

I want to particularly thank my own staff, Lynne Lawrence, for the active work she has done, and Roberta Haeberle and Kerry O'Toole in the excellent backup they have provided.

Why do I like this bill? First of all, we reauthorize the Prescription Drug User Fee Act. What this will mean is we will be able to have 600 reviewers who will be able to work at the Food and Drug Administration making sure that we cut the review time, streamline the process, be able to move drugs, biologics and devices for clinical practice in a more expedited fashion, and at the same time be able to protect safety and efficacy. We do protect safety and efficacy while we move along at a quicker step with more people.

A reauthorization of PDUFA gives us the right people and now we have the right legislative framework to do it. One of the important aspects of this legislation is the streamlining process, and yet at the same time maintaining safety and efficacy upon the approval process so more and more clinical things will be able to go into clinical practice.

I am delighted that this day has finally arrived. It is a great day for patients and physicians. They will get new medical products in a more timely and efficient manner. It is a great day for American business. They won't have to go through unnecessary regulatory hoops to get these new products on the market.

This legislation, carefully crafted between the House and Senate, represents a solid, bipartisan effort. We could not have reached this point without the incredible dedication and persistence of the chairman of the Labor Committee, Mr. JEFFORDS. I thank him for his heartfelt devotion to this bill, and for never giving up. I also thank his staff, Jay Hawkins, Sean Donahue, and Mark Powden for all their hard work.

Let me also acknowledge the tremendous contributions of our ranking

member, Mr. KENNEDY. There is no doubt this is a better bill because of his efforts. I also want to acknowledge the hard work of our counterparts in the House, the chairman of the Commerce Committee, Mr. BLILEY and the ranking member, Mr. DINGELL. Many thanks also go to the fine staff of the Commerce Committee for their excellent work.

Mr. President, I have worked on FDA reform for a number of years. When I was a Member of the House of Representatives, we embarked, on a bipartisan basis, to ensure consumer protection and to prevent dumping drugs that did not meet our standards on Third World countries.

Coming to the Senate, I joined with my colleague from Massachusetts, Mr. KENNEDY, and the Senator from Utah, Mr. HATCH, in fashioning the Prescription Drug User Fee Act [PDUFA]. PDUFA has enabled FDA to hire more people to examine products that were being presented for evaluation and get them to patients more quickly.

The leadership of KENNEDY-HATCH on PDUFA has not only stood the test of time, it has shown that we can expedite the drug approval process while maintaining safety and efficacy. I am so pleased that this successful legislation will be reauthorized for 5 years.

But while PDUFA has made a huge difference, it became clear PDUFA was not enough. More staff operating in an outdated regulatory framework, without a clear legislative framework, was deficient.

That is when we began to consult with experts in public health, particularly those involved in drugs and biologics. While we were considering all this, the world of science was changing. We experienced a revolution in biology. We went from a smokestack economy to a cyberspace economy. We went from basic discoveries in science from the field of chemistry and physics to a whole new explosion in biology, in genetics and biologic materials.

It became clear we needed an FDA with a new legislative framework and a new culture. This is when we began to put together what we called the sensible center on FDA reform. We worked with Republicans and Democrats alike, because we certainly never want to play politics with the lives of the American people.

Senator Kassebaum chaired the committee during this initiative. We took important steps forward. I say to Senator JEFFORDS, you assumed that mantle, and you brought us to the point today where we will achieve final passage of FDA reform. I thank you for that.

What will this legislation do? Why is it so important? It streamlines and updates the regulatory process for new products. It reauthorizes the highly successful Prescription Drug User Fee Act. And it creates an FDA that rewards significant science while protecting public health.

It will mean that new lifesaving drugs and devices will get into clinical

practice more quickly. It will enable us to produce products that we can sell around the world, and through this, save lives and generate jobs.

FDA is known the world over as the gold standard for product approval. We want to maintain that high standard. At the same time, we want to make sure that FDA can enter the 21st century.

This legislation gets us there. It sets up a new legislative and regulatory framework that reflects the latest scientific advancements. The framework continues FDA's strong mission to protect public health and safety. At the same time, it sets a new goal for FDA, enhancing public health by not impeding innovation or product availability through unnecessary redtape that only delays approval.

There has been an urgency about reauthorizing PDUFA. Its authority expires at the end of September. PDUFA has enabled FDA to hire 600 new reviewers and cut review times from 29 to 17 months over the last 5 years. Acting now means that people who have been working on behalf of the American people can continue to do their jobs. We won't risk losing talented employees and slowing down the drug approval process.

Delay would have hurt dedicated employees, but more importantly, it would have hurt patients. Patients benefit most from this legislation. Safe and effective new medicines will be getting to patients quicker.

We're not only extending PDUFA; we're improving it. Currently, PDUFA only addresses the review phase of the approval process. Our legislation expands PDUFA to streamline the early drug development phase as well.

Instead of a carload of paper—stacks and stacks of material—being deposited at the FDA's front door, companies will be able to make electronic submissions. This not only reduces paperwork, but actually provides a more agile way for scientific reviewers to get through the data.

Updating the approval process for biotech is another critical component of this bill. Biotech is one of the fastest growing industries in our country. There are 143 biotech companies like that in my own State of Maryland. They are working on AIDS, Alzheimer's, breast and ovarian cancer, and other life-threatening infections such as whooping cough.

The job of FDA is to make sure that safe and effective products get to patients. Our job as Members of Congress is to fund scientific research and to provide FDA the regulatory and legislative frameworks to evaluate new products and make them available to doctors and patients.

This is why I fought so hard for this. This is exactly why I fought for this. My dear father died of Alzheimer's, and it did not matter that I was a U.S. Senator. I watched my father die one brain cell at a time, and it did not matter what my job was.

My father was a modest man. He did not want a fancy tombstone or a lot of other things, but I vowed I would do all I can for research in this and to help other people along these lines.

Every one of us has faced some type of tragedy in our lives where we looked to the American medical and pharmaceutical, biological, and device community to help us.

When my mother had one of her last terrible heart attacks that was leading rapidly to a stroke—there was a new drug that is so sophisticated that it must be administered very quickly. You need informed consent because even though it is approved, it is so dramatic that it thins the blood almost to the hemophilia level. I gave that approval because my mother was not conscious enough to do it.

Guess what? That new drug approved by FDA, developed in San Francisco, got my mother through her medical crisis with the hands-on care of the Sisters of Mercy in Baltimore at Mercy Hospital. Mother did not have a stroke because we could avoid the clotting that would have precipitated it.

Thanks to the grace of God and the ingenuity of American medicine, we had my mother with us 100 more days in a way that she could function at home, have conversations with us and her grandchildren.

Do you think I am not for FDA? You think I am not for safety? You think I am not for efficacy? You bet I am. And this is what this is all about. It is not a battle of wills. It is not a battle over this line item or that line item. It is really a battle to make sure that the American people have from their physicians and clinical practitioners the best devices and products to be able to save lives. That's why I'm so pleased that we were able to achieve a bipartisan bill.

So, Mr. President, I thank you for the time. If I seem a little emotional about it, you bet I am. I love FDA. I am really proud they are in my State. I thank God for the ingenuity of the American medical community. And that is why I am so pleased we will be voting on the conference report today.

All of us are happy that this bill will finally pass.

Mr. JEFFORDS. Mr. President, I yield Senator COATS 4 minutes. He is a man whose tenaciousness and ability have made this a better bill.

The PRESIDING OFFICER. The Senator from Indiana is recognized for 4 minutes.

Mr. COATS. Mr. President, as the Senator from Vermont has said, this is the first reform in 30 years at FDA. Obviously, a lot has changed in the industry. New drugs and new devices, new methods of bringing life-saving and health-improving benefits to the American people, and the people of the world. I think it is remarkable, particularly given the fact that it has been nearly 2½, 3 years now that we have been specifically working on this legislation in the committee, through a



number of hearings, through a considerable, lengthy, and complex committee consideration, extensive floor debate. There were very difficult procedural hurdles to overcome and a difficult conference. We now arrive at this point with a bill that, very shortly, will be passed. This has only been done with a bipartisan effort.

I want to return the compliment to the Senator from Maryland. I thank her for that. I am not sure that everyone is going to miss me around this place, given my role in this bill, in trying to bring it forward. But I thank her for her kind words. Senators DODD, MIKULSKI, HARKIN, and WELLSTONE joined Republicans in the committee to produce a bipartisan piece of legislation, and they supported us on the floor. I thank Senator JEFFORDS and his leadership, and Senator GREGG, Senator FRIST, Senator DEWINE, and others on the Republican side, who contributed to the effort in moving the bill forward.

I would be remiss not to acknowledge the extraordinary work of so many staff people that helped to move this forward.

I thank my chief of staff, Sharon Soderstrom, and particularly Vince Ventimiglia, someone whose tireless efforts and thorough knowledge of the issues at hand, and at whose persistence we continued through all of the obstacles placed in the way of this legislation, and it was all accomplished in a manner of courtesy and respect, which is, unfortunately, all too rare around this place. He is an exceptional person. I don't believe we would be here without his efforts—even though he is not here right now; he is probably digging through the bill to make sure all the t's are crossed and the i's are dotted. He was exceptional in this whole effort.

This bill provides help to the Food and Drug Administration, who did not have the capacity nor, I believe, in the past, the managerial leadership that allowed FDA to keep pace with the marvelous breakthroughs we have had in the pharmaceutical and medical device area, which brings life-saving benefits and health-improving benefits to people. Six-hundred additional people, paid for by the industry in a tax against them to reauthorize PDUFA, will help speed up the drug approval process.

Now, for the first time, we give assistance to FDA on medical devices because we have a procedure where outside parties can, with FDA certification, approval and oversight, review medical device applications. This is going to provide for the medical device section what PDUFA provided for the drug section. This was a very critical part of the legislation, and I am pleased that it was retained in our efforts.

We are here and it is a victory for the American people. It took a lot of effort by a lot of people. It is a testament to the persistence of many, some of whom

are speaking here on the floor today. I am proud to play a role in this effort because I believe we are addressing some fundamental concerns, going to the very health and safety and very lives of the American people and people throughout the world. Mr. President, it is with that, I yield whatever remaining time I have.

Mr. KENNEDY. Mr. President, I will yield 5 minutes to the Senator from Rhode Island, but first I yield myself 15 seconds.

I want to give the assurance to my friend and colleague from Indiana, as one that didn't always see eye to eye with the good Senator on some of these issues, I pay tribute to him for the strength of his commitment and the power of his logic and argument, and the passion which he has demonstrated out here.

I have enjoyed his friendship and have always valued the opportunity to exchange ideas with him.

Mr. COATS. I thank the Senator. We have had some interesting exchanges of ideas.

Mr. REED. Mr. President, I believe I have 5 minutes.

The PRESIDING OFFICER. The Senator is correct.

Mr. REED. Mr. President, I rise today in support of the conference report on S. 830, the Food and Drug Administration Modernization and Accountability Act of 1997. This is an important bill with serious implications for the protection of the health of the American people. Although I did not support this bill when it was first considered on the floor of the Senate, I am pleased that significant changes have been made and that this final version of the legislation is worthy of support.

This FDA reform bill is the result of ongoing negotiations both prior to and subsequent to the Labor Committee's markup of the bill. Through this process, a number of provisions that seriously threatened public health and safety were dropped or otherwise resolved. I am particularly pleased that improvements made include important protections to the third party review process. Significant changes and additions also include provisions regarding health claims for food products, health care economic claims, a notice of discontinuance when a sole manufacturer stops producing a drug, and a range of other items.

The original Senate-passed bill contained a provision regarding the FDA device approval process that posed a serious threat to public health. In effect, the Senate-passed bill would have limited the FDS's current authority to ask device manufacturers for safety data. It would have prohibited the FDA from considering how a new device could be used if the manufacturer has not included that use in the proposed labeling. As a general matter, the FDA does not consider uses that the manufacturer has not included in its proposed labeling. However, there are instances when the label does not tell the whole

story. It is these instances—when the label is false or misleading—that my and Senator KENNEDY's amendment addressed.

I was not alone in my concern about this issue. Indeed, this provision was also identified as worthy of a veto threat by the administration. The Secretary of the Department of Health and Human Services said on numerous occasions that if this provision were not changed, that she and other top Presidential advisers would recommend that President Clinton veto this bill.

By accepting the House language on this device labeling issue, the conferees have struck a reasonable compromise that will give the FDA the authority it needs to ensure that medical devices are safe and effective. In this case, the legislative process has worked, and worked well. I commend the conference committee for the sensible compromise they reached on this important issue.

The FDA is responsible for assuring that the Nation's food supply is pure and healthy and to provide a guarantee that drugs and devices are safe and effective. The FDA has an immense impact on the lives of all Americans. Indeed, the FDA's mandate requires it to regulate over one-third of our Nation's products. Few Government agencies provide this kind of important protection for the American people. On a daily basis, the FDA faces the delicate balance between ensuring that patients have swift access to new drugs and devices while guaranteeing that those new products are safe and effective.

The bill we are considering today contains many positive elements. It reauthorizes the important Prescription Drug User Fee Act, one of the most effective regulatory reforms ever enacted. The legislation also includes a number of provisions that will improve and streamline the regulation of prescription drugs, biologic products, and medical devices. I believe that these important reforms to the operation of the Food and Drug Administration will increase its efficiency and speed the delivery of important new medical treatments to patients.

One of the most important elements of this legislation is the aforementioned reauthorization of the Prescription Drug User Fee Act, often referred to as PDUFA. PDUFA established an important partnership between the agency and the industry, and has successfully streamlined the drug approval process.

I am pleased that this bill will provide expedited access to investigational therapies. This provision builds on current FDA programs related to AIDS and cancer drugs. Another important element will allow the designation of some drugs as "fast-track" medications, thus facilitating development and expediting approval of new treatments of serious or life-threatening conditions. The bill will also require the Secretary of the Department of

Health and Human Services to establish a data base on the status of clinical trials relating to the treatment, detection, and prevention of serious or life-threatening diseases and conditions. Patients have long needed access to such information, and I am pleased that this bill provides a mechanism to grant it.

I am also pleased that this bill contains my amendment requiring that within 18 months of the date of enactment, the FDA must issue regulations for sunburn prevention and treatment products. In August 1978, the FDA published an advance notice of proposed rulemaking to establish a monograph for over-the-counter sunscreen drug products. To date—almost 20 years later—while progress has been made, this rule has not been made final.

Sunburn prevention and treatment products can go far to help prevent sun exposure related to skin cancer. The facts on skin cancer are compelling: one person an hour dies of malignant melanoma; half of all new cancers are skin cancers; one million Americans will develop skin cancer this year, making it nearly as common as all other types of cancer combined.

The Food and Drug Administration has a key role in our response to this skin cancer epidemic through the regulation of safe and effective sunburn prevention products that are vital to avoiding skin damage from the sun's rays.

Mr. President, I am pleased that this compromise is a bill that I can support. I look forward to working with my colleagues to oversee the implementation of this important legislation and to ensure that its provisions streamline FDA processes while also protecting the public health of the American people.

I compliment Chairman JEFFORDS, Senator KENNEDY, and many other colleagues in both the Senate and the House of Representatives who have worked hard on this bill together to eliminate many other troublesome provisions in the bill as originally introduced.

Mr. President, again, I support the conference report on S. 830, the FDA reform bill. The challenge throughout this process has been to balance a more efficient, streamlined, and productive FDA with their obligation to protect the public health. It has been a difficult task, but we made remarkable progress over the last several months. At the committee level, there was a serious discussion and debate. I could not support that version because at that time there were still outstanding issues which I thought could jeopardize the public health and safety.

When we reached the floor, there was another serious and productive debate about this legislation. Once again, I felt there were issues that had to be further addressed before I could support the measure. Today, happily, through the work of the conferees and colleagues on the floor today, we have

reached a point where we have legislation that both provides for a streamlined, productive, and efficient FDA, and continues to give FDA the authority to protect the public health.

With specific regard to the debate on the floor, there was one major issue that I felt was very important, and that was to allow the FDA to have the authority to carefully review medical devices that may be used by the public. The legislation at that time circumscribed significantly the ability of the FDA to look beyond the label, look beyond the listed use by the manufacturer, to contemplate possible other uses that may take place when the product is in the stream of commerce. Fortunately, through the work of the conferees, this situation has been resolved.

Indeed, on the floor I offered an amendment with Senator KENNEDY. It did not pass, but I think that effort helped spur a concentrated effort during the conference to develop a legislative formula to give the FDA the power to regulate these devices appropriately.

We have many, many things to be thankful for in this bill. One issue I would like to address, also, which does not rise up, in some respects, to the major reforms, PDUFA or these issues, but it is critically important; that is, the issue of protecting the public with respect to sunscreen products and sunburn products. I am pleased to note that the FDA has been directed to promulgate regulations within 18 months with respect to these products which are sold to the public to protect them from the Sun. This might seem like an innocent product, but, in fact, we are seeing a remarkable growth in incidence of skin cancer throughout the United States. One person an hour dies of malignant melanoma, skin cancer. Half of all the new cancers developing are skin cancer. One million Americans will develop skin cancer this year alone. So we have to begin to focus our attention on those products which are advertised to protect the American public.

Once again, I think this is totally consistent with the role of the FDA. I am pleased that this provision has been included in the legislation.

Let me conclude by saying, again, I believe we have struck the vital balance between an efficient, productive FDA and their obligation, historically and statutorily, to protect the public health. We have done that through the work of Senators JEFFORDS, KENNEDY, and many others. I personally thank them and applaud them for their efforts today.

I would be remiss if I didn't also thank my staff member, Bonnie Hogue, for her help through this entire process. I yield the balance of my time.

Mr. JEFFORDS. Mr. President, I will now yield to the Senator from Utah, who has been a tremendous help over the years on FDA. In fact, I am going to give him all the rest of my time—all 3 minutes.

Mr. HATCH. Mr. President, I wanted to take this brief opportunity to commend Chairman JEFFORDS for a job well done—for producing a bill which will dramatically improve the way the Food and Drug Administration does business as we move into the 21st century.

That has been one of my top priorities during my service in the Senate. I am proud that we are having the opportunity today to vote on this historic legislation which will have so many benefits for my State of Utah.

Utah is the home to over 100 medical device manufacturers, and several pharmaceutical manufacturers as well. We also are the Nation's leading producer of dietary supplements.

The Utah Life Sciences Industries Association, the leading trade association for Utah device and drug manufacturers, has worked closely with the Congress in formulating this legislation, which will have many positive effects for Utah.

On behalf of our Utah drug and device manufacturers, let me thank you Chairman JEFFORDS, and our colleague in the House, Chairman TOM BLILEY, for producing a bill which has encouraged the FDA to work in a more collaborative manner and to get the job done, to get it done professionally and expeditiously, without all the bureaucratic hassles we have experienced in the past.

And on behalf of the dietary supplement manufacturers, and most importantly the 100 million or so consumers—most of whom seem to have called our offices in the last few weeks—let me thank you for making sure that the bill does not undo the Dietary Supplement Health and Education Act in any way and that dietary supplements will remain what they are, food products, not drugs.

Finally, I wish to thank all of the staff who worked literally through the night to make today's passage of the conference report for S. 830 possible. You can be proud of your work.

RETIREMENT OF KATHLEEN "KAY" HOLCOMBE

Mr. HATCH. Mr. President, I could not let this opportunity pass without recognizing the extraordinary contribution that Kay Holcombe has made during almost 25 years of Government service.

Kay, who currently serves as the top health staffer on my good friend Representative JOHN DINGELL's Commerce Committee staff, has worked in a variety of positions in Government, including 6 years on Capitol Hill. Unfortunately for us, she plans to retire at the end of this session—while a fantastic opportunity for her, a regrettable loss the Congress and the Nation.

I grew to know and appreciate Kay in 1984, when I was chairman of the Labor Committee and Kay joined our staff as an American Political Science Association congressional fellow. What Kay

brought to that job was considerable. She is bright, witty, an expert on any issue she studies, and, above all, a true professional who puts good policy above politics.

What I recall most vividly about Kay's period on the Labor Committee was her incredible ability to juggle lots of balls without dropping any of them. I could always count on her to get the job done, and, in fact, to do her job and the job of three others.

I believe that Kay stands out among Government employees for the common sense she brings to any position and for an ability to bring consensus to the most difficult of issues.

We are witnessing that ability today with passage of the conference report on the FDA reform bill, a bill which—quite simply—would not have been possible without Kay Holcombe.

Her work on the Dietary Supplement Health and Education Act also stands out in my mind, where Kay's knowledge and skills as a tactician helped us overcome many an impasse. And, I might add, she was, and I suspect is, the only staffer in the Capitol who understands many of the words we wrote into that act, the most memorable of which was "lyophilize".

Her background as a bench scientist at NIH, with subsequent experience in almost every one of the Public Health Service agencies, is a record of accomplishment and experience that cannot be matched on Capitol Hill.

I, for one, will miss Kay's expertise sorely. And while I am thrilled for her as she enters this challenging new period in her life, and I am saddened at our loss here in the Congress.

To Kay, her husband Frank, her daughter and son-in-law Anne and Tony, and her mother Ginny, I wish the best as the family enters a new period of life after Capitol Hill. I hope it will be happy indeed.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 8 minutes 33 seconds.

Mr. KENNEDY. I yield 4 minutes 33 seconds to the Senator from Connecticut.

Mr. DODD. Mr. President, I want to begin by thanking my colleagues who have spent innumerable hours creating a bill that will bring lifesaving drugs and medical devices to the American people more quickly and efficiently, without compromising safety or effectiveness.

First, Senator JEFFORDS is to be commended for his leadership. His staff, most notably Jay Hawkins and Sean Donahue, also deserve our appreciation for their hard work and dedication to seeing this legislation enacted.

Although the process was at times a difficult one, I'm pleased to say that a spirit of bipartisanship and compromise ultimately prevailed, as evidenced by the overwhelming Senate vote of 98 to 2 in September on this bill.

I'd also like to thank my fellow Senate conferees—Senators KENNEDY,

COATS, HARKIN, GREGG, MIKULSKI, FRIST, and DEWINE for their successful efforts to negotiate a workable compromise with our colleagues in the House.

We should take pride in the legislation that has been created—the first substantial update of FDA's rules for regulating drugs and devices since the 1970's.

We should take pride in the fact that this bill will speed critical products to patients without compromising the high safety standards that Americans have come to rely on.

Mr. President, I'd like to speak for a moment about some of the positive reforms contained in this bill.

At the heart of the bill is the 5-year reauthorization of PDUFA, the Prescription Drug User Fee Act—a piece of legislation remarkable for the fact that there is unanimous agreement that it really works.

In the 5 years since this initiative was created, the fees collected under PDUFA have cut drug approval times in half. With its renewal as part of this bill, we can expect drug approval times to drop an additional 10 to 16 months.

In addition, by improving the certainty of product review process, this bill encourages U.S. companies to continue to develop and manufacture in the United States. This bill asks the FDA and industry to begin collaborating early in the approval process to prevent misunderstandings about agency expectations that ultimately could delay a needed product from reaching consumers.

This bill also establishes or expands upon several mechanisms to provide patients and other consumers with greater access to information and to lifesaving products.

For example, this bill will give individuals with lifethreatening illnesses greater access to information about ongoing clinical trials of drugs—information that may offer the only hope for those patients who have not benefited from treatments already on the market.

Based on a bill originally championed by Senators SNOWE and FEINSTEIN, I offered an amendment in committee, which I was pleased to see adopted, to expand an existing AIDS database to include clinical trials for all serious or lifethreatening diseases.

Individuals struggling with chronic and debilitating diseases should not be burdened with the daunting task of searching, without assistance, to locate studies of promising treatments. This database will provide one-stop-shopping to help those patients quickly and easily access vital information.

Mr. President, I am particularly pleased that this bill incorporates the Better Pharmaceuticals for Children Act, legislation originally introduced by our former colleague from Kansas, Senator Kassebaum, and now cosponsored by myself and Senator DEWINE.

This provision addresses the problem of the lack of information about how

drugs work on children, a problem that President Clinton recognized recently as a national crisis.

According to the American Academy of Pediatrics, only one-fifth of all drugs on the market have been tested for their safety and effectiveness in children. This legislation provides a fair and reasonable market incentive for drug companies to make the extra effort needed to test their products for use by children.

I was pleased to join Senator JEFFORDS as the first Democratic cosponsor of this bill. I would thank him again for the hard work and long hours that he and his staff have contributed.

I look forward to joining my colleagues in voting in favor of this legislation.

Let me join here, Mr. President, the chorus of praise for those who have been involved in putting this bill together. It has been a long journey and not always an easy one, but I think the final product is a good one. I commend the chairman of the committee, Senator JEFFORDS, and his staff, Jay Hawkins, Sean Donahue, Jeanne Ireland of my staff, for their hard work and dedication in seeing this process to its conclusion. We swept the Senate with an overwhelming vote of 98 to 2 on what I thought was a good bill. Our conferees worked very hard. I thank Senators KENNEDY, COATS, HARKIN, CRAIG, MIKULSKI, FRIST, and DEWINE for their successful efforts in this area as well.

This is a critically important piece of legislation that will expedite the process of getting needed medicines and devices to patients, without compromising safety or effectiveness. That was a desired goal of everybody here.

Let me, if I can, mention two or three provisions in the bill that I think are worthy of special note. One, of course, is a 5-year reauthorization of PDUFA, which is very, very important. I think it demonstrates the success of the PDUFA and how well it worked over 5 years.

Secondly, I also would like to commend our colleagues for accepting the several mechanisms to provide patients and consumers with greater access to information and to life-saving products. For example, this bill gives individuals with life-threatening illnesses greater access to information about ongoing clinical trials and drugs that could be very, very important to them and their families. By the way, Senator SNOWE and Senator FEINSTEIN deserve particular credit. It was originally their idea that we incorporated in the bill, the Better Pharmaceuticals for Children Act. Former Senator Kassebaum of Kansas originally authored that idea, Mr. President. Senator DEWINE and I included it in this bill. I think it has been improved upon in the conference. It is a very important provision that could make a huge difference for young children and their families who want to have reliable products that will become available to them.

So, Mr. President, let me conclude by again thanking all those who have been involved in this process. Passing this legislation can truly be considered one of the very fine achievements of this first session of this Congress. I look forward to its effectiveness with the American consumer.

#### APPROPRIATIONS TRIGGER

Mr. BUMPERS. Mr. President, on September 23 of this year, my colleague, Senator COCHRAN, chairman of the Appropriations Subcommittee on Agriculture, Rural Development, and Related Agencies, rose on the floor of the Senate to express objection to a provision of the FDA reform bill that would direct the appropriations subcommittee to provide established levels for salaries and expenses of the Food and Drug Administration through fiscal year 2002. If the appropriations bills did not meet those levels, referred to as trigger, the FDA would not be able to collect or use receipts authorized by the Prescription Drug User Fee Act [PDUFA]. The effect of the provision Senator COCHRAN found so troublesome would have been to place a budgetary gun to the head of the appropriations subcommittee under threat of PDUFA fees not being collected and the Nation's drug approval process placed at risk. As ranking member of the appropriations subcommittee, I shared Senator COCHRAN's concerns, but honestly hoped that the problem he highlighted would be corrected before we were faced with final passage of the conference report on FDA reform. While the conference report before us today does provide some relief in fiscal years 2001 and 2002 from the earlier Senate language, I am still disappointed that more progress was not achieved to inject a greater dose of realism into the expectations of the FDA authorization committees of the House and Senate.

I do not mean to detract from the very important work of the FDA nor to minimize the need to push ahead aggressively with drug approvals. I equally appreciate the concerns of the prescription drug industry, which will be responsible for paying the PDUFA fees, that their considerable contributions will be used to supplement, not supplant, the drug approval process. However, an unfortunate charade has been employed to suggest the language now contained in FDA reform is going to protect, in fact guarantee, increases in the level of Federal funds appropriated for FDA drug approvals. I must point out to my colleagues that the language before us does nothing to assure that very goal and I feel compelled to highlight the provision's failing.

FDA reform would require the appropriations bills for fiscal years 1999 through 2002 to provide levels for the FDA salaries and expenses account at levels no lower than the fiscal year 1997 level adjusted by the lesser of inflation based on the consumer price index or changes in growth of national domestic discretionary spending. The FDA sala-

ries and expenses account contains funding for all activities of FDA, including drug approvals, subject to an appropriation other than amounts for buildings and facilities. The FDA reform legislation contains no requirement that FDA allocate any portion of the salaries and expenses account for drug approvals. Therefore, while our appropriations subcommittee may comply with the full letter of FDA reform requirement, that act alone would provide no assurance to the drug industry that the FDA appropriation would be used as they expect. FDA certainly has other pressing budgetary demands such as the need to account for the rental space arrearage for which the General Services Administration is threatening action against FDA, and continued work on tobacco issues. FDA will also need increased attention in the area of food safety which continuing headlines, such as that appearing in the Washington Post this weekend about the more than 700 people made ill by contaminated food in southern Maryland, will no doubt place greater workload on the agency. An arbitrary appropriation trigger will produce no magic bullet aimed solely at the problem of drug approval backlogs.

Mr. President, I might have a little more understanding for the concerns of the drug industry if there was any merit to their claim that the appropriations subcommittee would not hold faith with their requests. Over the past 10 years, our subcommittee has increased new budget authority for FDA salaries and expenses from \$456,004,000 to \$857,501,000. In fact, I would like the RECORD to reflect the amounts provided in that account on a year-to-year basis since fiscal year 1988 to the present, and I ask unanimous consent the year and amounts be printed in the RECORD.

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

Fiscal year 1988—\$456,004,000.  
Fiscal year 1989—\$487,344,000.  
Fiscal year 1990—\$574,171,000.  
Fiscal year 1991—\$656,519,000.  
Fiscal year 1992—\$725,962,000.  
Fiscal year 1993—\$746,035,000.  
Fiscal year 1994—\$813,339,000.  
Fiscal year 1995—\$819,971,000.  
Fiscal year 1996—\$819,971,000.  
Fiscal year 1997—\$819,971,000.  
Fiscal year 1998—\$857,501,000.

