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Senate

The Senate met at 9 a.m. and was called to order by the President pro tempore [Mr. STEVENS].

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Majestic God, from whom we borrow heartbeats, Your mercies endure forever. Today, we acknowledge our dependence on You. Lord, thank You for directing our steps and for protecting our loved ones. When darkness overtakes us, illuminate our path.

Let Your peace rest upon us today. Teach us to love wisdom and accept Your guidance. Keep us from traps that destroy our joy. Give us the humility that leads to honor and let Your justice reign in the Earth.

Guide our Senators, cheer them in their work, and keep them faithful to the end. Thwart the hopes of our Nation's enemies and bless those who each day risk their lives for liberty. We pray this in Your holy name. Amen.

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.

RECOGNITION OF ACTING MAJORITY LEADER

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

SCHEDULE

Mr. LOTT. Mr. President, we will have the opening statement from the leader ready in a moment. He has been detained, but he will be here. I will review the schedule.

I do believe the first schedule of events would be statements regarding the nominee to the Fifth Circuit Court of Appeals, Judge Charles Pickering of Mississippi. I believe we will be ready to begin with that momentarily.

Mr. President, this morning we will be proceeding to the debate, as I just outlined, on the nomination of Charles Pickering to the Fifth Circuit Court of Appeals. There will be an hour of debate prior to the vote on invoking cloture on this nomination. The vote will occur sometime shortly after 10 a.m.

Following the vote, the Senate will return to debate on S. 139, the climate change legislation. There will be 2 additional hours for debate prior to the vote on that legislation.

Following the vote, the Senate will resume consideration of the Healthy Forests bill. We expect to have rollcall votes on amendments to that bill throughout the afternoon and hopefully we can complete action on the bill today. It sounds to me as if those involved in that legislation made real progress on the bill. It would be very positive if we could complete that action today.

RECOGNITION OF THE ACTING MINORITY LEADER

The PRESIDENT pro tempore. The acting minority leader is recognized.

Mr. REID. Mr. President, as has been indicated by Senator LOTT, we have a lot to do today. There are a lot of different balls in the air regarding this Senate. I think we have them all where we can balance them quite well. We have, as the Presiding Officer knows, a conference report that has been completed after 2 long, hard days, the supplemental. We are making progress; the Interior appropriations bill has been done. I am hopeful we can finish the Energy and Water appropriations bill. So things are moving along quite well. I hope we can continue our momentum.

RESERVATION OF LEADER TIME

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

EXECUTIVE SESSION

NOMINATION OF CHARLES W. PICKERING, SR., OF MISSISSIPPI, TO BE UNITED STATES CIRCUIT JUDGE FOR THE FIFTH CIRCUIT

The PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider Calendar No. 400, which the clerk will report.

The legislative clerk read the nomination of Charles W. Pickering, Sr., of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

The PRESIDENT pro tempore. Under the previous order, there will be 60 minutes equally divided between the chairman and ranking member, with the final 10 minutes divided, with the first 5 minutes under the control of the Democratic leader or his designee and the final 5 minutes under the control of the majority leader or his designee.

The Senator from Utah.

Mr. HATCH. Mr. President, I rise today in support of the nomination Charles W. Pickering, Sr. to be a Circuit Judge on the United States Court of Appeals for the Fifth Circuit. I am pleased that the Majority Leader has brought this nomination to the floor, as it has been nearly 2½ years since Judge Pickering was first nominated to this position. Since then, his record has been carefully considered. He appeared before the Judiciary Committee in not one, but two lengthy hearings. So there has been plenty of opportunity to consider the qualifications of Judge Pickering.

We have received hundreds of letters of support for Judge Pickering from the public, members of the bar, as well as political, academic, and religious

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leaders. The overwhelming support for Judge Pickering's nomination from his home state of Mississippi speaks volumes, especially since that support comes from across the political spectrum and from various racial and ethnic groups.

Last month, the Governor of Mississippi and the other Democratic elected statewide officials of Mississippi sent a letter endorsing Judge Pickering stating they believe he should be confirmed. In that letter they noted that Judge Pickering has worked for racial reconciliation and ''helped unify our communities.'' They go on to state, ''Judge Pickering's record demonstrates his commitment to equal protection, equal rights and fairness for all. His values demand he respect the law and constitutional precedents and rule accordingly. He does. . . . As a judge, he is consistent in his fairness to everyone, and deemed well qualified by those who independently review his rulings, temperament, and work.''

Unfortunately, there has also been an unjustified campaign against Judge Pickering, driven largely by Washington special interest groups who do not know Judge Pickering and who have an ideological axe to grind. Make no mistake about it—these groups' political agenda is to paint President Bush's fair and qualified nominees as extremists in order to keep them off the federal bench. It has been reported that a member of this body has accused the President of ''loading up the judiciary with right-wingers who want to turn the clock back to the 1890s,'' stating that America is under attack from ''the hard right, the mean people.'' That news report also quoted that same Senator as having said, ''They have this sort of little patina of philosophy but underneath it all is meanness, selfishness and narrow-mindedness.''

Now, I am disappointed that this is the level of discourse that Members of this body lower themselves to in their attempt to score political points or pander to their supporters. That is their right, if they choose to do so, but it is unfortunate that the opponents of Judge Pickering have attempted to vilify and destroy his good character and exemplary record with distortions and disparaging remarks. For example, at a recent press event in Arkansas opponents continued their smear campaign, with one group describing Judge Pickering as a ''racist,'' a ''bigot'' and a ''woman-hater.'' Such remarks reveal which side is based on meanness.

So today I must stand and defend the character and record of Judge Pickering and put these falsehoods, distortions and mean-spirited remarks in the trash bin where they belong.

I was pleased that, despite this intimidation campaign, President Bush in January of this year renominated Judge Pickering for the Fifth Circuit. The propaganda easily gets in the way, so let me remind my colleagues that after fully evaluating Judge Pickering's integrity, competence, and temperament, the American Bar Association gave him its highest rating of ''Well Qualified'' not once, but twice—both when he was first nominated in May 2001 and again at the outset of the current Congress.

Now I expect we will hear complaints from the other side that this nomination should not be before the Senate. There are those who say the President should not have renominated Judge Pickering, since the Judiciary Committee had already acted on the nomination. That position, of course, ignores the President's constitutional authority to nominate judges. And the extraordinary action taken by the Judiciary Committee in the last Congress denied the full Senate its constitutional right to advise and consent. Going forward with this nomination today is fair to Judge Pickering, fair to the Senate, and fair to President Bush.

In addition to these procedural complaints, we have heard and will likely continue to hear a recycling of the tired arguments and well-worn parade of horribles—which are horrible in large part because of their gross distortion of Judge Pickering's upstanding reputation and record. It is my fervent hope that opponents of this nomination do not resort to attacks on Judge Pickering based on his personal convictions in an effort to justify their opposition to his nomination. However, I am not optimistic that my hopes will be realized, if the unfortunate attack by the extremist abortion group, NARAL, the National Abortion Rights Action League, is any indication. That group, which represents what this debate is truly about, states ''Charles Pickering of Mississippi was a founding father of the anti-choice movement, and a clear risk to substitute far-right ideology for common-sense interpretation of the law.''

I reject that characterization, but in any event Judge Pickering's private views on abortion, like any judicial nominee's personal views on political issues, are irrelevant to the confirmation decision. Judge Pickering has publicly affirmed in his confirmation hearings that he will follow established law and Supreme Court precedents—even those with which he disagrees. His record as a jurist demonstrates his commitment to the rule of law and that he understands that all lower courts, including the 5th Circuit, are bound by Roe and by the more recent Supreme Court decision in Planned Parenthood v. Casey.

For the record, in 1976, then-political advocate Charles Pickering joined a long line of famous Democrats and liberals who believed that Roe v. Wade was wrongly decided. Some who shared his view include Byron White, President Kennedy's appointee to the Supreme Court, Archibald Cox, the special prosecutor who investigated President Nixon, and Professor William Van Allstyne, a former board member of the ACLU. But I repeat—Judge Pickering's political views are less important than his expressed commitment to follow Supreme Court precedent, even precedents with which he may not agree.

It is outrageous that Judge Pickering, who has three daughters and nine granddaughters, has been smeared as a ''woman-hater'' or ''anti-woman.'' Indeed, numerous women who know and have worked with Judge Pickering have endorsed his nomination, including civil rights attorney Deborah Gambrell, and Deputy U.S. Marshal Melanie Rube.

Unlike some of my friends on the other side of the aisle, I have steadfastly resisted efforts to inject personal ideology into the confirmation process. We have all seen the destructive effects of such tactics on this institution, on the judicial nominations process, and on the nominees themselves. So as we debate the qualifications of Judge Pickering, and as his record is fairly evaluated on the merits, there can be little doubt that he deserves the support of every Member of the Senate.

Let me step back from the politics of this nomination for a minute and talk about the person. Too often, I fear, we Senators get engaged in the issues to such an extent that the personal side of individual nominees might be forgotten. By many opponents, Charles Pickering is portrayed as the stereotype of the Southern white male, locked in the thought, culture and traditions of his upbringing in the deep South of yesteryear. This is the caricature they attack, but it is not the reality of who Judge Pickering is. Though born and raised in the rural South, and although he has remained geographically near his childhood home, Judge Pickering has traveled far in his personal and professional life. And while the society of his youth has changed dramatically, in Charles Pickering we have a nominee with a lifetime record of civic and community service in improving racial relations and enforcing laws protecting civil and constitutional rights.

Judge Pickering's life story includes an outstanding academic record, an exceptional legal career and a life committed to serving others. He graduated first in his law school class at the University of Mississippi in 1961. While in law school, he was on the Law Journal and served as Chairman of the Moot Court Board. Upon graduating, he became a partner in a law firm in Mississippi.

In the 1960s, when racial tensions were prevalent throughout Mississippi, Judge Pickering served as City Prosecuting Attorney of Laurel and was elected and served four years as County Prosecuting Attorney of Jones County. He condemned racially motivated violence and encouraged citizens to help the government prosecute those guilty of such violence. As County Attorney from 1964 to 1968, he assisted the FBI in investigating and prosecuting the Klan's attacks on African Americans and civil rights workers.

During his time as County Attorney, the KKK infiltrated the Woodworkers

Union at the Masonite pulpwood plant in Jones County. Klan members beat people, shot into houses, fire bombed homes, and even committed a murder at the Masonite plant. Judge Pickering signed the affidavit supporting the murder indictment of reputed Klansman Dubie Lee for the murder at the Masonite plant. He also testified against the Imperial Wizard of the KKK, Sam Bowers, at a trial for the firebombing death of a civil rights activist, indisputably putting himself and his family at risk.

