United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 107th CONGRESS, SECOND SESSION

Vol. 148 WASHINGTON, MONDAY, NOVEMBER 18, 2002 *No. 149*

House of Representatives

The House was not in session today. Its next meeting will be held on Tuesday, November 19, 2002, at 12 noon.

Senate

MONDAY, NOVEMBER 18, 2002

The Senate met at 11 a.m. and was called to order by the President pro tempore (Mr. BYRD).

PRAYER

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

Jehovah-Shalom, You have promised us a peace that passes all understanding. That is the quality of peace we need today. It is beyond our understanding that You can produce serenity in our souls when there is so much that is unfinished, unresolved, and unforgiven in us, in our relationships, in our work, and in our society. Sometimes we even deny ourselves the calm confidence of Your peace because we are so aware of what denies Your peace in us. Take from us strain and stress as our anxious hearts confess our need for You. Grant us Your incomprehensible, but indispensable, palpable peace so that we can be peacemakers. Give the Senators a fresh infusion of Your peace so that they may deal with disagreements and discord in the legislative process. Help them overcome problems and endure the pressure of these days. In the name of the Prince of Peace. Amen.

NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–60 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman.*

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

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PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

The PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The majority whip, the Senator from Nevada, is recognized.

SCHEDULE

Mr. REID. The Chair will shortly announce that we will be in a period of morning business until 12 noon today, under a previous order issued by the Senate. At noon, the Senate will consider the nomination of Dennis Shedd to be a circuit judge. The time on that debate is 6 hours. Upon the use or yielding back of that time, but not before 5:15 p.m., the Senate will vote on or in relation to that nomination.

Following disposition of that nomination, the Senate will resume consideration of the Homeland Security Act.

I don't know if there will be used the full 6 hours on the Shedd nomination. I really doubt it. I would hope that people would have the opportunity, if they choose, to come and talk about this most important vote we will have tomorrow on the amendment pending on H.R. 5005. This is very important. And of course, after the judge is voted on, there will be time this evening. There will be a very limited amount of time in the morning for people to speak.

As the Presiding Officer has educated the entire country, including the Senate, this next series of votes is extremely important.

MORNING BUSINESS

The PRESIDENT pro tempore. Under the previous order, as the Democratic whip has already stated, there will now be a period for the transaction of morning business not to extend beyond the hour of 12 noon, with Senators permitted to speak therein for up to 10 minutes each.

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

The PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DORGAN. Mr. President, my understanding is that we are now in a period of morning business. I wanted to come to the floor to spend a couple of minutes speaking about those Senators who are leaving the Senate at the end of this session.

The PRESIDENT pro tempore. The Senator is correct. The Senate is in morning business, and the Senator is recognized for not to exceed 10 minutes.

TRIBUTE TO DEPARTING SENATORS

Mr. DORGAN. Mr. President, the Senate, for all of the notice it gets in the national press, is nonetheless still a family of sorts. We are 100 men and women who come to this fashion of public service from different points on the compass, from all across the country, and from different backgrounds—Republicans and Democrats, conservatives and liberals. We work together a great part of the year in this Chamber, and we spend a lot of time in our respective States. We have become friends. Republicans and Democrats, liberals and conservatives, nonetheless, are close personal friends in many cases.

We are going to be saying good-bye to a number of Senators this year. I wish to, before we complete our work this week, say a word about a number of those who will be leaving. I actually threatened last week, I say to the Senator from Texas, Mr. GRAMM, for example, to say a word about him. I will do that today in a moment.

I will start with Senator JEAN CARNAHAN, if I may. I went to Missouri to campaign with JEAN CARNAHAN. She was here a relatively short time because she filled a seat that was then filled by a special election in the State of Missouri. But I believe the first moment I met JEAN was at the organizing session. She had suffered a great tragedy. The State of Missouri had suffered a great tragedy. The incumbent Governor of the State of Missouri had died in a plane crash. The Governor, his son, and others perished in that crash relatively close to the election. His name remained on the ballot. The folks from the State of Missouri, nonetheless, voted for his name on the ballot, and the Governor appointed JEAN CARNAHAN, his widow, to come to the Senate.

JEAN stood up at the organizing session—and I am sure she would not mind if I indicated this publicly because she did it in an organizing session—and she said to members of our caucus and to the new Members coming into the Senate:

You come here because of your win. I have arrived here because of my loss.

She, of course, was speaking about the tragedy that had occurred in the State of Missouri, her having lost a husband, then a candidate for the Senate, and her son in that plane crash.

I watched JEAN CARNAHAN as she worked in the Senate. She did a remarkable job. She is someone with great courage. She is someone who has the capability to stand up in a very significant way and explain quickly what it is she has a passion about in public policy.

I deeply admire JEAN CARNAHAN, not only for aspiring to carry out that mission of public service that was begun by her husband, the Governor of Missouri, but also because she played a significant role and contributed in a significant way in the Senate.

We all will miss JEAN CARNAHAN as she moves on to other challenges and other opportunities.

My colleague, MAX CLELAND from Georgia, will not be with us in the next session. He will be leaving at the end of this session as well. MAX CLELAND is one of those heroes of mine. MAX CLELAND is a brave, remarkable American. He left three of his limbs on a battlefield fighting for this country. He is a person of great personal courage.

I say to anyone who has not yet done so, read his book, ''Going to the Max.'' It is a story of great inspiration. MAX CLELAND has been a terrific legislator, a great representative of the State of Georgia in the Senate. More than that, he has been an inspiration to virtually all America.

Our country owes him a great debt of gratitude for his service. Our colleagues owe him a great debt of gratitude for his companionship and service in the Senate.

We also will not be joined next year by Senator TORRICELLI who indicated his decision not to seek reelection. Let me say about BOB TORRICELLI, I served with him in the U.S. House of Representatives. He is a passionate fighter, articulate, strong, assertive for the issues in which he believes and for the issues he feels are important to his home State of New Jersey and for our country.

On the Republican side, I came here not knowing JESSE HELMS. I only knew of him by reputation. His reputation was he was a hard-edged, tough guy who asked no quarter, gave no quarter, and never stopped fighting for the issues about which he cared. He planted himself sometimes far off the political spectrum and said: Here is where I stand. That was my impression of him as I came to the Senate.

What I discovered in the Senate is he is quite a remarkable gentleman, and I use the term ''gentleman'' in every respect. He is one of the most courteous, kind people with whom I have had the opportunity to serve. I have on occasion gone over and sat with him in the Chamber of the Senate and talked about the house he will retire to and the front porch on which he will spend some time.

While we might disagree on some issues very strongly, he is a legislator who contributed substantially to the public debate in this country and often with great courage on his part. I certainly thank him for his service to our country.

Senator STROM THURMOND will be leaving the Senate. If you know his personal story, you just are almost out of breath when you understand what he has done over his lifetime. He not only has served with great distinction in public service in many venues—as a judge in his home State, in the Senate, running for President, and so many other positions—he also volunteered for service during wartime at age 42 and volunteered to climb into a glider to crash land at night behind enemy lines.

This is a man of great personal courage and a man who served this country with great distinction in many ways. I have had the opportunity over the years I have been in the Senate to serve with him as well and visit with him about his public service. I deeply admire what Senator STROM THURMOND has given to this country, and we wish him well.

Senator MURKOWSKI is someone with whom I have worked on the Energy Committee, both as a chairman of the Energy Committee and ranking member. He is now off to become Governor of the State of Alaska. He is someone with great passion for his State. Almost every amendment coming from Senator MURKOWSKI has something to do with Alaska.

I have enjoyed the opportunity to get to know Senator MURKOWSKI. He is a man of good humor, but also someone who feels very strongly and passionately about issues.

Senator HUTCHINSON I have not known quite as well, but Senator HUTCHINSON and his brother Asa, who served in the House of Representatives while TIM served in the Senate—their family, obviously, has a great passion for public service. I have enjoyed the opportunity to know him, although not quite as well as others.

Senator SMITH from New Hampshire is one with whom I had the opportunity to serve on the Ethics Committee. I have grown very fond of BOB SMITH. He is a big, tall man with a great passion to serve his State and country. One of the qualities I discovered about him on issues that are very important, such as the issues we confronted on the Ethics Committee, is there was not a partisan bone in his body. But BOB SMITH was about fairness and doing things the right way.

I have become a friend of BOB SMITH's. I like him a great deal. I wish him very well as he moves on from the Senate.

Finally, Senator GRAMM from Texas. I mentioned the other day he is someone who, if you are going to be in a big fight—a really big fight—you want with you. He not only is smart and shrewd, but he does not ever quit, no matter what the time is on the clock.

While we have had our differences from time to time with regard to public policy, I have never had a difference with him on personal issues. He is someone I deeply admire. His service to our country through the Senate and the House is substantial. In fact, early on in our career, I sat next to him on the Veterans Affairs Committee in the U.S. House. That is when he was a Democrat, as a matter of fact. That is eons ago.

Senator GRAMM is one of those people who makes a significant contribution in this Chamber because he is determined to make that contribution and he knows the rules, he is shrewd, and he is tough. If you are in a fight, you want someone like Senator GRAMM with you in a fight.

Mr. President, having said all that about those who are leaving, let me say again the reason I came today to speak is because I care very deeply about this institution. I still pinch myself every day after 10 years serving in the Senate. When I drive to this Capitol Building, I pinch myself that a man from a town of 400 people and a high school class of 9 had the opportunity to be elected to the Senate.

This is an extraordinary honor. This body of 100 men and women who come with different passions and different visions for our country offer America the patchwork quilt of what America is about in its deliberations and the development of ideas and the approaches by which we try to move America forward.

I know from time to time, as do all of my colleagues, I leave this Chamber perhaps despondent about what happened that day, despondent that we did not get something done which I thought we should have done, or despondent that we did something I thought we should not have done. But over a long time, I remain enormously proud of the opportunities to serve in the Senate.

It is a remarkable, unusual, distinct privilege to serve in the Senate. This institution is still the greatest deliberative body in the world, and my colleague, Senator BYRD, the Presiding Officer, the President pro tempore, reminds us always of the place in history this Senate occupies.

I wish to say to all of those who are leaving this institution: It has been a great privilege to serve with each and every single one of them. Their presence has contributed to this institution in a very significant way.

Mr. President, I yield the floor.

PHIL GRAMM

Mr. THOMPSON. Mr. President, I rise today to pay tribute to my good friend and distinguished colleague, the senior Senator from Texas, Senator PHIL GRAMM. Senator GRAMM was first elected to public office in 1978. He served in the U.S. House of Representatives as a Democrat for 4 years. After becoming disenchanted with the Democratic party, he resigned his seat in January of 1983 and ran again in a special election as a Republican. He won back his seat and earned a new found respect for the honorable way in which he changed parties. In 1984, Senator GRAMM was elected to the United States Senate.

An economist by training, Senator GRAMM has spent his entire public career fighting for the principles of freedom, particularly economic freedom, individual choice and limited government. We all know well of his ''Dickey Flatt'' test. Dickey Flatt is a small businessman in Texas who has served as Senator GRAMM's bell-weather on the Federal Government's tax and regulatory policies. It is for the Dickey Flatts of this country that Senator GRAMM has fought to cut Federal tax rates, repeal the death tax and reduce the government's regulatory burden on small businesses. We also have heard often of Senator GRAMM's ''momma.'' It is for her and the other senior citizens of our country that Senator GRAMM has worked hard to strengthen and modernize the Medicare and Social Security programs. Perhaps Senator GRAMM's most important legislative accomplishments are the 1981 ''Gramm-Latta'' tax cut, the Gramm-Rudman-Hollings balanced budget bill and the Gramm-Leach-Bliley Financial Services Act.

Equally as important as the legislation he has supported is the legislation that Senator GRAMM has chosen to fight over the years. If a bill did not pass the Dickey Flatt test, you could be assured that Senator GRAMM would oppose it. He is probably most famous for successfully leading the opposition in 1994 to then-President Clinton's proposal for a Federal takeover of the Nation's health care system.

I have had the privilege of serving with the Senator from Texas on the Senate Finance Committee for the past 4 years. I have learned much from him and enjoyed listening to him debate the important issues before the Committee. Senator GRAMM has a plain-spoken, common sense way of explaining issues that will be sorely missed in this body.

Senator GRAMM has served his State of Texas and this country with great distinction. He is a skilled debater and legislator, who has held true to his conservative principles over the years. I feel privileged to have had the opportunity to work with him during my tenure in the Senate, and to call him my friend. I wish him and his lovely wife Wendy the best in their future endeavors.

Mr. FEINGOLD. Mr. President, today I pay tribute to my friend and colleague PHIL GRAMM, who retires from the Senate, but will not soon fade from the memories of all those who worked with him in this body. Very simply, Senator GRAMM is a straight shooter, a man who has a strong grasp of the issues, and who never fails to speak his mind. While we disagreed a good deal on the issues, I have always had the utmost respect for Senator GRAMM's opinion, and for the way that he has conducted himself throughout his service in the Senate.

There have also been many times when we have seen eye to eye, and when we have it has been a pleasure to

work with the Senator from Texas. Together we have fought to reform our budget process and cut wasteful spending. Now as my colleagues know, cutting spending or reforming the way that the government spends Federal tax dollars is never easy. But Senator GRAMM and I share the belief that only by reforming our budget process will we ensure the kind of fiscal discipline in Congress that the American people deserve.

While we were never able to bring our budget process reform bill to introduction, we stood shoulder-to-shoulder on many votes to cut pork-barrel spending and apply fiscal discipline. I thank Senator GRAMM for his tremendous leadership on these critical issues, and I wish him all the best as he ends his distinguished career in the U.S. Senate.

TRIBUTE TO SENATOR JESSE HELMS

Mr. FEINGOLD. Mr. President, with the end of the 107th Congress, we wish the best to Senator JESSE HELMS, who retires after serving five terms here in the U.S. Senate. Senator HELMS will be long remembered, by his colleagues and by history, for his legendary service to the people of North Carolina.

From the day I arrived in the Senate, and throughout our service together on the Senate Foreign Relations Committee, Senator HELMS has been unfailingly cordial to me, and that is something I have always greatly appreciated. While Senator HELMS and I more often than not disagreed on the issues of the day, I appreciated the chance to work with him on issues where we were able to find common ground. Together we fought against unnecessary fast-track procedures that bind Congress's hands on trade legislation. I also joined with Senator HELMS to try to ensure that the export laws took national security sufficiently into account, rather than merely bend to the largest business interests. Finally, I have been proud to work with Senator HELMS to call attention to human rights abuses in China.

So as he leaves the Senate, I thank Senator HELMS for the chance to work together on these important issues. I join my colleagues in paying tribute to him, and in wishing him all the best for his retirement.

TRIBUTE TO SENATOR FRED THOMPSON

Mr. FEINGOLD. Mr. President, today I would like to pay tribute to FRED THOMPSON, a colleague and friend who has left a lasting legacy here in the Senate. Senator THOMPSON has served the people of Tennessee well, standing on principle time and time again. He has been a champion of campaign finance reform since he first came to the Senate in 1994. He was among the original co-sponsors of the first McCain-Feingold legislation, and he has been an invaluable ally ever since.

I am deeply grateful to him for his longstanding and steadfast support for reform. FRED THOMPSON was a central part of our effort, from the first days, when gaining the support of such a fair-minded and well-respected member gave a tremendous boost to our efforts, through to some of our most critical moments, as when he skillfully negotiated an agreement on hard money limits that the vast majority of this body could support. Without that agreement, we simply could not have moved the McCain-Feingold bill through the Senate. I also want to pay special tribute to Senator THOMPSON for the work he did investigating the 1996 campaign finance scandals. Senator THOMPSON cut his political teeth on another great scandal in our Nation's history, but his work in 1997 showed the nation that the campaign finance is truly a bipartisan problem with a bipartisan solution. I will greatly miss his leadership on these issues.

I also joined with Senator THOMPSON to try to ensure that the export laws took national security sufficiently into account, rather than merely bend to the largest business interests. And finally, I want to thank FRED THOMPSON for his leadership on States' rights. Senator THOMPSON has consistently spoken out against Federal mandates that hinder, rather than help, States and localities as they work to serve America's communities.

These are just a few of the many reasons that FRED THOMPSON's presence in this body will be missed. He has been a true champion on many important issues, and a champion for the people of his state. I thank him for his leadership and his friendship, and I wish him all the best as he ends this chapter of his career.

TIM HUTCHINSON

Mr. COCHRAN. Mr. President, the election campaign in Arkansas this year which involved TIM HUTCHINSON and Mark Pryor put me in an awkward position. Former Senator David Pryor was one of my best friends when he was in the Senate.

TIM HUTCHINSON has been a hard working, successful Senator who deserved to be reelected. The voters of Arkansas made their decision and TIM HUTCHINSON was not reelected.

During his 6 years in the Senate, TIM was a forceful, articulate, and effective spokesman for the interests of his State. I observed him at close range, as a fellow member of the Agriculture Committee, speak out for the farmers of his State. He made sure the best programs possible were included in the farm bill last year for the rice, cotton, and soybean producers of his State.

He gave particular attention to the interests of the aquaculture industry and the unfair efforts of the Vietnamese basa fish exporters to undermine years of catfish promotion efforts and market development success.

In every instance when TIM HUTCHINSON argued for the interest of the citizens of his State, he did so with conviction and a seriousness of purpose that was very impressive to me.

Another example which I recall that made me sit up and take notice was in a nationally televised debate of the William Buckley show which was broadcast from the law school at the University of Mississippi. The subject was the United States-China relationship. The panel included Henry Kissinger, Jim Barksdale, my colleague TRENT LOTT, and the new Senator from Arkansas, TIM HUTCHINSON.

I was surprised that the young Arkansas Senator not only held his own during this program, but he was the star. He made compelling arguments for his points of view; he knew the facts; and he expressed them in an articulate and persuasive manner.

TIM HUTCHINSON has been a very fine Senator for the State of Arkansas. He has upheld the finest traditions of this body, and we will miss him.

I wish him much success in the years ahead.

MAX CLELAND

Ms. STABENOW. Mr. President, I rise today to pay tribute to my dear friend and departing colleague Senator MAX CLELAND.

Thomas Jefferson once said that ''a nation that rests on the will of the people must also depend on individuals to support its institutions if it is to flourish. Persons qualified for public office should feel an obligation to make that contribution.''

MAX CLELAND heard that centuries old call to duty and answered with a lifetime of service.

Senator CLELAND's dedication to his country stretches from the battlefields of Vietnam to the floor of this Senate. And the families of Georgia, and our entire Nation, are better for his leadership.

Senator CLELAND nearly lost his life serving his country in Vietnam. He returned home with injuries so grave that he spent a year and a half in various Veterans Administration Hospitals recovering.

But Senator CLELAND then battled and beat a depression so deep that it would have broken the spirit of many others and embarked on a remarkable 30-year career of public service.

He began by speaking out for better treatment for veterans, a cause he would champion throughout his career.

Then at the age of 28, he was elected to become Georgia's youngest State Senator.

In 1977, Senator CLELAND was appointed head of the Veterans Administration by President Carter, mailing him the youngest Administrator in the agency's history.

In 1982, Georgia voters elected him Secretary of State, again, the youngest ever.

And in 1996, Senator CLELAND was elected to the United States Senate where he became a champion on issues like veteran affairs, health care and protecting our Nation's parks and natural treasures.

I think Jefferson would be proud to see that our Nation still produces such leaders as Senator CLELAND whose entire life embodies the spirit of patriotism, civic duty and self-sacrifice that

has shaped our Nation since its very founding.

I hope Senator CLELAND will continue to speak out on the issues he cares about so deeply because his voice is still needed.

JEAN CARNAHAN

Mr. President, I rise to express my admiration and respect for my departing colleague, Senator JEAN CARNAHAN.

Senator CARNAHAN and I entered the Senate in the same freshman class and we served together on the Special Committee on Aging.

I quickly came to appreciate Senator CARNAHAN's hard work on behalf of the people of Missouri and our Nation.

Senator CARNAHAN was a leader in the fight to make prescription drugs more affordable.

Senator CARNAHAN authored the ''Classroom Quality'' provision of the ''Leave No Child Behind Act'', which will give our local schools the ability to offer qualified teaching specialists to all students who need them.

Senator CARNAHAN worked to save thousands of airline jobs in Missouri and across the Nation also provide relief for those workers who lost their jobs in the wake of the travel slowdown after 9–11.

Senator CARNAHAN was one of the first legislators to go to Afghanistan to see for herself that our troops had all they needed in the fight against terrorism.

And Senator CARNAHAN fought tirelessly to make sure Social Security and Medicare remain strong for our present seniors and the generations to come.

While her tenure was brief, her legacy will be long.

But, beyond admiring her skills as a legislator, I came to appreciate Senator CARNAHAN's sincere warmth, quiet humor and inner strength.

We are all too keenly aware that Senator CARNAHAN came to the Senate in the wake of the tragic plane crash that killed her husband, Governor Mel Carnahan, and her oldest son Randy.

But Senator CARNAHAN turned the grief over her family's loss into a legacy of gains for families in Missouri and our Nation.

Senator CARNAHAN was truly a fitting heir to the Senate seat once held by Harry Truman and I hope she will continue to speak out on the issues she cared about so deeply.

Her voice will still be needed.

The PRESIDING OFFICER. The Senator from Connecticut is recognized.

Mr. DODD. Mr. President, I rise for the purpose of paying tribute to our colleagues who are leaving the Senate. There are some 10 of our colleagues who are leaving under various circumstances. I would like to speak about them and to express my deep appreciation for their friendship, for the years we have worked together, or opposed each other, as the case may be, on various matters that have come before this body.

Mr. President, of course, we all have great affection for Senator THURMOND, who has served here for 54 years and is on the brink of celebrating his 100th birthday—a remarkable achievement in and of itself. As someone once said, if they had known they would have lived that long, they would have taken better care of themselves. And STROM THURMOND took very good care of himself over the years.

Senator MAX CLELAND, a remarkable person, has served here for only 6 years, representing the State of Georgia. He has done a remarkable job during his years here. But he has had a distinguished record, of course, that has accumulated prior to his arrival in the Senate.

Senator JESSE HELMS, with whom I have served on the Foreign Relations Committee for my entire service, my 22 years in the Senate. He has served for 30 years here. We have been the best of colleagues serving together.

Senator BOB TORRICELLI of New Jersey; Senator PHIL GRAMM of Texas, with whom I have served on the Banking Committee; Senator JEAN CARNAHAN, who has had a brief service here but has done a wonderful job representing the State of Missouri; Senator FRANK MURKOWSKI, with whom I was elected to the Senate 22 years ago; Senator FRED THOMPSON from the State of Tennessee; Senator BOB SMITH; Senator TIM HUTCHINSON—these are the 10 Members who are leaving.

STROM THURMOND

Mr. President, regarding Senator THURMOND, I spoke back a number of weeks ago about Senator THURMOND in our wonderful tribute to him. He is truly an institution within this institution.

I have known Senator THURMOND since I was very young. My father and he served together here for 12 years. I have served with him for 22 years. So for 34 years Senator THURMOND has had to serve with a Dodd in the U.S. Senate of his 54 years.

I know of no one who has had as varied and as distinguished a career in public service. When you think of his contribution as an educator, as a Governor, as a combat war veteran—and not young at the time of D-Day, I might add, but nonetheless showed great heroism—and serving, as I mentioned, as a Governor of his State, and, of course, in the Senate for so many years, and as a judge—truly a remarkable individual—and elected to the Senate under various banners over the years—as a Democrat, as a Dixiecrat, as a Republican, as a write-in candidate—truly a remarkable achievement.

I've heard it suggested that they might have to rename the State of South Carolina; there have been so many monuments to his public service. There are schools, roads, bridges, parks all through the State of South Carolina that bear the name of STROM THURMOND. That is because, of course, he is held with such incredible affection by the people of that State.

We have had our differences on substantive matters, but he has always been a tremendous gentleman and a wonderful friend. He is a good friend to my family as well. I wanted to take a couple minutes to say thank you to a remarkable individual, a remarkable American. I know that he has great affection for this institution and its Members. I wish him the very best of health and, I want him to know we will all miss him very much.

MAX CLELAND

I also want to pay tribute to our colleague from Georgia, MAX CLELAND. I know very few people who have as many heroic qualities as MAX CLELAND does. It is not by pure circumstance that I mention STROM THURMOND and MAX CLELAND next to each other. I mentioned the fact that STROM THURMOND served his country with great distinction in military service during World War II. MAX CLELAND, of course, served his Nation with great distinction during the Vietnam conflict and, of course, paid a terrible price for that service. Just a month shy of completing his tour of duty, he suffered the terrible loss of both legs and an arm.

Yet despite those physical injuries, and the obstacles they presented, MAX CLELAND has made a remarkable contribution to this institution, to the people of his home state of Georgia. MAX CLELAND is truly an American hero, not just because he wore the uniform of the United States and served in combat and suffered a terrible loss. He is an American hero because of his willingness and desire to serve the people of his country in a continuing fashion beyond that of a military uniform. He has done so in the State of Georgia, holding office there as well as here in the Senate. I don't know of anyone who is held in such a high regard and with such respect by all of us as MAX CLELAND.

One of Senator CLELAND's favorite poets, William Butler Yeats, once wrote: ''Too long a sacrifice can make a stone of the heart.''

In the case of MAX CLELAND, his enormous sacrifice to his country only emboldened his golden nature, and increased his desire to dedicate himself to improving the lives of others.

I will miss him very much. When the 108th Congress convenes, it just won't seem quite right that MAX CLELAND is not among us—he has a wonderful sense of humor, a great sense of history, a great love of his country. I deeply regret the people of Georgia didn't see fit to send him back to serve with us. I don't know his successor. I am sure he is a fine person. I am sure he won't mind if I say I am going to miss Max very much, but I know I have a lifelong friend in MAX CLELAND.

Just prior to coming back to Washington, it was announced that MAX and Nancy are going to be wed. My wife Jackie and I wish both of them the best in the years ahead.

JESSE HELMS

I also want to pay tribute to my friend and colleague from North Carolina, Senator Jesse Helms. I don't

know of anyone here I probably disagreed with more over the past 22 years than Jesse Helms. But I also don't know of anyone with whom I have had a better relationship over the last 22 years. I know that sounds somewhat of a contradiction to people who watch this institution, that people with whom you can have profound and significant disagreements can also be people you hold in high regard and respect.

Senator JESSE HELMS and I have fought tooth and nail on almost every issue I can think of. But I don't know of a finer gentleman, a more decent human being than Jesse Helms. And we have disagreed on policy matters over and over again—he is a passionate conservative, his voting record has scored a 100 percent rating from American Conservative Union throughout his 30 years here, and he is deeply proud of the fact that during those years he has one of the highest voting records of loyalty to the Republican Party, in excess of 95 percent.

It is that passion which I admire. We don't have enough of it in politics today, in my view. And while I wish we had more of on it our side, I respect it when I see it in anyone. JESSE HELMS certainly brings it to his public service. I will miss his service here. I will miss working with him. There were many occasions when we actually did find common ground, as we do so frequently here, on matters that don't achieve the high profile status as matters of disagreement do. He served his State of North Carolina well. He served and represented a point of view embraced by many.

I will miss him on a personal level as a kind and thoughtful individual. Jackie and I wish he and Dot the very best in the years to come.

BOB TORRICELLI

Mr. President, ROBERT TORRICELLI is leaving the Senate. He made the decision this fall not to seek reelection in the midst of his election. A lot of attention has been focused on that decision, but for those us of who have known BOB TORRICELLI over his 20 years of public service—14 years in the House, 6 years in the Senate—BOB TORRICELLI is a lot more than an individual who decided to pull out of a race in New Jersey this year. He is a passionate fighter for things he believes and he has compiled a wonderful record of public service.

I want the RECORD to reflect that BOB TORRICELLI was a fine Senator, a fine Member of Congress. He fought very hard on behalf of his constituents, fought very hard on the issues he cared deeply about. We had our disagreements over Cuban policy frequently. I always used to say, when BOB TORRICELLI came to the floor to take the other side, he was a formidable opponent.

He was an excellent debater, one who embraced his views with a great deal of knowledge and a great deal of passion and feeling. He became active in Democratic Party politics at an early age. His passion for politics is something all of us came to appreciate in the Senate during his years. He was elected to the House at age 31 in 1982. He did a tremendous job there, serving on the House International Relations Committee, and rose to prominence as a House member, as a leading voice for advancing and expanding democracy and human rights worldwide.

In 1996, he came to the Senate. His efforts on behalf of tax, employment, environmental, education, and health issues are things we are all well aware of. He has wonderful legislative skills and was a great battler on behalf of the Democratic Party.

He led the Senate Democratic campaign committee during his first term in a cycle during which he raised a lot of money to support Democratic candidates across the country. It is a thankless job. But for those of us who stand for election or reelection, you have to have someone who will head up these committees and do so with a great deal of energy. BOB TORRICELLI certainly did that for a lot of people whose careers might have been terminated more briefly had it not been for his dedication to seeing to it that Democratic candidates would have a good chance to be heard.

I would not want this session to end without expressing my gratitude to BOB TORRICELLI for his service in this body and his service to the people of New Jersey.

PHIL GRAMM

Mr. President, PHIL GRAMM is also leaving the Senate, going to work for UBS Warburg. Their offices are in Connecticut, so I will be looking forward, very carefully, at what PHIL GRAMM does as a new part-time constituent of mine. I say that somewhat facetiously of course.

PHIL GRAMM has had a very distinguished career in public life. We have served together on the Banking Committee during his entire time in the Senate. We have worked together very closely on matters affecting the securities industry. We coauthored a number of bills together during our joint service. We were elected to the House together. PHIL was a Democrat in those days, then became a Republican, was elected to the Senate as a Republican. He has authored major pieces of legislation during his career.

In fact, the Brookings Institution listed three of the bills that PHIL GRAMM authored or coauthored as among a handful of the most significant pieces of legislation in the 20th century, including the Gramm-Rudman-Hollings balanced budget proposal which attracted a wide degree of attention during the 1980s. He made a mark here as a tenacious fighter for what he believes in. One of the most difficult opponents you could have on an issue is PHIL GRAMM. He doesn't take many prisoners, and he fights very hard for the matters in which he believes. I thank him for his service and wish him well in the years ahead.

JEAN CARNAHAN

Mr. President, I want to mention JEAN CARNAHAN, who had a short service in this body. All of us have a deep appreciation for the circumstances under which she arrived—one of the most tragic set of circumstances any of us can imagine. She did a remarkable job, coming in under difficult circumstances, and we owe her a debt of gratitude for the courageous and selfless service that she provided to the people of Missouri, the American public, and the sense of silent grace with which she handled those personal difficulties.

She didn't just simply show up in the Senate—she thrived here. All of our colleagues would agree when I say that learning to navigate the ways of the Senate can be difficult for anybody, but for somebody who never served in public office, having, of course, been the first lady of her State of Missouri for 8 years, JEAN CARNAHAN did a remarkable job during her time here. She made a difference on numerous pieces of legislation in which she helped to forge compromises. While her tenure may have been brief, she left a mark worthy of those with much longer service. All of us express nothing but our very best wishes to JEAN CARNAHAN and to her family in the coming years. She has become a good friend to us here. I thank her for her service, and I am sure she will find other ways to contribute and provide services for the people of this country.

FRANK MURKOWSKI

FRANK MURKOWSKI and I were elected to the Senate together in 1980. He has now been elected Governor to the State of Alaska. He is moving on to other areas of public service. He has done a very fine job here and has made a significant contribution representing the people of Alaska. He had a successful career as a businessman in Alaska before coming to the Senate. He was President of the Alaska National Bank from 1970 to 1980.

Since his arrival here, he has kept Alaska first and foremost in his mind. He has been an extraordinary defender of Alaska's interests. But he made many contributions, as well, to the national agenda.

In fact, many of his biggest fights have greatly benefitted our Nation as a whole. In 1996, for example, FRANK MURKOWSKI led the congressional effort to pass the omnibus parks bill, which created or improved more than 100 national parks, forests, preserves and historic sites nationwide, including two in Alaska.

And, for more than 25 years, FRANK and his wife, Nancy, have been leaders in the fight against breast cancer in rural Alaska, and other areas where access to early testing is severely lacking. He also led a national effort against breast cancer here in Washington, and has been an integral part of securing increased Federal funding for breast cancer research and treatment nationwide.

He has been a passionate advocate of oil and gas exploration in Alaska—one of the major debates in this body. I disagreed with FRANK MURKOWSKI about allowing drilling in the Arctic National Wildlife Refuge, but he certainly fought very hard on behalf of his beliefs, showing up with charts and graphs and pictures of wildlife and the like, day after day during that debate.

The people of Alaska have now elected him as their Governor. I know all of us wish he and his wife Nancy well as they assume new responsibilities in Juneau, Alaska.

FRED THOMPSON

Mr. President, I pay tribute to and express my gratitude to Senator FRED THOMPSON of Tennessee, as well, for his service here. He has made a significant contribution to public life during his years here in the Senate, as well as prior to arriving here. FRED's career in politics has truly been one of life imitating art imitating life.

How else can you describe a man who can be seen on the Senate floor debating, only to see him later that evening playing a district attorney on the television show ''Law and Order''? On just about any given Sunday, you can catch FRED THOMPSON on cable in a rerun of ''Die Hard II,'' or ''The Hunt for Red October.'' So he has had a distinguished career in film and television, also.

But to suggest that was the sum total of FRED THOMPSON's life would be a tragic mistake. There is a lot more to it. He has made significant contributions in real life for over 30 years. He did serve as an assistant U.S. attorney at one point in his life. He has been a prominent public figure during some of the most critical moments in our Nation's history—not only as chairman of the Governmental Relations Committee, but also during the Watergate crisis in the early 1970s.

FRED THOMPSON was just a few years out of Vanderbilt Law School when he was named minority counsel to the Senate Watergate Committee in 1973. He has been commended on many occasions for his role in the public disclosure of the Oval Office audio tapes, and that deserves mention here again today.

FRED THOMPSON's early impact on the American political scene foreshadowed his later career and success in the Senate, and his ever-growing popularity in Tennessee. In 1994, he was elected by the people of that State to fill the seat left vacant by the election of Senator Al Gore as Vice-President. When he was voted in for a full Senate term in 1996, he received the highest number of votes cast for any candidate for any office in Tennessee history.

FRED THOMPSON has compiled a distinguished career over the years, as I mentioned earlier, as an assistant U.S. attorney, as Watergate counsel and, of course, during his years in the Senate. We are going to miss him here. He and his wife Geri, I am sure, are going to have a bright future, and I have a feeling we will be hearing more about FRED THOMPSON in the years to come.

ROBERT SMITH

Mr. President, BOB SMITH from New Hampshire is also leaving the Senate. While, again, we have been on not only different sides of the aisle but on the different sides of many, if not most, issues that come before the Senate, I thank BOB SMITH for his service to his State of New Hampshire and to the causes which he embraced very firmly.

BOB SMITH is a very conservative Member of this body. He has also become a leading advocate, during his latter years of service, on environmental questions affecting not only the State of New Hampshire, but also environmental issues across the country, including his work on helping to clean up and restore the Florida Everglades. He opposed drilling in the Arctic National Wildlife Refuge despite strong support from the Bush administration and Senator FRANK MURKOWSKI.

So BOB SMITH was more diverse in his views than some might have otherwise believed. Again, I thank him for his service. We didn't agree on many substantive issues that came before this body, but he was a passionate fighter for views he held. My wife Jackie and I wish him and his wife Jo Ann all the best in the future.

TIM HUTCHINSON

Mr. President, I rise today to pay tribute to my friend and colleague, Senator TIM HUTCHINSON, who will be leaving the United States Senate at the conclusion of the 107th Congress.

Although Senator HUTCHINSON and I have not agreed on every issue that has come before us, I have always considered him a friend, and I have always respected his convictions. He has certainly served as a capable and loyal advocate for the people of his home state of Arkansas.

Mr. President, I had the good fortune of getting to know TIM HUTCHINSON very well during his six years in the Senate. We served together on the Health, Education, Labor, and Pensions Committee. And, in 2000, Senator HUTCHINSON and I co-founded the Senate Biotechnology Caucus, which has played an important role in educating Members of Congress and the public about recent developments in medical and genetic research.

Throughout his 10 years in Washington—4 years in the House of Representatives and 6 here in the Senate—TIM HUTCHINSON has shown a deep commitment to improving the education of America's children, strengthening our national security, increasing access to healthcare, and safeguarding the often overlooked interests of rural America.

Given his background, these priorities are not surprising. TIM HUTCHINSON himself was born on a small farm in rural Gravette, Arkansas. And he was educated as a minister at Bob Jones University in South Carolina.

After graduating from college, he returned to Gravette, where he opened a Christian day school and taught history at nearby John Brown University. I have always believed that his background as an educator made Senator HUTCHINSON one of the most thoughtful and well-spoken members of this body.

TIM HUTCHINSON's election to the Senate in 1996 was the culmination of a 10-year political evolution, which began with his election to the Arkansas Statehouse in 1985. While there, he gained a state-wide reputation as a tireless advocate of law enforcement.

TIM HUTCHINSON was elected to the United States House of Representatives in 1993, and in 1996 he became the first Republican in Arkansas history to win a popular election to the Senate.

As a Senator TIM HUTCHINSON remained a committed advocate for conservative causes—consistently scoring over 90 percent for his voting record by the American Conservative Union.

However, there were also several instances when Senator HUTCHINSON took the lead on important issues that crossed party lines. For example, he has always had an interest in improving public education in America, and was an integral part of the effort to create tax free education savings accounts.

And, during the 107th Congress, Senator HUTCHINSON introduced the Nurse Employment and Education Development Act—a landmark piece of bi-partisan legislation to address the critical nursing shortage affecting rural Arkansas and the country as a whole.

This year, the NEED Act was incorporated into the Nurse Reinvestment Act, which President Bush recently signed into law. This legislation stands as a fitting coda to TIM HUTCHINSON's tenure in the U.S. Senate—its positive impact will be felt across America for years to come.

Mr. President, I will miss having TIM HUTCHINSON as a colleague. My wife Jackie and I wish him and his wife Randy, all the best in future year.

I thank all 10 of these Members for their friendship. I look forward to seeing them in the years ahead, and I wish them and their families the very best in the years that come down the road.

FRED THOMPSON

Mr. HAGEL. Mr. President, I rise to recognize my friend the Senior Senator from Tennessee. FRED THOMPSON will retire this year after eight distinguished years in the Senate. He has packed a great deal in those eight years. He has been a forceful leader who has made significant contributions to our country in a short amount time.

Senator THOMPSON was born and raised in Lawrenceburg, TN, a little town sited by the great frontiersman and Congressman Davy Crockett. Like Crockett, Senator THOMPSON charted a path in life that has allowed him to use his character and great abilities for interests larger than himself. He received his undergraduate degree from Memphis State University and completed his law degree at Vanderbilt University

in 1967. In 1973 and '74, Senator THOMPSON served as minority counsel to the vice chairman of the Senate Watergate Committee, his mentor, Senator, now Ambassador, Howard Baker. He served as Special Counsel to both the Senate Select Committee on Intelligence and the Senate Committee on Foreign Relations. Senator THOMPSON is among the most junior Senators in the history of the Senate to have ever served as Chairman of a Standing Senate Committee.

But Senator THOMPSON's skills and talents go far beyond his contributions to the Senate. He is also a very fine actor, not withstanding Senator MCCAIN's critiques of his performances. He has an expansive list of movie and television roles that highlight his commanding presence and impressive style. We will continue to enjoy seeing him shine in his renewed acting career. He's had excellent real life practice in the Senate.

We will miss FRED THOMPSON. We will miss his common sense, sharp wit and decency. All of his friends in the Senate wish FRED and his new bride, Jeri, all the best in their new lives together. I am proud to have served with him.

PHIL GRAMM

Mr. President, I rise to recognize the Senior Senator from Texas. Senator PHIL GRAMM will retire this year after 24 distinguished years in the U.S. Congress, three terms in the House and three terms in the Senate. He will be missed.

Thirty-five years ago Senator GRAMM received his Ph.D in Economics from the University of Georgia. After his time in Georgia, Senator GRAMM began his college teaching career at Texas A &M University as an Assistant Professor of Economics in 1967. By 1973, he became the youngest Full Professor in the history of the Texas A&M Economics Department. His grasp and understanding of economics have been important factors in our Congressional debate and government policy over the last twenty-four years.

I have had the privilege to serve with Senator GRAMM on both the Senate Banking and Budget Committees. I have seen first hand the power of his intellect and grasp of the issues that have advanced free trade and strengthened our economy and the foundation of our democracy. His contributions to our country are many. He authored numerous major pieces of legislation during his career—and none more important than the Gramm/Rudman/Hollings Balanced Budget and Emergency Deficit Control Act and the Gramm/Leach/Bliley Financial Services Modernization Act.

All of his friends in the Senate wish Wendy and PHIL much success as he takes on new responsibilities. He will now have more time to help R.C. Slocum coach the A&M Aggies. The Congress and America are stronger today for Senator GRAMM having served in Congress. I am proud to have served with him.

MAX CLELAND

Mr. President, I rise to recognize my longtime friend the Senior Senator from Georgia. MAX CLELAND and I arrived in the Senate together in 1997. He quickly became a respected U.S. Senator. MAX CLELAND has been a role model for many people over the years. And, his years of selfless public service have made America a better and stronger nation.

Senator CLELAND joined the Army ROTC program at Stetson University in Florida and went on to earn a Masters Degree in American History from Emory University as a commissioned Second Lieutenant in the U.S. Army. In 1967 he volunteered for service in Vietnam. The next year he was promoted to the rank of Captain and soon after he was seriously wounded losing both his legs and his right arm. Senator CLELAND's determination and spirit turned his experience in Vietnam into a continuing passion for interests greater than his own. His service in Vietnam further motivated him to continue to help shape America.

At the age of 28, he won a seat in the Georgia State Senate making him the youngest member and the only Vietnam veteran in that legislative body at that time. Seven years later, President Jimmy Carter appointed him Administrator of the U.S. Veterans Administration. He was the youngest VA Administrator ever and the first veteran of Vietnam in that post. In 1982, he became the youngest Georgia Secretary of State and held that position for three terms until he began his campaign for the United States Senate in 1995.

Senator CLELAND is an inspiration to all of us. We will miss his honesty, integrity, spirit and leadership in this body. We wish him well and thank him for his service and contributions to our country. I am privileged and proud to have served in the Senate with my friend and colleague MAX CLELAND. I salute you, Captain. You will be missed.

The PRESIDING OFFICER (Mr. JEFFORDS). Who seeks recognition? The Senator from Missouri, Mrs. CARNAHAN.

Mrs. CARNAHAN. Mr. President, I thank my colleague for his kind and generous remarks.

FAREWELL TO THE SENATE

Mrs. CARNAHAN. Mr. President, today I am reminded that 2 years ago when I came to the Senate, it was with a heavy heart. Life had not turned out the way it was supposed to. My husband, not I, was supposed to have been sworn in to the Senate, and I was to be seated in the gallery, beaming with delight at the shared victory we had won.

As someone has pointed out, life is not the way it is supposed to be. Life is the way it is, and it is the way we cope with it that makes a difference. I had some difficult lessons to learn in that regard.

It was not by chance when I stepped down from the dais, after being sworn in, that the first to welcome me was Senator JOE BIDEN. He had come to this Chamber many years ago after a tragic loss in his own life. He told me the story of having been greeted by Senator McClellan of Arkansas, who looked him in the eye and said: Work, hard work, it is the sure path to healing.

Senator BIDEN said: I thought at the time how callous that advice was; he just does not understand the hurt I am feeling. He later found out Senator McClellan spoke from having experienced a family tragedy of overwhelming proportion. JOE BIDEN took the advice to heart and he passed it on to me. You were right, JOE, and I thank you for that wisdom.

There has been much work to throw ourselves into during the 107th Congress. It has been a monumental period in our Nation's history, a time marred by unprecedented national tragedy, deep political divisions, economic upheavals, corporate corruption, continued threats to our national security, and now the gathering clouds of war. Through all of these disasters, we have seen the triumph of the American spirit. Yes, Americans have taken to heart the advice Louis Pasteur once gave to a group of young people. He said: Do not let yourselves be discouraged by the sadness of certain hours which passes over nations.

Thankfully, the Congress has refused to be discouraged. We have endured anthrax attacks, dismantled offices, tighter security measures, major alterations to the Capitol complex, not to mention three shifts in legislative leadership. Through it all, we have managed to address a number of important issues. We passed a historic tax cut, reformed education, overhauled campaign finance laws, called corporate America to a higher standard, and prepared our Nation to respond to global terrorism. We have found that being the guardian of freedom is a relentless and consuming work. The immensity of our task would cripple a lesser people. Rather than be cowered by events, America and her institutions have always been emboldened during times of crisis. I am convinced the Author of Liberty, who has blessed and protected our Nation in the past, will enable us to meet the stern responsibilities of the present.

As the 108th Congress takes on this new burden, I will not be among them but my prayers will be with them. I leave realizing that to have served in the Senate for even a short while is an honor afforded very few in their lifetime. I am forever grateful to the people of Missouri who have allowed me and my family to serve them for three generations. Reporters often ask me to reflect on those years. Most recently, I was asked what impressed me most during my time in the Senate. And I

replied it was the diligence beyond duty shown by all who are part of this Chamber—Democrats, Republicans, and independents. Staff, parliamentarians, clerks, pages, security officers, maintenance workers, elevator operators, all spend long hours serving America. For the most part, their names, their selfless deeds will go unrecorded, but their life and work demonstrate a deep devotion to duty.

In recognition of the loyalty and exemplary work of my own staff, I ask unanimous consent to have their names printed in the RECORD at the close of my remarks.

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

(See exhibit 1.)

Mrs. CARNAHAN. At this time I recognize sadly that two great towers of strength will be missed in this Chamber. My friend and colleague, MAX CLELAND, from his wheelchair stands taller than most men ever will. The Senate will be greatly diminished by his absence. And that we will no longer hear the spirited voice of Paul Wellstone summoning us to stand up and fight will likewise diminish the fervor of this body.

Our Nation and my party have been further blessed by the courageous leadership of Senator DASCHLE and Senator HARRY REID. They have shown the grace under pressure that marks true greatness.

I would be remiss if I did not mention the women of the Senate whose friendship has blessed and brightened my life. I am grateful, too, for the wholehearted and unwavering support of my Democratic colleagues in my every endeavor, and I especially appreciate those from the other side of the aisle, though far fewer in number, who graciously encouraged me as well.

Tradition affords those of us who leave the Senate, either by our own will or the will of the electorate, the opportunity to reflect on the time in this historic Chamber, to perhaps even engage in some unsolicited advice. I could not pass up that opportunity. My advice comes not as a seasoned insider but as one who came for a season to serve among my colleagues. Mine are simple maxims that spring from the heart, a heart filled with love for the Senate and for my country.

First, when my colleagues think on the role of government, seek a balance. Seek a balance between one that does everything and one that does nothing. And where there is talk of war, let there be the free and open debate that becomes our great Nation. And when there are judges to be appointed, let them be selected for their temperament and jurisprudence and not for political ideology that satisfies a special interest group.

When we lay out our energy and environment policy, let it not be for short-term gain but for the well-being of our grandchildren and the survival of our planet. And when my colleagues speak of leaving no child behind, let that not be a mantra but a mission, fervent and funded. When health care is thought about, the health care needs of children, family, and seniors—and I hope that will be often—I urge my colleagues to lay aside partisanship and heed the plight of the hurting and the helpless in our society.

I will vote for the homeland bill, as I have each step of the way, for we must make certain the information disconnect that allowed a 9/11 to occur never happens again.

During an earlier global conflict, President Roosevelt called for stout hearts and strong arms with which to strike mighty blows for freedom and truth. Well, that is what I am hoping this consolidation and coordination of effort will help us to accomplish.

As I vote for this bill, I do so with a caution. The pursuit of terrorists and the protection of basic freedoms will be our greatest challenge in the years ahead. In the quest to uproot terrorism, let us take care to preserve those precious liberties upon which our Nation is founded and upon which democracy depends. I have no doubt that in this good and godly work we will ultimately succeed.

Let me conclude by saying that this farewell to the Senate is a bittersweet moment for me, one that churns up a mixture of memories and emotions. One such memory was of a visit I made to the Corcoran Art Gallery to see the Jackie Kennedy exhibit. One of the displays was a handwritten letter that Mrs. Kennedy sent to a friend after completing an extensive project at the White House.

She wrote:

> How sad it is . . . when a work we love doing . . . is finally finished.

I know how she felt.

I still believe, as did my husband, that public service is a good and noble work worthy of our lives. Perhaps a former Member of this Chamber said it best. He was not of my party, but he certainly was of my principles. Senator Lowell Weicker wrote:

> For all the licks anyone takes by choosing public service,
>
> . . . there is the elation of having achieved for good purpose what none thought possible.
>
> And such feelings far exceed . . . whatever the hurt . . . for having tasted the battle.

I yield the floor.

EXHIBIT 1

Current Staff of Senator Jean Carnahan:

Isiah Akin, Legislative Aide
Amy Barber, Legislative Assistant
John Beakley, Special Assistant to the Senator
Ann Bickel, Assistant to the State Director
Todd Britt, Director, Eastern Missouri
Michael Carrasco, Office Manager
Chad Chitwood, Southwest Area Regional Coordinator
Qiana Combs, Deputy Director, Western Region
Sonja Cureton, Constituent Services Representative
Julie Egermayer, Constituent Services Representative
Sarah Elmore, Staff Assistant
Bradley Epperson, Special Advisor
Alex Formuzis, Press Secretary
Sandy Fried, Legislative Assistant
Rosie Haertling, Casework Supervisor
Stacy Henry, Assistant Scheduler
Margaret Hsiang, Legislative Correspondent
Lisa Jaworski, Legislative Aide
Amy Jordan-Wooden, State Director
Michele Ludeman, Caseworker/Administrative Assistant
Bryan Mitchell, Legislative Correspondent
Jeff Morrison, System Administrator
Stephen Neuman, Legislative Assistant
Tom Neumeyer, Southeast Area Regional Coordinator
Neal Orringer, Military Legislative Assistant
Alison Paul, Staff Assistant
Caroline Pelot, Deputy Director, Eastern Missouri
Jason Ramsey, Director, Central Missouri
Ryan Rhodes, Scheduler/Executive Assistant
Garon Robinnett, Staff Assistant
David Schanzer, Legislative Director
Raymond Schrock, Special Projects Coordinator
Vance Serchuk, Legislative Correspondent
Jan Singlemann, Regional Aide
Rachel Storch, Deputy Chief of Staff
Stephen Sugg, Legislative Assistant
Roy Temple, Chief of Staff
Cindy Townes, Data Entry Clerk
Pam Townsend, Staff Assistant
Courtney Weiner, Legislative Correspondent
Rogerick Wilson, Constituent Services Representative

The PRESIDING OFFICER. The Senator gave the most eloquent statement. I can't say how much I appreciated being here.

The Senator from West Virginia.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BYRD. I ask unanimous consent that the order for the quorum call be rescinded.

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, I have a series of parliamentary inquiries. As I understand the situation on tomorrow, Tuesday, there will be 90 minutes of debate before a vote occurs at 10:30; during that 90 minutes of debate there will be 30 minutes under the control of Mr. LOTT, 30 minutes under the control of Mr. DASCHLE, and 30 minutes under the control of Mr. BYRD; is that correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, at 10:30 it is my understanding—and I would like to inquire if I am correct in my understanding—the first vote will occur on the Daschle-Lieberman second-degree amendment No. 4953; a second vote will occur on the Daschle-Lieberman first-degree amendment No. 4911; a third vote will occur on the Thompson substitute, House bill No. 4901; the fourth vote will occur on cloture on H.R. 5005; am I correct?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. Mr. President, I thank the Chair but let me continue.

As I understand it, the Thompson substitute, House bill No. 4901, that is

the substitute which was passed by the House of Representatives, sent to the Senate, and called up and laid before the Senate. That is the bill which first saw the light of day in the Senate, as I understand it, on or about the early morning hours of this last Wednesday, this past Wednesday of last week. Is that the amendment, the Thompson substitute amendment, that is the House bill which I, on a number of occasions, have referred to as being a bill of 484 pages?

The PRESIDING OFFICER. The amendment does contain that number of pages.

Mr. BYRD. I just wanted to be sure to establish in my own mind and call to the Senate's attention that that will be the third vote, then, on that bill as we come to tomorrow morning, Tuesday of this week.

Now, Mr. President, a further parliamentary inquiry: Am I correct in stating that cloture on the bill, H.R. 5005, is not vitiated by question of the adoption of the substitute?

The PRESIDING OFFICER. Cloture on the bill is not vitiated by that action.

Mr. BYRD. I thank the Chair.

Further parliamentary inquiry: Is it not a fact that if cloture is invoked on H.R. 5005, under the rule, 30 hours then will ensue under that cloture measure?

If cloture is invoked, there will be 30 hours on H.R. 5005, am I correct?

The PRESIDING OFFICER. Cloture under this consideration is 30 hours.

Mr. BYRD. I thank the Chair. In this instance, if the Thompson substitute, the House bill No. 4901, if that substitute is adopted and cloture then is invoked on H.R. 5005, will amendments be in order during those 30 hours?

The PRESIDING OFFICER. The adoption of the Thompson substitute precludes amendments.

Mr. BYRD. I thought that was the case.

The adoption of the Thompson substitute means as far as further amendments are concerned, the ball game is over; am I correct in putting it in that form?

The PRESIDING OFFICER. The Senator is correct.

Mr. BYRD. I say all that, Mr. President, to say this: On last Friday when the Senate invoked cloture, what was cloture invoked on, may I ask of the Chair? On what did the Senate then invoke cloture?

I see my loss of memory is not too bad after all. It seems to be shared by others. Of course, I am 85—almost.

The PRESIDING OFFICER. We are checking the record.

Mr. BYRD. I say that with all respect, due respect and ample respect to the Chair, the Parliamentarian, and others.

The PRESIDING OFFICER. Cloture has been invoked on amendment No. 4901, the Thompson amendment.

Mr. BYRD. I thank the Chair.

Now, Mr. President, the point I am trying to make here is—and I wanted it in the RECORD, and I wanted Senators to be aware of what they did when they voted to invoke cloture on last Friday. The distinguished occupant of the chair did not vote to invoke cloture, nor did this Senator, who now is speaking.

There were 29 Democrats who voted against cloture last Friday. There were 17 Democrats who voted for cloture last Friday. As I note—and this may have been a cursory examination I have made—but I have noted, in a cursory examination, I believe two Republicans who were absent would have voted with me against cloture and I believe four Democrats who were absent would have voted with me against cloture.

In any event, had 6 of the 17 Democrats who voted for cloture voted against cloture last Friday, we would not be under cloture at this point because the number of Senators voting for cloture on last Friday would have been only 59 and the number, therefore, would have fallen 1 vote short of cloture.

Now, I tried to get my fellow Democrats to vote against cloture because I felt that we ought to have more time to discuss this homeland security bill, which had been dropped on our desks virtually out of the shades of the early morning as they were lifting and the golden fingers of dawn were streaking across the land. I tried to get several Senators to vote against cloture, my plea being: ''Don't vote for cloture today. Give us a little more time. If we don't vote for cloture today, it will be voted next week ''—meaning this week, which we have now started. ''Don't vote for cloture today.''

One or two Senators listened to my importunings and voted against cloture.

Mr. President, I ask for an additional 3 minutes.

The PRESIDING OFFICER. Without objection, the Senator is granted an additional 3 minutes.

Mr. BYRD. Mr. President, one or two Senators listened and voted against cloture. Some others listened and didn't vote against cloture but voted for cloture, which was their right to do. But let me just show what happened there.

They voted for cloture. Cloture was invoked. Some of those Senators with whom I talked said: ''You have 30 hours in which amendments can be offered, and some of the problems that you outlined, you can get a vote on them, and possibly those can be amended and corrected.''

As we have seen, only one amendment—one amendment—was offered. It filled up that particular tree, so that no other amendments could be offered while that amendment was pending. But our good friends on the other side said: This far, no farther. You have offered an amendment—meaning Mr. DASCHLE had offered an amendment on behalf of Mr. LIEBERMAN; that amendment was pending—you have offered this amendment. That's the amendment we are going to vote on. You are not going to get to to offer any more amendments. The 30 hours will be run on that one amendment.

So I hope Senators in the future will remember. Of course, I knew that could be done. But I have to say I think that is the first time in my memory—and I have been here during the great civil rights debates of the 1960s—I believe that is the first time—and I don't say it critically of the Republicans; they had that right, they played by the rules. Our problem is we don't all know the rules. But they played by the rules. We have one amendment. The 30 hours will be gone Tuesday morning, and that one amendment is it, and I mean ''it.''

Now, when cloture is invoked on H.R. 5005, as amended, if amended, we won't be able to offer any amendments. We can talk, but the ball game is over when we adopt the Thompson substitute. That substitute wipes out everything. It wipes out H.R. 5005, as far as that is concerned.

So the point is, we voted cloture on ourselves. We did it to ourselves on this side. I knew every Republican would vote for cloture, but I hoped that at least enough Democrats would vote against cloture—we only needed six more votes in opposition. But we did it. We did it to ourselves. We have had a chance to offer only one amendment. That is it. The Republicans say: That is it, no more amendments, and we will vote on Tuesday.

I just say this so that our friends on my side of the aisle in particular will know what their vote for cloture on Friday has done to defeat our chances to have other amendments voted on.

I thank the Chair and I yield the floor.

Mr. REID. Mr. President, I have spoken to the two leaders. There will be no cloture vote this afternoon, and likely no other votes this afternoon. Members will have all the opportunity they want to debate the Shedd nomination or, of course, the homeland security matter.

The PRESIDING OFFICER (Mr. LEVIN). The Senator from Texas.

Mr. GRAMM. Mr. President, what is the pending business?

The PRESIDING OFFICER. We have 1 minute and a half left in morning business.

Mr. GRAMM. Mr. President, I ask unanimous consent that I might have 10 additional minutes in morning business.

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

HOMELAND SECURITY

Mr. GRAMM. Mr. President, I wish to talk for just a moment about where we are on the homeland security bill. I wish to talk about the amendment on which we will be voting tomorrow morning because I think it is important for people to look at the issue, in terms of understanding the full picture, at least given each of our abilities to see the full picture.

We now have debated homeland security, I think, for seven or even eight weeks. It is obviously an important issue. When you are creating a new Department that will have 170,000 members—the largest reorganization of Government since the creation of the Defense Department—I think having a pretty extended debate is justified.

I say to people who are opposed to the bill that I hope they will recognize that the debate has had an effect. The distinguished Senator from West Virginia, who has been perhaps the most outspoken opponent of the bill, I think would agree that a major problem with the bill has been changed—that being, it would have transferred to the President a substantial ability to change the appropriation levels set by Congress, and as such would have redistributed power from the legislative branch to the executive branch.

Mr. BYRD. Mr. President, will the Senator yield? I ask that 2 minutes of my inquiry not be charged against his 10.

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

Mr. BYRD. Mr. President, may I say right at that point that the Senator is correct. That was the major constitutional flaw. That was a major constitutional flaw. It dealt with the power over the purse which under the Constitution is vested here in Congress. Senator STEVENS, I would have to say, was himself the foremost proponent of a change, backed by some degree of constitutionality. He is the major proponent on that side of the aisle of our veering away from that precipice and bringing us back to leaving control in the hands of the appropriations committees, and in the hands of Congress in large part.

Second, I would say one of the foremost proponents of recognizing that constitutional flaw was the distinguished Senator from Texas, Mr. GRAMM. I am convinced in my own mind—although I was not a little fly on the wall down at the White House listening in—that the Senator from Texas was a major, major proponent of bringing us back to our senses—or at least the administration back to its senses—with respect to that constitutional flaw. I have to believe in my own mind that he argued with them to that effect.

Listen, that is at least the one—that is the one in the Senator's mind, I would guess—unassailable point that the Senators from West Virginia and the Senator from Alaska make; that is, with respect to the power of the purse. You had better back off.

Those are my own words. But I have reason to believe the Senator from Texas is responsible in great measure for what occurred down at the White House with respect to its backing off on that point.

I thank the Senator.

If I am correct, or if I have failed and my guesswork is incorrect, please say so.

I thank the Senator for yielding.

Mr. GRAMM. Mr. President, the point I want to make—and I think it is a specific lesson of how government works—is that those who have followed this long debate, who have listened to the Senator from West Virginia, and know he has been on the losing side of vote after vote may say: What effect does he have?

He has had a profound effect. Even though he is not a supporter of the bill today and won't be at the end of the day—and I have been in a similar position on many issues, as the distinguished Senator from West Virginia knows—his major concern about the bill has been resolved. The debate and the clarity of the argument we have had on the issue of the power of the purse has had a profound effect on the bill. So you can be on the losing side of the votes and yet have a profound effect on the end product.

That is the point I wanted to make. The Senator is right. I thought it was a change that should be made, and it is a change that has been made. I think it represents an improvement.

I want to talk very briefly about the bill. I think I have a copy of it right here. Let me remind people what happened. I think everybody will understand the dilemma we were in.

We adjourned for the election with this issue unfinished. The President came back from the election with what I believe and what I think the public perceives to be a strong mandate that this is the important issue that should be dealt with.

The President could have said: Well, I will wait until the new Congress when my party will be in control, and I will write this bill exactly like I want to write it. He could have done that. He did not do that. And I believe that is wise. Instead, he sat down with three members of the opposition party and negotiated out additional clarifications in the bill. These clarifications are not profound, but they are important.

As this reorganization process goes forward, and as 170,000 people are moved into one agency, these changes the President agreed to will assure that these workers and their representatives will have an opportunity to give input. They will have a due process procedure, but in the end the reorganization will go forward. The President will have the right to exercise the same national security waiver that every President—first through executive order, and from the Carter administration forward under law—since John Kennedy has been able to exercise.

The next thing we had to do to get into a position to pass this bill is make clear what the final version of the bill would look like. We didn't want to end up with a week or two weeks of a conference with the House during this session where Congress is meeting after the election—sometimes referred to as a lame duck session. Many Democrats who are supportive of the bill wanted to be sure in negotiating with the President and in negotiating with the authors of the bill that they wouldn't end up having to negotiate again with Republican leaders in the House. Over the weekend—not this weekend, but the weekend before—we sat down with the House leaders on this issue, and we negotiated out a final product.

I would say of this 484 page bill, 98 percent of it is the Gramm-Miller substitute which we debated for weeks. There were several changes made that have been much discussed. I believe there is a more efficient way of characterizing those changes than the way they have been characterized. I want to try to explain them.

Let me just first start by saying when the House writes a bill and the Senate writes a bill, there are often differences in the bill, and there is always give and take. Some have talked about extraneous material in the bill. I would have to say that in my 24 years in Congress, there are almost always issues dealt with in a bill that some people view as extraneous. I would say there are relatively few in this bill. But let me talk about the issues that are subject to the amendment Senator LIEBERMAN has offered. This amendment strikes provisions in the compromise—I think there are seven of them. I don't have my notes with me, but I remember them well enough to talk about them.

Three of these provisions have to do with liability. Let me remind my colleagues that since the Civil War, we have had provisions of law that have dealt with liability for people who were producing new products for war efforts. One of the ways of encouraging people to be innovative and one of the ways to get products from the drawing board to the battlefield quickly is to protect people from liability.

There was a provision in the original Senate amendment, the Gramm-Miller amendment, that the Senators from Virginia were responsible for. That was a provision whereby the Federal Government would indemnify manufacturers of products that would be used in the war on terrorism, so that if a liability issue arose, the Federal Government would step in and basically cover the liability. I would have to say that was not my preferred option, but in putting the amendment together we accepted it.

The House had another approach, which was to basically limit liability, require that lawsuits occur in Federal court, and set up a procedure to deal with liability that arose in these issues.

In putting together the compromise with the House, we took something between the two that did not have the liability limits the House adopted but was a movement toward reducing runaway liability and removing the taxpayer from the line of fire.

That accounts for three of the criticisms made. I want to address the one that is most discussed, and that is the one that has to do with mercury-based injections and smallpox vaccine.

Under the bill, as it is now written, we are treating smallpox vaccine as an instrument of the war on terrorism. Before, we had dealt with it as a response to a disease. We had a liability fund for vaccines in the past, but now that we have eradicated smallpox, the only fear we have of it is the reintroduction by terrorist elements. So we bring smallpox vaccine under this liability limit.

Those of my age will remember, if you get a smallpox shot, you get a skin reaction which produces a permanent scar. I say to my colleagues that this is pretty terrorism specific because no one would take a smallpox vaccination except for the terrorist threat because there are risks involved. Some small percentage of people have very negative reactions, some people die, and almost everybody has a scar from smallpox.

This bill would require people who sue to enter into a negotiation with the Justice Department before they file suit, and to negotiate the possibility of a payment out of an indemnity fund.

Some of our colleagues have said: Why did you make it retroactive? Wasn't that some kind of benefit to some vaccine producer? I remind my colleagues that nobody is taking smallpox vaccine now, nor would anybody take it unless there was an imminent threat. But we do have some of the vaccine stockpiled.

Why would you make it retroactive to cover that stockpile that has already been produced? The reason you do that is, if you give a protection against liability for all vaccine produced in the future but not for what we have stockpiled, the manufacturers will destroy the stockpile and produce more vaccine. And if we had a sudden threat, we would not have the stockpile.

So if this were a vaccine that was routinely taken, then I think the criticism would be well founded. But I think it is a total mischaracterization to say this is some kind of pharmaceutical bailout when it is targeted toward smallpox vaccine and the stockpile now has relevance only in terms of terrorism.

In terms of manufactured products to use in the war on terrorism, I simply say, in every major conflict in modern history, we have had some liability limits for the people producing things for wartime use.

The fourth provision that would be stricken has to do with the Wellstone amendment. Senator Wellstone offered an amendment to the bill that said, if you had a company that had ever been domiciled in the United States, and it was now domiciled anywhere else in the world, that company could not participate in contracts for the war on terrorism. In the bill that is before us, a couple of provisions were added to the Wellstone amendment that allows the President some flexibility in cases where the application of the Wellstone amendment would actually cost American jobs, where it might leave only a sole bidder, or where the absence of competition could drive up costs.

You might say, how could it cost America jobs? Well, let's say you have a company that was once based in America and still has very heavy presence in America but has its headquarters in France. Many companies are now international companies and where their home office is has ceased to have a lot of relevance, in my mind. In any case, the product made by the French-headquartered company might actually be produced in America. We could not buy it because the company is now domiciled in France but once was domiciled in America—maybe in 1812—but yet we could buy a product that was produced in another country by a company that never had an American presence.

There might be national security reasons or job reasons to have a waiver. The amendment before us would strike that waiver. I think it is a good waiver. I think it is a good government provision. And I think it is one we should have.

Another amendment has to do with advisory committees. I couldn't care less about advisory committees. I think sometimes they serve a productive purpose. I think in most cases they do not. But I think we are foolish to be striking advisory committees when the House has adjourned and may not come back to agree to the change if we make it. I do not think we ought to jeopardize this bill.

Finally, there is a provision that establishes a broad authorization outline. No funds are appropriated for participating in the management of research. There is a definition that is written into the law that, as I understand it, would cover roughly 12 major research universities.

I just ask my colleagues to look at these overall seven provisions, and to ask themselves a question: Would the bill be better off without all seven, because they are all stricken in one amendment? I think the answer is no. I think there is a logical justification for the amendments in general. And I urge my colleagues to get the whole story before they cast their vote.

Finally—and I think this is of equal importance—this is an important bill. We are getting toward the end. This has been progress that has been hard coming. And I think we take a risk, one that we should not take, by making these changes. I do not think they are good changes.

I think, overall, we are better off with these seven provisions in the bill than we are without them. I think, overall, they are defensible. Any changes you get in bringing the two Houses together in negotiation often are subject to criticism, but I think these are defensible.

I think we would be taking an unnecessary risk by changing the bill. I hope we will not do it.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada.

EXTENSION OF MORNING BUSINESS

Mr. REID. Mr. President, I ask unanimous consent that morning business be extended until the hour of 1 o'clock today.

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

UNANIMOUS CONSENT REQUEST

Mr. REID. Mr. President, as in executive session, I ask unanimous consent that the cloture vote on the Shedd nomination be vitiated and that following today's debate on the nomination, the nomination be laid aside, and that upon the disposition of H.R. 5005, the homeland defense bill, the Senate proceed to executive session and vote, with no intervening action or debate, on confirmation of Dennis Shedd to be a United States Circuit Judge; further, that if the nomination is confirmed, the motion to reconsider be laid on the table, the President be immediately notified of the Senate's action, and the Senate return to legislative session; that if the nomination is not confirmed, the Senate return to legislative session with no intervening action or debate.

I extend my appreciation to the Presiding Officer with whom we worked for several hours Friday and this morning. I have spoken personally with the minority leader, and he has acknowledged that this is the best way to proceed. I ask that the consent be granted.

The PRESIDING OFFICER. Is there objection? The Senator from West Virginia.

Mr. BYRD. Reserving the right to object, I did not understand the distinguished whip's request with respect to H.R. 5005.

Mr. REID. What I said is that when that debate is completed, we would move forward to vote on the Shedd nomination.

Mr. BYRD. Even if that debate entails 30 hours in the train of a favorable vote on cloture on H.R. 5005?

Mr. REID. That is right.

Mr. BYRD. So that, indeed, the request has no impact whatsoever on H.R. 5005.

Mr. REID. I would also ask that the previous order with respect to terrorism insurance remain in effect following the Shedd vote. The order in effect now is that we would do the terrorism bill immediately following homeland security. Now what we would like to do is dispose of the Shedd nomination and then finish terrorism.

Mr. BYRD. Very well. I have no reservation.

The PRESIDING OFFICER. Is there objection? The Senator from Texas.

Mr. GRAMM. Mr. President, it is my understanding that our staffs are talking. Someone just handed me this. If the Senator could wait for about 2 minutes, I think we are trying to run one

more trap. I believe this is acceptable, and I am sorry to inconvenience him.

Mr. REID. Mr. President, I am happy to do that. I withdraw the unanimous consent request.

The PRESIDING OFFICER. The request is withdrawn at this time. The Senator from Wyoming.

Mr. THOMAS. Mr. President, I understand we are still in morning business.

The PRESIDING OFFICER. The Senator is correct.

HOMELAND SECURITY

Mr. THOMAS. Mr. President, I just listened to the two Senators who are probably most involved with the details of this homeland security bill—very interesting comments. I have been, frankly, disappointed that it has taken us as long as it has. We have been on this measure, I understand, now for about 7 weeks, and we are still not finished—a bill that needs to be finished. It needs to be there for security. Yet we continue to debate and worry over issues that are not as significant as the passage of this bill.

I hope we are getting closer to passing a homeland security bill. It is our responsibility to do that. I am almost embarrassed that we are not.

I am pleased that cloture was invoked and that we can move forward on this bill that gives the President the tools he needs to protect our homeland.

We have talked about the details. That is good. On the other hand, there are provisions in there that generally most everyone would agree we ought to be moving forward with: Immigration, to change the reorganization of that department so that you have more emphasis on the immigration aspect with regard to terrorism; reorganization of the Bureau of Alcohol, Tobacco, and Firearms so that it can work better in terms of terrorism as opposed to law enforcement activities.

Personnel flexibility has been one we have talked about for a very long time. Certainly, the President ought to have as much authority for flexibility as others have had and as he has in other departments.

We also need to have, obviously, some protection for the union representatives, and it is there; research and development, aiming it more toward terrorism, that is one of the amendments; critical infrastructure protection, of course, so that we get into helping with the private infrastructure such as dams, such as oil refineries, these kinds of things—important stuff to do—the Coast Guard, strengthening their position with respect to terrorism; the one on corporate inversion where there was concern about being offshore. The fact is it is only there to be used as long as it has specific economic security reasons to be used. I think that is reasonable. Airport security—all these things are there.

Again, I thought during the last month or so it became pretty clear that this session of the Congress has been exceptionally slow in moving forward. It has not accomplished many of the things we should have accomplished. I had hoped that with that in our background, we would be ready to move forward to accomplish this one that is so obvious in need. I hope we can do that.

I am glad we do have Members on both sides who recognize the importance of doing this. We have carefully crafted language that will be there. It is time for us to move forward. Whether there is anything else that we really need to do in this lame duck session, I wouldn't argue that. We obviously have to have a CR. Apparently there is movement toward doing something with terrorism liability. But this is the one. This is what we need to do, and we need to move forward.

I do appreciate the work that has been done. Particularly Senator THOMPSON and Senator GRAMM have worked tirelessly in putting something together that will ensure homeland security and a department that will be capable of moving forward to do the things that everybody understands we need to do. Frankly, there are no more excuses to delay this bill. I certainly urge my colleagues to oppose the amendment and pass the compromise bill so the President can sign this into law.

I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, is the Senate presently in a period for the transaction of morning business?

The PRESIDING OFFICER. The Senate is in morning business until 1 o'clock.

Mr. BYRD. I thank the Chair.

TRIBUTE TO SENATOR MAX CLELAND

Mr. BYRD. Mr. President, it is sad and unfortunate that I and this chamber must say farewell to Senator MAX CLELAND. As a student, a soldier, a public servant, and a U.S. Senator, MAX CLELAND has always personified the best of this country. His has been a life of patriotism and sacrifice, of struggle and of triumph.

After graduating from college, which included an internship on Capitol Hill, and receiving a master's degree in American history, MAX CLELAND volunteered for the Army and then volunteered for service in Vietnam. In that brutal conflict, he lost both of his legs and an arm in a grenade explosion. But MAX CLELAND never gave up. He refused to become simply a tragic symbol of an unwanted and unpopular war.

At the age of 28, MAX CLELAND became the youngest State Senator in Georgia. In 1977, President Jimmy Carter appointed him to head the Veterans Administration, the youngest person ever to hold that post, and one of the best. In that position, among his many accomplishments, MAX CLELAND helped to improve the VA hospital system and reduce delays in paying veterans' benefits.

After that, he was elected to four terms as Secretary of State of Georgia.

In 1996, Senator CLELAND was elected to the U.S. Senate. After being sworn into office, he told supporters:

> Your dreams can come true if you continue to believe in them long enough, hard enough, and never give up on them.

What a role model MAX CLELAND is, not only for disabled Americans but for all Americans. His life demonstrates what overcoming adversity—probably adversity at its worst, or almost that, at least—really means.

As a triple amputee, life and work have not come easily. I have read it takes him 3 hours just to prepare for work each day. I would imagine it takes him longer than that, because it takes me that long many days. But I cannot imagine the amount of pure grit it takes for this man just to live. At times I get up from my bed at 1 o'clock in the morning, 3 o'clock in the morning, whatever, and adjust the temperature in my room. If it is a little too cold or a little too warm, I have to get up and go outside my room and adjust the temperature. I think of that poor man, MAX CLELAND, and how it is for him if he gets too cold or too warm and has to adjust the temperature in the room. He has to get out of bed with much more difficulty than I, and go to the thermostat and do that. So what grit it must take of him just to live.

Well, one of MAX CLELAND's heroes is the great Franklin Roosevelt who, confined to a wheelchair because of paralysis, encountered many of the same obstacles and challenges that face MAX. Still, Franklin Roosevelt was elected President four times and, as President, saw this country through the Great Depression and World War II.

I am proud to point out that another one of MAX CLELAND's heroes is one of my heroes, a Senator who is one of my mentors in this Chamber, Senator Richard B. Russell of Georgia. MAX CLELAND met Senator Russell while serving as a congressional intern. When MAX returned from Vietnam several years later, with both legs gone and only one arm, he met Senator Russell again. That grand old Senator was so impressed with the young soldier that he had his driver give the young man a tour of the Nation's capital.

During his tenure in the U.S. Senate, Senator CLELAND has used Senator Russell's old telephone number, and has often taken his visitors to see the statue of Senator Russell in the Russell Senate Office Building, telling them, ''So much of me is tied up in Dick Russell.''

MAX CLELAND truly knows the horrors of war. Knowing that ''war is hell,'' he has been one of the Chamber's leading skeptics about the use of military force abroad and has always proved cautious when it comes to committing American troops overseas. In the 106th Congress, for example, he was

the first Democrat to call for a halt to the U.S.-led bombing campaign in Kosovo. He introduced legislation to update and improve the War Powers Resolution by erecting more safeguards before the deployment of our fighting men and women into situations of hostility.

I must point out that I have not always been in agreement with Senator CLELAND. I strongly opposed a balanced budget constitutional amendment, and I think MAX CLELAND supported it. I opposed the line-item veto, and I believe that MAX supported the line-item veto. But I have never, never, not for a second, questioned his sincerity, his integrity, or his respect for our Government and his love of this country.

MAX CLELAND is an outstanding Senator, a great American. He lost his Senate seat, at least for the foreseeable future, but he will never lose his integrity. Senator CLELAND is a real winner. Just as his military buddies were proud to have served with MAX CLELAND in Vietnam, I am honored to have served with him in the Senate. MAX CLELAND is a hero. He will always remain so.

May God bless MAX CLELAND. I wish him nothing but happiness and success in the future.

God give us men!
A time like this demands strong minds,
great hearts, true faith, and ready hands.
Men whom the lust of office does not kill;
Men whom the spoils of office cannot buy;
Men who possess opinions and a will;
Men who have honor; men who will not lie.

Men who can stand before a demagogue
And brave his treacherous flatteries without winking.

Tall men, sun-crowned;
Who live above the fog,
In public duty and in private thinking.

For while the rabble with its thumbworn creeds,
Its large professions and its little deeds, mingles in selfish strife,
Lo! Freedom weeps!
Wrong rules the land and waiting justice sleeps.
God give us men!

Men who serve not for selfish booty;
But real men, courageous, who flinch not at duty.
Men of dependable character;
Men of sterling worth;
Then wrongs will be redressed, and right will rule the earth.
God Give us Men!

Mr. President, MAX CLELAND is that kind of man.

I yield the floor.

The PRESIDING OFFICER. The Senator from Nevada is recognized.

Mr. REID. Mr. President, I certainly confirm, underscore, and applaud the statement of the Senator from West Virginia about MAX CLELAND. I don't know of anyone in my life who has given me more inspiration than MAX CLELAND. Whenever things seem a little bit dark and dreary, I always see that smiling face of MAX CLELAND. He is a tremendous man, a fine human being, and he has a lot more to contribute. His name will grow from where it is today. The people of Georgia and this country have not heard the last of MAX CLELAND.

UNANIMOUS CONSENT AGREEMENT

Mr. REID. Mr. President, I renew my unanimous consent request that was just asked a few minutes ago. I ask the Chair, do I need to restate that?

The PRESIDING OFFICER. It is not necessary.

Is there objection to the unanimous consent request previously stated by Senator REID?

Without objection, it is so ordered.

Mr. REID. Mr. President, the esteemed President pro tempore of the Senate, Senator BYRD, is going to speak for a while this morning. We are in morning business until 1 o'clock today.

For those wishing to speak on the Shedd nomination, the time has been running in spite of the fact we are in morning business. Senator HATCH is here, Senator LEAHY and his staff are here, and he is available to come at any time. I don't think they will need all the time.

I ask unanimous consent that morning business be extended until 2 p.m. today and that the Shedd time continue to run for Senators who wish to speak on that during morning business.

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

The Senator from West Virginia.

Mr. BYRD. Mr. President, seeing no other Senator seeking recognition at this time, I again have sought recognition.

Mr. REID. Will the Senator yield? I failed to make one announcement.

Mr. BYRD. Absolutely, yes.

Mr. REID. I apologize. The cloakrooms have sent out an announcement that there will be no more votes, but the majority leader has asked me to announce there will be no rollcall votes today.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

TRIBUTE TO SENATOR JESSE HELMS

Mr. BYRD. Mr. President, the senior Senator from North Carolina, Mr. HELMS, is in some ways my Senator. I was born in North Carolina. I was born there before Senator HELMS was born there. My natural father and mother are buried there in North Wilkesboro, NC. One of my brothers, the only brother I have still living, still lives in Wilkes County.

Many years ago, before the senior Senator from North Carolina joined the Senate, he was a radio commentator on WRAL in Raleigh, NC. During one of his radio commentaries, it is my understanding that the future Senator from North Carolina—the future Senator then, Senator HELMS, not Senator at that point—spoke of me as a Senator whose "greatest strength is his dedicated independence of thought and action," as a Senator who is "neither easily frightened nor intimidated," as a Senator who "stands up for what he regards as important."

I have always appreciated those words, and over the many years, I have appreciated the friendship of the senior Senator from the State of North Carolina. So when JESSE HELMS was elected to the United States Senate in 1972, it seemed to me that we were already long-time friends, and we became even closer friends.

The more we came to know each other, the more at least I liked and respected him. I think he returned the compliment, but I cannot speak for that. I can only say for myself that I liked and I like JESSE HELMS and I respect him, and I have always respected him.

I found Senator JESSE HELMS to be a deeply religious man of immense integrity, indisputable honesty, unqualified patriotism, and absolute independence, a man who is absolutely fearless. He is a southern gentleman of the first order. He is a product of the old South and a product of his beloved North Carolina.

He has certainly made his presence felt in the Senate. During his years in the Senate, he served as chairman of the Senate Agriculture Committee, chairman of the Senate Foreign Relations Committee, and was made a grand duke by the country of Lithuania for his contributions to the reestablishing and strengthening of the independence of the Baltic nations.

He also acquired a powerful and widely recognized reputation for his strong independent stands, and I am here to verify that many of the stands he has taken have not only been strong stands and independent stands but, in some cases, Senator HELMS stood virtually alone.

Some of his positions have involved his standing, as I say, alone not only against Presidential administrations but against the remainder of the entire U.S. Senate, or at least most of the Senate. More than once, Senator HELMS has been the singular vote on a particular position, and I know that can be a bit lonely. But he has never wavered in the strength of his convictions or his votes.

"The paramount thing for political leaders," he once explained, "is whether a man believes in his principles and whether a man is willing to stand up for them, win or lose."

That was JESSE HELMS. Consequently, we always know where Senator JESSE HELMS stands. Take an issue—abortion, prayer in school, Presidential nominations, reducing the deficit, taxes, Government waste, the future of the country— if one did not already know where JESSE HELMS stood, JESSE HELMS was always ready to tell you where he stood.

Some of his positions have been unpopular. Some of them may have seemed out of step with the march of history, but he has contributed to the great debates that from time to time have been heard over and throughout

the land. JESSE HELMS has made a major contribution to those debates.

In volume 2 of my own ''History of the Senate,'' I express the concern ''ours is becoming a nation of hardened cynics.'' I went on to point out that we ought to return to our beginnings. Go back to the hills—the hills of West Virginia or the hills of North Carolina—look up at the treetops and into the open sky and gain a renewed sense of God's presence in our personal lives and in the life of the Nation. As Senators, we especially need to remember the old values, such as faith in God, obedience to law, respect for the flag, honesty, and thrift. How very well Senator HELMS has reflected those values.

I close, Mr. President, by repeating the words Senator HELMS spoke of me 40 years ago, words I remember so well, words I think so aptly tell the story of Senator JESSE HELMS:

He is a Senator whose greatest strength is his dedicated independence of thought and action. He is a Senator who is neither easily frightened nor intimidated.

And foremost—

He is a Senator who has always stood up for what he regards as important.

Mr. President, my wife Erma, who is an old-fashioned girl who married an old-fashioned guy, and I wish the very best for JESSE HELMS and his lovely wife Dorothy Jane Coble as they enter the next phase of their lives.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. NELSON of Florida). Without objection, it is so ordered.

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

The PRESIDING OFFICER. The Senate is in morning business.

TRIBUTE TO ED HADEN

Mr. SESSIONS. Mr. President, I rise today to recognize a member of my judiciary staff, my chief counsel on Judiciary, Ed Haden. Ed will be leaving the Senate at the end of this session, returning to private practice at the outstanding Alabama law firm of Balch & Bingham in Birmingham, AL, where he will work in that firm's appellate litigation department. I will say this: My loss and the Senate's loss will be a great gain to Balch & Bingham.

Before joining the Senate, Ed had a distinguished legal career, having served as a staff attorney on the Alabama Supreme Court and as a law clerk for the Fifth Circuit Court of Appeals. He came to the Judiciary Committee in 1999, first serving as counsel to Senator ORRIN HATCH on the nominations and constitutional law unit. In 2000, he became my chief counsel for the Subcommittee on Youth Violence and is currently chief counsel for the Subcommittee on Administrative Oversight and the Courts.

Ed's work ethic is beyond reproach. From the moment he joined my staff, his legal analysis has been unmatched and his commitment to the rule of law unwavering. His attention to detail and his ability to be thorough but brief at the same time has helped me enormously. I know I can trust his judgment, and I thank him for dutifully managing our staff and our issues since the day he arrived on our team.

During his tenure on the committee, Ed has proven what I knew when I hired him, that he would always carry himself in a professional manner, and even though he might not agree with those on the other side of the aisle, he could work with them and gain their respect.

Ed is truly a man of utmost character. Senator SCHUMER, chairman of the Administrative Oversight and the Courts Subcommittee, commented at a recent executive committee meeting that:

[Ed] . . . represents the best of what we are about. He is bright and diligent and honorable. His word is his bond. . . . [Ed] has done a great job, with great distinction. He is really an admirable lesson of what public service is all about.

This is one time I could not agree with Senator SCHUMER more. Ed is a man of honor and integrity. His intellect is unmatched. Most importantly, his commitment to fairness and getting the job done distinguishes him. He has certainly provided extraordinary assistance to me, but I believe he has enriched the entire debate on the Senate Judiciary Committee. He is indeed an extraordinary worker with a prodigious capacity to produce high-quality work, almost unbelievably so. He works long hours and is committed to producing the absolutely most accurate answer for any question we are debating.

Ed has not only been a great manager of the complex issues that have passed through our committee, he also has been a good manager of the people I hired to work on the committee. His ability to lead is without question, and the respect he has garnered during his service has been expressed by those who worked closely with him.

Makan Delrahim, chief counsel to Senator HATCH, comments:

Ed is a close friend and an indispensable colleague. I worked with Ed when he first came to Washington and began his career as Nominations Counsel on Sen. Hatch's Judiciary staff. Our friendship has continued as he moved to serve Senator SESSIONS. Ed's intellect and integrity are second to none. The committee will miss him.

Rita Lari Jochum, chief counsel to Senator GRASSLEY, comments:

Ed Haden is an excellent lawyer and a great American. He will be sorely missed by the Judiciary Committee.

Stephen Higgins, chief counsel to Senator KYL, comments:

Ed Haden was an invaluable asset to the Judiciary Committee. He is a superb lawyer and has both a tremendous respect for the Constitution and a great love for this Republic. We will all miss him.

Scott Frick, chief counsel to Senator THURMOND, comments:

Ed Haden possesses a unique combination of intelligence, work ethic, and the ability to communicate his ideas clearly. These qualities have served Senator SESSIONS and the State of Alabama well. And in addition, he is a truly nice guy. When I first joined the Judiciary Committee staff, Ed selflessly offered his time and advice, and I remain appreciative of his willingness to lend a hand.

John Abegg, Judiciary counsel to Senator MCCONNELL, comments:

Ed Haden has been an invaluable asset to the United States Senate and to its Judiciary Committee. His intellect, resourcefulness, and work ethic are recognized and respected by both sides of the aisle, as is his always courteous and modest demeanor. Ed is the embodiment of the principle that one can disagree with others, even passionately so, about the most important of matters without being personally disagreeable. He is a credit to the country, his state, and his family.

Sean Woo, counsel to Senator BROWNBACK, comments:

In many ways and especially in matters dealing with judicial nominations, Ed Haden was the conscience of the Republican judiciary staff. His commitment, enthusiasm and intellect—applied with the Southern charm of an Alabamian—will be sorely missed.

Mr. President, Ed has given me and his country an extraordinary effort, and I am grateful for that, as well as his loyalty and dedication, always having my best interest in mind and not his own, never seeking credit for his great work, doing what was best for this country and Alabama. Ed is an exceedingly hard worker, a man of integrity and ability, who has dedicated himself to reaching a just result on every issue assigned to him, ranging from bankruptcy, where he was extraordinarily engaged in a most complex bit of legislation, to judicial nominations. I could not have been successful without his leadership and assistance.

Ed's greatest strength, I believe, is that he has a remarkably developed and rich set of core principles that guide him in his daily work. He does not go in for flash or show, but for substance. He, to a remarkable degree, understands the glory and uniqueness of the American Government. He loves America. He works constantly to enrich her and strengthen her—especially the rule of law, which has been the foundation of this country's strength.

Ed Haden is more than just an outstanding chief counsel, he is a great friend and a great American. I thank him for his service to me, to the people of Alabama, and to the people of the United States. He typifies what we so often see and too little hear about in this body—the great work of our staffs. They give us loyalty into the night, preparing work for us so we can shine the next day before the TV cameras. I think Ed is the epitome of excellence in staff, the kind of person I have valued greatly and will miss greatly.

I thank the Chair and yield the floor.

Mr. HATCH. Mr. President, I rise to join in Senator SESSIONS' comments earlier today regarding the departure of Ed Haden, a staffer who has given a great deal to the Judiciary Committee during the past three years. Ed has made his influence felt, and he will be missed.

Ed came to the Judiciary Committee in 1999 to work as my counsel in the Nominations and Constitutional Law unit. He served me admirably in that position. The next year, Ed became chief counsel to Senator SESSIONS' subcommittee, and he continued to contribute substantively to many issues handled by the full committee. Ed's reputation as a smart, creative, and effective lawyer is well-earned.

As Senator SESSIONS said, the Senate's loss is someone else's gain. Ed will be joining the Birmingham, AL, law firm of Balch & Bingham, which will no doubt benefit greatly from the association.

I want my colleagues to know that, as Senator SCHUMER said in a recent Judiciary meeting, I have found Ed Haden to represent the best of what we are about. He is honorable and hard-working and someone who can be taken at his word. I thank Ed for his great service to me and the Judiciary Committee, and I wish him all the best in his future endeavors.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

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

The PRESIDING OFFICER. The Senate is in morning business until 2 p.m.

Mr. LEAHY. Mr. President, I will be speaking on a number of things at appropriate times this afternoon. I ask the distinguished Presiding Officer, at what time do we turn to the Shedd nomination?

The PRESIDING OFFICER. At 2 o'clock.

Mr. LEAHY. I thank the Chair. I commend the Chair for his interest in the proceedings here—something he always demonstrates when he is there. He has had the ability to serve in both bodies and we have what might be a little bit more of a leisurely technique over here. The Senator from Vermont is delighted to have the Senator from Florida as a Member of this body.

HOMETOWN HEROES SURVIVORS BENEFITS ACT OF 2002

Mr. LEAHY. Mr. President, I rise to encourage the Senate to pass today the Hometown Heroes Survivors Benefits Act of 2002, H.R. 5334.

This multipartisan legislation is to improve the Department of Justice's Public Safety Officers' Benefit Program. This bill allows the families of public safety officers who suffer fatal heart attacks or strokes to qualify for Federal survivor benefits.

I commend those in the other body, including Congressmen ETHERIDGE, WELDON, HOYER, and OXLEY, for their leadership and, I might also say, their fortitude on this important legislation. On the last night the other body was in session, Congressman ETHERIDGE stood as a sentry on the bridge and said nothing else is going forward until this goes through. And it did pass in the House. I am proud to be the original sponsor of the Senate version of the Hometown Heroes bill, S. 3114. I thank Senators COLLINS, JEFFORDS, LANDRIEU, and DURBIN for joining me as cosponsors.

This legislation should not be in any way controversial. It is supported by the Fraternal Order of Police; National Association of Police Organizations; Congressional Fire Services Institute; International Association of Arson Investigators; International Association of Fire Chiefs; International Association of Fire Fighters; National Fire Protection Association; National Volunteer Fire Council; North American Fire Training Directors; International Fire Buff Association; National Association of Emergency Medical Technicians; American Ambulance Association; American Federation of State, County Municipal Employees. Actually, I will not list them all, but there are 50 additional national organizations.

Public safety officers act with an unwavering commitment to the safety and protection of their fellow citizens, and it is always the case that they are willing to selflessly sacrifice their lives to provide safe and reliable emergency services to their communities. Hundreds of public safety officers nationwide lose their lives, and thousands more are injured while performing duties that put them at great physical risk.

Although we know that PSOB benefits can never be a substitute for the loss of a loved one, the families of all our fallen heroes should be eligible to collect these funds.

The PSOB program authorizes a one-time financial payment to the eligible survivors of Federal, State, and local public safety officers for all line-of-duty deaths. A number of other things are in the bill. We have improved this PSOB program on numerous occasions—we did it in the Patriot Act—but, unfortunately, the inclusion of on-duty heart attack and stroke victims in the program has not been addressed.

This bill fixes that loophole to ensure that the survivors of public safety officers who die of heart attacks and other cardiac-related deaths in the line of duty, or within 24 hours of a triggering effect while on duty—regardless of whether or not a traumatic injury occurs at the time of the heart attack or stroke—are eligible to receive financial assistance. Heart attack and cardiac-related deaths account for almost half of all firefighter fatalities and an average of 13 police officer deaths each year.

It is time for the Senate to show its support and appreciation for these extraordinarily brave and heroic public safety officers by joining the House and passing the Hometown Heroes Survivors Benefits Act.

Mr. President, I understand it has been cleared on this side of the aisle. I hope that my friends on the other side of the aisle will let this bill pass. We are willing on this side of the aisle to pass it, but there has been objection on the other side. I hope that objection will be withdrawn and this will pass so that we can join what has been already done in the other body.

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

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

Mr. NELSON of Florida. Mr. President, I rise to speak in favor of the legislation just referred to by the distinguished Senator from Vermont. I have a particular interest in this legislation because in my former governmental capacity as the State treasurer, insurance commissioner, and State fire marshal of Florida, I had the occasion to come to a great appreciation of the role of the firefighter, the extraordinary courage that firefighters display, and the extraordinary amount of property and life they save.

Fortunately, that was etched into the consciousness of America as a result of what we saw on September 11—not only the police, the firemen, but so many public service personnel who responded under those conditions. So I want to add my voice in support of the legislation referred to by Senator LEAHY and to those on the other side of the aisle who might be putting a hold on this legislation.

There is an extreme risk to the occupation of firefighter. We understand that risk more clearly based on what we saw of the bravery and the devotion to duty expressed on September 11. But that bravery and devotion to duty goes on day in and day out in the firehouses in communities across this Nation. These firefighters should be appropriately compensated when infirmity and disaster strikes them.

Mr. President, I wanted to add my name in support of the distinguished Senator from Vermont and his bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

EXECUTIVE SESSION

NOMINATION OF DENNIS W. SHEDD, OF SOUTH CAROLINA, TO BE U.S. CIRCUIT JUDGE FOR THE FOURTH CIRCUIT

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session to proceed to the consideration of Executive Order No. 1178, which the clerk will report.

The legislative clerk read the nomination of Dennis W. Shedd, of South Carolina, to be United States Circuit Judge for the Fourth Circuit.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, how much time is under the control of the Senator from Vermont?

The PRESIDING OFFICER. Three hours.

Mr. LEAHY. Mr. President, I have discussed this with the distinguished senior Senator from Utah. I am going to speak on another matter prior to going to the Shedd nomination, although I have no objection to the time coming out of the 3 hours.

INNOCENCE PROTECTION ACT

Mr. LEAHY. Mr. President, for more than 2 years, I have been working hard with Members on both sides of the aisle, in both Houses of Congress, to address the horrendous problem of innocent people being condemned to death within our judicial system. This is not a question of whether you are for or against the death penalty. Many of the House Members and Senate Members who have joined this effort are in favor of the death penalty. I suspect the majority of them are in favor of it. It goes to the question of what happens if you have an innocent person who is condemned to death.

Our bill, the Innocence Protection Act, proposes a number of basic commonsense reforms to our criminal justice system; reforms that are aimed at reducing the risk that innocent people will be put to death.

We have come a long way since I first introduced the IPA in February 2000. At that time, we had four Democratic cosponsors. Now there is a broad consensus across the country among Democrats and Republicans, supporters and opponents of the death penalty, liberals, conservatives, and moderates, that our death penalty machinery is broken. We know that putting an innocent person on death row is not just a nightmare, it is not just a dream, it is a frequently recurring reality.

Since the 1970s, more than 100 people who were sentenced to death have been released, not because of some technicality, but because they were innocent, because they had been sentenced to death by mistake. One wonders how many others were not discovered and how many innocent people were executed.

These are not just numbers, these are real people. Their lives are ruined. Let me give an example: Anthony Porter. Anthony Porter was 2 days from execution in 1998 when he was exonerated and released from prison. Why? Not because the criminal justice system worked. He was exonerated and released because a class of journalism students, who had taken on an investigation of his case, found that did he not commit the crime. They also found the real killer. A group of students from a journalism class did what should have been done by the criminal justice system in the first place.

Ray Krone spent 10 years in prison. Three of those ten years were on death row waiting for the news that he was about to be executed. Then, earlier this year, through DNA testing, he was exculpated and the real killer was identified. These are two of the many tragedies we learn about each year.

These situations result not only in the tragedy of putting an innocent person on death row, but they also leave the person who committed the crime free. Everything fails. We have the wrong person in prison. But we have not protected society or the criminal justice system because the real criminal is still out running free. Often times, the actual perpetrator is a serial criminal.

Today, Federal judges are voicing concerns about the death penalty. Justice Sandra Day O'Connor has warned that ''the system may well be allowing some innocent defendants to be executed.'' Justice Ginsburg has supported a State moratorium on the death penalty. Another respected jurist, Sixth Circuit Judge Gilbert Merritt, referred to the capital punishment system as ''broken,'' and two district court judges have found constitutional problems with the Federal death penalty.

We can agree there is a grave problem. The good news is that there is also a broad consensus on one important step we have to take—we must pass the Innocence Protection Act.

That is why I wanted to let my colleagues know what is happening. As the 107th Congress draws to a close, the IPA is cosponsored by a substantial bipartisan majority of the House and by 32 Senators from both sides of the aisle, including, most recently, Senator BOB SMITH of New Hampshire. A version of the bill has been reported by a bipartisan majority of the Senate Judiciary Committee. And the bill enjoys the support of ordinary Americans across the political spectrum.

What would the Innocence Protection Act do? As reported by the committee, the bill proposes two minimum steps that we need to take—not to make the system perfect, but simply to reduce what is currently an unacceptably high risk of error. First, we need to make good on the promise of modern technology in the form of DNA testing. Second, we need to make good on the constitutional promise of competent counsel.

DNA testing comes first because it is proven and effective. We all know that DNA testing is an extraordinary tool for uncovering the truth, whatever the truth may be. It is the fingerprint of the 21st Century. Prosecutors across the country rightly use it to prove guilt. By the same token, it should also be used to do what it is equally scientifically reliable to do: to establish innocence.

Just like fingerprints, in many crimes there are no fingerprints; in many crimes there is no DNA evidence.

Where there is DNA evidence, it can show us conclusively, even years after a conviction, where mistakes have been made. And there is no good reason not to use it.

Allowing testing does not deprive the State of its ability to present its case, and under a reasonable scheme for the preservation and testing of DNA evidence, it should be possible to preserve the evidence.

The Innocence Protection Act would therefore provide improved access to DNA testing for people who claim that they have been wrongfully convicted.

Just last week, prosecutors in St. Paul, MN, vacated a 1985 rape conviction after a review of old cases led to DNA testing that showed they had the wrong man—and also identified the actual rapist. Think how much better society would have been had they caught the real rapist 17 years ago. The district attorney wanted to conduct DNA testing in two other cases, but the evidence in those cases had already been destroyed. She has called on law enforcement agencies to adopt policies requiring retention of such evidence, and that is what our bill would call for.

Many cases have no DNA evidence to be tested, just as in most cases there are no fingerprints. In the vast majority of death row exonerations, no DNA testing has or could have been involved.

So the broad and growing consensus on death penalty reform has another top priority. All the statistics and evidence show that the single most frequent cause of wrongful convictions is inadequate defense representation at trial. The biggest thing we can do is to guarantee at least minimum competency for the defense in a capital case.

This bill offers States extra money for quality and accountability.

They can decline the money but then the money will be spent on one or more organizations that provide capital representation in that State. One way or another, the system is improved.

More money is good for the states. More openness and accountability is good for everyone. And better lawyering makes the trial process far less prone to error.

When I was a State's Attorney in Vermont, I wanted those I prosecuted to have competent defense counsel. I wanted to reach the right result in my trails, whatever that was, and I wanted a clean record, not a record riddled with error. Any prosecutor worth his or her salt will tell you the same; any

prosecutor who is afraid of trying his cases against competent defense counsel ought to try a new line of work, because the whole system works better if both prosecutor and defense counsel are competent. That is what I wanted when I was prosecuting cases because I wanted to make sure justice was done.

The Constitution requires the Government to provide an attorney for any defendant who cannot afford one. The unfortunate fact is that in some parts of the country, it is better to be rich and guilty than poor and innocent, because the rich will get their competent counsel, but those who are not rich often find their lives placed in the hands of underpaid court-appointed lawyers who are inexperienced, inept, uninterested, or worse.

We have seen case after case of sleeping lawyers, drunk lawyers, lawyers who meet with their clients for the first time on the eve of trial, and lawyers who refer to their own clients with racial slurs.

Part of the problem, I think, lies with some state court judges who do not appear to expect much of anything from criminal defense attorneys, even when they are representing people who are on trial for their lives. Good judges, like good prosecutors, want competent lawyering for both sides. But some judges run for reelection touting the number and speed of death sentences they have handed down. For them, the adversary system is a hindrance.

The problem of low standards is not confined to elected State judges. Earlier this year, a bare majority of the Supreme Court held that it was okay for the defendant in a capital murder trial to be represented by the same lawyer who represented the murder victim. Most law students would automatically say that is a conflict of interest, but our Supreme Court said that was all right. And last year, a Federal appeals court struggled with the question whether a defense lawyer who slept through most of his client's capital murder trial provided effective assistance of counsel.

Fortunately, a majority of the court eventually came to the sensible conclusion that ''unconscious counsel equates to no counsel at all,'' basically reversing what a State court said when it said the Constitution guarantees a person counsel. It does not guarantee they will stay awake.