Mr. BUMPERS. I have included this history of funding to show how the amount of appropriations for FDA salaries and expenses has increased every single year since fiscal year 1988 except for the period between fiscal year 1995 and fiscal year 1997 when the level was held at a freeze. I also want to note that the 3-year period connecting fiscal year 1995 and fiscal year 1997 was a period in which the 602(b) allocation to our subcommittee fell by 11 percent. I hope my colleagues see in this history a commitment by our subcommittee to recognize the importance of FDA's activities. Further, I hope my colleagues see that even during a time when near-

ly all other programs under our jurisdiction had to take significant reductions, FDA was held harmless. I believe this history reflects well on the commitment and good faith of our subcommittee.

An obvious result of the provision contained in FDA reform will be continuing further reductions in other programs under the jurisdiction of our subcommittee. Those programs will again have to suffer unless, in the unlikely event, we receive substantial increases in our future 602(b) allocations. There are many, many other programs for which our subcommittee is responsible that are important to people and communities all across the Nation. Our bill provides funding for all activities at the U.S. Department of Agriculture—except the Forest Service—and the Commodity Futures Trading Commission. At USDA alone, there are hundreds of programs essential to rural and urban America that will be harmed, again, if our subcommittee is expected to provide FDA, and FDA only, with inflation increases through fiscal year 2002. USDA programs have already been radically cut by our subcommittee over the past several years while, as noted above, FDA was provided substantial increases or, at least, held constant.

I understand a few other proposals were suggested, and rejected, during consideration of the FDA reform legislation. One proposal was to hold FDA to a freeze, something which we have shown we have done historically. Another proposal would have specifically protected the FDA activities for drug approvals. That approach would have better addressed the concerns I outlined above. I understand this proposal to protect FDA drug approvals was rejected due to objections from nondrug related industries concerned that FDA resources might be transferred from their own specific priority areas to drug approvals. Ironically, that is the same concern I have heard from groups fearful about what the provision in FDA reform will do to USDA and CFTC programs.

Mr. President, at times I feel there is an outright assault on the appropriations process. Too many times in recent years we have seen requirements imposed on the Appropriations Committee by other legislative and procedural vehicles that continuously impairs our ability to respond to agency needs and responsibilities to our states and the American people. Based on administration projections, the trigger mechanism contained in FDA reform would force the appropriations subcommittee to increase the FDA salaries and expense account from the current \$857 to \$876 million in fiscal year 2002. According to the President's 1998 budget, the projected request for FDA salaries and expenses for fiscal year 2002 is only \$691 million. This is a difference of nearly \$200 million, an

amount worthy of deliberate consideration by the appropriations subcommittee. Additionally, the FDA reform provision does not account for the possibility of a tobacco settlement that might replace current appropriations expenditures, consolidation of food safety functions in some agency other than FDA, or other potential changes that would affect, and possibly reduce, the budgetary requirements of FDA. Even though the provision does attach the trigger to the lesser of the consumer price index or changes in the growth of national domestic discretionary spending, there is no guarantee that any increase in overall domestic discretionary totals will be reflected in the 602(b) allocation for our subcommittee.

For the coming year, I can assure my colleagues that I will work with Senator COCHRAN and others to assess the requests of all agencies and departments that will come before our subcommittee. I strongly believe that we have been fair in our setting of priorities and that we will continue to consider the merits of all requests in order to balance the fiscal demands and resources in a manner consistent with our abilities, good judgment, and the recommendations of all Senators.

Ms. MOSELEY-BRAUN. Mr. President, I support S. 830, the conference report for the Food and Drug Administration Modernization and Accountability Act of 1997, and commend the conferees for quickly reaching agreement on compromises that will ultimately improve the FDA and improve the public's access to cutting edge medical technology.

I am also pleased that we are going to pass this important legislation before adjourning for the year. The American people will be much better off as a result of our actions here today. S. 830 is a perfect example of Congress enacting public policy that Americans both want and need.

There is no disagreement as to the caliber of the Food and Drug Administration. FDA is one of the finest regulatory agencies in the Nation and the world. However, the length of time and amount of paperwork required for FDA approval of new products may still be excessive. For many companies, particularly small and startup businesses, the FDA application process is a formidable time consuming obstacle. These barriers exist despite the recent agency improvements to their review process. In some cases, the length and complexity of the process can force companies to launch their products abroad rather than here in America. This is a troubling prospect, particularly given the increasingly competitiveness of global markets.

The FDA, like all other entities, must evolve and adapt to the changing global landscape. Traditional methods of product review are no longer efficient. Industrialized and emerging nations now participate in multilateral trade agreements aimed to reduce

trade barriers. While the U.S. continues as the world's premiere economy, our market dominance is dwindling. A recent Washington Post article indicated that our Nation was far more dominant economically following World War II, when the U.S. economy accounted for more than 25 percent of the world's output, than it is today. Evolving global markets hold untapped potential for product manufacturers. The ability to lucratively launch products abroad will bring pressure on the FDA to harmonize its regulatory policies with other international safety and performance standards. The traditional policies that have made the U.S. the "gold standard" in public health protection threaten to undermine our competitiveness. In order to maintain its status as the gold standard, the FDA must implement policies that encourage the launching of new products in this country, as opposed to Europe, and ensures that the United States maintains its technical and scientific leadership in health disciplines.

Mr. President, S. 830 strikes a delicate balance between protecting the public health, fostering global trade under multilateral agreements, ensuring swift access to new health technology for Americans, and strengthening the U.S. technical and scientific leadership.

The conference agreement reauthorizes the Prescription Drug User Fee Act (PDUFA) for an additional 5 years. PDUFA has been one of the most successful pieces of governmental reform legislation. During the 5 years since we first passed PDUFA, the average approval time for pharmaceutical products has dropped over 40 percent. The pharmaceutical and biologics industries overwhelming support reauthorization of PDUFA because they have seen tangible results from their fee payments. The American public also supports reauthorization of PDUFA because they have received access to innovative treatments in a more timely manner.

S. 830 also makes considerable progress in expediting patients' access to important new therapies and potentially life saving experimental treatments. I have long held that access to alternative medical treatments is an essential part of health care freedom of choice. Under the conference agreement, patients with fatal illnesses will no longer be denied access to potentially life-saving treatments. I am sure that each of my colleagues can recount tales of constituents who have encountered considerable bureaucratic red-tape in their efforts to access a non-FDA approved but potentially life-saving treatment. Although I have great respect for the role that the agency and its employees play in protecting consumers from unsafe and ineffective products, there is a problem when informed Americans cannot get access to desired therapies. S. 830 makes some much needed reforms to enhance that access.

Mr. President, the conference agreement includes reasonable compromises on provisions concerning medical device labeling, dissemination of information concerning drug off-label use, and regulation of device manufacturing. Ensuring that unapproved medical devices not get onto the market that clearly have a different use than the labeling indicates is a vitally important task. This issue alone was responsible for delaying approval of the Senate version of the FDA Modernization Act. I am pleased that the conferees reached an agreement to give FDA the necessary regulatory authority but not subject manufacturers to the whims of various application reviewers. FDA will be given the necessary authority to prevent fraudulent labeling as a means of achieving product approval.

Similarly, S. 830 strikes an appropriate balance between protecting the public interests and allowing manufacturers to share important off-label use information with providers. It would have been a grave mistake to either prevent the distribution of off-label use information or not allow the FDA to play a vital role in ensuring the adequacy of information being distributed by manufacturers. I know that a lot of work went into the compromise reached regarding off-label usage information and the agreement greatly benefits the American public.

Mr. President, I would also like to congratulate patients groups for their steadfast pursuit of this reform. During this year, I have met with countless numbers of my constituents who will immediately have better access to medical treatment as a result of this conference agreement. Each time we met, their message was loud and clear—pass FDA reform now. This is a resounding message that I cannot ignore.

S. 830 builds on the reforms that the FDA has already put into place over the past 5 years. The agency has taken a number of steps to streamline administrative functions and work better with industry and consumers to facilitate the availability of cutting edge medical technology. The success that FDA has achieved in reducing the time to review new drugs and get potentially life-saving therapies on the market is laudable. However, more improvements are needed and S. 830 moves another step in the right direction.

My support for S. 830 is not a complete endorsement of the bill. There are a number of important provisions absent from this legislation. I am particularly concerned that the bill does not adequately address food safety, which will certainly emerge as a major public health issue. Most of the recent criticism of the FDA has focused on the biologics and medical technology areas. Regulation of imported food products will probably be the pressing issue of the next millennium. As more imported agricultural products find their way to American tables, there

will be more pressure upon FDA to act to prevent tainted products from getting to the market. The recent problems with tainted meat and poultry highlight this need for greater focus on food safety. Hopefully, Congress can revisit the shortcomings in food safety standards next year.

Nonetheless, S. 830 is a good start down the road of FDA reform. This conference agreement is better than the bill passed by either the House or Senate and considerably better than the bill developed last year. I am happy to have a conference agreement that I can support and that I truly believe moves the country in the right direction. S. 830 is good for patients, good for the industry, and good for the Nation's global competitiveness. I hope that my colleagues will join me in supporting this important legislation.

Mr. KENNEDY. Mr. President, how much time do I have?

The PRESIDING OFFICER. The Senator has 5 minutes 48 seconds.

Mr. KENNEDY. I yield myself 5 minutes.

Mr. President, I just want to review once again, very briefly, the principal provisions in the legislation which I think are enormously constructive and positive.

First of all, building on the PDUFA record, this provision that we have enacted expands the existing program by setting additional performance targets. It puts special emphasis on expanding early cooperation and FDA and the industry, which will reduce the development time, so that the drug development process, not just the regulatory review process, can be expedited. That is very important.

There are many other positive achievements in the legislation. I am particularly gratified, as I mentioned earlier, with the broader use of the fast-track approval. The streamlined accessibility procedure now available primarily to patients with cancer or AIDS will also be available for drug treatments for patients with any other life-threatening diseases. This bill also provides for expanded access to drugs still under investigation for patients who have no other alternatives. The compromise combines protections for patients with expanded access to new investigational therapies, without exposing patients to unreasonable risks.

The bill includes a new program to provide access for patients to information about clinical trials for serious or life-threatening diseases.

It provides incentives for research on pediatric applications of approved drugs and for development of new antibiotic to deal with emerging, drug-resistant strains of diseases.

It requires companies to give patients advance notification of discontinuance of important products. And in that connection, I am disappointed that we were not able to address the issue of assuring that asthma patients and others will not be put at risk by any abrupt discontinuance of

inhalers containing CFC's. I have been informed by FDA that no notice of proposed rulemaking will be issued before this summer, which will give Congress plenty of time to return to this question, if necessary.

The bill includes many measures that will reduce unnecessary regulatory burdens and appropriately clarify its authority.

These provisions, as well as others, are extremely constructive and will be enormously helpful to the American consumer.

Mr. President, I would like to mention some of the staff who have been a crucial part of this whole process. Those members of our staff on the Labor Committee: Nick Littlefield, David Nexon, Diane Robertson, Debbie Kochevar, Pearl O'Rourke, Jim Manley, Leslie Kux, and Carrie Coberly.

Bonnie Hogue with Senator REED, Sabrina Corlette and Peter Reinecke with Senator HARKIN, Jeanne Ireland with Senator DODD, Deborah Walker with Senator BINGAMAN, Anne Grady with Senator MURRAY, Linda DeGoutis with Senator WELLSTONE, Lynne Lawrence with Senator MIKULSKI, and Anne Marie Murphy with Senator DURBIN.

With the Republicans are the following staff:

Jay Hawkins, Sean Donohue, and Mark Powden, with Senator JEFFORDS; Vince Ventimiglia with Senator COATS; Kimberly Spaulding with Senator GREGG; Sue Ramthun with Senator FRIST; and Saira Sultan with Senator DEWINE.

Also, the House staff were instrumental in the success of this conference:

Kay Holcombe, as Senator HATCH has indicated, worked with us when she worked with Senator HATCH on the committee years ago and was very constructive during this process. Howard Cohen, Rodger Currie and Eric Berger also with the Commerce Committee, and Paul Kim on Congressman WAXMAN's staff.

And I thank the FDA staff: Bill Schultz, Peggy Dotzel, and Diane Thompson.

I thank them all very much for all of their help and their involvement.

#### PRIVILEGE OF THE FLOOR

Finally, I ask unanimous consent that Tom Perez, a Justice Department detainee on the Judiciary Committee, be given floor privileges for the remainder of the session.

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

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. One minute forty-five seconds.

Mr. KENNEDY. Mr. President, we again thank our colleagues and friends and look forward to the passage of this legislation.

If there are no other comments, I would be prepared to yield the remainder of our time.

Mr. JEFFORDS. Mr. President, I yield the remainder of my time.

The PRESIDING OFFICER. The question is on agreeing to the conference report.

The conference report was agreed to.

Mr. KENNEDY. Mr. President, I move to reconsider the vote by which the conference report was agreed to.

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

The motion to lay on the table was agreed to.

Mr. JEFFORDS. Mr. President, I would like to take a moment to thank the staff who have worked to make this bill possible. In the office of Senate Legislative Counsel, Robin Bates, Elizabeth Aldridge, and Bill Baird worked tirelessly to produce countless bill drafts and amendments. I would also like to commend House Legislative Counsels David Meade and Pete Goodloe for their work on the conference report.

The staff at CRS, especially Donna Vogt, and at GAO, including Bernice Steinhart deserve thanks for their willingness to provide essential information and documents on extremely short notice.

The staff to the members of the committee contributed greatly to the success of this bill. Vince Ventimiglia with Senator COATS' staff worked closely with mine in a true partnership on all aspects of S. 830.

In addition, Kimberly Spaulding with Senator GREGG, Sue Ramthun with Senator FRIST, Saira Sultan with Senator DEWINE, and Kate Lambrew-Hull with Senator HUTCHINSON all played important roles in fashioning compromises on key provisions of this conference report, as did Dave Larson and Barry Daylin.

Similarly, three staffers for members of the minority on the committee played pivotal roles throughout the process—from the premarkup stage through the development of this conference report. Their assistance was critical to making this bill a bipartisan success.

Lynne Lawrence with Senator MIKULSKI deserves special mention in recognition of her hard work both in the last Congress and in this one on FDA reform. Following passage of this conference report, Lynne will be leaving Capitol Hill. I am extremely pleased that she will be leaving on a high note, and we all wish her the best with future pursuits. Jeanne Ireland with Senator DODD and Linda Degutis, a fellow with Senator WELLSTONE also provided invaluable assistance throughout the process.

Finally, I thank, of course, the Labor and Human Resources Committee majority and minority staffs. On the minority staff, I would like to thank Nick Littlefield and David Nexon and two minority fellows Diane Robertson and Debbie Kochever.

On my own staff, I would like to thank the majority staff director Mark Powden, Jay Hawkins, and majority fellow Sean Donohue. All have devoted substantial portions of their time over the past 10 months to this effort.

Jay Hawkins, in particular, has been key to making this conference report a reality. His tireless efforts, his unfailing good humor, and his patience have allowed this process to maintain steady forward progress to a highly successful outcome.

The round-the-clock work, particularly over the past few days, of all the staff involved in the conference is greatly appreciated.

Mr. President, I could not be happier with this moment and at this time will happily leave the floor.

Mr. HARKIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. TORRICELLI. Mr. President, will the Senator from Iowa yield?

Mr. HARKIN. I yield without losing my right to the floor for a unanimous-consent request.

Mr. TORRICELLI. Mr. President, I ask unanimous-consent that at the conclusion of the remarks of the Senator from Iowa, I be able to address the Senate for 20 minutes.

The PRESIDING OFFICER. The Senator should be aware that under a previous order the Senator from Massachusetts is to be recognized after the Senator from Iowa.

Mr. TORRICELLI. Then I will amend my unanimous-consent request that after those Senators are recognized under the unanimous-consent request that I be a able to address the Senate for 20 minutes.

Mr. JEFFORDS. Reserving the right to object, I make a point of order that a quorum is not present.

Mr. HARKIN. Mr. President, I have the floor, I believe, and I yielded only to the Senator for the purpose of a question.

The PRESIDING OFFICER. The Senator from Iowa is recognized, and he has the floor.

The unanimous-consent request from the Senator from New Jersey is on the floor. Without objection, it is so ordered.

Mr. JEFFORDS. I object. I make a point of order that a quorum is not present.

Mr. HARKIN. Mr. President, I believe I have the floor. I only yielded for the purpose of a unanimous-consent request.

The PRESIDING OFFICER. The Senator from Iowa has the floor.

Mr. HARKIN. Mr. President, I will reclaim the floor in my own right and let these Senators work it out if they want to come back.

The PRESIDING OFFICER. The Senator from Iowa has the floor and is recognized for 20 minutes. He may proceed.

Mr. HARKIN. Thank you, Mr. President.

#### FAST-TRACK LEGISLATION

Mr. HARKIN. I want to speak a little about the fast-track bill that is before us and which is scheduled to be voted on in the House tonight.

I doing so, I reread the President's speech on September 10 that he gave on fast track. He gave it at the White House, I believe in the East Room.

I found some interesting remarks in the President's speech. He talked about change. He said, "As we have done throughout our history, we have taken our Nation and led the world to the edge of a new era and a new economy."

He is absolutely right.

He talked about the economy, and how we are the largest producer of automobiles, agricultural exports, semiconductors, steel, and other items.

Then, closer to the end of the speech, the President said, "As we continue to expand our economy here at home by expanding our leadership in the global economy, I believe that we have an obligation to support and encourage core labor standards and environmental protections abroad."

He further said in his speech—this is the President's speech on September 10—"Our goal must be to persuade other countries to build on the prosperity that comes with trade and lift their standards up. As we move forward, we must press countries to provide the labor standards to which all workers are entitled," et cetera.

The President said in his speech that we are part of a new world economy. I would say, yes, Mr. President, we are also part of a new world community—a new world community the likes of which we have never seen because of the rapid dissemination of information, the globalization of communication, the instantaneous transmission of images and voice, transmittal of information around the globe. People living in the remotest villages of Africa, China, or Asia now know what is happening in other parts of the world. No longer is it kept from them. Increasingly the people on this planet are going to demand their human rights, their fundamental basic human rights, their individual freedoms. That is what Tiananmen Square was all about.

Yes, Mr. President, you were right. You were right, Mr. President, to say to President Jiang of China that China was on the wrong side of history at Tiananmen Square. You were right, Mr. President. But, Mr. President, to the extent that we have a trade bill before us that limits your authority to negotiate under fast track regarding exploitative child labor, that weakens the provisions dealing with child labor, then you, Mr. President, and this country are on the wrong side of history.

Those may sound like strong words, but as I have read the President's speech, and as I read the fast-track bill before us, one can only come to one conclusion. This legislation takes us in the wrong direction. It severely limits the ability of the President and our trade negotiators to address the issue of exploitative child labor in trade negotiations. That is right. This bill limits the President's authority. The 1988 bill didn't. I will explain this.

In this bill, child labor is included in a category of issues under the heading

"Regulatory Negotiations." Under this heading in the bill, negotiations under fast track on child labor may only cover—I will read it—"the lowering of, or derogation from, existing \* \* \* standards."

That is all. The language does not allow negotiations aimed at getting a country to agree to raise its child labor standards, no matter how weak or non-existent they may be.

Furthermore, the negotiations may only address cases where the other country's lowering of, or derogation from, its child labor standards is—and I will read it directly from the bill—"for the purpose of attracting investment or inhibiting United States exports."

I want to make sure my colleagues understand that.

First of all, the President may only negotiate regarding the lowering of, or derogation from, existing labor standards. He can't negotiate on strengthening them. And he may only negotiate regarding the situation where the lowering of, or derogation from, standards is done for the purpose of attracting investment or inhibiting U.S. exports.

What about the case where a country lowers or fails to enforce its child labor standards for the purpose of producing goods at lower cost so it can ship them to the United States? That situation is not mentioned in this language, so the President does not have authority to negotiate on that basis according to the terms of the bill. Allowing the use of exploitative child labor to hold the price of goods down is unfair competition, plain and simple, but a country could do that.

Exploitative child labor in foreign countries unfairly puts competing firms and workers at a disadvantage in the United States and in other countries that do not allow it. Yet, the language in this bill does not indicate that President would have the authority to address that kind of unfair competition against U.S. companies and workers in negotiations and agreements under fast track. As long as the other country is not lowering or derogating from its standards for the purpose of attracting investment or inhibiting U.S. exports, our negotiators cannot negotiate to end this unfair competition.

The bottom line is that this bill limits the President's authority to seek agreements that would curtail exploitative child labor.

It is important to clarify this point. I think people will say "HARKIN, what are you talking about? How could it limit the President's authority?"

Well, let us examine that question.

Under this bill, the President actually has less authority to negotiate regarding child labor, and submit an agreement to Congress under fast-track procedures, than he had in the most recent fast-track legislation, which was contained in the Omnibus Trade and Competitiveness Act of 1988—the last bill laying out fast-track procedures that we voted on and which this Senator voted for.



That is right. Let me be very clear. The bill before us provides less authority to negotiate on child labor than the bill that we passed in 1988. And that bill has done precious little in terms of exploitative child labor.

Now, let me explain specifically. The 1988 fast-track law was set up in the same way as the bill before us. It had a listing of principal trade negotiating objectives. One of those listed objectives pertained to worker rights, and I will quote from the 1988 law:

The principal negotiating objectives of the United States regarding worker rights are (A) to promote respect for worker rights.

As used in the 1988 fast-track law, the term "worker rights" certainly includes the right of children not to be subjected to exploitative labor. That is the plain meaning of the language, and I have confirmed that interpretation with the Congressional Research Service.

So the 1988 fast-track bill clearly included a negotiating objective encompassing child labor and affirming the President's broad authority to negotiate regarding child labor.

Well, now someone, I am sure, will point out that the bill before us specifically mentions child labor. Yes, it does. The 1988 bill did not, although as I noted child labor was encompassed in the 1988 bill under the heading of worker rights. But the 1988 bill and this bill are vastly different from one another in the way they are structured and how they deal with child labor. The 1988 bill's negotiating objectives were written in broad terms to urge the President to pursue worker rights issues which included child labor. The 1988 language was not really written as a limitation on the President's authority, but rather as an affirmation of the President's expansive authority to negotiate on these issues and an encouragement to seek agreements on these issues with other countries.

By contrast, this bill before us is narrowly drawn to circumscribe and limit the President's negotiating authority regarding exploitative child labor. Unlike the 1988 bill, this bill before us is not written to set objectives and encourage the President to reach them, and to do even better if possible, in reaching sound agreements on exploitative child labor.

Understand this. This bill before us says he may negotiate under fast track only agreements designed to prevent other countries from lowering or derogating from existing child labor standards—no matter how low they may be. He may not negotiate under fast track an agreement in which a country would commit to raise its child labor standards if they are too low or if they do not exist.

And further, a fast-track agreement may prevent a country from lowering or derogating from its child labor standards only in cases where it does so for the limited purposes of attracting investment or inhibiting U.S. exports. This bill is very limited on the

President's authority to negotiate regarding exploitative child labor. Again, he can only negotiate on agreements designed to prevent other countries from lowering their standards, and then he can only do that if that country is lowering its standards for the limited purpose of attracting U.S. investment or limiting U.S. exports.

Mr. President, you wonder who wrote this. Now, I have in good faith talked a lot to the people around the President about exploitative child labor. I have talked to his Trade Representative in good faith about this issue. And you know, initially they said we are going to put child labor in there. Well, they did, but what they didn't say is they put it in in a way that actually limits the President's authority from what he had in the 1988 bill.

Mr. President, how much time do I have remaining?

THE PRESIDING OFFICER. The Senator has 8 minutes remaining.

Mr. HARKIN. In my remaining time, Mr. President, I would like to explain why my amendment that I will be offering on fast track deals specifically with exploitative child labor in a way that will enhance and strengthen the President's position.

Now, there are other labor provisions that ought to be put into this bill, and there has been a lot of debate and disagreement on ways to address labor, environmental, and health and safety issues in this legislation. I understand the reasons for these disagreements. But, honestly, I do not see how there can be any disagreement on the need to address exploitative child labor and to ensure that the President and our trade negotiators do not have their hands tied when it comes to negotiating and concluding agreements on this issue.

This is the benchmark that I believe should be applied to exploitative child labor in examining the bill before us. It is simply this. The President's authority and our directions to him to negotiate on exploitative child labor should be no less than that for the other important issues contained in this bill.

Using that benchmark, I would invite my colleagues to examine the fast-track bill that we have before us. This bill has numerous principal negotiating objectives dealing with a wide range of issues—trade in goods, trade in services, foreign investment, intellectual property, agriculture, unfair trade practices, a host of them.

Again, with respect to all of these other issues, the bill is drafted to articulate objectives, to give guidance and direction to the President, to ensure that the President has sufficiently broad and expansive negotiating authority and to encourages him to use it—a far cry from the limiting way child labor is addressed in this bill.

Look at the language dealing with intellectual property. The bill sets ambitious goals here and confirms the President's broad authority to negotiate and submit any resulting agree-

ment under fast track. In fact, one of the principal negotiating objectives on intellectual property is "the enactment and effective enforcement by foreign countries of laws that recognize and adequately protect intellectual property."

Now, when it comes to intellectual property, the President is not limited to negotiating under fast track only to prevent other countries from lowering or derogating from existing standards. Nor is negotiation limited only to those cases where a country is seeking to attract investment or inhibit U.S. exports.

To protect intellectual property, the President is to seek agreements in which other countries commit to adopt and enforce higher standards if they need to. Not so for child labor. And his negotiating authority to protect intellectual property covers the broad range of ways in which intellectual property rights may be violated. Again, not so for child labor.

My amendment regarding exploitative child labor simply tracks the language in the bill on intellectual property. It is basically the same language, with conforming modifications. My amendment ensures that the President has the same authority to negotiate on exploitative child labor as he has on protecting intellectual property. It puts into the bill that one of our trade negotiating objectives includes the enactment and effective enforcement by other countries of laws against exploitative child labor. It adds exploitative child labor to the bill as a negotiating objective.

My amendment does not tie the President's hands. It does not say there has to be a predetermined outcome on child labor in trade negotiations. It just says that in dealing with exploitative child labor, the President has the authority, the same authority, as he has to protect against the pirating of a song, a computer chip or a compact disc. We ought to ensure this bill gives the President the same authority to seek protection against exploitative child labor as a means of unfair competition as he has to seek protection against the misappropriation of intellectual property as a means of unfair competition.

My amendment says that exploitative child labor will be on the table during negotiations. It will be one of our principal trade negotiating objectives. It will have the same status and stature as intellectual property.

Mr. President, again I am not talking about 18-year old kids working, or 17-year-old kids, no. This is what I am talking about right here. This picture is of a young girl working in a field in Mexico after NAFTA. We have more children working in Mexico today after NAFTA than we did before. And I do not mean just teenagers. I mean kids 8, 9, 10 years of age, too. And yet we had some side agreements covering child labor on NAFTA, but they are not being enforced.

We have over 200 million working kids in the world today, more and more being put into factories and plants and, yes, agriculture. My Iowa farmers can compete against anyone in the world, but they cannot compete against that girl because that girl is a slave laborer. That is slave labor. This girl has no choice. She has no options. She cannot go to school. She cannot go to school because she is out in the fields all day, the same as a kid working in a glass factory, a shoe factory, a garment factory, or a rug factory. And these are often kids that are 8, 9, 10 years old.

Now, I believe that our trade negotiators and the people down at the White House have the best of intentions. I am sure there is no one there who likes exploitative child labor. For the life of me, I cannot understand why they sent a bill to us such as they did and why they will go along with such a weak bill relating to exploitative child labor. If they would only compare this bill with the one in 1988, they would understand that the bill before us curtails, circumscribes and limits the President's authority on exploitative child labor relative to the 1988 bill.

I have been talking to people down at the White House about putting exploitative child labor in this bill at the same level as intellectual property, but for some reason they just cannot quite seem to get on board.

There was a time not too long ago when intellectual property rights were regarded as extraneous to trade, just as some argue child labor is today. I remember when I was in the Navy back in the 1960s. People would go to Taiwan and they would get records for perhaps 10 cents each—books and encyclopedias for just pennies—because Taiwan was pirating the records; they were pirating the books and printing them. I remember people I knew in the Navy would go to Taiwan and load up with books and records, but today there are international rules in trade agreements to protect intellectual property. So there was a time when intellectual property was considered extraneous to trade agreements. Not so today. Exploitative child labor should not be extraneous today.

Yes, we are in a new era. We are in a new world economy, but we are also in a new world community. And just as we have taken the lead in the world economy, as we have taken the lead in breaking down trade barriers—and I believe we should—we must take the lead in stopping this, the last vestige of slavery in the world today, exploitative child labor.

We can debate and discuss labor issues, environmental issues, and there are all kinds of different perspectives and arguments about them. There should be no argument on exploitative child labor. There should be no disagreement on this. There are distinct lines. Children should not be working like this. Our trade negotiators, when they sit down at that table, ought to be negotiating on exploitative child labor.

It ought to be a trade negotiating objective. It ought to have the same stature, the same force, the same effect as intellectual property because not only is this a moral imperative of ours; it is imperative to stop it as unfair competition because that child laborer, that child slave, is producing goods that are sent to this country, that compete against our products. My farmers cannot compete against that. Our workers cannot compete against that. They should not have to compete against it. This bill is fatally flawed and the administration needs to send get behind the amendment that I will be offering. We need to adopt that amendment to make sure that stopping exploitative child labor has the same force and effect, and the same level of authority, in trade negotiations as stopping the pirating of intellectual property.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Massachusetts.

Mr. KERRY. Mr. President, I believe my order is to speak in morning business.

The PRESIDING OFFICER. That is correct. The Senator, under the previous order, has 20 minutes.

#### WE MUST BE FIRM WITH SADDAM HUSSEIN

Mr. KERRY. Mr. President, I will speak tomorrow on the subject of fast track. I wish to talk this evening about another subject that has not received as much conversation on the floor of the Senate as it merits—because, while we have been focused on fast track and on a lot of loose ends which must be tied up before this first session of the 105th Congress can be brought to a close, a very troubling situation has developed in the Middle East that has ominous implications, not just for our national security but literally for the security of all civilized and law-abiding areas of the world.