Now some may downplay Judge Pickering's actions during this era, but I want to emphasize the moral courage that he consistently displayed. Let me remind my colleagues of a statement by the chairman of the Mississippi Legislative Black Caucus, state Rep. Philip West, who is a supporter of Judge Pickering and has defended the judge's civil right's record. Representative West observed, ''For him to say one word against the Klan was risking his life.'' Mr. President, to hear Judge Pickering now described as a racist or bigot is simply despicable, and I will challenge anybody who does that on this floor.

Throughout his career Judge Pickering has shown a commitment to his community in both a professional and personal capacity. His numerous civic contributions include serving as the head of the March of Dimes campaign in Jones County; as the chairman of the Jones County Chapter of the American National Red Cross; and as the chairman of the Jones County Heart Fund. In 1963 he was recognized as one of the three Outstanding Young Men in Mississippi. Judge Pickering is active in his church and has served many years as a Sunday school teacher, as chairman of the deacons, Sunday school superintendent, and church treasurer.

He has worked with organizations to advance issues that promote equal opportunity for all individuals in his community, church, political party and State. His work with the race relations committee for Jones County and the Institute of Racial Reconciliation at the University of Mississippi are just two examples of his leadership for equal rights in this area. That is why we find such a broad outpouring of support for Judge Pickering across all groups and political parties. Allow me to share some of these editorials, articles, and letters with my colleagues.

I have already mentioned the letter of support from the current Governor of Mississippi and other Democratic statewide officials. Another letter came from William Winter, the former Democratic Governor of Mississippi, who writes, ''I have known Judge Pickering personally and professionally for all his adult life. I am convinced that he possesses the intellect, the integrity and the temperament to serve with distinction on that [Fifth Circuit] court. He is wise, compassionate and fair, and he is precisely the kind of judge that I would want to decide matters that would personally affect me or my family. While Judge Pickering and I are members of different political parties and do not hold to the same view on many public issues, I have always respected his fairness, objectivity, and decency.''

Many Senators are familiar with the name Jorge Rangel, who was nominated to the Fifth Circuit by President Clinton. In his letter supporting Judge Pickering's nomination, Mr. Rangel explains, ''I first met Judge Pickering in 1990 in my capacity as a member of the ABA's Standing Committee on the Federal Judiciary. As the Fifth Circuit's representative on the Committee, I conducted the primary investigation into his professional qualifications when he was nominated to a federal district judgeship in Mississippi. The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last thirteen years. Competent, compassionate, sensitive and free from bias are terms that aptly describe him. Attempts to demonize him are both unfair and out of place in a judicial confirmation proceeding.'' Mr. Rangel notes that Judge Pickering called him during the pendency of his own nomination with words of encouragement, and concludes, ''The current impasse in the confirmation proceedings is an unfortunate one, because it continues to ensnare many nominees of goodwill who have answered the call to serve. For their sake and for the ongoing vitality of our federal judiciary, I would hope that you and your colleagues can find common ground. A good starting point would be the confirmation of Judge Pickering.''

Yet another letter of support came from renowned Las Vegas criminal defense lawyer David Chesnoff, a registered Democrat who serves on the Board of the National Association of Criminal Defense Lawyers. Mr. Chesnoff, who tried a case before Judge Pickering, writes, ''At no time during my experience before Judge Pickering . . . did I ever note even a scintilla of evidence that Judge Pickering did not treat every citizen of our great country with equal fairness and consideration. Based on my experience with Judge Pickering, I am offended that people are attacking his sterling character. I felt it important to register my position on his behalf and believe he would make an outstanding addition to the United States Court of Appeals for the Fifth Circuit. . . .''

I.A. Rosenbaum also wrote to voice his support for Judge Pickering. I will read his letter in its entirety: ''I was the Democratic Mayor of Meridian [Mississippi] from 1977 to 1985 and a past President of Congregation Beth Israel. Injustice and character assassination galls me. Charles Pickering is no racist. He stood tall when our Temple was bombed and made very effort to prosecute Sam Bowers who planned the bombing. Sincerely, I.A. Rosenbaum.''

All of these letters, of course, were generated in response to the gross smear campaign waged against Judge Pickering that centered largely on his actions in the Swan case. I expect that we will hear a great deal about that case during the course of this debate. But let me make something perfectly clear to everyone here. Judge Pickering's actions in the Swan case had absolutely nothing to do with racial insensitivity. His lifetime of striving to promote racial reconciliation and fighting prejudice provides irrefutable evidence of that. Rather, Judge Pickering's actions in the Swan case had everything to do with his penchant for going easy on first-time criminal defendants.

Judge Pickering's record is replete with examples where he has seen the rehabilitative potential of first-time offenders and accordingly sentenced them to lighter sentences. Take, for example, the case of a 20-year-old African-American drug defendant who faced a 5-year mandatory minimum. Judge Pickering reduced that to 30 months and recommended the defendant be allowed to participate in an intensive confinement program, further reducing his sentence.

Another young African-American drug defendant with no previous felony convictions faced a 40-month sentence under the Sentencing Guidelines. Judge Pickering continued his case for a year, placed him under strict supervised home release for 1 year, and then used his good conduct during home release to establish the basis for a downward departure. Judge Pickering ultimately sentenced him to 6 months of home confinement, 5 years probation and no prison time.

A third 20-year-old African-American male faced between 70 and 87 months under the guidelines for a drug crime. Judge Pickering downward departed to 48 months and recommended that he participate in intensive confinement, which further reduced his sentence. The defendant's lawyer called Judge Pickering's compassionate sentence a ''life changing experience'' for this defendant.

In another case, an African-American woman faced a minimum sentence of 188 months. The government made a motion for a downward departure, and Judge Pickering continued the case six times over a period of 2½ years to allow the prosecution to develop a basis for a further downward departure. In the end, Judge Pickering reduced her sentence by more than half, sentencing her to 63 months.

The last case I want to discuss is the Barnett case. The Barnetts, an interracial couple, were both before Judge Pickering, charged with drug crimes. Both were facing sentences between 120 to 150 months but plea bargained with the government for a maximum 5-year sentence. Judge Pickering sentenced Mr. Barnett to the 5 years but with

Mrs. Barnett, who had Crohn's disease and was taking care of one of her sick children, he departed downward 22 levels and sentenced her to 12 months of home confinement. At a later time, the government made a motion for a downward departure for Mr. Barnett and Judge Pickering reduced his sentence as well. Mrs. Barnett later wrote a letter, as she said, out of gratitude for all Judge Pickering did for her and her family. She stated she had learned a valuable lesson, that her family had been brought closer together, and that her husband had changed in many positive ways. She concluded, ''I want to thank you for your part in all of this, and I can assure you that your thoughtfulness and just consideration is greatly appreciated and will never be forgotten.''

Thirteen years ago Judge Pickering began his service as a U.S. District Judge. He was unanimously confirmed by the U.S. Senate, which included a good number of members who are still serving in the Senate today, including 25 members of the Democratic caucus. That affirmative vote was well deserved given Judge Pickering's excellent academic record, his distinguished legal career, his outstanding character, and his superb record of public and community service. That record has only been enhanced by his service on the bench.

Judge Pickering deserves an up or down vote on the Senate floor. So I urge my colleagues to use proper standards, consider the entire record, and use a fair process for considering Judge Pickering's nomination. Those who know him best, Democrats and Republicans, representing a broad cross section of citizens, endorse his nomination. An unbiased consideration of Judge Pickering's character and experience will lead every fair-minded person that Judge Pickering's record fully justifies his confirmation to the Fifth Circuit Court of Appeals.

As the President said recently, ''The United States Senate must step up to serious constitutional responsibilities. I've nominated many distinguished and highly-qualified Americans to fill vacancies on the federal, district and circuit courts. Because a small group of Senators is willfully obstructing the process, some of these nominees have been denied up or down votes for months, even years. More than one-third of my nominees for the circuit courts are still awaiting a vote. The needless delays in the system are harming the administration of justice and they are deeply unfair to the nominees, themselves. The Senate Judiciary Committee should give a prompt and fair hearing to every single nominee, and send every nomination to the Senate floor for an up or down vote.''

I agree with President Bush that this obstruction is unfair and harmful. I have taken to the Senate floor on numerous occasions to condemn the tactic of forcing judicial nominees through cloture votes. My position has been the same regardless of whether the nominee was appointed by a Democratic president or a Republican president. I am proud to say that during my nearly 30 years in the Senate, I have never voted against cloture for a judicial nominee, even on the rare occasion that I opposed a judicial nomination and ultimately voted against it.

Yet, once again, some Senate Democrats are filibustering another ''Well Qualified'' nominee—preventing an up-or-down vote on this judge who is supported by a majority of the Senate. This is tyranny of the minority and it is unfair. Senator KENNEDY has asked ''What's the point of pushing yet again for a nominee who probably cannot get enough support to be confirmed because he doesn't deserve to be confirmed?'' With all due respect, I must disagree with the premise of his question. Judge Pickering does deserve to be confirmed, and, if an up-or-down vote were allowed, does have enough support to be confirmed.

As I have stated before, requiring a supermajority vote on this or any judicial nominee thwarts the Senate from exercising its constitutional duty of advise and consent. The Constitution is clear on this matter; it contemplates that a vote by a simple majority of the Senate will determine the fate of a judicial nominee. There is nothing in the Constitution that gives that power to a minority of 41 Senators.

Furthermore, a supermajority requirement for judicial nominees needlessly injects even more politics into the already over-politicized confirmation process. I believe that there are certain areas that should be designated as off-limits from political activity. The Senate's role in confirming lifetime-appointed Article III judges—and the underlying principle that the Senate perform that role through the majority vote of its members—is one such issue. Nothing less depends on the recognition of these principles than the continued, untarnished respect in which we hold our third branch of Government—the one branch of Government intended to be above political influence.

Over the past 2 years I have been accused of changing or breaking committee rules and of pushing ideological nominees. The record will show that these charges are without foundation. In fact, it is Senate Democrats that have pushed the notion of injecting ideology into the confirmation process and have taken unprecedented steps to oppose judicial nominees.

Opponents are using a variety of tactics to obstruct President Bush's judicial nominees. Supported by the extremist liberal interest groups, who themselves use even more shameful tactics to defeat these nominees, we have seen opponents distort the record, make unreasonable demands for privileged information, and force multiple cloture votes. This is all part of the strategy of changing the ground rules on judicial nominations that Senate Democrats have implemented.

I am not the only one who is concerned about the dangerous precedents that some Democrats have established. Before Miguel Estrada, the filibuster was never used to defeat a circuit court nominee. The Washington Post—hardly a bastion of conservatism—warned in a February 5, 2003, editorial that staging a filibuster against a judicial nominee would be ''a dramatic escalation of the judicial nomination wars.'' The Post urged Democrats to ''stand down'' on any attempt to deny a vote on the particular judicial nominee, Miguel Estrada. The editorial went on to warn that ''a world in which filibusters serve as an active instrument of nomination politics is not one either party should want.'' Unfortunately, this advice was rejected and the Senate was forced to endure an unprecedented seven cloture votes before Mr. Estrada requested his nomination be withdrawn. That was a sad day for the Senate—one I hope is never repeated.