No law can guarantee that no innocent person will be convicted. But surely we can do better than this. Surely we can demand more of defense counsel than that they simply show up for the trial and remain awake. When people in this country are put on trial for their lives, they should be defended by lawyers who meet reasonable standards of competence and who have sufficient funds to investigate the facts and prepare thoroughly for trial. As citizens, we expect that of our prosecutors. We ought to expect the same thing of our defense attorneys. That is all we ask for in the IPA.

I have heard four arguments against the bill. One wonders, with all these people from the right to the left, all these editorial writers and Members of Congress from both parties supporting the IPA, what that tells us.

First, critics claim that the bill is an affront to States' rights. As a Vermonter, and as a former State prosecutor, I agree that States' rights are very important. States should have the right to set their own laws, free of Federal preemption at the behest of special interests. They should have the right to set their own budgets, free of unfunded mandates. And their reasonable expectations of Federal funding for criminal justice and other essential programs should be met, rather than bankrupting State governments because of Federal tax policy.

The IPA is entirely consistent with these principles of State sovereignty. It leaves State laws, including the death penalty laws, in place. It offers States new funding for their criminal justice systems. And there was a provision added during the committee process establishing a student loan forgiveness program for prosecutors and public defenders, something that a lot of State governments say would help recruit and retain competent young lawyers.

This is one of those cases, like in the civil rights era, where the rhetoric of States rights is being abused as a code for the denial of basic justice and accountability. Some States have made meaningful reforms, but many have not. They have had more than a quarter of a century and 100 death row exonerations to get their act together, but they have failed. As many in this body argued in 1996, when promoting legislation to speed up executions, justice delayed is justice denied. I agree with that. We cannot wait forever while innocent lives are in peril.

I have heard a second argument against the IPA, which is that society cannot afford to pay for these reforms. The truth, however, is that we cannot afford to do otherwise if we want to maintain confidence in our criminal justice system. The costs of providing DNA testing and competent counsel are relatively small, especially when you compare them to the costs of retrials that are necessitated by the lack of adequate counsel at trial, or the cost of locking up innocent people for years or even decades. I am all for efficiency, but the greatest nation on Earth should not be skimping on justice in matters of life or death.

I have heard a third argument from a vocal minority of State prosecutors. They claim the bill would make it unduly difficult, if not impossible, to seek the death penalty. That is a shocking claim. When I prosecuted cases, I felt very comfortable prosecuting those cases under the laws of our State because of two things: I knew that all the evidence we had, including potentially exonerating evidence, had been given to the defendant. And I knew I was working in a well-functioning adversarial system with effective representation on the other side. That is the way it is supposed to work.

When I hear a prosecutor say that the IPA reforms—enabling DNA testing and securing adequate defense representation—would make it almost impossible for him to do his job, it makes me wonder what he thinks that job is.

Finally, there is one more argument against the bill which is rarely stated out loud. I call it the ''innocence denial'' argument. We saw this in the Earl Washington case in Virginia where, despite conclusive DNA evidence to the contrary, the Commonwealth for years clung to the hopelessly unreliable and implausible confession of a mentally retarded man. We see it in claims that ''the system is working'' when an innocent man is released after years on death row due to the work of journalism students. And we see it in the often-repeated insistence that, no matter how many people have been exonerated, no one can prove that an innocent person has actually been executed.

The innocence deniers will never concede there is a problem. But with 100 known instances of the system failing—and those are only the ones we know about—it would be surprising if there were not more unknown cases of innocent people being sentenced to death.

The IPA was passed out of committee in the Senate and is supported by a majority of the House. We ought to pass it before more lives are ruined.

As a prosecutor, I never had any hesitation to seek the severest penalties our State could provide for people who committed serious crimes. When I look at some of the cases I have reviewed over recent years, when I see shoddy evidence, or when I see evidence that was not looked at because it might have pointed to someone else, I wonder, why wouldn't society want a better system? Passing the IPA will help fix these problems and give greater credibility to our criminal justice system.

I yield the floor.

I suggest the absence of a quorum and ask that the time be equally divided.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO SENATOR STROM THURMOND

Mr. DEWINE. Mr. President, I rise today to recognize the accomplishments of our friend and colleague, Senator STROM THURMOND, an individual who has devoted his entire life to the service of the American people and who now stands before us as one of the most accomplished U.S. Senators in our nation's history.

I must say that I am saddened that I am making these comments on the heels of a controversy over the nomination of a highly qualified judicial nominee, Dennis Shedd, who was a longtime member of Senator THURMOND's staff and who was recommended to the President for this appointment by Senator THURMOND. While I won't go into the specifics of these hollow arguments against Judge Shedd, I cannot make these comments in praise of Senator THURMOND without mentioning my disappointment about the handling of Judge Shedd's nomination.

As our colleagues know, Senator THURMOND's nearly 50 years of service within this body make him the longest serving member since the Senate's inception, yet his contributions to public service and our Nation extend well beyond the United States Senate. From the time he served as Superintendent of Education in Edgefield, SC, STROM THURMOND placed the good of the Nation ahead of his personal career. He served over 36 years on active and reserve duty within the U.S. Army, while simultaneously holding many other public service positions.

Throughout, he was prepared to abandon his professional career on a moment's notice—ready to fight to preserve democracy and freedom. He was awarded five battle stars, as well as 18 decorations, medals, and awards, including the Bronze Star for Valor and the Purple Heart.

I have only—I say ''only''—been in the Senate for 8 years, but in the relatively short time I have had the pleasure of serving in the Senate alongside Senator THURMOND, we have worked together as sponsors or co-sponsors of dozens of bills, including legislation enhancing local law enforcement efforts to protect the elderly and child victims of violent crime, drug interdiction efforts designed to stem the tide of drugs flowing into our cities and schools, laws to end the practice of partial-birth abortion, and constitutional amendments to protect victims of violence. All of these collaborative efforts have benefited a great deal from the insight STROM THURMOND developed during his 12-year tenure as either chairman or ranking member of the Judiciary Committee and also, of course, his 50 years of service in this body.

While Senator THURMOND's Senate career speaks volumes about his commitment to this nation and to the people of South Carolina and to all Americans, I also must mention what a pleasure it has been for me to know Strom Thurmond as a person.

Over the years, he has shown great kindness and generosity to me and to my family. In particular, I would like to thank him for the hospitality he has shown my son, Brian, who recently graduated from South Carolina's Clemson University.

When I told STROM my son Brian was going to go to Clemson, he beamed. I could tell he was delighted. He said, You know, I went to Clemson. Of course I knew that. He said, I went to Clemson. I asked, STROM, What year did you graduate?

He said, I graduated from Clemson in 1923.

I looked at him. I said, STROM, my dad was born in 1923.

STROM THURMOND has had quite an unbelievable career. I have had the opportunity, as well, to listen to many of his stories. I asked him about his tenure at Clemson. He told me about the different times he would run barefooted from town to town. He was a long distance runner when he was there.

The great Athenian general Pericles once noted that:

> Where the rewards of virtue are greatest, there the noblest citizens are enlisted in the service of the state.

Our American democracy, like that of the Athenians, is designed to reward virtue with the opportunity to represent and defend fellow citizens. Certainly there is no man of our time better fit for and dedicated to these difficult tasks than STROM THURMOND. Indeed, he is a tribute to the American ethic of public service that the framers of our nation envisioned over two centuries ago.

It should come, then, as no surprise to my colleagues in the Senate, to the citizens of South Carolina, and to the American public that STROM THURMOND has left an indelible mark on our nation through his service—a mark that surely will never be forgotten or held in anything less than the highest regard.

We thank STROM for his service to our country, to South Carolina, and to the people who will miss his kindness and his friendship. But we look forward to seeing him, as we are sure we will, for a long time because he is a man of great courage and great integrity. We will miss him.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks about our great friend, Senator THURMOND. I have been around here 26 years, and Senator THURMOND was the leader on the Judiciary Committee for most of that time. He has been a tremendous mentor and adviser to me.

He is a wonderful man. He has gone through so many changes in his life, and he has had many different experiences in his life. He is truly a war hero and truly one of the people I think everybody in this body has to admire. There is no question about it. He is one of the all-time great Senators. He has represented the State of South Carolina for all of these years very well.

I can remember traveling through the State with him. Just about everybody knew STROM, and he knew just about everybody in his State. It was absolutely amazing to me that a person could be so revered as STROM THURMOND was—and he deserved it.

He is not only a great man, but he has done great things in his life. He has done great things having come from the Old South, which has been highly criticized by many of us in this Chamber.

But let me just take a moment to pay tribute to my good friend and our distinguished colleague on this committee, the senior Senator from South Carolina, STROM THURMOND.

From the moment STROM THURMOND set foot in the Senate Chamber in 1954, he has been setting records. He was the only person ever elected to the U.S. Senate on a write-in-vote. That is a reworkable achievement. He is the longest serving Senator in the history of the U.S. Senate. As he approaches his 100th birthday, he is also the oldest serving Senator. Many of my colleagues will recall the momentous occasion in September of 1998 when he cast his 15,000th vote in the Senate. With these and so many other accomplishments over the years, he has appropriately been referred to as ''an institution within an institution.''

In 1902, the year STROM THURMOND was born, life expectancy was 51 years and today —the last time I heard—it is 77 years. But I think it is going up regularly. STROM continues to prove that, by any measure, he is anything but average.

He has seen so much in his life. To provide some context, let me point out that, since his birth, Oklahoma, New Mexico, Arizona, Alaska and Hawaii gained Statehood, and eleven amendments were added to the Constitution. The technological advancements he has witnessed, from the automobile to the airplane to the Internet, literally span a century of progress. Conveniences we have come to take for granted today were not always part of STROM THURMOND's world. Perhaps this explains why during our Judiciary committee hearings, we have heard him asking witnesses who were too far away from the microphone to ''please speak into the machine.''

The story of his remarkable political career truly could fill several volumes. It began with a win in 1928 for the Edgefield County Superintendent of Schools. Eighteen years later, he was Governor of South Carolina. STROM was even a Presidential candidate in 1948, running on the 'Dixiecrat' ticket against Democrat Harry Truman.

I must admit that he has come a long way in his political career, given that he originally came to the Senate as a Democrat. I am happy to say that wisdom came within a few short years when STROM saw the light and joined the Republican Party.

That was supposed to be humorous. But I did not hear any laughter.

When I first arrived in the Senate in January of 1977, he was my mentor. As my senior on the Judiciary committee, it was STROM THURMOND who helped me find my way and learn how the committee functioned. He has not only been a respected colleague, but a personal friend, ever since.

During his tenure as Chairman of the Judiciary committee, STROM THURMOND left an indelible mark on the

committee and the laws that came through it. He became known and respected for many fine qualities and positions—his devotion to the Constitution, his toughness on crime, his sense of fairness.

He is also famous for his incredible grip. Many of us have experienced STROM THURMOND holding our arm tightly as he explains a viewpoint and asks for our support. I might add that this can be a very effective approach.

STROM is also known to have a kind word or greeting for everyone who comes his way, and for being extremely good to his staff—and to all the workers here on Capitol Hill. No question. He has gone out of his way.

I might add that I have seen him operate in his own home State and other places. I have seen him. He has operated in the most even-mannered, decent, honorable way to people regardless of where they came from—regardless of their color, their religion, their country of origin, or any other distinguishing characteristic. STROM has always been good to everybody.

Despite his power and influence, he has never forgotten the importance of small acts of kindness.

STROM THURMOND is truly a legend—someone to whom the people of South Carolina owe an enormous debt of gratitude for all his years of service. Clearly, the people of South Carolina recognize the sacrifices he has made and are grateful for all he has done for them. In fact, you cannot mention the name STROM THURMOND in South Carolina without the audience bursting into spontaneous applause. He truly is an American political icon.

Abraham Lincoln once said that:

> The better part of one's life consists of friendships.

With a friend like STROM THURMOND, this sentiment couldn't be more true. I am a great admirer of STROM THURMOND, and, as everyone around here knows, I am proud to call him my friend.

One final note about STROM THURMOND: He is a great patriot. I am grateful for his work with me over the years in support of a Constitutional Flag Amendment. A decorated veteran of World War II who fought at Normandy on D-Day, STROM THURMOND loves this country. He loves it very much. Let me just say this country loves him, too.

STROM THURMOND is a wonderful father. He has raised his children to be very fine people. And they love him as well.

When his daughter died, it was one of the most tragic things I have ever seen. It was the first and only time I ever saw STROM THURMOND shed tears. He is such a strong, resilient, patriotic leader. But on that day, at that funeral, STROM THURMOND broke down, which showed how much he loved his daughter and his family. I know how much he has. That is the mark of a great man.

I am glad today, or at least by tomorrow, hopefully, this body will be able to give STROM THURMOND the only thing he has asked of us, as a last request, in return for his service: the confirmation of his former chief counsel, Judge Dennis Shedd, who himself is a wonderful, decent man.

With that, Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, just so all Senators understand where we are, I have been told that the cloture vote that was scheduled for this afternoon has been vitiated. But we will be voting on the Shedd nomination sometime tomorrow morning.

I see the distinguished Senator from Florida on the floor. Could he indicate how long he wishes to speak? I was about to begin the debate on the nomination.

Mr. NELSON of Florida. About 10 minutes.

Mr. LEAHY. Mr. President, I ask unanimous consent that the distinguished Senator from Florida be recognized for 10 minutes, with the time divided equally. I make that request, that that 10 minutes of time be taken equally out of both sides.

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

The Senator from Florida is recognized for 10 minutes.

TECHNOLOGY AND FREEDOM

Mr. NELSON of Florida. Mr. President, I come to the floor not to speak on the Shedd nomination—and I had spoken to the chairman of the committee—but to speak about a matter we will be discussing tomorrow as we take up the homeland defense bill and some of the questions of privacy that have arisen, not necessarily directly involved in this bill but clearly in the discussion of homeland security.

Some grave questions of invasion of privacy have been noted. So I felt compelled to take the floor of the Senate to raise further the issue of governmental intrusion into the private lives of people.

I realize that in this technologically advanced age, in order to go after the bad guys, in order to be able to stop them before they hit us, clearly there has to be the clandestine means of penetrating the communications that are going on. That is very important to the defense of this country and our citizens. At the same time, the constitutional rights of privacy must always be foremost in our minds as we battle this new, elusive kind of enemy called the terrorist.

So I want to offer some words. I start, first, with words from a very famous American who had something significant to say about privacy, Justice Louis Brandeis, in which he argued, in a 1928 case, that the Framers of our Constitution—and I will quote Justice Brandeis:

> . . . sought to protect Americans in their beliefs, their thoughts, their emotions and their sensations.

Justice Brandeis went on, that the Framers of the Constitution had:

> . . . conferred, as against the Government, the right to be let alone—the most comprehensive of rights and the right most valued by civilized man.

Now, Justice Brandeis wrote those words in a dissenting opinion in a 1928 case involving a liquor dealer who was convicted by evidence gathered through a wiretap, way back then, early in the last century. That case arose because technology had granted the Government an increased ability to peer inside people's private lives—then, in 1928, a wiretap.

The technology increased governmental authority, forcing the Supreme Court to evaluate and redefine the boundaries between freedom and governmental power. The technological advances also stimulated an important national debate about the balance between individual freedom and the legitimate needs of law enforcement.

Now we are at a similar crossroads, and those words ring out to us today as we go about trying to balance the rights between individual freedom and the legitimate needs of the Government to penetrate terrorist cells.

Technology has advanced faster than the Nation's norms and the laws for managing them. Modern technology makes possible unprecedented intrusions into the private lives of American people. This ability, coupled with increasing governmental demands to use that technology, poses a grave threat to personal privacy and personal freedom.

This past week, I was rivetted by the news of the revelations about how the Department of Defense is developing a computer system to grant intelligence and law enforcement authorities the power to secretly access ordinary citizens' private information, including e-mail, financial statements, and medical records—to access that private information without the protections of a court order.

Clearly, in this post-9/11 world, we need to develop tools that will enable our Government to keep us safe from terrorists by disrupting their operations. But these tools need to be balanced against the protection of innocent people's right to privacy. If the right to privacy means anything, it is the right of the individual to be free from unwarranted governmental intrusion.

So what rivetted my attention were reports, first in the New York Times, the Washington Post, and then in the Washington Times, that the so-called Total Information Awareness Program—located in DARPA, deep inside the Department of Defense—would make possible unwarranted governmental intrusions such as we have never seen before.

It is disturbing that we are developing a research system that, if ever used, would violate the Privacy Act as well as violate a lot of other Federal laws on unreasonable searches of private information without probable cause, which is the typical standard

that needs to be met. That is why we go to a judge to get an order allowing us to intrude on such things as searches, as seizures, on such things as wiretaps.

I have a serious concern about whether this type of program, called Total Information Awareness, can be used responsibly. So while we investigate and learn more about it, I intend to speak out to the Congress and to the committees on which I am privileged to serve—including the Armed Services Committee—to speak out that we need to oversee this program to ensure that there is no abuse of law-abiding individuals' privacy.

It has been reported that this program is authorized or endorsed by the homeland security legislation pending now in the Senate. And that does not appear to be the case. While it doesn't specifically tend to be the case, this legislation, the Homeland Security Department, does include a provision creating a research division within the new Homeland Security Department. It would develop, among other things, information technologies similar to the Total Information Awareness Program. While I strongly support funding for new research, and I certainly believe that we must use our technological advantage to defeat our enemies, at the same time I think we better take a breath, be very cautious that any new research done in the Defense Department or within the new proposed Department of Homeland Security does not threaten our personal freedoms.

I also have grave concerns that this information awareness program is being directed by someone who is very controversial: Retired Rear Admiral Poindexter, the former Reagan administration official who was convicted in, you remember, the Iran-contra story. There is a very legitimate question about whether or not he is the appropriate person to head such a sensitive program.

To quote from recent editions of the Washington Post, specifically November 16, an editorial:

> However revolutionary and innovative it may be, this is not neutral technology, and the potential for abuse is enormous.

The editorial continues:

> Because the legal system, designed to protect privacy, has yet to catch up with this technology, Congress needs to take a direct interest in this project.

The editorial goes on:

> And the defense secretary should appoint an outside committee to oversee it, before it proceeds.

The editorial concludes:

> Finally, everyone involved might also want to consider whether Adm. Poindexter is the best person to direct this extremely sensitive project.
>
> Though his criminal convictions were overturned on appeal, his record before the Congress hardly makes him an ideal protector of the legal system. . . .

That is the Washington Post.

In conclusion, ever since I had the privilege to serve with the likes of these great Senate giants on the floor right now, Senators LEAHY and HATCH, guardians of the Constitution because of their roles on the premier committee that guards the Constitution in the Senate, privacy is an issue that has attracted my attention and concern.

Has my time expired?

The PRESIDING OFFICER (Mr. NELSON of Nebraska.) The Senator's time has expired.

Mr. NELSON of Florida. I ask unanimous consent that I conclude my remarks in 2 minutes.

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

Mr. NELSON of Florida. I thank Senators for letting me make this case.

When I first came here, I became concerned that back in 1999 we allowed banks and insurance companies to merge, but we didn't protect individual's privacy. It would shock people to know that if you go have a physical exam in order to get a life insurance policy and if that life insurance company is acquired by a bank, that the access to those individually identifiable medical records is unlimited, without your personal consent, to anywhere within that bank holding company.

You might also be interested to know that recently we had the issuance of rules by the Bush administration on medical record privacy, but there was a huge omission in that pharmaceutical companies could go to drugstore chains, pay the drugstore chain for the names and ability to communicate to individual people who had prescriptions, and then that pharmaceutical chain could contact that individual patient, asking them, soliciting them to change their medication to a different kind of medication, one that would be within the generic equivalent or a different brand name than the one that the physician had prescribed for them. That is an invasion of personal privacy. Yet it is allowed under the rules of the new administration.

Take, for example, the case 2 weeks ago in Fort Myers, FL. Suddenly a dumpster was overflowing with tax records, bank records, Social Security numbers, all kinds of personally identifiable financial information not properly disposed of by the bank subsidiary. The bank says there is no such law. So I filed a bill to protect individual's personal financial privacy.

Lo and behold, another invasion of privacy, identity theft, one of the big things, more recently, in Orlando, FL—another dumpster. Now all of a sudden, one of the two large pharmaceutical drugstore chains dumps all of the prescriptions in the dumpster, along with the bottles. As a result, the personally identifiable medical information is there for the public to see from someone pilfering the dumpster.

I think I have made my case. Privacy is something we better be concerned about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Mr. President, we have before us the nomination of United States District Court Judge Dennis Shedd of South Carolina to the Court of Appeals for the Fourth Circuit.

Judge Shedd's nomination was reported out of the Judiciary Committee last Thursday on a voice vote. Nine Democratic Senators, including myself, voted against him. As I noted before, I told Senator THURMOND I intended to bring this matter to a vote by the committee this year. My concern at the penultimate meeting, the meeting before last week, a meeting we held in October, was that we had very little time to debate this controversial nominee and that threatened to prevent a committee vote on 17 other of the President's judicial nominees before the committee.

Incidentally, those 17 district court nominees and 2 circuit court nominees were confirmed by the Senate last week. Those 17 district court nominees were on the Senate Calendar because the Senate Judiciary Committee was able to report those nominees despite unparalleled personal attacks by Republicans on me as chairman. Those attacks have included everything from saying I am not bringing up nominees—although I am and we are at a record rate that far outpaces the Republican rate during their six and one-half years of control—to even attacks in these recent months on my religious beliefs as well as the religion of several of the members of the Democratic majority on the Senate Judiciary Committee.

Notwithstanding these unprecedented attacks on both our religious beliefs and our actions, the confirmations last week bring to 99 the number of President Bush's judicial nominees confirmed by the Democratic-led Senate in the past 16 months.

I mention this because before that, during the 6½ years when the Republican majority controlled the Senate, they averaged 38 judicial confirmations per year. In fact, in the year 1996, over the whole year, they allowed only 17 district court judges to be confirmed all year and did not confirm a single circuit court nominee—not a single one. We had 17 district court judges in 1 meeting and those 17 nominees of President Bush were confirmed on one day last week by the Democratic-led Senate.

I put this in the record so the people understand the historic demonstration of my bipartisanship toward the President's judicial nominees in perspective with the recent history of judicial confirmations. The fact is that in addition to the 83 district court nominees confirmed, the Senate has also already confirmed 16 of his circuit court nominees. That is in sharp contrast to the fact that the Republicans allowed only 7 circuit court nominees to be confirmed per year, on average, during their control of the Senate. For example, more than half of President Clinton's circuit court nominees in the

106th Congress were defeated through such obstruction—more than half.

In fact, the Fourth Circuit—to take one at random—is one of many circuits affected by the other party's obstruction of President Clinton's judicial nominees. In the Fourth Circuit, seven of President Clinton's nominees to that circuit were never given a hearing or a vote in committee or on the floor—seven out of that one circuit alone.

James Beaty, one of the Fourth Circuit nominees of President Clinton, did not get a hearing or a vote in 1995, or 1996, or 1997, or 1998. Another Fourth Circuit nominee, Judge Richard Leonard, did not get a hearing or vote in 1995 or 1996.

Another Fourth Circuit nominee, James Wynn, did not get a hearing or a vote in 1999, 2000, or 2001. Other Fourth Circuit nominees—Elizabeth Gibson, Judge Andre Davis, or Judge Roger Gregory—also did not get hearings or votes during the period of Republican control of the Senate.

Indeed, the first hearing the Judiciary Committee held last year on a judicial nominee was for an earlier Fourth Circuit nominee, Judge Roger Gregory. He had been nominated initially by President Clinton when the Republicans were in control. They did not act on him. He was brought back by President Bush, and he became the first judge confirmed to the Fourth Circuit in several years. He was also the first African American confirmed to the Fourth Circuit in American history. That is because our committee in the Senate acted in the summer of 2001. Judge Gregory was the first of 20 circuit court nominees on whom we proceeded to hold hearings in our 16 months in the majority.

So the partisan rhetoric about the Judiciary Committee having blockaded President Bush's judicial nominees and having treated nominees unfairly might be a good stump speech on the circuit, but it is belied by the facts. Frankly, I think the staff at the White House who have put those kinds of misstatements in the President's speeches have done the President a disservice, as they have the Senate.

Turning to the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit, I cannot fail to note that it is not without controversy. In fact, it is quite controversial. Issues in his judicial record raised cause for concern among many Senators on the Judiciary Committee as well as with many citizens who live in the jurisdiction of the Fourth Circuit and elsewhere in the country who have written to the Senate in opposition to his elevation and confirmation.

While considering the information gathered in the hearing process, I placed Judge Shedd's nomination on the committee agenda in September. That was my effort to show Senator THURMOND courtesy as a former chairman and to signal that I expected this committee to proceed to consider the nomination before the year was out. Several Senators asked to hold the nomination over, and under the rules any Senator can.

On October 7, when I hoped to be able to list his name for consideration again, I was told there would be a debate so lengthy that we would not even be able to consider the 17 other judicial nominations of President Bush that were on the agenda or, for that matter, the legislative matters we were trying to take up before the election. So I told Senator THURMOND, and other Senators before that markup, it was for this reason that I would not list Judge Shedd's nomination on the agenda for the October 8 markup, but I explained to Senator THURMOND and others that I hoped we would be able to consider it at our next opportunity, as we knew at that point we would have a lame duck session. So now, having the lame duck session, I scheduled as soon as we came back and Senators would be here a markup on Judge Shedd and one other judicial nominee.

The committee has received more than 1,200 letters from individuals and organizations, both in and out of South Carolina, expressing concerns about elevating Judge Shedd. In fact, right here, it stands about 2 feet high—the stack of letters we got against it. These letters raise serious issues. What I heard about the nominee from the citizens of South Carolina and from others around the country was and is troubling.

I ask unanimous consent to have printed samples of letters such as those from citizens of South Carolina in the RECORD.

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

SOUTH CAROLINA
LEGISLATIVE BLACK CAUCUS,
Columbia, SC, September 4, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The South Carolina Legislative Black Caucus (SCLBC) was formed in 1975 soon after the Civil Rights Movement in the 1960's. Presently, the SCLBC has 31 members: seven senators and 24 representatives, including four women. The SCLBC is dedicated to the struggle for fairness, equality and justice for all South Carolinians, and to the civic and political involvement of African-Americans, women and other racial and ethnic minorities.

We seek to preserve the civil rights strides that occurred in South Carolina over the decades, and we fight to prevent any regressive step that threatens to rollback civil rights and constitutional rights of American-Americans, women and other racial and ethnic minorities. The nomination of U.S. District Judge Dennis W. Shedd to the U.S. Court of Appeals for the Fourth Circuit represents such a regressive step, and accordingly, we strongly oppose the nomination.

African-Americans constitute a full one-third of South Carolina's population, yet there is only one active African-American federal judge in the state. And, there are only two South Carolinian female federal judges, one on the federal District Court and the other on the Fourth Circuit. This is unfair and unjustified because there are many well-qualified African-American and women jurists and lawyers who deserve an opportunity to serve this nation on the federal judiciary.

Because African-Americans are one-third of South Carolina's population and the Fourth Circuit has a greater number of African-Americans than any circuit, it is critical that any nominee, especially one from South Carolina, be an unabashed champion of civil rights. The appointee should have a record that demonstrates fairness and justice to all people. Based on our careful review of Judge Dennis Shedd's performance on the U.S. District Court for the District of South Carolina, we have concluded that his record shows a serious hostility to civil rights and constitutional protections.

Since his appointment to the federal bench in South Carolina, Judge Shedd has engaged in right-wing judicial activism by imposing strict and exacting standards when reviewing employment discrimination cases brought by African Americans and women. He has dismissed almost every employment discrimination, sexual harassment, civil rights and disability case that has come before him. Judge Shedd seems to believe that discrimination is not an actionable offense even when the Equal Employment Opportunity Commission has found ''reasonable cause'' that discrimination has occurred. Judge Shedd, however, seems to apply a more lenient standard in reviewing discrimination cases brought by white men. Judge Shedd has allowed four out of five ''reverse'' discrimination cases to proceed beyond the summary judgment phase of litigation.

This record shows that Judge Shedd does not have an abiding concern for civil rights and fairness. It further shows that Shedd lacks the requisite moderate reasoning to bring balance to the Fourth Circuit. In fact, his membership to the Fourth Circuit would push it further beyond the mainstream of American values and would subject South Carolinians and residents of other states within the Fourth Circuit to an extreme right-wing interpretation of this nation's civil rights laws and constitutional protections.

Accordingly, we oppose Judge Shedd's nomination without reservation. His values represent the Old South, where African Americans and women were judged by different and unequal standards.

We appreciate your attention. If you have any questions, please contact me at the address and telephone number above.

Sincerely,

JOSEPH H. NEAL,
Chairman.

SOUTH CAROLINA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Columbia, SC, June 24, 2002.

Senator PATRICK LEAHY,
Chairman, Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to oppose the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals.

By now, you must be familiar with the importance of the Fourth Circuit to the African American community. Almost a quarter of the Fourth Circuit's residents are African American. The Fourth Circuit, with over 6 million African Americans in the five states, has the greatest number of African Americans of any Circuit Court in the country. The Latino population within the Fourth Circuit now at more than one million persons, has nearly tripled in the last decade. Based on

these demographics, more may be at stake here for the future of civil rights than in any other Circuit Court in the country.

The Fourth Circuit is already an extremely conservative Court on civil rights and Constitutional issues. This Circuit ruled that federal law-enforcement officials need not follow the Miranda decision, only to be reversed by the Supreme Court. This Circuit authorized drug testing for pregnant women without their consent, which was reversed by the Supreme Court. This Circuit ruled that the Equal Employment Opportunity Commission was limited to remedies contained in employee arbitration agreements, and again, was reversed by the Supreme Court. The Circuit also has been reversed recently in capital habeas corpus cases and citizen suits under environmental laws. The Fourth Circuit has issued numerous other opinions that are hostile to affirmative action, women's rights, fair employment, and voting rights.

This is also the Court to which moderate African American nominees were repeatedly denied membership. No fewer than four African Americans were nominated to this Court by President Clinton, only to have their nominations languish for years due to Senatorial obstruction. Thus, if a nominee *is* to be confirmed to this Court, the nominee must be a jurist who will bring moderation and ideological balance to this Court. It is our strongly held view that this nominee is not Dennis Shedd.

Judge Shedd's judicial record reveals a deep and abiding hostility to civil rights cases. A review of Shedd's unpublished opinions reveals that Judge Shedd has dismissed all but very few of the civil rights cases coming before him. In nearly thirty cases involving racial discrimination in employment, he granted summary judgment for the employer in whole or in part in all but one case; most of the cases were dismissed altogether. Many of these cases were strong cases with compelling evidence and litigated by experienced civil rights lawyers.

Gender and disability discrimination cases before Judge Shedd fare no better. He has granted summary judgment on every sexual harassment claim on which summary judgment was requested. Collectively, these rulings leave us with the distinct impression that, in Dennis Shedd's view of the world, discrimination does not exist, and just as importantly, a jury should never be asked even to decide that question.

We are profoundly disturbed by the mounting evidence of Judge Shedd's zealous efforts to assist the defense in civil rights cases. There are repeated instances of Judge Shedd's intervention in civil rights cases—without prompting by the defendant—in ways that are detrimental to the plaintiff case. In a number of cases, Judge Shedd, on his own motion, has questioned whether he should dismiss civil rights claims outright or grant summary judgment. He has invited defendants to file for attorneys' fees and costs against civil rights plaintiffs. These are not the actions of an impartial decision-maker.

We are extremely concerned about Judge Shedd's rulings promoting ''States' rights,'' and view these as a fundamental encroachment on Congress's ability to enact civil rights and other legislation. Judge Shedd has a very restrictive view of Congressional power. He struck down the Driver's Privacy Protection Act of 1994 as legislation beyond Congress's power, although this legislation was an ''anti-stalking'' measure designed to prohibit public disclosure of drivers' license information. In an opinion authored by Chief Justice Rehnquist, the Supreme Court unanimously overturned Judge Shedd's ruling and refuted his reasoning. This stands as one of the few occasions in which the Supreme Court rejected unanimously a holding that Congress exceeded its power in enacting a statute.

The question of judicial temperament is raised by Judge Shedd's offensive remarks during a judicial proceeding about an issue that strikes at the heart of many—the Confederate flag. Judge Shedd presided over a federal lawsuit seeking the removal of the Confederate flag from the dome of the South Carolina Statehouse. According to press accounts of a hearing held in the case, Judge Shedd made several derogatory comments about opposition to the flag. First, he attempted to marginalize opponents to the flag by questioning whether the flag matters to most South Carolinians. (It does, and thirty percent of South Carolina's population is African American.) He also minimized the deep racial symbolism of the flag by comparing it to the Palmetto tree, which appears in South Carolina's State flag.

Our membership in South Carolina, deserves to be represented on the Circuit by a nominee who has a record of judicial impartiality, is committed to the progress made on civil rights and individual liberties, and has a deep respect for the responsibility of the federal judiciary to uphold that progress. Dennis Shedd is not that nominee. We urge you and the Senate Judiciary Committee to vote against his nomination.

Sincerely,

JAMES GALLMAN,
President.

Mr. LEAHY. We received a letter from the Black Leadership Forum, signed by many well-respected African Americans, including Joseph Lowery, and more than a dozen more internationally known figures, as well as letters from other African American leaders.

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:

BLACK LEADERSHIP FORUM, INC.,
Washington, DC, September 16, 2002.

Hon. ERNEST F. HOLLINGS,
Member of the Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR HOLLINGS: We are writing to share with you a letter which the Black Leadership Forum, Inc. (BLF), whose members are listed on the left side of this page, delivered several weeks ago to members of the Senate Judiciary Committee. The attached letter strongly opposes the nomination of Judge Dennis Shedd to a seat on the Fourth Circuit Federal Court of Appeals, for the reasons stated in substantial detail.

It has come to our attention that you are actively supporting Mr. Shedd's nomination and are aggressively pressing the Judiciary Committee for speedy approval of a hearing on his nomination by the full Senate. Therefore, we feel that it is urgent for you to be directly informed by BLF of the bases for our objections to this nomination. We reflect in this letter the deep concern in the African American community about this nomination because Mr. Shedd's judicial record undercuts our closely guarded values of equal justice and threatens the maintenance of our civil rights advances and constitutional protections.

Conversations with numerous African Americans who also are resident-constituents of your District, indicate that they, too, believe that this nomination should not go forward. We sincerely hope, therefore, that we can meet with you regarding our objections to Mr. Shedd's nomination and that until we have had this discussion, you will forego any further actions supporting his nomination. We have called your office requesting such a meeting prior to a vote by the Judiciary Committee on this issue.

Love Embraces Justice,

DR. JOSEPH E. LOWERY,
DR. C. DELORES TUCKER,
YVONNE SCRUGGS-LEFTWICH, PH.D.

RAINBOW PUSH COALITION
Chicago, IL, August 24, 2002.

Senator PATRICK LEAHY,
Member, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: Let me lend my voice of opposition to the chorus of discontent surrounding the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I urge you to oppose the Shedd nomination, based on the merits, and the merits alone. A seat on the Fourth Circuit is too important to the nation's judiciary not to be heavily scrutinized.

As a native of South Carolina, I am deeply disturbed by the direction taken by the Fourth Circuit in recent years. As a Judicial Circuit with considerable influence on the Supreme Court, those elevated to the Court should reflect the highest American ideals of inclusion and equal protection under the law. Moreover, the states included in the Fourth Circuit are comprised of the highest percentage of African Americans, than any other Circuit, thus judges on the Court must be sensitive and respectful for the civil rights laws for which we fought so hard.

Currently, the Fourth Circuit is the most extremist court in the nation on civil rights issues, criminal justice issues, and those involving the power of the federal government, to enact legislation, which holds States accountable for civil rights violations. The nomination of Dennis Shedd threatens to take the Court in a further extremist direction. For example, Judge Shedd's opinion in the Condon v. Reno case suggests that he favors disempowering Congress. American judges, and their rulings should protect rights, rather than restrict the balance of power.

To preserve this nation's ideals of inclusion, and to ensure equal protection under the law for all Americans, I urge you, and other members of the members of the Senate Judiciary Committee to vote ''No'' on the nomination of Dennis Shedd.

Sincerely,

REVEREND JESSE L. JACKSON, SR.

NATIONAL BAR ASSOCIATION,
Washington, DC, September 4, 2002.

Re Nomination of Judge Shedd, United States Court of Appeals for the Fourth Circuit.

Hon. PATRICK LEAHY,
Chairman Senate Judiciary Committee, Dirksen Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Bar Association hereby submit this letter in strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. We strongly urge you to vote to defeat his appointment to this critical Court.

The National Bar Association, established in 1925 is the oldest and largest organization of minority attorneys, judges, legal scholars and law students in the United States and in the world. During our 77 year history we strive to obtain equal justice for all persons within the jurisdiction of these United States of America. Real diversity can only be achieved as a result of equal justice for all which directly results in equal opportunity. Real diversity, equal justice, and equal opportunity does not currently exist in our federal judiciary.

The National Bar Association maintains a watchful eye on federal judicial nominations, as part of its' historical mission. We

have a duty and obligation to support or oppose any nomination which directly affects our struggle for equal justice and equal opportunity for all. During these difficult times, the United States of America must set an example to the world by assuring equal justice and equal opportunity to a truly diverse nation.

The National Bar Association feels, confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit will severely undermine and inhibit its' goals of equal justice for all, equal opportunity for all, and real diversity. In our opinion the one thing which insulates the United States of America from anarchy, civil strife, etc. is our Construction (as currently amended), which provides an open judiciary, where *any* citizen regardless of race, creed, color, gender, economic status, social status, etc. can seek redress. Absent an open federal judiciary, citizens will seek other less civil means to voice their concerns and seek redress. An open judiciary is the balance for the scales of justice.

The essential element of an open judiciary is our constitutional right to trial by jury. This right provides some assurance of fair and equitable treatment in resolution of disputes, without political influence of the government. Therefore, we must oppose federal judicial nominees, when their actions or beliefs, in any way reduce complete access to the courts, right to trial by jury, or in any way discourage access and right to trial by jury.

A review of Dennis Shedd's record appears to indicate a judicial philosophy to reduce and discourage access to the courts and exercise of each citizens right to trial by jury. For these reasons, the National Bar Association strongly opposes nomination of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

Sincerely,

MALCOLM S. ROBINSON,
President.

THE NATIONAL BLACK CAUCUS
OF STATE LEGISLATORS,
Washington, DC, September 19, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
U.S. Senate, Chair, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: The National Black Caucus of State Legislators (NBCSL) is the body that represents some 600 African American state legislators in 44 states, the District of Columbia and the U.S. Virgin Islands. Last year, we celebrated our 25th year of involvement and dedication to many of the most pressing social issues and policies that impact our legislators' districts and the nation at large. Our commitment is to our constituents as well as the national agenda. Our dedicated work is to maintain the highest values of civil and human rights insuring that African Americans are a fair and representative part of the political and social equations of this great nation.

In their letter to you, dated September 4, 2002, members of the South Carolina Legislative Black Caucus have spoken clearly and definitively in opposing the nomination of Judge Dennis Shedd to the Fourth Circuit. In reviewing the information presented therein and having also researched the history and record of Judge Shedd, we find it woefully deficient regarding the issues of fairness, equality and justice. Moreover, as has been pointed out by our colleagues in South Carolina ''African Americans constitute a full one-third of South Carolina's population yet there is only one active African American federal judge in the state.'' In that there are unquestionably ''many, well-qualified African American . . . jurists'' in South Carolina, this is rightly seen an unfair and unequal treatment in the sight of fair representation. Further, considering the existent disproportionate representation of jurist of Color, certainly an effort must be made to insure that any South Carolina nominee be a strong advocate of civil and human rights. Rather, Judge Shedd's performance on the U.S. District Court for the District of South Carolina demonstrates what could be construed as hostile to civil and constitutional rights.

We have learned that Judge Shedd's insensitivity to fairness has been demonstrated in his review of employment discrimination cases brought by African Americans and in fact, women, even in such cases when the Equal Opportunity Commission has found ''reasonable cause.'' But, we have also found that in furtherance of this questionable action, when white men bring cases of ''reverse'' discrimination, those cases proceed. We also note that there have been concerns raised about the number of unpublished opinion issued by the Judge and further that such concerns regarding the decisions were reversed or vacated by the Fourth Circuit Court of Appeals.

The Fourth Circuit must have a judge who is mindful of the rightful place that African Americans have in this nation, and be a strong advocate of civil rights, human rights and constitutional rights. Any nominee should have demonstrated his dedication to such virtues and ideals. No other individuals should be considered for this important position.

For these reasons among others raised by our South Carolina Legislative Black Caucus, we cannot support the nomination of Judge Dennis Shedd for the Fourth Circuit and would ask that the opinion of our body be strongly considered in this matter. Should you have any questions, or require additional comment, please contact me.

Very truly yours,

JAMES L. THOMAS,
President.

CONGRESSIONAL BLACK CAUCUS
OF THE UNITED STATES CONGRESS,
Washington, DC, July 26, 2002.

Hon. PATRICK LEAHY,
Chairman, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the Congressional Black Caucus, we write to express our strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. We urge you to vote to defeat his appointment to this critical court.

The Fourth Circuit has the highest percentage of African-American residents of any federal circuit in the nation. As you know, President Clinton tried in vain for many years to integrate the Fourth Circuit by nominating no fewer than four moderate African-Americans to the court, only to see their nominations languish. James Beaty and James Wynn from North Carolina, Andre Davis from Maryland and Roger Gregory from Virginia were never given hearings before the Judiciary Committee at any time during the Clinton presidency. It was not until President Clinton took the extraordinary step of giving Roger Gregory a recess appointment in the final days of his Presidency that the last all-White circuit court in the nation was finally desegregated.

The Fourth Circuit is also the most conservative of the federal circuits. Its rulings on the rights of those accused of crimes, employees who face discrimination, and individuals with disabilities are far outside the judicial mainstream. Given the importance of the Fourth Circuit to the African-American community and the current ideological imbalance on the Court, it is imperative that any nominee to this Court be a jurist of moderate views who will protect the civil and constitutional rights of all Americans. Dennis Shedd is not that nominee.

Above all, we are concerned that any nominee to the Fourth Circuit be committed to the rigorous enforcement of federal civil rights laws. We are particularly troubled by Dennis Shedd's record in this area. Throughout his eleven years on the federal district court, Judge Shedd has demonstrated a propensity to rule against plaintiffs in civil rights cases. Based on our review of Judge Shedd's record, we doubt seriously whether he can fairly and impartially adjudicate the claims of persons protected by the federal civil rights laws.

Despite the fact that employment discrimination cases comprise a large portion of Judge Shedd's civil rights docket, Judge Shedd has allowed only few discrimination plaintiffs to have their day in court. In almost every case, Judge Shedd has dismissed some or all of the claims of civil rights plaintiffs before they have a chance to be heard by the jury. By all evidences, Judge Shedd utilizes an extremely high threshold of evidence necessary to allow a discrimination claim to get to the jury. For example, in the one race discrimination case in which Judge Shedd did not dismiss at least some of the plaintiff's claims, a White manager terminated an African-American female employee after directing racial epithets at her in the presence of a co-worker. Even with this evidence, Judge Shedd said it was an ''extremely close question'' whether the case should be dismissed. Given Judge Shedd's characterization of the evidence in this case, we question his commitment to following decades of case law recognizing that discrimination often occurs in much more subtle but no less pernicious forms and therefore may proven circumstantially. In contrast to Judge Shedd's systematic dismissal of claims by African-American plaintiffs, Judge Shedd has allowed ''reverse discrimination'' claims by White men to proceed to trial in four of the five cases in which summary judgment was requested.

Also, in a number of cases, Judge Shedd has overruled a magistrate's recommendation to allow claims to be tried to a jury. In one case, a magistrate concluded that a female corrections officer could pursue her claim for ''outrageous conduct'' where her supervisor subjected her to repeated requests for sex, lewd language, and physical contact, and told her co-workers that he was having an affair with her and that she was pregnant with his child. The conduct occurred not only in the workplace but by telephoning the plaintiff at home and by visits to the plaintiff's house, which the supervisor said he could visit ''anytime he wanted.'' Judge Shedd dismissed the claim, stating that while the defendant's actions were ''certainly disgusting and degrading,'' they did not rise to the level of outrageous conduct.

Judge Shedd's narrow and restrictive view of civil rights claims is also evidenced by his dismissal of several cases in which the Equal Employment Opportunity Commission had found ''reasonable cause'' to believe that discrimination occurred. A finding of ''reasonable cause'' by the EEOC is extremely rare (occurring in fewer than 10 percent of the cases filed). Thus, the fact that Judge Shedd has refused to allow many of these claims to get to the jury strongly suggests that Judge Shedd utilizes an exceedingly high threshold for proving unlawful discrimination. The endorsement of such a

restrictive standard that is far outside the mainstream of federal jurisprudence has devastating implications for all civil rights plaintiffs if Judge Shedd is confirmed to the Fourth Circuit.

At his June 27 hearing, Judge Shedd admitted that, during his eleven years on the bench, a plaintiff has never won an employment discrimination jury trial in his court. He defended this record by asserting that he could not recall a plaintiff ever winning a jury trial in a discrimination case in any court in South Carolina. However, we have subsequently learned that during Shedd's tenure on the bench, there have been at least twenty-one jury verdicts favorable to discrimination plaintiffs in other federal courts in South Carolina, yielding over $7 million in damages. Shedd's lack of awareness of the outcome of these numerous cases evidences a troubling indifference toward the type of civil rights cases with which, by virtue of his docket, he should be the most familiar.

Another area of grave concern to us is Judge Shedd's narrow view of Congressional power to enact protective legislation. We believe that Judge Shedd has the worst federalism record of any nominee considered by the Judiciary Committee thus far. At the same time, the Fourth Circuit has been the most active federal circuit in curtailing federal power, invalidating many portions of important federal legislation in recent years. Judge Shedd's record in this area signals he will join this Circuit's aggressive efforts to alter the balance of federal and State power in a way that threatens enforcement of our most cherished civil rights laws.

Judge Shedd authored the original district court opinion in Condon v. Reno, striking down the Driver's Privacy Protection Act based on his belief that the federal government did not have the power to require States to ensure that State driver's license records would remain private. Although the Fourth Circuit affirmed Judge Shedd's decision, the Supreme Court unanimously reversed the holding in a decision by Chief Justice Rehnquist. In an unpublished opinion, which usually signifies a routine decision, Judge Shedd struck down part of the Family and Medical Leave Act, holding that the Eleventh Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for a violation of that statute. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has demonstrated a reluctance to sanction law enforcement for crossing the line. In a recent criminal case, a deputy sheriff and a State prosecutor videotaped a constitutionally protected conversation between a lawyer and a defendant charged with a capital crime. The defendant was convicted in state court, but the South Carolina Supreme Court overturned the conviction on the basis of the videotape, calling it ''an affront to the integrity of the judicial system,'' and stating that ''[t]he right to counsel would be meaningless without the protection of free and open communication between client and counsel.'' Judge Shedd presided over the federal cases arising from a grand jury's investigation of the matter. When the deputy offered a guilty plea, Judge Shedd reportedly questioned it because he did not believe a civil rights violation occurred. Judge Shedd imposed only a $250 fine on the deputy and remarked at his sentencing hearing that ''[the deputy] is caught up in a situation in which there's at least part of the criminal defense bar trying to get prosecutors and law enforcement punished. That's what's going on in the law.'' In contrast, when the defense attorney was convicted of perjury for denying he leaked the videotape to the press after learning of its existence before trial, Judge Shedd sentenced the lawyer to prison and a $20,000 fine, accompanied by a lecture about the serious consequences of committing perjury.

Judge Shedd has also exhibited a high level of insensitivity on issues of race. Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolinians—thirty percent of whom are African-American—''don't care if that flag flies or not.'' (''Judge Dismisses Most Flag Defendants, The Greenville News, June 11, 1994). He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the State flag: ''What about the Palmetto tree?'' What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?'' (''U.S. Judge Dims Hope of Battle Flag's Foes,'' The State, June 11, 1994.) It is shocking that Judge Shedd, who was raised in South Carolina during the 1950s and 1960s, could compare—even hypothetically—being ''offended'' by the representation of the Palmetto tree to the reaction of the African-American community to the Confederate battle flag.

Dennis Shedd's opinions in his eleven years on the federal bench reflect hostility toward plaintiffs in civil rights cases, a desire to limit Congress's authority to enact legislation that is applicable to the States, and a general insensitivity on issues of race. The Fourth Circuit desperately requires a voice of moderation and commitment to core civil and human rights values. We believe that Judge Shedd is not that voice and that the Committee should therefore reject his nomination to this important court.

Sincerely,
Eddie Bernice Johnson, Chair;
John Conyers;
E. Towns;
Stephanie Tubbs Jones;
James E. Clyburn;
Albert R. Wynn;
Corrine Brown;
Barbara Lee;
Sheila Jackson-Lee;
Bobby L. Rush;
Elijah E. Cummings;
Melvin L. Watt;
Earl F. Hilliard;
Danny K. Davis;
Eva M. Clayton;
Julia Carson;
William J. Jefferson;
Gregory W. Meeks;
Donald M. Payne;
John Lewis;
Sanford D. Bishop, Jr.;
Benny G. Thompson;
Carrie P. Meek;
Alcee L. Hastings;
Diane E. Watson;
Chaka Fattah;
Wm. Lacy Clay;
Major R. Owens;
Carolyn C. Kilpatrick;
Maxine Waters;
Juanita Millender-McDonald;
Jesse Jackson, Jr.;
Harold E. Ford, Jr.;
Cynthia McKinney;
C.B. Rangel.

Mr. LEAHY. We received a letter from the Mexican American Legal Defense and Educational Fund, in the interest of many Latinos in the Fourth Circuit, expressing opposition to Judge Shedd as well as correspondence from others expressing concern.

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

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

MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND,
Washington, DC, September 30, 2002.

DEAR SENATE JUDICIARY COMMITTEE MEMBER: On behalf of the Mexican American Legal Defense and Educational Fund (MALDEF), I urge you to oppose the nomination of Dennis Shedd to the 4th Circuit Court of Appeals. MALDEF is a Latino civil rights organization that was founded in Texas in 1968. Since that time, we have expanded our work across the nation and represent all Latinos. In our more recent history, we opened a community outreach office on the census in Atlanta, Georgia prior to the 2000 census. Due to the growth of the Latino community in the Southeast and the pressing legal needs of our community in that region, we expanded our office this year into a full regional office handling litigation, advocacy and community education within the 4th Circuit states of Maryland, North Carolina, South Carolina, Virginia, and West Virginia.

Many people still are not aware of the rapid growth of the Latino community in this region of the country. The following is a sample of the Latino growth rates over that the last decade in 4th Circuit states. In Maryland, Howard County's Latino population grew at a rate of 104%, Anne Arundel County saw its Latino population grow at a rate of 76%, Baltimore County's Latino population grew by 65%, and Prince George's County experienced 37% growth of Latinos. In Virginia, Prince William County's Latino population grew by 94%, Fairfax County experienced 71% growth of the Latino population, Virginia Beach City's Latino population grew by 65%, and Arlington county experienced 46% Latino growth. In North Carolina, Wake County's Latino population grew by 190%, Mecklenburg County saw its Latino population grow by 163%, and Cumberland County experienced Latino growth at a rate of 97% in the last decade. In South Carolina, Richland County saw its Latino population grow at a rate of 66%.

In addition, much of the Latino growth in these states is being driven by the movement of Latino immigrants. What many of these Latino immigrants face in these southeastern states are barriers to housing, jobs, education, and health, as well as targeting by local law enforcement similar to what many Latino immigrants faced decades ago in states like California, Texas and New York. While barriers and improper law enforcement tactics still occur in states like California and New York, these traditionally high-immigrant states also now have a built-in infrastructure to serve the needs of immigrants and help them find recourse if their rights are trampled upon. Unfortunately, similar infrastructures do not exist in most of the region covered by the 4th Circuit. As such, ensuring that only nominees who will be fair to the new Latino community in the southeast is particularly important.

MALDEF's evaluation of Dennis Shedd uncovered a demonstrated lack of commitment

to protect the civil rights of ordinary residents of the United States and to preserve and expand the progress that has been made on civil rights and individual liberties. In every respect, Dennis Shedd has demonstrated that he would likely decide cases in a manner that run counter to the core principles and rights we believe are necessary to protect Latinos, particularly the most vulnerable who live within the 4th Circuit.

Throughout his eleven years on the federal district court, Judge Shedd has dismissed almost all of the civil rights cases that have come before him; thus, preventing the merits of these cases to be heard by a jury. Based on his handling of race, gender, age, and disability claims, we conclude that Judge Shedd would not give Latino plaintiffs seeking legal remedies for civil rights violations a fair day in court.

In the area of upholding federal statutes, Judge Shedd's rulings regarding federalism are also troubling and follow the Fourth Circuit's bold attempts to narrow the powers of Congress in its protection of the rights of all Americans. We conclude that Judge Shedd, as a judge on the circuit court, would continue attempts to limit the powers of Congress to pass legislation that protects the rights of Latinos and other protected groups.

Judge Shedd has also exhibited a high level of insensitivity or poor judgment in commenting on issues about race—while serving as a federal district judge in a state with a population that is 30% African-American. For example, in a recent unpublished case, Judge Shedd was reported in the press as making several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome.

Dennis Shedd's eleven-year record as a federal district judge reflects hostility towards plaintiffs in civil rights cases, a desire to limit authority to enact legislation that is applicable to states, and insensitivity to issues of discrimination. Further, Judge Shedd's extremist views on these issues render him unsuitable to serve on the Fourth Circuit. For these reasons, we urge you to oppose his nomination to the Fourth Circuit Court of Appeals.

Sincerely,

ANTONIA HERNANDEZ,
President and General Counsel.

Mr. LEAHY. Mr. President, hundreds, probably thousands, of letters from South Carolina citizens arrived in my office urging a closer look at Judge Shedd's nomination to serve in the Fourth Circuit.

So we don't have a CONGRESSIONAL RECORD tomorrow morning that will be several hundred pages long, I will not include all of them with my remarks today. However, I ask unanimous consent that a list of the letters of opposition to the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals be printed in the RECORD.

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

LETTERS OF OPPOSITION TO THE NOMINATION OF DENNIS SHEDD TO THE 4TH CIRCUIT COURT OF APPEALS

LOCAL CIVIL RIGHTS GROUPS

NAACP of South Carolina State Conference, June 24, 2002; May 21, 2002.

NAACP of Andrews Branch, August 7, 2002.

NAACP of Eutawville, South Carolina, August 7, 2002.

NAACP of Newberry, South Carolina, August 7, 2002.

NAACP of Hilton Head Island/Bluffton, South Carolina, NAACP, August 24, 2002.

NAACP of Moncks Corner, South Carolina, August 7, 2002.

NAACP of Kershaw, South Carolina, September 17, 2002.

NAACP of Clarendon County Branch, August 12, 2002.

Urban League of the Upstate, Inc., South Carolina, September 24, 2002.

NAACP of North Carolina, June 24, 2002; June 26, 2002.

NAACP of Maryland State Conference, September 4, 2002.

Progressive Maryland, August 8, 2002.

NAACP of California State Conference, September 9, 2002.

NAACP of Mississippi State Conference, August 24, 2002.

NAACP of Delaware State Conference, August 14, 2002.

Public Justice Center, October 7, 2002.

NAACP of West Virginia State Conference, August 14, 2002.

Quad County (IL) Urban League, September 27, 2002.

Birmingham Urban League, Inc., September 24, 2002.

Advocates for Ohioans with Disabilities, August 31, 2002.

National Organization for Women, Western Wayne County (MI), October 8, 2002.

NATIONAL CIVIL RIGHTS GROUPS

Black Leadership Forum, September 16, 2002, November 12, 2002 (Dr. Joseph E. Lowery).

NAACP, September 17, 2002 (Kweisi Mfume).

Mexican American Legal Defense and Educational Fund, Sept. 30, 2002 (Antonia Hernandez).

People for the American Way, June 24, 2002; September 4, 2002.

American Association of University Women, June 20, 2002; November 14, 2002.

National Council of Jewish Women, August 15, 2002.

Rainbow/Push Coalition, August 24, 2002 (Reverend Jesse L. Jackson, Sr.).

Alliance for Justice, November 15, 2002 (Nan Aron).

People for the American Way, November 15, 2002 (Ralph Neas).

Leadership Conference on Civil Rights & Alliance for Justice, July 11, 2002, coalition letter signed by the following groups: Alliance for Justice and Leadership Conference on Civil Rights August 30, 2002, NARAL, NAACP Legal Defense and Educational Fund, NAACP, American Association of University Women, ADA Watch, National Council of Jewish Women, AFL–CIO, NOW Legal Defense and Education Fund, People for the American Way, Feminist Majority, National Partnership for Women and Families, National Organization for Women, and Disability Rights Education and Defense Fund.

Alliance for Justice and Leadership Conference on Civil Rights, September 18, 2002, coalition letter signed by the following groups: Leadership Conference on Civil Rights, Alliance for Justice, People for the American Way, NARAL, Planned Parenthood Federation of American, Human Rights Campaign, National Organization for Women, American Association of University Women, NOW Legal Defense and Education Fund, National Family Planning and Reproductive Health Association, National Council of Jewish Women, National Abortion Federation, and The Feminist Majority.

Alliance for Justice and Leadership Conferee on Civil Rights, November 15, 2002, coalition letter signed by the following groups: Leadership Conference on Civil Rights, Alliance for Justice, NARAL, NAACP Legal Defense and Educational Fund, NAACP, People for the American Way, American Association of University Women, Feminist Majority, ADA Watch, National Partnership for Women and Families, National Council of Jewish Women, National Organization for Women, AFL–CIO, NOW Legal Defense and Education Fund, and Disability Rights Education and Defense Fund.

ELECTED OFFICIALS

National Black Caucus of State Legislators, September 25, 2002.

South Carolina Legislative Black Caucus, September 4, 2002.

North Carolina Legislative Black Caucus, September 26, 2002.

Legislative Black Caucus of Maryland, Inc., September 9, 2002.

Wisconsin Legislative Black & Hispanic Caucus, August 21, 2002.

Margaret Rose Henry, State Senator, State of Delaware, September 19, 2002, November 12, 2002.

Maryland State Delegate Howard ''Pete'' Rawlings, August 21, 2002.

Congressional Black Caucus, July 26, 2002, October 2, 2002.

BAR ASSOCIATIONS

National Bar Association, September 4, 2002.

Old Dominion Bar Association, September 11, 2002.

North Carolina Association of Black Lawyers, August 30, 2002.

Alliance of Black Women Attorneys of Maryland, Inc., August 30, 2002.

National Employment Lawyers Association, September 17, 2002, November 15, 2002.

North Carolina Academy of Trial Lawyers, September 26, 2002.

LAW PROFESSORS

UNC—Chapel Hill School of Law: John Carles Boger, Lissa L. Broome, Kenneth S. Broun, John O. Calmore, Charles E. Daye, Eugene Gressman, Ann Hubbard, Daniel H. Pollitt, and Marilyn V. Yarbrough.

Duke University School of Law: Christopher H. Schroeder and Jerome Culp.

North Carolina Central University School of Law: Renee F. Hill, David A. Green, Irving Joyner, Nichelle J. Perry, and Fred J. Williams.

LAW SCHOOL STUDENTS

Howard University School of Law Students, September 11, 2002, signed by 58 Howard University Law Students.

ATTORNEYS

Tom Turnipseed, Columbia, South Carolina, June 26, 2002.

Walt Auvil, Attorney, Parkersburg, West Virginia, June 19, 2002.

Neil Bonney, Attorney, Virginia Beach, Virginia, June 20, 2002.

Timothy E. Cupp, Attorney, Harrisonburg, Virginia, June 21, 2002.

Devarieste Curry, August 31, 2002.

Joseph D. Garrison, Attorney, New Haven, Connecticut, June 18, 2002.

Stephen B. Lebau, Richard P. Neuworth, Anna L. Jefferson, Carrie D. Huggins, Attorneys, Baltimore, MD, June 20, 2002.

David M. Melnick, Attorney, Rockville, MD, June 20, 2002.

Gabriel A. Terrasa, Attorney, Owings Mills, MD, June 20, 2002.

Cathy Ventrell-Monsees, Attorney, Chevy Chase, MD, June 20, 2002.

Salb, Shannon, Attorney, Washington, DC, September 19, 2002.

RELIGIOUS LEADERS

South Carolinians, September 30, 2002.

Ms. Elvira Faulkner—McIlwain, Lancaster District Pee Dee Conf. AME Zion Church.

Rev. Dr. Lloyd Snipes, Presiding Elder, Lancaster District Pee Dee Conf. AME Zion Church.

Rev. Matthew L. Browning, Pastor, David Stand AME Zion Church.
Rev. Dr. Reid R. White, Paster, El Bethel AME Zion Church.
Rev. Harold Jones, White Oak AME Zion Church.
Rev. Dr. Marion Wilson, Steele Hill AME Zion Church.
Rev. R.A. Morrison, Pastor, Salem AME Zion Church.
Rev. Albert Young, Pastor, Mt. Zion AME Zion Church.
Rev. Theodis Ingram, Pastor, Warner Temple AME Zion Church.
Rev. Henry I. Dale, Pastor, North Corner AME Zion Church.
Rev. Eldren D. Morrison, Pastor, Pleasant Hill AME Zion Church.
Rev. Beatrice H. Massey, Pastor, Mt. Nebo AME Zion Church.
Rev. Dorothy N. Wallace, Pastor, New United AME Zion Church.
Rev. Deborah Waddell, Pastor, Gold Hill AME Zion Church.
Rev. Thomas R. Moore, Mt Carmel, AME Zion Church.
Rev. Gloria Stover, Pastor, Greater Frazier AME Zion Church.
Rev. Toby L. Johnson, Pastor, Clinton Chapel AME Zion Church.
Rev. Len Clark, Pastor, Bingham Chapel AME Zion Church.
Rev. James R. Thomas Jr., Pastor, Camp Creek AME Zion Church.
Rev. James E. Gordon, Pastor, St. Paul AME Zion Church.
Rev. Dr. Roy H. Brice, Pastor, Mt. Moriah AME Zion Church.
Rev. Albert Tucker, Pastor, Centennial AME Zion Church.
Rev. Roosevelt Alexander, Mt. Tabor, AME Zion Church.

CITIZENS

Marlin Maddoux, Host, Point of View Radio Talk Show.
Gladys W. Wallace, Elgin, SC, April 1, 2002.
Kathy Moore, Charleston, SC, June 24, 2002.
Salvador V. Acosta, Jr., North Charleston, SC, June 21, 2002.
Henderson and Gwen Beavers, Charlottesville, VA, August 29, 2002.
Florence Brandenburg, Shedrick Knox, Birmingham, AL August 1, 2002.
Barbara Burgess, Marshall, Virginia, November 14, 2002.
James T. McLawhorn, October 2, 2002.
Judith Polson, New York, NY, September 14, 2002.
Gloria Washington, Stone Mountain, GA, September 11, 2002.
Keith Washington, Stone Mountain, GA, September 11, 2002.
And letters from more than 1,200 other citizens.

Mr. LEAHY. Mr. President, there is a reason, when you look at Judge Shedd's record, that many believe he has a reputation for assisting the defense in civil cases and for ruling for the defense in employment civil rights cases, for example. His holding in Condon v. Reno shows that his view of the constitutional allocation of powers between the States and the, Federal Government goes even beyond what we have seen from a very conservative activist Supreme Court across the street. They are busily rewriting the law in this fundamental area. And Judge Shedd goes beyond the U.S. Supreme Court. His actions in a case involving serious prosecutorial and police misconduct also raise serious questions about his fairness in criminal cases.

His record as a whole raises serious concerns about whether he should be elevated to a court that is only one step below the U.S. Supreme Court and whether he should be entrusted with deciding appeals there.

Every litigant, every defendant, every person, every plaintiff who comes before a judge in the Federal courts must be assured that the judge will give a fair and unbiased hearing to the case at hand. The test of a judge, especially a lifetime appointment, goes beyond just the question of competence. When we are talking about our Federal courts—remember, our Federal courts are admired around the world for their independence and their fairness, but that means that whether you or I, or anybody else walks into a Federal court, no matter what our case is, whether we are plaintiff or a defendant, whether we are the Government or one responding to the Government, whether we are rich or poor, no matter what our political background is, when we walk into the courtroom door, we have to be able to have confidence that this judge, this Federal judge, will hear our case—he or she will hear it fairly.

Litigants in our federal courts should be able to have confidence to say and believe that it makes no difference what my political background is, what the color of my skin is, where I am from, or anything else. I will win or I will lose based on the merits of the case, not based on the individual prejudices of the judge.

Unfortunately, when one looks at Judge Shedd's record, one has to say that somebody coming in to his court could not have that assurance. One has to say unless they fit into a narrow category that Judge Shedd has routinely favored in his cases, you are probably pretty unlucky to be before his court.

Let me go through these concerns in a little more detail. First, Judge Shedd has a reputation for assisting in the defense in civil cases, raising issues sua sponte (on his own motion, without a motion from the lawyers for the litigants), in essence making himself the third litigator and not leaving it up to the parties—the plaintiff or defendant—to litigate the case, but actually stepping in and taking sides and making it very clear to the people in the courtroom that he is taking sides.

He has ordered defendants to make motions for summary judgment whether they wanted or planned to or not. He has resolved issues before they are even raised and fully briefed, having made up his mind before the case is even heard, having made up his mind on behalf of one of the litigants. This shows a pattern of a judge injecting himself into litigation, particularly in the shoes of corporations and others if they are being sued, if they are defendants in civil litigation. Here are some specific cases that illustrate these interventions by Judge Shedd to the benefit of one of the parties.

In McCarter v. RHNB, a case alleging gender discrimination, Judge Shedd granted summary judgment. He did not even wait for the company to raise these grounds. He raised it for them and summarily ruled in their behalf on an issue they had not even raised.

In Shults v. Denny's Restaurant, a case involving a claims of employment discrimination under the Americans with Disabilties Act, Judge Shedd raised an issue on his own, saying he was doing it ''for possible resolution by summary judgment.'' In other words, putting himself on the side of Denny's and in essence advocating for their interests.

Again, deciding how best the defense should execute their litigation strategy, he noted that three of the defenses asserted are potentially dispositive of certain claims—in other words, three of the defenses could settle the case right there—and said ''these issues do not appear to necessitate much, if any, discovery on the part of the plaintiff.'' He mentioned, almost as an afterthought at the close of his order, that defendants ''may also file a memorandum'' if they want.

It does not help when you are litigating a case if you know the judge has already made up his mind for the other side. It helps even less if, having made it clear he has made up his mind for the other side, he actually steps in and helps the other side.

What kind of an image does that give to people who are expecting fairness and impartiality in our Federal courts? What does that say to people who are being told by all of us, as we always are, that our Federal courts are impartial? What does it say when they watch cases being tried by a judge who takes sides openly and clearly and continuously in his courtroom?

In Lowery v. Seamless Sensations, a case where an African American woman brought claims under Title VII for employment discrimination on the basis of race, Judge Shedd turned to the person she was suing and said: Make a motion to dismiss. Then he quickly granted it. I bet you that woman walked out of there wondering why she ever even bothered coming into court when it was so obvious the judge made up his mind.

Take Coker v. Wal-Mart, in which it appears the judge wanted to get rid of this case. He wanted to make a motion on his own to send it back to the State court, but he did ask Wal-Mart: Give me a memo to show me I can really do that which, of course, is what Wal-Mart wanted.

In Gilmore v. Ford Motor Company, a product liability case, Judge Shedd outlined four factors he must consider before dismissing an action for failure to prosecute. He found that the defendants had not set forth evidence addressing these four factors, but nevertheless went on to ''glean certain pertinent information from the record.''

In other words, he said: Here is what you need to win this case. You have not raised these issues yourself. I have gleaned them from somewhere in the record. So do not worry, buddies, I

have taken care of you; I am on your side. I will argue your case for you and, in doing this, I can dismiss the case against you.

You almost wonder if the winning side feels they should pay their attorneys when the judge has stepped in to help them win the case.

In Simmons v. Coastal Contractors, both parties were appearing without a lawyer, or pro se. Judge Shedd noted that ''this civil action . . . is before the court sua sponte.'' While he must have meant the motion itself was before him sua sponte, or on his own motion, he brought up deficiencies in the plaintiff's complaint and ordered that an amended complaint be filed or the action would be dismissed on the judge's own motion. In other words, he essentially indicated I am going to decide the case. You litigants go have coffee if you want, but I am going to make up my mind, make your arguments for you, and settle the case for you.

In another substitution for his strategic litigation judgment for that of the defendants, Tessman v. Island Ford-Lincoln-Mercury, Judge Shedd threatened to dismiss the plaintiff's Title VII action on his own unless the plaintiff could show cause why he should not. He said the plaintiff had not alleged that she had presented her claim to, or received a right-to-sue letter from the EEOC and decided that rather than letting the defense move for dismissal, he would do so on his own. In other words: I am going to make the arguments on the other side and get rid of the case.

Additionally, of the 11 cases relating to employment discrimination available in the public record, Judge Shedd held for the employer in every single one, including one case where he sat by designation on the Fourth Circuit. Judge Shedd granted summary judgment after summary judgment and found for the employer and against the employee in a wide range of employment discrimination claims.

Of the 54 fair employment cases included in the unpublished opinions he provided to the Committee, more than 80 percent of them grant summary judgment to the defendants. That does not appear to be a fair record. It strongly indicates plaintiffs are not receiving fair hearings. Employment cases are often fact-specific disputes that would not seem likely to result in an overwhelming majority of summary judgment decisions for defendants because under the summary judgment standard, the evidence must be viewed in the light most favorable to the nonmovant—the plaintiff under these circumstances—and the judge must find that there are no disputes about material facts and that judgment as a matter of law is warranted for the moving party the defendants.

Certainly when I look at the mail I get from South Carolina and from litigants and others there, there is a pervasive feeling that unless you fit the right category when you come before that court, you are not going to get a hearing favorable to you—actually, an overwhelming feeling that the hearings will not be fair. They will be slanted to one side. That is not how we maintain the integrity and independence of the Federal bench. For example, the National Employment Lawyers Association reviewed Judge Shedd's public record. They sent a letter opposing his confirmation. 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:

NATIONAL EMPLOYMENT LAWYERS ASSOCIATION,
September 17, 2002.

Re Dennis Sheed—Appointee for United States Court of Appeals.

Hon. PATRICK J. LEAHY,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the National Employment Lawyers Association (NELA), I am writing you to express our organization's strong opposition to the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. We urge the members of the Senate Judiciary Committee to vote against his nomination. We further urge the Administration to nominate a person for that seat who will apply federal employment and labor laws in a fair and even-handed manner, and who will interpret those laws in keeping with the intent of Congress.

DURING HIS HEARING, JUDGE SHEDD OFFERED MISLEADING INFORMATION

Judge Shedd's employment law decisions have been, almost without exception, in favor of employers. At his Committee hearing earlier this year, Judge Shedd claimed that was unable to recall any employment case in his courtroom that had gone to trial resulted in a verdict or judgment in favor of the plaintiff. By way of explanation, Judge Shedd told the Committee that no judge in his district had an employment case where the employee had won at trial. This statement was untrue, and several other judges in the district presided over trials which were won by the plaintiffs. Shedd's statement is not only indicative of his anti-employee bias, but also demonstrates a cavalier attitude toward the truth and a willingness to offer erroneous information to the Committee.

In addition, NELA is concerned that Judge Shedd may not have opened his entire judicial record for scrutiny by the Senate Judiciary Committee and the public. Shedd turned over unpublished opinions only after his hearing, and never provided the Committee with a full docket of his cases. Without a full docket, it is impossible to determine whether all of Judge Shedd's unpublished opinions have been released. Your Committee is considering Judge Shedd's lifetime appointment to a court where his rulings would carry enormous precedential force. In light of the importance of this appointment, the Committee and the full Senate should not be forced to make a decision based on a record that may be incomplete.

JUDGE SHEDD'S EMPLOYMENT DECISIONS REVEAL A STRONG ANTI-EMPLOYEE BIAS

NELA has analyzed dozens of Judge Shedd's unpublished and published decisions in employment cases. These decisions reveal a willingness to bend the law and ignore precedent in order to reach results-oriented rulings.

JUDGE SHEDD FREQUENTLY IGNORED THE FINDINGS OF HIS OWN MAGISTRATE JUDGE IN ORDER TO RULE AGAINST EMPLOYEES

In the federal district courts, Magistrate Judges often evaluate a case and recommend to the judge whether the plaintiff has presented sufficient evidence for the case to go to trial. The decisions of Magistrate Judges are typically affirmed, as the Magistrate Judge usually has had an opportunity to fully review the facts of the case. Judge Shedd has frequently ignored uncontradicted evidence and overruled the recommendations of Magistrate Judges.

In *Cleary* v. *Nationwide Mutual Insurance Co.*, the Magistrate Judge has found that there was sufficient evidence for a trial where a female employee was fired in retaliation for filing a sexual harassment case. The employer forced the female employee to take administrative leave and then fired her after she filed a sexual harassment claim, but the harasser was allowed to keep working. Judge Shedd rejected the Magistrate Judge's recommendation, and refused to let the case go to trial. By viewing each of the seven or eight incidents of harassment as a separate incident rather than as a whole, Judge Shedd concluded that there was no evidence that the female employee was forced to take leave and then terminated for retaliatory reasons (contrary to the Magistrate Judge's findings). Judge Shedd's analysis—viewing each incident in isolation—is contrary to established Supreme Court precedent. Judge Shedd also excused some of the defendant's acts as mere ''mistakes.''

In *Dinkins* v. *Blackman*, Judge Shedd rejected a magistrate Judge's recommendation and granted summary judgment on a sexual harassment claim and other claims by the employee, even though Judge Shedd found that the sexual harassment was ''gross behavior.'' Judge Shedd refused to give the employee the opportunity to seek further information for her case in discovery, ignoring a new Supreme Court case which was decided after Dinkins filed her case.

In *Ellis* v. *Speaks Oil Co.*, Judge Shedd granted summary judgment in favor of the employer on an age discrimination claim, contrary to the Magistrate Judge's recommendation, because he concluded that the plaintiff, a truck driver, was not performing his duties up to his employer's expectations of driving two trips per day. He disregarded evidence found by the Magistrate Judge which showed that the plaintiff, who was 62 years old, was driving two trips per day until the company let him go.

In *Roberts* v. *Defender Services*, Judge Shedd ignored the Magistrate Judge's recommendation to deny the employer's motion for summary judgment in a sexual harassment case. Judge Shedd agreed that the harassment in this case was severe, but ruled that the woman did not prove that she was really upset by the harassment, which should have been a question for the jury to decide.

JUDGE SHEDD IGNORED CLEAR AND ESTABLISHED PRECEDENT IN ORDER TO RULE IN FAVOR OF CORPORATE EMPLOYERS AGAINST INDIVIDUAL EMPLOYEES

In *Ephraim* v. *Paul Harris Stores, Inc.*, Judge Shedd held that a claim of invasion of privacy (false light) was not cognizable under South Carolina law, despite two South Carolina Supreme Court decisions that had recognized this as a valid claim under state law.

In *Rector* v. *Rainbow Shops, Inc.*, Judge Shedd disregarded South Carolina state-court decisions that had held that a mere insinuation is actionable in a defamation case if it is false and malicious and the meaning is plain. Instead, he decided that employee's termination while the store was experiencing cash shortages was not reasonably capable of

a defamatory meaning. Judge Shedd also allowed the employer to read and sign the form, even though the employer offered no reason for doing this. Judge Shedd did not even require the employer to explain why it was necessary for the termination meeting to occur in public, in the presence of other store employees.

In *Storms* v. *Goodyear Tire & Rubber Co.*, Judge Shedd held that an employee could not bring a claim for breach of contract based on language contained in the company's own personnel documents because there was no evidence of ''mutual assent'' to those documents. He did not explain why the company had not assented to the promises contained in its own documents. He refused to follow precedent by the South Carolina Supreme Court on this and related issues. Later, in *Truesdale* v. *Dana Corp.*, Judge Shedd cited his own opinion in *Storms* and again failed to follow precedent. In this case, an employee was fired in violation of the company's own disciplinary policies and procedures. By interpreting the employer's personnel documents in a selective, extremely pro-employer manner, Judge Shedd determined that the employer's policies did not protect the employee.

JUDGE SHEDD DISREGARDED OR MISCONSTRUED EVIDENCE TO THE BENEFIT OF EMPLOYERS

In *English* v. *Kennecott Ridgeway Mining Co.*, an injured employee claimed that he was fired in retaliation for filing a workers' compensation claim. Judge Shedd dismissed the retaliatory discharge claim despite uncontradicted evidence (summarized in his own opinion) which demonstrated the employer's hostility toward the injured worker because of his workers' compensation claim. In fact, while the plaintiff ''was still under the care of the company's physician, coworkers informed English that his superiors were complaining that English was milking the system, that he was not really hurt, and that he should be returned to full duty.''

In *Givens* v. *South Carolina Health Insurance Pool*, Judge Shedd allowed the state insurance pool to exclude AIDS/HIV from health insurance coverage. Judge Shedd held that the §501(c) insurance underwriting exclusion (safe harbor provision) of the Americans with Disabilities Act (''ADA'') exempted the Insurance pool from coverage under that statute, even though the State did not do any of its own actuarial studies or underwriting studies to evaluate the expensive and risks of insuring persons with AIDS/HIV. Since the State failed to do any of its own studies, it should have been barred from being able to claim the §501(c) exemption.

In *Gregory* v. *Chester County Sheriff's Dept.*, Judge Shedd accepted a poorly reasoned recommendation from a Magistrate Judge against an employee. The Magistrate Judge had found that the employee could not prove that her demotion was an ''adverse action'' by the employer. This ruling is contrary to precedent that demotions are adverse job actions. *Gurganus* v. *Beneficial North Carolina, Inc.*, 2001 U.S. App. LEXIS 26943 (4th Cir. 2000). Although Judge Shedd stated that he was supposed to review the Magistrate Judge's recommendation de novo, he issued only a one-page summary order.

In *Richberg* v. *Glaston Copper Recycling*, Judge Shedd refused to consider evidence presented by the plaintiff that showed the existence of genuine issues of material fact when he granted summary judgment for the employer. For example, he claimed that the plaintiff had failed to challenge the employer's affirmative defense that the plaintiff was terminated for failing to meet ''established work standards,'' although the plaintiff had submitted a positive performance evaluation from his personnel file. Judge Shedd also refused to follow a state court decision that had held that a sixteen-day proximity in time between a workers' compensation filing and a drug screen was prima facie retaliation, on the grounds that the drug screen in the *Richberg* case was ordered 50 days after the filing.

JUDGE SHEDD'S APPOINTMENT TO THE FOURTH CIRCUIT WOULD STACK THE COURT WITH PRO-EMPLOYER JUDGES

NELA members who practice in the states within the Fourth Circuit repeatedly have reported that they do everything they can to avoid filing employment cases in federal court and avoid filing federal claims in state court, for fear of removal. As a result, federal statutes prohibiting discrimination in employment—Title VII, the ADA, the Age Discrimination in Employment Act, the Reconstruction-era civil rights acts—are largely not enforced in those states because the Fourth Circuit has created a hostile environment for those claims. As Committee members are aware, the Fourth Circuit has been reversed even by the current Supreme Court on a number of occasions, in cases involving employment and other matters. See, e.g., *EEOC* v. *Waffle House, Inc.*, 534 U.S. 279 (2002) (reversing the Fourth Circuit decision by a 6–3 vote, and holding that the EEOC is not bound by arbitration agreements between an employee and employer); *Ferguson* v. *City of Charleston*, 531 U.S. 67 (2001) (by a 6–3 vote, holding that coerced drug testing of pregnant women is unconstitutional); *Dickerson* v. *United States*, 530 U.S. 428 (2000) (by a 7–2 vote, the Court refused to overrule *Miranda* v. *Arizona*).

NELA STRONGLY OPPOSES THE CONFIRMATION OF JUDGE SHEDD

Judge Shedd's record shows a cavalier attitude toward evidence, legal precedent, and an alarming tendency to deny working men and women who appear before him their day in court. Judge Shedd is dismissive toward the rights of workers who face harassment and mistreatment by their employers. Unlike his colleagues in the District of South Carolina, there has never been a pro-employee verdict in any civil rights trial in Judge Shedd's courtroom. If fairness and a commitment to equal justice are expected of appointees to the United States Court of Appeals, then Judge Shedd has proven that he cannot satisfy these expectations. For these reasons, NELA urges you to oppose the confirmation of Judge Dennis Shedd.

Very truly yours,

FREDERICK M. GITTES,
President, National Employment Lawyers Association.

Mr. LEAHY. Mr. President, I mentioned that Judge Shedd tends to go even beyond where an activist U.S. Supreme Court has gone. In a 1997 case challenging the constitutionality of the Driver's Privacy Protection Act, Judge Shedd made a federalism ruling that went way beyond even the extreme federalism rulings of the U.S. Supreme Court, and it was so bad that the U.S. Supreme Court in a 9-to-0 opinion reversed Judge Shedd's ruling.

In Condon v. Reno, Judge Shedd ruled on the constitutionality of the Driver's Privacy Act, which essentially prohibited States from selling and sharing personal information gleaned as they were picking up driver's license information. He said that the Act violated the 10th Amendment as interpreted by the courts in New York v. United States and Printz v. United States. Three years later, Chief Justice Rehnquist wrote for the Court explaining that, to the contrary, neither of the cases applied. He did not get just one of them wrong, he got them both wrong. The Chief Justice wrote that because the Act did not require the States in their sovereign capacity to regulate their own citizens, but instead regulates the States as the owners of the databases. Therefore, the Act was consistent with the constitutional principles enunciated in New York v. Printz.

In Crosby v. South Carolina, he found the Family and Medical Leave Act unconstitutional on the grounds that it was not properly enacted under Congress's power. I mention this case because it is the second time Judge Shedd ruled in such a way in an important federalism case. He also ruled this way because he just took a magistrate judge's very brief report and did not put in any significant analysis of his own.

In this case, it is almost impossible to figure out his reasoning for why this important law with bipartisan support would be unconstitutional, especially when acts of Congress are entitled to a presumption of constitutionality. One would think if somebody really cared about the courts of appeal and the Supreme Court, they would have at least given us rigorous analysis instead of making what appears to be a somewhat arbitrary ruling.

In addition, he issued several opinions relating to a murder case where a privileged conversation between the defendant and his attorney was monitored and recorded on videotape by the county sheriff's department. Present in the room where the conversation was being monitored were several of the sheriff's deputies and the county prosecutor who subsequently handled the case. The defendant was convicted and sentenced to death but the Supreme Court of South Carolina reversed because of the nature of the videotaping. In its opinion, the Supreme Court of South Carolina—not one considered the most liberal of courts—used very strong language that condemned the failure to disqualify the local prosecutor's office. They cited the prosecutor's special responsibilities to do justice. And the South Carolina Supreme Court said it would not tolerate deliberate prosecutorial misconduct which threatens rights fundamental to liberty and justice. That is about as strong a condemnation by any state Supreme Court of a prosecutor's actions as I have ever heard.

So the federal prosecutions relating to the videotaping were then brought to Judge Shedd's courtroom. Both the prosecutor, Fran Humphries, and the defense attorney, Jack Duncan, were brought before a federal grand jury investigating these constitutional violations.

Mr. DUNCAN testified that he had not given a copy of the tape to a television reporter, while Mr. Humphries testified he had not immediately known the taping was taking place. Now each of them

was charged with perjury based on these statements. As I mentioned, the prosecutor and several of the sheriffs, were there watching the taping. So it was obvious he was not telling the truth.

Mr. DUNCAN, the defense attorney, was found guilty and sentenced to 4 months in prison. Even though the information seemed overwhelming against the prosecutor, Judge Shedd dismissed those charges.

This is enlightening because if anybody was hurt by the improper taping, it was the defendant and the defense attorney. If anybody truly committed a wrongdoing, as the South Carolina Supreme Court said in the strongest language against a prosecutor I can remember, it was the prosecutor. But having them both before his court, Judge Shedd in effect exonerated the prosecutor and sentenced the defense attorney to 4 months.

Think of yourself as the litigant before his court. Look at all of these cases I have talked about, and so many others. I do not fall in the category of the sides he tends to rule with. I am on the other side. It would be an awful sinking feeling to go in there knowing how good your case is but you are probably going to lose.

This particular decision shows disregard for the rights of Americans who, no matter what they have been accused of, should be able to expect privacy and not to be videotaped by the government when they are talking to their attorneys. The law is settled in this country that with attorney-client privilege you can sit down and talk with your attorney without the prosecutor videotaping what you are saying, without them listening to or eavesdropping on you.

There are a couple of people you are able to talk to with a reasonable expectation of privacy. You are able to talk to your spouse. You are able to talk to your attorney. You are able to talk to your priest in a penitent relationship. Here, the prosecutor violated that—something that every prosecutor's handbook in America says is wrong, something that hornbook law says is wrong, every ethics course says is wrong, and every bar association says is wrong. The Supreme Court of South Carolina unanimously said it was wrong but Judge Shedd said to the prosecutor: It is okay; we will get the other guy. Well, that calls into question his ability to be fair in criminal cases.

So I am concerned when I see his record as a Federal district judge, and I ask myself: If this is his record as a Federal district judge, how is he going to be as a circuit judge on the court of appeals? So I share some of the same concerns about his fairness that we have heard expressed from South Carolina and from throughout the Fourth Circuit.

I know arguments will be made on the other side, and this will be disposed of however the Senate decides to vote, but for me, I could not in good conscience vote aye on this nomination. I will vote no.

I ask unanimous consent that letters from the Leadership Conference on Civil Rights, Alliance for Justice, and others be printed in the RECORD.

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

LEADERSHIP CONFERENCE ON CIVIL RIGHTS AND ALLIANCE FOR JUSTICE,

Washington, DC, August 30, 2002.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee, Washington, DC.

DEAR SENATOR LEAHY: We, the undersigned civil and human rights organizations, write to express our strong opposition to the confirmation of Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

First, we want to comment on the Judiciary Committee's level of review of this particular nomination. On July 11, we sent a letter expressing concern that the Committee had not received all of the information required to make a fully informed decision about whether to elevate Judge Shedd to the Fourth Circuit. We urged the Committee to take steps to complete the record on this nominee, and to hold another hearing to allow the Committee to fully examine the complete record.

It now appears as if the Committee has declined to ensure that it has obtained the complete judicial record and has decided not to hold a second hearing on the nomination. We are deeply troubled that the Committee may vote on the Shedd nomination without first obtaining a complete record and then providing an opportunity to publicly explore that record. The many concerns that we have identified in Judge Shedd's record produced thus far and which give rise to our opposition only strengthen our conviction that a vote on the nomination should occur only after a full record is obtained and examined.

We strongly believe that the composition of the federal judiciary is a civil rights issue of profound importance to all Americans, because the individuals charged with dispensing justice in our society have a direct impact on civil rights protections for us all. As you know, the role of the federal judiciary in protecting the rights of the powerless is particularly acute in the Fourth Circuit, which has the highest percentage of African-Americans of any federal circuit in the nation.

The Fourth Circuit is also arguably the most conservative of the federal circuits. Several of its most conservative decisions have been subsequently reversed by the Supreme Court as too extreme, including Condon v. Reno, a challenge to Congress's power to protect the privacy of drivers' license information; an attempt to overrule the Miranda rule; and Virginia's attempt to limit the right of reproductive choice. Because of the high percentage of minority citizens in the circuit and the very conservative nature of the court, it is imperative that any new appointment to this court be a person of moderate views who is wholly committed to the goals of equality and equal opportunity for all Americans. After an extensive review of Judge Shedd's record, it has become clear that he is not that nominee.

We are deeply concerned about Judge Shedd's reluctance to follow the law in support of vigorous enforcement of legal protections against discrimination for women and minorities. During Judge Shedd's time on the bench, at least forty African-Americans have filed employment discrimination cases that were assigned to Judge Shedd's court. Of those, Judge Shedd granted summary judgment for the employer in whole or in part in almost every case. In one case, Bailey v. South Carolina Dep't of Social Services, Judge Shedd granted summary judgment to the employer, even though the EEOC had determine there was reasonable cause to believe that the plaintiff was not promoted due to his race. In another case, McMillan v. Department of Corrections, the plaintiff alleged discrimination in the denial of a pay increase by the Department of Corrections. The plaintiff's supervisor had requested a pay increase for the plaintiff. At the same time, another State agency conducted an investigation into racially discriminatory employment practices within the Department of Corrections and concluded that White employees tended to do significantly better than Black employees in performance pay increases. Nevertheless, Judge Shedd refused to let this case go to trial. In contrast to cases involving African-American plaintiffs, in four out of five discrimination cases filed by White male plaintiffs, Judge Shedd has denied summary judgment and paved the way for trial.

Judge Shedd has an equally poor record in cases involving gender discrimination. In one case, Roberts v. Defender Services, Inc., he granted summary judgment to an employer in a sexual harassment case, even after concluding that the supervisor's conduct ''clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment.'' Despite that finding, Judge Shedd concluded that the plaintiff had not provided any evidence that she ''subjectively perceived the environment to be abusive,'' reaching this conclusion despite the fact that the record contained evidence that the plaintiff's supervisor made sexual comments to her on a daily basis, that she told him these comments were offensive, that she and a female manager took steps to report the conduct to corporate headquarters, and that she resigned from her job.

Judge Shedd has also exhibited a disturbing tendency to resolve cases on summary judgment in favor of defendants, even where genuine issues of material fact were clearly presented. For example, in Alston v. Ruston, Judge Shedd granted summary judgment on a Section 1983 complaint after concluding, as a matter of law, that a prison guard had not used excessive force—despite an affidavit and a well-pleaded complaint from the plaintiff alleging that the officer had sprayed him in the face with tear gas without justification, advanced toward him ''swinging his fists and punching [plaintiff] in the mouth,'' and wielded a broomstick until another officer intervened. Given the evidence presented, there was no room for Judge Shedd to conclude that excessive force had not taken place as a matter of law. Nevertheless, Judge Shedd made such a ruling and dismissed the plaintiff's case.

In other cases, Judge Shedd has exhibited hostility toward plaintiffs in civil rights claims involving allegations of misconduct by law enforcement officers. For example, in Joye v. Richland Co. Sheriff's Dep't., Judge Shedd dismissed a Section 1983 claim brought by a person wrongfully arrested by sheriff's deputies under a bench warrant issued for his son. Despite the fact that the arrest warrant described a 31 year old man, standing 5′ 11″, the officers arrested the plaintiff who was 61 years old and stood 5′ 7″ tall. The plaintiff argued that the officers had acted unreasonably in arresting him, in violation of his 4th Amendment rights. Judge Shedd, however, concluded that the plaintiff had not stated a valid 1983 claim because the officers had a ''reasonable, good

faith, belief, that they were arresting the correct person.'' He therefore rejected, as a matter of law, the contrary conclusion of the magistrate that the officers were not entitled to a ''good faith'' defense on these facts.

Judge Shedd's record also displays a consistent disregard for the rights of people with disabilities. He has ruled against disability rights plaintiffs in almost every instance, departing from settled law and adopting tortured interpretations of disability rights laws. In one case, Judge Shedd approved a state health insurance pool's complete exclusion from coverage of a man who was HIV positive. The plaintiff who filed the case sought to have it decided on an expedited basis, but died eight months later before any decision was rendered. In another case, a magistrate had found no evidence that the plaintiff's disability interfered with his ability to do his job and recommended that the plaintiff be permitted to proceed with the claim. Nevertheless, Judge Shedd dismissed the plaintiff's claim, concluding, without citing any evidence, that the disability rendered the plaintiff unable to do his job.

We are also very concerned about Judge Shedd's views on ''state's rights'' which would limit Congress's power to pass laws that are applicable to the States. Shedd authored the original district court opinion in Condon v. Reno, striking down the Driver's Privacy Protection Act based on his belief that the federal government did not have the power to require States to ensure that State driver's license records would remain private. Although the Fourth Circuit affirmed Judge Shedd's decision, the Supreme Court unanimously reversed the holding in a decision by Chief Justice Rehnquist. We are unaware of any other instance in the last 50 years where a district court judge has struck down an act of Congress on federalism grounds only to be unanimously reversed by the Supreme Court. Judge Shedd also struck down part of the Family and Medical Leave Act (FMLA), in Crosby v. South Carolina Dep't of Health and Envtl. Control, holding that the 11th Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for violation of the FMLA. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has also exhibited a high level of insensitivity on issues of race. In a recent case, Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolina, 30% of whom are African-American, ''don't care if that flag flies or not.'' He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the State flag, stating: ''What about the Palmetto tree? What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?'' Judge Shedd's hostility to the lawsuit in open court provides strong evidence of a poor judicial temperament. His attempt to minimize the symbolism of the Confederate flag to the African American community and suggest it is comparable to an image of the Palmetto tree reflects a stunning insensitivity to the injurious impact this particular symbol still has on many of our citizens.

In sum, Dennis Shedd's eleven-year record on the federal district bench reflects hostility towards plaintiffs in civil rights cases, including minorities, women and persons with disabilities, a desire to limit Congress's authority to enact protective legislation that is applicable to the states, and insensitive to issues of race. Judge Shedd's view on these issues render him a poor choice for the Fourth Circuit and we therefore urge you to oppose his confirmation.

Sincerely,

Wade Henderson, Executive Director, Leadership Conference on Civil Rights; Nan Aron, President, Alliance for Justice; Kate Michelman, President, NARAL; Elaine R. Jones, President and Director-Counsel, NAACP Legal Defense and Educational Fund; Hilary Shelton, Director—Washington Bureau, NAACP; Ralph Neas, President, People for the American Way; Nancy Zirkin, Director of Public Policy, American Association of University Women; Eleanor Smeal, President, Feminist Majority; Jim Ward, Executive Director, ADA Watch; Judith L. Lichtman, President, National Partnership for Women and Families; Marsha Atkind, National President, National Council of Jewish Women; Kim Gandy, President, National Organization for Women (NOW); William Samuel, Director—Department of Legislation, AFL–CIO; Patrishia Wright, Director of Government Affairs, Disability Rights Education and Defense Fund; Liza M. Maatz, Vice President of Government Relations, NOW Legal Defense and Education Fund.

PEOPLE FOR THE AMERICAN WAY,
Washington, DC, September 4, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATOR LEAHY: On behalf of the more than 500,000 members and supporters of People For the American Way (PFAW), we write to express our strong opposition to the elevation of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit.

Judge Shedd's views on federalism are of grave concern. Judge Shedd authored the original district court opinion in Condon v. Reno, which struck down the Driver's Privacy Protection Act based on his analysis that the federal government did not have the power to require states to ensure that driver's license records remain private. Although the Fourth Circuit Court of Appeals agreed, an a unanimous decision authored by Justice Rehnquist, the Supreme Court unanimously reversed. PFAW is unaware of any other instance in the last 50 years where a district court judge has struck down an act of Congress on federalism grounds only to be unanimously reversed by the Supreme Court.

In Crosby v. South Carolina Dept. of Health and Envtl. Control, Judge Shedd also struck down part of the Family and Medical Leave Act (FMLA), holding that the 11th Amendment doctrine of state sovereign immunity prevents an employee from suing a State agency for violation of the FMLA. This issue—because it calls into question Congress's power to remedy sex discrimination in the workplace—has profound implications for Congress's authority under Section 5 of the 14th Amendment.

Judge Shedd has a troubling record on civil rights enforcement. Throughout his eleven years as a federal district court judge, Judge Shedd has dismissed almost every civil rights case on behalf of minority claimants that has come before him, thereby preventing the merits of these cases from being heard by a jury.

For example, in Bailey v. South Carolina Dept. of Social Services, Judge Shedd granted summary judgment to the employer, even though the Equal Employment Opportunity Commission (EEOC) had determined there was reasonable cause to believe that the African American plaintiff was not promoted because of his race. In McMillan v. South Carolina Dept. of Corrections, a case involving allegations of race discrimination, Judge Shedd refused to allow the plaintiff's claim to go to trial, despite a finding by another state agency that Caucasian employees tended to receive higher performance pay increases than African-American employees.

In contrast, in four of the five cases filed in his court by Caucasian plaintiffs alleging ''reverse discrimination'' in employment, Judge Shedd denied summary judgment and allowed the case to proceed to a jury trial.

Judge Shedd's record also reflects insensitivity in civil rights cases alleging discrimination based on gender. For example, in Roberts v. Defender Services, Inc., a recommendation of the federal magistrate and granted summary judgment to the defendant. In Roberts, the record contained evidence that the plaintiff's supervisor made sexual comments to her on a daily basis, that she told him these comments were offensive, that she and a female manager took steps to report the conduct to corporate headquarters, and that she resigned from her job. Despite this evidence, Judge Shedd stated that while the supervisor's conduct ''clearly was, from an objective standpoint, sufficiently severe and pervasive to constitute a hostile and abusive work environment,'' the plaintiff had not provided any evidence that she ''subjectively perceived the environment to be abusive.''

A number of Judge Shedd's opinions reflect a disregard for laws protecting the disabled. For example, in Payette v. Westinghouse Electric Corp., Judge Shedd effectively read the right of employees to ''reassignment,'' a crucial protection for those with disabilities, out of the Americans with Disabilities Act (ADA). Congress explicitly included reassignment to a vacant position, when the person is no longer able to do his or her job, as one type of accommodation required by the ADA. In Givens v. South Carolina Health Insurance Pool, Judge Shedd ignored the plain meaning of the ADA when he approved a state health insurance pool's refusal of coverage for a man who was HIV positive. No other medical condition was excluded, and the state had done no actuarial analysis to justify the exclusion of individuals with HIV/AIDS. While many courts have held that the ADA does not prevent insurance plans from providing lesser benefits for treatment of particular types of disabilities, this ruling goes beyond those decisions.

Judge Shedd has exhibited a high level of insensitivity on issues of race. In a recent case, Judge Shedd made several insensitive comments as he dismissed a lawsuit aimed at removing the Confederate battle flag from the South Carolina statehouse dome. According to press accounts, Judge Shedd suggested that South Carolinians, 30% of whom are African-American, ''don't care if that flag flies or not.'' He also analogized the Confederate battle flag, to many a symbol of support for slavery and racist acts of terror directed at African-Americans, to the Palmetto tree, which is on the South Carolina State flag, stating: ''What about the Palmetto tree? What if that reminds me that Palmetto trees were cut down to make Fort Moultrie and that offends me?''

Given the importance of the Fourth Circuit and the current ideological imbalance on the court, it is imperative that any nominee to this court be a jurist of more moderate views who will protect the civil and constitutional rights of all Americans. Judge Shedd's record demonstrates that he is not

the nominee. PFAW urges the Judiciary committee to reject his nomination.

Sincerely,

RALPH G. NEAS,
President.

NATIONAL HEADQUARTERS,
Chicago, IL, August 24, 2002.

Senator PATRICK LEAHY,
Member, U.S. Senate,
Washington, DC

DEAR SENATOR LEAHY: Let me lend my voice of opposition to the chorus of discontent surrounding the nomination of Judge Dennis Shedd to the Fourth Circuit Court of Appeals. I urge you to oppose the Shedd nomination, based on the merits, and the merits alone. A seat on the Fourth Circuit is too important to the nation's judiciary not to be heavily scrutinized.

As a native of South Carolina, I am deeply disturbed by the direction taken by the Fourth Circuit in recent years. As a Judicial Circuit with considerable influence on the Supreme Court, those elevated to the Court should reflect the highest American ideals of inclusion and equal protection under the law. Moreover, the states included in the Fourth Circuit are comprised of the highest percentage of African Americans, than any other Circuit, thus judges on the Court must be sensitive and respectful for the civil rights laws for which we fought so hard.

Currently, the Fourth Circuit is the most extremist court in the nation on civil rights issues, criminal justice issues, and those involving the power of the federal government, to enact legislation, which holds States accountable for civil rights violations. The nomination of Dennis Shedd threatens to take the Court in a further extremist direction. For example, Judge Shedd's opinion in the *Condon v. Reno* case suggests that he favors disempowering Congress. American judges, and their rulings should protect rights, rather than restrict the balance of power.

To preserve this nation's ideals of inclusion, and to ensure equal protection under the law for all Americans, I urge you, and other members of the members of the Senate Judiciary Committee to vote ''No'' on the nomination of Dennis Shedd.

Sincerely,

REVEREND JESSE L. JACKSON, SR.

SOUTH CAROLINA LEGISLATIVE BLACK CAUCUS,
Columbia, SC, September 4, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

Hon. PATRICK J. LEAHY,
Chair, Senate Judiciary Committee,
Washington, DC.

DEAR SENATOR LEAHY: The South Carolina Legislative Black Caucus (SCLBC) was formed in 1975 soon after the Civil Rights Movement in the 1960's. Presently, the SCLBC has 31 members; seven senators and 24 representatives, including four women. The SCLBC is dedicated to the struggle for fairness, equality and justice for all South Carolinians, and to the civic and political involvement of African-Americans, women and other racial and ethnic minorities.

We seek to preserve the civil rights strides that occurred in South Carolina over the decades, and we fight to prevent any regressive step that threatens to rollback civil rights and constitutional rights of African-Americans, women and other racial and ethnic minorities. The nomination of U.S. District Judge Dennis W. Shedd to the U.S. Court of Appeals for the Fourth Circuit represents such a regressive step, and accordingly, we strongly oppose the nomination.

African-Americans constitute a full one-third of South Carolina's population, yet there is only one active African-American federal judge in the state. And, there are only two South Carolinian female federal judges, one on the federal District Court and the other on the Fourth Circuit. This is unfair and unjustified because there are many well-qualified African-American and woman jurists and lawyers who deserve an opportunity to serve this nation on the federal judiciary.

Because African-Americans are one-third of South Carolina's population and the Fourth Circuit has a greater number of African-Americans than any circuit, it is critical that any nominee, especially one from South Carolina, be an unabashed champion of civil rights. The appointee should have a record that demonstrates fairness and justice to all people. Based on our careful review of Judge Dennis Shedd's performance on the U.S. District Court for the District of South Carolina, we have concluded that his record shows a serious hostility to civil rights and constitutional protections.