Even after the overwhelming defeat that the coalition forces visited upon Iraq in and near Kuwait in the Desert Storm conflict, Iraqi dictator Saddam Hussein's truculence has continued unabated. In the final days of that conflict, a fateful decision was made not to utterly vanquish the Iraqi Government and armed forces, on the grounds that to do so would leave a risky vacuum, as some then referred to it, in the Middle East which Iran or Syria or other destabilizing elements might move to fill.

But instead of reforming his behavior after he was handed an historic defeat, Saddam Hussein has continued to push international patience to the very edge. The United Nations, even with many member nations which strongly favor commerce over conflict, has established and maintained sanctions designed to isolate Iraq, keep it too weak to threaten other nations, and push Saddam Hussein to abide by accepted

norms of national behavior. These sanctions have cost Iraq over \$100 billion and have significantly restrained his economy. They unavoidably also have exacted a very high price from the Iraqi people, but this has not appeared to bother Saddam Hussein in the least. Nor have the sanctions succeeded in obtaining acceptable behavior from Saddam.

Now, during the past 2 weeks, Saddam again has raised his obstinately uncooperative profile. We all know of his announcement that he will no longer permit United States citizens to participate in the U.N. inspection team searching Iraq for violations of the U.N. requirement that Iraq not build or store weapons of mass destruction. And he has made good on his announcement. The UNSCOM inspection team, that is, the United Nations Special Commission team, has been refused access to its inspection targets throughout the week and once again today because it has Americans as team members. While it is not certain, it is not unreasonable to assume that Saddam's action may have been precipitated by the fear that the U.N. inspectors were getting uncomfortably close to discovering some caches of reprehensible weapons of mass destruction, or facilities to manufacture them, that many have long feared he is doing everything in his power to build, hide, and hoard.

Another reason may be that Saddam Hussein, who unquestionably has demonstrated a kind of perverse personal resiliency, may be looking at the international landscape and concluding that, just perhaps, support may be waning for the United States's determination to keep him on a short leash via multilateral sanctions and weapons inspections. This latest action may, indeed, be his warped idea of an acid test of that conclusion.

We should all be encouraged by the reactions of many of our allies, who are evincing the same objections to Iraq's course that are prevalent here in the United States. There is an inescapable reality that, after all of the effort of recent years, Saddam Hussein remains the international outlaw he was when he invaded Kuwait. For most of a decade he has set himself outside international law, and he has sought to avoid the efforts of the international community to insist that his nation comport itself with reasonable standards of behavior and, specifically, not equip itself with implements of mass destruction which it has shown the willingness to use in previous conflicts.

Plainly and simply, Saddam Hussein cannot be permitted to get away with his antics, or with this latest excuse for avoidance of international responsibility.

This is especially true when only days earlier, after months of negotiations, the administration extracted some very serious commitments from China, during President Jiang Zemin's state visit to Washington, to halt several types of proliferation activities. It

is unthinkable that we and our allies would stand by and permit a renegade such as Saddam Hussein, who has demonstrated a willingness to engage in warfare and ignore the sovereignty of neighboring nations, to engage in activities that we insist be halted by China, Russia, and other nations.

Let me say that I agree with the determination by the administration, at the outset of this development, to take a measured and multilateral approach to this latest provocation. It is of vital importance to let the United Nations first respond to Saddam's actions. After all, those actions are first and foremost an affront to the United Nations and all its membership which has, in a too-rare example of unity in the face of belligerent threats from a rogue State, managed to maintain its determination to keep Iraq isolated via a regime of sanctions and inspections.

I think we should commend the resolve of the Chief U.N. Inspector, UNSCOM head Richard Butler, who has refused to bend or budge in the face of Saddam's intransigence. Again and again he has assembled the inspection team, including the U.S. citizens who are part of it, and presented it to do its work, despite being refused access by Iraq.

He rejected taking the easy way out by asking the U.S. participants simply to step aside until the problem is resolved so that the inspections could go forward. He has painstakingly documented what is occurring, and has filed regular reports to the Security Council. He clearly recognizes this situation to be the matter of vital principle that we believe it to be.

The Security Council correctly wants to resolve this matter if it is possible to do so without plunging into armed conflict, be it great or small. So it sent a negotiating team to Baghdad to try to resolve the dispute and secure appropriate access for UNSCOM's inspection team. To remove a point of possible contention as the negotiators sought to accomplish their mission, the United Nations asked that the U.S. temporarily suspend reconnaissance flights over Iraq that are conducted with our U-2 aircraft under U.N. auspices, and we complied. At that time, in my judgment this was the appropriate and responsible course.

But now we know that Saddam Hussein has chosen to blow off the negotiating team entirely. It has returned emptyhanded to report to the Security Council tomorrow. That is why I have come to the floor this evening to speak about this matter, to express what I think is the feeling of many Senators and other Americans as the Security Council convenes tomorrow.

We must recognize that there is no indication that Saddam Hussein has any intention of relenting. So we have an obligation of enormous consequence, an obligation to guarantee that Saddam Hussein cannot ignore the United Nations. He cannot be permitted to go unobserved and

unimpeded toward his horrific objective of amassing a stockpile of weapons of mass destruction. This is not a matter about which there should be any debate whatsoever in the Security Council, or, certainly, in this Nation. If he remains obdurate, I believe that the United Nations must take, and should authorize immediately, whatever steps are necessary to force him to relent—and that the United States should support and participate in those steps.

The suspended reconnaissance flights should be resumed beginning tomorrow, and it is my understanding they will be. Should Saddam be so foolish as to take any action intended to endanger those aircraft or interrupt their mission, then we should, and I am confident we will, be prepared to take the necessary actions to either eliminate that threat before it can be realized, or take actions of retribution.

When it meets tomorrow to receive the negotiators' report and to determine its future course of action, it is vital that the Security Council treat this situation as seriously as it warrants.

In my judgment, the Security Council should authorize a strong U.N. military response that will materially damage, if not totally destroy, as much as possible of the suspected infrastructure for developing and manufacturing weapons of mass destruction, as well as key military command and control nodes. Saddam Hussein should pay a grave price, in a currency that he understands and values, for his unacceptable behavior.

This should not be a strike consisting only of a handful of cruise missiles hitting isolated targets primarily of presumed symbolic value. But how long this military action might continue and how it may escalate should Saddam remain intransigent and how extensive would be its reach are for the Security Council and our allies to know and for Saddam Hussein ultimately to find out.

Of course, Mr. President, the greatest care must be taken to reduce collateral damage to the maximum extent possible, despite the fact that Saddam Hussein cynically and cold-heartedly has made that a difficult challenge by ringing most high-value military targets with civilians.

As the Security Council confronts this, I believe it is important for it to keep prominently in mind the main objective we all should have, which is maintaining an effective, thorough, competent inspection process that will locate and unveil any covert prohibited weapons activity underway in Iraq. If an inspection process acceptable to the United States and the rest of the Security Council can be rapidly re-instituted, it might be possible to vitiate military action.

Should the resolve of our allies wane to pursue this matter until an acceptable inspection process has been re-instituted—which I hope will not occur and which I am pleased to say at this

moment does not seem to have even begun—the United States must not lose its resolve to take action. But I think there is strong reason to believe that the multilateral resolve will persist.

To date, there have been nine material breaches by Iraq of U.N. requirements. The United Nations has directed some form of responsive action in five of those nine cases, and I believe it will do so in this case.

The job of the administration in the next 24 hours and in the days to follow is to effectively present the case that this is not just an insidious challenge to U.N. authority. It is a threat to peace and to long-term stability in the tinder-dry atmosphere of the Middle East, and it is an unaffordable affront to international norms of decent and acceptable national behavior.

We must not presume that these conclusions automatically will be accepted by every one of our allies, some of which have different interests both in the region and elsewhere, or will be of the same degree of concern to them that they are to the U.S. But it is my belief that we have the ability to persuade them of how serious this is and that the U.N. must not be diverted or bullied.

The reality, Mr. President, is that Saddam Hussein has intentionally or inadvertently set up a test which the entire world will be watching, and if he gets away with this arrogant ploy, he will have terminated a most important multilateral effort to defuse a legitimate threat to global security—to defuse it by tying the hands of a rogue who thinks nothing of ordering widespread, indiscriminate death and destruction in pursuit of power.

If he succeeds, he also will have overwhelmed the willingness of the world's leading nations to enforce a principle on which all agree: that a nation should not be permitted to grossly violate even rudimentary standards of national behavior in ways that threaten the sovereignty and well-being of other nations and their people.

I believe that we should aspire to higher standards of international behavior than Saddam Hussein has offered us, and the enforcement action of the United Nations pursues such a higher standard.

We know from our largely unsuccessful attempts to enlist the cooperation of other nations, especially industrialized trading nations, in efforts to impose and enforce somewhat more ambitious standards on nations such as Iran, China, Burma, and Syria that the willingness of most other nations—including a number who are joined in the sanctions to isolate Iraq—is neither wide nor deep to join in imposing sanctions on a sovereign nation to spur it to "clean up its act" and comport its actions with accepted international norms. It would be a monumental tragedy to see such willingness evaporate in one place where so far it has survived and arguably succeeded to date,

especially at a time when it is being subjected to such a critical test as that which Iraq presents.

In a more practical vein, Mr. President, I submit that the old adage "pay now or pay later" applies perfectly in this situation. If Saddam Hussein is permitted to go about his effort to build weapons of mass destruction and to avoid the accountability of the United Nations, we will surely reap a confrontation of greater consequence in the future. The Security Council and the United States obviously have to think seriously and soberly about the plausible scenarios that could play out if he were permitted to continue his weapons development work after shutting out U.N. inspectors.

There can be little or no question that Saddam has no compunctions about using the most reprehensible weapons—on civilians as readily as on military forces. He has used poison gas against Iranian troops and civilians in the Iran-Iraq border conflict. He has launched Scud missiles against Israel and against coalition troops based in Saudi Arabia during the gulf war.

It is not possible to overstate the ominous implications for the Middle East if Saddam were to develop and successfully militarize and deploy potent biological weapons. We can all imagine the consequences. Extremely small quantities of several known biological weapons have the capability to exterminate the entire population of cities the size of Tel Aviv or Jerusalem. These could be delivered by ballistic missile, but they also could be delivered by much more pedestrian means; aerosol applicators on commercial trucks easily could suffice. If Saddam were to develop and then deploy usable atomic weapons, the same holds true.

Were he to do either, much less both, the entire balance of power in the Middle East changes fundamentally, raising geometrically the already sky-high risk of conflagration in the region. His ability to bluff and bully would soar. The willingness of those nations which participated in the gulf war coalition to confront him again if he takes a course of expansionism or adventurism may be greatly diminished if they believe that their own citizens would be threatened directly by such weapons of mass destruction.

The posture of Saudi Arabia, in particular, could be dramatically altered in such a situation. Saudi Arabia, of course, was absolutely indispensable as a staging and basing area for Desert Storm which dislodged Saddam's troops from Kuwait, and it remains one of the two or three most important locations of U.S. bases in the Middle East.

Were its willingness to serve in these respects to diminish or vanish because of the ability of Saddam to brandish these weapons, then the ability of the United Nations or remnants of the gulf war coalition, or even the United States acting alone, to confront and halt Iraqi aggression would be gravely damaged.

Were Israel to find itself under constant threat of potent biological or nuclear attack, the current low threshold for armed conflict in the Middle East that easily could escalate into a world-threatening inferno would become even more of a hair trigger.

Indeed, one can easily anticipate that Israel would find even the prospect of such a situation entirely untenable and unacceptable and would take preemptive military action. Such action would, at the very least, totally derail the Middle East peace process which is already at risk. It could draw new geopolitical lines in the sand, with the possibility of Arab nations which have been willing to oppose Saddam's extreme actions either moving into a pan-Arab column supporting him against Israel and its allies or, at least, becoming neutral.

Either course would significantly alter the region's balance of power and make the preservation and advancement of U.S. national security objectives in the region unattainable—and would tremendously increase the risk that our Nation, our young people, ultimately would be sucked into yet another military conflict, this time without the warning time and the staging area that enabled Desert Storm to have such little cost in U.S. and other allied troop casualties.

Finally, we must consider the ultimate nightmare. Surely, if Saddam's efforts are permitted to continue unabated, we will eventually face more aggression by Saddam, quite conceivably including an attack on Israel, or on other nations in the region as he seeks predominance within the Arab community. If he has such weapons, his attack is likely to employ weapons of unspeakable and indiscriminate destructiveness and torturous effects on civilians and military alike. What that would unleash is simply too horrendous to contemplate, but the United States inevitably would be drawn into that conflict.

Mr. President, I could explore other possible ominous consequences of letting Saddam Hussein proceed unchecked. The possible scenarios I have referenced really are only the most obvious possibilities. What is vital is that Americans understand, and that the Security Council understand, that there is no good outcome possible if he is permitted to do anything other than acquiesce to continuation of U.N. inspections.

As the world's only current superpower, we have the enormous responsibility not to exhibit arrogance, not to take any unwitting or unnecessary risks, and not to employ armed force casually. But at the same time it is our responsibility not to shy away from those confrontations that really matter in the long run. And this matters in the long run.

While our actions should be thoughtfully and carefully determined and structured, while we should always seek to use peaceful and diplomatic

means to resolve serious problems before resorting to force, and while we should always seek to take significant international actions on a multilateral rather than a unilateral basis whenever that is possible, if in the final analysis we face what we truly believe to be a grave threat to the well-being of our Nation or the entire world and it cannot be removed peacefully, we must have the courage to do what we believe is right and wise.

I believe this is such a situation, Mr. President. It is a time for resolve. Tomorrow we must make that clear to the Security Council and to the world.

I yield back the balance of my time. Mr. TORRICELLI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey.

Mr. TORRICELLI. Mr. President, I ask unanimous consent to return to morning business and address the Senate for 15 minutes.

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

#### FAST TRACK

Mr. TORRICELLI. Mr. President, this Congress is engaged in a great debate about giving the President of the United States virtually unrestricted authority to engage and negotiate with other nations in what has been termed fast-track authority.

Capital markets and international political leaders are waiting to see whether or not this Congress will grant that authority to the President of the United States.

To some, the debate has already been defined as either one of believing in free trade or returning to protectionism. I believe that that is a disservice to this Congress and indeed to the debate itself because the issue is extraordinarily more complex.

The United States needs no lectures about the advantages or the pursuit of free trade nor, indeed, does this Congress. In Bretton Woods, the Kennedy Round, the Uruguay Round, the United States has both led and constructed the current system both in monetary and trade relations.

This country understands that free, unfettered trade, the opening of international markets, is the very foundation of both our own and international prosperity. This generation's standard of living has been based on the lessons of each of these agreements.

As a result, the United States has become the largest importing nation in the world. Indeed, although the United States has an economy that is smaller than the combined economies of the European community, we import more than twice the industrialized product from the developing world.

This trade has been not without benefit to even those industries which seemingly have suffered the most. Although there have been serious dislocations in key industrial industries, like autos and steel and new products like

semiconductors and computers, the current competitiveness and efficiency of even these industries have benefited by international trade and competition.

Indeed, it is because of this enhanced efficiency in competition that I supported fast-track authority in 1988, supported the Canada-U.S. Free Trade Agreement and most recently the GATT agreement.

I take the Senate floor today because I have reached my own conclusion that when asked to vote in this body, I will not support fast-track authority as currently requested by the President of the United States this year. I do so despite a long history of supporting similar authority and as one who believes strongly in free trade as enhancing American competitiveness and it being essential to America's quality of life, because I believe the United States has reached an important crossroads in our trade strategy.

Like many Americans, I am simply not convinced that the U.S. Government has a strategy to maximize benefits in current trade agreements. I do not fear the competition of foreign trade. I simply fear that our negotiators are not prepared to protect and defend our national interests with a coherent strategy.

I base my conclusion on four principal problems.

First, over 4 decades, by necessity, through the cold war and in times of threats to our national security, it became necessary for the United States on occasion to compromise in our trade strategy in order to engage in the protection of other important national interests.

By necessity, whether it was to secure Philippine military bases or the cooperation of Korean or Turkish or a host of other allies, the United States would set apart our trade objectives in order to secure national security concerns.

Even now while American intellectual property rights are being compromised in China, we are being told that this is necessary for the political engagement of the People's Republic of China.

Mr. President, my first objection to fast-track authority to the President is these agreements on trade must stand for economic purposes of their own weight. The American people and this Congress must be convinced the country is pursuing a coherent trade strategy without compromise for other purposes.

Second, it is critical that this Congress be convinced that our trade negotiators are using the leverage of those seeking access to our market to its maximum advantage. In negotiating NAFTA, the United States afforded Mexico the most important advantage that any nation economically could ever seek. That is, to gain access to the American market for their products. But we did so without using all of the leverage available to the United

States. So Mexico, a country that is a principal conduit for narcotics into the United States, a source of massive illegal immigration to the United States, a nation which does not allow access to American products or investment without reservation, was afforded the opportunities of NAFTA without, by necessity, conceding cooperation on all these fronts. So in my mind, Mr. President, the second reason for a reservation in proceeding with fast-track authority is that the United States is not using its principal leverage in negotiating with other nations.

Third, Mr. President, in my mind, is the legitimate concern about the pace of international economic integration. Mr. President, during this debate, both in this body and in the other, no one will be quoted more often than Adam Smith. Indeed, to my mind, there is no man who has been read less and quoted more often than Adam Smith in his "Wealth of Nations." For my third reason in objecting to fast-track authority, I return to his treatise of more than two centuries ago when he said, "... freedom of trade should be restored only by slow gradations, and with a good deal of reserve and circumspection. Were those high duties and prohibitions taken away all at once ... the disorder which this would occasion might no doubt be very considerable."

Mr. President, free trade is a national objective, but like other human virtues, it may never be fully realized. It is forever pursued, but it requires so many changes in culture and values and so many complications that it must remain a goal, understanding it may never be realized. Every Member of this institution recognizes that fast-track authority and opening the American market involves a host, indeed hundreds, of different industries that compromise many communities and their economic strength. It is understood and recognized that, like manufacturing, certain high-labor-intensive industries have no long-term future in the American economy.

As Adam Smith warned two centuries ago, that does not mean that with haste or even immediacy they must be subjected to their demise. There are industries in this country that employ thousands, if not millions, of people who live on the economic margins of our society who have no other economic choice. The 50- or 60-year-old textile worker who may have lived in this country for generations, or be new to our land, who may speak English or may not, who may be educated or may have the bare minimum of education, will not in a single generation or with the stroke of a pen be transformed from a textile worker to a computer technician.

American trade policy with a goal of free trade must be realistic and fair to all elements of this society and must take into account the very disorder of which Adam Smith warned only that we be accommodating.

Mr. President, finally, a fourth and final reason that I believe this Senate should withhold fast-track authority on this occasion. It is based on a series of judgments that this Congress reached a long time ago. It has become, I believe, standard in this country, almost without reservation, to believe that it is appropriate, from bans on child labor to a reasonable minimum wage, to the human rights organized labor unions, to just and fair environmental standards. But our country now, in the decision to engage itself in free and open global trade, needs to reach a judgment. How is it we keep these basic commitments without engaging in an extraordinary and even hypocritical contradiction? At this moment in time, the Nation wants both to maintain these high moral standards, some of which have transcended generations, but at the same time to take advantage of the inexpensive products, the economic opportunities of importations where workers have no right to organize, nonexistent or unenforced minimum wage and, in many cases, almost no protections against child labor, and a minimum of environmental standards.

The difference, Mr. President, is whether or not the United States will, in some cases, engage in exploitation, not whether or not the United States will engage in free trade. I believe, therefore, Mr. President, that on this occasion, with a commitment to free trade and an understanding of the need and necessity for the United States to engage in free, fair, and open competition, this Congress should not grant unrestricted authority to the President of the United States to engage in trade negotiations, without reserving for ourselves the right to ensure that there is a trade strategy that encompasses the goal of reaching trade balance, dealing with structural imbalances that, by necessity, are arising from countries that continue to protect their own markets. And we deal with these inherent contradictions of how we maintain both a standard of living for those in our country who cannot quickly adjust to the competition, the contradictions of maintaining environmental labor standards, while allowing access to our market to those who do not.

This will require a trade strategy by the Executive that, to my judgment, has not yet been defined and may not yet exist. I do hope, however, Mr. President, that this is understood for what it is—not a retreat, not protectionism, just forcing this country, at long last, to begin to define a real and lasting trade strategy.

Mr. President, I yield the floor.

UNANIMOUS-CONSENT  
AGREEMENT—H.R. 2607

Mr. LOTT. After consultation with many, many Senators and especially the Democratic leader, I now ask that

the Senate turn to the D.C. appropriations bill, H.R. 2607, and Senator STEVENS be recognized to offer a substitute amendment and that there be 2 hours of debate to be equally divided in the following fashion: 30 minutes between Senators STEVENS and BYRD, 30 minutes between Senators FAIRCLOTH and BOXER, 30 minutes between Senators GREGG and HOLLINGS, 30 minutes between Senators MCCONNELL and LEAHY.

I further ask that no other amendments or motions be in order, and following the conclusion or yielding back of the time, the amendment be agreed to and the bill be advanced to third reading and passage, and all occur without further action or debate.

I further ask that following the adoption, the Senate insist on its amendment, request a conference with the House, and the Chair be authorized to appoint conferees, all without further action or debate.

I ask unanimous consent that in the event that H.R. 2607 is sent to the President without a conference, the Committee on Appropriations, with the concurrence of the chairman and ranking member, be permitted to file in the RECORD within 2 days of final passage and to print as an official document of the Senate a report on the final version of H.R. 2607 as enacted by the Congress.

Finally, I ask unanimous consent that following the disposition of H.R. 2607, the Senate proceed to S. 1502 regarding D.C. scholarships, the bill be read the third time and passed, and the motion to reconsider be laid upon the table, all without further action or debate.

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

Mr. LOTT. I want to confirm, as most Senators certainly know, there will be no further rollcall votes tonight, and while the Senators have this 2 hours of time, we don't anticipate the full time will be used.

I yield the floor.

Mr. DASCHLE. I want to commend the distinguished chair and ranking member of the Appropriations Committee. Oftentimes we work through these things, and credit isn't allocated as it should be. In this case, this would not have happened were it not for the extraordinary effort on both sides of the aisle, in particular by the chairman and the ranking member. But I thank all Senators for their cooperation and the extraordinary effort they have put forth to get us to this point.

Mr. LOTT. Mr. President, I thank Senator DASCHLE for making those comments. He is certainly right. Senator STEVENS is very persistent, as is Senator BYRD, his worthy ally in this effort.

This has been a difficult agreement to put together, but it is the right thing to do at this hour. That way, we will have this package in the House and they will have a vehicle with these three bills on which they can act, and that will lead into, hopefully, final passage tomorrow. I do commend them for their very fine work.

I yield the floor.

#### DISTRICT OF COLUMBIA APPROPRIATIONS, MEDICAL LIABILITY REFORM, AND EDUCATION REFORM ACT OF 1998

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

The legislative clerk read as follows:

A bill (H.R. 2607) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1998, and for other purposes.

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

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

#### AMENDMENT NO. 1621

(Purpose: Making omnibus consolidated appropriations for the fiscal year ending September 30, 1998, and for other purposes)

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

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. STEVENS], for himself and Mr. BYRD, proposes an amendment numbered 1621.

Mr. STEVENS. Mr. President, I ask unanimous consent that 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.")

#### PRIVILEGE OF THE FLOOR

Mr. GREGG. Mr. President, I ask unanimous consent that Carl Truscott of my staff be granted floor privileges.

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

Mr. GREGG. Mr. President, I ask unanimous consent that after completion of the pending motion and amendment, and passage, the Senator from Michigan, Senator ABRAHAM, be granted 10 minutes.

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

The PRESIDING OFFICER. Who yields time?

Mr. FAIRCLOTH. Mr. President, I yield myself 5 minutes.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. FAIRCLOTH. Mr. President, as the 105th Congress draws to a close, we are finally, at last, about to complete action on the District of Columbia appropriations bill. The amendment before the Senate incorporates the conference report to the Commerce, Justice, State spending bill and the Foreign Operations spending bill, together with an amendment in the nature of a substitute to the District of Columbia appropriations bill.

I would like to speak very briefly to the provisions of the District of Columbia portion of this omnibus package. First of all, the ranking member of the

District of Columbia subcommittee, BARBARA BOXER, and I have ironed out all of our differences and we now have the bill that should have the support of the House and the administration.

At the moment, the District of Columbia is being funded on a temporary basis through a continuing resolution. It is critical that we pass this amendment as soon as possible because the Congress has yet to pass a District of Columbia rescue package and the management reform plan, which we enacted in August. Passage of this bill will ensure that that work goes forward to restructure the city's finances and impose some much-needed management reforms on the city and its various agencies.

The amendment being offered in the nature of a substitute to the District of Columbia appropriations bill will provide funding of \$8 million for management reforms, and these reforms are already under way. But without passage of this bill, the reform program will simply fall apart.

Mr. President, this amendment is very similar to the District of Columbia appropriations bill that has been pending before the Senate for several weeks. This amendment reflects the work of the Congress, city officials, and the financial control board to bring about a balanced District budget. This budget is balanced 1 year ahead of the schedule set by the Congress in 1995 when it created the financial control board to rescue the city from insolvency and incompetence.

To reach consensus on how to balance the budget, the control board and the elected city council first rejected several of the proposed budgets. This budget is a more conservative approach. This amendment actually cuts most city agencies, with a few exceptions, such as public safety. The focus of this bill is to balance the budget and reform the city's management problems.

It is a good bill and I urge its support by my colleagues. I want to especially thank the ranking member, Senator BARBARA BOXER, and KAY BAILEY HUTCHISON for their hard work on the Appropriations Committee. I want to thank the chairman of the Senate Appropriations Committee, Senator STEVENS, and the distinguished ranking member of the Senate Appropriations Committee, Senator BYRD, for their help and guidance in the past several months. I also wish to take a moment to thank Mary Beth Nethercutt, Jim Hyland, Dave Landers, of my staff, Jay Kimmit, and the rest of the minority staff for their help on this bill.

Mr. President, I yield the balance of my time.

#### PRIVILEGE OF THE FLOOR

Mr. GREGG. Mr. President, I ask unanimous consent that the following staff members be granted full floor privileges during consideration of the District of Columbia and Omnibus Appropriations bills; James Morhard, Paddy Link, Kevin Linskey, Carl

Truscott, Dana Quam, Vas Alexopoulos, Luke Nachbar, Scott Gudes, Karen Swanson Wolf, Emelie East, and Jay Kimmitt.

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

Mr. GREGG. Mr. President, I want to speak briefly about the appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for Fiscal Year 1998. The provisions came about through bipartisan negotiations and provides \$31.8 billion, an increase of \$30.9 million above the House level, \$135.3 million above the Senate level, and \$297 million less than the President's request.

Before getting to the details, I want to thank Senator HOLLINGS, and his staff, Scott Gudes, Karen Swanson-Wolf, and Emelie East for all their hard work and dedication to getting this bill written and passed. Their efforts and expertise helped smooth the way for its success through the 99-0 vote in the Senate in July and its presentation to you today.

The committee amendment includes many of the provisions that the Senate gave top priority to in its bill, but the funding levels reflect our negotiations with the House. Within the Justice Department, the committee amendment retains the Senate initiatives to fight crimes against children, increases assistance to state and local law enforcement, strengthens counterterrorism activities, bolsters drug control efforts, and provides funding for new juvenile programs.

We have funded many programs that will further our efforts in preventing and combating crimes against children. The amendment provides \$10 million in additional funding for the FBI's efforts to stop child exploitation on the Internet. In addition, we're making sure those organizations that work closely with the FBI also receive adequate funding to provide much needed support. There is \$1.7 million for Missing Children; \$6.9 million for the National Center for Missing and Exploited Children, of which \$1.9 million is provided for Internet investigations; \$1.2 million for the Jimmy Ryce Law Enforcement Training Center for State and local law enforcement investigations; and an additional \$2.4 million for State and local law enforcement to form specialized units to investigate and prevent child exploitation on the Internet. These agencies have promising ideas of ways to improve current law enforcement procedures in this area to stop pedophiles from committing further atrocities.

We believe it is the national interest to improve the skills of law enforcement personnel on all levels and supports initiatives to do this. The Community Oriented Policing Services, known as the COPS program, is funded at \$1.4 billion. As part of this provision and with direct funding, we were able to preserve the Senate number of \$25 million for the Regional Information Sharing System so that law enforce-

ment officers throughout the country have increased access to national criminal databases.

The Committee amendment includes an increase in funding for the Violence Against Women Act grants to \$270.7 million. We recognize the need to enhance and expand current women's assistance programs as violent crimes against them continue. The Violence Against Women grants will be given to States to be used to develop and implement effective arrest and prosecution policies to prevent, identify, and respond to violent crimes against women. This funding provides domestically abused women and children with additional support services. Only 20 states received Violence Against Women grants in 1996. We believe there should be sufficient funding for more states to participate in these programs. Consequently, we have appropriated funds for this effort.

In this amendment, we remain committed to ensuring that the U.S. law enforcement and intelligence community has a comprehensive strategy to combat domestic and international terrorism. In May Congress received from the Attorney General a comprehensive counterterrorism strategy compiled with consultation with other key departments and agencies. During subsequent oversight hearings, it became apparent that vulnerabilities to our national security still exist, especially to the emerging threats from chemical and biological agents and cyber attacks on computer systems within the United States. The hearings also emphasized the need for our efforts to be constantly coordinated among the many participating departments and agencies to make this very critical mission successful. To do this, the conference agreement provides \$32.7 million for the Counterterrorism and Technology Crime Threat.