Similarly, the Wall Street Journal, on February 6, 2003 stated ''Filibusters against judges are almost unheard of. . . . If Republicans let Democrats get away with this abuse of the system now, it will happen again and again.'' Unfortunately, that prediction came true, as the Senate is now blocked from acting on numerous judicial nominees because of filibusters.

But it is not just editorial pages which have denounced the use of the filibuster. In fact, some of my Democratic colleagues have expressed similar views. For example, Senator DASCHLE, the Democratic Leader stated: ''As Chief Justice Rehnquist has recognized: 'The Senate is surely under no obligation to confirm any particular nominee, but after the necessary time for inquiry it should vote him up or vote him down.' An up or down vote, that is all we ask. . . .''

Similarly, Senator LEAHY, my friend, colleague, and ranking member of the Judiciary Committee said ''. . . I, too, do not want to see the Senate go down a path where a minority of the Senate is determining a judge's fate on votes of 41.'' And Senator KENNEDY, the senior member on the Judiciary Committee stated, ''Nominees deserve a vote. If our Republican colleagues don't like them, vote against them. But don't just sit on them—that's obstruction of justice.''

I hope that Judge Pickering's nomination is not another example of a double standard or a strategy of some of my Democratic colleagues to change the ground rules on judicial nominees. I hope that my Democratic colleagues will exercise the same independence that I did when I joined them to invoke cloture on the nominations of Clinton judicial nominees. Judge Pickering deserves an up-or-down vote, and he deserves to be confirmed.

Mr. President, there are so many other things I could say, but I want to leave enough time for our Mississippi Senators.

Let me just say this. I know Judge Pickering. I have gotten to know him

better through this ordeal he has gone through over the last 2½ years than I ever thought I would. He is a fine man. His family is a fine family. He sent his kids to integrated schools—the first integrated schools in Mississippi they could go to. One of them now sits in the Congress, CHIP PICKERING, who is one of the fine Congress people here, and everybody who knows him knows it.

What they have done to him is awful. It is awful. I think it is time for the Democrats to break free from these rotten outside groups that just play politics on everything and bring everything down to the issue of abortion.

I ask unanimous consent relevant material be printed in the RECORD.

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

WATKINS LUDLAM WINTER & STENNIS, P.A.,
Jackson, MS, May 14, 2003.

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

DEAR MR. CHAIRMAN: I take this opportunity to express my support of Judge Charles Pickering of Mississippi for service on the Fifth Circuit Court of Appeals.

I have known Judge Pickering personally and professionally for all of his adult life. I am convinced that he possesses the intellect, the integrity and the temperament to serve with distinction on that court. He is wise, compassionate and fair, and he is precisely the kind of judge that I would want to decide matters that would personally affect me or my family.

While Judge Pickering and I are members of different political parties and do not hold to the same view of many public issues, I have always respected his fairness, objectivity and decency.

He was a member of the Mississippi State Senate when, as Lieutenant Governor, I presided over that body. I found him to be one of the most diligent, hardest working and most respected legislators with whom I served.

I would single out for special commendation his sensitivity and concern in the area of race relations. I had the privilege of serving as a member of President Clinton's National Advisory Board Race several years ago. One of the impressive initiatives that resulted from the work of that Board was the establishment of the Institute for Racial Reconciliation at the University of Mississippi.

Becasue of his long-standing commitment to the cause of racial equity and racial reconciliation, Judge Pickering was a leader in the formation of the Institute and served as a founding member of its Advisory Board.

As a member of the Mississippi Bar for over fifty years and a former Governor of Mississippi, I am pleased to vouch for Judge Pickering as being most worthy of confirmation as a judge of the Fifth Circuit Court of Appeals.

Sincerely,

WILLIAM F. WINTER.

WATKINS LUDLAM WINTER & STENNIS, P.A.,
Jackson, MS, October 25, 2001.

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

DEAR MR. CHAIRMAN: Please permit me to express to you my support for the confirmation of the Honorable Charles Pickering of Mississippi for a position on the Fifth Circuit Court of Appeals.

As a former Democratic Governor of Mississippi and as a long-time colleague of Judge Pickering in the legal profession and in the public service, I can vouch for him as one of our state's most respected leaders.

While he and I have not always been in agreement on certain public issues, I know that he is a man of reason and sound judgment. He is certainly no right-wing ideologue. He will bring a fair, open and perceptive mind to the consideration of all issues before the court.

I have been particularly impressed with his commitment to racial justice and equity. He and I have worked together for a number of years in the advancement of racial reconciliation, and we serve together on the board of the Institute for Racial Reconciliation at the University of Mississippi. He has been one of this state's most dedicated and effective voices for breaking down racial barriers.

Judge Pickering has demonstrated in every position of leadership which he has held a firm commitment to the maintenance of a just society. I believe that he will reflect those values as a member of the Fifth Circuit Court of Appeals, and I commend him to you as one who in my opinion will be a worthy addition to that body.

Sincerely,

WILLIAM F. WINTER.

THE RANGEL LAW FIRM, P.C.,
Corpus Christi, TX, April 1, 2003.

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

Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Russell Senate Office Building, Washington, DC.

DEAR SENATORS HATCH AND LEAHY: I write this letter to urge approval of Judge Charles W. Pickering, Sr.'s nomination to the United States Court of Appeals for the Fifth Circuit.

I first met Judge Pickering in 1990 in my capacity as a member of the ABA's Standing Committee on the Federal Judiciary. As the Fifth Circuit's representative on the Committee, I conducted the primary investigation into his professional qualifications when he was nominated to a federal district judgeship in Mississippi. I spent many hours discussing his qualifications with judges, lawyers and lay people throughout the state. I also interviewed Judge Pickering, during which we touched on matters relevant to his qualifications to serve as a federal judge.

The Charles W. Pickering that I have read about in press reports during the pendency of his current nomination does not comport with the Charles W. Pickering that I have come to know in the last thirteen years. Competent, compassionate, sensitive and free from bias are terms that aptly describe him. Throughout his professional career as a lawyer and as a judge, Judge Pickering has tried to do what he thought was right, consistent with his oaths as an officer of the court and as a judge. Attempts to demonize him are both unfair and out of place in a judicial confirmation proceeding.

On a more personal note, I still remember the words of encouragement I received from Judge Pickering while my own nomination to the Fifth Circuit was pending before the Judiciary Committee. On one occasion, Judge Pickering called me and graciously offered to contact Senator Lott's office to see if anything could be done to secure a hearing for my nomination. The word came back that Senator Lott was willing to help, but the process could not go forward until my home state senators returned their blue slips. That never happened. To this day, I very much appreciate the fact that Judge Pickering reached out to me and offered to help at a time when my pleas for a hearing had fallen on deaf ears.

The current impasse in the confirmation proceedings is an unfortunate one, because it continues to ensure many nominees of goodwill who have answered the call to serve. For their sake and for the ongoing vitality of our federal judiciary, I would hope that you and your colleagues can find common ground. A good starting point would be the confirmation of Judge Pickering.

Thank you.

Yours truly,

JORGE C. RANGEL.

GOODMAN & CHESNOFF,
Las Vegas, NV, January 16, 2003.

Re the Honorable Judge Charles W. Pickering, Sr.'s nomination to the United States Court of Appeals for the 5th Circuit.

Chairman ORRIN HATCH,
Committee on the Judiciary, U.S. Senate, Dirksen Building, Washington, DC.

DEAR CHAIRMAN HATCH: I had the pleasure of meeting with you when my partner Las Vegas Mayor, Oscar B. Goodman and I represented former United States District Court Judge Harry Chaiborne, in his impeachment proceeding in the United States Senate. I remember your open-mindedness and fairness in considering our case.

I am presently on the Board of the National Association of Criminal Defense Lawyers and a registered Democrat. I have been a financial supporter for the election of President William Jefferson Clinton and a contributor to the campaign of Vice-President Albert Gore, when he ran for President. I have been an aggressive advocate on the part of citizens accused of crimes and have appeared in criminal proceedings in thirty of our fifty states.

I had the privilege and pleasure of meeting Judge Pickering several years ago when I was hired by the former mayor of Biloxi, Mississippi, Peter J. Halet to represent him in a very complex and high profile federal trial assigned to Judge Pickering in the United States District Court in Hattiesburg, Mississippi.

The case was quite celebrated and the allegations were of the most serious nature. There were complicated legal questions and difficult human dynamics. Needless to say, the emotions ran high in the local community as well as among the participants. Having arrived in Judge Pickering's courtroom from across the country, I did not know what to expect in terms of my reception.

Sufficed to say, from day-one Judge Pickering treated all of the lawyers I brought with me to assist in the process, my jury expert and myself with courtesy and patience.

Certain tactics and techniques that we utilized may not have been used by other lawyers appearing before Judge Pickering in earlier cases, but he kept an open mind, listened to our position and gave me as fair a trial as I have received in any United States District Court, anytime.

Judge Pickering had a grasp of the difficult legal issues and addressed the case with objectivity and fairness. At no time during my experience before Judge Pickering, including the jury selection process, did I ever note even a scintilla of evidence that Judge Pickering did not treat every citizen of our great country with equal fairness and consideration. Based on my experience with Judge Pickering, I am offended that people are attacking his sterling character. I felt it important to register my position on his behalf and believe he would make an outstanding addition to the United States Court

of Appeals for the Fifth Circuit, of which I am admitted and have appeared.

Very truly yours,

DAVID Z. CHESNOFF, ESQ.

TENTH CHANCERY COURT
DISTRICT OF MISSISSIPPI,
Hattiesburg, MS.

Re the Appointment of Charles Pickering.

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

DEAR SIR: I write in support of the appointment of United States Judge Charles W. Pickering, III to the Fifth Circuit Court of Appeals. Charles Pickering is an able, outstanding and fair minded judge. I could not conceive that he would exhibit gender bias toward women inside or outside a court of law.

As an African American I have personal knowledge and experience of his efforts to heal the wounds of racial prejudice, and to resolve conflicts between the races in our state. As someone who experiences racial prejudice, both open and subtle, I can only say that my admiration for Judge Pickering is immense.

I sincerely appreciate all the efforts made by you and your committee in order to insure fairness in our federal judiciary. I urge you and your fellow committee members to recognize diverse opinions of persons, such as myself, who function and work at ground level in our local communities.

Thank you for your time and consideration.

Sincerely,

JOHNNY L. WILLIAMS.

DEBORAH JONES GAMBRELL
& ASSOCIATES,
Hattiesburg, MS, October 25, 2001.

Re Judge Charles Pickering; Nominee: Fifth Circuit Court of Appeals.

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

DEAR SENATOR LEAHY: A few days ago I ran into Judge Pickering at lunch and congratulated him on his being selected for an appointment to the Fifth Circuit Court of Appeals. I thereafter learned of opposition to his appointment and felt compelled to write this letter.