Since his appointment to the federal bench in South Carolina, Judge Shedd has engaged in right-wing judicial activism by imposing strict and exacting standards when reviewing employment discrimination cases brought by African Americans and women. He has dismissed almost every employment discrimination, sexual harassment, civil rights and disability case that has come before him. Judge Shedd seems to believe that discrimination is not an actionable offense even when the Equal Employment Opportunity Commission has found ''reasonable cause'' that discrimination has occurred. Judge Shedd, however seems to apply a more lenient standard in reviewing discrimination cases brought by white men. Judge Shedd has allowed four out of five ''reverse'' discrimination cases to proceed beyond the summary judgment phase of litigation.

This record shows that Judge Shedd does not have an abiding concern for civil rights and fairness. It further shows that Shedd lacks the requisite moderate reasoning to bring balance to the Fourth Circuit. In fact, his membership to the Fourth Circuit would push it further beyond the mainstream of American values and would subject South Carolinians and residents of other states within the Fourth Circuit to an extreme right-wing interpretation of the nation's civil rights laws and constitutional protections.

Accordingly we oppose Judge Shedd's nomination without reservations. Hi values represents the Old South, where African Americans and women were judged by different and unequal standards.

We appreciate your attention. If you have any questions, please contact me at the address and telephone number above.

Sincerely

JOSEPH H. NEAL,
Chairman.

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Baltimore, MD, September 17, 2002.

Re Fourth Circuit Nomination of Judge Shedd.

U.S. Senate, Washington, DC.

DEAR SENATOR: On behalf of the NAACP, the nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to let you know of the Association's strong opposition to the nomination of District Court Judge Dennis W. Shedd to the Fourth Circuit Court of Appeals. Delegates from every state in the nation, including the five states comprising the Fourth Circuit, unanimously passed a resolution from the South Carolina State Conference in opposition to the nomination at the NAACP's annual convention in Houston in early July.

Members of the NAACP believe that the Federal judiciary, as the final arbiter of the U.S. Constitution, is the branch of government primarily charged with protecting the rights and liberties of all Americans. In many instances in our nation's history, the courts have been the only institution willing to enforce the rights of minority Americans. We cannot afford to permit the Federal judiciary to retreat from its constitutional obligation and resort to the type of judicial activism that threatens civil rights and civil liberties.

No other federal circuit reflects this extreme right-wing activism more than the Fourth Circuit Court of Appeal, which is home to more African Americans than any other circuit. The Fourth Circuit Court of Appeals' hostility to civil rights, affirmative action, women's rights, voting rights and fair employment is unrivalled. Its decisions are so far out the mainstream that the Supreme Court has reversed the Fourth Circuit on basic constitutional protections such as Miranda warnings.

Judge Shedd's addition to the Fourth Circuit would further relegate that court to the periphery of judicial mainstream. His judicial record and testimony before the Judiciary Committee reflect a disposition to rule against the plaintiff in employment and discrimination cases. Moreover, his restrictive view of federal legislative authority, as indicated in Condon v. Reno, 972 F. Supp. 977 (D.S.C. 1997), which struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25 and was later overturned in a 9-to-0 decision by the Supreme Court, confirms our perspective that Judge Shedd's judicial philosophy and temperament would further push the Fourth Circuit to the right-wing.

Accordingly, as unanimously passed by the over 1,200 delegates to the 2002 NAACP National Convention, I ask that you oppose the nomination and that you use your influence to encourage the Senate Judiciary Committee to not vote him out of Committee. However, if the nomination makes it to the Senate floor, we ask you to vote against it.

I appreciate your attention and interest in this important matter. Please do not hesitate to contact me or Hilary Shelton, Director of the NAACP Washington Bureau at (202) 638–2269, if we can be of assistance.

Sincerely,

KWESI MFUME,
President & CEO.

SOUTH CAROLINA STATE CONFERENCE, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Columbia, SC, June 24, 2002.

Senator PATRICK LEAHY,
Chairman, Judiciary Committee, Dirksen Senate Office Building, Washington, DC.

DEAR CHAIRMAN LEAHY: We write to oppose the nomination of Dennis Shedd to the Fourth Circuit Court of Appeals.

By now, you must be familiar with the importance of the Fourth Circuit to the African American Community. Almost a quarter of the Fourth Circuit's residents are African American. The Fourth Circuit, with over 6 million African Americans in the five states, has the greatest number of African Americans of any Circuit Court in the country. The Latino population within the Fourth circuit now at more than one million persons, has nearly tripled in the last decade. Based on these demographics, more may be at stake here for the future of civil rights than in any other Circuit Court in the country.

The Fourth Circuit is already an extremely conservative Court on civil rights and Constitutional issues. This Circuit ruled that

federal law-enforcement officials need not follow the Miranda decision, only to be reversed by the Supreme Court. This Circuit authorized drug testing for pregnant women without their consent which was reversed by the Supreme Court. This Circuit ruled that the Equal Employment Opportunity Commission was limited to remedies contained in employee arbitration agreements, and again, was reversed by the Supreme Court. The Circuit also has been reversed recently in capital habeas corpus cases and citizen suits under environmental. laws. The Fourth Circuit has issued numerous other opinions that are hostile to affirmative action, women's rights, fair employment, and voting rights.

This is also the Court to which moderate African American nominees were repeatedly denied membership. No fewer than four African Americans were nominated to this Court by President Clinton, only to have their nominations languish for years due to Senatorial obstruction. Thus, if a nominee *is* to be confirmed to this Court, the nominee must be a jurist who will bring moderation and ideological balance to this Court. It is our strongly held view that this nominee is not Dennis Shedd.

Judge Shedd's judicial record reveals a deep and abiding hostility to civil rights cases. A review of Shedd's unpublished opinions reveals that Judge Shedd has dismissed all but very few of the civil rights cases coming before him. In nearly thirty case involving racial discrimination in employment, he granted summary judgment for the employer in whole or in part in all but one case; most of the cases were dismissed altogether. Many of these cases were strong cases with compelling evidence an litigated by experienced civil right lawyers.

Gender and disability discrimination cases before Judge Shedd fare no better. He has granted summary judgment on every sexual harassment claim on which summary judgment was requested. Collectively, these ruling leave us with the distinct impression that, in Dennis Shedd's view of the world, discrimination does not exist, and just as importantly, a jury should never be asked even to decide that question.

We are profoundly disturbed by the mounting evidence of Judge Shedd's zealous efforts to assist the defense in civil rights cases. There are repeated instances of Judge Shedd's intervention in civil rights cases—without prompting by the defendant—in ways that are detrimental to the plaintiff's case. In a number of cases, Judge Shedd, on his own motion, has questioned whether he should dismiss civil rights claims outright or grant summary judgment. He has invited defendants to file for attorney's fees and costs against civil rights plaintiffs. These are not the actions of an impartial decision-maker.

We are extremely concerned about Judge Shedd's rulings promoting ''States' rights,'' and view these as a fundamental encroachment on Congress's ability to enact civil rights and other legislation. Judge Shedd has a very restrictive view of Congressional power. He struck down the Driver's Privacy Protection act of 1994 as legislation beyond Congress's power, although this legislation was an ''anti-stalking'' measures designed to prohibit public disclosure of drivers' license information. In an opinion authored by Chief Justice Rehnquist, the Supreme Court unanimously overturned Judge Shedd's ruling and refuted his reasoning. This stand as one of the few occasions in which the Supreme Court rejected unanimously a holding that Congress exceeded its power in enacting a statute.

The question of judicial temperament is raised by Judge Shedd's offensive remarks during a judicial proceeding about an issue that strikes at the heart of many—the Confederate flag. Judge Shedd presided over a federal lawsuit seeking the removal of the Confederate flag from the dome of the South Carolina Statehouse. According to press accounts of a hearing held in the case. Judge Shedd made several derogatory comments about opposition to the flag. First, he attempted to marginalize opponents to the flag by questioning whether the flag matters to most South Carolinians. (It does, and thirty percent of South Carolina's population is African American.) He also minimized the deep racial symbolism of the flag by comparing it to the Palmetto tree, which appears in South Carolina's State flag.

Our membership in South Carolina, deserves to be represented on the Circuit by a nominee who has a record of judicial impartiality, is committed to the progress made on civil rights and individuals liberties, and has a deep respect for the responsibility of the federal judiciary to uphold that progress. Dennis Shedd is not that nominee. We urge you and the Senate Judiciary Committee to vote against his nomination.

Sincerely,

JAMES GALLMAN,
President.

THE NATIONAL BLACK CAUCUS
OF STATE LEGISLATORS,
Washington, DC, September 19, 2002.

Hon. PATRICK J. LEAHY,
U.S. Senate, Chair, Committee on the Judiciary, Dirksen Senate Office Building, Washington, DC.

Re Fourth Circuit Nomination of Judge Shedd.

DEAR SENATOR LEAHY: The National Black Caucus of State Legislators (NBCSL) is the body that represents some 60 African American state legislators in 44 states, the District of Columbia and the U.S. Virgin Islands. Last year, we celebrated our 25th year of involvement and dedication to many of the most pressing social issues and policies that impact our legislators' districts and the nation at large. Our commitment is to our constituents as well as the national agenda. Our dedicated work is to maintain the highest values of civil and human rights insuring that African Americans are a fair and representative part of the political and social equations of this great nation.

In their letter to you, dated September 4, 2002, members of the South Carolina Legislative Black Caucus have spoken clearly and definitively in opposing the nomination of Judge Dennis Shedd to the Fourth Circuit. In reviewing the information presented therein and having also researched the history and record of Judge Shedd, we find it woefully deficient regarding the issues of fairness, equality and justice. Moreover, as has been pointed out by our colleagues in South Carolina ''African Americans constitute a full one-third of South Carolina's population yet there is only one active African American federal judge in the state.'' In that there are unquestionably ''many, well-qualified African American . . . jurists'' in South Carolina, this is rightly seen as an unfair and unequal treatment in the sight of fair representation. Further, considering the existent disproportionate representation of jurists of Color, certainly an effort must be made to insure that any South Carolina nominee be a strong advocate of civil and human rights. Rather, Judge Shedd's performance on the U.S. District Court for the District of South Carolina demonstrates what could be construed as hostile to civil and constitutional rights.

We have learned that Judge Shedd's insensitivity to fairness has been demonstrated in his review of employment discrimination cases brought by African Americans and in fact, women, even in such cases when the Equal Opportunity Commission has found ''reasonable cause.'' But, we have also found that in furtherance of this questionable action, when white men bring cases of ''reverse'' discrimination, those cases proceed. We also note that there have been concerns raised about the number of unpublished opinions issued by the Judge and further that such concerns regarding the decisions were reversed or vacated by the Fourth Circuit Court of Appeals.

The Fourth Circuit must have a judge who is mindful of the rightful place that African Americans have in this nation, and be a strong advocate of civil rights, human rights and constitutional rights. Any nominee should have demonstrated his dedication to such virtues and ideals. No other individuals should be considered for this important position.

For these reasons among others raised by our South Carolina Legislative Black Caucus, we cannot support the nomination of Judge Dennis Shedd for the Fourth Circuit and would ask that the opinion of our body be strongly considered in this matter. Should you have any questions, or require additional comment, please contact me.

Very truly yours,

JAMES L. THOMAS,
President.

Mr. LEAHY. Before yielding the remainder of my time, I first say to my friend from Utah, he has been very patient but then he has told us before he is a patient man.

I yield the floor.

Mr. HATCH. I thank my colleague.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I have been listening to this recitation of various cases involving Judge Shedd, and I have to say I certainly have a different viewpoint. Let me go through those cases in approximately the order that the distinguished Senator from Vermont listed them.

My colleague referred to Shults v. Denny's Restaurant. This was an Americans with Disability Act and slander case where Judge Shedd sua sponte considered summary judgment and ordered the plaintiff to file a memorandum in opposition to the court's sua sponte motion for summary judgment. This action by Judge Shedd was again based on jurisdictional defenses raised in the defendant's answer: Failure to file within the 2-year statute of limitations and failure to exhaust the administrative Equal Employment Opportunity Commission review.

In the order, requesting the plaintiff to file a memorandum, Judge Shedd wrote:

> Although the express language of rule 56 provides only for the parties to move for summary judgment, Federal district judges possess the inherent power to raise, sua sponte, an issue for possible resolution by summary judgment.

Therefore, Judge Shedd had the right to bring this motion under the Rules of Civil Procedure.

My colleague refers to Lowery v. Seamless Sensations. This was a title VII case in which the defendant raised the defense that the plaintiff failed to timely file both a charge of discrimination with the EEOC and the lawsuit.

Both are jurisdictional prerequisites to any Federal court action.

Since that defense called into question the court's subject matter jurisdiction, Judge Shedd expedited consideration of those defenses. Remember, it would serve no purpose for the court to proceed on the merits where the court had no jurisdiction. In order to expedite consideration of the issues, Judge Shedd ordered the defendant to file a motion to dismiss based on those defenses. Judge Shedd further ordered that motion should be filed in his court instead of the magistrate court assigned to the case. Ultimately, the defendant was granted summary judgment on the grounds that the plaintiff could not establish a prima facie case. Therefore, the case survived the above-discussed motion to dismiss, evidencing that although he raised the issue, Judge Shedd fairly evaluated the merits of the case.

In another matter, my colleague makes a special mention of Coker v. Wal-Mart. Let's look at this case to see where again my colleague gets it wrong. In this case, the defendant removed the case from State to Federal court. Judge Shedd sua sponte questioned whether removal was appropriate, as it appears the motion for removal had been filed outside the 30-day time limitation established in 28 U.S.C. section 1446(b). Doubting whether he had the authority to remand the case sua sponte, Judge Shedd stated he would permit the defendant to file a brief addressing whether removal was timely and whether the court had authority to remand.

Rather than assisting the defense, Judge Shedd raised the issue of remand, and held the defendant to the proper burden of showing that removal was proper. He aided the plaintiff, who had apparently failed to raise the issue, this is exactly the opposite of what the distinguished Senator from Vermont has said. Judge Shedd had a duty to raise the removal issue, a purely jurisdictional matter, and he gave the defendant the opportunity to challenge his sua sponte action, which is what a good judge would do.

My colleague also refers to Gilmore v. Ford Motor Company, a product liability case. In that case, Judge Shedd sanctioned the plaintiff for failure to prosecute the action by dismissing the case. He made that determination after he properly evaluated each of the factors established by the Fourth Circuit in Ballard v. Carson. Indeed, my colleague in the Senate worries more about this case than did the plaintiff. The plaintiff failed to respond to this motion to dismiss for failure to prosecute after earlier failing to respond to the defendant's motion to compel discovery.

Notably, my colleague did refer to Simmons v. Coastal Contractors, Inc., a discrimination and retaliation employment case in which both parties represented themselves pro se. Judge Shedd sua sponte brought the petitioners before the court and ordered the plaintiff to cure specific deficiencies in his complaint or face dismissal. This decision was an attempt to aid the plaintiff in properly drafting his complaint.

My colleague refers to Tessman v. Island Ford-Lincoln-Mercury, a title VII case, where Judge Shedd sua sponte challenged the court's subject matter jurisdiction, given the plaintiff's apparent failure to allege that she had first presented her claim to the EEOC and received a right-to-sue letter. He ordered the action dismissed unless the plaintiff could show cause why that action should not be taken by the court. This is a wholly appropriate approach and probably the only approach that could have been taken by any good judge.

My colleague refers to Smith v. Beck, a 1983 gender discrimination case in which several women alleged discrimination when they were not admitted, without male escorts to a nightclub featuring nude female dancers. Judge Shedd sua sponte questioned whether the plaintiffs' allegation sufficed to establish the defendant private club's actions were under color of State law. Based on his conclusion that merely operating an establishment that has a State liquor license does not transform a club into a State actor, Judge Shedd dismissed the case. In other words, he analyzed the law, as he should.

In short, my colleague has suggested that Judge Shedd ''assists the defense.'' That is so highly misleading a charge it is hard to take it seriously. But I suppose I must since it has been raised. The truth is that a judge's discretion in assisting either side to get their case right is fairly wide, but within bounds that Judge Shedd has not crossed. The Supreme Court of the United States has written:

> [D]istrict courts are widely acknowledged to possess the power to enter summary judgments sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence.

The Fourth Circuit Court of Appeals held that:

> It is a fundamental precept that Federal courts are courts of limited jurisdiction, constrained to exercise only the authority confirmed by Article III of the Constitution and affirmatively granted by Federal statute. A primary incident of that precept is our duty to inquire, sua sponte, whether a valid basis for jurisdiction exists, and to dismiss the action if no such ground appears.

The truth is that in each of the cases in which Judge Shedd acted sua sponte, he provided the proper notice and opportunity to respond to the plaintiff.

Perhaps my colleague will be less troubled than he appears to be when he learns that none of the cases he refers to where Judge Shedd supposedly assisted the defense were reversed on appeal. Not one. It seems it would be best to leave the litigation of cases to the parties, lawyers, and judge involved rather than second-guess them on the floor of the Senate.

I, for one, am getting a little tired of some of our colleagues on the other side acting as if every plaintiff's case has to be won no matter what the facts and the law support. Actually, some of those cases have to be lost because they are not good cases.

Now let's just be honest about it. Cases are decided by judges and jurors—judges in nonjury cases and juries in jury cases. I have seen a lot of cases where plaintiffs have not won because they should not have won. To criticize judicial nominees for ruling against plaintiffs is nonsensical because every judge should decide against plaintiffs when they are wrong. It does not take brains to figure that out. But I guess for some on the other side, unless the plaintiff wins there is an injustice.

My colleague criticizes Judge Shedd's ruling in Condon v. Reno with the aim of characterizing his judicial ideology in the process.

I was shocked to learn by one of Judge Shedd's detractors that he is a ''sympathetic participant in [a] judicial campaign to disempower Congress,'' and that he is a judge who ''resort[s] to outdated and reactionary views of federal power.''

I am sure this came as a surprise to Judge Shedd as well.

Condon v. Reno concerned the Driver's Privacy Protection Act. Judge Shedd held in Condon that the Act violated the Tenth Amendment in that it improperly commanded states to implement federal policy.

The 4th Circuit affirmed Judge Shedd's ruling, while the Supreme Court ultimately reversed it. But this was clearly a difficult call to make; in fact, the lower federal courts that addressed the issue split evenly before the Supreme Court ruling, eight finding the Act constitutional and eight finding it unconstitutional.

Those finding the Act unconstitutional together with Judge Shedd included Judge Barbara Crabb, Chief Judge of the Western District of Wisconsin, a Carter appointee, and Judge John Gobold of the 11th Circuit, a Johnson appointee. Several Democrat Governors across the nation, including Democrats Jim Hunt of North Carolina, Jeanne Shaheen of New Hampshire and Don Siegelman of Alabama permitted their respective State Attorneys General to sign onto an amicus brief urging the Supreme Court to find the Act unconstitutional.

In addition, the Democrat Attorney General of Wisconsin also signed the amicus brief. So, reasonable minds can differ on these matters.

It seems to me that either the vast right wing campaign to ''disempower'' Congress is either much larger than previously supposed, or that this was a case in which thoughtful, and respected judges could, and indeed did, disagree.

Of course, my colleagues ignore another federalism case of Judge Shedd's United States v. Brown. That case involved the Gun Free School Zones Act.

The defendant challenged the constitutionality of the Act on federalism

grounds. Judge Shedd allowed the prosecutor to prove facts at trial that the Act was a valid exercise of Congressional power.

The Supreme Court later invalidated the Gun Free Zones Act in United States v. Lopez. Unlike the Condon v. Reno, Judge Shedd upheld the exercise of federal power, yet not surprisingly, his critics point us to the Condon case but not to the Brown case.

That is amazing to me.

My colleague again comments on Judge Shedd's ruling in Crosby v. South Carolina Department of Health.

Interestingly he did not raise the same objections to Judge Roger Gregory who ruled to uphold Judge Shedd's ruling when he was before us last year. One wonders why?

Judge Shedd is criticized for adopting a magistrate report striking down as unconstitutional part of the Family Medical Leave Act after a state agency cited 11th amendment sovereign immunity against an employee lawsuit.

Of course, the fact that eight of nine Circuit Courts have agreed with his ruling seems not to concern my colleagues, including the First, Second, Third, Fourth, Fifth, Sixth, Eighth, and Eleventh Circuits.

In fact, numerous Democrat-appointed judges agreed with Judge Shedd, including Carter appointees Amalya Kearse of the First Circuit, Richard Arnold of the Eighth, and Robert Anderson of the Eleventh; and Clinton nominees Sandra Lynch and Kermit Lipez of The First Circuit, Theodore McKee of the Fourth, Kermit Bye of the Eighth, Jose Cabranes of the Second Circuit, and Roger Gregory of the Fourth Circuit. Those are able, distinguished judges.

It should not come as any surprise that the Ninth Circuit is the only Circuit Court which has ruled the other way.

One would think from this near universal agreement that Judge Shedd's ruling in Crosby would seem reasonable one, one well within the judicial mainstream, no matter how we look at it. And yet he is criticized for it here on the floor.

In the area of Criminal Justice, my colleague makes special mention of the Quattlebaum murder case. Let's look at that case to see where my colleague gets it all wrong.

In that case, officers took into custody a murder suspect, Mr. Quattlebaum. During police questioning of Quattlebaum, which Quattlebaum was informed was being videotaped, the deputy sheriff left the room. Soon after the deputy sheriff left the room, he went to the room where the videotaping was being done and noticed that an attorney was now in the room with Quattlebaum, despite the fact that no one was to have access to that room other than law enforcement. The deputy sheriff immediately consulted with superiors and legal advisors as to what to do about the running videotape, but the damage—i.e., recording an attorney-client conversation—had already been done.

In response to the videotaping, prosecutors indicted the deputy sheriff for a civil rights violation. Mr. Quattlebaum's attorney, on the other hand, about whom my colleague appears concerned, ended up being indicted for perjury based on his grand jury testimony that he had not released the protected videotape to the media, and spent 4 months in prison.

The deputy sheriff pled guilty to charges based on the videotaping of the attorney-client conversations.

My colleague has expressed concern that the deputy sheriff who conducted the improper videotaping was not more heavily penalized by comparison to the defendant's attorney who perjured himself after releasing the protected tape to the media.

That concern is easily assuaged. The sentencing range in the guidelines for the offense to which the deputy sheriff pled guilty was zero to six months imprisonment, one year of supervised release, and a fine of $1,000 to $10,000. The Government moved for a downward departure of the zero to six months jail time for the police officer based on his assistance in the prosecution of related matters.

As Judge Shedd acknowledged during the sentencing hearing, in order to depart downward, he had to issue a sentence that was less than the minimum in the guidelines range, i.e., since less than zero time in prison is not possible, Judge Shedd, in accepting the downward departure request had to impose a fine that was less than $1,000 and could not impose any jail time on Mr. Grice.

Judge Shedd's sentencing decisions were controlled by the crimes charged and the related sentencing guidelines enacted by Congress. Judge Shedd's sentence of a fine without jail time was mandated by the guidelines once the government's request for downward departure was accepted.

My colleague's concern for the trail lawyer who served 4 months for perjury, after releasing a privileged videotape to the media, is not altogether clear to me, especially since that unethical conduct caused a convicted murderer to escape his sentence.

The concern is also strange given that my colleague expressed the opposite concern with regard to Judge Charles Pickering for questioning the inequitable result of mandatory sentencing guidelines.

Look, let me just bring this to an end by reading a letter of one of the attorneys involved in that case. This is a letter to me by E. Bart Daniel, attorney at law in Charleston, SC. It is regarding the nomination of Dennis W. Shedd to the Fourth Circuit Court of Appeals.

DEAR SENATOR HATCH: I have been a practicing attorney in South Carolina for over 22 years. During my career, I have served as an Assistant State Attorney General, an Assistant U.S. Attorney, a United States Attorney under the previous President Bush and an active federal trial attorney. My practice over the years has developed into primarily a ''white collar'' criminal defense practice. I have appeared many times in court before Judge Shedd and found him to be courteous and fair. He has exhibited great integrity and a strong character while on the bench.

One of the most difficult cases in which I appeared before Judge Shedd was in *United States* v. *John Earl Duncan* (3:99–638–001). Mr. Duncan was a practicing attorney who was convicted of perjury. Judge Shedd sentenced him to four months in a federal penitentiary and four months in a community confinement center (halfway house). He fined him $33,386.92. Judge Shedd's decision was a difficult one, but fair. As his counsel, we recognized that Judge Shedd would be compelled to sentence Mr. Duncan to an active term of incarceration since he was a practicing attorney who had been convicted of lying to a federal grand jury.

During the sentencing phase of the Duncan case, Judge Shedd was courteous and patient and listened intently to the many people who spoke on our client's behalf including my co-counsel Dale L. DuTremble and me.

I know of no judge more qualified for the position than Judge Shedd. If you have any questions or I can be of any further support, please do not hesitate to call.

That ought to put that to bed.

In all honesty, the charges against Judge Shedd that have been raised are shameful; absolutely shameful. It makes you wonder. Why? Why are we putting a really fine Federal district court judge who served almost 13 years on the bench with a distinguished record through this type of bitter and I think shameless set of accusations?

We had originally agreed with the Democrat leadership to confirm Judge Shedd late last week along with other judicial nominees by unanimous consent, but instead, base politics appears to have intervened. I am hopeful we can get this done tomorrow.

According to an article by Byron York in National Review Online on Friday afternoon, it is clear what happened. He writes that, after the Shedd vote in the Judiciary Committee on Thursday, the usual left-wing groups, including, he writes, People for the American Way, Leadership Conference on Civil Rights, Alliance for Justice, and the National Abortion Rights Action League, all urged Democrat Senators ''to continue the fight against Dennis Shedd in the full Senate.'' He quotes one leader as warning that, ''controversy will follow these nominations to the Senate floor.''

Here we are about to engage in the longest debate on a Senate nominee on the Senate floor this year. The special interest groups said jump, and so today we will jump high, and I guess tomorrow as well.

I am not complaining entirely. I am grateful to the distinguished chairman. I know it is a tough job to be chairman of the Judiciary Committee, and I hope this is not his fault. I am not shy of any debate on the President's superbly qualified judicial nominees.

But I do fear that, once again the American people will roll their eyes that, when we have as much to do in the Senate that is still undone, the leadership would think that a divisive

and lengthy debate on a judicial nominee is a good idea.

But I understand why it is happening. I am not a newcomer here. It appears to be happening because of the Louisiana Senate election.

It has been rumored and reported that the Northern liberals who hold the money strings and the liberal special interest groups here in Washington who claim to represent African American interests—have said that the money won't flow and folks won't help get out the vote in Louisiana unless Judge Dennis Shedd, Senator THURMOND's former counsel gets slowed down yet again.

(Mr. ROCKEFELLER assumed the Chair.)

Mr. HATCH. Now, look, most of us who have served on the Judiciary Committee for a number of years have known Judge Dennis Shedd. He was chief of staff to Senator THURMOND when he was chairman of the committee, and his chief counsel when he was not chairman.

I have known him for most of my time in the Senate. He is one of the finest people I have ever known. He is also one of the better Federal district court judges in the country. Judge Shedd is a decent man. I resent his being dragged through this process for months, as he has been. Senator THURMOND's last request has gotten slowed down again.

Now, I am grateful we are going to have a vote on him tomorrow, up or down. I surely hope my colleagues will look at his record, and not look at the distortions of his record, and will vote for him and will support Senator THURMOND and those of us who know him, and know him well.

I think some have trouble getting the message. The message I got from the recent election is perhaps different than what my colleagues across the aisle received. As far as I see it, the President took three issues to the American people: his Iraq policy, homeland security, and his judicial nominees. Of course, he had other issues, but those were the three primary issues.

The election showed that Americans trust this President, including in his selection of judicial nominees. The election indicated voters rejected the obstruction in the Senate we experienced this last year, including on judicial nominees. Voters especially rejected the shrillness and the distortions of reputations they read and heard about in hundreds of news stories, scores of editorials, and dozens of op-eds, and those they saw on TV. Voters sent us a clear message, it seems to me, that we should end the obstruction and maltreatment of judicial nominees, and yet here we are about to engage in hours of debate that will largely see the race card played, and the role of judges—and one judge, in particular—distorted and mischaracterized.

Today, at the behest of the so-called Washington civil rights lobby, now a wholly owned subsidiary of plaintiffs' trial lawyers, my friends on the other side will spend a business day describing an experienced judge as biased, as pro this and anti that, and now I am afraid some of my Democratic colleagues can no longer evaluate judges as unbiased umpires who call the balls and strikes as they are, not as they alone see them, and not as they want them to be.

Now, it is silly to suggest an umpire is pro bat or pro ball or pro batter or pro pitcher, but, of course, trial lawyers, and those who shill for them, have an interest in exactly such scorekeeping. To say all plaintiffs have to win all cases is just nuts, but yet that is what we have been getting lately.

But even this is not what bothers me the most about the debate that has been scheduled today. I am reminded of what my friend Senator KENNEDY said in 1982 about those who opposed extending the Voting Rights Act. Senator KENNEDY lamented in 1982 that ''there are those among us who would open old wounds . . . [and] refight old battles.''

Mr. President, they say the more things change, the more they stay the same—well, almost the same.

Now, with that regret expressed, I wish to express my great satisfaction that the Judiciary Committee has favorably recommended the nomination of Judge Dennis Shedd of South Carolina for a vote of the full Senate.

Mr. President, Senators feel very strongly about their staffs. Our legal counsels make uncounted sacrifices to work for us and for the American people. We are surrounded by very talented lawyers who forego larger salaries for the sake of public service. Sometimes they put their personal opinions aside to advocate ours.

We Senators take it very personally when they are nominated and given the opportunity for yet higher public service. It has been the tradition of the Judiciary Committee to give great courtesy to former staffers. I certainly take it very personally, and know Senator THURMOND does, too, that we have not done so in the case of Dennis Shedd, who has served with distinction for the last 12 years as a Federal district court judge in South Carolina.

When Judge Shedd was nominated to the Federal trial bench, Chairman BIDEN had this to say to him:

> I have worked with you for so long that I believe I am fully qualified to make an independent judgment about your working habits, your integrity, your honesty, and your temperament. On all these scores, I have found you to be beyond reproach.

Now, this is high praise indeed from a colleague on the other side of the aisle for whom we all have the greatest respect. Judge Shedd has strong bipartisan support in his home State as well, and not only from Senator THURMOND and Senator HOLLINGS—a Republican and a Democrat—he is also strongly supported by Dick Harpootlian, South Carolina State chairman of the Democratic Party, and himself a trial lawyer.

Let me just say that again. Judge Shedd is not only supported by my distinguished Democrat colleague, Senator HOLLINGS, but also by the Democratic Party chairman in South Carolina. This suggests a reality far from the slogans and distortions launched against President Bush's nominees, and in particular Judge Shedd.

First, it has been suggested that Judge Shedd will add to what liberals and plaintiffs' trial lawyers perceive as conservative appeals court—or at least on the issues that profit them. But contrary to the divisiveness card that his detractors are playing, Judge Shedd will add diversity to that Court.

Mr. President, Dennis Shedd has served as a federal jurist for more than a decade following nearly twenty years of public service and legal practice. While serving the Judiciary Committee, Judge Shedd worked, among many other matters, on the extension of the Voting Rights Act, RICO reform, the Ethics in Post-Employment Act, and the 1984 and 1986 crime bills.

As Senator BIDEN put it: ''His hard work and intelligence helped the Congress find areas of agreement and reach compromises.''

That leads me to address a few issues that have been raised by his detractors.

Mr. President, the last five Fourth Circuit confirmations have all been Democrats.

What seems to me more important to focus on—and what the American people want us to focus on—is that when Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit Court of Appeals.

Interestingly, by way of disproving some of my colleagues' diversity-mania, the last Democrat confirmed to the Fourth Circuit Court of Appeals, Judge Gregory, has affirmed Judge Shedd's rulings in 11 appeals. Notably, Judge Gregory agreed with Judge Shedd's ruling in the Crosby case, which found that the Family and Medical Leave Act was improperly adopted by Congress, a case which the liberal groups seem worked up about when it comes to Shedd but not when it came to Judge Gregory. No one asked Judge Gregory about his ruling in Crosby when he was before the Judiciary Committee last year. But may Democrat colleagues drilled Judge Shedd on it. Talk about discrimination.

Mr. President, Judge Dennis Shedd has heard more than 5,000 civil cases, reviewed more than 1,400 reports and recommendations of magistrates, and has had before him nearly 1,000 criminal defendants.

Judge Shedd's record demonstrates that he is a mainstream judge with a law reversal rate. In the more than 5,000 cases Judge Shedd has handled during his 12 years on the bench, he has been reversed fewer than 40 times—less than 1 percent.

Detractors have made much of the fact that he has relatively few decisions he has chosen to publish. But, in fact, he falls in the middle of the average for published opinions in the Fourth Circuit. One Carter appointee has published all of 7 cases, one Clinton appointee has published only 3, and another Carter appointee has published 51, only one more than Judge Shedd, despite being on the court for 10 years longer.

Judge Shedd is known for his fairness, for his total preparation, and for showing no personal bias in his courtroom. This is not just my opinion; this reflects the opinions of lawyers who practice before him. Judge Shedd is well-respected by members of the bench and bar in South Carolina. According to the Alamanc of the Federal Judiciary, attorneys said that Judge Shedd has outstanding legal skills and an excellent judicial temperament.

Here are a few comments from South Carolina lawyers: ''You are not going to find a better judge on the bench or one that works harder,'' ''He's the best federal judge we've got.'' ''He gets an A all around.'' ''It's a great experience trying cases before him.'' ''He is polite and businesslike.''

Let me take a moment also to address one of the more ludicrous attempts to discredit Judge Shedd that has been raised: that when he was confirmed to the District Court bench he had little experience in the practice of law.

I have to say that to ignore the remarkable experience Dennis Shedd had in legislation practice crafting historic laws while serving the Judiciary Committee is some chutzpah. To raise an objection like that almost 13 years after the fact is just plain silly. But it goes to show what we have to put up with in the obstruction and distortions of this past year.

Let's be clear, when Judge Shedd joins the other members of the Fourth Circuit, he will not only have unmatched legislative experience, he will also have the longest trial bench experience on the Fourth Circuit. He will also add some diversity to that court. The last five Fourth Circuit confirmations have all been Democrats.

I have to say that the most misleading criticism raised about Judge Shedd involves his employment cases.

Downright deceptive is that Judge Shedd's detractors, the outside liberal groups, have now taken to grouping and describing employment cases as civil rights cases.

They want us to believe that every quarrel between an employee and her employer rises to a Rosa Parks significance. No doubt every plaintiff's trial lawyer would like to think of themselves as a Thurgood Marshall. But this deception is unfortunate and a disservice to the cause of civil rights that I have longed championed in this Chamber.

Cloaking every small, perhaps even frivolous, employment case with the mantle of the civil rights movement, Washington's professional nominee detractors have been particularly misleading on Judge Shedd's employment cases.

They have misleadingly pointed out that the Judge seldom grants summary judgment in employment cases in favor of the employee. Of course, they fail to point out that few judges do. Any good lawyer knows that. Summary judgment is a judgment without a jury, and every good lawyer knows that employment cases are inherently fact-laden and go to trial by a jury or more often they settle. Or in many cases, the employee fails to state a claim and the case has to be dismissed.

Of course, Judge Shed's detractors could have noticed that he has only twice been reversed in his decisions in employment cases. But of course, they did not notice that.

They might have pointed out that in one of the appeals that he was invited to hear for the Fourth Circuit, he reversed a summary judgment and remanded for trial a political discrimination case against a worker who was a Democrat. But they did not do that either.

Judge Shedd's detractors have also made irresponsible claims as to the Judge's criminal case record.

In fact, in criminal cases, Judge Shedd has strongly defended citizens due process rights from violation by the state. He has frequently chastised law enforcement for errors in search warrants an the questionable use of seized property. In fact, he has sanctioned the State for discovery problems. He is known for aggressively informing defendants and witnesses of their fifth amendment rights.

Remarkably, Judge Shedd has never been reversed on any ruling considered before or during trial, or on the taking of guilty pleas. His detractors have somehow failed to note this.

The cases that come before a judge are often difficult. Judge Shedd has not been exempted. In one prisoner's case, Judge Shedd allowed a detainee to engage in a hunger strike and ruled against government's attempt to force feed him.

Although some would seek to question Judge Shedd's respect for privacy in criminal cases, into cases he protected HIV blood donor's confidentiality. In another case, he ordered special accommodations to an HIV positive defendant to ensure his continued clinical treatment.

These are not the rulings of a judge who is insensitive to prisoners and criminals, but this is the record of a judge who works hard to get the work of law enforcement right.

Of course, no smear campaign against a Bush judicial nominee, paid for plaintiffs' trial lawyers, and carried out by their left-wing lobbyists, is complete without the suggestion that the nominee is foe of environmental rights.

Of course, in their paint-by-the-numbers attack, Judge Shedd's detractors have ignored the wetlands protection case where he handed down tough sanctions against a violator and ordered expensive wetlands restoration.

The left-wing detractors skipped over Judge Shedd's decision in favor of National Campaign to Save the Environment.

They missed his ruling to grant standing to a plaintiff challenging a road construction project on its environmental impact.

They missed his ruling in favor of a woman protesting possible waste dumping in her community.

The well-paid, left-wing lobbyists who have turned attacking President Bush's judicial nominees into a small cottage industry see only what they want to see and not what the truth would show them.

The most breathtaking charge against Judge Shedd was first made by the NAACP that Judge Shedd has—''a deep and abiding hostility to civil rights.''

I must admit that was outraged by this when I first read it, and I still am. It is a distortion far beyond the pale of decency, and I call on my colleagues once again to repudiate such rabid practices.

In part, I am outraged because there are some who would profile Judge Shedd as merely a white male from the South and start from there to give him a certain treatment.

If Judge Shedd's record working for civil rights legislation on the Judiciary Committee were not enough of an accomplishment for one lifetime for any man or woman, the truth is that in each of the cases that have come before Judge Shedd involving the Voting Rights Act of 1965, plaintiffs have won their claims.

In the Dooley case, a one person/one vote case, Judge Shedd gave the plaintiff a clear and strong decision. In another political rights case, he ruled to protect the plaintiff's right to make door-to-door political solicitations.

Of course, Mr. President, you know a lot about a judge by how they conduct their courtroom. As you know, I have been a strong advocate for the protection of religious practices in the public square. It says a lot about Judge Shedd, especially in these times, that he has allowed religious headdress in his courtroom.

Judge Shedd also led efforts to appoint the first African American woman ever to serve as a magistrate judge in South Carolina and has sought the Selection Committee to conduct outreach to women and people of color in filling such positions. He pushed for an African American woman to be chief of pretrial services. He has actively recruited persons of color to be his law clerks.

And because of Judge Shedd's work in an award-winning drug program that aims to reverse stereotypes amount 4,000 to 5,000 school children, he was chosen as the United Way's School Volunteer of the Year.

The Judiciary Committee received a very touching letter from one of Judge Shedd's former law clerks, Thomas Jones, that we have blown up here. Perhaps the Presiding Officer will be able to read it from the chair.

The letter says:

Dear Senator LEAHY: My name is Thomas W. Jones, Jr. I am an African American attorney currently practicing as a litigation associate in Baltimore, MD. Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd on the U.S. District Court for the District of South Carolina. During my 18 months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of Judge Shedd's jurisprudence or daily activities. It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit. Thank you for your attention regarding this matter. Respectfully, Thomas W. Jones, Jr.

That was written on June 25 of this year to Senator LEAHY.

I will read another letter into the RECORD as well. This is a letter from Phyllis Berry Myers, President and CFO of the Center for New Black Leadership. I believe we received it today. It reads as follows:

DEAR SENATOR HATCH: The Centre for New York Leadership (CNBL) believes the Senate's judicial nomination system is broken and needs repairing.

We have watched with great trepidation as the Senate's role of ''advise and consent'' for Presidential nominations, especially judicial nominations, has become increasingly, ''search and destroy,'' ''slander and defame.'' It is a wonder that reasonable, decent people agree to go through the confirmation process at all.

The confirmation process has become particularly brutal if the nominee is labeled ''conservative.'' Traditional civil rights groups mass to castigate and intimidate, as they do now, attempting to thwart the confirmation of Judge Dennis W. Shedd to the U.S. Fourth Circuit Court of Appeals.

Once again, we are witnessing the new depth to which public discourse and debate has sunk when fabrications, statements taken out of context, misinformation and disinformation can pass as serious political deliberation and debate. The vitally needed discussion about continued civil rights progress in a 21st Century world gets lost in the cacophony. Our nation and true civil rights advocates are poorer because of this.

The Senate can restore to itself, at least a modicum, a sense of fair play, honor, and trust in its own policies and procedures, a commitment to guarding the civil rights of all, as well as advancing the rule of law by swiftly confirming Judge Shedd.

Sincerely,

PHYLLIS BERRY MYERS,
President & CEO.

Of course, the liberal groups starkly ignore Judge Shedd's ruling in the Vanderhoff case. In that case, Judge Shedd dismissed the claim of a fired employee who repeatedly displayed the Confederate flag on his toolbox in violation of company policy. Judge Shedd rejected the plaintiff's contention that he was dismissed because of his national origin as a ''Confederate Southern American.''

Perhaps my colleagues have sympathy for that plaintiff, too. After all, the plaintiff was represented by a trial lawyer in this employment case—or as they would like us to see it, a civil rights case—even though it was brought on behalf of a true racist.

I looked at a letter that the NAACP sent to the Judiciary Committee, a letter all the other copycat groups have repeated.

I ask unanimous consent that the letter be printed in the RECORD so everybody can see how fake the Washington NAACP has become when they carry the plaintiffs' trial lawyers' water.

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

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE,
Baltimore, MD, September 17, 2002.

Re Fourth Circuit nomination of Judge Shedd.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: On behalf of the NAACP, the nation's oldest, largest and most widely-recognized grass roots civil rights organization, I am writing to let you know of the Association's strong opposition to the nomination of District Court Judge Dennis W. Shedd to the Fourth Circuit Court of Appeals. Delegates from every state in the nation, including the five states comprising the Fourth Circuit, unanimously passed a resolution from the South Carolina State Conference in opposition to the nomination at the NAACP's annual convention in Houston early July.

Members of the NAACP believe that the federal judiciary, as the final arbiter of the U.S. Constitution, is the branch of government primarily charged with protecting the rights and liberties of all Americans. In many instances in our nation's history, the courts have been the only institution willing to enforce the rights of minority Americans. We cannot afford to permit the federal judiciary to retreat from its constitutional obligation and resort to the type of judicial activism that threatens civil rights and civil liberties.

No other federal circuit reflects this extreme right-wing activism more than the Fourth Circuit Court of Appeal, which is home to more African Americans than any other circuit. The Fourth Circuit Court of Appeals' hostility to civil rights, affirmative action, women's rights, voting rights and fair employment is unrivalled. Its decisions are so far out the mainstream that the Supreme Court has reversed the Fourth Circuit on basic constitutional protections such the Miranda warnings.

Judge Shedd's addition to the Fourth Circuit would further relegate that court to the periphery of judicial mainstream. His judicial record and testimony before the Judiciary Committee reflect a disposition to rule against the plaintiff in employment and discrimination cases. Moreover, his restrictive view of federal legislation authority, as indicated in *Condon* v. *Reno,* 972 F.Supp. 977 (D.S.C. 1997), which struck down the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721–25 and was later overturned in a 9-to-0 decision by the Supreme Court, confirms our perspective that Judge Shedd's judicial philosophy and temperament would further push the Fourth Circuit to the right-wing.

Accordingly, as unanimously passed by the over 1,200 delegates to the 2002 NAACP National Convention, I ask that you oppose the nomination and that you use your influence to encourage the Senate Judiciary Committee to not vote him out of Committee. However, if the nomination makes it to the Senate floor, we ask you to vote against it.

I appreciate your attention and interest in this important matter. Please do not hesitate to contact me or Hilary Shelton, Director of the NAACP Washington Bureau at (202) 638–2269, if we can be of assistance.

Sincerely,

KWESI, MFUME,
President & CEO.

Mr. HATCH. They describe their so-called civil rights complaint, and it boiled down to something not having anything to do with Judge Shedd's civil rights record. They project on to Judge Shedd their complaints about the Fourth Circuit as it currently stands. Though personally I believe that these charges are unfounded.

Well, Judge Shedd is not on the Fourth Circuit yet.

The NAACP's well-funded complaint is about appellate decisions Judge Shedd has had nothing to do with. That is remarkably irresponsible for an organization once so distinguished. Thurgood Marshall would be very displeased with this sort of sloppy advocacy.

Then the NAACP got to the heart of the matter. In the letter signed by Kwesi Mfume they show who is paying the bills. On behalf of plaintiff's trial lawyers, the NAACP complains about Judge Shedd's employment rulings—not his civil rights or voting rights rulings which are unimpeachable, but employment rulings. As I have said before, we know such a complaint has no basis in the reality of how employment cases are litigated and resolved.

Of course they, too, fail to note that Judge Shedd has only been reversed twice in employment cases during his 12-year career on the Federal bench.

The truth is the so-called civil rights attack on Judge Shedd is nothing but a campaign paid by and for the plaintiff's trial lawyers. They stoop so low to get their profits that they have put the NAACP, that once great organization, and other civil rights groups up to do their dirty work. That bothers me a lot.

Just so I set the record straight, I know a lot of really good trial lawyers in this country. I know a lot of them who fight for justice, for rights for the oppressed and for those who are down trodden. I am not referring to them. I am talking about those who are funding these vicious left-wing attacks on President Bush's judicial nominees, and there are plenty of them. They are loaded with dough, and they seem to want to manipulate the Federal bench like they have some of the State court benches. It is wrong.

Dennis Shedd is well qualified to serve on the Fourth Circuit Court of

Appeals. I think so, and the American Bar Association, hardly a bastion of conservative politics, has said so.

In supporting his confirmation, I for one express my gratitude on behalf of the American people for an entire life spent in public service.

One other letter I will read is a letter from the Congress of Racial Equality. It is written to Senator DASCHLE as of today's date. It reads as follows:

Dear Senator Daschle: This is an open letter in the interest of justice. The Congress of Racial Equality, CORE, enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd—

And, of course, I am pleased there is not going to be a filibuster. I think that is very unwise, and I hope we do not stoop to that level on either side of the aisle. I thought we had overcome that propensity in the last number of years. There have been so few in the history of this body, I hope we do not stoop to that again.

The letter reads as follows:

DEAR SENATOR DASCHLE: This is an open letter in the interest of justice. The Congress of Racial Equality (CORE) enthusiastically endorses Judge Dennis Shedd for the Fourth Circuit Court of Appeals. Despite a Democratic filibuster against Judge Shedd, it is the strong opinion of CORE that Judge Shedd is a more than worthy candidate for the Fourth Circuit Court of Appeals.

Judge Shedd's character has been under attack without merit and without fair scrutiny of his service to the American legal system.

Prior to serving the bench, Judge Shedd served faithfully from 1988–1990 as Chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. A fair and honest review of Judge Shedd's unpublished opinions would show that he has sided numerous times with plaintiffs in cases of race, gender and disability rights without falter or hesitation. In each case, his decisions have allowed employment discrimination lawsuits to go forward in the interest of fairness and truth.

Judge Shedd has shown his commitment to employment rights for minorities and women, particularly within the court. His efforts have championed the efforts to recruit and elect the first African-American U.S. Magistrate Judge in the South Carolina District, Margaret Seymour. He was actively sought minority and female candidates for other Magistrate Judge positions, and has directed the Selected Commission in South Carolina to bear in mind diversity in the selection of candidates for these positions.

Judge Dennis Shedd's accomplishments and service have transcended bi-partisan support even from his home state Senators, notably, Senators Strom Thurmond and Senator Ernest Hollings who wholly support his nomination.

In the interest of fairness, balance we ask you to look past the unfounded partisan attacks of propaganda against Judge Shedd and fairly examine his work for yourselves. We strongly believe Judge Shedd's accomplishments and contributions to justice and civil rights speaks for itself.

We hope that you would join CORE in our support of Judge Dennis Shedd and urge Senate Democrats to end the unfair filibuster against him. Let Judge Shedd have his day on the Senate floor

Sincerely,

NIGER INNIS,
National Spokesman.

Again, I am pleased there will be no filibuster against this worthy Federal district court judge who has served with distinction for the last 12 years. I caution this body, I hope we do not resort to filibusters on judicial nominees, as has been recommended by some notable left-wing law professors. Filibustering judicial nominations should not be done lightly, if at all. When we elect a President, we elect a President who will have the power to choose his or her judicial nominees. Senator's have a right to raise any issues against those nominees, so long as they are honestly raised.

In Judge Dennis Shedd's case, the outside groups have raised a lot of issues that are not honestly raised. I have not heard any criticisms against him that are valid in my judgment, and I know Judge Shedd personally and I have reviewed his complete record.

Just this morning, I received a letter from Joseph Anderson, chief judge for the District of South Carolina. It is noteworthy that Chief Judge Anderson was a Democratic member of the South Carolina Legislature before his appointment to the Federal bench. He served as a district court judge for 16 years and chief judge for the last 2 years. He and Judge Shedd have been suite-mates in the Federal courthouse in Columbia. For all of these reasons, he writes, he believes he is qualified to comment on Judge Shedd's abilities, qualifications, and reputation. Judge Anderson writes:

I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant.)

The letter continues:

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to recuse himself and he is very consistent about this.

Chief Judge Anderson then addresses the quality of Judge Shedd's decisions. He says:

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

He continues:

In regard to the issue of granting summary judgment or otherwise dismissing cases short of trial, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial, and a great number of those eventually settle—which means that the plaintiff and defendant agree on the outcome. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

It is ridiculous to say that, because a judge has not granted summary judgments for plaintiffs, that he was not fair. In employment cases, often the entire contest is whether the plaintiff survives summary judgment, after which the case settles. And that is true in Judge Shedd's cases. Once a summary judgment is refused, that means the case is going to be tried by a judge or jury, and then the parties settled.

I ask unanimous consent that the letter from Chief Judge Anderson be printed in the RECORD.

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

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, S.C., November 18, 2002.

In re Dennis W. Shedd, Nominee to Fourth Circuit Court of Appeals.

Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Dirksen Senate Office Building, Washington, DC

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

In response to your specific inquiries, I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case (plaintiff or defendant).

Judge Shedd is scrupulous in his dealings on the court. If there is any remote suggestion of the appearance of impropriety, he will not hesitate, and has not hesitated, to recuse himself and he is very consistent about this.

I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

In regard to the issue of granting summary judgment or otherwise dismissing case short of trail, it appears to me that Judge Shedd's record is no different from any other judge in this district. That is to say, some of his cases are ended by a ruling on summary judgment. Those that are not are then set for trial and a great number of those eventually settle before the trial can be conducted. In regard to summary judgment decisions, settlements, and actual trials, Judge Shedd's statistics are not significantly different from any other judge in this district.

I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards.

JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

Mr. HATCH. I believe this letter speaks volumes about Judge Shedd's fairness and dispels the completely unfounded criticism that Judge Shedd's

reversal rate or dismissal rate is somehow out of sync or cause for concern.

I have been on the Senate Judiciary Committee for 26 years. Most of my colleagues will say I have acted with fairness, honesty, and candor during those 26 years. Most would say I have done so as chairman of the committee when I have been chairman. I know Dennis Shedd. I know him very well. I worked closely with him and Senator THURMOND, as did many on the committee. I saw in Dennis Shedd a very scrupulously honest and decent man. I never saw one iota of evidence that he was anything but an honest and decent, honorable human being, with the respect for all people, regardless of race, religion, or origin—or any other reason. I can say this man served the committee well. He was chief of staff for the committee when Senator THURMOND was chairman. He got along well with everyone. He did his job, and did it well.

He has had experience in private practice. He has had experience in this legislative body that I don't think many staffers could match. He has had 12 years of experience on the Federal district court bench in South Carolina where the chief judge himself says he has distinguished himself.

I have bitterly resented some of the outside attacks which have come to be the norm in the case of President Bush's nominees. If a person is considered moderate to conservative or conservative, then automatically these groups start to attack some of these people. It is not right. I have had respect for a number of these groups in the past, but I have lost respect for them in the last couple of years with some of the arguments they have made and some of the cases they have tried to make and some of the distortions they have foisted upon the Senate Judiciary Committee. It is time to quit doing that. I would like to see the outside groups argue their cases well, argue their ideology well, do what they are organized to do, but do it honestly, do it fairly; do not destroy a person's reputation, as I think many have attempted to do here, and especially a person against whom you can find no real fault.

I know Dennis Shedd. He is an honorable, honest, competent, intelligent, former chief of staff of this committee but now Federal district judge in South Carolina. He deserves some respect in this body, and he deserves the vote of this body. I hope my colleagues will look past some of these unfortunate criticisms that are, in my opinion, dishonest, that we have shown to be distortions, and vote for Dennis Shedd tomorrow so that he can bring a greater element of ability to the circuit court of appeals.

Mr. President, contrary to some of the arguments made here today, it is clear to me that this debate is not so much about Judge Shedd, as it is about the purposeful delaying and denying of President Bush's judicial nominations.

The delay and speechmaking about Judge Shedd fits right into the pattern we have been seeing for almost two years.

Under Democrat control, the Senate has undertaken a systematic effort to treat President Bush and his judicial nominees unfairly. Some have attempted to justify this unfair treatment as tit-for-tat, or business as usual, but the American people should not accept such a smokescreen. What the Senate is doing is unprecedented.

Historically, a president can count on seeing all of his first 11 Circuit Court nominees confirmed. As you can see on this chart, Presidents Reagan, Bush and Clinton all enjoyed a 100 percent confirmation rate on their first 11 Circuit Court nominees. In stark contrast, 7 of President Bush's first 11 nominations are still pending at the close of President Bush's first Congress.

History also shows that Presidents can expect almost all of their first 100 nominees to be confirmed swiftly. Presidents Reagan, Bush and Clinton got 97, 95 and 97, respectively, of their first 100 judicial nominations confirmed. But the Senate has confirmed only 83 of President Bush's first 100 nominees.

Some try to blame Republicans for the current vacancy crisis. That is bunk. In fact, the number of judicial vacancies decreased by three during the 6 years of Republican leadership. There were 70 vacancies when I became chairman of the Judiciary Committee in January 1995, and there were 67 at the close of the 106th Congress in December 2000.

Some try to justify wholesale delays as payback for the past. That is also untrue. Look at the facts: During President Clinton's 8 years in office, the Senate confirmed 377 judges—essentially the same (5 fewer) as for Reagan (382). This is an unassailable record of non-partisan fairness, especially when you consider that President Reagan had 6 years of a Senate controlled by his own party, while President Clinton had only 2.

Finally, some might suggest that the Republicans left an undue number of nominees pending in Committee without hearings at the end of the Clinton administration. Well, we left 41, which is 13 less that the Democrats left without hearings in 1992 at the end of the Bush Administration.

So you see, Mr. President, what is happening to Judge Shedd fits into a pattern of unfairness that is not justified by any prior Republican actions.

President Bush deserves to be treated as well as the last three Presidents.

NOMINATIONS RECORD OF THE 107TH CONGRESS

My Democrat colleagues are apparently proud that in this Session, so far, the Senate has confirmed 99 judges. There is much eagerness in their voices in asserting that this number compares favorably to the last three sessions of Congress during which Republicans were in control of the Senate.

Although it is flattering that the Republican record under my leadership is being used as the benchmark for fairness, I am afraid that this does not make for a correct comparison because Republicans were never in control during President Clinton's first 2 years in office.

Let me repeat that, we were never in control during President Clinton's first 2 years in office. The proper comparison is not to the Republican record of the last 6 years of President Clinton, but to his first 2 years.

Despite the numbers that my colleague throws out in their comparison of apples to oranges.

Now, Mr. President I brought a visual. Here you see apples and oranges. It is fair to say that they are difficult to compare and that a comparison only leads the listener to conclude that they are both fruit. But they are not at all the same kind.

The fact remains that the Democrat achievement in this Session fails noticeably when properly compared, apples to apples.

During President Clinton's first Congress, when Senator BIDEN was the Chairman of the Judiciary Committee, the Senate confirmed 127 judicial nominees. And Senator BIDEN achieved this record despite not receiving any nominees for the first 6 months—in fact, Senator BIDEN's first hearing was held on July 20th of that year, more than a week later than the first hearing of this Session, which occurred on July 11, 2001.

Clearly, getting started in July of Year One is no barrier to the confirmation of 127 judges by the end of Year Two. But we have confirmed only 99 nominees in this Session.

Senator BIDEN's track record during the first President Bush's first 2 years also demonstrates how a Democrat-led Senate treated a Republican president. Then-Chairman BIDEN presided over the confirmation of all but 5 of the first President Bush's 75 nominees in that first two-year session. Chairman THURMOND's record is similar. The contrast to the present could hardly be starker.

We are about to close President Bush's first 2 years in office, having failed the standards set by Chairman BIDEN and Chairman THURMOND. That is nothing over which to be proud.

Mr. HOLLINGS. Mr. President, in South Carolina, Senator THURMOND and I have a long tradition of working cooperatively to nominate judges. Senator THURMOND has made good choices in the past, and he has done so again, with Judge Dennis Shedd, for elevation to the Court of Appeals for the Fourth Circuit.

Judge Shedd is familiar to many Members, having staffed the Judiciary Committee for several years, and of course serving as chief counsel and administrative assistant to Senator THURMOND himself.

He is a very smart and capable man. For more than a decade, he has been a

judge on the United States District Court for South Carolina, based in Columbia. He has a reputation as a hard worker on the bench, as a straightshooter, and one who is up-to-date on the laws. By special designation, he has sat on the Fourth Court on several occasions.

No judge now sitting on the Fourth Circuit has as much Federal trial experience. On the bench, he has handled 5,000 cases, and he has been reversed less than one percent in that entire time, an outstanding record of sound judgment.

I can say he has the support of a wide array of lawyers in South Carolina, and has received a well qualified rating by the American Bar Association.

I have a letter from Joseph Anderson, chief United States District Judge, who writes:

"I can say without hesitation that Judge Shedd has a reputation for fairness, both in his community and on our court. As Chief Judge, I have received no complaints about his courtroom demeanor, his decisions, or his procedures. It is my considered opinion that all people who appear in his court receive a fair hearing, regardless of the type of cases involved, or the status of the parties in the case.

And here is a letter from nine faculty members of the University of South Carolina School of Law, from which Judge Shedd graduated. After analyzing several of his cases they conclude: "Judge Shedd's record on the Federal bench demonstrates that he is fair and impartial in all matters that come before him, including to plaintiffs in employment discrimination and civil rights cases. . . . In our view he will make an excellent addition to the Fourth Circuit."

Let me acknowledge that the NAACP, and some others, have concerns with him. But I have looked into those situations, and I find them wanting with respect to specific inappropriate actions by Judge Shedd.

We in the law know that you never have a character witness come up and tell what he knows of his own association, but rather you bring witnesses who give testimony to his reputation in the particular community.

In that regard, having checked it out, Judge Shedd is my kind of judge. He is hard, he is tough, but he is hard and he is tough on both sides.

We who have practiced law before the courts, and know the score, and don't play games appreciate a judge who is not going to allow any games to be played on you.

I have said often that as much as we need a balanced budget, we need some balanced Senators, and some balanced judges.

I hope we can garner bipartisan support, and to see that this Judge is confirmed.

I ask unanimous consent to print the letters in the RECORD.

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

U.S. DISTRICT COURT,
DISTRICT OF SOUTH CAROLINA,
Columbia, SC, November 18, 2002.

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Senator ORRIN HATCH,
Ranking Republican Member, Judiciary Committee, U.S. Senate, Washington, DC.

DEAR SENATOR HATCH: This in response to your request that I provide information regarding Dennis W. Shedd, a judge on our court, who has been nominated for a position on the United States Court of Appeals for the Fourth Circuit. I have served as a United States District Judge for 16 years, the last two as Chief Judge for our district. I knew Judge Shedd prior to his appointment as U.S. District Judge, and, subsequent to his appointment, he and I have served as suite mates in the courthouse here in Columbia. I, therefore, feel that I am qualified to comment on his abilities, qualifications, and reputation.

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I regularly review the advance sheets of the United States Court of Appeal for the Fourth Circuit, and it would appear to me that Judge Shedd has an extremely good affirmance rate in that court.

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I hope this letter is responsive to your inquiry and if you need any additional information, please do not hesitate to let me know.

With kind personal regards,

JOSEPH F. ANDERSON, Jr.,
Chief United States District Judge.

JUNE 26,2002.

Hon. JOHN R. EDWARDS,
U.S. Senate,
Washington, DC.

DEAR SENATOR EDWARDS: We write to you as individual members of the faculty at the University of South Carolina School of Law. We are concerned that professors from law schools in your state recently may have provided you with inaccurate information regarding United States District Court Judge Dennis Shedd, whose nomination to the Fourth Circuit Court of Appeals is scheduled for a hearing in the Senate Judiciary Committee this week. As members of the academic legal community in South Carolina, we wish to set the record straight on Judge Shedd's record on the bench, and to urge your approval of this well-qualified nominee.

Contrary to claims made by his opponents, Judge Shedd's record in cases involving state sovereignty and the scope of congressional authority reflects that he has taken a fair and balanced approach to these issues and is well within the accepted mainstream among federal judges. On the difficult issue of whether Congress had authority under the Commerce Clause to enact the Driver's Privacy Protection Act (DPPA), Judge Shedd concluded, after careful analysis of existing case law, the DPPA violated the Tenth Amendment in that it commanded states to implement federal policy in violation of Supreme Court precedent, *New York v. United States*, 515 U.S. 144 (1992), and *Printz v. United States*, 521 U.S. 898 (1997). *See Condon v. Reno*, 972 F.Supp. 977 (D.S.C. 1997).

While the Supreme Court ultimately ruled that DPPA represented a valid exercise of Congress' Commerce Clause power, 7 of the other 15 lower court judges to consider the issue prior to the Court's decision agreed with Judge Shedd. Among those were Judge Barbara Crabb, the Chief Judge of the Western District of Wisconsin and an appointee of President Jimmy Carter, and John Godbold of the 11th Circuit, a Johnson appointee. In addition, several governors, including Governor Jim Hunt of North Carolina, authorized their attorneys general to file amicus briefs in *Condon* urging the Supreme Court to uphold Judge Shedd's ruling and to declare the law unconstitutional. To us, the disagreement among lawyers, judges and scholars regarding whether DPPA was constitutional in the wake of the Supreme Court's decisions in *Printz* and other opinions reflects the difficult question presented in this case. Judge Shedd's opinion represents a reasoned (albeit later overruled) approach to that question.

On the issue of state immunity under the Eleventh Amendment, opponents have cited Judge Shedd's opinion in the case of *Crosby* v. *South Carolina Dep't of Heath*, C.A. No. 3:97–3588–19BD, as an example of his "highly protective views" of state sovereignty. In *Crosby*, Judge Shedd in an unpublished opinion found that the 11th Amendment protected states from lawsuits in federal court under the Family and Medical Leave Act (FMLA). Contrary to the claims of his critics, Judge Shedd's opinion in *Crosby* is well within the mainstream of recent Eleventh Amendment jurisprudence. In fact, eight of the nine Circuit Courts of Appeals to decide the issue of whether the FMLA applied to state agencies have agreed with Judge Shedd's ruling in *Crosby*. *See Laro v. New Hampshire*, 259 F.3d 1 (1st Cir 2001); *Hale v. Mann*, 219 F.3d 61 (2nd Cir 2000); *Chittister v. Dept. Community and Econ. Dev.*, 226 F.3d 223 (3rd Cir 2000); *Lizz v. WMATA*, 255 F.3d 128 (4th Cir 2001); *Kazmier v. Widmann*, 225 F.3d 519 (5th Cir 2000); Sims v. Cincinnati, 219 F.3d 559 (6th Cir 2000); *Townsell v. Missouri*, 233 F.3d 1094 (8th Cir 2000); *Garrett v. UAB Board of Trustees*, 193 F.3d 1214 (11th Cir 1999). In fact, the Fourth Circuit opinion on this issue was joined by recent Bush appointee Roger Gregory, who was unanimously approved by the Judiciary Committee and unanimously confirmed by the full Senate. *See Lizzi v. WMATA*, 255 F.3d 128 (4th Cir 2001).

Those less familiar with Judge Shedd's record also may not be aware of his opinion in another case involving the scope of Congress' authority under the Commerce Clause. In *United States v. Floyd Brown*, Crim. No. 94–168–19, Judge Shedd in an unpublished opinion rejected a criminal defendant's constitutional challenge to the Gun Free School Zones Act, finding that the prosecution could prove facts at trial that would support some basis for federal jurisdiction under the statute. Consequently, Judge Shedd found that the Act represented a valid exercise of congressional authority under the Commerce Clause. The Supreme Court later disagreed with Judge Shedd and struck down the Act

in a controversial 5–4 decision. See *United States v. Lopez*, 514 U.S. 549 (1995). Nonetheless, Judge Shedd's opinion in *Brown* demonstrates that he is far from the ''sympathetic participant in the campaign to disempower Congress'' that his detractors have alleged.

Even more disturbing than their criticism of Judge Shedd's record on federalism issues is the North Carolina law professors' distortion of his record in civil rights and employment discrimination cases. While we will not address each and every mischaracterization contained in their recent letter to you, suffice it to say that those professors clearly have not provided you with the full picture of Judge Shedd's record.

For example, the assertion that Judge Shedd has never granted relief in an employment discrimination case and that he inappropriately uses Rule 56 summary judgment in these cases in misleading and inaccurate. As you must know from your career as a litigator, when a case proceeds beyond the summary judgment stage, the likelihood of settlement in that case increases exponentially. Moreover, an extremely high percentage of employment discrimination cases around the country are disposed of by summary judgment either because the courts consider the claims not to be meritorious or because the plaintiff failed to meet the minimal requirements set by statute and judicial precedent. We understand that Judge Shedd has repeatedly denied summary judgment to defendants in employment discrimination and civil rights cases. In addition, we are aware of only two instances in which the Fourth Circuit has overturned Judge Shedd in employment discrimination cases during his almost twelve-year career on the bench.

For your information, we wanted you to be aware of a few of the cases (among many) where Judge Shedd allowed plaintiffs to proceed past the summary judgment stage in civil rights and employment cases:

In *Miles v. Blue Cross & Blue Shield*, C.A. No. 3:94–2108–19BD, Judge Shedd denied defendant Blue Cross & Blue Shield's motion for summary judgment in a case brought under Title VII of the Civil Rights Act, where an African-American employee alleged that she was fired because of her race. The case included allegations that the plaintiff's supervisor used racially disparaging remarks on several occasions. The supervisor also allegedly stated that he did not want an African-American to hold the position held by the plaintiff.

In *Davis v. South Carolina Department of Health*, C.A. No. 3:96–1698–19BD, Judge Shedd refused to dismiss a Title VII lawsuit by an African-American employee who claimed that she was denied a promotion because of her race. The case involved allegations that the company promoted an unqualified white employee, and that a supervisor who participated in the decision not to promote the plaintiff had made racially disparaging remarks to her.

In *Ruff v. Whiting Metals*, C.A. No. 3:98–2627–19BD, Judge Shedd refused to dismiss a Title VII race discrimination case brought by an African-American welder after he was laid off. The case involved allegations that supervisors repeatedly made racial statements in the workplace, and that one supervisor claimed that he was going to use the pending layoffs to ''get rid of some'' African-American employees.

In *Black v. Twin Lakes Mobile Homes*, C.A. No. 0:97–3971–19, Judge Shedd denied summary judgment for the defendant, an owner of a mobile home park who sought to evict an HIV-positive tenant because of his medical condition. Shedd's ruling allowed the plaintiff's lawsuit alleging discrimination under the Fair Housing Act to go forward.

In addition to the above cases, Judge Shedd also has presided over three cases where the NAACP has alleged violations of the Voting Rights Act in which the NAACP prevailed. *NAACP* v. *Lee County*, C.A. No. 3:94–1575–17; *NAACP* v. *Holly Hill*, C.A. No. 5:91–3034–19; *NAACP* v. *Town of Elloree*, C.A. No. 5:91–3106–06. Far from displaying a hostility to civil rights and employment discrimination cases, Judge Shedd's record demonstrates that he is a judge who keeps an open mind, applies the law to the facts, and treats all parties fairly.

In sum, as members of the academic legal community in South Carolina [we can unequivocally state that Judge Shedd's record on the federal bench demonstrates that he is fair and impartial in all matters that come before him, including to plaintiffs in employment discrimination and civil rights cases. In addition, his career on the bench and as a staff member of the United States Senate shows that he has a clear understanding of and appropriate deference to Congress' legislative powers. In our view, he will make an excellent addition to the Fourth Circuit, and we urge you to support his nomination.

Sincerely,

F. Ladson Boyle; David G. Owen; S. Allen Medlin; Howard B. Stravitz; William J. Quirk; Randall Bridwell; Ralph C. McCullough II; Dennis R. Nolan; Robert M. Wilcox.

Mr. COCHRAN. Mr. President, I support the confirmation of Judge Dennis W. Shedd of South Carolina as U.S. Circuit Judge for the Fourth Circuit.

Judge Shedd has served more than 10 years as a United States District Judge for the District of South Carolina where he has earned a reputation for sound judgement and fairness. Prior to his appointment to the Federal bench, Judge Shedd spent nearly 20 years in the practice of law and public service, including ten years as a staff member of U.S. Senator STROM THURMOND. During his tenure in the Senate, Judge Shedd served as Counsel to the President Pro Tempore as well as Chief Counsel and Staff Director of the Senate Judiciary Committee.

While serving on the Federal bench, Judge Shedd has been a member of the Judicial Conference Committee on the Judicial Branch and its subcommittee on Judicial Independence. He has also participated in community activities where he has helped organize and promote drug education programs in the Columbia, SC public schools.

Judge Shedd has handled more than 4,000 civil cases and over 900 criminal matters. No judge currently sitting on the Fourth Circuit has as much Federal trial experience. In the thousands of cases Judge Shedd has handled, he has been reversed fewer than 40 times—less than one percent. In addition, a majority of the ABA's Standing Committee on the Judiciary rated Judge Shedd ''Well Qualified.''

I believe Judge Shedd has demonstrated the character, wisdom, and judicial temperament needed to be an outstanding judge on the Federal appellant bench. I encourage my colleagues to support his nomination.

Mr. THURMOND. Mr. President I am greatly pleased that the full Senate is considering the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. Judge Shedd is a man of impeccable character who will make an outstanding addition to the Federal appellate bench. He possesses the highest sense of integrity, a thorough knowledge of the law, and a good judicial temperament. These qualifications have earned Judge Shedd widespread respect and bipartisan support in my home State of South Carolina. In addition to Republican support, Senator ERNEST HOLLINGS and State Democratic Party chairman Dick Harpootlian have endorsed his nomination.

I am exceedingly proud of Dennis Shedd. He was a loyal employee of mine for 10 years and is very deserving of this high honor. Judge Shedd has been successful at every stage of his professional life and has dedicated most of his career to public service. Upon graduation from the University of South Carolina School of Law, he joined my staff and eventually served as administrative assistant. Thereafter, during my tenures as chairman and ranking member of the Judiciary Committee, he served as the committee's chief counsel and staff director. As a staff member, he gained a well-deserved reputation for honesty and hard work.

Upon returning to South Carolina, Judge Shedd entered the private practice of law and also served as an adjunct law professor at the University of South Carolina. In 1990, President Bush nominated Dennis Shedd to the United States District Court for the District of South Carolina, and he has served ably for more than a decade. On numerous occasions, Judge Shedd has been given the honor of sitting on the Fourth Circuit by designation.

Judge Shedd's performance on the district court has been marked by distinction. He has been assigned more than 5,000 cases during almost 12 years on the bench. Out of all these cases, he has only been reversed 37 times, resulting in a reversal rate of less than 1 percent. These numbers indicate both the skilled legal mind and the thorough preparation that he will bring to the Fourth Circuit. Judge Shedd also possesses a good judicial temperament, treating all litigants in his courtroom with dignity and respect.

Unfortunately, some groups have portrayed Judge Shedd's judicial career in a negative light. I would like to take a moment to address these allegations and concerns. An examination of Judge Shedd's record indicates that he is not only fair and impartial, but personally dedicated to upholding the constitutional rights of all people.

Judge Shedd has been criticized for his handling of Alley v. South Carolina, a lawsuit wherein the plaintiffs sought to remove the Confederate flag from atop the statehouse dome in Columbia, SC. The South Carolina NAACP has asserted that Judge Shedd ''made several derogatory comments about those opposing the flag, and

minimized the deep racial symbolism of the Confederate flag by comparing it to the Palmetto tree, which appears in South Carolina's state flag.''

These allegations are misleading and inaccurate. A close look at the transcript of the hearing reveals that Judge Shedd made a point of saying that his comments were not meant to be disparaging. In fact, he said, ''I'm not going to denigrate the constitutional claim abut the Confederate flag.'' Furthermore, Judge Shedd never ruled on the merits of the case. Rather, he abstained to allow a claim to go forward in State court, arguably the forum better equipped to handle the issue.

Additionally, it is important to note that Judge Shedd's comments about the Palmetto tree were made during his examination of the lawyer's legal argument in the case. The argument hinged on the offensive nature of the Confederate flag, and Judge Shedd pointed out that many symbols could be perceived as offensive, such as the Palmetto tree on the State flag. Judge Shedd then stated, ''I'm not determining now on whether or not the flag should be there at all. I'm just doing what—you lawyers have been with me before know, I'm exploring your legal theory.'' In this case, Judge Shedd was simply engaging in the Socratic method with the lawyers, and his words should not be twisted to insinuate any personal feelings about the propriety of flying the Confederate flag over the statehouse dome.

I would like to point out the case of Vanderhoff v. John Deere, the one case involving the Confederate flag in which Judge Shedd did rule. In that case, an employee was fired because he refused to comply with company policy and remove the Confederate flag from his toolbox. The employee sued under title VII, a statute designed to prohibit workplace discrimination based on race, sex, religion, and national origin. He argued that his national origin was a ''Confederate Southern American'' and that he had been the subject of discrimination. Judge Shedd rejected this argument and dismissed the plaintiff's claim. Thus, on the one Confederate flag case where he ruled on the merits, Judge Shedd's decision went against a flag proponent.

In recent weeks, Judge Shedd has been the subject of vicious attacks based on his handling of employment discrimination cases. Over and over again, we have head the accusation that Judge Shedd shows a bias towards defendants. A review of Judge Shedd's record indicates that he has been fair to the civil rights claims of plaintiffs in his courtroom. In fact, Judge Shedd has only been reversed two times in employment discrimination cases. With such a low reversal rate, I am disappointed that some groups have insisted on attacking this fine judge.

One commonly cited case is Roberts v. Defender Services, in which Judge Shedd dismissed a plaintiff's sexual harassment claim. In this case, Judge Shedd merely followed the law as established by the Supreme Court, which held in Faragher v. City of Boca Raton, 524 U.S. 775 (1998), that the work environment must be both objectively and subjectively offensive. While the plaintiff had clearly shown that the work environment was objectively offensive, Judge Shedd determined that she had not made a showing that she perceived it to be offensive. He based his determination on the fact that she had recommended the position to someone else and stated that the employer was ''a nice person'' who was ''pretty good to work for.'' These comments by the plaintiff demonstrate that Judge Shedd's decision was reasonable under the circumstances of this case.

The truth is that Judge Shedd has issued rulings that have benefitted plaintiffs on numerous occasions. For example, in Miles v. Blue Cross & Blue Shield, C.A. No. 3:94–2108–19BD, an action was brought under title VII of the Civil Rights Act by an African-American employee who alleged that she was fired because of her race. There was ample evidence that the plaintiff had been subjected to racial slurs before being fired. Judge Shedd appropriately denied the defendant employer's motion for summary judgment.

In another case, Davis v. South Carolina Department of Health and Environmental Control, C.A. No. 3:96–1698–19BD, an action was brought under title VII by an African-American employee who alleged that she was denied a promotion because of her race. There was evidence that an unqualified white employee had been promoted and that racially disparaging remarks had been made. Judge Shedd followed the law and denied the defendant employer's motion for summary judgment. Again in Ruff v. Whiting Metals, C.A. No. 3:98–2627–19BD and Williams v. South Carolina Department of Public Safety, C.A. No. 3:99–976–19BC, Judge Shedd denied a defendant's motion for summary judgment on race discrimination claims.

In the case of Treacy v. Loftis, C.A. No. 3:92–3001–19BD, Judge Shedd, overruling a magistrate judge's recommendation, declined to grant summary judgment on a fired employee's claim of intentional infliction of emotional distress. In that case, the plaintiff claimed that her job was terminated due to her involvement in an interracial relationship. Judge Shedd, in refusing to grant summary judgment, allowed the case to go forward.

There are many other cases like these. Judge Shedd's record reveals that he has upheld important rights protected by the Constitution. If elevated to the Fourth Circuit, Judge Shedd will continue to protect civil liberties.

In addition to Judge Shedd's proven record of protecting civil rights, he has personally dedicated himself to providing equal opportunities for women and minorities. As an example, Judge Shedd served as chairman of the South Carolina Advisory Committee to the U.S. Commission on Civil Rights. He also played an instrumental role in the selection of Margaret Seymour as the first female African-American U.S. magistrate judge in the district of South Carolina. When Judge Seymour was nominated by President Clinton to the district court, Judge Shedd fully supported her nomination. Furthermore, Judge Shedd has hired both African-American and female law clerks.

I would like to turn to another accusation that has been leveled against Judge Shedd. He has been accused of espousing an unreasonably narrow interpretation of congressional power based on his decision in Condon v. Reno, 972 F.Supp. 977 (1997), in which he struck down the Driver's Privacy Protection Act. The act regulated the dissemination of State motor vehicle record information, and the State of South Carolina challenged its constitutionality. Judge Shedd ruled that under Supreme Court precedent, the act violated the 10th amendment by impermissibly commandeering State governments, forcing them to regulate in a specific fashion. The Fourth Circuit upheld this decision, Condon v. Reno, 155 F.3d 453 (4th Cir. 1998), but the Supreme Court ultimately reversed. Reno v. Condon, 120 S.Ct. 666 (2000).

I stress that this case was one of first impression. Given the U.S. Supreme Court opinions in New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 898 (1997), Judge Shedd's ruling was entirely reasonable. In a very persuasive opinion, he compared the Drivers Privacy Protection Act with those acts invalidated in New York and Printz and found it to have similar constitutional defects.

Judge Shedd was not alone in his analysis. At least one liberal commentator, Erwin Chemerinsky, concluded that the Supreme Court's distinction of the Drivers Privacy Protection Act from the statutes struck down in New York and Printz was unconvincing. While Chemerinsky agreed with the final outcome of the case, he has argued that the Supreme Court should have overruled both New York and Printz in order to reach its decision in Reno. Professor Chemerinsky's argument lends support to the proposition that Judge Shedd, in striking down the statute, was correct in his interpretation of the law at that time.

In addition, of the 16 lower Federal court judges who considered the constitutionality of DPPA, 8 determined that the statute was unconstitutional. In short, there is nothing to indicate that Judge Shedd's decision in this case was out of the mainstream.

Another case that has been cited is Crosby v. U.S., in which Judge Shedd held that the plaintiff's claim under the Family and Medical Leave Act was barred by the 11th amendment to the Constitution. Judge Shedd's detractors have argued that this case is another example of his narrow view of congressional power. However, this accusation

is unfair and unwarranted. In this case, Judge Shedd sought to follow the law as established by the Supreme Court. He was not attempting to make new law, but was instead seeking to apply the law correctly. Furthermore, Judge Shedd was not alone in his decision. Out of nine circuit courts that have considered this same question, eight have agreed with Judge Shedd. It is worth noting that Judge Roger Gregory, originally appointed by President Clinton, joined the Fourth Circuit's opinion that agreed with Judge Shedd's ruling.

Judge Shedd has also been criticized as being antiplaintiff for disposing of matters sua sponte, or on his own motion. This charge is without merit for a number of reasons. First, Federal judges face enormous caseloads. If an area of the law is clear, it is completely proper for the judge to act on his own motion, helping to move litigation along and clear the dockets. Second, the law clearly allows for district court judges to consider matters without prompting from lawyers. The Supreme Court has acknowledged this, stating in Celotex Corp. v. Catrett, 830 F.2d 1308 477 U.S. 317, 326 (1986), that district courts may grant summary judgment sua sponte to a party that has not moved for summary judgment. As long as a judge is acting properly, which Judge Shedd has always done, sua sponte decisions are entirely appropriate.

I have known Judge Dennis Shedd for over 24 years and can personally vouch for his integrity and high moral character. He is truly a man of knowledge, ability, and superior ethical standards. Judge Shedd will bring a wealth of trial experience to the Fourth Circuit, having handled more than 4,000 civil cases and over 900 criminal matters. In addition, he possesses unmatched legislative experience. It is no surprise that the American Bar Association gave Judge Shedd a rating of ''Well Qualified.'' I am proud to support my friend, Dennis Shedd, and I hope to see him confirmed to the United States Court of Appeals for the Fourth Circuit. I ask unanimous consent that the attached materials be printed in the RECORD.

DENNIS W. SHEDD—NOMINEE TO THE FOURTH CIRCUIT COURT OF APPEALS

Background. Appointed by President George H.W. Bush to the United States District Court for South Carolina in 1990, Dennis W. Shedd has served as a federal jurist for more than a decade.

In addition to his service on the District Court, he sat by designation on the Fourth Circuit Court of Appeals on several occasions. Shedd also has served on the Judicial Conference Committee of the Judicial Branch and its Subcommittee on Judicial Independence.

From 1978 through 1988, Judge Shedd served in a number of different capacities in the United States Senate, including Counsel to the President Pro Tempore and Chief Counsel and Staff Director for the Senate Judiciary Committee.

Judge Shedd is well-respected by members of the bench and bar in South Carolina. According to South Carolina plaintiffs' attorney Joseph Rice, ''Shedd—who came to the bench with limited trial experience—has a good understanding of day-to-day problems that affect lawyers in his courtroom. . . . He's been a straight shooter.'' Legal Times, May 14, 2001.

According to the Almanac of the Federal Judiciary, attorneys said that Shedd has outstanding legal skills and an excellent judicial temperament. A few comments from South Carolina lawyers; ''You are not going to find a better judge on the bench or one that works harder.'' ''He's the best federal judge we've got.'' He gets an A all around.'' It's a great experience trying cases before him.'' ''He's polite and businesslike.''

Plaintiff lawyers commended Shedd for being even-handed; ''He has always been fair.'' ''I have no complaints about him. He's nothing if not fair.'' Almanac of the Federal Judiciary, Vol. 1, 1999.

Judge Shedd would bring unmatched experience to the Fourth Circuit. He has handled more than 4,000 civil cases since taking the bench and over 900 criminal matters. In fact, no judge currently sitting on the Fourth Circuit has as much federal trial experience as Judge Shedd, and none can match his ten years of experience in the legislative branch.

Shedd's record demonstrates that he is a mainstream judge with a low reversal rate. In the more than 5,000 cases Judge Shedd has handled during his twelve years on the bench, he has been reversed fewer than 40 times less than one percent). Since taking his seat on the Fourth Circuit in 2001, Judge Roger Gregory (a Democrat appointed by President Bush) has written opinions affirming several of Judge Shedd's rulings. Judge Gregory also agreed with Judge Shedd's holding in Crosby v. South Carolina Dep't of Health (case cited by Judge Shedd's opponents) that Congress did not effectively abrogate State sovereign immunity in the Family and Medical Leave Act. See Lizzi v. WMATA, 255 F.3d 128 94th Cir. 2001.

Judge Shedd has been completely forthcoming with the Senate Judiciary Committee's requests for information. Earlier this year, Judge Shedd sent nearly one thousand unpublished opinions to the Committee for review immediately after Chairman Leahy requested them. Judge Shedd has continued to provide additional unpublished opinions, as well as all other information the Committee has requested regarding his rulings, opinions and judicial record generally.

Judge Shedd has bi-partisan support from his home state Senators; Senators Thurmond and Hollings support his nomination.

A majority of the ABA's Standing Committee on the Judiciary rated Judge Shedd ''Well Qualified.'' Democrats have called the ABA rating the ''gold standard'' for judicial nominees.

ROSENBERG PROUTT FUNK & GREENBERG, LLP,
Baltimore, MD, June 25, 2002.

Senator PATRICK LEAHY,
Chairman, U.S. Senate Judiciary Committee, the Dirksen Building, Washington, DC.

DEAR SENATOR LEAHY: My name is Thomas W. Jones, Jr. I am an African-American attorney currently practicing as a litigation associate in Baltimore, Maryland.

Upon my graduation from the University of Maryland School of Law, I had the distinct pleasure of serving as a judicial clerk for the Honorable Dennis W. Shedd (''Judge Shedd'') on the U.S. District Court for the District of South Carolina. During my eighteen months of working with Judge Shedd, I never encountered a hint of bias, in any form or fashion, regarding any aspect of judge Shedd's jurisprudence or daily activities.

It is apparent to me that the allegations regarding Judge Shedd's alleged biases have been propagated by individuals without the benefit of any real, meaningful interaction with Judge Shedd, his friends or family members. I trust the accusations of bias levied against Judge Shedd will be given the short shrift they are due, and trust further that this honorable Committee will act favorably upon the pending nomination of Judge Shedd for the United States Court of Appeals for the Fourth Circuit.

Thank you for your attention regarding this matter.

Respectfully,

THOMAS W. JONES, JR.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC, September 13, 2002.

JAMES GALLMAN,
President, SCNAACP,
Columbia, SC.

DEAR PRESIDENT GALLMAN: Thank you very much for your interest in the nomination of Judge Dennis Shedd to the United States Court of Appeals for the Fourth Circuit. I want to assure you that Judge Shedd is an outstanding Federal Judge, and he is committed to upholding the rights of all people under the Constitution. Rather than being hostile to civil rights, as his detractors have claimed, Judge Shedd is committed to the ideals of equal justice under the law. I am confident that upon an examination of his record, you will find that Dennis Shedd is eminently qualified, applies the law fairly, and exhibits an appropriate judicial temperament.

I would like to address your concerns regarding Judge Shedd's civil rights record. I believe that it is commendable in all respects. First of all, Judge Shedd has been accused of granting summary judgment for defendants in almost every case. This accusation is false. A review of Judge Shedd's record indicates that he has been fair to the civil rights claims of plaintiffs in his courtroom. In fact, he has issued rulings that have benefitted plaintiffs on numerous occasions. For example, in Miles v. Blue Cross & Blue Shield, C.A. No. 3:94–2108–19BD, an action was brought under Title VII of the Civil Rights Act by an African-American employee who alleged that she was fired because of her race. There was ample evidence that the plaintiff had been subjected to racial slurs before being fired. Judge Shedd appropriately denied the defendant employer's motion for summary judgment.

In another case, Davis v. South Carolina Department of Health and Environmental Control, C.A. No. 3:96–1698–19BD, an action was brought under Title VII by an African-American employee who alleged that she was denied a promotion because of her race. There was evidence that an unqualified white employee had been promoted and that racially disparaging remarks had been made. Judge Shedd followed the law and denied the defendant employer's motion for summary judgment. Again in Ruff v. Whiting Metals, C.A. No. 3:98–2627–19BD and Williams v. South Carolina Department of Public Safety, C.A. No. 3:99–976–19BC, Judge Shedd denied a defendant's motion for summary judgment on race discrimination claims.

In the case of Treacy v. Loftis, C.A. No. 3:92–3001–19BD, Judge Shedd, overruling a magistrate judge's recommendation, declined to grant summary judgment on a fired employee's claim of intentional infliction of emotional distress. In that case, the plaintiff claimed that her job was terminated due to her involvement in an interracial relationship. Judge Shedd, in refusing to grant summary judgment, allowed the case to go forward.

Judge Shedd has also been accused of making insensitive remarks about the Confederate flag during proceedings in the case of

Alley v. South Carolina, C.A. No. 3:94–1196–19. a lawsuit in which the plaintiffs sought to remove the Confederate flag from atop the Statehouse dome. These allegations are misleading and inaccurate. A close look at the transcript reveals that Judge Shedd made a point of saying that his comments were not meant to be disparaging. In fact, he said, ''I'm not going to denigrate the constitutional claim about the Confederate flag.'' Judge Shedd went on to say, ''I'm not determining now on whether or not the flag should be there at all. I'm just doing whatyou lawyers have been with me before know, I'm exploring your legal theory.''. The transcript clearly indicates that Judge Shedd was questioning the lawyers about their arguments in this case, something that is done every day in courtrooms across the nation. Furthermore, Judge Shedd never ruled on the merits of the case. Rather, he abstained to allow a claim to go forward in state court, arguably the forum better equipped to handle the issue.

I would like to point out the case of Vanderhoff v. John Deere, C.A. No 01–0406–19BD, the one case involving the Confederate flag in which Judge Shedd did rule. In that case, an employee was fired because he refused to comply with company policy and remove the Confederate flag from his toolbox. The employee sued under Title VII, a statute designed to prohibit workplace discrimation based on race, sex, religion, and national origin. He argued that his national origin was a ''Confederate Southern American'' and that he had been the subject of discrimination. Judge Shedd rejected this argument and dismissed the plaintiff's claim. Thus, in the one Confederate flag case where he ruled on the merits, Judge Shedd's decision went against a flag proponent.

In addition to Judge Shedd's demonstrated fairness in the civil rights arena, he has shown that he is personally committed to ensuring equal opportunities for women and minorities. He was instrumental in the selection of Judge Margaret Seymour, now a Federal District Court Judge, as the first African-American female magistrate judge in the District of South Carolina. He has also made an effort to hire African-American and female law clerks. In fact, Thomas Jones, an African-American man who clerked for Judge Shedd, wrote a letter to Senator Leahy in which he said that the allegations made against Judge Shedd should ''be given the short shrift they are due . . . .''

Next, I would like to address the concerns raised by the case of Condon v. Reno, 972 F. Supp. 977 (D.S.C. 1997), in which Judge Shedd held that the Driver's Privacy Protection Act (DPPA) was unconstitutional. He was eventually reversed by the Supreme Court. Reno v. Condon, 528 U.S. 141 (2000). It is important to stress that this case was one of first impression. Given the United States Supreme Court opinions in New York v. United States, 505 U.S. 144 (1992), and Printz v. United States, 521 U.S. 898 (1997), Judge Shedd's ruling was entirely reasonable. In a very persuasive opinion, he compared DPPA with those Acts invalidated in New York and Printz and found it to have similar constitutional defects.

While the Supreme Court ultimately disagreed with Judge Shedd, his opinion was not outside of the mainstream. Of the 16 lower Federal court judges who considered the constitutionality of DPPA, 8 determined the statute unconstitutional. Some of these judges, such as Judge Barbara Crabb and Judge John Godbold, were nominated by Democratic presidents.

In summary, I believe that Judge Shedd is a highly qualified candidate who will make an excellent addition to the United States Court of Appeals for the Fourth Circuit. It is a shame that he has been characterized as a judge with an agenda to curtail civil rights. On the contrary, Judge Shedd has demonstrated that he will apply the law fairly to all people. In addition, he has received a rating of ''Well Qualified'' by the American Bar Association, and he has the support of South Carolina Democrats, such as Senator Fritz Hollings and state Democratic Party Chairman Dick Harpootlian.

I hope that this information is helpful during your further consideration of Judge Shedd, and I hope that you will join me in support of this fine man. I have known Judge Shedd for a long time, and he is in all respects an honorable public servant. Again, thank you for your interest.

With kindest regards and best wishes,

Sincerely,

STROM THURMOND.

U.S. SENATE
COMMITTEE ON THE JUDICIARY,
Washington, DC, July 30, 2002.

LETTERS TO THE EDITOR,
The New York Times,
New York, NY.

DEAR EDITOR: This letter is in response to the editorial that appeared in your paper on July 28, 2002, entitled ''The Secret History of Judges.'' The piece questioned whether Judge Dennis Shedd, whom President Bush nominated to the U.S. Court of Appeals for the Fourth Circuit, has adequately supplied the Senate Judiciary Committee with all relevant information regarding his 11 years as a Federal District Court Judge. I can assure you that Judge Shedd has been thoroughly responsive to Committee requests and has provided an extraordinary amount of material. In fact, to the best of my knowledge, there is simply nothing left for him to hand over. This tired call for more information is nothing more than a delay tactic being utilized by political groups that oppose most of President Bush's judicial nominees, even when the nominees are, like Judge Shedd, extremely well-qualified.

All interested parties have had ample time to examine Judge Shedd's record. On June 27, 2002, Judge Shedd testified before the Committee for more than two hours, during which time he answered all questions asked of him. After the hearing, individual Senators had the opportunity to submit questions, and Judge Shedd prepared written responses to questions from six Senators.

Previously, on March 22, 2002, the Committee requested all of Judge Shedd's ''unpublished'' opinions. To fulfill this extremely broad request, as many as a dozen district court employees were required to undertake an extensive and time-consuming manual search of case files within the district as well as an electronic search of available computer records. Within 12 days, Judge Shedd provided a first set of documents to the Committee. As Judge Shedd was able to secure additional documents from out-of-state court storage, he supplemented his initial response with a second set of documents on May 20, 2002. In summary, Judge Shedd expeditiously supplied the Committee with more than 13,000 pieces of paper. Therefore, all documents responsive to this request have been available to Committee members for a significant period of time.

Although it has been suggested that Judge Shedd had not provided the appropriate documentation, the record will reflect that Judge Shedd has diligently worked to produce all documents, of which he and other court employees are aware, that satisfy the Committee request. While Judge Shedd has been assigned some 5,000 civil cases, many of these cases included routine matters, such as foreclosures, and have ended without any substantive ruling by Judge Shedd. Likewise, cases are often referred to Federal magistrate judges who make reports and recommendations to the District Court Judge. While Judge Shedd has received some 1,400 reports from magistrate judges, many of these are on non-substantive issues. I can assure you that the opinions Judge Shedd has supplied represent, to the best of his knowledge, all of his substantive ''unpublished'' opinions.

Your editorial asserts that civil rights groups have identified ''important rulings by Judge Shedd that have not been handed over.'' I have previously requested that these groups identify the particular cases in which they are interested, but they have yet to do so. I would once again urge these groups to identify the cases that cause them concern, and Judge Shedd will be happy to locate any information on these cases that will assist Committee members as they evaluate his nomination.

In short, Judge Shedd has acted promptly, professionally, and in good faith in his dealings with the Senate Judiciary Committee. His record is as complete as any other circuit nominee we have ever had before the Committee. There simply is no justifiable basis to clam that he has failed to respond to Committee requests.

It is my sincere hope that Judge Dennis Shedd will soon be confirmed as a Federal Circuit Court Judge. He is a fine man who has performed ably on the Federal bench for more than a decade. He has responsively provided the Senate Judiciary committee with documentation that chronicles his career as a distinguished jurist. Quite simply, Judge Shedd's record is complete, and it proves that he is committed to upholding the rights of all people under the Constitution.

Sincerely,

STROM THURMOND.

FAIRNESS: JUDGE SHEDD'S ABA ''WELL QUALIFIED'' RATING—THE ABA RATED JUDGE SHEDD ''WELL QUALIFIED'' FOR THE FOURTH CIRCUIT

According to the ABA Standing Committee on Federal Judiciary, a nominee is evaluated on ''integrity, professional competence, and judicial temperament.''

''Integrity is self-defining. The prospective nominee's character and general reputation in the legal community are investigated, as are his or her industry and diligence.''

''In investigating judicial temperament, the Committee considers the prospective nominee's compassion, decisiveness, open-mindedness, courtesy, patience, freedom from bias, and commitment to equal justice under the law.''

''To merit Well Qualified, the prospective nominee must be at the top of the legal profession in his or her legal community, have outstanding legal ability, wide experience, the highest reputation for integrity and either have shown, or have exhibited the capacity for, judicial temperament, and have the committee's strongest affirmative endorsement.''

Source: The ABA Standing Committee on Federal Judiciary: What It Is and How It Works, American Bar Association (July 1999) (pages 4 and 6).

[From the Post and Courier, Nov. 15, 2002]

SHEDD'S ADVANCE A WELCOME SIGN

President Bush's nomination of U.S. District Court Judge Dennis Shedd of Columbia to the 4th U.S. Circuit Court of Appeals finally was sent to the full Senate by the Senate Judiciary Committee Thursday. That overdue action represents an important step forward in breaking the partisan logjam on federal judicial appointments.

It also represents a potential step away from what Sen. Strom Thurmond aptly described as ''destructive politics'' last month

after Judiciary Chairman Patrick Leahy, D–VT, reneged on his promise to send Judge Shedd's nomination to the full Senate. Sen. Thurmond, who's retiring after a long, distinguished career in politics, vividly expressed his outrage at this violation of personal trust, telling his colleagues: ''In 48 years in the Senate, I have never been treated in such a manner.''

And the Judiciary Committee's growing habit of blocking presidential appointments to the Federal bench has reached critical mass over the last year and a half. Democrats' protests that Senate Republicans had subjected President Clinton to the same mistreatment don't hold up when the rates of rejection are considered, particularly at the appeals court level. That blatantly party-line obstruction of judicial appointments became a campaign season liability for the Democrats in some states, including South Carolina, where Republican Lindsey Graham repeatedly stressed the need to break that pattern by giving President Bush a GOP Senate—and a GOP-controlled Judiciary Committee—in his winning campaign to replace Sen. Thurmond.

Recognizing the incoming Senate's intentions on this issue, and the voting public's message, Sen. Leahy didn't call for a committee roll-call vote on the nominations of Judge Shedd and Professor Michael McConnell to the appeals courts Thursday, instead allowing them to advance.

And despite familiar objections from special-interest groups that seem intent on branding any judge who has ever issued a purportedly conservative ruling as a reckless ''extremist,'' Judge Shedd has the support of not just leading Republicans, but of Sen. Ernest F. Hollings, D–SC. The senator has been openly critical of the Judiciary Committee's previous attempts to derail this nomination.

Thursday's Judiciary Committee decision was not merely a victory for Judge Shedd, President Bush, Sen. Thurmond and Sen. Hollings. It was a victory for fairer, more efficient consideration and confirmation of presidential judicial appointments by the Senate.

[From the Greenville News, Oct. 15, 2002]

INSULTING THURMOND

Senate Judiciary Committee Chairman Patrick Leahy, a Democrat from Vermont, did a number last week on retiring South Carolina Sen. Strom Thurmond, and in the process thumbed his nose at both the Constitution and any sense of fair play. Highly partisan Democrats don't want Thurmond's choice for the 4th U.S. Circuit Court of Appeals, U.S. District Judge Dennis Shedd, to get a well-earned promotion to the appeals court.

Shedd is eminently qualified, but he has been painted as an opponent of civil rights, the disabled and common workers. The case hasn't been made, but then, the Democrats who oppose his nomination aren't interested in making the case with facts. They have conveniently used Shedd as an election issue.

With the U.S. Senate in the hands of Democrats, it has become something of a sport in Washington to prevent President Bush from getting his top choice for federal judges. But Sen. Leahy sunk to a new low last seek by refusing to allow a vote on the Shedd nomination, and in doing so, it became obvious he had flat-out lied to Sen. Thurmond. Leahy had promised South Carolina's 99-year-old senior senator a Judiciary Committee vote on Shedd, but that was before word leaked that a committee Democrat would vote for Shedd. If his nomination got to the full Senate, he would be approved, especially with South Carolina's Sen. Fritz Hollings wholeheartedly supporting this nomination.

The Senate Judiciary Committee has become a graveyard for Bush's top choices for seats on the federal appeals court. The Democrats have flexed their muscles to prevent the nomination of reputable choices—such as Charles Pickering and Priscilla Owen—from making it to the Senate floor for a vote they probably would win. But now the powerful Leahy has proven he can go lower—by denying a vote, even after he made a promise to allow one.

Thurmond was indignant last week, making a rare Senate speech in which he said about Leahy, ''In my 48 years in the United States Senate, I have never been treated in such a manner.'' Thurmond is leaving a Senate in which a man's word is no longer his honor.

[From the Orangeburg Times and Democrat, Oct. 13, 2002}

NOMINATION OF SHEDD HELD HOSTAGE

The continuing battle over federal judgeships grows more frustrating.

It's a partisan and philosophical battle that has gone beyond what was ever intended by the framers of our Constitution. The founders gave presidents appointment power for judges, with the Senate's role being advice and consent.

Particularly since the Clinton years of the 1990s, the process has been paralyzed by politics. A Republican Senate left Clinton nominees hanging, never even giving them a hearing and a vote. The Democratic Senate has been doing the same thing with President Bush's nominees.

On Tuesday, partisanship got closer to home when Cordova native and S.C. U.S. District Judge Dennis Shedd was denied a vote by the Senate Judiciary Committee on his nomination to the 4th Circuit Court of Appeals.

The decision to delay the vote prompted S.C. Republican Sen. Strom Thurmond, for whom Shedd once served as a top aide, to react angrily at the committee and its Democratic leader, Sen. Patrick Leahy of Vermont. Leahy said the vote on Shedd was too contentious for the session and would have sparked a debate delaying action on other judicial candidates.

That may be, but Thurmond was taking the rejection personally, addressing the Senate Judiciary Committee himself in a rare appearance.

''In my 48 years in the U.S. Senate, I have never been treated in such a manner. You assured me on numerous occasions that Judge Shedd would get a vote, and that is all that I have ever asked of you. I have waited patiently for 17 months, and I have extended every courtesy to you,'' Thurmond said to Leahy.

The judgeship battles are likely to trample on more Senate decorum, particularly when judges meet vocal opposition as has Shedd. Despite endorsements by the American Bar Association and others, Shedd has faced criticism from the NAACP and other organizations contending his record shows no sympathy for those in discrimination cases. Sixth District Congressman Jim Clyburn is among opponents.

But Shedd enjoys the support of both Republican Thurmond and Democrat Ernest F. Hollings from South Carolina. And he is former chief legal counsel to the Senate Judiciary Committee, which Thurmond formerly chaired.

Thurmond's anger over the delay of Shedd's nomination probably won't change the equation.

A vote probably will not come until next year—and may not come then unless the Republicans regain control of the U.S. Senate in November's election. That would mean that Thurmond, who will soon turn 100 and is not seeking re-election, won't be voting on a judicial candidate he recommended and President Bush nominated way back on May 9, 2001.

In all, Bush has nominated 126 U.S. Appeals Court and U.S. District Court nominees, and the senate has confirmed 80: 14 judges to appeals courts and 66 to district courts. Most of the others haven't been put to a vote.

Shedd should not be one of them. His record is a good one, and it is that record that should be the test of his approval, not what others believe about his personal or political philosophy.