We remain concerned about the proliferation of illegal drugs coming across our borders and its impact on our children. In an effort to support law enforcement efforts to combat the rampant spread of illegal drugs, the committee devotes \$11 million through the DEA to combat the trade of methamphetamine and \$10 million for efforts to reduce heroin trafficking. The COPS Program includes \$34 million to stop methamphetamine production. We have created a new Caribbean initiative that will disrupt the drug corridors and block the flow of illegal drugs into the United States.

Over the last few years, the infrastructure needs of the organizations funded in this bill have been neglected. We have made a point of providing funds to repair buildings throughout our agencies. Over \$300 million will go to the Federal Bureau of Investigation, the Drug Enforcement Agency, and Bureau of Prisons to make much needed infrastructure improvements.

Regarding the INS, the agreement provides 1000 Border Patrol agents, over \$200 million in new initiatives to

restore the integrity of the naturalization process, and adds 1000 new beds for detention, and the ultimate deportation of criminal and illegal aliens.

As a last mention within the Justice portion of the bill, we have increased funding to \$238.6 million dollars for juvenile justice prevention programs with an additional \$250 million for a new juvenile accountability block grant.

In the area of the Commerce Department, we have made some difficult decisions, but, I think they are constructive ones. We have, for example, provided strong support for the National Oceanic and Atmospheric Administration, which does high quality research and provides technical data important to our economy. The Sea Grant program, which conducts research of regional importance through colleges and universities, is strongly supported in this bill at a level of \$56 million.

The committee amendment provides increased funding for the National Weather Service. Many of us are concerned that the agency have the necessary resources to ensure timely warnings of severe weather, including tornados and hurricanes.

There is \$23.4 million for the U.S. Trade Representative taking into account the amended request made by the President recently.

The Bureau of Export Administration has two new requirements which deserve mention. First, the Department of State's encryption export control responsibilities have been transferred to the Export Administration. Second, with the ratification of the Chemical Weapons Convention, the Export Administration will have primary responsibility for enforcing the convention and is thus provided with \$1.9 million to do this.

And I've kept the best for last—well, at least the issue that seems to have the most interest of late—The Census compromise achieved by the White House and the House leadership—it has two parts. First, it establishes a commission to oversee the Census and report regularly on the conduct of the Census. Second, it establishes fast track procedures for judicial review of sampling.

In the Judiciary portion of the bill, we have had to confront some difficult issues, but, I believe we are providing the American people with a better Judiciary through our efforts. The appropriation is sufficient to maintain current judicial operation levels and takes into account the increase in bankruptcy caseloads and probation population. We are also providing the Justices and judges with the 2.8 percent cost of living adjustment requested in the President's budget.

We have established a commission to study the current structure of the circuit courts, especially the controversial Ninth Circuit. During the 1996-1997 session, the U.S. Supreme Court overturned 96 percent of the decisions they reviewed from the Ninth Circuit. This



high turnover rate is a beacon that the Ninth Circuit is not meeting the needs of the people it serves. The debate over whether to split it has raged for some years. The commission should end the debate over the Ninth Circuit once and for all.

Moving on to the State Department, we have fully funded, to the best of our ability, the operations carried out by this Department. We made sure that the day-to-day functions of the State Department are funded at acceptable levels, and we are trying to upgrade their outdated technology systems. Maintaining infrastructure was a top priority for the Senate this year. We are providing \$21.4 million above the President's request for the Capital Investment Fund so that desperately needed upgrades in information and communication systems can be done.

And as a final noteworthy item, this bill covers the first down payment for U.N. arrears as well as the State Department Reauthorization bill which includes U.N. reform and State Department reorganization, which we have worked so hard to achieve.

That is a quick run down of the Commerce, Justice, State, and Judiciary provisions before us. I want to thank my staff—Jim Morhard, Kevin Linskey, Paddy Link, Carl Truscott, Dana Quam, Vas Alexopoulos, and Luke Nachbar—for all their hard work. They, and their democratic counterparts, have spent long hours drafting this legislation. I believe this amendment contains sound provisions that have been agreed to by both parties. The departments and agencies funded in this legislation can only benefit from the passage of these new funding levels. I urge all of my colleagues to support the passage of this committee amendment.

Just to quickly comment on that section of the bill, the language which is in this bill dealing with the funding for State, Commerce, Justice, is similar to the language which passed this Senate by a 99-0 vote. The language which is before the Senate at this time is language which has been agreed to by the Democratic and Republican members of the Appropriations Committee unanimously. Again, I strongly encourage the Senate to pass it.

At this time, I yield back the time allocated to myself and Senator HOLINGS under the bill.

The PRESIDING OFFICER. Without objection, the time is yielded back.

Who yields time?

Mr. STEVENS. Mr. President, we are awaiting another Member who wishes to ask some questions, so I will not yield my time yet.

Mr. BYRD. Mr. President, I fully support the efforts of the chairman, and I congratulate him for the proposal that he has just described which, if adopted, makes it possible to greatly shorten the process of completion of the remaining appropriation bills.

The pending amendment contains the committee's recommendations for the

remaining three Fiscal Year 1998 appropriation bills, namely, the Commerce/Justice/State, District of Columbia, and Foreign Operations Appropriation Bills. As Members are aware, the Commerce/Justice/State and Foreign Operations Appropriation Bills were passed by the Senate in July of this year and have been in conference with the House. For those two bills, the committee's recommendations include, to a large extent, the agreements reached by the House and Senate conferees. There are, however, certain issues upon which the conferees were unable to reach agreement. For those particular issues, the committee has recommended proposals which we hope will be acceptable to the Senate and, if so, which the House can then accept. The chairman and ranking member of the Commerce/Justice/State Subcommittee, Senators GREGG and HOLINGS, and the chairman and ranking member of the Foreign Operations Subcommittee, Senators MCCONNELL and LEAHY, will make statements regarding their portions of the pending amendment. These very capable chairmen and ranking members have worked tirelessly for months on their respective bills, and they are to be commended by the Senate for their efforts.

For the District of Columbia, as Senators are aware, the Senate has not yet passed the Fiscal Year 1998 appropriation bill. Here again, there are a number of issues which, up to this point, have been unresolved. I am certain that the distinguished chairman of the subcommittee, Senator FAIRCLOTH, and the equally able ranking member, Senator BOXER, will explain in some detail the D.C. portion of the pending amendment and will be prepared to answer any inquiries which Senators may have.

Mr. President, hopefully we are nearing the conclusion of the Fiscal Year 1998 appropriations process. As I have stated, the pending substitute, if enacted, will complete action on the remaining three appropriation bills. Like last year, this has been a very difficult year for the Appropriation Committees. These difficulties, however, like in other recent years, are due largely to attempts to attach controversial legislative riders to appropriation bills. The delays in enacting the remaining appropriation bills are in no way attributable to the chairman or other members of the Appropriations Committee.

In his first year as chairman of the committee, Senator STEVENS has carried out his responsibilities in an outstanding manner. At every step of the process, from the first meeting of the committee this year and throughout all of the hearings and markup sessions that he has chaired, he has shown not only great expertise and skill as it relates to all appropriation matters, but, just as importantly and, perhaps more so, my distinguished friend and colleague from Alaska, Senator STEVENS, has unerringly displayed great patience

and bipartisanship on every occasion throughout this, his first year as chairman of the committee. I know that he would have preferred, as I would, to have the thirteen appropriation bills separately adopted and signed into law. But at this late date, I support the chairman's decision and commend him for bringing this proposal to the Senate that, if agreed to, will enable us to complete action on the remaining bills expeditiously.

It may well be that the House will be unable to agree with every recommendation made in the pending substitute. If that is the case, the House may wish to ask for a conference with the Senate on the matter; or, the House could simply amend the Senate amendment and send the bill back to the Senate without the need for a conference. My point is, that even with the adoption of this proposal, we are not out of the woods. Further action may be required by the Senate. But, I am convinced that if we proceed in the regular manner and continued separate conferences on the Commerce/Justice/State and Foreign Operations Appropriations Bills, and separately complete action in the Senate on the District of Columbia Appropriation Bills, and then conference with the House on it, we may be in for several more weeks of controversy on these outstanding issues on the remaining appropriation bills. Furthermore, there is no assurance that these separate conferences would ever be able to overcome the impasses which have developed and mired them down.

Mr. President, I want the RECORD to show that if given the opportunity to vote on these three appropriation bills separately, I would have voted against passage of the conference report on the Fiscal Year 1998 Foreign Operations Appropriation Bill. At a time when we are under continuing severe budgetary constraints on discretionary spending for our nation's infrastructure—its highways and bridges, water and sewage treatment projects, education and other national priorities—I am opposed to providing appropriations for foreign countries at the same or increasing levels year after year. For example, in my view, the \$3 billion payment to Israel and \$2 billion payment to Egypt should be reduced under the circumstances facing the nation. Even though we are achieving reductions in the Federal budget deficit, we nevertheless still have a Federal debt exceeding \$5.43 trillion and the interest on that debt each year amounting to \$251 billion.

I strongly urge all members to support the chairman of the committee, as well as the chairmen and ranking members of the relevant subcommittees, in the proposal that is before the Senate, and I urge its adoption.

Mr. STEVENS. Mr. President, I call attention to the fact that we will file a statement within 2 days following passage of the bill after the House has acted on the bill, or Congress as a

whole. That will be printed as a document, to be a report for this bill that combines these three appropriations bills.

The Senator from Michigan has 10 minutes. If he wants to use that now, Mr. President, I would be pleased to yield the floor.

Mr. ABRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Michigan.

Mr. ABRAHAM. Mr. President, I thank the Senator from Alaska.

I wish to speak in relationship to this legislation, and in favor in particular of title II of the District of Columbia portion of this legislation.

Title II incorporates an agreement reached recently between House and Senate negotiators to correct provisions in last year's immigration law. These provisions, as they were being interpreted by the Board of Immigration Appeals and others, would have had the effect of changing the rules in the middle of the game for thousands of Central Americans and others who came to the United States because their lives and families had been torn apart by war and oppression and are seeking permanent residency here. That violates the sense of fairness that is so much a part of the American character.

Mr. President, during the 1980s civil wars rocked Central America. These civil wars in Nicaragua, El Salvador, and Guatemala were of great importance to the United States. They critically affected our national security policy, as well as our conception of America's role in the Western Hemisphere.

In 1979, the Sandinistas seized power from Anastasio Somoza. Upon gaining control of the state they carried out a program of land seizure, suppression of civil liberties, and other forms of oppression. They also aligned themselves with the communist government of the Soviet Union. A number of groups formed, seeking to overthrow the Sandinista regime, including some who had played an active role in the overthrow of Somoza on account of his civil liberties violations. These groups ultimately were supported by the U.S. government and became known as the Contras.

The Contras' cause ultimately met with success when, in a stunning upset, Violeta Chamorro defeated the Sandinistas in national elections. But the war, combined with a United States embargo on trade and a series of natural disasters, ruined the economy and added to the unrest that endangered many lives. Approximately 126,000 Nicaraguans fled their homeland, came to the United States, and applied for asylum between 1981 and 1991. That was a quarter of all our asylum applications during that time period.

During that same time, El Salvador experienced a brutal civil war which left tens of thousands dead. Over a quarter of the population were driven from their homes. The economy was

left in a shambles. Faced with these terrible circumstances, and with continual danger for themselves and their families, hundreds of thousands of Salvadorans made their way to the United States. They asked for asylum because they feared death at the hands of the leftist guerrillas partially backed by the Sandinistas in Nicaragua, or at the hands of the military and the extremist death squads. Between 1981 and 1991 approximately 126,000 of these Salvadorans applied for asylum.

During the same era, Mr. President, the people of Guatemala faced similar tragic and extremely dangerous circumstances. Approximately 42,000 of them made their way here and applied for asylum in the United States.

A great many of the Central Americans who came here during this period received some form of encouragement or support from our government for that decision. This started in 1979, when President Carter's Attorney General used his discretionary authority to protect recent arrivals from Nicaragua by establishing an extended voluntary departure program for them. When that program expired, it was extended further through a variety of other congressional and administrative actions.

During the early to mid-1980s, Nicaraguans' claims for asylum had a high success rate, and very few were deported. That success rate began to decline toward the end of the decade. Recognizing the dangers presented by the civil war, however, the Reagan administration in 1987 established a special Nicaraguan Review Program. Based in part on a recent Supreme Court decision bearing on the standard of proof for asylum, the NRP encouraged Nicaraguans to reapply for asylum under the new standard, thereby providing an extra level of review to Nicaraguans whose applications had been denied.

When Violeta Chamorro won the election in 1990, conditions in Nicaragua began to change for the better and the Nicaraguan Review Program began to dissipate. In the meantime, however, many of the Nicaraguans had laid down strong roots here.

The Nicaraguan Review Program was officially ended in 1995. However, the INS established a special phase out program under which Nicaraguans could remain in the country an additional year and receive work authorization. The work authorizations were again renewed in 1996.

There were a number of reasons for this phase out program. But one of its purposes, as expressly stated in agency documents, was to allow the Nicaraguans who had laid down roots here to utilize the additional time to accrue the 7 years they would need to be eligible to adjust their status to legal residents under a procedure called "suspension of deportation." In one form or another, this relief has been in existence for 40 years. In recent times, and until April 1 of this year, it was available to anybody who had been here for

7 years, was of good moral character, and whose deportation would cause extreme hardship to the person or his or her citizen or permanent resident immediate family members.

The Salvadorans and Guatemalans likewise received special protection from U.S. government authorities. Their asylum claims received a less sympathetic hearing initially. As a result, the Salvadorans filed a class suit, known as the "ABC" class action, subsequently joined by the Guatemalans, in which they challenged the way in which their asylum applications were being handled. President Bush's Administration settled this suit by agreeing to readjudicate their claims, and in order to facilitate this Congress gave the class members a special "temporary protected status" in the 1990 Immigration Act. That temporary status was administratively extended in one way or another while the class members awaited their readjudications.

My point, Mr. President, is that during the 1980's people fearing persecution, fearing death squads, fearing disruptions of their communities, came to America and we took extraordinary measures to make it feasible for them to stay here, even if they had been denied asylum through the official asylum-seeking procedures.

At every step of the way, acts of Congress or acts of the executive branch gave these refugees a very clear signal, that they would be able to remain if they played by the rules then in existence. An informal understanding developed that in the absence of some other mechanism being devised, suspension of deportation would be the means through which they would become permanent residents of this country.

That understanding was undermined when last year's immigration bill changed the rules for suspension of deportation. There are good arguments, Mr. President, indeed, I believe, arguments that would ultimately prevail if tested in court, that those changes were not intended to operate retroactively. That, however, was not the view of some of the leading sponsors of these changes, nor was it the initial view of the INS or the Board of Immigration Appeals. As a result, these Central American refugees—as well as refugees from other countries in like circumstances—face the realistic prospect that a retroactive change in our laws might uproot them yet again.

I am happy to say that, under the negotiated arrangement with the House, this will not happen. The U.S. government will keep its word to Central Americans.

Under the version of the legislation incorporated into this bill, Nicaraguans who were in the United States prior to January 1, 1995 will be permitted to adjust to permanent residence—and get green cards—if they have maintained a continuous presence here. The same right will be extended to their Nicaraguan spouses and children.

In addition, Salvadorans, and Guatemalans who either applied for asylum before 1990 or were members of the ABC class action suit settled with the U.S. Government, as well as members of their families, will be entitled to receive a hearing on their claims for suspension or withholding and adjustment under rules similar to those in effect prior to the 1996 immigration law. Nothing in the amendment precludes the Government from adapting those rules further to the special circumstances of that class.

Similar relief will be available to those who fled communist regimes in Eastern Europe and the former Soviet Union by December 31, 1990, and filed an asylum claim by December 31, 1991. They too will be able to seek suspension of deportation or withholding of removal under the rules similar to those in effect before passage of last year's law.

This relief also improves current law as applied to the members of these groups in two other respects. First, members of these groups will be eligible to have their cases adjudicated under the more generous rules whether or not they were in deportation proceedings as of the effective date of last year's immigration law. That makes good sense. There is no reason to apply the more generous rules to someone who filed an asylum application, lost on it, and was placed in deportation proceedings, while subjecting to the new rules someone who filed an asylum application at the same time and whose asylum claim has yet to be adjudicated.

Second, none of these refugees will be subject to the 4,000 cap last year's law placed on the number of adjustments that may be granted in any given fiscal year. Thus they will not have to wait in line for a number to become available before their application may finally be acted on. With Central Americans and Eastern Europeans being placed outside the cap, it is expected that the 4,000 ceiling will accommodate the ordinary flow of successful applicants. Should there be more favorable adjudications than 4,000 in any fiscal year, the legislation assumes the INS will continue with its present approach of only issuing conditional grants until a number becomes available. Thus no one who would be the beneficiary of a favorable adjudication would be forced to depart because of the cap's having been reached.

When the outlines of an agreement along these lines first emerged in the House, it included a proposal to eliminate an entire category of legal immigration, albeit a relatively small one, as the price for allowing these people to seek to stay under the rules they had been told would apply to them. Under the final version of the agreement embodied in this amendment, there will be no elimination of any legal immigration category. There will be a temporary reduction of no more than 5,000 visas per fiscal year in the

"other workers" employment-based immigration category, but only after those now in the backlog receive their visas. There will also be a temporary reduction of not more than 5,000 visas per fiscal year in the Diversity visa program. These temporary reductions will last until the cumulative total of these reductions equals the number of Salvadorans and Guatemalans who ultimately adjust to permanent residence. The numbers will be taken evenly out of the two categories.

The legislative process of necessity involves compromise. The version of this legislation before us today contains some provisions that were not in Senator MACK's original proposal. I am quick to say I preferred the original for that reason. First, while I think that temporary reductions in legal immigration categories are far superior to elimination of any, as the House originally proposed, I am not persuaded that we should be doing either. Moreover, since we have current categories with unused visas, if we must turn anywhere to "borrow" visas for these refugees, an approach that I feel is at odds with our humanitarian traditions, I would prefer to borrow any unused visas from the previous fiscal year before making any reductions.

Second, while the legislation makes clear that no retroactive change is to be made in the standards for suspension of deportation as applied to Central American, Eastern European, and Soviet asylum applicants, it also makes clear that we are retroactively changing those standards for everybody else. I see no reason to do so. I have opposed the retroactive application of this provision to all individuals, regardless of their nationality. This is not because I take issue with the objective I believe the House is seeking: to make it harder for some people who have been abusing the rules by dragging out their deportation proceedings in order to accrue the 7 years they need for suspension of deportation. The problem is that the legislation does not and cannot distinguish between those who have been taking advantage of this loophole and others who have done nothing wrong and who have been stuck in administrative backlogs through no fault of their own.

Retroactivity is particularly unjustified with respect to refugees from countries not covered by this compromise who have equities similar to those of the Nicaraguans, Salvadorans, and Guatemalans. In recent years, many people came to the United States under a legal or quasi-legal status, fleeing tyrannical regimes that were either enemies of the U.S. or allies whose domestic abuses were countenanced because of the country's strategic significance in the struggle for world freedom going on at the time. The retroactivity may force some of these people to leave despite the roots they have laid down and the fact that the conditions they are returning to remain dangerous.

Despite these reservations, I support this agreement. On the whole it will advance the cause of fairness and the promise that America will make good on its commitments better than if we were to do nothing. It will free a large number of people from the threat of immediate deportation. It will allow some of them to adjust to legal status and assure others of a fair hearing on their effort to do so. Accordingly, Mr. President, I urge adoption of this legislation.

I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from California.

Mrs. BOXER. Mr. President, I am very pleased to be here, even though it is 7 o'clock on Sunday night, to finally finish up the D.C. appropriations bill. When Senator FAIRCLOTH and I started working together on this, it was way back in the summertime, and in September our bill, this D.C. appropriations bill, was voted out of committee.

It was very easy to do that because the mayor, the city council, the control board, all agreed on the D.C. budget. We basically put it in this bill and we followed on the authorizing committees which had passed the National Capital Revitalization and Self-Government Improvement Act. So what we did was to carry forward the will of this Congress and the will of the people of D.C. as repleated by their control board, their city council, and their mayor putting together a consensus balanced budget.

That all was fine until we came to the floor and, of course, suddenly this bill became a very attractive sort of Christmas tree, way before Christmas, and Senator FAIRCLOTH and I found ourselves looking at each other as the debate swirled around us on immigration, on school vouchers and other things that we really did not anticipate being a part of this bill.

The two of us had very much wanted to move it forward, and I was very candid at the time that there were a couple of provisions in this bill that I was not happy about because I did not think it showed enough respect for the women of D.C. in terms of their right to choose and to those who are seeking recognition of domestic partners, which I think is a local issue.

But I stated at that time that majority rules, and I was not going to hold up the bill because I did not agree with these things, and so we were ready to move forward.

I am very pleased tonight that we have a resolution on the immigration portion. It was a very legitimate issue that was raised by Senators KENNEDY, MACK, and GRAHAM, and I think Senator ABRAHAM was very eloquent on the point that there were in fact refugees who came from Nicaragua, Cuba, El Salvador, and Guatemala who were going to be thrown out of the country without any sort of hearing whatsoever. Senator MOSELEY-BRAUN has raised the issue of Haitians in a similar

situation. Although this bill is silent on that, I think we have found other ways to handle her concerns. So it appears to me that we are on our way to having a bill for the people of Washington, DC, and the children of Washington, DC, who desperately deserve to have this bill completed.

The issue of vouchers was handled, I thought, in quite a diplomatic way, which was to remove it from this bill and send it forward to the President as a separate vehicle. I think that really is a way to resolve the problem which right now is very contentious on both sides.

So, Mr. President, I do not have any further comments to make at this time. I stand ready with my colleague from North Carolina to vote on this tonight. I understand we will voice vote it. I understand there are some colleagues who have other things they wish to discuss. I know Senator WYDEN had a provision in the bill, which I strongly supported, dealing with the end of anonymous holds that we have had as a Senate prerogative around here. That appears to be an issue of contention that is no longer in the bill.

So at this time I retain the remainder of my time in case colleagues come over and need it, but at this time I yield the floor.

Mr. President, with the understanding that Senator STEVENS is going to enter into a colloquy with Senator WYDEN, I yield back the remainder of my time.

Mr. STEVENS. Mr. President, I yield such time to the Senator from Oregon as he wishes. I know he has a matter he wishes to discuss, and Senator BYRD and I have time so he can use whatever time of that he wishes.

The PRESIDING OFFICER. The Senator from Oregon is recognized.

Mr. WYDEN. I thank the Chair. I thank the chairman of the Appropriations Committee. He has been exceptionally kind to me as a new Member of the Senate. I thank him for yielding to me this time.

Mr. President, I ask unanimous consent at this time that I be permitted to offer my amendment to prohibit secret Senate holds which was agreed to previously in the Senate D.C. appropriations bill.

Mr. STEVENS. Mr. President, I object.

The PRESIDING OFFICER. Is there objection?

Mr. STEVENS. I do object.

The PRESIDING OFFICER. There is objection.

Mr. WYDEN. Mr. President, then in light of the time that the chairman of the Appropriations Committee has kindly yielded to me, I should like to take a few minutes to describe why I think this issue is so important.

Mr. President and colleagues, I spoke yesterday afternoon in this body on the need to end Senate secrecy. Within an hour of my talk, three of the most senior Members of the Senate came to me and said they hoped this amendment would prevail.

These three Members probably have an aggregate total of 60 years seniority in this body, and each of them told me that they had been frustrated by instances of this hide-and-seek process that the Senate now has with secret Senate holds.

Certainly most of the American people are not aware of what a hold is. But the fact of the matter is, it is now possible for any Member of the U.S. Senate to unilaterally block the consideration of a bill or nomination from coming to this floor. It is an extraordinary power. It keeps the U.S. Senate from even discussing a nomination or a particular bill. It is one thing to object to something, or plan to vote against something. But in the case of the secret Senate hold, one Member of the U.S. Senate, one Member, can block the consideration of a nomination or bill. And during these last days of a session, this power is not just extraordinary, it is essentially a veto. It is a power that is unbeatable.

I would just say to my colleagues that, as a new Member of the U.S. Senate, every day I am impressed by the greatness of this institution. And I don't think that the greatness of this institution will in any way be diminished if this body is open and accountable. I think that is why senior Members of the U.S. Senate have come to Senator GRASSLEY and myself and said, "I hope you prevail on this."

We are not seeking to block the right of a Senator to impose a hold. Under what we have proposed, each Member of the U.S. Senate could still use the hold, block the consideration of a nomination or bill. All we are saying is that it cannot be done behind closed doors. This Senate secrecy doesn't smell right. It doesn't pass the smell test to the American people. What Senator GRASSLEY and I have proposed is that within 48 hours after a Member of the Senate informs the leadership that he or she is going to put a hold on a bill, that be so noticed in the CONGRESSIONAL RECORD.

Recently there were more than 40 holds. Outside, much of the day, has been a group of people, outside the Chamber, simply trying to keep track of all the revolving holds, where a Senator imposes a hold for a short period of time and then, in effect, another Senator comes along and imposes a hold again. Outside the Chamber throughout this day there have been individuals trying to keep track of what is going on.

I would say to my colleagues, I subscribe to the not exactly radical notion that public business is done in public. The use of this hold in the last few days of a session is not just some small thing. It is an extraordinary power. It can affect millions of dollars. It can affect the course of the judiciary and other key executive branch appointments. I am very concerned that at a time when the public is so skeptical and so cynical about Government, that this use of the secret hold simply feeds

that cynicism. It contributes to the sense that the American people have that so much in Washington, DC, is not on the level.

So, I am very grateful to Chairman STEVENS for giving me this time to explain my point of view. Senator GRASSLEY and I have indicated that we will be back. We will be back at the beginning of next session. I have tried for almost 15 months to get this issue before the U.S. Senate. The fact is, it is most abused right at this time, which is why we saw last week more than 40 holds. It was the subject of a hilarious press conference with the Senate minority leader, who said then that he couldn't figure out where all the holds were coming from.

So Senator GRASSLEY and I are not going to prevail tonight. I think that is bad news for democracy. I think the secret hold cheapens the currency of democracy. But we will be back. We will be back until we make this institution more open and accountable.

Senator STEVENS has been kind to give me all this time to explain my views. I appreciate that courtesy very much and I thank him for the time.

The PRESIDING OFFICER (Mr. ENZI). The Senator from Alaska.

Mr. STEVENS. Mr. President, I regret that I have objected to the amendment. I tell my friend from Oregon that the practice that he seeks to change is embedded in our rules; not in any law. During the period of time that I served here, 8 years as whip, Republican assistant leader, 4 years in the minority and 4 years in the majority, we had a different way at that time of handling what is now known as a hold.

A hold is nothing more than an agreement of another Senator to object on behalf of a Senator at the request of the second Senator to prevent a unanimous consent agreement from coming into play. There is nothing in the rules about holds. It is a practice that has built up. To try to pass a law to deal with a practice of the Senate—I would call to the attention of the Senator from Oregon, there is a law that Congress cannot sit in Washington after July 31st. It has been the law for many years.

We will not change the practices of Senate by law. What we have to do is get some rule changes, or a standing order that would apply to Senators. But the issue is whether a Senator in each instance, in this case whether the leaders, may object on behalf of a Senator who says, "I want to object and I may not be there at the time the subject comes up, and I want you to object for me." That is known as a hold today.

When I first came to the Senate there was an official objectors' committee. It was unofficial in that sense, but on each side they had two or three Senators who agreed to be on the floor. At any time, one of them was here. And they objected to unanimous consent requests if they had been requested to do so by Members.

It later became a prerogative of the leadership to do that. I think I would have to rely on my friend from West Virginia to give the complete history of it. I do not have the memory that he has. But I can assure you that he will instruct us one of these days about the history of this practice.

But I do regret having to object. I understand what the Senator from Oregon and the Senator from Iowa are trying to do. I wish them success, because I find holds to be very burdensome to deal with, whether it's from the leadership point of view or the point of view of a chairman of a committee.

Mr. WYDEN. Will the chairman yield briefly for just a moment?

Mr. STEVENS. Just for a few minutes, because I agreed to go to dinner with my wife tonight. If the Senator will be short, I will be glad to yield.

Mr. WYDEN. I thank the chairman. Far be it from me to interfere with that.

First, I thank the chairman for his courtesy and say I would very much like to work with him, to get this practice changed. I have, in fact, spent a considerable amount of time with Senator BYRD on this. He was very helpful as well.

I would finally say to the chairman that with respect to this matter of courtesy, I and Senator GRASSLEY have no concern about that. Of course the hold, if we are talking about a few days or a few hours as a courtesy, is not what is at issue. It is when a Senator digs in to try to block a bill that there ought to be some public disclosure.

But to me the chairman has been very helpful, not just on matters from our committee like Internet and the like, but generally. I want to tell him I am very interested in working with him on it because I think this is an opportunity to keep the greatness of this institution and still make it more open and democratic. I thank him for all the time.

#### CENTRAL AMERICAN REFUGEES

Mr. KENNEDY. Mr. President, this appropriations bill contains immigration provisions to provide much-needed protection from deportation for Central American refugee families and an opportunity for permanent residence in the United States under our immigration laws.

This legislation is an important step, and I commend Senator MACK and Senator GRAHAM for their extraordinary work and leadership in helping these refugee families and for bringing this issue before the Senate.

I deeply regret, however, that these provisions don't go far enough. Last year, Congress changed the rules and broke the faith with thousands of refugee families from Central America and Haiti who fled civil war, death squads, and oppression. They found safe haven in America, and they have contributed significantly to the United States and to communities across the country.

They were allowed to remain in the United States under bipartisan immi-

gration rules established by President Reagan, affirmed by President Bush, and reaffirmed by President Clinton.

But last year, the Republican Congress withdrew the welcome mat. Now, these deserving families who have suffered so much are suddenly faced with deportation. They had been promised their day in court, but that day has been unfairly denied.

This legislation is a frank admission by the Senate that last year's immigration law treated these families unfairly, and that something must be done to correct this grave injustice.

But instead of correcting the injustice for all refugees, Republicans now propose to pick and choose among their favorite Latino groups, and deny any relief to Haitian refugees at all.

Republicans want a blanket amnesty for Nicaraguans and Cubans, but far less for Salvadorans and Guatemalans who also faced oppression and civil war.

