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House of Representatives

The House was not in session today. Its next meeting will be held on Wednesday, February 11, 1998, at 3:00 p.m.

Senate

TUESDAY, FEBRUARY 10, 1998

The Senate met at 10 a.m. and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

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

Gracious God, You have shown us the power of an unreserved commitment. We prayerfully personalize the promise of the psalmist, ''We commit our way to You, Lord. We also trust in You, and You will bring Your plans to pass. We rest in Your word, and wait patiently for You'' (Psalm 37:5,7). In all the challenges of life, we've discovered that Solomon was right, ''Commit your works to the Lord and your thoughts will be established'' (Proverbs 16:3). Over and over again, You have responded to our commitment to solve problems by providing us with clarity of thought and ingenious solutions.

You have revealed that commitment is the key to opening the floodgate for the inflow of Your Spirit. It is as if You set all of the angels in heaven, all the people who serve You on Earth, and the confluence of circumstances to help us. Unexpected blessings happen; coincident events occur; people respond; and the tangled mess of details is untangled. Amazed, we look back to the moment when we gave up and You took over; when we let go and You took hold; when we rested in You and You replenished our strength. Lord, help us to commit ourselves, our problems, and our hopes and dreams to You. In the name of Jesus who prayed, ''Father, into Your hands I commit My spirit.'' Amen.

RECOGNITION OF THE MAJORITY LEADER

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

SCHEDULE

Mr. LOTT. Mr. President, this morning, under a previous consent, the Senate will debate the motion to invoke cloture on the nomination of David Satcher to be Surgeon General until 11 a.m. At 11 the Senate will vote on the motion to invoke cloture on the nomination. Under the agreement that we reached last week, if cloture is invoked, a second vote will occur immediately on the nomination itself. Therefore, Senators should be aware that there may be two consecutive rollcall votes beginning at 11 a.m.

As under the order, from 12:30, then, to 2:15, the Senate will recess for the weekly policy luncheons to meet. Following the luncheons, the Senate may begin consideration of the nomination of Judge Massiah-Jackson to be U.S. District Judge for the Eastern District of Pennsylvania. Therefore, further votes can be expected to occur following the one or two votes at 11 o'clock.

Also, I want to give Senators a reminder that a cloture vote on the motion to proceed to the cloning bill will now occur Wednesday morning at 10 a.m. I thank my colleagues for their attention to this and I urge they pay particular attention to this cloning issue. The Senate needs to make a decision on whether or not we want to allow human cloning to go forward. There is a lot of concern about that. The President has indicated he is opposed to it and we need to take this issue up.

I urge the Senate to at least vote to go to debate on the substance of the bill itself. The cloture motion is on the motion to proceed. I think we ought to have a beginning of a full discussion about this, see where there are disagreements and where maybe we can come to agreements. If we do not do that, this process will be allowed and there are going to be serious, I think, scientific, medical, ethical and moral questions that are going to be left dangling in the wind. If Senators have additional ideas that they would like to offer in the form of amendments to this human cloning issue, that is the way we should proceed.

I urge the Senate to begin to pay close attention to this issue. The alternative is, perhaps, to do nothing, and I think that would be a very dangerous thing in this very important issue.

Mr. President, I see a Senator seeks recognition. I yield the floor.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER (Mr. ASHCROFT). Under the previous order, the leadership time is reserved.

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

EXECUTIVE SESSION

NOMINATION OF DAVID SATCHER, OF TENNESSEE, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, MEDICAL DIRECTOR OF THE PUBLIC HEALTH SERVICE, AND SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

The PRESIDING OFFICER. Under the previous order, there will now be an hour debate, equally divided between the Senator from Vermont and the Senator from Missouri or their designees, prior to the cloture vote on the nomination of Dr. David Satcher of Tennessee to be Assistant Secretary of Health and Human Services and to be Surgeon General.

The Senate resumed consideration of the nomination.

The PRESIDING OFFICER. Who yields time? The Senator from Tennessee is recognized.

Mr. THOMPSON. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I rise in support of the nomination of Dr. David Satcher of Tennessee. I have listened to the debate. I have talked to Dr. Satcher about the issues involved. I am convinced that this is an outstanding appointment that the President has made. Whether you look at Dr. Satcher's history in terms of his commitment to his family, whether you look in terms of his commitment to his community, or whether you look in terms of his commitment to his profession, I believe he is an outstanding individual. From everyone that I have talked to, I have come away with that conclusion. Clearly there are some policy issues on which we disagree. I think we have one in terms of the debate on partial-birth abortion. Frankly, in looking at the issues and listening to the debate, I think that that is at the crux of the concern as far as Dr. Satcher's confirmation. I think a lot of these other issues are collateral issues.

I have talked to him about this. I am a strong supporter of the ban on partial-birth abortions. I think there is no justification whatsoever for that onerous procedure. And, in response to questions on this issue, Dr. Satcher has said:

> While I support the concept of a ban on late-term abortions, like the President I feel that if there are risks of severe health consequences for the mother then that decision should not be made by the Government, but by the woman in conjunction with her family and her physician.

Again, he supports the concept of a ban on late-term abortions but he believes there should be more thought given to the situation of severe health consequences for the mother. I understand what he is talking about. Personally, I have concerns about that exception and its potential for abuse. Without getting into that whole debate again, I can simply say I disagree with the President's position on that issue. However I have discussed this issue with Dr. Satcher and I have read what he has written in response to questions on this issue. I am satisfied he does not intend to use the position of Surgeon General to advocate or promote abortion in any way. In fact, he said:

> Let me state unequivocally that I have no intention of using the positions of Assistant Secretary for Health and Surgeon General to promote issues related to abortion. I share no one's political agenda, and I want to use the power of these positions to focus on issues that unite Americans and not divide them.

He went on to say:

> If I am confirmed by the Senate I will strongly promote a message of abstinence and responsibility to our youth which I believe can help to reduce the number of abortions in our country.

This is the commitment that he has made. Many of us have been concerned in times past that this particular position of Surgeon General would be used as a bully pulpit by individuals to promote policies that are contrary to the best interests of this country. I think it has been done in the past. I do not feel that Dr. Satcher will do this. I think he has a good concept of the good that can be done in this job. I think he understands the terrible problems that our young people have. I think he sees an opportunity to do some good for these young people. Everything in his history indicates that that would be his attitude in approaching this position, and I believe him when he says that and I respect his position on that.

I believe that, generally speaking, a President has the right and should have the right to appoint the kind of nominees, the kind of people he wants to these positions. I believe that, whether the President is a Democrat or a Republican. There are some situations where the positions or the background is so out of the norm, out of the mainstream, that we as a confirming body have to take a contrary position to that of the President. I think those situations ought to be rare. I have considered Dr. Satcher's record. I do not see anything in his record where that particular result on our part should obtain.

Unfortunately, I think sometimes in these confirmation debates we have a policy problem with the President, or we have a policy problem with the individual who the President nominates. But, instead of concentrating on that policy problem we begin to look for other things that we perhaps could use against this nominee. I think we get into, then, issues sometimes of credibility and veracity and character and things like that that, frankly, I think is unfortunate. I think it has happened on both sides of the aisle with regard to nominees from both sides of the aisle in times past.

I think we would be well served to keep our eye on the ball. Let's look at the history of this particular individual. I don't think anybody can question his character or his veracity or his commitment to his profession. We have a policy issue here. We need to address whether or not the fact that he supports the President, as all the President's nominees for any position that comes up are going to do—whether or not his support for the President in this case is sufficient to disqualify him for this position. I think the answer to that is no. I think he will be a good Surgeon General.

He does happen to be a Tennessean. That does not disqualify him either, in my estimation. And therefore I respectfully submit this gentleman should be confirmed.

I thank the Chair for the opportunity to speak this morning. I yield the floor.

The PRESIDING OFFICER (Mr. GREGG). Who seeks time? The Senator from Missouri.

Mr. ASHCROFT. Mr. President, I suggest the absence of a quorum and ask unanimous consent the time be allotted equally to both sides.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. ASHCROFT. Mr. President, I rise to speak against the confirmation of Dr. David Satcher, and I allocate myself so much time as I may consume, but I ask that I be notified when 8 minutes have expired.

The PRESIDING OFFICER. The Chair will notify the Senator at that point.

Mr. ASHCROFT. Thank you very much.

Mr. President, we live in an information age. We have come to a conclusion and an understanding of an important fact, which is that those individuals who control information and have information are in a position to make good decisions. And, as a matter of fact, the basis of good decisions really determines the outcome of arguments and determines the strategy that will be developed, determines the course of a nation. No one is able to make good decisions without good information. In the computer world, it is put this way: Garbage in, garbage out. If you don't have good information going in, you don't get good information coming out. It is that simple and easy to understand.

It works with computers; it also works with the U.S. Senate. If we don't get good information, we can't make good decisions. If we don't get accurate information, we can't make the kinds of decisions the people expect us to make in this office.

There are a variety of issues which have characterized the debate as it relates to the potential confirmation of Dr. David Satcher: issues relating to the New England Journal of Medicine's

conclusion that the African AIDS studies were unethical and that they were improper; issues relating to the study of newborns and the transmission of AIDS from mothers to their children in the United States; the maintenance of an experiment that left the identification of the children unknown long after we had therapy that would have been available to them if we just identified the children by virtue of the blood samples.

We have had the issue of both of those AIDS studies. We have had the issue of partial-birth abortion. We have had the issue about needle exchanges. We have had issues raised in this Chamber about the Accident Prevention Center at the Centers for Disease Control, that center which is so focused, in some respects, on guns and their impact on the lives of Americans. It has been an issue because there has been a suggestion that guns, in some respects, qualify as a disease and has become something that we should address in the Congress. I personally don't believe that the second amendment to the United States Constitution, which guarantees the opportunities of individuals to have guns, is a disease. I think it is a valuable right for this country, and it is one we ought to cherish.

But in all of these issues, the ability of the Congress to make good decisions, the ability of the Senate, specifically, to make decisions about a confirmation depends on the reliability and availability of the information.

There are some troubling aspects about the unavailability and the unreliability of information that have characterized the information flow in this confirmation proceeding. The Centers for Disease Control seems to have felt that it could selectively provide information regarding the controversial AIDS study in Africa, the study which the New England Journal of Medicine criticized because people were given sugar pills, or placebos, at a time when there was a known therapy. And it is pretty clear that when there is a known therapy, medical ethics say you are not allowed to give people just sugar pills and send them on their way, watching them die.

The New England Journal of Medicine took the Centers for Disease Control to task over this. The Centers for Disease Control was asked about it by my office and by others, and a meager stream of information came out.

I hold in my hand today a report of May 22, 1997. This report has yet to be delivered to me by the Centers for Disease Control but came into my possession from a third party who had gotten this report through a Freedom of Information Act demand last year. It seems to me that when we ask for information like this, the Members of the Senate ought to be accorded at least the courtesy of the information being provided, but when we read the report, it may well be that it is the nature of the report, it is the content of the report that makes it difficult for them to want to share it with the Senate.

Paragraph No. 3 says:

Whether the use of a placebo in this study is ethical.

So they are still debating 3 or 4 years after the start of this study serious questions at CDC about whether what they are doing is ethical, the way they are treating individuals in these African trials. I personally agree with the New England Journal of Medicine that to treat people as if they are laboratory subjects and not as human beings, to give them placebos when it is known that the HIV virus ultimately is fatal is unethical.

But what is important here is, and I quote the language:

This concern is because a placebo-controlled trial in the United States would be unethical.

Here you have a document from the Centers for Disease Control admitting that for us to do this in the United States to the citizens of the United States would be unethical. I think that is substantial. For me, human beings are indivisible. It says in our Declaration of Independence, we are endowed by the Creator with certain inalienable rights. We don't have superior standing in terms of ethics and expectation because we happen to live in the United States. This flat statement by those in authority at the Centers for Disease Control reporting on this randomized placebo-controlled study in Africa flatly states that a placebo-controlled trial in the United States would be unethical.

I find the unavailability of this kind of report to the U.S. Senate in a confirmation process to be troublesome. I think we have a right to be asking for good information. I think absent good information we won't make good decisions.

If this were the singular situation in which there had been the absence of information in this confirmation hearing, I might say, ''Well, gee, they have a lot of things and perhaps this is to be overlooked. This must have been an error.'' But early in the debate, needle exchange programs and the support by Dr. Satcher of such programs were raised. Several Senators came to the floor saying he has never supported a needle exchange program; he would never support federally funded needle exchange programs.

We asked for information from the CDC about that. We only got the information, frankly, after we had the leader intercede to give us information. When it came, it did show that there was a report from CDC that said that they approved of and thought reasonable and appropriate substantial Federal funding for needle exchange programs.

But even—I thank the Chair for the 8-minute warning. I allocate myself 5 minutes additional.

So there was a report that said the CDC itself supported substantial Federal funding for needle exchange programs. That is where you give dope addicts needles so that they can shoot up the dope and have less opportunity to be contaminated by a dirty needle.

But what was strangely missing, uniquely missing, was the fact that Dr. Satcher had written a cover letter to the report endorsing the report. When I asked for the information, it wasn't forthcoming. Finally, when we insisted, they sent the report, but they didn't send the cover letter of Dr. Satcher. That had to come from collateral sources that we were able to generate.

Stonewalling is a problem in Washington, and it is inappropriate to think that we can fail to tell the truth in this city and have the kind of Government that Americans deserve. It is a problem in a variety of settings, but it is a problem as it relates to the U.S. Senate and to this confirmation hearing.

Additionally, I asked in my exchanges with the CDC whether or not they ever funded conferences that promoted clean needles, and they said no. They even sent documents showing that there were certain conferences devoted to clean needles which they declined to fund. But then later we find that there are documents, as the agenda of conferences, that reveal the cosponsorship of the Centers for Disease Control and other so-called health agencies that are designed exclusively for the purpose of clean needles. The name of the conference was ''Getting the Point''—the needle point.

We can debate needle exchange programs. There are very serious ethical problems in providing dope addicts with clean needles. What is a young person to think when the junkie comes up and says, ''The Government provides us with these clean needles.'' Must be OK to use dope, to have tax dollars spent by Americans to provide clean needles to dope addicts so that they can focus their activities and operate safely to inject drugs. The folks who pay taxes in those neighborhoods where the clean needles are distributed must wonder about the commitment of their Government to protect them rather than to provide a safe haven for drug users.

But this is a disturbing set of circumstances, where we simply have an absence of information as a result of a stonewall on the part of the administration, and I believe that those who provide that approach are not the kind of individuals who ought to be trusted with the responsibilities of Government.

I believe an individual who supports needle exchange programs, who would accommodate drug use instead of seeking to curtail drug use, who thinks that the problem is dirty needles instead of the addiction to heroin, is not the type of person who ought to be leading our culture as it relates to drug policy or health policy.

I believe that the absence of information and the willingness to stonewall and not provide information does not

characterize the way in which we would want to deal with our own doctors, our family doctors, and certainly would not characterize the way we would expect the family doctor of the United States of America to deal with us.

It is in that respect that I think we understand that the absence of information keeps us from making good decisions—garbage in, garbage out. And when the agency decides to provide to the U.S. Senate, selectively, information which reinforces what it wants us to know, but withhold information about things that it hopes we do not find out, we should not reward that kind of behavior, that stonewalling, if you will, that absence of truth, that selective revelation of what they want us to know but not what we need to know. We should not reward that with confirmation.

There is an epidemic in Washington, DC, of bureaucracy that feels like it can tell people only what they think the people want to know. It is because there are those in the bureaucracy who feel they know so much better than the people. But that is contrary to the values of America.

The real value of America is not that the values of Washington, DC, be imposed on the people. The genius of this democratic republic is that the values of the people would be imposed on Washington, DC. For the values of the people to be understood, they have to be recognized and accorded dignity and respect, and they have to be formed in the context of information which is complete and thorough.

Mr. President, I reserve the remainder of my time.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. How much time is remaining on this side?

The PRESIDING OFFICER. The Senator from Tennessee has 18 minutes remaining. The Senator from Missouri has 10 minutes 41 seconds.

Mr. FRIST. Mr. President, I rise in strong support of the nomination of Dr. David Satcher for the positions of Surgeon General and Assistant Secretary for Health. Dr. Koop called the position of Surgeon General ''a high calling, with an obligation to interpret health and medical facts for the public.'' ''A high calling''—a high calling because one subjects oneself to all sorts of accusations, in portraits painted that may not quite be accurate. In fact, sometimes they may be false and sometimes misguided and certainly misleading. Therefore, I would like to focus my comments over the next several minutes on debunking some of the accusations we have heard on the floor over the past week, one by one.

No. 1, Dr. Satcher's position regarding abortion. Let me say at the outset that I strongly support the ban on partial-birth abortions passed by this Congress, vetoed by the President. I questioned Dr. Satcher about his agreement with the President's position. Let me say that in talking with him, the issues of partial-birth abortion deeply trouble Dr. Satcher. He has said both to me and in writing to this committee that he supports the ban of this procedure in concept, but he stops short of Federal legislation when the health of the mother is involved.

I do not agree with the President's position or Dr. Satcher's agreement with the President. In a letter of October 28, he wrote me the following, which is reassuring to me. It says:

> Let me state unequivocally that I have no intention of using the positions of the Assistant Secretary for Health and Surgeon General to promote issues related to abortion.

He continues:

> I share no one's political agenda. And I want to use the power of these positions to focus on issues that unite Americans—not divide them.

He continues:

> If I am confirmed by the Senate, I will strongly promote a message of abstinence and responsibility to our youth, which I believe can help to reduce the number of abortions in our country.

If you look over Dr. Satcher's past—not an agenda we want to impose on him, but his past—over the last 25 years, he has never made abortion a part of his agenda in promoting the public health. And, as you look forward, using the words that I just quoted, he has made the statement that abortion is not going to be a part of his agenda in the future.

No. 2, AZT trials in Africa and Asia. I have talked about this on the floor, but let me just very briefly say that today, actually over the course of the day, 1,000 HIV-infected babies will be born in developing countries. These babies will go ahead and, unfortunately, die.

The goal of the studies that have been carried out, proposed, and are under discussion, was to find a way to stop transmission of that HIV virus from HIV-infected pregnant women to their children. You do not do that—you do not do that—by studying Western-style, prohibitively expensive technology impractical in developing countries, Western-style medicine that requires intravenous administration, repeated visits back to the physician or to the clinic, because there is absolutely no chance that that sort of therapy can be applied in the developing countries where the goal is to prevent transmission.

That is the goal of the study—not to make us feel good, not to prove that the therapy works for the United States or England or France—but to decrease transmission in those countries. And you do not do that by eliminating an arm of the study that includes the current standard of care. We are blessed in this country where the standard of care is not a placebo or doing nothing. Unfortunately, in Africa—and I was just there 3 weeks ago—the current standard of care is no therapy. That has to be an arm of the trial when you are looking at a new intervention.

I am absolutely convinced, as a physician, as a clinical researcher, that the trials in Africa met the institutional, the national, and the international ethical standards as defined today.

These studies came in 1994. The World Health Organization recommended that studies be done to test the safety and efficacy of this short-term AZT therapy which had the potential of helping developing countries. In fact, I would argue that it would be unethical to take a Western-style therapy that can only be applied in countries that have the technological advances, that can have repeated visits, that have the money, it would be unethical to take that and experiment on a population that could not potentially benefit from that in the future.

Third issue. Federal funding of needle exchange programs and educational conferences has come up again and again and again. Dr. Satcher will very simply—talking about the man; no programs and documents coming from here and there; talking about the man—Dr. Satcher, the man nominated, has never advocated, has never supported taxpayer-funded needle exchange programs for drug abusers. Let me repeat, Dr. Satcher has never advocated or supported taxpayer-funded needle exchange programs for drug abusers.

Dr. Satcher, furthermore, in both written and oral conversations, believes strongly that we should never do anything to advocate the use of illegal drugs.

Mr. ASHCROFT. Would the Senator yield?

Mr. FRIST. Let me run through this in the interest of time.

No. 4, research on guns. The CDC National Center for Injury Prevention and Control has been criticized by some for supporting grantees with an alleged bias against guns as we look at violence. These studies have been carried out.

Again, I have talked to Dr. Satcher personally and discussed, in my office, this issue. I brought up at that time the fact that raw data had not been made available from a study published in the New England Journal of Medicine, that it should be made public. And I am actually very pleased that the raw data is now available on the Internet for everybody to see. I appreciate his rapid response.

Fifth issue. Dr. Satcher has been accused of secretly conducting blind HIV studies on newborn babies and sending them home infected without treatment. Not true. Not true. It makes for great sound bites, and it catches the people's imagination, but it is simply not true.

Again, look at what happens. The big issue is what is the incidence at the time? What is the incidence? What is the prevalence of HIV infection in your

community? How would you find that out today?

Well, the study that was actually carried out was that samples were obtained that had been discarded, set aside from clinics and from hospitals, all done once again with ethical standards of the time, and tests were done on that blood to see what the underlying incidence was. Yes, they were not labeled. In fact, all of the personal labeling had been stripped from the discarded samples. Why? Because of the privacy of those individuals.

Another point that has not been mentioned is that each of these clinics, each of these hospitals who participated in this baseline study to see what the incidence of HIV infection is, had at the time offered voluntary HIV counseling and testing at every site where this study took place. Therefore, each and every woman did have the opportunity to learn her HIV status.

Those are the issues that have come forward. Let me just briefly say, in Dr. Satcher's own words, because we have tended to look at all these other issues—I think we need to look at his past, his principles, and his agenda. What is his agenda? His agenda is—and I quote—

> As Surgeon General, I would strive to provide our citizens with cutting-edge technology in plain old-fashioned, straight talk. Whether we are talking about smoking or poor diets, I want to send the message of good health to the American people.

He continued, as he looked forward in his vision:

> My goals as Assistant Secretary for Health and Surgeon General are to be an effective adviser to the Secretary by providing sound medical, public health and scientific advice as appropriate. I want to bring more attention, awareness and clarity to the opportunities for disease prevention and health promotion that are available to individuals, to families, to communities in this country. I want to help make the health of children and youth a greater priority for the Nation and serve as a positive and inspirational role model to them.

Personal responsibility and prevention, that is Dr. Satcher's agenda for the future.

Dr. Satcher has dedicated his career to public health. He is well qualified to lead the U.S. Public Health Service and its commissioned officers to meet these worthy goals. I urge my colleagues to support the vote which will take place in a few minutes, the cloture vote, and to support Dr. Satcher as the next Surgeon General.

I yield the floor.

Ms. MOSELEY-BRAUN. Mr. President, the position of Surgeon General was created in 1870 and played a vital role in fighting infectious diseases and other threats to public safety. Communicating with the American public about the health of their families and communities is probably the most important responsibility of a Surgeon General. This person serves as our nation's chief spokesperson for public health. This is the bully pulpit from which we may be lead down the path to a strong, healthy, and productive society.

After nearly eight years of dormancy, President Reagan recognized the importance of a national health leader in 1981 and revived the position of Surgeon General with the nomination of Dr. C. Everett Koop. At the time, this too was a very controversial nominee, but the Congress and nation grew to deeply respect his leadership. Dr. Koop and his successors made tremendous strides in educating the public about the spread of AIDS, the prevalence of domestic violence, and the need to control out-of-wedlock births. There should be no doubt that Dr. David Satcher will continue this legacy.

This critically important post has been vacant for three years and our nation does not have anymore time to spare. The longer the Senate delays this appointment, the greater the lost opportunity to improve public health. For example, there is a developing consensus across the nation about the need to reduce teen smoking. Three thousand children become permanent smokers every day. We need a Surgeon General in place to spearhead a national strategy to meet the challenge of teen smoking.

Mr. President, I have listened to a lot of the debate on this nomination. I want to offer my support to Dr. Satcher and highlight some the experiences and qualities that make him the right person for this position.

Dr. Satcher is a physician, a scholar, and a public health leader of national stature. His almost uniform endorsement by the medical, business, and education communities are a testament to the respect which Dr. Satcher's work has earned him. I ask unanimous consent that a list of more than 120 of the nation's medical associations, allied health groups, businesses, and educational institutions that have also endorsed Dr. Satcher be printed in the RECORD.

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

ENDORSEMENTS OF DR. DAVID SATCHER

(as of November 24, 1997)

MEDICAL ASSOCIATIONS

American Medical Association.
American Academy of Family Physicians.
National Medical Association.
National Hispanic Medical Association.
Tennessee Medical Association.
American Academy of Child and Adolescent Psychiatry.
American Academy of Pediatrics.
American Association of Clinical Endocrinologists.
American Association of Neurological Surgeons.
American Association of Public Health Physicians.
American College of Chest Physicians.
American College of Emergency Physicians.
American College of Gastroenterology.
American College of Nuclear Physicians.
American College of Obstetricians and Gynecologists.
American College of Occupational & Environmental Medicine.
American College of Physicians.
American College of Preventative Medicine.
American Dental Association.
American Gastroenterological Association.
American Medical Group Association.
American Medical Women's Association.
American Osteopathic Association.
American Psychiatric Association.
American Society of Cataract and Refractive Surgery.
American Society of Clinical Pathologists.
American Society of Internal Medicine.
American Society of Pediatric Nephrology.
American Society for Reproductive Medicine.
American Society for Transplant Physicians.
California Medical Association.
College of American Pathologists.
Congress of Neurological Surgeons.
Interamerican College of Physicians and Surgeons.
Mississippi State Medical Association.
Society of Nuclear Medicine.
Society of Thoracic Surgeons.

NURSES

American Nurses Association.
American Association of Nurse Anesthetists.
National Black Nurses Association.
Emergency Nurses Association.

HOSPITALS

American Hospital Association.
InterHealth.
National Association of Public Hospital and Health Systems.
National Association of Children's Hospitals.
The Hospital and Health System Association of Pennsylvania.

PHARMACEUTICAL COMPANIES

Merck.
Smith Kline Beecham Pharmaceuticals.
Zenecca Inc.
Wyeth-Lederle Vaccines and Pediatrics.

BUSINESSES

American Airlines.
American Association of Health Plans.
American Greetings.
Avon.
Community Health Resources, Inc.
Ford.
National Pharmaceutical Association.
Phoenix Healthcare Corporation.

ACADEMIC HEALTH CENTERS

Association of American Medical Colleges.
Charles R. Drew University of Medicine & Science, Los Angeles, CA, Dr. W. Benton Boone.
Harvard University Medical School, Cambridge, Massachusetts, Dr. Julius B. Richmond.
Meharry Medical College.
Morehouse School of Medicine, Dr. Louis W. Sullivan.
Rollins School of Public Health of Emory University.
Vanderbilt University Medical Center.
University of California, School of Medicine, San Francisco, California, Dr. Phil Lee.
University of Washington School of Public Health and Community Medicine.
University of Pittsburgh Graduate School of Public Health.
University of North Carolina School of Public Health, Chapel Hill, NC, Dr. William L. Roper.

CHILDREN'S GROUPS

Children's Defense Fund.
The Children's Health Fund.

ALLIED HEALTH GROUP

AIDS Action Council.
American Cancer Society.

American Diabetes Association.
American Dietetic Association.
American Lung Association.
American Public Health Association.
Association of Schools of Public Health.
Association of Maternal and Child Health Programs.
Association of State and Territorial Health Officials.
Coalition for Health Funding.
Council of State and Territorial Epidemiologist.
Intercultural Cancer Council.
National Association of County and City Health Officials.
National Association for Public Health Policy.
National Family Planning and Reproductive Health Association.
National Black Child Development Institute.
National Association of People With AIDS.
National Mental Health Association.
National Osteoporosis Foundation.
National Task Force on AIDS Prevention.
Partnership For Prevention.
Society for Public Health Education.
U.S. Department of Health and Human Services Hispanic Employee Organization.

EDUCATION

Bethune-Cookman College, Daytona Beach, Florida.
Claflin College, Orangeburg, South Carolina.
National Alliance of Black School Educators.
Voorhees College, Denmark, South Carolina.
West Virginia State College, Institute, West Virginia.
Mississippi Valley State University, Itta Bena, Mississippi.
Coppin State College, Baltimore, Maryland.
St. Paul's College, Lawrenceville, Virginia.
South Carolina State University, Orangeburg, South Carolina.
Langston University, Langston, Oklahoma.
Paine College, Augusta, Georgia.
Texas Southern University, Houston, Texas.
Tuskegee University, Tuskegee, Alabama.
University of the District of Columbia, Washington, DC.

DISABILITY GROUPS

March of Dimes Birth Defects Foundation.
National Multiple Sclerosis Society.

YOUTH GROUPS

College Democrats of America.

FRATERNITIES AND SORORITIES

Alpha Phi Alpha Fraternity, Inc.
Phi Beta Sigma Fraternity, Inc.
Zeta Phi Beta Sorority, Inc.
Delta Sigma Theta Sorority, Inc.

WOMEN'S ORGANIZATIONS

Joint Action Committee for Political Affairs.
National Black Women's Health Project.
National Asian Women's Health Organization.
National Breast Cancer Coalition.
Women's Legal Defense Fund.

SENIOR GROUPS

National Council of Senior Citizens.

RELIGIOUS GROUPS

Ray of Hope Christian Church.
Shiloh Baptist Church of Washington.
Southern Christian Leadership Conference, Joseph Lowery.

CIVIL RIGHTS GROUPS

Dr. Martin Luther King, Jr., Commemoration Commission.
National Association for the Advancement of Colored People.
National Urban Coalition.

LAW ENFORCEMENT GROUPS

American Correctional Association.
National Association of Blacks in Criminal Justice.
National Organization of Black Law Enforcement Executives.

OTHER

Family Violence Prevention Fund.

INDIVIDUALS

Sister Mary Alice Chineworth, OSP.

Ms. MOSELEY-BRAUN. There can be no doubt that Dr. Satcher is eminently qualified to be Surgeon General. He has spearheaded successful public health improvements at each stage of his career. As director of the Centers for Disease Control, he lead four important advancements in public health which distinguished his tenure there.

Under his leadership, childhood immunization rates have risen to a record 78 percent. Vaccines have become more affordable and vaccine-preventable childhood illnesses have fallen to the lowest level in history.

All states now participate in the special breast and cervical cancer screening program due to Dr. Satcher's leadership. When he became CDC director in 1993, only 18 states were participating in this program. In almost two-thirds of the nation, women were excluded from this early outreach and cancer detection program. Today, more than one million women are receiving cancer screening tests and 21,000 cases of treatable cervical cancer have been identified. This is the result of Dr. Satcher's leadership.

Further, he led the development of a comprehensive strategy to combat infectious diseases. Recent outbreaks of *e. coli* and other bacterial infections, as well as the reemergence of malaria and cholera, have raised national awareness. Dr. Satcher brought networks of physicians and clinics together to monitor emerging diseases and formed an innovative seven-state surveillance program.

Finally, Dr. Satcher also developed an early warning system to respond to outbreaks of food-borne illnesses. Food safety is clearly one of our nation's most important issues, particularly so given the increasing globalization of trade. As more imported foods products find their way to Americans' dinner tables, having a strong food safety systems in place will be vital. Thankfully, the early warning system established by Dr. Satcher was in place last year to catch salmonella contaminated alfalfa sprouts and *e. coli* contaminated lettuce and apple cider which might have caused a public health tragedy.

These are just four examples of improvements in public health Dr. Satcher has achieved during his tenure as CDC director. These are the types of results and initiatives that Dr. Satcher would continue to work towards in his role as Surgeon General and Assistant Secretary of Health.

Concerns have been raised during this debate about Dr. Satcher's limited involvement in controversial HIV/AIDS studies in Africa, Asia, and the Caribbean. I share many of these concerns and wrote to the President in this regard in April of last year. Subsequently, I discussed these concerns at length with Dr. Satcher and others in the scientific community. They advised me that, useful medical research and clinical trials in developing countries often pose special challenges. The resources available to people of developing worlds are not comparable to resources available to individuals in this country. Even though I strongly disagree with their conclusions, I understand scientists' belief that we may need to balance our research standards in this country with the public health needs in developing nations.

This issue poses a debate concerning medical ethics which is yet unresolved in the scientific community. We can certainly not expect to resolve it with this nomination process. Dr. Satcher's position on these studies is not central to whether he would serve the nation well as Surgeon General. We can have the professional disagreement over the merits of the HIV studies, but the defining question should be whether this individual, is qualified for the challenges of the position. I believe unequivocally, that Dr. Satcher has that ability, the experience, and commitment to be an excellent Surgeon General.

It is reasonable for many of us to have various disagreements with nominees for executive branch posts. This ability to voice opposition and debate ideas is what makes our democracy great. At the end of the day, however, reason should prevail. The President has done the country a service by nominating such an outstanding candidate. Dr. Satcher is qualified to be Surgeon General and would be the first family physician to hold the post. What better person to be the nation's doctor? I hope that my colleagues will join me in supporting his confirmation.

Mr. BOND. Mr. President, I have observed the debate over the nomination of Dr. David Satcher over the past couple weeks. It has been a very productive, yet intense, discussion which has raised some critical questions.

Today, there is an unmistakable need for a capable individual to fill the position of United States Surgeon General—a position which has been vacant for over three years. Marked increases in smoking and substance abuse by our nation's youth, combined with the continuing plague of disease such as heart disease, cancer, diabetes, and others, have made it imperative for the nation to have access to advice that is both scientifically accurate and trustworthy.

The person who occupies the Surgeon General's Office is our Nation's number one doctor and public health leader. Kids around the country will seek and heed the advice of the Surgeon General, and for this reason alone, thorough scrutiny of Dr. Satcher's qualifications and views is well-placed.

Dr. Satcher has proven that he is an effective leader. Under Dr. Satcher's direction of the Centers for Disease Control and Prevention, child immunization rates have increased from 52 percent to a record 78 percent. As a result, vaccine-preventable childhood diseases are at record lows. Dr. Satcher also has led CDC's efforts to strengthen our nation's defenses against infectious diseases and food-borne illnesses. These are just a couple of significant results that have been achieved under Dr. Satcher's guidance.

Despite Dr. Satcher's remarkable credentials and achievements, there have been some questions raised by my colleagues concerning his positions on partial-birth abortion and gun control. I have known and worked with Dr. Satcher on numerous occasions, especially in the area of birth defects prevention. In fact, I just met with him last week to discuss these grave concerns that have arisen since his nomination. Dr. Satcher has personally assured me that he will rely on science, instead of politics, to influence his decisions—thereby preserving the independence of the Office of the Surgeon General.

Let me make it clear. I will continue the battle to ban partial-birth abortion, and have consistently voted to prohibit federal funds for abortion. In addition, I have consistently fought efforts to restrict the ability of law-abiding citizens to purchase and own firearms.

Dr. Satcher has exemplified the utmost dedication, ability, and professionalism throughout his distinguished career. I am satisfied that he will continue to operate in this manner as Surgeon General of the United States. We may not agree on all issues, but I have the utmost confidence in his character and ability to serve with distinction. Dr. Satcher is a strong choice for this position, and I look forward to witnessing Dr. Satcher's efforts to preserve the independence of this office.

With an issue as important as our nation's health, which rises far above partisan politics, I am confident that Dr. Satcher will serve America well.

Mr. KYL. Mr. President, I do not doubt Dr. Satcher's competence as a physician, scholar, and medical researcher. However, serious questions on two important issues have arisen during Senate debate on his nomination to be U.S. Surgeon General.

I am concerned about Dr. Satcher's position on partial birth abortion. The vast majority of Americans (84 percent, according to a 1996 Wirthlin poll), a majority of the Senate and U.S. House, and the American Medical Association support banning partial birth abortion. Former Surgeon General C. Everett Koop has said that there is ''no way to see partial birth abortion as a medical necessity * * *'' It is clear that Dr. Satcher's view on this controversial procedure is out of the mainstream of public and medical opinion. Since Dr. Satcher is apparently willing to subordinate mainstream medical judgment to politics in this instance, I have concerns that he may do so on other important health issues as well.

I am also troubled that, as administrator of the Centers for Disease Control, Dr. Satcher approved a questionable medical research project in Africa and Asia. The researchers gave one group of HIV-infected pregnant women placebos while another group received AZT, a drug known to decrease by 67 percent the probability that the unborn children would be infected by the HIV virus. A September 18, 1997 editorial in the New England Journal of Medicine concluded that this research was ''unethical.''

The editorial explains that the reason the code of medical ethics is unambiguous with regard to the investigators' primary responsibility to care for the human subjects of scientific testing ''is due to the strong temptation to subordinate the subjects' welfare to the objectives of the study.'' The editorial concludes that the ''research community must redouble our commitment to the highest ethical standards, no matter where the research is conducted.''

As the ''nation's doctor,'' the U.S. Surgeon General should embody the highest professional and ethical standards. He or she should clearly reflect the views of a majority of Americans and the medical community. Because Dr. Satcher's views on these two issues raise doubts in my mind—and because, after three years without a Surgeon General, it is unclear whether the position is necessary—I have decided to resolve my doubts against his confirmation. If the president strongly believes the country needs a Surgeon General, I am sure there are thousands of well-qualified candidates whose nominations would not raise these issues.

Mrs. MURRAY. Mr. President, I come to the Senate floor today to express my frustration and concern with the opposition to the nomination of Dr. Satcher as the new Surgeon General and Assistant Secretary for Health. I will not reiterate what has been said here today about Dr. Satcher's outstanding credentials or his outstanding work as head of the Centers for Disease Control. This has been well documented. I do not wish to lengthen the debate any more than necessary. Dr. Satcher is an ideal candidate who should already be serving the American people as our Surgeon General.

I come here today to unmask some of my Colleagues who are attempting to further delay the nomination of Dr. Satcher to advance their own political agenda. They are not opposing him because his is not qualified, but rather because he stands with the President, and the Supreme Court in defense of a women's right to adequate medical care that protects her life and health.

What my Colleagues on the other side are attempting to do is to ask a nominee for the position of Surgeon General to disregard the law and acceptable medical practice. This is what the debate is about.

I have heard and read other concerns expressed by opponents, but interestingly enough these issues were not debated at any great length during the Committee process. This would have been the opportunity to air these other issues or concerns. Instead they chose to block the nomination on the floor all because Dr. Satcher believes in protecting the health and life of women. They are trying to do what they could not and would not do in the Labor and Human Resources Committee. They did not have the votes.

I have listened to many of my Colleagues come to the floor as champions of women's health care. I see bill after bill being introduced in the Senate, all in the name of protecting or improving women's health. But, when it comes to really protecting women's health many of these same Senators are silent or stand in direct conflict with what is good for women's health.

Women's health is not just about breast cancer or cardiovascular disease. We all know that these are important women's health concerns and issues, but women's health also includes reproductive health. Dr. Satcher recognizes this fact and realizes the importance of standing for women's health.

In addition to the reproductive health issues involved here today, I think I should remind many of my Colleagues that we need a Surgeon General and we need one now. The American people need someone who they can trust and depend on as they try to negotiate through a more complicated and frustrating health care delivery system than any of us ever envisioned. We need someone who will talk to us about health care and access to health care, especially prevention services. While there is little consensus on what reforms or changes need to be made in the way our health care system currently delivers care, the one thing that we all can agree on is consumers need more information that speaks to their needs and concerns. It is no wonder so many of my constituents are concerned about the increasing role of non medical personal in making their health care decisions. Who else is out there talking to consumers, besides insurance companies?

For those of you so concerned about women's health, keep in mind that women are the true health care consumers in most American families. They pick the family doctor; they take care of the sick child; they make the doctors appointments for the aging parent; and they worry the most about lack of information available to make informed decisions.

Let's end this debate and move to vote on the nomination of an outstanding doctor to be our new Surgeon General. We all know that there will be another day to debate the issues surrounding late term abortions. This has become an annual event so we do not need to delay the nomination of Dr. Satcher simply to have yet another debate on late term abortion.

Mr. INHOFE. Mr. President, I rise today in opposition to the nomination of Dr. David Satcher to the position of Surgeon General of the United States. In my view, Dr. Satcher represents many of the problems undercutting the moral fabric of American life. Too many, including myself, Dr. Satcher is outside the mainstream of public opinion.

I understand that Dr. Satcher is a remarkable man, with many years of distinguished service as a doctor. My position on his nomination does not stem from his history of service or his qualifications. Rather, my opposition comes from the ideals that Dr. Satcher represents. It is unfortunate that the office of the Surgeon General, America's family doctor, has become politicized. Due to this increasing political role, Dr. Satcher remains unfit to fulfill the position of Surgeon General. As head of the Center for Disease Control and Prevention, Dr. Satcher's actions and decisions have wandered into the political arena time and again.

Dr. Satcher has publicly supported the President's position on partial-birth abortion. His position is completely at odds with over 80% of the American public and the America Medical Association. The AMA has said that there is never any medical circumstance where this particular procedure should be used to terminate a babies life. I find the elitism and arrogance of Dr. Satcher on this issue completely irresponsible. When asked by the Labor and Human Resources Committee about his support of the President's position, Dr. Satcher re-affirmed his support for this procedure. I need not remind my colleagues the description of this outrageous procedure. Even Senator DANIEL PATRICK MOYNIHAN, an abortion rights supporter, has termed this procedure ''infanticide.'' Continued support for this barbaric procedure borders on the ridiculous.

Dr. Satcher also has apparently adopted the opinions of his predecessor, Dr. Jocelyn Elders, on many sensitive cultural issues as well. As head of the CDC, Dr. Satcher has endorsed the distribution of condoms to our children in public schools. This is Dr. Satcher's way of teaching our kids how to deal with problems like teen pregnancy and AIDS. Mr. President, I must say I am appalled at this blatant attempt at undermining the concept of abstinence as the best form of disease prevention and birth control. Are we truly teaching children responsibility by providing them with condoms in their classrooms?

Dr. Satcher also supports using taxpayer dollars to promote this dangerous agenda. In 1994, Dr. Satcher began an $800,000 national advertising campaign aimed at out nation's youth promoting condom usage. This was all done in the name of AIDS prevention. I find this egregious use of precious resources disturbing. By promoting condom usage, we are simply encouraging our children to become sexually active. I understand the issue of responsibility, however, I have never heard the word abstinence associated with Dr. Satcher. To me, abstinence is truly the responsible way to prevent unwanted pregnancies and AIDS.

It is interesting to that note Dr. Satcher's view of responsibility is convenienent when it conforms with his political beliefs, when in reality his actions often appear to be irresponsible from both a moral and scientific point of view. I say this because much has been made recently of Dr. Satcher's morally questionable African HIV study. As we have all become aware, as head of the CDC, Dr. Satcher approved of research conducted in Africa and Asia that called for a groups of HIV positive pregnant women to receive placebos (sugar pills), without their knowledge, while others knowingly received valuable lifesaving medication (AZT). Those receiving the placebo served as the control group and those receiving the medication the study group. All this, despite the fact that it was known that AZT decreased by ⅔ the likelihood that the disease would be transmitted from the mother to the child.

This experiment is both repulsive and morally questionable. It violates every know protocol from the Hippocratic Oath to the Nuremberg Code and the Declaration of Helsinki which requires doctors to provide any and all lifesaving measures. The Declaration of Helsinki states: ''In a medical study every patient—including those in a control group, if any, should be assured of the best proven diagnostic and therapeutic method.'' Apparently, Dr. Satcher viewed his research outside established international ethical protocols.

A September 1997 New England Medical Journal of Medicine editorial, our most recognized medical journal in the United States, declared Dr. Satcher's actions unethical and likened the study to the Tuskegee Incident, where medication with known benefits was withheld from a control group. Truly, this represents a dark day in American history. However, sadly, one we chose not to learn a lesson from.

In responding to the criticism, Dr. Satcher admitted that this human experiment would not have taken place in the United States because all participants in any clinical trial must be given at least small amounts of AZT. He argued, however, that cost and efficiency dictated that the experiment be done in developing countries. Did he really mean to imply that those childrens' lives are any less of value than our own? As a grandfather, I feel for those grandparents who lost grandchildren and potential grandchildren because of Dr. Satcher's experimentation.

I wish that this was the first and only time Dr. Satcher had promoted blind testing in regard to HIV. Sadly, it is not. Dr. Satcher has also endorsed anonymous testing of domestic newborns.

In 1988, the CDC began collecting anonymous blood samples from newborn children right here in the United States. The results of these blood tests were subsequently withheld from the parents of the children. Mothers of newborns with HIV were sent home without being told that their child was carrying a fatal disease. Because the results were withheld, important life-sustaining treatment was denied.

When this blind testing became public, Dr. Satcher defended the CDC's practices saying the mothers would panic and ultimately leave their health system. These were life and death decisions made by Dr. Satcher. Apparently, he did not appreciate that fact as much as he should have.

With the public enraged over these unethical tests, Congress quickly sprang into action. Representative GARY ACKERMAN introduced legislation to prohibit the continuation of the studies. In response to this legislation, Dr. Satcher personally lobbied Representative ACKERMAN to abandon the bill. Fortunately, Representative ACKERMAN refused. The CDC was eventually forced to abandon the blind testing due to public outcry. Now just imagine for just a second if you will, what would have happened if the public had not become aware of the CDC's activities? How many countless children would have been denied access to health care.

Mr. President, Dr. Satcher's conduct in these cases was not only disturbing, but horrifying. Essentially, depending on which group you were in, Dr. Satcher was playing God. If anything is unethical, this must be. Surely, this sort of behavior cannot and should not be overlooked by this Senate today.

If Dr. Satcher's questionable ethical conduct were not enough, the CDC, under Dr. Satcher, has been attempting to subvert our right to keep and bear arms as guaranteed by the Constitution of the United States. The National Center for Injury Prevention and Control (NCIPC) has begun tracking gun-related injuries and turning the research over to anti-gun liberals with a political agenda. Now, I'm not exactly sure how the NCIPC developed this authority. However, these activities constitute nothing less than an all out political assault on the Second Amendment paid for by the American taxpayer.

The director of the NCIPC, Dr. Rosenberg, is a known anti-gun crusader. He is on record equating gun ownership to cigarette usage. Apparently, Dr. Rosenberg's, and presumably Dr. Satcher's, copy of the Constitution differ greatly from mine. My copy of the Constitution talks openly about the right and the freedom to keep and bear arms. Dr. Rosenberg has openly and repeatedly said that firearms are ''dirty, deadly, and [should be] banned.'' All of this is done with the tacit approval of Dr. Satcher and at taxpayer expense. In fact the very agency Dr. Satcher wishes to head, the

U.S. Public Health Service, has had since 1979 one of its primary goal ''to reduce the number of handguns in private ownership,'' starting with a 25% reduction by the end of this century. Unfortunately, not enough taxpayers are aware of how their money is being used to promote this activist liberal agenda.

In responding to questions about the relevancy of the CDC's work on gun issues, Dr. Satcher predictably defended the agency saying that those who were upset by its work should be more upset about the relationship between firearms and injury. I can assure Dr. Satcher unequivocally, no one is more concerned about gun safety than gun owners. In defending the CDC's practice, Dr. Satcher failed to comment on why the data, collected at taxpayer expense, is not being released to the public. Once again, it is ironic that responsibility has been confused with truthfulness.

In closing, Mr. President, I would like to reiterate my opposition to Dr. Satcher's nomination. The position of Surgeon General should be someone the American people can trust to advise them on important health issues. However, through his deeds and words, Dr. Satcher has demonstrated again and again that his ethics must be questioned and that he carries a biased politically driven agenda into a position that requires non-partisan action. Is Dr. Satcher the man for the position of America's family doctor? I cannot and do not come to this conclusion. I would urge my colleagues to evaluate their positions carefully before elevating someone with such a blatant and aggressive political agenda to such an esteemed position.

Thank you Mr. President. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, what is the allocation of time that remains?

The PRESIDING OFFICER. The proponents have 7 minutes 49 seconds remaining. The opponents have 10 minutes 41 seconds remaining.

If neither side yields time, time will be charged equally to both sides.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time again do we have?

The PRESIDING OFFICER. The proponents have 7 minutes 19 seconds remaining.

Mr. KENNEDY. Mr. President, I know Senator DASCHLE wants to speak in favor of the nominee, and there are only 7 minutes left. I will take just 2 minutes, and then I hope that those who are opposed to the nominee will take what time they need, and then the time-honored tradition is that those who are in support of the nominee are generally accorded the courtesy of the last response.

Mr. President, as we approach the vote, I want to point out that the various questions, allegations and charges that have been made to try to disqualify Dr. Satcher have been responded to, and none more eloquently than by our friend and colleague, the chairman of the Health Subcommittee of the Human Resources Committee, Senator FRIST.

I hope that those Members who have some questions in their mind have listened very carefully to those responses, because I think they accurately respond to the various allegations and charges.

Finally, I just want to say that Dr. Satcher is uniquely well qualified. His life has been a life of service. He was one of 3 out of 70 students who graduated from his high school to go on to college. He graduated magna cum laude from his college. He was at the top of his class at Case Western Reserve University where he pursued a medical degree and a Ph.D.

Dr. Satcher is a respected family doctor, researcher, teacher, and administrator, affiliated with some of the great universities of this country. He is an individual who has looked out for fairness and decency in the service to families in this country. Dr. Satcher has a unique background and it is due to this background that every single health organization, without exception, has endorsed Dr. Satcher. Every single one of them has endorsed him. The past Secretary of HEW, the very distinguished Dr. Louis Sullivan, has endorsed him as well.

We are very fortunate to have Dr. Satcher as a nominee. I commend the President and look forward to a vote of cloture so we can get on with the business of getting him in place to serve the American public.

Mr. President, I ask unanimous consent that letters of endorsement of Dr. Satcher from the head of the Office of National Drug Control Policy, Barry McCaffrey, and the Director of the National Institutes of Health, Dr. Harold Varmus, be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY,
Washington, DC, February 10, 1998.

Hon. EDWARD M. KENNEDY,
Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: Dr. David Satcher's written response to a question for the record from his confirmation hearing clearly indicates that he supports the Administration's needle exchange position. We do not have clear scientific evidence to conclude that needle exchange programs do not encourage drug use. His statements is fully consistent with federal law which requires the Secretary of HHS to make two science-based findings before lifting the ban on use of federal funds for needle exchange programs. Specifically, the Secretary must demonstrate that: (1) needle exchange programs reduce the transmission of the HIV virus and (2) do not encourage drug use.

Dr. Satcher has a distinguished background as the President of Meharry Medical College for eleven years, as a faculty member of the UCLA School of Medicine and the King/Drew Medical Center in Los Angeles, and outstanding service as the Director of the Centers for Disease Control since 1993. He is eminently qualified to serve as the nation's Surgeon General. Dr. Satcher will bring enormous expertise to bear on our efforts to reduce drug abuse and its consequences in America.

I fully support Dr. Satcher's nomination for Surgeon General.

Respectfully,

BARRY R. MCCAFFREY,
Director.

DEPARTMENT OF HEALTH & HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH,
Bethesda, Maryland, February 9, 1998.

Hon. EDWARD M. KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I am writing to support the nomination of David Satcher, M.D., Ph.D., currently the Director of the Centers for Disease Control and Prevention, to be Surgeon General of the United States and Assistant Secretary for Health in the Department of Health and Human Services. Dr. Satcher is a medical scientist of outstanding ability, a leader of great energy and vision, and a public servant of the highest integrity.

As Director of the Centers for Disease Control and Prevention, Dr. Satcher has led the Federal Government's primary programs for promoting health and preventing disease, injury, and premature death. He has directed a revamping of Federal efforts in AIDS prevention and led Federal actions to revitalize our attack on emerging infectious diseases. Dr. Satcher's accomplishments in his medical career, which has included work in sickle cell research and family medicine at King-Drew Medical Center in Los Angeles, earned him election to the Institute of Medicine of the National Academy of Sciences as well as selection to receive the 1978 Watts Grassroots Award for Community Leadership. His academic career has included positions on the faculty of the Morehouse School of Medicine and the King-Drew Medical Center and UCLA School of Medicine. During a distinguished tenure as president of Meharry Medical College from 1982 through 1993, Dr. Satcher's leadership and public service were recognized with the National Conference of Christians and Jews Award in 1985 and the ''Nashvillian of the Year'' Award in 1992. His expertise and background, as well as the outstanding personal qualities obvious to anyone fortunate enough to work closely with him—as I have—qualify Dr. Satcher exceptionally well to serve as Surgeon General and Assistant Secretary for Health and to be the single, clear voice in communicating to the Nation on issues that affect public health.

Sincerely,

HAROLD VARMUS, M.D.,
Director.

The PRESIDING OFFICER. The distinguished Democratic leader.

Mr. DASCHLE. Let me commend the distinguished senior Senator from Massachusetts for his summary comments with regard to the Satcher nomination. I don't think anyone could have said it more persuasively or more succinctly. As he noted, every single organization in this country with any standing, with any credibility in regard to health care, has said this is an extraordinary individual, a leader in health care.

The Senate ought to confirm him today. Nothing else really needs to be said.

I commend the Senator from Tennessee for his leadership and his advocacy of Dr. Satcher. I, secondly, join with all of my colleagues in supporting very strongly the nomination today. I hope that we can pass his nomination on an overwhelming vote, Republicans and Democrats, given the circumstances that we have now faced over the last 3 years.

We ought to be saying to the country, unequivocally: ''We need leadership in health care. We can no longer tolerate a void in that leadership by not having a Surgeon General in the United States of America.'' That is what this is about, acknowledging that void, recognizing the need for leadership, recognizing the need for a strong agenda in health care, spearheading efforts to place greater emphasis on children's health, to intensify the youth antismoking campaign and the array of responsibilities that the Surgeon General takes on as the Nation's top public health advocate.