Shedd is certainly not out of the judicial mainstream and his opinions are not rooted in controversy.

Sen. Hollings is known for his candid if not controversial assessment of people. The S.C. Democrat is solidly behind Shedd, being the one to introduce him initially to the Senate Judiciary Committee.

Saying Shedd ''has an outstanding record of sound judgment,'' Hollings told the Judiciary Committee that Shedd is ''my kind of judge—hard and tough, but hard and tough on both sides.''

His nomination should be brought to a vote by the Senate committee and then the full Senate, where we're confident he will win approval.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I will speak today in morning business briefly.

The PRESIDING OFFICER. The Senator may proceed.

HOMELAND SECURITY

Mr. DORGAN. Mr. President, I rise to say a few words about the issue of homeland security. I will not talk at the moment about the bill itself, which we will vote on tomorrow, but a couple of issues dealing with homeland security that are very important, that have been raised in recent days and need to be discussed.

One issue deals with something that is happening in the Defense Department. My colleague Senator NELSON from Florida spoke of it earlier today. That is the creation of an Information Awareness Office and the prospect of having an agency that would amass your most personal information—credit card purchases, travels, medical information, and so on—and put it into a single database. That concerns me greatly. I will speak about that in a moment.

But first I will speak about another issue relating to homeland security. This is an issue that was recently highlighted by a task force headed by former Senator Warren Rudman and former Senator Gary Hart.

That task force included former Secretaries of State Warren Christopher and George Shultz, retired Admiral William Crowe, former Chairman of the Joint Chiefs of Staff, and others. There is a very significant blue ribbon task force.

They issued a report that was sponsored by the Council of Foreign Relations. The report was titled ''America Still Unprepared, America Still In Danger.''

The task force found that 1 year after the September 11 attacks, America remains—according to them—dangerously unprepared for another terrorist attack. At the top of the list of concerns in this task force was this:

650,000 local and State police officials continue to operate in a virtual intelligence vacuum without access to terrorist watch lists that are provided by the United States Department of State to immigration consular officials.

Why is this important? Well, consider that 36 hours before the September 11 attack, one of the hijackers who piloted the plane that crashed in Pennsylvania, named Ziad Jarrah, a 26-year-old Lebanese national, was actually pulled over by the Maryland State Police for driving 90 miles an hour on Interstate 95. If this fellow's name had been on the State Department terrorist watch list—and it happens that it was not—there would have been no way for that Maryland State trooper to know it. That Maryland State trooper can type a name into the system and go to the NCIC where they have the database of convicted felons, but that trooper has no access to the watch list that the Immigration Service has courtesy of the State Department.

You have all of these people around the country—law enforcement officials—who are actually the first line of defense and the first responders in the event something happens. And they are out there stopping people with traffic stops and stopping suspicious people who are driving automobiles without license tags, and so on. They don't have any idea whether someone they have just stopped is a known terrorist on a watch list prepared by the State Department and given to the Immigration Service and given to the consular offices. Why? Because they currently have no mechanism to access it.

Right now, a county sheriff somewhere in a northern county in North Dakota is patrolling a road. If down that road for some reason would come a terrorist who crossed over a remote section on the border between the United States and Canada and a county sheriff stops that known terrorist who is on the watch list for driving 90 miles an hour on Highway 22, there isn't any way that county sheriff is going to be able to access that watch list and know that he or she has pulled over a known terrorist.

That is wrong.

Let me read an excerpt from the Hart-Rudman report, discussing what they regard as a top concern:

With just 56 field offices around the nation, the burden of identifying and intercepting terrorists in our midst is a task well beyond the scope of the Federal Bureau of Investigation. This burden can and should be shared with 650,000 local county and State law enforcement officers. But they clearly cannot lend a hand in the counterterrorism information void that now exists. When it comes to combating terrorism, the police officers on the beat are effectively operating deaf, dumb and blind.

That is from the report.

Again, quoting from the report:

Terrorist watch lists provided by the United States Department of State to immigration and consular officials are still out of bounds for State and local police. In the interim period, as information sharing issues get worked out, known terrorists will be free to move about to plan and execute their attacks without any bother from local law enforcement officials because they can't know their names and they can't access the list.

My staff has been in contact with this task force. We have also been in contact with the State Department and the White House, asking when something is going to be done to connect the dots here. Since we made these contacts, the administration is apparently looking for ways to integrate that terrorist watch list—called the Tipoff database—with the National Crime Information Center which is accessible by State and local law enforcement officers. I call on the administration to expedite, as much as is possible, the effort to make this happen. We can't waste another day in this regard, as all of us know.

The head of the CIA said the other day that we are in as much risk from a terrorist act as we were the day before September 11. If that is the case, then we ought to expect that all law enforcement officials around this country would have access to that terrorist watch list.

Let me go now to the second issue. I just spoke of the need for law enforcement to have access to a list of known terrorists and those who associate with known terrorists for purposes of protecting this country.

Well, one can certainly go to the other extreme in gathering information in the name of homeland security. And a good example of that is a project that is being developed in the Department of Defense, by the Information Awareness Office.

The Information Awareness Office is developing a long-term plan for what is called data mining. A master plan would be developed by which all of the information that moves around electronically in our country—every purchase you make with a credit card, every magazine subscription you buy, every medical prescription you fill, every Web site you visit, every e-mail you send or receive, every academic grade you ever received, every bank deposit you made, every trip you book - would go into a massive database. And the Federal Government would use the database to identify suspicious behavior.

That is not what we ought to be doing in this country. We ought to have a war on terrorism. But we ought not, in our zeal to engage in this war on terrorism, in any way break down the basic civil liberties that exist in our Constitution. The right to privacy is one of the most basic rights in America—the right to expect there is not a Big Brother with a massive computer system gathering all the information about everything everyone is doing in this country and evaluating it, perusing it, and moving it back and forth to try to determine who might or might not be doing something maybe suspicious.

That is not, in my judgment, in concert with the basic civil liberties that we expect in this country and that are guaranteed to the citizens in this country. We must stop this before it starts.

I understand that a change in law—specifically a change in the 1974 Privacy Act—would be required to implement this data mining program. That, in my judgment, is not going to happen in the Congress. I would not support such a change, and I think most of my colleagues would oppose a change of that type.

(Mrs. MURRAY assumed the chair.)

Mr. BYRD. Will the Senator yield?

Mr. DORGAN. I am happy to yield.

Mr. BYRD. The Senator says he is confident that the Congress will do no such thing? I say most respectfully to the Senator, I would not count on what the next Congress might do. I am very much afraid of what the next Congress might do in many areas. Doesn't the Senator share that feeling?

Mr. DORGAN. Well, I happen to——

Mr. BYRD. I say, Congress normally would not do that. But I am not too sure what the next Congress might do.

Mr. DORGAN. Madam President, I understand the concern expressed by my colleague. Let me say, there is a great disinfectant in this country, and that disinfectant is sunlight. If we can shed some light on these kinds of proposals, I do not think there is any question the American people will demand—will demand—of this Congress to preserve the basic rights, and especially the basic right to privacy that exists and that they expect to continue in the life of this country.

So I understand the point that the Senator from West Virginia makes, but I believe the more we disclose the efforts of those who would suggest that it is all right to snoop about everybody and everything that goes on in this country, the more we will expose, in my judgment, the great, great concern and anger of the American people to demand their right to privacy and demand that we not amend the 1974 Privacy Act in order to accommodate this kind of activity.

Mr. BYRD. Madam President, will the Senator yield?

Mr. DORGAN. Of course I will yield.

Mr. BYRD. I am not going to detain the Senator. My colleague here wishes to get the floor, and I am not going to detain him, but I still have to say that I am surprised at some of the things we do here.

The distinguished Senator from North Dakota is one of the brightest Senators I have ever seen over my good many years in this institution. But let's take the war, the resolution on a war with Iraq. I took the position that if we are, indeed—I was against that resolution, but I said, if, indeed, we are going to shift this kind of power to the President, a power to declare war, then

shouldn't we put a sunset provision in, shouldn't we stop that, at least give him 2 years, and then say that we have to take another look at that?

Was the Senator surprised, as I was, to see this very body—and even more surprisingly to see our own party—oppose that provision, a sunset provision, when the Constitution says Congress shall have the power to declare war, and we were shifting that power to the Chief Executive to determine how and when our military forces would be used, for how long and where? And he has that power in perpetuity. The next President after him will have that same power.

I was surprised. I am surprised to see where this Senate, which has been the great protector of the American people and the constitutional system for over 200 years, is going of late. I have been very bitterly disappointed in this Senate, of which I am a part, to see where it is going. It seems to have lost its nerve, lost its way, lost its vision, lost its understanding of its role under the Constitution.

Well, I thank the Senator and yield the floor.

Mr. DORGAN. Madam President, let me conclude by saying, I understand the angst and the concern expressed by my colleague.

After September 11, a day that this country experienced a terrible, terrible tragedy—we have come together and we have worked together to try to protect our homeland. But there have also been, in this period, instances where we have gone overboard. We should not sacrifice privacy rights in the name of homeland security. We need to find an appropriate balance between the two.

There is much we can do, and much we should do, and much we will do, in my judgment, to improve law enforcement capabilities, but we can do that without injuring the American people, without diminishing the right to privacy.

I understand the point that the Senator from West Virginia makes. But my point is, if someone is creating an office with the expectation that Congress will amend the 1974 Privacy Act so that the Federal Government can track where you shopped, where you spent money, where you traveled, what airline you ride on, how much you owe, what kinds of grades you received—if someone thinks that the Congress is going to allow that to happen, that someone is sadly mistaken.

I do not think Congress is going to allow that to happen. I am not going to allow that to happen. My colleague from Florida spoke on the floor earlier today and it prompted me to want to come to say, as one Member of the Senate, I think there will be many of us who come to the floor of the Senate and say, this isn't something that will be allowed. This is not something that Congress will entertain in any serious way. The right to privacy is critical. It is important. And we must respect it.

So I spoke about two things: One is the need for law enforcement officials around the country to access the State Department terrorist watch list. That is important, and it is necessary. I also spoke about the prospect of gathering raw data about everybody in the country, about everything they do, to identify ''suspicious'' behavior. That is dangerous, and we ought not to consider it.

Madam President, others want to speak. I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

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

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

THE CHILDREN'S HEALTH INSURANCE PROGRAM

Mr. ROCKEFELLER. Madam President, I rise today to ask unanimous consent for a bill which has been hotlined on our side and which relates to improved protection for children under the Children's Health Insurance Program. And it is not a bill which I will hand to the clerk at the time that I have completed my remarks, nor will I ask unanimous consent that it be printed in the RECORD, although it is ready and being hotlined, because we want to try to resolve a few remaining problems from several States on our side, which I do not think we are going to be able to do. We have tried in every way to do it.

Fundamentally, the Senator from West Virginia is on his feet trying to convince those States, whether they are here or not, whether their staff members perhaps are, not to try and do what has happened so often before under the Children's Health Insurance Program, and that is a State at the last moment using the leverage of the final seconds of Congress to try to leverage a better deal for itself.

The House is coming back to pass homeland security. There was one objection made on that side in the House. That person is being worked with at this time. If that objection is not raised and there is not an objection raised here, then the Children's Health Insurance Program could get funding for another 2 years. If not, funds will be returned to the Federal Government. Children will not get health insurance, and there will be a very dramatic effect which this Senator does not want to see happen.

This bill, which I will not ask unanimous consent to report, is very much bipartisan. It has been worked on for a very long period of time. It started back in 1992, something of that sort. It had a slow evolution because Senator John Chafee and myself wanted very much for the bill to be done under Medicaid. The Governors struggled strenuously to have the entire matter handled on a State-by-State basis, which was in effect a mistake because it meant some States that were very aggressive picked it up, and in others that were not so aggressive—my own being one of those—it took a number of years for the program to get going. That was lost time, lost health care for children.

It is very much a bipartisan, bicameral agreement that we believe is in the best interests of our constituents and that we can do it on the Children's Health Insurance Program this year.

The budget situation clearly is going to get a lot worse, starting in January. We need to protect the CHIPS funds before they are spent on other matters, as indeed they will be because, as I indicated, the money will be returned to the Federal Government. Don't expect that to come back into children's health insurance.

It is my understanding there are a number of Senators who have expressed concern and have stated their intention to hold up this bill in an effort to get the best possible outcome for their State. I do understand that. I have been through that a number of times even this year with individual States, now two or three States, one or two States, where they are trying to use a formula, which has been worked out, which applies to all States equally, to increase that formula to allow them to do other things which are outside of the Children's Health Insurance Program.

The Children's Health Insurance Program is obviously larger than any one State. My State does not get what it needs. There are only 20,000 children on a regular basis who are covered, although 55 have come in and out of that program, but I cannot say in all conscience that 55 are covered. The Children's Health Insurance Program is in a situation that if we do not act now, this money will be lost from the Children's Health Insurance Program for good.

It will happen. We have a new administration, new priorities, new budget, and the same OMB director who has very firm views about this.

This is not, however, a permanent solution. I am trying to stanch the drain, the bleeding for these next 2 years. I am trying my level best to do that.

This bill actually has a chance to pass in the Senate and in the House and to be taken up and passed in its entirety. I only ask with all of my heart that Senators give it a chance, that Senators not try to leverage the last possible variety or program outside of the CHIP program or extension of or some particular addition which will bring down, in fact, if an objection at this very late stage, with a day or so remaining, which will obviously work, is held. If that objection is held, then there will be no bill at all.

Earlier this year I worked in a bipartisan manner to develop a very comprehensive proposal based on a basic and fundamental philosophy that no child should go without needed health care. I was pleased at the time to be joined by my good friend Senator LINCOLN CHAFEE, Senator KENNEDY, and Senator HATCH to introduce the

Children's Health Insurance Improvement and Protection Act of 2002. Unfortunately, no action has been taken on that proposal, and I am left worrying that we will end this session in a day or two having forgotten our children.

Therefore, I am introducing a proposal that will at least protect the Children's Health Insurance Program for the next 2 years. This is not a permanent solution. This can change. But it is a solution for the next 2 years so money does not have to be returned. Children will be left behind.

The Children's Health Insurance Program, as the Presiding Officer knows very well, has been an unqualified success. It has been an amazing success. Last year 4.6 million children across America were enrolled in the Children's Health Insurance Program and the percentage of children without health insurance has declined in recent years by reason of the Children's Health Insurance Program. In my State of West Virginia, the CHIP program provides health coverage on a permanent basis to over 20,000. And, of course, it needs to do much better than that. As I indicated, we were slow in starting a number of years ago. We have picked up our pace more recently.

Health insurance coverage is key to assuring children's access to all kinds of health care. I need not go into this. Uninsured children who are injured are 30 percent less likely than insured children to receive medical treatment, 3 times more likely not to get a needed prescription. Health outcomes are affected in all respects. As children do eventually become adults, they carry with them the legacy of what they didn't get as children in the way of health insurance.

However, the continued success of the CHIP program is now, as I have indicated—I hope soberly enough—in very serious jeopardy. On September 30 of this year, $1.2 billion in unspent children's health insurance funds was sent back to the General Treasury. It is gone. In addition, some $1.5 billion of these funds are projected to revert back to the Treasury next September 30. If we do not act to protect this money for children and send money to the States that can in fact use it, we will have failed our children.

A 2-year fix is only a first step. There is much more that we need to do. The Bush administration projects that 900,000 children will lose their health insurance coverage between fiscal years 2003 and 2006 if we do not take action this year.

The bill I am discussing, that I hope will not be blocked by any individual Member, is tremendously important. It is called the CHIP Dip. Federal CHIP funding has dropped by more than $1 billion this year, and this reduction has no underlying health policy justification whatsoever. I cannot honestly imagine that with so many children at stake in so many different States, that one would look at the last moment to leverage a particular advantage.

I have been through this before even this year with a Senator from another State. And in formulas, there are various ways, technical ways, of things happening. Those can be brought up in a very careful and effective way at the last moment, and people can dig in their heels. But I beg Senators to look at the overall results for our children.

If we do not get this bill, it will affect the next 2 years. All of this, I might say, resulted in something that took place during the budget compromises that we had in 1997. These programs all have sort of obscure beginnings, but there are very large consequences.

As a result, a number of States will have insufficient Federal funding to sustain their enrollment. They just won't have that money. They will have no choice but to scale back or limit their Children's Health Insurance Programs. I cannot imagine anything worse.

We have talked about judges this afternoon while I was presiding. We talked about homeland security. I am talking about children's health insurance. I would not put that second to either of the previous two discussions. I care passionately about it. I remember precisely when the Senate got together and asked all the staff to leave, and 20 of us with very different points of view sat around a number of years ago and we worked out a children's health insurance budget, which passed very easily. Some people had never talked about health insurance at all, and we said this cannot do for children. It passed and it has been moving along ever since.

The biggest problem will result in enrollment cuts in the CHIP Program and the future health problems, as I indicated, of adults who, as children, could have received benefits under the CHIP Program but who did not because we were unable to take action, or the program was fundamentally insufficient.

We are trying to do the best we can. I am introducing this concept of the bill. It is being hotlined on our side. It has not been hotlined on the Republican side yet.

Again, it is only a first step that we need to take. We need a comprehensive and reasonable approach to shore up CHIP financing and avert a devastating enrollment. I cannot think of anything more important that we can do as a nation.

I conclude by saying we need to put more money into this program. However, this legislation—at least for the short period—will protect $1.2 billion that should be spent on children's health insurance rather than on roads or other matters, and will put money into States that can use it now to cover children. It is the least we can do.

I urge my colleagues to support this legislation, and I urge my colleagues on the other side to support it in the last days when it is hotlined on their side of the aisle. I urge my colleagues on this side of the aisle to support it for the protection of 4.6 million children across America and giving us a chance to do more.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. Madam President, I see two of my distinguished colleagues on the floor of the Senate who want to speak. At this moment, I am in no great hurry to get away. I am happy to accommodate both of them.

I ask unanimous consent that I may yield to either Senator SPECTER or Senator FRIST—Senator FRIST first. How much time would the Senator like?

Mr. FRIST. Less than 15 minutes.

Mr. SPECTER. I would like 10 minutes.

Mr. BYRD. For not to exceed 25 minutes—15 and 10—and that I then regain my right to the floor, even though I may walk away from the floor in the meantime.

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

Mr. SPECTER. I thank our distinguished President pro tempore for accommodating our schedules.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. FRIST. Madam President, I ask unanimous consent to speak in morning business, if that is necessary.

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

HOMELAND SECURITY

Mr. FRIST. Madam President, I rise to address a homeland security issue that we will be voting on tomorrow morning. Specifically, I would like to discuss the Lieberman amendment. This amendment strips out certain provisions which Senator LIEBERMAN and other proponents of the provision believe are unrelated to the underlying homeland security bill.

More specifically, I want to address the issue of vaccines. There are three claims that have been made by the proponents of the Lieberman amendment, as they relate to the vaccine provisions. For my colleagues who were not on the floor Friday, I refer them to some of my underlying comments on the policy of the homeland security bill and the vaccine provisions which I mentioned on the floor Friday.

This afternoon, what I would like to do specifically is examine these three claims. First, the proponents of the Lieberman bill say that the underlying vaccine provisions in the bill remove individual rights to sue. Their second claim is that Thimerosal, contained in vaccines, causes autism. The third claim I would like to refute is that these vaccine provisions do not belong in the homeland security bill.

Claim No. 1: The proponents of the Lieberman amendment say the vaccine provisions remove individual rights to sue. They are saying these provisions are an example of Republicans fronting for special interests; that they take away individual rights to sue and provide legal immunity from liability for vaccine makers.

My response is that these provisions do nothing more than require injuries that are related, or allegedly related, to a vaccine to first proceed through the Vaccine Injury Compensation Program (VIC program). The VIC program was very specifically established in the mid-1980s for all injuries that are allegedly related to a vaccine.

Since the mid-1980s, all such injuries alleged to be caused by a vaccine are collected and channeled quickly and appropriately first through this Vaccine Injury Compensation Program. A no-fault, efficient alternative to our tort system; very quickly.

That requirement is law today. The provisions that are in the underlying homeland security bill simply restate and clarify what that law is and what that law does. If there is an alleged vaccine-related injury, you first go to the Vaccine Injury Compensation Program. After a period of time, whether or not the program decides in your favor, whether or not there is what you regard as adequate compensation, at the end of that program, you can simply state that you still want to go to court. Whatever that program decides, you are free to go to court. You are free to sue, and there are no caps in terms of liability.

The provisions in this bill take away no one's right to sue. The provisions in the underlying homeland security bill provide no immunity from liability.

A little perspective: There are currently about 875 cases alleging injury due to the presence of a preservative called Thimerosal that is no longer used in vaccines. Right now, these 875 cases are in front of the Vaccine Injury Compensation Program, consistent with the law since the 1980s. These cases are in no way affected by the provisions in the homeland security bill. I want to repeat that. These 875 cases that are in the Vaccine Injury Compensation Program are being dealt with in an orderly process that was outlined several months ago, and they are in no way affected by the provisions in the underlying bill.

If individuals are unsatisfied with what the Vaccine Injury Compensation Program decides, at the end of it, you can say: Forget what you have concluded from me; I am going straight to court. Anyone can do that today, and one can still do that with the provisions of this bill.

The only people who are really affected by the language in this underlying homeland security bill are the trial lawyers who are trying to circumvent the very law this body passed in the mid-1980s—a law which has worked very well since that point in time. The trial lawyers basically are trying to create a loophole in the current law.

The provisions in the underlying homeland security bill state very simply that you first go to the Vaccine Injury Compensation Program, and for good reason. After which, you can still go to court and sue with no caps or no limits.

Claim No. 2—and this one probably bothers me as much as any because it is twisting medical science. I am not sure exactly what the reasons are, but this claim is Thimerosal-containing vaccines cause autism. Additionally, proponents claim that Thimerosal as an additive in a vaccine has a causal relationship to the autism, a disease with increasing incidence. The incidence of autism is increasing. We do not know why, and that is why it is important for us to conduct the appropriate research.

There has been a lot of misrepresentation about the various vaccine provisions in the bill, but this one really irks me the most. It is grandstanding which crosses the line because it is not what science says. It is not what the medical community says. It is not what medical science in the broadest sense says. In fact, it is the exact opposite of what the Institute of Medicine has said.

Last week on the floor one of my colleagues said these provisions in the underlying homeland security bill—saying why they must be stricken—said specifically:

> Liability protection for pharmaceutical companies that actually make mercury-based vaccine preservatives that actually have caused autism in children. . . .

That is scientifically wrong. Science does not validate it. Let me tell you what science says. I quote the October 2001 Institute of Medicine record. The report is called ''Thimerosal-Containing Vaccines and Neurodevelopmental Disorders.'' That report concluded:

> The hypothesis that Thimerosal exposure through the recommended childhood immunization schedule has caused neurodevelopmental disorders is not supported by clinical or experimental evidence.

The argument that is being used in support of the Lieberman amendment as the reason to support stripping these provisions is based on a false premise, a totally false premise, according to medical science today. What bothers me about it, and the reason this bothers me more than any of the other three claims, is probably because it scares parents. It says vaccines are going to hurt your children, and that demagoguery is going to mean these parents are not going to let their children get these childhood vaccines. These vaccines fight diseases that have caused pandemics and epidemics, diseases that will kill children if we do not make the vaccines available. Epidemics will occur, and death will ensue.

I challenge my colleagues to go to the American Academy of Pediatrics and to the Institute of Medicine and ask that question: Does Thimerosal, according to the scientific literature, cause autism? The answer is no.

A number of the people on the floor have also held up a New York Times magazine article quoting it as further proof that the preservative Thimerosal causes autism. I do not want to spend a lot of time on it, but I do want to read what the people who are quoted in the article are saying.

I ask unanimous consent that two letters be printed in the RECORD.

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

> INSTITUTE FOR VACCINE SAFETY,
> JOHNS HOPKINS UNIVERSITY,
> BLOOMBERG SCHOOL OF PUBLIC HEALTH,
>
> *November 11, 2002.*

Proposed title: Misleading the public about autism and vaccines.

TO THE EDITOR: The unfortunate use of a sensationalized title in the article published November 10, 2002 in the New York Times Magazine ''The not so crackpot autism theory: reports of autism seem to be on the rise. Anxious parents have targeted vaccines as the culprit. One skeptical researcher thinks it's an issue worth investigating,'' absolutely misrepresents my opinion on this issue. Also, the caption under the photograph of me ''Neal Halsey says that vaccinologists have no choice but to take the thimerosal threat seriously'' is not a statement that I ever made. There is no ''threat'' as thimerosal has been removed from vaccines used in children. The headline, the press release issued prior to publication, and the caption are inappropriate. I do not (and never did) believe that any vaccine causes autism.

I stated to the author on at least two occasions that the scientific evidence does not suggest any causal association between vaccines and autism and he reaffirmed that the article would reflect my opinion. Unfortunately, the title implies the opposite opinion. A ''fact checker'' employed by the New York Times asked me several questions and minor corrections were made, but I was never shown the text of the article and no questions were asked about the title that implies a belief that I do not hold. It was my expectation that the title would be about thimerosal and the difficult decisions that were made during the past three years that have resulted in the removal of thimerosal as a preservative from vaccines administered to infants and young children. Changes in the use of thimerosal were made by the Food and Drug Administration and the vaccine industry with urging by the American Academy of Pediatrics and the Public Health Service in a concerted effort to make vaccines as safe as possible.

The sensationalized title sets an inappropriate context for everything in the article. Readers are led to incorrectly believe that statement in the article refer to autism. I have expressed concern about subtle learning disabilities from exposure to mercury from environmental sources and possibly from thimerosal when it was used in multiple vaccines. However, this should not have been interpreted as a support for theories that vaccines cause autism, a far more severe and complex disorder. The studies of children exposed to methylmercury from maternal fish and whale consumption and the preliminary studies of children exposed to different amounts of thimerosal have not revealed any increased risk of autism.

Inappropriated reporting has contributed to public misunderstanding of vaccines and other health care issues. The use of deceptive title is one of the primary means that newspapers have misled the public. The New York Times and other newspapers need to conduct self-examinations into this role in misleading the public and modify procedures accordingly to help prevent future major misrepresentations of scientific data and opinions. Another disserve to the public comes

when scientists become reluctant to talk with the media for fear of being misquoted or misrepresented. I have already spent a great deal of time correcting the misinformation in the Sunday's NYT Magazine article. Naturally, the next reporter from the NYT who contacts me will be met with skepticism and reluctance unless changes are made to prevent recurrences of this debacles.

Apparently, editors, not authors, write most titles. To avoid misinterpretations authors should propose titles and assume responsibility for making certain that titles do not misrepresent the opinions of individuals or information presented in the article. Proposed titles and subtitles should be included in the review by ''fact checkers''' when interviewing people whose opinions are included in the title. The best way to avoid these problems would be to permit individuals referred to in articles an opportunity to read a draft of the text before it is to late to correct mistakes or misunderstandings.

The New York Times and other newspapers and magazines should have policies requiring authors, editors and fact checkers to disclose personal associations with issues covered in articles they are involved in preparing and they should be relieved from their responsibility for articles where they have personal issues or conflicts of interest.

The general public and parents of children with autism have been misled by the title of this article and the news release. This is a disservice to the public and the value of my opinion has been diminished in the eyes of physicians, scientists, and informed members of the public. I encourage interested readers to review my scientific publications and to read objective reviews of this and under other vaccine safety issues conducted by the Institute of Medicine (www.iom. edu).

NEAL HALSEY, M.D.,
Director.

DEPARTMENT OF PEDIATRICS, DUKE UNIVERSITY SCHOOL OF MEDICINE,
Durham, NC.

Subject: Thimerosal issue.

TO THE EDITOR: As one of the two authors of the July 7, joint PHS/AAP 1999 statement that you cite in your article on ''The Not-So-Crackpot Autism Theory'' it is appropriate that several misconceptions in your article be rectified. The EPA guidelines on mercury levels related to methyl mercury, a very different compound from ethyl mercury which is the metabolite of thimerosal. Three other guidelines issued by federal and World Health Organization agencies were not exceeded by the vaccine levels.

Nevertheless we chose to recommend the removal of thimerosal, not because there was any evidence of its toxicity to vaccine recipients, but to enhance public confidence in vaccines. To the credit of the pharmaceutical industry, within 1 year all vaccines for children were free of thimerosal.

The only possible exception is influenza virus vaccine which is not recommended for children less than 6 months of age and for which a newly licensed product is now available free of thimerosal. Despite the absence of thimerosal from these products over the past two years, there has been no decrease, in fact an alleged increase, in the incidence of autism among our childhood population—strongly suggesting other factors involved in its etiology. Regrettably this exemplifies another issue where the best-intentioned actions have served to benefit no one other than the liability lawyers who feed on events of this sort as sharks in bloodied waters.

Yours sincerely,

SAMUEL L. KATZ, MD,
Wilburt C. Davison Professor and Chairman Emeritus.

Mr. FRIST. Madam President, I will quote a couple paragraphs from each.

The first is from Dr. Neal Halsey, who is profiled in the article in the New York Times and who is characterized as being concerned about the Thimerosal threat. Dr. Halsey heads up the Johns Hopkins University Institute for Vaccine Safety, and he wrote saying that this story

absolutely misrepresents my opinion on this issue. . . .There is no ''threat'' as thimerosal has been removed from vaccines used in children. The headline, the press release issued prior to publication, and the caption are inappropriate. I do not (and never did) believe that any vaccine causes autism.

He continues:

I stated to the author on at least two occasions that the scientific evidence does not suggest—

Does not suggest—

any causal association between vaccines and autism and he reaffirmed that the article would reflect my opinion. Unfortunately, the title implies the opposite opinion.

He concludes:

The general public and parents of children with autism have been misled by the title of this article and the news release. . . .I encourage interested readers to review my scientific publications and to read objective reviews of this and other vaccine safety issues conducted by the Institute of Medicine.

The second letter is from Dr. Samuel Katz, Professor and Chairman Emeritus at the Department of Pediatrics at the Duke University School of Medicine. Dr. Katz writes:

As one of the two authors of the July 7 joint PHS/AAP 1999 statement that you cite in your article . . . it is appropriate that several misconceptions in your article be rectified. . . .we chose to recommend the removal of Thimerosal, not because there was any evidence of its toxicity to vaccine recipients, but to enhance public confidence in vaccines. To the credit of the pharmaceutical industry, within 1 year all vaccines for children were free of Thimerosal.

Dr. Katz concludes:

Despite the absence of Thimerosal from these products over the past two years, there has been no decrease, in fact an alleged increase, in the incidence of autism among our childhood population—strongly suggesting other factors involved in its ideology. Regrettably, this exemplifies another issue where the best-intentioned actions have served to benefit no one other than the liability lawyers who feed on events of this sort as sharks in bloodied waters.

The final statement is from Every Child by Two, the Rosalynn Carter-Betty Bumpers Campaign for Early Childhood Immunizations in a statement released today:

Most importantly, we are concerned that the Senate may be inadvertently fueling fears that vaccines cause autism. In fact, well-respected studies concluded that the evidence is inadequate. Much research is available to support these conclusions.

Madam President, the third claim—and I will be brief on the third claim—we have heard on the floor from the advocates of the Lieberman amendment, which I encourage my colleagues to oppose, is that the vaccine provisions do not belong in the homeland security bill. I would argue just to the contrary. If we do not have a stable manufacturing base for vaccines, there is absolutely no way we can prepare our communities and our Nation in the event there is a biological warfare attack on our soil.

We talk a lot about smallpox, and we all know today we are inadequately protected because today we are inadequately vaccinated against smallpox. We cannot destroy the manufacturing base for our vaccines today. We started with 12 vaccine companies in this country, companies that made vaccines. In large part because of the liability issue, the number of companies making vaccines has decreased to four vaccine manufacturers in the world. Only two vaccine manufacturers are in this country, and at the same time, the National Institutes of Health is embarking upon a new initiatives to develop a vaccine for botulinum toxin, a major initiative on their part. If we vote to strike these provisions, we are putting at risk our manufacturing base which we absolutely must have to be a prepared Nation. Vaccine development cannot be ramped up quickly because manufacturing is a highly complex process. These important provisions further stabilize the vaccine supply system, and thus, are key to our ability to establish appropriate homeland security.

Those are the three claims we have heard over the last 2 to 3 days. I encourage my colleagues to look at earlier statements on what the vaccine provisions are specifically.

I urge my colleagues to vote against the Lieberman amendment tomorrow and to move forward on this important homeland security bill.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. How much time remains of the 25 minutes identified by the Senator from West Virginia?

The PRESIDING OFFICER. The Senator from West Virginia has 10 minutes.

Mr. SPECTER. I thank the Chair.

NOMINATION OF DENNIS SHEDD

Madam President, I will briefly comment on two matters: First on the confirmation of Judge Shedd, and second on the pending Lieberman amendment to the homeland security bill.

I support confirmation of Judge Shedd for a number of reasons. First, he has been found well qualified by the American Bar Association, the highest rating which can be given. I knew Judge Shedd when he served as chief counsel, chief of staff, to the Judiciary Committee from 1981, when I came to the Senate and started to serve on the Judiciary Committee, until 1988. I believe he is a fair, equitable, and competent jurist. I know Judge Shedd's record on the U.S. district court where he has served since 1991. I asked Judge Shedd some questions, and he responded in some detail.

I ask unanimous consent that Judge Shedd's written response be included at the conclusion of my comments.

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

(See exhibit 1.)

Mr. SPECTER. In those written comments he pointed out that in civil demonstration cases he has been fair and equitable: One bench trial verdict of over $2 million and another over $1 million; he has employed both female and African-American law clerks; and, in general, set forth the specifics to show that he has not been discriminatory in his judicial practices. These comments have been checked out by staff and found to be accurate.

Judge Shedd has been criticized for circumventing the authority of Congress under the commerce clause in a very celebrated case, United States v. Brown, involving the Gun-free School Zones Act. Judge Shedd found that it was constitutional and was later reversed by the Supreme Court of the United States under United States v. Lopez. In brief, it is a complicated subject, but Lopez, the Supreme Court decision of 1995, curtailed the authority of Congress under the commerce clause.

Judge Shedd has been said to have limited what Congress can do on States' rights. Here is a case where he found congressional authority. It was a close case. He was reversed—or later the Supreme Court decided he was in error. But I think it illustrates the point that Judge Shedd did give latitude for congressional enactments.

It is my hope that Judge Shedd will not be part of the so-called payback theory. I did not like what happened to President Clinton's nominations when Republicans controlled the Senate. As the RECORD will show, I supported Judge Roger Gregory for the Fourth Circuit. We have had some of the payback consideration on the Fifth Circuit I think fairly stated with Judge Pickering, and I hope that will not occur with Judge Shedd. It is my hope we will soon have a protocol which will take politicization out of judicial selections when there is a Democratic President, such as President Clinton, with a Republican Senate. Now the shoe is on the other foot, and we have a Republican President, President Bush, and a Senate controlled by the Democrats. We ought to move away from that.

As the RECORD will show, I have supported qualified nominees submitted by President Clinton and was pleased to note that there was reciprocity. All 11 of Pennsylvania's district court judges have been confirmed, as has Judge Brooks Smith, the one contested circuit judge.

EXHIBIT 1

RESPONSE OF JUDGE DENNIS SHEDD TO SENATOR SPECTER'S QUESTION

During my June 27, 2002, hearing before the Senate Judiciary Committee, Senator Specter asked me if I believed that the NAACP's opposition to my nomination was fair. I responded that I do not think it is fair. Senator Specter then asked me to provide a written answer explaining my position. I trust that this will be responsive to the Senator's request.

In lodging its opposition to me, as I understand it, the NAACP has focused on a relatively small number of cases—primarily employment discrimination cases—in which the plaintiffs did not prevail. Relying on these cases, and ignoring my complete record, the NAACP has attempted to create the impression that I do not treat civil rights plaintiffs fairly. However, this is a complete mischaracterization of my record as a district judge, and it is based on a very limited—and misleadingly selective—sampling of my casework. My complete record as a district judge demonstrates that the charge is not accurate.

I do not wish to belabor this response with a case-buy-case rebuttal of the employment cases for which, to my knowledge, I have been criticized. Of course, people are entitled to disagree bout the outcome of a particular case depending on their viewpoint. However, as an initial matter, I would note that I have not been made aware of any criticism which suggests that my decisions in these cases are legally incorrect or improper. I do not claim to have been correct on every issue that has come before me, but I can tell you that I have conscientiously endeavored to be correct.

Moreover, contrary to the misimpression that the NAACP has attempted to create, I have on many occasions denied defendants' motions for summary judgment (or to dismiss) in employment cases. I have done so when a magistrate judge has recommended that I grant the motion, and I have done so over the defendant's vigorous objection. Typically, once a plaintiff defeats a summary judgment motion in this type of case, the case settles, and that has happened often in my cases. However, I have also had employment cases, in which I denied the defendant's motion, thereafter process to verdict. Further, sitting by designation with the Fourth Circuit, I joined with Judge Sam Ervin in reversing a summary judgment and remanding a case in order to allow the employment discrimination plaintiffs to proceed to trial. I believe these examples alone refute the NAACP's criticism of me.

As I am sure you are aware, an individual's civil rights may be implicated in federal litigation in many contexts outside the realm of employment discrimination. I have been presented with countless cases of various types in which an individual's civil rights were implicated, including (but not limited to) criminal cases, voting rights cases, habeas corpus cases, and cases involving allegations of governmental misconduct of some type. My complete record in these types of cases further reflects the fact that I do not have any type of anti-civil rights bias.

For example, I have presided over trials in which civil rights plaintiffs have won jury verdicts or gained a settlement at trial. I have granted relief in at least five habeas corpus cases. I ruled in favor of the plaintiff and upheld the one-person/one-vote principle in a case in which the plaintiff challenged the method of electing members to a local school board, and I have handled a number of Voting Rights Act cases in which (to my recollection) the plaintiffs in each case succeeded on their claim of a violation.

I have always endeavored to be vigilant in ensuring the protection of civil rights in criminal cases as well. I have, for example, granted judgment of acquittal on numerous occasions to defendants where I believed, as a matter of law, that the government failed to meet its burden of proof. I have also disallowed the government from using evidence at trial when I thought that its use would improperly disadvantage the defendant. It is also my practice during trial to ensure very specifically that defendants are aware of their constitutional right to testify or not to testify. Similarly, it is my practice to ensure that witnesses who I believe may incriminate themselves by their testimony are aware of their rights, and I have appointed counsel in some instances to advise these witnesses before they testify.

I would also note that my overall record in civil cases demonstrates that I do not have any bias against plaintiffs. I have, for example, awarded a bench trial verdict of over $2,000,000 in one case, and over $1,000,000 in another case. In addition, I have presided over jury trials which led to substantial verdicts in a plaintiff's favor, and I have on at least one occasion directed a verdict of liability in a plaintiff's favor. I have also raised, sua sponte, the propriety of the removal of cases from state court, thereby setting in motion the procedure by which the plaintiffs could return to their chosen forum (i.e., state court). I have also assisted parties in civil cases in reaching a settlement, and often this has occurred where it appeared as though the plaintiff would otherwise gain no recovery.

Apart from my case record, I believe that my commitment to ensuring fairness for all persons is exhibited by my conduct in other matters. For example, I have employed female and African-American law clerks. I have also actively recruited and support minority and female candidates for magistrate judgeships.

Now in my twelfth year on the district court. I have handled thousands of civil and criminal cases in which I have issued countless rulings, all of which are public record. During this time, my concerted effort has been to ensure that all litigants are treated fairly according to the law. I do not approach any case, or any litigant, with any type of bias, and I do not decide issues before me on anything other than the pertinent law. I am gratified that I have earned a reputation among lawyers in this district (as reported in the Almanac of the Federal Judiciary) for being fair and impartial. I believe my impartiality is reflected by the low number of cases in which I have been reversed, as one could reasonably expect that any type of bias on the part of a district judge would manifest itself over time in appellate response to judge's work.

I would like to point out an incident that occurred earlier this year, as I believe it is akin to the current accusations against me. On May 3, an article appeared in the Washington Post stating, in essence, that I was insensitive to disabled persons because I would not allow a blind woman to be present in the courtroom during a trial over which I presided. That article was printed without anyone from the newspaper contacting me to verify the allegation, which I readily could have refuted. However, after the article ran, I was able to obtain a transcript of the trail in question, and it very clearly confirmed what I already knew; I had made special efforts to accommodate the woman in question, and I only ordered her to leave the courtroom (as I was required to do by the Federal Rules of Evidence) after the parties identified her as a potential witness and requested that all trial witnesses be sequestered. In other words, the woman was required to leave the courtroom because she was a potential witness, not because she was blind. Fortunately, when the actual facts came to light, the newspaper ran another story setting the record straight.

I mention this story not as a complaint, but as an example of how a perfectly legitimate set of facts can easily be misused to

portray a false impression. I believer that this has occurred in this instance, and I am very appreciative to the Committee for providing me the opportunity to set the record straight about my judicial career.

In closing, I would add a personal comment. In my life, I have seen first hand the unfair and unequal treatment of disadvantaged people in society. That is one reason I have always cared so deeply for doing my best to treat all people fairly and with respect. Those who know me would emphatically agree that I have an abiding concern for fairness. I believe my record as a judge underscores my dedication to his principle and I will continue to show fairness and respect to all in my judicial actions, as well as in my public and private life.

Mr. SPECTER. How much time remains, Madam President, of the 10 minutes?

The PRESIDING OFFICER. The Senator has 5 minutes 50 seconds.

HOMELAND SECURITY

Mr. SPECTER. Madam President, we face a very difficult situation on homeland security in a number of respects. I spoke last week about my concern that there was not sufficient authority in the Secretary to direct the intelligence agencies and my concern about the labor-management provisions. I did not offer amendments because when the House of Representatives has, in effect, gone home, if we pass amendments, there will have to be a conference and the bill will be brought down.

I believe it is vitally important that homeland security be passed, that we move ahead to put all the so-called dots on the screen, as I spoke at length on last week. Had all the dots been on the screen, I think 9/11 might well have been prevented. I do not accept the assertion of CIA Director George Tenet that another 9/11 is inevitable.

The House-passed bill from last Wednesday, which has come over, is a voluminous bill, hundreds of pages long. As we start to consider it, there are seven provisions now which Senator LIEBERMAN has sought to strike: Provisions on childhood vaccines; protections for qualified antiterrorism technologies; the university of homeland security advancement, which seems to pinpoint Texas A&M; the extended duration of the advisory committee; the exemption for FACA; the airport security liability protections; the provision on contracting with offshore entities, which Senator Wellstone had added, to prohibit the Secretary from contracting with inverted domestic corporations.

All of these provisions, I think, require very extensive consideration and analysis. I am very distressed to see them added on the bill, with no hearings and no chance for consideration. Now we are faced with a homeland security bill which is very heavily weighted with provisions which are undesirable. It makes it difficult.

Candidly, I am not sure how I would vote on all of these provisions if they were presented individually. I do think that on a matter of this importance, it would have been orderly procedure to have these provisions submitted for hearings and consideration. It may well be that by the time we add up all of the provisions, the disadvantages may well outweigh the advantages of this bill on homeland security.

Ultimately, the need to have homeland security, to have a Secretary who will be able to put all of the investigative agencies under one umbrella, is so important that we will have to swallow hard. This is really a case where it is a matter of take it or leave it on a bill which is undesirable in many aspects, but the importance of protecting America from terrorist attacks outweighs so many of these provisions which are highly undesirable.

There is an old expression about not wanting to see either legislation or sausage made. This homeland security bill is problemsome in so many respects that it is giving sausage a bad name. It goes very far. However, it is so important to have a Secretary with authority on homeland security to act to protect against terrorism. This bill is very weighty and has undesirable aspects, and there are amendments which would have improved the bill tremendously.

I lodge these objections that the procedural posture really of legislative blackmail, with the House having gone home, a take-it-or-leave-it proposition, puts this Senator in a very difficult position. Ultimately, I think the necessity for homeland security outweighs these disadvantages, but barely.

I again thank my colleague from West Virginia for arranging this sequence, and I yield the floor.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. BYRD. I yield whatever time he may wish to consume to the distinguished Senator from Vermont, Mr. LEAHY, with my retaining the floor.

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

The Senator from Vermont.

Mr. LEAHY. Madam President, I thank the distinguished senior Senator from West Virginia. He has been my friend for nearly 30 years, and his constant courtesy is one of the reasons for it.

Mr. BYRD. And will be for the next 30.

Mr. LEAHY. I thank the Senator.

TRIBUTE TO EMMYLOU HARRIS

Madam President, last week, at the Birchmere Music Hall in Alexandria, VA, there was a concert that honored one of the most distinguished songwriters and singers I know, Emmylou Harris. Emmylou Harris was honored because of the work she has done to aid victims of landmines and to help stop the scourge of landmines throughout the world. In honoring her, some of the best artists of this country came and sang for her. They honored both her work and, of course, they honored her amazing talent.

My wife Marcelle and I, and our daughter Alicia, and Emmylou's daughter, mother, and friends were there to hear this. She received the award from the Vietnam Veterans of America Foundation, the Patrick Leahy Humanitarian Award. I can't think of anything that gave me more pleasure than to give it to her.

I ask unanimous consent that an article from Rolling Stone magazine of November 13, 2002, speaking of Emmylou being honored in Washington, DC, be printed in the RECORD.

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

[Rolling Stone, Nov. 13, 2002]

EMMYLOU HONORED IN D.C.

(By Lynne Margolis)

MUSICIANS, POLITICIANS PRAISE HARRIS FOR LANDMINE CHARITY WORK

When Senator PATRICK J. LEAHY presented singer-songwriter Emmylou Harris with his namesake humanitarian award Tuesday night at the Birchmere Music Hall in Alexandria, Virginia, he said her work on behalf of landmine victims might have touched more lives—in more important ways—than her vast body of beloved music.

Harris, who received the award from the Vietnam Veterans of America Foundation for her creation and continued support of the Concerts for a Landmine Free World benefits, said it merely represented how blessed she is to be able ''to give something back'' in exchange for a career that brings her so much joy that ''you really can't call it work.''

Harris seemed even more humbled than usual by the shower of accolades from LEAHY, VVAF president Bobby Muller and some of her closest musical friends including Steve Earle, Buddy and Julie Miller, Patty Griffin, Nanci Griffith, Guy Clark, Rodney Crowell, John Prine and Jamie O'Hara, all of whom performed at the benefit concert. Pal Mary Chapin Carpenter was unable to attend because of back problems, but sent flowers that adorned the stage of the intimate, 500-seat venue. Most of the artists had participated in earlier Landmine Free World concert tours and, like Harris, have visited countries devastated by landmines that still remain years after military conflicts have ended. LEAHY has spearheaded efforts for a global landmine ban; VVAF aids civilian victims of those conflicts.

During a night that focused on the purest of musical elements—lyrics, wooden guitars, and frequently, Harris' angelic soprano soaring in harmony with her equally talented friends—she gave as much praise to her fellow activists and performers as they did to her.

''Really what I have done has been given the opportunity to reflect, or deflect, some of the light that shines on me because of the nature of my work, and shine it on these people, these causes, these situations,'' she said backstage.

''I'm so, so grateful for the opportunity to be able to do that. Because that's the only way I know to be really thankful for my blessings. This is a really wonderful moment for me. And I'm so grateful to all my fantastic friends who made it possible.''

The night contained a few overtly political references or anti-war proselytizing, though Prine performed ''Your Flag Decal Won't Get You Into Heaven'' and his 1970 tearjerker gem, ''Hello in There,'' with its reference to parents who lost a son in Korea. Harris noted that her father was a World War II veteran and Korean War POW, and that the show was occurring one day after Veterans Day as well as the twentieth anniversary of the Vietnam Veterans Memorial dedication. She talked about playing at the memorial's fifteenth

anniversary five years ago and how listening to O'Hara sing his ''50,000 Names'' was ''the most cathartic experience I've ever had in my career.'' As he performed the tune again, sniffles could be heard in the audience. Later, at Harris' request, Earle did ''a song about faith,'' the title track from his new album, Jerusalem.

Earlier, LEAHY cracked that everybody in Washington was in the room except U.S. Attorney General John Ashcroft, who ''listens to Steve Earle all the time.'' The outspoken Earle has made his anti-war and anti-death penalty views well known in Washington.

Harris noted that ''Jerusalem'' provided a necessary note of hope, adding ''we're in a very difficult time right now.'' Backstage she said, ''I don't know whether [war is] inevitable or not. Certainly, the world is gonna change in some way pretty soon. I can't see the status quo staying the same.''

But this was a night for positivity and humor, despite the profusion of sad love songs and achingly beautiful hormonies delivered on tunes such as Harris' ''Prayer in Open D'' (performed by the Millers as ''Prayer in D'' because, Buddy explained, ''I can't play an open D'').

For the encore, Harris brought out John Starling and Mike Auldrige, original members of the D.C.-area bluegrass band the Seldom Scene, for the Louvin Brothers' classic ''Satan's Jeweled Crown,'' which she recorded on Elite Hotel.

The evening was probably best represented by comments delivered by LEAHY. ''There are people in Southeast Asia, in Africa, in Central America, around the world, who are going to be helped by what you have done,'' he said. ''They will never know you, they'll never hear your songs, they'll never know your fame. They'll never be able to do anything to help you, but because you've helped them, their lives are immeasurably better. And how many people in life can say that?''

Mr. LEAHY. I yield the floor, and I thank the Senator from West Virginia.

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

Mr. BYRD. The distinguished Senator from Vermont is welcome, and I congratulate him.

FAREWELL TO SENATOR ROBERT SMITH

Mr. BYRD. Madam President, last year when my beloved little dog Billy passed away, many people came to me to express their condolences. It was like losing one of the family. My wife and I have shed many tears over little Billy. There is never a day that I don't pass his little box of ashes that is sitting up in my bedroom, never a day that I don't touch that little box and think of little Billy. He has been with us 15 years.

We have a new dog now, one which is a very sweet little female dog. She is a lap dog. She is a Shi Tzu, a dog that came out of Tibet. It was bred to be a lap dog in the palace, extremely friendly, knows no person is not a friend. She just smothers my wife's face with kisses—and mine, too. So we love her.

But I said to Erma the other night: Erma, if Billy could come back tomorrow, would he still be No. 1? And both she and I said yes; even though we love this little dog, the little dog we have now, the female—she is called Trouble; I think my wife saw me coming when she named the little dog Trouble. I said to Erma, if Billy came back tonight, would he still be No. 1, and she said yes. And we both agreed that Billy would still be No. 1.

Last year, when our beloved dog Billy Byrd passed away, many people came to me to express their condolences. But one who really, really touched me was a big, hulking Navy combat veteran who came to my office and showed a personal compassion in that moment of sorrow. That person came to talk about the little dog that I had lost. He had read about the passing of our little dog Billy. He read the story in the newspaper, and he came to my office to express his sorrow.

Who was he? That person was the senior Senator from New Hampshire, Mr. ROBERT SMITH. He would make about two of me, ROBERT BYRD. Here he came to my office, took his own busy time to come to my office. This was back in April of this year. He came to my office, paid a special visit to my office to tell me how sorry he was to hear about my little dog Billy.

So once again, as I have many times in my long years with which God has blessed me, I came to realize that the people with whom we work here in the Senate often have a personal side that we do not get to know or understand in our working relationships on the Senate floor. Our colleagues are usually much more complex than their public persona would lead one to believe and have facets to their characters that are not often seen in their daily official activities.

But Senator ROBERT SMITH'S thoughtful expression of sympathy gave me a better understanding and appreciation for this man who for several years now has proudly represented his State in the Senate. He is on the Armed Services Committee with me. I have served on that committee now with him these many years. Senator SMITH possesses an admirable quality of perseverance. As a young man, he had to work his way through college. Although he was the son of a naval aviator who was killed in combat during World War II, when ROBERT SMITH was old enough, he enlisted in the Navy and he proudly served our country in combat in Vietnam. He is a person who had to run for Congress three times before being elected. As a Senator, his tenacious adherence to his independent ways eventually cost him his Senate seat.

He has often been portrayed as a fierce conservative, but I came to perceive him as the ''citizen legislator'' that he promised to be when he was first elected to Congress in 1984. In his twelve years in the Senate, he has been a forceful advocate of the many and various causes in which he believes, and he has never been deterred by the labels others may place on those views.

BOB SMITH'S politics is not easy to characterize, from his support for a constitutional amendment to balance the budget to helping to preserve and protect our environment, he has defied easy labels. Senator SMITH has also been a strong advocate for modernizing his state's and the nation's infrastructure, and for that I sincerely applaud him. He has also tenaciously fought to gain a thorough accounting of American MIAs and POWs.

I have probably opposed Senator SMITH more than I have agreed with him, but I have consistently been impressed with his independence of spirit and thought, and his dedication to the causes in which he believes. I am confident that in his future efforts he will continue to demonstrate the steadfastness, courage, and integrity that he has exemplified during his twelve years in this chamber. I wish him well in his future endeavors.

I hope he will, indeed, come back and visit those who are his colleagues of this date.

RECONSTRUCTION OF AFGHANISTAN

Mr. BYRD. Mr. President, on another matter, it was just over one year ago, on November 12, 2001, that Afghanistan's government of religious extremists fled Kabul. The rule of the Taliban soon collapsed in the rest of the country, and a new government, endorsed by the United Nations, took shape. Despite this new government, the United States still has more than 8,000 troops in Afghanistan performing a number of important missions, from tracking down al-Qaida terrorists who have taken to the hills to providing security to the new Afghan President. In other words, from tracking down al-Qaida terrorists, who have taken to the hills on the one hand, to providing security to the new Afghan President on the other hand.

But the situation in Afghanistan is anything but stable. Our troops still face hit-and-run attacks from al-Qaida and Taliban fighters. The leadership of the new Afghan government has been targeted for assassination. Warlords that control portions of Afghanistan's countryside have questionable allegiance to the central government. Two million Afghan refugees have returned to their homes in the past year, many finding that their homes had been destroyed by war and their fields ravaged by drought.

But with the Administration gearing up for a new war in Iraq, important questions must be asked. What is our plan for Afghanistan? How great is the risk that we will lose the peace after winning a war in a poor, landlocked Central Asian country? Is the potential for war with Iraq shifting our attention from unfinished business in Afghanistan?

Recent press reports on the situation in Afghanistan are not encouraging. On November 8, the Washington Post carried an article which quotes the Chairman of the Joint Chiefs of Staff, General Richard Myers, as saying that we have ''lost a little momentum'' in tracking down terrorists in Afghanistan. With al Qaeda adapting to our

military tactics, the report continues, the Pentagon is now debating whether to emphasize reconstruction efforts at the expense of military operations.

Such a shift in mission should not be taken lightly. Unless clear goals are laid out for the rehabilitation of Afghanistan and a sensible strategy is enunciated to achieve those ends, our nation could find its feet sinking into the quicksand that is Afghanistan.

I was in Afghanistan 47 years ago. I went to Afghanistan as a member of the subcommittee of the House Foreign Affairs Committee. I saw enough of Afghanistan to convince me at that time that it was very difficult to subjugate that country. Since then, the Soviets tried and failed. Before then, the British tried and they failed. We have already spent over $20 billion in Afghanistan, and we still don't have Osama bin Laden. We are a long way from winning that war, if that is what we are trying to do.

Let us not forget our recent, tragic history with nation building, such as our attempts to pacify the chaos of Somalia in the early 1990s. We should also not forget that in 1979, the Soviet Union grabbed control of Kabul in little more than a day, but spent the next nine years trying to extend its control to the rest of the country. Those people are not easy to handle.

Today, the United States has no clear goals or sensible strategy for how to work with our allies to rebuild Afghanistan. Instead of a clear plan of action, we hear lip service about a Marshall Plan for Afghanistan. Start sinking money into that bottomless pit. Such grand promises, if left unfulfilled, would send the wrong message to our allies and the Afghan people about our commitment to seeing that that country does not again become a haven for terrorists.

The Administration has already sent confusing messages to Congress about its commitment to rebuilding Afghanistan. On August 13, 2002, the President refused to designate as emergency spending $174 million in humanitarian aid for Afghanistan, which was contained in the Fiscal Year 2002 Supplemental Appropriations Act. By refusing to designate those funds as an emergency, the President did not allow the funds to be spent as Congress intended.

While the President refused to spend that money, he has publicly promised $300 million in foreign aid to Afghanistan for fiscal year 2003. However, Congress has not received any such request. As the committee report for the Fiscal Year 2003 Foreign Operations Appropriations bill, as reported unanimously from the Senate Appropriations Committee on July 18, states:

> The Committee is, therefore, perplexed that, despite calls for a Marshall Plan for Afghanistan and the critical importance to U.S. national security, the administration did not submit a formal fiscal year 2003 budget request for Afghanistan. The Committee has been informally advised that the administration plans to spend approximately $98,000,000 for Afghanistan in funds from the Foreign Operations, Export Financing, and Related Programs Appropriations Act.

If the administration fails to back up its promises of aid with actual dollars, how are we ever going to complete our mission in Afghanistan? We ought to be reasonable with our promises, but once we make a commitment, this nation should put our money where our mouth is.

It is clear that the United States must do more to focus the international community on creating a concrete plan of action for rebuilding Afghanistan. But the first step in creating this plan is to get the administration's attention off of Iraq just long enough to give serious consideration to the problems in Afghanistan. To that end, the Senate Foreign Relations Committee has reported a bill to authorize $3.3 billion in aid for Afghanistan. This bill was passed by the Senate last week.

While I share with the authors of the bill the great concern about the potential for Afghanistan to slide back into chaos and disorder, I have serious reservations about several provisions of this bill.

First, the bill authorizes $3.3 billion in foreign aid for Afghanistan with no indication of why this figure was proposed. It is important to understand that the authorization of those funds does not actually allow the U.S. Government to spend a single dime for Afghanistan. It takes an appropriations bill to spend that money. As Chairman of the Appropriations Committee, the committee that is expected to come up with the cash to fund such an authorization, I do not understand how this figure of $3.3 billion was reached. I am left with the impression that the bill in question authorizes these billions of dollars simply to send a message that rebuilding Afghanistan is an important task.

Second, as Chairman of the Appropriations Committee, I am not sure where Congress would find the funds to fulfill the $3.3 billion commitment to Afghanistan. Will the administration support cutting back on some of our foreign aid programs in order to send money to Afghanistan? Or will the administration propose to increase our foreign aid spending in order to fund this new aid package? Without the cooperation of the administration, it would be difficult to appropriate the full amount of the funds that are authorized by this bill. As I am sure the sponsors of the bill would agree, the last thing we need are more empty promises to help the people of Afghanistan.

Third, the Afghanistan aid bill contains a sense of the Congress provision that encourages the President to work to expand the U.N. peacekeeping mission now underway in Kabul to include the whole of Afghanistan. Right now, the United States is not a participant in that peacekeeping mission. It is not clear what role our troops would have in such an expanded peacekeeping mission, but Congress should be careful not to endorse the commitment of our soldiers to such a mission before we have an understanding of what that commitment might entail, such as how many troops might be involved, how long they might be there, and what goals must be achieved before withdrawal.

Finally, while this bill pushes for more aid and more peacekeepers for Afghanistan, we are still without a plan or strategy for our involvement in that country. The administration needs to work with our allies and the United Nations to produce an understandable strategy that will address the reconstruction needs of Afghanistan, while sharing the costs among all countries that have an interest in the peace and security of that nation.

The future of Afghanistan is an important national security issue for the United States. Discontent is being sown in Afghanistan by al-Qaida agents, and if order again breaks down in Afghanistan, we can bet that terrorists and extremists will try to take advantage of the situation. If Osama bin Laden is still alive, which recent reports seem to indicate, I am sure that he is looking forward to the failure of U.S. and allied efforts to bring security and stability to Afghanistan. If we are to head him off at the pass, the first thing we need to do is have a clear plan of action.

While the President seems eager to use military force against Saddam Hussein, I urge him first to take care of the unfinished business in Afghanistan. The situation is crying for his attention. The Senate has passed a bill to authorize funds to address the problems in Afghanistan, but it is up to the President to show the leadership that is needed to prevent the situation in that country from further deterioration.

Mr. REID. Mr. President, will the Senator from West Virginia yield for a question?

Mr. BYRD. Yes, I will.

Mr. REID. I apologize for interrupting, but I wanted to engage the Senator for a brief minute on homeland security.

Mr. BYRD. Yes.

Mr. REID. Let me tell you what I wanted to ask the Senator. I heard the very fine statement of the senior Senator from Pennsylvania, talking about all the bad things that are encompassed in the Daschle amendment. But he finished his statement by saying: Well, but there is nothing else we can do. I am going to have to vote for the bill.

The Senator from West Virginia has served in the House of Representatives, is that not true?

Mr. BYRD. Yes.

Mr. REID. I have, also. Now, the Senator is aware that the House of Representatives has not yet completed its business. They have sent everybody home, but the leadership is still in

place. Does the Senator understand that?

Mr. BYRD. Yes.

Mr. REID. And they, the leadership, have the authority to pass, as we do here, legislation by unanimous consent. Does the Senator understand that?

Mr. BYRD. Yes.

Mr. REID. My concern here is that Members of the House of Representatives, including DAN BURTON, one of the leading long-term House Members and a very conservative man from Indiana—I served with him when I was there—he said, talking about the things that are in the Daschle amendment, of which the Senator from West Virginia is a cosponsor——

Mr. BYRD. By unanimous consent, I had asked to cosponsor the amendment, yes.

Mr. REID. Chairman Burton said:

> These provisions don't belong in the bill. This is not a homeland security issue. This is a fairness issue.

And he goes on to say, talking about one provision; that is, the vaccine:

> Fifteen years ago, one in every 10,000 children were autistic. Today, one in every 250 children is autistic. We have an epidemic on our hands. More and more parents believe the autism affecting their children is relating to a vaccine or a mercury preservative.

And he goes on. I say to the distinguished Senator from West Virginia, as to people talking about endangering the homeland security bill by voting for this amendment, does the Senator agree with me this is senseless? That if this amendment is as bad as Chairman BURTON and the Senator from Pennsylvania said, shouldn't we vote on the merits of that and just have the House accept our changes? We wouldn't have to go to conference. Does the Senator understand that?

Mr. BYRD. Yes, the House could accept the amendment. If the Senate adopts the amendment, the House could accept it and there would be no conference.

Mr. REID. Wouldn't that be the best? Let's say this amendment has the merits, as indicated in the statement of Congressman BURTON. We have heard statements here on the floor for several days now about all the very bad things in this homeland security amendment.

This is my question to the Senator from West Virginia, who has studied this legislation more than anyone else: Wouldn't it seem appropriate and good legislation if we voted in favor of this amendment and sent it back to the House? That is why they arranged to come back, in case there would be some housekeeping they have to do. Wouldn't that be the best thing to do with this large 484-page piece of legislation?

Mr. BYRD. I should think so. It would be my feeling, Mr. President, that we ought to look at the amendment on its face, on its merits, and vote for it. If I were disposed to vote against it—there are some who will—but those of us who are for it should not back away because of some scare tactic that is being used by the White House to try to get Members to vote against that amendment. Where is the House of Representatives supposed to be? They get paid the same salaries as we do. Their job is not finished. Our job is not finished. Why shouldn't they be here?

Over the many years I have been in the Senate, 44 years now, time and time again I have seen the House pass a conference report or appropriations bill or something, and walk away and leave the Senate holding the bag. There is no reason why they should not have to come back, if we pass an amendment and it goes to conference. They should come back and finish their work. This is an important piece of work. They ought not go home on the pretext that, if this measure is passed by the Senate, they should not have a conference on it. Or the White House should not be spreading the scare stories.

If the House wants to have a conference, that's fine. If the House doesn't want to have a conference and wants to accept the bill, it can, or it wants to accept the amendment, it can. Then that could go to the President for his veto, if he wishes.

Mr. REID. I appreciate very much the Senator yielding.

I simply close by saying I really think we would be doing the President, the Congress, and the country a favor by adopting this amendment. It would take all the talk radio out of all the bad things in this bill—at least many of the bad things. I repeat, I think we would be doing the President a favor by passing this amendment, sending this bill to the House, and then let them handle that bill accordingly.

I am confident that they arranged to come back, anyway, for things like this. I think they probably understood it would be very difficult for the Senate to accept their bill exactly as they sent it to us. So, again, I appreciate the Senator yielding. I think anyone saying—as the Senator from Pennsylvania did, and I am paraphrasing him, not saying exactly what he said—that even though there were bad things in this amendment, he saw no alternative but to go ahead and vote to get this thing out of here because otherwise the whole bill would come down, I simply state for the record that will not happen and that is not the case.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

I would only add that if the whole thing comes down, that may be for the best. That may be for the best. It has a lot more wrong with that bill suddenly dumped upon us in the early hours of Wednesday morning. As far as I am concerned, greater mischief can happen in many ways than having that bill die. As far as I am concerned, we ought to be back next year and take our time and do a good job on that bill. I have always been for homeland security. I was one of the first around here to state that we needed a Department of Homeland Security. But this bill that has 484 pages in it, that has been suddenly dumped upon us, dumped on us—as far as I am concerned, it would be no great tragedy if that bill would die and we could start again next year.

Having that bill is not going to make the American people one whit more secure—not one whit—because even if that bill is passed, the President is going to have 12 months in which to submit his plan, which we know nothing about at this time. When we pass this bill, we will not know anything about his plan. But under that bill the Congress authorizes the President to submit his plan. That plan will automatically go into effect after a certain number of months, the most of which would be 12 months. It will automatically go into effect.

We don't know today what is in his plan. He probably doesn't know yet what he intends to submit as a plan. As far as I am concerned, we are buying a pig in the poke and Senators ought not vote for that bill. But at the very least, Senators ought to vote for this amendment because it does clean up a little bit of what is wrong with the bill.

The PRESIDING OFFICER. The assistant Republican leader.

TRIBUTE TO SENATOR PHIL GRAMM

Mr. NICKLES. Mr. President, it is a pleasure and a privilege for all of us to serve in the Senate. One of the great benefits of serving in the Senate is we have the opportunity to serve with some outstanding individuals—outstanding leaders not only in their States but outstanding leaders in their country.

One of those individuals that I will always rank as one of my favorite Senators, and one of the most effective Senators I have had the privilege and pleasure of serving with, is Senator PHIL GRAMM of Texas.

Senator GRAMM was elected to and served 6 years in the House. He was elected in 1978. He was elected as a Democrat. Eventually he resigned and ran as a Republican. I think he was the first person to do that in a century. It was a pretty phenomenal thing. Then he came to the Senate where he has served for 18 years. Much to my regret, he announced he would be retiring and will soon complete his very distinguished Senate career. Seldom do you find a person who makes such a difference in public policy over that period of time, as Senator GRAMM has.

I was elected to the Senate in 1980, and I remember very well the Gramm-Latta budget bill that passed the House of Representatives in 1981. That was Senator GRAMM, a Democrat, working with Congressman Latta, a Republican, to basically pass President Reagan's economic budget, a phenomenal accomplishment; it laid the guidelines for reducing and changing taxes. The maximum tax rate actually, in 1981, was 70 percent; 6 years later it was 28 percent—a phenomenal achievement. Some might disagree with it, but it

was a phenomenal achievement. And it was due, in great part, to the leadership of PHIL GRAMM.

So every once in a while we have the privilege of serving with someone who can make a real difference. And Senator GRAMM has done that. He did it in the House. He has done it in the Senate. He has made accomplishments. He has made legislation. He has angered his opponents, but I think in all cases, his adversaries or his opponents, while they may have disagreed with him on the issue, had to respect him for his conviction, for his commitment, for his effectiveness. I respect that.

Many of us made tributes to Senator Wellstone. We regret the tragedy of his death. But we respected his commitment. Likewise, I can tell you, I know Senator Wellstone would say he would have to respect Senator PHIL GRAMM. He did not agree with him—he agreed with him very little—but he had to respect him. One of the great things about the Senate is that we can disagree on issues, but we can have respect and admiration for people who have convictions and commitments, and, on occasion, when they prove the effectiveness of that to actually change law.

Most of us remember the Gramm-Rudman-Hollings Balanced Budget Act that passed in 1985 and was basically reaffirmed in 1987. It gave us caps and targets and rescissions, and so on. That is still basically part of our budget law today. I have had the pleasure of serving with Senator GRAMM on the Budget Committee for many years. Serving on the Budget Committee is a thankless task, but he has been a leader within the Budget Committee. He is a person who has believed in budgets, a person who has believed in discipline, and he was able to make that law.

If you look at the Gramm-Leach-Bliley Financial Service Modernization Act, in 1998, again, he proved he could work with Democrats and Republicans to make significant revisions of law. He did that from his position as chairman of the Banking Committee.

Today we are debating homeland security, and he is one of the principal authors of the President's homeland security bill, which I hope and pray we will finish tomorrow, and, again, in large part because of his leadership, and also the leadership of Senator THOMPSON, who, regrettably, also is retiring from the Senate.

So we are losing some great Members who I hate to see leave. But, likewise, I would just like to say it has been a pleasure and a privilege to work with, in my opinion, one of the most effective, one of the most outstanding, Senators I have had the pleasure of knowing in my Senate tenure.

It has been a pleasure to have Senator GRAMM join me on the Senate floor. He has sat right behind me for the last 18 years. He has made a monumental contribution to this country and to his State of Texas.

I am very happy for both Senator GRAMM and his lovely wife Wendy and their family. I wish them every success. I am confident they will enjoy every success. Senator GRAMM is an outstanding leader who has made invaluable contributions to make our country better. He has made the State of Texas better and he has made our country better. I thank him very much for his commitment, his effectiveness, and his public service.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I thank the Senator from Oklahoma for his remarks about the remarkable PHIL GRAMM. And I would like to attempt to make some comments upon his leaving us. My abilities are inadequate because he is, indeed, a very special American and human being.

DON has delineated a number of his historic achievements: with the budget, with health care, with homeland security, and so many others. But there are a lot of qualities about PHIL that are important.

He has told us often, particularly after the untimely death of Paul Coverdell, that we should tell those we love that we love them, that we ought not to wait. I don't know if I have said that directly to him, but I love PHIL GRAMM. I have loved him virtually since I have come to this body. He has consistently been, to me, the most principled, interesting, and courageous battler for America I have ever seen. I have said on many occasions, recognizing the poor grammar, that PHIL GRAMM is our ''most invaluable Senator.'' By that I mean he is the one this body could least do without. I truly believe that.

This body will be diminished by his leaving. He has been a force—a force—for the best of American values. First and foremost, PHIL GRAMM has been a champion for freedom. He has never doubted, as have many of his former colleagues in the academy, the validity of the American dream. He has studied history, traveled widely, and read much. His experience and learning have only confirmed his belief in the American ideal of democracy, freedom, and free enterprise. He knows it works. He knows this has been the system that has made America the envy of the world.

As a patriot, and in possession of this important truth, he has given his total effort to preserving and extending our brilliant heritage. From the time he gets up until the time he goes to bed, he fights for these great values of America. He has done so with more purity of purpose and depth of understanding than any I have known. Yes, he can compromise, and he does on occasion, but his compromises are always focused on whether or not the deal is best for America. Will it further freedom? That tends to be his test.

First and foremost, PHIL GRAMM fully comprehends the greatness and uniqueness of America. And his life has been directed with incredible fidelity toward its preservation and enhancement.

I recall one of the great trips I have taken in the Senate. It was CODEL GRAMM to Europe. PHIL insisted we stop at Normandy and examine that scene of carnage and courage. On another occasion, we visited the Flanders Cemetery, and PHIL read us the great poem: ''On Flanders Fields.'' We could not leave, he said, until we laid a wreath at the Tomb of the Unknown Soldier. We also carefully examined the battlefield at Point du Hoc on the Normandy coast. PHIL showed us, with great pride, where the brave Texans scaled and took that great fortified height at Point du Hoc, a key moment in the D-Day victory.

PHIL GRAMM, with great clarity, has seen his battles for freedom in this Congress—absent, of course, the physical danger of war—in the same way. He sees his role as a soldier for freedom, and that he has been. Indeed, he has been a glorious warrior for freedom.

Our heritage of liberty has always been endangered by hostile outside enemies, ignorance, corruption, and political whims of the moment within. PHIL GRAMM has stood in the breach and, in the same vein as his beloved Texans at Normandy, he has carried the battle to the enemies of freedom. Time and again, he has staked it all—put his career and his reputation on the line—for those ideals.

He has been blessed with a great partner in his glorious struggle to enhance the American dream—Wendy Gramm. Everyone who knows Wendy loves her. And so does PHIL. They are an unlikely pair: the loud PHIL and the small, brilliant, and soft-spoken Wendy. Surely, it could only have been a match made in Heaven. Wendy's balance, her integrity, and her vision for America, which she so deeply shares with PHIL, make them one of America's great couples.

Thirdly, we cannot discuss his career without considering his effectiveness in advocacy. With an economist's ability to see the big picture, PHIL has an unsurpassed ability to demolish small minded proposals. His skill in debate is legendary. I have not seen his equal in my tenure in this body. No one gets to the core of the matter better or can put the complex in layman's terms more effectively than PHIL GRAMM—no one. Some are good at spin, but PHIL GRAMM does not spin. He analyzes. He distills arguments, and he puts them to the test of rigorous thought. He reduces them to their simplest form and then demonstrates with his powerful mind and verbal skill how such proposals either further or constrict the American way.

PHIL, though quite frank and blunt, could get away with comments few others could. Many of our colleagues have quoted from PHIL some of his remarkable comments. He made a very important speech on economic relations between the United Kingdom and the United States when we were in Europe. He expressed concern about the

UK's move toward Europe. He recognized our historic relationships between our countries, and he urged them to join NAFTA. The speech made headlines all over Europe. It was a magnificent address. He knew it was important when he delivered it. He delivered it entirely without notes. I was very proud of him.

During the course of it, he noted the objections made by certain Europeans to American beef, much of which comes from Texas, of course, because of their fear of growth hormones. As an aside, he noted:

> Maybe you need to eat more of our beef. It could keep you from giving up your sovereignty.

His ability to demolish the conceit of the left that government can provide Americans more and better goods and services than the private sector is also unsurpassed. His advocacy for free trade is unsurpassed. PHIL believes in the concept of truth. He respects truth, and he battles to always appeal to objective truth. Thus he is not a spinmeister. He is a Texas straight shooter.

He will challenge an opponent's flawed core principles even when it may not be politically correct to do so. He will not just dance around the issue. He goes right to the heart of the matter, with integrity and courage. A few are taken aback by his directness, but most respect his honesty even if they disagree. And he has never allowed debate to ruin friendships.

Still, PHIL GRAMM does not take the future of America lightly. It is not just a matter of debate with him. It is not a matter of polls. He works to prevail on issues important to this country's future. This is not an intellectual exercise. It is in a different way as important to him as our victories in the past have been on the battlefield. His constant goal has been to make America better.

Perhaps you think I overstate the case, but I don't think so. I think he is a special, glorious warrior for the American way of life. And why should I not say here what I have said privately; that is, that a true recording of history will list him as one of the half dozen great Senators of the past century. This warrior for freedom will not cease when he leaves this body. Who knows, he may do more good from the outside than from the inside.

What we do know, however, is that while he was here, his contributions to America and to liberty were truly magnificent. I have been honored to know PHIL GRAMM and to have been his friend. I will miss him. This Senate will miss him.

I yield the floor.

The PRESIDING OFFICER. The Republican leader.

Mr. LOTT. I understand the Senator from Alabama has some other remarks he would like to make. I appreciate his allowing me to proceed between the remarks he just made on Senator GRAMM and others he will be speaking on momentarily. One of them is the person I want to commend, but I can't do that without thanking Senator SESSIONS for what he had to say about Senator PHIL GRAMM.

I have had so much to say about him over the past month, I won't repeat it here. I have already made some remarks on the floor and had a chance last week at the retirement dinner to talk about him. He certainly will be greatly missed. He is such a talented, intelligent, persistent but delightful person. He has been a great Senator, great Congressman. He has a very large record of which he can be proud. I have worked with him in the House when he was a Democrat, in the House when he was a Republican, and in the Senate.

There are a lot of bills that would not have passed, a lot of issues would not have been properly handled if he had not been willing to take the time, dig into the substance, and get them done. But they are great bills, great laws that have his name on them: Gramm-Latta, the first budget of the Reagan years; and Gramm-Rudman-Hollings, which was a budget restraint mechanism he put in place in the 1980s here in the Senate; and Gramm-Leach-Bliley, the reform bill on financial services that was passed a couple years ago, and many others. But I took the time recently to add up bills or issues that I knew he was involved in just over the last 2 years that would have been much more expensive if they had passed, would have been hugely expensive. He probably has saved the taxpayers over the past 2 years somewhere close to $1 trillion, certainly in the hundreds of billions of dollars.

There might be those who say we should have spent that money. Well, you can argue that, but I can show direct cases where he has helped influence legislation or stopped legislation that would have been very costly to working taxpayers in America.

I thank Senator SESSIONS for what he had to say today.

TRIBUTE TO R.J. ''DUKE'' SHORT

Mr. LOTT. Mr. President, I rise this afternoon before the Senate adjourns for the year to recognize the extraordinary contributions of an individual who is not a Senator but who, in addition to having been a long time staff member here, is one of the Chamber's most beloved individuals, I believe. That is R.J. ''Duke'' Short or, as Senator THURMOND would call him, ''Duke Short,'' which is pretty hard to understand if you don't know what he is actually saying.

My colleagues on both sides of the aisle know well that Duke has served for the past decade as chief of staff to the legendary Senator THURMOND, who is retiring next year at the age of 100. Duke has served our ''centennial Senator'' with incredible ability and grace. His judgment, his demeanor, and his knowledge on both the ways and traditions of this Chamber have impressed me. I have actually gone to him and asked for advice and made sure he knew what we were thinking about doing and making sure Senator THURMOND was comfortable with that.

I know many Senators have gone to Duke and sought his counsel as one of our longest serving and most effective staff members.

In so many ways Duke has been the Senate's unelected 101st Senator, I believe. The trust Senator THURMOND puts in him is obvious to anyone who has watched the two of them interact over the years. Duke is STROM's most constant companion, his closest and most trusted adviser and, I believe, his dearest friend. Theirs is not the usual relationship of a Senator and staffer. It is more like a father and son.

I know that Duke has had opportunities to go do other things, but at the urging or at the request of Senator THURMOND, he stayed. And he is going to stay with Senator THURMOND to the last day the Senator is here.

Even though they have been close on a personal basis, Duke Short has not misunderstood his role or stepped beyond the boundaries into the role of an elected official. He has always had a clear understanding of his responsibilities and, most importantly, where his job ends and an elected official's begins. It takes a person of extraordinary integrity and incredible common sense to be able to juggle both the role and the responsibilities that Duke Short has shouldered, and I can say without hesitation or equivocation: Well done, Duke. He should be very proud of his service to the Senator, to the Senate, and to his country.

By the way, there is something more to his career than his service to Senator THURMOND and the Senate. He served in the Army's prestigious 82nd Airborne. Then he came to the Senate as a staffer in 1974, where he served as a senior investigator for the Subcommittee on Internal Security.

He rose quickly through the ranks, later serving as chief investigator of the full Senate Judiciary Committee where he oversaw literally hundreds of judicial nominations and helped shepherd through the confirmations of Chief Justices and Associate Justices who now sit on the Supreme Court. To this day, he is remembered fondly by judges and justices all across the Nation as the individual with whom they worked most closely and who was always courteous and wise in his counsel as to how they should conduct themselves during the confirmation process.

As in his other duties in the Senate, Duke performed in the confirmation arena with the greatest dignity and integrity. Many of you may be surprised to know that Duke Short had a life before even his military service and before coming to the Senate. He was a U.S. Treasury Department agent and received numerous awards for distinguished service and assistance to our Nation's Federal, State, and local law enforcement officers and officials.

But it wasn't always the law enforcement, investigations, or government.

He also originally was a chiropractor. That was his original profession. He is a graduate of the Palmer College of Chiropractic with the degree of Doctor of Chiropractic. Maybe there was some other role he performed for the Senator that we didn't know about.

What an interesting career this gentleman has had. He is an alumnus of North Georgia College and the recipient of South Carolina's most distinguished civilian award—the Order of the Palmetto. He is, of course, most fortunate to be married to Dee, a charming lady whom we will miss along with Duke when they go on to their next career.

I know my colleagues join me in wishing Duke good luck and our best wishes as he leaves the Senate in January at the conclusion of Senator THURMOND's record-setting term.

We will miss Duke's good humor and his style. He is the epitome of a Southern gentleman. He leaves this institution with a marvelous record. Too often we commend each other and we talk about the great deeds of Senators, and not enough attention is given to loyal staff members who serve in this body and in this room and on committee staffs and on personal staffs. But Duke Short could not leave without proper recognition of his service.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama is recognized.

Mr. SESSIONS. Mr. President, I thank the distinguished Republican leader for those comments about Duke Short. I likewise want to say something about him and didn't know that he intended to make those remarks.

Duke has been a friend of mine for 20 years. I have admired him greatly. He is the kind of person who comes along and reaffirms your faith in basic democracy, basic decency of the human race. After 30 years of service in the Senate as a senior staff member, he will be leaving.

Our Nation—and particularly the State of South Carolina—owes Duke Short a great debt of gratitude for his many years of distinguished and able public service in the Senate. As my colleagues well know, he served for many years as chief of staff to our legendary STROM THURMOND, who retires next month at the age of 100, after more than 47 years of service in this Chamber.

Over the years he has worked with Senator THURMOND Duke has earned a reputation as someone who always conducted himself with the utmost integrity and honesty. Given great authority—perhaps more than almost any other staff member in the Senate—he always dedicated himself to the highest principles of public service and demonstrated an uncompromising devotion to his mentor and boss, STROM THURMOND.

There is, among the world's cynics, a belief that the longer men and women remain in positions of public trust, the more they fall victim to the vagaries of power and influence. Duke Short stands as a wonderful exception to that rule, an example of truly unselfish public service, whether as a Federal agent or in the Army, a man who dedicated his life to things bigger than himself and found, in turn, enormous satisfaction in the giving.

In his years in the Senate—at least the ones I have been privileged to witness—Duke Short has earned more than just satisfaction from a job well done. He has earned, I believe, the respect, admiration, and friendship of every Senator in this body. In so many ways, he was one of us—a Member of the Senate family who never forgot that the only real power in politics is that which we hold from the public, and his only reason for service was to serve his Senator.

Duke came to the U.S. Senate in 1974 as a senior committee investigator. It was the beginning of a long and extraordinary partnership between him and Senator THURMOND. When STROM became chairman of the Senate Judiciary Committee in 1980, Duke was appointed chief investigator and, in that capacity, he oversaw and coordinated the confirmation of Chief Justice William Rehnquist, Associate Justices O'Connor, Scalia, Souter, Kennedy, and Thomas. He became the Senator's chief of staff nearly a decade ago and has served in that capacity ever since. All of us came to rely on Duke's judgment, his unerring sense of fair play and, of course, his uncanny ability to always represent the wishes of his boss, Senator THURMOND.

Prior to coming to the Senate, Duke served the Nation in other important ways. He was a member of the Army's prestigious 82nd Airborne Division and a respected U.S. Treasury Department agent. His contributions to law enforcement are legend within South Carolina and throughout the Nation. He has been a recipient of numerous national, regional, and State awards from law enforcement associations, and he was presented in 1990 with the State of South Carolina's highest civilian award, the Order of Palmetto.

When Senator THURMOND was chairman of the Senate Armed Services Committee, Duke served as a close adviser on a wide range of issues from preparedness to nuclear arms control. Once again, he earned the respect of the Nation's highest officers and service chiefs, in addition to Cabinet members and the national security staffs of several Presidents.

Duke Short is one of those rare staff members whose expertise and judgment are called upon in a variety of settings. Through it all, he also demonstrated more than just a vast technical knowledge of different issues; he impressed us all with his deep and abiding love of and respect for the institutions of the Senate, as well as the vital importance of the legislative oversight process.

In all these arenas, Duke Short distinguished himself as an individual of rare humility. Working closely with Presidents, Cabinet members, Senators, Justices of the Supreme Court, and even foreign leaders, Duke's style always managed to disarm, to respectfully inform and, taking a page out of STROM THURMOND'S book, to politely and diplomatically move situations to where the people of South Carolina benefited most.

Finally, Duke is fortunate in one other area. He is married to an exceptional lady, Dee, who is truly the apple of his eye and one of the great inspirations of his life. Duke and Dee Short have always managed to light up any social and business event they attended.

Mr. President, the Senate will miss Duke Short's leadership, but individually I believe each of us will miss our friend, Duke Short. In an era of increasing rancor and incivility in public life, Duke Short's easygoing manner, his lighthearted humor and unswerving loyalty to country and friends will be sorely missed.

On behalf of a grateful Senate, thank you, Duke, for your good work and good will. May God continue to bless you and your fine family.

Mr. HATCH. Mr. President, for the past several decades, serving one of the United States Senate's most legendary figures—Senator STROM THURMOND of South Carolina—has been Robert J. Short. I rise today to pay tribute to the man we in the Senate fondly know as ''Duke Short.''

Duke is to be commended for his fine work and years of dedication to our Country. When I first arrived in Washington, DC., in January of 1977, Senator THURMOND was my senior on the Senate Judiciary Committee. As I settled in to my new role on the Judiciary Committee, I came to know and respect Duke, a bright and eager individual who was working at the time as Chief Investigator on the Committee.

Duke had first come to work in the Senate in 1974, and until 1976, he served as a Senior Investigator on the Senate Subcommittee on Internal Security. From 1976–1989, he was the Chief Investigator on the Senate Committee on the Judiciary. He has served as Chief of Staff and Administrative Assistant to President Pro Tempore Emeritus Senator STROM THURMOND since 1989.

Throughout the course of Duke's work in the Senate, he has assisted in the confirmations of literally hundreds of district and circuit court nominees, and of every sitting Supreme Court Justice. He played a key role in assisting the Judiciary Committee in its inquiry in the 1960's into motorcycle gang violence, as well as many other important matters. He has developed a remarkable wealth of knowledge about the Senate as an institution, and is widely respected by Senators past and present on both sides of the aisle.

Duke has been recognized throughout his distinguished career with many prestigious awards, too numerable to mention here, but most recently including a Reserve Officers Association

Appreciation Award in 2000, an FBI Director's Appreciation Award and the Order of the Palmetto—the State of South Carolina's highest award, in 2001. This year, Duke received the ACA's Third Annual Patients' Champion Award.

Duke's career has been characterized by service to our great Country, not only in his work for the Senate for nearly thirty years, but in his earlier service in the U.S. Army with the 82nd Airborne Division, and as a special agent in the Intelligence Division of the Department of the Treasury.

Duke Short has served Senator THURMOND, South Carolinians, and his country well, with the spirit and endless dedication of a true patriot. We will sorely miss him in the United States Senate and wish him all the best in his retirement.

TRIBUTE TO STROM THURMOND

Mr. SESSIONS. Mr. President, I will now take the opportunity to pay tribute to the senior Senator from South Carolina, the Honorable STROM THURMOND.

The accomplishments of this man in his nearly 100 years of life, are truly amazing. All of his continuous years of public service to our country illustrate that Senator THURMOND's life has put the service of his country first. Born on December 5, 1902, in Edgefield, SC, he graduated from Clemson College, now Clemson University, in 1923. He studied law under his father.

For 8 years, he served as the town attorney, and he also served as a South Carolina State senator.

A true patriot, he joined the U.S. Army Reserve as a second lieutenant in 1924. He landed in Normandy on D-Day with the 82nd Airborne Division during World War II. He had been a judge. He was in his forties. They did not really want him to join the Army at the time the war broke out. He insisted that he be allowed to do so and walked away, as some would say, old enough to know better. But he ended up in Great Britain preparing for Normandy and the invasion with the 82nd, and he again volunteered. He volunteered to be on the glider force that would fly in behind enemy lines at the time of the D-Day invasion.

He got into one of those gliders. They are pulled off by bombers, and let go. Hopefully the plane lands safely. He was asked one time: How was the landing, STROM?

He said: All I can say is I didn't have to open the door; you could walk out the side.

None of these landings were safe. It was a highly dangerous mission. He volunteered in his midforties to do that. He stayed until the end of the war. I asked him if he stayed to the end. He said yes, until Germany surrendered in combat and he was put on a train heading toward the Pacific when Japan surrendered. He earned 18 decorations, medals, and awards, including the Legion of Merit with oak leaf cluster, Bronze Star for Valor, and the Purple Heart, among others.

His political career flourished when he was elected Governor. In 1948, he decided to run for President of the United States as a States rights candidate. He carried four States and received 39 electoral votes, the largest independent electoral vote in U.S. history.

However, the most memorable moment, I guess, came when he was elected to the Senate in 1954 as a write-in candidate. In the Senate, the highest office ever to be elected by a write-in, I understand, in the Senate, STROM THURMOND served on several committees. He has been a fixture on the Armed Services Committee on which I serve and where he has with constancy of purpose fought for a strong America and for our veterans. He served as chairman of this committee from 1995 to January of 1999 and was bestowed the great honor of being named chairman emeritus in 1999. Serving with Senator THURMOND on this committee was a great learning experience.

I am convinced his combat experience provided him with an excellent background to understand the intricacies of our military and the need of this Nation to be strong and avoid war but to win it, if necessary.

He has helped lead our effort in this Nation to victory in the cold war, to defeat and challenge head-on godless, totalitarian communism, a force incompatible with American values. He never faltered. He stayed the course throughout the entire cold war. He celebrated its victory.

He never was among those souls who waned, who blamed America first, who always thought America was at fault and causing the problems in the world.

His career was marked by determination, surely based on personal experience with war, to never have our soldiers outgunned in war. This was a magnificent service to our country, of historical importance, and in which he played a key role.

Additionally, I have had the pleasure to serve with Senator THURMOND on the Judiciary Committee where he has been a member since 1967. He served as chairman from 1981 to 1987 and chairman of the Subcommittee on Constitution, Federalism, and Property Rights from January to June of 2001. Coming from a lineage of law study and being a former judge, Senator THURMOND has cherished his role on this committee and continues to work to promote the rule of law and assure quality judges are appointed to Federal courts.

He has been a champion of the rule of law on the Judiciary Committee for 35 years. Yes, he has changed many of his views over the years. He came to see segregation was wrong, that it hurt African Americans, whites, and it hurt America. Still, his classical view that the law is sacred, that it must be followed, never wavered.

His leadership in passing the Federal sentencing guidelines was perhaps the greatest change in criminal law in the entire last century. It was enacted to equalize sentencing—those who commit the same crime serve the same time—and it abolished parole. He was a tower of strength in the battle to bring back respect for law enforcement, to provide rights to crime victims, and to crack down on criminals.

As a former prosecutor, I am convinced the great battles he led in the 1980s—sentencing guidelines, abolishing parole, allowing for the denial of bail in certain circumstances—were historic steps that stimulated the strong efforts by State law enforcement to break the back of the surging crime rates of the sixties and seventies and resulted in substantial reduction in crime.

Longer prison sentences for repeat and dangerous criminals have saved thousands of innocent lives. People have not been murdered because dangerous criminals have been apprehended and locked up. No man gave more steadfast leadership to this change than STROM THURMOND. Indeed, he appointed the first chairman of the Sentencing Guideline Commission who did a remarkable job, or at least he sought the appointment of Judge Wilkins from South Carolina.

One of the great memories I have of spending time with Senator THURMOND was when he asked me, a new Senator, to accompany him on a trip to China in 1997. On this trip, we had some time to climb the Great Wall of China. Senator THURMOND was the oldest person ever to climb the Great Wall unassisted, and it was quite a climb. His ability to put situations in perspective is illustrated by the fact that upon reaching the top of the wall, he said: This is a big wall. Let's go. Up early to exercise, dining late often, as we did on the trip, he did not flag, leaving the rest of us in his wake.

Though he is nearing the century mark, his determination to fulfill his service is remarkable. Just this past week, we had the elections of the Republican leadership. Senator THURMOND was there at 9 a.m. for the elections. Then we had our lunch with the Republican Policy Committee while last-minute issues were discussed, and he attended that. That afternoon, the Defense authorization bill was up for debate and passage. He was one of the few Senators to be in the Chamber, and only at 15 minutes till 6, when he was sure no votes would be held that night—which he asked me to confirm was accurate—did he leave. It was a long, hard day.

That is typical of his commitment to service. His fierce commitment to America and the Senate is legendary. During his service from 1994 to 2000 as President pro tempore of the Senate, he was consistently on time every morning to open the Senate, conduct the Pledge of Allegiance, and introduce the Chaplain for invocation. He knew the importance of his office, and he did not fail in that responsibility.

It has been a monumental career, a life almost larger than life. STROM THURMOND has set a high standard for

duty, service, and country. It has been my honor to know and serve with him. He is a true southerner, a true American, and a true patriot.

STROM THURMOND will be forever remembered as a man who for a century was a vigorous proponent of strong national defense, a sound legal system composed of judges who follow, not make, law, and justice for victims of crime, and stiff punishment for wrongdoers.

One of his most enduring qualities, a quality that undoubtedly is a factor in his longevity, is his positive view of life, his optimism, his cheerfulness, and positive leadership which still are remarkable and continue to this day.

I am sure there have been times when he did not feel well, but his hearty greetings never changed. I have enjoyed hearing him call to me and say: How's the king of Alabama doing today?

Having watched his leadership for 6 years now in the Senate, I am convinced his positive leadership and character are major factors in his success.

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

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

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO SENATOR HUTCHINSON

Mr. NICKLES. Mr. President, Senator TIM HUTCHINSON of Arkansas, one of our colleagues, will soon be leaving us. I thank him for his service to his State and also to our country.

For the last 6 years, I have had the pleasure of working with Senator HUTCHINSON. He is a neighbor; he is a friend. I have gotten to know him very well. He served on my whip team. He is a very energetic and dynamic person who I think served his State and our country very well.

He served in the Arkansas State House of Representatives for 8 years. He served in the U.S. House for 4 years. I got to know him when he served in the statehouse, and I was very impressed with him. Actually, his congressional district was adjacent to that of Oklahoma. So I got to know him then. When he came to the Senate, I asked him if he would serve on my whip team, and he did. We became very good friends. He is a very energetic and committed person who did an outstanding job in the Senate. He is also a very intelligent and diligent Member.

He served on the Armed Services Committee and the HELP Committee and did a fantastic job. I worked with him. I was chairman of the task force dealing with the Patients' Bill of Rights and then was made chairman of the conference on the Patients' Bill of Rights. Senator TIM HUTCHINSON was there all the time, trying to pass a good and affordable Patients' Bill of Rights, one that would not bankrupt employers and one that would help provide good rights for patients all across this country. It has been a pleasure and privilege to serve with TIM HUTCHINSON in the Senate.

In the Senate we have the opportunity to work with outstanding individuals. TIM HUTCHINSON is one of those individuals. The election did not work out for him, but I am very optimistic that his future is very bright indeed. I thank him for his service to this body. I think he has made the Senate a better place, and I compliment him for his service.

TRIBUTE TO SENATOR FRANK MURKOWSKI

Mr. President, I also wish to comment on our retiring colleague, Senator FRANK MURKOWSKI. Senator MURKOWSKI and I were elected together in 1980, so we have been very good friends for the last 22 years.

I have served with Senator MURKOWSKI for the last 22 years on the Energy Committee. For the last several years, he has been the chairman of the Energy Committee. Talk about persistence, about dedication, and about a person who has really served his State of Alaska and served our country well; it is Senator FRANK MURKOWSKI. As a result of his leadership, many of us have gone to Alaska.

Senator STEVENS and Senator MURKOWSKI love their State. We all love our States, but they love their State with great enthusiasm and are very successful, forceful advocates for their parochial interests, as well as for our country.

Senator MURKOWSKI was thinking about how he could improve his State, but he was also thinking about our national energy posture. Frankly, we find ourselves in very difficult shape; we are importing the majority of our oil, and it only gets worse. He has tried to reverse that trend.

I compliment him for his leadership on the Energy Committee. He was a very effective and forceful chairman of the Energy Committee and served our country very well there.

I also had the pleasure of serving with him on the Finance Committee. He is a person who is a very good friend of taxpayers, a person who really wanted to grow our economy, and a person who I think was recognized by his State for his outstanding leadership. He was recently elected as Governor of the State of Alaska, and I have no doubt he will be an outstanding Governor of that great State.

So my compliments to Senator FRANK MURKOWSKI and to his lovely wife Nancy. They are very good friends of ours, a very outstanding senatorial couple who have made the Senate a better place and who make our country a better place. I thank and compliment him for his 22 years of service in the Senate and look forward to working with him as the next Governor of the State of Alaska.

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

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

TRIBUTE TO SENATOR TIM HUTCHINSON

Mr. SESSIONS. Mr. President, I thank the Senator from Oklahoma for his kind remarks about Senator TIM HUTCHINSON. He was one of my closest friends. He and Randi are fine people. We served together on the Armed Services Committee and the Health, Education, Labor, and Pensions Committee. I saw him perform day after day with fidelity to the principles that he campaigned on when he came to the Senate. He fought for what he believed in. He was one of the most able advocates in the Chamber. I do not think you could name on the fingers of your hand any Senator who could compete with him insofar as advocating positions on the floor. He stood for the great values of America.

While on the Armed Services Committee, I remember one battle he got into as Personnel Subcommittee chairman. He made great progress in regard to the problem of the great educational institutions in America, colleges and high schools, that barred military recruiters from coming on campus to recruit personnel for a career in the military. It is unthinkable to me that that would occur, but it happens in this country.

Indeed, the very liberties we have that provide for education and allow people to debate and disagree are protected by our military, and it denied them the right to come on campus to seek people to serve, which is really unbelievable. He fought that battle and reached an agreement eventually that essentially achieved the end of that unconscionable procedure.

He also presided on that subcommittee during consideration of a consistent series of pay raises for our men and women in the military. We have now gotten to the point where we are seeing our military get paid a far more decent wage than they were a few years ago.

On the HELP Committee, he was a prime advocate for the President's No Child Left Behind bill. He and I sponsored legislation called Dollars to the Classroom. We intended to put as much money to those teachers where learning occurs to try to enhance those magical moments when a teacher and a child come together and learning occurs. That was our vision, that is what we fought for, and No Child Left Behind had a lot of that in it.

As Senator NICKLES said, Senator HUTCHINSON fought for and was a great advocate during the battle over the Patients' Bill of Rights. He was a very responsible and articulate spokesman on some complex issues on which Senator NICKLES led us as we carried on that

debate. I do appreciate him remembering and commenting on the extraordinary contributions of TIM HUTCHINSON. We are going to miss him. I will miss him personally. His leadership will be missed. I know he will have a great future in front of him.

TRIBUTE TO SENATOR FRANK MURKOWSKI

Mr. President, it is a sad day to think FRANK and Nancy MURKOWSKI will not be with us. I admire them so much.

We have had the occasion, my wife Mary and I, to spend time with them. I have come to respect him. I was in Alaska not too many years ago and passed his home in Fairbanks and talked to some of his neighbors, all of whom had such a high opinion of him.

He was a champion for energy. He understood that energy is good, not bad. He understood we need a great capacity, at the lowest possible cost, so American citizens can carry on their travel, heat and cool their homes at the lowest possible cost. Keeping energy costs down is important. He knew and warned us repeatedly that we were becoming too dependent on Middle East oil and energy and we needed to enhance our domestic production. He convinced me and almost the majority of this Senate that Alaska and the ANWR reserve could produce large amounts of oil with no threat to the environment, touching only the smallest portion of that vast reserve. I admired him for that and I supported him.

He also supported one of the programs that I believe was extremely environmentally friendly, the bill we call the CARA Act, which would allow revenue from offshore oil and gas wells in the Gulf and wherever they would drill to be plowed back into environmental programs in our country. It would provide a constant and guaranteed source of funds for environmental benefit. It was a good and forward-looking bill, far more historic, with greater potential for environmental benefits than a lot of people understood—although it did certainly have broad support in the environmental community.

It has been a pleasure to serve with FRANK. I have been impressed with his steadfastness, his constancy of purpose, his understanding that your message has to be repeated to break through the sound barrier in the country. I admire him and respect him very much. We will be missing him. I look forward to having the opportunity to visit FRANK and Nancy as often as possible when they come back to the capital city here as Governor of Alaska.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

HOMELAND SECURITY

Mr. BYRD. Mr. President, tomorrow morning the Senate will vote on the amendment introduced by Senator DASCHLE to the homeland security bill. This amendment will strike several provisions in the bill that were added by the other body in the dark of night without their ever having seen the light of day until after they were adopted. I have added my name as a cosponsor of the amendment because I was troubled by the substance of these last-minute provisions. I was pleased that Senator DASCHLE and Senator LIEBERMAN were taking action to strike the new language from the bill. I support the amendment and I hope that other Senators will support it, as well.

I have cosponsored the amendment because I believe the Senate has a duty to take the time to improve legislation when it needs improving, as it does, obviously. This bill certainly needs improving. I had hoped that more Senators would be able to offer their amendments to this bill.

I have heard several of my colleagues expressing concerns about what is in the bill, as well as what is not in the bill. I have concerns of my own, many of which I have expressed in recent days. I also have amendments that could be offered to address these problems, just as other Senators have amendments that they had hoped to offer. But here we are, consuming all of our time under cloture in consideration of this single amendment. The Senators in the minority are keeping us from voting on the Daschle amendment until all 30 hours of debate have run. The Republican side of the aisle is doing this to prevent other amendments from being offered during this time.

While the administration is pressing hard to avoid other amendments, the die was already cast for this bill when the Senate voted last Friday to invoke cloture. Caesar crossed the Rubicon on January 11, in the year 49 A.D., on the night of January 11. Whether he crossed the Rubicon before midnight or after midnight on that night, I don't recall; I am not sure I ever knew. It was on that night that he crossed the Rubicon. He paused thoughtfully and then he said:

The die is cast.

So be it.

I voted against cloture last week on Friday because I believed that there were problems in this bill that should be thoroughly addressed in the Senate; that we needed more time to debate those problems and that we needed more time in which to offer amendments to the 484-page bill that had been dropped on our desks on the morning of last Wednesday. I tried to get some of our Democratic colleagues to vote against cloture on Friday, so that we would have a little more time in which we Senators and our staffs could study that hurriedly-put-together bill, hurriedly passed by the other body. I felt that we should not invoke cloture on last Friday, that we should take a few more days, study the bill, and try to amend it before cloture, as I knew, would finally be adopted.