They also provide protection from deportation for Eastern European refugees, but nothing for those who fled for their lives from Haiti.

The Republican proposal is unjust and shamefully discriminatory. These refugee groups faced similar circumstances and have a similar history. First the Reagan administration, then the Bush administration, and then the Clinton administration assured them that they could apply to remain permanently in the United States under our immigration laws. Under those laws at that time, if they have lived here for at least 7 years and are of good moral character, and if a return to Central America or Haiti will be an unusual hardship, they are allowed to remain.

Last year's immigration law eliminated this opportunity for these families by changing the standard for humanitarian relief. It said the families had to live here for 10 years, not just 7, to qualify to remain. It created a much higher standard for proving that their removal from the United States would pose a great hardship to the family. It limited the number of persons who could get relief from deportation to only 4,000 per year. All other families would be deported, even if they otherwise qualified for relief under this program.

Americans across the political spectrum have called on Congress to ensure that the rules are not changed unfairly for these families. President Clinton has urged Congress to give them the day in court they have been promised for the past decade.

They include people such as Zulema, who fled to Miami in 1986 to escape civil war. Her husband and four children are all legal permanent residents of the United States. They have their green cards. Two of the children are now serving in the U.S. Army and have been stationed in Bosnia. But Zulema still does not have her green card and faces deportation.

Her family escaped war and persecution. They rebuilt their lives in Amer-

ica. Her children have put their lives on the line in Bosnia in service of their adopted country. It is unfair to suddenly change the rules and deport their mother.

Roberto, age 6, was abandoned by his parents in El Salvador during that country's tragic civil war. He came to the United States and was raised here by his aunt, who is an American citizen. Today, he is 18 years old and a freshman at Middlebury College in Vermont. He is an honors student planning a career in medicine. His only memories of El Salvador are of the war. He does not even know if his parents are still alive. Roberto, too, faces deportation.

These are the kinds of persons we are talking about. They have played by the rules laid down by both Republican and Democratic administrations. They have obeyed the law. They have made worthwhile contributions to our communities. In fact, the assistant manager of Dade County in Florida estimates that Dade County would lose \$1 billion in revenue if these families are forced to leave.

But while offering assistance to Central American refugee families, the provisions of this amendment contain troublesome inequities that cannot be ignored.

The Republican bill provides for case-by-case consideration of the applications of refugees from El Salvador or Guatemala. Under current INS practices, less than half of those eligible to apply are expected to get their green cards. But refugees from Nicaragua and Cuba get a blanket amnesty.

Refugees from all four countries fled violent civil wars, death squads, rogue militias, and violations of their basic rights. Their families suffered persecution and death threats. Once here, they followed the rules laid out by our Government. But now, one group gets green cards—no questions asked—while the other is considered only on a case-by-case basis.

I am also concerned that this legislation does not also help refugees from Haiti. In the Bush administration—and again in the Clinton administration—Haitian refugees, like Central Americans, were granted temporary haven in America from the rampant persecution and violence in Haiti. Many Haitians risked their lives by opposing the forces of oppression in their country and standing up for democracy and freedom. Yet, this amendment does nothing for these deserving families. They deserve their day in court, too.

Congress should act on behalf of these Haitian families too, and I hope we will do so before the session ends.

Once again, I commend Senator MACK and Senator GRAHAM for their leadership on this important issue.

I regret, however, that the Republican leadership did not see fit to allow us to offer amendments to ensure equal treatment for all Central American and Haitian refugees.

Mr. KOHL. Mr. President, my thanks to the chairman and ranking member

for their hard work on the District of Columbia appropriations bill and for working with me on an amendment of vital importance to the children and families of the District. I am very pleased that they have agreed to accept my amendment which would allow the District to increase the number of monitors and inspectors responsible for upholding safety and quality standards in day-care centers and home-care operations across the city.

Mr. President, in early October we all had the occasion to read an extremely troubling article on the front page of the Washington Post. As part of a series on welfare reform implementation, the Post discussed the deplorable and unsafe conditions at many District day-care facilities. Many of the problems could be traced to the fact that the people and resources dedicated to overseeing child care centers in the District are woefully inadequate.

We learned that of the approximately 350 public day-care centers in the District of Columbia, more than half are operating without proper licenses. The primary inspection agency has been without a supervisor for almost a year and a half. There are only five inspectors charged with issuing and enforcing licenses to District child care centers, and only three people in charge of certifying which centers should be eligible for public funds. Those who are clearly suffering as a result are the children, far too many of whom are spending their days in an environment where they are unstimulated, uncared for, and even in mortal danger.

The availability and regulation of quality day-care centers and home-care operations in the District and across the country is a crucial component of successful welfare reform. Simply put, welfare reforms will not succeed unless moms and dads across the country have a safe place to leave their children while they are out earning paychecks.

Not only that, welfare reform has and will continue to increase greatly the demand for day-care slots. In the District alone, it is predicted that 4,000 additional slots will be needed to accommodate the schedules of working parents. That number mirrors the situation in the city of Milwaukee in my home State of Wisconsin. As more, new child care centers spring up to meet this new demand, tough, consistent licensing standards, applied and enforced by an adequate number of inspectors, are essential to avoiding more tragedies like we are witnessing in the District.

I am a supporter of welfare reform because I believe the family is strengthened by work. But that premise is destroyed—and the success of true reform, jeopardized—if we force parents to choose between work and the basic safety of their children. As a society, we have a responsibility to help American families become independent, unified, and strong by moving them off welfare and into the work-

place. As a people, we have a moral duty to ensure that children of those families are safe and nurtured while their parents work. We will have crippled more than just welfare reform if, because of inadequate attention to the quality of child care in this country, we force parents to turn their children over to dangerous, deplorable child care situations.

I am very pleased that the Senate has agreed to incorporate my amendment into the spending legislation for the District of Columbia. Obviously, this is a crisis situation which the additional staff will help address.

That said, much more needs to be done. This problem goes way beyond a question of mere staffing numbers. As such, in addition to this amendment, the chairman and I will be writing a letter to the Control Board to ensure that oversight and proper licensing and enforcement of safety and quality regulations by District agencies is an integral part of the comprehensive management reform plans scheduled to be unveiled in December.

Specifically, we will press the Control Board on procedures for day-care center and home day-care licensing, rates of inspection, the effectiveness of safety and quality standards at day-care centers and home day-cares, the effectiveness of public subsidy and case referral services in the District day-care system, the effectiveness of the current system of public oversight of day-care center and home day-care operations as conducted by the Department of Consumer and Regulatory Affairs and the Department of Human Services, and appropriate staffing levels at these agencies.

Again, I am pleased that the Senate has agreed to my amendment. I consider it to be one of many steps we need to take on this very important issue. I look forward to working with the District on finding solutions to this and other pressing problems relating to the quality of life in our Nation's Capital.

Thank you.

#### ARMY CORPS OF ENGINEERS FUNDING

Mr. GORTON. Mr. President, I rise for two brief colloquies with the distinguished chairman of the Appropriations Committee. I first want to bring to the distinguished chairman's attention some confusion regarding the committee's intent for approximately \$6 million of the Army Corps of Engineers' budget. This money was intended to fund a very important project in Washington State. Unfortunately, we have been informed by the local Corps of Engineers office that without more specific direction from Congress, the agency cannot spend these funds. The Senate accepted the House position on this project, which was to provide \$6 million for the Corps of Engineers to extend the south jetty at the Grays Harbor project to provide

a permanent solution to the ongoing erosion problem. Would the chairman agree that my description of where these funds will be spent is consistent with the Conference Committee's intention?

Mr. STEVENS. The Senator is correct. The conference committee intends for the \$6 million to be allocated to extend the south jetty at the Grays Harbor project to provide a permanent solution to the ongoing erosion problem.

Mr. GORTON. Thank you, Mr. Chairman. My second colloquy pertains to an additional \$2 million from the Corps budget that should be allocated to dredge, monitor, and maintain the channel to determine the potential for cost effective maintenance near the Willapa River. Regrettably, the direction that our committee gave the Corps did not adequately distinguish between two phases of the Willapa Project. The first phase, which called for beach nourishment to protect the highway from wave erosion has been completed. The second phase, calling for channel dredging, monitoring and maintenance, has yet to be started. It was the original intention of the project proponents that the \$2 million allocated for this project be directed to its second phase. The local office of the Corps of Engineers has indicated that it can spend the funds appropriately, provided it be given the necessary direction by Congress. Mr. chairman, given this misunderstanding, do you have any objection to the Corps using these funds for this purpose?

Mr. STEVENS. I have no objection to the Corps using the funds for that purpose. We have allocated significant funding for these projects and it is very important to ensure the funds are not wasted on needs which have already been addressed.

Mr. GORTON. Thank you very much for the clarification, Mr. chairman. I greatly appreciate the Chairman's efforts on these two projects which address important economic, environmental, and public safety needs in southwest Washington. I also want to commend the chairman of the Energy and Water subcommittee, Senator DOMENICI, whose efforts were crucial to securing the necessary funds.

Mrs. MURRAY. Would the Chairman yield?

Mr. STEVENS. Of course.

Mrs. MURRAY. I would like to thank the distinguished chairman for his hard work on this bill and for his clarification here today. These projects will accomplish a great deal for two communities in southwest Washington state and I appreciate his hard work, as well as that of the subcommittee chairman's.

Mr. MACK. Mr. President, I ask unanimous consent that a section by section analysis of Title II of the D.C. appropriations portion of the omnibus appropriations bill be printed at this point in the RECORD.

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

EXPLANATORY MEMORANDUM REGARDING  
TITLE II OF THE D.C. APPROPRIATIONS PORTION  
OF THE OMNIBUS APPROPRIATIONS BILL  
SUBMITTED BY MESSRS. MACK, GRAHAM,  
ABRAHAM, KENNEDY, and DURBIN

#### PURPOSES OF THE BILL

The purpose of this Act is to ensure that nationals of certain specified countries who fled civil wars and other upheavals in their home countries and sought refuge in the United States, as well as designated family members, are accorded a fair and equitable opportunity to demonstrate that, under the legal standards established by this Act, they should be permitted to remain, and pursue permanent resident status, in the United States.

In recognition of the hardship that those eligible for relief suffered in fleeing their homelands and the delays and uncertainty that they have experienced in pursuing legal status in the United States, the Congress directs the Department of Justice and the Immigration and Naturalization Service to adjudicate applications for relief under this Act expeditiously and humanely.

#### SECTION-BY-SECTION ANALYSIS

##### Section 201—Short title

This Act may be cited as the "Nicaraguan Adjustment and Central American Relief Act."

##### Section 202—Adjustment of status of certain Nicaraguans and Cubans

This section provides for Nicaraguans and Cubans who came to the United States before December 1, 1995 and have been continuously present since that time to adjust to the status of permanent residents provided they make application to do so before April 1, 2000. The Act also extends this benefit to the spouses, children, or unmarried sons or daughters of those individuals. This portion of the Act is modeled on the Cuban Adjustment Act.

##### Section 203—Modification of certain transition rules

Section 203 of the bill modifies the transition rules established in Section 309 of the Illegal Immigration and Immigrant Responsibility Act of 1996 ("IIRIRA"), Public Law No. 104-208; division C; 110 Stat. 3009-627.

Section 203(a) amends the transition rule governing eligibility for suspension of deportation for those who were in exclusion or deportation proceedings as of April 1, 1997, the effective date of IIRIRA. Under the rules in effect before then, on otherwise eligible person could qualify for suspension of deportation if he or she had been continuously physically present in the United States for seven years, regardless of whether or when the Immigration and Naturalization Service had initiated deportation proceedings against the person through the issuance of an order to show cause ("OSC") to that person. As a result, people were able to accrue time toward the seven-year continuous physical presence requirement after they already had been placed in deportation proceedings.

IIRIRA changed that rule to bar additional time for accruing after receipt of a "notice to appear," the new document the Act created to begin "removal" proceedings, the repatriation mechanism IIRIRA substituted for deportation and exclusion proceedings. Over a strong dissent, a majority of the Board of Immigration Appeals in *Matter of N-J-B* interpreted IIRIRA Section 309(c)(5) to apply not only prospectively in removal cases initiated by means of this new document but also retroactively to those who were in exclusion or deportation proceedings

initiated by an order to show cause. On July 10, 1997 Attorney General Reno vacated and took under review the BIA's decision in *Matter of N-J-B*.

Section 203(a) generally codifies the majority decision in *Matter of N-J-B* by stating explicitly that orders to show cause have the same "stop time" effect as notices to appear. Excepted from retroactive application of the "stop time" rule are (1) those whose cases are terminated and reinstituted pursuant to IIRIRA Section 309(c)(3); and (2) those who, based on their special circumstances, are eligible for relief from repatriation under this Act, as described below.

As defined in Section 203(a) of the Act (amending IIRIRA Section 309(c)(5)), those who are eligible for relief under the Act (referred to hereinafter as "Eligible Class Members") include:

Salvadorans who entered the United States on or before September 19, 1990 and who, on or before October 31, 1991, either registered for benefits under the settlement agreement in American Baptist Churches, et al. v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991) (the "ABC Settlement") or applied for temporary protected status.

Guatemalans who entered the United States on or before October 1, 1990 and registered for benefits under the ABC Settlement.

Salvadorans and Guatemalans not included in the foregoing groups but who applied for asylum on or before April 1, 1990.

Nationals of the Soviet Union (or any of its successor republics), Latvia, Estonia, Lithuania, Poland, Czechoslovakia (or its successor republics), Romania, Hungary, Bulgaria, Albania, East Germany and Yugoslavia (or its successor republics) who entered the United States on or before December 31, 1990 and applied for asylum on or before December 1991.

Under Section 203(a) of the bill, the foregoing Eligible Class Members may pursue and be granted suspension of deportation or cancellation of removal without having their continuous physical presence in the United States terminated as of the date of service of an order to show cause or notice to appear. As Section 203(a)'s amendment to section 309(c)(5)(C)(i) of IIRIRA makes clear, these class members are eligible for this treatment even if they were not in proceedings on or before April 1, 1997.

Also eligible for relief from repatriation under this Act are those who, at the time an Eligible Class Member is granted relief from repatriation under this Act, are either (1) the spouse or child (as defined in Section 101(b)(1) of the Immigration and Nationality Act) of such person; or (2) the unmarried son or daughter of such person, provided that, if the unmarried son or daughter is 21 years of age or older when the parent is granted relief under this Act, the son or daughter must establish that he or she entered the United States on or before October 1, 1990.

Those who otherwise would be eligible for relief but have been convicted of an aggravated felony (as defined in Section 101(a) of the Immigration and Nationality Act) are not eligible for relief. Moreover, those deemed ineligible for relief under this Act may not seek judicial review of this decision.

Section 203(b) of the bill adds a new subsection (f) to the IIRIRA Section 309 transition rules. Under this new provision, Eligible Class Members who were not in exclusion or deportation proceedings as of April 1, 1997 may apply for cancellation of removal—the relief from repatriation replacing "suspension of deportation," which was available under the pre-IIRIRA rules—and adjustment to permanent resident status under a special set of standards, subject to the following limitations:

Generally speaking, Eligible Class Members will be eligible for cancellation of removal and adjustment of status if they can establish that: (1) they have been physically present in the United States for a continuous period of seven years immediately preceding the date of application for relief; (2) they have been of good moral character during that period; and (3) removal would result in "extreme hardship" to the person or to a spouse, parent or child who is either a U.S. citizen or lawful permanent resident.

Those who are inadmissible or deportable because of certain offenses—including engaging in certain activities threatening U.S. national security (8 U.S.C. §§212(a)(3), 237(a)(4)); conviction of an aggravated felony at any time after admission (8 U.S.C. §237(a)(2)(A)(iii); or participating in the persecution of others (8 U.S.C. §241(b)(3)(B)(ii))—are ineligible for cancellation of removal and adjustment of status.

Those who are inadmissible or deportable because of certain other offenses—including engaging in specified criminal activity (8 U.S.C. §§212(a)(2), 237(a)(2)); or failure to comply with certain INS rules, including engaging in document fraud (8 U.S.C. §237(a)(3))—are eligible for cancellation of removal and adjustment of status if they can establish that (1) they have been physically present in the United States for a continuous period of ten years immediately following the event that otherwise would constitute a ground for removal; (2) they have been a person of good moral character during that period; and (3) removal would result in exceptional and extremely unusual hardship to the person or to a spouse, parent or child who is either a U.S. citizen or lawful permanent resident.

These standards generally echo the standards for suspension of deportation that had been in effect until IIRIRA. Nothing in these standards is intended to preclude the Attorney General from adapting the procedures under which Eligible Class Members' applications for cancellation or suspension are to be adjudicated in a manner appropriate to the circumstances of the individuals whose cases are before her. These cases have already been drawn out enough as a result of the uncertainties about the applicable standard brought about by the changes to the law made by IIRIRA and uncertainties about the meaning of those changes.

In particular, given the special solicitude Congress is showing toward the Eligible Class Members by enacting this legislation in large measure to see to it that their claims are fairly adjudicated, it would, for example, be entirely consistent with that intent for the Attorney General to direct INS attorneys to consider the special hardships undergone by them and the fragile economic and political conditions in their home countries as relevant to the extreme hardship determination. For this reason, it would also be appropriate for the Attorney General not to challenge applications for relief by Eligible Class Members on hardship grounds if the applicant satisfies the seven-year presence and good moral character requirements. This would be similar to the approach taken by President Bush in the context of the review of asylum applications by Chinese nationals based on China's policy of forced abortion and coerced sterilization. See November 30, 1989 Memorandum of Disapproval signed by President Bush; December 1, 1989 and January 4, 1990 cables from INS Commissioner Gene McNary to all field offices (File CO 243.69-P); Executive Order 12711 (April 11, 1990); 55 Fed. Reg. 13897 (April 13, 1990). More generally, it would be entirely consistent with Congressional intent for the Attorney General to establish procedures that keep to a minimum the burdens an applicant of good



character has to shoulder in order to qualify for relief, both in terms of the paperwork the applicant has to complete and the showings the applicant has to make.

In addition to recognizing the special circumstances to which the ABC class members have been subjected, application of the foregoing approach would greatly reduce the need for protracted analysis of the more subjective aspects of the suspension standard, thereby reducing the administrative burden on the Immigration and Naturalization Service and minimizing further delays in according relief to these individuals. Adoption of such an approach would be entirely consistent with Congress' intentions in adopting this legislation, and with its interest in seeing to it that any future difficulties these people may experience in getting a final resolution of their status here to be kept to a minimum.

Section 203(c) of the bill permits Eligible Class Members previously placed in deportation or removal proceedings who claim eligibility for relief from repatriation under the Act to file a single motion to reopen such proceedings to pursue relief from repatriation; such relief might otherwise have been barred on procedural grounds. The Attorney General must designate a time period not greater than 240 days within which motions to reopen must be filed; the time period must begin within 60 days after the date of enactment of this Act. We note that because a number of the Eligible Class Members arrived in this country with no understanding of the court system and no English, some may have had court proceedings initiated against them and been tried in absentia. Others were minors too young to remember that they had been in immigration court. As a result they may not know that they have final orders of deportation entered against them. We encourage all elements of the Department of Justice and the Immigration and Naturalization Service to work to facilitate making that information available to these individuals, including by affirmatively serving notice on Eligible Class Members subject to such orders. We also note that nothing herein prevents the Attorney General from adopting an approach to the deadlines set out here consistent with application of ordinary tolling principles. Finally, we note that if an Eligible Class Member files a motion to reopen and it is determined that the applicant would qualify for some other form of relief, such as adjustment on the basis of an approved visa with a current priority date, that could be adjudicated far more easily than a suspension application, that relief may be granted instead.

Section 203(d) establishes certain temporary reductions in the number of visas made available in the "other workers" and "diversity" immigration categories. Beginning in FY 1999, up to 5,000 fewer visas shall be made available on an annual basis in the diversity category. A similar annual reduction shall be made in the "other workers" category, but that reduction shall not begin to be made until everyone with an approved petition for a visa in this category as of the date of enactment of the Act has had a visa made available to him or her. The total reduction in the visas issued under these two categories shall equal the total number of individuals described in subclauses I, II, III, and IV of section 309(c)(5)(C) of IIRIRA, as amended by this Act, who are granted cancellation of removal or suspension of deportation under the Act. Each category shall absorb half of the reductions.

*Section 204—Limitation on cancellations of removal and suspensions of deportation*

IIRIRA established a 4,000-person annual limit on the Attorney General's ability to

grant relief from repatriation. Eligible Class Members and designated family members, as well as those who were in deportation proceedings as of April 1, 1997 and who applied for suspension of deportation under INA Section 244(a)(3) (as in effect before IIRIRA), are excepted from this annual limit.

These exceptions to the 4,000-person limit having been made, it is expected that that limit should accommodate the remaining annual flow of successful suspension and cancellation applications. Should that projection prove erroneous, however, nothing in this Act is intended to prevent the Attorney General and those adjudicating suspension or cancellation applications on her behalf from pursuing the course that she has been following to this time of entering provisional grants of suspension or cancellation of deportation but postponing a final decision on the application until a slot becomes available. In no case is it Congress's intent that an otherwise meritorious application should be finally denied, and the applicant deported or removed, because the 4,000-person limit has been reached.

Mr. BIDEN. Mr. President, I am pleased to support this legislation. Included within this appropriations bill is historic legislation, produced on a bipartisan basis in the Foreign Relations Committee, regarding the institutional structure of, and funding for, American foreign policy. This important legislation to reorganize the foreign policy agencies of the U.S. Government and authorize the payment of U.S. arrearages to the United Nations is similar to a bill approved by the Senate last June by a vote of 90-5. Unfortunately, the bill which the Senate overwhelmingly approved has been bogged down in conference with the other body over an issue which has no relevance to this bill.

I am therefore grateful to the Chairman and Ranking Member of the Appropriations Committee, Senator STEVENS and Senator BYRD, for agreeing to include provisions of our legislation in this bill.

I can assure my colleagues that the decision to include the authorization bill in an appropriations bill was not taken lightly. The Chairman of the Foreign Relations Committee, Senator HELMS, and I sought to do so after careful consultation with the Senate leadership. But because two major elements of this bill are so critical to American foreign policy, the Chairman and I believed that we could not afford to delay this bill until next year. I hope my colleagues will agree.

Specifically, the bill addresses two important issues which were the focus of much heated debate in the last Congress. First, the bill provides for the payment of U.S. back dues to the United Nations, contingent on specific reforms by that body. Second, the bill establishes a framework for the reorganization of the U.S. foreign policy agencies which is consistent with the plan announced by the President last April.

Importantly, the bill also contains sufficient funds to restore our diplomatic readiness, which has been severely hampered in recent years by deep reductions in the foreign affairs

budget. The funding levels in the bill largely mirror the Fiscal 1998 budget request submitted by the Clinton administration. The wide support in this Congress for providing increased funding for foreign affairs is an important achievement, and reverses a troubling trend of the past few years.

Although the cold war has ended, the need for American leadership in world affairs has not. Our diplomats often represent the front line of our national defense; with the downsizing of the U.S. military presence overseas, the maintenance of a robust and effective diplomatic capability has become all the more important. Despite the reduction in our military presence abroad, the increased importance of "diplomatic readiness" to our Nation's security has not been reflected in the Federal budget.

The increase in foreign affairs funding contained in this bill could not have come too soon. According to a report prepared at my request by the Congressional Research Service earlier this year, foreign policy spending is now at its lowest level in 20 years. Stated in fiscal 1998 dollars, the budget in fiscal 1997 was \$18.77 billion, which is 25 percent below the annual average of \$25 billion over the past two decades, and 30 percent below the level of 10 years ago, near the end of the Reagan administration. In fiscal 1997, such funding was just 1.1 percent of the Federal budget—the lowest level in the past 20 years and about one-third below the historical average.

I should remind my colleagues that the bill is truly a bipartisan product. It began with negotiations involving the Foreign Relations Committee and the Clinton administration early in the year. The Senate subsequently passed that bill overwhelmingly in June, by a vote of 90-5. Since that time, several changes have been made as a result of the conference deliberations with our House counterparts and negotiations with the Clinton administration. These were also undertaken in a spirit of bipartisanship. Because of these changes, I am confident that the bill will be acceptable to the President.

Enactment of this bill will mark another important milestone in reestablishing a bipartisan consensus on foreign policy. Like our predecessors five decades ago, we stand at an important moment in history.

After the Second World War, a bipartisan and farsighted group of senators, led by Chairmen of the Foreign Relations Committee such as Thomas Connally and Arthur Vandenberg, worked with the Truman administration to construct a post-war order. The institutions created at that time—the United Nations, the World Bank, the General Agreement on Tariffs and Trade, the North Atlantic Treaty Organization—are still with us today, but the task of modernizing these institutions to make them relevant to our times is just beginning.

For example, the Clinton administration and the Senate are cooperating on

the first significant expansion of NATO—an expansion to the east which will encompass three former adversaries in Central Europe. The Foreign Relations Committee, under the leadership of Chairman HELMS, has initiated a series of hearings on the proposed enlargement of NATO, setting the stage for what I hope will be successful amendment to the Washington Treaty next spring. Similarly, this legislation now before us calls for significant reforms of the United Nations, an important instrument in American foreign policy which has become crippled both by growing U.S. arrearages and an unwillingness within that body to reform. Enactment of this legislation will be an important step forward in resolving both those problems.

Just as we are trying to revise and reenergize international institutions, we must reorganize our own foreign policy institutions. Two years ago, the Chairman of the Foreign Relations Committee put forward a far-reaching plan to consolidate our major foreign affairs agencies—the Arms Control and Disarmament Agency (ACDA), the United States Information Agency (USIA), and the Agency for International Development—within the Department of State. In the context of an election cycle, it was perhaps inevitable that the Congress and the President would not come to agreement on it.

But continued stalemate was not inevitable. With the onset of a new presidential term and the appointment of a new Secretary of State, a window of opportunity to revisit the issue was opened. The Chairman, to his credit, took advantage of this window by urging the new Secretary of State, Madeleine Albright, to take a second look at the reorganization issue. And, to her credit, the Secretary did so; the result was the reorganization plan announced by the President in April. Under the proposal, two agencies—ACDA and USIA—will be merged into the State Department. The Agency for International Development will remain an independent agency, but it will be placed under the direct authority of the Secretary of State.

The legislation now before the Senate closely reflects the President's proposal. The Arms Control and Disarmament Agency will be merged into the State Department no later than October 1, 1998, and the U.S. Information Agency will be merged no later than October 1, 1999. As with the President's plan, the Agency for International Development will remain a separate agency, but it will be placed under the direct authority of the Secretary of State. And, consistent with the President's proposal to seek improved coordination between the regional bureaus in State and AID, the Secretary of State will have the authority to provide overall coordination of assistance policy.

The bill puts flesh on the bones of the President's plan with regard to international broadcasting. The President's plan was virtually silent on this ques-

tion, stating only that the "distinctiveness and editorial integrity of the Voice of America and the broadcasting agencies would be preserved." This bill upholds and protects that principle by maintaining the existing government structure established by Congress in 1994 in consolidating all U.S. government-sponsored broadcasting—the Voice of America, Radio and TV Marti, Radio Free Europe/Radio Liberty, Radio Free Asia, and Worldnet TV—under the supervision of one oversight board known as the Broadcasting Board of Governors. Importantly, however, the Board and the broadcasters below them will not be merged into the State Department, where their journalistic integrity would be greatly at risk.

With regard to the United Nations provision, the bill provides \$926 million in arrearage payments to the United Nations over a period of 3 years contingent upon the U.N. achieving specific reforms. This will allow us to pay all U.S. arrears to the U.N. regular budget, all arrears to the peacekeeping budget, nearly all arrears to the U.N. specialized agencies, and all arrears to other international organizations.

It is difficult to exaggerate the significance of this achievement. We are finally in a position to lay to rest the perennial dispute over our unpaid dues that has severely complicated relations between the United Nations and the United States. This bill would give our diplomats the leverage they need to push through meaningful reforms that promise to make the U.N. a more capable institution.

Two important changes were made to the legislation that cleared the Senate last June. First, the bill now allows the crediting of \$107 million owed to the U.S. by the U.N. against our arrears. Second, it gives the administration added flexibility by allowing the Secretary of State to waive two conditions. The waiver will not apply to the reduction of assessment rates or the establishment of inspectors-general in the specialized agencies. But report language will make a clear commitment that Congress would, if necessary, consider on an expedited basis a waiver on the condition for a 20 percent assessment rate for the U.N. regular budget.

Of course, not everyone is happy with the agreements the Chairman, Senator HELMS, and I worked out. Some would have preferred to see no conditions at all attached to the payment of our debts. Others are unhappy that the United States is paying any arrears whatsoever.

I think it is fair to say that the Chairman and I approached this issue from two very different points of view. I make no excuses for my support of the United Nations. I believe that the U.N. is an indispensable arrow in our foreign policy quiver. The Chairman, I think it is fair to say, has been skeptical of the role of the United Nations.

But despite our differing outlooks, over the course of nearly 8 months of negotiation, dialogue, and old-fashioned bargaining, we each gave some-

thing and got something to return. The Chairman got several important conditions attached to the payment of arrears. Among other items, these include important managerial reforms, assurances that U.S. sovereignty will be protected, and a lowering of our assessment rate from 25 percent to 20 percent of the U.N. regular budget.

For me, it is important that this bill sends a strong signal of bipartisan support for putting our relationship with the United Nations back on track. Restoring our relationship with the United Nations is not a favor to anyone else—it is in our interest.

The United Nations allows us to leverage our resources with other countries in the pursuit of common interests, be it eradicating disease, mitigating hunger, caring for refugees, or addressing common environmental problems. And as the unfolding crisis with Iraq demonstrates, the United Nations can be a useful instrument in our diplomacy. The United States has played a leading role in the United Nations since its founding, and I believe that this legislation will secure that leadership.

While the purists on either side may not be happy with the agreement before us, I believe that we have produced a responsible piece of legislation that warrants the support of our colleagues.