As an African American attorney who practices in the federal courts of the Southern District of Mississippi, where Judge Pickering has sat for the past eleven (11) years, I am concerned that he has come under scrutiny. I have appeared before Judge Pickering on numerous occasions during the past eleven (11) years, most often than not, in cases involving violations of civil rights and employment discrimination matters. I have found Judge Pickering not only to be a fair jurist, but one who is concerned with the integrity of the entire judicial process and assures every participant of a ''level playing field'' and a judge who will apply the law without regard for the sensitive nature of cases of this sort, which may have caused him personal discomfort.

I have personally seen him go overboard in working to bring reconciliation in matters wherein parties, because of lack of understanding of the law or actual ill will, may have committed violations because of lack of knowledge, etc. I have even been appointed by Judge Pickering to represent indigents who have legitimate claims but not the expertise or money to litigate the same, when he could have selected attorneys who might not bring the passion and true concern to bear to insure that the litigants rights are protected. Even when I don't prevail, my clients know that they have had their ''day in court'' before a judge who is open-minded, fair and just and will follow the law without regard to color, economic status or political persuasion.

I have known Judge Pickering prior to his taking the bench and have seen him advocate the rights of the poor and those disenfranchised by the system. Over the past 11 years, I have seen him bring the same passion for fairness and equity to the federal bench.

Though I personally hate to see him leave the Southern District, I am proud to say that his honesty, integrity and sense of fair play would make him an excellent candidate for the Fifth Circuit Court of Appeals.

Sincerely,

DEBORAH JONES GAMBRELL.

HATTIESBURG, MS,
October 25, 2001.

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

DEAR SENATOR LEAHY: I am writing to urge you to confirm Judge Charles Pickering as a Fifth Circuit Court of Appeals Judge. I have had the privilege of working in Judge Pickering's courtroom for the past two years as a Deputy United States Marshal.

Judge Pickering brings honor and compassion to the bench. His courtroom is truly a center of justice and fairness for men and women of every race and religion. As a Deputy U.S. Marshal, I have been present for most of his courtroom sessions. I am always impressed by Judge Pickering's rulings and opinions. He puts his heart and soul into preparing each case.

I am overwhelmed at the compassion that Judge Pickering shows each and every defendant. He truly cares for the welfare of these defendants and their families. I believe it grieves him to see mothers and fathers separated from their loved ones. As a man of great conviction, I know that Judge Pickering would make a positive impact on the Fifth Circuit.

As a Deputy U.S. Marshal, I am proud to serve under a man who personifies justice. As a citizen of the United States, I am glad to know that in times like these, we have Judge Charles Pickering in the position to maintain dignity and responsibility in our courtroom. As a woman, I am pleased at the thought that we will have Judge Pickering looking out for the rights of women and children from the beach of the Fifth Circuit Court of Appeals.

Sincerely,

MELANIE RUBE.

HOLCOMB DUNBAR,
Oxford, MS, October 25, 2001.

Re U.S. District Judge Charles Pickering.

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

DEAR SENATOR LEAHY: This letter is to submit for your consideration my unqualified endorsement of U.S. District Judge Charles Pickering for confirmation of his appointment by the President to the Court of Appeals for the Fifth Circuit.

I have practiced law in the State of Mississippi for more than 40 years. I am a past president of the Mississippi Bar Association, and a past member of the Board of Governors of the American Bar Association. I am a fellow of the American College of Trial Lawyers and have known Judge Pickering personally and by judicial reputation for many years.

I am a Democrat and would not want you to confirm any person to the federal courts of this nation who I felt was gender or racially biased. I have never known Judge Pickering to be a person or judge that was anything other than fair and impartial in his conduct toward women or minorities.

I do not think anyone questions his judicial qualifications. The American Bar Association has deemed him ''well qualified.''

For these reasons, I strongly endorse his confirmation to the Court of Appeals for the Fifth Circuit.

Respectfully,

JACK F. DUNBAR.

THE RILEY FOUNDATION,
Meridian, MS, May 22, 2003.

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

DEAR SENATOR HATCH: I was the Democratic Mayor of Meridian from 1977 to 1985 and a past President of Congregation Beth Israel.

Injustice and character assassination galls me. Charles Pickering is no racist. He stood tall when our Temple was bombed and made every effort to prosecute Sam Bowers who planned the bombing.

Sincerely,

I. A. ROSENBAUM.

WILLIAM HAROLD JONES,
Petal, MS, October 25, 2001.

Re Charles Pickering, United States District Court of Appeals Nominee.

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

DEAR SENATOR LEAHY: I have known Charles Pickering for probably 20 years or more. He served as a Senator from a nearby county in the Mississippi Legislature, and I served in the House of Representatives myself for 13 years. I have practiced in his Court on many occasions throughout the last 12 or 13 years and I can only say this is the most fair Judge before whom I have ever appeared. Not only is he fair, he wants to be fair to all parties. I have never known of any indifference or prejudice that he has shown against blacks or women and in my own humble opinion, it is regrettable that he has been accused of such.

I presently serve as Chairman of the Forrest County Democratic Executive Committee and although Charles was prior to his judicial service, a Republican, I do not hesitate to signify to any person that he is fair and impartial, and has been so even to myself, a Democrat.

Very sincerely yours,

WILLIAM H. JONES.

Mr. HATCH. Mr. President, I reserve the remainder of my time. I am happy to yield whatever time the distinguished senior Senator from Mississippi desires.

The PRESIDENT pro tempore. The Senator from Mississippi.

Mr. LOTT. Thank you, Mr. President. I thank Senator HATCH.

It is a pleasure to serve with my distinguished colleague from Mississippi who will be speaking later today.

I say to Senator HATCH, thank you for your leadership, your sensitivity as chairman of the Judiciary Committee, and for your specific help in the confirmation process of Judge Charles Pickering to be on the Fifth Circuit Court of Appeals.

I also want to express appreciation to Senator FRIST, the leader, for giving us time in a very busy schedule to take up

this nomination. But it is time we go forward with a vote on the nomination of this good and honest and very capable Federal judge, Charles Pickering.

Mr. President, as I say, I rise today in strong support of Judge Charles Pickering's nomination to be a judge on the U.S. Court of Appeals for the Fifth Circuit. I am pleased that this day has finally come, and that after almost 2½ years of waiting, we are finally moving forward with the consideration of Judge Pickering's nomination here on the floor of the Senate. I am grateful to Senator HATCH for his hard work in leading the Judiciary Committee to its recent approval of Judge Pickering's nomination to the Fifth Circuit, and this important vote has led to our being able to begin debate on this outstanding nominee.

As many Senators will recall, Judge Pickering was unanimously approved by the Judiciary Committee in the fall of 1990 to be a United States District Court Judge for the Southern District of Mississippi. He was then unanimously confirmed by the full Senate. He has served honorably in this position for 13 years, and I am happy that the President has re-nominated Judge Pickering for a promotion to the Fifth Circuit after his nomination was blocked from consideration by the full Senate during the 107th Congress.

Charles Pickering and I have known each other for over 40 years, which doesn't seem possible, and I can personally attest that there is no other person in the State of Mississippi who is more eminently qualified to serve on the Fifth Circuit Court of Appeals.

Mr. President, Charles Pickering graduated first in his class from the University of Mississippi Law School in 1961, and received his B.A. degree from Ole Miss with honors in 1959. He practiced law for almost 30 years in Jones County, Mississippi, and during this time served stints as the prosecuting attorney for Jones County and the City of Laurel during the 1960's. From 1972 to 1980, Charles served in the Mississippi State Senate. This was a part-time position, with full-time demands I might add, that allowed him to continue his law practice during this period.

Judge Pickering has had an impeccable reputation on the bench in Mississippi, and he is respected by all sectors of the Mississippi and national legal community. Scores of attorneys, community leaders, and other Mississippians from all walks of life have applauded his nomination to the Fifth Circuit. What a compliment to Judge Pickering, Mr. President, for him to have the support of those who know him best—the people he works with in his professional life and spends time with in his personal endeavors. It is no surprise that the ABA's Standing Committee on the Federal Judiciary found him ''Well-Qualified'' for appointment as a Fifth Circuit judge.

Furthermore, he is highly respected within the federal judiciary. He served on the Board of Directors of the Federal Judges Association from 1997 until 2001, and was a member of the Executive Committee for the final 2 years of his term. He recently completed a term of service on the Judicial Branch Committee of the Judicial Conference of the United States.

Judge Pickering has been involved in numerous community and public service endeavors. He has headed the March of Dimes campaign in Jones County, Mississippi, and served as Chairman of the Jones County Chapter of the American National Red Cross. He was also a major participant in the formation of the Jones County Economic Development Authority, serving as its first chairman.

Charles Pickering has been a leader in his community and in the state on race relations, and in standing up for what is right. In 1967, at the risk of harm to himself and his family, he testified against the Imperial Wizard of the KKK, Sam Bowers, for the firebombing death of civil rights activist Vernon Dahmer. He was active in his community's efforts to integrate their public schools, sending all four of his children to the integrated schools. In 1981, Charles Pickering represented an African American man falsely accused of robbing a white teen-aged girl. Although his decision to provide this legal representation was not supported by some in his community, he aggressively represented his client, who was found not guilty. He was a motivating force behind and currently serves on the Board of Directors of the William Winter Institute for Racial Reconciliation at the University of Mississippi, our mutual alma mater.

He has also volunteered for the Jones County Heart Fund, the Jones County Drug Education Council, and the Economic Development Authority of Jones County. He has always been very active in his church, serving as a Sunday school teacher, Chairman of the Deacons, Sunday school superintendent, and church treasurer. From 1983–85, he was the President of the Mississippi Baptist Convention.

In addition to his many professional and civic activities, Charles Pickering has also been a good farmer. He was the first president of the National Catfish Farmers Association and was a leader in catfish farming during its early days. Most importantly, though, is the fact that Charles has always put his family first, even with the commitments I have just described. He has a wonderful wife and four grown children with spouses and families of their own, including his son, Congressman CHIP PICKERING, who is a former member of my staff. Representative PICKERING's integrity is a further testament to the caliber of Judge Charles Pickering's character.

Mr. President, I am pleased that the Senate is considering this important nomination today, because the Senate needs to act now to confirm Judge Pickering. He is exceptionally well-qualified for elevation to the Fifth Circuit, and I strongly endorse his nomination. He has been waiting far, far too long for a debate and vote on his nomination. I urge my colleagues to support moving forward with an up-or-down vote on this important nomination. I know that Judge Pickering's elevation to the Fifth Circuit is supported by a majority of Senators, and it is time for this majority to be heard.

As I said, he has been waiting 2½ years in this process. Unfortunately, last year he was defeated on a party-line vote and prevented from being reported out of the Judiciary Committee. But this year he was reported to the floor. He deserves to have his story told, and even a vote to occur on his nomination.