But my words were to little avail. There was at least one Senator who did vote against cloture at my importuning him to do so. And I deeply appreciated his willingness to listen and his willingness to vote against cloture.

There were others who were not quite so willing. They listened patiently, but they went on their way and voted for cloture. Some of them thought that, inasmuch as we would then have 30 hours under cloture, we could offer our amendments. But I knew that the entire 30 hours could be spent on one amendment. I had never seen it done before, but it very well could be. I was aware of that. I didn't think it would be done, but we have seen it has been done by the Republican minority, which has said: This far; no farther. You have offered one amendment, that being the Daschle amendment on behalf of himself and Mr. LIEBERMAN—you have offered that amendment, and the entire 30 hours will be spent on that amendment. You will not have any opportunity to offer any other amendment.

I still believe that there are serious problems in the bill that go far beyond the provisions stricken by the Daschle amendment. That was not an all-encompassing amendment as far as I was concerned. It was an amendment in the right direction but, even with the adoption of the amendment, there is going to be a tremendous amount of power shifted to the President. He is going to have a full year in which to indicate to the rest of us what his plan is for reorganizing, and for organizing the new Department. He probably doesn't know at this moment what his plan will be. But he has a year, under this bill, to offer his plan. And it will, ipso facto, automatically go into effect at some point. Congress is out of the loop. Congress will not be asked to approve his plan. Congress will only be informed of his plan. That's it. We have no further say in the matter.

So his plan, being a pig in a poke, a plan which we do not know now, that plan will at some point go into effect without any further vote on the part of Congress. Congress will not be asked to approve it. And this bill, which we will pass on tomorrow, will not give Congress the right to vote to approve that plan.

Moreover, an amendment, if I had been able to offer it, to provide for congressional approval—that amendment would not have been germane under cloture. So we were headed off there. So we have helped to cut our own throats, to a degree, by having voted for cloture last Friday.

I urged Senators last Friday, as I said before, not to vote for cloture last week, so we would have more time in which to read and study this bill that was dropped suddenly into our laps by

the other body. I pleaded with this Senate not to shut off debate and limit amendments, and 28 other Senators voted with me not to do so.

There were 29 Senators who voted against it and they were all Democrats. Mr. President, 29 Democrats voted against cloture last Friday. Only 17 Democrats voted for some cloture. There were other Democrats who were absent and not voting and their votes, of course—at least four of those Senators would have voted against cloture. That would have brought the vote up to 33 votes against cloture, well over half the Democratic caucus. So that if only six of the 17 Senators who did vote for cloture last Friday had not voted for cloture and voted against it, or had not voted for cloture, then there would have only been 59 votes for cloture, which would have meant that cloture would not have been invoked.

Sixty-five votes in totality were for cloture. So all that was needed to defeat cloture was for six of those Senators who voted for cloture to vote against cloture.

Many of my colleagues last week, as I pleaded with them to vote against cloture, reassured me that we would have the opportunity to offer amendments after cloture was invoked. But those Members should look carefully at where the Senate stands today, because there is an important lesson to be learned about the rules of the Senate and the effect of cloture on the ability of Senators to offer amendments. Not only have Senators been restricted to offering only those amendments that are ruled to be germane—and we know that under the cloture rule—but Senators have been unable to offer any amendments at all, other than the amendment introduced by the majority leader.

Not all Senators could foresee that would happen, but all Senators should have known that could happen under the rule. It did happen. So I hope the Senators who voted for cloture, some of them at least, will have some afterthoughts that will help in the future to remind them that we ought not be in such a great hurry to invoke cloture, especially on an extremely complicated bill which has been brought to our attention in its entirety just within the past few days beginning with last Wednesday.

When I say to Senators that we should not shirk our responsibilities as legislators by invoking cloture, especially so quickly, so early on, I understand the kind of opportunities that are available under cloture, we will all understand this in the future.

I understand that the rules of the Senate have been used fairly to prevent amendments from being offered to the homeland security legislation. When I hear the arguments that voting for the single amendment that has been offered will jeopardize passage of the bill, I understand that such arguments were made possible by the vote to invoke cloture.

The Senate has painted itself, in a way, into a corner, by invoking cloture on the Thompson amendment. We have no one to blame but ourselves for allowing the administration and the other body to characterize this modest amendment as a threat to the passage of homeland security legislation. The administration wants to limit any amendments to one up-or-down vote so that the administration can argue that a vote for this amendment is a vote to ''kill'' the homeland security bill. There is simply no basis whatsoever in fact for the administration's attempts to politicize this vote by claiming that the vote on this amendment by Mr. DASCHLE and Mr. LIEBERMAN will kill the bill.

This legislation has been introduced for consideration by the Senate, and the extent of that consideration should not be confined to a few days of debate over whether simply to rubberstamp the legislation so it can be sent to the President for his signature.

If the President wants to insist on getting this bill passed before Congress adjourns, he could persuade both Houses of Congress to pass bills and work out their differences in conference. Such a conference is one which may or may not take very long.

As a matter of fact, the House could very well accept the amendment, if the amendment by Mr. DASCHLE and Mr. LIEBERMAN should prevail—the House could very well accept that amendment, and the bill would go to the President.

For now, I think the Senate should do its job. Senators need to look carefully at the bill, do what they can to make improvements before voting. And they only have this one chance—vote up or down on the Daschle amendment.

That will help some but not enough. But that might allow some Senators in their own good consciences to vote for the bill. As far as I am concerned, it is not enough because there would still be a tremendous shift of power from the legislative branch to the President. And I don't feel like shifting that power to any President—not just this one, but in particular this administration with its way of wanting to do things in a secretive manner and wanting to run a government out of the White House, and not in the full light of day or under the full scrutiny of the press and the people.

I intend to vote against this bill, and I know that a majority of Senators will likely vote for it. But whether Senators plan to vote for this bill or against it, we should all work to make sure that the Senate passes the best possible bill that it can under the circumstances. We ought to act responsibly in response to this eleventh-hour legislation that did not see the light of day until only a few days ago. We should not surrender our duties under the Constitution by allowing legislation to be dictated to this Senate in an atmosphere of political brinkmanship.

Senator DASCHLE's amendment strikes a number of very troubling provisions that were added to this bill at the last minute in the hopes that the Senate would cave in to the administration's empty rhetoric. Senator DASCHLE and Senator LIEBERMAN have called this bluff, and this amendment has cast a high-powered spotlight on language in this bill that cannot possibly withstand the light of day and the strict scrutiny of time. These shameful provisions could never survive public scrutiny, and now that they have been brought into focus, the Senate must ensure that they do not survive our consideration.

So let us see on tomorrow whether or not the Senate has the will and the courage to take a strong stand against this power grab. That stand can be taken by voting for the Daschle-Lieberman amendment.

This amendment strikes several provisions in this bill that do not deserve to be enacted into law. The first of these provisions in one that I have previously addressed, relating to unnecessary and dangerous exemptions from the Federal Advisory Committee Act. The language in this bill would give new blanket authority to the Secretary of Homeland Security to exempt advisory committees from existing public disclosure and conflict-of-interest rules. These rules already allow exemptions for sensitive information relating to national security. This bill would allow the Secretary to cloak committee activities behind a veil of secrecy, regardless of whether those activities actually involve issues of national security.

I believe that too much secrecy in government is dangerous to our civil liberties, and we should not authorize such broad exemptions without compelling evidence of the need for unchecked blanket authority.

The President of the United States already has that authority on a case-by-case basis. But now we are going to extend it to the Secretary of the new Department, and of course he can exercise blanket authority if he so wishes.

If we are to preserve our liberty and the integrity of our constitutional system, executive decision making must be subject to scrutiny and oversight by the Congress, the media, and the public. I support striking this language from the bill, and I thank Senators DASCHLE and LIEBERMAN for bringing it to the attention of the Senate.

The Daschle amendment also strikes several provisions in this bill that protect corporate campaign contributors from lawsuits. The first of these provisions would prohibit lawsuits against companies that manufacture vaccines by people who have been harmed by those vaccines, including children suffering from autism as a result of preservatives used in childhood vaccines.

Another of these liability provisions would enact sweeping tort reform for products that are designated as anti-terrorism technologies. These provisions would protect companies that manufacture everything from gas

masks to computer software when their products fail, even when the companies know that their products will not work.

The final liability provision would give immunity to companies responsible for providing security screening in airports. The Senate rejected similar language last year during its consideration of the airline ''bailout'' bill, yet now we are being asked to approve it because it has been inserted into politically popular legislation. The attempt to slip this provision past the Senate is another example of the haste with which this bill has been drafted and considered by this Congress. Issues like these liability provisions should be carefully scrutinized before they become law, not just rubber-stamped by impatient lawmakers looking to put issues behind them and go home.

Another provision that has already been considered by this Senate relates to doing business with companies that have moved their headquarters out of the United States to avoid paying U.S. taxes. In its consideration of the Lieberman substitute to the homeland security bill, the Senate adopted an amendment offered by the late Senator Wellstone that prohibited the Secretary of Homeland Security from contracting with such companies, unless he needed to do so for national security reasons. The Thompson substitute guts the Wellstone amendment by allowing the Secretary expanded powers to waive this prohibition to prevent the loss of jobs or to save money for the government. The Senate should reject this attempt to undermine the will of the Senate by restoring the language of Senator Wellstone's amendment to the homeland security bill.

The Thompson substitute also tries to slip in language to delay the implementation of new airport security regulations. The Senate enacted procedures in last year's airline security bill for the Transportation Security Agency to issue regulations for improving security in our Nation's airports. The new language in the Thompson substitute would modify these procedures by requiring the Transportation Security Oversight Board to ratify any regulations before they become effective. I see no good reason for this modification, If there is one, the Senate should take the time to debate it rather than hastily approving it as part of this massive legislation.

The final provision that will be stricken by the Daschle-Lieberman-Byrd amendment is the language directing that a new homeland security research center be created at Texas A&M University.

I don't think the amendment specifically says that, but its provisions are such that that particular university would be most favored and targeted for location of such a center.

The amendment removes items from the list of highly specific criteria which all but guaranteed that Texas A&M would be the only university which would qualify for the new research center.

Mr. President, striking these provisions from the Thompson amendment is a good start. I believe that the Senate should go further in fulfilling its constitutional duty to improve this legislation before passing this bill. I believe there are many other provisions of this bill which should be stricken and begun anew next year.

In fact, I think we would all be more secure if we put off the whole bill and started over next year.

For example, there is a provision that the President may submit his recommendations to Congress and the only thing that Congress can do is just at that point agree to his recommendations. The Congress has no opportunity to approve or not approve of those recommendations as far as this bill is concerned. We might expect a great deal of chaos as these 28 agencies are moved into the Department. This will take place within the next year. The President has not yet submitted his plan for having the agencies moved into the new Department, but his plan will be submitted at some point and, ipso facto, will go into effect.

Under an amendment which I had offered earlier to the homeland security measure—that being at that time, I believe, the Lieberman bill that came out of the committee of which he is chairman—I had offered an amendment to provide for an orderly phase-in of agencies into the new Department over a period of a year.

Under my amendment, the recommendations of the administration would have gone to the Lieberman committee and to its counterpart in the House of Representatives. And those two committees would have had an opportunity, then, to hold hearings and, under expedited procedures, could have brought out bills, reported bills, to implement the phasing in of agencies into the new Department, with there being three phases, of 120 days each, which would have created an orderly process whereby these various agencies would have been phased into the new Department.

Also, the Congress would have been kept in the loop in each case, with the Lieberman committee and its counterpart in the House being able to hold hearings, call witnesses, vote out bills by expedited procedures. Those bills would come to the Senate. They could be called up in the Senate under expedited procedures so that there would be no filibuster, and those bills would be amended, passed on; and in this way the creation of the new Department, with the orderly phasing in of the agencies, would occur over the same period of time—1 year—as is the case with the current bill.

As it is, when we pass this bill in the Senate, we are out of the loop; we have automatically put ourselves, the Congress, to the sidelines. And the President then can do as he wishes. He can submit his plan, and that plan would automatically go into effect. Congress will be on the sideline. We will have said: Here it is, Mr. President. It's all yours. We have no more say in it. It's yours. Just be kind enough to let us know what your plans are. That's all we ask. Let us know what your plans are.

But under my amendment, those recommendations would have come to the Congress. Congress would have kept itself in the loop. It would have been able to maintain oversight. And with each phase, each of the three phases, as it passed from the first, to the second, to the third, Congress would have benefited by its experience under the first, and then under the second, and there would have been an orderly phase-in, and with Congress, as I say, retaining its place in the loop.

But that amendment was opposed even by Mr. LIEBERMAN and, I believe, the majority leader. The majority leader I think voted against it. It was his right to do so. But Mr. LIEBERMAN, the author of the bill which had been reported out by his committee, voted against the amendment. So I thought it would have been an improvement to the bill and certainly would not have been in derogation of the committee in its work. But that amendment was rejected. And there you are. I tried. I failed to bring about that improvement. So that is another improvement that I think ought to still have been put into the bill that is before us.

So I have seen the handwriting on the wall. I know this bill will probably pass the Senate. Having said that, I believe that the amendment by Mr. DASCHLE and Mr. LIEBERMAN is important because it does make some needed improvements to the bill. The Senate has a duty to approve at least these minimal proposals, if I may say that about them—they are important improvements—before handing over this broad grant of power to the executive branch.

I urge Senators to vote for the Daschle-Lieberman amendment on tomorrow morning.

Mr. President, I yield the floor.

PROCUREMENT POLICY

Mr. DEWINE. Mr. President, the homeland security legislation we have been debating takes on many organizational and administrative challenges, but one challenge it does not cover fully is in the area of information technology. Specifically, I am talking about departmental policies and guidelines for purchasing computer software. No doubt, effective procurement policies will be essential not just to the sound administration of the Department, but also to the successful achievement of a number of important policies identified in this legislation, including most notably, the ability of law enforcement and intelligence agencies to share data and coordinate activities to respond to or prevent terror or criminal acts.

For those sharing and analyzing data electronically, the security of the software being utilized, such as database

and operating system software, is critical. These software technologies are referred to by those in the industry as ''information assurance'' technology. Information assurance technology is what is needed to assure information systems operate effectively, ensure the security of the information contained in these systems, and verify the identities of those authorized to use these systems. At its most fundamental level, information assurance software, for example, includes operating systems, database, and user authentication software.

It should not be a surprise to anyone here that agencies within the Federal Government that are responsible for our most sensitive information have to rely on information assurance technology. In fact, in January of 2000, the National Security Telecommunications and Information Systems Security Committee, an entity within the National Security Agency, proposed a policy that called on all Government agencies to purchase only those commercial-off-the-shelf, or COTS, software that had undergone an independent evaluation process that tests the security of the software. Toward that goal, the committee outlined a specific acquisition policy for those information systems critical to national security. This policy—the National Security Telecommunications and Information Systems Security Policy #11, or NSTISSP #11—states that Federal agencies with information systems involved in national security can only purchase commercial information assurance software that has been independently evaluated to be secure.

This sounds a bit technical, but if we take a step back and look at this proposed policy as consumers, it makes perfect sense. Today, many household items, like our dishwashers, televisions, stereos, and computers, have the now famous Underwriters Laboratory Label. This label provides consumers with the peace of mind that the products they are purchasing have met independent public safety tests.

Consumers have been purchasing products with the Underwriters Laboratory ''seal of approval'' for more than a century. However, businesses large and small, and local, State, and Federal Government agencies purchase computer software with no thought given to whether or not the software has met some outside measure of security assurance. That is an extremely risky proposition. Computer software is essential to our Nation's critical infrastructures, including our railroads, airports, pipelines, utilities, and financial services. At the Government level, information technology is critical to the administration of key Federal programs, our homeland defense, and most notably, our national security.

The costs of insecure, vulnerable information systems are real and sobering. Computer viruses, like Nimda and Code Red, penetrate, disrupt and disable information systems through security holes in software. Last year, according to industry estimates, these viruses inflicted $13 billion in damages on our economy and even incapacitated systems within our own Defense Department.

Fortunately, information technology laboratories exist that perform functions similar to the Underwriters Laboratory. Many software companies have these independent labs evaluate their products to determine if they meet various levels of security assurance. For example, the international Common Criteria provides for security evaluations that are recognized in 15 countries, including the United States, Germany, Canada, and Great Britain. Thus, if a software product is certified under the Common Criteria, it is recognized among all participating countries. More to the point, this certification is designed to validate the security claims made by software companies, much like the Underwriters Laboratory validates the safety claims of appliance manufacturers. In his book, ''Secrets and Lies'' cybersecurity expert Bruce Schneier noted that the Common Criteria is a ''giant step in the right direction.''

NSTISSP #11 is the Federal Government's way of saying that for its most sensitive national security systems, it is not enough for information technology providers to say their products are secure. Now, software providers must have independent evaluations to back up their claims.

It is my understanding that the Defense Department is working to implement an information assurance acquisition policy based on NSTISSP #11. That is an important and positive step, one called for in the Defense authorization bill conference report.

The reason why I am bringing this issue to the attention of my colleagues today is because I believe it is an issue that deserves the attention of the new Department of Homeland Security. After all, if the tragic terrorist attacks of September 11 proved anything, it is that our most sensitive information systems in Federal information sharing and coordination of strategies will likely take place among those law enforcement agencies within and outside of the Homeland Security Department. Information sharing and analysis also is likely to occur between our law enforcement and intelligence agencies. All of this activity requires that the Department of Homeland Security to have strong information assurance strategies, including those involving the purchase of information assurance systems in the commercial market.

I see the distinguished chair of the Governmental Affairs Committee and manager of the legislation currently pending on the floor. I know this is an issue of great interest and concern to him, and I would now yield the floor to him for any comments he wishes to make.

Mr. LIEBERMAN. I thank the distinguished Senator from Ohio for yielding, and I thank him for his comments, which are right on the mark. Information assurance will be critical to the new Department of Homeland Security, and independent evaluations can be useful tools to improve the security of information systems. In fact, information assurance is critical to the entire Federal Government and deserves to be a key component in any cybersecurity strategy. I look forward to seeing this framework for independent software evaluation evolve and improve through processes like the National Information Assurance Partnership and the Common Criteria.

Mr. DEWINE. I thank the distinguished chair of the Governmental Affairs Committee for his comments. I look forward to working with him and the new Department of Homeland Security to ensure that the Department's information assurance policies include the purchase of secure, stable information systems.

Mr. LIEBERMAN. I also thank the Senator from Ohio for his comments and look forward to working with him, as well.

UNACCOMPANIED CHILD PROTECTION ACT

Mrs. FEINSTEIN. Mr. President, I am disappointed that the bill before us does not contain in its entirety the Unaccompanied Child Protection Act, bipartisan legislation I introduced at the beginning of this Congress and that was included as Title XII of the Lieberman substitute to H.R. 5005.

I am pleased, however, that the measure contains one key component of that legislation: the transfer of authority over the care and custody of unaccompanied alien children to the Office of Refugee Resettlement within the Department of Health and Human Services.

This is key for two reasons: First, we do not want to burden the Secretary of Homeland Security with policy issues unrelated to the threat of terrorism. The Department will have a huge and important mission when this legislation is done and its attention should be focused on that mission.

Second, the federal government has a special responsibility to protect the children in its custody. For too long, the Immigration and Naturalization Service, INS, has not lived up to that responsibility. The children's provisions in this legislation is an important first step in correcting decades of questionable practices with regards to children that come under the agency's watch.

As I mentioned before, this is an important first step in providing protection for unaccompanied alien children. I ask my friend from Arizona, who is a senior member of the Judiciary Committee and part of the leadership on the other side of the aisle, if he would agree to work with me next year to further refine the important reforms relating to the treatment of unaccompanied alien children.

Mr. KYL. I thank my friend from California for her question. I know that

she has worked long and hard on these issues and that it is her work and her dedication that is responsible for the inclusion of the children's provisions in the homeland security bill.

I would further say to my friend from California that while additional reforms may be warranted, the legislation before us today was primarily a structural bill, not a policy bill. That fact prevented the consideration of some of the reforms she has championed from being included in this legislation.

I pledged to work with her in the 108th Congress to help fashion legislation that could address some of the issues that had to be left out of this measure.

Mrs. FEINSTEIN. I thank the Senator from Arizona. You may be interested to know that I first became involved in this issue when I heard about a young 15-year old Chinese girl who stood before a U.S. immigration court facing deportation proceedings. She had found her way to the United States as a stowaway in a container ship captured off of Guam, hoping to escape the repression she had experienced in her home country.

Although she had committed no crime, the INS sent her to a Portland jail, where she languished for seven months. When the INS brought her before an immigration judge, she stood before him confused, not understanding the proceedings against her. Tears streamed down her face, yet she could not wipe them away because her hands were handcuffed and chained to her waist.

While the young girl eventually received asylum in our country, she unnecessarily faced an ordeal no child should bear under our immigration system. This young Chinese girl represents only one of 5,000 foreign-born children who, without parents or legal guardians to protect them, are discovered in the United States each year in need of protection.

So you see, this issue calls for clearer policy direction from Congress. I thank my friend and look forward to working with him in the beginning of the 108th Congress.

Mr. COCHRAN. Mr. President, the reorganization of our homeland security efforts is necessary if we are to achieve a higher level of safety for American citizens.

The bill before us improves our security by combining into a single department the federal agencies and programs that today have a role in providing homeland security. Those organizations comprise some 170,000 people. Bringing them together under a single reorganized department will enable us to improve coordination of the Government's efforts to defend the United States against terrorist attacks.

By creating the cabinet-level position of Secretary of Homeland Security, the bill ensures there will be a leader of this effort, with the appropriate authority and responsibility to carry out that mission.

The creation of a Border and Transportation Security Directorate—bringing together the Immigration and Naturalization Service from the Justice Department, the U.S. Customs Service from the Treasury Department, and the newly created Transportation Security Administration—will make a single entity responsible for securing our border and transportation systems and preventing the entry of terrorists into our country.

The Coast Guard, which also plays an important role in securing our borders, will move from the Department of Transportation to the Department of Homeland Security. By maintaining the Coast Guard as an independent agency reporting directly to the Secretary of Homeland Security, this bill ensures the Coast Guard will have the resources and advocacy it needs to conduct its important security missions as well as its other missions, such as search-and-rescue and boating safety.

This legislation also creates a Directorate of Emergency Preparedness and Response, which will coordinate the federal government's response to terrorist attacks and major disasters. Combining all the Federal Government's emergency response efforts into a single entity will improve the Government's coordination with state and local entities in preparing for and responding to terrorist attacks.

The need for this reorganization is critical to our national security. Its scope is necessarily quite extensive. If this effort is to be effective, the President must have the flexibility to adapt the new department as needed to carry out its mission. This bill provides him the management flexibility he needs while protecting the rights of the Federal workers who will serve in the new department.

This bill represents to most extensive reorganization of the Federal Government in over 50 years. By taking resources from existing departments and agencies and placing them in a new organization, it has required a very difficult balancing of competing interests and views. The success of those efforts is a tribute to those who have worked so hard to bring this legislation about.

The President in particular deserves praise for bringing together a wide variety of interests and addressing a variety of concerns about the new department. Here in the Senate, Senator THOMPSON, the ranking member of the Governmental Affairs Committee and one of the sponsors of the compromise proposal before us now, deserves great credit for his efforts to ensure this legislation was both effective and fair. Senator LIEBERMAN, the chairman of the Governmental Affairs Committee, was one of the first to identify the need for this department and to call for its creation, and he should be commended for his efforts as well.

The bill before us is the beginning, not the end, of our efforts to adapt to the new threats we face. After the Department of Homeland Security is created, we may find that other changes will be needed, but this legislation is a very important step to ensuring that our nation, our homeland, and our citizens, are protected to the fullest extent possible from the new and dangerous threats that confront us.

I support this effort and I urge all Senators to vote for it.

Let's get on with it.

Mrs. HUTCHISON. 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.

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

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

AVIATION SECURITY IMPROVEMENT ACT

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 623, S. 2949.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 2949) to provide for enhanced aviation security, and for other purposes.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on Commerce, Science, and Transportation, with amendments, as follows:

[Strike the parts shown in black brackets and insert the parts shown in italic.]

S. 2949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(a) SHORT TITLE.—This Act may be cited as the ''Aviation Security Improvement Act''.

(b) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.

TITLE I—EXPLOSIVE DETECTION SYSTEMS

Sec. 101. Explosive detection systems.

TITLE II—AIR CARGO SECURITY

Sec. 201. Inspection of cargo carried aboard passenger aircraft.
Sec. 202. Air cargo shipping.
Sec. 203. Cargo carried aboard passenger aircraft.
Sec. 204. Training program for cargo handlers.
Sec. 205. Cargo carried aboard all-cargo aircraft.

TITLE III—PASSENGER IDENTIFICATION

Sec. 301. Passenger identification.

Sec. 302. Passenger identification verification.
TITLE IV—CIRCUMVENTION OF AIRPORT SECURITY
Sec. 401. Prohibition on unauthorized circumvention of airport security systems and procedures.
TITLE V—WAR RISK INSURANCE
Sec. 501. War risk insurance for certain aircraft.
TITLE VI—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY
Sec. 601. Blast-resistant cargo container technology.
TITLE VII—FLIGHT SCHOOLS
Sec. 701. Modification of requirements regarding training to operate aircraft
TITLE VIII—MISCELLANEOUS
Sec. 801. Applications for nonlethal cockpit weapons
Sec. 802. FAA Notices to Airmen FDC 1/3353 and 2/95823.
TITLE [VII] *IX*—TECHNICAL CORRECTIONS
Sec. [701.] *901.* Technical corrections.

TITLE I—EXPLOSIVE DETECTION SYSTEMS

SEC. 101. EXPLOSIVE DETECTION SYSTEMS.

Section 44901(d) is amended by adding at the end the following:

''(2) [FAILURE TO MEET DEADLINE] *DEADLINE.*—

''(A) IN GENERAL.—If the Under Secretary of Transportation for Security determines that the Transportation Security Administration is not able to deploy explosive detection systems required to be deployed under paragraph (1) at all airports where explosive detection systems are required by December 31, 2002, then with respect to each airport for which the Under Secretary makes that determination—

''(i) the Under Secretary shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a detailed plan (which may be submitted in classified form) for the deployment of the number of explosive detection systems at that airport necessary to meet the requiremens of paragraph (1) as soon as practicable at that airport; and

''(ii) the Under Secretary shall take all necessary action to ensure that alternative means of screening all checked baggage is implemented until the requirements of paragraph (1) have been met.

''(B) CRITERIA FOR DETERMINATION.—In making a determination under subparagraph (A), the Under Secretary shall take into account—

''(i) the nature and extent of the required modifications to the airport's terminal buildings, and the technical, engineering, design and construction issues;

''(ii) the need to ensure that such installations and modifications are effective; and

''(iii) the feasibility and cost-effectiveness of deploying explosive detection systems in the baggage sorting area or other non-public area rather than the lobby of an airport terminal building.

''(C) LIMITATION.—The Under Secretary may not make a determination under subparagraph (A) in the case of more than 40 airports.

''(D) AIRPORT EFFORT REQUIRED.—Each airport with respect to which the Under Secretary makes a determination under subparagraph (A) shall—

''(i) cooperate fully with the Transportation Security Administration with respect to screening checked baggage and changes to accommodate explosive detection systems; and

''(ii) make security projects a priority for the obligation or expenditure of funds made available under chapter 417 or 471 until explosive detection systems required to be deployed under paragraph (1) have been deployed at that airport.

''(3) REPORTS.—

''(A) IN GENERAL.—Until the Transportation Security Administration has met the requirements of paragraph (1), the Under Secretary shall submit a classified report every 30 days after the date of enactment of the Aviation Security Improvement Act to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure describing the progress made toward meeting such requirements at each airport.

''(B) LIMIT ON NUMBER OF REPORTS.—The Under Secretary shall submit reports for each airport until the requirements of paragraph (1) have been met, but may not submit more than [6] *12* reports for any airport.''.

TITLE II—AIR CARGO SECURITY

SEC. 201. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows:

''(f) CARGO.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish [a system] *systems* to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

''(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).''.

SEC. 202. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449, is amended by adding at the end the following:

''§ 44921. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into [such] arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this title.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

''44921. Regular inspections of air cargo shipping facilities.''.

SEC. 203. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449, is further amended by adding at the end the following:

''§ 44922. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide *pilot program* database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the [database] results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.—

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''[(2)] *(3)* NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''[(3)] *(4)* SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate *or authority* issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

''[(4)] *(5)* INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part [109 of title 14,] *1548 of title 49,* Code of Federal Regulations.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part [109 of title 14,] *1548 of title 49,* Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, as amended by section 202, is amended by adding at the end the following:

''44922. Air cargo security.''.

SEC. 204. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 205. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section [44901(f)] *44901(f)(1)(B)* of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE III—PASSENGER IDENTIFICATION

SEC. 301. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

"§ 44923. Passenger identification

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, *training of personnel*, and issues related to the types of identification available to the public.

''(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, is amended by adding at the end the following:

''44923. Passenger identification.''.

SEC. 302. PASSENGER IDENTIFICATION VERIFICATION.

(a) REQUIREMENT.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44924. Passenger identification verification

''(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

''(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, [retinal] *retinal*, *iris*, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

''(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, is amended by adding at the end the following:

''44924. Passenger identification verification.''.

TITLE IV—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 401. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) PROHIBITION.—Section 46503 is amended—

(1) by inserting ''(a) INTERFERENCE WITH SECURITY SCREENING PERSONNEL.—'' before ''An individual''; and

(2) by adding at the end the following new subsection:

''(b) UNAUTHORIZED CIRCUMVENTION OF SECURITY SYSTEMS AND PROCEDURES.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) The section heading of that section is amended to read as follows:

"§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

(2) The item relating to that section in the table of sections at the beginning of chapter 465 is amended to read as follows:

''46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures.''.

TITLE V—WAR RISK INSURANCE

SEC. 501. WAR RISK INSURANCE FOR CERTAIN AIRCRAFT.

Section 44302 is amended by adding at the end the following:

''(f) WAR RISK INSURANCE.—

''(1) IN GENERAL.—Not later than 30 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall—

''(A) extend for 270 days from such date of enactment the termination date of any aviation war risk insurance policies the Department issued that were in effect on such date of enactment on terms that are no less favorable than the terms of those policies as the policies were in effect on June 19, 2002; and

''(B) offer to amend each policy the term of which is extended to provide coverage for losses or injuries to hull, passengers, and crew, in addition to coverage for injury to third parties (with respect to both persons and property), on such terms and conditions as the Secretary may prescribe, at an additional premium comparable to the premium charged for the third-party casualty coverage under existing *Federal Aviation Administration* policies.

''(2) REPORT.—Not later than 90 days after the date of enactment of the Aviation Security Improvement Act, the Secretary shall transmit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives a report that—

''(A) evaluates the availability of war risk insurance for air carriers and other aviation entities for passengers and third parties;

''(B) analyzes the economic effect upon air carriers and other aviation entities of available war risk insurance; and

''(C) describes the manner in which the Department could provide an alternative means of providing aviation war risk reinsurance covering passengers, crew, and third parties through use of a risk-retention group or by other means.''.

TITLE VI—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 601. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE VII—FLIGHT SCHOOLS

SEC. 701. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after ''(a) WAITING PERIOD.—'' as a new paragraph 2 ems from the left margin;

(2) by striking ''A person'' in that new paragraph and inserting ''(1) IN GENERAL.—A person'';

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking ''any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more'' and inserting ''an aircraft'';

(5) by striking ''paragraph (1)'' in paragraph (1)(B), as redesignated, and inserting ''subparagraph (A)''; and

(6) by adding at the end the following:

''(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

''(A) has earned a Federal Aviation Administration type rating in an aircraft; or

''(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.''.

(b) COVERED TRAINING.—Section 44936(c) is amended to read as follows:

''(c) COVERED TRAINING.—

''(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

''(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.''.

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security

TITLE VIII—MISCELLANEOUS

SEC. 801. APPLICATIONS FOR NONLETHAL COCKPIT WEAPONS.

The Secretary of Transportation shall act expeditiously on any pending application by an air carrier seeking authority for the use of less-than-lethal-weapons by its flight crews.

SEC. 802. FAA NOTICES TO AIRMEN FDC 1/3353 AND 2/95823.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notices to Airmen FDC 1/3353 and 2/9583 (including any local Notices to Airmen of similar effect or import) as those restrictions are in effect on the date of enactment of this Act for a period of 180 days after that date;

(2) may not grant any waivers or exemptions from those restrictions, except as authorized by air traffic control for operational or safety purposes; and

(3) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule under which the Secretary may grant a waiver or exemption only if—

(1) the application for the waiver or exemption was received by the Secretary not less than 5 days (excluding Saturdays, Sundays, and holidays) before the proposed operation for which it is requested;

(2) the application is for a specific stadium or venue, during a specified period of time, for a specific aircraft, and contains the names of the pilot, crew, and passengers who will be aboard the aircraft;

(3) the pilot and each crewmember have passed a fingerprint-based criminal history records check by the Federal Bureau of Investigation;

(4) the names of all individuals aboard the aircraft have been compared with names on appropriate security watch lists;

(5) access to the aircraft will be secured before the proposed operation; and

(6) timely notice has been, or will be, given to the operators of the affected stadium or other venue.

TITLE [VII] *IX*—TECHNICAL CORRECTIONS

SEC. [701.] *901.* TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting ''Under'' before ''Secretary''.

(b) Section 115(c)(1) is amended—

(1) by striking ''and ratify or disapprove''; and

(2) by striking ''security'' the second place it appears and inserting ''Security''.

(c) Section 40109(b) is amended by striking ''40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935—44937'' and inserting ''40103(b)(1) and (2) and 40119''.

(d) Section 44901(a) is amended by inserting ''or, in the case of United States mail, by an officer or employee of the United States Postal Service under standards and procedures established by the Under Secretary,'' after '' Code),''.

(e) Section 44901(e) is amended by striking ''subsection (b)(1)(A)'' and inserting ''subsection (d)(1)(A)''.

(f) Section 44901(g)(2) is amended by striking ''Except at airports required to enter into agreements under subsection (c), the'' and inserting ''The''.

(g) Section 44903 is amended—

(1) by striking ''Administrator'' in subsection (c)(3) and inserting ''Under Secretary''; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(h) Section 44909 is amended—

(1) by striking ''Not later than March 16, 1991, the'' in subsection (a)(1) and inserting ''The''; and

(2) by inserting ''of Transportation for Security'' after ''Under Secretary'' in subsection (c)(2)(F).

(i) Section 44935 is amended—

[(1) by striking ''States;'' in subsection (e)(2)(A)(ii) and inserting ''States or a national of the United States, as defined in section 1101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22));''; and]

(1) by striking ''States;'' in subsection (e)(2)(A)(ii) and inserting ''States or described in subparagraph (C);'';

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

''(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

''(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

''(ii) was born in a territory of the United States;

''(iii) was honorably discharged from service in the Armed Forces of the United States; or

''(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71).''; and

[(2)] *(4)* by redesignating the second subsection (i) as subsection (k).

(j) Section 44936(a)(1)(A) is amended by striking ''Transportation Security,,'' and inserting ''Security,''.

(k) Section 44940 is amended—

(1) by striking ''Federal law enforcement personnel pursuant to section 44903(h).'' in subsection (a)(1)(G) and inserting ''law enforcement personnel pursuant to this title.'';

(2) by inserting ''FOR'' after ''RULES'' in the caption of subsection (d)(2); and

(3) by striking subsection (d)(4) and inserting the following:

''(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.''.

(l) Section 46301(a) is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).''.

(m) Section 46301(d)(2) is amended—

(1) by striking ''46302, 46303,'' in the first sentence;

(2) by striking the second sentence and inserting ''The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(d)(1)(C)–(F), 44908, and 44909), section 46302, 46303, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.''.

(n) Section 46301(g) is amended by striking ''Secretary'' and inserting ''Secretary, the Under Secretary of Transportation for Security,''.

(o) Chapter 465 is amended—

(1) by striking ''**screening**'' in the caption of section 46503; and

(2) by striking ''screening'' in the item relating to section 46503 in the chapter analysis.

(p) Section 47115(i) is amended by striking ''non-federal'' each place it appears and inserting ''non-Federal''.

(q) Section 48107 is amended by striking ''section 44912(a)(4)(A).'' and inserting ''section 44912(a)(5)(A).''.

(r) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking ''Under Secretary for Transportation Security'' each place it appears and inserting ''Under Secretary''.

(s) Section 44936 is amended by adding at the end the following:

''(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.''.

(t) Sections 44942(a)(1) and 44943(a) are each amended by striking ''Under Secretary for Transportation Security'' and inserting ''Under Secretary of Transportation for Security''.

(u) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary''.

(v) Section 44943(c) is amended by inserting ''and Transportation'' after ''Aviation''.

(w) Section 44942(b) is amended—

(1) by striking ''(1) PERFORMANCE PLAN AND REPORT.—'';

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(x) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

''44942. Performance goals and objectives.
''44943. Performance management plans.''.

(y) Section 44944(a)(1) is amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary of Transportation for Security''.

(z) Section 106(b)(2)(B) of the Aviation and Transportation Security Act is amended by inserting ''Under'' before ''Secretary''.

(aa) Section 119(c) of the Aviation and Transportation Security Act is amended by striking ''section 47192(3)(J)'' and inserting ''section 47102(3)(J)''.

(bb) Section 132(a) of the Aviation and Transportation Security Act is amended by striking ''12,500 pounds or more.'' and inserting ''more than 12,500 pounds.''.

Mrs. HUTCHISON. Mr. President, I ask unanimous consent that the committee-reported amendments be agreed to; I understand that Senators HOLLINGS and MCCAIN have an amendment at the desk, and I ask that the amendment be considered; that the Hollings-Rockefeller-McCain amendment, which is at the desk, be considered and agreed to; that the substitute amendment, as amended, be agreed to; that the motions to reconsider be laid upon the table, en bloc; that the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, without intervening action or debate.

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

The committee amendments were agreed to.

AMENDMENT NO. 4969 TO AMENDMENT NO. 4968

(Purpose: To add the text of S. 2950, entitled ''A bill To amend title 49, United States Code, to authorize appropriations for the National Transportation Safety Board for fiscal years 2003, 2004, and 2005, and for other purposes'', as reported by the Committee on Commerce, Science, and Transportation)

The amendment (No. 4969) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 4968

(Purpose: To provide for enhanced aviation security, and for other purposes)

The amendment (No. 4968), in the nature of a substitute, as amended, was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (S. 2949), as amended, was read the third time and passed, as follows:

S. 2949

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(a) SHORT TITLE.—This Act may be cited as the ''Aviation Security Improvement Act''.

(b) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.

TITLE I—AIR CARGO SECURITY

Sec. 101. Inspection of cargo carried aboard passenger aircraft.
Sec. 102. Air cargo shipping.
Sec. 103. Cargo carried aboard passenger aircraft.
Sec. 104. Training program for cargo handlers.
Sec. 105. Cargo carried aboard all-cargo aircraft.

TITLE II—PASSENGER IDENTIFICATION

Sec. 201. Passenger identification.
Sec. 202. Passenger identification verification.

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

Sec. 301. Prohibition on unauthorized circumvention of airport security systems and procedures.

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

Sec. 401. Blast-resistant cargo container technology.

TITLE V—FLIGHT SCHOOLS

Sec. 501. Modification of requirements regarding training to operate aircraft

TITLE VI—MISCELLANEOUS

Sec. 601. FAA Notice to Airmen FDC 2/0199.

TITLE VII—TECHNICAL CORRECTIONS

Sec. 701. Technical corrections.

TITLE VIII—NTSB AUTHORIZATION

Sec. 801. Short title.
Sec. 802. Authorization of appropriations.
Sec. 803. Assistance to families of passengers involved in aircraft accidents.
Sec. 804. Relief from contracting requirements for investigations services.

TITLE IX—CHILD PASSENGER SAFETY

Sec. 901. Short title.
Sec. 902. Improvement of safety of child restraints in passenger motor vehicles.
Sec. 903. Report on development of crash test dummy simulating a 10-year old child.
Sec. 904. Requirements for installation of lap and shoulder belts.
Sec. 905. Two-year extension of child passenger protection education grants program.
Sec. 906. Grants for improving child passenger safety programs.
Sec. 907. Definitions.
Sec. 908. Authorization of appropriations.

TITLE I—AIR CARGO SECURITY

SEC. 101. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows:

''(f) CARGO.—

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation; or

''(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).''.

SEC. 102. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449, is amended by adding at the end the following:

''§ 44921. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

''44921. Regular inspections of air cargo shipping facilities''.

SEC. 103. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449, is further amended by adding at the end the following:

''§ 44922. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.—

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''(3) NOTICE OF FAILURES.—The Under Secretary shall notify the Secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect

air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

''(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

''(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirements under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation for Security shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, as amended by section 102, is amended by adding at the end the following:

''44922. Air cargo security''.

SEC. 104. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 105. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed aboard such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported aboard all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(c) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.—

(1) CIRCULATION OF PROPOSED PROGRAM.—The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE II—PASSENGER IDENTIFICATION

SEC. 201. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

''§ 44923. Passenger identification

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

''(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, is amended by adding at the end the following:

''44923. Passenger identification''.

SEC. 202. PASSENGER IDENTIFICATION VERIFICATION.

(a) REQUIREMENT.—Subchapter I of chapter 449, is further amended by adding at the end the following:

''§ 44924. Passenger identification verification

''(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

''(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

''(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

''44924. Passenger identification verification''.

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 301. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) PROHIBITION.—Section 46503 is amended—

(1) by inserting ''(a) INTERFERENCE WITH SECURITY SCREENING PERSONNEL.—'' before ''An individual''; and

(2) by adding at the end the following new subsection:

''(b) UNAUTHORIZED CIRCUMVENTION OF SECURITY SYSTEMS AND PROCEDURES.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) The section heading of that section is amended to read as follows:

''§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures''.

(2) The chapter analysis for chapter 465 is amended by striking the item relating to section 46503 and inserting the following:

''46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures''.

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 401. BLAST-RESISTANT CARGO CONTAINER TECHNOLOGY.

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE V—FLIGHT SCHOOLS

SEC. 501. MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after ''(a) WAITING PERIOD.—'' as a new paragraph 2 ems from the left margin;

(2) by striking ''A person'' in that new paragraph and inserting ''(1) IN GENERAL.—A person'';

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking ''any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more'' and inserting ''an aircraft'';

(5) by striking ''paragraph (1)'' in paragraph (1)(B), as redesignated, and inserting ''subparagraph (A)''; and

(6) by adding at the end the following:

''(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

''(A) has earned a Federal Aviation Administration type rating in an aircraft; or

''(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.''.

(b) COVERED TRAINING.—Section 44936(c) is amended to read as follows:

''(c) COVERED TRAINING.—

''(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, training in a simulator, and any other form or aspect of training.

''(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.''.

(c) PROCEDURES.—

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security.

TITLE VI—MISCELLANEOUS

SEC. 601. FAA NOTICE TO AIRMEN FDC 2/0199.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notice to Airmen FDC 2/0199 (including any local Notices to Airmen of similar effect or import), as those restrictions are in effect on the date of enactment of this Act, for a period of 180 days after that date;

(2) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act; and

(3) may not grant any waivers or exemptions from those restrictions, except—

(A) as authorized by air traffic control for operational or safety purposes;

(B) for operational purposes of an event, stadium, or other venue, including (in the case of a sporting event) equipment or parts, transport of team members, officials of the governing body and immediate family members of team members and officials to and from the event, stadium, or other venue;

(C) for broadcast coverage for any broadcast rights holder;

(D) for safety and security purposes of the event, stadium, or other venue; or

(E) to operate an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic procedures.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule setting forth the standards under which the Secretary may grant a waiver or exemption. Such standards shall provide a level of security at least equivalent to that provided by the waiver policy applied by the Secretary as of the date of enactment of this Act.

(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting ''Under'' before ''Secretary''.

(b) Section 115(c)(1) is amended—

(1) by striking ''and ratify or disapprove''; and

(2) by striking ''security'' the second place it appears and inserting ''Security''.

(c) Section 40109(b) is amended by striking ''40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935—44937'' and inserting ''40103(b)(1) and (2) and 40119''.

(d) Section 44901(e) is amended by striking ''subsection (b)(1)(A)'' and inserting ''subsection (d)(1)(A)''.

(e) Section 44901(g)(2) is amended by striking ''Except at airports required to enter into agreements under subsection (c), the'' and inserting ''The''.

(f) Section 44903 is amended—

(1) by striking ''Administrator'' in subsection (c)(3) and inserting ''Under Secretary''; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(g) Section 44909 is amended—

(1) by striking ''Not later than March 16, 1991, the'' in subsection (a)(1) and inserting ''The''; and

(2) by inserting ''of Transportation for Security'' after ''Under Secretary'' in subsection (c)(2)(F).

(h) Section 44935 is amended—

(1) by striking ''States;'' in subsection (e)(2)(A)(ii) and inserting ''States or described in subparagraph (C);'';

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

''(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

''(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

''(ii) was born in a territory of the United States;

''(iii) was honorably discharged from service in the Armed Forces of the United States; or

''(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71).'';

(4) by inserting ''and'' after the semicolon in subsection (e)(2)(A) (iii);

(5) by striking ''establish; and'' in subsection (e)(2)(A)(iv) and inserting ''establish.'';

(6) by striking subsection (e)(2)(A)(v);

(7) by adding at the end of subsection (f)(1) the following:

''(E) The individual shall be able to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol.''; and

(8) by redesignating the second subsection (i) as subsection (k).

(i) Section 44936(a)(1)(A) is amended by striking ''Transportation Security,,'' and inserting ''Security,''.

(j) Section 44940 is amended—

(1) by striking ''Federal law enforcement personnel pursuant to section 44903(h).'' in subsection (a)(1)(G) and inserting ''law enforcement personnel pursuant to this title.'';

(2) by inserting ''FOR'' after ''RULES'' in the caption of subsection (d)(2); and

(3) by striking subsection (d)(4) and inserting the following:

''(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.''.

(k) Section 46301(a) is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).''.

(l) Section 46301(d)(2) is amended—

(1) by striking ''46302, 46303,'' in the first sentence;

(2) by striking the second sentence and inserting ''The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)—(d)(1)(A), 44907(d)(1)(C)—(F), 44908, and 44909), section

46302, 46303, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.''.

(m) Section 46301(g) is amended by striking ''Secretary'' and inserting ''Secretary, the Under Secretary of Transportation for Security,''.

(n) Chapter 465 is amended—

(1) by striking ''**screening**'' in the caption of section 46503; and

(2) by striking ''screening'' in the item relating to section 46503 in the chapter analysis.

(o) Section 47115(i) is amended by striking ''non-federal'' each place it appears and inserting ''non-Federal''.

(p) Section 48107 is amended by striking ''section 44912(a)(4)(A).'' and inserting ''section 44912(a)(5)(A).''.

(q) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking ''Under Secretary for Transportation Security'' each place it appears and inserting ''Under Secretary''.

(r) Section 44936 is amended by adding at the end the following:

''(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.''.

(s) Sections 44942(a)(1) and 44943(a) are each amended by striking ''Under Secretary for Transportation Security'' and inserting ''Under Secretary of Transportation for Security''.

(t) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary''.

(u) Section 44943(c) is amended by inserting ''and Transportation'' after ''Aviation''.

(v) Section 44942(b) is amended—

(1) by striking ''(1) PERFORMANCE PLAN AND REPORT.—'';

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(w) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

''44942. Performance goals and objectives
''44943. Performance management plans''.

(x) Section 44944(a)(1) is amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary of Transportation for Security''.

(y) Section 106(b)(2)(B) of the Aviation and Transportation Security Act is amended by inserting ''Under'' before ''Secretary''.

(z) Section 119(c) of the Aviation and Transportation Security Act is amended by striking ''section 47192(3)(J)'' and inserting ''section 47102(3)(J)''.

(aa) Section 132(a) of the Aviation and Transportation Security Act is amended by striking ''12,500 pounds or more.'' and inserting ''more than 12,500 pounds.''.

TITLE VIII—NTSB AUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the ''National Transportation Safety Board Reauthorization Act of 2002''.

SEC. 802. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEARS 2003–2005.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking ''and''; and

(2) by striking ''such sums to'' and inserting the following: ''$73,325,000 for fiscal year 2003, $84,999,000 for fiscal year 2004, and $89,687,000 for fiscal year 2005. Such sums shall''.

(b) EMERGENCY FUND.—Section 1118(b) of such title is amended by striking the second sentence and inserting the following: ''In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $3,000,000.''.

(c) NTSB ACADEMY.—Section 1118 of such title is amended by adding at the end the following:

''(c) ACADEMY.—

''(1) AUTHORIZATION.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, and $4,995,000 for fiscal year 2005. Such sums shall remain available until expended.

''(2) FEES.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

''(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this paragraph—

''(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

''(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

''(C) shall remain available until expended.

''(4) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.''.

(d) REPORT ON ACADEMY OPERATIONS.—The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.

SEC. 803. ASSISTANCE TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—Section 1136 of title 49, United States Code, is amended by adding at the end the following:

''(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

''(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

''(2) BOARD ASSISTANCE.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.''.

(b) REVISION OF MOU.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 804. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

Section 1113(b) of title 49, United States Code, is amended—

(1) by striking ''Statutes;'' in paragraph (1)(B) and inserting ''Statutes, and, for investigations conducted under section 1131, enter into such agreements or contracts without regard to any other provision of law requiring competition if necessary to expedite the investigation;''; and

(2) by adding at the end the following:

''(3) The Board, as a component of its annual report under section 1117, shall include an enumeration of each contract for $25,000 or more executed under this section during the preceding calendar year.''.

TITLE IX—CHILD PASSENGER SAFETY

SEC. 901. SHORT TITLE.

This title may be cited as ''Anton's Law''.

SEC. 902. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) ELEMENTS FOR CONSIDERATION.—In the rulemaking proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 40 pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

(3) consider whether to develop a solution for children weighing more than 40 pounds who only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

(4) review the definition of the term ''booster seat'' in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulation, to determine if it is sufficiently comprehensive.

(c) COMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

SEC. 903. REPORT ON DEVELOPMENT OF CRASH TEST DUMMY SIMULATING A 10-YEAR OLD CHILD.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the current schedule and status of activities of the Department of Transportation to develop, evaluate, and certify a commercially available dummy that simulates a 10-year old child for use in testing the effectiveness of child restraints used in passenger motor vehicles.

SEC. 904. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS.

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, relating to occupant crash protection, in order to—

(1) require a lap and shoulder belt assembly for each rear designated seating position in a

passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement; and

(2) apply that requirement to passenger motor vehicles in phases in accordance with subsection (b).

(b) IMPLEMENTATION SCHEDULE.—The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.

(c) REPORT ON DETERMINATION TO EXCLUDE.—

(1) REQUIREMENT.—If the Secretary determines under subsection (a)(1) that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of motor vehicle, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report specifying the reasons for the determination.

(2) DEADLINE.—The report under paragraph (1) shall be submitted, if at all, not later than 30 days after the date on which the Secretary issues a final rule under subsection (a).

SEC. 905. TWO-YEAR EXTENSION OF CHILD PASSENGER PROTECTION EDUCATION GRANTS PROGRAM.

Section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note; 112 Stat. 328) is amended by striking ''and 2001.'' and inserting ''through 2004.''

SEC. 906. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

''§ 412. Grant program for improving child passenger safety programs

''(a) STANDARDS AND REQUIREMENTS REGARDING CHILD RESTRAINT LAWS.—Not later than October 1, 2003, the Secretary shall establish appropriate criteria applicable to child restraint laws for purposes of eligibility for grants under this section. The criteria shall be consistent with the provisions of Anton's Law.

''(b) REQUIREMENT TO MAKE GRANTS.—

''(1) IN GENERAL.—The Secretary shall make a grant to each State and Indian tribe that, as determined by the Secretary, has a child restraint law in effect on September 30, 2004.

''(2) LIMITATION ON NUMBER OF GRANTS.—Not more than one grant may be made to a State or Indian tribe under this section.

''(3) COMMENCEMENT.—The requirement in paragraph (1) shall commence on October 1, 2004.

''(c) GRANT AMOUNT.—The amount of the grant to a State or Indian tribe under this section shall be the amount equal to five times the amount provided to the State or Indian tribe, as the case may be, under section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note) in fiscal year 2003.

''(d) USE OF GRANT AMOUNTS.—

''(1) IN GENERAL.—A State or Indian tribe shall use any amount received by the State or Indian tribe, as the case may be, under this section to carry out child passenger protection programs for children under the age of 16 years, including programs for purposes as follows:

''(A) To educate the public concerning the proper use and installation of child restraints, including booster seats.

''(B) To train and retain child passenger safety professionals, police officers, fire and emergency medical personnel, and educators concerning all aspects of the use of child restraints.

''(C) To provide child restraint systems, including booster seats and the hardware needed for their proper installation, to families that cannot otherwise afford such systems.

''(D) To support enforcement of the child restraint law concerned.

''(2) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a program under paragraph (1) that is carried out using amounts from a grant under this section may not exceed 80 percent of the cost of the program.

''(e) ADMINISTRATIVE EXPENSES.—The amount of administrative expenses under this section in any fiscal year may not exceed the amount equal to five percent of the amount available for making grants under this section in the fiscal year.

''(f) APPLICABILITY OF CHAPTER 1.—The provisions of section 402(d) of this title shall apply to funds authorized to be appropriated to make grants under this section as if such funds were highway safety funds authorized to be appropriated to carry out section 402 of this title.

''(g) DEFINITIONS.—In this section:

''(1) CHILD RESTRAINT LAW.—The term 'child restraint law' means a law that—

''(A) satisfies standards established by the Secretary under Anton's Law for the proper restraint of children who are over the age of 3 years or who weigh at least 40 pounds;

''(B) prescribes a penalty for operating a passenger motor vehicle in which any occupant of the vehicle who is under the age of 16 years is not properly restrained in an appropriate restraint system (including seat belts, booster seats used in combination with seat belts, or other child restraints); and

''(C) meets any criteria established by the Secretary under subsection (a) for purposes of this section.

''(2) PASSENGER MOTOR VEHICLE.—The term 'passenger motor vehicle' has the meaning given that term in section 405(f)(5) of this title.

''(3) STATE.—The term 'State' has the meaning given in section 101 of this title and includes any Territory or possession of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 411 the following new item:

''412. Grant program for improving child passenger safety programs.''.

SEC. 907. DEFINITIONS.

In this title:

(1) CHILD RESTRAINT.—The term ''child restraint'' means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

(2) PRODUCTION YEAR.—The term ''production year'' means the 12-month period between September 1 of a year and August 31 of the following year.

(3) PASSENGER MOTOR VEHICLE.—The term ''passenger motor vehicle'' has the meaning given that term in section 405(f)(5) of title 23, United States Code.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this title, including the making of grants under section 412 of title 23, United States Code, as added by section 906.

Mrs. HUTCHISON. Mr. President, I appreciate the fact that we have now passed an air cargo security bill that I think will move the ball a long way down the road toward ensuring the safety of the traveling public and our aviation industry.

Since the 9/11 terrorist attacks, we have spent a tremendous amount of time, effort, and resources improving our passenger aviation security system. In fact, tomorrow we have a very important deadline that will be met. All of the airport screeners in our country will be Federal employees who have met a series of stringent requirements, undergone mandatory training, and passed performance and written examinations.

I am proud of the work we have done in this area, but I am also concerned that we have been neglecting other modes of transportation as we continue to focus on passenger aircraft. 1 year ago, Congress created the Transportation Security Administration to implement and oversee security on our highways, in our airports, on trains, and in our ports. However, until now, we only gave to the TSA the tools to do the job with respect to passenger aviation security.

Last week, we finally passed the port security bill. Now we need to take another step toward transportation security. While I am confident that our efforts have dramatically improved aviation security, we have not closed all the loopholes in our air cargo operations. This issue must be addressed.

Twenty-two percent of all air cargo in the United States is carried on passenger flights, but only a tiny percentage of this cargo is inspected. There is no point to carefully screening every piece of luggage if the cargo placed aboard the same flight is not inspected at all. That is why I introduced the Air Cargo Security Act with my friend from California, Senator DIANNE FEINSTEIN. We reasoned it was pointless to require air passengers to wait in long security lines, undergo rigorous searches, which all of us have certainly had the privilege of suffering through, if we then allow packages to travel on the very same flight with no inspections whatsoever. Ignoring this problem could be an invitation to disaster.

My legislation was the subject of a closed-door hearing of the Aviation Subcommittee. Without going into details, it was apparent there are significant vulnerabilities in our existing system of air cargo security. The Transportation Security Administration is doing the best it can with limited resources. But clearly, legislation is required.

I modified the bill in response to those weaknesses and the recommendations made by the Transportation Security Administration, as well as the

Department of Transportation Inspector General.

This bill was unanimously passed by the Commerce Committee in September as part of a larger package of aviation security measures. Some of these provisions made their way into the homeland security compromise draft, but air cargo security is too important to simply wait until next year.

The bill before us will establish a more reliable and accountable known shipper program, with frequent inspections of shipping facilities, tamper-proof identification cards for employees, and an accessible shipper database.

For the first time, the Transportation Security Administration will have the power to revoke the license of a shipper or freight forwarder whose practices are unsound or who has engaged in illegal activity.

The bill also requires the Transportation Security Administration to conduct regular inspections of foreign shipping facilities. Freight forwarders will have to submit to random inspections, and the TSA must also implement a training program for cargo professionals. All cargo facilities must have an improved security plan.

While we tighten these rules and procedures, we must be careful not to cause any economic damage to an airline industry that is already in dire straits. It is critical that the measures we impose allow both passenger and cargo carriers to compete on an equal footing. We drafted this bill in consultation with air cargo carriers and the airlines. I am pleased that we have gained their support, because it is important we have the regulators and the aviation industry working together to make the most seamless security system possible, not only in our country but throughout the world.

I also want to point out that the bill before us would accomplish several other goals. These provisions have all been approved by the Commerce Committee, and I thank Senators HOLLINGS and MCCAIN for their leadership.

The bill reauthorizes the National Transportation Safety Board through fiscal year 2005. I was proud to serve as vice chair of the National Transportation Safety Board before I came to the Senate. This agency investigates civil aviation accidents and significant incidents in other modes of transportation: railroad, highway, marine, and pipeline. The NTSB also issues safety recommendations aimed at preventing future accidents. This reauthorization also strengthens performance requirements for booster seats for children weighing more than 50 pounds. The NTSB's important work is completed on a very reasonable budget. I am pleased to support this reauthorization bill.

The bill before us also makes technical corrections to last year's Aviation and Transportation Security Act. It allows TSA to use biometric identification technologies such as retina scans and fingerprints to assist in aviation security. It defines circumvention of airport security as a Federal crime. It authorizes a study on blast-resistant cargo containers, and it strengthens security at flight schools. These necessary measures fine-tune the comprehensive security legislation we passed last year. I am pleased we have cleared this legislation, and I urge my colleagues in the House to follow suit.

Mr. President, I would make a parliamentary inquiry. Am I correct in concluding that all of the necessary steps and procedures have occurred to assure that this bill has been passed and that Senate action on S. 2949 is now complete?

The PRESIDING OFFICER. The Senator is correct.

Ms. HUTCHISON. I thank the Chair.

I appreciate the cooperation of my colleagues. I thank Senator REID for helping me in this wrap-up. I know he has not yet come to the floor, but I know that he helped us in clearing this bill. This bill has been cleared by unanimous consent. It is a very important step in securing our homeland. We have taken great strides to secure our airports and the passenger screening is quite thorough. Everybody has to smile when you say that, because anyone who has flown in America in the last 6 months has certainly been subjected to a lot of scrutiny. I have certainly been frisked. I have had my shoes taken off, all of those things that drive people crazy. But the bottom line is, we do have a safer system. We got the wake-up call on 9/11 of 2001. We have taken extraordinary steps to secure our country and our aviation system. Anyone who says our system is not safer today than it was on September 10 of 2001 either has not flown or is being disingenuous.

I would like to thank Admiral Loy at the Transportation Security Administration, and certainly Secretary Mineta and President Bush for their strong leadership in homeland and transportation security. We are going to do everything we can to make sure our people are safe.

The port security bill was a huge step in the right direction. I have one of the largest petrochemical complexes in the world in Houston, TX. I want to make sure they had all the authority and resources they need to secure that port. In fact, just this week, I talked to the people from the Port of Houston, and they are taking steps on their own. We need to help them at the Federal level to improve security, but they are not waiting for us to act. They know the importance of this issue because they are on the front lines, hearing of new threats from Osama bin Laden just recently. So they are battening down the hatches.

We are going to do the same thing with air cargo in the bill we just passed. If the House does come back this year, I will urge my colleagues in the House to look at this bill and try to work with us to make sure the belly of the airplane is just as safe as the passenger cabin is today. All of us want that to happen. I appreciate everybody's cooperation in passing this very important piece of legislation. Mr. President, I look forward to chairing the Aviation Subcommittee next year, working with Senator ROCKEFELLER, my ranking member, with whom I have had a great working relationship. We have passed the aviation security measure that is the law today. We worked together to pass the port security bill.

Senator ROCKEFELLER and I have a great vision for what we can do in aviation to make our system not only secure and safe for the traveling public, but also economically viable. Without an aviation industry, this country would lose in commerce and in the freedom of our people to travel. Our country is vast and we need aviation. I am looking forward to chairing that Subcommittee with Senator ROCKEFELLER and working to try to make sure that we maintain an economically viable aviation industry that is safe and secure for the traveling public, and for the goods that comprise our commerce.

Mr. President, I yield the floor.

Mr. MCCAIN. Mr. President, I rise to speak on S. 2949, the Aviation Security Improvement Act. This bill builds and improves upon work that began last year when Congress passed the Aviation and Transportation Security Act, ATSA, P.L. 107–71. During the 10 months since that law's enactment, there has been a significant change in the way aviation security is handled. However, there is a long way to go until we achieve all our aviation security goals. I believe the bill before us would make many positive steps in the continuing effort to protect the nation's air transportation system. This bill also contains the text of S. 2950, the National Transportation Safety Board Reauthorization.

I want to begin by commending Senators HUTCHISON and SNOWE for their work on the air cargo security issue addressed in this legislation. The cargo provisions flow directly from their bills and would bolster an aspect of aviation security that was not addressed in great detail in last year's law. This is one area in which we can and should be proactive to get ahead of potential problems or vulnerabilities.

There is a particular issue in this bill that I want to discuss briefly. In last year's security bill, we mandated that airport screeners had to be U.S. citizens. While imposing that requirement was an understandable impulse, it had some negative ramifications that were not clear at the time. For example, American Samoans are not now eligible to be screeners because they are considered nationals, not citizens.

S. 2949 includes a provision to allow nationals of the U.S., honorably discharged veterans of the U.S. military, and lawful permanent residents who were employed as airport security screeners at the time of ATSA's enactment, to be eligible to compete for jobs

as federal security screeners. The provision would not require that these individuals be hired, but give TSA the discretion to hire them if they meet all the other statutory requirements concerning the hiring of screeners. This is a fair and reasonable expansion of the existing provision.

A similar provision was added to the Homeland Security bill. However, the provision in the Homeland Security bill only expands the definition to include U.S. nationals. It would still exclude an important segment of the population-legal permanent residents. LPRs as they are known, can join the military and risk giving up their lives fighting for our country. Yet, to date, they cannot be hired as security screeners. This is wrong, and we should correct it now.

In addition, S. 2949 would reauthorize the National Transportation Safety Board. The NTSB is an independent Federal agency charged with investigating every civil aviation accident in the United States. It also investigates significant accidents in the other modes of transportation—railorad, highway, marine, and pipeline—and issuing safety recommendations intended to prevent future accidents. We are all aware of the important role the NTSB plays in the safety of our transportation system, and it is important that we move ahead with this reauthorizing legislation.

A key element of this bill involves authorization for the NTSB's new Training Academy, which will be the centerpiece of its teaching and training of transportation accident investigators worldwide. It also will provide state-of-the-art classrooms and laboratory space for accident investigation. This is especially important with the advent of new technology that is being used to build, fuel, and more all modes of transportation.

The legislation also would streamline the NTSB's procurement process during accident investigations and allow the Board to transfer its family assistance responsibilities to any Federal agency that takes over an investigation, such as the FBI, provided that the other agency is willing and able to handle those duties. Finally the bill would reauthorize the NTSB's funding for its day to day activities.

The importance of the agency is well known to all. I urge the support of this bill.

THE CONFIRMATION OF MICHAEL McCONNELL TO THE 10TH CIRCUIT

Mr. LEAHY. Mr. President, last Friday, the Senate approved the nomination of Michael McConnell to the United States Court of Appeals for the Tenth Circuit. As a professor, first at the University of Chicago, and then at the University of Utah, Mr. McConnell has been a strong voice for reexamining First Amendment jurisprudence of Free Exercise Clause and the Establishment Clause. He has expressed strong personal opposition to abortion to Roe v. Wade, to the clinic access law. He has testified before the Congress against the Violence Against Women Act on the grounds that it was unconstitutional.

Each of these issues was explored to some degree at his hearing before the Judiciary Committee and in follow up written questions. No one doubts that Professor McConnell is personable and intelligent. No one doubts that he is an outstanding and provocative professor. I see why so many of his law professor colleagues like him and have endorsed his nomination. But the Judiciary Committee also received letters from hundreds of law professors reminding us that the burden of persuasion on lifetime judicial appointments should be on the nominee, as well as a recent letter signed by hundreds of law professors opposing confirmation of Professor McConnell.

The question I was left with after his nomination hearing was whether we had witnessed another confirmation conversion. Stated another way, I remain very concerned that Professor McConnell may turn out to be an activist on the 10th Circuit.

For instance, I still have a hard time reading his writing on the actions of Federal District Court Judge John Sprizzo in acquitting abortion protesters as anything other than praise for the extra-legal behavior of both the defendants and the judge. Even though Professor McConnell has now been confirmed, I continue to be concerned that he appeared to commend a judge and regard him as a hero for not following the law.

I find his responses regarding the Violence Against Women Act convenient.

I see his refusal to take responsibility for his harsh criticism of the Supreme Court's decision in the Bob Jones case as an attempt to distance himself from his prior approval of the ability of religious institutions to discriminate on the basis of race, even if they are receiving benefits from the Government.

At his hearing, and in follow-up written questions, Professor McConnell sought to assure us that he understands the difference between his role as a teacher and advocate and his future role as a judge. He assured us that he respects the doctrine of stare decisis, and that as a Federal appeals court judge, he will be bound to follow Supreme Court precedent.

Although many of President Clinton's nominees who assured the Senate of these same things when they were nominated were discredited and not considered, this nomination has moved forward and been approved.

I reluctantly supported this nomination to the 10th Circuit based on Professor McConnell's assurances. I trust that he will not seek to undermine women's reproductive rights derived from the Constitution and articulated in Roe v. Wade. I trust that as an appeals court judge he will divorce his personal views on abortion and on racial discrimination in religious institutions from his decisions as a judge, and that he will act to uphold existing law. I trust that he will not seek to circumvent the doctrine of stare decisis and that he will not work to change the law through activism on the bench.

There are already admirers who predict that Professor McConnell is destined for a short stop at the 10th Circuit on the way to a Supreme Court nomination. I do not speculate about such things. Professor McConnell has yet to create a record on the 10th Circuit. I mention it only to note that no one should confuse my support of Professor McConnell's nomination to the 10th Circuit as an endorsement or approval for any other position.

IN REMEMBRANCE OF PAUL WELLSTONE

Ms. SNOWE. Mr. President, like all of my colleagues, I was shocked and deeply saddened by the tragic accident that claimed the life of Senator Wellstone, his wife Sheila, their daughter Marcia, two pilots, and three members of Paul's staff. My heart goes out to the families and they will remain in my thoughts and prayers.

It was always a privilege working with Senator Wellstone. In fact, one of the last images I have of him was in the final days of the session, when I encountered him coming up the aisle in the Senate Chamber after a vote with his typical boundless energy, warm smile, and friendly greeting. He was a compassionate, honorable man—and it was obvious to all of us that, together, Paul and Sheila made an extraordinary and loving team.

As a public servant, Senator Wellstone's most enduring legacy will surely be his career of conscience in elective office. With his unwavering passion and integrity, he was highly respected and will be long remembered.

With both of us hailing from northern border States, we shared the same perspective on a number of issues such as the reimportation of prescription drugs, and we worked together over the years to ensure the critical low-income energy program, LIHEAP, would be there for the people of Maine and Minnesota.

I was proud to serve with him on the Small Business Committee where I saw his diligence and tenaciousness firsthand, and to work with him on issues of importance to our veterans such as a bill establishing July 16 as a National Day of Remembrance for Atomic Veterans, as well as a measure providing for increases in veterans spending. I was also pleased to help champion his and Senator DOMENICI's legislation to create mental health parity—a perfect illustration of his compassion and the causes for which he felt duty-bound to fight.

Indeed, all of us and, most importantly, the people of Minnesota could count on Paul to stand up for his deeply held beliefs, speaking always from

the courage of his convictions. He personified the notion of being able to disagree—even vehemently—without being disagreeable.

In fact, I cannot help but recall that when Senators were offering their appreciation to Senator HELMS upon the occasion of his retirement, Senator Wellstone offered very heartfelt and touching words. He acknowledged that he and Senator HELMS often differed on the issues. But Paul respected the purity of the convictions of his colleague across the aisle—and he wished him well.

Now, it is Paul Wellstone who has left our midst, and the entire Senate family shares in the sense of loss. We have a desk that was once filled with Paul's irrepressible spirit, and it strikes me that Paul Wellstone perished in pursuit of the very ideal he held to be so noble and worthy—public service.

This institution is always at its strongest when it is populated with men and women of Paul Wellstone's authenticity. We are diminished by his passing, and he will be missed.

CONFIRMATION OF JOHN ROGERS

Mr. LEAHY. Mr. President, last week the Senate voted to confirm the nomination of John Rogers who is nominated to the U.S. Court of Appeals for the Sixth Circuit. By confirming this nomination, we are trying to move forward in providing help to the Sixth Circuit. Earlier this year, we held a hearing for Judge Julia Gibbons to a seat on the Sixth Circuit, who was confirmed by the Senate on July 29, 2002 by a vote of 95 to 0. With last night's vote, the Democratic-led Senate confirmed the 15th judge to our federal Courts of Appeal and our 98th judicial nominee since the change in Senate majority in July 2001. I have placed a separate statement in the RECORD on the occasion of confirming that many of this President's judicial nominees in just 16 months.

Republicans often say that almost half of the seats on the Sixth Circuit are vacant but what they fail to acknowledge is that most of those vacancies arose during the Clinton administration and before the change in majority last summer. None, zero, not one of the Clinton nominees to those current vacancies on the Sixth Circuit received a hearing by the Judiciary Committee under Republican leadership. With the confirmation of Professor Rogers, we have reduced the number of vacancies on that court to six, but four of those remaining lack home-State consent due to the President's failure to address the legitimate concerns of Senators in that circuit whose nominees were blocked by Republicans during the period of Republican control of the Senate.

The Sixth Circuit vacancies are a prime and unfortunate legacy of the past partisan obstructionist practices under Republican leadership. Vacancies on the Sixth Circuit were perpetuated during the last several years of the Clinton administration when the Republican majority refused to hold hearings on the nominations of Judge Helene White, Kathleen McCree Lewis and Professor Kent Markus to vacancies in the Sixth Circuit.

One of those seats has been vacant since 1995, the first term of President Clinton. Judge Helene White of the Michigan Court of Appeals was nominated in January 1997 and did not receive a hearing on her nomination during the more than 1,500 days before her nomination was withdrawn by President Bush in March of last year. Judge White's nomination may have set an unfortunate record.

Her nomination was pending without a hearing for over four years—51 months. She was first nominated in January 1997 and renominated and renominated through March of last year when President Bush chose to withdraw her nomination. Under Republican control, the Committee averaged hearings on only about eight Courts of Appeals nominees a year and, in 2000, held only five hearings on Courts of Appeals nominees all year.

In contrast, Professor Rogers was the fifteenth Court of Appeals nominee of President Bush to receive a hearing by the Committee in less than a year since the reorganization of the Senate Judiciary Committee. In 16 months we held hearings on 20 circuit court nominations. Professor Rogers was being treated much better than Kathleen McCree Lewis, a distinguished African American lawyer from a prestigious Michigan law firm. She never had a hearing on her 1999 nomination to the Sixth Circuit during the years it was pending before it was withdrawn by President Bush in March 2001.

Professor Kent Markus, another outstanding nominee to a vacancy on the Sixth Circuit that arose in 1999, never received a hearing on his nomination before his nomination was returned to President Clinton without action in December 2000. While Professor Markus' nomination was pending, his confirmation was supported by individuals of every political stripe, including 14 past presidents of the Ohio State Bar Association and more than 80 Ohio law school deans and professors.

Others who supported Professor Markus include prominent Ohio Republicans, including Ohio Supreme Court Chief Justice Thomas Moyer, Ohio Supreme Court Justice Evelyn Stratton, Congresswoman DEBORAH PRYCE, and Congressman DAVID HOBSON, the National District Attorneys Association, and virtually every major newspaper in the state.

In his testimony to the Senate in May, Professor Markus summarized his experience as a Federal judicial nominee, demonstrating how the ''history regarding the current vacancy backlog is being obscured by some.'' Here are some of things he said:

> On February 9, 2000, I was the President's first judicial nominee in that calendar year. And then the waiting began. . . .
>
> At the time my nomination was pending, despite lower vacancy rates than the 6th Circuit, in calendar year 2000, the Senate confirmed circuit nominees to the 3rd, 9th and Federal Circuits. . . . No 6th circuit nominee had been afforded a hearing in the prior two years. Of the nominees awaiting a Judiciary Committee hearing, there was no circuit with more nominees than the 6th Circuit.
>
> With high vacancies already impacting the 6th Circuit's performance, and more vacancies on the way, why, then, did my nomination expire without even a hearing? To their credit, Senator DEWINE and his staff and Senator HATCH's staff and others close to him were straight with me.
>
> Over and over again they told me two things: 1. There will be no more confirmations to the 6th Circuit during the Clinton administration[.] 2. This has nothing to do with you; don't take it personally—it doesn't matter who the nominee is, what credentials they may have or what support they may have—see item number 1. . . .
>
> The fact was, a decision had been made to hold the vacancies and see who won the presidential election. With a Bush win, all those seats could go to Bush rather than Clinton nominees.

As Professor Markus identified, some on the other side of the aisle held these seats open for years for another President to fill, instead of proceeding fairly on the consensus nominees pending before the Senate. Some were unwilling to move forward, knowing that retirements and attrition would create four additional seats that would arise naturally for the next President. That is why there are now so many vacancies on the Sixth Circuit.

Had Republicans not blocked President Clinton's nominees to this court, if the three Democratic nominees had been confirmed and President Bush appointed the judges to the other vacancies on the Sixth Circuit, that court would be almost evenly balanced between judges appointed by Republicans and Democrats. That is what Republican obstruction was designed to avoid, balance. The same is true of a number of other circuits, with Republicans benefitting from their obstructionist practices of the preceding six and a half years. This combined with President Bush's refusal to consult with Democratic Senators about these matters is particularly troubling.

Long before some of the recent voices of concern were raised about the vacancies on that court, Democratic Senators in 1997, 1998, 1999, and 2000 implored the Republican majority to give the Sixth Circuit nominees hearings. Those requests, made not just for the sake of the nominees but for the sake of the public's business before the court, were ignored. Numerous articles and editorials urged the Republican leadership to act on those nominations.

Fourteen former presidents of the Michigan State Bar pleaded for hearings on those nominations. The former Chief Judge of the Sixth Circuit, Judge Gilbert Merritt, wrote to the Judiciary Committee Chairman years ago to ask that the nominees get hearings and

that the vacancies be filled. The Chief Judge noted that, with four vacancies, the four vacancies that arose in the Clinton Administration, the Sixth Circuit ''is hurting badly and will not be able to keep up with its work load due to the fact that the Senate Judiciary Committee has acted on none of the nominations to our Court.'' He predicted: ''By the time the next President in inaugurated, there will be six vacancies on the Court of Appeals. Almost half of the Court will be vacant and will remain so for most of 2001 due to the exigencies of the nomination process. Although the President has nominated candidates, the Senate has refused to take a vote on any of them.''

However, no Sixth Circuit hearings were held in the last three full years of the Clinton Administration (almost his entire second presidential term), despite these pleas. Not one. Since the shift in majority last summer, the situation has been exacerbated further as two additional vacancies have arisen.

The Committee's April 25th hearing on the nomination of Judge Gibbons to the Sixth Circuit was the first hearing on a Sixth Circuit nomination in almost five years, even though three outstanding, fair-minded individuals were nominated to the Sixth Circuit by President Clinton and pending before the Committee for anywhere from one year to over four years. Judge Gibbons was confirmed by the Senate on July 29, 2002, by a vote of 95 to 0. We did not stop there, but proceeded to hold a hearing on a second Sixth Circuit nominee, Professor Rogers, just a few short months later in June.

Just as we held the first hearing on a Sixth Circuit nominee in many years, the hearing we held on the nomination of Judge Edith Clement to the Fifth Circuit last year was the first on a Fifth Circuit nominee in seven years and she was the first new appellate judge confirmed to that Court in six years.

When we held a hearing on the nomination of Judge Harris Hartz to the Tenth Circuit last year, it was the first hearing on a Tenth Circuit nominee in six years and he was the first new appellate judge confirmed to that Court in six years. When we held the hearing on the nomination of Judge Roger Gregory to the Fourth Circuit last year, it was the first hearing on a Fourth Circuit nominee in three years and he was the first appellate judge confirmed to that court in three years.

A number of vacancies continue to exist on many Courts of Appeals, in large measure because the recent Republican majority was not willing to hold hearings or vote on half—56 percent—of President Clinton's Courts of Appeals nominees in 1999 and 2000 and was not willing to confirm a single judge to the Courts of Appeals during the entire 1996 session.

From the time the Republicans took over the Senate in 1995 until the reorganization of the Committee last July, circuit vacancies increased from 16 to 33, more than doubling. Democrats have broken with that recent history of inaction. In the last 16 months, we have held 26 judicial nominations hearing, including 20 hearings for circuit court nominees.

Professor Roger's nomination was also the fourth judicial nomination from Kentucky to be considered by the Committee in its first year, and the eighth nomination from Kentucky overall. There are no judicial vacancies left in the State.

Professor Rogers of the University of Kentucky College of Law has experience as an appellate litigator and a teacher, and is a prolific author on a number of difficult legal topics. It is important to note that aspects of his record raise concerns. As a professor, he has been a strong proponent of judicial activism. No Clinton judicial nominee with such published views would ever have been confirmed during the period of Republican control. In his writings, Professor Rogers has called on lower court judges to reverse higher court precedents, if the lower court judge thinks the higher court will ultimate reverse its own precedent. Such an activist approach is inappropriate in the lower Federal courts. The Supreme Court itself has noted that lower courts should follow Supreme Court precedent and not anticipate future decisions in which the Supreme Court may exercise its prerogative to overrule itself.

Prognostications about how the Supreme Court will rule often turns out to be wrong. For example, some predicted that the Supreme Court would overturned Miranda, but the Supreme Court, in an opinion by Chief Justice Rehnquist, declined to do so. Similarly, people like Professor Rogers have called on the Supreme Court to overturn Roe v. Wade, but thus far the Supreme Court has rejected calls to reverse itself in this important decision regarding the rights of women and has resisted calls to return this country to the awful period of dangerous back alley abortions.

Professor Rogers also suggested in his academic writings that lower court judges should consider the political views of Justices in making the determination of when lower courts should overrule Supreme Court precedent. In his answers to the Committee, Professor Rogers acknowledged that he had taken that position but he now says that lower courts should not look to the views of Justices expressed in speeches or settings other than their opinions. Also, in his answers to the Committee, Professor Rogers said he would give great weight to Supreme Court dicta, or arguments that are not part of the holding of the case. I would like to take this opportunity to urge him to take seriously the obligation of a judge to follow precedent and the holdings of the Supreme Court, rather than to look to dicta for views that may support his own personal views. I would also urge him resist acting on his academic notion that a judge should diverge from precedent when he anticipates that the Supreme Court may eventually do so.

Professor Rogers has assured us that he would follow precedent and not overrule higher courts, despite his clear advocacy of that position in his writings as a scholar. He has sworn under oath that he would not follow the approach that he long advocated. As with President Bush's Eighth Circuit nominee Lavenski Smith, who was confirmed earlier this summer, I am hopeful that Professor Rogers will be a person of his word: that he will follow the law and not seek out opportunities to overturn precedent or decide cases in accord with his private beliefs rather than his obligations as a judge.

I would also note that during his tenure at the Justice Department, Professor Rogers appeared to support an expansive view of the power of the Executive Branch vis-a-vis Congress. I am hopeful, however, that Professor Rogers will recognize the important difference between being a zealous advocate for such positions and being a fair and impartial judge sworn to follow precedents and the law.

When he was asked to describe any work he had handled which was not popular but was nevertheless important, he said that the case which came to mind was one in which he defended the CIA against a lawsuit seeking damages for the CIA's illegal opening of the private mail of tens of thousands of U.S. citizens during this 1970s or 1980s. Those were dark days of overreaching by the intelligence community against the rights of ordinary law-abiding American citizens. Although times have changed forever since the tragic events of September 11, I think it is important that the American people have access to judges who will uphold the Constitution against government excesses while also giving acts of Congress the presumption of constitutionality to which our laws are entitled by precedent.

Professor Rogers has repeatedly assured the Committee, however, that he would follow precedent and not seek to overturn decisions affecting the privacy of women or any other decision of the Supreme Court. Senator MCCONNELL has also personally assured me that Professor Rogers will not be an activist but is sincerely committed to following precedent if he is confirmed. I sincerely hope that his decisions on the Sixth Circuit do not prove us wrong.

LOCAL LAW ENFORCEMENT ACT OF 2001

Mr. SMITH of Oregon. Mr. President, I rise today to speak about hate crimes legislation I introduced with Senator KENNEDY in March of last year. The Local Law Enforcement Act of 2001 would add new categories to current hate crimes legislation sending a signal that violence of any kind is unacceptable in our society.

I would like to describe a terrible crime that occurred April 29, 2002 in Indianapolis, IN. A self-proclaimed neo-Nazi shot a 13-year-old black teenager as she walked with friends outside a convenience store. Investigators say that the assailant, who has tattoos of swastikas, argued with several black men about the insignias and then went on a mission to hurt someone who was black. The victim recovered from her injury, but surgeons did not remove the bullet from her body.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act of 2001 is now a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

NATIONAL ALZHEIMER'S AWARENESS WEEK

Mr. HARKIN. Mr. President, 20 years ago, President Reagan signed a proclamation designating the first National Alzheimer's Awareness Week. Today, as part of this year's National Alzheimer's Disease Awareness Month, I would like to commend and thank all those who have worked to battle this terrible disease.

As the chairman of the Appropriations subcommittee that oversees funding for the National Institutes of Health, and someone who has watched many close friends succumb to Alzheimer's over the years, I have learned perhaps more than I wish I knew about this disease. In 1982, 2 million people suffered from Alzheimer's; today, the number is 4 million. By the year 2050, that number will rise to 14 million, and we will be paying $357 billion a year in health care costs, unless science can find a way to prevent or delay this disease.

Fortunately, that goal is in sight. Researchers are finally closing in on what causes Alzheimer's; they are using cutting-edge brain imaging to figure out how to diagnose it; and they are studying everything from folic acid and statins to Advil and ginkgo biloba to see if any of these drugs and supplements can help delay it.

Much of that research would not have been possible without the substantial increase in Federal funding that Senator SPECTER and I, working together on the Senate Labor, Health and Human Services, and Education Appropriations Subcommittee, have secured for NIH. In fiscal year 1998, when we began our bipartisan effort to double the NIH's budget, NIH spent $356 million on Alzheimer's disease. When Congress completes the doubling effort this year, that number will rise to almost $650 million.

But it is still not enough. We need to raise that total to $1 billion as soon as possible, if we're really going to be serious about reducing the physical and economic costs of Alzheimer's. According to experts, delaying the onset and progression of Alzheimer's for even 5 years could save as much as $50 billion in annual health care costs. President Reagan's son-in-law, Dennis C. Revell, makes an excellent case for investing more money in Alzheimer's research in an op-ed in today's Washington Times.

In the meantime, we are fortunate that so many people across this country are working to support Alzheimer's research and care. I have worked for many years with the national Alzheimer's Association, as well as with their local chapters in Iowa, and I can tell you firsthand that they will not rest until scientists find a cure. As the Nation recognizes Alzheimer's Disease Awareness Month throughout November, I thank them for their dedication.

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

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

ALZHEIMER'S DISEASE

(By Dennis C. Revell)

''That's the worst part of this disease. There's nobody to exchange memories with.'' (Nancy Reagan, Sept. 25, ''60 Minutes II.'')

Alzheimer's disease doesn't make special arrangements for anyone, even for the leader of the free world. In tragic irony, 20 years ago this week President Reagan launched a national campaign against Alzheimer's disease. In a historic White House ceremony, he drew national attention to Alzheimer's and defined it as a major health menace. He proclaimed November National Alzheimer's Disease Awareness Month, warning the American people of ''the emotional, financial and social consequences of Alzheimer's disease.'' With vision and leadership, he argued for research as ''the only hope for victims and families.''

The brain is a miracle when it works, and a mystery when it fails. One of the most haunting, puzzling, and soon to be most costly of the brain's failures is Alzheimer's—a degenerative, progressive, and terminal brain disorder.

Most people think of Alzheimer's strictly as memory loss. It is much more, although memory loss alone would be scary enough. Memories are the records of our lives—the essential stuff of our identities and personalities—the very essence of what we share with those we love.

On Nov. 5, 1994, Ronald Reagan wrote a courageous letter to the American people about his own diagnosis of Alzheimer's, and his 1982 presidential campaign against the disease became his family's personal struggle.

We have made giant strides toward fulfilling his vision, and now this Congress and President Bush have the opportunity to finish the battle he began. Congress has steadily invested public funds in Alzheimer's research over the past 20 years and the Alzheimer's Association has added millions in private funds.

That investment in research is now paying off. Science is at the point where effective treatment and prevention of Alzheimer's is within reach. The research infrastructure is in place; the paths for further investigation are clear. The missing ingredient is money. A $1 billion federal investment now will pay big dividends in the future.

When Ronald Reagan sounded his battle cry against Alzheimer's, an estimated 2 million people were suffering from this awful disease. Today, the number has grown to more than 4 million, with an additional 19 million family members suffering the emotional and financial impact—24 hours a day, seven days a week, 365 days a year.

Unfortunately, over the next 50 years, as many as 14 million baby boomers will be the next large pool of victims, unless we find ways to further slow down or stop the changes in their brains that might already be taking place.

The threat to so many American families should be enough to urge us to action, but the economic impact of the disease drives us as well. In just 10 years, the annual cost of Alzheimer's disease to Medicare and Medicaid will rise from $50 billion to more than $82 billion. Since 1998, estimates of the annual cost of Alzheimer's disease to American business have risen from $33 billion to more than $61 billion.

During this Alzheimer's Awareness Month, we reflect upon the extraordinary progress we have made as a nation these past 20 years:

Twenty years ago, there were no treatments for Alzheimer's disease; today, four Alzheimer drugs have been approved, and researchers are working to bring even more promising treatments, including a potential vaccine, to market.

Twenty years ago, we had little information on risk factors to point the way to prevention; today, there is growing evidence that known risk factors for heart disease, including high blood pressure and high cholesterol, may also increase the risk for Alzheimer's.

Twenty years ago, only a handful of scientists were studying Alzheimer's; now, thousands of scientists around the world are racing to find the answers.

Twenty years ago, Alzheimer scientists were working in isolation; today, 33 Alzheimer's disease centers are funded by the National Institute on Aging, where scientists collaborate to speed the search.

We are so close. Thanks to the dynamics Ronald Reagan set in motion two decades ago, science has changed the view of Alzheimer's disease from one of helplessness to one of hope. But this is no time to sit back and rest on a sense of accomplishment.

The answer is still research, research, and more research. Individuals and families living with the disease research. Individuals and families living with the disease have joined the Alzheimer's Association in challenging Mr. Bush and Congress to increase the federal commitment to Alzheimer research.

We call on Congress to increase funding for the National Institutes of Health to $1 billion a year to continue the momentum in Alzheimer research. We call upon Mr. Bush to make this important cause his own by including in his budget for next year the necessary funds to accelerate the pace of research.

We are in a race against time. Without sufficient research resources now, we will lose that race.

We can change the course of Alzheimer's disease, for the 4 million people suffering today, for the 19 million family members who are caring for them, and for up to 14 million Americans who today face the fate that befell a man who means so much to us and to the world.

Testifying before the Senate about Alzheimer's disease shortly before her own death, Maureen Reagan took up her father's mission, calling upon Congress to ''make this the last generation that would live without hope.''

Both Ronald Reagan and Maureen always looked to a brighter horizon. Congress and Mr. Bush can ensure that we reach that horizon before the sun sets on another generation with Alzheimer's disease.

THE SCHOLAR RESCUE FUND ALUMNI RESEARCH

Mr. LEAHY. Mr. President, next year I intend to speak more about the Scholar Rescue Fund Alumni Research Program.

I am aware of this through my friendship with Dr. Henry Jarecki. I believe that it is something more Senators should be aware of, and something that would appeal to Senators in both parties. Perhaps one of the best ways to describe it would be to include in the Record remarks, by Dr. Jarecki, and I so ask unanimous consent to have those remarks printed.

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

Allan Goodman has, in introducing me, spoken of the fact that I accepted Henry Kaufman's mandate to help develop the IIE's newly-established Scholar Rescue Fund. Doing what Henry tells me to do is easy for me and this mandate was even easier: I have been a refugee and I am an academic; and the risks of free speech are tattooed on the skin of my relatives and on my mind. I wanted to start immediately.

When I came to talk to Allan about the program, he was as enthusiastic as I was but wondered whether we should wait with the start until we had the endowment funds to make sure that the program would last. His comments sounded so sensible that I didn't at first know what to say. But that, as people who know me, didn't last too long.

I told him how, in 1937, Franklin Roosevelt had convened a conference of representatives from 80 countries in Evian, France, to encourage them to accept Hitler's Jews, and how speaker after speaker had praised President Roosevelt's wonderful idea but said that, unfortunately, his particular country could not take part at that moment because of a unique problem they were having in his particular country just at that particular time. Finally, the representative of Rafael Trujillo, then known as the Butcher of Santo Domingo for having machine-gunned hundreds of Haitian refugees who tried to cross the border into the Dominican Republic, got up to speak. Trujillo was, understandably enough, in bad odor all over the world and so he tried to make amends by letting his representative announce that Trujillo had agreed to let 100,000 of the refugees settle in the Dominican Republic.

The world's refugee organizations then set to work to make sure that it all went well. They started by developing precise criteria: how many merchants, how many farmers, and what ages they should be; how many married and unmarried and a lot more. By the middle of 1938 they had developed their criteria and started to interview prospective candidates for the trip. By that time, it was a lot easier to interview candidates because many of them were already in concentration camps. Over the next 9 months, these careful choosers found 900 who could go to the Dominican Republic, where most of them settled in a small town called Sosua and survived the war. Over 99,000 were left behind to die.

When I got through with my story, Allan told me to get on with it and get on with it we have after I found generous kindred spirits in my fellow Trustee Jeffrey Epstein and in George Soros, both of whom I want not to thank in the name of persecuted scholars in over 60 countries from whom we now have requests for help. Sixty countries! What are they thinking of? How can benighted tyrants and despots be smart enough to know how powerful free-thinking scholars can be? And how they must intimidate them into silence. ''They kill your voice even before their kill you,'' said Maimul Khan, a rescued scholar from Bangladesh who is here with us tonight.

I learned a lot from Allan's first reaction. It made me understand how important it would be to find financial and popular support for IIE programs that did not yet have endowment or government backing. Back in the 30's when we were raising money on our own, we made and carried out the decision to bring European scholars to the States. We only had enough money to bring out 300 of them but that was enough to help found a graduate facility at the New School here in New York.

This story from the thirties was just one of the many stories I heard when I first joined the Board of IIE a few years ago. I was impressed with the history of the Institute which has undertaken hundreds of educational programs in its 80 years of existence, including the ''crown jewel'' of such programs, the Fulbright Program that it has administered on behalf of the Department of State since that program's inception. With the help of its sponsors and donors, the IIE has had an essential role in the growth and development of hundreds of thousands of people who are today leaders in every field of endeavor—be it government, science, academe or business.

Just two weeks ago, three scientists were awarded the Nobel Prize; two of them for their work on neutrinos, particles so small that they are virtually impossible to detect. The one from Japan and the one from Italy were Fulbrighters who studied here in the Fifties. Last year, too, two Nobel Prize winners for economics were Fulbrighters.

In your program this evening is a list of all of the Fulbrighters and other IIE participants who, like our founders Elihu Root and Nicholas Murray Butler, have been awarded the Nobel Prize. It is an impressive roster of a small subset of the IIE alumni network.

While I was learning about our history, I discovered that my mentor and Chairman at Yale, the renowned psychiatrist Fritz Redlich, had first visited the United States in 1930 on an IIE program which brought him for a year from Vienna to the University of Iowa. Fritz told me that in 1938, when he recognized that he had to leave Vienna or go to a concentration camp, his sponsor at Iowa was the only American he knew who could provide him the ''affidavit'' required by the U.S. government—the document that I and all other refugees knew so well as committing the person who signed it to not letting the recipient end up on welfare, a charge to the state.

Fritz came here, became a professor at Yale, then head of the Department of Psychiatry and eventually Dean of the Yale Medical School. He was a brilliant and caring doctor who wrote extensively on whether the poor got the same treatment, or even the same diagnoses, as the rich. And he was, like me, an iconoclast. It was he who brought me to Yale, a fact that has had such a strong influence on my own life.

Fritz was, of course, not the only scholar who was rescued from Hitler's Germany and the countries falling to Nazi control. As I mentioned before, the Institute's ''University in Exile'' program brought more scholars to America, enough indeed to form the graduate faculty of the New School University here in New York, a university which to this day remains a vibrant academic institution.

The list of IIE alumni is not limited to scholars fleeing persecution or Nobel Prize winners, however; it would fill a ''Who's Who'' of world leaders: Valery Giscard d'Estang, former President of France; Margaret Thatcher, former Prime Minister of England; 10 Heads of State, 56 Ambassadors, 44 Nobel Laureates, 115 University presidents, and 400,000 more men and women who have been educationally enriched by the experience we helped them to have.

The accomplishments of the IIE Alumni Network have indeed been so illustrious that their stories seemed to me a natural way to explain to the world just why international education was so valuable and to obtain popular support for our educational and humanitarian programs. To make sure that an understanding of this network was available to us all, I accepted Tom Russo's and Allan Goodman's challenge to establish and codify an IIE Alumni database.

We will use this database to let the world know about the kinds of people who have made good, in part because of the programs designed and administered by the Institute. That awareness will help us to develop support for additional programs that are responsive to the needs of the current moment—like the Scholar Rescue initiative I and others have told you about.

I encouraged Dan Greespahn, who has done a terrific job heading the Alumni Research Program, to find out as much a he could about our alumni, both so that we could learn about them and so that they could help us develop our new programs. It was in the course of developing this Alumni Database that we encountered Ruth Gruber, about whom you will hear more momentarily.

And so there was a wonderful confluence of events: My mentor and close friend, Fritz Redlich, who led Yale University to the heights of scholarly achievement through encouraging the free flow of ideas, and Ruth Gruber, an outstanding humanitarian, journalist and author: both IIE alumni—Fritz coming here and Ruth going there, both in 1930.

Henry Kaufman, on whose vision all of this rests, suggested that we create an award to recognize some of the most accomplished of those alumni. What better way to do so than to name the award for someone who, for me at least, is the paradigm of what IIE strive for—Fritz Redlich.

(Fritz, will you please stand and be recognized.)

Fritz, in appreciation of what you have meant to me and to your thousands of students and in recognition of IIE's role in ensuring your safety here in the United States, we want to name our annual award the Fritz Redlich Alumni Award. Thank you for letting us do so.

Tonight we present the first Fritz Redlich Alumni Award to Ruth Gruber.

Our efforts to tell you about Ruth are made somewhat easier by our friends in the film industry who, in 2001, made a CBS television mini-series that detailed Ruth's rescue of 1000 refugees form Europe in 1944. In that film, the part of Ruth Gruber was played by the highly accomplished actress Natasha Richardson.

Ms. Richardson's performances on stage, screen and televsion—both here and abroad—have been recognized by the most prestigious awards in the entertainment industry. They began in 1986 when she received the London Drama Critics's Most Promising Newcomer Award. In 1992, she received the London Drama Critics Best Actress Award. She received a Tony for her performance as Sally Bowles in Cabaret, as well as Outer Critics Circle, Drama League and Drama Desk Awards for Best Actress. And there are many, many more.

Natasha Richardson is with us this evening to introduce Ruth Gruber and to present her with the Fritz Redlich Alumni Award. Let's start Natasha's introduction of Ruth by taking a look at Natasha playing her in the film I told you about.

ADDITIONAL STATEMENTS

TRIBUTE TO N. JACK TAYLOR, JR.

• Mr. JOHNSON. Mr. President, I rise today to pay tribute to N. Jack Taylor, Jr., who has worked as a Congressional Fellow in my office since January of 2002. On behalf of my staff and the people of South Dakota, I would like to thank Jack for his hard work, his dedication, and his considerable contributions to my state and to this great nation.

Jack joined our staff to work on banking issues at a troubled time here in the Senate, when we faced significant physical threats in the wake of 9/11 and the Senate anthrax scares. Nevertheless, Jack left the Federal Deposit Insurance Corporation, his home for the past 15 years, to spend a year learning about the legislative process. And what a year it was.

Jack was on the front lines during the Senate debate over accounting reform, and he played a key role in our office's involvement in the Sarbanes-Oxley Accounting Reform and Investor Protection Act. He got a bit more than he bargained for by playing the lead staff role during floor action and the conference committee, but he performed with great aplomb and professionalism.

Jack has also been immensely valuable in raising our awareness of Native American banking issues. He took the lead in conceptualizing and organizing a hearing in the Senate Banking Financial Institutions Subcommittee on ways we might increase private capital in Indian Country. He brought together an impressive group of witnesses whose ideas I hope we can implement in the future. Jack also provided valuable assistance on a number of other tribal-related housing and banking issues.

Another noteworthy contribution of Jack's was his hard work in putting together S. 3034, the Check Truncation Act. While it may not be the most high-profile subject, check truncation would modernize our financial system in significant ways, and be particularly helpful in rural areas such as South Dakota where the physical transportation of checks is often difficult and expensive. Jack helped us to lead the charge to modernize our system, and I am hopeful we can complete action on that bill next year.

Finally, I would be remiss if I did not mention Jack's role in our continued efforts to pass comprehensive deposit insurance reform. Jack, who came to us from the FDIC's division of insurance, proved to be an invaluable in-house resource for my staff on matters related to deposit insurance. He was also willing to travel out to South Dakota to meet with bankers throughout the State to ensure that our bill reflects the needs of Main Street bankers across this country.

It is my pleasure and honor to stand before the Senate today to thank Jack Taylor publicly for his service to the United States Senate. I am pleased he will continue to serve our country by returning to the FDIC, which is lucky to have him.•

TRIBUTE TO COLONEL JOSEPH M. WILLGING

• Mr. THOMPSON. Mr. President, I rise to pay tribute to a U.S. Air Force officer, Colonel Joseph M. Willging. Colonel Willging currently serves as the Chief of the Environmental Law Division of the Judge Advocate General's Department in Arlington, Virginia. He will retire on May 1, 2003 from the Air Force after 25 years of service. Today, it is my privilege to recognize some of Colonel Willging's accomplishments, and to commend his service to the Air Force and our nation.

Colonel Willging was born in Minneapolis, MN, and entered the Air Force through the Air Force Reserve Officer Training Corps program. His early assignments included George Air Force Base, California, Royal Air Force Bentwaters Air Base, United Kingdom, Grand Forks Air Force Base, ND, and Offutt Air Force Base, Nebraska. He later served as the Staff Judge Advocate for Castle Air Force Base, California, Chief of the Environmental Law Division, Headquarters, Air Combat Command, Langley Air Force Base, Virginia, and the Deputy Legal Counsel to the Chairman of the Joint Chiefs of Staff at the Pentagon before arriving in 2000 in Arlington, VA for his current assignment.

Throughout his career, Colonel Willging has received numerous military decorations including the Defense Superior Service Medal, the Meritorious Service Medal with four oakleaf clusters, the Joint Service Commendation Medal, the Air Force Commendations Medal, the Joint Service Achievement Medal, and the Southwest Asia Service Medal. Additionally, he holds a law degree from the William Mitchell College of Law in Saint Paul and a Master of Laws in Environmental Law from George Washington University. He is also a graduate of Air Command and Staff College, and Air War College, Maxwell Air Force Base, Alabama, and earned the degree of Master of Science from the National War College, Fort McNair, Washington, DC. Colonel Willging is admitted to practice before the Supreme Court of Minnesota.

As Chief of the Environmental Law Division of the United States Air Force Judge Advocate General's Department, Colonel Willging has led an impressive organization of military and civilian lawyers, paralegals, and support personnel. Colonel Willging's leadership, judgment, and unwavering devotion to duty were instrumental in the successful resolution of numerous difficult issues facing the Air Force. At the same time, he was a key and trusted advisor to the Air Force engineering community, which relied heavily on his sound, timely, and cogent advice in resolving a host of complex issues.

I am pleased to have this opportunity to commend Colonel Willging for his many years of selfless service to the United States of America.•

REMARKS OF AMBASSADOR REED AT THE 9/11 SYMPOSIUM

• Mr. ENZI. Mr. President, I rise to recognize an important and moving statement made by Ambassador Joseph Verner Reed, Under-Secretary-General of the United Nations, on September 11, 2002. Ambassador Reed's remarks are a true example of the national strength, personal mourning, and international support that we all have experienced since September 2001. I ask that his remarks be printed in the RECORD.

The remarks follow.