In sum, the bill before the Senate, the Foreign Affairs Reform and Restructuring Act, is a significant achievement. I want to pay tribute to the Chairman for his continued good faith and cooperation throughout this process. I want to thank the President, the National Security Adviser, and the Secretary of State, for their support and assistance during the negotiations. I also want to thank our colleagues in the other body, particularly the ranking member of the International Relations Committee, LEE HAMILTON, who played an important role in pushing for changes to make this proposal more acceptable to the administration.

I believe we have produced a good compromise that a large majority will be able to support. I urge its adoption.

#### AMENDMENTS TO THE PRISON LITIGATION REFORM ACT

Mr. ABRAHAM. Mr. President, the Commerce-State-Justice portion of this bill contains a few technical and clarifying changes to the Prison Litigation Reform Act enacted last year. The Majority Whip of the House of Representatives and I have been working together on this language, and I believe this statement reflects both of our views.

The Prison Litigation Reform Act was specifically designed to protect the Tenth Amendment powers of the sovereign states, to enforce the Guarantee Clause, and to preserve and strengthen key structural elements of the United States Constitution such as separation of powers, judicial review, and federalism. In passing the Act Congress made clear that it intended that the courts enforcing the Act scrupulously ensure

that these goals be accomplished. In order to avoid any possibility of misinterpretation, we are seeking through the language contained in these amendments to clarify that stated intent.

Subsection (a)(3)(F) establishes that a state or local official, including individual state legislators, or a unit of government, is entitled to intervene as of right in a district or appellate court to challenge prisoner release orders or seek their termination. No separate time limits are included because the sponsors think it clear that a court should implement the intervention provisions in a manner that gives them their full effect by ruling in timely fashion on such motions.

Subsection (b)(3) corrects the confusing use of the word "or" to describe the limited circumstances when a court may continue prospective relief in prison conditions litigation. The amendment makes clear that a constitutional violation must be "current and ongoing". Both requirements are necessary to ensure that court orders continue only when necessary to remedy a presently occurring constitutional violation. These dual requirements thus ensure that court orders do not remain in place on the basis of a claim that a current prison condition that does not violate prisoners' Federal rights nevertheless requires a court decree to address it because the condition is somehow traceable to a prior policy that did violate Federal rights. Likewise, the clarification insures that prisoners cannot keep intrusive court orders in place based upon the theory that the government officials are "poised" to resume allegedly unlawful conduct. Congress does not presume that government officials who have been advised that a particular practice is unlawful will automatically return to an unlawful practice unless a court order remains in effect. If an unlawful practice resumes or if a prisoner is in imminent danger of a constitutional violation, the prisoner has prompt and complete remedies through a new action filed in a state or federal court and preliminary injunctive relief.

Finally, these amendments make some changes to the automatic stay provisions in the Act. Under the Act, courts are supposed to rule promptly on motions to terminate these long-standing decrees. In order to discourage delay on such motions, the Act provided that, if a court did not render a decision on the motion within 30 days, the decree was automatically stayed until the court had rendered a final decision. Unfortunately, many district courts are not ruling promptly, are keeping the decrees in effect, and are then seeking violations that justify doing so.

Courts have also been avoiding the automatic stay by saying that it is impossible to comply with because it sets up an impossible timetable and that it is therefore unconstitutional. The Department of Justice meanwhile has

contended that the stay is not really automatic at all, although no court has accepted that view.

The argument that the court is being forced to rule on anything on an unrealistic timetable is incorrect because the automatic stay imposes no requirement that they rule. It only provides that if they do not rule there is no order in effect until they do so. Nevertheless, giving the court the authority to extend the time an additional 60 days should eliminate that basis for challenge. The amendments also clarify that the stay is in fact is automatic by expressly modeling it on the bankruptcy automatic stay, and they state explicitly that any order blocking the automatic stay is appealable, thereby ensuring review of the district court's action. Finally, they make clear that mandamus is available to compel a ruling if a court is simply failing to act on one of these motions.

Mrs. BOXER. Mr. President, I congratulate the chairman and ranking member of the Appropriations Committee for bringing this bill to the Senate. Their leadership will help break the logjam on the remaining 1998 appropriations bills, and I commend them for pushing forward.

While I support most provisions in this multi-title legislation, I must take this opportunity to register my strong disapproval of the provisions in the Foreign Operations title relating to International Family Planning.

The bill provides that for the next two years, it will include the restrictive Mexico City policy, which will prohibit U.S. international family planning assistance from going to any foreign private organization involved in certain abortion-related activities—even though these activities are carried out with non-U.S. funds. This language will cripple the work of many of the private organizations doing the most effective work in family planning and maternal and child health. For example, organizations that seek to advise their governments on how to make abortions safer for women, in countries where abortion is legal, would be restricted from doing so if they receive U.S. money for family planning services. This restriction will only result in more dangerous health conditions for women.

The Mexico City provision does at least include a waiver provision, allowing the President to disregard the policy. However, if he chooses to exercise the waiver, the family planning account will be penalized by being reduced.

Unfortunately, this language is a compromise with those who would terminate international family planning altogether, and thus it is probably the best we can do. I commend the Senator from Vermont, Senator LEAHY, for working so hard to get the best language possible at this time. However, Mr. President, this compromise must go no further. Any movement beyond the language we have included in the

Senate bill will, in my view, seriously jeopardizes passage of the legislation.

Mr. STEVENS. Mr. President, we are waiting for the Senator from Vermont. While I am waiting let me state for the record that the omnibus bill that is here has some additions that were not in the conference reports of the various bills.

We have included the Small Business Administration reauthorization bill, a portion of the State Department authorization bill which deals with reorganization, and with authorization for the United Nations arrearages. We have included the Highway Safety and Transit Contract Authority Extensions, due to the expiration of ISTEA. We have technical corrections to the Department of Defense Authorization Act with regard to land transfer in New Mexico. And we have the agreement that deals with the census provision that was in the State-Justice-Commerce bills that passed the Senate, but it has been altered substantially. I should call attention to that.

Let me ask the Chair, what time now remains on this bill?

The PRESIDING OFFICER. There is 15 minutes for the Senator from West Virginia [Mr. BYRD]; there is 15 minutes for the Senator from Kentucky [Mr. MCCONNELL].

Mr. STEVENS. I am authorized to yield back the time of the Senator from Kentucky and the Senator from West Virginia. I do so.

The PRESIDING OFFICER. There remains 15 minutes for the Senator from Vermont [Mr. LEAHY].

Mr. FORD. Mr. President, may I advise my good friend, the chairman of the Appropriations Committee, that Senator LEAHY has been on the floor. He has been detained just for a few minutes. He is on his way. I don't think he will take his entire 15 minutes, but I would have to hold those minutes for him, if I could.

Mr. STEVENS. Does the Senator from Florida seek to speak?

Mr. GRAHAM. Mr. President, the procedure, which I discussed with the majority leader, was that as soon as we completed action on the District of Columbia appropriations bill, I would be recognized for purposes of offering legislation relative to Haitian immigration. I wonder if it would be an appropriate use of this time, and I so ask unanimous consent, while awaiting Senator LEAHY's arrival, to offer that legislation at this time.

Mr. STEVENS. Mr. President, with the understanding that the Senator from Florida will yield to the Senator from Vermont, in order to finish this bill, when the Senator from Vermont arrives, I suggest the Chair recognize the Senator from Florida.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

Mr. GRAHAM. I ask unanimous consent that the business currently pending before the Senate be set aside temporarily for purposes of introducing

legislation with the understanding that at such time as the Senator from Vermont arrives, the Senator from Vermont will have the floor.

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

Mr. GRAHAM. I thank the Chair.

(The remarks of Mr. GRAHAM pertaining to the introduction of S. 1504 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I compliment the distinguished chairman of the Appropriations Committee, Mr. STEVENS; the distinguished ranking member, Mr. BYRD; and the distinguished chairman of the Subcommittee on Foreign Operations, Mr. MCCONNELL; and all those who worked on it. This has not been an easy time getting this bill through, partly because of holdups in the other body, holdups that tended to disregard, frankly, the democratic process and how we voted here and voted over there. Be that as it may, we have done the best with a difficult situation. I believe this bill should be passed.

INTERNATIONAL FAMILY PLANNING FUNDING

Mr. LEAHY. Mr. President, I want to speak on the issue of funding for international family planning, which is contained in this omnibus bill.

The agreement on the Mexico City policy that was approved by the Appropriations Committee yesterday, is the result of weeks of tortuous negotiations. It would establish the Mexico City policy in statute for 2 years. That is a major concession to the House that is opposed by the administration. It would permit him to waive the Mexico City restrictions.

But there is a penalty if he does. Funding for family planning would be frozen at last year's level, which is the House level and \$50 million below the Senate level.

Even with the waiver for the President, I believe that if the Mexico City issue were voted on separately in the Senate it would be defeated. We are including it as part of this larger package in an effort to pass the Foreign Operations conference report.

It is interesting to me that despite the fact that 5 months ago the Appropriations Committee reported and the Senate voted for \$435 million for international family planning programs with no Mexico City restrictions, despite the fact that the Senate voted the same way in February, and the same way last year, despite the fact that the House and Senate Foreign Operations conferees would have overwhelmingly supported the Senate position if the House leadership had allowed them to vote on it, Members of the House are already saying that they will not accept it because it permits the President to waive the Mexico City restrictions.

Under their approach, the United States could not fund organizations

that support laws to make abortion safer in countries where abortion is legal. And they expect the President, and the Secretary of State who is seen around the world as a champion for women's rights, to accept the Mexico City policy. It completely ignores reality. If they are unwilling to budge we are doomed to failure, because their approach would be vetoed. In fact, I cannot even say that the Mexico City policy with a waiver for the President, as we have done, would not be vetoed.

Mr. President, I was perfectly willing to have a vote in the conference committee, and I am more than willing to vote on this today or next year.

But the House has been unwilling to do that. They prefer to try to thwart the process in other ways.

They are all for democracy in Russia. They are outraged when the Haitian Parliament does not follow the rules. But if they do not have the votes here, they break their commitments, manipulate the parliamentary rules to their advantage, and obstruct the democratic process.

Six years ago we had the votes to defeat the Mexico City policy, which was the policy in effect during the previous administration, just as we have the votes in the Senate today. But we knew our position would be vetoed, and that we could not override a veto.

So rather than bring the Congress to a standstill, we accepted that we could not change the President's policy and we got the Foreign Operations Conference Report passed and signed into law.

Today the tables are turned. The supporters of Mexico City do not have the votes to get it through the Congress, and even if they did they could not override a veto.

But rather than accept that, rather than concede that they cannot win a fair fight, they prevented the conference committee from doing its job, they refused an offer to vote when they knew they would lose, and they tried to force their position through so that we would either have to shut down the government again or swallow their position without an opportunity to amend it.

That is exactly what they did two years ago. The result was that funds for family planning were cut sharply. They tried it again last week, when they sent over the Mexico City policy and tried to jam it through with only Republican names on the Conference Report. They were blocked at the last minute by members of their own party.

Mr. President, the irony of this is that not one dime of our money can be spent on abortion or to lobby for abortion. That has been the law for years.

This issue is about what private organizations, like Johns Hopkins University, like Georgetown University, like the University of North Carolina, like the International Planned Parenthood Federation, do with their own money.

It is about whether we have a policy that says it is okay to give money to

foreign governments in countries where abortion is legal, but it is not okay to give money to private organizations that work in those same countries. It is totally illogical and discriminatory.

The compromise agreement contained in this omnibus bill will make no one happy. I do not like it because it puts into law the Mexico City policy, which I strongly oppose even for two years. Others on this side feel the same way. They see that this is a major concession to the pro-Mexico City faction in the House, and they are right. The administration does not like it either.

It also means that funding for family planning remains frozen at last year's level of \$385 million. That is a \$180 million cut from the 1995 level. I think that is a travesty, when so many people around the world want family planning services and cannot get them. Not abortion. Family planning, so they don't have to resort to abortion.

That is the choice. In Russia, where women had on average 7 abortions in their lifetimes because they had no access to family planning, that number has fallen sharply since we started a family planning program there. It is common sense.

I would like to see twice this amount of money going for family planning, but we have agreed to this level, which is a \$50 million cut from the amount that passed the Senate in July, as part of this agreement to try to finish these appropriations bills.

Mr. President, the House can reject this approach. Perhaps they do not believe the President when he says he will veto the Mexico City policy. I do not know how many times he has to say it.

It was not easy to get here. When there is a Republican in the White House, or the votes change in the Senate, I am sure the other side will want to vote because they will be confident of victory. But that is not where we are today.

I hope the House can improve on this approach. I would be overjoyed if they can find a way to keep the Mexico City policy out of the law entirely, without including the kind of harmful restrictions on the disbursement of family planning funds that were adopted last year. If the supporters of the Mexico City policy want it so badly, why not vote on it?

As I have said time and again, I would prefer to handle this by voting on Mexico City next year. We could agree that if it is defeated in the Senate, the funds would be disbursed on a quarterly basis through the 1998 fiscal year. I know that approach has bipartisan support in the House. In fact, the Chairman of the House Appropriations Committee has suggested that approach. Whether it could win a majority I do not know, but I encourage the House to pursue it.

Mrs. BOXER. Will the Senator yield for purposes of a question?

Mr. LEAHY. Of course, I yield to my friend from California.

Mrs. BOXER. I say to Chairman STEVENS and I know the ranking member, Senator BYRD, and to the Senator from Vermont, thank you for working so hard on this international family planning issue. The Senator is so correct when he says that the Senate has spoken, the House has spoken, and suddenly we find ourselves faced with a situation where the funds for family planning on an international scale will be withheld.

I say to my friend, for the RECORD, because I think it is very important and a lot of people are counting on us, can our friend from Vermont assure us that this agreement that he has garnered working with Senator MCCONNELL is, in fact, the best he thinks he can get at this time?

Mr. LEAHY. It is, but it is not what I would want. I would prefer to be far closer to what the Senate has voted on time and time and time again.

I understand the realities of the situation, though, and this is where we are. The irony is that those who are holding up family planning money, claiming they are doing it because of their opposition to abortion, are assuring that there will be more abortions in the countries we send the family planning money to.

The family planning money, in so many of these countries, has provided a strong alternative to abortion, because many countries use abortion as a method of birth control. Our family planning money would cut down abortions. It has been proven.

For the life of me, I cannot understand this topsy-turvy, "Alice in Wonderland," view of cutting family planning money and saying we are trying to stop abortions, because it does nothing of the kind. In fact, when people have access to family planning, the abortions go down.

Mrs. BOXER. Thank you.

Mr. LEAHY. Mr. President, I see the distinguished chairman on the floor. If he does not need further time on this, I understand the Senator from Kentucky has yielded back his time. I, therefore, yield back time on this side.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. As I understand it then, the balance of the time is the time that remains to me, is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. STEVENS. I want to thank the Senate for its consideration of the desire of the Appropriations Committee to finish this work for this Congress. We had hoped that we would pass 13 separate appropriations bills. That has not been possible. But we have taken the opportunity to put two of the bills that have not been finished on this bill—that managed by Senator FAIRCLOTH and Senator BOXER, with the hope that we could resolve the differences with the House. It will go to the House now as an amendment to the

House bill. It is an omnibus appropriations bill now. And the House will work its will on it. I am hopeful that it will decide to send the bill to the President.

In any event, it is my understanding we will soon be presented with a continuing resolution. The continuing resolution in effect now would expire at midnight tonight. The one I expect to be received by the Senate will expire tomorrow night. So we are hopeful that we will be able to resolve the differences between the House and the Senate by tomorrow night with regard to the matters under this bill.

Again, I thank everyone for their consideration of our position. And if there is nothing further to come before the Senate on this bill, I yield back the balance of the time. It is my understanding that would yield back all time on this bill. Is that correct, Mr. President?

The PRESIDING OFFICER. The Senator is correct. It would yield back all time.

Mr. STEVENS. Is there anything further we need to do to see it to that the time agreement is carried out?

The PRESIDING OFFICER. No. Under the previous order, the pending amendment is agreed to.

The amendment (No. 1621) was agreed to.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

The PRESIDING OFFICER. The bill having been read the third time, the question is, Shall the bill pass?

The bill (H.R. 2607), as amended, was passed.

The PRESIDING OFFICER. Under the previous order, the title is amended.

The title was amended so as to read:

An Act making omnibus consolidated appropriations for the fiscal year ending September 30, 1998, and for other purposes.

The PRESIDING OFFICER. Under the previous order, the Senate insists on its amendment, requests a conference with the House, and the Chair appoints the following conferees.

The Presiding Officer (Mr. ENZI) appointed Mr. STEVENS, Mr. SPECTER, Mr. DOMENICI, Mr. MCCONNELL, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CAMPBELL, Mr. FAIRCLOTH, Mrs. HUTCHISON, Mr. COCHRAN, Mr. BYRD, Mr. INOUE, Mr. HOLLINGS, Mr. LEAHY, Mr. BUMPERS, Mr. LAUTENBERG, Mr. HARKIN, Ms. MIKULSKI, Mrs. MURRAY, and Mrs. BOXER conferees on the part of the Senate.

#### DISTRICT OF COLUMBIA STUDENT OPPORTUNITY SCHOLARSHIP ACT OF 1997

The PRESIDING OFFICER. Under the previous order, the clerk will report S. 1502.

The assistant legislative clerk read as follows:

A bill (S. 1502) entitled "District of Columbia Student Opportunity Scholarship Act of 1997."

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

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

Mr. KENNEDY. Mr. President, I strongly oppose the D.C. voucher bill because it is unacceptable and unconstitutional.

We all want to help the children of the District of Columbia get a good education. But this voucher provision is not the way to do it. Public funds should be used for public schools, not to pay for a small number of students to attend private and religious schools.

Earlier this week, the House of Representatives soundly defeated a similar bill. It was Congress' first vote on a free-standing private school voucher bill. It's clear that private school vouchers are not the panacea that voucher proponents would like them to be. Americans do not want vouchers—they want to improve public education, not undermine it.

President Clinton is a strong leader on education. In fact, President Clinton is the education President. He is leading the battle for education reform. The country is proud of his leadership, and our Republican colleagues don't know what to do.

They keep shooting themselves in the foot in their repeated attempts to devise a Republican alternative that will satisfy their right wing hostility to public education and still have the support of the American people. It can't be done. First they tried to abolish the U.S. Department of Education. Then they tried to make deep cuts in funds for public schools. They even shut down the Government when they couldn't get their way. Now they are trying the same trick through the back door, using public funds to subsidize private schools. It won't work, and they shouldn't try.

It is clear that President Clinton will veto the D.C. voucher bill, and he is right to veto it.

The current debate involves schools in the District of Columbia. But the use of Federal funds for private schools is a national issue that Congress has addressed and rejected many times before. And so have many States.

Now, voucher proponents are attempting to make the D.C. public schools a guinea pig for a scheme that voters in D.C. have soundly rejected, and so have voters across the country.

Recent voucher proposals in Washington, Colorado, and California lost by over 2-to-1 margins. In 1981, D.C. voters defeated a voucher initiative by a ratio of 8 to 1, and the concept has never been brought up on the ballot again because it has so little support. Clearly, Congress should not impose on the District of Columbia what the people of D.C. and voters across the country reject.

Representative ELEANOR HOLMES NORTON, and D.C. parents, ministers, and other local leaders have made it clear that they do not want vouchers in the District of Columbia. Members of Congress who can't get to first base with this issue in their own States should not turn around and impose it on the people of the District.

Vouchers would undermine D.C. school reforms already underway. Last year, Congress created a Control Board and all but eliminated the locally elected school board. This bill would create yet another bureaucracy in the form of a federally appointed corporation to run the voucher program. Six of the seven corporation members would be nominated by the Federal Government, and those nominations are controlled by the Republican Congress. Only one representative of D.C. would serve on the corporation. This is precisely the kind of Federal takeover of a local school system that Republican Senators oppose for any other community in America.

Public funds should not go to private schools when District of Columbia public schools have urgent needs of their own. Roof repairs still need to be made; 65 percent of the schools have faulty plumbing; 41 percent of the schools don't have enough power outlets and electrical wiring to accommodate computers and other needed technology; 66 percent of the schools have inadequate heating, ventilation, and air conditioning. Funding these repairs should be our top priority, not conducting a foolish ideological experiment on school vouchers.

Another serious problem with private school vouchers is the exclusionary policies of private schools. Scarce Federal dollars should not go to schools that can exclude children. There is no requirement in the bill that schools receiving vouchers must accept minority students, or students with limited English proficiency, or students with disabilities, or homeless students, or students with discipline problems.

Public schools are open to all children. Public schools don't have the luxury of closing their doors to students who pose difficult challenges.

Voucher proponents argue that vouchers increase choice for parents. But choice for parents is a mirage. Private schools apply different rules than public schools. Unlike public schools, which must accept all children, private schools can decide whether to accept a child or not. The real choice goes to the schools, not the parents. The better the private school, the more selective it is, and the more students are turned away. In Cleveland, nearly half of the public school students who received vouchers could not find a private school that would accept them.

Vouchers will not help the overwhelming majority of children who need help. The current voucher scheme will, at most, enable 2,000 D.C. children to attend private schools, out of the 78,000 children who attend D.C. public

schools. This proposal would provide vouchers for 3 percent of D.C. children—and do nothing for the other 97 percent. This is no way to spend federal dollars. We should invest in strategies that help all children, not just a few.

As I have said before, instead of supporting local efforts to revitalize the schools, voucher proponents are attempting to make the D.C. public schools a guinea pig for an ideological experiment in education that voters in D.C. have soundly rejected, and that voters across the country have soundly rejected too. Our Republican colleagues have clearly been unable to generate any significant support for vouchers in their own States. It is a travesty of responsible action for them to attempt to foist their discredited idea on the long-suffering people and long-suffering public schools of the District of Columbia. If vouchers are a bad idea for the public schools in all 50 States, they are a bad idea for the public schools of the District of Columbia too.

Many of us in Congress favor D.C. home rule. Many of us in Congress believe that the people of the District of Columbia should be entitled to have voting representation in the Senate and the House, like the people in every State. It is an embarrassment to our democracy that the most powerful democracy on Earth denies the most basic right of any democracy—the right to vote—to the citizens of the Nation's Capital.

D.C. is not a test tube for misguided Republican ideological experiments on education. Above all, D.C. is not a slave plantation. Republicans in Congress should stop acting like plantation masters, and start treating the people of D.C. with the respect they deserve.

General Becton, local leaders, and D.C. parents are working hard to improve all D.C. public schools for all children. Congress should give them its support, not undermine them.

Another serious objection to this voucher scheme is its unconstitutionality. The vast majority of private schools that charge tuition less than the \$3,200 available for a voucher are religious schools. Providing vouchers to religious schools violates the establishment clause of the first amendment of the U.S. Constitution. It's a Federal subsidy for sectarian schools. In many States, voucher schemes would violate the State constitution, too.

Last January, a Wisconsin lower court held that the expansion of the Milwaukee voucher program to include religious schools was unconstitutional and violated the Wisconsin Constitution. The court stated that "We do not object to the existence of parochial schools or that they attempt to spread their beliefs through their schools. They just cannot do it with State tax dollars."

Last August, the Wisconsin State Court of Appeals affirmed that decision, holding that the expansion of the

State voucher program to include religious schools was unconstitutional under the Wisconsin Constitution.

Last May, an Ohio appellate court reversed a trial court's decision to allow public money to be paid to religious schools. The appeals court held that the voucher program violated the principle of separation of church and state under both the United States Constitution and the Ohio Constitution. The court ruled that the voucher program "steers aid to sectarian schools, resulting in what amounts to a direct government subsidy."

Last June, a Vermont State Superior Court held that the use of vouchers to pay tuition at private religious schools violates both the U.S. Constitution and the Vermont Constitution.

As these cases demonstrate, the courts are clear that vouchers for religious schools are unconstitutional, and Congress should abide by their rulings.

Last month, in a keynote address to the Conference of the Council of Great City Schools, Coretta Scott King said,

I don't have a lot of sympathy with those who would further diminish the resources available to urban public schools with a voucher system . . . The debate over vouchers takes the focus away from where it really needs to be—on how we can increase funding and resources, so that every public school can provide the best possible education for all students.

Coretta King is right. Instead of subsidizing private schools, we need to support ways to improve and reform the public schools—not in a few schools, but in all schools; not for a few students, but for all students.

Subsidies for a few children at the expense of the many divides communities. The federal government should help bring communities together, not divide them. We should make investments that help all children in all neighborhood schools to get a good, safe education. I oppose the D.C. voucher bill as unwise, unacceptable, and unconstitutional.

Private school vouchers are not the answer to the problems facing the nation's schools. It is a mistake and a misuse of tax dollars to send children to private schools at public expense.

#### DC SCHOOL VOUCHER BILL

Ms. MOSELEY-BRAUN. Mr. President, I strongly oppose S. 1502, a bill to take funds away from public school children in order to subsidize private schools.

Supporters of this legislation claim that the \$7 million they propose to spend on private schools does not divert funds from public school children. The truth, however, is that in the zero-sum budget, any funds spent on vouchers must be drawn from other education funds. That means less resources for public school children.

Seven million dollars could make a real difference in the DC public schools. We could fully fund after-school programs at every DC school.

We could buy 368 new boilers for the DC schools. We could rewire the 65 schools that don't have electrical wiring to accommodate computers and multimedia equipment. We could upgrade the plumbing in the 102 schools with substandard facilities. With just \$1 million, we could buy 66,000 new hardcover books for DC's school libraries. There are real improvements we could make to the DC public school system with \$7 million. Instead, this bill proposes to siphon those funds away from the public school children.

Some of my colleagues suggest that, were it not for management problems, the DC schools would not be in the condition they are now in. How a diversion of \$7 million from the public schools to private schools will solve that problem is beyond me. I have a better solution: good management. Paul Vallas has turned around the Chicago schools. It would not surprise me if some day the Chicago Public Schools were competing on the same level as the public schools that comprise the First in the World Consortium in north suburban Chicago. Students in those schools compete with students at the finest schools in the world. The DC schools have new management, and I have every confidence that General Becton will be able to do for the DC schools what Paul Vallas is doing for the Chicago schools.

Some of my colleagues suggest that school vouchers will help improve the public schools by increasing competition—by creating, in effect, a marketplace for education. There is a problem with that proposal. By definition, markets have winners and losers, and our country cannot afford any losers in a game of educational roulette.

Supporters of school vouchers state that this is not like a game of roulette, that research proves that voucher programs have positive effects on student achievement. The facts, however, do not speak so clearly to this issue. The data is mixed. Some studies show improvement. Some studies show declining achievement. Some studies show no difference at all between the students in public schools and those placed in private schools. We do know that programs in other countries have not succeeded. In France, Britain, the Netherlands, and Chile, voucher programs actually widened the achievement gap, instead of narrowing it.

That is the real problem. Vouchers do not fix public schools. Vouchers do not solve problems. Vouchers raise false hopes in parents who desire better schools for their children. Vouchers are not answers to the real problems that we must address in our public schools.

Mr. President, for the last three years, proponents of this bill in the Senate have failed to pass this bad idea. Today, however, in order to expedite the business of the Senate, I, and my colleagues who oppose this bill, are willing to let the Senate pass this measure, because President Clinton has wisely pledged to veto it. Our willing-

ness to let this legislation pass the Senate does not represent any weakening of our belief that it is fundamentally flawed, that it represents an abandonment of public education, and a pessimistic capitulation to a winnable challenge—the improvement of our public schools so they may serve all our children into the 21st century.

We have agreed to let this legislation clear the Senate, in these last hours of the first session of the 105th Congress, as part of a much larger arrangement to consider a number of important issues, including: measures to fund the activities of the State Department, the Commerce Department, and the Justice Department; measures to fund the District of Columbia and our foreign aid operations; a stop-gap measure to fund our highway and mass transit programs; and legislation granting the President the so-called "fast track" authority to negotiate trade agreements. It is in this context, and with the advance knowledge that the President will veto this DC voucher bill, that we have agreed to let the Senate proceed with this bill.

Mr. President, I hope that next year we will focus on real solutions to the problems facing our public schools. According to the U.S. General Accounting Office, 14 million children attend schools that are literally crumbling down around them, and we have let our public schools fall \$112 billion into physical disrepair. Our children cannot learn the skills they need to keep us competitive in this kind of environment. I know that we can do better for our children. We can fix our schools, and I look forward to working with my colleagues next year on legislation to form a partnership with state and local governments to rebuild and modernize our crumbling schools. I look forward to working with my colleagues next year to address the real needs of our nation's 52 million public school children.

Mr. HOLLINGS. Mr. President, today we are passing important legislation which I strongly oppose by voice vote. The normal Senate procedure would be to vote on such an important bill, and I do not like to see Senators avoid a recorded vote on a bill with such dire implications for public education. However, the President has committed to veto the full bill, and I am confident from repeated past votes that if we did not have this commitment, the Senate would block the bill. Also, without this commitment, I would be glad not only to force a vote, but also to discuss the bill at length.

In fact, there is a healthy sign that even supporters of the ill-advised idea of starting a taxpayer-funded private school voucher program are re-thinking their support. Five days ago, the House defeated a private school voucher plan. Thirty-five House Republicans voted against creation of a voucher program on the basis that the legislation did not include basic civil rights protections that also are absent in the bill before us.

The United States Catholic Conference opposed that bill. I quote here from their letter:

An additional reason why the USCC is unable to support H.R. 2746 is the "Not School Aid" provision in the new section 6405(a). . . . Section 6405(a) can readily be construed to negate the application of longstanding civil rights statutes, in particular, Title VI of the Civil Rights Act of 1964, Title X of the Education Amendments of 1972 and Section 504 of the Rehabilitation Act of 1973, that would normally apply to a scholarship program.

In other words, by saying that the federal aid going to private schools under a voucher program is "not school aid" the bill proponents excuse them from full compliance with federal protections that currently apply to public schools.

Mr. President, that is not just my interpretation or that of the Catholic Conference. That is the reading of proponents of the bill.