There shouldn't be any doubt about what this is all about. It is at long last acknowledging the need for leadership, acknowledging the tremendous contribution Dr. Satcher has made in an array of different roles, especially in the Centers for Disease Control, and acknowledging the opportunity that we now have to ask him to take on the nation's most important public health role. I believe Dr. Satcher's nomination deserves broad-based Republican and Democratic support.

I hope, Mr. President, that the people will listen to the words of Senator KENNEDY, Senator FRIST and others as they have so eloquently argued for his nomination over the last several days.

Mr. President, I fully support the nomination of Dr. David Satcher for the dual position of U.S. Surgeon General and Assistant Secretary of Health. This nation is fortunate that a man of Dr. Satcher's dedication, vision and deep commitment to public service has agreed to take on this important role.

Dr. Satcher has served the American people as a family practice physician, an educator and an established leader in the public health arena. During his tenure as the Director of the Centers for Disease Control, Dr. Satcher worked to strengthen the critical prevention link in the nation's public health structure. He tackled the national problem of lagging childhood immunization rates, increasing the number of children immunized by nearly 25 percent.

This is an exceptional accomplishment. Under Dr. Satcher's leadership, we reduced by one-fourth the number of children at risk for immunization-preventable diseases, some of them permanently disabling or fatal.

Dr. Satcher also spearheaded a highly successful program to provide breast and cervical cancer screening to women throughout the nation, and launched an early warning system to detect and prevent food-borne illnesses such as *e-coli*.

I have received an unprecedented number of letters and calls in support of Dr. Satcher's nomination: physicians, nurses, hospital administrators, public health organizations, individuals from my state and others. Clearly, Dr. Satcher is already recognized as a guiding force in our health care system. I believe the nation can only benefit from asking him to serve as the nation's leading voice for public health, science and medical education.

In a recent letter, Dr. Satcher wrote: ''If I am confirmed by the Senate, I will work to ensure that every child has a healthy start in life. I will encourage the American people to adopt healthy lifestyles, including physical activity and diet. And I will try to help the American people make sense of a changing health care system, so they can maximize their access to—and quality of—the health care they receive.''

I believe Dr. Satcher's goals are on target. The nation will be well served by a public health leader who can help us foster healthy lifestyles, a consumer advocate who recognizes that strengthening our health care system means empowering individuals to make informed decisions about the care they receive.

I am confident that Dr. Satcher, a man of experience, integrity and insight, will help us make these goals a reality. I hope that my colleagues on both sides of the aisle will join me in confirming his nomination.

I ask unanimous consent that a letter I received from the Director of the Office of National Drug Control Policy, Barry McCaffrey, be printed in the RECORD.

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

EXECUTIVE OFFICE OF THE PRESIDENT, OFFICE OF NATIONAL DRUG CONTROL POLICY,
Washington, DC, February 10, 1998.

Hon. THOMAS A. DASCHLE,
Democratic Leader,
U.S. Senate, Washington, DC.

DEAR MR. LEADER: Dr. David Satcher's written response to a question for the record from his confirmation hearing clearly indicates that he supports the Administration's needle exchange position. We do not have clear scientific evidence to conclude that needle exchange programs do not encourage drug use. His statement is fully consistent with federal law which requires the Secretary of HHS to make two science-based findings before lifting the ban on use of federal funds for needle exchange programs. Specifically, the Secretary must demonstrate that: (1) needle exchange programs reduce the transmission of the HIV virus and (2) do not encourage drug use.

Dr. Satcher has a distinguished background as the President of Meharry Medical College for eleven years, as a faculty member of the UCLA School of Medicine and the King/Drew Medical Center in Los Angeles, and outstanding service as the Director of the Centers for Disease Control since 1993. He is eminently qualified to serve as the nation's Surgeon General. Dr. Satcher will bring enormous expertise to bear on our efforts to reduce drug abuse and its consequences in America.

I fully support Dr. Satcher's nomination for Surgeon General.

Respectfully,
BARRY R. MCCAFFREY,
Director.

Mr. DASCHLE. I yield the floor.

The PRESIDING OFFICER. If neither side yields time, time is charged equally to both sides.

Mr. ASHCROFT. Mr. President, would you please inform the Chamber of the remaining time for each side.

The PRESIDING OFFICER. The time of the proponents has expired; the time remaining for the opponents is 8 minutes and 21 seconds.

Mr. ASHCROFT. Would the Chair please notify me when 2 minutes remain.

The PRESIDING OFFICER. The Chair will so advise.

Mr. ASHCROFT. Mr. President, I rise to say to the U.S. Senate that this responsibility which we are considering today is a very important responsibility. The Nation's doctor is a very important position. We should be very careful about doing those things which can and need to be done in making sure we confirm appropriately or deny confirmation appropriately to someone nominated for that responsibility.

It is in that regard that I have sought to raise issues that are, I think, fundamental to the values of the American people and ask serious questions about them. I want to review those at this time.

The first thing I mention is that Dr. Satcher transmitted to the Secretary of Health and Human Services a report favorably saying that substantial Federal funds should be committed both to providing needle exchange services and to expanding research into these programs. Both recommendations, according to the CDC's comment, are reasonable and appropriate. That transmission saying that needle exchanges should have substantial funding was made in a report under Dr. Satcher's signature going to the Secretary of Health and Human Services.

It is pretty clear to me that one of the leadership responsibilities of the Surgeon General is the responsibility to inform the President or the Secretary of Health and Human Services of policies that ought to be adopted. This nominee has said that needle exchange programs ought to have substantial Federal funding and they ought to be studied carefully.

Now, in my view, it doesn't make sense to give dope addicts needles with which to conduct their poisonous activity and with which to propagate bad habits of intravenous drug use. What are we saying to young people if the junkie comes along and says, ''Don't worry about this, we have clean needles. The Government approves it. They give us the needles to use.'' What are we saying to the families when the needles from the junkies are left by the hundreds around the neighborhoods so that young children will find them? As soon as you provide free needles—a

town that tried this found 300 discarded needles by junkies in one week.

No. 2, this nominee for Surgeon General conducted studies on individuals in Africa when the studies would have been unethical in the United States. The regulations provide that you are not allowed to do to other people what you won't and can't do to yourself. The New England Journal of Medicine made clear the absence of ethics in this situation.

No. 3, David Satcher persisted in conducting blind HIV studies of newborns in the United States, ignoring the need to identify the blood samples and notify parents of HIV infections in children, even after therapies were developed which could help those children in those settings. When the Congress got upset about it and decided to discontinue the program altogether, Dr. Satcher said, ''No, we want to continue it without telling parents and without identifying which of the children is HIV infected,'' and came and lobbied the Congress in that respect.

I don't think that calls us to our highest and best. I think that accommodates America at something far less. So you have this pattern.

In addition, we have tried to get information from the Centers for Disease Control and Dr. Satcher. They have given us partial bits of information. The report in which the CDC commended the idea of Federal funding for needle exchange was sent to us but it didn't have Dr. Satcher's cover letter on it—conveniently didn't. The denial of needle exchange support by Dr. Satcher conveniently didn't indicate that Federal funds, provided through the CDC, had the sole purpose of promoting needle exchange programs.

When we asked about the ethics of the African trials we simply didn't get all the information from the CDC. We were not given memos internal to the agency which we have received from other sources that have raised the very ethical issues in CDC by medical personnel there that we have been raising on this floor.

Now if trust is a fundamental component of the relationship between the doctor of a nation and the people of the Nation, there has been in some substantial measure a breach of the necessary trust in the absence of candor and the absence of providing information in this setting.

Last but not least, let me say that Dr. Satcher has said that he supports the President's position on partial-birth abortion. The President's position has been that he is going to continue to make it available in this country and refuse to have a reasonable law which would prevent it. In my judgment, it is time for us to say that we expect the leadership on health in this country to comport with the understanding of the health community that partial-birth abortions are not indicated, they are not necessary, and that to endorse the political agenda of the President rather than the health agenda of America is inappropriate. This is about whether someone who is indifferent to infanticide can care for our children.

The PRESIDING OFFICER. The Chair advises the Senator that he has 2 minutes remaining.

Mr. ASHCROFT. Mr. President, I ask unanimous consent the time remaining be yielded to the chairman of the Senate Labor and Human Resources Committee so that he has the custom of concluding the remarks in the Chamber in a way that is favorable to the nominee.

The PRESIDING OFFICER. The chairman of the committee, the Senator from Vermont, is recognized.

Mr. JEFFORDS. Mr. President, first I want to thank my good friend for allowing me to do this.

Mr. President, this is one of the relatively few times in the Senate when we have had a cloture motion on a nomination.

I want to remind everyone of the fine, fine man that we are voting on here today. I urge my colleagues to vote for cloture, and then to confirm Dr. Satcher.

When we opened this debate last week, I stated that Dr. Satcher's record of service to the people of the United States was exemplary. I noted that his character and integrity were absolutely without blemish. Nothing has been said over the past two days that has challenged these assertions. Not even Dr. Satcher's critics question his professional qualifications to serve in the positions for which he has been nominated.

Senators FRIST and THOMPSON, and others, have already spoken eloquently about Dr. Satcher's commitment and integrity. They described the unprecedented support Dr. Satcher enjoys within the medical community, the public health community, and the research community. They have also described firsthand their own experiences working with the nominee to address public health issues in the State of Tennessee.

I wish to associate myself with their remarks and to urge my colleagues to support Dr. Satcher's nomination. I know of no reason why we should not vote for cloture, and then support Dr. Satcher.

Mr. President, I yield the remainder of my time, if any.

CLOTURE MOTION

The PRESIDING OFFICER. All time has expired. By unanimous consent, pursuant to rule XII, the Chair lays before the Senate the pending cloture motion, which the clerk will state.

The bill clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar Nos. 338 and 339, the nomination of David Satcher to be Assistant Secretary of HHS and to be Surgeon General:

Trent Lott, James Jeffords, Richard Lugar, Conrad Burns, Arlen Specter, Frank H. Murkowski, Ted Stevens, Ted Kennedy, Olympia J. Snowe, Susan Collins, Tom Daschle, Paul Wellstone, Herb Kohl, Christopher Dodd, Chuck Robb, Tim Johnson, and Tom Harkin.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of David Satcher of Tennessee to be Assistant Secretary of Health and Human Services, Medical Director of the Public Health Service, and Surgeon General of the Public Health Service shall be brought to a close?

The yeas and nays are required. The clerk will call the roll.

The bill clerk called the roll.

Mr. NICKLES. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

Mr. FORD. I announce that the Senator from Michigan (Mr. LEVIN) is necessarily absent.

The yeas and nays resulted—yeas 75, nays 23, as follows:

[Rollcall Vote No. 8 Ex.]

YEAS—75

Abraham	Feingold	Lott
Akaka	Feinstein	Mack
Baucus	Ford	McCain
Bennett	Frist	Mikulski
Biden	Glenn	Moseley-Braun
Bingaman	Gorton	Moynihan
Bond	Graham	Murkowski
Boxer	Grams	Murray
Breaux	Gregg	Nickles
Bryan	Hagel	Reed
Bumpers	Harkin	Reid
Byrd	Hatch	Robb
Chafee	Hollings	Rockefeller
Cleland	Hutchison	Roth
Cochran	Inouye	Sarbanes
Collins	Jeffords	Smith (OR)
Conrad	Johnson	Snowe
Coverdell	Kennedy	Specter
Craig	Kerrey	Stevens
Daschle	Kerry	Thomas
DeWine	Kohl	Thompson
Dodd	Landrieu	Thurmond
Domenici	Lautenberg	Torricelli
Dorgan	Leahy	Wellstone
Durbin	Lieberman	Wyden

NAYS—23

Allard	Faircloth	Lugar
Ashcroft	Gramm	McConnell
Brownback	Grassley	Roberts
Burns	Helms	Santorum
Campbell	Hutchinson	Sessions
Coats	Inhofe	Shelby
D'Amato	Kempthorne	Smith (NH)
Enzi	Kyl	

NOT VOTING—2

Levin	Warner

The PRESIDING OFFICER. On this vote, the yeas are 75, the nays are 23. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Under the previous order the question is now on the nomination without further debate.

Mr. JEFFORDS addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. JEFFORDS. Mr. President, have the yeas and nays been requested?

The PRESIDING OFFICER. They have not.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

VOTE

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David Satcher to be an Assistant Secretary of Health and Human Services, Medical Director of the Public Health Service, and Surgeon General of the Public Health Service? On this question the yeas and nays have been ordered.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. NICKLES. I announce that the Senator from Virginia (Mr. WARNER) is necessarily absent.

Mr. FORD. I announce that the Senator from Michigan (Mr. LEVIN) is necessarily absent.

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

The result was announced, yeas 63, nays 35, as follows:

[Rollcall Vote No. 9 Ex.]

YEAS—63

Akaka	Durbin	Lieberman
Baucus	Feingold	Mack
Bennett	Feinstein	McCain
Biden	Ford	Mikulski
Bingaman	Frist	Moseley-Braun
Bond	Glenn	Moynihan
Boxer	Gorton	Murray
Breaux	Graham	Reed
Bryan	Harkin	Reid
Bumpers	Hatch	Robb
Byrd	Hollings	Rockefeller
Chafee	Inouye	Roth
Cleland	Jeffords	Sarbanes
Cochran	Johnson	Snowe
Collins	Kennedy	Specter
Conrad	Kerrey	Stevens
Coverdell	Kerry	Thompson
Daschle	Kohl	Thurmond
Dodd	Landrieu	Torricelli
Domenici	Lautenberg	Wellstone
Dorgan	Leahy	Wyden

NAYS—35

Abraham	Gramm	Lugar
Allard	Grams	McConnell
Ashcroft	Grassley	Murkowski
Brownback	Gregg	Nickles
Burns	Hagel	Roberts
Campbell	Helms	Santorum
Coats	Hutchinson	Sessions
Craig	Hutchison	Shelby
D'Amato	Inhofe	Smith (NH)
DeWine	Kempthorne	Smith (OR)
Enzi	Kyl	Thomas
Faircloth	Lott	

NOT VOTING—2

Levin	Warner

The nomination was confirmed.

Mr. HATCH. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

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

The motion to lay on the table was agreed to.

LEGISLATIVE SESSION

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

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business for not to exceed 1 hour, with the first 30 minutes under the control of Senator BYRD and the remaining 30 minutes under the control of Senator ROBERTS.

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

Mr. LOTT. I yield the floor.

Mr. BYRD addressed the Chair.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the distinguished majority leader for arranging the time for me to speak.

HIGHWAY FUNDING

Mr. BYRD. Mr. President, since the convening of this session of Congress 2 weeks ago today, I have spoken on the Senate Floor numerous times to convey the urgency of prompt action on the highway bill. We were told that it would be among the first pieces of legislation considered this year, and yet the bill is still not before us. This inactivity is unjustified and, I think, it is inexcusable. The deadline for passing highway reauthorization legislation is May 1—May 1 of this year.

That deadline is set forth in the short-term highway bill that was passed last November before the Congress adjourned sine die. It is very clearly set forth in that legislation. After May 1, States will be prohibited from obligating any Federal highway or transit funds.

After that date, states will be prohibited from obligating any Federal highway or transit funds. As a result, many states will be forced to delay road and bridge projects and thousands of highway construction workers, as well as those in related industries, such as gravel and asphalt manufacturers, highway equipment manufacturers, and steel suppliers, may begin to be laid off. At the height of the highway construction season, thousands of highway, bridge, and safety projects will be stopped cold—dead in their tracks—and those who are employed in relation to these projects could begin to be sent home and lose their paychecks, while they await further action by Congress to enact highway reauthorization legislation.

So the Senate has just 44 session days remaining, including today. Those are days we have been told that the Senate will be in session. So there are just 44 session days, including today, remaining in which to avert this impending crisis. When the hour strikes midnight on May 1, the time is up.

I want to take a few minutes to explain exactly what this May 1 deadline means to a number of the States.

The Road Information Program, TRIP, recently surveyed the State transportation departments throughout the country to ascertain what will happen after May 1 if a new highway bill has not been signed into law by the President by that time. To date, TRIP has received responses from 15 State transportation departments, and additional responses are expected soon. Even with preliminary results, however, it is clear that billions of dollars worth of highway projects and transit projects are in danger of being postponed, and will be postponed until new Federal funding is available. These are critical transportation projects—critical transportation projects—projects designed to improve road safety and reduce the number and severity of highway crashes, to smooth the flow of traffic so we can improve air quality and lower the pollution that Americans breathe every day and every hour and every minute, and to reduce congestion so that Americans can spend more time at work and more time at home caring for their children, more time with their families and less time trapped in gridlock.

It may be edifying to my colleagues to hear some of the specific projects in their States that will be delayed, according to their own State transportation departments, if new Federal highway funding is not available beyond May 1. Remember, these are just the 15 States that have responded already to the TRIP survey.

The Road Information Program asked each State to list some of the most critical transportation projects that would have to be postponed during the 12-month period beginning May 1, 1998, if no new Federal funding is available.

And so let us go down the list. The very first State that is on the list is the State of Georgia.

In Georgia, the State transportation department will have to delay: Improvements to I–475 from I–75 in Bibb County to I–75 in Monroe County; improvements to the Harry S. Truman Parkway in Chatham County; work on the Jefferson Bypass in Jefferson County; and improvements to Peachtree Industrial Boulevard in Gwinnett County.

The Indiana transportation department will have to postpone: rehabilitating I–69 in Dekalb County; road and bridge rehabilitation on I–465 in Marion County; and bridge rehabilitation on US 20 in St. Joseph County.

In Kentucky, funds will dry up after May 1 for projects to: widen US 27 to four lanes from Lexington to Paris; reconstruct the Donaldson Road interchange on I–75 in Boone County; and replace the Cumberland River Bridge in Somerset.

Now, the Senators from these respective States, I am sure, are talking with their highway departments. Those Senators will probably have more complete lists than these that I am reading. But these are just the first 15 that have been supplied to me by TRIP.

In Maine, delays will occur on: The rehabilitation of the Carlton Bridge on US Route 1 in Bath; the reconstruction of 4 miles of Route 9 in Devereaux; and the replacement of the Penobscot River Bridge on Route 11 in Medway.

The Missouri transportation department will have to postpone, I am told: the replacement or rehabilitation of seven bridges on I–70 in the St. Louis area; plans to add left turn lanes on Route 61 at Lemay Woods in St. Louis to improve traffic safety; the widening and resurfacing of Route 39 in Barry County; and the replacement of two bridges over the North Fabius River on Route 136 in Scotland County.

In Nevada, they will have to delay plans to: widen I–15 from two to three lanes in West Las Vegas; remove and replace pavement on I–80 in Reno; and widen US 95 to four lanes in Las Vegas.

In New Hampshire, our failure to enact a highway bill by May 1 will mean the transportation department has to postpone: reconstructing exit 20 on I–93 in Tilton; safety improvements planned for I–93 in Manchester; and replacing a bridge over North Branch River in Stoddard.

In North Dakota, congressional inaction will mean the postponement of plans to: reconstruct South Washington Street in Grand Forks; improve I–94 from Eagles Nest to Geck; and widen US 52 from Drake to Harvey.

The Oklahoma transportation department will have to shelve plans for: interchange reconstruction and resurfacing on I–35 in Oklahoma City, a project designed to relieve congestion; widening 50 miles of US 183 from Cordell to Snyder in western Oklahoma to provide four lane access to I–40, designed to foster economic development in the region; and building shoulders and a passing lane on US 283 in Beckham County to improve highway safety.

In South Dakota, failure to meet the May 1 funding deadline will mean the delay of plans to: reconstruct I–29 in Minnehaha and Moody Counties; improve Benson Road in Sioux Falls to provide access to the Joe Ross Field Airport; and improve the interchange at the Haines Avenue exit on I–90 in Rapids City.

The Texas Department of Transportation reports that the following projects scheduled for Spring 1999—all designed to relieve congestion—would be delayed without new Federal funding beyond May 1: widening to eight lanes a 4.3 mile section of Route 1960 in Harris County; widening to eight lanes a 3.9 mile section in Fort Bend County; and widening to four lanes a 6 mile section of US 67 in Johnson County.

In Utah, the following projects—all related to preparations for the 2002 Winter Olympic Games—would be delayed: The reconstruction of the Kimball and Silver Creek Junctions on I–80; the construction of the 1.5 mile Winter Sports Road; and the reconstruction of the interchange at I–84 and US 89.

In Vermont, our inaction will mean delay in the planned resurfacing of 200 miles of State highways; the rehabilitation or replacement of three State highway system bridges and five local highway system bridges; as well as the reconstruction of four miles of US 7 in Shelburne and South Burlington to increase capacity and improve traffic flow.

In my State of West Virginia, the lack of new Federal highway funds after May 1 would mean postponement of the renovation of the Shepherdstown Bridge on West Virginia 480 in Jefferson County; the widening of a segment of West Virginia 2 in Ohio County to improve traffic flow—by the way, it was on Route 2 that my former colleague in the Senate, Senator Jennings Randolph, and I had an accident in 1957—1957 or 1958. We had an accident in that county. We ran head on into another automobile, killing the driver of the other automobile. That was Route 2. So we are talking here about the widening of the segment of West Virginia 2 in Ohio County to improve traffic flow, and the replacement of the Easley Bridge in Princeton, Mercer County. Mercer County, that is where I first started school in a little two-room schoolhouse over 70 years ago.

And finally, in Wyoming, the Senate's failure to act by May 1 would mean delaying reconstruction and bridge work on I–80 in Rock Springs, Rawlins, and Laramie Marginalal; as well as widening and rehabilitation projects on I–90 from Buffalo to Gillette and from Moorcroft to Sundance.

So, Mr. President, I urge Senators to call their transportation departments, if they have not already, and find out what a prolonged delay in Federal highway funds would mean for their States. The list I have just read is, obviously, not exhaustive; but it is indicative of the serious problems every State, or almost every State certainly will face if Congress does not act before midnight May 1. When Senators start to realize what this May 1 deadline means for their States, and how few days we have left to move a highway bill through the Senate, it should become obvious that we will have no choice but to bring up the highway reauthorization bill.

We have just 44 days, 44 session days. That does not count days like Saturdays and Sundays or other days when the Senate is not expected to be in session. Only 44 session days, including today, remain through the hour of midnight May 1. After that hour of midnight, then those States can obligate Federal aid highway program funds for any Federal highway project, after the hour of midnight on May 1. Now, that is by law. That was a part of the law that Congress passed last November when it enacted the short-term highway bill. It is in there. Bridge replacements, traffic decongestion projects, and road widening efforts all mean safety, time, money and jobs to our people. Further delay makes no sense. A commitment was made to bring up the highway bill after the President's State of the Union speech. The State of the Union speech has come and gone and there is still no highway bill here in the Senate. Further delay makes no sense and the Senate should consider the highway bill promptly.

How much time remains, Mr. President?

The PRESIDING OFFICER. The Senator has 13 minutes remaining.

Mr. BYRD. I yield that remaining time to my friend, the distinguished Senator from Kansas, Mr. ROBERTS. I thank the Chair, I thank all Senators, and again thank the leader for making possible the time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. ROBERTS. Mr. President, I ask unanimous consent notwithstanding the previous order for the Senate to stand in recess at the hour of 12:30, that I may be permitted to speak for up to 40 minutes.

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

CURRENT SITUATION IN IRAQ

Mr. ROBERTS. Mr. President, I rise today to express my concerns about United States policy with regard to Iraq. Through the national and international news media and in consultations with members of Congress, we have been told time and again in the past several weeks that the United States is on the brink of waging a limited but significant military strike against Iraq and Saddam Hussein.

At the same time, Administration officials and President Clinton have also repeatedly stated they are hopeful for a diplomatic solution.

It would appear, however, that Saddam Hussein despite almost frantic revolving-door diplomatic efforts from Russia, China, France, Turkey and others, will not agree to the resumption of full and open U.N. inspections. So, we have a standoff.

Mr. President, in regard to this latest crisis in the Gulf, I commend to the attention of my colleagues the remarks made yesterday by the distinguished Senator from Nebraska, Mr. HAGEL. His remarks are both thoughtful and thought provoking and they come from a man who is a veteran with a most distinguished record.

Senator HAGEL said this:

> This dilemma must be approached from the framework of both our short-term and long-term foreign policy objectives. We cannot allow Saddam Hussein to stampede us into precipitous action.
>
> What chain of events will we unleash with any action we take? What is the Administration's long-term objective in Iraq? Do we have one? Or, are we crafting a long term policy to justify short-term actions?

Senator HAGEL went on to say he was disturbed about reports over the weekend quoting high ranking Administration officials and Congressional leaders saying such things as:

''We may have to face the reality that we will not get U.N. inspection teams back into Iraq;

''Any military action would be to just slow Saddam Hussein down;

''We have to keep going back to bomb him again;

''Our allies support of us in Iraq may be tied to our future commitment to NATO'' and other such disconcerting remarks.

Senator HAGEL concluded by saying we owe it to our country and the men and women in uniform who will be called upon to fight a war to do better than just bomb Saddam Hussein.

He said:

That is not good enough. There is something surreal about all of the war talk, and war preparation played out in this 'matter of fact' tone on international TV with every talk show host panelist presenting his or her theories and options when most of them have never been to war, prepared for war or understand the first thing about the horrors of war.

There are no good options. Saddam Hussein has and is intent on building the most vile weapons in the history of man, weapons outlawed by nearly every country in the world. He cannot go unchallenged.

But, the American people and the Congress must have a more solid basis for our support. Whatever action is taken, it must meet a clear and immediate objective. We cannot continue to ricochet from crisis to crisis and call that foreign policy.

Mr. President, that is straight talk and I commend Senator HAGEL for his candor and forthrightness.

And, Senator HAGEL is right. The policy discussions regarding Iraq have indeed been unique, if not bizarre. We have seen more policy declarations, more redefined policy declarations, and more mixed signals than a coach signaling his quarterback with the time clock running out. That may well be part of diplomatic carrot and stick efforts but it certainly does not improve public understanding or provide confidence for a well defined and successful military mission.

The latest comments by Administration officials indicate the attack is now only weeks away although there has been considerable speculation that the U.S. would not attack while the Winter Olympics are being held. The United States is a signatory to a U.N. resolution that calls on all countries to honor a cease fire during the Olympic Games. International Olympic Games President, Juan Antonio Samaranch has made a public appeal to the United States.

I do not mean to be disrespectful but it occurs to me that a previous U.S. President canceled U.S. participation in the Olympics in response to one country invading another. This time we apparently will attack, but not while the Olympics are being held.

In addition, while our strongest Arab ally in the Gulf War, Saudi Arabia, has refused the use of their country from which to base an attack, they have expressed strongly that any military strike should be well over before the beginning of the annual pilgrimage to Mecca and Medina that is the high point of the Islamic year. The Olympics are over February 23 and the pilgrimage begins March 20.

Such are the rather unique things that military planners must factor into their planning in this modern world of limited and political military strikes.

Saddam Hussein doubtlessly can pretty much figure out when the strike is coming: all he has to do is read the latest Time magazine for the latest target and battle plan information and the London Times for the Iraqi sites at risk not to mention many other press reports.

It goes without saying, this will be no surprise attack.

Nevertheless, additional time will at least afford us the opportunity to take a hard look at what is being proposed, especially as Senator HAGEL has stressed in regard to how a limited strike will fit into long term foreign policy goals and the law of unintended consequences.

First, I recommend to my colleagues and the American public the comments made by the Chairman of the Senate Armed Services Committee, Senator Richard Russell of Georgia almost 30 years ago to the date. The Senator made his remarks in the midst of the Vietnam war and during the month in which the United States suffered over 2,000 casualties. He said this:

''I for one am not afraid of the old fashioned term, victory. We hear a great deal about limited wars, but I would point out that there is no such thing as a limit on actual combat in which our men are engaged. While it is a sound policy to have limited objectives, we should not expose our men to unnecessary hazards to life and limb in pursuing them.

The Senator went on to make the following pledge:

As for me, my fellow Americans, I shall never knowingly support a policy of sending even a single American boy overseas to risk his life in combat unless the entire civilian population and wealth of our country—all that we have and all that we are—is to bear a commensurate responsibility in giving him the fullest support and protection of which we are capable.

It is inconsistent with our history, traditions and fundamental principles to commit American boys on far-flung battlefields if we are to follow policies that deny them full support because we are afraid of increasing the risk of those who stay at home.

It is a confession of moral weakness on the part of this country not to take any steps that are necessary to fully diminish the fighting power of our enemies.

I submit, Mr. President, that is a most powerful statement of truth that has direct application to the challenges we face today in the Persian Gulf. The only thing that has changed is that today we refer to American men and American women.

The question must be asked, just where are we in regard to specific goals regarding Iraq? Last week, in a press conference with Prime Minister Blair of Great Britain, President Clinton ''clarified'' Administration policy. He said the goal of the proposed attack on Iraq would be to, ''substantially reduce or delay Iraq's ability to develop and use weapons of mass destruction.''

The President also ruled out the removal of Saddam Hussein from power or action designed to compel him to halt obstruction of disarmament inspectors from the U.N.

The President went on to say, ''I don't believe we need to get into a direct war with Iraq over the leadership of the country. Do I think the country would be better served if it had a different leader? Of course I do. That's not the issue.''

In making this statement, the President has clearly narrowed the goals of the proposed air strike. In fact, in my opinion, he has narrowed them from the goals articulated in previous speeches by key administration officials and from the goals outlined in consultation with Members of Congress.

Secretary of State Albright, in a speech given last year emphasized the American strategy was to continue the sanctions until there was a successor regime. The President stated sanctions would continue ''until the end of time or as long as he lasts.'' That strategy was changed however to one of trying to accommodate Saddam with what was described as ''small carrots.'' It was the ''small carrot'' strategy that many observers now say led to the current crisis.

Just last week, members of Congress were told there were two specific goals:

First, to set back Saddam Hussein's ability to deploy and deliver weapons of mass destruction and,

Second, to preserve the ability of the U.N. Security Council to respond to the threat of proliferation of weapons of mass destruction by enforcing the disarmament resolutions that ended the 199l Persian Gulf war, specifically in regard to unrestricted access for weapons inspectors.

Now, with all due respect to the President and his national security advisers, I am concerned the first mission may have a very limited success at considerable risk to our men and women in uniform and for all intent and purpose, end whatever possibility there is for achieving the second mission. The bombing may not destroy Saddam's capacity to deploy and deliver weapons of mass destruction but it is almost a sure bet bombing Saddam will NOT bring about open inspections.

This is especially significant in that the current resolution of support being crafted by our Senate leadership has been premised on U.N. Security Council Resolution 687 and four subsequent resolutions demanding open inspections by the U.N. inspection team. The language mirrors the statement of the distinguished Democratic Leader, Senator DASCHLE who stated last week:

The end game is simply to allow access by U.N. inspectors into all locations suspected to be the manufacturing facilities for biological weapons. I don't know what could be more clear than that.

The Democratic Leader's statement is, in fact, clear and direct. The problem, however, is that there is a follow on goal articulated in the resolution draft and it says:

We urge the President, in consultation with the Congress, and consistent with the U.S. Constitution and existing laws, to take all necessary and appropriate action to respond effectively to the threat posed by Iraq's refusal to allow inspection.

The question is will the bombing be effective? It may set back Saddam's capability to deploy and deliver biological weapons and it may not. But one thing for sure, after a week of bombing, there will be no welcome mats for U.N. inspectors.

In addition the resolution draft urges the president to work with Congress to further a long-term policy.

My colleagues it has not taken long to discover that we do not have the support of our allies, that we do not have a long-term strategy and that if we go ahead with the limited military strike we will effectively end chances for open inspection, which is precisely the original stated goal of the administration and the stated goal of the draft resolution of support.

Now, in making these remarks, I realize the current challenge posed by Saddam Hussein is both difficult and complex and that the situation in the Gulf and our relations with the members of the Gulf Coalition allies has dramatically changed.

The President stated, ''I don't believe we need to re-fight the Gulf war. It's history. It happened. That's the way it is.''

The President is right. The way it was is not the way it is and we have been frantically trying to play catch up in efforts to formulate a successful response to Saddam's latest threat.

Nevertheless, Administration officials state today we have Saddam in a box. To the contrary, after repeated efforts to ''lead'' and convince our allies in supporting the planned military action, I do not see much ''following'' and I wonder who has whom in a box.

It seems to me there are several obvious disconnects:

First, other than Saddam simply behaving like the international thug that he is, we are told his primary reason for closing down the inspections is to somehow force an end to the economic sanctions now in place, that the deprivation now experienced in his country is such that his continued rule is threatened.

It is true that most of his 22 million people are going through severe deprivation. But, this is the man who has a 90,000 strong security force made up of well trained, dedicated, fanatical professional units that have maintained a climate of terror. To the extent one can be, he is both bomb and assassination proof and simply gets rid of his opposition even to the extent of using weapons of mass destruction upon his own people.

The argument is also being posed that with France, Russia and China all opposing military action, and his Arab neighbors sitting on the fence, the United States might then be willing to lift the sanctions or at least increase the oil for food and medicine program. But, the United States already proposed increasing the oil for food program and Saddam refused it. And, he has used oil revenue to further construct the many palaces that now house his weapons. In any case, this explanation of his reasoning, if true, represents a good argument against a military strike.

In a paradox of enormous irony, it could be argued that by withstanding and suffering through the attack and exploiting the obvious propaganda opportunity, Saddam may actually gain sympathy and support for ending the sanctions from the very nations we are asking for help!

Second, what if Saddam's primary reason for shutting the door to U.N. inspectors was simply self preservation, not from within but from Iran? In fact, it was the attack from Iran several months ago that precipitated the crisis. Saddam, without his weapons of mass destruction and Iran with that capability and with a growing army represents a self preservation crisis for Saddam.

A military strike against Saddam further weakens Iraq in relation to their long standing enemy. Have we thought through what the Mideast will look like when Iran has the balance of power?

Third, in proposing military action, we do not have the support of the members of the Security Council whose credibility and effectiveness in enforcing open inspection we are trying to protect! We do not even have Security Council or allied support for the continuation of sanctions.

So much for a rational prospective U.N. policy with reference to proliferation of weapons of mass destruction.

France wants to sell Iraqi oil, China wants to buy it and Russia desperately needs the money that Iraq owes to Russia. All three do not support military action and have warned of dire consequences should military action be taken.

While trying to broker a diplomatic solution (Lets see, how about eight palaces open for inspection for 60 days with x number of inspectors from this country and y number of diplomats from that country and on and on) France is worried that American bombs plus Iraqi casualties will only consolidate domestic support for Saddam and that the bombing does not represent a long term answer. They have a point.

The Chinese foreign minister, speaking on television, said China is extremely and definitely opposed to the use of military force because it will result in a tremendous amount of human casualties and create more turmoil in the region and could even cause more conflict.

However, the winner of the Coalition Cross Current Sweepstakes has to be Russia. Foreign Minister Primakov has seized an opportunity to climb back on the world stage as the self declared pro Muslim broker while Boris Yeltsin's comment that bombing could mean ''world war'' could well have been made while pounding his shoe on a lectern. But, the Iraq issue did not stop there. Gennady Zyuganov, the Communist leader stated the Russian Duma should not ratify the START II treaty and said Americans ''act like drunk cowboys.'' The ultra nationalist Vladmir Zhirinovsky called for Yeltsin to put Russian troops in Southwest Russia on alert. Moderate members of the Russian Duma have argued the United States must get U.N. authorization before any attack. We cannot simply dismiss this sorry state of affairs as just Russian bluff and bluster.

To say that these landmark changes in policy amongst our former coalition allies will have grave consequences is an understatement to say the least.

Fourth, we do not have the support of the Arab nations whose sovereignty and freedom were are allegedly trying to protect! With the exception of Kuwait, no Arab nation has endorsed American threats of military action.

Saudi Arabia, our closest Arab ally and a major regional power provided a crucial base for 500,000 American and allied troops that routed Iraqi forces back in 199l. Today, Saudi Arabia has refused to support a military strike upon Saddam Hussein and Secretary of Defense Cohen and the Commander of U.S. Forces in the Middle East, General Anthony Zinni have been forced to change battle plans.

The Saudi's stance also undercuts political support throughout the Arab world sensitive to the view that the United States has already excessively punished the Iraqi people and that the limited attack will not rid the Gulf region of Saddam and that he will remain as vengeful as ever.

In proposing limited strikes, the United States is in the position comparable to local law enforcement asking a witness to testify against the Mafia with no promise of incarceration or protection. Those chances are slim and none.

Like other staunch allies during the Gulf war, Turkey is now putting its own interests first regarding any confrontation with Saddam. Their foreign minister has also been one of the revolving door diplomats trying to broker a solution. Seen in the rest of the Muslim world as a pawn of the United States, having suffered economic losses as a result of the Gulf war, and having to fight Kurdish rebels, the Turks have also refused the use of air bases.

There is no doubt that most leaders in the Muslim world would like to be rid of Saddam Hussein. They view him as a menace. But, the political reality is that limited bombing with no plan for getting rid of the menace will lead

to the perception of the United States conducting a military exercise with innocent civilians being killed on world wide television with ominous repercussions throughout the Muslim world . . . including the trouble spots of Bosnia and in Indonesia.

Our policy has also made Israel more than a little nervous. Israeli leaders have stated they reserve the right for self protection and will act in accordance with their defense interests. Once again, we are trying to convince Israel to forgo its right to self defense and retaliation. A retaliatory attack upon Israel in response to U.S. bombing may be unlikely but it cannot be ruled out. Such a missile exchange would have devastating consequences.

Fifth, as a result of Arab denial to use our bases in their countries, the United States must now launch any attack from aircraft located in neighboring gulf states, from aircraft carriers and from an Indian ocean island. The USS *Independence* was supposed to be decommissioned this coming September but now, the oldest ship in the fleet, is in the Gulf.

This renewed buildup of sea and air forces in the Gulf and the corresponding manpower and equipment gaps in Europe and the Pacific is another example of just how stressed and stretched our U.S. military has become, all in the wake of substantial troop cuts and rising commitments to various peacemaking and nation-building missions such as Bosnia. We are already experiencing serious problems in regard to readiness, modernization, procurement and military quality of life.

If we sustain a three carrier force in the Gulf, it will mean zero presence somewhere else. Yet, Navy command has mapped out plans for two carrier presence through 1999. Our Air Force is not structured as a mobile expeditionary force. Accustomed to operating out of large bases, the new operations and personnel tempo has caused serious retention problems.

The obvious budget, military readiness, national security and foreign policy repercussions will be far reaching. Without question we cannot fund this current buildup and prospective military strike from within the current defense budget. If this is, in fact, an emergency requiring a military strike, then it should be funded by an emergency supplemental bill.

I must ask, has enough consideration been given to the collective risks that could well outweigh whatever benefit a limited military strike might bring?

Can we really ascertain the extent of Saddam's air and missile defense?

Can we, with any degree of certainty effectively target and destroy his most deadly weapons and eliminate the threat?

Do we have adequate protection for the men and women who will conduct the operation? Personnel recovery? POW recovery?

Can this strike destroy most of Saddam's deployment and delivery capability?

Will this action end all chances of further inspection? If this is true, what happens next when his capability is restored?

Will this strike hurt or improve his support within and without his country?

Will the strike prevent Saddam from counter-attacking and using weapons of mass destruction?

Will Iran attack a weakened Iraq?

What will be the response of the Muslim nations throughout the world?

How will the attack change Saddam's conduct?

Are our forces adequately equipped and protected against biological and chemical agents?

Have we considered the possibility of terrorist activities both in the Mideast and in the United States?

There is almost no end to these kind of questions and there is no question that the President's national security team and Pentagon planners have studied all of these questions and more with great care and purpose. '

I can say as a member of the Armed Services and Intelligence Committees, I have great faith and a sense of personal pride and trust in our military and in our intelligence community. But, I also know that too often in the past military action has been rooted in misguided policy and our military has suffered the consequences.

The Chairman of the Joint Chiefs of Staff, General Shelton, has already found it necessary to refute allegations that the battle plan and targets in Iran have been drafted and selected by the executive as opposed to warfighters, a charge that harkens back to the limited and political decision making in the Vietnam war. There is no question that our military will obey their Commander in Chief and will do an exemplary job, no matter what the mission. That is how it should be and is. Nevertheless, I would be less than candid if I did not say judging from the private commentary from many within the military and public questions from those with expertise in military tactics and national security that this proposed strike may well be flawed and counterproductive.

Administration spokesmen have stated that this strike will attempt to destroy as much of Saddam Hussein's capability to deploy and deliver chemical and biological weapons as possible: not the actual material mind you, but the delivery means. But, we will not be able to destroy all of that delivery means.

So, at the end of the attack, at the end of the day, when all is said and done, with civilian and military casualties, Saddam will still be in power, his scientists will still be at work, his military and the Republican Guard still deployed, some of his weapons of mass destruction and their delivery means will still be intact. It strains credibility that there will be any chance of inspections. In a year or two we may have to do it all over again.

In the meantime, we will have a continued erosion of faith and confidence with our allies, anti-American sentiment throughout the Muslim world, and the horrors of war on international television courtesy of Saddam Hussein. If our bombing does not kill innocent civilians, then Saddam will.

This is not some kind of impersonal therapy to correct Saddam's behavior we are contemplating. Too often we refuse to recognize the reality and horrors of war. In this regard, there is a pretty good test. Imagine what you would say to the loved one of an American service man or woman who will be put in harms way and may not return. For what did that airman, soldier, sailor or Marine die? Justify that loss. Many times in our history we have been able to do so with the knowledge and comfort in knowing that our nation and our individual freedoms were protected. Tragically, there have been other times we have not. We could not in Vietnam. We could not in Beirut. We could not in Somalia. Unleashing the horrors of war can be justified only to protect our vital national interests and to get rid of a greater evil. I am concerned the proposed military strike may not do either.

Mr. President, before we consider S. Con. Res. 71, these concerns should be answered and other policy alternatives should be considered.

I yield the floor.

RECESS

The PRESIDING OFFICER. Under the previous order, the Senate will stand in recess until the hour of 2:15 p.m.

Thereupon, the Senate, at 12:48 p.m., recessed until 2:14 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. COATS).

The PRESIDING OFFICER. The Senator from Vermont.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Kansas.

Mr. BROWNBACK. I ask unanimous consent I be allowed to speak as in morning business for up to 5 minutes.

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

The Senator from Kansas is recognized.

Mr. BROWNBACK. I thank the Chair.

(The remarks of Mr. BROWNBACK pertaining to the submission of S. Con. Res. 73 are located in today's RECORD under ''Submission of Concurrent and Senate Resolutions.'')

ATTEMPT ON THE LIFE OF PRESIDENT EDUARD SHEVARDNADZE OF GEORGIA

Mr. BROWNBACK. Mr. President, I serve on the Foreign Affairs Committee and I note, last night an attempt was made on the life of President Eduard Shevardnadze of The Republic of Georgia by assailants who have yet to be identified. President Shevardnadze survived the attack without injury. Unfortunately several members of his personal security detail were killed, and number of others were wounded.

The Republic of Georgia is one of the key linchpins of the new Eurasia. It is the most democratic of all of the states that succeeded the Soviet Union. Under President Shevardnadze's inspired leadership a civil war has been put to rest, criminals have been jailed, private armies have been disarmed, and economic decline has been reversed. In 1997, Georgia's economy grew by nearly 8 percent, inflation was held in check and the Georgian currency remained rock solid. Democracy has flourished. Indeed, if democracy is allowed to fail in Georgia, it is unlikely to succeed anywhere in the region.

Any attempt to kill Shevardnadze must be seen in those context. It is an attempt to derail a successful democratic process, and an effort to compromise the growing number of U.S. economic and strategic interests in Georgia and the region.

According to Georgian authorities, the attempted assassination was well-planned and well-executed by as many as 30 well-trained assailants. They were armed with rocket propelled grenades and automatic weapons. The Georgians are asking, as we must ask: How could a group this size operate undetected in the capital of Georgia? Where did they receive arms and ammunition? Who trained them? Where did they disappear to in the aftermath? And most importantly: Whose interests do they represent?

Georgian authorities make it clear that they suspect outside powers of this attempt on the life of their president. They are not alone. Azerbaijan's president Aliyev was also the object of an assassination attempt in recent days, which Azerbaijani authorities believe was planned and executed by outsiders. We should be mindful that these two cowardly acts may be part of a plan to destabilize the Caucasus with the intention of scaring off American and other investors who seek to bring the Caspian's great energy wealth west to international markets.

Who benefits from promoting instability in the Southern Caucasus at this time? Russia is everyone's leading candidate as the outside power with the most to gain. Russia has long raged and conspired to thwart Caspian energy from flowing any direction but north through Russia. Most parts of Russia's political elite still view Caspian wealth as their own. The suspected perpetrator of an earlier assassination attempt on Shevardnadze remains under Russian care despite vociferous demands from Georgia that he be extradited. Russia still has bases in Georgia from which yesterday's attack could be planned and staged. None of this is proof of Russian complicity, but the strong suspicion of Russian involvement will not go away quickly.

The U.S. Government should make every effort to learn the truth. More than this, we must articulate in clear and forceful terms to those outside powers who might be tempted to destabilize the Caucasus some simple truths:

First, the United States has vital interests in the Caucasus which these attacks threaten.

Second, our support for President Shevardnadze and the other Caucasian leaders is unbending.

Third, we will do everything we can to facilitate democracy and free markets in the region.

Fourth, oil and gas will flow west.

And finally, we must make it painfully evident that outside states that seek to destabilize America's friends in the Caucasus are not states we will favor with political and economic aid and other forms of assistance.

The attempt to kill President Shevardnadze, one of America's most valued friends, is intolerable and will have consequences.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I ask unanimous consent to speak as in morning business.

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

JUDICIAL VACANCIES

Mr. GRASSLEY. Mr. President, lately, there has been a lot of talk about Chief Justice Rehnquist's ''Year End Report on the Federal Judiciary.'' As chairman of the Sucommittee on Administrative Oversight and the Courts, I have an added interest in what the Chief Justice has to say. According to some, the Chief Justice's report indicates that the federal judiciary suffers from a partisan produced ''vacancy crisis.'' Indeed, some critics have gone so far as to feverishly conclude that the Senate's Constitutionally mandated confirmation process has become an ''obstruction of justice.'' Caught up in this frenzy, some Democrats have come to the Senate Floor blaming many, if not all, of the judiciary's problems on vacancies. Vacancies, however, are not the source of the problem.

Despite assertions to the contrary, the Chief Justice could not have been more clear on this point: Vacancies are the consequence of what he perceives to be an overburdened judiciary. In fact, the Chief Justice pointed out that it is the judiciary's increased size and expanded jurisdiction that is the major threat to justice in the United States. In his Report, Chief Justice Rehnquist warned that the federal judiciary had become ''so large'' that it was losing ''its traditional character as a distinctive judicial forum of limited jurisdiction.''

Mr. President, in addition to what the Chief Justice said about the size of the judiciary has become ''so large'' that it was losing ''its traditional character as a distinctive judicial forum of limited jurisdiction,'' I ask unanimous consent to have printed in the RECORD an article by Chief Judge Harvie Wilkinson III of our Circuit Court of Appeals entitled ''We Don't Need More Federal Judges.''

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

[From the Wall Street Journal, Feb. 9, 1998]

WE DON'T NEED MORE FEDERAL JUDGES

(By J. Harvie Wilkinson III)

The tune is so familiar that most federal court watchers can whistle it in their sleep. Add more and more judges to the federal bench, goes the refrain, and all will be well.

Well, Congress has been adding judges for years now, and somehow each new addition never seems to be enough. The trend has been dramatic. At midcentury, the number of authorized federal judgeships stood at approximately 280. Today, the number of authorized judgeships is 846. And the process shows no signs of abating. The Judicial Conference of the U.S. has asked Congress for 17 additional judgeships for the 13 circuits on the U.S. Court of Appeals—12 permanent judgeships and five ''temporaries.'' Under the conference's proposal, the Ninth Circuit alone would increase to 37 judgeships from the already unwieldy 28.

The federal judiciary is caught in a spiral of expansion that must stop. With growth in judgeships comes growth in federal jurisdiction. And with the expansion of federal jurisdiction comes the need for additional federal judges to keep pace. Whether the growth in judges precedes the growth in jurisdiction or vice versa is anybody's guess. The one follows the other as the night follows the day.

The process of growth has not been a carefully examined one. Rather, it is fueled by a mechanical formula that presupposes that every increase in case filings must be met not with judicial efficiencies or jurisdictional restrictions but with additional battalions of judges. The Judicial Conference has come up with a benchmark of 500 filings per three-judge panel for requesting an additional judgeship on the appellate courts.

Nobody knows precisely what is the basis for the 500 figure except that it is a nice round number; not so long ago the magic unit was 255. While the figure is intended to be used in conjunction with other assessments, it remains the major factor and the one on which a request for additional judgeships is presumptively justified.

To be sure, there are some hard-pressed courts where the workload makes it imperative that new judges come on board. But adding judges to the federal courts is no long-range answer. In fact, the consequences of this silent revolution in the size of the judiciary could not be more serious.

Growth in the federal judiciary has three main costs. The first is that of simple inefficiency. Large circuit courts of appeals present problems that small ones don't have. There are more internal conflicts in circuit law. These must be resolved by more en banc hearings of the full court. If the en banc court consists, for example, of 20 judges as opposed to 12 it takes twice the time even to get the decision out. Judges on a large court

must also spend more time simply keeping abreast of the work of other panels—time that cannot be spent resolving their own cases.

The second cost is that of litigiousness. With a smaller court of appeals, the possible panel combinations of three judges are less numerous and the law is more coherent. Legal principles are discernible and judicial outcomes are predictable. As a court grows, so do the possible panel combinations, and the law becomes fuzzier and less distinct. Litigation takes on the properties of a game of chance and litigants are encouraged to come to court for their roll of the dice. When legal outcomes are uncertain, cases are brought for their settlement value and parties lack clear guideposts for their conduct out of court.

The third cost of judicial growth is that of intrusiveness. The number of life-tenured federal judges now exceeds the membership of Congress. The outpouring of federal law from this expanding establishment touches every local issue and affects every public official. Local disputes are tossed into federal court on the assumption that there will always be plenty of federal judges around to resolve them. In the end, unrestricted growth in the federal judiciary threatens to upset the federal-state balance just as much as uncontrolled growth in the federal budget would. With more federal judges will come more federal rulings, and with more federal rulings will come more opportunities for federal judicial intervention into even the smallest of controversies in our classrooms, our workplaces, our prisons, our zoning boards, our city council chambers and the like.

Congress must preserve an independent judiciary without sanctioning an intrusive one. It can strike this balance by imposing a ceiling on judicial growth and setting limits beyond which the size of the federal judiciary may not expand. A numerical cap would strike a historical blow for limited government. But it would have other advantages also. It would allow each party to fill judicial vacancies but only up to the point of the numerical limit. A cap would force Congress to think about what is, and what is not, the proper business of the federal courts.

As for the judiciary, a cap would force courts to adopt innovative management techniques. In the Fourth Circuit, we have established a sophisticated tracking system that requires straightforward appeals to be resolved promptly and inexpensively. This step would not have been taken if we had assumed that the addition of new judges was the solution to our problems.

The alternative to a cap is a federal judiciary that, at the current pace of growth, will number more than 2,000 well before the middle of the next century. Judge Jon Newman, a Carter appointee to the Second Circuit, and Judge Robert Parker, a Clinton appointee to the Fifth Circuit, have spoken eloquently of the threat that judicial growth poses to the collegial functioning of appellate courts, to the stability of legal precedent and to the historic regional characteristics of the federal judicial system. Indeed, if the courts of appeals become much larger, the temptation will be to break them up into smaller and more parochial units. With this development, we shall have surrendered a national and regional perspective on American law.

I have heard it said that those who favor a cap on growth are nothing more than elitists supporting a small and exclusive club. The truth is just the opposite. The real elitists are those who would deprive the American people of the right to determine their own destiny and would lodge their collective fate in an overgrown federal judicial establishment. Federal courts play an important role in the protection of a uniform law and our fundamental liberties. But with unrestricted growth it will become an all-important role. I cannot imagine a more unhealthy development for our society.

Mr. GRASSLEY. Mr. President, in order to reverse this trend, the report resoundly concluded that Congress needed to reduce the jurisdiction of the federal courts.

In the last Congress, the Republican leadership wisely pushed for measures designed to reduce the federal workload. Both the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act ''streamlined'' procedures so as to decrease the number of potential federal court filings. These measures were praised by the Chief Justice as ''promising examples of how Congress can reduce the disparity between resources and workload in the federal judiciary without endangering its distinctive character.''

Similarly, a bill I sponsored, The Federal Courts Improvement Act of 1996, included a provision that raised the threshold for diversity jurisdiction cases. It's estimated this provision alone reduced the federal workload by as many as 10,000 filings per year.

In addition to what had been a continually expanding jurisdiction, the judiciary's increasing case filings was also a result, in large measure, from the policies and practices of the current Administration. Over the last year, the Executive Branch alone increased its number of civil filings by 23%. This increase, in addition to the increase resulting from expanded federal jurisdiction, accounted for the total overall increase in the number of civil filings in 1997.

The policies and practices of the President have also crippled the criminal justice system. President Clinton has yet to present even a single nominee to fill the six vacancies on the seven seat Sentencing Commission. As a result, the Commission is ''seriously hindered'' in pursuing its important statutory functions, making it more likely that criminals may ''beat the system.''