REMARKS BY AMBASSADOR JOSEPH VERNER REED, UNDER-SECRETARY-GENERAL OF THE UNITED NATIONS

On behalf of the Secretary-General of the United Nations Kofi A. Annan, I bring greetings and good wishes on this solemn anniversary commemorating September 11, 2001—9/11—The Day of Terror.

The Secretary-General regrets that he could not be with us today. He is very much involved, as you know, with preparations of the 57th General Assembly as well as the ongoing task of pursuing the course of peace in the 17 Peace Keeping Missions around our troubled globe.

The Secretary-General is presiding at a commemoration of 9/11 on the Great Lawn at the United Nations with 191 member states participating.

First, allow me to salute the organizers of this International Symposium. The mission of the Virtue Foundation is as laudable as it is imperative.

''From Tragedy to Unity: A Celebration of the Human Spirit.'' That is the theme of this Symposium.

None of us can ever forget the tragedy and terror and sadness that 9/11 brought upon our nation, our society and the world. But, the prominent panelists in today's discussions in this hallowed Museum will not dwell on the past horror. Rather, their focus will be on healing and renewal and rekindling strength in our citizenry.

With this lofty, indeed noble—yet irrefutably appropriate—purpose in mind, today's Symposium will inspire all of us to rebuild and create a more cohesive and caring community.

Amid sorrow we will create anew. That is what our world needs now. Whether a life or a building or a spirit—there is a call now to rebuild—a need for a new beginning.

This anniversary day is also very much a Time of Remembrance.

None of us here in the Rainey Auditorium and across the length and breadth of our beautiful nation will ever forget that horrible moment a year ago today when we heard the unspeakable news. We will never forget where we were, whom we were with or what we were doing. 9/11 was the Opening Day of the 56th General Assembly of the United Nations. It was the day the United Nations celebrates the International Day of Peace. I was on my way to Headquarters. On hearing the news of the first crash I returned to our house joining my stunned wife in staring at the television. We shared the national experience of a quantum leap into a new, frightening and uncertain world. We immediately sensed this was the world we would now live in for the rest of our lives.

This past year has been a period of national mourning.

I hesitate to say but reality makes me do so—A sense of dread and sadness has gripped our nation in the searing emotional aftermath of the Day of Terror.

The world must never forget that September 11, 2001 was the bloodiest day on American soil since our civil war. Our flags are half-staff. The Congress has designated today Patriot Day to honor the sacrifice made by 3,000 innocent citizens on that tragic day. National character does not change in a day. 9/11 did not alter the American character, it merely revealed it—it forced—the emergency of a bedrock America of courage, resolve, resourcefulness and, above all, resilience. What the enemy did not know or anticipate was that beneath the outward normality of America in post-Cold War repose lay a sleeping giant that Admiral Yamamoto knew he had awakened on December 7, 1941 and that Osama bin Laden had no inkling he had awakened on September 11, 2001.

The world then witnessed an astonishing demonstration of resilience, the kind only a nation of continental size and prodigious productivity, of successful self-government and self-conscious spirituality could summon.

The anniversary of this stunning national 'state change'; will be respectfully celebrated in tears, sorrow and reflection. The death toll of the 9/11 attacks did not just affect New York and the United States. Though the overwhelming number of those who died was American citizens there were victims from 36 countries around the world. Our neighbor to the south, Mexico, with 27 who died, was the hardest hit of the foreign lands.

The old diplomatic refrain that ''one man's terrorist is another man's freedom fighter'' can no longer be argued. Ladies and Gentlemen—let me be perfectly clear: September 11 proved once and for all that ''Terror is terror.'' Terror is inexcusable, it is indefensible, it is wrong.

That Day of Terror transformed ''terrorism.'' In the past, in their madness, terrorists yearned for a lot of people watching, not a lot of people dead. Last year, the rules changed. Those terrorists—those assassins—sought to kill thousands as hundreds of millions watched in horror.

The murderers got what they wanted.

But, they and the rest of Osama bin Laden's al-Qaeda network miscalculated America's might and resolve.

This September 11 marks not just a day of infamy, but also the close of Year One of the War on Terrorism. And to win the war we need to demonstrate—as America has done in other great wars of necessity—patience, endurance, determination, and a willingness to bear any burden.

Their attack on the symbols of United States economic and military power stirred the world's only superpower to place terrorism at the heart of its—and the world's—foreign and domestic policy.

The message today is clear. The United States will not negotiate terrorism. Nor will it compromise with terrorists. Rather she will destroy them and all the evil for which they stand. Of that, I have no doubt.

We will never forget 9/11.

Today's Symposium, then, is an important one. Today is the day to begin to move from this tragedy to ''unity and a celebration of the human spirit.''

Thank you Director de Montebello for making this great Museum the home of this gathering. Thank you Dr. Salim and Dr. LaRovere for your initiative. To all the organizers, musicians, members of the staff of the Met and the distinguished participants who will be with us today I salute each of you.

Let us find healing and strength in remembrance. I pray that the coming year will bring us closer together—within our families and our communities—and ever more committed to caring for one another.

May we enjoy years of peace for our children, for the future, for all mankind.

Peace!●

TRIBUTE TO DR. MARCELO HOCHMAN OF CHARLESTON, SC, FOR HIS HUMANITARIAN EFFORTS

● Mr. HOLLINGS. Mr. President, the headlines always are the Israelis and the Arabs at each other's throats, so it's noteworthy when a Jewish doctor treats a Muslim child—gratis. I know of the expertise of Dr. Marcelo Hochman and I know of his humanitarianism. He has been doing it for years. I ask unanimous consent that this article from the November 17th Charleston Post and Courier be printed in the RECORD.

The article follows.

LOCAL SURGEON HELPING TURKISH BOY FACE WORLD

(By Allison L. Bruce)

BOY'S FAMILY SEARCHES WORLD FOR AID; FIND COMMUNITY OF HELP IN CHARLESTON

For 4-year-old Batuhan Itku, a trip to Charleston marks a new beginning.

The Turkish boy was born with a birthmark covering more than half of his face and causing severe disfigurement. He couldn't shut his right eye and a cleft lip make eating difficult.

After more than 30 doctors told Batuhan's parents, Levent and Ayla Itku, that they could not operate on Batuhan, Levent Itku said he and a friend from work created a Web page to see if other doctors elsewhere in the world could help.

Doctors from Canada, Germany and the United States responded to the site, but after Levent Itku sent medical information to them, only Dr. Marcelo Hochman remained.

Hochman is a facial plastic and reconstructive surgeon and a leading expert in treating hemangiomas. His practice is The Facial Surgery Center in Charleston.

He not only was willing to operate on Batuhan but also agreed to donate his services.

Levent Itku said he and his wife ''couldn't believe what they heard . . . until the moment they came here and saw him (Hochman),'' according to interpreter Yesim Otay. ''At the beginning, they didn't have any hope. They thought it would be the same thing they heard before,'' Otay said, translating for Itku. Now, she said, ''they have a great hope.''

Batuhan's vascular birthmark is called a hemangioma, a condition that Hochman said affects about 10 percent of the population. They range from a pinpoint to large, severe deformations that usually affect the face, head and neck.

About 30 percent of hemangiomas require medical attention, Hochman said.

Common names for some forms of the birthmark include a portwine stain or strawberry.

For Batuhan, the hemangioma is severe and will require more than one operation.

''Had we seen him early on with aggressive medical treatment and laser treatment, perhaps he could have avoided this horrific disfigurement,'' Hochman said.

Hochman said doctors often tell families not to treat the condition.

''The prevailing advice parents get is to leave it alone, it will go away.'' he said. While that may be the right advice for some patients, Hochman said, he often sees children and adults who have been waiting for years for it to go away.

''What we're trying to do is change the way the primary care physicians see these lesions,'' he said. ''There is hope for treatment. It is very common and lots of things can be done.''

The Itkus are staying at the Ronald McDonald House downtown as Batuhan recovers from his first surgery. His stitches come out Monday.

Levent Itku said Batuhan is aware of everything Hochman did. After the surgery, he woke up one morning and patted his face, saying ''Dr. Hochman did this to my face.''

''He has a chance in his future life,'' Levent Itku said.

At the Ronald McDonald House, Batuhan—a bright, cheerful child—plays with a bag of toys and books. He finds a plastic drill, which he proceeds to use while making drill-like sounds on every piece of furniture available. He grins and laughs as his parents and others join in making the sounds with him.

He waves at people he knows at the house and constantly talks with his parents and guests.

His face shows signs of the first surgery. Hochman created an eye lid for Batuhan so he can close his eye for the first time. The cleft lip is also repaired so that he can eat better.

Batuhan's trip to Charleston for the surgery took a lot of coordination. Aside from Hochman donating his services, St Francis Hospital and local business owners also contributed. Patricia Dwight arranged for Batuhan and his family to get to the United States by collecting frequent flier miles donations. Dwight owns Adventure Travel and has lived in Turkey. After hearing about Batuhan's case, she made a point to visit the Itkus while she was visiting Istanbul.

''After meeting the family and seeing what incredible people the mother and father were, I was more inspired to help,'' she said. ''They're dealing with it in such a remarkable way. Without them being the way they are, this would not have happened either.''

On the Internet, she found out about a United Way program that uses frequent flier miles to provide transportation. With the help of several local donations, including a large donation of miles from Henry Cheves Jr., Dwight was able to bring the Itkus to the United States.

She also is leading the effort to create The Hemangioma Treatment Foundation. The foundation would help provide treatment of children and adults with vascular birthmarks and training for doctors in other companies.

Dwight said Batuhan's case was the catalyst for creating the foundation, which is currently under Trident United Way until it receives non-profit status.

A large part of Hochman's efforts in the last decade has been to educate other doctors about treating hemangiomas.

During the past 12 years, Hochman has traveled to other countries to operate on children with hemangiomas. He has traveled to Russia, Latin America and Mexico repeatedly.

Aside from demonstrating for doctors in other countries how the surgeries can be done, Hochman has edited a textbook on hemangiomas and hopes that more doctors in the United States also will explore the different kinds of treatment available.

He said he receives thousands of e-mails each year. Many of those come from overseas.

Two Costa Rican girls are coming to Hochman for treatment for hemangiomas this week.

Another 35 children in Costa Rica are waiting for treatment, as well as more children in Turkey.

Levent Itku said he wanted to thank all of the people who had helped his family, including Hochman, Dwight, the Ronald McDonald House and the Turkish community in Charleston, including Otay and Carol Arkok, who also helped with translation and took the family to dinner and shopping.

Dwight said at a time when Muslims and Jews are often in conflict, ''here we have a marvelous example of interfaith cooperation . . . We have a marvelous man of one faith helping this needy child of another faith.''

Hochman said that had never crossed his mind.

''I didn't even think about it until Patricia said, 'Isn't it wonderful that a Jewish doctor is treating a Muslim child?'''' he said. ''These people need help, and if we have the expertise, it's a privilege to help take care of them.''

''These families endure so much. It feels good to be able to change that.''●

MESSAGE FROM THE HOUSE

At 5:07 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House agrees to the amendment of the Senate to the bill (H.R. 2621) to amend title 18, United States Code, with respect to consumer product protection.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3609) to amend title 49, United States Code, to enhance the security and safety of pipelines.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 3833) to facilitate the creation of anew, second-level Internet domain within the United States country code domain that will be haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

The message also announced that the House agrees to the amendments of the Senate to the bill (H.R. 3908) to reauthorize the North American Wetlands Conservation Act, and for other purposes.

The message further announced that the House agrees to the amendments of the Senate to the bill (H.R. 4664) to authorize appropriations for fiscal years 2003, 2004, and 2005 for the National Science Foundation, and for other purposes.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 5469) to amend title 17, United States Code, with respect to the statutory license for webcasting, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC–9596. A communication from the President of the United States, transmitting, consistent with the War Powers Act, a report relative to NATO-led international security force in Kosovo (KFOR) received on November 15, 2002; to the Committee on Foreign Relations.

EC–9597. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to law, a report entitled ''Cuban Immigration Policies''; to the Committee on Foreign Relations.

EC–9598. A communication from the Assistant Secretary, Bureau of Land Management, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Coal Management: Noncompetitive Leases; Coal Management Provisions and Limitations'' (RIN1004–AD43) received October 15, 2002; to the Committee on Energy and Natural Resources.

EC–9599. A communication from the Federal Register Liaison Officer , Office of the Secretary, Department of Defense, transmitting, pursuant to law, the report of a rule entitled ''Enhancement of Dental Benefits under the TRICARE Retiree Dental Program (TRDP)'' (RIN0720–AA61) received on October 9, 2002; to the Committee on Armed Services.

EC–9600. A communication from the General Counsel, Department of Commerce, transmitting, the draft of a bill entitled ''Marine Mammal Protection Act Amendments of 2002'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9601. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 737 Series Airplanes Docket No. 2001–NM–251'' ((RIN2120–AA64)(2002–0435)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9602. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Eurocopter France Model AS332C, L, L1, and L2; AS350B, BA, B1, B2, B3, and D; AS355E, F, F1, F2, and N; AS–365N2; AS–365N3; SA330F, G, and J; SA–365C, C1, and C2; SA.316B and C and SA. 319B Helicopters Docket No. 2000–SW–55 [10–2–10–10]'' ((RIN2120–AA64)(2002–0430)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9603. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Bell Helicopter Textron A division of tectron Canada model 222, 222B, 222U, 230, and 430 Helicopters Docket No. 2001–SW–73'' ((RIN2120–AA64)(2002–0431)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9604. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Air Tractor, Inc. Models AT–402, AT–402A, AT–402B, AT–602, AT–802, and AT–802A Airplanes Docket No. 2002–CE–03 [10–1–10–10]'' ((RIN2120–AA64)(2002–0428)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9605. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, UH–1P and Southwest Florida Aviation Model SW204, SW204HP, SW205, and SW205A–1 helicopters manufactured by Textron, Inc. for the armed forces of the United States; Docket No. 2001–SW–41 [10–2–10–10]'' ((RIN2120–AA64)(2002–0429)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9606. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Boeing Model 767–200 and 300 Series Airplanes Powered by Pratt & Whitney JT9D series Engines; Docket No. 2001–NM–268 [10–1–10–10]'' ((RIN2120–AA64)(2002–0426)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9607. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives-Boeing Model 747—200B, 300, 400, 400D, and 400F Series Airplanes Docket No. 2001–NM–22 [10–1–10–10]'' ((RIN2120–AA64)(2002–0427)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9608. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: Request for Comments; Sikorsky Aircraft Corporation Model S76A, B, and C Helicopters Docket No. 2002–SW–40 [10–3–10–10]'' ((RIN2120–AA64)(2002–0432)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9609. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives; SOCATA Groupe AEROSPATIALE Model TB 21 Airplanes Docket No. 2002–CE–16 [10–3–10–10'' ((RIN2120–AA64)(2002–0434)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9610. A communication from the Paralegal Specialist, Federal Aviation Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Airworthiness Directives: breeze Eastern Aerospace Rescue hoists, Series BL–16600–160. Augusta A109, Bell 206, Bell 222, Bell 407, Europcopter France AS332, McDonnell Douglas MD–500, and Sikorsky S–61 Helicopters Docket No. 98–ANE–37 [10–3–10–10]'' ((RIN2120–AA64)(2002–0433)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9611. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Regatta Regulations; SLR; Columbus Day Regatta, Biscayne Bay, Miami, Florida'' ((RIN2115–AE46)(2002–0033)) received October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9612. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; (Including 2 regulations)'' ((RIN2115–AE47)(2002–0085)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9613. A communication from the Chief of Regulations and Administrative Law,

United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Mystic River, MA'' ((RIN2115–AE47)(2002–0086) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9614. A communication from the Chief of Regulations and Administrative Law, United States Coast Guard, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Drawbridge Regulations; Miami River, Miami-Dade County, Florida'' ((RIN2115–AE47)(2002–0087)) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9615. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule, entitled ''NMFS is prohibiting fishing with trawl gear in the Chum Salmon Savings Area of the Bering Sea and Aleutian Islands Management area (BSAI). This action is necessary to prevent exceeding the 2002 limit of non-chinook salmon caught by vessels using trawl gear in the Catcher Vessel Operation Area (CVOA)'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9616. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries of the Exclusive Economic Zone Off Alaska-Closes Atka Mackerel Fishery in the Western Aleutian District of the Bering Sea and Aleutian Islands Management Area'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9617. A communication from the Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Closure of the thornyhead rockfish fishery in the Western Area of the Gulf of Alaska (GOA)'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9618. A communication from the Director, Regulations Policy and Management Staff, Department of Health and Human Services, transmitting, pursuant to law, the report of a rule entitled ''Clinical Chemistry and Clinical Toxicalogy Devices; Reclassification of Cyclosporine and Tacrolimus Assays'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9619. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''NMFS announces changes to the regulations for the Area 2A sport halibut fisheries off the central coast of Oregon. This Action opens the all-depth sport halibut fisheries off the central Oregon coast for additional days on September 18 and 19. The intention of this action is to give Oregon anglers access to remaining 2002 halibut quota before the closure of West Coast sport halibut fisheries on September 30, 2002'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9620. A communication from the Director, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''NMFS announces the closure of the fishery for Pacific sardine in the U.S. exclusive economic zone off the Pacific coast north of Pt. Piedras Blanacas, CA (35 degrees 40 Minutes N. lat.) at 12:01 am local time on September 14, 2002. The closure will remain in effect until the reallocation of the remaining portion of the coast wide harvest guideline is required by the Coastal Pelagics Species Fishery Management Plan (FMP). That reallocation is expected to occur on or about October 1, 2002. The purpose of this action is to comply with the allocation procedure mandated by the FMP.'' received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9621. A communication from the Assistant Administrator, Office of Sustainable Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''Fisheries off West Coast States and in the Western Pacific; Coastal Pelagic Species Fisheries; Reallocation of Pacific Sardine'' (RIN0648–AQ47) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9622. A communication from the Deputy Assistant Administrator for Satellite and Information Services, National Oceanic and Atmospheric Administration, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled ''NOAA/NASA Joint Center for Satellite Data Assimilation Notice of Availability of Financial Assistance'' (RIN0648–ZB24) received on October 15, 2002; to the Committee on Commerce, Science, and Transportation.

EC–9623. A communication from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting, a report entitled ''Revised Model Administrative Order on Consent for Removal Actions'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9624. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, a report entitled ''Memorandum of Understanding between EPA and NRC: Consultation and Finality on Decommissioning and Decontamination of Contaminated Sites'' received on October 28, 2002 ; to the Committee on Environment and Public Works.

EC–9625. A communication from the Assistant Secretary, Fish & Wildlife Service, Department of the Interior, transmitting, pursuant to law, the report of a rule entitled ''Endangered and Threatened Wildlife and Plants; Final Designation of Critical Habitat for Chlorogalum purpureum, a Plant from the South Coast Ranges of California'' (RIN1018–AG75) received on October 21, 2002; to the Committee on Environment and Public Works.

EC–9626. A communication from the Regulations Officer, Federal Highway Administration, Department of Transportation, transmitting, pursuant to law, the report of a rule entitled ''Discretionary Bridge Candidate Rating Factor'' (RIN2125–AE88); to the Committee on Environment and Public Works.

EC–9627. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, the report of a rule entitled ''Unregulated Contaminant Monitoring Regulations: Approval of Analytical Method for Aeromonas. National Primary and Secondary Drinking Water Regulations: Approval of Analytical Methods for Chemical and Microbiological Contaminants'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9628. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting , pursuant to law, the report of a rule entitled ''Revision to the California State Implementation Plan, Ventura County Air Pollution'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9629. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Revisions to the California State Implementation Plan, Imperial County Air Pollution Control District, Ventura County Air Pollution Control District, and Santa Barbara County Air Pollution Control District'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9630. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''OMB Approvals Under the Paperwork Reduction Act, Technical Amendment'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9631. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Massachusetts: Extension of Interim Authorization of State Hazardous Waste Management Program Revision'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9632. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, the report of a rule entitled ''Approval and Promulgation of Implementation Plans North Carolina: Approval of Revisions to Inspection and Maintenance (I/M) Regulations within the North Carolina State Implementation Plan'' received on October 28, 2002; to the Committee on Environment and Public Works.

EC–9633. A communication from the Acting Assistant Secretary, Department of the Army, transmitting, a report relative to the Water Resources Development Act (WRDA) of 2000; to the Committee on Environment and Public Works.

EC–9634. A communication from the Director, Office of Congressional Affairs, Office of the Chief Financial Officer, Nuclear Regulatory Commission, transmitting, pursuant to law, the report of a rule entitled ''Cost Recovery for Contested Hearing Involving U.S. Government National Security Initiatives'' (RIN3150–AH03) received on October 17, 2002; to the Committee on Environment and Public Works.

EC–9635. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled ''Consolidated Guidance on the Establishment, Management and Use of CERCLA Special Accounts'' received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9636. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled ''Memo encourages use of 'comfort/status' letters at RCRA facilities, where appropriate, and provides examples of Regional RCRA comfort/status letter'' received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9637. A communication from the Acting Principle Deputy Associate Administrator, Environmental Protection Agency, transmitting, pursuant to law, a report relative to the Uniform Resource Locators (URLs) for a document entitled ''Superfund Accounts Receivable: Collection Action for Delinquent Accounts'' received on November 7, 2002; to the Committee on Environment and Public Works.

EC–9638. A communication from the Chairman of the Nuclear Regulatory Commission, transmitting, pursuant to law, the Commission's monthly report on the status of licensing and regulatory duties for August 2002; to the Committee on Environment and Public Works.

EC–9639. A communication from the Assistant Secretary of Legislative Affairs, Department of State, transmitting, pursuant to section 417 of the USA-PATRIOT Act (P.L. 107–56), the report relative to the ''status of the implementation of machine-readable passports (MRPs) in countries participating in the Visa Waiver Program'' received on November 7, 2002; to the Committee on the Judiciary.

EC–9640. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, a report relative to Reports, Testimony, Correspondence, and Other Publications for August 2002; to the Committee on Governmental Affairs.

EC–9641. A communication from the Chairman, Consumer Product Safety Commission, transmitting, pursuant to law, the report relative to the U.S. consumer Product Safety Commission's (CPSC) inventory of commercial activities for 2002; to the Committee on Governmental Affairs.

EC–9642. A communication from the Comptroller General of the United States, General Accounting Office, transmitting, pursuant to law, a report relative to Reports, Testimony, Correspondence, and Other Publications for September 2002; to the Committee on Governmental Affairs.

PETITIONS AND MEMORIALS

The following petition or memorial was laid before the Senate and was referred or ordered to lie on the table as indicated:

POM–360. A joint resolution adopted by the Alaska State Legislature relative to the desecration of the United States Flag; to the Committee on the Judiciary.

LEGISLATIVE RESOLVE NO. 59

Be it resolved by the Legislature of the State of Alaska:

Whereas certain actions, although arguably related to one person's free expression, nevertheless raise issues concerning public decency, public peace, and the rights of expression and sacred values of others; and

Whereas there are symbols of our national soul, such as the Washington Monument, the United States Capitol Building, and memorials to our greatest leaders, that are the property of every American and are therefore worthy of protection from desecration and dishonor; and

Whereas the American Flag was most nobly born in the struggle for independence that began with ''The Shot Heard Round the World'' on a bridge in Concord, Massachusetts; and

Whereas, in the War of 1812, the American Flag stood boldly against foreign invasion, symbolized the stand of a young and brave nation against the mighty world power of that day and, in its courageous resilience, inspired our national anthem; and

Whereas, in the Second World War, the American Flag was the banner that led the American battle against facist imperialism from the depths of Pearl Harbor to the mountaintop on Iwo Jima, and from defeat in North Africa's Kasserine Pass to victory in the streets of Hitler's Germany; and

Whereas Alaska's star was woven into the fabric of the Flag in 1959, and that 49th star has become an integral part of the Union; and

Whereas the American Flag symbolizes the ideals that good and decent people fought for in Vietnam, often at the expense of their lives or at the cost of cruel condemnation upon their return home; and

Whereas the American Flag symbolizes the sacred values for which loyal Americans risked and often lost their lives in securing civil rights for all Americans, regardless of race, sex, or creed; and

Whereas the American Flag was carried to the moon as a banner of goodwill, vision, and triumph on behalf of all mankind; and

Whereas the American Flag was raised by New York City fire fighters atop the rubble of the World Trade Center and became the symbol of a nation challenged as it had never been before; and

Whereas the American Flag to this day is a most honorable and worthy banner of a nation that is thankful for its strengths and committed to curing its faults and remains the destination of millions of immigrants attracted by the universal power of the American ideal; and

Whereas the law as interpreted by the United States Supreme Court no longer accords to the Stars and Stripes that reverence, respect, and dignity befitting the banner of that most noble experiment of a nation-state; and

Whereas House Joint Resolution 36, which passed the United States House of Representatives and has been referred to the United States Senate, proposes an amendment to the United States Constitution stating, ''The Congress shall have power to prohibit the physical desecration of the flag of the United States''; and

Whereas Senate Joint Resolution 7, introduced in the United States Senate, proposes an amendment to the United States Constitution stating, ''The Congress shall have LR 59 power to prohibit the physical desecration of the flag of the United States''; and

Whereas it is only fitting that people everywhere should lend their voices to a forceful call for restoration to the Stars and Stripes of a proper station under law and decency; be it

Resolved by the Alaska State Legislature, That the Congress of the United States is requested to pass House Joint Resolution 36 or Senate Resolution 7, or comparable legislation, and present to the legislatures of the several states an amendement to the Constitution of the United States that would specifically provide the Congress power to prohibit the physical desecration of the Flag of the United States; this request does not constitute a call for a constitutional convention; and be it further

Resolved, That the legislatures of the several states are invited to join with Alaska to secure ratification of the proposed amendment.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, with an amendment in the nature of a substitute:

S. 2862: A bill to provide for the establishment of a scientific basis for new firefighting technology standards, improve coordination among Federal, State, and local fire officials in training for and responding to terrorist attacks and other national emergencies, and for other purposes. (Rept. No. 107–344).

NOMINATIONS DISCHARGED

The following nominations were discharged from the Committee on Environment and Public Works pursuant to the order of November 18, 2002:

APPALACHIAN REGIONAL COMMISSION

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

The following nomination was discharged from the Committee on Commerce, Science, and Transportation pursuant to the order of November 18, 2002:

DEPARTMENT OF TRANSPORTATION

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

ADDITIONAL COSPONSORS

S. 549

At the request of Mr. CRAPO, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 549, a bill to ensure the availability of spectrum to amateur radio operators.

S. 2581

At the request of Mr. MILLER, the name of the Senator from Virginia (Mr. WARNER) was added as a cosponsor of S. 2581, a bill to conduct a study on the effectiveness of ballistic imaging technology and evaluate its effectiveness as a law enforcement tool.

S. 2721

At the request of Mr. SARBANES, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 2721, a bill to improve the voucher rental assistance program under the United States Housing Act of 1937, and for other purposes.

S. 3000

At the request of Mr. HARKIN, the name of the Senator from Vermont (Mr. JEFFORDS) was added as a cosponsor of S. 3000, a bill to enhance and further research into paralysis and to improve rehabilitation and the quality of life for persons living with paralysis and other physical disabilities, and for other purposes.

S. 3018

At the request of Mr. BAUCUS, the names of the Senator from Texas (Mrs. HUTCHISON) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 3018, a bill to amend title XVIII of the Social Security Act to enhance beneficiary access to quality health care services under the medicare program, and for other purposes.

S. 3114

At the request of Mr. LEAHY, the names of the Senator from New York (Mrs. CLINTON), the Senator from Florida (Mr. NELSON) and the Senator from Maryland (Mr. SARBANES) were added as cosponsors of S. 3114, a bill to ensure that a public safety officer who suffers a fatal heart attack or stroke while on duty shall be presumed to have died in the line of duty for purposes of public safety officer survivor benefits.

S. CON. RES. 138

At the request of Mr. REID, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. Con. Res. 138, a concurrent resolution expressing the sense of Congress that the Secretary of Health and Human Services should conduct or support research on certain tests to screen for ovarian cancer, and Federal health care programs and group and individual health plans should cover the tests if demonstrated to be effective, and for other purposes.

AMENDMENTS SUBMITTED & PROPOSED

SA 4965. Mr. REID (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 754, to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs.

SA 4966. Mr. REID (for Mr. ROCKEFELLER (for himself, Mr. HOLLINGS, Mr. MCCAIN, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 2951, to authorize appropriations for the Federal Aviation Administration, and for other purposes.

SA 4967. Mr. REID (for Mr. BAUCUS (for himself and Mr. GRASSLEY)) proposed an amendment to the bill H.R. 4070, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

SA 4968. Mrs. HUTCHISON (for Mr. HOLLINGS (for herself and Mr. MCCAIN)) proposed an amendment to the bill S. 2949, to provide for enhanced aviation security, and for other purposes.

SA 4969. Mrs. HUTCHISON (for Mr. HOLLINGS (for herself, Mr. ROCKEFELLER, and Mr. MCCAIN)) proposed an amendment to amendment SA 4968 proposed by Mrs. HUTCHISON (for Mr. HOLLINGS (for himself and Mr. MCCAIN)) to the bill S. 2949, supra.

TEXT OF AMENDMENTS

SA 4965. Mr. REID (for Mr. HATCH (for himself and Mr. LEAHY)) proposed an amendment to the bill S. 754, to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs; as follows:

On page 11, line 17, strike ''or''.

On page 11, line 18, strike the period and insert ''; or''.

On page 11, after line 18, insert the following:

(D) packaging and labeling contracts.

On page 13, line 17, strike all beginning with ''Equitable'' through line 23.

SA 4966. Mr. REID (for Mr. ROCKEFELLER (for himself, Mr. HOLLINGS, Mr. MCCAIN, and Mrs. HUTCHISON)) proposed an amendment to the bill S. 2951, to authorize appropriations for the Federal Aviation Administration, and for other purposes; as follows:

On page 3, beginning in line 21, strike ''Transportation and'' and insert ''Transportation,''.

On page 3, line 23, strike ''Infrastructure.'' and insert ''Infrastructure, and the House of Representatives Committee on Science.''.

On page 4, strike lines 18 through 23, and insert the following:

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements.

On page 5, beginning in line 22, strike ''Transportation and'' and insert ''Transportation,''.

On page 5, line 24, strike ''Infrastructure.'' and insert ''Infrastructure, and the House of Representatives Committee on Science.''.

On page 8, strike lines 9 through 13, and insert the following:

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

SA 4967. Mr. REID (for Mr. BAUCUS (for himself and Mr. GRASSLEY)) proposed an amendment to the bill H.R. 4070, to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Social Security Program Protection Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents is as follows:

Sec. 1. Short title and table of contents.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

Sec. 101. Authority to reissue benefits misused by organizational representative payees.

Sec. 102. Oversight of representative payees.

Sec. 103. Disqualification from service as representative payee of persons convicted of offenses resulting in imprisonment for more than 1 year, of persons fleeing prosecution, custody, or confinement, and of persons violating probation or parole.

Sec. 104. Fee forfeiture in case of benefit misuse by representative payees.

Sec. 105. Liability of representative payees for misused benefits.

Sec. 106. Authority to redirect delivery of benefit payments when a representative payee fails to provide required accounting.

Subtitle B—Enforcement

Sec. 111. Civil monetary penalty authority with respect to wrongful conversions by representative payees.

TITLE II—PROGRAM PROTECTIONS

Sec. 201. Issuance by Commissioner of Social Security of receipts to acknowledge submission of reports of changes in work or earnings status of disabled beneficiaries.

Sec. 202. Denial of title II benefits to persons fleeing prosecution, custody, or confinement, and to persons violating probation or parole.

Sec. 203. Requirements relating to offers to provide for a fee a product or service available without charge from the Social Security Administration.

Sec. 204. Refusal to recognize certain individuals as claimant representatives.

Sec. 205. Penalty for corrupt or forcible interference with administration of Social Security Act.

Sec. 206. Use of symbols, emblems, or names in reference to social security or medicare.

Sec. 207. Disqualification from payment during trial work period upon conviction of fraudulent concealment of work activity.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

Sec. 301. Cap on attorney assessments.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

Sec. 401. Application of demonstration authority sunset date to new projects.

Sec. 402. Expansion of waiver authority available in connection with demonstration projects providing for reductions in disability insurance benefits based on earnings.

Sec. 403. Funding of demonstration projects provided for reductions in disability insurance benefits based on earnings.

Sec. 404. Availability of Federal and State work incentive services to additional individuals.

Sec. 405. Technical amendment clarifying treatment for certain purposes of individual work plans under the Ticket to Work and Self-Sufficiency Program.

Subtitle B—Miscellaneous Amendments

Sec. 411. Elimination of transcript requirement in remand cases fully favorable to the claimant.

Sec. 412. Nonpayment of benefits upon removal from the United States.

Sec. 413. Reinstatement of certain reporting requirements.

Sec. 414. Clarification of definitions regarding certain survivor benefits.

Sec. 415. Clarification respecting the FICA and SECA tax exemptions for an individual whose earnings are subject to the laws of a totalization agreement partner.

Sec. 416. Coverage under divided retirement system for public employees in Kentucky.

Sec. 417. Compensation for the Social Security Advisory Board.

Sec. 418. 60-month period of employment requirement for application of government pension offset exemption.

Subtitle C—Technical Amendments

Sec. 421. Technical correction relating to responsible agency head.

Sec. 422. Technical correction relating to retirement benefits of ministers.
Sec. 423. Technical corrections relating to domestic employment.
Sec. 424. Technical corrections of outdated references.
Sec. 425. Technical correction respecting self-employment income in community property States.
Sec. 426. Technical amendments relating to the Railroad Retirement and Survivors Improvement Act of 2001.

TITLE I—PROTECTION OF BENEFICIARIES

Subtitle A—Representative Payees

SEC. 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 205(j)(5) of the Social Security Act (42 U.S.C. 405(j)(5)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

''(A) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of paragraph (4)(B)); or

''(B) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title VIII, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall certify for payment to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of paragraph (7)(B).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 205(j) of such Act (42 U.S.C. 405(j)) is amended by adding at the end the following new paragraph:

''(8) For purposes of this subsection, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this paragraph.''.

(b) TITLE VIII AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 807(i) of the Social Security Act (42 U.S.C. 1007(i)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

''(1) is not an individual; or

''(2) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title XVI, or any combination of such titles;

misuses all or part of an individual's benefit paid to such representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of such benefit so misused. The provisions of this paragraph are subject to the limitations of subsection (l)(2).''.

(2) MISUSE OF BENEFITS DEFINED.—Section 807 of such Act (42 U.S.C. 1007) is amended by adding at the end the following new subsection:

''(j) MISUSE OF BENEFITS.—For purposes of this title, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another qualified individual under this title and converts such payment, or any part thereof, to a use other than for the use and benefit of such other qualified individual. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this subsection.''.

(3) TECHNICAL AMENDMENT.—Section 807(a) of such Act (42 U.S.C. 1007(a)) is amended, in the first sentence, by striking ''for his or her benefit'' and inserting ''for his or her use and benefit''.

(c) TITLE XVI AMENDMENTS.—

(1) REISSUANCE OF BENEFITS.—Section 1631(a)(2)(E) of such Act (42 U.S.C. 1383(a)(2)(E)) is amended by inserting after the first sentence the following new sentences: ''In any case in which a representative payee that—

''(i) is not an individual (regardless of whether it is a 'qualified organization' within the meaning of subparagraph (D)(ii)); or

''(ii) is an individual who, for any month during a period when misuse occurs, serves 15 or more individuals who are beneficiaries under this title, title II, title VIII, or any combination of such titles;

misuses all or part of an individual's benefit paid to the representative payee, the Commissioner of Social Security shall pay to the beneficiary or the beneficiary's alternative representative payee an amount equal to the amount of the benefit so misused. The provisions of this subparagraph are subject to the limitations of subparagraph (H)(ii).''.

(2) EXCLUSION OF REISSUED BENEFITS FROM RESOURCES.—Section 1613(a) of such Act (42 U.S.C. 1382b(a)) is amended—

(A) in paragraph (12), by striking ''and'' at the end;

(B) in paragraph (13), by striking the period and inserting ''; and''; and

(C) by inserting after paragraph (13) the following new paragraph:

''(14) for the 9-month period beginning after the month in which received, any amount received by such individual (or spouse) or any other person whose income is deemed to be included in such individual's (or spouse's) income for purposes of this title as restitution for benefits under this title, title II, or title VIII that a representative payee of such individual (or spouse) or such other person under section 205(j), 807, or 1631(a)(2) has misused.''.

(3) MISUSE OF BENEFITS DEFINED.—Section 1631(a)(2)(A) of such Act (42 U.S.C. 1383(a)(2)(A)) is amended by adding at the end the following new clause:

''(iv) For purposes of this paragraph, misuse of benefits by a representative payee occurs in any case in which the representative payee receives payment under this title for the use and benefit of another person and converts such payment, or any part thereof, to a use other than for the use and benefit of such other person. The Commissioner of Social Security may prescribe by regulation the meaning of the term 'use and benefit' for purposes of this clause.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to any case of benefit misuse by a representative payee with respect to which the Commissioner makes the determination of misuse on or after January 1, 1995.

SEC. 102. OVERSIGHT OF REPRESENTATIVE PAYEES.

(a) CERTIFICATION OF BONDING AND LICENSING REQUIREMENTS FOR NONGOVERNMENTAL ORGANIZATIONAL REPRESENTATIVE PAYEES.—

(1) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) is amended—

(A) in paragraph (2)(C)(v), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in paragraph (9))'';

(B) in paragraph (3)(F), by striking ''community-based nonprofit social service agencies'' and inserting ''certified community-based nonprofit social service agencies (as defined in paragraph (9))'';

(C) in paragraph (4)(B), by striking ''any community-based nonprofit social service agency which is bonded or licensed in each State in which it serves as a representative payee'' and inserting ''any certified community-based nonprofit social service agency (as defined in paragraph (9))''; and

(D) by adding after paragraph (8) (as added by section 101(a)(2) of this Act) the following new paragraph:

''(9) For purposes of this subsection, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in such State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on such agency which may have been performed since the previous certification.''.

(2) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) is amended—

(A) in subparagraph (B)(vii), by striking ''a community-based nonprofit social service agency licensed or bonded by the State'' in subclause (I) and inserting ''a certified community-based nonprofit social service agency (as defined in subparagraph (I))'';

(B) in subparagraph (D)(ii)—

(i) by striking ''or any community-based'' and all that follows through ''in accordance'' in subclause (II) and inserting ''or any certified community-based nonprofit social service agency (as defined in subparagraph (I)), if the agency, in accordance'';

(ii) by redesignating items (aa) and (bb) as subclauses (I) and (II), respectively (and adjusting the margination accordingly); and

(iii) by striking ''subclause (II)(bb)'' and inserting ''subclause (II)''; and

(C) by adding at the end the following new subparagraph:

''(I) For purposes of this paragraph, the term 'certified community-based nonprofit social service agency' means a community-based nonprofit social service agency which is in compliance with requirements, under regulations which shall be prescribed by the Commissioner, for annual certification to the Commissioner that it is bonded in accordance with requirements specified by the Commissioner and that it is licensed in each State in which it serves as a representative payee (if licensing is available in the State) in accordance with requirements specified by the Commissioner. Any such annual certification shall include a copy of any independent audit on the agency which may have been performed since the previous certification.''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall take effect on the first day of the thirteenth month beginning after the date of enactment of this Act.

(b) PERIODIC ONSITE REVIEW.—

(1) TITLE II AMENDMENT.—Section 205(j)(6) of such Act (42 U.S.C. 405(j)(6)) is amended to read as follows:

''(6)(A) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency located in the United States that receives

the benefits payable under this title (alone or in combination with benefits payable under title VIII or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this subsection, section 807, or section 1631(a)(2) in any case in which—

''(i) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(ii) the representative payee is a certified community-based nonprofit social service agency (as defined in paragraph (9) of this subsection or section 1631(a)(2)(I)); or

''(iii) the representative payee is an agency (other than an agency described in clause (ii)) that serves in that capacity with respect to 50 or more such individuals.

''(B) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to subparagraph (A) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(i) the number of such reviews;

''(ii) the results of such reviews;

''(iii) the number of cases in which the representative payee was changed and why;

''(iv) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(v) the number of cases discovered in which there was a misuse of funds;

''(vi) how any such cases of misuse of funds were dealt with by the Commissioner;

''(vii) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(viii) such other information as the Commissioner deems appropriate.''.

(2) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 101(b)(2) of this Act) is amended further by adding at the end the following new subsection:

''(k) PERIODIC ONSITE REVIEW.—(1) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner may provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title XVI) to another individual pursuant to the appointment of such person or agency as a representative payee under this section, section 205(j), or section 1631(a)(2) in any case in which—

''(A) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals; or

''(B) the representative payee is an agency that serves in that capacity with respect to 50 or more such individuals.

''(2) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to paragraph (1) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in such reviews and any corrective action taken or planned to be taken to correct such problems, and shall include—

''(A) the number of such reviews;

''(B) the results of such reviews;

''(C) the number of cases in which the representative payee was changed and why;

''(D) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(E) the number of cases discovered in which there was a misuse of funds;

''(F) how any such cases of misuse of funds were dealt with by the Commissioner;

''(G) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(H) such other information as the Commissioner deems appropriate.''.

(3) TITLE XVI AMENDMENT.—Section 1631(a)(2)(G) of such Act (42 U.S.C. 1383(a)(2)(G)) is amended to read as follows:

''(G)(i) In addition to such other reviews of representative payees as the Commissioner of Social Security may otherwise conduct, the Commissioner shall provide for the periodic onsite review of any person or agency that receives the benefits payable under this title (alone or in combination with benefits payable under title II or title VIII) to another individual pursuant to the appointment of the person or agency as a representative payee under this paragraph, section 205(j), or section 807 in any case in which—

''(I) the representative payee is a person who serves in that capacity with respect to 15 or more such individuals;

''(II) the representative payee is a certified community-based nonprofit social service agency (as defined in subparagraph (I) of this paragraph or section 205(j)(9)); or

''(III) the representative payee is an agency (other than an agency described in subclause (II)) that serves in that capacity with respect to 50 or more such individuals.

''(ii) Within 120 days after the end of each fiscal year, the Commissioner shall submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate a report on the results of periodic onsite reviews conducted during the fiscal year pursuant to clause (i) and of any other reviews of representative payees conducted during such fiscal year in connection with benefits under this title. Each such report shall describe in detail all problems identified in the reviews and any corrective action taken or planned to be taken to correct the problems, and shall include—

''(I) the number of the reviews;

''(II) the results of such reviews;

''(III) the number of cases in which the representative payee was changed and why;

''(IV) the number of cases involving the exercise of expedited, targeted oversight of the representative payee by the Commissioner conducted upon receipt of an allegation of misuse of funds, failure to pay a vendor, or a similar irregularity;

''(V) the number of cases discovered in which there was a misuse of funds;

''(VI) how any such cases of misuse of funds were dealt with by the Commissioner;

''(VII) the final disposition of such cases of misuse of funds, including any criminal penalties imposed; and

''(VIII) such other information as the Commissioner deems appropriate.''.

SEC. 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN 1 YEAR, OF PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND OF PERSONS VIOLATING PROBATION OR PAROLE.

(a) TITLE II AMENDMENTS.—Section 205(j)(2) of the Social Security Act (42 U.S.C. 405(j)(2)) is amended—

(1) in subparagraph (B)(i)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

''(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

''(V) obtain information concerning whether such person is a person described in clause (iv) or (v) of section 202(x)(1)(A), and''.

(2) in subparagraph (C)(i)(II), by striking ''subparagraph (B)(i)(IV),,'' and inserting ''subparagraph (B)(i)(VI)'' and striking ''section 1631(a)(2)(B)(ii)(IV)'' and inserting ''section 1631(a)(2)(B)(ii)(VI)''; and

(3) in subparagraph (C)(i)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a comma; and

(C) by adding at the end the following new subclauses:

''(IV) such person has previously been convicted as described in subparagraph (B)(i)(IV), unless the Commissioner determines that such certification would be appropriate notwithstanding such conviction, or

''(V) such person is person described in clause (iv) or (v) of section 202(x)(1)(A).''.

(b) TITLE VIII AMENDMENTS.—Section 807 of such Act (42 U.S.C. 1007) is amended—

(1) in subsection (b)(2)—

(A) by striking ''and'' at the end of subparagraph (C);

(B) by redesignating subparagraph (D) as subparagraph (F); and

(C) by inserting after subparagraph (C) the following new subparagraphs:

''(D) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(E) obtain information concerning whether such person is a person described in paragraph (2) or (3) of section 804(a); and''; and

(2) in subsection (d)(1)—

(A) by striking ''or'' at the end of subparagraph (B);

(B) by striking the period at the end of subparagraph (C) and inserting a semicolon; and

(C) by adding at the end the following new subparagraphs:

''(D) such person has previously been convicted as described in subsection (b)(2)(D), unless the Commissioner determines that such payment would be appropriate notwithstanding such conviction; or

''(E) such person is a person described in paragraph (2) or (3) of section 804(a).''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(B) of such Act (42 U.S.C. 1383(a)(2)(B)) is amended—

(1) in clause (ii)—

(A) by striking ''and'' at the end of subclause (III);

(B) by redesignating subclause (IV) as subclause (VI); and

(C) by inserting after subclause (III) the following new subclauses:

''(IV) obtain information concerning whether the person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year;

''(V) obtain information concerning whether such person is a person described in section 1611(e)(4); and'';

(2) in clause (iii)(II)—

(A) by striking ''clause (ii)(IV)'' and inserting ''clause (ii)(VI)''; and

(B) by striking ''section 205(j)(2)(B)(i)(IV)'' and inserting ''section 205(j)(2)(B)(i)(VI)''; and

(3) in clause (iii)—

(A) by striking ''or'' at the end of subclause (II);

(B) by striking the period at the end of subclause (III) and inserting a semicolon; and

(C) by adding at the end the following new subclauses:

''(IV) the person has previously been convicted as described in clause (ii)(IV) of this subparagraph, unless the Commissioner determines that the payment would be appropriate notwithstanding the conviction; or

''(V) such person is a person described in section 1611(e)(4).''.

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the thirteenth month beginning after the date of enactment of this Act.

(e) REPORT TO CONGRESS.—The Commissioner of Social Security, in consultation with the Inspector General of the Social Security Administration, shall prepare a report evaluating whether the existing procedures and reviews for the qualification (including disqualification) of representative payees are sufficient to enable the Commissioner to protect benefits from being misused by representative payees. The Commissioner shall submit the report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate no later than 270 days after the date of enactment of this Act. The Commissioner shall include in such report any recommendations that the Commissioner considers appropriate.

SEC. 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES.

(a) TITLE II AMENDMENTS.—Section 205(j)(4)(A)(i) of the Social Security Act (42 U.S.C. 405(j)(4)(A)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Secretary'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of paragraphs (5) and (6). The Commissioner''.

(b) TITLE XVI AMENDMENTS.—Section 1631(a)(2)(D)(i) of such Act (42 U.S.C. 1383(a)(2)(D)(i)) is amended—

(1) in the first sentence, by striking ''A'' and inserting ''Except as provided in the next sentence, a''; and

(2) in the second sentence, by striking ''The Commissioner'' and inserting the following: ''A qualified organization may not collect a fee from an individual for any month with respect to which the Commissioner of Social Security or a court of competent jurisdiction has determined that the organization misused all or part of the individual's benefit, and any amount so collected by the qualified organization for such month shall be treated as a misused part of the individual's benefit for purposes of subparagraphs (E) and (F). The Commissioner''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to any month involving benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after December 31, 2002.

SEC. 105. LIABILITY OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS.

(a) TITLE II AMENDMENTS.—Section 205(j) of the Social Security Act (42 U.S.C. 405(j)) (as amended by sections 101 and 102) is amended further—

(1) by redesignating paragraphs (7), (8), and (9) as paragraphs (8), (9), and (10), respectively;

(2) in paragraphs (2)(C)(v), (3)(F), and (4)(B), by striking ''paragraph (9)'' and inserting ''paragraph (10)'';

(3) in paragraph (6)(A)(ii), by striking ''paragraph (9)'' and inserting ''paragraph (10)''; and

(4) by inserting after paragraph (6) the following new paragraph:

''(7)(A) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to such representative payee under this subsection, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to subparagraph (B), upon recovering all or any part of such amount, the Commissioner shall certify an amount equal to the recovered amount for payment to such individual or such individual's alternative representative payee.

''(B) The total of the amount certified for payment to such individual or such individual's alternative representative payee under subparagraph (A) and the amount certified for payment under paragraph (5) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(b) TITLE VIII AMENDMENT.—Section 807 of such Act (as amended by section 102(b)(2)) is amended further by adding at the end the following new subsection:

''(l) LIABILITY FOR MISUSED AMOUNTS.—

''(1) IN GENERAL.—If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of a qualified individual's benefit that was paid to such representative payee under this section, the representative payee shall be liable for the amount misused, and such amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of such overpayments. Subject to paragraph (2), upon recovering all or any part of such amount, the Commissioner shall make payment of an amount equal to the recovered amount to such qualified individual or such qualified individual's alternative representative payee.

''(2) LIMITATION.—The total of the amount paid to such individual or such individual's alternative representative payee under paragraph (1) and the amount paid under subsection (i) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(c) TITLE XVI AMENDMENTS.—Section 1631(a)(2) of such Act (42 U.S.C. 1383(a)(2)) (as amended by section 102(b)(3)) is amended further—

(1) in subparagraph (G)(i)(II), by striking ''section 205(j)(9)'' and inserting ''section 205(j)(10)''; and

(2) by striking subparagraph (H) and inserting the following:

''(H)(i) If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee that is not a Federal, State, or local government agency has misused all or part of an individual's benefit that was paid to the representative payee under this paragraph, the representative payee shall be liable for the amount misused, and the amount (to the extent not repaid by the representative payee) shall be treated as an overpayment of benefits under this title to the representative payee for all purposes of this Act and related laws pertaining to the recovery of the overpayments. Subject to clause (ii), upon recovering all or any part of the amount, the Commissioner shall make payment of an amount equal to the recovered amount to such individual or such individual's alternative representative payee.

''(ii) The total of the amount paid to such individual or such individual's alternative representative payee under clause (i) and the amount paid under subparagraph (E) may not exceed the total benefit amount misused by the representative payee with respect to such individual.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to benefit misuse by a representative payee in any case with respect to which the Commissioner of Social Security or a court of competent jurisdiction makes the determination of misuse after December 31, 2002.

SEC. 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.

(a) TITLE II AMENDMENTS.—Section 205(j)(3) of the Social Security Act (42 U.S.C. 405(j)(3)) (as amended by sections 102(a)(1)(B) and 105(a)(2)) is amended—

(1) by redesignating subparagraphs (E) and (F) as subparagraphs (F) and (G), respectively; and

(2) by inserting after subparagraph (D) the following new subparagraph:

''(E) In any case in which the person described in subparagraph (A) or (D) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under subparagraph (A) or (D), the Commissioner may, after furnishing notice to such person and the individual entitled to such payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(b) TITLE VIII AMENDMENTS.—Section 807(h) of such Act (42 U.S.C. 1007(h)) is amended—

(1) by redesignating paragraphs (3) and (4) as paragraphs (4) and (5), respectively; and

(2) by inserting after paragraph (2) the following new paragraph:

''(3) AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING.—In any case in which the person described in paragraph (1) or (2) receiving benefit payments on behalf of a qualified individual fails to submit a report required by the Commissioner of Social Security under paragraph (1) or (2), the Commissioner may, after furnishing notice to such person and

the qualified individual, require that such person appear in person at a United States Government facility designated by the Social Security Administration as serving the area in which the qualified individual resides in order to receive such benefit payments.''.

(c) TITLE XVI AMENDMENT.—Section 1631(a)(2)(C) of such Act (42 U.S.C. 1383(a)(2)(C)) is amended by adding at the end the following new clause:

''(v) In any case in which the person described in clause (i) or (iv) receiving payments on behalf of another fails to submit a report required by the Commissioner of Social Security under clause (i) or (iv), the Commissioner may, after furnishing notice to the person and the individual entitled to the payment, require that such person appear in person at a field office of the Social Security Administration serving the area in which the individual resides in order to receive such payments.''.

(d) EFFECTIVE DATE.—The amendment made by this section shall take effect 180 days after the date of enactment of this Act.

Subtitle B—Enforcement

SEC. 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES.

(a) IN GENERAL.—Section 1129(a) of the Social Security Act (42 U.S.C. 1320a–8) is amended by adding at the end the following new paragraph:

''(3) Any person (including an organization, agency, or other entity) who, having received, while acting in the capacity of a representative payee pursuant to section 205(j), 807, or 1631(a)(2), a payment under title II, VIII, or XVI for the use and benefit of another individual, converts such payment, or any part thereof, to a use that such person knows or should know is other than for the use and benefit of such other individual shall be subject to, in addition to any other penalties that may be prescribed by law, a civil money penalty of not more than $5,000 for each such conversion. Such person shall also be subject to an assessment, in lieu of damages sustained by the United States resulting from the conversion, of not more than twice the amount of any payments so converted.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to violations committed after the date of enactment of this Act.

TITLE II—PROGRAM PROTECTIONS

SEC. 201. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS OF DISABLED BENEFICIARIES.

Effective as soon as possible, but not later than 1 year after the date of enactment of this Act, until such time as the Commissioner of Social Security implements a centralized computer file recording the date of the submission of information by a disabled beneficiary (or representative) regarding a change in the beneficiary's work or earnings status, the Commissioner shall issue a receipt to the disabled beneficiary (or representative) each time he or she submits documentation, or otherwise reports to the Commissioner, on a change in such status.

SEC. 202. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE.

(a) IN GENERAL.—Section 202(x) of the Social Security Act (42 U.S.C. 402(x)) is amended—

(1) in the heading, by striking ''Prisoners'' and all that follows and inserting the following: ''Prisoners, Certain Other Inmates of Publicly Funded Institutions, and Fugitives'';

(2) in paragraph (1)(A)(ii)(IV), by striking ''or'' at the end;

(3) in paragraph (1)(A)(iii), by striking the period at the end and inserting a comma;

(4) by inserting after paragraph (1)(A)(iii) the following:

''(iv) is fleeing to avoid prosecution, or custody or confinement after conviction, under the laws of the place from which the person flees, for a crime, or an attempt to commit a crime, which is a felony under the laws of the place from which the person flees, or which, in the case of the State of New Jersey, is a high misdemeanor under the laws of such State, or

''(v) is violating a condition of probation or parole imposed under Federal or State law.

In the case of an individual from whom such monthly benefits have been withheld pursuant to clause (iv), the Commissioner may, for good cause shown, pay such withheld benefits to the individual.''; and

(5) in paragraph (3), by adding at the end the following new subparagraph:

''(C) Notwithstanding the provisions of section 552a of title 5, United States Code, or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1106(c) of this Act), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, Social Security number, and photograph (if applicable) of any beneficiary under this title, if the officer furnishes the Commissioner with the name of the beneficiary, and other identifying information as reasonably required by the Commissioner to establish the unique identity of the beneficiary, and notifies the Commissioner that—

''(i) the beneficiary—

''(I) is described in clause (iv) or (v) of paragraph (1)(A); and

''(II) has information that is necessary for the officer to conduct the officer's official duties; and

''(ii) the location or apprehension of the beneficiary is within the officer's official duties.''.

(b) REGULATIONS.—Not later than the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act, the Commissioner of Social Security shall promulgate regulations governing payment by the Commissioner, for good cause shown, of withheld benefits, pursuant to the last sentence of section 202(x)(1)(A) of the Social Security Act (as amended by subsection (a)).

(c) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the first day of the first month that begins on or after the date that is 9 months after the date of enactment of this Act.

SEC. 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION.

(a) IN GENERAL.—Section 1140 of the Social Security Act (42 U.S.C. 1320b–10) is amended—

(1) in subsection (a), by adding at the end the following new paragraph:

''(4)(A) No person shall offer, for a fee, to assist an individual to obtain a product or service that the person knows or should know is provided free of charge by the Social Security Administration unless, at the time the offer is made, the person provides to the individual to whom the offer is tendered a notice that—

''(i) explains that the product or service is available free of charge from the Social Security Administration, and

''(ii) complies with standards prescribed by the Commissioner of Social Security respecting the content of such notice and its placement, visibility, and legibility.

''(B) Subparagraph (A) shall not apply to any offer—

''(i) to serve as a claimant representative in connection with a claim arising under title II, title VIII, or title XVI; or

''(ii) to prepare, or assist in the preparation of, an individual's plan for achieving self-support under title XVI.''; and

(2) in the heading, by striking ''PROHIBITION OF MISUSE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE'' and inserting ''PROHIBITIONS RELATING TO REFERENCES''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to offers of assistance made after the sixth month ending after the Commissioner of Social Security promulgates final regulations prescribing the standards applicable to the notice required to be provided in connection with such offer. The Commissioner shall promulgate such final regulations within 1 year after the date of enactment of this Act.

SEC. 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES.

Section 206(a)(1) of the Social Security Act (42 U.S.C. 406(a)(1)) is amended by inserting after the second sentence the following: ''Notwithstanding the preceding sentences, the Commissioner, after due notice and opportunity for hearing, (A) may refuse to recognize as a representative, and may disqualify a representative already recognized, any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice or who has been disqualified from participating in or appearing before any Federal program or agency, and (B) may refuse to recognize, and may disqualify, as a nonattorney representative any attorney who has been disbarred or suspended from any court or bar to which he or she was previously admitted to practice. A representative who has been disqualified or suspended pursuant to this section from appearing before the Social Security Administration as a result of collecting or receiving a fee in excess of the amount authorized shall be barred from appearing before the Social Security Administration as a representative until full restitution is made to the claimant and, thereafter, may be considered for reinstatement only under such rules as the Commissioner may prescribe.''.

SEC. 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF SOCIAL SECURITY ACT.

Part A of title XI of the Social Security Act (42 U.S.C. 1301 et seq.) is amended by inserting after section 1129A the following new section:

''ATTEMPTS TO INTERFERE WITH ADMINISTRATION OF SOCIAL SECURITY ACT

''SEC. 1129B. Whoever corruptly or by force or threats of force (including any threatening letter or communication) attempts to intimidate or impede any officer, employee, or contractor of the Social Security Administration (including any State employee of a disability determination service or any other individual designated by the Commissioner of Social Security) acting in an official capacity to carry out a duty under this Act, or in any other way corruptly or by force or threats of force (including any threatening letter or communication) obstructs or impedes, or attempts to obstruct or impede, the due administration of this Act, shall be fined not more than $5,000, imprisoned not more than 3 years, or both, except that if the offense is committed only by threats of force, the person shall be fined not more than $3,000, imprisoned not more than 1 year, or

both. In this subsection, the term 'threats of force' means threats of harm to the officer or employee of the United States or to a contractor of the Social Security Administration, or to a member of the family of such an officer or employee or contractor.''.

SEC. 206. USE OF SYMBOLS, EMBLEMS, OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE.

(a) IN GENERAL.—Section 1140(a)(1) of the Social Security Act (42 U.S.C. 1320b–10(a)(1)) is amended—

(1) in subparagraph (A), by inserting '' 'Centers for Medicare & Medicaid Services','' after '' 'Health Care Financing Administration','', by striking ''or 'Medicaid', '' and inserting '' 'Medicaid', 'Death Benefits Update', 'Federal Benefit Information', 'Funeral Expenses', or 'Final Supplemental Plan','' and by inserting '' 'CMS','' after '' 'HCFA','';

(2) in subparagraph (B), by inserting ''Centers for Medicare & Medicaid Services,'' after ''Health Care Financing Administration,'' each place it appears; and

(3) in the matter following subparagraph (B), by striking ''the Health Care Financing Administration,'' each place it appears and inserting ''the Centers for Medicare & Medicaid Services,''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to items sent after 180 days after the date of enactment of this Act.

SEC. 207. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY.

(a) IN GENERAL.—Section 222(c) of the Social Security Act (42 U.S.C. 422(c)) is amended by adding at the end the following new paragraph:

''(5) Upon conviction by a Federal court that an individual has fraudulently concealed work activity during a period of trial work from the Commissioner of Social Security by—

''(A) providing false information to the Commissioner of Social Security as to whether the individual had earnings in or for a particular period, or as to the amount thereof;

''(B) receiving disability insurance benefits under this title while engaging in work activity under another identity, including under another social security account number or a number purporting to be a social security account number; or

''(C) taking other actions to conceal work activity with an intent fraudulently to secure payment in a greater amount than is due or when no payment is authorized,

no benefit shall be payable to such individual under this title with respect to a period of disability for any month before such conviction during which the individual rendered services during the period of trial work with respect to which the fraudulently concealed work activity occurred, and amounts otherwise due under this title as restitution, penalties, assessments, fines, or other repayments shall in all cases be in addition to any amounts for which such individual is liable as overpayments by reason of such concealment.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to work activity performed after the date of the enactment of this Act.

TITLE III—ATTORNEY FEE PAYMENT SYSTEM IMPROVEMENTS

SEC. 301. CAP ON ATTORNEY ASSESSMENTS.

(a) IN GENERAL.—Section 206(d)(2)(A) of the Social Security Act (42 U.S.C. 406(d)(2)(A)) is amended—

(1) by inserting '', except that the maximum amount of the assessment may not exceed the greater of $75 or the adjusted amount as provided pursuant to the following two sentences'' after ''subparagraph (B)''; and

(2) by adding at the end the following new sentence: ''In the case of any calendar year beginning after 2003, the dollar amount specified in the preceding sentence (including a previously adjusted amount) shall be adjusted annually under the procedures used to adjust benefit amounts under section 215(i)(2)(A)(ii), except such adjustment shall be based on the higher of $75 or the previously adjusted amount that would have been in effect for December of the preceding year, but for the rounding of such amount pursuant to the following sentence. Any amount so adjusted that is not a multiple of $10 shall be rounded to the next lowest multiple of $10, but in no case less than $75.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to fees for representation of claimants which are first required to be certified or paid under section 206 of the Social Security Act on or after the first day of the first month that begins after 180 days after the date of enactment of this Act.

TITLE IV—MISCELLANEOUS AND TECHNICAL AMENDMENTS

Subtitle A—Amendments Relating to the Ticket to Work and Work Incentives Improvement Act of 1999

SEC. 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS.

Section 234 of the Social Security Act (42 U.S.C. 434) is amended—

(1) in the first sentence of subsection (c), by striking ''conducted under subsection (a)'' and inserting ''initiated under subsection (a) on or before December 17, 2004''; and

(2) in subsection (d)(2), by amending the first sentence to read as follows: ''The authority to initiate projects under the preceding provisions of this section shall terminate on December 18, 2004.''.

SEC. 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(c) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended by striking ''(42 U.S.C. 401 et seq.),'' and inserting ''(42 U.S.C. 401 et seq.) and the requirements of section 1148 of such Act (42 U.S.C. 1320b–19) as they relate to the program established under title II of such Act,''.

SEC. 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDED FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS.

Section 302(f) of the Ticket to Work and Work Incentives Improvement Act of 1999 (42 U.S.C. 434 note) is amended to read as follows:

''(f) EXPENDITURES.—Administrative expenses for demonstration projects under this section shall be paid from funds available for the administration of title II or XVIII of the Social Security Act, as appropriate. Benefits payable to or on behalf of individuals by reason of participation in projects under this section shall be made from the Federal Disability Insurance Trust Fund and the Federal Old-Age and Survivors Insurance Trust Fund, as determined appropriate by the Commissioner of Social Security, and from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Medical Insurance Trust Fund, as determined appropriate by the Secretary of Health and Human Services, from funds available for benefits under such title II or XVIII.''.

SEC. 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS.

(a) FEDERAL WORK INCENTIVES OUTREACH PROGRAM.—

(1) IN GENERAL.—Section 1149(c)(2) of the Social Security Act (42 U.S.C. 1320b–20(c)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) EFFECTIVE DATE.—The amendment made by this subsection shall apply with respect to grants, cooperative agreements, or contracts entered into on or after the date of enactment of this Act.

(b) STATE GRANTS FOR WORK INCENTIVES ASSISTANCE.—

(1) DEFINITION OF DISABLED BENEFICIARY.—Section 1150(g)(2) of such Act (42 U.S.C. 1320b–21(g)(2)) is amended to read as follows:

''(2) DISABLED BENEFICIARY.—The term 'disabled beneficiary' means an individual—

''(A) who is a disabled beneficiary as defined in section 1148(k)(2) of this Act;

''(B) who is receiving a cash payment described in section 1616(a) of this Act or a supplementary payment described in section 212(a)(3) of Public Law 93–66 (without regard to whether such payment is paid by the Commissioner pursuant to an agreement under section 1616(a) of this Act or under section 212(b) of Public Law 93–66);

''(C) who, pursuant to section 1619(b) of this Act, is considered to be receiving benefits under title XVI of this Act; or

''(D) who is entitled to benefits under part A of title XVIII of this Act by reason of the penultimate sentence of section 226(b) of this Act.''.

(2) ADVOCACY OR OTHER SERVICES NEEDED TO MAINTAIN GAINFUL EMPLOYMENT.—Section 1150(b)(2) of such Act (42 U.S.C. 1320b–21(b)(2)) is amended by striking ''secure or regain'' and inserting ''secure, maintain, or regain''.

(3) EFFECTIVE DATE.—The amendments made by this subsection shall apply with respect to payments provided after the date of enactment of this Act.

SEC. 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM.

(a) IN GENERAL.—Section 1148(g)(1) of the Social Security Act (42 U.S.C. 1320b–19) is amended by adding at the end, after and below subparagraph (E), the following new sentence:

''An individual work plan established pursuant to this subsection shall be treated, for purposes of section 51(d)(6)(B)(i) of the Internal Revenue Code of 1986, as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in section 505 of the Ticket to Work and Work Incentives Improvement Act of 1999 (Public Law 106–170; 113 Stat. 1921).

Subtitle B—Miscellaneous Amendments

SEC. 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT.

(a) IN GENERAL.—Section 205(g) of the Social Security Act (42 U.S.C. 405(g)) is amended in the sixth sentence by striking ''and a transcript'' and inserting ''and, in any case in which the Commissioner has not made a decision fully favorable to the individual, a transcript''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to final determinations issued (upon remand) on or after the date of enactment of this Act.

SEC. 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES.

(a) IN GENERAL.—Paragraphs (1) and (2) of section 202(n) of the Social Security Act (42 U.S.C. 402(n)(1), (2)) are each amended by striking ''or (1)(E)''.

(b) EFFECTIVE DATE.—The amendment made by this section to section 202(n)(1) of the Social Security Act shall apply to individuals with respect to whom the Commissioner of Social Security receives a removal notice from the Attorney General after the date of enactment of this Act. The amendment made by this section to section 202(n)(2) of the Social Security Act shall apply with respect to removals occurring after the date of enactment of this Act.

SEC. 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS.

Section 3003(a)(1) of the Federal Reports Elimination and Sunset Act of 1995 (31 U.S.C. 1113 note) shall not apply to any report required to be submitted under any of the following provisions of law:

(1)(A) Section 201(c)(2) of the Social Security Act (42 U.S.C. 401(c)(2)).

(B) Section 1817(b)(2) of the Social Security Act (42 U.S.C. 1395i(b)(2)).

(C) Section 1841(b)(2) of the Social Security Act (42 U.S.C. 1395t(b)(2)).

(2)(A) Section 221(c)(3)(C) of the Social Security Act (42 U.S.C. 421(c)(3)(C)).

(B) Section 221(i)(3) of the Social Security Act (42 U.S.C. 421(i)(3)).

SEC. 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS.

(a) WIDOWS.—Section 216(c) of the Social Security Act (42 U.S.C. 416(c)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''she was married'';

(4) by inserting ''(1)'' after ''(c)''; and

(5) by adding at the end the following new paragraph:

''(2) The requirements of paragraph (1)(E) in connection with the surviving wife of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving wife,

''(B) the prior wife was institutionalized during the individual's marriage to the prior wife due to mental incompetence or similar incapacity,

''(C) during the period of the prior wife's institutionalization, the individual would have divorced the prior wife and married the surviving wife, but the individual did not do so because such divorce would have been unlawful, by reason of the prior wife's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior wife continued to remain institutionalized up to the time of her death, and

''(E) the individual married the surviving wife within 60 days after the prior wife's death.''.

(b) WIDOWERS.—Section 216(g) of such Act (42 U.S.C. 416(g)) is amended—

(1) by redesignating subclauses (A) through (C) of clause (6) as subclauses (i) through (iii), respectively;

(2) by redesignating clauses (1) through (6) as clauses (A) through (F), respectively;

(3) in clause (E) (as redesignated), by inserting ''except as provided in paragraph (2),'' before ''he was married'';

(4) by inserting ''(1)'' after ''(g)''; and

(5) by adding at the end the following new paragraph:

''(2) The requirements of paragraph (1)(E) in connection with the surviving husband of an individual shall be treated as satisfied if—

''(A) the individual had been married prior to the individual's marriage to the surviving husband,

''(B) the prior husband was institutionalized during the individual's marriage to the prior husband due to mental incompetence or similar incapacity,

''(C) during the period of the prior husband's institutionalization, the individual would have divorced the prior husband and married the surviving husband, but the individual did not do so because such divorce would have been unlawful, by reason of the prior husband's institutionalization, under the laws of the State in which the individual was domiciled at the time (as determined based on evidence satisfactory to the Commissioner of Social Security),

''(D) the prior husband continued to remain institutionalized up to the time of his death, and

''(E) the individual married the surviving husband within 60 days after the prior husband's death.''.

(c) CONFORMING AMENDMENT.—Section 216(k) of such Act (42 U.S.C. 416(k)) is amended by striking ''clause (5) of subsection (c) or clause (5) of subsection (g)'' and inserting ''clause (E) of subsection (c)(1) or clause (E) of subsection (g)(1)''.

(d) EFFECTIVE DATE.—The amendments made by this section shall be effective with respect to applications for benefits under title II of the Social Security Act filed during months ending after the date of enactment of this Act.

SEC. 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER.

Sections 1401(c), 3101(c), and 3111(c) of the Internal Revenue Code of 1986 are each amended by striking ''to taxes or contributions for similar purposes under'' and inserting ''exclusively to the laws applicable to''.

SEC. 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY.

(a) IN GENERAL.—Section 218(d)(6)(C) of the Social Security Act (42 U.S.C. 418(d)(6)(C)) is amended by inserting ''Kentucky,'' after ''Illinois,''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) takes effect on January 1, 2003.

SEC. 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD.

(a) IN GENERAL.—Subsection (f) of section 703 of the Social Security Act (42 U.S.C. 903(f)) is amended to read as follows:

''Compensation, Expenses, and Per Diem

''(f) A member of the Board shall, for each day (including traveltime) during which the member is attending meetings or conferences of the Board or otherwise engaged in the business of the Board, be compensated at the daily rate of basic pay for level IV of the Executive Schedule for each day during which the member is engaged in performing a function of the Board. While serving on business of the Board away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code, for persons in the Government employed intermittently.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall be effective as of January 1, 2002.

SEC. 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION.

(a) WIFE'S INSURANCE BENEFITS.—Section 202(b)(4)(A) of the Social Security Act (42 U.S.C. 402(b)(4)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service prior to''.

(b) HUSBAND'S INSURANCE BENEFITS.—Section 202(c)(2)(A) of such Act (42 U.S.C. 402(c)(2)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service prior to''.

(c) WIDOW'S INSURANCE BENEFITS.—Section 202(e)(7)(A) of such Act (42 U.S.C. 402(e)(7)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service prior to''.

(d) WIDOWER'S INSURANCE BENEFITS.—Section 202(f)(2)(A) of such Act (42 U.S.C. 402(f)(2)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service prior to''.

(e) MOTHER'S AND FATHER'S INSURANCE BENEFITS.—Section 202(g)(4)(A) of the such Act (42 U.S.C. 402(g)(4)(A)) is amended by striking ''if, on'' and inserting ''if, during any portion of the last 60 months of such service prior to''.

(f) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to applications for benefits under title II of the Social Security Act filed on or after the first day of the first month that begins after the date of enactment of this Act, except that such amendments shall not apply to individuals whose last day of employment while in the service of any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act (42 U.S.C. 418(b)(2))) constitutes covered employment (as defined in section 210 of such Act (42 U.S.C. 410)) and occurs on or before June 30, 2003, provided that such period of covered employment for such governmental entity began on or before December 31, 2002.

Subtitle C—Technical Amendments

SEC. 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD.

Section 1143 of the Social Security Act (42 U.S.C. 1320b–13) is amended—

(1) by striking ''Secretary'' the first place it appears and inserting ''Commissioner of Social Security''; and

(2) by striking ''Secretary'' each subsequent place it appears and inserting ''Commissioner''.

SEC. 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS.

(a) IN GENERAL.—Section 211(a)(7) of the Social Security Act (42 U.S.C. 411(a)(7)) is amended by inserting '', but shall not include in any such net earnings from self-employment the rental value of any parsonage or any parsonage allowance (whether or not excluded under section 107 of the Internal Revenue Code of 1986) provided after the individual retires, or any other retirement benefit received by such individual from a

church plan (as defined in section 414(e) of such Code) after the individual retires'' before the semicolon.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to years beginning before, on, or after December 31, 1994.

SEC. 423. TECHNICAL CORRECTIONS RELATING TO DOMESTIC EMPLOYMENT.

(a) AMENDMENT TO INTERNAL REVENUE CODE.—Section 3121(a)(7)(B) of the Internal Revenue Code of 1986 is amended by striking ''described in subsection (g)(5)'' and inserting ''on a farm operated for profit''.

(b) AMENDMENT TO SOCIAL SECURITY ACT.—Section 209(a)(6)(B) of the Social Security Act (42 U.S.C. 409(a)(6)(B)) is amended by striking ''described in section 210(f)(5)'' and inserting ''on a farm operated for profit''.

(c) CONFORMING AMENDMENT.—Section 3121(g)(5) of such Code and section 210(f)(5) of such Act (42 U.S.C. 410(f)(5)) are amended by striking ''or is domestic service in a private home of the employer''.

SEC. 424. TECHNICAL CORRECTIONS OF OUTDATED REFERENCES.

(a) CORRECTION OF TERMINOLOGY AND CITATIONS RESPECTING REMOVAL FROM THE UNITED STATES.—Section 202(n) of the Social Security Act (42 U.S.C. 402(n)) (as amended by section 412) is amended further—

(1) by striking ''deportation'' each place it appears and inserting ''removal'';

(2) by striking ''deported'' each place it appears and inserting ''removed'';

(3) in paragraph (1) (in the matter preceding subparagraph (A)), by striking ''under section 241(a) (other than under paragraph (1)(C) thereof)'' and inserting ''under section 237(a) (other than paragraph (1)(C) thereof) or 212(a)(6)(A)'';

(4) in paragraph (2), by striking ''under any of the paragraphs of section 241(a) of the Immigration and Nationality Act (other than under paragraph (1)(C) thereof)'' and inserting ''under any of the paragraphs of section 237(a) of the Immigration and Nationality Act (other than paragraph (1)(C) thereof) or under section 212(a)(6)(A) of such Act'';

(5) in paragraph (3)—

(A) by striking ''paragraph (19) of section 241(a)'' and inserting ''subparagraph (D) of section 237(a)(4)''; and

(B) by striking ''paragraph (19)'' and inserting ''subparagraph (D)''; and

(6) in the heading, by striking ''Deportation'' and inserting ''Removal''.

(b) CORRECTION OF CITATION RESPECTING THE TAX DEDUCTION RELATING TO HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—Section 211(a)(15) of such Act (42 U.S.C. 411(a)(15)) is amended by striking ''section 162(m)'' and inserting ''section 162(l)''.

(c) ELIMINATION OF REFERENCE TO OBSOLETE 20-DAY AGRICULTURAL WORK TEST.—Section 3102(a) of the Internal Revenue Code of 1986 is amended by striking ''and the employee has not performed agricultural labor for the employer on 20 days or more in the calendar year for cash remuneration computed on a time basis''.

SEC. 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES.

(a) SOCIAL SECURITY ACT AMENDMENT.—Section 211(a)(5)(A) of the Social Security Act (42 U.S.C. 411(a)(5)(A)) is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions;''.

(b) INTERNAL REVENUE CODE OF 1986 AMENDMENT.—Section 1402(a)(5)(A) of the Internal Revenue Code of 1986 is amended by striking ''all of the gross income'' and all that follows and inserting ''the gross income and deductions attributable to such trade or business shall be treated as the gross income and deductions of the spouse carrying on such trade or business or, if such trade or business is jointly operated, treated as the gross income and deductions of each spouse on the basis of their respective distributive share of the gross income and deductions; and''.

SEC. 426. TECHNICAL AMENDMENTS RELATING TO THE RAILROAD RETIREMENT AND SURVIVORS IMPROVEMENT ACT OF 2001.

(a) QUORUM RULES.—Section 15(j)(7) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(7)) is amended by striking ''entire Board of Trustees'' and inserting ''Trustees then holding office''.

(b) TRANSFERS.—

(1) Section 15(k) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(k)) is amended by adding at the end the following: ''At the direction of the Railroad Retirement Board, the National Railroad Retirement Investment Trust shall transfer funds to the Railroad Retirement Account.''.

(2) Section 15A(d)(2) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n–1(d)(2)) is amended—

(A) by inserting ''or the Railroad Retirement Account'' after ''National Railroad Retirement Investment Trust'' the second place it appears;

(B) by inserting ''or the Railroad Retirement Board'' after ''National Railroad Retirement Investment Trust'' the third place it appears; and

(C) by inserting ''or the Railroad Retirement Board'' after ''the Trust''.

(c) INVESTMENT AUTHORITY.—Section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) is amended by striking ''shall'' and inserting ''may''.

(d) CLERICAL.—

(1) Subparagraphs (C) and (D) of section 15(j)(4) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(4)) are each amended by striking ''assets in the Trust'' and inserting ''assets of the Trust''.

(2) Paragraph (5) of section 15(j) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(j)(5)) is amended—

(A) in subparagraph (B), by striking ''trustee's'' each place it appears and inserting ''Trustee's'';

(B) in subparagraph (C), by striking ''trustee'' and ''trustees'' each place it appears and inserting ''Trustee'' and ''Trustees'', respectively; and

(C) in the matter preceding clause (i) of subparagraph (D), by striking ''trustee'' and inserting ''Trustee''.

SA 4968. Mrs. HUTCHISON (for Mr. HOLLINGS (for himself and Mr. MCCAIN)) proposed an amendment to the bill S. 2949, to provide for enhanced aviation security, and for other purposes; as follows:

SECTION 1. SHORT TITLE; AMENDMENT OF TITLE 49.

(A) SHORT TITLE.—This Act may be cited as the ''Aviation Security Improvement Act''.

(b) AMENDMENT OF TITLE 49.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or a repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 49, United States Code.

SEC. 2. TABLE OF CONTENTS.

The table of contents for this Act is as follows:

Sec. 1. Short title; amendment of title 49.
Sec. 2. Table of contents.

Title I—Air Cargo Security

Sec. 101. Inspection of cargo carried aboard passenger aircraft.
Sec. 102. Air cargo shipping.
Sec. 103. Cargo carried aboard passenger aircraft.
Sec. 104. Training program for cargo handlers.
Sec. 105. Cargo carried aboard all-cargo aircraft.

Title II—Passenger Identification

Sec. 201. Passenger identification.
Sec. 202. Passenger identification verification.

Title III—Circumvention of Airport Security

Sec. 301. Prohibition on unauthorized circumvention of airport security systems and procedures.

Title VI—Blast Resistant Cargo Container Technology

Sec. 401. Blast-resistant cargo container technology.

Title V—Flight Schools

Sec. 501. Modification of requirements regarding training to operate aircraft.

Title VI—Miscellaneous

Sec. 601. FAA Notice to Airmen FDC 2/0199.

Title VII—Technical Corrections

Sec. 701. Technical corrections.

TITLE I—AIR CARGO SECURITY

SEC. 101. INSPECTION OF CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

Section 44901(f) is amended to read as follows: ''(f) CARGO.

''(1) IN GENERAL.—The Under Secretary of Transportation for Security shall establish systems to screen, inspect, or otherwise ensure the security of all cargo that is to be transported in—

''(A) passenger aircraft operated by an air carrier for foreign air carrier in air transportation or intrastate air transportation; or

''(B) all-cargo aircraft in air transportation and intrastate air transportation.

''(2) STRATEGIC PLAN.—The Under Secretary shall develop a strategic plan to carry out paragraph (1).''.

SEC. 102. AIR CARGO SHIPPING.

(a) IN GENERAL.—Subchapter I of chapter 449, is amended by adding at the end the following:

§ 44921. Regular inspections of air cargo shipping facilities

''The Under Secretary of Transportation for Security shall establish a system for the regular inspection of shipping facilities for shipments of cargo transported in air transportation or intrastate air transportation to ensure that appropriate security controls, systems, and protocols are observed, and shall enter into arrangements with the civil aviation authorities, or other appropriate officials, of foreign countries to ensure that inspections are conducted on a regular basis at shipping facilities for cargo transported in air transportation to the United States.''.

(b) ADDITIONAL INSPECTORS.—The Under Secretary may increase the number of inspectors as necessary to implement the requirements of title 49, United States Code, as amended by this subtitle.

(c) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

''44921. Regular inspections of air cargo shipping facilities''.

SEC. 103. CARGO CARRIED ABOARD PASSENGER AIRCRAFT.

(a) IN GENERAL.—Subchapter I of chapter 449, is further amended by adding at the end the following:

§ 44922. Air cargo security

''(a) DATABASE.—The Under Secretary of Transportation for Security shall establish an industry-wide pilot program database of known shippers of cargo that is to be transported in passenger aircraft operated by an air carrier or foreign air carrier in air transportation or intrastate air transportation. The Under Secretary shall use the results of the pilot program to improve the known shipper program.

''(b) INDIRECT AIR CARRIERS.

''(1) RANDOM INSPECTIONS.—The Under Secretary shall conduct random audits, investigations, and inspections of indirect air carrier facilities to determine if the indirect air carriers are meeting the security requirements of this title.

''(2) ENSURING COMPLIANCE.—The Under Secretary may take such actions as may be appropriate to promote and ensure compliance with the security standards established under this title.

''(3) NOTICE OF FAILURES.—The Under Secretary shall notify the secretary of Transportation of any indirect air carrier that fails to meet security standards established under this title.

''(4) SUSPENSION OR REVOCATION OF CERTIFICATE.—The Secretary, as appropriate, shall suspend or revoke any certificate or authority issued under chapter 411 to an indirect air carrier immediately upon the recommendation of the Under Secretary. Any indirect air carrier whose certificate is suspended or revoked under this subparagraph may appeal the suspension or revocation in accordance with procedures established under this title for the appeal of suspensions and revocations.

''(5) INDIRECT AIR CARRIER.—In this subsection, the term 'indirect air carrier' has the meaning given that term in part 1548 of title 49, Code of Federal Regulations.

''(c) CONSIDERATION OF COMMUNITY NEEDS.—In implementing air cargo security requirement under this title, the Under Secretary may take into consideration the extraordinary air transportation needs of small or isolated communities and unique operational characteristics of carriers that serve those communities.''.

(b) ASSESSMENT OF INDIRECT AIR CARRIER PROGRAM.—The Under Secretary of Transportation for Security shall assess the security aspects of the indirect air carrier program under part 1548 of title 49, Code of Federal Regulations, and report the result of the assessment, together with any recommendations for necessary modifications of the program to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and the House of Representatives Committee on Transportation and Infrastructure within 45 days after the date of enactment of this Act. The Under Secretary may submit the report and recommendations in classified form.

(c) REPORT TO CONGRESS ON RANDOM AUDITS.—The Under Secretary of Transportation of Security shall report to the Senate Committee on Commerce, Science, and Transportation and House of Representatives Committees on Transportation and Infrastructure on random screening, audits, and investigations of air cargo security programs based on threat assessments and other relevant information. The report may be submitted in classified form.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this section.

(e) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, as amended by section 102, is amended by adding at the end the following:

''44922. Air cargo security''.

SEC. 104. TRAINING PROGRAM FOR CARGO HANDLERS.

The Under Secretary of Transportation for Security shall establish a training program for any persons that handle air cargo to ensure that the cargo is properly handled and safe-guarded from security breaches.

SEC. 105. CARGO CARRIED ABOARD ALL-CARGO AIRCRAFT.

(a) IN GENERAL.—The Under Secretary of Transportation for Security shall establish a program requiring that air carriers operating all-cargo aircraft have an approved plan for the security of their air operations area, the cargo placed abroad such aircraft, and persons having access to their aircraft on the ground or in flight.

(b) PLAN REQUIREMENTS.—The plan shall include provisions for—

(1) security of each carrier's air operations areas and cargo acceptance areas at the airports served;

(2) background security checks for all employees with access to the air operations area;

(3) appropriate training for all employees and contractors with security responsibilities;

(4) appropriate screening of all flight crews and persons transported abroad all-cargo aircraft;

(5) security procedures for cargo placed on all-cargo aircraft as provided in section 44901(f)(1)(B) of title 49, United States Code; and

(6) additional measures deemed necessary and appropriate by the Under Secretary.

(e) CONFIDENTIAL INDUSTRY REVIEW AND COMMENT.

(1) CIRCULATION OF PROPOSED PROGRAM.

The Under Secretary shall—

(A) propose a program under subsection (a) within 90 days after the date of enactment of this Act; and

(B) distribute the proposed program, on a confidential basis, to those air carriers and other employers to which the program will apply.

(2) COMMENT PERIOD.—Any person to which the proposed program is distributed under paragraph (1) may provide comments on the proposed program to the Under Secretary not more than 60 days after it was received.

(3) FINAL PROGRAM.—The Under Secretary of Transportation shall issue a final program under subsection (a) not later than 45 days after the last date on which comments may be provided under paragraph (2). The final program shall contain time frames for the plans to be implemented by each air carrier or employer to which it applies.

(4) SUSPENSION OF PROCEDURAL NORMS.—Neither chapter 5 of title 5, United States Code, nor the Federal Advisory Committee Act (5 U.S.C. App.) shall apply to the program required by this section.

TITLE II—PASSENGER IDENTIFICATION

SEC. 201. PASSENGER IDENTIFICATION.

(a) IN GENERAL.—Subchapter I of chapter 449, as amended by title II of this Act, is further amended by adding at the end the following:

"§ 44923. Passenger identification

''(a) IN GENERAL.—Not later than 180 days after the date of enactment of the Aviation Security Improvement Act, the Under Secretary of Transportation for Security, in consultation with the Administrator of the Federal Aviation Administration, appropriate law enforcement, security, and terrorism experts, representatives of air carriers and labor organizations representing individuals employed in commercial aviation, shall develop protocols to provide guidance for detection of false or fraudulent passenger identification. The protocols may consider new technology, current identification measures, training of personnel, and issues related to the types of identification available to the public.

''(b) AIR CARRIER PROGRAMS.—Within 60 days after the Under Secretary issues the protocols under subsection (a) in final form, the Under Secretary shall provide them to each air carrier. The Under Secretary shall establish a joint government and industry council to develop recommendations on how to implement the protocols. The Under Secretary shall report to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Transportation and Infrastructure within 1 year after the date of enactment of the Aviation Security Improvement Act on the actions taken under this section.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449, is amended by adding at the end the following:

''44923. Passenger identification''.

SEC. 202. PASSENGER IDENTIFICATION VERIFICATION.

(a) REQUIREMENT.—Subchapter I of chapter 449, is further amended by adding at the end the following:

"§ 44924. Passenger identification verification

''(a) PROGRAM REQUIRED.—The Under Secretary of Transportation for Security may establish and carry out a program to require the installation and use at airports in the United States of such identification verification technologies as the Under Secretary considers appropriate to assist in the screening of passengers boarding aircraft at such airports.

''(b) TECHNOLOGIES EMPLOYED.—The identification verification technologies required as part of the program under subsection (a) may include identification scanners, biometrics, retinal, iris, or facial scanners, or any other technologies that the Under Secretary considers appropriate for purposes of the program.

''(c) COMMENCEMENT.—If the Under Secretary determines that the implementation of such a program is appropriate, the installation and use of identification verification technologies under the program shall commence as soon as practicable after the date of that determination.''.

(b) CONFORMING AMENDMENT.—The chapter analysis for chapter 449 is amended by adding at the end the following:

''44924. Passenger identification verification''.

TITLE III—CIRCUMVENTION OF AIRPORT SECURITY

SEC. 301. PROHIBITION ON UNAUTHORIZED CIRCUMVENTION OF AIRPORT SECURITY SYSTEMS AND PROCEDURES.

(a) PROHIBITION.—Section 46503 is amended—

(1) by inserting ''(a) INTERFERENCE WITH SECURITY SCREENING PERSONNEL.—'' before ''An individual''; and

(2) by adding at the end the following new subsection:

''(b) UNAUTHORIZED CIRCUMVENTION OF SECURITY SYSTEMS AND PROCEDURES.—An individual in an area within a commercial service airport in the United States who intentionally circumvents, in an unauthorized manner, a security system or procedure in the airport shall be fined under title 18, imprisoned for not more than 10 years, or both.''.

(b) CONFORMING AND CLERICAL AMENDMENTS.—

(1) The section heading of that section is amended to read as follows:

"§ 46503. Interference with security screening personnel; unauthorized circumvention of security systems or procedures".

(2) The chapter analysis for chapter 465 is amended by striking the item relating to section 46503 and inserting the following:

"46503. Inference with security screening personnel; unauthorized circumvention of security systems or procedures".

TITLE IV—BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

SEC. 401. BLAST RESISTANT CARGO CONTAINER TECHNOLOGY

Not later than 6 months after the date of enactment of this Act, the Under Secretary of Transportation for Security, and the Administrator of the Federal Aviation Administration, shall jointly submit a report to Congress that—

(1) evaluates blast-resistant cargo container technology to protect against explosives in passenger luggage and cargo;

(2) examines the advantages associated with this technology in preventing the damage and loss of aircraft from terrorist action, any operational impacts which may result (particularly added weight and costs) and whether alternatives exist to mitigate such impacts, and options available to pay for this technology; and

(3) provides recommendations on what further action, if any, should be taken with respect to the use of blast-resistant cargo containers on passenger aircraft.

TITLE V—FLIGHT SCHOOLS

SEC. 501 MODIFICATION OF REQUIREMENTS REGARDING TRAINING TO OPERATE AIRCRAFT.

(a) ALIENS COVERED BY WAITING PERIOD.—Subsection (a) of section 44939 is amended—

(1) by resetting the text of subsection (a) after

"(a) WAITING PERIOD.—" as a new paragraph 2 ems from the left margin;

(2) by striking "A person" in that new paragraph and inserting "(1) IN GENERAL.—A person";

(3) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(4) by striking "any aircraft having a maximum certificated takeoff weight of 12,500 pounds or more" and inserting "an aircraft";

(5) by striking "paragraph (1)" in paragraph (1)(B), as redesignated, and inserting "subparagraph (A)" and

(6) by adding at the end the following:

"(2) EXCEPTION.—The requirements of paragraph (1) shall not apply to an alien who—

"(A) has earned a Federal Aviation Administration type rating in an aircraft; or

"(B) holds a current pilot's license or foreign equivalent commercial pilot's license that permits the person to fly an aircraft with a maximum certificated takeoff weight of more than 12,500 pounds as defined by the International Civil Aviation Organization in Annex 1 to the Convention on International Civil Aviation.".

(b) COVERED TRAINING.—Section 44936(c) is amended to read as follows:

"(c) COVERED TRAINING.

"(1) IN GENERAL.—For purposes of subsection (a), training includes in-flight training, in a simulator, and any other form or aspect of training.

"(2) EXCEPTION.—For the purposes of subsection (a), training does not include classroom instruction (also known as ground training), which may be provided to an alien during the 45-day period applicable to the alien under that subsection.".

(c) PROCEDURES.

(1) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement section 113 of the Aviation and Transportation Security Act.

(2) USE OF OVERSEAS FACILITIES.—In order to implement the amendments made to section 44939 of title 49, United States Code, by this section, United States Embassies and Consulates that have fingerprinting capability shall provide fingerprinting services to aliens covered by that section if the Attorney General requires their fingerprinting in the administration of that section, and transmit the fingerprints to the Department of Justice and any other appropriate agency. The Attorney General of the United States shall cooperate with the Secretary of State to carry out this paragraph.

(d) EFFECTIVE DATE.—Not later than 120 days after the date of enactment of this Act, the Attorney General shall promulgate regulations to implement the amendments made by this section. The Attorney General may not interrupt or prevent the training of any person described in section 44939(a)(1) of title 49, United States Code, who commenced training on aircraft with a maximum certificated takeoff weight of 12,500 pounds or less before, or within 120 days after, the date of enactment of this Act unless the Attorney General determines that the person represents a risk to aviation or national security.

(e) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of Transportation and the Attorney General shall jointly submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on transportation and Infrastructure a report on the effectiveness of the activities carried out under section 44939 of title 49, United States Code, as amended by this section, in reducing risks to aviation and national security.

TITLE VI—MISCELLANEOUS

SEC. 601. FAA NOTICE TO AIRMEN FDC 2/0199.

(a) IN GENERAL.—The Secretary of Transportation—

(1) shall maintain in full force and effect the restrictions imposed under Federal Aviation Administration Notice to Airmen FDC 2/0199 (including any local Notices to Airmen of similar effect or import), as those restrictions are in effect on the date of enactment of this Act, for a period of 180 days after that date;

(2) shall rescind immediately any waivers or exemptions from those restrictions that are in effect on the date of enactment of this Act; and

(3) may not grant any waivers or exemptions from those restrictions, except—

(A) as authorized by the air traffic control for operational or safety purposes;

(B) for operational purposes of an event, stadium, or other venue, including (in the case of a sporting event) equipment or parts, transport of team members, officials of the governing body and immediate family members of team members and officials to and from the event, stadium, or other venue;

(C) for broadcast coverage for any broadcast rights holder;

(D) for safety and security purposes of the event, stadium, or other venue; or

(E) to operate an aircraft in restricted airspace to the extent necessary to arrive at or depart from an airport using standard air traffic procedures.

(b) WAIVERS.—Beginning no earlier than 180 days after the date of enactment of this Act, the Secretary may modify or terminate such restrictions, or issue waivers or exemptions from such restrictions, if the Secretary promulgates, after public notice and an opportunity for comment, a rule setting for the standards under which the Secretary may grant a waiver or exemption. Such standards shall provide a level of security at least equivalent to that provided by the waiver policy applied by the Secretary as of the date of enactment of this Act.

(c) BROADCAST CONTRACTS NOT AFFECTED.—Nothing in this section shall be construed to affect contractual rights pertaining to any broadcasting agreement.

TITLE VII—TECHNICAL CORRECTIONS

SEC. 701. TECHNICAL CORRECTIONS.

(a) Section 114(j)(1)(D) is amended by inserting "Under" before "Secretary".

(b) Section 115(c)(1) is amended—

(1) by striking "and ratify or disapprove"; and

(2) by striking "security" the second place it appears and inserting "Security".

(c) Section 40109(b) is amended by striking "40103(b)(1) and (2), 40119, 44901, 44903, 44906, and 44935–44937" and inserting "40103(b)(1) and (2) and 40119".

(d) Section 44901(e) is amended by striking "subsection (b)(1)(A)" and inserting "subsection (d)(1)(A)".

(e) Section 44901(g)(2) is amended by striking "Except at airports required to enter into agreements under subsection (c), the" and inserting "the".

(f) Section 44903 is amended—

(1) by striking "Administrator" in subsection (c)(3) and inserting "Under Secretary"; and

(2) by redesignating the second subsection (h), subsection (i), and the third subsection (h) as subsections (i), (j), and (k), respectively.

(g) Section 44909 is amended—

(1) by striking "Not later than March 16, 1991, the" in subsection (a)(1) and inserting "The"; and

(2) by inserting "of Transportation for Security" after "Under Secretary" in subsection (c)(2)(F).

(h) Section 44935 is amended—

(1) by striking "States;" in subsection (e)(2)(a)(ii) and inserting "States or described in subparagraph (C);";

(2) by redesignating subparagraph subsection (e)(2)(C) as subparagraph (D);

(3) by inserting after subsection (e)(2)(B) the following:

"(C) OTHER INDIVIDUALS.—An individual is described in this subparagraph if that individual—

"(i) is a national of the United States (as defined in section 101(a)(22) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(22)));

"(ii) was born in a territory of the United States;

"(iii) was honorably discharged from service in the Armed Forces of the United States; or

"(iv) is an alien lawfully admitted for permanent residence, as defined in section 101(a)(20) of the Immigration and Nationality Act and was employed to perform security screening services at an airport in the United States on the date of enactment of the Aviation and Transportation Security Act (Public Law 107–71).";

"(4) by inserting "and" after the semicolon in subsection (e)(2)(A) (iii);

"(5) by striking "establish; and" in subsection (e)(2)(A)(iv) and inserting "establish;

"(6) by striking subsection (e)(2)(A)(v);

"(7) by adding at the end of subsection (f)(1) the following:

"(E) The individual shall be able to demonstrate daily a fitness for duty without any impairment due to illegal drugs, sleep deprivation, medication, or alcohol."; and

"(8) by redesignating the second subsection (i) as subsection (k).

''(i) Section 44936(a)(1)(A) is amended by striking ''Transportation Security,,'' and inserting ''Security,''.

''(j) Section 44940 is amended—

''(1) by striking ''Federal law enforcement personnel pursuant to section 44903(h).'' in subsection (a)(1)(G) and inserting ''law enforcement personnel pursuant to this title.'';

''(2) by inserting ''FOR'' after ''RULES'' in the caption of subsection (d)(2); and

''(3) by striking subsection (d)(4) and inserting the following:

''(4) FEE COLLECTION.—Fees may be collected under this section as provided in advance in appropriations Acts.''.

''(k) Section 46301(a) is amended by adding at the end the following:

''(8) AVIATION SECURITY VIOLATIONS.—Notwithstanding paragraphs (1) and (2) of this subsection, the maximum civil penalty for violating chapter 449 or another requirement under this title administered by the Under Secretary of Transportation for Security is $10,000, except that the maximum civil penalty is $25,000 in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an airman serving as an airman).''.

(l) Section 46301(d)(2) is amended—

(1) by striking ''46302, 46303,'' in the first sentence;

(2) by striking the second sentence and inserting ''The Under Secretary of Transportation for Security may impose a civil penalty for a violation of section 114(l), section 40113, 40119, chapter 449 (except sections 44902, 44903(d), 44907(a)–(d)(1)(A), 44907(c)(1)(C)–(F), 44908, and 44909), section 46302, 463403, or 46318 of this title, or a regulation prescribed or order issued under any of those provisions.''.

(m) Section 46301(g) is amended by striking ''Secretary'' and inserting ''Secretary, the Under Secretary of Transportation for Security,''.

(n) Chapter 465 is amended—

(1) by striking ''**screening**'' in the caption of section 46503; and

(2) by striking ''screening'' in the item relating to section 46503 in the chapter analysis.

(o) Section 47115(i) is amended by striking ''non-federal'' each place it appears and inserting ''non-Federal''.

(p) Section 48107 is amended by striking ''section 44912(a)(4)(A).'' and inserting ''section 44912(a)(5)(A).''.

(q) Sections 44903(i)(1) (as redesignated), 44942(b), and 44943(c) are each amended by striking ''Under Secretary for Transportation Security'' each place it appears and inserting ''Under Secretary''.

(r) Section 44936 is amended by adding at the end the following:

''(f) PROTECTION OF PRIVACY OF APPLICANTS AND EMPLOYEES.—The Under Secretary shall formulate and implement procedures that are designed to prevent the transmission of information not relevant to an applicant's or employee's qualifications for unescorted access to secure areas of an airport when that applicant or employee is undergoing a criminal history records check.''.

(s) Sections 44942(a)(1) and 44943(a) are each amended by striking ''Under Secretary for Transportation security'' and inserting ''Under Secretary of Transportation for Security''.

(t) Subparagraphs (B) and (C) of section 44936(a)(1) are each amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary''.

(u) Section 44943(c) is amended by inserting ''and Transportation'' after ''Aviation''.

(v) Section 44942(b) is amended—

(1) by striking ''(1) PERFORMANCE PLAN AND REPORT.—'';

(2) redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively; and

(3) redesignating clauses (i) and (ii) of paragraph (1), as redesignated, as subparagraphs (A) and (B), respectively.

(w) The chapter analysis for chapter 449 is amended by inserting after the item relating to section 44941 the following:

''44942. Performance goals and objectives
''44943. Performance management plans''.

(x) Section 44944(a)(1) is amended by striking ''Under Secretary of Transportation for Transportation Security'' and inserting ''Under Secretary of Transportation for Security''.

(y) Section 106(b)(2)(B) of the Aviation and Transportation Security Acts is amended by inserting ''Under'' before ''Secretary''.

(z) Section 119(c) of the Aviation and Transportation Security Act is amended by striking ''section 47192(3)(J)'' and inserting ''section 47102(3)(J)''.

(aa) Section 132(a) of the Aviation and Transportation Security Act is amended by striking ''12,500 pounds or more.'' and inserting ''more than 12,500 pounds.''.

SA 4969. Mrs. HUTCHISON (for Mr. HOLLINGS (for himself, Mr. ROCKEFELLER, and Mr. MCCAIN)) proposed an amendment to amendment SA 4968 proposed by Mrs. HUTCHISON (for Mr. HOLLINGS (for himself, and MR. MCCAIN)) to the bill S. 2949, to provide for enhanced aviation security, and for other purposes; as follows:

At the end of the bill, add the following:

TITLE VIII—NTSB AUTHORIZATION

SEC. 801. SHORT TITLE.

This title may be cited as the ''National Transportation Safety Board Reauthorization Act of 2002''.

SEC. 802. AUTHORIZATION OF APPROPRIATIONS.

(a) FISCAL YEARS 2003–2005.—Section 1118(a) of title 49, United States Code, is amended—

(1) by striking ''and''; and

(2) by striking ''such sums to'' and inserting the following: ''$73,325,000 for fiscal year 2003, $84,999,000 for fiscal year 2004, and $89,687,000 for fiscal year 2005. Such sums shall''.