Specifically, Mr. Clint Bolick, who has a group named "Institute for Justice," has been agitating to start taxpayer funding for private school tuitions. Here is what Mr. Bolick said about the Catholic Conference and civil rights in a memo that leaked out last month:

Dick Komer and I met with representatives of the Catholic Conference, who urged that the bill contain the full panoply of federal civil rights regulations, including Title IX (gender) and disability provisions. We argued strongly against those regulations. We are pleased to report that the final bill contains only a general anti-discrimination requirement and expressly provides that schools are not "recipients of federal funds."

So Mr. Bolick "argued strongly" against civil rights for girls and disabled children, but he is pleased to report that schools receiving vouchers would not be "recipients of federal funds."

This is absurd. The federal government today spends about \$12 billion on elementary and secondary education. That is about \$250 per child in a public school. But the proponents of this bill want from the outset to give private schools \$3,200 per child in federal funds. If we do that, just three voucher children would provide a private school with more federal assistance than we provide to a whole public school classroom. If that is "Not School Aid," I don't know what is. There are a lot of public school classrooms that would like to have \$3,200 per child in federal assistance, and they would not be crowing about how basic civil rights protections were rolled back.

I say this to criticize this proposed legislation, not the private schools. I believe that we have a duty as public servants to fund the public schools, and we have a duty to the private schools to leave them alone. I support private schools. About nine out of ten are religious, and I particularly support their freedom to stay that way without federal intervention. Make no mistake. If we go down this road of putting \$3,200 per child of federal taxpayers' money



into private school classrooms, federal regulation will follow and that will be a tragedy.

This is not conjecture, the Bush Administration studied it. In a report titled "Choice of Schools in Six Nations," here is what they found:

For those who believe strongly in religious schooling and fear that government influence will come with public funding, reason exists for their concern. Catholic or Protestant schools in each of the nations studied have increasingly been assimilated to the assumptions and guiding values of public schooling. This process does not even seem to be the result of deliberate efforts . . . but rather of the difficulty for a private school playing by public rules, to maintain its distance from the common assumptions and habits of the predominant system.

World Bank economist Estelle James did a similar survey and found that ". . . heavy controls invariably accompany subsidies, particularly over teacher salaries and qualifications, price, and other entrance criteria." She looked particularly closely at Australia, and found ". . . increasing regulation and centralization of decisions and the loss of private school autonomy . . ."

I raise all of these points to appeal to my colleagues on the other side of the aisle. I do not talk to hear myself talk, but to urge serious consideration. We have House colleagues reconsidering. We have the Catholic Conference urging civil rights protections. We have Bush Administration and World Bank studies indicating heavy regulation. We have a proposal that clearly disadvantages public schools on the matter of federal funding. Who will really be happy if we pass this?

Mr. President, we must finally remember our duty to public education. I go back to Horace Mann, the great champion of public schools. He said that

The idea of an educational system that was at once both universal, free and available to all the people, rich and poor alike, was revolutionary. This is the great thing about America. No other nation ever had such an institution. . . . The free public school system . . . has been in large measure the secret of America's success.

The proposal before us erodes public education. It disadvantages public schools in federal funding and under federal regulation. Instead, it offers more funds to private schools which should exist as an independent alternative, but which are not "universal, free" or "available to all the people." I urge my colleagues who have supported this private voucher idea to reconsider over the holidays, and I thank the President in advance for his veto.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1502

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

#### SECTION 1. SHORT TITLE; FINDINGS; PRECEDENTS.

(a) SHORT TITLE.—This Act may be cited as the "District of Columbia Student Opportunity Scholarship Act of 1997".

(b) FINDINGS.—Congress makes the following findings:

(1) Public education in the District of Columbia is in a crisis, as evidenced by the following:

(A) The District of Columbia schools have the lowest average of any school system in the Nation on the National Assessment of Education Progress.

(B) 72 percent of fourth graders in the District of Columbia tested below basic proficiency on the National Assessment of Education Progress in 1994.

(C) Since 1991, there has been a net decline in the reading skills of District of Columbia students as measured in scores on the standardized Comprehensive Test of Basic Skills.

(D) At least 40 percent of District of Columbia students drop out of or leave the school system before graduation.

(E) The National Education Goals Panel reported in 1996 that both students and teachers in District of Columbia schools are subjected to levels of violence that are twice the national average.

(F) Nearly two-thirds of District of Columbia teachers reported that violent student behavior is a serious impediment to teaching.

(G) Many of the District of Columbia's 152 schools are in a state of terrible disrepair, including leaking roofs, bitterly cold classrooms, and numerous fire code violations.

(2) Significant improvements in the education of educationally deprived children in the District of Columbia can be accomplished by—

(A) increasing educational opportunities for the children by expanding the range of educational choices that best meet the needs of the children;

(B) fostering diversity and competition among school programs for the children;

(C) providing the families of the children more of the educational choices already available to affluent families; and

(D) enhancing the overall quality of education in the District of Columbia by increasing parental involvement in the direction of the education of the children.

(3) The 350 private schools in the District of Columbia and the surrounding area offer a more safe and stable learning environment than many of the public schools.

(4) Costs are often much lower in private schools than corresponding costs in public schools.

(5) Not all children are alike and therefore there is no one school or program that fits the needs of all children.

(6) The formation of sound values and moral character is crucial to helping young people escape from lives of poverty, family break-up, drug abuse, crime, and school failure.

(7) In addition to offering knowledge and skills, education should contribute positively to the formation of the internal norms and values which are vital to a child's success in life and to the well-being of society.

(8) Schools should help to provide young people with a sound moral foundation which is consistent with the values of their parents. To find such a school, parents need a full range of choice to determine where their children can best be educated.

(c) PRECEDENTS.—The United States Supreme Court has determined that programs giving parents choice and increased input in their children's education, including the choice of a religious education, do not violate the Constitution. The Supreme Court has held that as long as the beneficiary de-

cides where education funds will be spent on such individual's behalf, public funds can be used for education in a religious institution because the public entity has neither advanced nor hindered a particular religion and therefore has not violated the establishment clause of the first amendment to the Constitution. Supreme Court precedents include—

(1) *Wisconsin v. Yoder*, 406 U.S. 205 (1972); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); and *Meyer v. Nebraska*, 262 U.S. 390 (1923) which held that parents have the primary role in and are the primary decision makers in all areas regarding the education and upbringing of their children;

(2) *Mueller v. Allen*, 463 U.S. 388 (1983) which declared a Minnesota tax deduction program that provided State income tax benefits for educational expenditures by parents, including tuition in religiously affiliated schools, does not violate the Constitution;

(3) *Witters v. Department of Services for the Blind*, 474 U.S. 481 (1986) in which the Supreme Court ruled unanimously that public funds for the vocational training of the blind could be used at a Bible college for ministry training; and

(4) *Zobrest v. Catalina Foothills School District*, 509 U.S. 1 (1993) which held that a deaf child could receive an interpreter, paid for by the public, in a private religiously affiliated school under the Individual with Disabilities Education Act (20 U.S.C. 1400 et seq.). The case held that providing an interpreter in a religiously affiliated school did not violate the establishment clause of the first amendment of the Constitution.

#### SEC. 2. DEFINITIONS.

As used in this Act—

(1) the term "Board" means the Board of Directors of the Corporation established under section 3(b)(1);

(2) the term "Corporation" means the District of Columbia Scholarship Corporation established under section 3(a);

(3) the term "eligible institution"—

(A) in the case of an eligible institution serving a student who receives a tuition scholarship under section 4(c)(1), means a public, private, or independent elementary or secondary school; and

(B) in the case of an eligible institution serving a student who receives an enhanced achievement scholarship under section 4(c)(2), means an elementary or secondary school, or an entity that provides services to a student enrolled in an elementary or secondary school to enhance such student's achievement through instruction described in section 4(c)(2);

(4) the term "parent" includes a legal guardian or other person standing in loco parentis; and

(5) the term "poverty line" means the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Community Services Block Grant Act (42 U.S.C. 9902(2)) applicable to a family of the size involved.

#### SEC. 3. DISTRICT OF COLUMBIA SCHOLARSHIP CORPORATION.

(a) GENERAL REQUIREMENTS.—

(1) IN GENERAL.—There is authorized to be established a private, nonprofit corporation, to be known as the "District of Columbia Scholarship Corporation", which is neither an agency nor establishment of the United States Government or the District of Columbia Government.

(2) DUTIES.—The Corporation shall have the responsibility and authority to administer, publicize, and evaluate the scholarship program in accordance with this title, and to determine student and school eligibility for participation in such program.

(3) CONSULTATION.—The Corporation shall exercise its authority—

(A) in a manner consistent with maximizing educational opportunities for the maximum number of interested families; and

(B) in consultation with the District of Columbia Board of Education or entity exercising administrative jurisdiction over the District of Columbia Public Schools, the Superintendent of the District of Columbia Public Schools, and other school scholarship programs in the District of Columbia.

(4) APPLICATION OF PROVISIONS.—The Corporation shall be subject to the provisions of this Act, and, to the extent consistent with this Act, to the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-501 et seq.).

(5) RESIDENCE.—The Corporation shall have its place of business in the District of Columbia and shall be considered, for purposes of venue in civil actions, to be a resident of the District of Columbia.

(6) FUND.—There is established in the Treasury a fund that shall be known as the District of Columbia Scholarship Fund, to be administered by the Secretary of the Treasury.

(7) DISBURSEMENT.—The Secretary of the Treasury shall make available and disburse to the Corporation, before October 15 of each fiscal year or not later than 15 days after the date of enactment of an Act making appropriations for the District of Columbia for such year, whichever occurs later, such funds as have been appropriated to the District of Columbia Scholarship Fund for the fiscal year in which such disbursement is made.

(8) AVAILABILITY.—Funds authorized to be appropriated under this Act shall remain available until expended.

(9) USES.—Funds authorized to be appropriated under this Act shall be used by the Corporation in a prudent and financially responsible manner, solely for scholarships, contracts, and administrative costs.

(10) AUTHORIZATION.—

(A) IN GENERAL.—There are authorized to be appropriated to the District of Columbia Scholarship Fund—

(i) \$7,000,000 for fiscal year 1998;

(ii) \$8,000,000 for fiscal year 1999; and

(iii) \$10,000,000 for each of fiscal years 2000 through 2002.

(B) LIMITATION.—Not more than 7.5 percent of the amount appropriated to carry out this Act for any fiscal year may be used by the Corporation for salaries and administrative costs.

(b) ORGANIZATION AND MANAGEMENT; BOARD OF DIRECTORS.—

(1) BOARD OF DIRECTORS; MEMBERSHIP.—

(A) IN GENERAL.—The Corporation shall have a Board of Directors (referred to in this title as the "Board"), comprised of 7 members with 6 members of the Board appointed by the President not later than 30 days after receipt of nominations from the Speaker of the House of Representatives and the Majority Leader of the Senate.

(B) HOUSE NOMINATIONS.—The President shall appoint 3 of the members from a list of 9 individuals nominated by the Speaker of the House of Representatives in consultation with the Minority Leader of the House of Representatives.

(C) SENATE NOMINATIONS.—The President shall appoint 3 members from a list of 9 individuals nominated by the Majority Leader of the Senate in consultation with the Minority Leader of the Senate.

(D) DEADLINE.—The Speaker of the House of Representatives and Majority Leader of the Senate shall submit their nominations to the President not later than 30 days after the date of the enactment of this Act.

(E) APPOINTEE OF MAYOR.—The Mayor shall appoint 1 member of the Board not later

than 60 days after the date of the enactment of this Act.

(F) POSSIBLE INTERIM MEMBERS.—If the President does not appoint the 6 members of the Board in the 30-day period described in subparagraph (A), then the Speaker of the House of Representatives and the Majority Leader of the Senate shall each appoint 2 members of the Board, and the Minority Leader of the House of Representatives and the Minority Leader of the Senate shall each appoint 1 member of the Board, from among the individuals nominated pursuant to subparagraphs (A) and (B), as the case may be. The appointees under the preceding sentence together with the appointee of the Mayor, shall serve as an interim Board with all the powers and other duties of the Board described in this title, until the President makes the appointments as described in this subsection.

(2) POWERS.—All powers of the Corporation shall vest in and be exercised under the authority of the Board.

(3) ELECTIONS.—Members of the Board annually shall elect 1 of the members of the Board to be the Chairperson of the Board.

(4) RESIDENCY.—All members appointed to the Board shall be residents of the District of Columbia at the time of appointment and while serving on the Board.

(5) NONEMPLOYEE.—No member of the Board may be an employee of the United States Government or the District of Columbia Government when appointed to or during tenure on the Board, unless the individual is on a leave of absence from such a position while serving on the Board.

(6) INCORPORATION.—The members of the initial Board shall serve as incorporators and shall take whatever steps are necessary to establish the Corporation under the District of Columbia Nonprofit Corporation Act (D.C. Code, sec. 29-501 et seq.).

(7) GENERAL TERM.—The term of office of each member of the Board shall be 5 years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of such term.

(8) CONSECUTIVE TERM.—No member of the Board shall be eligible to serve in excess of 2 consecutive terms of 5 years each. A partial term shall be considered as 1 full term. Any vacancy on the Board shall not affect the Board's power, but shall be filled in a manner consistent with this title.

(9) NO BENEFIT.—No part of the income or assets of the Corporation shall inure to the benefit of any Director, officer, or employee of the Corporation, except as salary or reasonable compensation for services.

(10) POLITICAL ACTIVITY.—The Corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(11) NO OFFICERS OR EMPLOYEES.—The members of the Board shall not, by reason of such membership, be considered to be officers or employees of the United States Government or of the District of Columbia Government.

(12) STIPENDS.—The members of the Board, while attending meetings of the Board or while engaged in duties related to such meetings or other activities of the Board pursuant to this Act, shall be provided a stipend. Such stipend shall be at the rate of \$150 per day for which the member of the Board is officially recorded as having worked, except that no member may be paid a total stipend amount in any calendar year in excess of \$5,000.

(c) OFFICERS AND STAFF.—

(1) EXECUTIVE DIRECTOR.—The Corporation shall have an Executive Director, and such other staff, as may be appointed by the Board for terms and at rates of compensa-

tion, not to exceed level EG-16 of the Educational Service of the District of Columbia, to be fixed by the Board.

(2) STAFF.—With the approval of the Board, the Executive Director may appoint and fix the salary of such additional personnel as the Executive Director considers appropriate.

(3) ANNUAL RATE.—No staff of the Corporation may be compensated by the Corporation at an annual rate of pay greater than the annual rate of pay of the Executive Director.

(4) SERVICE.—All officers and employees of the Corporation shall serve at the pleasure of the Board.

(5) QUALIFICATION.—No political test or qualification may be used in selecting, appointing, promoting, or taking other personnel actions with respect to officers, agents, or employees of the Corporation.

(d) POWERS OF THE CORPORATION.—

(1) GENERALLY.—The Corporation is authorized to obtain grants from, and make contracts with, individuals and with private, State, and Federal agencies, organizations, and institutions.

(2) HIRING AUTHORITY.—The Corporation may hire, or accept the voluntary services of, consultants, experts, advisory boards, and panels to aid the Corporation in carrying out this title.

(e) FINANCIAL MANAGEMENT AND RECORDS.—

(1) AUDITS.—The financial statements of the Corporation shall be—

(A) maintained in accordance with generally accepted accounting principles for nonprofit corporations; and

(B) audited annually by independent certified public accountants.

(2) REPORT.—The report for each such audit shall be included in the annual report to Congress required by section 11(c).

(f) ADMINISTRATIVE RESPONSIBILITIES.—

(1) SCHOLARSHIP APPLICATION SCHEDULE AND PROCEDURES.—Not later than 30 days after the initial Board is appointed and the first Executive Director of the Corporation is hired under this Act, the Corporation shall implement a schedule and procedures for processing applications for, and awarding, student scholarships under this Act. The schedule and procedures shall include establishing a list of certified eligible institutions, distributing scholarship information to parents and the general public (including through a newspaper of general circulation), and establishing deadlines for steps in the scholarship application and award process.

(2) INSTITUTIONAL APPLICATIONS AND ELIGIBILITY.—

(A) IN GENERAL.—An eligible institution that desires to participate in the scholarship program under this Act shall file an application with the Corporation for certification for participation in the scholarship program under this Act that shall—

(i) demonstrate that the eligible institution has operated with not less than 25 students during the 3 years preceding the year for which the determination is made unless the eligible institution is applying for certification as a new eligible institution under subparagraph (C);

(ii) contain an assurance that the eligible institution will comply with all applicable requirements of this Act;

(iii) contain an annual statement of the eligible institution's budget; and

(iv) describe the eligible institution's proposed program, including personnel qualifications and fees.

(B) CERTIFICATION.—

(i) IN GENERAL.—Except as provided in subparagraph (C), not later than 60 days after receipt of an application in accordance with subparagraph (A), the Corporation shall certify an eligible institution to participate in the scholarship program under this Act.

(ii) CONTINUATION.—An eligible institution's certification to participate in the scholarship program shall continue unless such eligible institution's certification is revoked in accordance with subparagraph (D).

(C) NEW ELIGIBLE INSTITUTION.—

(i) IN GENERAL.—An eligible institution that did not operate with at least 25 students in the 3 years preceding the year for which the determination is made may apply for a 1-year provisional certification to participate in the scholarship program under this Act for a single year by providing to the Corporation not later than July 1 of the year preceding the year for which the determination is made—

(I) a list of the eligible institution's board of directors;

(II) letters of support from not less than 10 members of the community served by such eligible institution;

(III) a business plan;

(IV) an intended course of study;

(V) assurances that the eligible institution will begin operations with not less than 25 students;

(VI) assurances that the eligible institution will comply with all applicable requirements of this Act; and

(VII) a statement that satisfies the requirements of clauses (ii) and (iv) of subparagraph (A).

(ii) CERTIFICATION.—Not later than 60 days after the date of receipt of an application described in clause (i), the Corporation shall certify in writing the eligible institution's provisional certification to participate in the scholarship program under this Act unless the Corporation determines that good cause exists to deny certification.

(iii) RENEWAL OF PROVISIONAL CERTIFICATION.—After receipt of an application under clause (i) from an eligible institution that includes a statement of the eligible institution's budget completed not earlier than 12 months before the date such application is filed, the Corporation shall renew an eligible institution's provisional certification for the second and third years of the school's participation in the scholarship program under this Act unless the Corporation finds—

(I) good cause to deny the renewal, including a finding of a pattern of violation of requirements described in paragraph (3)(A); or

(II) consistent failure of 25 percent or more of the students receiving scholarships under this Act and attending such school to make appropriate progress (as determined by the Corporation) in academic achievement.

(iv) DENIAL OF CERTIFICATION.—If provisional certification or renewal of provisional certification under this subsection is denied, then the Corporation shall provide a written explanation to the eligible institution of the reasons for such denial.

(D) REVOCATION OF ELIGIBILITY.—

(i) IN GENERAL.—The Corporation, after notice and hearing, may revoke an eligible institution's certification to participate in the scholarship program under this Act for a year succeeding the year for which the determination is made for—

(I) good cause, including a finding of a pattern of violation of program requirements described in paragraph (3)(A); or

(II) consistent failure of 25 percent or more of the students receiving scholarships under this Act and attending such school to make appropriate progress (as determined by the Corporation) in academic achievement.

(ii) EXPLANATION.—If the certification of an eligible institution is revoked, the Corporation shall provide a written explanation of the Corporation's decision to such eligible institution and require a pro rata refund of the proceeds of the scholarship funds received under this Act.

(3) PARTICIPATION REQUIREMENTS FOR ELIGIBLE INSTITUTIONS.—

(A) REQUIREMENTS.—Each eligible institution participating in the scholarship program under this Act shall—

(i) provide to the Corporation not later than June 30 of each year the most recent annual statement of the eligible institution's budget; and

(ii) charge a student that receives a scholarship under this Act not more than the cost of tuition and mandatory fees for, and transportation to attend, such eligible institution as other students who are residents of the District of Columbia and enrolled in such eligible institution.

(B) COMPLIANCE.—The Corporation may require documentation of compliance with the requirements of subparagraph (A), but neither the Corporation nor any governmental entity may impose requirements upon an eligible institution as a condition for participation in the scholarship program under this Act, other than requirements established under this Act.

SEC. 4. SCHOLARSHIPS AUTHORIZED.

(a) ELIGIBLE STUDENTS.—The Corporation is authorized to award tuition scholarships under subsection (c)(1) and enhanced achievement scholarships under subsection (c)(2) to students in kindergarten through grade 12—

(1) who are residents of the District of Columbia; and

(2) whose family income does not exceed 185 percent of the poverty line.

(b) SCHOLARSHIP PRIORITY.—

(1) FIRST.—The Corporation first shall award scholarships to students described in subsection (a) who—

(A) are enrolled in a District of Columbia public school or preparing to enter a District of Columbia public kindergarten, except that this subparagraph shall apply only for academic years 1997–1998, 1998–1999, and 1999–2000; or

(B) have received a scholarship from the Corporation for the academic year preceding the academic year for which the scholarship is awarded.

(2) SECOND.—If funds remain for a fiscal year for awarding scholarships after awarding scholarships under paragraph (1), the Corporation shall award scholarships to students who are described in subsection (a), not described in paragraph (1), and otherwise eligible for a scholarship under this Act.

(3) LOTTERY SELECTION.—The Corporation shall award scholarships to students under this subsection using a lottery selection process whenever the amount made available to carry out this Act for a fiscal year is insufficient to award a scholarship to each student who is eligible to receive a scholarship under this Act for the fiscal year.

(c) USE OF SCHOLARSHIP.—

(1) TUITION SCHOLARSHIPS.—A tuition scholarship may be used for the payment of the cost of the tuition and mandatory fees for, and transportation to attend, an eligible institution located within the geographic boundaries of the District of Columbia; Montgomery County, Maryland; Prince Georges County, Maryland; Arlington County, Virginia; Alexandria City, Virginia; Falls Church City, Virginia; Fairfax City, Virginia; or Fairfax County, Virginia.

(2) ENHANCED ACHIEVEMENT SCHOLARSHIP.—An enhanced achievement scholarship may be used only for the payment of the costs of tuition and mandatory fees for, and transportation to attend, a program of instruction provided by an eligible institution which enhances student achievement of the core curriculum and is operated outside of regular school hours to supplement the regular school program.

(e) NOT SCHOOL AID.—A scholarship under this Act shall be considered assistance to the student and shall not be considered assistance to an eligible institution.

SEC. 5. SCHOLARSHIP AWARDS.

(a) AWARDS.—From the funds made available under this Act, the Corporation shall award a scholarship to a student and make scholarship payments in accordance with section 6.

(b) NOTIFICATION.—Each eligible institution that receives the proceeds of a scholarship payment under subsection (a) shall notify the Corporation not later than 10 days after—

(1) the date that a student receiving a scholarship under this Act is enrolled, of the name, address, and grade level of such student;

(2) the date of the withdrawal or expulsion of any student receiving a scholarship under this Act, of the withdrawal or expulsion; and

(3) the date that a student receiving a scholarship under this Act is refused admission, of the reasons for such a refusal.

(c) TUITION SCHOLARSHIP.—

(1) EQUAL TO OR BELOW POVERTY LINE.—For a student whose family income is equal to or below the poverty line, a tuition scholarship may not exceed the lesser of—

(A) the cost of tuition and mandatory fees for, and transportation to attend, an eligible institution; or

(B) \$3,200 for fiscal year 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

(2) ABOVE POVERTY LINE.—For a student whose family income is greater than the poverty line, but not more than 185 percent of the poverty line, a tuition scholarship may not exceed the lesser of—

(A) 75 percent of the cost of tuition and mandatory fees for, and transportation to attend, an eligible institution; or

(B) \$2,400 for fiscal year 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

(d) ENHANCED ACHIEVEMENT SCHOLARSHIP.—An enhanced achievement scholarship may not exceed the lesser of—

(1) the costs of tuition and mandatory fees for, and transportation to attend, a program of instruction at an eligible institution; or

(2) \$500 for 1998, with such amount adjusted in proportion to changes in the Consumer Price Index for all urban consumers published by the Department of Labor for each of fiscal years 1999 through 2002.

SEC. 6. SCHOLARSHIP PAYMENTS.

(a) PAYMENTS.—The Corporation shall make scholarship payments to the parent of a student awarded a scholarship under this Act.

(b) DISTRIBUTION OF SCHOLARSHIP FUNDS.—Scholarship funds may be distributed by check, or another form of disbursement, issued by the Corporation and made payable directly to a parent of a student awarded a scholarship under this Act. The parent may use the scholarship funds only for payment of tuition, mandatory fees, and transportation costs as described in this Act.

(c) PRO RATA AMOUNTS FOR STUDENT WITHDRAWAL.—If a student receiving a scholarship under this Act withdraws or is expelled from an eligible institution after the proceeds of a scholarship is paid to the eligible institution, then the eligible institution shall refund to the Corporation on a pro rata basis the proportion of any such proceeds received for the remaining days of the school

year. Such refund shall occur not later than 30 days after the date of the withdrawal or expulsion of the student.

#### SEC. 7. CIVIL RIGHTS.

(a) IN GENERAL.—An eligible institution participating in the scholarship program under this Act shall not discriminate on the basis of race, color, national origin, or sex in carrying out the provisions of this Act.

(b) APPLICABILITY AND CONSTRUCTION WITH RESPECT TO DISCRIMINATION ON THE BASIS OF SEX.—

(1) APPLICABILITY.—With respect to discrimination on the basis of sex, subsection (a) shall not apply to an eligible institution that is controlled by a religious organization if the application of subsection (a) is inconsistent with the religious tenets of the eligible institution.

(2) CONSTRUCTION.—With respect to discrimination on the basis of sex, nothing in subsection (a) shall be construed to require any person, or public or private entity to provide or pay, or to prohibit any such person or entity from providing or paying, for any benefit or service, including the use of facilities, related to an abortion. Nothing in the preceding sentence shall be construed to permit a penalty to be imposed on any person or individual because such person or individual is seeking or has received any benefit or service related to a legal abortion.

(3) SINGLE-SEX SCHOOLS, CLASSES, OR ACTIVITIES.—With respect to discrimination on the basis of sex, nothing in subsection (a) shall be construed to prevent a parent from choosing, or an eligible institution from offering, a single-sex school, class, or activity.

(c) REVOCATION.—Notwithstanding section 3(f)(2)(D), if the Corporation determines that an eligible institution participating in the scholarship program under this Act is in violation of subsection (a), then the Corporation shall revoke such eligible institution's certification to participate in the program.

#### SEC. 8. CHILDREN WITH DISABILITIES.

Nothing in this Act shall affect the rights of students, or the obligations of the District of Columbia public schools, under the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.).

#### SEC. 9. RULE OF CONSTRUCTION.

(a) IN GENERAL.—Nothing in this Act shall be construed to prevent any eligible institution which is operated by, supervised by, controlled by, or connected to, a religious organization from employing, admitting, or giving preference to, persons of the same religion to the extent determined by such institution to promote the religious purpose for which the eligible institution is established or maintained.

(b) SECTARIAN PURPOSES.—Nothing in this Act shall be construed to prohibit the use of funds made available under this Act for sectarian educational purposes, or to require an eligible institution to remove religious art, icons, scripture, or other symbols.

#### SEC. 10. REPORTING REQUIREMENTS.

(a) IN GENERAL.—An eligible institution participating in the scholarship program under this Act shall report to the Corporation not later than July 30 of each year in a manner prescribed by the Corporation, the following data:

(1) Student achievement in the eligible institution's programs.

(2) Grade advancement for scholarship students.

(3) Disciplinary actions taken with respect to scholarship students.

(4) Graduation, college admission test scores, and college admission rates, if applicable for scholarship students.

(5) Types and amounts of parental involvement required for all families of scholarship students.

(6) Student attendance for scholarship and nonscholarship students.

(7) General information on curriculum, programs, facilities, credentials of personnel, and disciplinary rules at the eligible institution.

(8) Number of scholarship students enrolled.

(9) Such other information as may be required by the Corporation for program appraisal.

(b) CONFIDENTIALITY.—No personal identifiers may be used in such report, except that the Corporation may request such personal identifiers solely for the purpose of verification.

#### SEC. 11. PROGRAM APPRAISAL.

(a) STUDY.—Not later than 4 years after the date of enactment of this Act, the Comptroller General shall enter into a contract, with an evaluating agency that has demonstrated experience in conducting evaluations, for an independent evaluation of the scholarship program under this Act, including—

(1) a comparison of test scores between scholarship students and District of Columbia public school students of similar backgrounds, taking into account the students' academic achievement at the time of the award of their scholarships and the students' family income level;

(2) a comparison of graduation rates between scholarship students and District of Columbia public school students of similar backgrounds, taking into account the students' academic achievement at the time of the award of their scholarships and the students' family income level;

(3) the satisfaction of parents of scholarship students with the scholarship program; and

(4) the impact of the scholarship program on the District of Columbia public schools, including changes in the public school enrollment, and any improvement in the academic performance of the public schools.

(b) PUBLIC REVIEW OF DATA.—All data gathered in the course of the study described in subsection (a) shall be made available to the public upon request except that no personal identifiers shall be made public.

(c) REPORT TO CONGRESS.—Not later than September 1 of each year, the Corporation shall submit a progress report on the scholarship program to the appropriate committees of Congress. Such report shall include a review of how scholarship funds were expended, including the initial academic achievement levels of students who have participated in the scholarship program.

(d) AUTHORIZATION.—There are authorized to be appropriated for the study described in subsection (a), \$250,000, which shall remain available until expended.

#### SEC. 12. JUDICIAL REVIEW.

(a) JURISDICTION.—

(1) IN GENERAL.—The United States District Court for the District of Columbia shall have jurisdiction in any action challenging the constitutionality of the scholarship program under this Act and shall provide expedited review.

(2) STANDING.—The parent of any student eligible to receive a scholarship under this Act shall have standing in an action challenging the constitutionality of the scholarship program under this Act.

(b) APPEAL TO SUPREME COURT.—Notwithstanding any other provision of law, any order of the United States District Court for the District of Columbia which is issued pursuant to an action brought under subsection (a) shall be reviewable by appeal directly to the Supreme Court of the United States.