The Ninth Circuit probably suffers the most from President Clinton's indifference to the judiciary's plight. The President sent up only six nominees to fill 10 vacant seats on the Ninth Circuit. One nominee has already withdrawn from consideration, leaving only four nominees to fill over one-third of the Circuit's total seats. To our credit, the Senate also just confirmed one of these nominees to this court a few days ago who had only been pending for a few months. Having solid qualifications and bi-partisan support, the Senate confirmation of Barry Silverman illustrates what we Republicans have long maintained. Whenever nominees can demonstrate that they follow the law as stated by the Constitution or enacted by Congress, rather than making up laws as they see fit, the Senate is prepared to expedite their nominations.

By the latest count, there are around 83 vacant seats on the federal judiciary. When Democratic Senators controlled the confirmation process in 1991 and 1992, there were 148 and 118 vacancies respectively. Why wasn't the other side talking about a judicial crisis then? No one blamed the shortcomings of the judiciary on vacancies then, but now that Republicans control the confirmation process, 83 vacancies have all of a sudden become a ''judicial crisis.'' Taking into consideration the fact that there are 42 more judges sitting on the bench today than five years ago, 83 vacancies is not such an ominous figure as some would have us believe.

Today, the Senate is working hard to confirm qualified nominees, but remains hard-pressed to fill those 83 judgeships when President Clinton has so far made only 42 nominations, which is just slightly over half of the number needed. The difficulty is only exacerbated by the President's refusal to offer new candidates after his nominees have been properly rejected by the Senate.

The case of a nominee from Texas provides an excellent example. Both Texas Senators steadfastly rejected his nomination. Traditionally, and under Senator BIDEN's former chairmanship, when even one Home State Senator disapproves of a nomination, the nomination is effectively rejected. President Clinton, however, continues to press for this flawed nominee, despite the fact that other more qualified nominees could immediately replace him.

These examples illustrate how some are trying to manipulate the vacancy issue in order to steer the public away from the real problems facing the federal judiciary. Put simply, the Chief Justice believes the judiciary's expanded jurisdiction and consequent workload is too large and needs to be cut back. Why aren't the demagogues who keep repeating the Chief Justice's point about vacancies also talking about his points of reducing jurisdiction as well as the overall number of judges? It's simple. They are being selective, because they don't agree with the Chief Justice's major arguments. They want to continually expand federal jurisdiction, and continually expand the number of judges.

I agree with the Chief Justice that we should attempt to process qualified nominees in a timely manner and then have a vote. Of course some of the nominees we have been getting are not qualified or are flawed in some way.

But, at the same time, Congress should refrain from expanding the overall size of the federal judiciary. As chairman of the Subcommittee on Administrative Oversight and the Courts, I have been conducting a review of the nation's judgeship needs. I hope to have this review completed by this summer. Although it may be true that additional judges are needed in some areas, it is also the case that judgeships should be reduced or at least not filled in other jurisdictions.

A number of these 83 judgeships are not even needed. For instance, in the Judiciary Committee we have already made the case that the 12th seat in the D.C. Circuit should not be filled. We have had chief judges in other courts testify that they don't need seats in their courts filled. This further undermines the argument that there is some kind of a vacancy crisis. As a matter of fact, three of these vacant seats were created in 1990 and have never been filled. If they were so necessary, why didn't a Democrat-controlled Senate fill them in the four years it had to do it? I think the answer is self-explanatory, Mr. President. Those who charge that Republicans are practicing partisan politics against Clinton nominees are the same crowd that brought partisan politics to an art form against Reagan and Bush nominees.

Mr. President, I intend to speak on this matter more as we continue to consider nominees and debate the issue of judicial vacancies further. I urge my colleagues on this side of the isle to do the same.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXECUTIVE SESSION

Mr. HATCH. Mr. President, I ask unanimous consent that the Senate now proceed to executive session to consider the nomination of Frederica Massiah-Jackson.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. HATCH. Let me also note for the record, there is no objection on the part of the minority, at least I have been informed there is no objection, to proceeding with this debate at this time.

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Frederica A. Massiah-Jackson, of Pennsylvania, to be United States District Judge for the Eastern District of Pennsylvania.

Mr. HATCH. Mr. President, I rise today to express my strong concerns with respect to President Clinton's nominee to be a U.S. district court judge for the Eastern District of Pennsylvania—Judge Frederica Massiah-Jackson. I voted for this nominee in committee, but on the basis of information that has been presented to the committee since Judge Massiah-Jackson's hearing, I now have serious reservations about her nomination.

Judge Massiah-Jackson, who currently serves as a State court trial judge in Philadelphia, was nominated by President Clinton on July 31, 1997, to serve in the Eastern District of Pennsylvania. The Judiciary Committee received her completed paperwork on August 15 and began processing her nomination around mid-September. The committee began, in bipartisan fashion, to review what available information there was on her background, her qualifications, and her experience.

The committee's assessment of that information was directed from the outset to serious allegations that were leveled against Judge Massiah-Jackson. In particular, the committee's bipartisan investigative team followed up on allegations that Judge Massiah-Jackson was biased against law enforcement, that she was unduly lenient in sentencing career criminal offenders, and that she lacks proper judicial temperament, as shown with her use of profanity while sitting on the bench.

Despite attempts to investigate seriously these allegations, no one was willing to come forward publicly during the initial investigation with specific and credible evidence or information showing a general bias against law enforcement. In fact, Judge Massiah-Jackson, when confronted with this allegation, had denied having such a bias.

I was particularly troubled by a newspaper account reporting that Judge Massiah-Jackson had identified two undercover officers in open court and warned the spectators to watch out for them. No one, however, came forward to substantiate those charges.

But the committee's investigation did unearth some very troubling information. Judge Massiah-Jackson herself admitted to using profanity at least once while sitting as a judge—she admitted to cursing at a prosecutor in open court; it was not pleasant, and the profanity was not incidental profanity—but she expressed contrition about that event. Indeed, she promised the committee that, if confirmed, she would act appropriately as a Federal district judge.

Now, I take charges of intemperance from the bench seriously. Judges, by their very position, must remain above the fray. They must, by their demeanor and comportment, preside with dignity over their courtrooms and set an example for the attorneys and witnesses to follow. Nevertheless, as a former litigator, I know that in the rough and tumble world of courtroom advocacy that sometimes things can get a bit out of hand. That at least places such untoward remarks in some kind of context. Judge Massiah-Jackson assured the committee that she would conduct herself in an appropriate manner in the future, and that such mistakes as had occurred were early in her tenure on the bench and that she would never allow that to happen again.

The committee's investigation also confirmed that Judge Massiah-Jackson's sentences, while not grossly out of line with those imposed by other State judges, were indeed very lenient on average.

By the time the committee held a hearing on Judge Massiah-Jackson, it was clear to me that she had exercised questionable judgment in a number of cases, that she was softer on crime than I would wish a Federal judge to be, and that there were some serious questions about her ability to preside over a courtroom with the level of decorum that our citizens have the right to expect.

It was clear to me, in a word, that Judge Massiah-Jackson would never be my nominee to the Federal bench. But the Constitution does not vest judicial appointment authority in the Senate. She is President Clinton's nominee. I have never viewed my advise-and-consent responsibilities as an opportunity to second-guess whoever is the President—so long as he sends us nominees who are well qualified to serve and whose views, while perhaps not my own, reflect a commitment to uphold the Constitution and abide by the rule of law.

For that reason, I anticipated that the nominee's responses during her hearing would be extremely important to my own vote. To my mind, those responses would determine whether there was reason to expect that Judge Massiah-Jackson could yet be a credit to the Federal bench.

During her hearing, Judge Massiah-Jackson was questioned extensively about her sentencing record in various cases, she was asked about charges she was antiprosecution, and she was asked to explain the incident in which she had cursed at prosecutors.

After the hearing, members of the committee posed further questions in writing, to which she responded.

In a nutshell, Judge Massiah-Jackson again apologized for her use of profanity in the courtroom and she made every effort to persuade us she has the highest respect for law enforcement and for the difficult job that police officers have to do in our country.

Of particular significance to me, Judge Massiah-Jackson expressly disputed the published press report that indicated she had used her job as a State judge to expose the identities of undercover police officers—in open court, I might add—and to warn the spectators against them. In response to a written question from Senator THURMOND, she flatly denied that such an event had occurred.

On the faith of those assurances and the assurances of those who knew her and know her, and while reviewing the issue very closely, I voted with a majority of my colleagues to report her nomination favorably out of the committee.

I am disappointed to say that with the benefit of hindsight, information has emerged since the Judiciary Committee held its hearings on this particular nominee of President Clinton that strongly suggests to me that she was somewhat less than candid with the committee.

In addition, since the committee's vote, the committee has been virtually deluged with letters from prosecutors and law enforcement agencies in Pennsylvania that document a disturbing pattern of open hostility toward the law enforcement communities. These condemnations have been bipartisan and, in some respects, overwhelming. The Pennsylvania District Attorney's Association, as well as the Philadelphia District Attorney, have come out in opposition to Massiah-Jackson, as have the Pennsylvania Attorney General, the Fraternal Order of Police and the National Association of Police Officers. That is pretty extraordinary. I don't know of any other case where that really has happened, although there may be one or more, even in my experience, but I don't remember any. Moreover, the committee has now received more details about particular rulings by Judge Massiah-Jackson that evidence an inability to deal with law enforcement issues fairly.

First, let me address Judge Massiah-Jackson's possible lack of candor with the Judiciary Committee. During the committee's bipartisan investigation, Judge Massiah-Jackson was questioned about an article that appeared in the local Philadelphia newspaper in 1988 which stated that she had told spectators in the courtroom to take a good look at the undercover officers who are witnesses in the case and to watch themselves. She was asked whether the circumstances described in the article were true. Judge Massiah-Jackson told committee staff she does not recall the incident, but that she did not understand the concern about ''outing'' the officers if they had already testified. Thereafter, the committee faxed a copy of the article to Judge Massiah-Jackson and asked her to write a letter and comment about the allegations mentioned within the article. Later, the committee received a letter from the nominee that failed to make mention of the incident with the undercover police officers.

Later, at her hearing before the committee, Judge Massiah-Jackson was questioned again about her alleged comments about the undercover police officers. Unfortunately, Judge Massiah-Jackson failed to answer the questions directly and instead she indicated that she respected the role of law enforcement officers.

Dissatisfied by her answers both to the written questions and to the questions at the hearing, Senator THURMOND sent the nominee a follow-up question directly asking her to explain her statement to courtroom spectators to ''take a good look at the undercover officers and watch yourselves.'' In her written response, the nominee categorically denied ever having made the statement. Her written answer back to the committee was as follows: ''I have read the 1988 article and it is inaccurate. I would not and did not make any such statement to the spectators. I have great respect for law enforcement officers who have very difficult jobs and work in dangerous situations.''

In the wake of recent developments, however, committee staff, in a bipartisan investigation, was able to interview the two police officers who were mentioned in the news article. Those officers provided written statements to the committee that refute Judge Massiah-Jackson's representations and corroborate the newspaper story. Both Sergeant Rodriguez and his partner, Detective Terrace Jones, an African American, felt that the judge's statement jeopardized their lives if any of the people in the courtroom were friends, family or associates of persons with whom they might negotiate drug buys in the course of their undercover work.

Although I was more than willing to credit Judge Massiah-Jackson's denial of the newspaper account, in the face of statements by the two officers and the newspaper story, her denial now appears to be somewhat less credible.

I would also point out that Judge Massiah-Jackson unequivocally informed the committee during her hearing and during questioning by Senator SPECTER she had never been reversed on a sentencing issue. This fact was important because of concerns that Judge Massiah-Jackson was particularly bent on leniency in sentencing. In fact, nominees are routinely asked, if they are presently judges, to provide the committee all of the cases on which they were reversed.

In response to the committee's request, Judge Massiah-Jackson identified 14 cases in which she had been reversed. None involved a sentencing issue. When asked a second time in writing whether there were any other cases in which she was reversed, Judge Massiah-Jackson reported one additional case. Once again, this case did not involve a sentencing issue.

Since her hearing, however, the committee itself discovered that Judge Massiah-Jackson's statement that she has never been reversed on a sentencing issue is inaccurate. In fact, to date, the committee has found she has been reversed in at least two sentencing cases: Commonwealth v. Easterling and Commonwealth v. Williams. In both cases, Judge Massiah-Jackson imposed a sentence found to be too lenient by the appellate court.

In Easterling, the defendant pled guilty to burglary and criminal conspiracy. Despite a serious prior criminal history, including nine prior adult property convictions and two adult armed robbery convictions, Judge Massiah-Jackson sentenced the defendant to concurrent terms of 11½ to 23 months imprisonment. Her sentence was 3 years below the standard guidelines and 1 year below even the mitigated guidelines. The Supreme Court found that the downward departure was unreasonable and vacated the sentence.

In Williams, the defendant pled guilty to robbery and possession of an instrument of a crime. The defendant, in attempting to take the victim's purse, viciously slashed the victim with a razor. Despite having a prior criminal history, Judge Massiah-Jackson again sentenced the defendant to only 11½ to 23 months' imprisonment and then immediately paroled him. The superior court again held that this sentence was unreasonable—it was substantially below the minimum sentencing guidelines which required a minimum of 4 to 7 years' imprisonment for robbery with a deadly weapon. In addition to finding that Judge Massiah-Jackson had improperly lowered the defendant's offense gravity score, the superior court also found her refusal to apply a deadly weapon enhancement to the razor was clearly erroneous. The court vacated Judge Massiah-Jackson's unreasonable low sentence.

In addition to these reversals for illegal sentences, I would like to provide an example of why I am so concerned about Judge Massiah-Jackson's ability to weigh the facts fairly. Recently, the committee has received numerous cases that were not previously provided by the committee. One of these cases, Commonwealth v. Smith, appears to be a particularly egregious case, and I want to tell you about it so you may assess for yourself why this nominee is perceived as being unalterably hostile to crime fighting.

In the early evening of September 28, 1990, a 13-year-old boy was dragged into the bushes on the grounds of a Philadelphia hospital. The assailant raped and sodomized the boy, threatening to kill him. Despite the fact that his face was slashed with a box cutter, the boy managed to escape from his assailant's clutches. Naked and bleeding, he told two female hospital employees who were passing by what had just happened and that his attacker, a man, was still in the bushes. Shortly thereafter, hospital guards arrived and took the boy to the emergency room for treatment.

The two women then saw a man crawling out of the bushes where the boy had told them the attack had occurred. They made eye contact with the man from only 2 feet away. The man jumped to his feet and turned to walk away from the crowd of security guards and bystanders.

One of the women informed the guards of the man's appearance. Remember, the two women, according to the court of appeals' decision, never lost sight of the man until after he was apprehended by police just 2 minutes after they spotted him crawling out of the bushes where the young boy said he was.

A Philadelphia police officer arrived on the scene within seconds of receiving a police radio call of a ''rape in progress.'' The officer stopped the man and told him he was investigating a radio call of a rape. The man said that he had not raped anyone. When the security guards and witnesses told the officer that the man had just raped a young boy, the officer handcuffed him and put him in the back of his patrol car.

Moments later, another officer conducted a safety search of the man before placing him in a patrol wagon. He found a box-cutter knife like the one used to cut the boy's face and a rag still wet with blood. The defendant later confessed. Despite the overwhelming evidence in the case, Judge Massiah-Jackson held that the police officer had no probable cause to arrest the man. She suppressed the defendant's statement, the box-cutting knife, the bloody rag and the out-of-court identifications as the fruits of an illegal arrest. I am thankful to say her ruling was appealed and reversed, but I am somewhat surprised President Clinton would still nominate this judge if he was aware of this decision.

It has been noted that by some that, after the case was reversed, the case was assigned to a new judge and the defendant was, I am told, acquitted. This is why it would be advisable to consider holding a hearing at which the nominee can explain her decision in this case. Frankly, notwithstanding the eventual verdict, I fail to see how one could conclude that probable cause to arrest the defendant did not exist.

In recent weeks, the Judiciary Committee has received letters from virtually every law enforcement office in the State of Pennsylvania and several national organizations voicing their opposition to President Clinton's nominee. To date, we have received letters from the Attorney General of Pennsylvania, the Philadelphia National Fraternal Order of Police, the National Association of Police Organizations, the Pennsylvania District Attorneys Association, and letters by numerous district attorneys around the State, including one from Lynn Abraham, district attorney for Philadelphia, who I understand is a Democrat herself. All of these letters express opposition to this nominee's appointment because of her record of hostility to prosecutors, law enforcement and victims of crime.

Now, although it certainly would have been beneficial to the committee if we had this information before Judge Massiah-Jackson's hearing, we certainly cannot turn a blind eye to the facts. We ought to just make it clear that this committee, in a bipartisan way, takes these judgeship nominations very seriously. We continue to investigate right up to the time of confirmation. We are not going to fail to look at matters when we think there may be some legitimacy to them, as may be the case here.

Make no mistake, I take my floor vote on Judge Massiah-Jackson very seriously. When her candidacy was in the committee, I resolved my serious misgivings about her nomination in her favor, as I often do, if we don't have people who are willing to appear before the committee, willing to give statements that are substantiated rather than unsubstantiated and if the FBI matters also are unsubstantiated, regardless of the accusations. We see in the FBI reports all kinds of accusations from everybody, from responsible citizens to crazies, and we have to look at those things in a bipartisan, decent, honorable way, sift through them, and do the best we can to arrive at the facts and to be fair to the nominees.

While her candidacy was in the committee, like I say, I resolved these serious misgivings I had in her favor because we do not—most of the accusations, all of the accusations, by and large, were unsubstantiated. People were unwilling to come forward and to speak on the record. I am not about to oppose a nominee and cast a shadow over his or her career when all the Committee has to act on are anonymous sources. But now we have people who have been willing to come forward. I wish they had done so before. It would have helped the Committee straighten out this matter.

My decision on the committee was based in large measure on the representations made by the nominee herself, both in answer to the written questions and at her hearing. To the extent that these recent developments called the nominee's statements before the committee under question—and they do—I am obliged to reconsider my vote. After reviewing and considering the information that has recently been provided to the committee by law enforcement officers about her conduct on the bench, her alleged bias against law enforcement, her flawed judicial rulings, and above all, her apparent lack of candor with the committee, I can't in good conscience, based on what is available to me now, continue to give her the benefit of the doubt.

I have the highest personal regard for Senator SPECTER, who has ably promoted her candidacy, I believe, with the same understandings that I have had up until now, but I have serious questions whether Judge Massiah-Jackson is fit for the Federal bench. Senators SPECTER and SANTORUM have suggested that she be given an opportunity to publicly respond to these recent developments. As chairman of the committee, I hope that the Senate can accommodate their request. I am not sure that we will at this point. But I hope that we will. I hope we can give her a hearing. If we decide to have a hearing, I can hold a hearing. And I think I would have the cooperation on the part of the minority in doing so.

Having said that, I also believe that some of my colleagues, who will speak in opposition to the nominee, have a legitimate argument in urging the Senate to vote on this.

In his State of the Union Address, President Clinton challenged the Senate to ''vote on the highly qualified nominees before you, up or down.'' Since President Clinton's challenge, the Senate has voted to confirm five judicial nominees. One judicial nominee has chosen to withdraw. And Judge Massiah-Jackson's nomination is in serious question due to concerns from the law enforcement community. Today, some of my colleagues are eager to comply with President Clinton's request. And I hope that this year we will be a bit more expeditious in bringing judges up for votes on the floor. If Senators have objections to them, let them raise them here. This is an appropriate place to do it. Above all, it is appropriate to raise them during the hearings that we hold in the Judiciary Committee. But they can also be raised here, and we face those objections if we are for or against these nominees as they come up for a vote.

Mr. President, if I could just have one more sentence, I don't know whether we will have another hearing or not. But I am certainly going to keep my options open on the subject and work with my colleagues from Pennsylvania. I can't believe that all of these people who have suddenly come forth as law enforcement people are not telling the truth. Yet, I do have some information that Judge Massiah-Jackson may have massaged some of the facts herself. And I am very concerned about this. Frankly, I am going to look for guidance here on the floor from a wide variety of people. And let's just hope that we can do what is appropriate here under the circumstances.

I yield the floor at this time.

Mr. LEAHY. Mr. President, if the distinguished Senator from Utah will stay on the floor for a moment on this, I know there are a number of Senators, especially the two distinguished Senators from Pennsylvania, and others who wish to speak. I advise Senators that I am only going to hold the floor for a moment.

I would like to underscore something that the distinguished Senator from Utah said, which is that if this matter does not come to a vote in the next couple of days and stays on the calendar during that time, the distinguished chairman of the Judiciary Committee has the authority to hold further hearings, if he wishes to, even though the matter is here pending on the calendar. It is something that can be done without the direction one way or the other from the Senate as a body.

I would also note that the distinguished chairman and I have a long practice of discussing first privately issues of this nature that may come up so that we can then report back to the individual Members on our side of the aisle where we are going. I know that the distinguished Senator from Utah would do that. I mention this only to say that I do not want in any way to limit anyone's right to speak, but I will reserve any comments that I might make until after the time I have discussed this matter privately with

the Senator from Utah. I will certainly listen to the things that are said by other Senators on the floor. I want to note an agreement with what the Senator from Utah has said, which is, of course, that the committee has the right to hold further hearings while this matter is pending before the Senate. It is not often done. But certainly it could be.

Mr. President, I am about to suggest the absence of a quorum, and I will assure Senators that I will have no objection to having it called off in about 1 minute. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, I see other Senators, including the distinguished senior Senator from Pennsylvania, on the floor. I yield the floor.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I think that there may well be an agreement on the basic course in this matter; that is, to have another hearing in the Judiciary Committee after we have reviewed all of the cases presented by the district attorneys, and after we have given Judge Massiah-Jackson an opportunity to reply. Before commenting about the background and history of the case and the actions which have been taken up until now, I would ask for the attention of our distinguished chairman, Senator HATCH.

The PRESIDING OFFICER. The Senate will please come to order.

Mr. SPECTER. Senator HATCH has cited the case of Commonwealth v. Smith, and noted Judge Massiah-Jackson's judgments in the matter. And I just wanted to inquire of my distinguished colleague, if I could have Senator HATCH's attention, does my distinguished colleague know that when the case came up on retrial before a different judge that the defendant Smith was found not guilty?

Mr. HATCH. I understand this to be the case. As I noted, the record as of today is unclear on a number of these issues. The Department of Justice is still reviewing some of these cases. But the fact that the defendant was eventually acquitted does not excuse the fact that she was reversed on appeal, that we only learned of this case last week, and that there certainly appeared to be probable cause to arrest him.

Mr. SPECTER. The Senator from Utah has commented about two cases where there were sentences below the guidelines. I ask my colleague from Utah if he knew in the case of Commonwealth v. Earnest Smith, January term, 1986, 0144–0146 that Judge Massiah-Jackson was reversed for handing out a sentence which was too tough or long under the sentencing guidelines? I would be interested to know if the Senator knew as opposed to the staff knowing, if it please.

Mr. HATCH. I am aware that she may have handed down some tough sentences as well.

Mr. SPECTER. I raise those two points on specific matters cited by the distinguished chairman because there is a great deal which has to be analyzed. I am in total agreement with Senator HATCH when he says that there has to be review in a bipartisan manner to take a close look at Judge Massiah-Jackson's qualifications. I consider myself as a juror on the matter to look at the facts and make an impartial, unbiased determination. That is the conclusion which I came to in conjunction with my distinguished colleague from Pennsylvania, Senator SANTORUM, when we had the district attorneys in my office on January 23rd at the invitation of Senator SANTORUM and myself to hear the specifics of their complaints. They said at that time that they had some 50 cases to present on Judge Massiah-Jackson's record, and we responded that we wanted to hear them to see what they were. We hoped that they could be filed within a week, although whatever information they give us at any time, including today, is going to be considered.

This is a very important matter when you have a lifetime Federal court appointment. In fact, 49 cases were submitted on Monday, February 2nd, a week ago yesterday. Those cases are currently under review. I am told that some 15 people are reviewing the cases in the Department of Justice and at the White House to make an analysis of those cases. Judge Massiah-Jackson is now in the process of reviewing those matters to present her views as to why she did what she did in those cases. Once that is concluded, I think that we would have to make an analysis. And the probabilities are high that another hearing will be required, although even that cannot be determined until we take a look at the cases to see what those cases say.

When Senator HATCH outlined the history of this matter, he pointed out that the President submitted the nomination of Judge Massiah-Jackson to the Senate on July 31st of 1997, and that the papers were sent over on August 15th of 1997.

I think it is worth noting, Mr. President, that an arrangement which has been worked out between Senator SANTORUM and myself as the Senators from Pennsylvania and the White House has been that for every three nominees submitted by the President's party, Senator SANTORUM and I would be able to make recommendations as to one judge from the Republican Party. Pennsylvania is the only State which has that arrangement, with the exception of New York which has had that arrangement going back to the 1970's when Senator Javits was the Senator from New York. Our recommendation was for the Eastern District and for former Pennsylvania State Supreme Court Justice Bruce Kauffman and that was our suggestion. There was no connection with any other nominee. But that arrangement has been carried out, and we expect it to be carried out in the Western District and the Middle District as well.

As Senator HATCH pointed out, when we sought to have information about Judge Massiah-Jackson, none was forthcoming, and there was a reluctance on the part of the Judiciary Committee until further investigation was done.

So Senator SANTORUM and I convened a hearing which was attended by Senator BIDEN, former chairman of the Judiciary Committee, in Philadelphia in early October. We asked all parties to come forward at that time, if they had any information adverse to Judge Massiah-Jackson. Among the witnesses who testified that day, one was a representative of the mayor. And Mayor Rendell has been very forceful in his support of Judge Massiah-Jackson. Mayor Rendell told me that Judge Massiah-Jackson had only one appeal taken and had been sustained on that. Senator HATCH pointed out that apparently is not the case with two other cases having been reviewed here. Mayor Rendell had been District Attorney in Philadelphia, and had subsequently been the Mayor of Philadelphia, been the interim District Attorney until 1985, and then elected Mayor in 1991. So he had some substantial familiarity with Judge Massiah-Jackson's record and was very forceful in his support of Judge Massiah-Jackson.

In any event, after the hearing in Philadelphia in early October, the Judiciary Committee hearing was scheduled in late October. And at that time there was a review of Judge Massiah-Jackson's record at that time. Senator KYL presided. Senator SESSIONS was present, and I was present. Others were present when we went into her record. Subsequent to that hearing, information has come forward from the Pennsylvania District Attorneys Association challenging Judge Massiah-Jackson on a variety of grounds.

When I heard about that, I asked them to come in. January 19 was an inconvenient date, but we did meet on January 23 and then the sequence followed with their having presented their cases which we have in hand as of a week ago yesterday, February 2.

It seems to me that what we need to do is to take a look at those cases. There have been citations against Judge Massiah-Jackson in some cases—and I am not going to go into them at this time—where Judge Massiah-Jackson's judgments were later upheld by the appellate court. The information which has been provided to me is that in 95 cases which were taken on appeal from Judge Massiah-Jackson, she was reversed in 14 cases. Some of those cases were civil as well as criminal.

And I think it important to note that Judge Massiah-Jackson has not sat in criminal cases since 1991.

I think there is agreement by all people who have taken a look at this nomination that a lifetime appointment is a matter of great concern, and I might add that there is a special concern among the district attorneys which has been expressed to me as the result of the decision by Judge Dalzell of the same court, the United States District Court for the Eastern District of Pennsylvania, in a case of Commonwealth v. Lambert in Lancaster County, a very serious homicide matter where Judge Dalzell suppressed evidence and said there could not be a retrial. Judge Dalzell has since been reversed by the Court of Appeals for the Third Circuit because the defendant did not exhaust State remedies, and Congressman Pitts and Congressman GEKAS and I have filed legislation which would deny jurisdiction to a Federal judge to order no retrial. Federal judges have the authority to suppress evidence, but I do not think they have the authority to deny retrial. That is a matter for the District Attorney of Lancaster County, something I have some familiarity with, having been DA for 8 years and Assistant District Attorney for 4 years before that. But I think a retrial is a matter for the local District Attorney and the local court. But there is quite a concern among the District Attorneys of Pennsylvania about that action by a Federal judge and a concern as to this nomination, and as citizens, as District Attorneys, they obviously have every right to provide information to the Judiciary Committee on this nominee. I think we have to consider what they have to say. I think we have to consider Judge Massiah-Jackson's responses and then make a determination of the judgment as to whether she should be confirmed or not.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I rise to support what seems to be a growing notion on the floor that we not vote on this nominee today, that we take an opportunity for the sake of fairness to give Judge Massiah-Jackson the opportunity to respond to the new information provided by the district attorneys association.

I had to leave the floor for the past few minutes, and I missed most of the remarks of my colleague from Pennsylvania. There were some folks from Core State who wanted to talk about the Core State-First Union merger which is a very important issue in my state. I have been informed that Senator SPECTER went through some of the history of how this nomination came to this point, and I think it serves us well to understand that this information has come out late, that the opportunity was made available to anyone to not only testify in Philadelphia—Senator SPECTER and myself and Senator BIDEN held a hearing in Philadelphia to seek information, as well as the Judiciary Committee held its hearing. Information could have been provided.

I must admit that for a period of several months prior to the nominee coming up before the committee I was provided a whole bunch of information slid under the door, thrown over the transom, but not information that was in fact stood behind by anybody willing to come forward and say this is what the record indicates and go on the record. It led me to have some very serious concerns about the nominee, but, as Senator HATCH said, I am not going to make a decision on a judge based on information that someone is not willing to stand up in the public light and testify to. Senator SPECTER and I have a joint committee that reviews nominees to be district court judges in Pennsylvania. We both have an equal number of representations—a bipartisan committee. They review the qualifications of a judge, basically resume and other kinds of information. In fact, we ask several questions of the judge, but the judge provides us with the information, and we make a decision based on that information we receive. Judge Massiah-Jackson was approved by that commission. As a result, my policy is to support anybody who gets approved by the commission and then subsequently nominated by the President, to support that nominee's right to come out of committee and come to the floor of the Senate. I have on occasion not too long ago actually held judges and objected to judges being considered by the committee and coming to the floor of the Senate from the State of Pennsylvania because the commission that Senator SPECTER and I have did not find that individual to be qualified. They did find Judge Massiah-Jackson to be qualified. Therefore, I agreed to support her through this process until it reached the floor.

I always left open the opportunity, and still do, to judge as to whether I believe that person should be finally approved by the Senate. In the case of Judge Massiah-Jackson I have very serious concerns that she is in fact going to be a good judge on the Eastern District in Pennsylvania. The charges that have been put forward by the district attorneys association and others I think are very serious. The cases you have heard from Senator HATCH and I know others will be talking about today raise very serious concerns about her respect for law enforcement and her treatment of criminals on both her record as far as a finder of fact in nonjury trials as well as her sentencing as a result of being the finder of fact.

So those things I have very grave concerns about, but having said all that I don't think it is fair for the Senate to move forward and vote on a nominee who has not had the opportunity to respond. I just think that would be unprecedented. These allegations, unfortunately, came in at the last minute, came in almost after the last minute. Judge Massiah-Jackson actually almost was approved before we left at the end of last year but an objection was raised by two Senators for that approval. Otherwise, she would have been approved by unanimous consent here. Two Senators objected to that approval. It was only after that—in fact not immediately after that because that happened in November. It was 2 months later that this information came out—not 2 months but almost 2 months later that this information came out in a letter from the district attorney of Philadelphia and the neighborhood who voiced her concern and her opposition and obviously the district attorneys association followed suit, or I guess about the same time came forward and said they objected. Subsequently, the fraternal order of police in Philadelphia objected, then the State and then the national. So we had this sort of drip, drip, drip of opposition come out, and I am not questioning whether it is legitimate or not.

These are, obviously, very important substantive issues, but I must admit I am a bit concerned and bothered by the fact it came out at such a late time and in such a, I think, unprofessional fashion. We needed to have this information before the committee when the committee brought her nomination up for confirmation. It was only fair to the judge to do that. And I think these allegations coming out at the time they are have not been fair to her, so I think for the Senate to move forward at this point would be an additional unfairness to this candidate. And so I would encourage my colleague, the Senator from Utah, as well as the Senator from Vermont, Senator LEAHY, to coordinate, whether we have to do it by some formal action in the Senate or preferably by some informal action, that we delay this nominee today, give her the opportunity to come before the Judiciary Committee and have an opportunity to be heard and to respond to these allegations, and they are serious, but I frankly think the more serious the more I feel compelled to give her the opportunity to respond. If they were not so serious, then I would say, well, let's just move forward. But the fact they are serious I think fairness requires her to come before the committee and give her accounting of these fact situations.

And what are they? Well, 50 cases have been brought to our attention here in the last few weeks, 50 cases that have been delivered to us for the last year in which she was a judge. I believe she was a criminal court judge about 7 years. I could be wrong by a half year or so. The last year they went through her records and of 400 some cases, they pulled 50 to show what they believe is conduct that shows a disrespect for the rule of law and a very soft approach on crime.

I must admit I have read the summaries of all 50 of those cases and I am troubled by not all of them but certainly most of them. I also understand that is the synopsis of the district attorneys association as to what the

facts were in the cases, and I would think it is only fair that we hear what the judge's perspective is as to what the facts at least alleged in these summaries are before we make the decision in the Senate.

And so again I think on that count the judge deserves an opportunity. Other information has been brought forward as to her sentencing record. Again, that was somewhat reviewed by the committee. They are taking a little different angle. But these are nuances that I think are important, when it comes to sentencing, she have an opportunity to provide at least some light on the subject.

There is the issue of her acquittal rate. According to the district attorneys association, her acquittal rate is much higher than the average judge. When I say acquittal rate, acquittal when she sits as finder of fact in a nonjury trial—that her rate of acquittal is higher than the average rate of acquittal, on all charges I might add, on all charges of the average judge in Philadelphia. In fact, in the last 4 years it is three times the rate of the average judge in Philadelphia. Again, I am not an expert in the way the court system functions in Philadelphia. I don't know what division of the court she was sitting in. I don't know what that means. Is it maybe as the result of the kind of cases she was hearing? I think those are important questions we have to ask her and, frankly, ask the district attorneys association or the district attorney of Philadelphia at a hearing so we can understand in a little broader picture what the facts are with respect to her acquittal rate.

So those are just some of the things that while on the face of it I must admit are troubling and may continue to be troubling if the response, Judge Massiah-Jackson's responses are not satisfactory, I think the opportunity to respond is imperative.

So I rise to support what hopefully will be the order of the day here which is to give everyone an opportunity to be heard but hopefully then give Judge Massiah-Jackson the opportunity to be heard.

I thank the Chair.

Mr. ASHCROFT. Mr. President, I rise today to speak out in opposition to the nomination of Judge Frederica Massiah-Jackson to be United States District Judge for the Eastern District of Pennsylvania.

We have heard in recent weeks about the so-called vacancy crisis in Federal courts and that the Senate needs to move more quickly in putting the Clinton nominees on the bench.

Well, I for one am more concerned about the quality of nominees than I am about the quantity of nominees. And I am quite sure that we should not respond to a perceived vacancy crisis by giving a lifetime appointment to Frederica Massiah-Jackson.

Before putting this nomination into the context of judges in Washington, and the battles over judges, it is worth emphasizing the remarkably strong and unified opposition of local law enforcement to this nomination. I have not had a long history of appointments and confirmations here in the Senate—3 years. We have confirmed scores of judges over the course of 3 years. When I was Governor, I had the opportunity to appoint a couple of hundred judges. I appointed all seven members of the supreme court of the State of Missouri. It was a privilege for which I was deeply grateful and I took it very seriously. I thought it very important that we appoint individuals of high quality.

Never in my experience with judicial appointees here in the U.S. Senate or in my time as a Governor, when I appointed several hundred judges in my home State, did I ever see a community of prosecutors step forward and say, ''Don't do this.'' Never before have officers of the court—and prosecutors are officers of the court—felt the necessity to stand up and say, whatever you do, don't confirm this one. Don't appoint this individual.

At noon today I participated in a press conference with national and local law enforcement officials. Other participants included John Morganelli, the district attorney from Northampton County in Pennsylvania, and Ralph Germak, the district attorney in Juniata County of Pennsylvania, and Richard Costello, the president of the Philadelphia Fraternal Order of Police.

I thank them for their willingness to come forward. They came to the news conference to express their opposition to Judge Massiah-Jackson. Interestingly enough, these are not individuals that you would normally expect to publicly express their opposition. District Attorney Morganelli is a Democrat. The nomination of this Democrat judge from Philadelphia was made by a Democrat President. It takes courage to put one's country and the judicial system above one's party. But District Attorney Morganelli chose to do so.

Not only did District Attorney Morganelli come forward, but he also made us aware of District Attorney Lynne Abraham, a Democrat district attorney for Philadelphia. At great political cost to her, Ms. Abraham said this nominee is simply unacceptable. She wrote in a letter addressed to Senator ARLEN SPECTER on January 8 of this year, referring to Judge Massiah-Jackson:

> This nominee's judicial service is replete with instances of demonstrated leniency toward criminals, an adversarial attitude toward police, and a disrespect toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

The severity of that statement is matched only by its candor and its courage. It is not easy for a district attorney who has the responsibility of sending prosecutors into that courtroom to come forward with that kind of testimony about a nominee. Most of us would not want to tell the truth about a judge that we were going to have to face over and over and over again. When District Attorney Morganelli and District Attorney Lynne Abraham come forward, speaking at great personal risk, I do not take that lightly.

When Richard Costello spoke, as the president of the Philadelphia Fraternal Order of Police, he mentioned casually a fact that sent a chill down my spine. He said, ''I have been shot twice.'' And then he related the story of how Judge Massiah-Jackson had ordered undercover policemen to stand up and be recognized in court so that any drug dealers that were there would recognize them if they saw them on the streets. You can imagine what happens to an undercover policeman who is trying to make a drug buy in a case and the drug dealer recognizes the policeman. It could well be that that individual's life would not be worth that much.

I think these individuals who have come forward have a unique blend of personal experience and an unparalleled amount of courage to provide this important information to the U.S. Senate. Nomination fights are difficult. I wish we didn't have all these fights stacked at once. But there is a level of quality that we must expect from individuals who are appointed for life to the Federal bench. If that level of quality does not exist, we must find it elsewhere.

I do not believe that the talent pool of individuals available to be Federal judges in America is shallow. I do not believe that we cannot find moral people who are decent, who have an ability to stay in the middle of a controversy instead of joining one side or the other. I do not believe that the number of trained, skilled lawyers in the Philadelphia, PA community is so low that we have to accept individuals who, according to the district attorney, have an adversarial attitude toward police and disrespect prosecutors. The prosecutors are a part of the court and judicial system. They are entitled to respect. But this nominee is so far below the minimum quality we should expect from a Federal judge that it is tragic. The local law enforcement community is horrified. They are about to be saddled with a judge that they say is the worst.

There is a principle, I think they call it ''the Peter Principle,'' where they kick people upstairs. They keep promoting them because they want to get rid of them. These officials who came forward in this case are not even willing to do that. They understand that this would be a mistake of unparalleled proportions. Washington may seem willing to rubberstamp nominees no matter how unqualified, but these courageous individuals from Philadelphia—and, I might add, the prosecutors association from the State of Pennsylvania, which voted unanimously against this nominee—are not.

I began a minute ago to address the idea of the talent pool, the idea that there are people talented enough and capable enough, and who have the requisite integrity to do a good job. I am

firmly convinced of that. What really troubles me is that the Senate here, now, is talking about maybe we can try and allow this individual to have another hearing, in spite of the fact that the written responses were inadequate, in spite of the fact that the oral responses of this judge, when heard previously, were inadequate, that somehow we could explain away everything. It is as if there is no other option.

I do not think we should try to find a way to make the worst nominee that these folks have ever seen somehow marginally acceptable. We should not be seeking the lowest quality possible in the Federal judiciary. We should be seeking the highest quality possible.

Let me go through some of the objections that the local officials outlined. These happen to be the basis for my own opposition. They are fourfold.

This nominee has shown disrespect for the court by using the English language's most offensive profanity in open court. This is not a subject of debate. This is the subject of court records. You see, there were certain times when this judge's personal court reporter wasn't there to take down the testimony and so a reporter unaccustomed to the language of this judge just filed the report with the offensive language in it, instead of scrubbing the report.

I think for us to say that a judge who uses the crudest profanity that we know in America in a way that demeans the prosecutor in a courtroom is someone that we should not reward by elevating to a lifetime appointment as a Federal judge. It is just that simple. There are some who said there have been apologies and it did not happen very often. I know that there are several cases in court records which show the kind of language that was used. They don't happen to occur in records that were kept by the regular reporter. But, in my judgment, when we have a deep talent pool, why should we say to those who are both in the system and hoping someday to be made Federal judges, or otherwise, that ''it doesn't matter what kind of language you use. You just can come up and say you are not going to do it anymore and next time make sure that the reporter scrubs it out of the record.'' We really need to make a statement that people who disrespect the participants in the judicial system do not belong as Federal judges with lifetime appointments, accountable to no one.

Second, I already mentioned the eloquent testimony of Richard Costello, the president of the Philadelphia Fraternal Order of Police, and how this judge so favoring dope dealers asked undercover police officers to stand up and be identified in court. You know any dope dealer in the court wouldn't have been identified to the police officers, only the police officers to the dope dealers. Here is a judge who recklessly and without regard to the lives of police officials, puts those lives at risk. Officer Costello indicated that he attended the funerals of seven police officers who had been killed in the line of duty, and he didn't appreciate in the least a judge jeopardizing his fellow officers and his own ability to survive.

Third, this judge demonstrated hostility to prosecutors by suppressing evidence and dismissing charges against criminals. I think the statement by the chairman of the committee with regard to the young man who was raped and the assailant who was captured, identified crawling out of the bushes, was eloquent and powerful. We need judges who will be fair and impartial.

Last but not least, this judge has shown leniency to criminals in sentencing violent criminals to probation only, even when they have been involved in violent crimes on a repeated basis. The judge has used a technique to get to a place for lower sentences. When a person would be charged with a crime and the evidence would come in and show unequivocally that they are guilty of the crime, the judge would find guilt of a lesser included offense so that she could avoid having to impose the minimum sentence and could give a lesser sentence.

There has been a great deal of talk about how there have not been very many appeals. Some have asked, ''How many times has she been reversed on appeals?'' Let me say this, if you are a criminal you are not going to appeal when the judge turns you loose. You are not going to appeal when the sentence is low. It's very difficult for the prosecutor to appeal.

The Senate cannot confirm this nominee in the face of the strong opposition of the local law enforcement community and on the basis of these four fundamental facts, which are established clearly in the record and which require no additional committee meetings to examine. This judge has been a profane judge, disrespecting prosecutors in the courtroom by referring to them with the lowest level of profanity known in the English language. This judge has recklessly risked the lives of law enforcement officers by making undercover agents reveal who they are to the drug-running community. This judge has demonstrated a hostility toward prosecutors by suppressing evidence unnecessarily and improperly on a repeated basis. And this judge has shown leniency toward criminals by sentencing violent criminals only to probation when the record clearly shows that not only are they violent criminals, but they are violent repeat offenders.

For us to confirm this nominee of this President would be to betray our oath of office to provide advice and consent. For us to confirm this nominee would be the height of arrogance and another example of ''Washington knows best,'' when the folks at the local level know what is right and they have come forward with great courage and inordinate candor to share with the Senate their sentiments about this nominee.

As I mentioned earlier, never in my experiences with the appointment of hundreds of judges have I ever heard from prosecutors like we have in this matter. I've never seen so many stand up, be willing to call a news conference and say, ''This kind of candidate is totally unacceptable.''

We have heard a great deal in recent weeks about the vacancy crisis in the Federal courts, and we heard it said that Republicans are delaying for the sake of delay. In the case of Massiah-Jackson, I have asked that we debate this issue for the sake of the country and for its courts.

I must confess that this issue is here in the U.S. Senate because of me, because at the close of the last session, I was contacted by no less than a half a dozen different Senators who urged me to let this nomination go through in the dark of night as a matter of unanimous consent. They said, ''Let's get it over with; let's just get this done.''

Well, that would have been an unfortunate mistake. It would not have allowed these prosecutors and local officials to assemble their briefs. It would not have allowed us to hear the evidence. It would not have allowed us to make good decisions as Members of the U.S. Senate. I resisted those efforts because I felt the nomination raised serious questions, it had serious defects that needed to be examined in the light of day.

When the President comes and asks us to work hard to make sure we do a good job on nominees, I think that is a sincere request, but we should take him at face value. I think these nominees are important enough for us to debate, I think they are important enough for us to decide, and I think we should debate them and decide them in the light of day. There is no need for us to rush this particular item back into a committee room somewhere so something can be done absent the light of day and the scrutiny of the public. It is time for the U.S. Senate to stand up and to say that there are times when the President simply sends us individuals who are unacceptable.

I placed a hold on this nomination and refused to lift it, despite the insistence of a number of Senators, including Senator SPECTER. Some would point to this as unnecessary delay, but we will create an actual crisis, not an imagined one, if we send individuals of this caliber into America's courtrooms.

The Senate has a constitutional obligation to give its advice to the President with respect to judicial nominees, and, in this case, I think we should withhold our consent. I think that the President should have withdrawn this nominee. I can't imagine the President understands the character and nature of this nominee's conduct and wants the Senate to ratify that conduct by sending this nominee into a lifetime appointment. Surely the President is familiar with the litany of disrespect assembled by this nominee in her prior service.

One has to wonder about the vetting process that raises no objections to a nominee like this one. You wonder what kind of job the American Bar Association did. They purport to be the ''Good Housekeeping Seal of Approval.'' I maybe ought to apologize to Good Housekeeping for saying that, because never has a product with the ''Good Housekeeping Seal of Approval'' fallen so short of its advertised billing.

The truth of the matter is this: The Constitution does not give the American Bar Association or the Justice Department or the White House counsel's office the screening responsibility for Federal judges. The responsibility to screen Federal judges is resident in the U.S. Senate.

Some have said, ''Well, we ought to have another committee hearing; we ought to have this; we ought to have that.'' The U.S. Senate acts as a committee of the whole. When the nomination comes, we are each eligible to evaluate the evidence. We are each charged with the responsibility, duty and opportunity to help make sure that the judicial branch of this country is properly staffed.

The President should withdraw this nomination. The American people deserve better. This nomination sends the wrong message to criminals, suggesting that you can find a friendly judge whose predisposition is adversarial to the prosecutors. That is not my conclusion, that is the conclusion of the prosecution community in Pennsylvania. It sends the wrong message to young people that it doesn't matter what kind of language or respect you accord to the judicial system, you can still be moving up the ladder. Finally, this nomination sends the wrong message to law enforcement that the U.S. Senate doesn't mind promoting someone who puts the lives of law enforcement officials in jeopardy.

I call on the President to withdraw this nomination. If the President refuses to withdraw this nominee, the Senate should vote to reject the nominee now. There is no need for additional proceedings. The President himself says we should have up-or-down votes. He says that there is a backlog. Well, if there is a backlog, why slow the system down with a reexamination of an individual who is unqualified to serve, who will not take this responsibility of the American judiciary to its highest and best, but who, unfortunately, will be found as reinforcing it at its lowest and least?

Nothing will be gained by further delay or sending the nominee back to committee. We know more than enough now, and we know more than enough about the talent pool of lawyers in Philadelphia, PA, to know at least there are some lawyers there that could have a far superior propensity for public service than this nominee who has already soiled a reputation while serving in a public position of responsibility.

We are constantly being told that if there are problems with nominees, we should bring them up and vote them down. Now is the time to dispose of this nomination. Now is the time to say America deserves better. We deserve better than someone who would profanely abuse the courtroom and the participants in the judicial system.

We deserve someone who would do better than to jeopardize the lives of law enforcement officials.

We deserve a judge who would be fairer than to arbitrarily dismiss evidence so that criminals could go loose unjustifiably.

We deserve someone who knows better than to avoid tough sentences when there are repeat violent offenders against the people of our cities and States.

I believe we have the votes, and after a debate in which people can see the kind of nominees that the President is sending to the Senate, we should vote this nominee down.

I thank the Chair.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER (Mr. HUTCHINSON). The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, let me take strong offense to what the Senator from Missouri has said in a number of particulars, if I could have his attention. If I could have the attention of the Senator from Missouri. When he makes a comment about betraying the oath of office, I consider that insulting. I have been in this body a little longer than the Senator from Missouri has, and I know what my oath of office is. If the Senator from Missouri thinks that he knows enough, that can be his conclusion. He may be willing to make a judgment without hearing from Judge Massiah-Jackson, but I don't think that is the fair or the appropriate thing to do.

When he talks about why send it back to the Committee, let's debate and decide this in the light of day, he is not only insulting this Senator, he is insulting the Committee—why send it back to the Committee without the scrutiny of the public? If the matter goes back to the Committee, there will be an open hearing, and the Senator from Missouri is on the Committee, although he wasn't present when Judge Massiah-Jackson's hearing came up. The Senator from Missouri has made a good political speech, but I don't think a speech becoming of the United States Senate's decision to hear both sides of the case.

When the Senator from Missouri says that there has been offensive language, that is true, and that was taken up with the Committee and the Committee voted 12 to 6 to report Judge Massiah-Jackson out, notwithstanding that language which was, in fact, offensive, and she apologized for it. I don't know of any Senator on this floor or in this body—maybe there is one, the Senator from Missouri—who has never made offensive comments. But I don't think you would find people in many offices, if any, who would be disqualified from office because they made two offensive comments.

Mr. ASHCROFT. Will the Senator yield?

Mr. SPECTER. No, I won't. When I finish—no, go ahead, I will yield.

Mr. ASHCROFT. I wondered if the Senator had a question of me. You asked that I stay, and I wonder if you had a question. If you do, I will be pleased to answer it.

Mr. SPECTER. No, I do not have a question of you. I would like you to listen to this. If you don't want to listen to Judge Massiah-Jackson, I hope you will listen to a colleague who has something to say about what you just said.

Mr. ASHCROFT. I have thoroughly reviewed the record of Judge Massiah-Jackson.

Mr. SPECTER. Are you aware that the case you referred to involving the rape of a young man was sent back to another judge for trial and that defendant was acquitted?

Mr. ASHCROFT. I have thoroughly reviewed the record of Judge Massiah-Jackson.

Mr. SPECTER. Well, that's an interesting answer to some other question, but the question I just posed to you, are you aware of the fact that defendant was acquitted when he went back for another trial—you talked about the defendant being guilty, are you aware of the fact that he was acquitted?

Mr. ASHCROFT. I am aware of the record of Judge Massiah-Jackson. It was clearly stated by the chairman of the committee.

Mr. SPECTER. Well, then I would suggest——

Mr. ASHCROFT. Mr. President,——

Mr. SPECTER. Mr. President, regular order. I have the floor.

Mr. ASHCROFT. I have the floor.

Mr. SPECTER. I have the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania has the floor.

Mr. SPECTER. Mr. President, when I make that comment about the Senator from Missouri saying that he knows the facts, knows the case, he raises four points, and one of them is the rape of this young man, a victim, but he doesn't know that the defendant was acquitted. That does have some bearing. If the scrutiny and the thoroughness of the Senator from Missouri on the balance of the record is as thorough as it was on this case, some may question the basis for his judgments, wanting to come to a vote without having heard the other side of the case.

When the Senator from Missouri comments about endangering police officers, I wonder if the Senator from Missouri knows that those officers were identified because they testified in open court?

And when the Senator from Missouri talks about attending the funerals of seven police officers, this Senator has attended the funerals of a lot more police officers than seven in 4 years as an Assistant District Attorney and 8 years as District Attorney of Philadelphia. It

may be in that capacity that I have some greater knowledge of criminal procedure in that city and what goes on in the courtroom and what happens and whether somebody is entitled to make a reply. Not only attended the funerals of seven police officers, but prosecuted on many occasions their murderers.

When the Senator from Missouri makes a comment about lower sentences, lesser included offenses, he may have a point on that, but that requires an analysis of what was in the case.

I agree with the Senator from Missouri when he talks about the need for a quality evaluation of judges, and I do not believe that we ought to appoint judges for the Federal courts for lifetime appointments without very thorough scrutiny, but I do not think that it advances the cause to vilify or joke about the American Bar Association and the ''Good Housekeeping Seal of Approval.'' The Philadelphia Bar Association is making an analysis and stands behind Judge Massiah-Jackson as her advocate.

When the Senator from Missouri says that ARLEN SPECTER is the sponsoring Senator, again, he doesn't know what he is talking about. This is a nominee by the President. This is a nominee by the President, and I have said that Judge Massiah-Jackson is entitled to a fair hearing and to have her side of the matter presented. That is, as a member of the Judiciary Committee, as a United States Senator and as a juror, who has to make a decision.

I am well aware of my oath of office. And I am well aware of my responsibilities to make an impartial judgment in this case. I said to the district attorneys who came to my office on January 23—and I repeated it earlier today—that I was interested in hearing what they had to say, but I will not make a judgment until I hear the reply of Judge Massiah-Jackson as a matter of basic fundamental fairness.

I yield the floor.

Mr. SESSIONS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, the process of advise and consent in the U.S. Senate for judicial nominees is indeed an important one. We have had some tremendous debate already this afternoon. And we have had it on other nominees. The Senators that have spoken earlier today are outstanding Senators who deeply care about their work. And I respect them all.

I think it unfortunate that we may have crossed over into some personal matters that would not be normally displayed on this floor. But I think it is important what we are doing. I think it is commendable that people speak with passion about what they believe in.