(b) EMERGENCY FUND.—Section 1118(b) of such title is amended by striking the second sentence and inserting the following: ''In addition, there are authorized to be appropriated such sums as may be necessary to increase the fund to, and maintain the fund at, a level not to exceed $3,000,000.''.

(c) NTSB ACADEMY.—Section 1118 of such title is amended by adding at the end the following:

''(c) ACADEMY.—

''(1) AUTHORIZATION.—There are authorized to be appropriated to the Board for necessary expenses of the National Transportation Safety Board Academy, not otherwise provided for, $3,347,000 for fiscal year 2003, $4,896,000 for fiscal year 2004, and $4,995,000 for fiscal year 2005. Such sums shall remain available until expended.

''(2) FEES.—The Board may impose and collect such fees as it determines to be appropriate for services provided by or through the Academy.

''(3) RECEIPTS CREDITED AS OFFSETTING COLLECTIONS.—Notwithstanding section 3302 of title 31, any fee collected under this paragraph—

''(A) shall be credited as offsetting collections to the account that finances the activities and services for which the fee is imposed;

''(B) shall be available for expenditure only to pay the costs of activities and services for which the fee is imposed; and

''(C) shall remain available until expended.

''(4) REFUNDS.—The Board may refund any fee paid by mistake or any amount paid in excess of that required.''.

(d) REPORT ON ACADEMY OPERATIONS.—The National Transportation Safety Board shall transmit an annual report to the Congress on the activities and operations of the National Transportation Safety Board Academy.

SEC. 803. ASSISTANCE TO FAMILIES OF PASSENGERS INVOLVED IN AIRCRAFT ACCIDENTS.

(a) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—Section 1136 of title 49, United States Code, is amended by adding at the end the following:

''(j) RELINQUISHMENT OF INVESTIGATIVE PRIORITY.—

''(1) GENERAL RULE.—This section (other than subsection (g)) shall not apply to an aircraft accident if the Board has relinquished investigative priority under section 1131(a)(2)(B) and the Federal agency to which the Board relinquished investigative priority is willing and able to provide assistance to the victims and families of the passengers involved in the accident.

''(2) BOARD ASSISTANCE.—If this section does not apply to an aircraft accident because the Board has relinquished investigative priority with respect to the accident, the Board shall assist, to the maximum extent possible, the agency to which the Board has relinquished investigative priority in assisting families with respect to the accident.''.

(b) REVISION OF MOU.—Not later than 1 year after the date of enactment of this Act, the National Transportation Safety Board and the Federal Bureau of Investigation shall revise their 1977 agreement on the investigation of accidents to take into account the amendments made by this section and shall submit a copy of the revised agreement to the Committee on Transportation and Infrastructure of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

SEC. 804. RELIEF FROM CONTRACTING REQUIREMENTS FOR INVESTIGATIONS SERVICES.

Section 1113(b) of title 49, United States Code, is amended—

(1) by striking ''Statutes;'' in paragraph (1)(B) and inserting ''Statutes, and, for investigations conducted under section 1131, enter into such agreements or contracts without regard to any other provision of law requiring competition if necessary to expedite the investigation;''; and

(2) by adding at the end the following:

''(3) The Board, as a component of its annual report under section 1117, shall include an enumeration of each contract for $25,000 or more executed under this section during the preceding calendar year.''.

TITLE IX—CHILD PASSENGER SAFETY

SEC. 901. SHORT TITLE.

This title may be cited as ''Anton's Law''.

SEC. 902. IMPROVEMENT OF SAFETY OF CHILD RESTRAINTS IN PASSENGER MOTOR VEHICLES.

(a) IN GENERAL.—Not later than 12 months after the date of the enactment of this Act, the Secretary of Transportation shall initiate a rulemaking proceeding to establish performance requirements for child restraints, including booster seats, for the restraint of children weighing more than 50 pounds.

(b) ELEMENTS FOR CONSIDERATION.—In the rule-making proceeding required by subsection (a), the Secretary shall—

(1) consider whether to include injury performance criteria for child restraints, including booster seats and other products for use in passenger motor vehicles for the restraint of children weighing more than 40

pounds, under the requirements established in the rulemaking proceeding;

(2) consider whether to establish performance requirements for seat belt fit when used with booster seats and other belt guidance devices;

(3) consider whether to develop a solution for children weighing more than 40 pounds who only have access to seating positions with lap belts, such as allowing tethered child restraints for such children; and

(4) review the definition of the term ''booster seat'' in Federal motor vehicle safety standard No. 213 under section 571.213 of title 49, Code of Federal Regulation, to determine if it is sufficiently comprehensive.

(c) COMPLETION.—The Secretary shall complete the rulemaking proceeding required by subsection (a) not later than 30 months after the date of the enactment of this Act.

SEC. 903. REPORT ON DEVELOPMENT OF CRASH TEST DUMMY SIMULATING A 10-YEAR OLD CHILD.

Not later than 120 days after the date of the enactment of this Act, the Secretary of Transportation shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on the current schedule and status of activities of the Department of Transportation to develop, evaluate, and certify a commercially available dummy that simulates a 10-year old child for use in testing the effectiveness of child restraints used in passenger motor vehicles.

SEC. 904. REQUIREMENTS FOR INSTALLATION OF LAP AND SHOULDER BELTS

(a) IN GENERAL.—Not later than 24 months after the date of the enactment of this Act, the Secretary of Transportation shall complete a rulemaking proceeding to amend Federal motor vehicle safety standard No. 208 under section 571.208 of title 49, Code of Federal Regulations, relating to occupant crash protection, in order to—

(1) require a lap and shoulder belt assembly for each rear designated seating position in a passenger motor vehicle with a gross vehicle weight rating of 10,000 pounds or less, except that if the Secretary determines that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of passenger motor vehicle, the Secretary may exclude the designated seating position from the requirement; and

(2) apply the requirement to passenger motor vehicles in phases in accordance with the subsection (b).

(b) IMPLEMENTATION SCHEDULE.—The requirement prescribed under subsection (a)(1) shall be implemented in phases on a production year basis beginning with the production year that begins not later than 12 months after the end of the year in which the regulations are prescribed under subsection (a). The final rule shall apply to all passenger motor vehicles with a gross vehicle weight rating of 10,000 pounds or less that are manufactured in the third production year of the implementation phase-in under the schedule.

(c) REPORT ON DETERMINATION TO EXCLUDE.

(1) REQUIREMENT.—If the Secretary determines under subsection (a)(1) that installation of a lap and shoulder belt assembly is not practicable for a particular designated seating position in a particular type of motor vehicle, the Secretary shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report specifying the reasons for the determination.

(2) DEADLINE.—The report under paragraph (1) shall be submitted, if at all, not later than 30 days after the date on which the Secretary issues a final rule under subsection (a).

SEC. 905. TWO-YEAR EXTENSION OF CHILD PASSENGER PROTECTION EDUCATION GRANTS PROGRAM.

Section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note; 112 Stat. 328) is amended by striking ''and 2001.'' and inserting ''through 2004.''

SEC. 906. GRANTS FOR IMPROVING CHILD PASSENGER SAFETY PROGRAMS.

(a) IN GENERAL.—Chapter 4 of title 23, United States Code, is amended by adding at the end the following new section:

''§ 412. Grant program for improving child passenger safety programs

''(a) STANDARDS AND REQUIREMENTS REGARDING CHILD RESTRAINT LAWS.—Not later than October 1, 2003, the Secretary shall establish appropriate critiera applicable to child restraint laws for purposes of eligibility for grants under this seciton. The criteria shall be consistent with the provisions of Anton's Law.

''(b) REQUIREMENT TO MAKE GRANTS.

''(1) IN GENERAL.—The Secretary shall make a grant to each State and Indian tribe that, as determined by the Secretary, has a child restraint law in effect on September 30, 2004.

''(2) LIMITATION ON NUMBER OF GRANTS. Not more than one grant may be made to a State or Indian tribe under this section.

''(3) COMMENCEMENT.—The requirement in paragraph (1) shall commence on October 1, 2004.

''(c) GRANT AMOUNT.—The amount of the grant to a State or Indian tribe under this section shall be the amount equal to five times the amount provided to the State or Indian tribe, as the case may be, under section 2003(b)(7) of the Transportation Equity Act for the 21st Century (23 U.S.C. 405 note) in fiscal year 2003.

''(d) USE OF GRANT AMOUNTS.—

''(1) IN GENERAL.—A State or Indian tribe shall use any amount received by the State or Indian tribe, as the case may be, under this section to carry out child passenger protection programs for children under the age of 16 years, including programs for purposes as follows:

''(A) To educate the public concerning the proper use and installation of child restraints, including booster seats.

''(B) To train and retain child passenger safety professionals, police officers, fire and emergency medical personnel, and educators concerning all aspects of the use of child restraints.

''(C) To provide child restraint systems, including booster seats and the hardware needed for their proper installation, to families that cannot otherwise afford such systems.

''(D) To support enforcement of the child restraint law concerned.

''(2) LIMITATION ON FEDERAL SHARE.—The Federal share of the cost of a program under paragraph (1) that is carried out using amounts from a grant under this section may not exceed 80 percent of the cost of the program.

''(e) ADMINISTRATIVE EXPENSES.—The amount of administrative expenses under this section in any fiscal year may not exceed the amount equal to five percent of the amount available for making grants under this section in the fiscal year.

''(f) APPLICABILITY OF CHAPTER 1.—The provisions of section 402(d) of this title shall apply to funds authorized to be appropriated to make grants under this section as if such funds were highway safety funds authorized to be appropriated to carry out section 402 of this title.

''(g) DEFINITIONS.—In this section:

''(1) CHILD RESTRAINT LAW.—The term 'child restraint law' means a law that—

''(A) satisfies standards established by the Secretary under Anton's Law for the proper restraint of children who are over the age of 3 years or who weigh at least 40 pounds;

''(B) prescribes a penalty for operating a passenger motor vehicle in which any occupant of the vehicle who is under the age of 16 years is not properly restrained in an appropriate restraint system (including seat belts, booster seats used in combination with seat belts, or other child restraints); and

''(C) meets any criteria established by the Secretary under subsection (a) for purposes of this section.

''(2) PASSENGER MOTOR VEHICLE.—The term 'passenger motor vehicle' has the meaning given that term in section 405(f)(5) of this title.

''(3) STATE.—The term 'State' has the meaning given in section 101 of this title and includes any Territory or possession of the United States.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of that chapter is amended by inserting after the item relating to section 411 the following new item:

''412. Grant program for improving child passenger safety programs.''.

SEC. 907. DEFINITIONS.

In this title:

(1) CHILD RESTRAINT.—The term ''child restraint'' means any product designed to provide restraint to a child (including booster seats and other products used with a lap and shoulder belt assembly) that meets applicable Federal motor vehicle safety standards prescribed by the National Highway Traffic Safety Administration.

(2) PRODUCTION YEAR.—The term ''production year'' means the 12-month period between September 1 of a year and August 31 of the following year.

(3) PASSENGER MOTOR VEHICLE.—The term ''passenger motor vehicle'' has the meaning given that term in section 405(f)(5) of title 23, United States Code.

SEC. 908. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated to the Secretary of Transportation such sums as may be necessary to carry out this title, including the making of grants under section 412 of title 23, United States Code, as added by section 906.

PRIVILEGE OF THE FLOOR

Mr. LEAHY. Mr. President, I ask unanimous consent that Marit Delozier and Brian Greer, law clerks with the Judiciary Committee, be allowed floor privileges during the pendency of and vote on the Shedd nomination.

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

Mr. REID. Mr. President, I ask unanimous consent that Alaine Perry, a detailee with the Finance Committee, be granted floor privileges for the duration of consideration of H.R. 4070.

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

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to executive session and that the Environment Committee be discharged from further consideration of the following nominations: Ann Pope to be

Federal Cochairman of the Appalachian Regional Commission; Richard Peltz to be alternative Federal Cochairman of the Appalachian Regional Commission; that the Senate proceed to the consideration of the nominees; the nominees be confirmed; the motions to reconsider be laid on the table, any statements thereon be printed at the appropriate place in the RECORD as if read, and that the President be immediately notified of the Senate's action.

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

The nominations were considered and confirmed, as follows:

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

NOMINATION OF JAMES M. LOY, TO BE UNDER SECRETARY OF TRANSPORTATION FOR SECURITY

Mr. REID. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of the following nomination: James M. Loy, to be Under Secretary of Transportation for Security; that the Senate proceed to the immediate consideration of the nomination; that the nomination be confirmed; the motion to reconsider be laid on the table; that any statements thereon be printed in the RECORD as if read; that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nomination was considered and confirmed, as follows:

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.

EXPRESSING THE SENSE OF CONGRESS REGARDING SECURITY, RECONCILIATION, AND PROSPERITY FOR ALL CYPRIOTS

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 539, S. Con. Res. 122.

The PRESIDING OFFICER. The clerk will state the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 122) expressing the sense of the Congress that security, reconciliation, and prosperity for all Cypriots can be best achieved within the context of membership in the European Union, which will provide significant rights and obligations for all Cypriots, and for other purposes.

There being no objection, the Senate proceeded to consider the resolution which had been reported from the Committee on Foreign Relations with an amendment and an amendment to the preamble, as follows:

(Strike the parts shown in black brackets and insert the parts shown in italic.)

S. CON. RES. 122

[Whereas the status quo on Cyprus remains unacceptable;

[Whereas a just and lasting resolution of the Cyprus problem, on the basis of United Nations Security Council resolutions, must safeguard the security and fundamental rights of all citizens of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

[Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

[Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

[Whereas membership in the European Union will guarantee each citizen of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

[Whereas membership in the European Union will bring significant benefits to both the Greek-Cypriot and Turkish-Cypriot communities, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

[Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that ''a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition'';

[Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus consistent with relevant United Nations Security Council resolutions and to continue to work toward the resumption of talks;

[Whereas resolution of the Cyprus problem is in the strategic interests of the United States, given the important location of Cyprus at the crossroads of Europe, Africa, and Asia; and

[Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it]

Whereas the current status quo on Cyprus remains unacceptable and the reunification of Cyprus remains a desirable foreign policy objective;

Whereas a just and lasting resolution of the Cyprus problem, in full consideration of United Nations Security Council resolutions and international treaties, must safeguard the security and fundamental rights of the population of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

Whereas membership in the European Union will guarantee each citizen of the Republic of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

Whereas membership in the European Union will bring significant benefits to both Greek-Cypriots and Turkish-Cypriots, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that ''a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition . . . [i]n this the Council will take account of all relevant factors'';

Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus in full consideration of relevant United Nations Security Council resolutions and international treaties;

Whereas the Greek and Turkish Cypriot leadership began direct talks on January 16, 2002, with the United Nations Special Advisor in attendance and the European Council at the Seville Conference in June 2002 called on the Greek and Turkish Cypriot leaders to intensify and expedite their talks in order to seize the unique opportunity to reach a comprehensive settlement; and

Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), [That it is the sense of Congress that—

[(1) the unacceptable status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, on the basis of United Nations Security Council resolutions;

[(2) the accession of Cyprus to the European Union would act as a catalyst for the solution of the Cyprus problem without the latter being a precondition for accession;

[(3) membership of Cyprus to the European Union should be strongly supported;

[(4) all Cypriots be urged to support and encourage efforts to bring Cyprus into the European Union; and

[(5) the various agencies of the United States Government should pursue vigorously and as an issue of high and urgent priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.]

That it is the sense of Congress that—

(1) the current status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, with full consideration of United Nations Security Council resolutions and international treaties;

(2) the direct and intensive negotiations between the Greek and Turkish Cypriot leaders, which began in January 2002, and which are continuing on a regular basis, have been most welcome and are encouraged to continue until a comprehensive settlement has been achieved;

(3) while a successful resolution of the Cyprus problem would facilitate the accession of Cyprus

to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

Mr. REID. Mr. President, I ask unanimous consent that the substitute amendment to the concurrent resolution be agreed to; the concurrent resolution be agreed to, as amended; the amendment to the preamble be agreed to; the preamble, as amended, be agreed to; the motion to reconsider be laid upon the table; and that any statements relating thereto be printed in the RECORD.

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

The committee amendment was agreed to.

The concurrent resolution (S. Con. Res. 122), as amended, was agreed to.

The amendment to the preamble was agreed to.

The preamble, as amended, was agreed to.

The concurrent resolution, as amended, with its preamble, as amended, reads as follows:

S. CON. RES. 122

Whereas the current status quo on Cyprus remains unacceptable and the reunification of Cyprus remains a desirable foreign policy objective;

Whereas a just and lasting resolution of the Cyprus problem, in full consideration of United Nations Security Council resolutions and international treaties, must safeguard the security and fundamental rights of the population of Cyprus, Greek-Cypriots and Turkish-Cypriots alike;

Whereas Cyprus is among the leading candidate countries for accession to the European Union, in recognition of its commitment to free markets, human rights, democracy, and the rule of law;

Whereas the European Union guarantees to all its citizens the indivisible universal values of human dignity (supporting fair and equal treatment of all), freedom (right to security, marriage, family, among others), equality (celebrating cultural, religious, and linguistic diversity), solidarity (protecting workers' rights and providing social security), citizens' rights (voting), and justice (holding a fair trial);

Whereas membership in the European Union will guarantee each citizen of the Republic of Cyprus important legal, civil, and human rights, as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights, and to promote the respect of cultural diversity and traditions;

Whereas membership in the European Union will bring significant benefits to both Greek-Cypriots and Turkish-Cypriots, including new economic opportunities, access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods, and services and capital;

Whereas the European Council in its Summit Conclusions of December 1999, in Helsinki, stated that ''a political settlement [of the Cyprus problem] will facilitate the accession of Cyprus to the European Union . . . [i]f no settlement has been reached by the completion of accession negotiations, the Council's decision on accession will be made without the above being a precondition . . . [i]n this the Council will take account of all relevant factors'';

Whereas both the United States and the European Union in their summit statement on the New Transatlantic Agenda of June 14, 2001, pledge to continue to work together to support the efforts of the United Nations Secretary General to achieve a comprehensive settlement with respect to Cyprus in full consideration of relevant United Nations Security Council resolutions and international treaties;

Whereas the Greek and Turkish Cypriot leadership began direct talks on January 16, 2002, with the United Nations Special Advisor in attendance and the European Council at the Seville Conference in June 2002 called on the Greek and Turkish Cypriot leaders to intensify and expedite their talks in order to seize the unique opportunity to reach a comprehensive settlement; and

Whereas resolution of the Cyprus problem is also consistent with American values, as enshrined in the rights guaranteed by the Constitution of the United States, which guarantees the right to life, liberty, and the pursuit of happiness: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That it is the sense of Congress that—

(1) the current status quo on Cyprus must be ended and the island and its people be reunited, in a bizonal, bicommunal federal Cyprus, with full consideration of United Nations Security Council resolutions and international treaties;

(2) the direct and intensive negotiations between the Greek and Turkish Cypriot leaders, which began in January 2002, and which are continuing on a regular basis, have been most welcome and are encouraged to continue until a comprehensive settlement has been achieved;

(3) while a successful resolution of the Cyprus problem would facilitate the accession of Cyprus to the European Union, in the absence of such a resolution, the accession of Cyprus to the European Union could act as a further catalyst for the solution of the Cyprus problem without the latter being a precondition for accession and with all relevant factors being considered;

(4) membership of the Republic of Cyprus in the European Union should be strongly supported;

(5) all Cypriots be urged to support and encourage efforts to bring the Republic of Cyprus into the European Union; and

(6) the various agencies of the United States Government in support of United Nations efforts to facilitate a settlement should pursue as an issue of high priority new initiatives that will help promote and achieve reunification, reconciliation, stability, and prosperity on Cyprus.

VETERANS BENEFITS ACT OF 2002

Mr. REID. Mr. President, I ask the Chair lay before the Senate a message from the House of Representatives on the bill (S. 2237) to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives.

Resolved, That the bill from the Senate (S. 2237) entitled ''An Act to amend title 38, United States Code, to modify and improve authorities relating to compensation and pension benefits, education benefits, housing benefits, and other benefits for veterans, to improve the administration of benefits for veterans, and for other purposes'', do pass with the following amendments:

Strike out all after the enacting clause and insert:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Veterans Benefits Act of 2002''.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. References to title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

Sec. 101. Retention of CHAMPVA for surviving spouses remarrying after age 55.
Sec. 102. Clarification of entitlement to special monthly compensation for women veterans who have service-connected loss of breast tissue.
Sec. 103. Specification of hearing loss required for compensation for hearing loss in paired organs.
Sec. 104. Assessment of acoustic trauma associated with military service from World War II to present.

TITLE II—MEMORIAL AFFAIRS

Sec. 201. Prohibition on certain additional benefits for persons committing capital crimes.
Sec. 202. Procedures for disqualification of persons committing capital crimes for interment or memorialization in national cemeteries.
Sec. 203. Application of Department of Veterans Affairs benefit for Government markers for marked graves of veterans at private cemeteries to veterans dying on or after September 11, 2001.
Sec. 204. Authorization of placement of a memorial in Arlington National Cemetery honoring World War II veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

Sec. 301. Increase in aggregate annual amount available for State approving agencies for administrative expenses for fiscal years 2003 through 2007.
Sec. 302. Authority for Veterans' Mortgage Life Insurance to be carried beyond age 70.
Sec. 303. Authority to guarantee hybrid adjustable rate mortgages.
Sec. 304. Increase in amount payable as Medal of Honor special pension.
Sec. 305. Extension of protections under the Soldiers' and Sailors' Civil Relief Act of 1940 to National Guard members called to active duty under title 32, United States Code.
Sec. 306. Extension of income verification authority.
Sec. 307. Fee for loan assumption.
Sec. 308. Technical and clarifying amendments.
Sec. 309. Codification of cost-of-living adjustment provided in Public Law 107–247.

TITLE IV—JUDICIAL MATTERS

Sec. 401. Standard for reversal by Court of Appeals for Veterans Claims of erroneous finding of fact by Board of Veterans' Appeals.

Sec. 402. Review by Court of Appeals for the Federal Circuit of decisions of law of Court of Appeals for Veterans Claims.

Sec. 403. Authority of Court of Appeals for Veterans Claims to award fees under Equal Access to Justice Act for non-attorney practitioners.

SEC. 2. REFERENCES TO TITLE 38, UNITED STATES CODE.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of title 38, United States Code.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

SEC. 101. RETENTION OF CHAMPVA FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55.

(a) EXCEPTION TO TERMINATION OF BENEFITS UPON REMARRIAGE.—Paragraph (2) of section 103(d) is amended—

(1) by inserting ''(A) after ''(2)''; and

(2) by adding at the end the following:

''(B) The remarriage after age 55 of the surviving spouse of a veteran shall not bar the furnishing of benefits under section 1781 of this title to such person as the surviving spouse of the veteran.''.

(b) APPLICATION FOR BENEFITS.—In the case of an individual who but for having remarried would be eligible for medical care under section 1781 of title 38, United States Code, and whose remarriage was before the date of the enactment of this Act and after the individual had attained age 55, the individual shall be eligible for such medical care by reason of the amendments made by subsection (a) only if an application for such medical care is received by the Secretary of Veterans Affairs during the one-year period ending on the effective date specified in subsection (c).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date that is 60 days after the date of the enactment of this Act.

SEC. 102. CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE.

Section 1114(k) is amended by striking ''one or both breasts (including loss by mastectomy)'' and inserting ''25 percent or more of tissue from a single breast or both breasts in combination (including loss by mastectomy or partial mastectomy) or has received radiation treatment of breast tissue''.

SEC. 103. SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS.

Section 1160(a)(3) is amended—

(1) by striking ''total deafness'' the first place it appears and inserting ''deafness compensable to a degree of 10 percent or more''; and

(2) by striking ''total deafness'' the second place it appears and inserting ''deafness''.

SEC. 104. ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT.

(a) ASSESSMENT BY NATIONAL ACADEMY OF SCIENCES.—The Secretary of Veterans Affairs shall seek to enter into an agreement with the National Academy of Sciences for the Academy to perform the activities specified in this section. The Secretary shall seek to enter into the agreement not later than 60 days after the date of the enactment of this Act.

(b) DUTIES UNDER AGREEMENT.—Under the agreement under subsection (a), the National Academy of Sciences shall do the following:

(1) Review and assess available data on hearing loss that could reasonably be expected to have been incurred by members of the Armed Forces during the period from the beginning of World War II to the date of the enactment of this Act.

(2) Identify the different sources of acoustic trauma that members of the Armed Forces could reasonably be expected to have been exposed to during the period from the beginning of World War II to the date of the enactment of this Act

(3) Determine how much exposure to each source of acoustic trauma identified under paragraph (2) is required to cause or contribute to hearing loss, hearing threshold shift, or tinnitus, as the case may be, and at what noise level.

(4) Determine whether or not such hearing loss, hearing threshold shift, or tinnitus, as the case may be, is—

(A) immediate or delayed onset;

(B) cumulative;

(C) progressive; or

(D) any combination of subparagraph (A), (B), and (C).

(5) Identify age, occupational history, and other factors which contribute to an individual's noise-induced hearing loss.

(6) Identify—

(A) the period of time at which audiometric measures used by the Armed Forces became adequate to evaluate individual hearing threshold shift; and

(B) the period of time at which hearing conservation measures to prevent individual hearing threshold shift were available to members of the Armed Forces, shown separately for each of the Army, Navy, Air Force, Marine Corps, and Coast Guard, and, for each such service, shown separately for members exposed to different sources of acoustic trauma identified under paragraph (2).

(c) REPORT.—Not later than 180 days after the date of the entry into the agreement referred to in subsection (a), the National Academy of Sciences shall submit to the Secretary a report on the activities of the National Academy of Sciences under the agreement, including the results of the activities required by subsection (b).

(d) REPORT ON ADMINISTRATION OF BENEFITS FOR HEARING LOSS AND TINNITUS.—(1) Not later than 180 days after the date of the enactment of this Act, the Secretary of Veterans Affairs shall submit to the Committees on Veterans' Affairs of the Senate and the House of Representatives a report on the claims submitted to the Secretary for disability compensation or health care for hearing loss or tinnitus.

(2) The report under paragraph (1) shall include the following:

(A) The number of decisions issued by the Secretary in each of fiscal years 2000, 2001, and 2002 on claims for disability compensation for hearing loss, tinnitus, or both.

(B) Of the decisions referred to in subparagraph (A)—

(i) the number in which compensation was awarded, and the number in which compensation was denied, set forth by fiscal year; and

(ii) the total amount of disability compensation paid on such claims during each such fiscal year.

(C) The total cost to the Department of Veterans Affairs of adjudicating the claims referred to in subparagraph (A), set forth in terms of full-time employee equivalents (FTEEs).

(D) The total number of veterans who sought treatment in Department of Veterans Affairs health care facilities during fiscal years specified in subparagraph (A) for hearing-related disorders, set forth by the number of veterans per year.

(E) The health care furnished to veterans referred to in subparagraph (D) for hearing-related disorders, including the number of veterans furnished hearing aids and the cost of furnishing such hearing aids.

TITLE II—MEMORIAL AFFAIRS

SEC. 201. PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES.

(a) PRESIDENTIAL MEMORIAL CERTIFICATE.—Section 112 is amended by adding at the end the following new subsection:

''(c) A certificate may not be furnished under the program under subsection (a) on behalf of a deceased person described in section 2411(b) of this title.''.

(b) FLAG TO DRAPE CASKET.—Section 2301 is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

''(g) A flag may not be furnished under this section in the case of a person described in section 2411(b) of this title.''.

(c) HEADSTONE OR MARKER FOR GRAVE.—Section 2306 is amended by adding at the end the following new subsection:

''(g)(1) A headstone or marker may not be furnished under subsection (a) for the unmarked grave of a person described in section 2411(b) of this title.

''(2) A memorial headstone or marker may not be furnished under subsection (b) for the purpose of commemorating a person described in section 2411(b) of this title.

''(3) A marker may not be furnished under subsection (d) for the grave of a person described in section 2411(b) of this title.''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to deaths occurring on or after the date of the enactment of this Act.

SEC. 202. PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES.

Section 2411(a)(2) is amended—

(1) by striking ''The prohibition'' and inserting ''In the case of a person described in subsection (b)(1) or (b)(2), the prohibition''; and

(2) by striking ''or finding under subsection (b)'' and inserting ''referred to in subsection (b)(1) or (b)(2), as the case may be,''.

SEC. 203. APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001.

(a) IN GENERAL.—Subsection (d) of section 502 of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 995; 38 U.S.C. 2306 note) is amended by striking ''the date of the enactment of this Act'' and inserting ''September 11, 2001''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect as if included in the enactment of such section 502.

SEC. 204. AUTHORIZATION OF PLACEMENT OF A MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE.

The Secretary of the Army is authorized to place in Arlington National Cemetery a memorial marker honoring veterans who fought in the battle in the European theater of operations during World War II known as the Battle of the Bulge.

TITLE III—OTHER MATTERS

SEC. 301. INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003 THROUGH 2007.

The first sentence of section 3674(a)(4) is amended by inserting before the period at the end the following: '', for fiscal year 2003, $14,000,000, for fiscal year 2004, $18,000,000, for fiscal year 2005, $18,000,000, for fiscal year 2006, $19,000,000, and for fiscal year 2007, $19,000,000''.

SEC. 302. AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70.

Section 2106 is amended—

(1) in subsection (a), by inserting ''age 69 or younger'' after ''any eligible veteran''; and

(2) in subsection (i), by striking paragraph (2) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 303. AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES.

(a) TWO-YEAR DEMONSTRATION PROJECT TO GUARANTEE CERTAIN ADJUSTABLE RATE MORTGAGES.—Chapter 37 is amended by inserting after section 3707 the following new section:

"§ 3707A. Hybrid adjustable rate mortgages

''(a) The Secretary shall carry out a demonstration project under this section during fiscal years 2004 and 2005 for the purpose of guaranteeing loans in a manner similar to the manner in which the Secretary of Housing and Urban Development insures adjustable rate mortgages under section 251 of the National Housing Act in accordance with the provisions of this section with respect to hybrid adjustable rate mortgages described in subsection (b).

''(b) Adjustable rate mortgages that are guaranteed under this section shall be adjustable rate mortgages (commonly referred to as 'hybrid adjustable rate mortgages') having interest rate adjustment provisions that—

''(1) specify an initial rate of interest that is fixed for a period of not less than the first three years of the mortgage term;

''(2) provide for an initial adjustment in the rate of interest by the mortgagee at the end of the period described in paragraph (1); and

''(3) comply in such initial adjustment, and any subsequent adjustment, with subsection (c).

''(c) Interest rate adjustment provisions of a mortgage guaranteed under this section shall—

''(1) correspond to a specified national interest rate index approved by the Secretary, information on which is readily accessible to mortgagors from generally available published sources;

''(2) be made by adjusting the monthly payment on an annual basis;

''(3) be limited, with respect to any single annual interest rate adjustment, to a maximum increase or decrease of 1 percentage point; and

''(4) be limited, over the term of the mortgage, to a maximum increase of 5 percentage points above the initial contract interest rate.

''(d) The Secretary shall promulgate underwriting standards for loans guaranteed under this section, taking into account—

''(1) the status of the interest rate index referred to in subsection (c)(1) and available at the time an underwriting decision is made, regardless of the actual initial rate offered by the lender;

''(2) the maximum and likely amounts of increases in mortgage payments that the loans would require;

''(3) the underwriting standards applicable to adjustable rate mortgages insured under title II of the National Housing Act; and

''(4) such other factors as the Secretary finds appropriate.

''(e) The Secretary shall require that the mortgagee make available to the mortgagor, at the time of loan application, a written explanation of the features of the adjustable rate mortgage, including a hypothetical payment schedule that displays the maximum potential increases in monthly payments to the mortgagor over the first five years of the mortgage term.''.

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 37 is amended by inserting after the item relating to section 3707 the following new item:

''3707A. Hybrid adjustable rate mortgages.''.

SEC. 304. INCREASE IN AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION.

(a) INCREASE IN AMOUNT.—Subsection (a) of section 1562 is amended by striking ''$600'' and inserting ''$1,000, as adjusted from time to time under subsection (e)''.

(b) ANNUAL ADJUSTMENT.—That section is further amended by adding at the end the following new subsection:

''(e) Effective as of December 1 each year, the Secretary shall increase the amount of monthly special pension payable under subsection (a) as of November 30 of such year by the same percentage as the percentage by which benefit amounts payable under title II of the Social Security Act (42 U.S.C. 401 et seq.) are increased effective December 1 of such year as a result of a determination under section 215(i) of that Act (42 U.S.C. 415(i)).''.

(c) PAYMENT OF LUMP SUM FOR PERIOD BETWEEN ACT OF VALOR AND COMMENCEMENT OF SPECIAL PENSION.—That section is further amended by adding after subsection (e), as added by subsection (b) of this section, the following new subsection:

''(f)(1) The Secretary shall pay, in a lump sum, to each person who is in receipt of special pension payable under this section an amount equal to the total amount of special pension that the person would have received during the period beginning on the first day of the first month beginning after the date of the act for which the person was awarded the Medal of Honor and ending on the last day of the month preceding the month in which the person's special pension in fact commenced.

''(2) For each month of a period referred to in paragraph (1), the amount of special pension payable to a person shall be determined using the rate of special pension that was in effect for such month, and shall be payable only if the person would have been entitled to payment of special pension for such month under laws for eligibility for special pension (with the exception of the eligibility law requiring a person to have been awarded a Medal of Honor) in effect at the beginning of such month.''.

(d) EFFECTIVE DATE.—(1) Except as provided in paragraph (2), the amendments made by subsections (a) and (b) shall take effect on September 1, 2003. No payment may be made pursuant to subsection (f) of section 1562 of title 38, United States Code, as added by subsection (c) of this section, before October 1, 2003.

(2) The Secretary of Veterans Affairs shall not make any adjustment under subsection (e) of section 1562 of title 38, United States Code, as added by subsection (b) of this section, in 2003.

SEC. 305. EXTENSION OF PROTECTIONS UNDER THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE.

Section 101(1) of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 511(1)) is amended—

(1) in the first sentence—

(A) by striking ''and all'' and inserting ''all''; and

(B) by inserting before the period the following: '', and all members of the National Guard on service described in the following sentence''; and

(2) in the second sentence, by inserting before the period the following: '', and, in the case of a member of the National Guard, shall include service under a call to active service authorized by the President or the Secretary of Defense for a period of more than 30 consecutive days under section 502(f) of title 32, United States Code, for purposes of responding to a national emergency declared by the President and supported by Federal funds''.

SEC. 306. EXTENSION OF INCOME VERIFICATION AUTHORITY.

Section 6103(l)(7)(D) of the Internal Revenue Code of 1986 is amended by striking ''September 30, 2003'' in the second sentence after clause (ix) and inserting ''September 30, 2008''.

SEC. 307. FEE FOR LOAN ASSUMPTION.

(a) IN GENERAL.—For the period described in subsection (b), the Secretary of Veterans Affairs shall apply section 3729(b)(2)(I) of title 38, United States Code, by substituting ''1.00'' for ''0.50'' each place it appears.

(b) PERIOD DESCRIBED.—The period referred to in subsection (a) is the period that begins on the date that is 7 days after the date of the enactment of this Act and ends on September 30, 2003.

SEC. 308. TECHNICAL AND CLARIFYING AMENDMENTS.

(a) ELIGIBILITY OF CERTAIN ADDITIONAL VIETNAM ERA VETERANS FOR EDUCATION BENEFITS.—Section 3011(a)(1)(C)(ii) is amended by striking ''on or''.

(b) ACCELERATED PAYMENT OF ASSISTANCE FOR EDUCATION LEADING TO EMPLOYMENT IN HIGH TECHNOLOGY INDUSTRY.—(1) Subsection (b)(1) of section 3014A is amended by striking ''employment in a high technology industry'' and inserting ''employment in a high technology occupation in a high technology industry''.

(2)(A) The heading for section 3014A is amended to read as follows:

"§ 3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry".

(B) The table of sections at the beginning of chapter 30 is amended by striking the item relating to section 3014A and inserting the following new item:

''3014A. Accelerated payment of basic educational assistance for education leading to employment in high technology occupation in high technology industry.''.

(c) SOURCE OF FUNDS FOR INCREASED USAGE OF MONTGOMERY GI BILL ENTITLEMENT UNDER ENTITLEMENT TRANSFER AUTHORITY.—(1) Section 3035(b) is amended—

(A) in paragraph (1), by striking ''paragraphs (2) and (3) of this subsection,'' and inserting ''paragraphs (2), (3), and (4),''; and

(B) by adding at the end the following new paragraph:

''(4) Payments attributable to the increased usage of benefits as a result of transfers of entitlement to basic educational assistance under section 3020 of this title shall be made from the Department of Defense Education Benefits Fund established under section 2006 of title 10 or from appropriations made to the Department of Transportation, as appropriate.''.

(2) The amendments made by this subsection shall take effect as if included in the enactment of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107), to which such amendments relate.

(d) LICENSING OR CERTIFICATION TESTS.—Section 3689(c)(1)(B) is amended by striking ''the test'' and inserting ''such test, or a test to certify or license in a similar or related occupation,''.

(e) PERIOD OF ELIGIBILITY FOR SURVIVORS' AND DEPENDENTS' ASSISTANCE EDUCATION BENEFITS.—(1) Section 3512(a) is amended—

(A) in paragraph (3)—

(i) by striking ''paragraph (4)'' in the matter preceding subparagraph (A) and inserting ''paragraph (4) or (5)''; and

(ii) by striking ''subsection (d)'' in subparagraph (C)(i) and inserting ''subsection (d), or any date between the two dates described in subsection (d)'';

(B) by redesignating paragraphs (4), (5), (6), and (7) as paragraphs (5), (6), (7), and (8), respectively;

(C) by inserting after paragraph (3) the following new paragraph (4):

''(4) if the person otherwise eligible under paragraph (3) fails to elect a beginning date of entitlement in accordance with that paragraph, the beginning date of the person's entitlement shall be the date of the Secretary's decision that the parent has a service-connected total disability permanent in nature, or that the parent's death was service-connected, whichever is applicable;''; and

(D) in paragraph (6), as so redesignated, by striking ''paragraph (4)'' and inserting ''paragraph (5)''.

(2) The amendments made by this subsection shall take effect November 1, 2000.

(f) LOAN FEES.—(1) Section 3703(e)(2)(A) is amended by striking ''3729(b)'' and inserting ''3729(b)(2)(I)''.

(2) The amendment made by paragraph (1) shall take effect as if included in the enactment of section 402 of the Veterans Benefits and Health Care Improvement Act of 2000 (Public Law 106–419; 114 Stat. 1861).

(g) ADDITIONAL MISCELLANEOUS TECHNICAL AMENDMENTS TO TITLE 38, UNITED STATES CODE.—(1)(A) The tables of chapters preceding part I and at the beginning of part IV are each amended by striking ''5101'' in the item relating to chapter 51 and inserting ''5100''.

(B) The table of parts preceding part I is amended by striking ''5101'' in the item relating to part IV and inserting ''5100''.

(2) Section 107(d)(2) is amended by striking ''the date of the enactment of this subsection'' and inserting ''November 1, 2000,''.

(3) Section 1701(10)(A) is amended by striking ''the date of the enactment of the Veterans' Millennium Health Care and Benefits Act'' and inserting ''November 30, 1999,''.

(4) Section 1705(c)(1) is amended by striking ''Effective on October 1, 1998, the Secretary'' and inserting ''The Secretary''.

(5) Section 1707(a) is amended by inserting ''(42 U.S.C. 14401 et seq.)'' before the period at the end.

(6) Section 1710(e)(1)(D) is amended by striking ''the date of the enactment of this subparagraph'' and inserting ''November 11, 1998''.

(7) Section 1729B(b) is amended by striking ''the date of the enactment of this section'' and inserting ''November 30, 1999,''.

(8) Section 1781(d) is amended—

(A) in paragraph (1)(B)(i), by striking ''as of the date'' and all that follows through ''of 2001'' and inserting ''as of June 5, 2001''; and

(B) in paragraph (4), by striking ''paragraph'' and inserting ''subsection''.

(9) Section 3018C(e)(2)(B) is amended by striking the comma after ''April''.

(10) Section 3031(a)(3) is amended by striking ''the date of the enactment of this paragraph'' and inserting ''December 27, 2001''.

(11) Section 3485(a)(4) is amended in subparagraphs (A), (C), and (F), by striking ''the five-year period beginning on the date of the enactment of the Veterans Education and Benefits Expansion Act of 2001'' and inserting ''the period preceding December 27, 2006''.

(12) Section 3734(b)(2) is amended—

(A) by striking subparagraph (B); and

(B) by redesignating subparagraphs (C), (D), (E), and (F) as subparagraphs (B) (C), (D), and (E), respectively.

(13) Section 7315(a) is amended by inserting ''Veterans Health'' in the first sentence after ''in the''.

(h) PUBLIC LAW 107–103.—Effective as of December 27, 2001, and as if included therein as originally enacted, section 103(c) of the Veterans Education and Benefits Expansion Act of 2001 (Public Law 107–103; 115 Stat. 979) is amended by inserting closing quotation marks at the end of the text inserted by the amendment made by paragraph (2).

(i) PUBLIC LAW 102–86.—Section 403(e) of the Veterans' Benefits Programs Improvement Act of 1991 (Public Law 102–86; 105 Stat. 424) is amended by striking ''section 321'' and all that follows through ''and 484)'' and inserting ''subchapter II of chapter 5 of title 40, United States Code, sections 541 through 555 and 1302 of title 40, United States Code''.

SEC. 309. CODIFICATION OF COST-OF-LIVING ADJUSTMENT PROVIDED IN PUBLIC LAW 107–247.

(a) VETERANS' DISABILITY COMPENSATION.—Section 1114 is amended—

(1) by striking ''$103'' in subsection (a) and inserting ''$104'';

(2) by striking ''$199'' in subsection (b) and inserting ''$201'';

(3) by striking ''$306'' in subsection (c) and inserting ''$310'';

(4) by striking ''$439'' in subsection (d) and inserting ''$445'';

(5) by striking ''$625'' in subsection (e) and inserting ''$633'';

(6) by striking ''$790'' in subsection (f) and inserting ''$801'';

(7) by striking ''$995'' in subsection (g) and inserting ''$1,008'';

(8) by striking ''$1,155'' in subsection (h) and inserting ''$1,171'';

(9) by striking ''$1,299'' in subsection (i) and inserting ''$1,317'';

(10) by striking ''$2,163'' in subsection (j) and inserting ''$2,193'';

(11) in subsection (k)—

(A) by striking ''$80'' both places it appears and inserting ''$81''; and

(B) by striking ''$2,691'' and ''$3,775'' and inserting ''$2,728'' and ''$3,827'', respectively;

(12) by striking ''$2,691'' in subsection (l) and inserting ''$2,728'';

(13) by striking ''$2,969'' in subsection (m) and inserting ''$3,010'';

(14) by striking ''$3,378'' in subsection (n) and inserting ''$3,425'';

(15) by striking ''$3,775'' each place it appears in subsections (o) and (p) and inserting ''$3,827'';

(16) by striking ''$1,621'' and ''$2,413'' in subsection (r) and inserting ''$1,643'' and ''$2,446'', respectively; and

(17) by striking ''$2,422'' in subsection (s) and inserting ''$2,455''.

(b) ADDITIONAL COMPENSATION FOR DEPENDENTS.—Section 1115(1) is amended—

(1) by striking ''$124'' in subparagraph (A) and inserting ''$125'';

(2) by striking ''$213'' in subparagraph (B) and inserting ''$215'';

(3) by striking ''$84'' in subparagraph (C) and inserting ''$85'';

(4) by striking ''$100'' in subparagraph (D) and inserting ''$101'';

(5) by striking ''$234'' in subparagraph (E) and inserting ''$237''; and

(6) by striking ''$196'' in subparagraph (F) and inserting ''$198''.

(c) CLOTHING ALLOWANCE FOR CERTAIN DISABLED VETERANS.—Section 1162 is amended by striking ''$580'' and inserting ''$588''.

(d) DEPENDENCY AND INDEMNITY COMPENSATION FOR SURVIVING SPOUSES.—(1) Section 1311(a) is amended—

(A) by striking ''$935'' in paragraph (1) and inserting ''$948''; and

(B) by striking ''$202'' in paragraph (2) and inserting ''$204''.

(2) The table in section 1311(a)(3) is amended to read as follows:

''Pay grade	Monthly rate	Pay grade	Monthly rate
E–1 ..	$948	W–4	$1,134
E–2 ..	948	O–1	1,001
E–3 ..	948	O–2	1,035
E–4 ..	948	O–3	1,107
E–5 ..	948	O–4	1,171
E–6 ..	948	O–5	1,289
E–7 ..	980	O–6	1,453
E–8 ..	1,035	O–7	1,570
E–9 ..	[1]1,080	O–8	1,722
W–1	1,001	O–9	1,843
W–2	1,042	O–10 ...	[2]2,021
W–3	1,072		

''[1]If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $1,165.

''[2]If the veteran served as Chairman or Vice-Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, at the applicable time designated by section 1302 of this title, the surviving spouse's rate shall be $2,168.''.

(3) Section 1311(b) is amended by striking ''$234'' and inserting ''$237''.

(4) Section 1311(c) is amended by striking ''$234'' and inserting ''$237''.

(5) Section 1311(d) is amended by striking ''$112'' and inserting ''$113''.

(e) DEPENDENCY AND INDEMNITY COMPENSATION FOR CHILDREN.—(1) Section 1313(a) is amended—

(A) by striking ''$397'' in paragraph (1) and inserting ''$402'';

(B) by striking ''$571'' in paragraph (2) and inserting ''$578'';

(C) by striking ''$742'' in paragraph (3) and inserting ''$752''; and

(D) by striking ''$742'' and ''$143'' in paragraph (4) and inserting ''$752'' and ''$145'', respectively.

(2) Section 1314 is amended—

(A) by striking ''$234'' in subsection (a) and inserting ''$237'';

(B) by striking ''$397'' in subsection (b) and inserting ''$402''; and

(C) by striking ''$199'' in subsection (c) and inserting ''$201''.

TITLE IV—JUDICIAL MATTERS

SEC. 401. STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS.

(a) STANDARD FOR REVERSAL.—Paragraph (4) of subsection (a) of section 7261 is amended—

(1) by inserting ''adverse to the claimant'' after ''material fact''; and

(2) by inserting ''or reverse'' after ''and set aside''.

(b) REQUIREMENTS FOR REVIEW.—Subsection (b) of that section is amended to read as follows:

''(b) In making the determinations under subsection (a), the Court shall review the record of proceedings before the Secretary and the Board of Veterans' Appeals pursuant to section 7252(b) of this title and shall—

''(1) take due account of the Secretary's application of section 5107(b) of this title; and

''(2) take due account of the rule of prejudicial error.''.

(c) APPLICABILITY.—(1) Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of the enactment of this Act.

(2) The amendments made by this section shall apply with respect to any case pending for decision before the United States Court of Appeals for Veterans Claims other than a case in which a decision has been entered before the date of the enactment of this Act.

SEC. 402. REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW OF COURT OF APPEALS FOR VETERANS CLAIMS.

(a) REVIEW.—Section 7292(a) is amended by inserting ''a decision of the Court on a rule of law or of'' in the first sentence after ''the validity of''.

(b) APPLICABILITY.—The amendment made by subsection (a) shall apply with respect to any appeal—

(1) filed with the United States Court of Appeals for the Federal Circuit on or after the date of the enactment of this Act; or

(2) pending with the United States Court of Appeals for the Federal Circuit as of the date of the enactment of this Act in which a decision has not been rendered as of that date.

SEC. 403. AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT FOR NON-ATTORNEY PRACTITIONERS.

The authority of the United States Court of Appeals for Veterans Claims to award reasonable fees and expenses of attorneys under section 2412(d) of title 28, United States Code, shall include authority to award fees and expenses, in an amount determined appropriate by the United States Court of Appeals for Veterans Claims, of individuals admitted to practice before the Court as non-attorney practitioners under subsection (b) or (c) of Rule 46 of the Rules of Practice and Procedure of the United States Court of Appeals for Veterans Claims.

Amend the title so as to read ''An Act to amend title 38, United States Code, to improve authorities of the Department of Veterans Affairs relating to veterans' compensation, dependency and indemnity compensation, and pension benefits, education benefits, housing benefits, memorial affairs benefits, life insurance benefits, and certain other benefits for veterans, to improve the administration of benefits for veterans, to make improvements in procedures relating to judicial review of veterans' claims for benefits, and for other purposes.''.

Mr. REID. Mr. President, I ask unanimous consent that the Senate concur in the amendment of the House, and that a statement of Senator ROCKEFELLER be printed in the RECORD as if read.

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

Mr. ROCKEFELLER. Mr. President, as Chairman of the Committee on Veterans' Affairs, I urge the Senate to pass S. 2237, the proposed ''Veterans Benefits Act of 2002.''

Mr. President, the pending measure is the final compromise version of an omnibus bill that would improve a variety of veterans benefits, from pensions for heroes awarded the Medal of Honor to fairness in evaluating the disabilities of veterans with hearing loss. I will briefly highlight some of the provisions of which I am most proud, and refer my colleagues seeking more detail to the Joint Explanatory Statement accompanying this statement.

S. 2237, which I will refer to as the ''Compromise Agreement,'' would eliminate many inequities and obstacles that affect veterans and their families. I thank Ranking Member ARLEN SPECTER and his staff for their efforts on behalf of our Nation's veterans, and my colleagues in the House for working with our Committee staff to craft this agreement.

I would also like to take this moment to note the loss of a dear colleague, a dedicated advocate for veterans. Many have eulogized Senator Paul Wellstone in the past few weeks, and I do not need to tell my colleagues of his passion, his energy, and his unwavering commitment to shout on behalf of those who cannot speak for themselves. However, few have noted his work on behalf of America's veterans, particularly those most neglected by a Nation that has not always kept its promises. Senator Wellstone worked on behalf of homeless veterans, veterans suffering from the mental illnesses that can be the silent legacy of the battlefield, and for those who returned from war to fight their own government's denials about the invisible wounds caused by chemicals and radiation. Paul Wellstone may have launched his political career in protest of the Vietnam War, but as a Senator, he chose to fight for those who served. It is up to all of us now to carry on his work.

As veterans and their families—like the rest of Americans expect to enjoy—lengthening life spans, we must regularly review and update laws crafted in earlier times. Last year, I proudly authored legislation to allow survivors of severely disabled veterans to continue receiving VA healthcare coverage through the program called CHAMPVA after age 65. Section 101 of the Compromise Agreement would take this further, allowing the eligible surviving spouses of veterans who died from service-connected disabilities or in the line of duty to retain their eligibility for CHAMPVA benefits even if they remarry after age 55. Those who sacrificed so much for their Nation throughout their lives should not be further penalized by losing the special healthcare safety net that CHAMPVA offers.

Mr. President, Congress last year authorized VA to offer special monthly compensation to women who had lost one or both breasts as a result of military service. VA's subsequently promulgated regulations limited eligibility for this benefit to women who had undergone simple or radical mastectomy. Even if this restriction plays no role in a woman's medical decisions, it implies unfairly that tissue-sparing treatments create no physical, emotional, or financial obstacles to a woman's health. Section 102 of the Compromise Agreement would extend this eligibility to women veterans who have endured service-connected loss of 25 percent or more of a breast's tissue, or radiation treatment to a breast. As women comprise a growing percentage of our Armed Services, we must ensure that they receive fair recognition for their sacrifices, and equitable assistance in overcoming the medical challenges that they face.

I am enormously proud that the Compromise Agreement would help veterans who have both service-connected and unrelated hearing loss expect a fair disability rating. Currently, VA can consider whether a veteran has bilateral damage to ''paired'' organs or extremities—such as kidneys, lungs, feet, or hands—when rating the veteran's disability, even if only one of the paired organs was injured through military service. However, VA can only consider how non-service-connected hearing loss might further disable a veteran if he or she suffers total deafness in both ears. Section 103 of the Compromise Agreement would allow VA to consider whether a veteran suffers from partial non-service-connected hearing loss in one ear when evaluating disability caused by compensable service-connected hearing loss in the other ear. This would not only extend the same special consideration to damage to the ears that VA gives to other paired organs, but would assist veterans whose hearing loss has been made even worse due to military service.

This provision represents an important step for veterans with hearing loss, but other challenges remain. America's aging veterans suffer increasingly from hearing loss and tinnitus, and the number of disability claims for hearing disorders submitted to VA continues to climb. Many veterans who left service decades ago received an ineffective hearing examination at separation, or no evaluation at all, leaving VA with a legacy of incomplete records and uncertain clinical evidence. This affects not only veterans with hearing loss, but all veterans who must wait for VA to process a staggering burden of hearing loss claims without a clear scientific standard on past exposures.

Section 104 of the Compromise Agreement would require VA to contract with the National Academy of Sciences to review evidence on hearing damage suffered during military service from World War II to the present. As part of this study, scientists would determine when the audiometric testing and hearing conservation programs initiated by the military services became adequate for VA to assess whether an individual veteran had hearing loss at or prior to separation. The Compromise Agreement would also require VA to review its own records on hearing loss or tinnitus in veterans, including the cost of adjudicating these claims under the current system and the cost of treating hearing disorders. These reports together should provide VA's Secretary with critical tools to decide how to assist veterans whose hearing loss may have resulted from damage suffered years ago quickly and fairly.

Mr. President, Section 304 of the Compromise Agreement would increase the special pension granted to recipients of the Medal of Honor as a token of recognition for their extraordinary heroism from $600 to $1000, and adjust this pension annually with inflation. The agreement would also provide a one-time payment to Medal of Honor recipients who—due to a time lag between the date of the act of valor and the actual awarding of the Medal of Honor—received this pension only after a delay.

The next section of the Compromise Agreement grew from legislation introduced by Senator Paul Wellstone, another example of his advocacy on behalf of those who serve this Nation. The Soldiers' and Sailors' Relief Act of 1940 (SSCRA) applies to servicemembers, including National Guard Members, who serve on active duty under title 10 of the United States code. It suspends enforcement of certain civil liabilities against servicemembers on active duty so that they can devote their concentration to their duties.

National Guard members may also be called to active duty by their State Governors under title 32. National Guard missions under title 32 are funded by the federal government ''to perform training and other duty.'' However, if the National Guard members are called up under title 32, rather than title 10, they are not entitled to SSCRA protections.

In the days following September 11, 2001, under the direction of the President, the Federal Aviation Administration and the Secretary of Defense coordinated the use of National Guard members at commercial airports. These National Guard members, called to active duty from four to six months, clearly served a national mission. However, because they were called up under title 32, they were not entitled to SSCRA protections.

Section 305 of the Compromise Agreement would extend SSCRA protections to include National Guard members called to active service for more than 30 consecutive days in response to a national emergency declared by the President, even if they serve under title 32. This provision is intended to protect members of the National Guard when called up under circumstances similar to those following last September's terrorist attacks.

Mr. President, it is time to amend the Soldiers' and Sailors' Relief Act of 1940 to reflect the critical role that National Guard members now play in protecting this Nation. These National Guard members have increasingly been called onto active duty since September 11th. Like all active duty servicemembers, National Guard members deserve these rights and legal protections to allow them to concentrate on national defense. Paul Wellstone recognized this, and took steps to make sure that those who don the uniform to protect our freedoms—at home or abroad—have earned our protection.

The Compromise Agreement would also ensure that veterans receive a full judicial review when appealing claims denied by VA. The ''benefit of the doubt'' rule, the standard applicable to proceedings before VA, states that a veteran's claim is granted unless the preponderance of the evidence is against the claimant. This rule, unique in administrative law, recognizes the tremendous sacrifices made by the men and women who have served in our Armed Forces. A number of veterans service organizations have expressed concern that the current appellate process is overly deferential to VA findings of fact that are adverse to veteran claimants. Specifically, these groups argue that the ''clearly erroneous'' standard applied by the U.S. Court of Appeals for Veterans Claims (CAVC) when reviewing Board of Veterans' Appeals (BVA) cases results in veterans' claims receiving only cursory review on appeal, not allowing for full application of the ''benefit of the doubt'' rule.

Section 401 of the Compromise Agreement would maintain the current ''clearly erroneous'' standard of review, but modify the requirements of the review the court must perform when making determinations under section 7261(a) of title 38. CAVC would be specifically required to examine the record of proceedings—that is, the record on appeal—before the Secretary and BVA. Section 401 would also provide special emphasis during the judicial process to the ''benefit of the doubt'' provisions of section 5107(b) as CAVC makes findings of fact in reviewing BVA decisions. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the ''benefit of doubt'' provision. The addition of the words ''or reverse'' after ''and set aside'' in section 7261(a)(4) is intended to emphasize that CAVC should reverse clearly erroneous findings when appropriate, rather than remand the case. This new language in section 7261 would overrule the recent U.S. Court of Appeals for the Federal Circuit decision of Hensley v. West, which emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding ''is entitled on review to substantial deference.'' However, nothing in this new language is inconsistent with the existing section 7261(c), which precludes the court from conducting trial de novo when reviewing BVA decisions, that is, receiving evidence that is not part of the record before BVA.

Section 402 of the Compromise Agreement would also expand the Federal Circuit's authority to review CAVC decisions based on rules of law that are not derived from a specific statute or regulation. This change would allow the Federal Circuit to review comprehensively any CAVC decisions of law that adversely affect appellate reviews of veterans' claims.

Currently, attorneys and non-attorney practitioners supervised by attorneys who represent certain claimants may receive compensation for their services under the Equal Access to Justice Act. Section 403 of the Compromise Agreement would allow non-attorney practitioners admitted to practice before the CAVC, such as veterans service organization representatives, to be awarded fees under this act without the signature of a supervising attorney. This would make organizations that provide invaluable assistance to veterans eligible for richly deserved compensation.

The Joint Explanatory Statement contains language responding to the Executive Branch's interpretation that the CAVC is part of the Executive Branch, and subject to rescissions of budget pursuant to section 1403 of Public Law 107–206. I wish to reiterate that it is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have previously stated as much, finding in reports in both the House and Senate that the ''Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch.'' It is my hope that the Committees will not have to address this issue again through legislation or other means.

Mr. President, in conclusion, I want to thank Senator SPECTER and his benefits staff—Bill Tuerk, Jon Towers, David Goetz, and Chris McNamee—for diligently working with me and my benefits staff—Mary Schoelen, Julie Fischer, Chris Reinard, and Dahlia Melendrez—to craft this legislation during such an incredible year. I urge my colleagues to support this bipartisan commitment to our Nation's veterans, and to send a strong message of support to the men and women who now serve in uniform by caring for those who served before.

I ask unanimous consent that the joint explanatory statement be printed in the RECORD.

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

EXPLANATORY STATEMENT ON HOUSE AMENDMENT TO SENATE BILL, S. 2237

S. 2237, as amended, the ''Veterans Benefits Act of 2002,'' reflects a Compromise Agreement the Senate and House Committees on Veterans' Affairs have reached on the following bills considered in the House and Senate during the 107th Congress: S. 2237 (''Senate Bill''), H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, and H.R. 5055 (''House Bills''). S. 2237, as amended, passed the Senate on September 26, 2002; H.R. 2561 and H.R. 3423, as amended, passed the House on December 20, 2001; H.R. 4085, as amended, passed the House on May 21, 2002; and H.R. 4940, as amended, and H.R. 5055 passed the House on July 22, 2002.

The Senate and House Committees on Veterans' Affairs have prepared the following explanation of S. 2237, as amended, (''Compromise Agreement''). Differences between the provisions contained in the Compromise Agreement and the related provisions of S. 2237, H.R. 2561, H.R. 3423, H.R. 4085, H.R. 4940, H.R. 5055, are noted in this document, except for clerical corrections, conforming changes made necessary by the Compromise Agreement, and minor drafting, technical, and clarifying changes.

TITLE I—COMPENSATION AND BENEFITS IMPROVEMENTS

RETENTION OF CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE DEPARTMENT OF VETERANS AFFAIRS FOR SURVIVING SPOUSES REMARRYING AFTER AGE 55

Current law

Section 103(d) of title 38, United States Code, prohibits a surviving spouse who has remarried from receiving dependency and indemnity compensation (''DIC''), VA health insurance under the Civilian Health and Medical Program of the Department of Veterans Affairs (''CHAMPVA''), home loan, and education benefits. These benefits may be reinstated in the event the subsequent remarriage is terminated.

House bill

Section 3 of H.R. 4085 would allow a surviving spouse who remarries after attaining age 65 to retain DIC, CHAMPVA health insurance, home loan, and education benefits. Spouses who remarried at age 65 or older prior to enactment of the bill would have one year from the date of enactment to apply for reinstatement of DIC and related benefits. The amount of DIC would be paid with no reduction of certain other benefits to which the surviving spouse might be entitled.

SENATE BILL

The Senate Bill contains no comparable provision.

Compromise agreement

Section 101 of the Compromise Agreement would provide that a surviving spouse, upon remarriage after attaining age 55, would retain CHAMPVA eligibility. Surviving spouses who remarried after attaining age 55 but prior to enactment of this Act would have one year to apply for reinstatement of this benefit. The Committees expect the Secretary will maintain data concerning the number of surviving spouses who become eligible or retain eligibility under this provision.

The Committees intend in the 108th Congress to consider full restoration of benefits for surviving spouses who remarry after attaining age 55.

CLARIFICATION OF ENTITLEMENT TO SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO HAVE SERVICE-CONNECTED LOSS OF BREAST TISSUE

Current law

Section 1114(k) of title 38, United States Code, authorizes the Department of Veterans Affairs (''VA'') to provide special monthly compensation to any woman veteran who ''has suffered the anatomical loss of one or both breasts (including loss by mastectomy)'' as a result of military service. Regulations published at section 4.116 of title 38, Code of Federal Regulations, have limited this compensation to ''Anatomical loss of a breast exists when there is complete surgical removal of breast tissue (or the equivalent loss of breast tissue due to injury). As defined under this section, radical mastectomy, modified radical mastectomy, and simple (or total) mastectomy result in anatomical loss of a breast, but wide local excision, with or without significant alteration of size or form, does not.''

Senate bill

Section 101 of S. 2237 would amend section 1114(k) of title 38, United States Code, to specify that women veterans who have suffered the anatomical loss of half of the tissue of one or both breasts in or as a result of military service may be eligible for special monthly compensation.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 102 of the Compromise Agreement follows the Senate language, and would amend it to extend eligibility to women veterans who have suffered the anatomical loss of 25 percent or more of tissue from one or both breasts (including loss by mastectomy or partial mastectomy) or who received radiation treatment of breast tissue. The Committees intend that this change should extend eligibility for special monthly compensation to women veterans whose medical treatments (other than ''cosmetic surgery'') or injuries have resulted in a significant change in size, form, function, or appearance of one or both breasts.

SPECIFICATION OF HEARING LOSS REQUIRED FOR COMPENSATION FOR HEARING LOSS IN PAIRED ORGANS

Current law

Under section 1160 of title 38, United States Code, special consideration is extended to a veteran's service-connected disabilities in ''paired organs or extremities,'' such as kidneys, lungs, feet, or hands. For these paired organs or extremities, VA is authorized when rating disability to consider any degree of damage to both organs, even if only one resulted from military service. Total impairment is not a requirement for kidneys, hands, feet, or lungs. Proportional impairment, such as ''the loss or loss of use of one kidney as a result of service-connected disability and involvement of the other kidney as a result of non-service-connected disability,'' is specifically provided for in subsections (2), (4), and (5) of section 1160(a) of title 38, United States Code. However, total deafness in both ears is required under section 1160(a)(3) of title 38, United States Code, for special consideration of hearing loss.

Senate bill

Section 102 of S. 2237 would eliminate the word ''total'' from section 1160(a)(3) of title 38, United States Code, and allow VA to consider partial non-service-connected hearing loss in one ear when rating disability for veterans with compensable service-connected hearing loss in the other ear.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 103 of the Compromise Agreement follows the Senate language.

ASSESSMENT OF ACOUSTIC TRAUMA ASSOCIATED WITH MILITARY SERVICE FROM WORLD WAR II TO PRESENT

Current law

There is no applicable current law.

Senate bill

Section 103(a) of S. 2237 would authorize the Secretary to establish a presumption of service connection for hearing loss or tinnitus in veterans who served in certain military occupational specialties during specific periods of time if VA finds that evidence warrants such a presumption. Section 103(b) would extend presumption rebuttal provisions in title 38, United States Code, to cover service-connected hearing loss, should such a presumption be established.

Section 103(c) of the Senate Bill would require VA to enter into a contract with the National Academy of Sciences (''NAS'') or an equivalent scientific organization to review scientific evidence on forms of acoustic trauma that could contribute to hearing disorders for personnel serving in specific military occupational specialties. Section 103(c)(2)(B) of the Senate Bill would direct NAS to identify forms of acoustic trauma likely to cause hearing damage in servicemembers, and, in section 103(c)(2)(C), to determine whether such damage would be immediate, cumulative, or delayed. Section 103(c)(2)(D) of the Senate Bill would require NAS to assess when audiometric data collected by the military services became adequate to allow an objective assessment of individual exposure by VA, examining a representative sample of records from World War II to present by period of service. Section 103(c)(2)(E) of the Senate Bill would require NAS to identify military occupational specialties in which servicemembers are likely to be exposed to sufficient acoustic trauma to cause hearing disorders.

Section 103(d) of S. 2237 would require VA to report on medical care provided to veterans for hearing disorders from fiscal years 1999–2001; on the number of disability compensation claims received and granted for hearing loss, tinnitus, or both during those years; and an estimate of the total cost to VA of adjudicating those claims in full-time employee equivalents.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 104 of the Compromise Agreement would strike sections 103(a) and 103(b) of the Senate Bill authorizing a presumption of service connection. The Compromise Agreement follows the Senate language requiring VA to enter into a contract with NAS, but would change the focus of the study to assessment of acoustic trauma associated with military service from World War II to present.

The Compromise Agreement would strike sections 103(c)(2)(B), 103(c)(2)(D), 103(c)(2)(E), and all references to military occupational specialties. The Compromise Agreement follows the Senate language requiring NAS to determine how much exposure to acoustic trauma or noise damage during military service might cause or contribute to hearing loss, hearing threshold shift, or tinnitus, and whether this damage may be immediate- or delayed-onset, cumulative, progressive, or a combination of these.

The Compromise Agreement would preserve provisions requiring NAS to assess when audiometric measures became adequate to assess individual hearing threshold shift reliably and when sufficiently protective hearing conservation measures became available. It would also add a third provision requiring NAS to identify age, occupational history, and other factors which could contribute to an individual's noise-induced hearing loss.

In assessing when audiometric data collected by the military became adequate for VA to evaluate if a veteran's hearing threshold shift could be detected at or prior to separation, the Committees intend for NAS to review and report on a representative sample of individual records. This should reflect not only an appropriate distribution of individuals among the various Armed Forces, but within each military service branch so that these records represent servicemembers who might reasonably be expected to have different levels of noise exposure in the course of their duties. The representative sample should also include records of servicemembers discharged during or after distinct periods of war or conflict and consider the environment in which they served in order to gauge how adequately each branch collected audiometric data following World War II, the Korean conflict, the Vietnam era, and during and following the Persian Gulf War.

The Compromise Agreement would generally follow the Senate language requiring VA to report on hearing loss claims and medical treatment for hearing disorders. The Compromise Agreement would amend this language to refer to the number of decisions issued and their results, rather than claims submitted in fiscal years 2000 through 2002, and would remove references to military occupational specialties.

TITLE II—MEMORIAL AFFAIRS

PROHIBITION ON CERTAIN ADDITIONAL BENEFITS FOR PERSONS COMMITTING CAPITAL CRIMES

Current law

Sections 2411 and 2408(d) of title 38, United States Code, prohibit persons who are convicted of capital crimes from interment or memorialization in National Cemetery Administration cemeteries, Arlington National Cemetery (''ANC''), or a State cemetery that receives VA grant funding. Section 5313 of title 38, United States Code, further limits VA benefits available to veterans who die while fleeing prosecution or after being convicted of a capital crime.

Senate bill

Section 402 of S. 2237 would prohibit the issuance of Presidential Memorial Certificates, flags, and memorial headstones or grave markers to veterans convicted of or fleeing from prosecution for a State or Federal capital crime.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 201 of the Compromise Agreement follows the Senate language.

PROCEDURES FOR DISQUALIFICATION OF PERSONS COMMITTING CAPITAL CRIMES FOR INTERMENT OR MEMORIALIZATION IN NATIONAL CEMETERIES

Current Law

Section 2411 of title 38, United States Code, prohibits interment or memorialization in National Cemetery Administration cemeteries or in Arlington National Cemetery (''ANC'') of any person convicted of a capital crime. This section further prohibits interment or memorialization of persons found by the Secretary of Veterans Affairs or the Secretary of the Army to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution. In such cases, the Secretary of Veterans Affairs or the Secretary of the Army must receive notice from the Attorney General of the United States, or the appropriate State official, of the Secretary's own finding before the prohibition shall apply.

Senate bill

Section 403 of S. 2237 would eliminate the requirement that the Secretary of Veterans Affairs or the Secretary of the Army be notified of a finding by the Attorney General or the appropriate State official in cases of persons who are found to have committed capital crimes but who avoided conviction of the crime through flight or death preceding prosecution.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 202 of the Compromise Agreement follows the Senate language.

APPLICATION OF DEPARTMENT OF VETERANS AFFAIRS BENEFIT FOR GOVERNMENT MARKERS FOR MARKED GRAVES OF VETERANS AT PRIVATE CEMETERIES TO VETERANS DYING ON OR AFTER SEPTEMBER 11, 2001

Current law

Section 2306(d)(1) provides that the Secretary shall furnish a government marker to those families who request one for the marked grave of a veteran buried at a private cemetery, who died on or after December 27, 2001.

House bill

Section 6 of H.R. 4940 would make section 2306(d)(1) retroactive to veterans who died on or after September 11, 2001.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 203 of the Compromise Agreement follows the House language.

AUTHORIZATION OF PLACEMENT OF MEMORIAL IN ARLINGTON NATIONAL CEMETERY HONORING WORLD WAR II VETERANS WHO FOUGHT IN THE BATTLE OF THE BULGE

Current law

Section 2409 of title 38, United States Code, authorizes the Secretary of Army to erect appropriate memorials or markers in Arlington National Cemetery to honor the memory of members of the Armed Forces.

House bill

H.R. 5055 would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge during World War II. The Secretary of the Army would have exclusive authority to approve an appropriate design and site within ANC for the memorial.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 204 of the Compromise Agreement would authorize the Secretary of the Army to place in ANC a new memorial marker honoring veterans who fought in the Battle of the Bulge.

TITLE III—OTHER MATTERS

INCREASE IN AGGREGATE ANNUAL AMOUNT AVAILABLE FOR STATE APPROVING AGENCIES FOR ADMINISTRATIVE EXPENSES FOR FISCAL YEARS 2003, 2004, 2005, 2006, AND 2007

Current law

Section 3674(a)(4) of title 38, United States Code, funds State approving agencies. From fiscal years 1995 to 2000, State approving agency (''SAA'') funding was capped, with no annual increase, at $13 million. Public Law 106–419 increased SAA funding to $14 million for fiscal years 2001 and 2002. Under current law, the authorization amount was reduced to $13 million as of October 1, 2002. SAAs are the agencies that determine which schools, courses, and training programs qualify as eligible for veterans seeking to use their GI Bill benefits.

Senate bill

Section 201 of S. 2237 would restore SAA funding to $14 million per year and would increase it to $18 million per year during fiscal years 2003, 2004, and 2005.

House bill

Section 6 of H.R. 4085 contains an identical provision.

Compromise agreement

Section 301 of the Compromise Agreement would restore SAA funding at $14 million for fiscal year 2003, $18 million for fiscal year 2004, $18 million for fiscal year 2005, $19 million for fiscal year 2006, and $19 million for fiscal year 2007.

AUTHORITY FOR VETERANS' MORTGAGE LIFE INSURANCE TO BE CARRIED BEYOND AGE 70

Current law

Section 2106(i)(2) of title 38, United States Code, provides that Veterans' Mortgage Life Insurance (''VMLI'') shall be terminated on the veteran's seventieth birthday. VMLI is designed to provide financial protection to cover eligible veterans' home mortgages in the event of death. VMLI is issued only to those severely disabled veterans who have received grants for Specially Adapted Housing from the Department of Veterans Affairs.

House bill

Section 5(b) of H.R. 4085 would permit veterans eligible for specially-adapted housing grants to continue their VMLI coverage beyond age 70. No new policies would be issued after age 70.

Senate bill

The Senate Bill contains no comparable provision.

Compromise agreement

Section 302 of the Compromise Agreement follows the House language.

AUTHORITY TO GUARANTEE HYBRID ADJUSTABLE RATE MORTGAGES

Current law

There is no authorization in current law for VA to guarantee adjustable rate mortgages (''ARMs'') and hybrid adjustable rate mortgages (''hybrid ARMs''). A hybrid ARM combines features of fixed rate mortgages and adjustable rate mortgages. A hybrid ARM has a fixed rate of interest for at least the first 3 years of the loan, with an annual interest rate adjustment after the fixed rate has expired.

Senate bill

Section 301 of S. 2237 would authorize VA to establish a three-year pilot program to guarantee hybrid ARMs and reauthorize a fiscal year–1993 to 1995 pilot program to guarantee conventional ARMs. This authority would begin in fiscal year 2003 and expire at the end of fiscal year 2005.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 303 of the Compromise Agreement would authorize VA to guarantee hybrid ARMs for a period of two years. The effective date of this provision would be October 1, 2003.

INCREASE IN THE AMOUNT PAYABLE AS MEDAL OF HONOR SPECIAL PENSION

Current law

Section 1562 of title 38, United States Code, provides a special pension of $600 per month to recipients of the Medal of Honor. Eligibility to receive the Medal of Honor special pension is contingent upon having first been awarded the Medal of Honor.

Senate bill

Section 104 of S. 2237 would increase the Medal of Honor special pension from $600 to $1,000 per month. Beginning in January 2003, the pension amount would be adjusted annually to maintain the value of the pension in the face of the rising cost of living. The amount of this adjustment would match the percentage of the cost-of-living adjustment paid to Social Security recipients. The Senate Bill would also provide for a one-time, lump-sum payment in the amount of special pension the recipient would have received between the date of the act of valor and the date that the recipient's pension actually commenced.

House bill

H.R. 2561 would increase the special pension payable to Medal of Honor recipients from $600 to $1,000 per month, and provide a lump sum payment for existing Medal of Honor recipients in an amount equal to the total amount of special pension that the person would have received had the person received special pension during the period beginning the first day of the month that began after the act giving rise to the receipt of the Medal of Honor, and ending with the last day of the month preceding the month that such person's special compensation commenced. H.R. 2561 also would provide criminal penalties for the unauthorized purchase or possession of the Medal and for making a false representation as a Medal recipient.

Compromise agreement

Section 304 of the Compromise Agreement follows the Senate language, but would modify the effective date of the provision to September 1, 2003. It is the Committee's understanding that the first month a Medal of Honor recipient would receive special pension is October 2003.

It is the Committees' intent that the lump sum payment of special pension be determined using the rates of special pension and the laws of eligibility in effect (including applicable age requirements) for months beginning after an individual's act of gallantry. Excluded from this rule would be the law of eligibility requiring an individual to have been awarded a Medal of Honor.

EXTENSION OF PROTECTIONS UNDER SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940 TO NATIONAL GUARD MEMBERS CALLED TO ACTIVE DUTY UNDER TITLE 32, UNITED STATES CODE

Current law

The Soldiers' and Sailors' Civil Relief Act of 1940 (''SSCRA''), sections 510 et seq., of title 50, United States Code Appendix, suspends enforcement of certain civil liabilities

and provides certain rights and legal protections to servicemembers who have been called up to active duty under title 10, United States Code. However, these protections do not extend to National Guard members called to duty under section 502(f) of title 32, United States Code, ''to perform training or other duty.'' Certain homeland security duties performed under title 32, United States Code, such as protecting the nation's airports, have been carried out at the request and expense of the Federal government with National Guard members under the command of their state governors.

Senate bill

Section 401 of S. 2237 would expand SSCRA protections to include those National Guard members serving full-time, upon an order of the Governor of a State at the request of the head of a Federal law enforcement agency and with the concurrence of the Secretary of Defense, under 502(f) of title 32, United States Code for homeland security purposes.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 305 of the Compromise Agreement would provide that when members of the National Guard are called to active service for more than 30 consecutive days under section 502(f) of title 32, United States Code, to respond to a national emergency declared by the President, coverage under the provisions of the SSCRA would be available. The Committees note that this provision is intended to extend protections of the SSCRA to members of the National Guard when called to duty under circumstances similar to those following the terrorist attacks of September 11, 2001.

EXTENSION OF INCOME VERIFICATION AUTHORITY

Current law

Section 6103(l)(7)(D) of the Internal Revenue Code gives the Internal Revenue Service (''IRS'') authority to furnish income information to the VA from IRS records so that VA might determine eligibility for VA need-based pension, parents dependency and indemnity compensation, and priority for VA health-care services. This provision currently expires on September 30, 2003, pursuant to Public Law 105–33.

Section 5317 of title 38, United States Code, provides parallel authority for VA to use IRS information and requires VA to notify applicants for needs-based benefits that income information furnished by the applicant may be compared with the information obtained from the Departments of Health and Human Services and Treasury under section 6103(l)(7)(D). This parallel authority is scheduled to expire on September 30, 2008, pursuant to Public Law 106–409.

Senate bill

Section 106(a) of S. 2237 would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2011. Section 106(b) would extend section 5317 of title 38, United States Code, through September 30, 2011.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 306 of the Compromise Agreement would extend section 6103(l)(7)(D) of the Internal Revenue Code through September 30, 2008.

FEE FOR LOAN ASSUMPTION

Current law

Section 3729(b)(2)(1) of title 38, United States Code, requires a 0.50 percent loan fee for active-duty servicemembers, veterans, Reservists, and others participating in loan assumptions under section 3714.

Senate bill

The Senate Bill contains no comparable language.

House bill

The House Bills contain no comparable language.

Compromise agreement

Section 307 of the Compromise Agreement would increase the loan fee for assumptions for loans closed more than 7 days after enactment in fiscal year 2003 from 0.50 percent to 1.0 percent. The Committees intend this fee increase to expire at the end of fiscal year 2003.

TITLE IV—JUDICIAL MATTERS

The U.S Court of Appeals for Veterans Claims (''CAVC'') is an Article I Court of limited jurisdiction. It has come to the Committees' attention that the Administration has disregarded Congressional intent in interpreting the CAVC to be part of the Executive Branch and subject to rescissions of Executive Branch agency budgets, pursuant to section 1403 of Public Law 107–206. The Committees note that while the budget for the Court is included in the President's budget, the Executive Branch has no authority to review it. Public Law 100–687, section 4082(a). It is the Committees' intent to clarify that the CAVC is not part of the Executive Branch. The Committees have so stated on other occasions, e.g., ''The Court, established by the Congress under Article I of the Constitution to exercise judicial power, has unusual status as an independent tribunal that is not subject to the control of the President or the executive branch.'' House of Representatives Report 107–156, July 24, 2001, and Senate Report 107–86, October 15, 2001.

STANDARD FOR REVERSAL BY COURT OF APPEALS FOR VETERANS CLAIMS OF ERRONEOUS FINDING OF FACT BY BOARD OF VETERANS' APPEALS

Current law

Under section 7261(a)(4) of title 38, United States Code, the Court of Appeals for Veterans Claims applies a ''clearly erroneous'' standard of review to findings of fact made by the Board of Veterans' Appeals (''BVA''). The ''clearly erroneous'' standard has been defined as requiring CAVC to uphold BVA findings of fact if the findings are supported by ''a plausible basis in the record . . . even if [CAVC] might not have reached the same factual determinations.'' Wensch v. Principi, 15 Vet. App. 362, 366–68 (2001). The recent U.S. Court of Appeals for the Federal Circuit decision of Hensley v. West, 212 F.3d 1255 (Fed. Cir. 2000) emphasized that CAVC should perform only limited, deferential review of BVA decisions, and stated that BVA fact-finding ''is entitled on review to substantial deference.'' Id. at 1263.

Section 5107(b) of title 38, United States Code, provides that VA must find for the claimant when, in considering the evidence of record, there is an approximate balance of positive and negative evidence regarding any material issue including the ultimate merits of the claim. This ''benefit of the doubt'' standard applicable to proceedings before VA is unique in administrative law. Under the benefit of the doubt rule, unless the preponderance of the evidence is against the claimant, the claim is granted. Gilbert v. *Derwinski*, 1 Vet. App. 49 (1990) and *Forshey v. Principi*, 284 F.3d 1335 (Fed. Cir. 2002).

Senate bill

Section 501 of S. 2237 would amend section 7261(a)(4) of title 38 to change the standard of review CAVC applies to BVA findings of fact from ''clearly erroneous'' to ''unsupported by substantial evidence.'' Section 502 would also cross-reference section 5107(b) in order to emphasize that the Secretary's application of the ''benefit of the doubt'' to an appellant's claim would be considered by CAVC on appeal.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 401 of the Compromise Agreement follows the Senate language with the following amendments.

The Compromise Agreement would modify the standard of review in the Senate bill in subsection (a) by deleting the change to a ''substantial evidence'' standard. It would modify the requirements of the review the Court must perform when it is making determinations under section 7261(a) of title 38, United States Code. Since the Secretary is precluded from seeking judicial review of decisions of the Board of Veterans Appeals, the addition of the words ''adverse to the claimant'' in subsection (a) is intended to clarify that findings of fact favorable to the claimant may not be reviewed by the Court. Further, the addition of the words ''or reverse'' after ''and set aside'' is intended to emphasize that the Committees expect the Court to reverse clearly erroneous findings when appropriate, rather than remand the case.

New subsection (b) would maintain language from the Senate bill that would require the Court to examine the record of proceedings before the Secretary and BVA and the special emphasis during the judicial process on the benefit of the doubt provisions of section 5107 (b) as it makes findings of fact in reviewing BVA decisions. This would not alter the formula of the standard of review on the Court, with the uncertainty of interpretation of its application that would accompany such a change. The combination of these changes is intended to provide for more searching appellate review of BVA decisions, and thus give full force to the ''benefit of doubt'' provision.

The Compromise Agreement would also modify the effective date of this provision to apply to cases that have not been decided prior to the enactment of this Act. This provision would not apply to cases in which a decision has been made, but are not final because the time to request panel review or to appeal to the U.S. Court of Appeals for the Federal Circuit (''Federal Circuit'') has not expired.

REVIEW BY COURT OF APPEALS FOR THE FEDERAL CIRCUIT OF DECISIONS OF LAW

Current law

Under section 7292(a) of title 38, United States Code, the Federal Circuit may only review CAVC decisions involving questions of law ''with respect to the validity of any statute or regulation.'' It does not explicitly have the authority to hear appeals of CAVC decisions that are not clearly legal interpretations of statutes or regulations.

Senate bill

Section 502 of S. 2237 would amend sections 7292(a) and (c) of title 38, United States Code, to specifically provide for appellate review of a CAVC decision on any rule of law.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 402 of the Compromise Agreement follows the Senate language.

AUTHORITY OF COURT OF APPEALS FOR VETERANS CLAIMS TO AWARD FEES UNDER EQUAL ACCESS TO JUSTICE ACT TO NON-ATTORNEY PRACTITIONERS

Current law

Currently, section 2412(d) of title 28, United States Code, the Equal Access to Justice Act (''EAJA''), shifts the burden of attorney fees from the citizen to the government in cases where the government's litigation position is not substantially justified and the citizen qualifies under certain income and asset criteria. Qualified non-attorneys admitted to practice before theCAVC may only receive fees if the EAJA application is signed by an attorney.

Senate bill

Section 503 of S. 2237 would allow qualified non-attorneys admitted to practice before the CAVC to be awarded fees under EAJA for representation provided to VA claimants without the requirement that an attorney sign the EAJA application.

House bill

The House Bills contain no comparable provision.

Compromise agreement

Section 403 of the Compromise Agreement follows the Senate language.

The Committees expect that in determining the amount of reasonable fees payable to non-attorney practitioners, the Court will apply the usual rules applicable to fees for the work of other non-attorneys such as paralegals and law students based upon prevailing market rates for the kind and quality of the services furnished. 28 U.S.C. 2412 (d)(2)(A). *See, Sandoval* v. *Brown*, 9 Vet. App. 177, 181 (1996).

LEGISLATIVE PROVISIONS NOT ADOPTED

ARLINGTON NATIONAL CEMETERY

Current law

Eligibility for burial at Arlington National Cemetery is governed by federal regulations at section 553.15 of title 32, Code of Federal Regulations. The following categories of persons are eligible for in-ground burial: active duty members of the Armed Forces, except those members serving on active duty for training; retired members of the Armed Forces who have served on active duty, are on a retired list and are entitled to receive retirement pay; former members of the Armed Forces discharged for disability before October 1, 1949, who served on active duty and would have been eligible for retirement under 10 U.S.C. 1202 had the statute been in effect on the date of separation; honorably discharged members of the Armed Forces awarded the Medal of Honor, Distinguished Service Cross, Air Force Cross or Navy Cross, Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who served honorably and who died on or after November 30, 1993; provided they were honorably discharged from the Armed Forces, elected federal officials (the President, Vice President, and Members of Congress), federal cabinet secretaries and deputies, agency directors and certain other high federal officials (level I and II executives), Supreme Court Justices, and chiefs of certain diplomatic missions; the spouse, widow or widower, minor child (under 21 years of age) and, at the discretion of the Secretary of the Army, certain unmarried adult children, and certain surviving spouses.

House bill

H.R. 4940 would codify eligibility criteria for in-ground burial at Arlington National Cemetery: members of the Armed Forces who die on active duty; retired members of the Armed Forces, including reservists who served on active duty; members or former members of a reserve component who, but for age, would have been eligible for retired pay; members of a reserve component who die in the performance of duty while on active duty training or inactive duty training; former members of the Armed Forces who have been awarded the Medal of Honor, Distinguished Service Cross (Air Force Cross or Navy Cross), Distinguished Service Medal, Silver Star, or Purple Heart; former prisoners of war who die on or after November 30, 1993; the President or any former President; members of the Guard or Reserves who served on active duty, who are eligible for retirement, but who have not yet retired; the spouse, surviving spouse, minor child and at the discretion of the Superintendent of Arlington, certain unmarried adult children. Veterans who do not meet these requirements might qualify for the placement of their cremated remains in Arlington's columbarium.

H.R. 4940 would also provide the President the authority to grant a waiver for burial at Arlington in the case of an individual not otherwise eligible for burial under the criteria outlined above but whose acts, service, or contributions to the Armed Forces were so extraordinary as to justify burial at Arlington. The President would be allowed to delegate the waiver authority only to the Secretary of the Army.

H.R. 4940 would codify existing regulatory eligibility for interment of cremated remains in the columbarium at Arlington (generally, this includes all veterans with honorable service and their dependents), clarify that only memorials honoring military service may be placed at Arlington and set a 25-year waiting period for such memorials, and clarify that in the case of individuals buried in Arlington before the date of enactment, the surviving spouse is deemed to be eligible if buried in the same gravesite.

Senate bill

The Senate Bill contains no comparable provision.

INCREASE OF VETERANS' MORTGAGE LIFE INSURANCE (''VMLI'') COVERAGE TO $150,000

Current law

Section 2106(b) of title 38, United States Code, provides that VMLI may not exceed $90,000.

House bill

Section 5(a) of H.R. 4085 would increase the maximum amount of coverage available under Veterans' Mortgage Life Insurance from $90,000 to $150,000. This would increase the amount of the outstanding mortgage, which would be payable if the veteran were to die before the mortgage is paid in full.

Senate bill

The Senate Bill contains no comparable provision.

UNIFORM HOME LOAN GUARANTY FEES FOR QUALIFYING MEMBERS OF THE SELECTED RESERVE AND ACTIVE DUTY VETERANS

Current law

Section 3729(b) of title 38, United States Code, provides the amounts in fees to be collected from each person participating in VA's Home Loan Guaranty Program.

Currently, members of the Selected Reserve pay a 0.75 percent higher funding fee under the home loan program than other eligible veterans.

House bill

Section 4 of H.R. 4085 would amend the Loan Fee Table in section 3729(b) of title 38, United States Code, to provide for uniformity in the funding fees charged to members of the Selected Reserve and active duty veterans for VA home loans. The fee would be reduced for the period beginning on October 1, 2002, and ending on September 30, 2005.

Senate bill

The Senate Bill contains no comparable provision.

PROHIBIT ASSIGNMENT OF MONTHLY VETERANS BENEFITS AND CREATE AN EDUCATION AND OUTREACH CAMPAIGN ABOUT FINANCIAL SERVICES AVAILABLE TO VETERANS

Current law

Section 5301 of title 38, United States Code, currently prohibits the assignment or attachment of a veteran's disability compensation or pension benefits. In recent years, private companies have offered contracts to veterans that exchange up-front lump sums for future benefits.

Senate bill

Section 105 of S. 2237 would clarify the applicability of the prohibition on assignment of veterans benefits through agreements regarding future receipt of compensation, pension, or dependency and indemnity compensation. This provision would make violation of this prohibition punishable by a fine and up to one year in jail. This provision would also require VA to create a five-year education and outreach campaign to inform veterans about available financial services.

House bill

The House Bills contain no comparable provision.

CLARIFICATION OF RETROACTIVE APPLICATION OF PROVISIONS OF THE VETERANS CLAIMS ASSISTANCE ACT

Current law

Public Law 106–475, the Veterans Claims Assistance Act of 2000 (''VCAA''), restored and enhanced VA's duty to assist claimants in developing their claims for veterans benefits. Specifically, section 3(a) of the VCAA requires VA to take certain steps to assist claimants.

Two recent decisions by the U.S. Court of Appeals for the Federal Circuit have found that the provisions in the VCAA pertaining to VA's duty to assist cannot be applied retroactively to claims pending at the time of its enactment. In Dyment v. Principi, 287 F.3d 1377 (Fed. Cir. 2002), the Federal Circuit stated: ''The Supreme Court has held that a federal statute will not be given retroactive effect unless Congress has made its contrary intention clear. There is nothing in the VCAA to suggest that section 3(a) was intended to applied [sic] retroactively.'' In Bernklau v. Principi, 291 F.3d 795, 806 (Fed. Cir. 2002), the Court again concluded: ''[S]ection 3(a) of the VCAA does not apply retroactively to require that proceedings that were complete before the Department of Veterans Affairs and were on appeal to the Court of Appeals for Veterans Claims or this court be remanded for readjudication under the new statute.''

Senate bill

Section 504 of S. 2237 would apply section 3 of VCAA retroactively to cases that were ongoing either at various adjudication levels within VA or pending at the applicable Federal courts prior to the date of VCAA's enactment. Section 505 of the Senate Bill would provide for claims decided between the handing down of the *Dyment* case and enactment of this provision to receive the full notice, assistance, and protection afforded under the VCAA.

House bill

The House Bills contain no comparable provision.

MEASURES INDEFINITELY POSTPONED—S. 2828, S. 2840, S. 2918, S. 2929, S. 2931

Mr. REID. Mr. President, I ask unanimous consent that the following calendar items be indefinitely postponed: Calendar Nos. 711, 712, 713, 714, and 715.

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

Mr. REID. Mr. President, for the information of the Senate, these items are Senate-numbered items and are Post Office designations. The House version of the bills have passed the Senate and been signed into law.

SUPPORTING GOALS OF RED RIBBON WEEK IN PROMOTING DRUG-FREE COMMUNITIES

Mr. REID. Mr. President, I ask unanimous consent that the HELP Committee be discharged from further consideration of H. Con. Res. 84, and that the Senate proceed to its immediate consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A concurrent resolution (H. Con. Res 84) supporting the goals of Red Ribbon Week in promoting drug-free communities.

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

Mr. REID. Mr. President, I ask unanimous consent that the concurrent resolution and the preamble be agreed to en bloc; that the motions to reconsider be laid upon the table en bloc, without any intervening action or debate; and that any statements relating to the concurrent resolution be printed in the RECORD.

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

The concurrent resolution (H. Con. Res. 84) was agreed to.

The preamble was agreed to.

DRUG COMPETITION ACT OF 2001

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 431, S. 754.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 754) to enhance competition for prescription drugs by increasing the ability of the Department of Justice and Federal Trade Commission to enforce existing antitrust laws regarding brand name drugs and generic drugs.

There being no objection, the Senate proceeded to consider the bill which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

[Strike the part shown in black brackets and insert the part shown in Italic.]

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[SECTION 1. SHORT TITLE.

[This Act may be cited as the ''Drug Competition Act of 2001''.

[SEC. 2. FINDINGS.

[Congress finds that—

[(1) prescription drug costs are increasing at an alarming rate and are a major worry of senior citizens and American families;

[(2) there is a potential for drug companies owning patents on brand-name drugs to enter into private financial deals with generic drug companies in a manner that could tend to restrain trade and greatly reduce competition and increase prescription drug costs for American citizens; and

[(3) enhancing competition between generic drug manufacturers and brand name manufacturers can significantly reduce prescription drug costs to American families.

[SEC. 3. PURPOSE.

[The purposes of this Act are—

[(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies owning patents on branded drugs and companies who could manufacture generic or bioequivalent versions of such branded drugs; and

[(2) by providing timely notice, to—

[(A) enhance the effectiveness and efficiency of the enforcement of the antitrust laws of the United States; and

[(B) deter pharmaceutical companies from engaging in anticompetitive actions or actions that tend to unfairly restrain trade.

[SEC. 4. DEFINITIONS.

[In this Act:

[(1) AGREEMENT.—The term ''agreement'' means an agreement under section 1 of the Sherman Act (15 U.S.C. 1) or section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

[(2) ANTITRUST LAWS.—The term ''antitrust laws'' has the same meaning as in section 1 of the Clayton Act (15 U.S.C. 12), except that such term includes section 5 of the Federal Trade Commission Act (15 U.S.C. 45) to the extent that such section applies to unfair methods of competition.

[(3) ANDA.—The term ''ANDA'' means an Abbreviated New Drug Application, as defined under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(4) BRAND NAME DRUG COMPANY.—The term ''brand name drug company'' means a person engaged in the manufacture or marketing of a drug approved under section 505(b) of the Federal Food, Drug and Cosmetic Act.

[(5) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

[(6) FDA.—The term ''FDA'' means the United States Food and Drug Administration.

[(7) GENERIC DRUG.—The term ''generic drug'' is a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(8) GENERIC DRUG APPLICANT.—The term ''generic drug applicant'' means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug and Cosmetic Act.

[(9) NDA.—The term ''NDA'' means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 355(b) et seq.)

[SEC. 5. NOTIFICATION OF AGREEMENTS AFFECTING THE SALE OR MARKETING OF GENERIC DRUGS.

[A brand name drug manufacturer and a generic drug manufacturer that enter into an agreement regarding the sale or manufacture of a generic drug equivalent of a brand name drug that is manufactured by that brand name manufacturer and which agreement could have the effect of limiting—

[(1) the research, development, manufacture, marketing or selling of a generic drug product that could be approved for sale by the FDA pursuant to the ANDA; or

[(2) the research, development, manufacture, marketing or selling of a generic drug product that could be approved by the FDA; [both shall file with the Commission and the Attorney General the text of the agreement, an explanation of the purpose and scope of the agreement and an explanation of whether the agreement could delay, restrain, limit, or in any way interfere with the production, manufacture or sale of the generic version of the drug in question.

[SEC. 6. FILING DEADLINES.

[Any notice, agreement, or other material required to be filed under section 5 shall be filed with the Attorney General and the FTC not later than 10 business days after the date the agreements are executed.

[SEC. 7. ENFORCEMENT.

[(a) CIVIL FINE.—Any person, or any officer, director, or partner thereof, who fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $20,000 for each day during which such person is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

[(b) COMPLIANCE AND EQUITABLE RELIEF.—If any person, or any officer, director, partner, agent, or employee thereof, fails to comply with the notification requirement under section 5 of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Commission or the Assistant Attorney General.

[SEC. 8. RULEMAKING.

[The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5, consistent with the purposes of this Act—

[(1) may require that the notice described in section 5 of this Act be in such form and contain such documentary material and information relevant to the agreement as is necessary and appropriate to enable the Commission and the Assistant Attorney General to determine whether such agreement may violate the antitrust laws;

[(2) may define the terms used in this Act;

[(3) may exempt classes of persons or agreements from the requirements of this Act; and

[(4) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

[SEC. 9. EFFECTIVE DATES.

[This Act shall take effect 90 days after the date of enactment of this Act.]

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Drug Competition Act of 2001''.

SEC. 2. FINDINGS.

Congress finds that—

(1) prescription drug prices are increasing at an alarming rate and are a major worry of many senior citizens and American families;

(2) there is a potential for companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs to enter into financial deals that could tend to restrain trade and greatly reduce competition and increase prescription drug expenditures for American citizens; and

(3) enhancing competition among these companies can significantly reduce prescription drug expenditures for Americans.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies with

patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs; and

(2) by providing timely notice, to enhance the effectiveness and efficiency of the enforcement of the antitrust and competition laws of the United States.

SEC. 4. DEFINITIONS.

In this Act:

(1) ANDA.—The term ''ANDA'' means an Abbreviated New Drug Application, as defined under section 201(aa) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(aa)).

(2) ASSISTANT ATTORNEY GENERAL.—The term ''Assistant Attorney General'' means the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(3) BRAND NAME DRUG.—The term ''brand name drug'' means a drug approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)).

(4) BRAND NAME DRUG COMPANY.—The term ''brand name drug company'' means the party that received Food and Drug Administration approval to market a brand name drug pursuant to an NDA, where that drug is the subject of an ANDA, or a party owning or controlling enforcement of any patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations of the Food and Drug Administration for that drug, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(5) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(6) GENERIC DRUG.—The term ''generic drug'' means a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(7) GENERIC DRUG APPLICANT.—The term ''generic drug applicant'' means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(8) NDA.—The term ''NDA'' means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b) et seq.)

SEC. 5. NOTIFICATION OF AGREEMENTS.

(a) IN GENERAL.—

(1) REQUIREMENT.—A generic drug applicant that has submitted an ANDA containing a certification under section 505(j)(2)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(vii)(IV)) and a brand name drug company that enter into an agreement described in paragraph (2), prior to the generic drug that is the subject of the application entering the market, shall each file the agreement as required by subsection (b).

(2) DEFINITION.—An agreement described in this paragraph is an agreement regarding—

(A) the manufacture, marketing or sale of the brand name drug that is the subject of the generic drug applicant's ANDA;

(B) the manufacture, marketing or sale of the generic drug that is the subject of the generic drug applicant's ANDA; or

(C) the 180-day period referred to in section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) as it applies to such ANDA or to any other ANDA based on the same brand name drug.

(b) FILING.—

(1) AGREEMENT.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any such agreement, except that the generic drug applicant and the brand-name drug company shall not be required to file an agreement that solely concerns—

(A) purchase orders for raw material supplies;

(B) equipment and facility contracts; or

(C) employment or consulting contracts.

(2) OTHER AGREEMENTS.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any other agreements not described in subsection (a)(2) between the generic drug applicant and the brand name drug company which are contingent upon, provide a contingent condition for, or are otherwise related to an agreement which must be filed under this Act.

(3) DESCRIPTION.—In the event that any agreement required to be filed by paragraph (1) or (2) has not been reduced to text, both the generic drug applicant and the brand name drug company shall file written descriptions of the non-textual agreement or agreements that must be filed sufficient to reveal all of the terms of the agreement or agreements.

SEC. 6. FILING DEADLINES.

Any filing required under section 5 shall be filed with the Assistant Attorney General and the Commission not later than 10 business days after the date the agreements are executed.

SEC. 7. DISCLOSURE EXEMPTION.

Any information or documentary material filed with the Assistant Attorney General or the Commission pursuant to this Act shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTY.—Any brand name drug company or generic drug applicant which fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $11,000, for each day during which such entity is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

(b) COMPLIANCE AND EQUITABLE RELIEF.—If any brand name drug company or generic drug applicant fails to comply with any provision of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Assistant Attorney General or the Commission. Equitable relief under this subsection may include an order by the district court which renders unenforceable, by the brand name drug company or generic drug applicant failing to file, any agreement that was not filed as required by this Act for the period of time during which the agreement was not filed by the company or applicant as required by this Act.

SEC. 9. RULEMAKING.

The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5 United States Code, consistent with the purposes of this Act—

(1) may define the terms used in this Act;

(2) may exempt classes of persons or agreements from the requirements of this Act; and

(3) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

SEC. 10. SAVINGS CLAUSE.

Any action taken by the Assistant Attorney General or the Commission, or any failure of the Assistant Attorney General or the Commission to take action, under this Act shall not bar any proceeding or any action with respect to any agreement between a brand name drug company and a generic drug applicant at any time under any other provision of law, nor shall any filing under this Act constitute or create a presumption of any violation of any antitrust or competition laws.

SEC. 11. EFFECTIVE DATE.

This Act shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) shall apply to agreements described in section 5 that are entered into 30 days after the date of enactment of this Act.

Mr. LEAHY. Mr. President, I am pleased that the Senate has, at long last, taken up the Drug Competition Act of 1002, S. 754. Prescription drug prices are rapidly increasing, and are a source of considerable concern to many Americans, especially senior citizens and families. Generic drug prices can be as much as 80 percent lower than the comparable brand name version.

While the Drug Competition Act is a small bill in terms of length, it is a large one in terms of impact. It will ensure that law enforcement agencies can take quick and decisive action against companies that are driven more by greed than by good sense. It gives the Federal Trade Commission and the Justice Department access to information about secret deals between drug companies that keep generic drugs off the market. This is a practice that hurts American families, particularly senior citizens, by denying them access to low-cost generic drugs, and further inflating medical costs.

This has been a genuine bipartisan effort, and I must thank all my colleagues, including Senator HATCH who has a long-standing interest in these issues, subcommittee Chairman KOHL who has worked with me from the start on this effort, and particularly Senator GRASSLEY, who has worked hard to reach consensus on this bill that will help protect consumers.

The issue of drug companies paying generic companies not to compete was exposed in recent years by the FTC, and by articles in major newspapers, including an editorial in the July 26, 2000, the New York Times, titled ''Driving Up Drug Prices.'' This editorial concluded that the problem ''needs help from Congress to close loopholes in federal law.'' And while the FTC has sued pharmaceutical companies that have made such secret and anticompetitive deals, as the then-Director of the Bureau of Competition Molly Boast testified before the Judiciary Committee in May 2001, the antitrust enforcement agencies are only finding out about such deals by luck, or by accident. Most recently, the FTC has issued a comprehensive study of the generic pharmaceutical industry which explicitly supported passage of S. 754.