I have known this man and his family and his neighbors, the people in his church, the school officials, the minority leaders in his community for over 40 years.

I think there used to be a time when a Senator vouched for a person, a nominee from his State, and it carried real weight. I am here to tell you, this is one of the finest men, one of the finest family men, one of the smartest individuals, one of the best judges I have known in my life. There is no question that he has the educational background, the qualifications, the experience, the judicial demeanor, and also the leadership to bring about unity, not division.

That has been the story of his life. He has always been a unifier. He has always been willing to step up and take on the tough battles in his home county and in our State of Mississippi.

Senator HATCH made reference to the fact that when he was county attorney, years ago, in the late 1960s he had the courage to actually work with the FBI and to testify against the Imperial Wizard of the Ku Klux Klan, something not very healthy for your political career or even your life at the time. But he took a stand and was defeated for reelection, to a large degree because of that.

He continued to work in his community and provide leadership. He practiced law for 30 years. If you want to look at his qualifications, here they are listed. He was not just an average student. He graduated first in his class from law school. He graduated from undergraduate school with honors. He has the highest rating by Martindale Hubbell. In 1990, he was unanimously confirmed by the Senate to be a district judge. He has been very good in his rulings. In fact, of those that were appealed, the reversal rate is only 7.9 percent, which is extraordinarily good. He received from the American Bar Association—not once but twice—their highest rating of well qualified. They looked into allegations that were made against him after his first consideration by the committee and came back and said: He is still well qualified—not a group known for dismissing allegations or charges that were made against him.

He certainly has the qualifications and the experience. In his community, he is endorsed by Democrats and Republicans, elected officials of both parties, the head of the local NAACP. The people who know him best, who know his family, who see him every day, say this is a good man, qualified to be on the Fifth Circuit Court of Appeals.

He has served on the Federal bench for 13 years. He is highly respected within the Federal judiciary. In fact, he has served in a leadership capacity there. He has been on the board of directors of the Federal Judges Association from 1997 to 2001, and he was on the executive committee for the final 2 years of his term. He recently completed a term of service on the Judicial Branch Committee of the Judicial Conference. He is respected by his fellow judges.

I know some of the Senators on both sides of the aisle have had Federal judges in their States also vouch for this good man to be on the Fifth Circuit Court of Appeals.

He has had letters of endorsement from a wide span of community leaders and State leaders in our State, including all five statewide elected Democrats.

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

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

STATE OF MISSISSIPPI,
OFFICE OF THE GOVERNOR,
Jackson, MI, September 24, 2003.

Hon. BILL FRIST,
Majority Leader, U.S. Senate, Dirksen Senate Office Bldg., Washington, DC.
Hon. THOMAS DASCHLE,
Minority Leader, U.S. Senate, Hart Senate Office Bldg., Washington, DC.

DEAR SENATORS FRIST AND DASCHLE: The nomination of Federal District Judge Charles Pickering to the U.S. Fifth Circuit Court of Appeals is once again coming before the U.S. Senate in Washington for consideration. We are the Democratic statewide officials of Mississippi.

We know Charles Pickering personally and have known him for many years. We believe Judge Pickering should be confirmed for this appointment and serve on that court.

Judge Pickering chose to take stands during his career that were difficult and often courageous. He has worked for racial reconciliation and helped unify our communities. Toward that objective, he formed a biracial commission in his home county to address community issues and led an effort to start a program for at-risk youth. Furthermore, Judge Pickering helped establish and serves on the board of the Institute for Racial Reconciliation at the University of Mississippi.

We are all active Democrats. Charles Pickering was, before rising to the Federal Bench, an active Republican. It is our hope that Party labels can be transcended in this fight over his nomination. We should cast a blind eye to partisanship when working to build a fair and impartial judiciary.

The U.S. Senate has a chance to demonstrate a commitment to fairness. Judge Pickering's record demonstrates his commitment to equal protection, equal rights and fairness for all. His values demand he respect the law and constitutional precedents and rule accordingly. He does.

He has never been reversed on any substantive issue in a voting rights or employment discrimination case that has come before him. His rulings reflect his support for the principle of one man one vote. Judge Pickering ruled the 1991 Mississippi legislative redistricting plan unconstitutional for failing to conform to one man one vote standards and ordered a new election as the remedy.

In 1963, at the age of 26, Judge Pickering was elected Prosecuting Attorney of Jones County. While holding this office he confronted the effects of racial hatred and saw firsthand its result in the form of extensive Ku Klux Klan violence. It was a horrible time in Mississippi. Judge Pickering took a public stand against the Klan violence and terrorism. He worked with the FBI to prosecute and stop the Klan. Charles Pickering testified against the Klan leader Sam Bowers in the murder of civil rights activist Vernon Dahmer.

In the 1960's Charles Pickering stood up for the voting rights of African Americans, and for the equal protection of all. In the 1970's and 1980's he led his community, his children's school, his political party and his church in integration and inclusion. Today, he is a voice for racial reconciliation across our state. As a judge, he is consistent in his fairness to everyone, and deemed well qualified by those who independently review his rulings, temperament and work.

Mississippi has made tremendous progress in race relations since the 1960s and Charles Pickering has been part of that progress. We ask the United States Senate to stand up to those that malign the character of Charles Pickering, and give him an up or down vote on the Senate Floor.

Very truly yours,

RONNIE MUSGROVE,
Governor of Mississippi.
ERIC CLARK,
Secretary of State.
MIKE MOORE,
Attorney General.
LESTER SPELL,
Commissioner of Agriculture and Commerce.
GEORGE DALE,
Commissioner of Insurance.

Mr. LOTT. I have other letters of endorsement and articles supporting Judge Charles Pickering, and I ask unanimous consent that they be printed in the RECORD.

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

From: Representative Phillip West, Chairman.
Date: April 25, 2003.
Re: Judge Charles Pickering.

POSITION STATEMENT ON JUDGE CHARLES PICKERING

After having listened to Judge Charles Pickering during his meeting with the Mississippi Legislative Black Caucus, reviewed materials concerning Judge Pickering's record as a Jones County attorney, and spoken with some of the members of the Institute of Racial Reconciliation, I have decided to reverse my position regarding Judge Pickering's nomination to the Fifth Circuit Court of Appeals.

When I originally signed the petition against his nomination I was not aware of the information that has subsequently come to my attention. I labored under the impression that opponents had a clear and convincing argument. Now I am not certain that the ammunition on him is as powerful and as convincing as I was led to believe. I certainly do not believe Judge Pickering is presently a ''racist''.

Judge Pickering's record of working with both races and working for racial reconciliation in past and present years is beyond what many whites we have supported and continue to support in positions of leadership have done in our state.

While I do not condemn and judge all white men and women to be ''staunch racist'', I do believe many have racist tendencies and beliefs as evidenced by the racism instilled in our many institutions. At least Judge Pickering has shown a willingness to work for racial reconciliation prior to his consideration for the Fifth Circuit Court of Appeals position.

I hope and pray understanding of the need for racial reconciliation by Judge Pickering will help strengthen the Fifth Circuit's fortitude in resolving racial issues and concerns in a spirit that God directs.

I recognize different people can review the same facts and reach different conclusions. I respect their right, for ''Beauty is in the eyes of the beholder.''

It would also be ''Politically Correct'' for me to remain silent. However, I cannot support a position that may be ''Politically Correct'' but I feel is ''Morally Wrong''. I truly believe we all should embrace truth, justice, and fairness whether we are black or white, rich or poor, democrat or republican. Our state needs it. Our children deserve it.

AMERICAN BAR ASSOCIATION,
Houston, TX, February 10, 2003.

Re Charles W. Pickering, Sr., United States Court of Appeals, Fifth Circuit.

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

DEAR SENATOR LEAHY: The purpose of this letter is to confirm the recommendation of this Committee previously given as to the nomination of Charles W. Pickering, Sr. for appointment as Judge of the United States Court of Appeals, Fifth Circuit.

A substantial majority of our Committee is of the opinion that Charles W. Pickering, Sr. is Well Qualified and a minority of the Committee is of the opinion that Charles W. Pickering, Sr. is Qualified for this appointment.

A copy of this letter has been sent to Charles W. Pickering, Sr. for his information.

Yours very truly,

CAROL E. DINKINS,
Chair.

[From the Clarion-Ledger, Mar. 9, 2003]

JUDGE PICKERING—SENATE SHOULD CONFIRM NOMINATION

As outlined on the front of The Clarion-Ledger's Perspective section today, the almost two-year-old circus that has become the nomination of U.S. District Judge Charles Pickering Sr. to the 5th U.S. Circuit Court of Appeals has been based allegations that Judge Pickering is a racist.

This is not true and is very unfair to Pickering.

A throng of special interest groups—including very reputable ones—has opposed President Bush's nomination of Pickering on the basis of that charge of longstanding career racism by the Laurel jurist.

Trouble is, those groups and the political faces in the Senate that depend upon the support of them, have failed to make a credible case against Pickering on the racism charge.

Pickering is a what conservative Republican judge who is a devout Christian and a

practicing Southern Baptist. As has been made clear to those following the Capitol Hill controversy, the hue and cry is about racism but the undercurrent of opposition isn't about race at all—it's about the thorny issue of abortion rights.

As in the case of fellow Bush federal appellate court nominee Miguel Estrada, the opposition to Pickering among Senate Democrats isn't about the judge's qualifications. It's about the judge's politics.

And while Senate Republicans played the same political game with the judicial nominees of former President Bill Clinton, the politics of personal destruction in the case of Pickering has reached a new low.

By any reasonable standard, Charles Pickering Sr. has lived the life and done the work of a man with his heart in the right place on race in a state where such a life and work wasn't always easy or appreciated.

Pickering isn't a Johnny-Come-Lately to the concept of meaningful racial reconciliation. He's been part of the solution to Mississippi's vexing racial conundrum for decades. He has been an able jurist, a contributing citizen and a responsible politician and jurist.

Those who seek to oppose Judge Pickering on the grounds of his political philosophy or religious views should do so openly and in aboveboard fashion—not hiding behind the political skirts of dubious charges of racism.

Racism is a serious evil. Mississippians know better than most in America the severity of racism and the vile manifestations it can assume. Mississippi has borne witness to unspeakable acts of cruelty and mayhem in the name of race literally since statehood.

In Mississippi's fragile racial environment—one in which people of good will and good intentions have sought to build bridges—crying ''wolf'' on false charges of racism is a particularly onerous political and social crime.

On a broader scale, the politics of judicial confirmation threatens to subvert the partisan political give and take of the presidency in judicial nominations to provide philosophical balance to the courts.

Confirmation hearings should be about the qualifications and character of the judicial nominee, not the next presidential election.

The Senate Judiciary Committee owes Judge Pickering a fair hearing based on an examination of his record—his entire record—as a judge, as a public figure and as a man.

Based on what we have known of that record, a fair hearing by the committee will produce no impediment to confirmation.