A Federal judicial lifetime appointment is an important office. I served as an assistant U.S. attorney, a Federal prosecutor, for 2½ years. I served as a U.S. attorney, a Federal prosecutor, for almost 12 years. I practiced every day, full time, before Federal judges.

I respect and believe in Federal judges with great passion. I believe we ought to have the finest quality of people we can possibly have on the federal bench. I have tried, as I have participated in the Senate Judiciary Committee, as a member, to conduct myself in that committee with the highest levels of professionalism.

When this nominee came up, I had some concerns as a professional prosecutor. I had a feeling, an intuition, that there was something unhealthy about this nominee, that there was perhaps an unstated bias against prosecutors and law enforcement. We had a number of matters that indicated such a bias.

She testified well and gave some explanations. I concluded that we ought to vote no on the nominee. A number of other people, a majority, did not oppose the nominee. Her nomination came to the floor.

I think it is true, as Senator ASHCROFT has suggested, had he not put a hold on that nominee, she would be a Federal judge today. That was the direction we were heading. The vote was coming up. The committee had voted 2 to 1 in favor of that nominee.

The President has asked that his judges be voted on. I think he has a right to ask that, as it is a fair thing for the President to ask. But I think the President also recognizes that sometimes giving a little insight into it is important; otherwise we become nothing more than a rubber stamp or a potted plant. And I do not intend to do that. I have a responsibility. I serve on that committee. I care about the Federal judiciary, and I want good quality judges on the bench.

So that is where we are. I think one thing is important and instructive out of this entire process. Senator SPECTER and Senator SANTORUM and Senator BIDEN had a hearing in Philadelphia. They sought out comments. They did not receive any substantial negative comments. In defense of Senator SPECTER, at the hearing he volunteered to allow me to continue my questioning of Judge Massiah-Jackson beyond the normal time limit that I would have been given. I do not think there has been an attempt to suppress the truth.

What happens in situations like this, however, is that people hate to speak out against a person who has been nominated for a high position. They just do not like to do it. There is no fun in it. There is no pleasure to it. It is not a nice thing to have to do.

So what really happened was, after the hearing in which I questioned Ms. Massiah-Jackson, as did Senator SPECTER and Senator KYL and others, it was reported in the Philadelphia papers, apparently, that law enforcement officers, line prosecutors, who had been in the courtroom day after day in Philadelphia, the Philadelphia district attorney and others began to think about this, the prospect of this nominee being a full time, lifetime appointed Federal judge.

As a result of that, they made some decisions. They decided to come forward and express their true beliefs. Those opinions ought to be respected. I would say, in accord with Senator ASHCROFT, in my experience I have never seen the kind of unanimity of opinion in opposition to a nominee by a group of professional people who have associated with that nominee on a daily basis as I have seen in the case of this nominee.

The objections are bipartisan—Republicans and Democrats. The district attorney in Philadelphia is a democrat and is nationally known, Lynne Abraham. She is a true professional, a leader in a number of different activities for law enforcement, and has substantial credibility.

She wrote the Judiciary Committee, after our hearing, this letter. I will quote from it. You can listen because it is very carefully explained. She chooses her words very carefully. It is a significant opinion by a prosecutor in Philadelphia whose assistants practiced under this judge on a regular basis, who personally served as a judge with her on the bench at another point in time, a fellow colleague with her.

This is what she said. She first said she had never taken a position on a judge. She did not want to take a position on a judge, but she felt she had to. She said:

> My position on this nomination goes well beyond mere differences of opinion or judicial philosophy. Instead, this nominee's record presents multiple instances of a deeply ingrained and pervasive bias against prosecutors and law enforcement officers and, by extension, an insensitivity to victims of crime. Moreover, the nominee's judicial demeanor and courtroom conduct, in my judgment, undermines respect for the rule of law and, instead, tends to bring the law into disrepute.

Ms. Abraham, a Democratic district attorney in Philadelphia, goes on to write:

> This nominee's judicial service is replete with instances of demonstrated leniency toward criminals, an adversarial attitude toward police, and disrespect and a hostile attitude toward prosecutors unmatched by any other present or former jurist with whom I am familiar.

I say, Mr. President, that is a serious comment by a serious person about a nominee that they felt very deeply about. It was important that we hear it. Had that nominee not been held up over Christmas, and had it not been they had an opportunity to discuss it, we would not have heard that.

I submit this, too, that I have been a prosecutor that supervised a staff of attorneys. They talk about judges. You know who the judges are that are just a terror to work before. You know who the ones are that are always looking to undermine the case, to rule for the defendant.

A prosecutor, see, does not get to appeal most rulings on evidence. A motion of judgment of acquittal on a case is a final judgment. The prosecutor has no right to appeal. But a judge can rule

against the defendant, and the defendant has the right to appeal. So if a judge is not willing to give the prosecutor a fair trial, there are many times there is no recourse. A granting, for example, of a judgment of acquittal by a judge is an unreviewable order. They can take a case from the jury, declare there is not enough evidence there, and it is the same as if a jury had acquitted them. Double jeopardy applies and that sort of thing. So this is a problem. It is particularly a problem with a lifetime Federal appointment.

Other law enforcement officials share Ms. Abraham's concern. District Attorney John Morganelli of Northhampton County, PA, also opposes the nomination of Judge Massiah-Jackson. Mr. Morganelli, who is also a Democrat, wrote last month that Judge Jackson's conduct is ''unjudicial, improper, and illustrates a disdain for police and prosecutors.'' Those are his words, not mine.

Another district attorney from Pennsylvania, Bob Buehner of Montour County, also opposes the nomination. He wrote that Judge Jackson's ''actions as a common pleas judge in Philadelphia have, at times, bordered on the outrageous. She has used profanity in her courtroom. What is even worse is her consistent, demonstrated exceedingly adverse attitude toward prosecutors and members of the law enforcement community.

That is what troubled me to begin with about this matter when it came up before the committee. We had the circumstance in which Judge Jackson in the courtroom, on the record, said to a female assistant U.S. district attorney: ''Shut your 'F'-ing mouth.''

Well, some may say people slip. They say things they ought not to say. But from what was said about that, it troubled me, from some of the other circumstances involved, that it indicates a lack of respect for the prosecutor, a lack of understanding that the prosecutor is a litigant, too, who represents the people of Pennsylvania and is entitled to the same protections of the law as is the defendant. That is what concerned me about it.

Now we have these letters from these professional law enforcement people in Philadelphia. They have seen this judge handle hundreds of cases, thousands of cases perhaps. Their assistants have been prosecuting there on a daily basis. They talk about what it is like to be in that courtroom. That is where we are today.

Let me say this. These are not just isolated comments of one or two prosecutors. In fact, on January 8 of this year, the Pennsylvania District Attorneys' Association officially and unanimously voted to oppose the confirmation of Judge Massiah-Jackson. The association found that Judge Jackson's record ''indicates an attitude which is unusually adversarial toward police and prosecutors. Her record also indicates a tendency to be lenient with respect to criminal defendants.''

In addition to the prosecutors, many police officers oppose the nomination of Judge Jackson. For example, the Philadelphia lodge of the Fraternal Order of Police announced their opposition to Judge Jackson last month. The Philadelphia lodge of the Fraternal Order of Police stated that:

> Judge Jackson has an established record of being extremely lenient to criminals; insensitive to the victims of crime; and has posed a direct threat against police. Judge Jackson's bizarre rulings, coupled with her challenging and adversarial attitude toward police and prosecutors, make it appear she is on a crusade against public safety.

That is the Fraternal Order of Police there.

Now, even in a great city the size of Philadelphia, judges have reputations. Police officers know them. They know what kind of experience it is to appear before them. They know how a hostile judge can leave them hanging out to dry—and it can be a very tough day indeed—and what it is like to be before a fair and objective judge. I do not think that is a flippant comment. I think that represents a considered opinion of the police department, the police officers, the line police officers in Philadelphia.

Judge Jackson's nomination is so controversial that even the National Fraternal Order of Police has taken a stand and formally opposed her confirmation.

I would like to share with my fellow Senators some examples that demonstrate why these law enforcement people oppose Judge Jackson's nomination. While these are just a few of her decisions—many of which I firmly disagree with—I think they indicate some of the reasons why they would reach these conclusions and why she should not be confirmed as a judge.

In Commonwealth v. Ruiz, Judge Jackson acquitted a man accused of possessing $400,000 worth of cocaine because she did not believe the testimony of the two undercover officers. In this case, Judge Jackson pointed out in the courtroom the two undercover officers, telling the onlookers ''to take a good look at the undercover officers and watch yourself.''

Well, some say, ''Well, you know, maybe they shouldn't have been testifying. Maybe they would have been identified anyway. What harm did that do?''

I will tell you what troubled me about it, in addition to just the plain fact that it may have jeopardized the lives of line police officers. What went through my mind was, what would make her do that? Why would she do that? What kind of hostility or bias against police and law enforcement would cause her to go out of her way to identify police officers and tell others to watch out because they might come out to arrest you or catch you. That is what concerned me from the beginning about this case.

Detective-Sergeant Daniel Rodriguez, one of the undercover officers exposed by Judge Jackson, had this to say: ''I hope I don't ever have to make buys from anyone in this courtroom. They would know me but I wouldn't know them. What the judge said jeopardized our ability to make buys. And it put us in physical danger.''

Now, the reason that is significant is in every sizable police department there are a number of police officers who, for a period of time, work in an undercover capacity. It is the best way to make a drug case because the one guy who sells drugs today is going to sell them tomorrow. You simply send somebody out pretending to be a drug dealer and put a tape recorder under his coat. He goes out to buy drugs from him and records it so it is not one person's word against another one. It is actually the drug dealer's recorded word and you can play that in court and the jury who hears it can feel like they are right there, know whether or not there was any entrapment. They will know everything that was said and they can make a decision whether this was a person who committed a crime.

These officers were undercover police officers. This was their responsibility—to go out on a regular basis to make cases. I don't know, maybe they are witnesses in other courtrooms there. Maybe there were other drug defendants there, maybe families of drug dealers who also dealt in drugs, who may have been of a violent nature. It made the police officer unhappy and it also made him afraid. He knew that if he ever tried to make an undercover buy from any of those individuals they would not deal with him and may even harm him.

Again, why would she do that? Why? What would make a judge do that—something I have never seen in my entire lifetime or practice of law as a prosecutor. By the way, we did ask about this matter and some of the others at the hearing, and she did have a chance to answer to them.

In addition, Judge Jackson made some very offensive comments to prosecutors in court. In Commonwealth v. Willie Hannibal she told an assistant United States attorney, as I said, ''Will you shut your 'f-ing' mouth.'' When asked about this comment by the Philadelphia Inquirer, Jackson said, ''Maybe I would suggest it offended [Ms. McDermott], but I can't imagine the defendant was offended.''

Now, later, when the Judicial Inquiry Commission, the disciplinary commission of the Pennsylvania judicial system, disciplined her in some fashion she said she was sorry and she shouldn't have done it and she said that before our committee. But to the newspaper, her comments didn't reflect remorse to me, and in fact she said it may have made the prosecutor mad but it made the defendant happy.

It is the kind of odd approach to judging that I think is unhealthy. I believe it shows an insight into her attitude about law enforcement and criminal law that is very instructive.

She is also on record as using profanity in another instance in the courtroom.

Now, you would expect, perhaps, if my intuition is correct, that this is an anti-law enforcement judge, a person who is more concerned about the rights of criminals than about the rights of the victims, that it would show up in the sentencing tendencies of the judge. In this case it really does. In Commonwealth v. Norman Nesmith, the defendant was convicted of striking a pedestrian with his car, leaving her seriously injured in a gutter, fleeing the scene of the crime and beating into unconsciousness one of the woman's relatives who tried to thwart his escape. As usual, the defendant waived a trial.

You have a right to waive a trial by jury and be tried by the judge. Apparently, many people waive their jury trial early on in the system in Philadelphia and they don't know what judge is actually going to hear it and they are tried before a judge and not before a jury. They have a right to be tried by a jury if they demand it.

At any rate, this individual waived a trial by jury and asked to be tried by the judge herself. She sentenced him to 2 years probation for all seven convictions. The defendant had a long prior record for that offense.

In Commonwealth v. Jerome Gray, the defendant severely beat his girlfriend. The victim had cracked ribs, a collapsed lung, a ruptured spleen that had to be removed. After being released from the hospital the defendant threatened to kill her.

As usual, the defendant waived jury trial and was tried by Judge Jackson. He was found guilty of recklessly endangering another person, aggravated assault, second-degree and simple assault, and was sentenced to only 24 months probation.

In Commonwealth v. Freeman, the defendant shot and wounded another man in the chest because the defendant laughed at him. Judge Jackson convicted the defendant of a misdemeanor instead of a felony offense and sentenced him to 23 months, but then immediately paroled him so he did not have to serve any prison time.

In Commonwealth v. Jenkins, the police arrived at the scene of an armed robbery within minutes. They were given detailed descriptions of the robbers and told that the suspects had run north along the street. The descriptions were broadcast over the radio. Soon thereafter, other police officers arrested an individual matching the description 1½ blocks from the crime scene. When approached by the police, the suspect took a roll of cash from his pocket and threw it on the ground.

Amazingly, the judge ruled that probable cause did not exist to make the arrest or stop, and suppressed the stolen cash. She also suppressed the in-court and out-of-court identifications.

Now, police have a responsibility and a duty to be on the streets to try to protect us from crime. The Supreme Court is clear, in my opinion, that these kind of stops by police officers when they have this kind of probable cause are constitutional. Here, the police saw the defendant throwing down a roll of money, he meets the description of a defendant, he is running a block and a half away—that is the kind of basis to make a stop. If we eliminate the ability of police to make that kind of good, heads-up police work because some judge says it violates the search and seizure law, we are in real trouble. The law does not say that is illegal. In fact, the Supreme Court of the United States, and I am sure the Supreme Court of Pennsylvania, holds regularly that those kind of searches with probable cause are legitimate and constitutional

In Commonwealth v. Hicks, the defendant was charged with robbery, theft, receiving stolen property, aggravated assault and simple assault. The defense made a motion for continuance because a police officer that the defense had called did not show up to testify, even though he had been subpoenaed. Judge Jackson ruled that the officer was under the State's control and forced the prosecution to dismiss or nolle pros the case. When the prosecution refused to nolle pros the case, she dismissed the charges.

Judge Jackson's order dismissing that case was reversed by the appellate court and the charges were reinstated. The appellate court noted that the prosecution was ready to try the case, the prosecutor was ready to try the case. What wrong had he or she done? The only motion before the court was a defense request to continue the case until he got his witness there. Judge Jackson could simply have granted the motion by the defendant to continue the case instead of dismissing the charges.

Prosecutors don't like to resist judges. They have to practice before them on a regular basis. It is something that they have to do. I say, from my reading of those facts, that that prosecutor was probably a young person not long out of law school, hustling to handle a whole bunch of cases, and just would not knuckle under. He was not going to nolle pros that case because there was no basis for it. Why would she dismiss it and cause the State to go to the incredible expense of appeal is not rational to me. It does not suggest that we have an even-handed justice in Judge Jackson's courtroom. In fact, just the opposite.

Mr. President, there are a number of other things that we could say about this with regard to sentences. I asked Judge Jackson about this at the Judiciary Committee hearing. The State of Pennsylvania has some sentencing guidelines. They are pretty broad. They are not as strong and not as tight as the Federal guidelines but they are significant. You carry a gun during the commission of a crime, you have another 5 years you have to serve. It has to be 5 years for that gun, regardless. If you are convicted of aggravated assault, felony-one, then you are looking at 10 to 20 years in jail.

Under the sentencing guidelines, according to her own numbers presented by Judge Jackson, she departed from the sentencing guidelines twice as much as other judges in Philadelphia. What I don't think those numbers show and what would make them even more dramatic, they don't show the instances that appear to be so regular in which she convicted the defendant of a lesser offense than which he was charged.

The District Attorney's Association have provided some 50 cases that show, time and time and time again, that this judge convicted the defendant on a lesser offense than what they were charged when it would seem it was almost impossible for the defendant not to be convicted on a higher and more serious offense.

For example, Commonwealth v. Sprewall, the defendant ordered a friend to shoot the victim but the friend refused. The defendant took the gun from the other defendant's hand. The defendant's brother then tried to stop the defendant, but he pushed away his brother and fired over five shots at the fleeing victim, hitting him in the stomach, thigh, buttocks and leg. The victim slipped in and out of consciousness when he was admitted to the hospital where he spent 3 weeks. One of his toes had to be amputated and he had to use a colostomy bag for 10 months following surgery. Despite this plain evidence of serious bodily injury, in Philadelphia if you commit an aggravated assault that causes or attempts to cause serious bodily injury then you have been convicted of felony 1, 10 to 20 years.

An injury is defined as serious if it causes the protracted impairment or loss of a bodily member, organ, serious or permanent disfigurement, or a substantial risk of injury. The classic example of aggravated assault in a first-degree felony is the shooting of a gun at a person. You don't even have to hit him. If you were trying to then you are attempting to cause serious bodily injury. This person was hit a number of times.

Despite this plain evidence of serious bodily injury, the judge convicted the defendant of only felony 2, aggravated assault, causing nonserious injury, on the dubious theory that there might have been more than one shooter and that the defendant's intent to cause serious injury was somehow in doubt. Thus, the court aborted having to impose the 5-year mandatory minimum sentence for felony 1 aggravated assault. The judge then sentenced the defendant from 15 to 30 months, one-quarter of the minimum required sentence that he would have faced had he been convicted under the more serious offense.

According to the report, it goes on to say that had this defendant been sentenced to the mandatory minimum of 5

years imprisonment, using a gun, that he would still have been serving his sentence in 1993 when he was at that time arrested again for gunpoint robbery, and he would have been in jail in 1994 when he was, again, on two occasions, arrested for gunpoint robbery.

In another case, the defendant shot the victim, hitting him in the chest and back. The victim had to undergo emergency surgery and spent 2½ weeks in the hospital with the first 3 days in intensive care. Despite this clear evidence of a felony-one aggravated assault, the court found the defendant guilty of only second-degree aggravated assault. The defendant was then sentenced to 2½ to 5 years instead of at least the minimum sentence of 5 to 10 years.

I think I misspoke. I believe the minimum sentence under a felony-one sentence would be 5 to 10 years, instead of 10 to 20.

I will not continue to discuss those cases, but there are many of them. There are some 50. They are replete with just these kinds of circumstances in which serious cases are reduced and the defendant is found guilty on a lesser charge. For the most part, a judge's decision to do this is unreviewable; that is, there is no way the prosecutor can appeal because the failure to convict on the more serious charge is an acquittal on that charge. And the judge being the finder of fact, jeopardy attaches. That is a final judgment.

Under the double jeopardy clause of the United States Constitution, and I am sure the Pennsylvania Constitution, criminal defendants can't be tried again for that same offense. So it is over. That is a final decision. So the judge has this unreviewable power. Some people do not realize what the power of a judge has. They have this unreviewable power to make certain findings of fact that can never be reviewed. And the prosecutor and the victims in separate and subsequent offenses have to live with that. There is nothing they can do. You can't sue a judge. They have immunity. Judge Learned Hand said this about Federal judges: ''There is nothing they can do to us. They can't fire us, and they can't even dock our pay.''

So we are considering this nominee who has a lot of good friends and has been actively involved in her community. I am not saying anything about that. I am just saying that I am confident, based upon my review of this record, that this nominee has an unhealthy bias against law enforcement. It is the kind of bias that I must say is disqualifying. It suggests that she ought not to be confirmed to a lifetime appointment. At least in Philadelphia she has to come up for election or review and can be removed from office if she continues to act in a way that is arbitrary and capricious and unjustified. But when we appoint somebody as a Federal judge, then they have it for life.

Let me say this: It is a difficult task. It is an honor to be nominated. I know this is not a pleasant thing for Judge Massiah-Jackson to go through. She is still a State judge, and will be able to continue as that. And perhaps this will cause her to reevaluate whether or not she has been objective in this process of handling criminal cases. If so, then some good will come out of that.

I respect the Senators from Pennsylvania. This is not their nominee. This is the President's nominees. He chose this nominee. He had background checks done on this nominee. He is the one that submitted this name to the U.S. Senate. He asked us to vote on it. I am ready to vote. If people feel like we need another hearing to talk some more about it, so be it. I am ready to vote. The President asked us to vote. I am prepared to vote, and I am prepared to vote no.

Thank you, Mr. President.

Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, let me congratulate the Senator from Alabama for his professional discussion of today, and I think that the Senator from Alabama has raised questions which require an answer. I think that we will give Judge Massiah-Jackson an opportunity to respond to the questions which the distinguished Senator from Alabama has raised.

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

Mr. SPECTER. I do.

Mr. SESSIONS. I would like to say that whereas I concluded at the hearings that this nominee had these kind of tendencies based on what I saw, a majority of the committee did not agree with that, and we did not have the overwhelming amount of evidence that we have now. I say that in all due respect to the Senator from Pennsylvania. He had a hearing in Pennsylvania. These things did not come up at that time. I understand. I don't criticize the district attorneys and the police. They don't like to be involved in this. But I think they had to. They felt they had to come forward, and they did. I think it is time now for us to do our job. I wanted to say that in respect to the Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I understand that the Senator from Alabama voted against Judge Massiah-Jackson at the committee level and had raised questions about Judge Massiah-Jackson so that he felt those questions were sufficient at that time for him to make his judgment. I respect his judgment. He has raised quite a number of additional questions today. And when he cites these cases about making a finding of a lesser included offense, he accurately states the law that those matters are not reviewable, that is the conclusion of the case.

On a number of other matters which he has raised, those matters are reviewable; that where Judge Massiah-Jackson has made the decision to suppress evidence, that is a reviewable matter. So when she makes that judgment, her decision can be overturned. And where she made the judgment to order a nolle pros of a case, that was subject to review as well.

When the Senator from Alabama was present at the hearing, we discussed a number of those cases. We have both been prosecutors. We know the evidentiary rules, and some matters may be reviewed. Judge Massiah-Jackson made quite a number of judgments which were subject to review, and on a good many of them she was upheld.

When the Senator from Alabama raises questions about what the police community has stated, I understand that and respect that.

We received one letter from the Grand Lodge of the Fraternal Order of Police citing a case where Judge Massiah-Jackson did some things that they write to disagree with. On that particular case, it went for appellate review, and the Appellate Court of Pennsylvania upheld Judge Massiah-Jackson. So the issue would be that these police officers and police officials will have an opportunity to testify about the specifics as to their judgment or whether their judgment might differ if they knew what had happened on appeal in the case.

When the Senator from Alabama talks about ''why will the judge identify police officers in court,'' that is the case referred to by Senator HATCH earlier where those officers have already testified in court.

In raising questions about why Judge Massiah-Jackson would take action in a variety of contexts, I think those are fair and appropriate questions. I think those questions are appropriate for Judge Massiah-Jackson to have an opportunity in which to respond. To the credit of the Senator from Alabama, when we had the hearing, he was there and he was asking those questions.

I think it is not irrelevant to comment that there have been a number of convictions of police officers in the Federal court in Philadelphia recently for falsifying evidence in drug cases. Several hundred cases have been dismissed by the District Attorney of Philadelphia. The city of Philadelphia has paid out some $11 million in damages where you deal in a certain context and certain sections of a big city like Philadelphia. It may differ from some other communities. I came to Philadelphia from Russell, KS, and the differences were absolutely gigantic.

When I was District Attorney in Philadelphia for 8 years after being assistant DA for some 4 years, I had many very strong disagreements with the judges. In one case, I was held in contempt of court in my battle on a sentence on a narcotics case, Commonwealth v. Arnold Marks. I still remember it. It only happened 28 years ago—4 ounces of pure, uncut heroin. And I thought the sentence was insufficient. I battled with the judge.

The judges in Philadelphia when I became DA used to come to court late and leave early. I sent my detectives

into court to write down the time they arrived and the time they left for lunch and the time they got back and the time they quit. Very frequently, court was supposed to run 10 to 12:30 and 2 to 4—4½ hours on the bench, not a straining schedule. But they had jobs to do in chambers. But the common practice was to arrive a few minutes before 11, work to about 12:10, come back at 2:50 and leave about 3:20. So I sent detectives in to court to write down the times.

Soon thereafter, one of my detectives was held in contempt. I went down to the court. I said to the judge, ''You can't hold him in contempt. I did the order.'' I was the District Attorney. ''If you are going to hold anybody in contempt, you have to hold me in contempt. You can't hold me in contempt because anybody can come in open court and write down the times you come and go.''

Later, I got the Chief Justice of Pennsylvania to issue an order that judges had to sit from 9:30 to 5. We petitioned for reconsideration of sentences.

This business about battling with the judge is something a District Attorney has to do. That is the appropriate role of a public prosecutor. When the District Attorneys have raised questions, I think that is within their rights. The police officers have raised questions. I think that is within their rights.

But let's hear what Judge Massiah-Jackson has to say. The Senator from Alabama raised a number of questions. He can't understand why a judge would do that. And it is a little different milieu. Let us hear what she has to say. When we have all the facts, I consider myself, as I said earlier, a juror. I have taken an oath as a U.S. Senator and as a juror. I am prepared to hear both sides and to make a judgment. I think the hearings will be held in the light of day. There will be full disclosure. There is ample opportunity for public scrutiny, as there should be, and we will make the determination on the facts and on the merits as to whether this nominee should or should not be confirmed.

I thank the Chair.

I yield the floor.

Mr. SANTORUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I want to associate myself with the remarks of my colleague from Pennsylvania. I too feel that we here in the Senate, when it comes to justice, really should be jurors, and that we should get all the information. The information shared, I think, as correctly stated by my colleague from Pennsylvania and by the Senator from Alabama, was well presented. But that is information that we received from the District Attorneys Association opposed to her nomination, without any rebuttal or explanation from Judge Massiah-Jackson. I will admit that some of those cases I find it hard to find out what a good explanation would be. But that is not for me to prejudge, nor as a juror should you prejudge those things.

So I am willing to listen. I think she needs to be given an opportunity.

The leader has not been on the floor since we brought up this nomination. I am not too sure that we are going to get a resolution today as to how to proceed with her nomination. But I am hopeful that either this evening or sometime tomorrow we will be able to come up with a plan on how we are going to proceed with her nomination and have her nomination received in a fair fashion.

Again, I respect her. I think Senator HATCH and Senator LEAHY mentioned that a hearing by the Judiciary Committee would accord the judge an opportunity to face this new information and respond to it, and give the police and the prosecutorial community an opportunity to present such evidence and such testimony to the committee that they believe is important for us to consider.

So I hope that a full committee hearing goes through, if necessary. I am not on the committee. So I can charge them with whatever I please because I don't have to sit through it; but at least take a number of these cases as a representative sampling of these cases and go through them one by one and make a determination as to the justification that Judge Massiah-Jackson had in making these decisions.

So I am hopeful that that is the next order of business, that somehow or other we can come to some accommodation with the leader, who I know wants to vote on this nominee as quickly as possible in response to the President's urgings of up-or-down votes on his judges. I know that many here, as you heard, would like to vote on this judge today. We are not going to vote on this judge today. Senator SPECTER and I don't want to vote on this judge today, and I believe there are many Members on the other side of the aisle who don't want to vote on this judge today. But we would like the judge to be given a chance and then to have a vote. Let's let the string run out, if you will, give her an opportunity to respond, have a vote somewhat promptly thereafter, and then let the Senate act as the jury, which we know it is very good at doing.

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

The PRESIDING OFFICER (Mr. SMITH of Oregon). The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. KENNEDY. Mr. President, I ask unanimous consent to proceed as in morning business.

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

CLOTURE VOTE ON MOTION TO PROCEED TO THE CONSIDERATION OF S. 1601

Mr. KENNEDY. Mr. President, tomorrow the Senate will cast one of the most important votes on health care in this Congress, and perhaps of this decade. That vote will determine whether one of the most promising avenues of research against a host of serious diseases will continue, or whether Congress will act to ban it—and condemn millions of Americans to unnecessary death and disability.

The vote that will occur is on a cloture motion to take up S. 1601. The authors of S. 1601 say that it is a bill to ban the production of human beings by cloning—an attempt to stop Dr. Seed and other unscrupulous scientists in their tracks.

But that claim cannot pass the truth in advertising test. S. 1601 goes far beyond a ban on the cloning of human beings, which we all support. This legislation also bans the use of the technology for any purpose, even though the research would be used to create cures for cancer, diabetes, spinal cord injuries, arthritis-damaged joints, birth defects, and a host of tragic diseases such as Alzheimer's disease, Parkinson's disease, Lou Gehrig's Disease, multiple sclerosis, and many other serious illnesses. It is not necessary to ban all of this important life-saving research in order to achieve our goal of banning the cloning of a human being.

Every scientist in America understands the threat this legislation poses to critical medical research.

Every American should understand it, too. A vote against this bill is a vote for medical research. It is a vote for millions of Americans suffering from serious diseases for whom this cutting-edge technology offers hope of new and miraculous cures.

A vote against this bill is certainly not a vote in favor of cloning human beings. Congress can and should act to ban the cloning of human beings. But we should not pass legislation that goes far beyond what the American people want or what the scientific and medical community says is necessary and appropriate.

It should also be clear to everyone that there is absolutely no need to act tomorrow to prevent cloning of a human being.

No reputable scientist wants to clone human beings. Scientifically, it cannot be done yet. And the FDA, which has jurisdiction over this area, has made it clear that it has both the authority and intention to prevent any human cloning until further research is done. I ask unanimous consent that a letter from FDA making this point be printed in the RECORD.

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

FOOD AND DRUG ADMINISTRATION,
Rockville, MD, February 10, 1998.

Hon. EDWARD M. KENNEDY,
Ranking Minority Member, Committee on Labor and Human Resources, U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: This is in response to your inquiry concerning the jurisdiction of the Food and Drug Administration (FDA or the agency) over creating a human being using cloning technology. FDA already has jurisdiction over such experiments and is prepared to exercise that jurisdiction. While FDA's authority does not address the larger question of whether or not creating a human being using cloning technology should be altogether prohibited, this authority will ensure that such experimentation does not proceed until basic questions about safety are answered.

Creating a human being using cloning technology is subject to FDA regulation under the Public Health Service Act and the Federal Food, Drug, and Cosmetic Act. Under these statutes and implementing FDA regulations, clinical research on the creation of a human being using cloning technology may proceed only when an investigational new drug application (IND) is in effect. Before such research may begin, the sponsor of the research is required to submit to FDA an IND describing the proposed research plan, to obtain authorization from an independent institutional review board, and to obtain the informed consent of all participating individuals. FDA may prohibit a sponsor from conducting the study (often referred to as placing the study on ''clinical hold'') for a variety of reasons, including if the Agency finds that ''human subjects are or would be exposed to an unreasonable and significant risk of illness or injury,'' ''the IND does not contain sufficient information required . . . to assess the risks to subjects of the proposed studies,'' or ''the clinical investigators . . . are not qualified by reason of their scientific training and experience to conduct the investigation.'' At a minimum, the sponsor must wait at least 30 days after submitting its proposal to FDA before beginning any study.

In the case of attempts to create a human being using cloning technology, there are major unresolved safety questions. Until those questions are appropriately addressed, the Agency would not permit any such investigation to proceed.

We hope this information is useful to you in your deliberations. If we may be of any further assistance, please let us know.

Sincerely,

SHARON SMITH HOLSTON,
Deputy Commissioner for External Affairs.

Mr. KENNEDY. Senator FEINSTEIN and I strongly support a ban on the cloning of human beings. We have introduced legislation to accomplish that goal. We hope that it can be reviewed through the normal committee process of hearings and mark-up. Responsible legislation to ban the cloning of human beings can and should be enacted. But S. 1601 is not such legislation.

It is an attempt to capitalize on public concern to rush through a sweeping and unacceptable ban on a wide array of medical research.

Every day, the concern about this legislation and the opposition to it grows.

President Clinton and the Administration strongly support responsible legislation to ban human cloning. The President called for a ban on creation of a human being by cloning in the State of the Union message. If S. 1601 were simply a ban on creation of a human being by cloning, it would receive the Administration's wholehearted support.

But that is not what S. 1601 does, and that is why the Administration says in its letter:

The Administration . . . believes S. 1601, as introduced, is too far-reaching because it would prohibit important biomedical research aimed at preventing and treating serious and life-threatening disease. Therefore, the Administration does not support passage of the bill in its current form.

As the scientific and medical community learns more about this legislation, almost universal opposition is developing. The American Association of Medical Colleges has circulated a letter to other scientific and medical organizations asking that this legislation not go forward.

The letter is signed by 71 distinguished organizations, from the American Academy of Allergy, Asthma, and Immunology, to the Association of American Cancer Institutes to the Parkinson's Action Network—and the list continues to grow.

The letter states:

The current opportunities in biomedical research are unparalleled in our nation's history. To ensure that these continue, the scientific and organized medicine communities urge you to oppose legislation that would prohibit the use of somatic cell nuclear transfer due to the grave implications it may have for future advances in biomedical research in human healing.

The letter goes on to compare S. 1601's attempts to ban not just cloning of human beings but use of the technique itself to the ill-considered attempts to ban recombinant DNA techniques in the early 1970's. They state:

Like the recombinant DNA debate, the scientific techniques involved in cloning research hold great promise for our ability to treat and manage myriad diseases and disorders—from cancer and heart disease, to Parkinson's and Alzheimer's, to infertility and HIV/AIDS.

Just yesterday, Alan Holmer, the Pharmaceutical Manufacturer's Association's President sent up a letter to members of the Senate on behalf of our nation's research pharmaceutical industry members urging a ''no'' vote on cloture on S. 1601.

He said:

Pharmaceutical companies and their researchers are not, nor do they support, cloning entire human beings. However, without more deliberation and a meaningful opportunity for comment by the scientific and patient communities, we fear that passage of this bill also will foreclose a promising line of research.

The research involves stem cells which, unlike most other cells of the human body, retain the ability to renew themselves and to differentiate into specialized cells. Based upon a better understanding of the differentiation process, scientists may be able to take the cell of a patient paralyzed by an accident, induce that cell to return to a primary state, and then coax it to differentiate into the spinal cord nerve cell needed by that patient. Such cells than could be transplanted back into the patient, whose body would not reject those perfect genetic matches. This procedure could help not only victims of traumatic injuries, but also patients suffering from diabetes, cancer, Alzheimer's, Parkinson's, cystic fibrosis, muscular dystrophy, multiple sclerosis, and other dread diseases that cause suffering and death, reduce the quality of life for both patients and their families, and cost our economy hundreds of billions of dollars annually.

Any hope for such cell-based therapies would be stymied if this avenue of research were foreclosed.

These are our great research pharmaceutical companies speaking, the companies we depend upon to turn basic research in the laboratory into medical miracles at the patient's bedside. And they are saying, ''Stop this bill, because it could destroy our hope to find cures for these dread diseases.''

I ask unanimous consent that the full text of this letter be printed in the RECORD.

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

PHARMACEUTICAL RESEARCH AND MANUFACTURERS OF AMERICA,
Washington, DC, February 9, 1998.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the research-based pharmaceutical industry, I urge you to vote against the motion for cloture on S. 1601 on Tuesday, February 10. More time is required to ensure that a goal of the sponsors is indeed achieved; the protection of biomedical research that benefits patients.

S. 1601 aims to ban the cloning of a ''human individual.'' Pharmaceutical companies and their researchers are not, nor do they support, cloning entire human beings. However, without more deliberation and a meaningful opportunity for comment by the scientific and patient communities, we fear that passage of this bill also will foreclose a promising line of research.

The research involves stem cells which, unlike most other cells of the human body, retain the ability to renew themselves and to differentiate into specialized cells. Based upon a better understanding of the differentiation process, scientists may be able to take the cell of a patient paralyzed by an accident, induce that cell to return to a primary state, and then coax it to differentiate into the spinal cord nerve cell needed by that patient. Such cells then could be transplanted back into the patient, whose body would not reject these perfect genetic matches. This procedure could help not only victims of traumatic injuries, but also patients suffering from diabetes, cancer, Alzheimer's Parkinson's cystic fibrosis, muscular dystrophy, multiple sclerosis, and other dread diseases that cause suffering and death, reduce the quality of life for both patients and their families, and cost our economy hundreds of billions of dollars annually.

Any hope for such cell-based therapies would be stymied if this avenue of research were foreclosed. We, therefore, urge you to seek and consider carefully the views of scientists in the government, academia and industry, as well as patients with unmet medical needs.

We believe legislation is unnecessary since the Food and Drug Administration has announced it will prevent the cloning of an entire human being by regulation. But since legislation now appears likely, it should: Prohibit the act of cloning an entire human being rather than prohibit a biomedical research or use of a particular technology or

focus on a researcher's intent; contain a savings clause that protects biomedical research (including that described above); preempt state legislation to ensure uniform implementation; establish civil money penalties as the enforcement mechanism; bar a private right of action (private lawsuits); a reasonable sunset (Perhaps five years, as recommended by the National Bioethics Advisory Commission) to ensure a deliberate review of the ethical and safety issues.

None of the current legislative proposals meet these criteria.

Human beings are not being cloned today, but millions and millions of patients are being helped by biomedical researchers using state-of-the art technologies to clone individual human genes and cells. We hope you will consider the dreams of patients and their families, and vote ''no'' on the motion for cloture tomorrow.

Sincerely,

ALAN F. HOLMER.

Mr. KENNEDY. Also yesterday, twenty-seven Nobel prize-winners submitted a letter opposing cloning legislation that would choke off critical medical research. The more the research community understands what the Lott-Bond bill will do, the more alarmed they become.

An editorial in the New York Times this morning represents a growing sense of concern in newspapers around the country. The editorial is entitled, ''A Slapdash Approach to Cloning.'' It states:

Senate Republicans are now rushing to enact a bill that would outlaw cloning a human embryo and, in the process, ban a valuable technique that could potentially cure a wide range of diseases. No wonder a slew of scientific associations and high-tech industry groups are urging more carefully constructed legislation. The sensitive scientific and moral issues involved here require careful handling, not grandstanding by politicians more interested in pandering than in reaching a reasoned solution.

The editorial concludes:

When the matter comes up for a floor vote this week, the Senate should postpone action and demand more considered deliberation. It would be a shame if the rush to ban cloning of people ended up crippling biomedical research.

I ask unanimous consent that the full text of the editorial be printed in the RECORD.

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

[From the New York Times, Feb. 10, 1998]

A SLAPDASH PROPOSAL ON CLONING

The shock caused by the physicist Richard Seed's grandiose intention to clone human beings may be about to cause more damage than anything Dr. Seed could do in the laboratory. Senator Republicans are now rushing to enact a bill that would outlaw cloning a human embryo and, in the process, ban a valuable technique that could potentially cure a wide range of diseases. No wonder a slew of scientific associations and high-tech industry groups are urging more carefully constructed legislation. The sensitive scientific and moral issues involved here require careful handling, not grandstanding by politicians more interested in pandering than in reaching a reasoned solution.

Congress may ultimately want to impose limits on cloning, a technique that has arrived sooner than expected with the announcement last year that Scottish scientists had cloned a lamb from the cell of an adult sheep. That achievement, if it proves practical in humans, would make it possible to take a cell from an adult and use it to produce a genetically identical twin many years younger than the parent. A national bioethics commission, the biotechnology and pharmaceutical industries and many scientific groups have all called for a moratorium on actually cloning a person until society has time to grapple with the ethical and moral issues.

But the bill sponsored by the Republican Senators Christopher Bond, William Frist and Judd Gregg does not simply prohibit the use of cloning to produce a human embryo for implantation in the womb. It would also prohibit use of the technique to produce genetically identical tissues in the laboratory to treat diseases or injuries where a person's existing cells are damaged or insufficient. Such ailments include leukemia, diabetes, Alzheimer's disease, spinal cord injury, heart attacks and severe burns, among others.

The Republicans contend that even these approaches require creating what amounts to an embryo in the laboratory and then experimenting on it to produce the desired tissues. But that is a complex matter of definitions and techniques that requires careful evaluation. The Republican bill and others on the subject have not even gone through committee hearings. When the matter comes up for a floor vote this week, the Senate should postpone action and demand more considered deliberation. It would be a shame if the rush to ban cloning of people ended up crippling biomedical research.

Mr. KENNEDY. A letter from Dr. Gerald R. Fink, the Director of the Whitehead Institute of the American Cancer Society—one of the pre-eminent cancer research institutes in the country—explains very clearly what is at stake.

Dr. Fink says:

I am very concerned about efforts to bring the Bond bill to an immediate vote. While I agree that there should be a national ban on human cloning, it is essential that any such law protects areas of critical research that can benefit human health. The Bond bill's generic ban on the use of 'human somatic cell transfer technology,' would in fact be quite damaging to medical research progress in the United States.

The Bond bill would seriously limit our ability to develop new cell-based strategies to fight cancer, diabetes, and Alzheimer's disease. It would also prevent vital research on the repair of spinal cord injuries and severe burns.

I urge you to convey to your colleagues that the Bond bill would cause us to lose ground in the battle against deadly and disabling human diseases.

Surely, what the Senate and the American people do not want to lose ground in the battle against deadly and disabling human diseases.

More than 120 scientific and medical organizations have expressed opposition to the Lott-Bond bill or concerns about prohibition on legitimate cloning research as the result of ill-conceived or over-broad legislation.

An immense array of scientific and medical societies and patient groups is opposing S. 1601. They urge us to use caution and not rush ahead without adequate consideration. Supporters of this bill say that it won't impede necessary research. If this is true, where is their support from people who know. I challenge them to cite mainstream scientific or medical organizations supporting their legislation. At the very least, we should not rush ahead without committee hearings, adequate definitions, or even a semblance of careful consideration. The scientific and medical and patients' communities know that such excessive legislation is wrong.

The substance of this bill is objectionable, and so is the procedure by which it is being considered. To pass this bill tomorrow would be a travesty of the Senate's role as a deliberative body.

This is one of the most important scientific and ethical issues of the 21st century.

It was introduced on Tuesday of last week.

It was put directly on the Senate calendar on Wednesday, with no referral to a committee.

The Majority Leader tried to bring it to the floor last Thursday and filed an immediate cloture motion when he was unsuccessful.

The Senate was not in session Friday—and few of our colleagues were present on Monday.

This legislation has not received one day—not one hour of committee hearings here in the Senate.

It has not received one minute of committee discussion and markup.

The telephones in many of our offices are ringing off the hooks from scientists and physicians and patients across the country who are deeply concerned about the impact of this legislation. But he have had no opportunity for their voices to be heard.

This is an important issue. It warrants Senate consideration. But it does not warrant consideration under this accelerated and indefensible procedure.

The authors of this legislation know that it cannot stand up to public scrutiny, and they should not be making this extraordinary attempt to rush this legislation through the Senate.

The Bond bill does not just ban cloning of human beings, it bans vital medical research related to cloning—research which has the potential to find new cures for cancer, diabetes, birth defects and genetic diseases of all kinds, blindness, Parkinson's disease, Alzheimer's disease, paralysis due to spinal cord injury, arthritis, liver disease, life-threatening burns, and many other illnesses and injuries.

Here is what the bill says—page 2, line 13, paragraph 301 is entitled, ''Prohibition on cloning.'' It is the heart of the bill. It states, ''It shall be unlawful for any person or entity, public or private, in or affecting interstate commerce, to use human somatic cell nuclear transfer technology.'' That is the end of the statement. It does not just ban the technology for use of human cloning. It bans if for any purpose at all.

That means scientists can't use the technology to try to grow cells to aid

men and women dying of leukemia. They can't use it to grow new eye tissue to help those going blind from certain types of cell degeneration. They can't use it to grow new pancreas cells to cure diabetes. They can't use it to regenerate brain tissue to cure those with Parkinson's disease or Alzheimer's disease. They can't use it to grow spinal cord tissue to cure those who have been paralyzed in accidents or by war wounds.

Congress should ban the production of human being by cloning. But we should not ban scientific research that has so much potential to bring help and hope to millions of citizens. As J. Benjamin Younger, Executive Director of the American Society for Reproductive Medicine, has said:

We must work together to ensure that in our effort to make human cloning illegal, we do not sentence millions of people to needless suffering because research and progress into their illness cannot proceed.

Let us work together. Let us stop this unnecessarily destructive know-nothing bill. Let us vote against cloture tomorrow and send this bill to committee, where it can receive the careful consideration it deserves. Together, we can develop legislation that will ban the cloning of human beings, without banning needed medical research that can bring the blessings of good health to so many millions of our fellow citizens.

Mr. President, I am delighted to join in this effort with my friend and colleague and our leader in this whole effort, the Senator from California, Senator FEINSTEIN.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. ASHCROFT. May I inquire as to the state of business in the Senate.

The PRESIDING OFFICER. The Senate is in morning business.

Mr. ASHCROFT. Mr. President, I ask for the regular order.

The PRESIDING OFFICER. The regular order is the nomination of Frederica A. Massiah-Jackson.

Mr. ASHCROFT. Thank you, Mr. President.

EXECUTIVE SESSION

NOMINATION OF FREDERICA A. MASSIAH-JACKSON, OF PENNSYLVANIA, TO BE UNITED STATES DISTRICT JUDGE FOR THE EASTERN DISTRICT OF PENNSYLVANIA

The Senate continued with consideration of the nomination.

Mr. ASHCROFT. Mr. President, I rise to continue my argument and my debate in regard to this candidate for Federal judgeship nominated by President Clinton.

Earlier in the day, I had raised several objections to this particular nomination, and in response to my objections, a number of answers were developed on the part of the Senator from Pennsylvania. I want to return to my objections. I think they are well-founded, I think they are important, and I think they should be observed and understood by the Senate.

I raised the objection today that the absence of judicial temperament on the part of this judicial nominee was an infirmity which should be considered by the Senate. In particular, I said that she had used the foulest of profanities known to the English language in open court and in reference to a prosecutor.

In explaining that, a proponent of this nomination indicated, ''Well, everyone has used profanity at one time or another.'' Let me just point out that I think the use of profanity in open court by the judge presiding over the court is different than the fellow who hits his finger with a nail while fixing the fence in the backyard. As a matter of fact, I think it would be important for me to just outline just what happened in this instance.

In the case of Commonwealth v. Hannibal, in response to a prosecutor's attempt to be afforded an opportunity to be heard—the prosecutor was asking for the judge's attention—the following exchange took place on the record:

The COURT [judge]: Please keep quiet, Ms. McDermott.

Ms. MCDERMOTT [for the Commonwealth]: Will I be afforded——

The COURT: Ms. McDermott, will you shut your [blanking] mouth?

Judge Massiah-Jackson was formally admonished by the Judicial Inquiry and Review Board for using intemperate language in the courtroom.

I realize she has apologized in this respect for having done so, but I think it tells us something about the temperament of the individual involved. I don't think it is very instructive just to concede that other people may have used profanity at some place or on the ball field or in the cloakroom. The use of profanity in this Chamber would be a serious affront to this Chamber, as would any personal attack or other indiscretion or discourtesy in this Chamber. But let me go to a second example that relates to the judicial temperament displayed by this individual.

The case of Commonwealth v. Burgos and Commonwealth v. Rivera. During a sentencing proceeding, the prosecutor told Judge Massiah-Jackson that she had forgotten to inform one of the defendants of the consequences of failing to file a timely appeal. Such a failure would prejudice the Commonwealth on appeal. Judge Massiah-Jackson responded to this legal argument with profanity, stating: ''I don't give a [blank],'' and the word is probably imaginable.

A district attorney, John Morganelli, the Democratic District Attorney of Northampton County, Pennsylvania, has suggested that the reason there are not more instances of this foul language on the record is that Judge Massiah-Jackson's principal court reporter routinely ''sanitized the record,'' and the instances I have referred to here occurred in settings where, according to District Attorney Morganelli, there was not the regular court reporter.

Now, I know that people lose their temper and that people use profanity, but I think these incidents reflect the absence of the requisite judicial temperament, but I think it reflects more than that. When you indicate to officers of the court that you are disparaging their character, when you describe someone's mouth with foul language, you are not just using foul language, you are attributing a character deficit to an officer of the court, a prosecutor. I think that is unacceptable.

Perhaps those would be the kinds of things to be ignored or overlooked or to pass by, but I find it disconcerting. I find it disconcerting that it would be suggested that, well, since everybody uses profanity, it's OK for judges to use profanity in open court.

I raised the issue earlier today of the contempt for prosecutors and police officers on the part of Judge Massiah-Jackson. It was suggested that the fact that she revealed two undercover police officers and pointed them out to be observed in the courtroom was a way of threatening their safety, because drug dealers would have an extra chance to look at them and know who they are and to be cognizant of the fact that they might be persons from whom a drug buy might be made sometime and, be careful, these people would be part of a prosecution effort.

The Senator defending the judicial nominee of the President indicated, ''Well, these people had already testified in court, so it perhaps didn't matter.'' Well, it may not have. It may have been that during the testimony, they were seen by the other people. But let's look exactly at what Judge Massiah-Jackson said about these individuals and see if it tells us something about whether or not we would want this kind of person to be a Federal judge appointed for life, a Federal judge endowed with the authority of the United States of America, answerable to no one.

As the officers were leaving the courtroom, the judge told spectators in the court:

Take a good look at these guys and be careful out there.

I submit to you that for a judge to say, take a good look at these police officers and basically say, ''Watch out for them, they're the guys who might apprehend you in your nefarious activities,'' tells us something about the judge.

I quoted earlier the president of the Philadelphia Fraternal Order of Police, who said that the officers involved felt like this was a threat to them, that it would expose them additionally to bodily harm.

It was suggested by a Senator defending the nomination that that was unreasonable, and it may not be as big a threat as some might think it to be,

but Detective Sergeant Daniel Rodriquez confirmed the outrageous courtroom incident in a signed letter to the Senate. The detective sergeant had the following comments regarding this incident:

I thought ''I hope I don't ever have to make buys from anyone in this courtroom.'' They would know me, but I wouldn't know them. What the judge said jeopardized our ability to make buys and put us in physical danger.

It may well be that there are arguments that could be expressed in the Senate a couple hundred miles away that it really didn't put these officers in danger. I can't really say whether it would or it wouldn't, but I am prepared to take the word of the police officer involved, and I am prepared to consider his statement to be honest, and I am prepared to understand that he feels restrained now as a police officer in a way that he wouldn't have felt restrained previously.

It appears to me that Judge Massiah-Jackson was willing to make statements which would impair the capacity of police officers to function. Detective Sergeant Daniel Rodriquez felt strongly enough about it to make such a comment in writing.

Detective Terrance Jones, the other undercover officer that was identified and disclosed and about whom the warning was issued to the people in the courtroom by Judge Massiah-Jackson, also confirmed the facts of the situation in a signed statement to the committee staff. He stated that the ''comments jeopardized our lives.''

It may be that there are those on the floor of the Senate who don't take the comments that seriously. I really think that Judge Massiah-Jackson must not have taken seriously the threat to the integrity of these officers; she must not have believed them. Maybe some Senators don't believe them either. But Detective Jones said that the comments of the judge jeopardized the lives of police officers. Maybe not, but I would tend to think if I were an undercover police officer, that kind of exposure and identification, even if you had already testified, they must have felt that there was something there that was substantially threatening.

He wrote in his letter:

As a law enforcement officer who happens to be an African-American, I am appalled that self-interest groups and the media are trying to make the Massiah-Jackson controversy into a racial issue. This is not about race, this is about the best candidate for the position of Federal judge.

And it is obvious he doesn't think the best candidate is Judge Massiah-Jackson after she, in fact, jeopardized his life, according to him.

Earlier today, I also raised the point about contempt for prosecutors and police officers, and that seemed to be construed as some sort of inappropriate attack.

In this case, let me talk about another example, Commonwealth v. Hicks. In an action that led to a reversal by the appellate court, Judge Massiah-Jackson dismissed charges against the defendant on her own motion.

Although the prosecution was prepared to proceed, the defense was not ready because the defense was missing a witness. A police officer who was scheduled to testify for the defense apparently had not received his subpoena. The defense requested a continuance, saying, ''OK, we'll try this later. We'll clear up this mixup concerning the subpoena.'' The Commonwealth stated it had issued the subpoena.

The defense did not allege any wrongdoing or failure to act on the part of the Commonwealth. It did not say the Commonwealth failed to issue the subpoena, that they fouled this up, that the case was fouled up as a result of misdeeds on the part of the State or the Commonwealth.

Nevertheless, without any evidence or prompting from the defense counsel, Judge Massiah-Jackson simply did not believe that the Commonwealth's attorney subpoenaed the necessary witness. So here you have the defense unprepared to go forward, and the judge held the Commonwealth liable for the defense's unpreparedness, and on the court's own motion dismissed the case.

Here is a judge that expresses her contempt for the court and the prosecutors, profaning the court and profaning the prosecutors. Here is a judge who expresses her contempt for police officers by inappropriately identifying them and warning the community against police officers. You have a judge who is willing to dismiss cases on her own motion even when the defense is willing to just take a continuance to clear the matter up and to bring the witnesses to court.

What it turns out to be in the case is that the missing defense witness had been on vacation. The subpoena had been issued by the Commonwealth. The officer had not received it, but the Commonwealth had done everything it possibly could to issue the subpoena to help assist the defense in the preparation of the trial by providing the necessary witness. And Judge Massiah-Jackson's decision obviously was reversed on appeal as an abuse of discretion. But it tells us something. It tells us something about this judge and this judge's attitude toward police officers and prosecutors.

The appellate court concluded, having carefully reviewed the record:

We are unable to determine the basis for the trial court's decision to discharge the defendant. Indeed, the trial court was unable to justify its decision by citation to rule or law.