#### SEC. 13. EFFECTIVE DATE.

This Act shall be effective for each of the fiscal years 1998 through 2002.

#### SEC. 14. APPROPRIATION OF INITIAL FEDERAL CONTRIBUTION TO FUND.

There are hereby appropriated, out of any money in the Treasury not otherwise appropriated, \$7,000,000 for the District of Columbia Scholarship Fund.

Mr. STEVENS. Mr. President, is it proper at this time to move to reconsider the action taken by the Senate under this time agreement?

The PRESIDING OFFICER. Yes.

Mr. STEVENS. I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. FORD. 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. SESSIONS. Mr. President, I ask unanimous consent the call of the quorum be rescinded.

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

Mr. SESSIONS. I know there may be some agenda items that are necessary for other Members of the Senate to complete tonight. If so, I am happy to yield at an appropriate time.

#### BILL LANN LEE NOMINATION

Mr. SESSIONS. Mr. President, I rise to talk about the Bill Lann Lee nomination as Assistant Attorney General for Civil Rights. He is a good man, a lawyer of skill and experience. He is the son of an immigrant who has worked hard and done very well professionally and financially.

However, his nomination is in the Senate Judiciary Committee. Many of his positions are outside the mainstream of current legal thought, and I believe we need to reject that nomination. Regretfully, I intend to vote no when it comes up before the Judiciary Committee.

There has been some discussion and comments made that there have been scurrilous attacks against him. I just want to say that is not so. Certainly it is not so from the Senators who are members of the Judiciary Committee who have considered this nomination. Senator HATCH, the chairman of the Judiciary Committee, came to this body earlier this week. He made a very long, professional address, delineating his concerns about this nomination and why he had decided to vote no. He talked about legal issues, professional issues, positions of importance, and that is the basis of our concern—not personal attacks.

This position is a serious position. Mr. Lee has been treated respectfully. I have been at every hearing he has attended, and I have been at every hearing in which his nomination has been discussed. It has been discussed on a high level, according to the highest professional standards of this Senate. That is the way it should be. But his

position is an important position, so it is necessary that we ask important fundamental questions and that we get answers from him, and then once we get those answers, it is our responsibility, under the advice and consent responsibility of the Senate, to make a judgment as to how we should vote.

I want to say we must protect the civil rights of all Americans. We cannot, however, utilize civil rights laws as a tool to favor one group over another. We need to know what Mr. Lee thinks on what the issues are facing America. He is an advocate. We know that. I respect that. But we need to go beyond that. How deep is his advocacy? Can he take it away and can he be an objective and effective administrator of the civil rights policies of the U.S. Government, or does he maintain some of his advocacy views that are outside the mainstream of American legal thought?

That is why, I submit, he has been asked a number of questions and why we have taken this seriously.

This position has been vacant for 18 months. The President just recently submitted his nomination. Our committee has moved promptly to consider that nomination, and we brought it up last week for a vote. His supporters, perhaps fearing they did not have the votes, asked it be put over again for another week. I expect we will take that up Thursday of next week. Some have suggested that if there are not enough votes in the committee to confirm this nomination, that we ought to, regardless of that, send the nomination to the floor.

As a new member of the committee, I thought we had an interesting discussion about that. The Members who felt they were on the losing side raised quite a number of questions and earnestly argued for their position. Of course, this is a decision that we can make, and we can make any decision we choose, and they cited a number of historical examples why we should do that. Senator HATCH has been a member of the committee for a number of years and delineated the history. There has been no Executive nominee—and this nominee would be part of President Clinton's administration—reported out of that committee other than with a favorable recommendation since 1953.

In fact, a number of Democratic Senators on the committee were the very ones who just a few years ago voted not to send the nomination of Bill Lucas, an African-American who had been nominated by President Reagan to be civil rights chief—they voted not to send his nomination out. And they did the same with William Bradford Reynolds, another nominee of President Reagan, who was not sent forward, on their objection.

Therefore, they took the position—and I think one that is quite proper—if they so choose and if our committee so chooses, that the committee makes a recommendation as to whether or not a nomination should go forward.

Let me say there have been suggestions that scurrilous complaints and attacks have been made. I hate to hear that, but I say they have not come from our side. I say there have been some unwise and intemperate remarks by those who are supporting the Lee nomination in this U.S. Senate. They have, in effect, said, "Agree with us and you report out this nomination, or we will say you are against civil rights, we will accuse you of being against African-Americans, we will say you are against women, we will say you are against Chinese-Americans." They would, in fact, play the race card.

Sad to say, they have done just that.

Mr. President, let me share with Members of this body and the American people some of the things that were said by Senators in this body about those of us who have concerns about this nomination. The Democratic leader had a press conference earlier this week, and he said, "The far right doesn't want the Civil Rights Division filled because they don't want civil rights laws enforced."

Now, I submit that is a sad thing to say. That is an extreme thing to say, that the chairman of our committee, Senator ORRIN HATCH, who has worked hand in glove with this administration to confirm every nominee they sent forward for the Department of Justice, except this one. This is the only one he has objected to. It is extremely unfair to say that we don't want civil rights laws enforced because we want to question this nominee and we believe he is outside the mainstream of current legal thought.

Senator KENNEDY said, "It's wrong for Republicans to hold him hostage to their anti-civil-rights agenda." I'm for civil rights. I believe in that. The other Members do. We just need to talk about what we really mean by the words "civil rights." Do civil rights mean equality for all as we traditionally thought? Or do we go to a new definition of civil rights that means preferences and advantages to one group or another group because of the color of their skin? We are not against civil rights. Senator KENNEDY went on to say, "It would be an outrage for a small band of anti-civil-rights Republican Senators to bottle up this nominee. A vote against Bill Lee is a vote against civil rights," he said.

Another Senator, Senator BOXER said, "By opposing Bill Lee, I think the Republicans are sending a signal to every minority in this country, to every woman in this country, that, frankly, they don't believe in equal opportunity for everyone."

That hurts me, Mr. President, to hear a Member of this body make such an extreme statement as that. I really think it was unnecessary and goes beyond what ought to have been said. We can disagree whether or not this nominee ought to be confirmed. But I think we ought to all respect each other's views and opinions more than that. So I am concerned about that.

Another Senator, Senator MIKULSKI, was also aggressive in her remarks. This is how it was reported in the Washington Times the other morning on the front page:

Congressional Democrats, in a bid to save the nomination of a Chinese American as assistant Attorney General for Civil Rights, yesterday accused Republicans of racism.

"I don't think the United States Senate should be a forum for attacking Chinese Americans," said Senator Mikulski. "We don't want Bill Lann Lee to be the Anita Hill of 1997," she said.

This is what the paper reported:

Just after finishing leveling fire, the Maryland Democrat walked over to Senator Edward M. Kennedy and said under her breath, "I hated to do that, but we had no choice."

I am glad at least to know that she was reluctant to make those comments. I think she well should have been because I intend to take, and every member of this committee intends to take, this nominee seriously. We need to give him a fair hearing. He needs to be treated respectfully. But if his ideas are outside the mainstream of current American law, outside the direction we believe this Nation ought to go in civil rights, we have a responsibility to reject the nomination, and that is what I intend to do. I intend to fulfill my responsibility.

I want to say right now that I don't intend to be intimidated by attacks of that kind. I am going to do what I believe is right for this country.

Let me read you what some of the testimony was at hearings about this nominee.

Mr. Gerald A. Reynolds, an African-American, president of the Center for New Black Leadership, testified that he strongly opposed the nomination of Mr. Lee. He said:

If confirmed as Assistant Attorney General, Mr. Lee's background suggests that no democratic principle, controlling legal authority, nor legal standard will prevent him from furthering his particular ideological agenda.

Further he said:

For the last 30 years, traditional civil rights organizations have used civil rights laws as a weapon to extract benefits for racial minorities, no matter what the cost. Mr. Lee has spent most of his professional life doing that same thing.

Mr. Lee's legal defense fund sought to overcome the will of the citizens of California by persuading the ninth circuit to affirm Judge Henderson's ruling against Proposition 209.

I would argue that the legal defense fund's attempts to nullify Proposition 209 constitutes a direct assault upon our democratic principles. The legal defense fund's case against Proposition 209 rested on a thin reed. Basically, it rested upon two cases that are easily distinguishable from the facts surrounding Proposition 209.

I think we will talk about Proposition 209 in a minute. But just to point out, that is a civil rights initiative in California that said people should be treated alike regardless of the color of their skin, and it mirrored almost exactly the 14th amendment to the Constitution of the United States and the Civil Rights Act of 1964.

Mr. Reynolds goes further:

There are other examples. We can look to the lawsuit in Los Angeles. The Los Angeles County Metropolitan Transportation Authority decided to increase its bus fares and eliminate monthly bus passes. Mr. Lee's legal defense fund lawsuit alleged that the MTA action violated the civil rights laws and the Constitution because they had an adverse impact on minorities and poor people.

Mr. Reynolds continues:

We can debate whether it was a good idea to eliminate some of the benefits that the citizens of Los Angeles enjoyed, but I think it is a stretch to conclude that a policy decision such as raising a bus fare and eliminating bus routes and eliminating bus passes constitutes a constitutional violation.

He went on to note that:

The lesson that we should have walked away with is that race is a toxic circumstance, and that it is wrong to distribute benefits and burdens on the basis of race.

I questioned Mr. Reynolds and I asked him about busing and how people in the minority community feel about busing.

Mr. Reynolds replied:

I think it is clear that most parents are concerned with the quality of education that their children receive, and most parents, black and white, do not care. Well, actually they prefer that it be a neighborhood school. More importantly, I think time has shown that forced busing has been an unmitigated disaster.

Those were the words of Mr. Reynolds. I further asked him, had he seen cases like the Houston busing case, on which Mr. Bill Lann Lee was the attorney, and where lawyers, professional litigators, who were involved in these issues as a business, their livelihood, continued to pursue remedies that the children and the parents of the children do not want. Mr. Reynolds answered: "Yes."

Well, that was from Mr. Gerald Reynolds, an African-American citizen of this country, opposing Bill Lann Lee. Is he against African-Americans? I submit not. Is he against women? I submit not. Is he against Chinese-Americans? I submit not. Is he against civil rights? I say no. He's for civil rights. There is no doubt about that.

Let me read you this excerpt from the testimony, in June, of Charlene F. Loen. Like Mr. Lee, she is a Chinese-American, and she gave some of the most poignant testimony I have heard before our committee. She actually came to tears. She talked about her son, Patrick, who wanted to attend Lowell High School in San Francisco, but he was prevented from attending that public high school because of a racial quota set up under a Federal court consent decree in 1983. Under the consent decree, she said:

Hard work and good grades are not always enough. My son Patrick found out the hard way.

I am quoting again:

In 1994, Patrick applied to Lowell, with a test score of 58 out of a 69. That year, Lowell set the minimum score for Chinese students at 62. But then Lowell set the minimum scores for white students and other Asians at 58. Lowell set the minimum scores for blacks

and Hispanics lower than that. So Patrick could have gotten into Lowell if he were white, Japanese or black. He was rejected because he was Chinese American.

She went on:

Discipline, hard work, and academic achievement should be rewarded. Patrick studied hard, he got the grades, and he was rejected because he is of Chinese descent.

She went on:

The year Patrick was rejected, the San Francisco school district announced the opening of a new academic high school, Thurgood Marshall. I went to the school district to apply for Patrick. Right away, the person at the office asked me, "Is Patrick Chinese?" I said, "yes," and she said that the slots for the Chinese were already taken at Thurgood Marshall. I asked how could that be because the application period was not even over yet. She shrugged and said that that is just what the consent decree requires. Patrick also applied at three other high schools—Wallenberg, Washington, and Lincoln—and all three rejected him because they already had too many Chinese under the consent decree.

Those were her words. That is not the way, I submit, we ought to operate our Government today. She felt very strongly about that. And this is a Chinese-American testifying before our committee. In November, she said the Federal judge who approved the consent decree approved a payment by the State of California of over \$400,000 in legal fees to the NAACP, the legal defense fund, Bill Lee's unit, for opposing the lawsuit; in other words, the lawsuit that she had filed to try to get her son to be able to go to the school of her choice that he qualified to by objective standards.

A judge denied a motion to end the consent decree.

This is how she concluded her remarks.

Under the consent decree can you be denied admission to public school because of your race by treating people as members of racial groups rather than as individuals with the same rights before the law. The consent decree has dashed the hopes of children, denied my son and many others the right to opportunities they earned through hard work and diligence, condemned children to needless busing, prevented parents from being involved in their school and thereby holding school administrators accountable, and divided the people of San Francisco.

Divided the people of San Francisco.

This is the way things have been in San Francisco for the past 14 years.

Is Mrs. Loen against civil rights? I submit not. Is she against Chinese-Americans? No, she is not. She is a Chinese-American. Is she against women? No. Is she against minorities and civil rights? No.

Let me read this testimony before the Judiciary Committee's Subcommittee on the Constitution Federalism, and Property Rights chaired by Senator JOHN ASHCROFT. This is the statement of Senator MITCH MCCONNELL of Kentucky. He was talking about the "legally ordained" set-aside in Federal highway funding that mandated a certain percentage of the money be spent toward minority contractors.

This is what Senator MCCONNELL recounted:

Michael Cornelius recently spoke poignantly to this point before the Constitution Subcommittee in the House of Representatives. He explained that his firm [his business] was denied a Government contract under ISTEA [a Federal program] even though his bid was \$3 million lower than his competitor's. Mr. Cornelius' bid was rejected because the Government felt that the bid "did not use enough minority- or women-owned subcontractors."

To comprehend the full extent of the Government's unconstitutional policy, you must understand that the Cornelius bid proposed to subcontract 26.5 percent of the work to firms owned by minorities and women, and, of course, the Government concluded that even that was inadequate.

This is the kind of matter that the *Adarand* decision dealt with, and the *Adarand* decision is a decision Mr. Lee says he believes is bad constitutional law. But that is the Supreme Court of the United States, which in the *Adarand* decision set forth standards that basically demonstrate that these kind of set-asides are not fair. They are in violation of the equal protection clause of the Constitution of the United States.

Mr. President, I would also like to quote one more witness who testified. This is Mrs. Sue Au Allen, a Chinese-American, the President of the United States-Pan American Chamber of Commerce, a national nonprofit organization representing Asian-American business men and women, and other professionals.

She is a very impressive lady, and was very direct in what she had to say about the Lee nomination. She said:

Mr. Lee's record gives me grave concern. Mr. Chairman. As a nation's top civil rights law enforcement official, he will advocate certain policies on race and gender issues that are contrary to constitutional guarantee of equal right and opportunity for all Americans and that will have a deleterious effect on racial and gender harmony in general and on the rights of many individuals in particular.

She went on to say:

When I look at the arguments he has made in the last 20 years to determine his understanding of what equal protection requires, I learned that he does not believe in civil rights for all. He believes in quotas, set-asides, and preferences based on race and gender. This is not my belief. The person who believes in civil rights for some based on race and gender is a wrong person for this job.

She continues:

And his organization's defense of continuing judicial control of the desegregation of Lowell High School in San Francisco for high admission standards required of students whose admissions are kept at 40 percent . . .

She particularly mentioned that. This was just a few weeks ago. It is the same comment made by Mrs. Loen that I read earlier about Lowell High School in San Francisco.

Mrs. Allen continues, describing the assault on Proposition 209, the California civil rights initiative. This is what she said:



To bolster the assault on 209, Mr. Lee's Legal Defense Fund recruited the Federal Government as his ally. First, he filed a complaint with the U.S. Department of Labor's Office of Federal Contract Compliance Program and said that the decline in minority admissions at the University of California violates affirmative action rules imposed on Federal contractors.

This is the university:

It argued that the lowered admissions reduced the number of minority graduate students that the university might hire in complying with Federal racial preference programs.

This pushes legal theory, I submit, beyond any reasonable standard. This was for Mr. Lee's use. He is a private attorney now. He gained the support of his allies in the Department of Labor.

Quoting Mrs. Allen:

Second, although no student had ever complained about discrimination because of Proposition 209 or the University of California regents' vote to end racial preferences in admissions, Mr. Lee's Legal Defense Fund filed a complaint with the United States Department of Education attributing to discrimination the decline in minority admissions and enrollment at select University of California campuses.

So, Mrs. Allen is making a significant point. What she was saying was that even though a private attorney, Mr. Lee has been adept at inducing the Federal Government to join with him in his legal theory.

If confirmed in this position, he will, in fact, be the Federal Government, and he will have 250 attorneys at his disposal to send out on whatever cause he might deem appropriate.

She goes on to say this:

A San Francisco school district has been under a consent decree since 1983 because the Legal Defense Fund brought a suit to desegregate the school.

That is, since 1983, they have had a Federal judge monitoring that school system, I submit Mr. President.

She continues:

Under that decree, Lowell High School, a magnet school, where competition for admission is fierce, operates with a 40-percent cap on Chinese students. In addition, the school sets higher admission standards for Chinese students than for any other race or ethnic group. Recently, several Chinese students and their parents challenged that consent decree. But the Legal Defense Fund . . .

Which I submit is Mr. Lee's organization which he headed in the west:

. . . the Legal Defense Fund has actively defended the continuing judicial control over the district in the name of desegregation, this despite the adverse impact on Chinese students who would otherwise be admitted to Lowell and against the strong opposition of their parents.

Chinese-American parents.

Mrs. Allen said:

When the Legal Defense attorney called the consent decree segregation by inclusion, to me it is desegregation by discrimination and exclusion. These examples raise a very important question. As head of civil rights enforcement, will Mr. Lee argue for continued forced busing?

This lady Sue Au Allen, president of the Pan American-Asian Chamber of Commerce—is she anti-Chinese? She is

of a Chinese descent. Is she antiwomen? Is she anticivil rights? Is she antiminority? I submit no.

Serious questions have been raised about this nominee. This use of scurrilous attacks has not been coming by those of us who are concerned about nominations. We are talking about real issues. We are talking about real cases. We are talking about the position of the U.S. Department of Justice and what kind of position it will be taking in these cases as the years go by.

Those who oppose him, however, have been intemperate at best in those remarks, and I hope and pray that they will evaluate that and be more responsive, be more respectful of their colleagues in the future.

Let me say this. Incivility is not acceptable. In my opinion, the Judiciary Committee over the past decade, over 20 years, 15 or 20 years, has gone through a series of confirmation battles that have not been healthy. They have not reflected well on the Senate, and they have not done well in analyzing whether or not people should be confirmed. I for one believe we ought to do better. I believe we ought to dig in seriously to the nominees and what they believe, their integrity, their ability and their legal philosophy. And I think we can do that and sometimes we are going to say no. We hate to. It is no fun to say no to a person who would like to have a position of prominence. But that is our position of responsibility and we must face up to it.

Let me just say this. Why is it that I am concerned with this nomination? There has been a lot of talk about the California civil rights initiative, Proposition 209, a very, very important event in American history.

Basically, what the people of California said is we do not believe in preferences. We, in effect, believe that in our State we want the law to be very similar and basically the same as what the 14th amendment to the Constitution of United States says. So they really encapsulated the 1964 Civil Rights Act, and the people of California passed that by a significant margin.

Mr. Lee's organization immediately joined in a challenge to that proposition and in fact filed a brief. It is one thing for him to oppose the proposition when the people are voting on it, to campaign about it, but he went further than that. His organization joined in the litigation to have Proposition 209, which says almost the same thing as the Constitution of the United States, declared unconstitutional, a perfectly legitimate referendum declared unconstitutional. And this is what the court of appeals, the Ninth Circuit Court of Appeals held when they considered Mr. Lee's opinion on Proposition 209.

They said this. This is a Federal court:

As a matter of conventional equal protection analysis—

Equal protection clause of the 14th amendment—

there is simply no doubt that Proposition 209 is constitutional.

Those are the words of the ninth circuit, the most liberal of the eleven circuits in this country. Everyone suggests that. That circuit flatly rejected Mr. Lee's position, saying there is no doubt about it. And what is troubling is here you have an attorney seeking to attack the will of the people by bringing in a challenge to the constitutionality of an act that had no basis.

The court continued to say:

After all, the goal of the 14th amendment, to which the Nation continues to aspire, is a political system in which race no longer matters. The 14th amendment, lest we lose sight of the forest for the trees, does not require what it barely permits.

In other words, it does not require, the 14th amendment does not require preferences based on a person's race. It barely permits it. Only in the most extreme circumstances, only under the most strict scrutiny will a court ever approve an event in America in which we give a benefit to one person, thereby denying it to another simply because of their race.

So we have to be honest about this. It is time for us to talk about it seriously. We believe—I certainly do—in affirmative action, to go out and affirmatively solicit every person to apply, to seek out the best talent, to give people every chance to succeed, but we cannot tolerate quotas and set-asides and things of that nature.

Well, that is the important issue, Proposition 209, and Mr. Lee, when questioned about it, says it continues to be his position. And at the Civil Rights Division of the Department of Justice he would be prepared to file a brief on behalf of the United States of America in the Supreme Court to declare it unconstitutional. But he would not get that opportunity because the Supreme Court refused to even review the Ninth Circuit Court of Appeals ruling. The Supreme Court of the United States let it stand, denying certiorari, in effect saying this is a matter not even worth our time to consider because the law is so clear, agreeing totally with the ninth circuit's opinion.

Well, there is another matter of importance, and that is the Supreme Court decision, recent decision in the Adarand case. Adarand dealt with the set-asides in Federal law, that in effect tell Federal Government highway administrators that they must set aside a certain percentage of Federal contracts for minority contractors. I earlier read the comments of Mr. Cornelius who was the low bidder by \$3 million on one of those contracts and had an agreement to hire 25 percent of his subcontractors who would be minorities, and that was rejected because it was not generous enough. This is the kind of issue with which we are dealing.

Adarand said basically that that cannot continue. I would suggest that the Supreme Court is very seriously thinking about this issue, and I believe the



Supreme Court has looked down history in America and they have thought about it and they are saying we have got to stop, we have got to get out of this business of disbursing the goods and services of America based on what group you belong to. This is not the kind of principle upon which our country was founded, and that is what they meant by the Adarand decision, and that's why legal scholars consider it of thunderous importance, an extremely important decision.

OK. How does Mr. Lee feel about that? He opposed the Adarand decision. I asked him, does he still believe it is bad law? He says he believes it is bad law. He testified he does not agree with it. And he said something that is particularly troubling about it.

In his testimony, Mr. Lee stated that Adarand allowed affirmative action programs, which in this case means a kind of set-aside, in effect quotas. Sometimes affirmative action means affirmative outreach. Sometimes it means racial preferences and quotas. It just depends how it is used. But in this case we are talking about Adarand which had a set-aside in the law to favor some people. He said he thought they were legal under the Adarand decision if conducted in a limited and measured way.

That is not, Mr. President, what the Court in Adarand said. The Court in Adarand said that set-asides like this highway program are presumptively unconstitutional and can never be allowed except under the strictest of scrutiny. It is for the most significant of reasons that would justify these kinds of actions.

So what troubles me about that, and I know Senator HATCH raised it, is it suggests that as the top civil rights lawyer in this country he would not interpret Adarand the way the legal

scholars do but would interpret Adarand in a way that would justify him applying the resources of the 250 attorneys in the Department of Justice to undermine the Adarand decision the Supreme Court has rendered.

So let me ask, am I against civil rights to say that? Do I not believe in civil rights to say that I agree with the Supreme Court of the United States, I agree with the ninth circuit of the United States with regard to Proposition 209? I submit not. I believe in civil rights for everyone and I think most Americans do.

I wanted to quote from the words of Congressman Charles Canady who testified before the Subcommittee on Constitution, Federalism and Property Rights of the Judiciary Committee just a few days ago actually. And this is what he says, Congressman CANADY from Florida:

If we go back to 1961, when President KENNEDY promulgated the original Executive order on affirmative action, it was clear in that Executive order that steps were to be taken to reach out to all parts of the community to bring people into the pool of applicants for opportunities, but that people were to be treated without regard to their race. That specific language was used in the Executive order.

So I believe that Senator MCCONNELL's proposal encompassing a number of outreach elements is [what we should do].

Congressman CANADY continued:

Now, this system of set-asides [which was legally challenged in the Adarand decision] that is in place has been described as a remedial system. The problem with this system, however, is that it provides benefits to people who have not demonstrated that they are victims of any specific wrongdoing and it imposes cost on individuals who have been demonstrated to be guilty of no wrongdoing themselves.

Do we get that? It provides benefits to people who do not demonstrate that they have been harmed and it provides costs on those

who have not been demonstrated to have done anything wrong. Is it against civil rights to think such a policy is not good?

Congressman CANADY continued, I think saying it well:

I believe if we step back from this system [step back, like the Supreme Court is doing] which was put in place with the best of intentions [these set-asides and preferences and quotas] we have to conclude on the basis of our history as Americans that racial distinctions are inherently pernicious. It is fundamentally wrong [Congressman CANADY continued] for our country to divide this country into groups based on race and gender and then award benefits to some people because they belong to the right group and deny benefits to other people because they belong to the wrong group. That is inconsistent with our fundamental American values. It is inconsistent with the way our Government should treat its citizens.

He concluded:

I believe that the American people are becoming more and more weary of this failed system of race and gender preferences. They want to reaffirm the promise of America, that all Americans will be treated as individuals who are equal in the eyes of the law.

Well, I thought a good while about this. I think it was important to do so. I will just say this. We cannot end discrimination by practicing discrimination. That is fundamental. Make no mistake, when you benefit one person because of the color of his or her skin you are depriving another person because of the color of his or her skin. It is just that simple. It can be no other way. And the courts are agreeing with this. And Mr. Lee is outside the mainstream of judicial thought in America today. His opinion, opposing the most important Adarand decision, represents that he opposes the position of the Supreme Court of the United States. For that reason I feel compelled to vote "no" on his nomination.

I yield the floor.

## NOTICE

***Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.***

### ORDERS FOR MONDAY, NOVEMBER 10, 1997

Mr. SESSIONS. Mr. President, I ask unanimous consent that when the Senate completes its business today it stand in adjournment until the hour of 10 a.m. on Monday, November 10. I further ask that on Monday, immediately following the prayer, the routine requests through the morning hour be granted, and the Senate proceed to a period of morning business for not to extend beyond the hour of 10:30 a.m. with Senators permitted to speak for up to 10 minutes each.

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

### PROGRAM

Mr. SESSIONS. Mr. President, tomorrow the Senate will be in a period of morning business until 10:30 a.m.

Following morning business, the Senate intends to consider and complete action on the following:

The fast-track bill, if passed by the House; additional motions, if necessary, with respect to the omnibus appropriations bills; and any Legislative or Executive Calendar items cleared for action.

Therefore, Members can anticipate rollcall votes during Monday's session of the Senate. However, I would not expect votes before 11 a.m.

Mr. FORD. Mr. President, as the acting leader laid out at the beginning, at 10:30, following morning business, what do you expect to go to next? Would

there be any time limitations on the fast-track? If it is here.

Mr. SESSIONS. I say to the distinguished Senator from Kentucky that, of course, it has to get here first.

Mr. FORD. I understand.

Mr. SESSIONS. If it does, this unanimous consent request says we will move to the fast-track bill, if passed by the House. Additional motions, if necessary, with respect to the omnibus appropriations bill, and any Legislative or Executive Calendar items cleared for action.

Mr. FORD. I am sure this has been agreed to. This has all been cleared.

Mr. SESSIONS. I thank the Senator from Kentucky.

ADJOURNMENT UNTIL 10 A.M.  
TOMORROW

Mr. SESSIONS. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 8:50 p.m., adjourned until Monday, October 10, 1997, at 10 a.m.

### CONFIRMATIONS

Executive nominations confirmed by the Senate November 9, 1997:

#### FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

ROBERT H. BEATTY, JR., OF WEST VIRGINIA, TO BE A MEMBER OF THE FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING AUGUST 30, 1998.

#### EXECUTIVE OFFICE OF THE PRESIDENT

ARTHUR BIENENSTOCK, OF CALIFORNIA, TO BE AN ASSOCIATE DIRECTOR OF THE OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

#### DEPARTMENT OF COMMERCE

RAYMOND G. KAMMER, OF MARYLAND, TO BE DIRECTOR OF THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY.

#### DEPARTMENT OF THE INTERIOR

KEVIN GOVER, OF NEW MEXICO, TO BE AN ASSISTANT SECRETARY OF THE INTERIOR.

#### UNITED STATES POSTAL SERVICE

ERNESTA BALLARD, OF ALASKA, TO BE A GOVERNOR OF THE UNITED STATES POSTAL SERVICE FOR A TERM EXPIRING DECEMBER 8, 2005.

#### FEDERAL LABOR RELATIONS AUTHORITY

DALE CABANISS, OF VIRGINIA, TO BE A MEMBER OF THE FEDERAL LABOR RELATIONS AUTHORITY FOR A TERM EXPIRING JULY 29, 2002.

#### MERIT SYSTEMS PROTECTION BOARD

SUSANNE T. MARSHALL, OF VIRGINIA, TO BE A MEMBER OF THE MERIT SYSTEMS PROTECTION BOARD FOR THE TERM OF SEVEN YEARS EXPIRING MARCH 1, 2004.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

#### NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

WILLIAM R. FERRIS, OF MISSISSIPPI, TO BE CHAIRPERSON OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES FOR A TERM OF FOUR YEARS.

#### OFFICE OF PERSONNEL MANAGEMENT

JANICE R. LACHANCE, OF MAINE, TO BE DIRECTOR OF THE OFFICE OF PERSONNEL MANAGEMENT FOR A TERM OF FOUR YEARS.

#### THE JUDICIARY

FRANK C. DAMRELL, JR., OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE EASTERN DISTRICT OF CALIFORNIA.

MARTIN J. JENKINS, OF CALIFORNIA, TO BE U.S. DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF CALIFORNIA.

A. RICHARD CAPUTO, OF PENNSYLVANIA, TO BE U.S. DISTRICT JUDGE FOR THE MIDDLE DISTRICT OF PENNSYLVANIA.