CONSTANCE IONA SLAUGHTER HARVEY,
Forest, MS, October 23, 2001.

Hon. CHARLES W. PICKERING, Sr.,
U.S. District Court Judge,
Hattiesburg, MS.

DEAR JUDGE PICKERING: Thank you for reminding me of the upcoming Institute for Racial Reconciliation Board Retreat to be held Friday, November 9 through Saturday, November 10, 2001. Unfortunately, my heavy schedule will prevent me from attending. On those dates, I will also be required to participate in the Annual State Convention of Mississippi Action for Progress Head Start and facilitate a session at the Metro Black Women Lawyers' retreat. Both of these events require my personal involvement.

While I will not be in attendance, I am assured, because of your integrity, that you will continue to provide the quality of leadership you have provided in the past. You have served Mississippi and her people well even to the extent of taking positions that were unpopular. This sometimes meant great personal sacrifice and loss of political gain for you.

Thank you for being a human being and for caring what happens to other human beings. I am especially mindful of your commitment to racial reconciliation over the past twenty years. Because of this commitment, our future looks better.

I'll contact you regarding the developments at the Retreat around the 15th of November. My best to you.

Sincerely yours,

CONSTANCE SLAUGHTER-HARVEY.

[From the Atlanta Journal-Constitution, Mar. 9, 2003]

TRIALS OF A SOUTHERN JUDGE

EVIDENCE DOESN'T SUPPORT CHARGES OF RACISM AGAINST CHARLES PICKERING

(By Janita Poe and Tom Baxter)

When court is not in session, Deborah Gambrell and U.S. District Judge Charles W. Pickering often hole up with other lawyers in a courthouse anteroom—and debate the law.

They're there to schedule trials or sentencings. But Gambrell, a liberal African-American lawyer, and Pickering, a conservative white judge, invariably fall into spirited exchanges on legal issues and philosophies.

''We've had debates over everything from Clarence Thomas to the details of some case,'' Gambrell said. ''Judge Pickering is a conservative, but he wants to hear your opinion. And he's amenable to having his mind changed, too.''

Gambrell sees no racial bias in the judge. On the contrary, she said, he appoints motivated lawyers such as her to represent workers—many of them black—who claim they were wronged by employers. ''He loves the law and wants you to represent your client well,'' Gambrell said, ''and I don't think that's discriminatory.''

Strange as it sounds, Gambrell is talking about the same Charles Pickering who made headlines last year as a reputed old-line Southern bigot. The liberal lobbying group People for the American Way, for example, claims Pickering is ''hostile to civil rights.'' NAACP Chairman Julian Bond says Pickering uses ''a racial lens to look at America.''

Pickering drew the criticism after President Bush nominated him for a job on the New Orleans-based 5th U.S. Circuit Court of Appeals, one step below the Supreme Court. A Senate committee controlled by Democrats, heeding complaints about the judge's racial views, rejected him.

With the Senate now in Republican hands, Bush has renominated Pickering, prompting new Democratic charges that Republicans, even after the Trent Lott fiasco, are catering to racist Southern whites.

In Mississippi, however, many describe a different man than the one feared and vilified by critics inside the Beltway.

Rather, their up-close description of Pickering is that he is a relative progressive on race, a man who in the 1960s, when much of Mississippi was still fighting efforts to kill Jim Crow, testified against a murderous Ku Klux Klansman. He is a parent who, despite a poisonous racial atmosphere around Laurel, bucked white flight to send his four children to newly integrated public schools.

Pickering has been excoriated for seeking a lighter sentence for a white man convicted in a cross burning (see related story). But he also sought reduced sentences for many black first offenders. He has pushed to establish a racial reconciliation center at the University of Mississippi, his alma mater. And, both on the bench and off, he has pressed white prison officials to ensure the rights of black inmates.

The judge's record is not spotless on race. In the infamous cross-burning case, he worried aloud how a tough sentence would play in the community—apparently the white community.

And as a law student in 1959, he published a paper laying out a strategy for maintaining a ban on mixed-race marriages in Mississippi.

Yet these are two exceptions, the second more than four decades old, in an otherwise surprisingly upstanding history on race.

Pickering will not comment publicly, pending Senate action on his nomination, which is expected this month or next.

ROOTS: RELIGION AND RACE

Pickering, the son of a Laurel dairy farmer, has always stayed close to his south-central Mississippi roots. The New Orleans-based appeals court job would be his first post outside Mississippi.

A land of bayous and pine trees, the region around Laurel and Hattiesburg is a place where people take their religion seriously. Methodist and Baptist churches line the main streets; even today, when much of the Bible Belt has succumbed to secularism, day care centers are named ''River of Life'' and ''Alpha Christian.''

Pickering is a 42-year member at First Baptist Church of Laurel, where he has been a deacon, a Sunday school teacher and church treasurer. In the mid-'80s, he was president of the Southern Baptists in Mississippi and was allied with the ''inerrantists,'' who maintain the Bible is the word of God and its accounts are factual.

Racism once had as strong grip on the region as religion, and Pickering was reared during a period of open, unquestioned apartheid. That upbringing has lent some credibility to critics' charges.

Marilyn Huff, a white 65-year-old who lived next to the Pickering farm, recalls playing hopscotch and marbles with Pickering and several children of black sharecroppers who lived nearby. But the black kids attended a different school.

''We got on our bus and went to our school, and they got on their bus and went to theirs,'' she said. ''I think the South accepted those things when other areas of the country did not.''

Pickering's 1959 paper on ''miscegenation,'' or mixed-race marriage, reflects that acceptance. In the article, which was based on a case of that era, Pickering suggests that Mississippi lawmakers could strengthen the state's anti-miscegenation law against legal challenges by reviewing similar laws in 23 other states. Pickering published the article in the Mississippi Law Journal, where he was a staff writer.

The judge's son, U.S. Rep. ''Chip'' Pickering, 39, explains the article as nothing more than an assigned ''exercise'' in which students ''assessed laws on interracial marriage and told why the Mississippi law was struck down.''

The congressman's account, however, does not fully convey the tone of the brief. The article did not simply analyze problems with the law, but suggested how it could better withstand court challenges. As People for the American Way points out, Pickering ''expressed no moral outrage over laws prohibiting and criminalizing interracial marriage'' but instead calmly offered a strategy for maintaining a ban—as if the law were as ethically neutral as, say, restrictions on double-parking.

Elsewhere, by the 1950s, people inside and outside the state were beginning to question Mississippi's adherence to Jim Crow strictures. In 1955, Pickering's junior college near Laurel achieved a breakthrough of sorts when its all-white football team, in a quest for a national championship, decided to play an integrated squad from California despite

protests from the state's racist establishment.

In 1962, as Pickering started his law practice, the Federal government forced the University of Mississippi to admit James Meredith, a black Air Force veteran. Students and locals responded by staging a riot that killed two people and injured hundreds.

And that was in relatively genteel Oxford. Laurel, a rougher place to begin with, became a flash point of racial and class tensions, with leftist union and reactionary Ku Klux Klan organizers alike recruiting members from the 4,000 workers at the town's big Masonite plant. The toxic atmosphere soon presented Pickering with a chance to depart Mississippi's well-worn racial path.

Laurel was home to a man who combined ferver for both Christianity and apartheid to produce a vicious, ragtag holy war in defense of the status quo. In 1966, Sam Bowers, the Scripture-quoting imperial wizard of the White Knights of the Ku Klux Klan, led a gang of Klansmen to firebomb the home of Hattiesburg NAACP leader Vernon Dahmer, killing him.

Pickering, then serving as Jones County prosecutor, could have avoided the trial, as the slaying took place in a neighboring county. But Jim Dukes, the prosecutor, who presented the case against Bowers, asked his colleague to testify to Bowers' violent character, and Pickering agreed—despite the risk of Klan reprisals.

''He was putting himself at risk of bodily harm, social ostracism and economic destruction,'' Dukes said. ''These were turbulent times, and testifying against the Klan was not a popular thing to do.''

Pickering lost a race for a state House seat later that year. Bowers—whose trial ended in a hung jury and who was not convicted until 1998—took credit for beating him.

REPUBLICAN POLITICS

Like many Mississippians of his generation, Pickering began political life as a Democrat and switched to the GOP. He did so, however, before the party had become a haven for Southern whites disaffected with the national Democrats' liberal racial policies.

Pickering changed parties in 1964, a time when Mississippi's Democratic leadership stood for continued segregation. Most notoriously, Democratic Gov. Ross Barnettt had personally turned Meredith away from Ole Miss and helped provoke the later rioting. The Mississippi Democratic establishment, in the thrall of Jim Crow, sent an all-white delegation to the 1964 national convention and was denied seating.

The small but growing Mississippi GOP leaned to the right on many issues, as it still does, reflecting a pro-business bent. But compared with the Democratic leadership, many Republicans were moderate or even progressive on desegregation and on compliance with federal court orders.

The state GOP ''was characterized by some very powerful business types who could afford to be more moderate in their political views,'' said Marty Wiseman, director of the John Stennis Institute of Government at Mississippi State University.

Laurel's powerful state senator, E.K. Collins, led the all-white delegation to the Democratic convention. In 1971, Pickering took Collins on and beat him. ''It was considered nervy for a young upstart to run against an established longtime Dixiecrat like E.K.,'' recalled former Rep. Tucker Buchanan, a Democrat who became friends with Pickering in the Legislature.

In the Senate, Pickering developed a reputation for being able to talk with all sides and occasionally broker a deal—even though, as one of only two Republicans, he was excluded from Senate leadership.

''He was right down the middle. He was a moderate,'' said former Gov. William Winter, a progressive Democrat who was lieutenant governor when Pickering arrived at the Legislature.

The new governor, Democrat William Waller, was the first in many years who had not made race the focus of his campaign, and as a prosecutor had heroically but unsuccessfully mounted two cases against white supremacist Byron de la Beckwith for the murder of the NAACP's Medgar Evers. ''Charles was of that stripe,'' Winter said.

Robert G. Clark Jr., who is today the House speaker pro tem, in 1968 became the first African-American elected to the Legislature. He did not receive a warm welcome. ''It was pretty lonely back then,'' Clark said.

But Pickering was cordial. ''He was one who didn't mind coming up to me to shake my hand and say, 'How are you doing today, Rep. Clark?' ''

Pickering was elected state GOP chairman in 1976, serving with then-Executive Director Haley Barbour, who went on to become Republican national chairman, a powerful Washington lobbyist and—this year—a candidate for governor.

Pickering won credit as a party peacemaker after a bruising fight between supporters of Gerald Ford and Ronald Reagan at the 1976 GOP convention. But he lost his one bid for federal office in 1978, when Thad Cochran defeated him in the U.S. Senate primary. He lost again in a run for state attorney general a year later, ending his career in elective politics.