When a judge does something and cannot cite any rule or any law to support it, the judge is just imposing her own preference, her own personal preference in the matter.

The imposition of judges' personal preferences is one of the real challenges we face in this country in a crisis of what I call ''judicial activism.''

One of the other issues I raised regarding Judge Massiah-Jackson is the issue of leniency in sentencing.

Here is an example. Commonwealth vs. Nesmith. The defendant had a criminal history of 3 prior juvenile arrests and 1 adjudication, 19 prior adult arrests, 8 convictions, 3 commitments, 3 violations and 2 revocations. If we were at the right season of the year we could then end with ''and a partridge in a pear tree.'' Nineteen prior arrests, 8 convictions.

He was tried and convicted of striking a pedestrian with his car, leaving her seriously injured—broken legs, pelvis, four bones of the back—by the side of the road, fleeing the scene of the crime, and then beating into unconsciousness one of the woman's relatives who tried to thwart his escape. Judge Massiah-Jackson sentenced him to 2 years' probation—probation. This is an individual with eight previous convictions. Judge Massiah-Jackson sentenced him to 2 years' probation, a sentence that deviated more than 3 years below the lowest point of the standard range of the guidelines and more than 2 years below even the lowest point of the mitigated range.

The defendant committed these crimes while on parole, having just been released from prison for an assault conviction. Over the Commonwealth's strenuous objection, Judge Massiah-Jackson sentenced him to 2 years' probation. Judge Massiah-Jackson, however, explained that the defendant's actions were ''not really criminal. He had merely been involved in a car accident.''

You wonder about a judge who can look at an individual who hits a pedestrian, flees the scene of the crime, beats into unconsciousness one of the women's relatives who tried to thwart his escape, and then characterizes the activity as merely being the activity of one who has been involved in a car accident.

Here is another instance of leniency in sentencing.

Commonwealth vs. Freeman. The defendant shot and wounded Mr. Fuller in the chest because Mr. Fuller had laughed at him. I don't know how you know someone is laughing at you or whether they are laughing because they just have a thought of something funny. In any event, the defendant shot and wounded Fuller in the chest because Fuller had laughed at him.

Judge Massiah-Jackson convicted the defendant of a misdemeanor instead of felony aggravated assault. She sentenced him to 2 to 23 months—not 2 to 23 years—2 to 23 months, and then immediately paroled him so that he did not have to serve jail time. The felony charge would have had a mandatory 5- to 10-year prison term. Judge Massiah-Jackson explained her decision, stating that ''the victim had been drinking before being shot''—the victim had been drinking before he was shot—''and that (the defendant) had not been involved in any other crime since the incident.''

I think the people of the United States of America deserve a judge who will say that an individual who shoots someone, perhaps for smiling or laughing, is an individual who deserves a serious sentence.

Here is yet another example of lenient sentencing, Commonwealth vs. Burgos. During a raid on the defendant's house, police seized more than 2 pounds of cocaine, along with evidence that the house was a distribution center—2 pounds of cocaine. The street value of 2 pounds of cocaine is astronomical.

The defendant, Mouin Burgos, was convicted. Judge Massiah-Jackson sentenced the defendant only to 1 year's probation. Then-District Attorney Ron Castille criticized Judge Massiah-Jackson's sentence as ''defying logic'' and being ''totally bizarre.'' He commented:

> This judge just sits in her ivory tower . . .. She ought to walk along the streets some night and get a dose of what is really going on out there. She should have sentenced these people to what they deserve.

Well, earlier this afternoon I had the privilege of relating the fact that virtually the entire law enforcement community of Pennsylvania has noticed this predisposition to be antagonistic to law enforcement.

The Executive Committee of the Pennsylvania District Attorneys' Association voted unanimously to voice their objection to the appointment of this individual to the Federal bench. The Fraternal Order of Police, both locally and nationally, has expressed its opposition to this nominee. And frankly, the Democrat district attorney in Philadelphia sent a letter saying this is the worst judge that she had ever seen. The letter also states her opinion that whoever is appointed to the Federal district court for that district should be a black woman—that they need to have a black woman on the bench there—but also stating that Judge Massiah-Jackson cannot be the one.

It takes real courage for a district attorney to say that about a judge who will stay in her current role if the Senate heeds the warning of the district attorney. And the district attorney will have to continue to send prosecutors into that court and be involved in that legal environment. But not only did District Attorney Abraham from Philadelphia, who is a Democrat, make such a contention, District Attorney Morganelli also made the same kind of statements, saying that we really have no business confirming an individual whose record is so replete with this kind of abuse.

These points are points that I believe are easily understood. It takes a substantial amount of effort to obscure these points. But these points are understood—and they are painfully understood by those who are closest to this situation and involved in the courts on a daily basis: the police officers and prosecutors. Obviously, we would not expect defense attorneys to be here objecting to this nominee.

This nominee lacks the fundamental commitment to the judicial system, to respect it, and to respect the participants of it. She has demonstrated that on many occasions. And profanity in the courtroom is important. It reflects a disregard for the court. But when it is profanity directed to officers of the court, it is a disregard for the system itself. And I do not think it is appropriate to minimize that. It makes a difference to me. I think it makes a difference to the American people whether or not we have judges who respect the institution over which they preside.

I raise the issues about the antagonism to the police. It is pretty clear that when you warn the community to be careful of the police, to ''watch out,'' that you reveal a disrespect for this system that we do not need to institutionalize on the Federal bench. And when you use virtually every contrivance that you could possibly imagine, and even then when the appellate court says there is no basis in law, no basis in rule that would support the kind of leniency that you find in some of these cases, I think it is pretty clear that we have an individual whose predisposition is so favorable to the violators of the law that those who would enforce the law and the need for the culture to enforce the law are at a serious disadvantage in a courtroom like that.

It is clear to me—very clear to me—that this is a nominee whose resume does not merit reward, whose recommendation by the President should be withdrawn rather than confirmed.

During the closing hours of the session last year, prior to the break for the year-end recess, the Judiciary Committee was meeting. There was a debate over whether to send this nominee to the floor. And among those who are now saying that we have to have more meetings and more time in the committee were those who carried me to one of the anterooms off the committee room, and begged me, ''Let's send this to the floor so it can be debated on the floor.'' I said, ''I don't think this is appropriate to send to the floor.'' And they said, ''You don't have to support her on the floor, but do not stop the committee from acting to send her to the floor at this time.''

Frankly, the rules of the committee would have made it possible for me at that time to have stopped this individual from coming to the floor. It just strikes me as ironic that those who prevailed on me to send this nominee to the floor, and to allow her to come to the floor, are now arguing that somehow those of us who want to vote on this candidate on the floor or a withdrawal by the President are doing an injustice—that somehow by accommodating them and providing a basis which would allow the candidate to make it to the floor, that we were now wanting to act on that candidate and somehow wanting to act inappropriately.

I think all of that is just so much process—whether you had the committee hearings, and how many you had. The key to this whole situation is, what kind of information do you have? And do you have the capacity to make a good judgment about whether or not to confirm a nominee of the President of the United States?

This nominee who disrespects the system, disrespects the participants, disrespects law enforcement, this nominee who has done virtually everything within her power to make it easy on those who have violated the law and tough on those who would enforce the law, does not merit our confirmation. The President ought to withdraw her nomination, and, absent that, the Senate should vote to reject this nomination for the Federal bench.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent to depart from the regular order and enter a period of morning business.

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

Mrs. FEINSTEIN. Mr. President, I ask to be recognized to speak in morning business.

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

HUMAN CLONING PROHIBITION ACT

Mrs. FEINSTEIN. Mr. President, I will follow on the comments of the distinguished Senator from Massachusetts, since the Senate is scheduled tomorrow to vote on a cloture motion, whether to move Senate bill 1601, a bill that prohibits the cloning of human beings. I will clarify where we are and what the issues really are.

Let me be clear at the outset: I support a ban on the cloning of human beings. There is widespread agreement that the cloning of a human being should be prohibited. That agreement, I believe, exists in the Congress. It clearly exists in the scientific community. It exists in the medical community, in the religious community, and it exists in virtually every patient and health group that I know of.

I submit, Mr. President, that the cloning of human beings is scientifically unsafe; it is dangerous; it is morally unacceptable; and it is ethically flawed. We should enact a ban. We should pass a law that establishes the illegality of human cloning and sets forth appropriate penalties.

The argument I make today is not the ban, but how the bill before the Senate tomorrow, the Bond-Frist bill, would affect scientific research. I introduced identical bills with Senator KENNEDY, Senate bills 1602 and 1611 which would protect research that someday, we believe, is likely to provide cures for many of the most dreaded diseases.

Some examples are treatments for damaged nerve cells, for spinal cord injuries, blood cell therapies for leukemia and sickle cell anemia, liver cell transplants for liver damage, cartilage cells for reconstruction of joints damaged by arthritis or injuries, the creation of stem cells to treat burn victims, and the creation of cells to treat some 5,000 different genetic diseases.

The bill that the leadership is trying to rush through the Senate, Senate bills 1599 and 1601, would make it a crime with up to 10 years in prison to conduct that kind of research—research that someday will save lives and suffering.

Those bills, because they don't have clear scientific terms, they don't have definitions of critical words which are part of somatic cell nuclear transfer technology, would submit scientists to prison terms for treatments using this technique. These penalties would have a serious, chilling effect on promising scientific research.

Somatic cell nuclear transfer—and I am a newcomer to this so I have had a crash course, and I still have an awful lot to learn—this transfer process is its own science. It has a lexicon all of its own. Scientists tell us that the traditional definitions of reproductive health—the traditional definitions of reproductive health—do not fit somatic cell nuclear transfer. There is the rub.

S. 1601 uses these terms but doesn't define them. The bill doesn't define somatic cell, for example. Now, what I know a somatic cell to be is a cell in your body. You can take a cell from a mammary gland. In Dolly's case, the cell was taken from the udder.

Additionally, the bill does not define embryo or preimplantation embryo. It does not define oocyte. Without clear, scientifically accurate definitions, we don't know what we are talking about and scientists will be reluctant to conduct research that might save lives and alleviate human suffering.

That is the bottom line of asking for a delay, of asking that the Senate's proper procedures be employed so that the scientific community can come forward, provide their definitions, explain them, we can debate them and clearly understand what we are doing.

My father used to tell me that the first tenet of medicine is ''Do no harm.'' We can do great harm by proceeding without a full understanding of what this is all about.

According to the Biotechnology Industry Association, Senate bill 1601 would go beyond the issue of human cloning and would outlaw research to create stem cells. It would make it a crime for doctors to use a currently effective treatment for mitochondrial disease. The Biotechnology Industry Association says, ''In this treatment, women who have this disease have an extreme and tragic form of infertility. The disease is a disease of the mitochondria an essential element of any egg. The treatment for this disease involves the use of a fertilized nucleus which is transferred through the use of somatic cell nuclear transfer to an egg from which the nucleus has been removed. The new egg is a fresh, endocyst egg. The current Bond bill would make it a crime to provide this treatment even though the nucleus which is transferred is the product of fertilization and not cloning.''

So there is no need to rush. The bill we are asked to vote on is one week old—one week. It was introduced February 3, brought to the full Senate 48 hours later, on February 5. Now we are asked to vote on whether to continue consideration and have a vote of the bill. It has not been referred to committee. There have been no hearings. It has not gone through the normal deliberative process.

We should not be ramrodding a bill with this potential for harm through the Senate. It is one of the most profound issues of our time. This is a difficult area of science. It involves terminology and technologies few Americans have ever studied, let alone fully understand, terminology and technologies that few Senators understand. It poses very serious and fundamental moral, ethical and scientific questions.

We need not rush a bill to the floor without committee consideration. That is the other point. The scientific community has imposed a voluntary moratorium. The Food and Drug Administration has said they will assert jurisdiction. Many organizations have written urging caution.

Let me go into some of them right now. Let me begin with the American Cancer Society, in a letter dated February 9, and I ask unanimous consent this letter be printed in the RECORD.

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

AMERICAN CANCER SOCIETY,
February 9, 1998.

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

DEAR SENATOR FEINSTEIN: The American Cancer Society has called for your commitment for a renewed war on cancer through a national investment in biomedical research and cancer prevention and control programs. The sustained downturn in cancer mortality and incidence—for the first time ever—is evidence that our investment in this war is beginning to make a difference.

The current opportunities in cancer research, including our understanding of the molecular nature of the disease, are bringing us closer to the answers we need to prevent and cure cancer. Congress and the Administration are calling for unprecedented increases in funding for biomedical and cancer research which will allow us to exploit scientific knowledge and bring answers more quickly to the American people.

The American Cancer Society urges you to oppose S. 1601, legislation that would prohibit the use of somatic cell nuclear transfer. The American Cancer Society agrees with the public that human cloning should not proceed at this time. However, the legislation as drafted would have the perhaps unintended effect of restricting critical, legal scientific research. The ability to create therapeutically valuable stem cell lines from oocytes, therefore promoting genetic reprogramming of cells to prevent and cure cancer exemplifies the type of research that could be hindered with overly restrictive regulations. The current language in S. 1601 could hamper or punish scientists who contribute to our growing knowledge about cancer.

We urge you to carefully consider all aspects of this legislation to ensure the continued support for all legal and ethical modalities of cancer research.

Sincerely,
DAVID S. ROSENTHAL, MD,
President.

Mrs. FEINSTEIN. Let me quote one part:

The American Cancer Society urges you to oppose S. 1601, legislation that would prohibit the use of somatic cell nuclear transfer. . . . The legislation as drafted would have the unintended effect of restricting critical legal scientific research. The ability to create therapeutically valuable stem cell lines from oocytes, therefore promoting genetic reprogramming of cells to prevent and cure cancer exemplifies the type of research that could be hindered with overly restrictive regulations. The current language in S. 1601 could hamper or punish scientists who contribute to our growing knowledge about cancer.''

The American Heart Association—I ask unanimous consent their letter be printed in the RECORD.

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

AMERICAN HEART ASSOCIATION, OFFICE OF COMMUNICATIONS AND ADVOCACY,
Washington, DC, February 9, 1998.

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

DEAR SENATOR FEINSTEIN: On Tuesday, February 10th, the Senate is expected to initiate a cloture vote regarding a motion to consider S. 1601, the *Prohibition on Cloning of Human Beings Act of 1998.* The American Heart Association urges you to vote *against* the cloture petition.

The American Heart Association wishes to make it clear that we do not support any legislation allowing the cloning of a human being. However, we fear that this legislation may place biomedical research at risk and might negatively impact the use of cloning techniques on human cells, genes and tissue critical to identifying cures for a host of diseases, including cardiovascular diseases. The American Heart Association is concerned that a rush to passage of S. 1601 may inadvertently threaten to restrict critical biomedical research, which promises to have great impact on disease prevention and treatment for the American people.

For example, we are concerned that this legislation may effectively ban research using the generation of stem cells for treating heart attack victims, as well as blood vessel endothelial cells for treating atherosclerosis.

The American Heart Association urges the Senate to engage in a more deliberate debate on this important issue. Please vote ''no'' on cloture for S. 1601 and allow a more extensive debate on these complex issues.

Sincerely,
MARTHA N. HILL, RN, PH.D.,
President.

Mrs. FEINSTEIN. ''The American Heart Association urges the Senate to engage in a more deliberate debate on this important issue.''

The Cystic Fibrosis Foundation, I ask unanimous consent their letter be printed in the RECORD.

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

CYSTIC FIBROSIS FOUNDATION,
February 9, 1998.

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

DEAR SENATOR FEINSTEIN: The current frenzied atmosphere on Capitol Hill surrounding the issue of human cloning instills great fear in the scientific community. On behalf of cystic fibrosis (CF) scientists, researchers, caregivers, and most importantly patients, the Cystic Fibrosis Foundation (CFF) asks all members of Congress to take the time to study the potentially harmful ramifications of prohibitive human cloning legislation. As America's governing body, Congress has an unequivocal responsibility to hold public hearings on this issue in order to fully understand the scope of this debate. The CFF agrees that the cloning of a complete human being should not be done. However, we have grave concerns over current legislation that is crafted in such a way to restrict the advancement of lifesaving biomedical research.

A voluntary moratorium on human cloning should suffice to prevent scientists from attempting to clone a complete human being in the laboratory. Nevertheless, if it is decided that legislation must be drafted, extreme care should be taken not to restrict the capacity to pursue cutting edge technologies which hold great promise. For example, the strategy that may ultimately be needed to achieve a cure for CF through gene therapy techniques is called somatic cell/stem cell gene transfer therapy.

Enactment of the Bond/Frist Cloning Prohibition Act in its current form and other existing pieces of legislation would prevent the use of this kind of technology. This would be a critical set-back in our ability to develop new therapies to treat individuals with CF and other life-threatening diseases. To consider the passage of legislation without appropriate debate from the scientific community, as well as a public airing of the consequences on future biomedical research, will do irreparable damage.

For the 30,000 children and young adults with CF in this country, the message is clear. Do not allow hasty and capricious action to impede our ability to impact on this disease. It is equally important to note that until essential scientific debate has reached completion, the cloning of a complete human being cannot occur, as the regulatory safeguards of the FDA already in place prevent such an act.

Your attention to this critical matter is appreciated.

Sincerely yours,
ROBERT J. BEALL, PH.D.,
President and CEO.

Mrs. FEINSTEIN. They say, ''To consider the passage of legislation without appropriate debate from the scientific community, as well as a public airing of the consequences on future biomedical research, will do irreparable damage.''

The American Association for Cancer Research, I ask unanimous consent that letter be printed in the RECORD.

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

AMERICAN ASSOCIATION
FOR CANCER RESEARCH, INC.,
Philadelphia, PA, February 4, 1998.

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

DEAR SENATOR FEINSTEIN: Medical research, conducted in the United States over the last 20 years, has opened up tremendous opportunities to make progress against many devastating diseases. The scientific community does not desire to make human beings, or modify or genetically mark any portion of our population. However, to deny the application of molecular biology, made possible through the use of cloning technologies, to patients who could be benefitted would be a great injustice.

A litany of beneficial applications of cloning technology was enumerated in this weeks TIME Magazine. Several of these applications are at the core of cutting-edge cancer research, and there are many more potential benefits that are unknown at this time. These applications, as well as any future progress, would be eliminated by broad legislation setting back progress and potential in our conquest to develop effective approaches to the prevention, detection, and treatment of cancer.

The American Association for Cancer Research (AACR), with over 14,000 members, is the largest professional organization of basic and clinical cancer researchers in the world. Founded in 1907, its mission is to prevent, treat, and cure cancer through research, scientific programs, and education. To accomplish these important goals it is essential that scientists vigorously pursue all promising lines of investigations against cancer.

The AACR feels strongly that an ethical and just compromise can be reached that will protect the public and the scientific community from the irresponsible application of cloning technology while permitting meaningful and ethical research to move forward. The medical and cancer research community feels that the present rush to enact legislation without proper consideration or deliberation is a serious mistake, and the unfortunate result would be irresponsible legislation.

As scientists we clearly see the tremendous advantages of cloning technology as well as its potential problems, which we, also, have reason to fear if it is applied in an unreasonable manner.

The AACR, therefore, appeals to all Members of Congress to establish and honor a moratorium of at least 45 days on enacting any legislation until definitions and implications of legislation can be determined in a more reasonable and thoughtful manner, and in an open and public process. This would be a service to humanity, science, and millions of individuals who are now suffering, or will suffer in the future, from catastrophic and crippling diseases such as cancer. We appeal to all members of Congress to give this important moral and scientific issue very careful consideration and deliberation. Clearly a rush to judgment on this complex issue could be a major setback for cancer and medical research.

Sincerely,
DONALD S. COFFEY, PH.D.,
President.

Mrs. FEINSTEIN. They say, ''The medical and cancer research community feels that the present rush to enact legislation without proper consideration or deliberation is a serious mistake and the unfortunate result would be irresponsible legislation.''

The Juvenile Diabetes Foundation International, the Diabetes Research Foundation, I ask unanimous consent that letter be printed in the RECORD.

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

JUVENILE DIABETES FOUNDATION
INTERNATIONAL,
THE DIABETES RESEARCH FOUNDATION,
February 9, 1998.

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

DEAR SENATOR FEINSTEIN: On behalf of the Juvenile Diabetes Foundation International (JDFI), we urge you to vote ''no'' on a motion to invoke cloture and proceed to consider S. 1601, a bill to ban human cloning. This vote is scheduled to come before the Senate on Tuesday, February 10.

We want to be clear: there is *no* acceptable moral or ethical justification for making a replica of another human being. As currently drafted, however, S. 1601 threatens to restrict future promising stem cell research which could lead to improved treatments or even a cure for diabetes and many other serious, chronic illnesses.

Diabetes affects approximately 16 million Americans and is a leading chronic disease in children. In addition to its severe human impact, diabetes costs about $137 billion per year in direct and indirect expenses. Therefore, it is critical that any federal policies affecting medical research are crafted so that they do not unnecessarily restrict the potential for promising future advances in diabetes research.

In the case of type 1, or juvenile, diabetes, the beta cells of the pancreas which produce insulin are destroyed. Promising stem cell research could make it possible to produce pancreatic beta cells that could then be transplanted into a person with diabetes. As a consequence, a person with type 1 diabetes would be free of the up to eight daily blood tests and up to six daily insulin injections that so significantly reduce the quality of life. More importantly, this type of cell transplantation could eliminate the horrible complications of the disease which include: kidney failure; blindness; amputation; increased risk of heart disease and stroke; and premature death.

For these reasons, JDFI urges you to vote ''no'' on the cloture motion for S. 1601, thereby allowing the Senate to conduct a more thorough debate on this issue. We need to better understand the impact that legislation in this area could have on research critical to improving the lives of people with devastating illness. In order to ensure medical progress and the attainment of future opportunities, we urge you to proceed cautiously.

Sincerely,
ROBERT LEVINE, MD,
Chairman, Government Relations Committee.
JAMES E. MULVIHILL, DMD,
President and CEO, Juvenile Diabetes Foundation International.

Mrs. FEINSTEIN. They say, ''We urge you to proceed cautiously.''

Resolve, the National Infertility Organization says, ''go slow.''

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

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

RESOLVE,
Somerville, MA, January 30, 1998.

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

DEAR SENATOR FEINSTEIN: RESOLVE expresses its strong support for the cloning bill being co-sponsored by you and Senator Edward M. Kennedy. This bill, consistent with RESOLVE's position, includes an important provision specifying that research using somatic cell nuclear transfer technology should not be banned while recommending a moratorium on the cloning of a human being until further review.

RESOLVE is pleased to note that the proposed legislation does not ban embryo research. Embryo research has been instrumental in the development of procedures that allow many couples to overcome the difficulties they experience as they strive to build families. The emotional and physical consequences of this struggle can be overwhelming. In vitro fertilization is an amazing technology which would not have been possible without the knowledge gained through embryo research. This effective treatment has brought about the birth of thousands of much-wanted babies. Continued embryo research has the potential to further the understanding of the causes of infertility, including the tragedy of miscarriage, as well as provide information which can lead to new breakthroughs.

As a national organization which provides support, advocacy and education to those experiencing infertility, RESOLVE is contacted by thousands of people from all walks of life who are struggling with this disease. The stories about their struggles can be heart-wrenching. The success stories about the joy and overwhelming appreciation of the children that are brought into this world are enormously heart-warming.

Avenues for further research to help couples must not be halted. RESOLVE joins with many other organizations across the country in expressing its opposition to any attempts to ban embryo research. We applaud your efforts to develop carefully-constructed legislation which will not impact the potential for medical advances that will help the many couples struggling to build much-wanted families.

Sincerely,

DIANE D. ARONSON,
Executive Director.

Mrs. FEINSTEIN. The National Coalition for Osteoporosis and Related Bone Diseases says, ''Congress needs to be extremely cautious in drafting legislation too quickly on this very complex issue.''

It is signed by several doctors. I ask unanimous consent this letter be printed in the RECORD.

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

THE NATIONAL COALITION FOR OSTEOPOROSIS AND RELATED BONE DISEASES,
Washington, DC, February 5, 1998.

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

DEAR SENATOR FEINSTEIN: As representatives of the Osteoporosis and Related Bone Diseases National Coalition, which consists of scientists and patients, we are writing to urge you to vote against human cloning legislation which would ban some types of promising stem cell research.

We support a ban on cloning a human being. We see no ethical or medical justification for anyone in the public or private sector, whether in a research or clinical setting, to create a human child using somatic cell nuclear transfer technology. However, we are concerned that legislation which would expedite a ban on cloning would also effectively eliminate research on ''customized'' stem cell research which one day could lead to cures for many diseases.

Congress needs to be extremely cautious in drafting legislation too quickly on this very complex issue. We are concerned that Congress will not take the time to analyze the effects on stem cell research already underway or consider the future benefits of such research. It is our hope that with input from the scientific community Congress will come to a consensus which will address the public's concern about human cloning and yet allow the scientific community to do their work.

Again, we urge you to protect stem cell research which can generate cells for the treatment of numerous diseases including osteoporosis and related bone diseases. If you need further information about the proposed legislation, please contact Bente E. Cooney, Director of Public Policy at the National Osteoporosis Foundation (202) 223–2226.

Sincerely,

BENTE E. COONEY, MSW,
Director of Public Policy, National Osteoporosis Foundation.
FRED SINGER, MD,
Chairman, The Paget Foundation.
STEPHEN CUMMINGS, MD,
Chair, ASBMR Public Affairs Committee, American Society of Bone and Mineral Research.
JOE ANTOLINI,
President of the Board, Osteogenesis Imperfecta Foundation.

Mrs. FEINSTEIN. The Alliance for Aging Research strongly supports our bill, the Feinstein-Kennedy bill. They urge a no vote on cloture. They say this is not a vote for cloning but rather for reasoned debate that draws upon the wisdom of scientists and medical experts:

Senators should also take time to hear from patients and their families who yearn for cures and treatments for life-threatening diseases. A rush to legislate in this area could have serious consequences for research that could benefit the lives of millions of Americans.

I ask unanimous consent to have that letter printed in the RECORD.

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

ALLIANCE FOR AGING RESEARCH,
Washington, DC, February 9, 1998.

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

DEAR SENATOR FEINSTEIN, The Alliance for Aging Research strongly supports your efforts and those of Senator Kennedy to legislate responsibly in the area of somatic cell nuclear transfer technology. You and Senator Kennedy and others have proposed a ban on human cloning without threatening vital research efforts into cellular technologies that could produce cures and valuable therapies for Alzheimers Disease, Parkinsons, would healing, age-related blindness and many other medical problems of the elderly. The not-for-profit Alliance applauds your efforts on behalf of research, and we urge you to vote ''no'' when a motion to cut off debate on S. 1601 comes to the Senate this week.

The Alliance for Aging Research strongly opposes the cloning of a human being on moral grounds, as does every responsible health advocacy organization we know. However, the Lott-Bond-Frist bill is written so broadly as to halt cellular technology that could be a significant tool in developing therapies for scores of age-related diseases and disabilities.

The Alliance is also concerned there has not been sufficient discussion and debate to allow reasoned consideration of this highly technical and complicated issue. A ''no'' vote on cloture is not a vote for cloning, but rather for a reasoned debate that draws upon the wisdom of scientists and medical experts. Senators should also take time to hear from patients and their families who yearn for cures and treatments for life-threatening diseases. A rush to legislate in this area could have serious consequences for research that could benefit the lives of millions of Americans.

Respectfully,

DANIEL PERRY,
Executive Director.

Mrs. FEINSTEIN. The National Health Council states, ''We urge careful consideration of the issue and a vote against cloture so a more thorough debate can occur.''

I ask unanimous consent that be printed in the RECORD.

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

NATIONAL HEALTH COUNCIL,
Washington, DC, February 9, 1998.

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

DEAR SENATOR FEINSTEIN: Early this week the Senate will decide whether to begin debate on legislation to ban the cloning of a human being. The National Health Council, which represents the Nation's leading patient organizations, agrees with the American public that the cloning of a human being should be prohibited. However, we urge careful consideration of the issue and a vote against cloture, so a more thorough debate can occur within the committees of jurisdiction before consideration by the full Senate.

Current advances in medical research are, for the first time, holding true promise of curing some of the most well-known diseases: cancer, diabetes, and paralysis. In the past, scientific gains have provided patients with novel treatments, allowing us to manage disease more effectively. But cures have eluded us.

Cloning, the duplication of scientific material, such as cells or genes, has allowed scientists to more efficiently study biological processes, and has led to many recent medical advances. The technique which created the sheep Dolly was a new approach to producing duplicate material. This novel process, called somatic cell nuclear transfer, may hold the key not only to understanding the function of all human cells but also to identifying new avenues to repair damaged cells.

By gaining a greater understanding of how cells develop and differentiate we may be able to replace damaged pancreatic cells with healthy cells, therefore curing diabetes. Combined with gene therapy, cloning may also make it possible to eliminate the transmission of such inherited diseases as Huntington's Disease.

We appreciate your concerns regarding the issues relating to cloning, but it is critical

that we have a better understanding of all the implications of the various approaches aimed at banning the cloning of human beings. I am certain that you share our interest that important medical research is protected. In order to ensure medical progress and the attainment of future opportunities, we urge you to proceed cautiously.

Thank you for your consideration of this important issue.

Sincerely,

MYRL WEINBERG, CAE,
President.

Mrs. FEINSTEIN. The National Patient Advocate Foundation says, ''There is no rush to legislate.''

I ask unanimous consent their letter be printed in the RECORD.

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

NATIONAL PATIENT
ADVOCATE FOUNDATION,
Newport News, VA, February 6, 1998.

DEAR SENATOR: The National Patient Advocate Foundation urges you to vote ''no'' on the cloture vote next Tuesday, February 10, regarding the motion to proceed to consider S. 1601, the legislation to ban human cloning. A vote ''no'' is a vote to protect biomedical research. It would also call for more deliberate debate on this complicated scientific issue.

As an organization that continues to seek insurance reimbursement for cancer therapies, therapeutic devices and agents that hold promise of improved quality of life after a cancer diagnosis, life extension and improvement in preventing cancer, bio-medical research presents significant hope for improvement in preventing, detecting and treating cancer. We have been involved with this issue since early last summer when the anti-cloning discussion first emerged when the Ehler's bills was introduced. Our position then and now is the same. Though we are in full support of no cloning of human beings, we value the progress being made in biomedical research and can not support any initiative that threatens continued research in this area. Zygotes, diploid cells and somatic cell nuclear transfer are issues that are complicated and present myriad opportunities for misinterpretation without thorough discussions relative to the impact on bio-medical research that this anti-cloning legislation poses. We urge your no vote on cloture February tenth, so that this matter may be addressed in detail in hearings.

There is no need to rush to legislate. The Food and Drug Administration has full jurisdiction to ensure that no one will clone human beings at this time. We urge careful and deliberate consideration of this legislation to ban cloning. It should be carefully reviewed by key Committees, which has not occurred. S. 1601 raises serious questions about its scope and impact on critical biomedical research seeking cures for deadly and disabling diseases.

This bill is not confined to''cloning'', which is the creation of a child genetically identical to another individual.

It would halt research to develop ''customized'' stem cells which promise potential new treatments for many diseases and conditions.

It would outlaw a current medical procedure to treat infertility which uses eggs which are fertilized and contain the genetic traits of two individuals, not the clone of one individual.

Again, we urge you to vote ''no'' on Tuesday's cloture vote on S. 1601 to protect biomedical research.

Sincerely,

NANCY DAVENPORT-ENNIS,
Founding Executive Director.

Mrs. FEINSTEIN. The California Biomedical Research Association, signed by 40 or 50 major companies, urges us ''to support continuing debate about the potential negative impact of Senator TRENT LOTT's legislation.''

I ask unanimous consent that be printed in the RECORD.

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

CALIFORNIA BIOMEDICAL
RESEARCH ASSOCIATION,
Sacramento, CA, February 9, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the CBRA Governing Board, I am writing to encourage your ''no'' vote on the cloture vote on S. 1601 scheduled for Tuesday, February 10, 1998. The Association urges you to support continuing debate about the potential negative impacts of Senator Trent Lott's legislation.

Somatic cell transfer technology is essential to continuing research into cures for some of our greatest human health threats—Parkinson's Disease, leukemia, diabetes, Alzheimer's disease and spinal cord injuries. Unintended consequences of this bill as currently written could threaten the future health of millions of Americans.

Please feel free to contact our office if you should need further information.

Sincerely,

SUZANNE NESS,
President.

MEMBERS (PARTIAL LIST)

Allergan
Alliance Pharmaceutical
ALZA Corporation
American Association for Laboratory Animal Science: Northern, Orange County, San Diego, Southern and Palms to Pines Branches
American Cancer Society, California Division, Inc.
American Diabetes Association, California Affiliate
American Heart Association (Western States Affiliate and Greater L.A. Affiliate)
American Lung Association of California
Amgen
Bayer Corporation
Berlex Bio Sciences
BioDevices
Buck Center for Research in Aging
California Institute of Technology
California Medical Association
California State University: Long Beach, Pomona, Office of the Chancellor
California Veterinary Medical Association
Cedars-Sinai Medical Center
Charles River Laboratories
Children's Hospital Oakland Research Institute
Children's Hospital of Orange County
Chiron Corporation
City of Hope
Genentech
J. David Gladstone Institutes
Good Samaritan Hospital
Harbor UCLA Medical Center, Research and Education Institute, Inc.
Heartport
Huntington Medical Research Institutes
Isis Pharmaceuticals
Lawrence Berkeley Laboratory
Loma Linda University
NASA Ames Research Center
Palo Alto Medical Foundation
Roche Biosciences
Salk Institute for Biological Studies
San Diego State University
San Jose State University
Scripps Research Institute
Stanford University
The Parkinson's Institute
University of California: Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz, Office of the President
University of Southern California
Veterans Administration Medical Centers at: Loma Linda, Long Beach, Palo Alto, San Diego, San Francisco, Sepulveda, West Los Angeles.

Mrs. FEINSTEIN. The AIDS Action Council, the Allergy and Asthma Network, the Alliance for Aging Research, the Alzheimers Aid Society, the American Academy of Optometry and the American Academy of Pediatrics urges that we ''proceed with extreme caution and adhere to the ethical standards for physicians, 'first do no harm'.''

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

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

JANUARY 26, 1998.

Re legislation to ban cloning of human beings.

DEAR MEMBER: We are writing to express our concern about legislation pending in the Congress to ban the cloning of entire human beings.

Let us be clear. We oppose the cloning of a human being. We see no ethical or medical justification for the cloning of a human being and agree with the conclusions of the National Bioethics Advisory Commission (NBAC) that it is unacceptable at this time for anyone in the public or private sector, whether in a research or clinical setting, to create a human child using somatic cell nuclear transfer technology. We recognize that this application of the technology raises fundamental ethical and social issues. This technology is not currently safe to use in humans.

The American Society for Reproductive Medicine, the Biotechnology Industry Organization, and the Federation of American Societies of Experimental Biology have all stated that their members will not seek to clone a human being. These three associations include essentially every researcher or practitioner in the United States who has the scientific capability to clone a human being.

We agree with NBAC in its report on cloning that: ''It is notoriously difficult to draft legislation at any particular moment that can serve to both exploit and govern the rapid and unpredictable advances of science.'' Poorly crafted legislation to ban the cloning of human beings may put at risk biomedical research, such as the use of cloning techniques on human cells, genes and tissues, which is vital to finding the cures to the diseases and ailments which our organizations champion. Cancer, diabetes, allergies, asthma, HIV/AIDS, eye diseases, spinal cord injuries, Guillain-Barré syndrome, Gaucher disease, stroke, cystic fibrosis, kidney cancer, Alzheimer's disease, tuberous sclerosis, tourette syndrome, alcoholism, autoimmune diseases, osteoporosis, Parkinson's disease, infertility, diseases of aging, ataxia telangiectasia and many other types of research will benefit from the advances achieved by biomedical researchers.

We urge the Congress to proceed with extreme caution and adhere to the ethical standard for physicians, ''first do no harm.'' We believe that there are two distinct issues here, cloning of a human being and the healing which comes from biomedical research.

Congress must be sure that any legislation which it considers does no harm to biomedical research which can heal those with deadly and debilitating diseases.

Please keep patients' concerns in mind as you proceed in analyzing this very complicated issue.

Sincerely,

AIDS Action Council.
Allergy and Asthma Network/Mothers of Asthmatics, Inc.
Alliance for Aging Research.
Alzheimer Aid Society.
American Academy of Optometry.
American Academy of Pediatrics.

Mrs. FEINSTEIN. The Biotechnology Industry Organization, which represents literally hundreds of biotech organizations, says, ''We are very concerned about the rushed process to pass legislation on this complex subject and the possibilities for unintended consequences.''

I ask unanimous consent to have the letter printed in the RECORD.

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

STATEMENT OF THE BIOTECHNOLOGY INDUSTRY ORGANIZATION (BIO) REGARDING LEGISLATION INTRODUCED TO BAN HUMAN CLONING

The Biotechnology Industry Organization (BIO) believes that it is both unsafe and unethical to even attempt to clone a human being. BIO strongly supported the review of this issue by the National Bioethics Advisory Commission (NBAC) and the moratorium on cloning imposed by President Clinton. We believe that the FDA has clear authority and jurisdiction and will, as they have stated, prohibit any attempt to clone a human being.

BIO is concerned about the scope and impact of legislation introduced to make it a crime with a ten year prison sentence to conduct biomedical research which may or may not have any relevance to the cloning of a human being. We are very concerned about the rushed process to pass legislation on this complex subject and the possibilities for unintended consequences. The scientific and legal issues with respect to any legislation regarding biomedical research are exceedingly technical, and a hastily drafted bill could advertently and inadvertently damage biomedical research on deadly and disabling diseases.

The Senate needs to adhere to the standard for doctors, ''first, do no harm.'' Biomedical research into deadly and disabling diseases is far too important to rush to enact legislation which would unequivocally undermine promising research and therapies. The Senate should be extremely cautious before it starts sending scientists to jail when the purpose of their research meets the highest moral and ethical standards and holds such promise for relieving human suffering.

ANALYSIS OF PENDING BILLS AND THE SCIENCE AT RISK

Several bills have been introduced in the Senate regarding human cloning. They vary widely in focus and precision. The three principal bills are S. 368, S. 1599, and S. 1602 and we have analyzed each of them here.

The first bill introduced by Senator Bond last year, S. 368, is one of the better drafted bills introduced in either body. It uses reasonably accurate terms to describe the applicable science and limits Federal funding for the cloning of a human being.

The new bill introduced by Senator Bond, S. 1599, would impose a ten year prison sentence for any individual for the act of ''producing an embryo (including a preimplantation embryo)'' through the use of a specified technology, ''somatic cell nuclear transfer,'' even if the production of such an embryo is for purposes unrelated to the cloning of a human being and even if the embryo does not contain nuclear DNA which is identical to that of an existing or previously existing human being (cloning). The bill goes beyond the issue of cloning to make it a crime to use somatic cell nuclear transfer of a nucleus derived from normal sexual union of an egg and sperm, which is obviously not cloning. It would also make it a crime to conduct some research seeking to generate stem cells to treat a wide range of deadly and disabling diseases, treatments which have nothing whatever to do with human cloning.[1]

The third bill, introduced by Senator Feinstein, S. 1602, would impose heavy civil fines for any entity that would ''implant or attempt to implant the product of somatic cell nuclear transfer into a woman's uterus . . .'' This sharply focuses the bill on an attempt to clone a human being and would not imperil biomedical research.

IMPACT OF BILLS ON STEM CELL RESEARCH

The current bill introduced by Senator Bond would, because it goes well beyond the issue of human cloning, imperil promising biomedical research, including research to generate stem cells. Instead of focusing on cloning, it makes it a crime to create a zygote or embryo through the use of a new technology, somatic cell nuclear transfer, even if the use of this technology is essential for the generation of stem cells to treat disease and where there is no intention of attempts through use of this technology to clone a human being. Basically the current bill would make it a crime to conduct research if it could possibly be related to the cloning of a human being even if it is not, in fact, conducted for that purpose.

This approach in S. 1599 goes beyond the issue of human cloning and would outlaw some research to create stem cells, including stem cells for the following types of treatments: cardiac muscle cells to treat heart attack victims and degenerative heart disease;; skin cells to treat burn victims; spinal cord neuron cells for treatment of spinal cord trauma and paralysis; neural cells for treating those suffering from neurodegenerative diseases; pancreas cells to treat diabetics; blood cells to treat cancer anemia, and immunodeficiencies; neural cells to treat Parkinson's, Huntington's and Amyotrophic Lateral Sclerosis (ALS); cells for use in genetic therapy to treat 5,000 genetic diseases, including Cystic Fibrosis, Tay-Sachs Disease, schizophrenia, depression, and other diseases; blood vessel endothelial cells for treating atherosclerosis; liver cells for liver diseases including hepatitis and cirrhosis; cartilage cells for treatment of osteoarthritis; bone cells for treatment of osteoporosis; myoblast cells for the treatment of Muscular Dystrophy; respiratory epithelial cells for the treatment of Cystic Fibrosis and lung cancer; adrenal cortex cells for the treatment of Addison's disease; retinal pigment epithelial cells for age-related macular degeneration; modified cells for treatment of various genetic diseases; and other cells for use in the diagnosis, treatment and prevention of other deadly or disabling diseases or other medical conditions.

To be precise, the current bill introduced by Senator Bond, S. 1599, would make it a crime to generate stem cells, for the above uses, where somatic cell nuclear transfer technology is used. It would not ban stem cell research where the stem cell is generated without the use of somatic cell nuclear transfer. It is not possible to say how much of this promising research will or might involve the use of somatic cell nuclear transfer. As described below, the bill would clearly ban the generation of any stem cells ''customized'' to an individual where somatic cell nuclear transfer must be used.

This stem cell technology is exciting and potentially revolutionary. Scientists are developing a new approach for treating human diseases that doesn't depend on drugs like antibiotics, but on living cells that can differentiate into blood, skin, heart, or brain cells and can potentially treat various cancers, spinal cord injuries, and heart disease. For example, this stem cell research has the potential to develop and improve cancer treatments by gaining a more complete understanding of cell division and growth and the process of metastasis. This could also lead to a variety of cancer treatment advances.

The types of cells that make up most of the human body are differentiated, meaning that they have already achieved some sort of specialized function such as blood, skin, heart or brain cells. The precursor cells that led to differentiated cells come from an embryo. The cells are called stem cells because functions stem from them like the growth of a plant. Stem cells have the capacity for self-renewal, meaning that they can reproduce more of themselves, and differentiation, meaning that they can specialize into a variety of cell types with different functions. In the last decade, scientists studying mice and other laboratory animals have discovered new power approaches involving cultured stem cells. Studies of these cells obtained from a mouse's stem cells show that they are capable of differentiating, in vitro or in vivo into a wide variety of specialized cell types. Stem cells have been derived by culturing cells of non-human primates. Promising efforts to obtain human stem cells have also recently been reported.

Stem cell research has been hailed as the ''[most] tantalizing of all'' research in this field, because adults do not have many stem cells. Most adults cells are fully differentiated into their proper functions. When differentiated cells are damaged, such as damage to cardiac muscle from a heart attack, the adult cells do not have the ability to regenerate. If stem cells could be derived from human sources and induced to differentiated in vitro, they could potentially be used for transplantation and tissue repair.

Using heart attacks as an example, we might be able to replace damaged cardiac cells, with healthy stem cells, that could differentiate into cardiac muscle. Research using these stem cells could lead to the development of ''universal donor cells,'' and could be an invaluable benefit to patients. Stem cell therapy could also make it possible to store tissue reserves that would give health care providers a new and virtually endless supply of the cells listed above. The use of stem cells to create these therapies would lead to great medical advances. We have to be sure that this legislation concerning human cloning would not in any way obstruct this vital research.

BOND BILL APPLICATION TO NON-IDENTICAL NUCLEUS

The purpose of a bill to ban human cloning is supposedly to ban the cloning of an individual and the essence of this is the duplication of the DNA of one individual in another. The term ''somatic cell,'' however, is not limited in the current Bond bill to somatic cells with DNA which is the same as that of an existing or previously existing human being. If it is not limited to cases where the

[1] An identical bill has been introduced by Senator Lott as S. 1601 and this may be the bill which is called up for the Senate debate.

DNA is identical, human cloning is—by definition—not involved.

The current Bond bill goes beyond cloning because it does not define the term ''somatic cell'' or limit to cases where the DNA is identical. It only defines the term ''somatic cell nuclear transfer,'' but it does not define the term ''somatic cell.'' We need a brief glossary of terms to define what constitutes a ''somatic cell.''

''Zygote'' means a single celled egg with two sets (a diploid set) of chromosomes as normally derived by fertilization;

''Egg'' and ''oocyte'' mean the female gamete;

''Gamete'' means a mature male or female reproductive cell with one set (a haploid) set of chromosomes;

''Sperm'' means the male gamete;

''Somatic cell'' means a cell of the body, other than a cell that is a gamete, having two sets (a diploid set) or chromosomes;

So a ''somatic cell'' is any cell of the body other than a gamete, and it includes a fertilized egg. This means that the current Bond bill would make it a crime to use somatic cell nuclear transfer even in cases where the somatic cell contains a nucleus derived from sexual reproduction, which is obviously not cloning. This means that even though the nucleus is not a clone, the current Bond bill makes it a Federal crime to create it. This means that the current Bond bill goes beyond the issue of cloning.

Because of this coverage of all ''somatic cells'' the current Bond bill would make it a crime for doctors to use a currently effective treatment for mitochondrial disease. In this treatment women who have the disease have an extreme and tragic form of infertility. The disease is a disease of the mitochondria, which is an essential element of any egg. The treatment for this disease involves the use of a fertilized nucleus which is transferred through the use of somatic cell nuclear transfer to an egg from which the nucleus has been removed. The new egg is a fresh, undiseased egg. The current Bond bill would make it a crime to provide this treatment even though the nucleus which is transferred is the product of fertilization, not cloning.

CUSTOMIZED STEM CELLS

If the current Bond bill was limited to somatic cells with nuclear DNA identical to that of an existing or previously existing human being, i.e. to a cloned nucleus, it would make it a Federal crime to conduct one especially promising type of stem cell research, research into generating ''customized'' stem cells.

A researcher or doctor might want to create a human zygote with DNA identical to that of an existing or previously existing person through the use of somatic cell nuclear transfer, the act prohibited in the bill, in order to create a customized stem cell line to treat the individual from whom the DNA was extracted. By using the same DNA, the stem cell therapy would more likely be compatible with, and not be rejected by, the person for whom the therapy is created. By starting with the patient's own nuclear DNA, the therapy is, in effect, custom made for that person. It is like taking the patients blood prior to surgery so that it can be infused into the patient during surgery (avoiding the possibility of contamination by the use of blood of another person).

Because the current Bond bill makes it a crime to use the technology—somatic cell nuclear transfer—if would make it a crime to develop a therapy with the equivalent of the patient's personal monogram on it, a customized treatment based on their own nuclear DNA.

Because the bill introduced by Senator FEINSTEIN requires the implantation of an embryo, it does not curtail stem cell research, and the bill provides that the transferred nucleus must be that of an ''existing or previously existing human child or adult,'' precisely the limitation not present in the current Bond bill. None of the issues we have raised regarding the current Bond bill apply to the Feinstein bill, which is narrowly focused on the act of cloning, or attempting to clone an individual.

PROTECTING BIOMEDICAL RESEARCH

The current Bond bill and the Feinstein bill both contain clauses for the protection of biomedical research. There is a critical difference between them.

At the press conference announcing introduction of his bill Senator BOND distributed a document entitled ''Current Research Untouched by the Bond/Frist/Gregg Legislation.'' The title of this document was followed by a list of such research, including ''In Vitro Fertilization,'' ''Stem Cell Research,'' ''Gene Therapy,'' ''Cloning of Cells, Tissues, Animals and Plants,'' ''Cancer,'' ''Diabetes,'' ''Birth Defects,'' ''Arthritis,'' ''Organ Failure,'' ''Genetic Disease,'' ''Severe Skin Burns,'' ''Multiple Sclerosis,'' ''Muscular Dystrophy,'' ''Spinal Cord Injuries,'' ''Alzheimer's Disease,'' ''Parkinson's Disease,'' and ''Lou Gehrig's Disease.'' Unfortunately, the title is followed by a critical qualification, an asterisk. The asterisk qualification states, ''The current Bond bill would not prohibit any of this research, even embryo research, as long as it did not involve the use of a very specific technique (somatic cell nuclear transfer) to create a live cloned human embryo.''

In the ways described above this asterisk qualification acknowledges that the bill would, in fact, make it a crime to conduct some types of stem cell research and other research. Given the importance of the asterisk, the document's title and the list of supposedly protected research could be considered misleading. The document should more accurately have been entitled ''Only Some Research Regarding the Following Diseases Is Outlawed.''

The current Bond bill contains a Section 5 entitled ''Unrestricted Scientific Research.'' This section provides that ''Nothing in this Act (or an amendment made by this Act) shall be construed to restrict areas of scientific research that are not specifically prohibited by this Act (or amendments).'' This provision is circular. It states that the bill does what it does and does not do what it does not do. The provision does nothing to modify the prohibitions on research and does nothing to protect ''scientific research.''

In contrast the Feinstein bill includes a provision regarding ''Protected Research and Practices'' which provides that ''Nothing in this section shall be construed to restrict ares of biomedical and agriculture research or practices not expressly prohibited in this section, including research or practices that involve the use of—(1) somatic cell nuclear transfer or other cloning technologies to clone molecules, DNA, cells, and tissues; (2) mitochondrial, cytoplasmic or gene therapy; or (3) somatic cell nuclear transfer techniques to create nonhuman animals.'' This is a ''savings'' clause with meaning and content. Its reference to the cloning of ''cells'' and to ''mitochondrial'' therapy are laudatory and meaningful.

NBAC RECOMMENDATION AND CLINTON ADMINISTRATION BILL

The National Bioethics Advisory Commission (NBAC) cautioned that poorly crafted legislation to ban human cloning may put at risk biomedical research on the following types of diseases and conditions: ''regeneration and repair of disease or damaged human tissues and organs'' (NBAC report at 29); ''assisted reproduction'' (NBAC report at 29); ''leukemia, liver failure, heart and kidney disease'' (NBAC report at 30); and ''bone marrow stem cells, liver cells, or pancreatic beta-cells (which produce insulin) for transplantation'' (NBAC report at 30). The Clinton Administration proposed law, like the Feinstein bill, avoids the peril identified by NBAC and focuses only on the issue of human cloning and does not imperil biomedical research.

SUNSET AND PREEMPTION

NBAC proposed that any law include both sunset review and preemption provisions.

Regarding a sunset review provision, NBAC stated in its report: ''It is notoriously difficult to draft legislation at any particular moment that can serve to both exploit and govern the rapid and unpredictable advances of science. Some mechanism, therefore, such as a sunset provision, is absolutely needed to ensure an opportunity to re-examine any judgment made today about the implications of somatic cell nuclear transfer cloning of human beings. As scientific information accumulates and public discussion continues, a new judgment may develop and we, as a society, need to retain the flexibility to adjust our course in this manner. A sunset provision. . .ensures that the question of cloning will be revisited by the legislature in the future, when scientific and medical questions have been clarified, possible uses have been identified, and public discussion of the deeper moral concerns about this practice have matured.'' NBAC report at 101. President Clinton has proposed a five year sunset in his bill. The Feinstein bill includes a ten year sunset and the current Bond bill includes no sunset review.

BIO supports inclusion of a sunset review provision, but the most important issue is whether the terms of the prohibition in any law focuses only on the issue of human cloning. A sunset review provision will not undo the damaged which a poorly crafted, over broad law would do to biomedical research prior to the sunset date.

The Feinstein bill, but not the current Bond bill, includes a clause which preempts inconsistent state laws. NBAC strongly supported a preemption of state laws: ''The advantage to federal legislation—as opposed to state-by-state laws—lies primarily in its comprehensive coverage and clarity. . . . Besides ensuring interstate uniformity, a federal law would relieve the need to rely on the cooperation of diverse medical and scientific societies, or the actions of diverse IRBs, to achieve the policy objective. As an additional benefit, federal legislation could displace the varied state legislative efforts now ongoing, some of which suffer from ambiguous drafting that could inadvertently prohibit the important cellular and molecular cloning research described . . . in this report.'' NBAC report at 100. Numerous bills introduced in state legislatures, some of which are very poorly crafted and over broad.

BIO supports inclusion of a preemption clause. Again, the key issue is whether the prohibition in any law focuses only on the issue of human cloning and does not imperil biomedical research. A poorly drafted, over broad Federal law which preempts state laws might do even more damage.

NBAC ROLE AND COMMISSION

NBAC performed a public service with its quick and thoughtful analysis of the human cloning issue. the current Bond bill would set up an entirely new body to review the human cloning issue rather than rerefer the issue back to NBAC for further review. NBAC is well qualified and positioned to perform this function and it may be wasteful and expensive to establish another body to

perform this ongoing review. The Feinstein bill calls on NBAC to conduct the reviews.

Mrs. FEINSTEIN. Finally, there are hospitals and universities, the University of California Medical Center in San Francisco, the Reproductive Genetics Unit, also sent a letter.

I ask unanimous consent to have that printed in the RECORD.

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

UNIVERSITY OF CALIFORNIA,
San Francisco, CA, February 4, 1998.