Under current law, the first generic manufacturer that gets permission to sell a generic drug before the patent on the brand-name drug expires, enjoys protection from competition for 180 days—a headstart on other generic companies. That was a good idea—but the unfortunate loophole exploited by a few is that secret deals can be made that allow the manufacturer of the generic drug to claim the 180-day grace

period—to block other generic drugs from entering the market—while, at the same time, getting paid by the brand-name manufacturer to not sell the generic drug.

The bill closes this loophole for those who want to cheat the public, but keeps the system the same for companies engaged in true competition. The deals would be reviewed only by those agencies—the agreements would not be available to the public. I think it is important for Congress not to overact and throw out the good with the bad. Most generic companies want to take advantage of this 180-day provision and deliver quality generic drugs at much lower costs for consumers. We should not eliminate the incentive for them. Instead, we should let the FTC and Justice look at every deal that could lead to abuse, so that only the deals that are consistent with the intent of that law will be allowed to stand. This bill accomplishes precisely that goal, and helps ensure effective and timely access to generic pharmaceuticals that can lower the cost of prescription drugs for seniors, for families, and for all of us.

Mr. REID. Mr. President, I ask unanimous consent that the Hatch-Leahy amendment which is at the desk be agreed to; that the committee amendment, as amended, be agreed to; that the bill, as amended, be read the third time, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be printed in the RECORD.

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

The amendment (No. 4965) was agreed to, as follows:

AMENDMENT NO. 4965

On page 11, line 17, strike ''or''.

On page 11, line 18, strike the period and insert ''; or''.

On page 11, after line 18, insert the following: (D) packaging and labeling contracts.

On page 13, line 17, strike all beginning with ''Equitable'' through line 23.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The bill (S. 754), as amended, was read the third time and passed, as follows:

S. 754

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION. 1. SHORT TITLE.

This Act may be cited as the ''Drug Competition Act of 2002''.

SEC. 2. FINDINGS.

Congress finds that—

(1) prescription drug prices are increasing at an alarming rate and are a major worry of many senior citizens and American families;

(2) there is a potential for companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs to enter into financial deals that could tend to restrain trade and greatly reduce competition and increase prescription drug expenditures for American citizens; and

(3) enhancing competition among these companies can significantly reduce prescription drug expenditures for Americans.

SEC. 3. PURPOSES.

The purposes of this Act are—

(1) to provide timely notice to the Department of Justice and the Federal Trade Commission regarding agreements between companies with patent rights regarding brand name drugs and companies which could manufacture generic versions of such drugs; and

(2) by providing timely notice, to enhance the effectiveness and efficiency of the enforcement of the antitrust and competition laws of the United States.

SEC. 4. DEFINITIONS.

In this Act:

(1) ANDA.—The term ''ANDA'' means an Abbreviated New Drug Application, as defined under section 201(aa) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(aa)).

(2) ASSISTANT ATTORNEY GENERAL.—The term ''Assistant Attorney General'' means the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice.

(3) BRAND NAME DRUG.—The term ''brand name drug'' means a drug approved under section 505(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(c)).

(4) BRAND NAME DRUG COMPANY.—The term ''brand name drug company'' means the party that received Food and Drug Administration approval to market a brand name drug pursuant to an NDA, where that drug is the subject of an ANDA, or a party owning or controlling enforcement of any patent listed in the Approved Drug Products With Therapeutic Equivalence Evaluations of the Food and Drug Administration for that drug, under section 505(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b)).

(5) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

(6) GENERIC DRUG.—The term ''generic drug'' means a product that the Food and Drug Administration has approved under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(7) GENERIC DRUG APPLICANT.—The term ''generic drug applicant'' means a person who has filed or received approval for an ANDA under section 505(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)).

(8) NDA.—The term ''NDA'' means a New Drug Application, as defined under section 505(b) et seq. of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(b) et seq.)

SEC. 5. NOTIFICATION OF AGREEMENTS.

(a) IN GENERAL.—

(1) REQUIREMENT.—A generic drug applicant that has submitted an ANDA containing a certification under section 505(j)(2)(vii)(IV) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(2)(vii)(IV)) and a brand name drug company that enter into an agreement described in paragraph (2), prior to the generic drug that is the subject of the application entering the market, shall each file the agreement as required by subsection (b).

(2) DEFINITION.—An agreement described in this paragraph is an agreement regarding—

(A) the manufacture, marketing or sale of the brand name drug that is the subject of the generic drug applicant's ANDA;

(B) the manufacture, marketing or sale of the generic drug that is the subject of the generic drug applicant's ANDA; or

(C) the 180-day period referred to in section 505(j)(5)(B)(iv) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(5)(B)(iv)) as it applies to such ANDA or to any other ANDA based on the same brand name drug.

(b) FILING.—

(1) AGREEMENT.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any such agreement, except that the generic drug applicant and the brand-name drug company shall not be required to file an agreement that solely concerns—

(A) purchase orders for raw material supplies;

(B) equipment and facility contracts;

(C) employment or consulting contracts; or

(D) packaging and labeling contracts.

(2) OTHER AGREEMENTS.—The generic drug applicant and the brand name drug company entering into an agreement described in subsection (a)(2) shall file with the Assistant Attorney General and the Commission the text of any other agreements not described in subsection (a)(2) between the generic drug applicant and the brand name drug company which are contingent upon, provide a contingent condition for, or are otherwise related to an agreement which must be filed under this Act.

(3) DESCRIPTION.—In the event that any agreement required to be filed by paragraph (1) or (2) has not been reduced to text, both the generic drug applicant and the brand name drug company shall file written descriptions of the non-textual agreement or agreements that must be filed sufficient to reveal all of the terms of the agreement or agreements.

SEC. 6. FILING DEADLINES.

Any filing required under section 5 shall be filed with the Assistant Attorney General and the Commission not later than 10 business days after the date the agreements are executed.

SEC. 7. DISCLOSURE EXEMPTION.

Any information or documentary material filed with the Assistant Attorney General or the Commission pursuant to this Act shall be exempt from disclosure under section 552 of title 5, and no such information or documentary material may be made public, except as may be relevant to any administrative or judicial action or proceeding. Nothing in this section is intended to prevent disclosure to either body of Congress or to any duly authorized committee or subcommittee of the Congress.

SEC. 8. ENFORCEMENT.

(a) CIVIL PENALTY.—Any brand name drug company or generic drug applicant which fails to comply with any provision of this Act shall be liable for a civil penalty of not more than $11,000, for each day during which such entity is in violation of this Act. Such penalty may be recovered in a civil action brought by the United States, or brought by the Commission in accordance with the procedures established in section 16(a)(1) of the Federal Trade Commission Act (15 U.S.C. 56(a)).

(b) COMPLIANCE AND EQUITABLE RELIEF.—If any brand name drug company or generic drug applicant fails to comply with any provision of this Act, the United States district court may order compliance, and may grant such other equitable relief as the court in its discretion determines necessary or appropriate, upon application of the Assistant Attorney General or the Commission.

SEC. 9. RULEMAKING.

The Commission, with the concurrence of the Assistant Attorney General and by rule in accordance with section 553 of title 5 United States Code, consistent with the purposes of this Act—

(1) may define the terms used in this Act;

(2) may exempt classes of persons or agreements from the requirements of this Act; and

(3) may prescribe such other rules as may be necessary and appropriate to carry out the purposes of this Act.

SEC. 10. SAVINGS CLAUSE.

Any action taken by the Assistant Attorney General or the Commission, or any failure of the Assistant Attorney General or the Commission to take action, under this Act shall not bar any proceeding or any action with respect to any agreement between a brand name drug company and a generic drug applicant at any time under any other provision of law, nor shall any filing under this Act constitute or create a presumption of any violation of any antitrust or competition laws.

SEC. 11. EFFECTIVE DATE.

This Act shall—

(1) take effect 30 days after the date of enactment of this Act; and

(2) shall apply to agreements described in section 5 that are entered into 30 days after the date of enactment of this Act.

CONSUMER PRODUCT SAFETY ACT AMENDMENT

Mr. REID. Mr. President, I ask unanimous consent that the Commerce Committee be discharged from further consideration of H.R. 727 and that the Senate proceed to its consideration.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 727) to amend the Consumer Product Safety Act to provide that low-speed electric bicycles are consumer products subject to such Act.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate; and that any statements relating to the bill be in the RECORD.

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

The bill (H.R. 727) was read the third time and passed.

CHILD SAFETY ENHANCEMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5504.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 5504) to provide for the improvement of the safety of child restraints in passenger motor vehicles, and for other purposes.

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

Mr. REID. Mr. President, I ask unanimous consent that the bill be read a third time, passed, and the motion to reconsider be laid upon the table; and that any statements relating to the bill be printed in the RECORD.

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

The bill (H.R. 5504) was read the third time and passed.

FEDERAL AVIATION ADMINISTRATION RESEARCH, ENGINEERING AND DEVELOPMENT ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 697, S. 2951, a bill to authorize appropriations for the Federal Aviation Administration.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (S. 2951) to authorize appropriations for the Federal Aviation Administration, and for other purposes.

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

Mr. REID. I understand Senators ROCKEFELLER, HOLLINGS, MCCAIN, and HUTCHISON of Texas have an amendment at the desk, and I ask that the amendment be considered and agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table; that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The amendment (No. 4966) was agreed to, as follows:

AMENDMENT NO. 4966

(Purpose: To include the House of Representatives Committee on Science as a recipient of each of all the required reports, and to make other minor changes)

On page 3, beginning in line 21, strike ''Transportation and'' and insert ''Transportation,''.

On page 3, line 23, strike ''Infrastructure.'' and insert ''Infrastructure, and the House of Representatives Committee on Science.''.

On page 4, strike lines 18 through 23, and insert the following:

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements.

On page 5, beginning in line 22, strike ''Transportation and'' and insert ''Transportation,''.

On page 5, line 24, strike ''Infrastructure.'' and insert ''Infrastructure, and the House of Representatives Committee on Science.''.

On page 8, strike lines 9 through 13, and insert the following:

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

The bill (S. 2951), as amended, was read the third time and passed, as follows:

S. 2951

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Federal Aviation Administration Research, Engineering, and Development Act of 2002''.

SEC. 2. AUTHORIZATION OF APPROPRIATIONS.

(a) AMOUNTS AUTHORIZED.—Section 48102(a) of title 49, United States Code, is amended—

(1) by striking ''and'' at the end of paragraph (7);

(2) by striking the period at the end of paragraph (8) and inserting a semicolon; and

(3) by adding at the end the following:

''(9) for fiscal year 2003, $261,000,000, including—

''(A) $211,000,000 to improve aviation safety;

''(B) $18,000,000 to improve the efficiency of the air traffic control system;

''(C) $16,000,000 to reduce the environmental impact of aviation; and

''(D) $16,000,000 to improve the efficiency of mission support;

''(10) for fiscal year 2004, $274,000,000, including—

''(A) $221,000,000 to improve aviation safety;

''(B) $19,000,000 to improve the efficiency of the air traffic control system;

''(C) $17,000,000 to reduce the environmental impact of aviation; and

''(D) $17,000,000 to improve the efficiency of mission support; and

''(11) for fiscal year 2005, $287,000,000, including—

''(A) $231,000,000 to improve aviation safety;

''(B) $20,000,000 to improve the efficiency of the air traffic control system;

''(C) $18,000,000 to reduce the environmental impact of aviation; and

''(D) $18,000,000 to improve the efficiency of mission support.''.

SEC. 3. COORDINATION OF NATIONAL AVIATION SAFETY AND SECURITY RESEARCH PROGRAMS.

(a) DEVELOPMENT OF PLAN.—Not later than June 30, 2003, the National Aeronautics and Space Administration Administrator, the Federal Aviation Administration Administrator, and the Under Secretary of Transportation for Security shall prepare and transmit an updated integrated civil aviation research and development plan to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science.

(b) CONTENTS.—The updated integrated civil aviation research and development plan shall include—

(1) identification of the respective aviation research and development requirements, roles, and responsibilities of the National Aeronautics and Space Administration, the Federal Aviation Administration, and the Transportation Security Administration; and

(2) review of steps they could take to facilitate the transfer and adoption of new technologies in an operational environment, including consideration of increasing the exchange of research staff, providing greater details on funding at the project level in joint plans, and providing for greater use of technology readiness in program plans and budgets to help frame the maturity of new technologies and determine when they can be implemented.

SEC. 4. RESEARCH PROGRAM TO IMPROVE AIRFIELD PAVEMENTS.

The Federal Aviation Administration Administrator shall continue the program to consider awards to nonprofit concrete and asphalt pavement research foundations to improve the design, construction, rehabilitation, and repair of concrete and asphalt airfield pavements to aid in the development of safer, more cost-effective, and more durable airfield pavements. The Administrator may use grants or cooperative agreements in carrying out this section. Nothing in this section requires the Administrator to prioritize

an airfield pavement research program above safety, security, Flight 21, environment, or energy research programs.

SEC. 5. ENSURING APPROPRIATE STANDARDS FOR AIRFIELD PAVEMENTS.

(a) IN GENERAL.—The Federal Aviation Administration Administrator shall review and determine whether the Federal Aviation Administration's standards used to determine the appropriate thickness for asphalt and concrete airfield pavements are in accordance with the Federal Aviation Administration's standard 20-year-life requirement using the most up-to-date available information on the life of airfield pavements. If the Administrator determines that such standards are not in accordance with that requirement, the Administrator shall make appropriate adjustments to the Federal Aviation Administration's standards for airfield pavements.

(b) REPORT.—Within 1 year after the date of enactment of this Act, the Administrator shall report the results of the review conducted under subsection (a) and the adjustments, if any, made on the basis of that review to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science.

SEC. 6. AIR TRAFFIC MANAGEMENT RESEARCH AND DEVELOPMENT INITIATIVE.

(a) OBJECTIVE.—The Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall participate in a national initiative with the objective of defining and developing an air traffic management system designed to meet national long-term aviation security, safety, and capacity needs. The initiative should result in a multiagency blueprint for acquisition and implementation of an air traffic management system that would—

(1) build upon current air traffic management and infrastructure initiatives;

(2) improve the security, safety, quality, and affordability of aviation services;

(3) utilize a system of systems approach;

(4) develop a highly integrated, secure common information network to enable common situational awareness for all appropriate system users; and

(5) ensure seamless global operations for system users.

(b) IMPLEMENTATION.—In implementing subsection (a), the Federal Aviation Administration Administrator, in coordination with the National Aeronautics and Space Administration Administrator, shall work with other appropriate Government agencies and industry to—

(1) develop system performance requirements;

(2) determine an optimal operational concept and system architecture to meet such requirements;

(3) utilize new modeling, simulation, and analysis tools to quantify and validate system performance and benefits;

(4) ensure the readiness of enabling technologies; and

(5) develop a transition plan for successful implementation into the National Airspace System.

SEC. 7. ASSESSMENT OF WAKE TURBULENCE RESEARCH AND DEVELOPMENT PROGRAM.

(a) ASSESSMENT.—The Federal Aviation Administration Administrator shall enter into an arrangement with the National Research Council for an assessment of the Federal Aviation Administration's proposed wake turbulence research and development program. The assessment shall address—

(1) research and development goals and objectives;

(2) research and development objectives that should be part of Federal Aviation Administration's proposed program;

(3) proposed research and development program's ability to achieve the goals and objectives of the Federal Aviation Administration, and of the National Research Council, the schedule, and the level of resources needed; and

(4) the roles other Federal agencies, such as National Aeronautics and Space Administration and the National Oceanic and Atmospheric Administration, should play in wake turbulence research and development, and coordination of these efforts.

(b) REPORT.—A report containing the results of the assessment shall be provided to the Senate Committee on Commerce, Science, and Transportation, the House of Representatives Committee on Transportation and Infrastructure, and the House of Representatives Committee on Science not later than 1 year after the date of enactment of this Act.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to the Federal Aviation Administration Administrator for fiscal year 2003, $500,000 to carry out this section.

SEC. 8. DEVELOPMENT OF ANALYTICAL TOOLS AND CERTIFICATION METHODS.

The Federal Aviation Administration may conduct research to promote the development of analytical tools to improve existing certification methods and to reduce the overall costs to manufacturers for the certification of new products.

SEC. 9. CABIN AIR QUALITY RESEARCH PROGRAM.

In accordance with the recommendation of the National Academy of Sciences in its report entitled ''The Airliner Cabin Environment and the Health of Passengers and Crew'', the Federal Aviation Administration may establish a research program to answer questions about cabin air quality of aircraft.

SEC. 10. RESEARCH TO IMPROVE CAPACITY AND REDUCE DELAYS.

The Administrator may include, as part of the Federal Aviation Administration research program, a systematic review and assessment of the specific causes of airport delay at the 31 airports identified in the Airport Benchmarking Study, on an airport-by-airport basis.

DIRECTING LAND CONVEYANCE TO CHATHAM COUNTY, GEORGIA

Mr. REID. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of Calendar No. 615, H.R. 2595.

The PRESIDING OFFICER. The clerk will report the bill by title.

The legislative clerk read as follows:

A bill (H.R. 2595) to direct the Secretary of the Army to convey a parcel of land to Chatham County, Georgia.

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

Mr. REID. I ask unanimous consent that the bill be read three times, passed, the motion to reconsider be laid upon the table, and that any statements relating thereto be printed in the RECORD, with no intervening action or debate.

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

The bill (H.R. 2595) was read the third time and passed.

SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002

Mr. REID. Mr. President, I ask unanimous consent that the Finance Committee be discharged from further consideration and the Senate proceed to the consideration of H.R. 4070.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will report the bill by title.

A bill (H.R. 4070) to amend the Social Security Act and the Internal Revenue Code of 1986 to provide additional safeguards for Social Security and Supplemental Security Income beneficiaries with representative payees, to enhance program protections, and for other purposes.

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

Mr. BAUCUS. Mr. President, I rise today to urge my colleagues to support the Senate version of H.R. 4070, the ''Social Security Program Protection Act of 2002.'' H.R. 4070 is bipartisan legislation developed by Ways and Means Social Security Subcommittee Chairman SHAW and ranking member MATSUI. H.R. 4070 passed the House unanimously by a vote of 425 to 0. In keeping with the bipartisan tradition of the Senate Finance Committee and with the bipartisan origins of this legislation, Senator GRASSLEY and I have worked together to further refine this legislation for Senate consideration.

The House-passed version of H.R. 4070 makes a number of important changes to the Social Security and Supplemental Security Income, SSI, programs. These changes will accomplish a number of important goals: they will enhance the financial security of some of the most vulnerable beneficiaries of these programs, increase protections to seniors from deceptive practices by individuals in the private sector, improve program integrity, thereby saving money for the Social Security and Medicare Trust Funds and taxpayers, and reduce disincentives to employment for disabled individuals.

One of the most important results of this legislation will be to enhance the financial security of the almost 7 million Social Security and SSI beneficiaries who are not capable of managing their own financial affairs due to advanced age or disability. The Social Security Administration, SSA, currently appoints individuals or organizations to act as ''representative payees'' for such beneficiaries. Most of these representative payees perform their roles conscientiously. However, some do not. Indeed, there have even been instances of terrible abuse in this program.

It is imperative that Congress take action to guard vulnerable seniors and disabled individuals from such abuse. This legislation increases requirements for SSA to provide restitution to beneficiaries when representative payees defraud the beneficiaries of their benefits. The legislation also tightens the qualifications for representative payees, increases oversight of the program, and imposes stricter penalties on those who violate their responsibilities.

The legislation expands the protection to seniors and disabled individuals by increasing the list of references to Social Security, Medicare and Medicaid which cannot be used by private-sector individuals, companies and organizations to give a false impression of Federal endorsement. The legislation also protects seniors from those who deceptively attempt to charge them for services that the seniors could receive for free from SSA.

H.R. 4070 improves program integrity by expanding the current prohibition against paying benefits to fugitive felons. As part of the 1996 welfare reform law, Congress banned the payment of SSI benefits to these individuals. However, under current law, fugitive felons can still receive Social Security benefits under title II. This legislation prohibits the payment of title II Social Security benefits to fugitive felons.

H.R. 4070 also includes technical amendments to improve the effectiveness of the Ticket to Work and Work Incentives Improvement Act, legislation passed in 1999 to help beneficiaries with disabilities become employed and move toward self-sufficiency.

To these House-passed provisions, Senator GRASSLEY and I have added some new provisions that we feel are very important.

First, we added a program integrity provision which will give the SSA Inspector General additional tools to pursue individuals who commit fraud by concealing work activity while they are receiving disability benefits.

Second, we included a provision to make uniform an exemption to the Government Pension Offset. The Government Pension Offset, GPO, was enacted in order to equalize the treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by an amount equal to two-thirds of the government pension. However, as a recent GAO report highlighted, State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System, CSRS, a system that is not covered by Social Security, to the Federal Employee Retirement System, FERS, a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO. Our Senate version of H.R. 4070 makes the exemption to the Government Pension Offset the same for State and local government workers as for Federal Government workers.

Finally, we added four technical refinements to the Railroad Retirement and Survivors' Improvement Act of 2001. These changes will help to promote the efficient implementation of that important legislation which became law last year.

I believe that each of the provisions of H.R. 4070, as passed by the House, and each of the provisions that Senator GRASSLEY and I have added deserve the support of the Senate. Moreover, in an attempt to expedite congressional passage of this legislation, the changes that Senator GRASSLEY and I want to make to the House-passed bill have already been worked out with both the chairman and the ranking member of the Social Security Subcommittee of the House Ways and Means Committee. Indeed, I have a statement that has been agreed to by the chairman and the ranking member of the Social Security Subcommittee, as well as by the chairman and ranking member of the Senate Finance Committee. This statement provides details about each of the provisions of the legislation, as well as the rationale behind each provision. I am submitting this full statement for the record.

I would also like to point out that the legislation as a whole has net savings of more than $500 million over ten years for taxpayers, according to the non-partisan Congressional Budget Office. As a result, the Social Security and Medicare Trust Fund balances will increase by more than $500 million over that period, excluding increases from increased interest income. Moreover, over the next 75 years, this legislation will decrease—not increase—the long-run actuarial deficit for the Social Security Trust Funds, although by a negligible amount. This information comes from Office of the Independent Chief Actuary for the Social Security Administration. I am submitting the estimate from the office of the Chief Actuary of the Social Security Administration for the RECORD. I will submit the official written estimate from the Congressional Budget Office for the RECORD as soon as I receive it.

This legislation contains the types of improvements we can all agree on, as demonstrated by the overwhelming bipartisan vote in the House, and the bipartisan, bicameral agreement of the chairman and ranking members of the committees of jurisdiction. I wholeheartedly urge my colleagues in the Senate to approve these sensible and important changes.

Mr. President, I ask unanimous consent that a summary of the bill and a memorandum from the Social Security Administration be printed in the RECORD.

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

"THE SOCIAL SECURITY PROGRAM PROTECTION ACT OF 2002" SUMMARY

TITLE I. PROTECTION OF BENEFICIARIES

SUBTITLE A. REPRESENTATIVE PAYEES

SECTION 101. AUTHORITY TO REISSUE BENEFITS MISUSED BY ORGANIZATIONAL REPRESENTATIVE PAYEES

Present law

The Social Security Act requires the reissuance of benefits misused by any representative payee when the Commissioner finds that the Social Security Administration (SSA) negligently failed to investigate and monitor the payee.

Explanation of provision

The new provision eliminates the requirement that benefits be reissued only upon a finding of SSA negligence in the case of misuse by an organizational payee or an individual payee representing 15 or more beneficiaries. Thus, the Commissioner would reissue benefits under Titles II, VIII and XVI in any case in which a beneficiary's funds are misused by an organizational payee or an individual payee representing 15 or more beneficiaries.

The new provision defines misuse as any case in which a representative payee converts the benefits entrusted to his or her care for purposes other than the "use and benefit" of the beneficiary, and authorizes the Commissioner to define "use and benefit" in regulation.

In crafting a regulatory definition for "use and benefit," the Commissioner should take special care to distinguish between the situation in which the representative payee violates his or her trust responsibility by converting the benefits to further the payee's own self interest, and the situation in which the payee faithfully serves the beneficiary by using the benefits in a way that principally aids the beneficiary but which also incidentally aids the payee or another individual. For instance, cases in which a representative payee uses the benefits entrusted to his or her care to help pay the rent on an apartment that he or she and the beneficiary share should not be considered misuse.

This provision applies to benefit misuse by a representative payee as determined by the Commissioner on or after January 1, 1995.

Reason for change

There have been a number of highly publicized cases involving organizational representative payees that have misused large sums of monies paid to them on behalf of the Social Security and Supplemental Security Income (SSI) beneficiaries they represented. In most instances, these organizations operated as criminal enterprises, bent not only on stealing funds from beneficiaries, but also on carefully concealing the evidence of their wrongdoing. These illegal activities went undetected until large sums had been stolen. If the Social Security Administration is not shown to be negligent for failing to investigate and monitor the payee, affected beneficiaries may never be repaid or may be repaid only when the representative payee committing misuse makes restitution to SSA.

Requiring the SSA to reissue benefit payments to the victims of misuse by organizational payees or individual payees serving 15 or more beneficiaries protects beneficiaries who are among the most vulnerable because they may have no family members or friends who are willing or able to manage their benefits for them. With respect to individual representative payees, the provision applies only to representative payees serving 15 or more beneficiaries. As with many cases involving organizational representative payees, these are cases which may be the hardest to detect. Moreover, extending the provision to cases involving individual payees serving fewer beneficiaries may lead to fraudulent claims of misuse. These claims, which often turn on information available only from close family members, would be difficult to assess. Similarly, extension of this provision to these cases could potentially encourage misuse or poor money management by these individual representative payees if they believed that the beneficiary could eventually be paid a second time by SSA.

The effective date would protect the interests of beneficiaries affected by these cases

of egregious misuse that have been identified in recent years.

SECTION 102. OVERSIGHT OF REPRESENTATIVE PAYEES

Present law

Present law requires non-governmental fee-for-service organizational representative payees to be licensed or bonded. Periodic on-site reviews of representative payees by SSA is not required.

Explanation of provision

The new provision requires non-governmental fee-for-service organizational representative payees to be both licensed and bonded (provided that licensing is available in the State). In addition, such representative payees must submit yearly proof of bonding and licensing, as well as copies of any available independent audits that were performed on the payee in the past year.

The new provision also requires the Commissioner of Social Security to conduct periodic onsite reviews of: (1) a person who serves as a representative payee to 15 or more beneficiaries, (2) non-governmental fee-for-service representative payees (as defined in Titles II and XVI), and (3) any agency that serves as the representative payee to 50 or more beneficiaries. In addition, the Commissioner is required to submit an annual report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on the reviews conducted in the prior fiscal year.

The bonding, licensing, and audit provisions are effective on the first day of the 13th month following enactment of the legislation. The periodic on-site review provision is effective upon enactment.

Reason for change

Strengthening the bonding and licensing requirements for representative payees would add further safeguards to protect beneficiaries' funds. State licensing provides for some oversight by the State into the fee-for-service organization's business practices, and bonding provides some assurances that a surety company has investigated the organization and approved it for the level of risk associated with the bond for community-based non-profit social service agencies serving as representative payees.

On-site periodic visits should be conducted regularly to reduce misuse of funds. To the degree possible, appropriate auditing and accounting standards should be utilized in conducting such reviews.

SECTION 103. DISQUALIFICATION FROM SERVICE AS REPRESENTATIVE PAYEE OF PERSONS CONVICTED OF OFFENSES RESULTING IN IMPRISONMENT FOR MORE THAN ONE YEAR, OF PERSONS FLEEING PROSECUTION, CUSTODY OR CONFINEMENT, AND OF PERSONS VIOLATING PROBATION OR PAROLE

Present law

Sections 205, 807, and 1631 of the Social Security Act disqualify individuals from being representative payees if they have been convicted of fraud under the Social Security Act.

Explanation of provision

The new provision expands the scope of disqualification to prohibit an individual from serving as a representative payee if he or she: (1) has been convicted imprisonment for more than one year; (2) is fleeing to avoid prosecution, or custody or confinement after conviction; or (3) violated a condiction of probation or parole. An exception applies if the Commissioner of Social Security determines that a person who has been convicted of any offense resulting in imprisonment for more than one year would, notwithstanding such conviction, be an appropriate representative payee.

The new provision requires the Commissioner to submit a report to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate evaluating existing procedures and reviews conducted for representative payees to determine whether they are sufficient to protect benefits from being misused.

This provision is effective on the first day of the 13th month beginning after the date of enactment, except that the report to Congress is due no later than 270 days after the date of enactment.

Reason for change

Prohibiting persons convicted of offenses resulting in imprisonment for more than one year, of persons fleeing prosecution, custody or confinement, and of persons violating probation or parole from serving as representative payees, not just prohibiting those convicted of fraud under the Social Security Act, decreases the likelihood of mismanagement or abuse of beneficiaries' funds. Also, allowing such person to serve as representative payees places beneficiary payments in potential jeopardy and could raise serious questions about the SSA's stewardship of taxpayer funds. The agency's report to Congress will assist the committees of jurisdiction in both the House and Senate in their oversight of the representative payee program.

The criminal background information provided by those who apply to be representative payees should be the same as the information considered by the Commissioner to implement this provision.

SECTION 104. FEE FORFEITURE IN CASE OF BENEFIT MISUSE BY REPRESENTATIVE PAYEES

Present law

Certain organizational representative payees are authorized to collect a fee for their services. The fee, which is determined by a statutory formula, is deducted from the beneficiary's benefit payments.

Explanation of provision

The new provision requires representative payees to forfeit the fee for those months during which the representative payee misused funds, as determined by the Commissioner of Social Security or a court of competent jurisdiction. This provision applies to any month involving benefit misuse by a representative payee as determined by the Commissioner after December 31, 2002.

Reason for change

Payees who misuse their clients' funds are not properly performing the service for which the fee was paid and therefore such fees should be forfeited. Permitting the payee to retain the fees is tantamount to rewarding the payee for violating his or her responsibility to use the benefits for the individual's needs.

SECTION 105. LIABILITIES OF REPRESENTATIVE PAYEES FOR MISUSED BENEFITS

Present law

Although the SSA has been provided with expanded authority to recover overpayments (such as the use of tax refund offsets, referral to contract collection agencies, notification of credit bureaus, and administrative offsets of future federal benefits payments), these tools cannot be used to recoup benefits misused by a representative payee.

Explanation of provision

The new provision treats benefits misused by a non-governmental representative payee (including all individual representative payees) as an overpayment to the representative payee, rather than the beneficiary, thus subjecting the representative payee to current overpayment recovery authorities. Any recovered benefits not already reissued to the beneficiary pursuant to section 101 of this legislation would be reissued to either the beneficiary or their alternate representative payee, up to the total amount misused. This provision applies to benefit misuse by a representative payee in any case where the Commissioner of Social Security makes a determination of misuse after December 31, 2002.

Reason for change

Although the SSA has been provided with expanded authority to recover overpayments, these tools cannot be used to recoup benefits misused by a representative payee. Treating benefits misused by non-governmental organization representative payees and all individual payees as overpayments to the representative payee would provide the SSA with additional means for recovering misused payments.

SECTION 106. AUTHORITY TO REDIRECT DELIVERY OF BENEFIT PAYMENTS WHEN A REPRESENTATIVE PAYEE FAILS TO PROVIDE REQUIRED ACCOUNTING

Present law

The Social Security Act requires representative payees to submit accounting reports to the Commissioner of Social Security detailing how a beneficiary's benefit payments were used. A report is required at least annually, but may be requested by the Commissioner at any time if the Commissioner has reason to believe the representative payee is misusing benefits.

Explanation of provision

The new provision authorizes the Commissioner of Social Security to require a representative payee to receive any benefits under Titles II, VIII, and XVI in person at a Social Security field office if the representative payee fails to provide an annual accounting of benefits report. The Commissioner would be required to provide proper notice and the opportunity for a hearing prior to redirecting benefits to the field office. This provision is effective 180 days after the date of enactment.

Reason for change

Accounting reports are an important means of monitoring the activities of representative payees to prevent fraud and abuse. Redirecting benefit payments to the field office would enable the agency to promptly address the failure of the representative payee to file a report.

SUBTITLE B: ENFORCEMENT

SECTION 111. CIVIL MONETARY PENALTY AUTHORITY WITH RESPECT TO WRONGFUL CONVERSIONS BY REPRESENTATIVE PAYEES

Present law

The Social Security Act authorizes the Commissioner to impose a civil monetary penalty (of up to $5,000 for each violation) along with an assessment (of up to twice the amount wrongly paid), upon any person who knowingly uses false information or knowingly omits information to wrongly obtain Title II, VIII or XVI benefits.

Explanation of provision

The new provision expands the application of civil monetary penalties to include misuse of Title II, VIII or XVI benefits by representative payees. A civil monetary penalty of up to $5,000 may be imposed for each violation, along with an assessment of up to twice the amount of misused benefits. This provision applies to violations occurring after the date of enactment.

Reason for change

Providing authority for SSA to impose civil monetary penalties along with an assessment of up to twice the amount of misused benefits, in addition to the SSA's

present authority permitting recovery of misused funds, would provide the SSA with an additional means of addressing misuse by representative payees.

TITLE II. PROGRAM PROTECTIONS

SECTION 201. ISSUANCE BY COMMISSIONER OF SOCIAL SECURITY OF RECEIPTS TO ACKNOWLEDGE SUBMISSION OF REPORTS OF CHANGES IN WORK OR EARNINGS STATUS

Present law

Changes in work or earnings status can affect a Title II disability beneficiary's right to continued entitlement to disability benefits. Changes in the amount of earned income can also affect an SSI recipient's continued eligibility for SSI benefits or his or her monthly benefit amount.

The Commissioner has promulgated regulations that require Title II disability beneficiaries to report changes in work or earnings status (20 CFR, 404.1588), and regulations that require SSI recipients (or their representative payees) to report any increase or decrease in income (20 CFR, 416.704—416.714).

Explanation of provision

The new provision requires the Commissioner to issue a receipt to a disabled beneficiary (or representative of a beneficiary) who reports a change in his or her work or earnings status. The Commissioner is required to continue issuing such receipts until the Commissioner has implemented a centralized computer file that would record the date on which the disabled beneficiary (or representative) reported the change in work or earnings status.

This provision requires the Commissioner to begin issuing receipts as soon as possible, but no later than one year after the date of enactment. The Committees with jurisdiction over the Social Security Administration, the House Committee on Ways and Means and the Senate Committee on Finance (the Committees), are aware that SSA has developed software known as the Modernized Return to Work System (MRTW). This software will assist SSA employees in recording information about changes in work and earnings status and in making determinations of whether such changes affect continuing entitlement to disability benefits. The software also has the capability of automatically issuing receipts. SSA has informed the Committees that this software is already in use in some of the agency's approximately 1300 local field offices, and that SSA expects to put it into operation in the remainder of the field offices over the next year. The Committees expect that SSA field offices that are already using the MRTW system will immediately begin issuing receipts to disabled beneficiaries who report changes in work or earnings status, and that SSA will require the other field offices to begin issuing receipts as these offices begin using the MRTW system over the next year. For disabled Title XVI beneficiaries, if SSA issues a notice to the beneficiary immediately following the report of earnings that details the effect of the change in income on the monthly benefit amount, this notice would serve as a receipt.

Reason for change

Witnesses have testified before the Social Security Subcommittee and the Human Resources Subcommittee of the House Ways and Means Committee that SSA does not currently have an effective system in place for processing and recording Title II and Title XVI disability beneficiaries' reports of changes in work and earnings status. Issuing receipts to disabled beneficiaries who make such reports would provide them with proof that they had properly fulfilled their obligation to report these changes.

SECTION 202. DENIAL OF TITLE II BENEFITS TO PERSONS FLEEING PROSECUTION, CUSTODY, OR CONFINEMENT, AND TO PERSONS VIOLATING PROBATION OR PAROLE

Present law

The welfare reform law (''Personal Responsibility and Work Opportunity Reconciliation Act of 1996,'' P.L. 104–193) included provisions making persons ineligible to receive SSI benefits during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the same prohibition does not apply to Social Security benefits under Title II.

Explanation of provision

The new provision makes persons ineligible to receive Social Security benefits under Title II during any month in which they are fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or are in violation of a condition of probation or parole. However, the Commissioner may, for good cause, pay withheld benefits to persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. Finally, the Commissioner, upon written request by law enforcement officials, shall assist such officials in apprehending fugitives by providing them with the address, Social Security number, and, if available to SSA, a photograph of the fugitive.

This provision is effective on the first day of the first month that begins on or after the date that is 9 months after the date of enactment.

Reason for change

The Inspector General has estimated that persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony, or in violation of a condition of probation or parole, receive at least $39 million in Title II Social Security benefits annually. The Inspector General has recommended that the law be changed to prohibit these individuals from receiving such benefits.

Under this provision, the Commissioner would be required to develop regulations within one year of the date of enactment with regard to the use of the ''good cause'' exception to withholding Title II benefits from persons fleeing to avoid prosecution for a felony or to avoid custody or confinement after conviction for a felony. The good cause exception will provide the Commissioner with the ability to pay benefits under unusual circumstances in which the Commissioner deems the withholding of benefits to be inappropriate. The Committees expect that one of the uses to be made by the Commissioner of this discretionary authority will be to deal with situations that arise when Social Security beneficiaries are found to be in flight from a warrant relating to a crime for which the beneficiary is ultimately not convicted. In such circumstances, it is expected that the absence of a conviction should serve as a basis for paying any benefits withheld from the beneficiary during a period of flight.

The Committees have been made aware of situations in which the violation of a condition of probation or parole could involve mitigating circumstances that may warrant further examination regarding the denial of benefits created by this section. The Committees plan to work with the Commissioner of Social Security to further examine such situations in order to evaluate whether the current good faith exception is sufficient.

SECTION 203. REQUIREMENTS RELATING TO OFFERS TO PROVIDE FOR A FEE A PRODUCT OR SERVICE AVAILABLE WITHOUT CHARGE FROM THE SOCIAL SECURITY ADMINISTRATION

Present law

Section 1140 of the Social Security Act prohibits or restricts various activities involving the use of Social Security and Medicare symbols, emblems, or references which give a false impression that an item is approved, endorsed, or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services), or the Department of Health and Human Services. It also provides for the imposition of civil monetary penalties with respect to violations of the section.

Explanation of provision

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. The new provision requires persons or companies offering such services to include in their solicitations a statement that the services which they provide for a fee are available directly from SSA free of charge. The statements would be required to comply with standards promulgated through regulation by the Commissioner of Social Security with respect to their content, placement, visibility, and legibility. The amendment applies to solicitations made after the 6th month following the issuance of these standards. The new provision requires that the Commissioner promulgate regulations within 1 year after the date of enactment.

Reason for change

Several individuals and companies offer Social Security services for a fee even though the same services are available directly from SSA free of charge. For example, SSA's Inspector General has encountered business entities that have offered assistance to individuals in changing their names (upon marriage) or in obtaining a Social Security number (upon the birth of a child) for a fee. These practices can mislead and deceive senior citizens, newlyweds, new parents, and other individuals seeking services who may not be aware that SSA provides these services for free.

SECTION 204. REFUSAL TO RECOGNIZE CERTAIN INDIVIDUALS AS CLAIMANT REPRESENTATIVES

Present law

An attorney in good standing is entitled to represent claimants before the Commissioner of Social Security. The Commissioner may prescribe rules and regulations governing the recognition of persons other than attorneys representing claimants before the Commissioner. Under present law, attorneys disbarred in one jurisdiction, but licensed to practice in another jurisdiction, must be recognized as a claimant's representative.

Explanation of provision

The new provision authorizes the Commissioner to refuse to recognize as a representative, or disqualify as a representative, an attorney who has been disbarred or suspended from any court or bar, or who has been disqualified from participating in or appearing before any Federal program or agency. Due process (i.e., notice and an opportunity for a hearing) would be required before taking such action. Also, if a representative has been disqualified or suspended as a result of collecting an unauthorized fee, full restitution is required before reinstatement can be considered. This provision is effective upon the date of enactment.

Reason for change

This provision would provide additional protections for beneficiaries who may rely

on representatives during all phases of their benefit application process. As part their ongoing oversight of claimant representatives, the Committees intend to review whether options to establish protections for claimants represented by non-attorneys should be considered.

SECTION 205. PENALTY FOR CORRUPT OR FORCIBLE INTERFERENCE WITH ADMINISTRATION OF THE SOCIAL SECURITY ACT

Present law

No provision.

Explanation of provision

The new provision imposes a fine of not more than $5,000, and imprisonment of not more than 3 years, or both, for attempting to intimidate or impede—corruptly or by using force or threats of force—any Social Security Administration (SSA) officer, employee or contractor (including State employees of disability determination services and any individuals designated by the Commissioner) while they are acting in their official capacities under the Social Security Act. If the offense is committed only by threats of force, however, the offender is subject to a fine of not more than $3,000 and/or no more than one year in prison. This provision is effective upon enactment.

Reason for change

This provision extends to SSA employees the same protections provided to employees of the Internal Revenue Service under the Internal Revenue Code of 1954. These protections will allow SSA employees to perform their work with more confidence that they will be safe from harm.

The Internal Revenue Manual defines the term ''corruptly'' as follows: "'Corruptly' characterizes an attempt to influence any official in his or her official capacity under this title by any improper inducement. For example, an offer of a bribe or a passing of a bribe to an Internal Revenue employee for the purpose of influencing him or her in the performance of his or her official duties is corrupt interference with the administration of federal laws.'' (Internal Revenue Manual, [9.5] 11.3.2.2, 4–09–1999).

The Committees expect that judgment will be used in enforcing this section. Social Security and SSI disability claimants and beneficiaries, in particular, are frequently subject to multiple, severe life stressors, which may include severe physical, psychological, or financial difficulties. In addition, disability claimants or beneficiaries who encounter delays in approval of initial benefit applications or in post-entitlement actions may incur additional stress, particularly if they have no other source of income. Under such circumstances, claimants or beneficiaries may at times express frustration in an angry manner, without truly intending to threaten or intimidate SSA employees. In addition, approximately 25% of Social Security disability beneficiaries and 35% of disabled SSI recipients have mental impairments, and such individuals may be less able to control emotional outbursts. These factors should be taken into account in enforcing this provision.

SECTION 206. USE OF SYMBOLS, EMBLEMS OR NAMES IN REFERENCE TO SOCIAL SECURITY OR MEDICARE

Present law

Section 1140 of the Social Security Act prohibits (subject to civil penalties) the use of Social Security or Medicare symbols, emblems and references on any item in a manner that conveys the false impression that such item is approved, endorsed or authorized by the Social Security Administration, the Health Care Financing Administration (now the Centers for Medicare and Medicaid Services) or the Department of Health and Human Services.

Explanation of provision

The new provision expands the prohibition in present law to several other references to Social Security and Medicare. This provision applies to items sent after 180 days after the date of enactment.

Reason for change

Expansion of this list helps to ensure that individuals receiving any type of mail, solicitations or flyers bearing symbols, emblems or names in reference to Social Security or Medicare are not misled into believing that these agencies approved or endorsed the services or products depicted in the solicitations.

SECTION 207. DISQUALIFICATION FROM PAYMENT DURING TRIAL WORK PERIOD UPON CONVICTION OF FRAUDULENT CONCEALMENT OF WORK ACTIVITY

Present law

An individual entitled to disability benefits under Title II is entitled to a ''trial work period'' to test his or her ability to work. The trial work period allows beneficiaries to work with earnings above the substantial gainful activity level for up to 9 months (which need not be consecutive) without any loss of benefits. A month counts as a trial work period month if the individual earns above a level established by regulation (in 2002, this amount is $560 a month). If the individual does not use the full 9 months within a 60 month period, he or she is entitled to another 9 month trial work period.

SSA's Inspector General has pursued prosecution of Title II disability beneficiaries who fraudulently conceal work activity by applying several criminal statutes, including section 208(a) of the Social Security Act and sections 371 and 641 of Title 18 of the United States Code (Crimes and Criminal Procedures).

Explanation of provision

Under the new provision, an individual who is convicted of fraudulently concealing work activity during the trial work period would not be entitled to receive a disability benefit for trial work period months that occur prior to the conviction but within the same period of disability. If the individual had already been paid benefits for these months, he or she would be liable for repayment of these benefits, in addition to any restitution, penalties, fines, or assessments that were otherwise due.

In order to be considered to be fraudulently concealing work activity under this provision, the individual must have: (1) provided false information to SSA about his or her earnings during that period; (2) worked under another identity, including under the social security number of another person or a false social security number; or (3) taken other actions to conceal work activity with the intent to fraudulently receive benefits that he or she was not entitled to.

This provision is effective with respect to work activity performed after the date of enactment.

Reason for change

Under current law, if an individual is convicted of fraudulently concealing work activity, the dollar loss to the government is calculated based on the benefits that the individual would have received had he or she not concealed the work activity. During the trial work period, disability beneficiaries continue to receive their monthly benefit amount no matter how much they earn. Therefore, benefits received during the trial work period are not included in calculating the total dollar loss to the government.

Many United States Attorneys set dollar-loss thresholds that they use in determining which fraud cases to prosecute. As benefits received during the trial work period are not included in the dollar-loss totals, the dollar loss to the government may fall below the thresholds set by the United States Attorneys in cases involving fraudulent concealment of work by Title II disability beneficiaries. In such situations, the case would not be prosecuted even if the evidence of fraud was very clear.

This provision rectifies this situation by establishing that individuals convicted of fraudulently concealing work activity during the trial work period are not entitled to receive a benefit for trial work period months prior to the conviction (but within the same period of disability). As a result, in such cases the total dollar loss to the government that is calculated will be greater and more likely to meet the United States Attorneys' thresholds for prosecution.

TITLE III—ATTORNEY REPRESENTATIVE FEE PAYMENT SYSTEM IMPROVEMENTS

SECTION 301. CAP ON ATTORNEY REPRESENTATIVE ASSESSMENTS

Present law

The Social Security Act allows the fees of claimant representatives who are attorneys to be paid by the SSA directly to the attorney out of the claimant's past-due benefits for Title II claims. The SSA, by law, is permitted to charge an assessment at a rate not to exceed 6.3% of approved attorney fees, for the costs of determining, processing, withholding and distributing attorney representative fees for Title II claims.

Explanation of provision

The new provision imposes a cap of $75 on the 6.3% assessment on approved attorney representative fees for Title II claims, and this cap is indexed for inflation. This provision is effective 180 days after the date of enactment.

Reason for change

Testimony was given at a House oversight hearing in May 2001 on Social Security's processing of attorney representative's fees that the amount of the fee assessment is unfair to these attorneys, who provide an important service to claimants. The attorneys who receive fee payments from the agency have their gross revenue reduced by 6.3%, which is about a 20% reduction in the net revenue for most attorneys. As a result of this revenue loss and the time it takes for the SSA to issue the fee payments to attorneys, a number of attorneys have decided to take fewer or none of these cases. The cap on the amount of the assessment would help ensure that enough attorneys remain available to represent claimants before the Social Security Administration.

The Committees continue to be concerned about the agency's processing time for attorney representative fee payments and expect the SSA to further automate the payment process as soon as possible.

The Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate will request the General Accounting Office to conduct a study of claimant representation in the Social Security and Supplemental Security Income programs. The study will include an evaluation of the potential advantages and disadvantages of extending the fee withholding process to non-attorney representatives.

TITLE IV: MISCELLANEOUS AND TECHNICAL AMENDMENTS

SUBTITLE A: AMENDMENTS RELATING TO THE TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999

SECTION 401. APPLICATION OF DEMONSTRATION AUTHORITY SUNSET DATE TO NEW PROJECTS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. These projects can test: (1) alternative methods of treating work activity of individuals entitled to disability benefits; (2) the alteration of other limitations and conditions that apply to such individuals (such as an increase in the length of the trial work period); and (3) implementation of sliding scale benefit offsets. To conduct the projects, the Commissioner may waive compliance with the benefit requirements of Title II and Section 1148, and the HHS Secretary may waive the benefit requirements of Title XVIII. The Commissioner's authority to conduct demonstration projects terminates on December 17, 2004, five years after its enactment in the ''Ticket to Work and Work Incentives Improvement Act of 1999''(P.L. 106–170, ''Ticket to Work Act'').

Explanation of provision

The new provision clarifies that the Commissioner is authorized to conduct demonstration projects that extend beyond December 17, 2004, if such projects are initiated on or before that date (i.e., initiated within the five-year window after enactment of the Ticket to Work Act). This provision is effective upon enactment.

Reason for change

The current five-year limitation on waiver authority restricts the options that may be tested to improve work incentives and return to work initiatives, as several potential options the Commissioner may test would extend past the current five-year limit. As developing a well-designed demonstration project can require several years, the current five-year authority may in some cases not allow sufficient time to both design the project and to conduct it long enough to obtain reliable data.

SECTION 402. EXPANSION OF WAIVER AUTHORITY AVAILABLE IN CONNECTION WITH DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

Section 234 of the Social Security Act provides the Commissioner with general authority to conduct demonstration projects for the disability insurance program. In addition, the Ticket to Work Act specifically directs the Commissioner to conduct demonstration projects for the purpose of evaluating a program for Title II disability beneficiaries under which benefits are reduced by $1 for each $2 of the beneficiary's earnings above a level determined by the Commissioner. To permit a thorough evaluation of alternative methods, section 302 of the Ticket to Work Act allows the Commissioner to waive compliance with the benefit provisions of Title II and allows the Secretary of Health and Human Services to waive compliance with the benefit requirements of Title XVIII.

Explanation of provision

The new provision allows the Commissioner to also waive requirements in Section 1148 of the Social Security Act, which governs the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program), as they relate to Title II. This provision is effective upon enactment.

Reason for change

This additional waiver authority is needed to allow the Commissioner to effectively test the $1-for-$2 benefit offset in combination with return to work services under the Ticket to Work Program. Under the $1-for-$2 benefit offset, earnings of many beneficiaries may not be sufficient to completely eliminate benefits. However, under section 1148 of the Social Security Act, benefits must be completely eliminated before employment networks participating in the Ticket to Work Program are eligible to receive outcome payments. Therefore, employment networks are likely to be reluctant to accept tickets from beneficiaries participating in the $1-for-$2 benefit offset demonstration, making it impossible for SSA to effectively test the combination of the benefit offset and these return to work services. Additionally, section 1148 waiver authority was provided for the broad Title II disability demonstration authority under section 234 of the Social Security Act, but not for this mandated project.

SECTION 403. FUNDING OF DEMONSTRATION PROJECTS PROVIDING FOR REDUCTIONS IN DISABILITY INSURANCE BENEFITS BASED ON EARNINGS

Present law

The Ticket to Work Act provides that the benefits and administrative expenses of conducting the $1-for-$2 demonstration projects will be paid out of the Old-Age, Survivors, and Disability Insurance (OASDI) and Federal Hospital Insurance and Federal Supplementary Medical Insurance (HI/SMI) trust funds, to the extent provided in advance in appropriations acts.

Explanation of provision

The new provision establishes that administrative expenses for the $1-for-$2 demonstration project will be paid out of otherwise available annually-appropriated funds, and that benefits associated with the demonstration project will be paid from the OASDI or HI/SMI trust funds. This provision is effective upon enactment.

Reason for change

For demonstration projects conducted under the broader Title II demonstration project authority under section 234 of the Social Security Act, administrative costs are paid out of otherwise available annually-appropriated funds, and benefits associated with the demonstration projects are paid from the OASDI or HI/SMI trust funds. This provision would make funding sources for the $1 for $2 demonstration project under the Ticket to Work Act consistent with funding sources for other Title II demonstration projects.

SECTION 404. AVAILABILITY OF FEDERAL AND STATE WORK INCENTIVE SERVICES TO ADDITIONAL INDIVIDUALS

Present law

Section 1149 of the Social Security Act (the Act), as added by the Ticket to Work Act, directs SSA to establish a community-based work incentives planning and assistance program to provide benefits planning and assistance to disabled beneficiaries. To establish this program, SSA is required to award cooperative agreements (or grants or contracts) to State or private entities. In fulfillment of this requirement, SSA has established the Benefits Planning, Assistance, and Outreach (BPAO) program. BPAO projects now exist in every state.

Section 1150 of the Act authorizes SSA to award grants to State protection and advocacy (P&A) systems so that they can provide protection and advocacy services to disabled beneficiaries. Under this section, services provided by participating P&A systems may include: (1) information and advice about obtaining vocational rehabilitation (VR) and employment services; and (2) advocacy or other services that a disabled beneficiary may need to secure or regain employment. SSA has established the Protection and Advocacy to Beneficiaries of Social Security (PABSS) Program pursuant to this authorization.

To be eligible for services under either the BPAO or PABSS programs, an individual must be a ''disabled beneficiary'' as defined under section 1148(k) of the Act. Section 1148(k) defines a disabled beneficiary as an individual entitled to Title II benefits based on disability or an individual who is eligible for federal Supplemental Security Income (SSI) cash benefits under Title XVI based on disability or blindness.

Explanation of provision

The new provision expands eligibility for the BPAO and PABSS programs under section 1149 and 1150 of the Act to include not just individuals who are ''disabled beneficiaries'' under section 1148(k) of the Act, but also individuals who (1) are no longer eligible for SSI benefits because of an increase in earnings, but remain eligible for Medicaid; (2) receive only a State Supplementary payment (a payment that some States provide as a supplement to the federal SSI benefit); or (3) are in an extended period of Medicare eligibility under Title XVIII after a period of Title II disability has ended. The new provision also expands the types of services a P&A system may provide under section 1150 of the Act. Currently P&A systems may provide ''advocacy or other services that a disabled beneficiary may need to secure or regain employment,'' while the new provision allows them to provide ''advocacy or other services that a disabled beneficiary may need to secure, maintain, or regain employment.''

The amendment to section 1149, which affects the BPAO program, is effective with respect to grants, cooperative agreements or contracts entered into on or after the date of enactment. The amendments to section 1150, which affect the PABSS program, are effective for payments provided after the date of the enactment.

Reason for change

The Committees recognize that Social Security and SSI beneficiaries with disabilities face a variety of barriers and disincentives to becoming employed and staying in their jobs. The intent of this provision, as with the Ticket to Work Act, is to encourage disabled individuals to work.

The definition of ''disabled beneficiary'' under section1148(k) of the Act does not include several groups of beneficiaries, including individuals who are no longer eligible for SSI benefits because of an earnings increase but remain eligible for Medicaid; individuals receiving only a State Supplementary payment; and individuals who are in an extended period of Medicare eligibility. The Committees believe that BPAO and PABSS services should be available to all of these disabled beneficiaries regardless of Title II or SSI payment status. Beneficiaries may have progressed beyond eligibility for federal cash benefits but still be in need of information about the effects of work on their benefits, or in need of advocacy or other services to help them maintain or regain employment. Extending eligibility for the BPAO and PABSS programs to beneficiaries who are receiving State Supplemental payments or are still eligible for Medicare or Medicaid, but who are no longer eligible for federal cash benefits, will help to prevent these beneficiaries from returning to the federal cash benefit rolls and help them to reach their optimum level of employment.

The Committees also intend that PABSS services be available to provide assistance to

beneficiaries who have successfully obtained employment but who continue to encounter job-related difficulties. Therefore, the new provision extends the current PABSS assistance (which is available for securing and regaining employment) to maintaining employment—thus providing a continuity of services for disabled individuals throughout the process of initially securing employment, the course of their being employed and, if needed, their efforts to regain employment. This provision would ensure that disabled individuals would not face a situation in which they would have to wait until they lost their employment in order to once again be eligible to receive PABBS services. Payments for services to maintain employment would be subject to Section 1150(c) of the Social Security Act. The Committees will continue to monitor the implementation of PABSS programs to ensure that assistance is directed to all areas in which beneficiaries face obstacles in securing, maintaining, or regaining work.

SECTION 405. TECHNICAL AMENDMENT CLARIFYING TREATMENT FOR CERTAIN PURPOSES OF INDIVIDUAL WORK PLANS UNDER THE TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM

Present law

Under section 52 of the Internal Revenue Code (IRC), employers may claim a Work Opportunity Tax Credit (WOTC) if they hire, among other individuals, individuals with disabilities who have been referred by a State vocational rehabilitation (VR) agency. For an individual to qualify as a vocational rehabilitation referral under section 51(d)(6)(B) of the IRC, the individual must be receiving or have completed vocational rehabilitation services pursuant to: (i) ''an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973;'' or (ii) ''a program of vocational rehabilitation carried out under chapter 31 of title 38, United States Code.'' (IRC, section 51(d)(6)(B).

The WOTC is equal to 40% of the first $6,000 of wages paid to newly hired employees during their first year of employment when the employee is retained for at least 400 work hours. As such, the maximum credit per employee is $2,400, but the credit may be less depending on the employer's tax bracket. A lesser credit rate of 25% is provided to employers when the employee remains on the job for 120–399 hours. The amount of the credit reduces the company's deduction for the employee's wages.

The Ticket to Work Act established the Ticket to Work and Self-Sufficiency Program (Ticket to Work Program) under section 1148 of the Social Security Act. Under this program, SSA provides a ''ticket'' to eligible Social Security Disability Insurance beneficiaries and Supplemental Security Income beneficiaries with disabilities that allows them to obtain employment and other support services from an approved ''employment network'' of their choice. Employment networks may include State, local, or private entities that can provide directly, or arrange for other organizations or entities to provide, employment services, VR services, or other support services. State VR agencies have the option of participating in the Ticket to Work Program as employment networks. Employment networks must work with each beneficiary they serve to develop an individual work plan (IWP) for that beneficiary that outlines his or her vocational goals, and the services needed to achieve those goals. For VR agencies that participate in the Ticket to Work Program, the individualized written plan for employment (as specified under (i) in paragraph one above) serves in lieu of the IWP.

Under current law, an employer hiring a disabled individual referred by an employment network does not qualify for the WOTC unless the employment network is a State VR agency.

Explanation of provision

The new provision allows employers who hire disabled workers through referrals by employment networks under section 1148 of the Social Security Act to qualify for the WOTC. Specifically, it provides that, for purposes of section 51(d)(6)(B)(i) of the IRC of 1986, an IWP under section 1148 of the Social Security Act shall be treated as an individualized written plan for employment under a State plan for vocational rehabilitation services approved under the Rehabilitation Act of 1973.

This provision is effective as if it were included in section 505 of the Ticket to Work Act.

Reason for change

The Ticket to Work Program was designed to increase choice available to beneficiaries when they select providers of employment services. Employers hiring individuals with disabilities should be able to qualify for the WOTC regardless of whether the employment referral is made by a public or private service provider. This amendment updates eligibility criteria for the WOTC to conform to the expansion of employment services and the increase in number and range of VR providers as a result of the enactment of the Ticket to Work Act.

SUBTITLE B. MISCELLANEOUS AMENDMENTS

SECTION 411. ELIMINATION OF TRANSCRIPT REQUIREMENT IN REMAND CASES FULLY FAVORABLE TO THE CLAIMANT

Present Law

The Social Security Act requires SSA to file a hearing transcript with the District Court for any SSA hearing that follows a court remand of an SSA decision.

Explanation of provision

The new provision clarifies that SSA is not required to file a transcript with the court when SSA, on remand, issues a decision fully favorable to the claimant. This provision is effective upon enactment.

Reason for change

A claimant whose benefits have been denied is provided a transcript of a hearing to be used when the claimant appeals his case in Federal District court. If the Administrative Law Judge issues a fully favorable decision, then transcribing the hearing is unnecessary since the claimant would not appeal this decision.

SECTION 412. NONPAYMENT OF BENEFITS UPON REMOVAL FROM THE UNITED STATES

Present law

In most cases, the Social Security Act prohibits the payment of Social Security benefits to non-citizens who are deported from the United States. However, the Act does not prohibit the payment of Social Security benefits to non-citizens who are deported for smuggling other non-citizens into the United States.

Explanation of provision

The new provision requires SSA to suspend benefits of beneficiaries who are removed from the United States for smuggling aliens. This provision applies to individuals for whom the Commissioner receives a removal notice from the Attorney General after the date of enactment.

Reason for change

Individuals who are removed from the United States for smuggling aliens have committed an act that should prohibit them from receiving Social Security benefits.

SECTION 413. REINSTATEMENT OF CERTAIN REPORTING REQUIREMENTS

Present law

The Federal Reports Elimination and Sunset Act of 1995 ''sunsetted'' most annual or periodic reports from agencies to Congress that were listed in a 1993 House inventory of congressional reports.

Explanation of provision

The new provision reinstates the requirements for several periodic reports to Congress that were subject to the 1995 ''sunset'' Act, including annual reports on the financial solvency of the Social Security and Medicare programs (the Board of Trustees' reports on the OASDI, HI, and SMI trust funds) and annual reports on certain aspects of the administration of the Title II disability program (the SSA Commissioner's reports on pre-effectuation reviews of disability determinations and continuing disability reviews). The provision is effective upon enactment.

Reason for change

The reports to be reinstated provide Congress with important information needed to evaluate and oversee the Social Security and Medicare programs.

SECTION 414. CLARIFICATION OF DEFINITIONS REGARDING CERTAIN SURVIVOR BENEFITS

Present law

Under the definitions of ''widow'' and ''widower'' in Section 216 of the Social Security Act, a widow or widower must have been married to the deceased spouse for at least nine months before his or her death in order to be eligible for survivor benefits.

Explanation of provision

The new provision creates an exception to the nine-month requirement for cases in which the Commissioner finds that the claimant and the deceased spouse would have been married for longer than nine months but for the fact that the deceased spouse was legally prohibited from divorcing a prior spouse who was in a mental institution. The provision is effective for benefit applications filed after the date of enactment.

Reason for change

This provision allows the Commissioner to issue benefits in certain unusual cases in which the duration of marriage requirement could not be met due to a legal impediment over which the individual had no control and the individual would have met the legal requirements were it not for the legal impediment.

SECTION 415. CLARIFICATION RESPECTING THE FICA AND SECA TAX EXEMPTIONS FOR AN INDIVIDUAL WHOSE EARNINGS ARE SUBJECT TO THE LAWS OF A TOTALIZATION AGREEMENT PARTNER

Present law

In cases where there is an agreement with a foreign country (i.e., a totalization agreement), a worker's earnings are exempt from United States Social Security payroll taxes when those earnings are subject to the foreign country's retirement system.

Explanation of provision

The new provision clarifies the legal authority to exempt a worker's earnings from United States Social Security tax in cases where the earnings were subject to a foreign country's retirement system in accordance with a U.S. totalization agreement, but the foreign country's law does not require compulsory contributions on those earnings. The provision establishes that such earnings are exempt from United States Social Security tax whether or not the worker elected to make contributions to the foreign country's retirement system.

The provision is effective upon enactment.

Reason for change

In U.S. totalization agreements, a person's work is generally subject to the Social Security laws of the country in which the work is performed. In most cases the worker, whether subject to the laws of the United States or the other country, is compulsorily covered and required to pay contributions in accordance with the laws of that country. In some instances, however, work that would be compulsorily covered in the U.S. is excluded from compulsory coverage in the other country (such as Germany). In such cases, the IRS has questioned the exemption from U.S. Social Security tax for workers who elect not to make contributions to the foreign country's retirement system. This provision would remove any question regarding the exemption and would be consistent with the general philosophy behind the coverage rules of totalization agreements.

SECTION 416. COVERAGE UNDER DIVIDED RETIREMENT SYSTEM FOR PUBLIC EMPLOYEES IN KENTUCKY

Present law

Under Section 218 of the Social Security Act, a State may choose whether or not its State and local government employees who are covered by an employer-sponsored pension plan may also participate in the Social Security Old-Age, Survivors, and Disability Insurance program. (In this context, the term ''employer-sponsored pension plan'' refers to a pension, annuity, retirement, or similar fund or system established by a State or a political subdivision of a State such as a town. Under current law, State or local government employees not covered by an employer-sponsored pension plan already are, with a few exceptions, mandatorily covered by Social Security.)

Social Security coverage for employees covered under a State or local government employer-sponsored pension plan is established through an agreement between the State and the federal government. In most States, before the agreement can be made, employees who are members of the employer-sponsored pension plan must agree to Social Security coverage by majority vote in referendum. If the majority vote is in favor of Social Security coverage, then the entire group, including those voting against such coverage, will be covered by Social Security. If the majority vote is against Social Security coverage, then the entire group, including those voting in favor of such coverage and employees hired after the referendum, will not be covered by Social Security.

In certain States, however, if employees who already are covered in an employer-sponsored pension plan are not in agreement about whether to participate in the Social Security system, coverage can be extended only to those who choose it, provided that all newly hired employees of the system are mandatorily covered under Social Security. To establish such a divided retirement system, the state must conduct a referendum among members of the employer-sponsored pension plan. After the referendum, the retirement system is divided into two groups, one composed of members who elected Social Security coverage and those hired after the referendum, and the other composed of the remaining members of the employer-sponsored pension plan. Under Section 218(d)(6)(c) of the Social Security Act, 21 states currently have authority to operate a divided retirement system.

Explanation of provision

The new provision permits the state of Kentucky to join the 21 other states in being able to offer a divided retirement system. This system would permit current state and local government workers in an employer-sponsored pension plan to elect Social Security coverage on an individual basis. Those who do not wish to be covered by Social Security would continue to participate exclusively in the employer-sponsored pension plan.

The governments of the City of Louisville and Jefferson County will be merged in January 2003 and a new retirement system will be formed. Under the new provision, each employee under the new system could choose whether or not to participate in the Social Security system in addition to their employer-sponsored pension plan. As under current law, all employees newly hired to the system after the divided system is in place would be covered automatically under Social Security.

This provision is effective on January 1, 2003.

Reason for change

The governments of the City of Louisville and Jefferson County, Kentucky will merge in January, 2003. Currently, some officers and firefighters in employer-sponsored pension plans provided by these governments are covered by Social Security, while others are not. In order to provide fair and equitable coverage to all officers and firefighters, a divided retirement system, such as that currently authorized in 21 other states, was seen as the best solution. Otherwise, upon creation of the new retirement system, a referendum would be held to determine by majority vote whether or not the group would participate in Social Security. As the number of non-covered employees will exceed the number of Social Security-covered employees under the new retirement system, in the absence of this new provision, those employees covered by Social Security could lose that coverage. The Kentucky General Assembly has adopted a bill that will allow the new divided retirement system to go forward following enactment of this provision.

SECTION 417. COMPENSATION FOR THE SOCIAL SECURITY ADVISORY BOARD

Present law

The Social Security Advisory Board is an independent, bipartisan Board established by the Congress under section 703 of the Social Security Act. The 7-member Board is appointed by the President and the Congress to advise the President, the Congress and the Commissioner of Social Security on matters related to the Social Security and Supplemental Security Income programs. Section 703(f) of the Social Security Act provides that members of the Board serve without compensation, except that, while engaged in Board business away from their homes or regular places of business, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code for persons in the Government who are employed intermittently.

Explanation of provision

The new provision establishes that compensation for Social Security Advisory Board members will be provided, at the daily rate of basic pay for level IV of the Executive Schedule, for each day (including travel time) during which the member is engaged in performing a function of the Board. This provision is effective on January 1, 2002.

Reason for change

Other government advisory boards—such as the Employee Retirement Income Security Act Advisory Council, the Pension Benefit Guaranty Corporation Advisory Committee and the Thrift Savings Plan Board—provide compensation for their members. This provision allows for similar treatment of Social Security Advisory Board members with respect to compensation.

SECTION 418. 60-MONTH PERIOD OF EMPLOYMENT REQUIREMENT FOR APPLICATION OF GOVERNMENT PENSION OFFSET EXEMPTION

Present law

The Government Pension Offset (GPO) was enacted in order to equalize treatment of workers in jobs not covered by Social Security and workers in jobs covered by Social Security, with respect to spousal and survivors benefits. The GPO reduces the Social Security spousal or survivors benefit by two-thirds of the government pension.

However, under what's known as the ''last day rule,'' State and local government workers are exempt from the GPO if their job on their last day of employment was covered by Social Security. In contrast, Federal workers who switched from the Civil Service Retirement System (CSRS), a system that is not covered by Social Security, to the Federal Employee Retirement System (FERS), a system that is covered by Social Security, must work for 5 years under FERS in order to be exempt from the GPO.

Explanation of provision

The new provision requires that State and local government workers be covered by Social Security during their last 5 years of employment in order to be exempt from the GPO. The provision is effective for applications filed after the month of enactment. However, the provision would not apply to individuals whose last day of employment for the State or local governmental entity was covered by Social Security and occurs on or before June 30, 2003, provided that such period of covered employment began on or before December 31, 2002.

Reason for change

The change will establish uniform application of the GPO exemption for all local, State, and federal government workers.

SUBTITLE C. TECHNICAL AMENDMENTS

SECTION 421. TECHNICAL CORRECTION RELATING TO RESPONSIBLE AGENCY HEAD

Present law

Section 1143 of the Social Security Act directs ''the Secretary of Health and Human Services'' to send periodic Social Security Statements to individuals.

Explanation of provision

The new provision makes a technical correction to this section by inserting a reference to the Commissioner of Social Security in place of the reference to the Secretary of Health and Human Services. This provision is effective upon enactment.

Reason for change

The ''Social Security Independence and Program Improvements Act of 1994'' (P.L. 103–296) made the Social Security Administration an independent agency separate from the Department of Health and Human Services. This provision updates Section 1143 to reflect that change.

SECTION 422. TECHNICAL CORRECTION RELATING TO RETIREMENT BENEFITS OF MINISTERS

Present law

Section 1456 of the ''Small Business Job Protection Act of 1996'' (P.L. 104–188) established that certain retirement benefits received by ministers and members of religious orders (such as the rental value of a parsonage or parsonage allowance) are not subject to Social Security payroll taxes under the Internal Revenue Code. However, under Section 211 of the Social Security Act, these retirement benefits are treated as net earnings from self-employment for the purpose of acquiring insured status and calculating Social Security benefit amounts.

Explanation of provision

The new provision makes a conforming change to exclude these benefits received by retired clergy from Social Security-covered earnings for the purpose of acquiring insured status and calculating Social Security benefit amounts. This provision is effective for years beginning before, on, or after December 31, 1994. This effective date is the same as the effective date of Section 1456 of P.L. 104–188.

Reason for change

P.L. 104–188 provided that certain retirement benefits received by ministers and members of religious orders are not subject to payroll taxes. However, a conforming change was not made to the Social Security Act to exclude these benefits from being counted as wages for the purpose of acquiring insured status and calculating Social Security benefit amounts. This income is therefore not treated in a uniform manner. This provision would conform the Social Security Act to the Internal Revenue Code with respect to such income.

SECTION 423. TECHNICAL CORRECTION RELATING TO DOMESTIC EMPLOYMENT

Present law

Present law is ambiguous concerning the Social Security coverage and tax treatment of domestic service performed on a farm. Domestic employment on a farm appears to be subject to two separate coverage thresholds (one for agricultural labor and another for domestic employees).

Explanation of provision

The new provision clarifies that domestic service on a farm is treated as domestic employment, rather than agricultural labor, for Social Security coverage and tax purposes. This provision is effective upon enactment.

Reason for change

Prior to 1994, domestic service on a farm was treated as agricultural labor and was subject to the coverage threshold for agricultural labor. According to SSA, in 1994, when Congress amended the law with respect to domestic employment, the intent was that domestic employment on a farm would be subject to the coverage threshold for domestic employees instead of the threshold for agricultural labor. However, the current language is unclear, making it appear as if farm domestics are subject to both thresholds.

SECTION 424. TECHNICAL CORRECTION OF OUTDATED REFERENCES

Present law

Section 202(n) and 211(a)(15) of the Social Security Act and Section 3102(a) of the Internal Revenue Code of 1986 each contain outdated references that relate to the Social Security program.

Explanation of provision

The new provision corrects outdated references in the Social Security Act and the Internal Revenue Code by: (1) in Section 202(n) of the Social Security Act, updating references respecting removal from the United States; (2) in Section 211(a)(15) of the Social Security Act, correcting a citation respecting a tax deduction related to health insurance costs of self-employed individuals; and (3) in Section 3102(a) of the Internal Revenue Code of 1986, eliminating a reference to an obsolete 20-day agricultural work test. This provision is effective upon enactment.

Reason for change

Over the years, provisions in the Social Security Act, the Internal Revenue Code and other related laws have been deleted, re-designated or amended. However, necessary conforming changes have not always been made. Consequently, Social Security law contains some outdated references.

SECTION 425. TECHNICAL CORRECTION RESPECTING SELF-EMPLOYMENT INCOME IN COMMUNITY PROPERTY STATES

Present law

The Social Security Act and the Internal Revenue Code provide that, in the absence of a partnership, all self-employment income from a trade or business operated by a married person in a community property State is deemed to be the husband's unless the wife exercises substantially all of the management and control of the trade or business.

Explanation of provision

Under the new provision, self-employment income from a trade or business that is not a partnership, and that is operated by a married person in a community property State, is taxed and credited to the spouse who is carrying on the trade or business. If the trade or business is jointly operated, the self-employment income is taxed and credited to each spouse based on their distributive share of gross earnings. This provision is effective upon enactment.

Reason for change

Present law was found to be unconstitutional in several court cases in 1980. Since then, income from a trade or business that is not a partnership in a community property State has been treated the same as income from a trade or business that is not a partnership in a non-community property State—it is taxed and credited to the spouse who is found to be carrying on the business.

This change will conform the provisions in the Social Security Act and the Internal Revenue Code to current practice in both community property and non-community property States.

SECTION 426. TECHNICAL CHANGES TO THE RAILROAD RETIREMENT AND SURVIVORS' IMPROVEMENT ACT OF 2001

Present law

See Public Law 107–90.

Explanation of provisions

Quorum rules

This technical change clarifies that, under Section 105 of the Act, a vacancy on the Board of National Railroad Retirement Investment Trust (NRRIT) does not preclude the Board from making changes in the Investment Guidelines with the unanimous vote of all remaining Trustees.

Transfers

This technical change clarifies that under Section 107 of the Act, the Railroad Retirement Board (RRB) can require the NRRIT to transfer amounts necessary to pay benefits to the Railroad Retirement Account (RRA) and that excess Social Security Equivalent Benefits (SSEB) Account assets can be transferred to the RRA for investment in federal securities until used to pay benefits.

Investment authority

This technical change clarifies that, under Section 105 of the Act, the Board of the NRRIT has the authority to invest the assets with the assistance of its own professional staff or by retaining outside advisors and managers.

Clerical changes

This provision makes a number of grammatical and typographical corrections to the Act.

Reason for change

All four changes are purely technical in nature and are needed to promote the efficient implementation of the Railroad Retirement and Survivors' Improvement Act of 2001.

SOCIAL SECURITY

MEMORANDUM

Date: November 18, 2002
To: Stephen C. Goss, Chief Actuary
From: Chris Chaplain, Actuary, Alice H. Wade, Deputy Chief Actuary
Subject: Estimated Long-Range OASDI Financial Effects of the Social Security Program Protection Act of 2002, as Amended by the Senate Finance Committee—Information.

This memorandum provides long-range estimates of the financial effect on the Social Security (OASDI) program for enactment of the Social Security Program Protection Act of 2002 (H.R. 4070), as passed by the House on June 26, 2002 and amended by the Senate Finance Committee. This legislation contains 35 provisions, including the following:

Provide additional safeguards for Social Security beneficiaries with representative payees, such as requiring periodic onsite reviews, holding payees liable or assessing penalties for misused benefits.

Grant the authority to assess civil monetary penalties for corrupt or forcible interference with the administration of the Social Security Act, and wrongful conversion by representative payees.

Deny title II benefits to fugitive felons, persons fleeing prosecution, and probation or parole violators.

Limit the amount of attorney fee assessments to the lower of 6.3% of the fee or $75. The $75 threshold would be indexed annually by cumulative changes in the Social Security cost-of-living adjustment (COLA), but future threshold amounts would be rounded to the next lower multiple of $10. However, the threshold amount would never go below $75.

Make several amendments to demonstration projects under the Ticket to Work Act.

Extend the right to have a divided retirement system for public employees in the state of Kentucky.

Replace the ''last day'' requirement for exemption from the Government Pension Offset with a ''last 5 years'' requirement—that is, the beneficiary would have to work in a position covered by Social Security and by the government pension plan for the last 5 years of such employment, rather than the last day.

Make miscellaneous technical amendments.

The estimated long-range OASDI financial effect of each provision of the legislation is either no change or a change in the actuarial balance that is negligible (less than 0.0005 percent of taxable payroll). Taken as a whole, the legislation would result in an increase in the OASDI actuarial balance that is estimated to be negligible. In addition, enactment of this legislation would change neither the first year that annual costs are expected to exceed tax income (2017) nor the year that the combined OASI and DI Trust Funds are expected to become exhausted (2041). The provisions in the legislation are generally effective with the date of enactment of the legislation, which we assume to be January 1, 2003. All estimates included in this memorandum are based on the intermediate assumptions of the 2002 Trustees Report.

Mr. REID. I ask unanimous consent that the substitute amendment be agreed to; the bill, as amended, be read three times, passed, and the motion to reconsider be laid upon the table, with no intervening action or debate, and that any statements relating thereto be printed in the RECORD.

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

The amendment (No. 4967) was agreed to.

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

The bill (H.R. 4070), as amended, was read the third time and passed.

ORDERS FOR TUESDAY, NOVEMBER 19, 2002

Mr. REID. I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9 a.m., Tuesday, November 19; that following the prayer and the pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate proceed under the previous order; further, that the Senate recess from 12:30 to 2:15 tomorrow for the weekly party conferences, and if the Senate is proceeding under cloture, this time be charged against the cloture 30 hours.

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

PROGRAM

Mr. REID. Under the previous order, there will be a series of rollcall votes in relation to homeland security beginning at approximately 10:30 tomorrow morning.

ORDER FOR ADJOURNMENT

Mr. REID. I ask unanimous consent that if there is no further business to come before the Senate, the Senate stand in adjournment following the statement of the Senator from Alabama.

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

The Senator from Alabama is recognized.

NOMINATION OF DENNIS SHEDD

Mr. SESSIONS. Mr. President, in his absence, I want to share some thoughts I have about Judge Dennis Shedd, who has been nominated for the Fourth Circuit Court of Appeals. Judge Shedd is a superb nominee. He served 12 years on the Federal bench as a Federal district trial judge, hearing some 5,000 cases. He was rated by the American Bar Association, which goes around and interviews fellow judges, State court judges, and lawyers on both sides of cases. They get their opinions about how the judge has performed and they issue an independent rating.

We conservatives have sometimes complained about their ratings, saying they tend to be more favorable to more liberal-type judges. But in this case, they rated Judge Shedd the highest possible rating, well-qualified. They have about a 15-member committee that actually votes on all the paperwork that has been put together, and the ABA investigation is quite a deal.

Frankly, I believe it is very valuable to this process. I always have. I was talking recently to Senator-elect Lindsey Graham from South Carolina, who will be replacing Senator THURMOND. We were talking about Dennis Shedd. Lindsey has been a practicing attorney for many years and had been in court a lot. What he said to me was exactly the way I feel about these things. He said: You know, when a person has been on the bench 12 years, everybody knows whether they are any good or not. In a State like South Carolina, there are not that many Federal judges. Lawyers go into their courts all the time. The fact is, after a few years, everybody knows whether they are any good or not. These lawyers support Judge Shedd. The American Bar Association has supported Judge Shedd.

I have looked at some of the complaints that have been made about his record. I find them not only wrong, but in fact he should have been commended for the rulings he has made. I would like to share a few thoughts on that.

One is that he has served the Judicial Conference of the United States during his tenure, 12 years as a Federal judge, serving on the Judicial Branch Committee and the Subcommittee on Judicial Independence. It is a mark of respect for a trial judge in the United States to be chosen to serve on key committees of the Judicial Conference. Most judges are not on these committees.

From 1978 through 1988, he served on the Senate Judiciary Committee staff in this body. He is known by many of the Senators. He served as chief counsel and staff director for the Senate Judiciary Committee for Senator STROM THURMOND. According to the Almanac of Federal Judiciary, the attorneys rate judges and make comments about judges. You go before a judge and want to know something about them. Lawyers have books on them. This is what they say about him. They say he has outstanding legal skills and excellent judicial temperament. A few comments from South Carolinians were included: ''You are not going to find a better judge on the bench or one who works harder.'' ''He is the best Federal judge we have,'' said one attorney. ''He gets an A all around,'' said another. ''It is a great experience trying cases before him,'' said an attorney.

I like that. I tried a lot of cases and some cases you go to trial before a judge and it is miserable. A good judge can make the practice of law a pleasure.

''He is bright in business,'' said another. Everyone knows that is true. Plaintiff lawyers who seem to be stirring this opposition up have commended him for being evenhanded. ''He has always been fair.'' Another plaintiffs lawyer says: ''I have no complaints about him. He is nothing if not fair.''

Judge Shedd will bring experience to the bench, having tried 4,000 to 5,000 cases as a district judge. That will be more trial experience than any of the other Federal judges on the Fourth Circuit Court of Appeals. Trial experience is the crucible for training an appellate judge. Some can do well without it.

As a practicing lawyer trying cases in Federal court full time as a U.S. attorney, and in private practice, as an assistant U.S. attorney, I understand Federal judges. I respect Federal judges. I know they learn from that trial bench. That will help them better when they read a written record to see if a judge made a mistake or not. Trial experience is helpful.

They say this is some sort of a circuit that is too conservative. I don't believe this circuit is at all that way. I note the last five judges appointed to the Fourth Circuit have been Democrats. Some people have forgotten what President Bush did. Judge Gregory, who had been nominated for the circuit and who was not confirmed by this Senate before President Clinton left office was renominated. President Bush, in extending his hand of bipartisanship, reached out and took this African-American jurist and renominated him to the court as an act of bipartisanship. Judge Gregory was a Democrat, a Clinton nominee, and had not been confirmed. President Bush, shortly after he took office, renominated him. Of course, he was confirmed just like that.

The other judges who were nominated at the same time have not moved so well.

But there are 11 cases that Judge Shedd has ruled on that have been reviewed by Judge Gregory. He has affirmed all 11 of them. It is unfair to suggest this is somehow a radical judge who is out of step. One case, Crosby v. South Carolina Department of Health, has been raised, that somehow he made a bad decision on that case. I don't think he did. But regardless of that, people could have a different opinion. That was one of the cases that went to Judge Gregory, President Clinton's nominee. Many members of the Democratic Party were most aggrieved he had not been confirmed by the time President Clinton left office. Judge Gregory agreed with Judge Shedd. He affirmed Judge Shedd's opinion.

That is just typical. Do 5,000 cases and somebody will find something with which to disagree. But, as Lindsey Graham said: Judges have reputations. And to me that means a lot. And this judge, through this career and background, has a good reputation of capability, experience, honesty, and a superb demeanor, making it a pleasure to practice before him.

I just want to say this. I attended the hearings in which Judge Shedd testified, and he was there as long as they wanted him to testify. They submitted all these questions to him, demanding that he explain everything he has ever done. And I heard the complaints, and I read the complaints. I am just going to tell you: They do not hold up.

He was criticized for doing the right thing. He didn't do wrong things. He

was written up in those reports put out by special interest advocacy groups, the ones Senator HATCH calls the usual suspects, and they have abused him and twisted his rulings. I am going to go through a few of them, and we are going to talk about them. It ought to be an embarrassment for any group to have submitted the smear sheets they submitted when allegation after allegation just gets knocked down.

But how does it work around here? Unfortunately these attack groups file these sheets, and they make these allegations, and the press picks them up. By the time somebody gets the case and reads it and shows it is not true, they don't get nearly as much attention. The allegations get the attention first. It is really sad. I have watched this for many years. This is an absolute pattern.

Judge Shedd has a very low reversal rate by the court of appeals for the thousands of cases he has handled. But I will tell you one thing: If these advocacy groups, these usual suspects, if their smear sheets were brought out in the light of day and they were graded on them, they would get a big fat F. It would come back off that court of appeals like a rubber ball off that wall.

I am amazed that someone we know, who has such a sound record, who has served as a staffer in this Senate, has been put in the kind of grinder he has. Not one of the allegations, once you look at them in the slightest way, would serve as the basis for rejecting this superior judge.

One of the things they said—and it was repeated earlier on the floor today—was that the judge acted sua sponte to throw out cases against plaintiffs. Oh, this is awful, they say. Sua sponte meaning he acts on his own motion, meaning without anybody having filed a motion. And this means he is anti-plaintiff.

Have these people never been to court? They don't know what happens? You can tell one thing, I submit. They scoured his record. If they are digging up this kind of stuff, they have looked at everything he has ever done. So if they found anything of real substance, we would have heard about it.

Let's look at these sua sponte rulings that are supposed to be so bad and represent a view that he is hostile to plaintiffs.

One of them is Coker v. Wal-Mart. In that case, the defendant removed the case—Wal-Mart has the right, within certain rules and procedures, to remove the case to Federal court from State court. Judge Shedd, sua sponte, questioned whether the removal was appropriate as it appeared the motion for removal had been filed outside the 30-day time limitation established by 28 U.S.C. 1446(b). There was a time limitation. If you are sued in State court and you want to remove it out of State court, you have a time limitation to do so. Doubting whether he had the authority to remand the case sua sponte, Judge Shedd stated he would permit the defendant to file a brief addressing whether removal was timely and whether the court had the authority to remain. He had a duty to raise the issue of removal because it was jurisdictional. Federal courts are courts of limited jurisdiction. The general courts of jurisdiction are our State courts. Federal courts have limited jurisdiction. So a good judge, the first thing he does is looks at a case that comes before him and he wants to know whether or not it even ought to be in Federal court, and that is all he was saying.

He is saying: I looked at the case here, counsel, and it looks like it is outside the 30 days. Send me a brief on why I ought not to remand it back to State court. You waited too long to bring it to Federal court. All he asked for was a brief on the law. So that is what Federal judges are supposed to do.

Here is another one. Gilmore v. Ford is a product liability case. Judge Shedd sanctioned the plaintiff for failure to prosecute the case by dismissing the case. He dismissed the case for failure to prosecute. He evaluated that decision and tested it by each of the factors established by the Fourth Circuit in Ballard v. Carson, a 1989 case. Indeed, the plaintiff failed to respond to this motion to dismiss and for failure to prosecute, after earlier failing to respond to the defendant's motion to compel discovery.

You are not entitled to go to court and file lawsuits and continue lawsuits if you don't abide by the rules of the court. If you don't answer discovery, and if the judge sends you a warning that, I am going to dismiss the case and we are going to have a hearing, and you fail to respond—and the plaintiff doesn't even respond to that motion—the judge did the right thing, which was, remove the case from the court. That is not something he did wrong, it is something he did right.

Here is another one: Lowery v. Seamless Sensations. The defendant raised the defense that the plaintiff failed to file a timely charge of discrimination with the EEOC—this is a defendant being sued over a discrimination charge—and he defended, saying the plaintiff did not file as required by law with the Equal Employment Opportunity Commission, the Federal agency that is supposed to deal with that; and he failed to file a timely lawsuit and the jurisdictional prerequisites to any Federal court action since that defense called into question the court's subject matter jurisdiction.

The court has no authority and jurisdiction over the case if the plaintiff hadn't filed his claim and had a hearing before the EEOC.

So the judge expedited consideration of those offenses as it would have served no purpose to proceed to the merits of a case in which there is no jurisdiction.

So you have to figure that out first. If the court does not have jurisdiction, it should not consider the case.

To expedite consideration of the issues, he ordered the defendant to file a motion to dismiss based on the defenses and that the motion be filed with the judge. Ultimately, the defendant was granted summary judgment on the grounds that the plaintiff could not establish a prima facie case. So it appears the motion to dismiss was not eventually granted. But the case failed on other motions.

Let me just say this. I am a lawyer. I love to practice law. I believe in the rule of law. I believe in the right of people to go to court and to litigate. But there is a growing concern in this country about the expense and delay and time extensions of litigation. It is costing large amounts of money. Lawyers—maybe a half dozen of them—are charging $200 an hour fiddling around with a case. One of the good government reforms that virtually every judge I know of who amounts to anything has bought into it. If the case fails on jurisdiction or has some other defect, it ought to be promptly ruled on and ended. We ought not to have six months of depositions and expenses when the case never had a basis to go to trial, anyway.

So that is what Judge Shedd was doing here. He was simply carrying out good government and a good legal basis. If you do not meet the standard for jurisdiction, you don't go to Federal court, and the clients don't expend thousands and thousands of dollars eaten up by lawyers and end up later with the case being thrown out when it should have been thrown out to begin with.

In McCarter v. RHNB, an age and sex discrimination case, Judge Shedd initially granted summary judgment—this has been complained of right here on the floor today—on the grounds that the plaintiff was unable to provide any evidence of age and sex discrimination.

Following the entry of that judgment, the plaintiff filed a motion to alter or amend that judgment since it was based on grounds not raised, it was asserted, in the defendant's motion. The judge reconsidered it.

Judge Shedd reconsidered his order, agreed with the plaintiff, and reinstated the motion. He wrote:

> Although the Court believes that the defendant's motion for summary judgment and supporting memorandum may be fairly read as raising the issue upon which the motion was granted, the Court will nevertheless give the plaintiff the benefit of the doubt and grant the motion to alter or to amend and deny defendant's motion for summary judgment.

So he says right there that he was going to give the plaintiff the benefit of the doubt and allow the case to continue.

That is what a good judge does. He rules. If somebody shows he has made a mistake, or it is doubtful, he may reconsider his ruling.

That, to me, shows again good behavior, that he is thoughtful; that if someone raises something he didn't fully understand, he will reconsider his decision and go forward.

In Shults v. Denny's Restaurant, a disabilities and slander case, Judge Shedd sua sponte considered summary judgment, and ordered the plaintiff to file a memorandum in opposition to the court's motion for summary judgment.

This action by Judge Shedd was again based on jurisdictional defenses raised in the defendant's answer. The allegation was that the plaintiff had failed to file within the 2-year statute of limitations, and he had failed to exhaust administrative equal opportunity commission review procedures.

In the order requesting the plaintiff to file a memorandum, Judge Shedd wrote that:

> . . . although the express language of Rule 56 provides only for the parties to move for summary judgment, Federal district judges possess the inherent power to raise sua sponte an issue for possible resolution by summary judgment.

He cited appropriate authority of the United States Supreme Court in Celotex Corporation v. Catrett.

That is absolutely the law of America. If a judge spots something that goes to the very nature of the jurisdiction, he can assert a summary judgment motion and ask the plaintiff to respond.

This is really not adversarial. Some people in this country think that judges decide cases on the length of their foot; that they decide cases on how they feel that day; or they look at the plaintiff and they look at the defendant, they don't like Celotex, but they like the plaintiff, and so they rule for them.

That is not what happens in America. We have rules, and judges follow the rules. They get the case to the jury, and the jury decides it, or the lawyers settle.

I would point out that he acted within the law, and he raised those two fundamental questions. They were simple but very important. Had the 2-year statute of limitations been violated? If it had, the case cannot be brought. Had they failed to seek the EEOC review required by the procedures? If so, the case could not be brought.

The sooner that is determined, the better off everybody is going to be.

Simmons v. Coastal Contractors was a discrimination and retaliation-in-employment case in which both parties were pro se.

Both parties, the plaintiff and defendant, were representing themselves; that is, both had fools for clients, as they say.

Judge Shedd sua sponte brought the parties before the court. Traditionally you would not do this, perhaps. But he knew he had two nonlawyers. He ordered the plaintiff to cure specific deficiencies in his complaint or face dismissal.

The decision really was an attempt to aid the plaintiff in properly drafting his complaint and should not be viewed as anti-plaintiff, given the pro se nature of both parties.

Basically he said, Plaintiff, you cannot recover. If you recover on this complaint, the court of appeals will throw it out. You have to amend your complaint and file it in the right fashion.

I think that is an advantage to the plaintiff. That was helping the plaintiff.

Yet, these groups—these attack organizations argue that Judge Shedd in his rulings show hostility to the plaintiffs before him.

That is one of the examples they cite.

Smith v. Beck was a section 1983 gender discrimination case in which several women alleged discrimination when they were not admitted without male escorts to a nightclub featuring nude female dancers.

Judge Shedd sua sponte questioned whether the plaintiffs' allegations sufficed to establish the defendant's private club's actions were under color of State law.

It is a complex legal question. He raised that on his own. He says if it is not under color of State law, this is a private club, and you can't recover.

So the question dealt with whether or not merely operating an establishment that has a liquor license does or does not transform the club into a State action. After consideration of the brief, he concluded that merely holding a liquor license does not make it a State action when they said you couldn't have in the strip club women coming in without male escorts.

We do have some interesting cases in Federal court, as you can well see.

I think that was a correct ruling, and apparently was not appealed and not reversed.

Should he have allowed that case to go on? Should he allow depositions to be taken for months? Should he allow expenses to be run up? Insurance companies pay, people say. Well, you know, there is nothing wrong with that. The insurance company is going to pay the lawyer. Who pays the insurance companies? We pay the insurance companies. It is a cost of doing business in America. There is no free lunch and there is no free legal work in America. Somebody pays.

In Tessman v. Island Ford-Lincoln-Mercury, Inc., this Title VII action, Judge Shedd sua sponte challenged the court's subject matter jurisdiction given the plaintiff's apparent failure to allege she had first presented her claim to the EEOC and received a right-to-sue letter.

The way this works, as I understand it, if you have a complaint about discrimination in the workforce, you have to go and file your complaint with the Equal Opportunity Employment Commission. When you do that, they evaluate it, and you can settle it at that stage. Businesses, recognizing they made a mistake or many times the complaint is shown to be worthless, and it is settled right there, and it ends right there.

But if the complaint is valid, and if the business or defendant does not respond to the satisfaction of the plaintiff, the plaintiff can ask the EEOC to give them a right-to-sue letter. That allows them to get their attorney to sue the defendant and take it to Federal court, to make a Federal case out of it.

So the judge ordered the case dismissed unless the plaintiff could show cause why that action should not be taken. I think that is what a judge should do. That is the way he ought to rule. When you have 5,000 cases, and you go through these, I am not aware that any of them have been reversed on appeal. And I think it is the right thing.

On the right of a judge to issue sua sponte actions, this is the law of the United States. This is a Supreme Court case, the authoritative decision on the matter issued in 1986. The Supreme Court said:

> [D]istrict courts are widely acknowledged to possess the power to enter summary judgment sua sponte, so long as the losing party was on notice that she had to come forward with all of her evidence.

In each of these cases, the judge told the other party that was in trouble their complaint was being questioned for jurisdiction matters, that they had an opportunity to file a brief, and any other evidence as to why the case ought not to be dismissed. And that is the right way to handle it.

The ninth circuit—this California circuit that strikes down the Pledge of Allegiance—has declared:

> District courts unquestionably have the power [to grant summary judgment sua sponte].

That was in 1995.

The fourth circuit, of which District Court Judge Shedd is a part, ruled:

> It is a fundamental precept that federal courts are courts of limited jurisdiction, constrained to exercise only the authority conferred by Article III of the Constitution and affirmatively granted by federal statute.

Many Federal judges forget that, but that is the law of this country. Federal courts have limited jurisdiction, and they are empowered by the Constitution and Federal statutes to do certain things, and only those things.

Continuing to quote the court:

> A primary incident of that precept is our duty to inquire, sue sponte, whether a valid basis for jurisdiction exists, and to dismiss the action if no such ground appears.

The fourth circuit further said:

> We have long held that receipt of, or at least entitlement to, a right-to-sue letter is a jurisdictional prerequisite that must be alleged in a plaintiff's complaint. Thus, where neither the complaint nor the amended complaint alleges that the plaintiff has complied with these prerequisites, the plaintiff has not properly invoked the court's jurisdiction under Title VII.

So in each of the cases I have cited, and those that have been complained of by these scurrilous attack groups, Judge Shedd acted sua sponte, but he provided proper notice and an opportunity to the plaintiff to respond, as the law requires.

None of these cases were reversed on appeal. Trust me, had they been in

error, it would have been taken up and been reversed. I think this court is a great circuit.

Several years ago, we had hearings to address the caseloads of the federal courts. Senator GRASSLEY as chairman of the Courts Subcommittee of the Senate Judiciary Committee, of which I am a member, called the hearings. He had the chief judge of the fourth circuit appear and talk about his caseload. They have one of the highest caseloads in America. Actually, not one of the highest, I think their caseload, per circuit, based on the cases per circuit for judges, was the highest in America. They had worked extremely hard, and they had a good procedure for managing their cases. It was really a good example for the rest of the courts around the country.

So I think this allegation—that this circuit is out of line—is something not healthy about the fourth circuit. It is just wrong. It is a great circuit, doing superb work, and the taxpayers are benefitting from it greatly.

There have been suggestions, although not anything of substance really, but allegations that somehow Judge Shedd is a white Southern male, and he is insensitive on the matters of race. Those are serious matters. I think if somebody had something to say about that, they would come forward, and we would see it, and we would know about it. But vague allegations of that kind are not good.

We ought to take very seriously any thought that someone would have acted without a commitment to equal justice. That would be wrong, and they ought not be on the Federal bench if they do not treat people equally.

I would like to say, his record shows just the opposite. One of the things that Judge Shedd did as a district judge—and district judges play a significant role in the hiring of United States magistrates, who make about $1,000 less than they do per year. They do not have quite the lifetime appointment, but it is a good appointment. And magistrate judge positions are becoming highly sought after. A lot of good applications are made. There are a lot of superb lawyers who are acting as United States magistrate judges in America.

He led the effort in his district to recruit an African American magistrate for that district, Margaret Seymour. She did a fine job as that magistrate. Later on, President Clinton, a Democratic President, appointed her to the Federal bench in that district. Margaret Seymour is now a sitting Federal district judge. One of the main reasons that occurred is because, years before, Judge Shedd had gone out and sought her, and worked to have her selected as that United States Federal magistrate.

He has worked actively to seek out minority and female candidates for other magistrate judge positions, and has directed the selection commission in South Carolina to consider diversity in selecting candidates for those positions.

In addition, he has recommended an African American female to serve as chief of the Pretrial Services Division in that district. Pretrial Services handles all the arrest matters involving defendants who are arrested: whether or not they should be allowed bail, whether they are on drugs, whether they ought to be locked up, how they ought to be treated, supervising them pretrial if they are released on bail. They do a lot of work. It is a pretty big deal. For the State of South Carolina, with one district, that is a big appointment. I just point those things out. His critics didn't raise those issues.

Judge Shedd has bipartisan support from both his home State Senators. Of course, Senator THURMOND admires Judge Shedd immensely. He has observed his career for many years. He has observed with great pleasure Judge Shedd's success on the bench. And he is extremely proud, as he nears 100 years of age, about to complete the longest term any Senator has ever served in this body, that his former chief counsel, when he was chairman of the Senate Judiciary Committee, is now in a position to be elevated to the Fourth Circuit Court of Appeals. That is not too much to ask, I submit. It is the kind of thing we ought not to deny unless there is a real basis to do so.

He has both the support of Senator THURMOND and Senator FRITZ HOLLINGS from South Carolina. Before coming to this body, Senator HOLLINGS was a real lawyer, a real litigator, a plaintiff's lawyer, a former national president of the American Trial Lawyers Association. He gives no quarter in protecting the rights of plaintiffs on this floor.

When somebody complained one time about the plaintiffs trial lawyers getting so much money in these tobacco cases, he said they did so much good, as far as he was concerned, they could have more. He supports Judge Shedd. He and his friends in the Trial Lawyers Association—and I am sure he shares confidences with them—have agreed that this is a good nomination.

I don't understand where we are with this problem. Judge Shedd has been completely forthcoming with the Senate Judiciary Committee's requests, many of them, for information.

Earlier this year Judge Shedd sent nearly 1,000 unpublished opinions for review immediately after Chairman LEAHY requested them. They wanted to plow through all his cases, the unpublished opinions, thinking they might find a nugget there. Apparently they haven't because they haven't raised any of them. We would be hearing about it. They would be blown up in charts.

He continued to provide additional unpublished opinions as well as other information the committee has requested regarding his rulings, opinions, and judicial record generally. He has been absolutely forthcoming.

Finally, I will just repeat, how do you know about all this? You hear these things and some person says this and some person says that, and what do you believe?

The Democrats have tenaciously adhered to the view that the ABA rating is the gold standard, Democrats on our committee. They really insisted on that and placed the ABA review at the center of our confirmation process. Of course, it is an unofficial thing. It is nothing in the official process, but they have asserted it as the gold standard for determining whether or not a judge should be confirmed. This gold standard review process has been conducted by the American Bar Association. Their team of lawyers and investigators have talked to all the people down there who have practiced before his court. They talked to civil rights groups. They talked to plaintiffs lawyers. They talked to defense lawyers. They talked to the community and fellow judges. They have come back with the highest possible rating they give—well qualified—for Judge Shedd.

He absolutely is well qualified for this office. He ought to be confirmed. It was a real disappointment to me to see a number of Senators in committee suggest that they might not be for him or were not for him, even though we never had an official roll call vote. I don't see where they are coming from.

This is a man we know. This is a man with a record of integrity, judgment, good demeanor, experienced now to a large degree, the kind of capabilities that make for a great judge.

He is going to be a great judge on the Fourth Circuit Court of Appeals. I am proud to support him. I believe the complaints against him are baseless and that he should be confirmed.

I yield the floor.

ADJOURNMENT UNTIL 9 A.M. TOMORROW

The PRESIDING OFFICER. Under the previous order, the Senate stands adjourned until 9 a.m., Tuesday, November 19, 2002.

Thereupon, the Senate, at 9 p.m., adjourned until Tuesday, November 19, 2002, at 9 a.m.

CONFIRMATIONS

Executive nominations confirmed by the Senate November 18, 2002:

APPALACHIAN REGIONAL COMMISSION

Anne B. Pope, of Tennessee, to be Federal Cochairman of the Appalachian Regional Commission.

Richard J. Peltz, of Pennsylvania, to be Alternative Federal Cochairman of the Appalachian Regional Commission.

DEPARTMENT OF TRANSPORTATION

James M. Loy, of Virginia, to be Under Secretary of Transportation for Security for a term of five years.