THE SOVEREIGNTY COMMISSION

Pickering's terms as a state senator coincided with the final years of the infamous Mississippi Sovereignty Commission. Created in 1956 in reaction to the U.S. Supreme Court's school desegration decision, the agency was supposed to protect Mississippi and her ''sister states'' from federal encroachment, by ''any and all acts and things deemed necessary and proper.''

The commission used its charge to spy on, intimidate and harass those considered to be racial troublemakers or outside ''agitators.'' It helped fund the reactionary white Citizens Councils and kept up a system of informants who reported to the commission on the activities of the FBI as well as civil rights groups.

As a state senator Pickering voted twice, in 1972 and 1973, along with the majority, to continue funding for the commission—votes his critics have highlighted during the confirmation hearings. By the early '70s, however, Mississippi had generally dismantled legal segregation, and the agency was trying to retool itself as a general investigative organization.

Waller vetoed the funding in 1973, and the commission was officially dissolved in 1977, its files sealed. In the end, Pickering voted with the majority to end the commission and seal the records.

In 1990, during hearings on his nomination as district judge, Pickering said he ''never had any contact'' with the commission and that he knew ''very little about what is in those records.'' His opponents point out, however, that when the Sovereignty Commission's files were subsequently opened, an investigator's memo was found naming him.

The document suggested Pickering and two other legislators had communicated with the commission on its investigation of labor union activity in Laurel. The three lawmakers were ''very interested'' and ''requested to be advised of developments,'' according to the memo.

Pickering's son, the congressman, says the agency had approached his father, not the other way around. ''His only contact came in 1972, when a Sovereignty Commission employee approached him and said he had information about a radical group infiltrating a union in Jones County. My father's only response was, 'Keep me informed.' ''

Again, this may be too easy a dismissal. The nature of the supposed union infiltration is in dispute. The commission memo says the agency was focusing on a pro-civil rights group, but in Pickering's confirmation hearing last year, the judge said he was concerned about Klan activity.

Any alleged connection to the racism of the Sovereignty Commission sharply contrasts with Pickering's public and personal actions in support of integration in the same decade.

AT HOME IN LAUREL

Even though they lived in racially polarized Jones County, Pickering and his wife, Margaret Ann, sent their four children to newly integrated public schools in the '70s.

Allison Montgomery, the judge's second-youngest child, recalls thinking her father had to set an example for other families by supporting integration. She was bused to the formerly all-black Oak Park High the year it debuted as an integrated elementary school.

''It was never discussed in our home, but my sense was that because Daddy had a reputation as being one who supported what was right, that it was what we were expected to do,'' said Montgomery, 35, a homemaker who lives in Shreveport, La.

''Even though it meant we would end up in a minority situation, I think the powers that be in our community knew he would still support the public school system.''

Montgomery has fond memories of learning new games and chants with her black schoolmates, but she remembers several white parents moving their children out of her hometown because the teacher was black. Some families enrolled their children in private schools. ''Suddenly people were sending their kids to a little small academy called Heidelburg Academy,'' she said. ''It was in Jasper County, and they probably had a 20- or 30-minute drive, at least.

Black people in the Laurel area took note of Pickering's stance on racial issues.

When Larry Thomas was a child, he watched his father, a local civil rights leader, work out the logistics of demonstrations with Pickering. Later, he dealt directly with Pickering as a fellow economic-development board member. Thomas, 49, a pharmacist, is a black Democrat.

Over the years, Pickering disregarded white criticism to make alliances with black people, Thomas said.

''When things were changing in the '60s and '70s, he always tried to reach a compromise. He was always trying to understand the thinking and concerns of the black community,'' Thomas said. ''To me, that's the most I expect of a white man. The rest is our responsibility.''

Melvin Mack, 53, a black county supervisor, grew up about four miles from Pickering's family and, over the years, has seen him at dozens of black gatherings. Pickering may have been reared in an era when discrimination was the rule, he said, but he has always been friendly with blacks.

''You will see him at black family reunions,'' Mack said. ''You will see him at funerals when a black family's loved one has died.''

In the '90s, Pickering was an early, prominent supporter for establishing what became the William Winter Institute for Racial Reconciliation at Ole Miss. Among its other functions, the institute promotes programs to combat racial prejudice.

Pickering has also responded to complaints about the abuse of black State prison inmates. Sometimes he has ordered changes

from the bench and other times, when evidence did not fully substantiate the abuse, worked informally. Pickering ''will call me afterward and ask that we look into what is going on,'' said Leonard Vincent, general counsel for the State Corrections Department.

In one case, such informal intervention led to the firing of at least two guards.

''Judge Pickering was the only white leader we could get to stand up against the guards and the penal system,'' said a local civic activist, who spoke on condition of anonymity. ''I mean, he called them on the carpet and cleaned them up.''

Pickering, the activist said, did not seek to publicize his behind-the-scenes effort. ''I'm not saying Judge Pickering is a saint,'' he said. ''He is a conservative man. But he's not afraid to stand up for what is right.''

THE CASE AGAINST PICKERING

Such sentiments do not sway opponents.

''Judge Pickering's record isn't erased just because he has African-American friends in his community,'' said NAACP Chairman Bond, a former Georgia legislator. ''This is a question of what kind of Federal judiciary are we going to have. Are we going to have one occupied by women and men who support justice and fairness, or who oppose it?''

Many Pickering opponents object to his nomination on grounds unrelated to his racial attitudes. The predominantly black Magnolia Bar Association of Mississippi is one such opponent.

The 5th U.S. Circuit Court of Appeals has jurisdiction over Mississippi, Louisiana and Texas, whose population is 45 percent nonwhite. But of 14 judges' seats that are filled, only two are Hispanic and only one is black. The Magnolia Bar has sought more diversity and more liberal voices on the court for years, President Melvin Cooper said, so Pickering—a conservative white—is the wrong choice.

''We're looking at . . . the decisions he would make on the bench,'' Cooper said.

Abortion-rights groups have joined the fight against Pickering, also because of his conservative personal views. As a State legislator in the mid-1970s, Pickering led an effort to make the national Republican platform anti-abortion, specifically opposing the U.S. Supreme Court's ''intrusion'' into the issue with Roe v. Wade.

''We're concerned that would color the attitude he would take to the appellate bench,'' said Judy Appelbaum, a vice president of the National Women's Law Center.

When asked about abortion at his confirmation hearing last year, the judge sounded less militant. ''My personal views are immaterial and irrelevant,'' the judge responded. ''I will tell you that I will follow the constitution, and I will apply the Supreme court precedent.''

Pickering has yet to rule on an abortion matter. But the 5th U.S. Circuit may well consider the constitutionality of state statutes designed to make abortions more difficult to obtain. In Mississippi, for example, legislation is pending that would restrict the time when an abortion is legal and require abortion providers to be board-certified in obstetrics and gynecology.

Yet allegations of bigotry have hurt the judge's chances—and damaged his reputation—more than concerns about his general conservatism. His son says Pickering is willing to undergo another round of intense scrutiny and heated attacks to restore his good name.

''The stereotype of what Mississippi is can easily be used against someone like my father, who is a Southern Baptist and from an older generation of white Mississippians,'' he said. ''But my father is not at all the man they try to say he is. We hope in this second go-round the truth catches up with the false accusations.''

The law-review article on mixed-race marriage laws casts a cloud on that record. But the evidence suggests that the judge has moved on since he wrote it.

''That was 1959,'' said Angela Barnett. ''Back in the day, everyone was taught to think that way.''

Barnett, who is white, went before Pickering on drug charges in 1997—with her black husband, Harrell. The couple, who now live in Houston, say the judge helped them get their lives together with lenient sentences and advice.

''If he was racist, he wouldn't even be thinking about helping us,'' Barnett said. ''He would have said 'Heck, no, she's married to a black man, I'm not going to help them.'''

When the Senate debates Pickering's nomination, his conservative views—on abortion, federalism, the role of the judiciary and other matters—will be fair game. The judge is quite conservative by most measures, and many people would prefer more moderate or liberal nominees.

But in Mississippi, the notion that Pickering is a racial throwback and a friend to cross-burners doesn't sell.

Pascagoula attorney Richard ''Dickie'' Scruggs, for example, is a believer in Pickering.

Scruggs is a ''mass tort'' trial lawyer—the sort who signs up thousands of plaintiffs to join in class-action lawsuits—who was lead litigator in Mississippi's multibillion-dollar tobacco suit.

''Judge Pickering has been in the camp that was considered liberal to moderate in the 1960s,'' said Scruggs, a Democrat who is also Trent Lott's brother-in-law. ''He's a bright jurist and has a moral compass that gives him a real sense of fairness. . . .

''I think he would be a great [appeals court] judge. I just don't know why he would want to go through this process again.''

Mr. LOTT. One of the criticisms was, well, the Judge was the intermediary in sending some of the letters of support. I am not going to belabor the point, but as a matter of fact, I have the list of who these people were. They were people he had known for 30 years, former college friends, law school friends, people he practiced law with. It was in the aftermath of the anthrax attack here on the Capitol. The only way he could make sure the letters got to the Judiciary Committee in a timely way was to send them himself. The allegation that there was something inappropriate about that is totally baseless, and it is just the type of thing that has been used against him.

Another allegation is that when he was a State senator he had some relationship with what was then known as the Sovereignty Commission. When he went into the Senate, I think when he was first sworn in, representatives from that organization said they had some concerns about Klan activity with regard to labor unions down in his home county.

He said: Keep me posted.

Seldom do they note the fact that he subsequently voted to abolish the Sovereignty Commission; again, a very frivolous charge. To have your name mentioned 30 years later in a report, that they had some happenstance contact with him, certainly should not be disqualifying.

From all walks of life in Mississippi, people are very much in support of this nomination. He hasn't just been a lawyer and a judge and family man. He has been involved. He helped bring his hometown school through integration. His kids went to the public schools. The first time I saw his son—now a Congressman—CHIP PICKERING, he was playing linebacker for the football team for the Laurel Tornadoes, R. H. Watkins Laurel High School. He was a great athlete on a team that was probably 80 percent African American. They have always been willing to take a stand.

He was head of the local March of Dimes. He headed the local Red Cross. He has been involved in economic development. He has been involved in the Heart Fund, the Drug Education Council, Sunday school teacher, chairman of the deacons, church treasurer, president of the Mississippi Baptist Convention. Some people look at that almost like it is an indictment. It is a great honor for the people of your faith to honor you to head their organization statewide.

He has even been a farmer and was the first president of the National Catfish Farmers Association. I had contact with him then.

President Reagan once wrote in a note where there was a picture of a mother and her son: The apple never falls too far from the tree. The point was, if the child is really an outstanding person, he probably came from a very strong and good tree. True. In this case, there is not a finer young man I know of than Congressman CHIP PICKERING who has labored valiantly to tell the truth about his dad. If you want to get emotional, watch a son work for his father. I think the kind of man CHIP PICKERING is tells you a lot about the father who brought him into the world, along with his mother.