Hon. SENATOR KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY: I am writing to express my deep concern about the negative impact of impending legislation introduced by Senators Bond, Frist *et al.* (S. 1599) intended to regulate cloning of a human being. As an active researcher in the scientific field of the discovery leading to Dolly, I understand its implications for basic science and human health. Dolly's existence proves for the first time that the genetic material of an adult body cell can be completely reprogrammed by the egg, thus totally restoring the genetic potential for specializing into all possible cell types. This discovery that genetic reprogramming is possible in mammals is as important to human health as the discovery of penicillin. Basic research on genetic reprogramming will likely lead to novel transplantation therapies for numerous human disease, including heart disease, diabetes, neurodegenerative diseases (such as Parkinson disease), genetic diseases and birth defects. I believe that imprecise, hastily-written legislation against human cloning, such as S. 1599, will hinder these important research opportunities for understanding genetic reprogramming of adult cells. Excessive regulation as specified by S. 1599, including civil penalties and criminalization, in the areas of this new discovery is likely to thwart the momentum of basic research on genetic reprogramming and deter the enthusiasm and ability of researchers poised to make new contributions in applying their findings to human health problems.

In no conceivable instance would research on genetic reprogramming involve cloning of human beings. Indeed, active, credible researchers and clinicians overwhelmingly regard cloning a human being as an unethical and reprehensible act. Last year, working through the Society for Developmental Biology, I spearheaded a voluntary moratorium on cloning human beings. This moratorium unequivocally states that we have no intention to clone human beings, where this is defined as ''duplication of an existing or previously existing human being by transferring the nucleus of a differentiated, somatic cell into an enucleated human oocyte, and implanting the resulting product for intrauterine gestation and subsequent birth.'' To date, 15 additional scientific and medical societies, including the Federation of American Societies for Experimental Biology, the American Society for Reproductive Medicine, and the Society for the Study of Reproduction, together representing more than 60,000 reproductive, developmental, cell and molecular biologists, have endorsed this moratorium. Historical precedent (with recombinant DNA technology) indicates that a voluntary moratorium can deter activities that are potentially unsafe for humans. It is evident from recent events that anyone who advocates cloning human beings for any purpose will be subjected to ostracism and discredited scientifically. Therefore, I believe that the existing voluntary moratorium against cloning human beings is an effective means of regulating the behavior of U.S. scientists and physicians.

Presently, the fields of developmental biology and human genetics are at an exciting juncture, where many novel genes are being identified through the Human Genome Project and their functions during normal development are being understood for the first time. In addition, an understanding of how these genes interact with the internal and external environment of the cell is emerging for studies such as those giving rise to Dolly. Deriving the full benefits of these new insights for human health will require a dedicated and cooperative research effort by many scientists, including those who conduct research on human cells and tissues.

In conclusion, there is a great risk that anti-cloning legislation would deprive the American people of unprecedented human health benefits. I thus urge extreme caution in any legal sanctions, such as those included in S. 1599, which would have lasting detrimental effects on our ability to alleviate human diseases, and would also undermine the competitive abilities of U.S. scientists in our field.

Respectfully yours,
ROGER A. PEDERSEN, PH.D.,
Professor and Research Director, Reproductive Genetics Unit,
Department of Obstetrics, Gynecology and Reproductive Science.

Mrs. FEINSTEIN. Let me move for a moment to think tanks. I must say, Mr. President, that one of the most interesting letters to me is one from the CATO Institute, dated February 6.

They attach to their letter a very interesting article from Science magazine which really casts major doubts on the conclusions drawn from the Dolly experiment.

The letter says that the new information indicates that there is no need to rush legislation, and it can be accorded the time and deliberation appropriate to legislate that can have a lasting impact on biological research in this country.

The article from Science magazine questions whether Dolly originated from adult cell DNA. Interesting. And it suggests that she might have resulted from the cloning of an embryonic cell. ''Scientists have cloned embryonic cells for years, and those activities have raised no public concern. The last sentence in the first paragraph of the Science news article sums up the significance of the new information. If Dolly isn't the product of DNA from a mature cell, 'it would mean that human cloning, which for most conceivable purposes would start with adult cells, is not the immediate threat some worry about.' ''

And CATO goes on and says:

With this new information in hand, there appears to be no need to rush legislation, and at a minimum there is ample time for hearings with knowledgeable and respected scientists, ethicists, theologians, and others testifying about the proposed legislation and its ramifications.

The CATO letter continues,

Many scientists, including the Director of the NIH, worry that hastily drafted and loosely drawn legislation directed against cloning will foreclose research that promises new drugs and the capacity to replace or repair nerves, skin, and muscle lost to injury or disease. The information from Science indicates that legislative haste is not necessary.

I ask unanimous consent that the CATO letter be printed in the RECORD.

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

CATO INSTITUTE,
Washington, DC, February 6, 1998.

HON. DIANNE FEINSTEIN,
Washington, DC.

DEAR SENATOR FEINSTEIN: As you are well aware, the uproar over Dolly and the perils that many people see in the possibility of human cloning have resulted in the introduction of legislation to prohibit research into human cloning. A letter and news article from this week's Science magazine (enclosed) cast doubt on the conclusions drawn from Dolly. The new information indicates that there is no need to rush legislation and that it can be accorded the time and deliberation appropriate to legislation that can have a lasting impact on biological research in this country.

Few biological results have excited as much attention as the announcement of Dolly's birth eleven months ago. Dolly was important and surprising because, it was claimed, she was produced from the DNA of an adult sheep.

Mammalian life begins with a ''totipotent'' fertilized egg that can multiply and differentiate into all the diverse types of cells—skin, nerves, bones, muscle, etc.—that make up a mature animal. As cells differentiate into specialized cells, they lose the capacity to carry out the functions of other cell types; they are no longer totipotent. A skin cell cannot produce a nerve, bone, or muscle cell, for example.

Dolly was a surprise because she was, apparently, the product of DNA from a differentiated, specialized cell from the udder of a mature sheep. The DNA was introduced into a DNA-less egg, and the egg was implanted into the uterus of a sheep where it developed into Dolly.

Dolly, at the time the experiment was announced last year, appeared to open up the possibility of human cloning. In theory, DNA could be taken from a woman or man and inserted into a DNA-less egg, and the egg, which now contained the genetic information from the donor, could be introduced into the uterus of a woman. If a child resulted from the process, she or he would be genetically identical to the woman or man from whom the DNA came.

The enclosed letter from Science questions whether Dolly originated from adult cell DNA, and it suggests that she might have resulted from the cloning of an embryonic cell. Scientists have clonsed embryonic cells for years, and those activities have raised no public concerns. The last sentence of the first paragraph of the Science news article sums up the significance of the new information. If Dolly isn't the product of DNA from a mature cell, ''it would mean that human cloning, which for most conceivable purposes would start with adult cells, is not the immediate threat some worry about.''

With this new information in hand, there appears to be no need to rush legislation. At a minimum, there is ample time for hearings with knowledgeable and respected scientists, ethicists, theologians, and others testifying about the proposed legislation and its ramifications.

Human cloning, if it is ever accomplished, will offer the promise of a child to love and cherish to couples who otherwise would be childless. Although cloning has been greeted very negatively, it is also true that negative

reactions met almost every advance in human reproduction technologies—artificial insemination, in vitro fertilization, ''fertility drugs,'' prenatal diagnoses. Those technologies became accepted when they gave healthy children to couples that otherwise would have been childless.

Many scientists, including the Director of the National Institutes of Health, worry that hastily drafted and loosely drawn legislation directed against cloning will foreclose research that promises new drugs and the capacity to replace or repair nerves, skin, and muscle lost to injury or disease. The information from Science indicates that legislative haste is not necessary.

I will be happy to talk with you or your staff and to provide additional information.

Sincerely,

MICHAEL GOUGH, Ph.D.

Mrs. FEINSTEIN. Mr. President, there are also brand new letters that I did not enter into the RECORD my last time on the floor speaking about this issue. They are from the American Society for Biochemistry and Molecular Biology, from the professor and chairman of the Department of Developmental Biology at Stanford University School of Medicine, the American Society for Cell Biology, which interestingly enough is signed by more Nobel laureates than I have ever seen signing one letter. And this is truly amazing. There are 27 Nobel laureates on this letter.

What they say, in summing up, is:

If legislation is deemed to be necessary, we respectfully urge you to be sure that it be limited to the cloning of human beings and not include language that impedes critical, ongoing, and potential new research.

And I have letters from the American Society for Cell Biology, the American Society for Human Genetics, the National Association for Biomedical Research, a telegram from the Federation of American Societies for Experimental Biology. I ask unanimous consent that these letters be printed in the RECORD.

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

AMERICAN SOCIETY FOR BIOCHEMISTRY AND MOLECULAR BIOLOGY,

Bethesda, MD, February 10, 1998.

Hon. CHRISTOPHER BOND,
U.S. Senate, Washington, DC.

DEAR SENATOR BOND: We are writing to express a number of concerns regarding your bill, S. 1601, the Human Cloning Prohibition Act, which would prohibit the use of ''Somatic cell nuclear transfer technology for purposes of human cloning.'' Our main concern is that harm not be done to biomedical research through your well-intentioned effort to prevent disreputable individuals or companies from attempting to clone a human being. We recognize it is not your intent to harm biomedical research. However, we respectfully point out that this would be the likely result if the bill were to become law in its current form.

Our first concern is that few of the scientific terms used in the bill are defined. The bill defines the broad term ''human somatic cell nuclear transfer technology,'' but the definition is flawed in several ways. The use of the word ''technology'', for example, implies that it is the physical tools needed to carry out human somatic cell nuclear transfer that are banned, not the process itself. The technology needed to carry out such a nuclear transfer is readily available in any modern biological laboratory dealing with reproductive biology; surely it is not your intention to ban these tools.

The definition also includes as banned the production of ''an embryo (including a preimplantation embryo)''. This inclusion would clearly interfere with work needed to develop a variety of therapies described below for burn victims, diabetes sufferers, and others suffering from more rate genetic diseases.

The bill also does not define the term ''oocyte,'' which many members of the Senate may not understand. It would be useful to define term so these senators know what is being discussed. The same could be said for the terms ''nuclear'', ''nuclear transfer,'' ''cell,'' ''somatic cell,'' and ''cloning.'' The point of this discussion of definitions is that this whole area of biology is extremely complex, and the process itself is only now beginning to be understood by people who have devoted years of study to the subject. It is thus premature to attempt to define in legislation a process that is still evolving.

Second, we are concerned by the bill's permanent prohibition of human somatic cell nuclear transfer. While no responsible member of the life sciences community is in favor of cloning humans at this time, there may come a time, after further research and study, when it will be viewed as less egregious. For example, infertile couples might appreciate the availability of human somatic cell nuclear transfer, as it might someday enable them to experience the joys and rewards of parenthood.

Third, cloning is a widely used technique in modern biology to produce large numbers of cells and other biological materials scientist need to carry out modern biomedical research. The National Institutes of Health has produced a paper called ''Cloning: Present Uses and Promises'', which discusses all of these issues in clear and useful detail.

This paper explains that human somatic cell nuclear transfer can have profound benefits for human health if research is allowed to proceed using the technique. For example, a burn victim often needs skin grafts. Current grafting techniques require taking undamaged skin from the victim and grafting it onto the patient's burned areas. Skin from other humans cannot be used because it would be rejected by the victim's immune system. However, if adult cells can be taken from the victim, treated in such a way as to return them to an embryonic state and then made to grow into skin cells, virtually unlimited quantities of the victim's own skin could be grown and used as grafts. This skin would not be rejected since it would be genetically identical to the victims' original skin.

The NIH paper also discusses the potential use of somatic cell nuclear transfer in attacking diabetes, and other, more rare genetic diseases. Of course, these therapies are not available now—but they might be in the future, if biomedical research on the uses and limits of somatic cell nuclear transfer is not permanently banned, as it would be under the provisions of your bill.

Even though your bill notes that ''Nothing in this Act . . . shall be construed to restrict areas of scientific research that are not specifically prohibited . . .'' section 2 declares that ''. . . it is right and proper to prohibit the creation of cloned human embryos that would never have the opportunity for implantation and that would therefore be created solely for research that would ultimately lead to their destruction.'' This language, plus the way your definition of ''human somatic cell nuclear transfer technology'' is phrased, makes it impossible for research to continue on these therapies using somatic cell nuclear transfer. We respectfully note that we cannot support such a broad prohibition.

A fourth matter to consider is that history is replete with examples of bad law that were primarily the products of undue haste. In our view, human cloning is not going to occur soon enough to justify taking this bill directly to the floor of the Senate without hearings at the subcommittee and committee level. Such hearings would develop the points we raise above as well as many more, and explore the consequences (both positive and negative) of the bill's provisions. There is no need at this point to short-circuit the normal hearing process, which serves our country and the Congress very well.

Finally, all of the above notwithstanding, it is not absolutely clear that the now famous sheep Dolly was cloned using an adult cell and not a fetal cell in the first pace. One prominent researcher, Dr. Norton Zinder, of Rockefeller University, believes that it has not been proven that Dolly was created using the nucleus of a somatic cell. In a recent letter to Science, he notes that so far, Dolly has not been replicated, and that it took 400 tries to create her in the first place. One success in 400 ''Is an anecdote, not a result,'' he writes. Thus, since it has not been definitely proven that an adult cell was used to clone Dolly, it is possible that Dr. Wilmut's announcement approximately a year ago was mistaken, and that a fetal cell was used by accident (the sheep from which the cell was taken was pregnant at the time, and fetal cells circulate throughout the body in such situations).

Thus, it may be that there is no danger of somatic cell nuclear transfer being used to clone a human being because it cannot be done! We simply don't know at this point. It would therefore be unfortunate if this technique, which has promise in so many other biological applications, was placed ''off limits'' to researchers before its promise and pitfalls were thoroughly explored. This is yet another reason why haste is not desirable.

Let me make it clear that the ASBMB does not support human cloning. This is why the ASBMB Public Affairs Advisory Committee supports the National Bioethics Advisory Commission's call for a 5-year moratorium. The committee adopted the following resolution in September 1997:

''The ASBMB Public Affairs Advisory Committee supports the declaration of a voluntary five-year moratorium on cloning human beings, where 'cloning human beings' is defined as the duplication of an existing or previously existing human being by transferring the nucleus of a differentiated, somatic cell into an enucleated human oocyte, and implanting the resulting product for intrauterine gestation and subsequent birth.''

Numerous life sciences organizations, such as the Society for Developmental Biology, the Federation of American Societies for Experimental Biology, the American Society for Cell Biology, and the Association of American Medical Colleges, have indicated their support for a voluntary moratorium on human cloning. We are confident that such a moratorium will be effective in preventing the act you fear from occurring. It would also allow the issue to be revisited later, after further research and deliberation.

We hope you will take all these thoughts into consideration before moving ahead with a bill that is well-intentioned but which could also do serious harm to biomedical research unless it is modified. We would be pleased to provide you with further information on these issues in the days and weeks ahead.

For your information, the American Society for Biochemistry and Molecular Biology,

founded in 1906, is a scientific and educational organization with a membership of 10,200 life scientists who teach or conduct research at most of our country's colleges and universities, nonprofit research institutions, in industry, and for the federal government. We publish the *Journal of Biological Chemistry*, one of our nation's premiere peer-reviewed journals in the life sciences. Our headquarters are on the campus of the Federation of American Societies for Experimental Biology, in Bethesda, Maryland.

Sincerely,

I. ROBERT LEHMAN,
President.

BECKMAN CENTER,
Stanford, CA, February 4, 1998.

Hon. CONNIE MACK,
U.S. Senate, Washington, DC.

DEAR SENATOR MACK: The Congress is moving rapidly, indeed precipitously, to legislate a ban on attempts to produce a human being by somatic cell nuclear transfer (SCNT) technology. The bill sponsored by Senators Bond, Frist, Gregg and others, if passed, would be the first to ban a specific line of research. I believe this is a serious mistake, one that we could regret because of its unintended implications for otherwise valuable biomedical research.

Extending the President's moratorium to the private sector would provide an interim solution to preventing any and all attempts to produce a human being by SCNT until a congressional commission determined whether and what kind of legislation would be appropriation.

I call to your attention a position statement supported by many scientific societies which recommends a course of action you should consider.

At the request of the National Bioethics Advisory Commission, the American Society for Cell Biology recommended in the Spring of 1997 a voluntary international moratorium on human nuclear transfer for the purpose of creating a new human being. This would allow scientists and the public the opportunity to determine the safety and appropriateness of such experimentation.

The ASCB continues to support such a moratorium as a constructive interim response to the concerns raised by the cloning of an adult sheep. However, recent events in the U.S. have escalated and infused new urgency into this debate, resulting in increased demands for regulatory legislation.

The ASCB urges that if legislation is needed, it should specifically be concerned with the reproduction of a human being by nuclear transfer. At the same time, any legislation should not impede or interfere with existing and potential critical research fundamental to the prevention or cure of human disease. This research often includes the cloning of human and animal cell lines and DNA, but not whole human beings.

The National Biomedical Advisory Commission did recommend a three to five year moratorium on human nuclear transfer for the purpose of creating a new human being in order to allow time to evaluate the safety of and public views about such procedures. The ASCB urges that the Commission's recommendation be the basis for any federal legislation.

Very sincerely yours,

PAUL BERG,
Nobel Laureate, Chemistry, 1980.

THE AMERICAN SOCIETY FOR
CELL BIOLOGY,
Bethesda, MD, February 9, 1998.

To the President of the United States and Members of the United States Congress:

There is a broad consensus supporting the President's National Biomedical Ethics Advisory Commission's proposal to ban the creation of a human being by somatic nuclear transplants. The Commission urged that such a ban should not deliberately or inadvertently interfere with biomedical research that is critical to the understanding and eventual prevention of human disease. To that end, we the undersigned endorse the statement on cloning from the American Society for Cell Biology. If legislation is deemed to be necessary, we respectfully urge you to ensure that it be limited to the cloning of human beings, and does not include language that impedes critical ongoing and potential new research.

Sincerely,

Sidney Altman, Sterling Professor of Biology, Professor Chemistry, Yale University, Nobel Prize in Chemistry, 1989; Kenneth J. Arrow, Joan Kenney Professor of Economics Emeritus, and Professor of Operations Research Emeritus, Stanford University, Nobel Prize in Economics, 1972; David Baltimore, President, California Institute of Technology, Nobel Prize in Physiology or Medicine, 1975; Paul Berg, Cahill Professor of Cancer Research, Department of Biochemistry, Stanford University School of Medicine, Nobel Prize in Chemistry, 1980.

J. Michael Bishop, University Professor, University of California, Director, the G.W. Hooper Research Foundation, University of California, San Francisco School of Medicine, Nobel Prize in Physiology or Medicine, 1989; Stanley Cohen, Distinguished Professor of Biochemistry, Vanderbilt University School of Medicine, Nobel Prize in Physiology or Medicine, 1986; E.J. Corey, Sheldon Emery Professor of Chemistry, Department of Chemistry & Chemical Biology, Harvard University, Nobel Prize in Chemistry, 1990; Peter Doherty, Department of Immunology, St. Jude Children's Research Hospital, Nobel Prize in Physiology or Medicine, 1996.

Gertrude B. Elion, Research Professor of Pharmacology and Medicine, Nobel Prize in Physiology or Medicine, 1988; Walter Gilbert, Carl M. Loeb University Professor, Department of Molecular and Cellular Biology, Harvard University, Nobel Prize in Chemistry, 1980; Alfred G. Gilman, Regental Professor and Chair, Department of Pharmacology, University of Texas Southwestern Medical Center, Nobel Prize in Physiology or Medicine, 1994; Donald A. Glaser, Professor of Physics and Neurobiology in the Graduate School, University of California at Berkeley, Nobel Prize in Physics, 1960.

Joseph L. Goldstein, Professor and Chairman, Department of Molecular Genetics, University of Texas Southwestern Medical Center at Dallas, Nobel Prize in Physiology or Medicine, 1985; Roger Guillemin, Distinguished Research Professor, The Salk Institute for Biological Studies, Nobel Prize in Physiology or Medicine, 1977; Dudley Herschbach, Baird Professor of Science, Harvard University, Nobel Prize in Chemistry, 1986; Edwin G. Krebs, Professor Emeritus, Department of Pharmacology, University of Washington, Nobel Prize in Physiology or Medicine, 1992.

Joshua Lederberg, Professor Emeritus, The Rockefeller University, Nobel Prize in Physiology or Medicine, 1958; Leon M. Lederman, Pritzker Professor of Science, Illinois Institute of Technology, Director Emeritus, Fermi National Accelerator Laboratory, Nobel Prize in Physics, 1988; Edward B. Lewis, Thomas Hunt Morgan Professor of Biology, Emeritus, Nobel Prize in Physiology or Medicine, 1995; Daniel Nathans, Senior Investigator, Howard Hughes Medical Institute, University Professor, The Johns Hopkins University School of Medicine, Nobel Prize in Physiology or Medicine, 1978.

Marshall Nirenberg, Laboratory Chief, Laboratory of Biochemical Genetics, The National Institutes of Health, National Heart Lung & Blood Institute, Nobel Prize in Physiology or Medicine, 1968; Douglas D. Osheroff, J.G. Jackson and C.S. Wood Professor of Physics, Stanford University, Nobel Prize in Physics, 1996; Phillip A. Sharp, Professor and Head, Department of Biology, Massachusetts Institute of Technology, Nobel Prize in Physiology or Medicine, 1993; Susumu Tonegawa, Amgen Professor of Biology and Neuroscience, Director, Center for Learning and Memory, Massachusetts Institute of Technology, Investigator, Howard Hughes Medical Institute, Nobel Prize in Physiology or Medicine, 1987.

James D. Watson, President, Cold Spring Harbor Laboratory, Nobel Prize in Physiology or Medicine, 1962; Eric F. Wieschaus, Squibb Professor of Molecular Biology, Investigator, Howard Hughes Medical Institute, Nobel Prize in Physiology or Medicine, 1995; Torsten Wiesel, President, The Rockefeller University, Nobel Prize in Physiology or Medicine, 1981.

THE AMERICAN SOCIETY FOR CELL BIOLOGY
STATEMENT ON CLONING JANUARY, 1998

At the request of the National Bioethics Advisory Commission, the American Society for Cell Biology recommended in the Spring of 1997 a voluntary international moratorium on human nuclear transfer for the purpose of creating a new human being. This would allow scientists and the public the opportunity to determine the safety and appropriateness of such experimentation.

The ASCB continues to support such a moratorium as a constructive interim response to the concerns raised by the cloning of an adult sheep. However, recent events in the U.S. have escalated and infused new urgency into this debate, resulting in increased demands for regulatory legislation.

The ASCB urges that if legislation is needed, it should specifically be concerned with the reproduction of a human being by nuclear transfer. At the same time, any legislation should not impede or interfere with existing and potential critical research fundamental to the prevention or cure of human disease. This research often includes the cloning of human and animal cell lines and DNA, but not whole human beings.

The National Bioethics Advisory Commission did recommend a three to five year moratorium on human nuclear for the purposes of creating a new human being in order to allow time to evaluate the safety of and public views about such procedures. The ASCB urges that the Commission's recommendation be the basis for any federal legislation.

THE AMERICAN SOCIETY
OF HUMAN GENETICS,
Bethesda, MD, February 5, 1998.

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

DEAR SENATOR FEINSTEIN: Senators Kit Bond (R-TN) and Bill Frist (R-TN) have introduced S. 1601, ''to prohibit the use of somatic cell nuclear transfer technology for purposes of human cloning.'' While the majority of the scientific community and the public supports a ban on human cloning, the

bill's language would effect other important areas of medical and scientific research.

As President of The American Society of Human Genetics representing over 6,000 researchers in the field human genetics, I want to go on record as opposing this bill.

Congress must make sure that any bill would not restrict or inhibit stem cell research which is being used to create a whole new type of therapy—cell therapy. Congress must also make sure that research is not restricted into the pathology of disease, gene therapy research, research into the ways genes operate in the cell and other basic biomedical research which gives hope that we can find and develop cures and therapies for deadly and disabling diseases.

Thank you for allowing us to go on record as opposing S. 1601.

Sincerely yours,

ARTHUR BEAUDET, MD,
President, ASHG.

NATIONAL ASSOCIATION FOR BIOMEDICAL RESEARCH,
Washington, DC, February 5, 1998.

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

DEAR SENATOR FEINSTEIN: The NABR membership respectfully requests that you vote ''no'' next Tuesday, February 10, when a motion to invoke cloture and proceed to consider S. 1601, a bill to ban human cloning, is scheduled to come before the Senate. There is virtually unanimous agreement that human beings should not be cloned. However, as currently drafted S. 1601 threatens to restrict research efforts far beyond those which could involve cloning human beings. The proposal is going to the floor without the customary committee consideration and recommendation. The result is a well-intentioned, but ill-defined, measure that will destroy promising new research avenues that might provide long-awaited solutions to untold human suffering. Your ''no'' vote is needed to protect responsible biomedical research and allow this legislation to receive the full deliberation it deserves.

We all fear a disastrous outcome of new cloning technologies; however, S. 1601 is not focused on outcomes. Rather, for the first time, the government would ban a specific research technique and process. To prevent a real or imagined future calamity, approval of this bill would mean the public must also forego all the beneficial fruits of ''somatic cell nuclear transfer,'' including the possible cloning of cells or tissue to cure and treat cancer, diabetes, Alzheimer's and many other illnesses. (Please see enclosed Time article for further discussion.) For this reason, Congress certainly should take the time to carefully consider S. 1601 and other proposals dealing with human cloning. Surely, the people whose healthy futures depend on more and better research must have the opportunity to understand and participate in the decisions Congress is facing. The current rush to pass imprecise, misunderstood legislation to ban human cloning is much more dangerous to the pubic than the remote chance a mad scientist might actually attempt it in the near future.

Until the moral, ethical and medical questions surrounding the possibility are fully explored and satisfactorily answered, no one should try to duplicate a human being by cloning. The nation's leading scientific, medical, pharmaceutical and biotechnology organizations agree and have already subscribed to a voluntary moratorium to this effect. In addition, the Food and Drug Administration has announced it will exercise regulatory authority over human cloning should any irresponsible individual try to ignore the mainstream scientific community. Therefore, it is not necessary to act hastily in the absence of all the facts.

Should you or your staff require additional information, please contact NABR. Thank you for your consideration of this urgent matter.

Sincerely,

FRANKIE L. TRULL,
President.

FEDERATION OF AMERICAN SOCIETIES FOR EXPERIMENTAL BIOLOGY,
Bethesda, MD, February 3, 1998.

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

The Federation of American Societies for Experimental Biology (FASEB) urges the Senate to proceed extremely cautiously as it considers legislation regarding human cloning. While the Federation considers the cloning of human being to be reprehensible, dangerous, and unethical, we are concerned that overly restrictive legislation could unintentionally preclude critical research of great benefit to the American people. We believe that S. 1599, currently pending consideration by the Senate, would be damaging to worthwhile research. By flatly banning all use of human somatic cell nuclear technology for any purpose, this legislation would close off key areas of research which do not involve the creation of humans. We urge that the Senate not approve this legislation in its current form as it does not balance appropriate ethical considerations with the health needs of the American people.

RALPH G. YOUNT, Ph.D.,
President.

Mrs. FEINSTEIN. And academics. I have a letter from the University of California at San Diego, from the professor of the Division of Cellular and Molecular Medicine, the Department of Pharmacology, University of California; another one from Dr. Bishop, Nobel laureate, University of California; a letter from the Whitehead Institute; another letter from the University of California from the Vice President of Health Affairs and the Vice Provost of Research; a letter from Dr. Roger Pedersen, professor and research director of the Reproductive Genetics Unit, University of California, San Francisco; and a letter from the Nobel laureate of chemistry to Senator MACK. In 1980, he won the Nobel prize.

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

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

UNIVERSITY OF CALIFORNIA,
San Diego, CA, February 10, 1998.

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

DEAR SENATOR FEINSTEIN: I am writing to urge you to continue working to protect basic biomedical research in any proposed human cloning legislation. While we all agree that ''cloning'' a complete human being is undesirable and unethical at present, it is very important that any legislation that is passed not inadvertently block important research into regenerative technology, or into the creation of artificially grown human organs for transplantation and other purposes. For example, as you know the recently proposed Bond/Frist cloning bill, S. 1599 in the Senate is far too broad and would ban many related and valuable research and medical activities. Your bill S. 1602 with Senator Edward Kennedy (D–MA) bans the implantation of the product of somatic cell nuclear transfer into a woman's womb. The language in S. 1602 appears much more reasonable and with minor modification could be recommended for support by the scientific community.

For your information, I have reproduced below a statement from the American Society for Cell Biology on cloning, which clearly delineates principles that many scientists feel are most useful in thinking about this important legislative challenge.

''The American Society for Cell Biology
Statement on Cloning, January, 1998

''At the request of the National Bioethics Advisory Commission, the American Society for Cell Biology recommended in the Spring of 1997 a voluntary international moratorium on human nuclear transfer for the purpose of creating a new human being. This would allow scientists and the public the opportunity to determine the safety and appropriateness of such experimentation.

''The ASCB continues to support such a moratorium as a constructive interim response to the concerns raised by the cloning of an adult sheep. However, recent events in the U.S. have escalated and infused new urgency into this debate, resulting in increased demands for regulatory legislation.

''The ASCB urges that if legislation is needed, it should specifically be concerned with the reproduction of a human being by nuclear transfer. At the same time, any legislation should not impede or interfere with existing and potential critical research fundamental to the prevention or cure of human disease. This research often includes the cloning of human and animal cell lines and DNA, but not whole human beings.

''The National Bioethics Advisory Commission did recommend a three to five year moratorium on human nuclear transfer for the purpose of creating a new human being in order to allow time to evaluate the safety of and public views about such procedures. The ASCB urges that the Commission's recommendation be the basis for any federal legislation.''

It is very important that our citizens and legislators think calmly and carefully about what legislation is passed in this area. We must ensure that we do not inadvertently hold back important and valuable medical research. I am sure that simple and temporary legislation, which doesn't seek to be too broad in its scope, and introduce many unintended consequences would be the best strategy. I hope that you will proceed with great caution.

Sincerely,

LAWRENCE S.B. GOLDSTEIN, Ph.D.

WHITEHEAD INSTITUTE,
Cambridge, MA, February 5, 1998.

Hon. EDWARD M. KENNEDY,
Russell Senate Office Building, Washington, DC.

DEAR SENATOR KENNEDY: I am very concerned about efforts to bring Senate Bill 1599, the Bond bill, to an immediate vote. While I agree that there should be a national ban on human cloning, it is essential that any such law protect areas of critical research that can benefit human health. The Bond bill's generic ban on the use of ''human somatic cell nuclear transfer technology,'' would, in fact, be quite damaging to medical research progress in the United States.

The Bond bill would seriously limit our ability to develop new cell-based strategies to fight cancer, diabetes, and Alzheimer's disease. It would also prevent vital research on the repair of spinal cord injuries and severe burns.

I urge you to convey to your colleagues that the Bond bill would cause us to lose ground in the battle against deadly and disabling human diseases. In contrast, Senate

Bill 1602 (the Feinstein/Kennedy bill) focuses on the implantation of the product of somatic cell nuclear transfer. By banning implantation, the Feinstein/Kennedy bill would permit life-saving research to continue and still prohibit the cloning of human beings.

All major advances in technology raise new ethical, legal, and social issues. The cloning issues are particularly complex. I appreciate your efforts to promote widespread and careful public deliberation and, at the same time to foster important advances in human health.

Sincerely,

GERALD R. FINK,
Director.

UNIVERSITY OF CALIFORNIA,
Oakland, CA, February 10, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senator, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: We are writing on behalf of the University of California to urge you to vote against the upcoming cloture motion for S. 1601, the cloning bill. While we recognize the sensitivity and importance of this issue, the University is concerned that premature legislation on cloning, however well intentioned, may prove to be too inclusive, with resulting negative consequences on future advances in biomedical research.

The current opportunities in biomedical research are unparalleled. Thousands of experiments are carried out each day in the university laboratories using routine molecular and cellular research approaches involving human tissues, cells and molecules. Over the past two decades, this research has contributed to major advances in our understanding of the molecular and cellular basis of human disease. It has led to important new medical advances, including the production of human insulin, hepatitis vaccine, and sensitive diagnostics for AIDS. The scientific techniques involved in cloning research are very promising in terms of our ability to treat and manage myriad diseases and disorders, ranging from cancer to heart disease, to Parkinson's and Alzhemier's, to infertility and HIV/AIDS. These advances have saved hundreds of thousands of lives and dramatically reduced health care costs.

We urge you to vote no on the motion to invoke cloture on S. 1601, so that there is more time to consider the implications of cloning legislation. If Congress chooses to enact legislation, we urge you to make certain that any legislative language does not prohibit legitimate and worthwhile scientific research that has the potential to provide enormous health benefits. We would be happy to offer our resources as the legislative debate continues.

Thank you for considering our views.

Sincerely,

CORNELIUS L. HOPPER,
Vice President, Health Affairs.
ROBERT N. SHELTON,
Vice Provost, Research.

UNIVERSITY OF CALIFORNIA,
SAN FRANCISCO,
San Francisco, CA, February 4, 1998.

Hon. CONNIE MACK,
U.S. Senate,
Washington, DC.

DEAR SENATOR MACK: I understand that the U.S. Senate is considering several bills related to human cloning. One of these bills, introduced by Senator Bond and others, prohibits human somatic nuclear transfer to be used for the purpose of creating an embryo. Although this bill, as I understand it, protects many areas of science, the specific prohibition on somatic nuclear transfer is unwarranted and potentially detrimental to medical research.

The fundamental flaw in this legislation is the prohibition of a technology irrespective of its application. Such prohibition forecloses on any benefit from the technology, even if that benefit were in no way objectionable. Many well-intentioned people fail to understand that somatic cell nuclear transfer is not limited to cloning an organism. There are many examples of possible future applications of this technology to produce healthy tissue for therapeutic purposes, such as skin grafts for burn patients, or even to create insulin-producing cells for diabetics. There may also be applications for cancer patients who need a bone marrow transplant for whom a match cannot be found.

The Senate should instead address its attention to specific applications of this technology that are unwanted in our society, such as creating a new human being.

I hope that you will work to ensure that research on this promising technology is allowed to continue.

Sincerely,

J.M. BISHOP,
Nobel Laureate.

FEBRUARY 4, 1998.

Hon. SENATOR KENNEDY,
U.S. Senate,
Washington, DC.

DEAR SENATOR KENNEDY: I am writing to express my deep concern about the negative impact of impending legislation introduced by Senators Bond, Frist et al. (S. 1599) intended to regulate cloning of a human being. As an active researcher in the scientific field of the discovery leading to Dolly, I understand its implications for basic science and human health. Dolly's existence proves for the first time that the genetic material of an adult body cell can be completely reprogrammed by the egg, thus totally restoring the genetic potential for specializing into all possible cell types. This discovery that genetic reprogramming is possible in mammals is as important to human health as the discovery of penicillin. Basic research on genetic reprogramming will likely lead to novel transplantation therapies for numerous human diseases, including heart disease, diabetes, neurodegenerative diseases (such as Parkinson disease), genetic diseases and birth defects. I believe that imprecise, hastily-written legislation against human cloning, such as S. 1599, will hinder these important research opportunities for understanding genetic reprogramming of adult cells. Excessive regulation as specified by S. 1599, including civil penalties and criminalization, in the area of this new discovery is likely to thwart the momentum of basic research on genetic reprogramming and deter the enthusiasm and ability of researchers poised to make major new contributions in applying their findings to human health problems.

In no conceivable instance would research on genetic reprogramming involve cloning of human beings. Indeed, active, credible researchers and clinicians overwhelmingly regard cloning a human being as an unethical and reprehensible act. Last year, working through the Society for Developmental Biology, I spearheaded a voluntary moratorium on cloning human beings. This moratorium unequivocally states that we have no intention to clone human beings, where this is defined as ''duplication of an existing or previously existing human being by transferring the nucleus of a differentiated, somatic cell into an enucleated human oocyte, and implanting the resulting product for intrauterine gestation and subsequent birth.'' To date, 15 additional scientific and medical societies, including the Federation of American Societies for Experimental Biology, the American Society for Reproductive Medicine, and the Society for the Study of Reproduction, together representing more than 60,000 reproductive, developmental, cell and molecular biologists, have endorsed this moratorium. Historical precedent (with recombinant DNA technology) indicates that a voluntary moratorium can deter activities that are potentially unsafe for humans. It is evident from recent events that anyone who advocates cloning human beings for any purpose will be subjected to ostracism and discredited scientifically. Therefore, I believe that the existing voluntary moratorium against cloning human beings is an effective means of regulating the behavior of U.S. scientists and physicians.

Presently, the fields of developmental biology and human genetics are at an exciting juncture, where many novel genes are being identified through the Human Genome Project and their functions during normal development are being understood for the first time. In addition, an understanding of how these genes interact with the internal and external environment of the cell is emerging for studies such as those giving rise to Dolly. Deriving the full benefits of these new insights for human health will require a dedicated and cooperative research effort by many scientists, including those who conduct research on human cells and tissues.

In conclusion, there is a great risk that anti-cloning legislation would deprive the American people of unprecedented human health benefits. I thus urge extreme caution in any legal sanctions, such as those included in S. 1599, which would have lasting detrimental effects on our ability to alleviate human diseases, and would also undermine the competitive abilities of U.S. scientists in our field.

Respectfully yours,

ROGER A. PEDERSEN, PH.D.,
Professor and Research Director, Reproductive Genetics Unit, Department of Obstetrics, Gynecology, and Reproductive Science.

Mrs. FEINSTEIN. There are new letters from industry groups. There is a very interesting letter from Genentech. Genentech is a huge biotech firm. Actually, biotechnology was spawned out of San Francisco and Genentech was one of the very first companies in the Nation to enter this area. They have a very cogent letter that states well their opposition. They point out, ''. . . deliberate and exercise caution and restraint in legislating this issue.''

I ask unanimous consent that the February 9 letter from the Biotechnology Industry Organization be printed in the RECORD.

There being no objection, it has been ordered to be printed in the RECORD, as follows:

REGARDING HUMAN CLONING LEGISLATION
TUESDAY CLOTURE VOTE: S. 1601, BOND/LOTT

FEBRUARY 9, 1998.

DEAR SENATOR: Tomorrow the Senate is scheduled to vote on cloture on S. 1601, the Bond/Lott human cloning bill. The Biotechnology Industry Organization (BIO) urges you to vote ''no'' on the cloture petition. BIO represents 760 biotechnology companies throughout the world engaged in research on diseases, the immune system, cell therapy, vaccines, drugs/biologics, antibiotics, and gene therapy.

The Bond/Lott bill is not ripe for consideration by the Senate. It was introduced on Wednesday of last week, no hearings have

been held on it and no mark-up in the two committees with jurisdiction have been held on it. Most important, the bill as drafted would have a dire impact on biomedical research completely unrelated to human cloning.

This is not a human cloning bill. This is a bill which bans the use of biomedical technology even if that use has nothing whatever to do with human cloning.

A ''no'' vote is a vote to protect biomedical research on deadly and disabling diseases.

There is no rush to legislate. The FDA has jurisdiction over Dr. Seed and any others. Violations of the FDA regulatory requirements carry draconian penalties. A ''no'' vote is a vote to proceed with caution to make sure that biomedical research is not harmed.

A ''no'' vote is a vote to restrict this bill to the human cloning issue.

A ''no'' vote is a vote to permit the Senate Labor and Senate Judiciary Committees, which have jurisdiction over the bills to take care to draft the legislation and confine it to the human cloning issue.

BIO believes that a human cloning experiment would be utterly unethical and unsafe. What we are writing about here is our views on the terms of the Bond/Lott bill, not the larger debate about human cloning.

Attached is a more detailed statement outlining our concerns about the Bond/Lott bill which was printed in the Congressional Record on Thursday. If you have any questions about our position, please feel free to call at 857–0244.

Sincerely,

NANCY BRADISH,
Director, Federal Government Relations.
CHARLES E. LUDLAM,
Vice President for Government Relations.

Mrs. FEINSTEIN. Mr. President, I ask unanimous consent that the January 28 letter from the Pharmaceutical Research and Manufacturers of America be printed in the RECORD.

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

PHARMACEUTICAL RESEARCH AND,
MANUFACTURERS OF AMERICA,
Washington, DC, January 28, 1998.

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

DEAR SENATOR FEINSTEIN: I urge you to consider any legislative proposals to ban the cloning of an entire human being with great caution. The research-based pharmaceutical industry appreciates the widespread ethical and moral concerns about the possibility of creating a genetic duplicate of an existing (or previously existing) human being. We also share the view expressed by the National Bioethics Advisory Commission that such a procedure is unsafe.

For equally valid ethical, moral and safety reasons, we are concerned that some pending proposals would inadvertently harm patients with unmet needs and their families. The member companies of the Pharmaceutical Research and Manufacturers of America support the President's call for a voluntary moratorium on any cloning of an entire human being. However, the best help and heal patients, biomedical researchers need to be able to continue to clone human genes, cells and tissues. If not drafted with laser-precision, legislation to ban ''human cloning'' could—unintentionally, but heartbreakingly—stop life-saving and health-enhancing medical research.

The Food and Drug Administration has announced it will prevent any cloning of an entire human being. The FDA's assertion of regulatory authority eliminates any need for well-intended but risky haste. In your consideration of any legislative proposals, we urge you to protect patients and their families from unintended impediments to ethical, moral and safe biomedical research that does not involve any cloning of an entire human being, but does involve cloning human genes, cells or tissues.

Sincerely,

ALAN F. HOLMER,
President.

Mrs. FEINSTEIN. The California Biomedical Research Organization ''. . . urges you to support continuing debate about the potential negative impact of Senator TRENT LOTT's legislation.''

This is accompanied by, I would have to say, 30 campuses and companies. Ligand Pharmaceuticals, two letters for the RECORD. I ask unanimous consent that these letters be printed in the RECORD.

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

GENENTECH, INC.
San Francisco, CA, February 9, 1998.

Hon. CONNIE MACK,
Hart Senate Office Building, Washington, DC.

DEAR SENATOR MACK: I am writing with regard to legislative proposals currently pending in the Senate relating to cloning entire human beings. This vexing topic needs to be put into a larger perspective before the Senate votes on a bill, S. 1601, which was introduced only last week.

The biotechnology and research community has been very open and public about its support for the President's request for a voluntary moratorium on activities that could lead to the cloning of entire human beings. This exercise of responsibility in science is consistent with our long history of restraint in the pursuit of basic biomedical research. We do not plan or seek to clone entire human beings. In addition, we fully recognize the existence of various federal laws setting out the jurisdiction of the Food and Drug Administration which, when taken together, would bar the commercialization of cloning of entire human beings. Because of this moratorium and existing legal limitations on action, it is possible to deliberate and exercise caution and restraint in legislating this issue.

The reality of modern biomedical research is that it is difficult to predict in advance exactly how specific, even esoteric, areas of research will produce breakthroughs. As Michael Bishop (cancer researcher, Nobel laureate in medicine and my colleague from the University of California, San Francisco) spoke of this issue recently, in 1968 his work with Dr. Harold Varmus, and Professor Herb Boyer would have never been foreseen as leading to breakthroughs in recombinant DNA research and cancer genetics. Similarly, work done in the 1980s on transgenic animals by Dr. Phil Leder, of Harvard, and others, would not have easily been understood as being essential to the development of animal models that could facilitate dramatic advances in our ability to test new AIDS therapies.

It is also the case that with virtually every scientific advance there are voices that seek to delay legitimate, if misunderstood, advances in science. In the early 1970s, some government officials sought to vary virtually all recombinant DNA research out of exaggerated fears about the safety of the technology. Researchers and companies voluntarily adopted a moratorium on some research until more information was obtained. Fortunately, the calls for more radical local or federal regulation were rejected. The self-regulatory efforts by industry and the research community worked, and there were no significant safety issues to arise out of that research.

In the 1980s some critics advocated bans on transgenic animal research out of fear of science. These requests for a halt to research were often based on assertions of pseudoscience. Again, we are fortunate that Congress did not act to bar the creation of transgenic animals, which are now so commonly used in drug development, especially in AIDS research. In addition, transgenic animals may someday be used for the actual production of pharmaceutical compounds. This hope for pure protein production at a lower cost is yet to be realized, but if Congress had acted in the 1980s to end research, patients would have had that hope foreclosed.

Now Congress is faced with difficult decisions about how to react to a single experiment in sheep. Each side of the current debate has sincere motivations and convictions about its legislative approach. Senators Bond, Frist and others have bona fide concerns about cloning human beings and hope that their bill would not affect biomedical research. Yet, determining how to prohibit the act of cloning an entire human being has proven to be a daunting task. For a set of reasons outlined below, we prefer the approach taken in the bill, S. 1602, to that found in the bill currently pending, S. 1601.

Most importantly, in considering restrictions on scientific research in the private sector (as opposed to previously enacted limitations on the expenditure of federal funds), great care must be exercised. In addition to the legal rights of persons to free expression and inquiry in the private market, there is little precedent for imposing limitations on research except for reasons of safety or other narrowly crafted circumstances.

In this instance, there are multiple possibilities of promising research with somatic cells. Our hope in the research community is that this branch of research will lead to discoveries that permit us to develop new cures and treatments for serious and unmet medical needs. Some of our colleagues in academe have already begun exploring questions of how to turn on and off these somatic cells so that new biological material could be generated for transplantation and for other therapeutic purposes. At this point in the discovery process, it is not known exactly how to accomplish this therapeutic goal, but one possible way is to use the technique known as somatic nuclear cell transfer. Such research could, in some circumstances, involve conduct that would be permitted under S. 1602 and would be criminalized under S. 1. This difference (among others noted below) is the reason we prefer your bill.

There seems to be little dispute within the Congress about the current inappropriateness of using somatic nuclear cell transfer technology to create an embryo which is implanted into the uterus, with the goal being reproductive in nature. On the other hand, it is hard to understand why scientists should become criminals if they pursue legitimate new therapies for heart disease, cancer, diabetes, and other diseases, and if their research has no prospect or intent of creating an entire cloned human being.

Given our current state of knowledge, there is no reasonable prospect for creating a new human being unless an embryo is implanted into the uterus of a woman. Thus, the approach should be to adopt a bill that effectively bars what the political consensus

wants to prohibit, while simultaneously retaining the option of research that is aimed at new therapies, not at reproductive ends.

There are several other reasons to support the approach taken in S. 1602:

S. 1602 preempts inconsistent state laws. Given the rush to judgment in various states, the high likelihood for overlapping and inconsistent standards, and the clearly negative effect on interstate commerce, a federal standard is appropriate.

S. 1602, unlike S. 1601, uses a civil penalty structure that will be sufficient to deter unwanted conduct. If criminal penalties or asset forfeiture are threatened for research activities, there is likely to be a chilling effect on research in this entire area. Moreover, there are additional sanctions available under the Food, Drug and Cosmetic Act to address human cloning.

S. 1602 appropriately requires that Congress should review these limitations on research after a set period of time. This review could be facilitated if, using carefully drawn criteria, there was a balanced review of this area of research by a nonpolitical entity.

The suggestion in S. 1602 for international cooperation on this topic is welcome, as is the ratification of the authority of the jurisdiction of the Food and Drug Administration.

One final point, S. 1601 would establish a commission that could approach the bioethics questions associated with certain limited new somatic cell nuclear transfer technologies. This concept is worthy of serious consideration. As we approach scientific advances, it is important that we make sure that science reflects our basic human and ethical values.

The work done by existing entities, such as the Recombinant DNA Advisory Committee of the NIH, and the NIH-DOE Working Group on Ethical, Legal, and Social Implications of Human Genome Research, has advanced the public discussion. In this regard, the work already done by the President's Commission on the topic of cloning entire human beings has materially assisted the national debate on this topic. We leave to the political process questions of whether any such bioethics commission should be situated in the Executive Branch and who should exercise the appointment authority.

There are several caveats worth noting, however:

Past history, here and in Europe, suggests that there is a real risk that any such commission could inadvertently begin to function as a new regulatory entity and serve to delay the approval of new treatments for patients. This temptation should be avoided at all costs by explicitly limiting the role of the commission.

There is a risk that any new commission will be led by other political agendas into discussions that do not advance progress on improving human health. This temptation should also be avoided by narrowly circumscribing the commission's charter.

The composition of any commission should broadly reflect the best available thinking in science, law, and ethics. The mere prohibition on political officials serving on such a panel is not likely sufficient to prevent the politicization of the appointment process. There are, I understand, precedents that permit certain relevant professional societies to offer lists of nominees to an appointing authority. This approach would appear to mitigate the risk of an overly political appointment process.

In closing, let me thank you for having the special sensitivity and commitment to biomedical research to ask for greater deliberation and for crafting a more precise bill that seeks a uniform consensus about how to ban the cloning of entire human beings.

The issue before the Senate is: Can we simultaneously advance science and the search for cures for serious diseases while also barring the cloning of entire human beings? We believe that to foster further dialogue and deliberation can help achieve that common goal.

Sincerely,

ART LEVINSON,
President.

CALIFORNIA BIOMEDICAL
RESEARCH ASSOCIATION,
Sacramento, CA, February 9, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: On behalf of the CBRA Governing Board, I am writing to encourage your ''no'' vote on the cloture vote on S. 1601 scheduled for Tuesday, February 10, 1998. The Association urges you to support continuing debate about the potential negative impacts of Senator Trent Lott's legislation.

Somatic cell transfer technology is essential to continuing research into cures for some of our greatest human health threats—Parkinson's Disease, leukemia, diabetes, Alzheimer's disease and spinal coral injuries. Unintended consequences of this bill as currently written could threaten the future health of millions of Americans.

Please feel free to contact our office if you should need further information.

Sincerely,

SUZANNE NESS,
President.

MEMBERS (PARTIAL LIST)

Allergan
Alliance Pharmaceutical
ALZA Corporation
American Association for Laboratory Animal Science Northern, Orange County
San Diego, Southern and Palms to Pines Branches
American Cancer Society, California Division, Inc.
American Diabetes Association, California Affiliate
American Heart Association (Western States Affiliate and Greater L.A. Affiliate)
American Lung Association of California
Amgen
Bayer Corporation
Berlex Bio Sciences
BioDevices
Buck Center for Research in Aging
California Institute of Technology
California Medical Association
California State University: Long Beach, Pomona, Office of the Chancellor
California Veterinary Medical Association
Cedars-Sinai Medical Center
Charles River Laboratories
Children's Hospital Oakland Research Institute
Children's Hospital of Orange County
Chiron Corporation
City of Hope
Genentech
J. David Gladstone Institutes
Good Samaritan Hospital
Harbor UCLA Medical Center, Research and Education Institute, Inc.
Heartport
Huntington Medical Research Institutes
Isis Pharmaceuticals
Lawrence Berkeley Laboratory
Loma Linda University
NASA Ames Research Center
Palo Alto Medical Foundation
Roche Biosciences
Salk Institute for Biological Studies
San Diego State University
San Jose State University
Scripps Research Institute
Stanford University
The Parkinson's Institute
University of California: Berkeley, Davis, Irvine, Los Angeles, Riverside, San Diego, San Francisco, Santa Barbara, Santa Cruz, Office of the President
University of Southern California
Veterans Administration Medical Centers at: Loma Linda, Long Beach, Palo Alto, San Diego, San Francisco, Sepulveda, West Los Angeles.

LIGAND PHARMACEUTICALS,
San Diego, February 2, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: Ligand Pharmaceuticals Inc. of San Diego and its more than 300 employees, like other responsible members of the biomedical community, deplore the recent announcement by Dr. Richard Seed of his intention to clone a human being. We regard such an effort to be medically irresponsible and ethically abhorrent. Nevertheless, we are concerned that Congress and State legislatures, in understandable zeal to prevent Dr. Seed and anyone of a like mind from actually attempting to clone a human, will enact legislation that fails to distinguish between vital medical research and misguided human cloning. Therefore, we ask that you and other members of Congress carefully consider both the need for and the scope of any legislation addressing this issue before acting upon it.

With respect to whether legislation is needed, Ligand suggests a careful review of existing legislation to determine whether the U.S. Food and Drug Administration (FDA) already has the authority to regulate research related to and the actual cloning of a human being. Many, including the Biotechnology Industry Organization to which Ligand belongs, believes the FDA has this authority.

If legislation is deemed to be necessary, it should achieve two important ends. The first is that it should be drafted narrowly to deal with the cloning of a human being and not contain broad or even ambiguous prohibitions on cloning which would halt or disrupt vital medical research based upon widely accepted cloning techniques. Secondly, it should be preemptive of State laws governing cloning. Biomedical research is carried out, often with Federal funding, throughout the United States. This research occurs in public and private universities and in big and small companies. Much of this research is done on a collaborative basis involving entities in more than one state. Furthermore, every advance paves the way for further progress. The individual states should not, therefore, be allowed to erect a maze of law and regulation which unnecessarily regulates this area of research.

Congress, unlike the states, has ready access to the expertise of NIH, NSF, FDA and other sources of expertise that should be drawn upon before the drafting of appropriate legislation. That fact, and the interlocking nature of biomedical research, suggests that preemption is in the best interests of the country with respect to dealing with the issues raised by Dr. Seed. We believe this to be the case even though our Federal system rightly contemplates that the fifty states can exercise sovereignty in most areas, either in concert with, or in the absence of legislation at the national level.

Should you, therefore, have the opportunity to shape the debate on this important, and even emotional issue, we ask that you support hearings which address first whether new legislation is required. If a reasoned analysis of current law suggests that FDA is not able to effectively regulate, then

and only then should legislation carefully drawn based on input from the biomedical community be enacted.

Very truly yours,

WILLIAM L. RESPESS,
Senior Vice President.

LIGAND PHARMACEUTICALS,
San Diego, February 5, 1998.

Hon. DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATOR FEINSTEIN: I am writing on behalf of Ligand Pharmaceuticals Inc. asking that you oppose Senator Bond's Bill S. 1599 concerning human cloning. It is my understanding that this bill is to come up for a vote without hearings or mark-up. We believe that is an action that is too precipitous and could result in legislation which will adversely impact the biomedical industry.

I wrote to you on February 2, 1998 expressing opposition to the announcement by Dr. Richard Seed to engage in an effort to clone a human being. However, legislation or regulation to ban such activity must be carefully drawn so as not to inhibit legitimate research. Therefore, it is essential that hearings be held on any bill to permit testimony by scientists, representatives of the biomedical industry, and others potentially affected by such legislation to be heard on the specifics of any bill. This is not the time for a justifiable rush to judgment on Dr. Seed's announced intention to result in hastily conceived legislation which may do as much harm as good. Research on cloning and the use of cloning techniques are important to the progress of medical science. While Congress should move with deliberate speed, this is not the occasion to act outside of the usual congressional scheme of engaging in hearings before appropriate committees before taking action on matters of such import.

In my letter of February 2, 1998, I suggested that Congress first look to determine whether the FDA already has the authority to regulate in this area and, only if it is persuaded that the FDA lacks such authority, to undertake to draft legislation. I still believe that is the most appropriate process.

Very truly yours,

WILLIAM L. RESPESS,
Senior Vice President.

Mrs. FEINSTEIN. Mr. President, let me be very clear. Every letter that is coming in says: Stop, consider, proceed cautiously; this bill would be harmful; it would stop vital research. What is the rush, since the FDA has asserted jurisdiction and the scientific community has engaged in a moratorium? Why proceed like this in such haste, straight to the floor?

Only two letters have come in saying, proceed like this: One from the Christian Coalition, and the other one is from the National Right to Life Committee, two letters. The entire scientific community says, go slow, define your terms, know what you are doing.

Let me share with you what I understand this technology is. Let's say a somatic cell were taken out of my tissue. The nucleus of that cell is removed and is entered into an egg cell and fused. That cell, once fused, begins to divide and create more cells. The only way that cell can produce a human being is if it is put into a human uterus. Otherwise, it cannot produce a human being. We don't even know if it will produce a human being if it is put in a uterus. There is only one known instance in an animal, Dolly, which now Science magazine has challenged in a major way. But what we do know is that those stem cells, because of their DNA, can clone tissue.

For example, a third-degree-burn patient who may reject a skin graft may some day get a skin graft made from his or her own cells and will not reject it. My husband, Bert Feinstein, died of colon cancer and liver cancer. What a miracle if those cells could have been used to come up with a cancer treatment that would have prevented his death. That is really where we are. That is what we hope for.

There are no definitions in the bill. We don't know what they call a somatic cell. We don't know what they call an embryo. The bill does not define oocyte. But the point is, we have to know, and these terms have to be spelled out in the legislation.

The bill says, if there is this stem tissue research, it is illegal, and the scientists have a 10-year sentence.

So what we are begging, imploring, respectfully asking the distinguished majority leader is, please, let's not proceed tomorrow. Let's observe the regular order. Let's go to committee. Let Senator KENNEDY and I have an opportunity to present our bill. Let's have the majority leader, Senators BOND and FRIST, whom I respect, have an opportunity to present their bill. Let's discuss it and see what is best. Then at least we have heard everybody with knowledge.

Let me be clear. I want a bill. I want a carefully crafted bill. I want this Congress to act to ban the cloning of human beings.

I thank the Chair. I yield the floor.

Mr. GRAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. GRAMS. Mr. President, I ask unanimous consent to be able to speak as if in morning business for 10 minutes.

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

Mr. GRAMS. Thank you very much.

FEDERAL SURPLUS PROPERTY IMPROVEMENT ACT OF 1998

Mr. GRAMS. Mr. President, I rise today to introduce the ''Federal Surplus Property Improvement Act of 1998'' and ask my colleagues for their support of this legislation.

Congressional oversight of our country's surplus personal property donation program may not be a topic of debate in the Senate, but it is of great importance to my constituents and the 70,000 recipients of surplus federal personal property in all of our states.

Members of Congress and state and local officials all have an obligation to see that the government distributes this property fairly and equitably, ensuring accountability to the taxpayers.

Too often, federal agencies forget that the owners of this property are the American people—the federal government is merely its public custodian.

As my colleagues may know, once a piece of federal personal property such as a typewriter, chair or vehicle is declared ''excess'' by a federal agency, it is offered to other federal agencies for their use. If no other agency can utilize the property, it is donated to the states or other public agencies.

The current system of disposal is based on reforms signed into law by President Ford over twenty years ago.

The reforms to the Federal Property and Administrative Services Act of 1949 enacted in 1976 were based on concerns that as surplus property distribution programs multiplied, confusion and inefficiency on the part of the federal government grew as well.

Congress realized that the various state agencies and the General Services Administration should work together to ensure a fair and equitable allocation of surplus federal property to eligible recipients.

Under this new partnership, states would have a greater role over distribution, while GSA would guide the overall system on the federal side.

Mr. President, the 1976 reforms also broadened the pool of eligible recipients to include parks and recreation, conservation, public health and public safety.

Since then, each state agency for surplus property has worked with neighboring state agencies and GSA to provide the equipment, supplies and material used to educate our children, maintain roads and streets, keep utility rates reasonable, train the workers of tomorrow, protect families from crime, and during natural disasters, treat the health of our nation's sick and needy.

Through the efforts of the state agencies for surplus property, eligible recipients have acquired impressive pieces of equipment such as trailers, forklifts, fire trucks, aircraft, boats and generators.

The original acquisition value of property distributed through the U.S. state agencies for surplus property totaled over $537 million in fiscal year 1997. Over the last few weeks, I have heard from many recipients of surplus federal property and ask unanimous consent that their letters be printed in the RECORD.

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

DEPARTMENT OF PUBLIC SAFETY,
STATE PATROL DIVISION,
St. Paul, MN, January 13, 1998.

Senator ROD GRAMS,
Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR GRAMS: For the past several years the flight of the Minnesota State Patrol has called upon the services of the state surplus property program, a division of the Department of Administration, for various pieces of equipment needed to accomplish our mission. In more recent years my contact person at surplus property has been Mr. Gene Glaeser who now heads up that program. Any time I have needed something,

whether it be a helicopter, airplane, or an office desk, I have never had to wait an unusually long period of time to have my request filled by Glaeser's office.

In August 1992, the flight section had need of an aircraft tug to move our helicopter that is stationed in the Cloquet area in an out of our hangar. I simply called Gene Glaeser, told him what I needed and in a matter of about a week, I was notified by Glaeser that he had the tug I had requested. That tug was put into service almost immediately.

Again in September of 1996 our organization had a need to upgrade one of our helicopters from a two place piston powered helicopter to a turbine powered ship. Shortly after notifying surplus property of our need, I was told that a helicopter meeting our specifications had been located right here at the St. Paul Airport. This helicopter had been part of the fleet of OH58 helicopters operated by the Army Reserve Unit here in St. Paul, and this unit was being disbanded. Within the first year, that helicopter was refurbished and placed in service as part of our fleet of aircraft.

Once again, in February 1997 our unit had need for a twin engine airplane. One week after I made the request for this type of aircraft, Gene Glaeser called and said he had located an aircraft he thought would fit our needs. It was a Beechcraft Queen Air and it had been used by NASA for several years and was based at Langley Air Force Base in Virginia. Following many phone calls to Langley to discuss the condition of this craft, it was decided to acquire this aircraft.

In each of the above cases, there has been substantial cost savings to the State of Minnesota. The OH58 helicopter was placed in service at a total cost of $84,000.00. Had we purchased this same type of helicopter on the open market, we would have paid an estimated $450,000.00–$550,000.00. The Beechcraft Queen Air acquired from NASA, including the training of six pilots to fly it, cost the state approximately $36,000.00 to place it in service. This aircraft has been appraised at $150,000.00–$175,000.00 by an aircraft broker. In each of these cases, had the State Patrol been forced to buy from the open market, we would not have been able to upgrade our fleet because of budget constraints.

Had the surplus program not been available to us, our chances of acquiring this equipment would not have existed. This is a perfect example of our government obtaining the most from a piece of equipment. When one agency no longer has a need for that equipment, it is passed down to another government agency that does have a need. I would hope that this program would continue for many years into the future, as everyone benefits from it. As is common in today's language, ''it's a win-win situation.''

Should you have further questions regarding anything I have stated, please feel free to call me. Thank you.

Sincerely,

CAPT. DAVID J. ALLEN,
Chief Pilot.

THE MCCANDLESS TOWNSHIP
SANITARY AUTHORITY,
Pittsburgh, PA, January 19, 1998.

Senator ROD GRAMS,
Dirkson Senate Office Building,
Washington, DC.

DEAR SENATOR GRAMS: The McCandless Township Sanitary Authority (M.T.S.A.) is located approximately 15 miles north of the City of Pittsburgh PA. M.T.S.A.'s main function is to collect and treat wastewater for seven surrounding communities, with a total customer base in excess of 35,000 residents. This Authority operates and maintains four treatment facilities, fifteen pumping stations, over 250 miles of sewer lines and employs in excess of 45 employees. Over the last five to six years this Authority has actively participated in the Pa. Federal Surplus Program. Purchases through this program have become a normal part of our budget with a yearly allocation of $20,000.00.

This Authority falls under the guidelines and rules and regulation of the EPA and the Pa. DEP. Over the last couple of years unexpected regulations have been imposed on this Authority which require us to undertake the replacement and enhancement of many of the older sections of the sewer line collection system. Through the Federal Surplus Program we were able to obtain equipment and materials to aid in this system upgrading. Some of the items that were secured were: a transit, material handling bucket, two-10 ton dump trucks, a loader, fork lift, a job site toolbox, a six inch portable pump, many small hand tools, hooks-cables-lifting straps and even personal employee items such as boots and gloves.

Purchases through this program have also benefited our wastewater treatment facilities. We have secured both materials and equipment for use by our maintenance personnel. Some of the pictures that are enclosed show projects that have been completed. Many of these projects were completed with use of stainless steel and/or aluminum which were secured from Federal Surplus for a fraction of their normal cost. This Authority also was able to secure a 5000 gallon tank trailer for transporting sludge from our satellite treatment facilities to our main sludge de-watering facility. This in itself was an excellent purchase; we were able to purchase a $40,000 trailer for $2,500.00. The Authority was also able to supply the treatment facility personnel with numerous safety related items such as self contained breathing apparatus, life vests, rubber * * * boots and even a small life raft.

This Authority has also used the Federal Surplus Program to supplement its fleet of vehicles. We have purchased five mid-sized trucks, one station wagon and numerous trailers; one of which we use for hauling heavy equipment. These vehicles all needed some repairs but Authority personnel were able to fix them up to make them nice additions to the fleet. Pictures and a brief description of each of these vehicles is enclosed. One vehicle of particular interest would be the vehicle used for the Dye Test Program. The Dye Test Program was implemented to meet requirements set by PA. DEP, which requires the Authority to begin testing resident's roof and driveway drains to locate illegal connections to the sanitary sewer. This program required the Authority to hire employees and purchase equipment, so this vehicle and the cost savings associated with it helped to get this program off the ground.

This Authority's involvement with the Pa. Federal Surplus Program has been very beneficial to the Authority as well as to the Authority's rate payers. The McCandless Township Sanitary Authority has not had a rate increase since 1991 and I believe that our involvement in this program as well as other cost saving measures have helped to keep these rate increases down. Finally, I would like to mention that we have had purchase parts or materials from private distributors when repairing some of our Federal Surplus purchases I was surprised to see the amount of ''new stock'' they had on hand. It was my understanding that state agencies have first choice on surplus. I think there would be many government bodies that could put this surplus to good use rather than see a private company making a profit at the tax payers expense.

Sincerely,

DENNIS J. BLAKLEY,
Superintendent.

FEDERAL SURPLUS PURCHASES COST SAVINGS

Item	Qty.	Purchase price	Value	Savings
Filing Cabinet	1	$75.00	$500.00	$425.00
Cement	84	94.92	420.00	325.08
Breathing apparatus	2	200.00	5,600.00	5,400.00
Fuel tanks	8	1,600.00	17,200.00	15,600.00
Press Arbor	1	147.50	1,200.00	1,052.50
¼ Ton trailer	1	300.00	1,500.00	1,200.00
Tongue buckle harness	9	135.00	675.00	540.00
Chevy station wagon	1	800.00	4,000.00	3,200.00
Air conditioner	1	195.00	5,000.00	4,805.00
Flatbed trailers (Fruehauf)	1	750.00	15,000.00	14,250.00
Safety storage cabinet	2	300.00	1,000.00	700.00
Battery for fork lift at P.C	2	150.00	4,000.00	3,850.00
5000 Gal semi trailer	1	2,500.00	30,000.00	27,500.00
1967 66 Dump truck	1	3,500.00	15,000.00	11,500.00
Jack stands	2	70.00	200.00	130.00
10,000 Lb. forklift	1	1,250.00	10,000.00	8,750.00
Lubricating oil	5	250.00	1,005.00	755.00
1988 GMC Flatbed truck	1	2,675.00	15,000.00	12,325.00
6′ Pump	1	375.00	10,000.00	9,625.00
Drafting table	1	100.00	400.00	300.00
1983 Ford pick up truck	1	1,500.00	10,000.00	8,500.00
Air sander	1	125.00	500.00	375.00
Fire cabinet	1	50.00	600.00	550.00
Pipe Bender	1	175.00	1,200.00	1,025.00
Flammable cabinet	1	75.00	600.00	525.00
410 Steel plate	3	33.75	720.00	686.25
Alum round bar 1⅝	1	25.00	185.00	160.00
48⅛ SS Plate	1	45.00	245.00	200.00
412.090 Alum plate	1	80.00	241.00	161.00
412.050 Alum plate	2	60.00	482.00	422.00
6110 Alum bar	1	30.00	238.00	208.00
Grinder	1	60.00	500.00	440.00
Snowblower	1	250.00	1,000.00	750.00
Drill press	1	250.00	1,000.00	750.00
Alum sheets	2	70.00	600.00	530.00
Trailer/dye testing equip	1	375.00	2,000.00	1,625.00
Desk	1	175.00	1,000.00	825.00
Lateral files—5 drawer	2	150.00	1,000.00	850.00
Lateral files—4 drawer	3	180.00	3,000.00	2,820.00
Lateral files—2 drawer	4	100.00	4,000.00	3,900.00
Barrel lift	1	250.00	1,300.00	1,050.00
Sheet barrier-pine creek shed	7	105.00	4,998.00	4,893.00
Drill	1	150.00	425.00	275.00
1984 AMA ¾ Ton cargo trailer	1	750.00	20,000.00	19,250.00
1984/Chev—44 cargo diesel truck	1	5,000.00	15,000.00	10,000.00
Generators 100 KW	1	1,750.00	25,000.00	23,250.00
30 Ft flat bed trailer/miller	1	375.00	3,000.00	2,625.00
Alum I beam	6	150.00	1,800.00	1,650.00
1985/GMC ¾ Ton truck	1	800.00	10,000.00	9,200.00
Port-A-Power	1	125.00	1,000.00	875.00
Alum I beam	5	125.00	1,500.00	1,375.00
Threadlite survey—3 pc set	1	250.00	3,000.00	2,750.00
Totals		29,106.17	253,834.00	224,727.83

PLUMBERS & STEAMFITTERS
LOCAL UNION 52,
Montgomery, AL, January 16, 1998.

Senator ROD GRAMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SIR: We are a Non-profit Organization partially funded by the State of Alabama and the Federal Government. Our Training School is a five year program that prepares our students for working in the following trades: plumbing, pipefitting, welding and air conditioning.

We have obtained supplies and equipment from our Local State and Federal Surplus Division, that has been very beneficial to our program. These purchases have also saved our Program thousands and thousands of dollars. Without these savings, our Program would not have been able to obtain the training equipment we currently possess.

We are aware that there is less property available today because of the downsizing of the Military. However, the combinations of the special interest legislation and major ''giveaways'' such as the humanitarian assistance program, have destroyed most of

the opportunity the States have to receive the type and quality of property available in prior years. Therefore, our Program as well as all other non-profit organizations, suffer the loss.

Sir, please help us in keeping the Federal Donation Program going. If we can be of further assistance, please contact us.

Sincerely,

WAYNE BARFIELD,
Business Agent.

GRANDVIEW POLICE DEPARTMENT,
Grandview, WA, January 20, 1998.

Senator GRAMS,
Dirkson Senate Building,
Washington, DC.

DEAR SENATOR GRAMS: My purpose for writing you this letter is to appraise you of the great benefits that my Agency and City have received from our years of involvement in the Federal Surplus Program. Over the past six years, we have been very active in purchasing surplus equipment from the Government that has improved the quality of our City, and allowed us to expand and improve the operations in City government.

Over the past six years, the City has purchased a bulldozer and dump truck which has allowed us to build a quality Police firearms range to allow our officers to be proficient in the use of their weapons, as well as purchasing pickup trucks, a van and other related equipment to augment our Department, to allow us to better serve our citizens. The majority of furniture, desks, computers, typewriters and other supplies that we use on a day to day basis in the Police department are from the federal surplus program. Without this program, our Department would still be using equipment that was purchased over 20 years ago. Due to our financial situation in our rural area, this program has allowed us to keep our department current with the modern technologies and equipment of the 1990's. I would hate to think where our Department, as well as other departments within the City would be if we had not been a active purchaser of federal surplus property. Citywide, we have purchased thousands of dollars worth of quality equipment on a yearly basis, saving our taxpayers tens of thousands of dollars.

I am a very proud participant of the federal surplus program and believe that it is one of the best cost effective programs that our City has ever been involved in. I also hope that this program will continue to remain in tact in the future and allow us to grow with it. We have the pleasure of having Mr. Doug Coleman who is our State Federal Surplus Property Manager, who does a fantastic job of working with the local Cities in Washington State on the dispersement of surplus property. I would hope that this worthwhile program continues and grows.

Respectfully,

DAVID R. CHARVET,
Chief of Police.

TALENT IRRIGATION DISTRICT,
Talent, OR, January 19, 1998.

JACK GUZMAN,
Acting Manager, Federal Surplus Property,
Salem, OR.

DEAR MR. GUZMAN: The Federal Surplus Property Program is an intricate part of the Talent Irrigation District's (TID) operating target. It has significantly contributed to keeping operating costs down resulting in low water rates for our taxpayers. Here are just a very few specific examples.

	Acquisition cost	Equivalent open market cost
Maintenance Pick-up trucks	$2,000.00	$8–10,000.00
Snow Cat for Mountain/high lake operation	5,000.00	95,000.00
6″ Gate valves	30.00	300.00
Fork Lifts	3,000.00	9,000.00
Structural Steel and Steel plate	Simply could not afford it at market price.	

The list goes on and on. In an era of austere funding and increased property taxes TID has been able to keep water rates one-third less than other Southern Oregon Districts. This is a direct result of utilizing the Federal Surplus Property program.

The only inequity in the system from a donee standpoint, is the ''Host State'' procedures. Not having any military installations, Oregon Donees are a notch below the host state at the donee level. This needs attention.

Further comment would be redundant, suffice it to say overall the program is very beneficial to the taxpayer.

Sincerely,

HOLLIE CANNON,
Manager, Talent Irrigation District.

BIRCH TREE COMMUNITIES, INC.,
Benton, AR, January 19, 1998.

Hon. ROD GRAMS,
Dirksen Senate Office Building,
Washington, DC.

DEAR SENATOR ROD GRAMS: We are a non profit Certified Community Mental Health Center. We are a clinical and rehabilitative program for the chronically mentally ill. The people we work with are the lowest of the low income people in America.

We utilize the products of the Federal Donation Program immensely. We use many of the products they have for sale. A few of those items are beds and mattresses. To be able to purchase only these items saves our organization thousands of dollars each year. The total items we purchase and utilize would be too lengthy to list.

A bed and mattress are very simple items, but can you imagine sleeping without a bed or mattress? The people we work with are classified as homeless and many have not had the comfort of a bed or mattress for some time.

This letter is to definitely continue the Federal Donation Program in its present form.

Sincerely,

PAUL ENDERLIN.

MOUNTAIN FIRE/RESCUE
Mountain Ranch, CA, January 20, 1998.

DEAR SENATOR GRAMS: On behalf of Mountain Fire//Rescue and as the Chief of this Volunteer Fire Company, I'm writing to you in response to the urgent letter I received from the National Asso. of State Agencies for Surplus Property.

Mountain Fire/Rescue came to be 18 years ago and has grown to be the largest fire unit in Calaveras County, CA. We have 94 pieces of fire fighting, rescue, potable water tenders, generators and the parts to keep this equipment running. All but 3 of our rolling stock was obtained through Surplus property program.

We use this equipment in various ways:

Our 5 ton recovery vehicle (wrecker) is used to recover any government agencies property that has become disabled. This is a very poor county and most of the fire departments here don't have the money to hire a large tow truck to recover their equipment. This same unit responded to a call where a farmer was driving his tractor and went over a mountain side, 300 yards. At the site, we pulled out the 400′ + cable and added all of our chain then a 20′ piece of cable on the end of this mess, put a snatch block in a tree by the victim, that was pinned under the tractor, and was able to pick the tractor off of him without hurting him further. Before we got there, attempts to lift the tractor was futile. Every time the rescue team tried to move the tractor it would slid down the mountain side a little. He was air lifted to Modesto and is doing fine now. Reports we received after this incident tell us we saved his life. This was a piece of excess property. Cost $99,000.00, our cost, $1200.00.

In 1994, on a presidential order, this Volunteer Fire Co. was sent to Goma, Zaire, Africa on a C5A from Travis AFB non stop, to produce potable water to the refugees 15 miles outside of Goma. A Report can be found in Vol. 141 Washington, Saturday, August 5, 1995 No. 130, on page E–1690, True American Heroes, Hon. John T. Doolittle of California, Friday, August 4, 1995. This may be useful to you. The equipment was excess property except for the sub-pump and the fire truck. As a US Army trained medic, I took along my medical stuff from MFR. At the pumping site at Lac Kavu, MFR set up pumping operations, chlorinated the water, took care of the military personal at this site provided the heated shower, built off the back of the fire truck and generally blended in to the working order of this base. Two days into the pumping operation, Dr. Thomas Durant, Asst. Medical Director, Boston School of Medicine became my preceptor on site. He was going to rent a car to go out to the refugee camps and start to give shots to these poor people. He was going to pay $100.00 per day for the rental. I told him to take MFRs 1¼ ton 4X4 pickup to do this work at no charge. One day, as the doctor's and RNs were going to the camp, they were stopped by a squad of Zaire soldiers, told to get out of the truck. They were taken into a banana grove, where they thought they were going to be shot. In the grove was a young Zaire soldier that had picked up an explosive device of some kind and blown his hands up. The doctors put him in the truck and all his buddies and took him to a field hospital to be treated. From that time on, no more stopping for road blocks. This one vehicle provided the transportation for those good docs and no one will ever know how many lives they saved. Most of all of the support equipment we took with us was surplus property.

Photos of the African event can be obtained by contacting Lt. Col. Eric Hanson. office # 1–703–607–7864. Confirmation of events there can be confirmed by contacting Dr. Tom Durant, office # 1–617–726–2106, Boston MS.

Another source of information can be found in the August 1995 of the Fire Engineering monthly, poc Bill Manning @ 1–800–962–6484. I also wrote an article for this mag. on how to procure excess property from the government. This might be something you want in your information briefing.

Lastly, we were told we were True American Heroes, Congressman Doolittle has been the only person that has taken it upon himself to make General Jack Nix's order to give us the Category 1 and 2 civilian medals that Gen. Nix wanted us to be awarded happen. This will happen when the congressman has the time to fit us in.

MFR has been involved in many events where we use the equipment that we obtain through the DRMO program. Without this program, we could not exist. I hope this note finds you and your staff in good health and have a Happy New Year.

JOHN D. HORNER,
Fire Chief.

Mr. GRAMS. Mr. President, I am particularly impressed at how effectively the state agencies, GSA and the Defense Re-utilization and Marketing Service have worked together as a team to respond quickly and efficiently

during times of national disasters and emergencies.

Together they have successfully identified and transported sandbags, blankets, cots, tools, trucks and other equipment and supplies to disaster sites.

In 1997, the state agencies and their federal partners faced a number of emergencies—and they delivered.

And I know Minnesotans who suffered through the Midwest floods last year appreciated the relief provided to them during these horrible times. I recently received a letter from Dave Allen, Chief Pilot of the Minnesota State Patrol, and a recipient of surplus property distributed by the Minnesota State Agency for Surplus Property for the last several years.

Mr. Allen wrote:

In February 1997 our unit had the need for a twin engine airplane. One week after I made the request for this type of aircraft, Gene Glaeser called and said he had located an aircraft he thought would meet our needs. It was a Beechcraft Queen Air and it had been used by NASA for several years and was based at Langley Air Force Base in Virginia.

The Beechcraft Queen Air acquired from NASA including the training of six pilots cost the State approximately $35,000 to place it in service. This aircraft had been appraised at $150,000–$175,000 by an aircraft broker . . . Had the surplus property program not been available to us our chances of acquiring this equipment would not have existed.

This is a perfect example of our government obtaining the most from a piece of equipment . . . I would hope that this program would continue for many years in the future, as everyone benefits from it.

The plane filled a very important need during last year's floods by shuttling state and emergency management staff to meetings, where they assessed the damage in our communities and provided guidance to residents.

The state agencies for surplus property should be commended for following the intent of Congress and fulfilling their responsibilities under Public Law 94–519. However, I believe that the volume and value of distributed surplus federal property would increase if the intent of the Congress when it passed the 1976 reforms was more closely followed.

If Congress continues to allow surplus federal property to go abroad, or not make its way through proper channels to eligible recipients, our students, workers, taxpayers, and families will lose. The legislation I am introducing will address these concerns through the following provisions.

First, this legislation would ensure that when distributing surplus federal property, domestic needs are met before we consider foreign interests. It would, however, grant the President the authority to make supplies available for humanitarian relief purposes before going to the states, in the case of emergencies or natural disasters.

Second, my bill would amend the Foreign Assistance Act of 1961 to prohibit the transfer of Government-owned excess property to foreign countries or international organizations for environmental protection activities in foreign countries unless GSA determined that there is no federal or state use for the property.

Fourth, my bill would repeal the authority of the Secretary of Energy to transfer excess DOE research and development facility equipment to educational institutions in the U.S. This current practice by DOE falls outside the Donation Program and denies equal access to all local education agencies, schools and universities.

Third, it would ensure that 8(a) firms participating in the Small Business Administration's Capital Ownership Development Program maintain their eligibility to receive surplus Federal property, but through the normal process involving GSA and the State agencies. States, not bureaucracies, should determine how to meet the needs of our schools and universities.

Finally, this legislation would require GSA to report to Congress on the effectiveness of all statutes relating to the disposal and donation of personal property and recommend any changes that would further improve the Donation Program.

Mr. President, my bill is based on the principle that eligible recipients should be able to maximize their tax dollars through expendable Federal property that meets their needs.

It takes an important step toward stopping publicly-owned property from being shipped abroad and given to other organizations before it is distributed through each State agency for surplus property.

My legislation will fulfill the public's right to know how and where their tax dollars are being spent.

In many ways, it will serve as the second phase of the reforms overwhelmingly passed by Congress in 1976, by preserving the active role of States in the handling and distribution of surplus Federal property. This initiative will benefit thousands of recipients—the Nation's taxpayers.

The best interests of America's taxpayers has always been at the top of my agenda. I look forward to working with my colleagues in the Senate to move this legislation through Congress and give the taxpayers the highest possible return on their investment.

NOMINATION OF MARGARET MORROW

Mr. INHOFE. Mr. President, it is my understanding that tomorrow we are going to be voting on the confirmation of Mrs. Margaret Morrow, Judge Margaret Morrow, who has been nominated for the position of U.S. District Judge for the Central District of California. While I will be opposing her nomination, it is not because of her academic qualifications, nor her credentials, but her philosophy that she has expressed in the past from the bench.

Lately a lot of people have said that the state of our judiciary is somewhat deplorable, and I think it is, although I do not think it is because of the lack of judges being confirmed. I do not think that is the problem. I think it is the philosophy, the dangerous philosophy of elitism which pervades the judicial branch of the Federal Government. This elitism is dangerous and undercuts our belief in courts throughout America. Regrettably, Mrs. Morrow is representative of that elitism.

I am most concerned more than anything else with statements she has made about direct democracy. It seems to be her position that we in America are not able to rule for ourselves, not able to make intelligent decisions, but those decisions would have to be made in some protected ivory tower. She condemns direct democracy. She says, ''Ballot initiatives,'' and this is a quote, ''render ephemeral any real hope of intelligent voting of the majority.''

What she is saying here is that the people are not capable of making these decisions. And, of course, they do have problems out there in the ninth circuit, and the position she is seeking to gain would put her in a position to actually promote some of those things that have been taking place there.

Recently, in Bates v. Jones, a three-judge panel—Reinhardt, Sneed, and Fletcher—affirmed a decision by Judge Wilkins to throw out California's ballot initiative, Proposition 140—that's the term limits for State officials—declaring them unconstitutional.

There have been other efforts such as proposition 209. Last year Judge Henderson struck down the voter-approved referendum ending State affirmative action programs, and fortunately for the 20 million California voters Henderson's original ruling has been struck down, restoring their faith in the voting process.

Proposition 187. Judge Richard Pfaelzer declared a State law denying benefits to illegal aliens unconstitutional because it conflicted with the 1996 welfare reform law. That was overturned.

Proposition 208. Judge Carlton has recently blocked enforcement of the popular initiative that has imposed limits on campaign contributions at the State level.

During her confirmation, Mrs. Morrow claimed never to have publicly opposed a ballot initiative in the past decade with one exception and that was proposition 209. In fact, in 1988, Morrow wrote an article urging lawyers to support or oppose various ballot initiatives. She denounces three others later that year and spoke publicly against two others. So I think it is fairly evident that Margaret Morrow, in addition to these problems, has a problem with the truth. And I certainly think if there is anything we do not need in our judiciary it is someone of that philosophy.

I like the way Senator ASHCROFT said it the other day. He said, ''Morrow's writings make it clear that she believes people cannot be trusted with

the fundamental powers of self-government.''

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, February 9, 1998, the Federal debt stood at $5,468,966,737,716.36 (Five trillion, four hundred sixty-eight billion, nine hundred sixty-six million, seven hundred thirty-seven thousand, seven hundred sixteen dollars and thirty-six cents).

Five years ago, February 9, 1993, the Federal debt stood at $4,173,624,000,000 (Four trillion, one hundred seventy-three billion, six hundred twenty-four million).

Ten years ago, February 9, 1988, the Federal debt stood at $2,545,424,000,000 (Two trillion, five hundred forty-five billion, four hundred twenty-four million).

Fifteen years ago, February 9, 1983, the Federal debt stood at $1,192,294,000,000 (One trillion, one hundred ninety-two billion, two hundred ninety-four million).

Twenty-five years ago, February 9, 1973, the Federal debt stood at $448,265,000,000 (Four hundred forty-eight billion, two hundred sixty-five million) which reflects a debt increase of more than $5 trillion—$5,020,701,737,716.36 (Five trillion, twenty billion, seven hundred one million, seven hundred thirty-seven thousand, seven hundred sixteen dollars and thirty-six cents) during the past 25 years.

STATEMENT OF SENATOR JOHN WARNER ON THE NATO EXPANSION AMENDMENT

Mr. THURMOND. Mr. President, Senators WARNER and LEVIN are absent from the Senate this week so that they can accompany Secretary of Defense Cohen on his trip to the Persian Gulf. They are representing the Armed Services Committee on this important trip, and will report their findings to the Committee and to the Senate leadership.

During his absence, Senator WARNER has requested that I insert the following statement in the RECORD on his behalf. I am happy to do this for my colleague. I ask unanimous consent that Senator WARNER's statement be printed in the RECORD.

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

STATEMENT OF SENATOR WARNER—NATO EXPANSION AMENDMENT

This past weekend I was privileged to attend the annual Wehrkunde Conference in Munich, Germany. A main topic of discussion at this NATO security conference was the issue of NATO expansion. I have consistently expressed my sincere concerns with this policy.

NATO has been the most valuable and successful military alliance in the history of this Nation. It has worked far beyond the expectations of its founders—keeping peace in Europe for 50 years, and securing victory in the cold war. President Truman cited NATO and the Marshall Plan as the greatest achievements of his presidency. I am concerned that we not do anything to undermine the effectiveness of this great alliance.

Recently, the Senate Armed Services Committee received testimony from former Secretary of Defense James Schlesinger and former Secretary of State Henry Kissinger on the issue of NATO expansion. Although both said that the Senate should provide its advice and consent for the first round of expansion, they expressed a number of concerns. Secretary Schlesinger called this first round of NATO expansion ''a bad idea whose time has come.'' And Secretary Kissinger warned that we are in danger of transforming NATO into a ''U.N.-type instrument'' if expansion is not handled properly.

It seems clear that this first round of expansion will go forward as planned. My concern is that we build in a mechanism to guard against precipitous, future expansion rounds.

During the Wehrkunde Conference, I had the opportunity to discuss an idea I have been contemplating to establish a moratorium—of 3 to 5 years—on new members being invited to join the NATO alliance, following the likely addition of Poland, Hungary and the Czech Republic in 1999. In my view, such a moratorium is crucial to allow NATO to begin the process of integrating the three new nations, and more fully assess the impact of this integration before proceeding with further expansion rounds.

The purpose of this statement today is to promptly inform my colleagues of my discussions in Germany and my intent, upon returning from the trip with Secretary Cohen, to submit to the Senate for consideration an amendment which will establish a 3-year moratorium on future NATO expansions. This amendment will be drafted as a condition to the resolution of ratification, and will effectively prevent the United States from agreeing to any further expansion of the NATO alliance for a period of three years.

I will make a full set of remarks on this amendment and seek co-sponsors following my return. I look forward to engaging in an extended debate on this issue—and other aspects of NATO expansion—in the weeks to come.

I thank Senator THURMOND for assisting me in making this statement a part of the RECORD during my absence on official business as part of Secretary Cohen's delegation to the Persian Gulf and Russia.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the Committee on Armed Services.

(The nominations received today are printed at the end of the Senate proceedings.)

1998 ANNUAL REPORT OF THE COUNCIL OF ECONOMIC ADVISERS—MESSAGE FROM THE PRESIDENT—PM 96

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Joint Economic Committee.

To the Congress of the United States:

For the last 5 years this Administration has worked to strengthen our Nation for the 21st century, expanding opportunity for all Americans, demanding responsibility from all Americans, and bringing us together as a community of all Americans. Building a strong economy is the cornerstone of our efforts to meet these challenges.

When I first took office in 1993, the Federal budget deficit was out of control, unemployment was unacceptably high, and wages were stagnant. To reverse this course, we took a new approach, putting in place a bold economic strategy designed to bring down the deficit and give America's workers the tools and training they need to help them thrive in our changing economy.

Our strategy has succeeded: the economy has created more than 14 million new jobs, unemployment is at its lowest level in 24 years, and core inflation is at its lowest level in 30 years. Economic growth in 1997 was the strongest in almost a decade, and the benefits of that growth are being shared by all Americans: poverty is dropping and median family income has gone up nearly $2,200 since 1993. We also saw the biggest drop in welfare rolls in history. Many challenges remain, but Americans are enjoying the fruits of an economy that is steady and strong.

THE ADMINISTRATION'S ECONOMIC STRATEGY

From the beginning, this Administration's economic strategy has had three crucial elements: reducing the deficit, investing in people, and opening markets abroad.

Deficit reduction. In 1993 this Administration's deficit reduction plan set the Nation on a course of fiscal responsibility, while making critical investments in the skills and well-being of our people. When I took office, the deficit was $290 billion and projected to go much higher. This year the deficit will fall to just $10 billion and possibly lower still. That is a reduction of more than 95 percent, leaving the deficit today smaller in relation to the size of the economy than it has been since 1969.

And this year I have proposed a budget that will eliminate the deficit entirely, achieving the first balanced budget in 30 years.

Beyond that, it is projected that the budget will show a sizable surplus in the years to come. I propose that we reserve 100 percent of the surplus until we have taken the necessary measures to strengthen the Social Security system for the 21st century. I am committed to addressing Social Security first, to ensure that all Americans are confident that it will be there when they need it.

Investing in our people. In the new economy, the most precious resource this Nation has is the skills and ingenuity of working Americans. Investing in the education and health of our people will help all Americans reap the rewards of a growing, changing economy. Those who are better educated, with the flexibility and the skills they need to move from one job to another and seize new opportunities, will succeed in the new economy; those who do not will fall behind.

That is why the historic balanced budget agreement I signed into law in 1997 included the largest increase in aid to education in 30 years, and the biggest increase to help people go to college since the G.I. Bill was passed 50 years ago. The agreement provided funds to ensure that we stay on track to help 1 million disadvantaged children prepare for success in school. It provided funding for the America Reads Challenge, with the goal of mobilizing a million volunteers to promote literacy, and it made new investments in our schools themselves, to help connect every classroom and library in this country to the Internet by the year 2000.

The balanced budget agreement created the HOPE scholarship program, to make completion of the 13th and 14th years of formal education as widespread as a high school diploma is today. It offered other tuition tax credits for college and skills training. It created a new Individual Retirement Account that allows tax-free withdrawals to pay for education. It provided the biggest increase in Pell grants in two decades. Finally, it provided more funds so that aid to dislocated workers is more than double what it was in 1993, to help these workers get the skills they need to remain productive in a changing economy.

But we must do more to guarantee all Americans the quality education they need to succeed. That is why I have proposed a new initiative to improve the quality of education in our public schools—through high national standards and national tests, more charter schools to stimulate competition, greater accountability, higher quality teaching, smaller class sizes, and more classrooms.

To strengthen our Nation we must also strengthen our families. The Family and Medical Leave Act, which I signed into law in 1993, ensures that millions of people no longer have to choose between being good parents and being good workers. The Health Care Portability and Accountability Act, enacted in 1996, ensures that workers can keep their health insurance if they change jobs or suffer a family emergency. We have also increased the minimum wage, expanded the earned income tax credit, and provided for a new $500-per-child tax credit for working families. To continue making progress toward strengthening families, the balanced budget agreement allocated $24 billion to provide health insurance to up to 5 million uninsured children—the largest Federal investment in children's health care since Medicaid was created in 1965.

Opening markets and expanding exports. To create more good jobs and increase wages, we must open markets abroad and expand U.S. exports. Trade has been key to the strength of this economic expansion—about a third of our economic growth in recent years has come from selling American goods and services overseas. The Information Technology Agreement signed in 1997 lowers tariff and other barriers to 90 percent of world trade in information technology services.

To continue opening new markets, creating new jobs, and increasing our prosperity, it is critically important to renew fast-track negotiating authority. This authority, which every President of either party has had for the last 20 years, enables the President to negotiate trade agreements and submit them to the Congress for an up-or-down vote, without modification. Renewing this traditional trade authority is essential to American's ability to shape the global economy of the 21st century.

SEIZING THE BENEFITS OF A GROWING, CHANGING ECONOMY

As we approach the 21st century the American economy is sound and strong, but challenges remain. We know that information and technology and global commerce are rapidly transforming the economy, offering new opportunities but also posing new challenges. Our goal must be to ensure that all Americans are equipped with the skills to succeed in this growing, changing economy.

Our economic strategy—balancing the budget, investing in our people, opening markets—has set this Nation on the right course to meet this goal. This strategy will support and contribute to America's strength in the new economic era, removing barriers to our economy's potential and providing our people with the skills, the flexibility, and the security to succeed. We must continue to maintain the fiscal discipline that is balancing the budget, to invest in our people and their skills, and to lead the world to greater prosperity in the 21st century.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *February 10, 1998.*

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. CHAFEE, from the Committee on Environment and Public Works:

Sallyanne Harper, of Virginia, to be Chief Financial Officer, Environmental Protection Agency.

Donald J. Barry, of Wisconsin, to be Assistant Secretary for Fish and Wildlife.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. ROTH, from the Committee on Finance:

Michael B. Thornton, of Virginia, to be a Judge of the United States Tax Court for a term of fifteen years after he takes office.

Donald C. Lubick, of Maryland, to be an Assistant Secretary of the Treasury.

L. Paige Marvel, of Maryland, to be a Judge of the United States Tax Court for a term of fifteen years after she takes office.

Richard W. Fisher, of Texas, to be Deputy United States Trade Representative, with the rank of Ambassador.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. BREAUX:

S. 1620. A bill to suspend temporarily the duty on certain textile machinery; to the Committee on Finance.

By Mr. GRAMS:

S. 1621. A bill to provide that certain Federal property shall be made available to States for State use before being made available to other entities, and for other purposes; to the Committee on Governmental Affairs.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. BROWNBACK (for himself and Mr. GRASSLEY):

S. Con. Res. 73. A concurrent resolution expressing the sense of Congress that the European Union is unfairly restricting the importation of United States agriculture products and the elimination of such restrictions should be a top priority in trade negotiations with the European Union; to the Committee on Finance.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. BREAUX:

S. 1620. A bill to suspend temporarily the duty on certain textile machinery; to the Committee on Finance.

TEXTILE MACHINERY DUTY SUSPENSION LEGISLATION

Mr. BREAUX. Mr. President, I rise today to introduce legislation that would suspend the current duty on ink-jet textile printing machinery through December 31, 1999. I would like to make some brief comments about this bill.

It is my understanding that this machinery is not made in the United States, so there are no domestic producers that are likely to be harmed by this bill. Furthermore, the revenues currently generated by the duty on these machines are under $500,000 per annum, making it a de minimis amount under budget rules. This being the case, Mr. President, I think my colleagues will agree that this bill is not apt to have any detrimental effects on domestic industry or federal revenue.

In fact, I believe such a measure could represent a potential economic benefit for the textile industry. These ink-jet printing machines are used to print patterns and designs on fabrics, and they are indispensable for a large part of our domestic textile industry. They are also extremely costly. It stands to reason that every little bit we can do for our domestic textile producers to reduce their costs of production help them to be competitive in this increasingly global economy.

Mr. President, this is a good bill with no substantial costs involved, and I want to encourage my colleagues to support it.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 1620

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

SECTION 1. TEXTILE MACHINERY.

(a) IN GENERAL.—Subchapter II of chapter 99 of the Harmonized Tariff Schedule of the United States is amended by inserting in numerical sequence the following new heading:

"	9902.84.43	Ink-jet textile printing machinery (provided for in subheading 8443.51.10)	Free	No change	No change	On or before 12/31/99	".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to goods entered, or withdraw from warehouse for consumption, on or after the date that is 15 days after the date of enactment of this Act.

(c) RETROACTIVE APPLICATION.—Notwithstanding section 514 of the Tariff Act of 1930 or any other provision of law, upon proper request filed with the Customs Service not later than 180 days after the date of enactment of this Act, any entry, or withdrawal from warehouse for consumption, of goods described in subheading 9902.81.10 of the Harmonized Tariff Schedule of the United States (as added by subsection (a)) that—

(1) was made after December 31, 1997, and before the date that is 15 days after the date of enactment of this Act; and

(2) with respect to which there would have been no duty if the amendment made by subsection (a) applied to such entry or withdrawal,

shall be liquidated or reliquidated as if such amendment applied to such entry or withdrawal.

ADDITIONAL COSPONSORS

S. 22

At the request of Mr. MOYNIHAN, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of S. 22, a bill to establish a bipartisan national commission to address the year 2000 computer problem.

S. 153

At the request of Mr. MOYNIHAN, the name of the Senator from Illinois (Mr. DURBIN) was added as a cosponsor of S. 153, a bill to amend the Age Discrimination in Employment Act of 1967 to allow institutions of higher education to offer faculty members who are serving under an arrangement providing for unlimited tenure, benefits on voluntary retirement that are reduced or eliminated on the basis of age, and for other purposes.

S. 442

At the request of Mr. LEAHY, his name was added as a cosponsor of S. 442, a bill to establish a national policy against State and local government interference with interstate commerce on the Internet or interactive computer services, and to exercise Congressional jurisdiction over interstate commerce by establishing a moratorium on the imposition of exactions that would interfere with the free flow of commerce via the Internet, and for other purposes.

S. 512

At the request of Mr. KYL, the names of the Senator from Alaska (Mr. MURKOWSKI) and the Senator from Virginia (Mr. ROBB) were added as cosponsors of S. 512, a bill to amend chapter 47 of title 18, United States Code, relating to identity fraud, and for other purposes.

S. 1096

At the request of Mr. KERREY, the name of the Senator from Georgia (Mr. CLELAND) was added as a cosponsor of S. 1096, a bill to restructure the Internal Revenue Service, and for other purposes.

S. 1194

At the request of Mr. KYL, the name of the Senator from Alaska (Mr. STEVENS) was added as a cosponsor of S. 1194, a bill to amend title XVIII of the Social Security Act to clarify the right of medicare beneficiaries to enter into private contracts with physicians and other health care professionals for the provision of health services for which no payment is sought under the medicare program.

S. 1256

At the request of Mr. HATCH, the name of the Senator from Arizona (Mr. KYL) was added as a cosponsor of S. 1256, a bill to simplify and expedite access to the Federal courts for injured parties whose rights and privileges, secured by the United States Constitution, have been deprived by final actions of Federal agencies, or other government officials, or entities acting under color of State law; to prevent Federal courts from abstaining from exercising Federal jurisdiction in actions in which no State law claim is alleged; to permit certification of unsettled State law questions that are essential to Federal claims arising under the Constitution; to allow for efficient adjudication of constitutional claims brought by injured parties in the United States district courts and the Court of Federal Claims; to clarify when government action is sufficiently final to ripen certain Federal claims arising under the Constitution; and for other purposes.

S. 1287

At the request of Mr. JEFFORDS, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Maine (Ms. COLLINS) were added as cosponsors of S. 1287, a bill to assist in the conservation of Asian elephants by supporting and providing financial resources for the conservation programs of nations within the range of Asian elephants and projects of persons with demonstrated expertise in the conservation of Asian elephants.

S. 1464

At the request of Mr. HATCH, the names of the Senator from Kentucky (Mr. FORD) and the Senator from Illinois (Ms. MOSELEY-BRAUN) were added as cosponsors of S. 1464, a bill to amend the Internal Revenue Code of 1986 to permanently extend the research credit, and for other purposes.

S. 1580

At the request of Mr. SHELBY, the names of the Senator from Maine (Ms. SNOWE) and the Senator from Hawaii (Mr. INOUYE) were added as cosponsors of S. 1580, a bill to amend the Balanced Budget Act of 1997 to place an 18-month moratorium on the prohibition of payment under the medicare program for home health services consisting of venipuncture solely for the purpose of obtaining a blood sample, and to require the Secretary of Health and Human Services to study potential fraud and abuse under such program with respect to such services.

S. 1599

At the request of Mr. BOND, the name of the Senator from Indiana (Mr. COATS) was added as a cosponsor of S. 1599, a bill to amend title 18, United States Code, to prohibit the use of somatic cell nuclear transfer technology for purposes of human cloning.

S. 1601

At the request of Mr. BOND, the name of the Senator from Indiana (Mr.

COATS) was added as a cosponsor of S. 1601, a bill to amend title 18, United States Code, to prohibit the use of somatic cell nuclear transfer technology for purposes of human cloning.

S. 1605

At the request of Mr. LEAHY, the name of the Senator from New Jersey (Mr. LAUTENBERG) was added as a cosponsor of S. 1605, a bill to establish a matching grant program to help States, units of local government, and Indian tribes to purchase armor vests for use by law enforcement officers.

SENATE CONCURRENT RESOLUTION 65

At the request of Ms. SNOWE, the name of the Senator from Rhode Island (Mr. REED) was added as a cosponsor of Senate Concurrent Resolution 65, A concurrent resolution calling for a United States effort to end restriction on the freedoms and human rights of the enclaved people in the occupied area of Cyprus.

SENATE CONCURRENT RESOLUTION 71

At the request of Mr. LOTT, the name of the Senator from New York (Mr. D'AMATO) was added as a cosponsor of Senate Concurrent Resolution 71, A concurrent resolution condemning Iraq's threat to international peace and security.

At the request of Mr. GORTON, his name was withdrawn as a cosponsor of Senate Concurrent Resolution 71, supra.

At the request of Mr. HOLLINGS, his name was withdrawn as a cosponsor of Senate Concurrent Resolution 71, supra.

SENATE RESOLUTION 148

At the request of Mr. DOMENICI, the names of the Senator from Idaho (Mr. KEMPTHORNE) and the Senator from Maine (Ms. SNOWE) were added as cosponsors of Senate Resolution 148, A resolution designating 1998 as the ''Onate Cuartocentenario,'' the 400th anniversary commemoration of the first permanent Spanish settlement in New Mexico.

SENATE RESOLUTION 155

At the request of Mr. LOTT, the name of the Senator from Arkansas (Mr. BUMPERS) was added as a cosponsor of Senate Resolution 155, A resolution designating April 6 of each year as ''National Tartan Day'' to recognize the outstanding achievements and contributions made by Scottish Americans to the United States.

SENATE RESOLUTION 170

At the request of Mr. SPECTER, the name of the Senator from Maine (Ms. COLLINS) was added as a cosponsor of Senate Resolution 170, A resolution expressing the sense of the Senate that the Federal investment in biomedical research should be increased by $2,000,000,000 in fiscal year 1999.

SENATE RESOLUTION 171

At the request of Mr. SPECTER, the names of the Senator from Louisiana (Ms. LANDRIEU), the Senator from Iowa (Mr. GRASSLEY), the Senator from North Carolina (Mr. FAIRCLOTH), the Senator from Delaware (Mr. ROTH), the Senator from Connecticut (Mr. LIEBERMAN), the Senator from Alaska (Mr. STEVENS), and the Senator from South Carolina (Mr. HOLLINGS) were added as cosponsors of Senate Resolution 171, A resolution designating March 25, 1998, as ''Greek Independence Day: A National Day of Celebration of Greek and American Democracy.''

SENATE CONCURRENT RESOLUTION 73—RELATIVE TO THE EUROPEAN UNION

Mr. BROWNBACK (for himself and Mr. GRASSLEY) submitted the following concurrent resolution; which was referred to the Committee on Finance:

S. CON. RES. 73

Whereas on a level playing field, United States producers are the most competitive suppliers of agricultural products in the world;

Whereas increased United States agricultural exports are critical to the future of the farm, rural, and overall economy of the United States;

Whereas the opportunities for increased agricultural exports are undermined by the unfair subsidies provided by trading partners of the United States, and by various tariff and nontariff trade barriers imposed on highly-competitive United States agricultural products;

Whereas United States agricultural exports reached a record-level $60,000,000,000 in 1996 compared to a total United States merchandise trade deficit of $170,000,000,000;

Whereas the United States is currently engaged in a number of outstanding trade disputes with the European Union regarding agriculture matters and the disputes involve the most intractable issues between the United States and the European Union;

Whereas the outstanding trade disputes include the failure to finalize a veterinary equivalency program, which jeopardizes an estimated $3,000,000,000 in trade in livestock products between the United States and the European Union;

Whereas the World Trade Organization has ruled that the European Union must allow the importation of beef with growth hormones produced in the United States;

Whereas the European Union has yet to fulfill its commitment under the Agreement on Application of Sanitary and Phytosanitary Measures reached as part of the General Agreement on Tariffs and Trade;

Whereas the European Union has promulgated regulations regarding the use of ''specified risk materials'' for livestock products which have a disputed scientific basis and which serve to impede the importation of United States livestock products despite the fact that no cases of bovine spongisorm encephalopathy (mad cow disease) have been documented in the United States;

Whereas the European Union has hindered trade in products grown with the benefit of biogenetics based on claims that also have a disputed scientific basis;

Whereas these barriers to biogenetic trade could have a profound negative impact on agricultural trade in the long run; and

Whereas there are also continuing disputes regarding European Union subsidies for dairy, wheat gluten, and canned fruits: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the European Union unfairly restricts the importation of United States agricultural products;

(2) the restrictions imposed on United States agricultural exports to the European Union are the most vexing problems facing United States exporters in Europe;

(3) the elimination of restrictions imposed on United States agricultural exports should be a top priority of any current or future trade negotiations between the United States and the European Union; and

(4) the United States Trade Representative should not engage in any trade negotiations with the European Union to achieve sectoral liberalization unless an initiative to achieve the elimination of unfair restrictions on United States agricultural products is advanced on the same time frame as the sectoral negotiations.

Mr. BROWNBACK. Mr. President, many of the lessons that we have learned regarding agricultural trade strategy, to change the subject to one that we have been not necessary been talking recently, have taken a lot of time for us to learn. I used to work in this field, the trade field. I worked for the Secretary of Agriculture, and I have been around some of these negotiations.

It took the United States forty years of multilateral negotiations, but in the Uruguay Round, we finally got it right: in order to achieve meaningful agricultural market liberalization, we must link progress in agricultural liberalization to progress in other sectors critical to our trading partners.

Throughout the world, agriculture is one of the most highly protected industries. It is also represents one of the strongest comparative advantages that the United States enjoys. Additionally, the U.S. agriculture industry is a critical building block of this economy, employing 22.7 million people. That is about 17 percent of the total domestic labor force. Agriculture also contributed $997.7 billion dollars to our economy in 1996. In other words, 13.1 percent of our country's GDP is agriculture-based. Furthermore, a large portion of what we produce in the U.S.—roughly 40 percent—is consumed overseas.

Because agriculture is so critical to the U.S. economy and so reliant on exports, I find it exceedingly troubling, along with Senator GRASSLEY, to hear the recent news reports that the office of the United States Trade Representative plans to pursue a trans-Atlantic trade pact that would not address agricultural issues. The barriers to U.S. agricultural exports represent some of the most significant market access problems that the United States currently faces in Europe. Furthermore, the U.S. is currently engaged in a number of outstanding trade disputes with the EU regarding agricultural matters, and these are among the most intractable issues between our two continents. It is incomprehensible to me that the U.S. would consider entering negotiations that would overlook these crucial issues.

Today I am joining with Senator GRASSLEY in submitting a Senate Concurrent Resolution, which expresses

the sense of the Congress that the EU is unfairly restricting the importation of United States agriculture products and that the elimination of such restrictions should be a top priority in trade negotiations with the European Union.

Mr. President, quite simply, it would be foolhardy for the United States to proceed with negotiations that avoid some of the issues that it has been seeking most desperately to advance. Without the leverage that is gained by simultaneously negotiating access in areas where the U.S. seeks greater access with the areas in which the EU would like greater access, the U.S. is positioning itself to hand over the keys to the bank. While leaving out the touchy issues in agriculture may allow the U.S. to quickly conclude an agreement, it is a strategy that would undermine the long-run economic interests of this country.

I hope my colleagues will join with me in sending a message to this Administration that the agriculture industry is not willing to be sold out for the sake of an chance to culminate a quick trade deal. We will not support any new trade negotiations unless agriculture issues are advanced on the same time frame as issues involving other sectors of the economy.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, February 10, 1998, at 10 a.m. in open session, to receive testimony on the defense authorization request for fiscal year 1999 and the future years defense plan.

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

COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet at on Tuesday, February 10, 1998, at 9:30 a.m. on indecency on the Internet.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. ROBERTS. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a business meeting to consider the nominations of Donald J. Barry, to be Assistant Secretary for Fish and Wildlife, Department of Interior, and Sallyanne Harper, to be Chief Financial Officer, Environmental Protection Agency, Tuesday, February 10, immediately following the 11 a.m. cloture vote, the President's Room, S–216, the Capitol.

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

COMMITTEE ON FINANCE

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on Finance be permitted to meet Tuesday, February 10, 1998, beginning at 10 a.m. in room SH–215, to conduct a markup.

The PRESIDING OFFICER. Without objection it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Relations be authorized to meet during the session of the Senate on Tuesday, February 10, 1998, at 10 a.m. to hold a hearing.

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

COMMITTEE ON THE JUDICIARY

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, February 10, 1998, at 10 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on ''The Tobacco Settlement.''

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

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be authorized to meet for a hearing on Tobacco Settlement IV during the session of the Senate on Tuesday, February 10, 1998, at 10 a.m.

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

SPECIAL COMMITTEE ON AGING

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Special Committee on Aging be permitted to meet on February 10, 1998, at 10 a.m. for the purpose of conducting a hearing.

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

SUBCOMMITTEE ON FINANCIAL SERVICES AND TECHNOLOGY

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Subcommittee on Financial Services and Technology of the Committee on Banking, Housing, and Urban Affairs be authorized to meet during the session of the Senate on Tuesday, February 10, 1998, to conduct a hearing into the FDIC's year 2000 preparedness.

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

SUBCOMMITTEE ON INVESTIGATIONS

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Tuesday, February 10, 1998, at 9:30 a.m., in SD–342, to hold a hearing on Fraud on the Internet: Scams Affecting Consumers.''

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

SUBCOMMITTEE ON SCIENCE, TECHNOLOGY AND SPACE

Mr. ROBERTS. Mr. President, I ask unanimous consent that the Subcommittee on Science, Technology and Space be authorized to meet on Tuesday, February 10, 1998, at 2:30 p.m. on computer security.

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

ADDITIONAL STATEMENTS

ISRAELI AID

● Mr. BOND. Mr. President, I welcome the initiative on the part of Mr. Netanyahu and the Israeli government to significantly reduce the amount of aid we annually send to Israel. Our countries have a long-standing relationship which has been witness to the maturing of a fledgling democracy in an area intolerant of its presence. In a very real sense, we have supported Israel's right to exist as a nation and we have supported its economic development.

I note that Mr. Netanyahu's plan which calls for the complete elimination of $1.2 Billion in economic aid, is testament to the successful implementation of our past years' investment. The funds we provided have not been squandered. The Israeli economy is strong and growing. Mr. Netanyahu is doing the right thing at the right time. We do not need to continue the current level of these funds into the future. However, Mr. President, we must also take care not to undermine the economic stability of this democracy and we must continue to insure its military strength. For those reasons, I support a gradual phasing out of the $1.2 Billion of economic aid and the gradual increase to its military aid by $600 Million. Israel has been and remains a strategic ally, both in the region and as an important partner in developing technologically advanced civilian and defense systems. We must do all in our power to not just merely maintain that relationship, but strengthen it. I firmly believe that a strong Israel is the cornerstone for a stable and peaceful Middle East region.

The cost of defending itself has been a tremendous burden on the Israeli economy. The threats to its borders and its people are very real. The Israelis have looked to the United States not only for funding assistance but for the hardware with which to defend itself. I note with pride that the new centerpiece of the Israeli Air Force is none other than the Boeing McDonnell Douglas F–15 I, known as the Stirke Eagle here, and as the Thunder, in Israel. This is the most advanced operational tactical aircraft in the world today. It will increase Israel's security and in turn promote regional stability. This is very much in our interest.

Mr. Netanyahu's proposal will solidify our military partnership and bring an end to Israel's status as an economic dependent. Mr. President, as Israel strengthens its economic house, we must remain committed to preserving that house so that it might remain as a democratic beacon in the region. A strong Israel is good for America.●

INTERNET TAX FREEDOM ACT

• Mr. LEAHY. Mr. President, I rise today to add my support to promoting electronic commerce and keeping it free from new Federal, State or local taxes. I am pleased to cosponsor the Internet Tax Freedom Act, S. 442, as it was reported out of the Senate Commerce Committee.

In ways that are becoming increasingly apparent, the Internet is changing the way we do business. More than 30 million people around the world surf the Net. And more and more of these users turn to the World Wide Web and Internet to place orders with suppliers, sell products and services to customers, communicate with clients and market products.

This Internet market is growing at a tremendous pace. Over the past two years, sales generated through the Web grew over 5,000%. And according to one Internet research firm, Net merchants are expected to sell $6.6 billion worth of goods by the year 2000.

The growth of electronic commerce is everywhere, including my home state of Vermont. On my home page on the Web, I have put together a section called ''Cyber Selling In Vermont,'' which is a step-by-step resource guide for exploring on line commerce and other business uses of the Internet. It includes links to businesses in Vermont that are already cyber selling. As of today, this site includes links to Web sites of more than 100 Vermont businesses that are doing business on the Internet, ranging from the Quill Bookstore in Manchester Center to Al's Snowmobile Parts Warehouse in Newport.

As electronic commerce continues to grow, I am hopeful that we in Congress will be leaders in developing tax policy to nurture this exciting new market. That is why I have closely followed the Internet Tax Freedom Act since Senator WYDEN introduced it last summer. I want to commend the senior Senator from Oregon for his leadership on cyber tax policy.

During my time in the Senate, I always tried to protect the rights of Vermont state and local legislators to craft their laws free from interference from Washington. Thus, the broad, open-ended moratorium on state and local taxes relating to the Internet in the original bill gave me pause. I certainly agreed with the goal of no new state and local taxation of online commerce, but the means were questionable.

I believe those questions have been fully answered by the changes made to this legislation during its consideration in the Senate Commerce Committee. I want to commend Senators MCCAIN, WYDEN, BURNS and KERRY for crafting a substitute bill that protects the free flow of online commerce while accommodating the rights of state and local governments. In particular, I am pleased that the revised legislation adds an end date of January 1, 2004 to the moratorium and clarifies the list of state and local taxes that are grand fathered under it. The addition of state tax organizations to the Presidential task force to develop long-term Internet tax policy also makes good sense.

Mr. President, I am proud to cosponsor the Internet Tax Freedom Act to foster the growth of online commerce and will work hard for its swift passage into law.•

HONORING THE DEEDS OF MR. FRANK ''SKIP'' PETTIS III

• Mr. CHAFEE. Mr. President, I ask you today to join me in honoring a native hero of Rhode Island, who, by his courage and unselfish interest in the well-being of someone he did not know, saved a man from nearly certain death.

When Frank ''Skip'' Pettis III set off to work on January 27, he had no idea that he would return home a hero. Pettis, who owns Pettis Marina near Pawtuxet Cove in Warwick, RI, was working when he overheard radio conversations between the Coast Guard and tugboat operators about a kayaker who was declared missing in Narragansett Bay.

Pettis jumped into one of the marina's 24-foot salvage boats and raced to the scene. There, he found Steven McGarry of Warwick, without a kayak or lifejacket, floating in the waves and clinging to a pair of empty bleach bottles, being used as traps. Mr. Pettis grabbed the half conscious and hypothermia-sticken McGarry but, unaided, was unable to lift him into the boat.

Fighting the cold and wet of the waves and the weight of McGarry's body, Pettis waited for what must have seemed an eternity until firefighters arrived to help fish him out of the water. As Pettis put it later, ''All I could do was envision him just sliding out of my hands . . . I didn't want that vision stuck in my head for the rest of my life.'' McGarry, whose temperature had dropped to 82 degrees, was rushed to Rhode Island Hospital, where he was listed in critical condition. By the next day, thanks to Pettis' heroism, McGarry had sufficiently recovered to give thanks to his rescuer.

On January 28, just a day after Pettis hoisted McGarry's nearly frozen body from the icy water, Mayor Lincoln Chafee declared ''Skip Pettis Day'' in Warwick to honor our local hero.

Mr. President, Skip Pettis is a model for people across America. Hearing of a stranger in need, he joined in a desperate search for a man who, for all purposes, was lost at sea. Finding him, Pettis persevered alone in preventing McGarry's death until help arrived. Mr. Pettis' experience exemplifies a form of altruism that can seem rare today, and, as such, I believe his heroic actions should be honored.•

TRIBUTE TO ISIDORE SCHWARTZ

• Mr. MOYNIHAN. Mr. President, I rise to pay tribute to Isidore Schwartz, a Polish immigrant to the United States and World War II veteran who is reported to have been the first man to repair mechanical watches in combat during his four years of dedicated service to the United States Army.

Mr. Schwartz learned the trade of watch repair through a Work Progress Administration program during the Depression, a skill which he later used to assist the United States military. Upon induction into the army, Isidore Schwartz, wishing to use all of his talents to help the war effort, brought the necessary instruments for repairing mechanical watches. Originally, he merely intended to perform favors for the men with whom he served. His ability to repair military mechanical watches in combat developed into a skill recognized and sought after by the Army.

Mr. Schwartz's talent was discovered during an inspection tour of an infantry company. The Commanding Officer of the Company asked Mr. Schwartz's Commanding Officer if he had a watchmaker. The Commanding Officer called Mr. Schwartz over and presented him with several malfunctioning military watches. Working out of a modified bus, Isidore Schwartz successfully repaired the watches. Word spread to the War Department that Private Schwartz had the ability to perform the important function of military watch repair in combat. Had it not been for Mr. Schwartz's initiative during his service, these military watches would have been shipped for repair under hazardous war time conditions.

Isidore Schwartz's contribution to the war effort was not limited to the repair of mechanical watches in combat as he used his ingenuity to perform similar important tasks. One accomplishment was the repair of a lieutenant's eyeglasses which were severely bent out of shape. In the process of straightening the frame, hinges broke on both sides making the glasses unwearable. Despite lacking the necessary parts to perform the repair, Mr. Schwartz, using a small brass rod and a jeweler's file created the necessary hinges thus successfully completing the repair. It is this creativity and dedication to helping fellow soldiers and the United States Army which makes the actions of Private Schwartz deserving of recognition and commendation.

Through our recognition of Mr. Schwartz's achievements, we are reminded of the tremendous contribution immigrants have made in the shaping of our nation. This diverse group of extraordinary, enterprising, and self-sufficient individuals have continuously served to strengthen the United States. The great desire of America's immigrants to contribute combined with a passion to improve their new home has allowed the United States to assume the position of world leader. We are forever grateful for their strength and courage.

The quiet, yet significant actions of Isidore Schwartz during his four years

of military service in Northern Ireland and North Africa exemplify his commitment and dedication to the United States of America. It is with great pleasure that I join his many friends in the Bronx who will be honoring Mr. Schwartz this summer for being the first man to repair mechanical watches in combat.●

THE COMING BUDGET SURPLUS

● Mr. KYL. Mr. President, with the federal government apparently on the verge of running its first unified budget surplus in nearly 30 years, many people are beginning to ask what comes next? What should happen to the budget surplus when it materializes? Should we spend it? Should we begin to pay down the national debt? Or should we provide hard-working Americans with meaningful, long overdue tax relief?

Before we try to answer those questions, it would be worthwhile to recall how we got here. Remember, it was not that long ago—in fact, it was as recently as February of 1995—that President Clinton submitted a budget that would have locked in annual deficits in the range of $200 billion for the foreseeable future. A unanimous Senate rejected the Clinton budget on May 19, 1995. And from that point on, the debate took a fundamental turn from whether to balance the budget, to how to balance it.

During the last three years, we have begun to slow federal spending growth. We eliminated 307 mostly small federal programs. But perhaps the most decisive factor has been what we did not do. We did not impose another large tax increase on already overtaxed families and businesses. And that gave people enough room to do things to invigorate the economy.

In fact, the economy has outperformed just about everyone's expectations, producing tens of billions of dollars in unanticipated revenues to the Treasury to close the budget gap. When the budget agreement passed last year, for example, unified budget deficits were projected to go from $67 billion in fiscal year 1997 to $90 billion in fiscal year 1998. But as it turns out, the fiscal year 1997 deficit came in at only $22 billion, and it is projected to amount to just $5 billion in the current year. The unexpected turnaround is due almost entirely to the economy's performance, and it comes in spite of the substantially increased spending allowed by the 1997 budget agreement.

Whatever we ultimately decide to do with a unified budget surplus—and I would caution that projections of a surplus are just that, projections—we ought to be sure that it sustains the economic growth that has gotten us to where we are today.

Mr. President, the suggestions that have been made about how to handle a budget surplus generally fall into four categories: Apply it to new or existing federal spending programs; use it to strengthen and improve Social Security for future generations; apply it toward the national debt; or return it to the American people in the form of tax relief.

OPTION ONE: INITIATE NEW SPENDING PROGRAMS

The first option is to spend any surplus, and there is no shortage of suggestions about how to do that. With deficits seemingly behind us, the thought of lavishing readily available funds on new government programs is tempting to many. President Clinton is proposing the creation of dozens of new programs, costing $125 billion over the next five years. That is in direct contradiction to his pledge to save Social Security first.

There are good reasons to be cautious about creating any new spending programs. For one thing, a surplus has yet to be posted. We should not commit to spend what we do not have.

Moreover, we are all aware of the instability now being experienced by Asian economies, and some of that could spill over into our own economy in the coming months. To some degree, United States markets have already felt the effects of the Asian problems.

Just as the fast-growing economy has produced billions of dollars in additional revenue for the Treasury during the last year, any slowdown in the economy could take billions of dollars out of the equation. If we cannot ensure that any new programs have a dependable revenue stream to support them, we will be back into deficit very quickly.

SOCIAL SECURITY

Mr. President, millions of Americans, myself included, listened intently to what President Clinton had to say about Social Security in his State of the Union address. What we heard—or what we thought we heard—was a declaration by the President to reserve any budget surplus that might emerge in the next few years to shore up Social Security for future generations.

It was a statement that drew widespread praise from the public. But now it turns out that what we heard is not, according to White House spokesmen, what the President really meant. The Washington Post put it this way in a February 4 report: ''the ringing simplicity of Clinton's call to 'save Social Security first' gave way to a fog of bewildering budget-speak from the administration's top economic advisers.''

It turns out that the President is not proposing to reserve the surplus for Social Security at all. First, it is worth noting that his budget would spend the surplus that is generated this coming year by the Social Security system itself. In other words, President Clinton takes an estimated $93 billion out of the Social Security trust fund, issues the retirement program a set of IOUs, and uses the money, not for retirees today or in the future, but to pay for other programs run by the federal government.

Second, as I mentioned a few moments ago, he would diminish the size of the other surplus we are talking about—the unified budget surplus—by proposing to spend it on a whole host of new government programs costing $125 billion over the next five years.

Is that really putting Social Security first? It seems to me that that is a plan for putting it last—or at least way, way down the list of things to do with a budget surplus.

If we really want to save Social Security, we ought to get back to what most people thought Social Security was supposed to be: A safe and secure account where their contributions could be deposited and where they could grow to produce a nest egg for their retirement years. A unified budget surplus will make it easier to get to a system where money is put into individual Social Security retirement accounts for each citizen so that the money will actually be set aside for him or her. This would put Social Security reserves completely off limits to the federal government so they could not be squandered on other programs.

This may be the best thing to do with a unified budget surplus.

OPTION THREE: BEGIN TO PAY DOWN THE NATIONAL DEBT

Mr. President, there are those who say that we should not spend any surplus revenues that may arise, nor reserve them for Social Security, but begin to pay down the debt instead.

The federal government has not run a unified budget surplus since 1969, so the fact that it may do so next year is indeed significant. But I would caution that we are not yet at the point that we can actually begin to pay down the debt—at least in the sense that most people think of. The fact of the matter is that the national debt will continue to rise, even though we are about to enter an era of surpluses. Why?

We are only on the verge of running a surplus in the unified budget—what we get when we total up all government revenues and expenses, including Social Security revenues and expenditures. If borrowing from Social Security and other trust funds were removed from the calculation, the Clinton budget would show not a surplus of $9.5 billion for fiscal year 1999, but a deficit of $95.7 billion.

With borrowing comes the obligation to repay. That is, the IOUs that are issued to the Social Security trust fund must be repaid as the needs of the retirement system dictate. This is one reason that the President's budget forecasts the debt rising from $5.5 trillion this year to $6.3 trillion by 2003.

We have a long way to go before we balance the budget without relying on Social Security, and so the first order of business must be federal spending restraint. That is why we should reject President Clinton's call to spend billions of dollars to start dozens of new programs. When we get to the point where we can balance the budget without relying on Social Security, the debt will stop growing, and then we can think about starting to shrink it.

But here is the more fundamental point: it seems to me that if our only

focus is on paying down the debt, we will fail in our ultimate duty to the American people. At best we will merely perfect a mechanism for collecting the taxes and paying the debts of a government that still regulates too much, spends too much, and taxes too much. Milton Friedman has said that he would rather have a smaller budget that is out of balance, than a larger budget that is in balance. I think he is right.

It is more important, in my view, to aim first to limit government spending, reduce taxes, and foster a less intrusive federal government. The fact that we achieve balance only by relying on Social Security and other trust funds is indicative of a government that is still operating far beyond its means.

A final point. Jack Kemp has suggested that keeping taxes higher than they need to be simply to run budget surpluses to slow the amount of debt we are accumulating puts the ''cart of austerity ahead of the horse of economic growth.'' I think his point is a valid one. The absolute size of the debt is not nearly as burdensome as its size relative to the overall economy. In other words, as long as the budget is in balance or near balance, the country's true debt burden is going to shrink by virtue of a growing economy.

The focus ought to be on maintaining a healthy and growing economy that produces good new jobs, more opportunities for everyone to get ahead, and the resulting capability to meet federal budget requirements and actually pay down the debt over time.

OPTION FOUR: PROVIDE BROAD-BASED TAX RELIEF

That gets to the fourth option: Tax relief. We know from recent experience that a strong economy can turn the unified budget from deficit into surplus, so long as we also exercise some modest restraint over federal spending. So a thriving economy is one of the keys to solving our Nation's long-term budget problems. It is a thriving economy that will make it much easier to safeguard Social Security and Medicare for the generations to come.

But with the favorable short-term budget outlook so dependent upon economic growth, and no significant pro-growth policy changes to prevent the already lengthy expansion from petering out, many of us believe that it will be difficult, if not impossible, to ever realize the extra revenues that we are depending on for the budget to stay in balance once it gets there.

Federal Reserve Board Chairman Alan Greenspan gave this advice to the Budget Committee in early February: He told us to view the surplus very cautiously, avoid new spending, adhere to spending caps, and focus on growth-oriented tax cuts, like lowering marginal income-tax rates and reducing capital-gains taxes.

So, Mr. President, regardless of what happens to a unified budget surplus, it would be prudent to invest in economic growth, and the best way to do that would be to reduce income-tax rates for all Americans. This would help the economy by lowering the tax on each additional dollar earned—something that will stimulate work, saving, and investment. This, in turn, will lead to more jobs, better pay, more opportunities for all Americans, and ultimately more revenue for the Treasury.

If the political climate is such that across-the-board income-tax rate reductions cannot be accomplished this year, then providing marriage-penalty and death-tax relief may be the best alternative for helping millions of hard-working families, while promoting economic growth.

Mr. President, in early December, Congressman JOHN SHADEGG and I hosted a town hall meeting in Scottsdale, Arizona, to discuss taxes with our constituents. Half the session was devoted to reform of the Internal Revenue Service. The other half focused on tax reform.

Most of the people we heard from expressed frustration with the federal government's propensity to try to pick winners and losers—that is, to target tax relief to select groups of Americans. That is what President Clinton is proposing again this year. The consensus was in favor of broad-based relief so that everyone has a chance to do better—singles as well as married couples, retirees as well as students, families with children as well as those without. People also cried out for simplification. Last year's attempt to provide tax relief resulted in an additional 821 changes in the Tax Code. It is just too complex.

In fact, most constituents favor scrapping the entire Tax Code and starting over with an entirely new tax system—one that puts taxpayers' interests ahead of the interests of accountants, lawyers, and lobbyists. A majority of the Arizonans who attended the Town Hall meeting appeared to favor a national sales tax. But there is a lot of support for the flat tax as well.

Therein lies our dilemma. While public sentiment appears to be strongly in favor of a fundamental overhaul of the Tax Code, significant public consensus has yet to emerge in favor of a single-rate or flat tax over a sales tax or some alternative. And given President Clinton's lack of support for any fundamental tax reform, it is likely to take a broad public consensus, the likes of which we have not seen in recent years, to drive such a tax overhaul through Congress and past the President's veto pen. Comprehensive reform will take time to accomplish.

In the meantime, though, we can take a big step in the direction of fundamental reform by providing broad-based tax relief to the American people. Income-tax rate reductions would be best, but we ought to go as far as we can this year. Marriage-penalty and death tax relief are other good places to start.

A FEDERAL SPENDING LIMIT

Mr. President, the chairman of the House Ways and Means Committee recently recommended that we not only provide tax relief, but also set a goal of limiting federal revenue to no more than 19 percent of Gross Domestic Product (GDP)—that is about 0.9 percent less than where revenues are today. The growing debt under the Clinton budget and the dozens of costly new programs the President is proposing are evidence of the need to limit the government's burden on hard-working Americans. Obviously, a tax limit would also have to be coupled with a requirement that the government balance its books.

Establishing such a limit is an idea that I have advocated for some time, although I think a better and more direct approach would be to limit federal spending instead of revenue.

It has proven notoriously difficult to accurately project what federal revenues will be from year to year. And even if we could accurately predict revenues, keeping them within the limit would no doubt require near constant tinkering with the Tax Code—something that ought to be avoided if we are interested in simplifying compliance and returning some stability to the tax laws.

But we can limit spending. And that is the cornerstone of the Balanced Budget/Spending Limitation Amendment that I have proposed over the years. Voters in my home state of Arizona overwhelmingly approved a spending limit as part of our state's constitution in 1978. It is a home-grown idea that would work well in Washington, too.

The spending limitation amendment I propose would limit spending to 19 percent of GDP, which is roughly the level of revenue the federal government has collected for the last 40 years. There are also statutory approaches to establishing such a limit.

Balance the budget and limit spending, and there is no need to consider tax increases. Congress would not be allowed to spend the additional revenue that is raised. Link federal spending to economic growth, as measured by GDP, and an incentive is created for Congress to promote pro-growth economic policies—that is, policies that lead to more jobs and better pay, more opportunities for small businesses. The more the economy grows, the more Congress is allowed to spend, but always proportionate to the size of the economy.

CONCLUSION

Mr. President, we need to be straight with the American people when we talk about a budget surplus. It has yet to materialize, so we should not attempt to spend what we do not have. Paying down the debt is not really an option, since the debt will keep growing as a result of continued borrowing from Social Security and other trust funds. We still have a long way to go to balance the budget without Social Security.

We can, however, begin to protect Social Security from spendthrift politicians by considering ways of putting

Social Security contributions off-limits to the government in individual Social Security accounts. And we can invest in broad-based tax relief that will help fuel economic growth so that we not only have the means to safeguard Social Security and Medicare for future generations, but the resources to balance the budget without relying on Social Security.

The healthy and growing economy of the last year did what the big tax increases of 1993 and 1990 could not do. It has produced the surge in revenues that has nearly closed the gap between government revenues and expenditures. And it has validated what many of us have said for some time: Reduce the tax burden imposed on the American people, and the economy will flourish and produce the revenues we need to solve our budget problems.

Let us really put Social Security first, and let us provide broad-based tax relief. Those objectives should top our agenda for the year.●

JUDICIAL VACANCIES

● Ms. MOSELEY-BRAUN. Mr. President, today, my colleague from Illinois, Senator DURBIN, and I are recommending that President Clinton nominate David Herndon and Jeanne Scott for federal judgeships in the Southern and Central Districts of Illinois. David Herndon has been a highly respected Illinois Circuit Court judge since 1991. Prior to that, he practiced for 14 years, developing a real expertise in complex litigation. Jeanne Scott has served as an Illinois state judge for 18 years. She is currently the Division Chief for Civil cases in Sangamon County. She has a sterling reputation as a dedicated and fair judge. She will be the first female federal judge in the history of the Central District of Illinois. It is therefore an appropriate moment for me to say a few words about a matter of critical importance: the exceptionally large number of judicial vacancies in our federal court system.

Currently, there are 83 vacancies in the federal judiciary. This accounts for approximately one out of every ten federal judges. Twenty-five of the vacancies have been in existence for 18 months or longer and are therefore regarded as ''judicial emergencies.'' Over one-third of the seats in the U.S. Court of Appeals for the Ninth Circuit are vacant. As of last year, the average number of days from nomination to confirmation was at a record high of 183.

Illinois presently has seven vacant judgeships. One of these, in the U.S. District Court for the Southern District of Illinois, dates back to November of 1992. Another, in the Central District, dates back to October of 1994. Two of the nominees for these vacancies are awaiting action by the Senate Judiciary Committee and two are awaiting action by the full Senate. In the Southern District, the chief judge went for more than a year without having time to hear a single civil case because his criminal docket was so full. In the Central District, major civil trials have had to be postponed because of the shortage of judges. Commenting on the imminent retirement of a third judge in his district, Marvin Aspen, the chief judge of the Northern District, recently told the Chicago Sun-Times that ''if Congress does not move quickly . . . in a short time we could have a serious backlog.'' Last week, Judge Aspen called the number of judicial vacancies nationwide ''an unprecedented scandal.''

As Chief Justice Rehnquist stated in his 1997 Year-End Report on the Federal Judiciary, ''Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the federal judiciary.'' The Chief Justice placed much of the blame squarely on the Senate. He said, ''Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed during 1994.''

By failing to move expeditiously on judicial nominations, the majority party in the Senate is failing to live up to its responsibilities to the American people. President Clinton has made 91 judicial nominations during the 105th Congress, but the Senate has confirmed only 39 of these individuals. As the Chicago Tribune editorialized last month, ''If Republicans don't like the choices, let the Senate debate them and vote them down. Doing nothing, as the Senate has done lately, is cowardly and cynical.''

Worse yet, it is affecting the quality of justice in the United States. The increase in the number of judicial vacancies in combination with the growth in criminal and civil filings has created a huge backlog of federal cases. According to Chief Justice Rehnquist, since 1990, the number of cases filed in courts of appeals has increased by 21 percent and those filed in district courts have grown by 24 percent. There was a five percent increase in the criminal caseload in 1997. This resulted in the largest federal criminal caseload in 60 years.

According to the Administrative Office of the U.S. Courts, the number of active cases pending for at least three years rose 20 percent from 1995 to 1996. According to the most recent data provided by the Department of Justice, there are more than 16,000 federal cases that are more than three years old.

Time magazine wrote last year that ''some Republicans have as much as declared war on [President] Clinton's choices, parsing every phrase they've written for evidence of what they call judicial activism.'' This has discouraged qualified candidates from subjecting themselves to the confirmation process. For instance, last September, Justice Richard P. Goldenhirsch of the Illinois Court of Appeals, withdrew his name from consideration for a federal judgeship, stating that, because of the ''poisoned atmosphere of the confirmation process, my nomination would be pending for an indefinite period of time.'' He stated that the protracted nature of the process was ''particularly unfair to the people of the Southern District of Illinois, who deserve a fully staffed court ready to hear their cases.''

In condemning President Clinton's judicial nominations, one of my Republican colleagues described the judicial branch last year as being full of ''renegade judges, [who are] a robed, contemptuous intellectual elite.'' And in explaining why the confirmation of a California appeals court judge had been delayed for two years, a senior member of the Republican majority stated, ''If you want to blame somebody for the slowness of approving judges to the Ninth Circuit, blame the Clinton and Carter appointees who have been ignoring the law and are true examples of activist judging.''

The President's record of judicial appointments belies any assertion that he has sought to stack the federal judiciary with the types of judges referred to by my colleagues. The New York Times commented last year that what ''may be most notable about Clinton's judicial appointments may be reluctance to fill the court with liberal judges.'' The Times noted that a statistical analysis by three scholars ''confirms the notion that the ideology of Clinton's appointees falls somewhere between the conservatives selected by [Presidents] Bush and Reagan and the liberals chosen by President Carter.'' The Times quoted an author of the study, Professor Donald Songer of the University of South Carolina, as stating that Clinton's appointments were ''decidedly less liberal than other modern Democratic presidents.'' Professor Songer stated that, from an ideological standpoint, President Clinton's judges were most similar to judges selected by President Ford.

Republican members of the Senate thus cannot claim that they are safeguarding the judiciary from liberal jurists. Indeed, it is they who, in the words of Time magazine, are currently engaged in ''what has become a more partisan and ideological examination of all judicial nominees.'' As my colleague from Vermont, Senator LEAHY, stated last September, the ''continuing attack on the judicial branch [by Republican Members of Congress], the slowdown in the processing of the scores of good women and men the President has nominated to fill vacancies on the Federal courts around the country, and widespread threats of impeachment [against federal judges] are all part of a partisan ideological effort to intimidate the judiciary.''

Mr. President, Chief Justice Rehnquist has called the independence of the judiciary ''the crown jewel of our system of government.'' Our courts are

revered around the globe precisely because of their ability to administer justice impartially and without regard to the prevailing political climate. Republicans in Congress are seeking to undermine judicial independence and freedom of action. A key element of their strategy has been to put a choke hold on the process of confirming nominees sent by President Clinton. This state of affairs must not be allowed to continue. As Chief Justice Rehnquist has stated, ''The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or down.'' Let the Senate heed the words of the Chief Justice and commit itself to enabling the federal judiciary to be, as the Supreme Court pediments proclaim, the guardian of our liberty and the guarantor of equal justice under the law.●

A TRIBUTE TO CADET CAPTAIN GUY PRYOR

● Mr. FRIST. Mr. President, Cadet Captain Guy Pryor, a student at Haywood High School, in Brownsville, Tennessee, will soon be honored by the Air Force Junior Reserve Officer Training Corps with its highest honor, the Cadet Gold Valor Award. Cadet Pryor is receiving this award for his heroic efforts on Sunday, December 19, 1997, as he attempted to save the life of an automobile accident victim.

Cadet Pryor and his friends left a Sunday evening church party in Jackson when they came upon the scene of an accident, a head-on collision. One of the cars in the accident, a Toyota pickup, was already engulfed in flames, lying in a ditch, having rolled about 100 feet from the crash site. The man trapped in the vehicle was desperately calling for help.

Without hesitating, Cadet Pryor ran to the truck, and began pulling at the passenger door. Those watching cautioned him that the truck might well explode at any moment, and called for him to move from the truck. The flames were already so hot Cadet Pryor's palms burned, and an onlooker threw him a coat to better insulate his hands against the fire.

Cadet Pryor succeeded in pulling the man from the truck just as paramedics arrived. Unfortunately, the victim, Hugh Rainey Pegram of Jackson, died on the way to the hospital, and our hearts go out to his loved ones. Cadet Pryor was taken to the hospital for treatment of his burned hands and released.

So often we do not hear about our young people who distinguish themselves. Cadet Pryor is a hero in the truest sense of the word because at great peril to himself, he gave willingly and without question to a fellow human being in need. His spirit of service and selflessness is an example for all of us to emulate.

This recognition from the Air Force Junior Reserve Officer Training Corps is a wonderful testament to Cadet Pryor's bravery that Sunday night. The Cadet Gold Valor Award brings honor to Cadet Pryor and his family, and also to the outstanding Tennessee 944th unit of the Junior ROTC at Haywood County High School. Cadet Pryor's story is an inspiration to us all, and I am proud to be his United States Senator.●

NATIONAL AFRICAN AMERICAN CREED

● Mr. BENNETT. Mr. President, I submit for the RECORD the following National African American Creed, written by one of my constituents, Mr. Terry Harris. Mr. Harris is an active member of the National Association for the Advancement of Colored People (NAACP), and has presented this creed before the NAACP Executive Board. Mr. Harris' National African American Creed challenges people to make a difference beginning with themselves. In particular, Mr. Harris encourages other African Americans to eschew drugs and gang violence, gain an education, display kindness, and support our country. I commend Mr. Harris on his interest in helping others.

The material follows:

THE AFRICAN AMERICAN CREED

(By Terrance Harris)

I, the African American, man, woman, child—son and daughter and great-grandchild of slaves, descendant of Africa and child of God, no longer have to search to find my place in this world.

I, the African American, have a responsibility to my forefathers whose struggles I must continue to ward off hatred and bigotry.

I, the African American, descendant of Ishmael and Abraham, have a responsibility, to help my brothers and sisters when, and after, they fall by the wayside.

I, the African American, descendant of great kings and queens of Africa, am obligated to teach my children about our ancestors and their customs.

I, the African American, of dark complexion, have a responsibility for keeping my dark beautiful armor shined with Christ-like luster in my daily walk.

I, the African American, whose ancestors were great warriors, must become a great warrior against such things as drugs and gang violence.

I, the African American, come from a race which was so powerful, to cause a nation to change its views on segregation and rethink its views on desegregation.

I, the African American, great grandchild of great chiefs in Africa, have a responsibility to become the head of my family and to raise my children in such a manner that will enable my children to become great leaders.

I, the African American, come from a race which helped to build this country, have a responsibility to keep the talent alive and to build great buildings that will stand along side the great pyramids of Egypt.

I, the African American, whose forefathers came from a land rich in vegetation and animal life, have a responsibility to preserve that beauty so that my children will have the same opportunities to bathe in the beauty of nature that God has created for all to enjoy.

I, the African American, whose ancestors used as a part of their culture, great dances, am obligated to pass this tradition and the history behind the dances on to my children.

I, the African American, come from a race where such powerful men and women laid down their lives so that I might be able to get a fair education, am obligated to attend a school of higher learning.

I, the African American, whose forefathers have been spit upon and smitten, all in the name of equality, just so you and I could stand here today, must be willing to display in return the same equal kindness that we have demanded, not just to men and women of the African American race, but to men and women of all races.

I, the African American, whose fathers and mothers can now become men of science, medicine, and law, am obligated to follow in their footsteps ensuring the best possible care, in order to preserve my history.

I, the African American, whose forefathers have died in wars when they were not allowed to drink from the same drinking fountain, yet were equal enough to share the same bullet, but couldn't be buried in the same cemetery, am obligated to become a great general of the Armed Forces, and even to become President of the United States of America.

My country 'tis of thee, sweet land of Liberty let it be known that if any changes are to occur, it must start with me—of Thee I sing. Land where my fathers died, land of every man's pride, from every mountain side, let freedom ring and ring.

Mr. HATCH. Mr. President, I want to echo the remarks of my colleague, Senator BENNETT, in sharing with the Senate the creed written by our fellow Utahn, Terry Harris. It is an inspiring declaration of personal integrity and determination. I join in commending Terry Harris. I urge all Americans to read it and carefully consider its message, not just to African Americans, but to all of us. In doing the right thing, the power of a single individual can make our country a better place.●

ORDER OF PROCEDURE

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

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

ORDERS FOR WEDNESDAY, FEBRUARY 11, 1998

Mr. GRAMS. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, February 11, and immediately following the prayer the routine requests through the morning hour be granted, and the Senate immediately resume consideration of the cloture motion on the motion to proceed to S. 1601, the Human Cloning Prohibition Act, as previously ordered.

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

PROGRAM

Mr. GRAMS. Tomorrow morning, as previously ordered, the Senate will resume debate on the cloture motion on the motion to proceed to S. 1601, the cloning bill, with the time from 9:30 a.m. to 10 a.m. being equally divided between the two leaders or their designees.

Also, as previously ordered, at 10 a.m. a rollcall vote will occur on the cloture motion on the motion to proceed to S. 1601. If cloture is invoked, the Senate will debate the motion to proceed on the cloning bill. If cloture is not invoked, the Senate can be expected to resume the Massiah-Jackson nomination.

At approximately 4 p.m. on Wednesday, the Senate can be expected to begin debate on the nomination of Margaret Morrow, of California, to be U.S. district judge. Therefore, additional votes can be expected to occur during Wednesday's session of the Senate.

As a reminder to all Senators, tomorrow at 10 a.m. a vote will occur on the cloture motion on the motion to proceed to S. 1601 the Human Cloning Prohibition Act.

ADJOURNMENT UNTIL 9:30 A.M. TOMORROW

Mr. GRAMS. If there is no further business to come before the Senate, I now ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:39 p.m., adjourned until Wednesday, February 11, 1998, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate February 10, 1998:

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JAMES E. CALDWELL, III 0000
COL. ROBERT C. HUGHES, JR., 0000

IN THE MARINE CORPS

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be major general

BRIG. GEN. MARTIN R. BERNDT, 0000
BRIG. GEN. DAVID F. BICE, 0000
BRIG. GEN. WALLACE C. GREGSON, JR., 0000
BRIG. GEN. MICHAEL W. HAGEE, 0000
BRIG. GEN. MICHAEL A. HOUGH, 0000
BRIG. GEN. DENNIS T. KRUPP, 0000
BRIG. GEN. ROBERT MAGNUS, 0000
BRIG. GEN. DAVID M. MIZE, 0000
BRIG. GEN. HENRY P. OSMAN, 0000
BRIG. GEN. GARRY L. PARKS, 0000
BRIG. GEN. RANDALL L. WEST, 0000

IN THE AIR FORCE

THE FOLLOWING-NAMED OFFICERS FOR APPOINTMENT TO THE GRADES INDICATED IN THE UNITED STATES AIR FORCE AND FOR REGULAR APPOINTMENT (IDENTIFIED BY AND ASTERISK (*)) UNDER TITLE 10, U.S.C., SECTIONS 624 AND 531:

To be colonel

RICHARD A. ALLNUTT, III, 0000
DANIEL K. BERRY, 0000
*JAMES N. BLACK, 0000
KEVIN F. BLAIR, 0000
*ANNE N. BOWEN, 0000
JOHN J. BOYLE, JR, 0000
ROBERT D. BRADSHAW, 0000
*STEPHEN A. BRIETZKE, 0000
*JOHN R. BROWNLEE, 0000
WILLIAM P. BUTLER, 0000
KAREN R. CARPENTER, 0000
GEORGE W. CASTRO, 0000
FREDERIC A. CONTE, 0000
*GEORGE P. COSTANZO, 0000
WENDELL A. EDGIN, 0000
*DWIGHT M. ELLERBE, 0000
JAY S. ELLIS, JR, 0000
*ERNEST E. EMMERTON, 0000
WILLIAM R. ENGLISH, 0000
JERROLD N. FLYER, 0000
*THEODORE M. FREEMAN, 0000
*RICHARD FRIEDERICH, 0000
PAUL R. GLOWIENKA, 0000
*CHARLES D. GOLDMAN, 0000
STEVEN M. GONZALEZ, 0000
RICHARD M. GREIFF, 0000
*GARY S. GRONSETH, 0000
STEVEN R. HANSEN, 0000
DAYLE V. HARTGERINK, 0000
RICHARD A. HERSACK, 0000
ROGER R. HESSELBROCK, 0000
*DAVID C. HOUGLUM, 0000
MICHAEL L. HUTCHINGS, 0000
LARRY H. ISAKSON, 0000
LYNN M. JOHNSON, 0000
*ANDREW L. JUERGENS, 0000
THOMAS J. KELLER, 0000
KENNETH S. KIM, 0000
TERENCE J. KINYON, 0000
*DAVID P. KISSINGER, 0000
CHRISTOPHER R. KLEINSMITH, 0000
THOMAS M. KOROSCIL, 0000
ERIC W. KRAMER, 0000
JAMES L. KRETZSCHMAR, 0000
DANIEL L. LEONARD, 0000
CARL M. LINDQUIST, 0000
*BARRY I. MACDONALD, 0000
SUSAN L. MALANE, 0000
*JAMES MALENKOS III, 0000
STEPHEN T. MCDAVID, 0000
*JOHN E. MCMANIGLE, 0000
BRIAN L. MEALEY, 0000
*JEFFREY J. MEFFERT, 0000
DENNIS R. MILLER, 0000
CHRISTOPHER M. MINKE, 0000
EDWARD F. MITNITSKY, 0000
GERHARD MOELLER, 0000
*DAVID S. NOLL, 0000
*MARY A. ORZECH, 0000
JOHN R. OSBORNE, 0000
RICHARD L. PASCHEDAG, 0000
DEAN A. PFIRRMAN, 0000
VICTOR M. PINEIROCARRERO, 0000
JOHN P. RAMER, 0000
MICHAEL W. RESTEY, 0000
RICHARD E. RUTLEDGE, 0000
SCOTT E. SEMBA, 0000
*WILLIAM P. THORNTON, 0000
*WILLARD M. TOWLE, 0000
RICHARD D. TRIFILO, 0000
*JAMES E. WIEDEMAN, 0000
*KAREN K. WIES, 0000
CHARLES D. WILLIAMS, 0000
*SANFORD D. ZELNICK, 0000

To be lieutenant colonel

*KENNETH L. ABBOTT, 0000
*JEFFREY P. ALLERTON, 0000
*NORMA L. ALLGOOD, 0000
KIMSEY K. ANDERSON, 0000
DAVID E. ANISMAN, 0000
FRANK J. ARCHER, 0000
GARY I. ARISHITA, 0000
*LYNN M. BAATZ, 0000
JEFFREY C. BANKER, 0000
*MICHAEL W. BARBER, 0000
*STEVEN L. BARNES, 0000
RICHARD C. BATZER, 0000
CAROLYN S. BENNETT, 0000
*SVEN T. BERG, 0000
MICHAEL H. BETO, 0000
ROBERT W. BJORAKER, JR, 0000
*MARTIN D. BOMALASKI, 0000
*JOHN MICHAEL BOSTWICK, 0000
*DEAN A. BRICKER, 0000
*GERRY L. BROWER, 0000
*HERBERT. BROWN, 0000
*TIMOTHY R. BROWN, 0000
WILLIAM R. BUHLER, 0000
JOHN W. BULLOCK, 0000
MICHEL L. BUNNING, 0000
PAMELA L. BURR, 0000
*RITA A. BURR, 0000
BRIAN R. CAMPBELL, 0000
*PAUL N. CARDON, 0000
GARY N. CARLTON, 0000
*ANDREA J. CARPENTER, 0000
TERRY L. CARPENTER, 0000
KARAN CHARISSEPIERCY, 0000
WAYNE C. CHEATUM, 0000
*ANN C. CHILDRESS, 0000
MATTHEW R. CHINI, 0000
*MICHAEL L. CHYREK, 0000
*DANIEL G. CLAIR, 0000
*RICHARD A. CLARK, 0000
*CAROLYN CLARKTILLEY, 0000
*ROBERT B. CONNOR, 0000
WILLIAM G. COURTNEY, 0000
SAMUEL M. CUMMINGS, 0000
FORREST C. CUNNINGHAM, 0000
*CHARLES R. DAY, 0000
STEVEN R. DEANDA, 0000
STEVEN C. DECOUD, 0000
DAVID P. DEWITT, 0000
WILLIAM E. DINSE, 0000
RUSSELL D. DUMIRE, 0000
*WILLIAM J. DUNN, 0000
*BRYAN D. DYE, 0000
*DAVID A. EARL, 0000
MARY K. EISERTWLODARCZYK, 0000
JEROME J. ERSLAND, 0000
PAUL W. FISHER, 0000
DIANE J. FLINT, 0000
*VICTOR A. FOLARIN, 0000
*PETER E. FRASCO, 0000
ROBERT F. GAMBLE, 0000
ROGER L. GIBSON, 0000
*JAMES J. GIFT, 0000
*HOWARD E. GILL III, 0000
*RIDGE M. GILLEY, 0000
*DANNY J. GLOVER, 0000
*JOHN S. GOLDEN, 0000
*THOMAS C. GRAU, 0000
*KENDALL E. GRAVEN, 0000
JOHN K. GRAYSON, 0000
*CARROLL H. GREENE III, 0000
RANDALL S. HAGAN, 0000
*SCOTT A. HAGEN, 0000
*MARK C. HAIGNEY, 0000
KENNETH E. HALL, 0000
*GILBERT R. HANSEN, 0000
OREST M. HARKACZ, 0000
*STUART A. HARLIN, 0000
LYNN C. HARRIS, 0000
*DANIEL R. HENLEY, 0000
*MARGARET K. HERRICK, 0000
*DAVID E. HOLCK, 0000
MARK S. HOLDEN, 0000
STEVEN W. HUMBURG, 0000
*BART O. IDDINS, 0000
*ERIC T. IFUNE, 0000
*JOHN V. INGARI, 0000
ROBERT J. JACKSON, 0000
ARTHUR M. JAMES, 0000
RONALD E. JEFFCOTT, 0000
*RAY S. JETER, 0000
*GREGORY W. JOHNSON, 0000
*JOHN W. JONES, 0000
THEODORE F. JORDAN III, 0000
ARTHUR S. KAMINSKI, 0000
ROBERT N. KANG, 0000
*GREGORY A. KASTEN, 0000
JAMES V. KIERNAN, 0000
MICHAEL P. KLEPCZYK, 0000
*ELIZABETH P. KORNEGAY, 0000
*KERRY K. LARSON, 0000
*JOHN R. LEE, 0000
*CHRISTOPHER LEWANDOWSKI, 0000
ERNEST J. LIDDLE, JR, 0000
*WILLIAM L. LUBKE, 0000
THOMAS D. FADELL LUNA, 0000
PETER W. MACARTHUR, 0000
JOSEPH R. MAIDEN, 0000
ROBERT E. MANAKER, 0000
JANET Y. MARTIN, 0000
*JOHN M. MCATEE, 0000
CANDACE L. MCCALL, 0000
KURT D. MCCARTNEY, 0000
*MICHAEL W. MCCLELLAN, 0000
*LYNN S. MCCURDY, 0000
MICHAEL P. MCGUNIGAL, 0000
MICHAEL W. METHOD, 0000
*ROBERT S. MICHAELSON, 0000
STEPHEN L. MIKKELSEN, 0000
*PATRICK P. MILES, 0000
CAROLYN L. MILLER, 0000
*CHARLES J. MILLER, 0000
JAMES E. MITCHELL, 0000
EDWARD P. MOLNAR, JR., 0000
RICHARD J. MONTMINY, 0000
KARLA A. MOORE, 0000
SARAH E. MOORE, 0000
ALAN J. MORITZ, 0000
KEVIN P. MULLIGAN, 0000
*ROBERT W. NAEF III, 0000
*PAUL J. NAWIESNIAK, 0000
*GREGORY S. NEAL, 0000
DEBRA M. NIEMEYER, 0000
*STEPHEN J. NILES, 0000
*SUSAN E. NORTHRUP, 0000
*DAVID M. O'BRIEN, 0000
LORETTA M. O'BRIEN, 0000
*HERNANDO J. ORTEGA, JR., 0000
*JOSEPH V. PACE, 0000
*KENNETH S. PAPIER, 0000
LARRY P. PARWORTH, 0000
AUGUST C. PASQUALE, III, 0000
TIMOTHY LEE PENDERGRASS, 0000
*RONALD PEVETO, 0000
*STEPHEN D. PLICHTA, JR, 0000
*THOMAS W. RATLIFF, 0000
*AUDRY G. RHODES, 0000
RONALD W. RICHARDSON, 0000
*DOUGLAS L. RISK, 0000
*JAMES K. RONE, 0000
*JAMES D. RORABAUGH, 0000
*ROBERT C. ROSTOMILY, 0000
*KENT A. SABEY, 0000
*SONIA J. SALGADO, 0000
PHILLIP R. SANDEFUR, 0000
*JEFFREY S. SARTIN, 0000
*JEFFREY A. SCHIEVENIN, 0000
THERESA YARBER SCHULZ, 0000
*STEPHEN D. SCOTTI, 0000
*THOMAS M. SEAY, 0000
*MARK D. SHEEHAN, 0000
JAMES W. SMITH, 0000
*TED R. SMITH, 0000
*TIMOTHY W. SOWIN, 0000

RICHARD M. SPEER, 0000
DIANE C. SPERRY, 0000
MICHAEL D. STAMATAKOS, 0000
STEVEN R. STANEK, 0000
JEFFREY A. STAPLES, 0000
*STEVEN R. STEINHUBL, 0000
WAYNE K. SUMPTER, 0000
HENRY J. THOMPSON, JR., 0000
*CRESCENCIO TORRES, 0000
*PATRICK W. TOWNSEND, 0000
*LEONARD E. TROUT III, 0000
*RICHARD I. VANCE, 0000
WILLIAM G. WALL, 0000
BRUCE E. WEAVER, 0000
*MATTHEW P. WICKLUND, 0000
MANFRIED K. ZEITHAMMEL, 0000
*MARY L. ZOZULIN, 0000

To be major

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JEFFERY L. JOHNSON, 0000
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FELICIA LAUTEN, 0000
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ROBERT B. LOVE, 0000
STEVEN S. LOWRY, 0000
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STEVEN S. SMITH, 0000
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HILDEGARDE P. STEWART, 0000
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TIMOTHY J. SWEENEY, 0000
JON M. SWEET, 0000
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KELLI J.B. THOMAS, 0000
KIMBERLY A. THOMAS, 0000
PORTIA A. THOMAS, 0000
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CYNTHIA BUCHMAN WEBB, 0000
ETHAN A. WEBB, 0000
LIDIA P. WEBB, 0000
DONNA M. WEED, 0000
KAREN L. WEIS, 0000
JON C. WELCH, 0000
JONATHAN C. WELSH, 0000
ANDREW G. WESTBROOK, 0000
GILMER G. WESTON III, 0000
THOMAS J. WHALEN, 0000
DAVID M. WHITE, 0000
SUSAN J. WHITNEY, 0000

MARY T. WIER, 0000
ELIZABETH M. WILCOX, 0000
GEORGE A. WILLIAMS, 0000
HERMINE WILLIAMS, 0000
LORI A. WILLIAMS, 0000
LOU A. WILLIAMS, 0000
PAUL D. WILLIAMS, 0000
WANDA F. WILLIS, 0000
CHARLES J. WILSON, 0000
LESLIE A. WILSON, 0000
ROY R. WOLFE, JR., 0000
JOHN P. WOLL, 0000
JON B. WOODS, 0000
JULIA M. WOODUL, 0000
DONALD G. WRIGHT, 0000
LAUREL E. WOOD WRIGHT, 0000
STEWART W. WRIGHT, 0000
ANDREW R. WYANT, 0000
MICHAEL S. XYDAKIS, 0000
GLENN A. YAP, 0000
NICOLE B. YINGLING, 0000
RICHARD A. YOKELL, 0000
GREGORY B. YORK, 0000
MARTIN K. YOUNG, 0000
VINCENT D. YOUNG, 0000
MARTIN ZADNIK, 0000
LISA A. ZAHLER, 0000
MARIE L. ZALDIVAR, 0000
AUBREY W. ZIEGLER, 0000
DIANE A. ZIPPRICH, 0000

CONFIRMATIONS

Executive nominations confirmed by the Senate February 10, 1998:

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DAVID SATCHER, OF TENNESSEE, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES.

DAVID SATCHER, OF TENNESSEE, TO BE MEDICAL DIRECTOR IN THE REGULAR CORPS OF THE PUBLIC HEALTH SERVICE, SUBJECT TO QUALIFICATIONS THEREFOR AS PROVIDED BY LAW AND REGULATIONS, AND TO BE SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE FOR A TERM OF FOUR YEARS.

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.