This certainly is an outstanding individual. He had his reputation besmirched a couple of years ago. He has been willing to continue to stand and fight to have the record corrected and to see this through to a conclusion. I hope the Senate will not filibuster this judge. At least give him a direct vote. Or if we have to have a vote on cloture, vote to invoke cloture, and let's move this nomination forward.

There is a real fester developing here in this institution, institutionally and individually. We have to lance it or it is going to demean us as individuals and the institution. We have to stop it. This is the place to do it. This man should be confirmed for the Fifth Circuit Court of Appeals.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDENT pro tempore. The Senator has 11 minutes 9 seconds.

Mr. HATCH. I yield 5 minutes to the distinguished Senator from Georgia.

The PRESIDENT pro tempore. The Senator from Georgia is recognized.

Mr. MILLER. Mr. President, I rise today to talk about a good and brave man from the State of Mississippi, Judge Charles Pickering. I also rise today to talk about a judicial nominating process that is badly broken and out of control. Judge Charles Pickering has been victimized by inaccurate race baiting and political trash talk of the news media, Members of Congress, and Washington's liberal elite. Judge Pickering's critics continue to unfairly label him a racist and segregationist. Nothing could be further from the truth.

Judge Pickering has worked courageously in difficult times—difficult times many in this body could not hope to understand—to eliminate racial disparities in Mississippi and the South. My good friend, former Governor William Winter of Mississippi, a Democrat and one of the South's most respected progressives, came to Washington to support Judge Pickering's nomination. Sadly, Governor Winter's praise and firsthand account of Pickering's true record fell on deaf ears by most Capitol Hill Democrats.

Charles Pickering deserves an up-or-down vote on his nomination, as does another fine nominee who has been treated in the same shameful manner, Justice Janice Rogers Brown of California. On both of these nominees, I fear we are about to cave in once again to the left-leaning special interest groups. These special interest groups, like termites, have come out of the woodwork to denounce Justice Brown simply because she is an African American who also happens to be conservative. Never mind that Justice Brown is intelligent, articulate, chock-full of common sense, and highly qualified to serve on the Federal appeals court bench. Never mind that in 1998, 76 percent of Californians voted to retain Justice Brown. That is a job approval rating most of us could only dream of.

The special interest groups don't care about any of that. They don't want to hear how qualified Justice Brown and Judge Pickering are, or how much the voters like the job they have done.

No, their only mission is to assassinate these good people's character and to take them down one way or another because they fear they won't cater to their liberal agenda. They are right; they won't. These fine nominees are much too independent and much too intelligent to be held hostage to anyone's extreme agenda. Or as Thomas Sowell wrote of Justice Brown in a column headlined ''A Lynch Mob Takes Aim at Judicial Pick'':

> What really scares the left about Brown is that she has guts as well as brains. She won't weaken or waver.

So they can publish all the racist cartoons they want and they can demonize Judge Pickering and brutally and callously reduce Justice Brown to tears at her committee meeting. They can sneeringly accuse them both of being outside the mainstream. But President Bush knows and the voters of California and Mississippi know, and the majority of this Senate knows, Charles Pickering and Janice Rogers Brown are not the ones who are outside the mainstream. The ones who are completely out of touch are the special interest groups that have taken this nominating process hostage and those in this body who have aided and abetted their doing so.

Speaking of lynch mobs, my all-time favorite movie is ''To Kill a Mockingbird.'' In the movie's key scene, you may remember, Atticus Finch, a lawyer who is raising two small children, is defending a black man unjustly accused of rape. That lynch mob also tries to take justice into its own hands. Atticus confronts them at the jailhouse door. His daughter Scout joins him and sees that the leader of the mob is someone she knows. She calls to him by name: Hey, Mr. Cunningham. Remember me? You are Walter's daddy. Walter is a good boy. Tell him I said hello.

After a dramatic pause, Mr. Cunningham turns away and says to the mob: Let's go home, boys.

This group, bent on injustice, was turned aside by a small girl who appealed to them as individuals.

My friends in this Chamber, I know you, and I appeal to each of you as individuals, as fathers, mothers, colleagues and friends. Most of you were taught in Sunday school to do unto others as you would have them do unto you. This is not treating someone as you would want to be treated yourself. This extreme partisanship and deliberately planned obstructionism has gone on long enough in this body. I wish we could do away with the 60-vote rule that lets a small minority rule this Chamber and defeat the majority, reversing the rule of free government everywhere; everywhere, that is, except in the Senate.

The PRESIDENT pro tempore. The Senator's time has expired.

Mr. MILLER. I hope we can have an up-or-down vote—just an up-or-down vote, Mr. President.

The PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. Mr. President, how much time remains?

The PRESIDENT pro tempore. Five minutes.

Mr. HATCH. I ask unanimous consent that there be an additional 10 minutes equally divided with, of course, the same understanding that Senator COCHRAN will be the last to speak for 5 minutes.

The PRESIDENT pro tempore. Is there objection?

Mr. LEAHY. Reserving the right to object, and I shan't because I have already spoken about this with the distinguished senior Senator from Utah, but my understanding is this is 10 minutes equally divided on top of whatever time is remaining?

Mr. HATCH. That is right, with the understanding that Senator COCHRAN will be the last to speak for 5 minutes.

Mr. LEAHY. Mr. President, what is the current order—I was off the floor when the order was entered last night—what is the current order on who speaks last?

The PRESIDENT pro tempore. The final 5 minutes is to the majority leader or his designee, and the previous 5 minutes is to the minority leader or his designee.

Mr. LEAHY. It is perfectly all right. I think the Senator from Utah has proposed a very fair proposal. I have no objection.

The PRESIDENT pro tempore. Is there objection? The Chair understands the request is to add 5 minutes to each side.

Mr. HATCH. Right.

The PRESIDENT pro tempore. Under the control of—

Mr. LEAHY. The same way.

The PRESIDENT pro tempore. The same persons controlling the time.

Mr. HATCH. With the understanding that Senator COCHRAN will be given the leader's 5 minutes at the very end of the debate.

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

Mr. HATCH. Does the distinguished Senator care to go ahead?

The PRESIDENT pro tempore. There are 35 minutes on the Democratic side and 10 minutes on the Republican side.

Mr. LEAHY. Will the Chair repeat that, please? I didn't hear what the Chair said.

The PRESIDENT pro tempore. There remains 35 minutes to the Democratic side and 10 minutes to the Republican side, 5 minutes added to each side. The Chair reminds the Senators that the last 5 minutes on each side is under the control of the leaders or their designees.

Mr. HATCH. Mr. President, I yield 2 minutes to the distinguished Senator from Georgia, Mr. CHAMBLISS.

Mr. CHAMBLISS. Mr. President, I appreciate the chairman's strong leadership on this issue. I rise in the strong support of the nomination of Charles Pickering to the Fifth Circuit Court of Appeals.

I want to say, first, that I appreciate the honesty, the integrity, and the forthrightness of my colleague from Georgia on every issue, but particularly on this issue. He has been very much out front, and this Senator greatly appreciates his attitude and his dedication to ensuring that quality judges are confirmed to every circuit of the United States and every district of the Federal bench.

I rise with some special appreciation for Judge Pickering's nomination because he is nominated to the Fifth Circuit Court of Appeals.

In 1969, when this Senator became a member of the Georgia bar, Georgia was a member of the Fifth Circuit. So I have been a member of the Fifth Circuit bar since my early days. The Eleventh Circuit was created in 1980. We split off at that time, so I no longer argue cases on a regular basis in the Fifth Circuit.

The Fifth Circuit has been very blessed with a number of great judges. Look at the judges who came from difficult times, such as my very good friend Judge Griffin Bell who, after serving as a member of the Fifth Circuit, came to be Attorney General; Elbert Tuttle, Judge Frank Johnson—any number of judges such as these judges at the district court level—Judge W.A. Bootle. These individuals came through very difficult times and distinguished themselves as judges.

Judge Charles Pickering came through that same very difficult time in the South, a time in the South when race was a very critical and the most forthright issue. Charles Pickering looked the racial issue in the eye and provided the kind of leadership of which every American would be very proud.

As we now consider his nomination to the Fifth Circuit Court of Appeals, I could not be prouder of any individual than I am of the nomination of Charles Pickering. I am going to have a lot more to say about this, but today we have the opportunity to bring this nomination to an up-or-down vote.

I encourage all of my colleagues to give him a vote on the floor of the Senate. Let's put this good man, this good judge on the Fifth Circuit.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator's time has expired.

Mr. HATCH. I yield the remainder of my time to the Senator from Tennessee.

The PRESIDING OFFICER. The Senator from Tennessee has 3 minutes remaining—2 minutes remaining.

Mr. HATCH. How much time is remaining?

The PRESIDING OFFICER. The Senator has 2 minutes.

Mr. ALEXANDER. Mr. President, I come at this differently than the Senator from Mississippi. I don't know Charles Pickering. I have met him briefly only twice. But I care about the Fifth Circuit Court of Appeals. Bridget Lipscomb and I have studied his record diligently.

Nearly 40 years ago, I was a law clerk on the Fifth Circuit for the great Judge John Minor Wisdom. I have been trying to think of something to say to the Members on the other side to help them change their minds on this nomination.

Judge Wisdom was a member of the Federal court that ordered the University of Mississippi to admit James Meredith to Ole Miss. The Fifth Circuit played a crucial role in desegregating the South. Judges Tuttle, Rives, Brown, and Wisdom were real heroes at that time. Crosses were burned in front of their homes. I will have more to say about this, but Judge Pickering is a worthy successor to the court of Judges Wisdom, Tuttle, Rives, and Brown.

While those judges were ordering the desegregation of Deep South schools, while crosses were being burned in front of their homes, Judge Pickering was enrolling his children in those same newly desegregated schools, and Judge Pickering in his hometown was testifying in court against Sam Bowers, the man the Baton Rouge Advocate called the ''most violent living racist,'' at a time when people were killing people based on race.

Many of my generation have changed their minds about race in the South over the last 40 years. That is why the opposition to Judge Pickering to me seems so blatantly unfair. He hasn't changed his mind. There is nothing to forgive him for. There is nothing to condemn. There is nothing to excuse. He was not a product of his times. He led his times. He spoke out for racial justice. He testified against the most dangerous of the cross burners. He did it in his own hometown, with his own neighbors, at a time in our Nation's history when it was hardest to do. He stuck his neck out for civil rights.

Mr. President, will our message to the world be: Stick out your neck for civil rights for Mississippi in the 1960s and then we will cut your neck off in the Senate in 2003, all in the name of civil rights? I certainly hope not.

Charles Pickering earned this nomination. He is a worthy successor to the court of Judge Wisdom, Judge Tuttle, Judge Rives, and Judge Brown.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. Mr. President, I understand the time has been used. I know the remarks of the distinguished Senator from Tennessee are much more lengthy. I ask unanimous consent that immediately following the vote, he be given time to finish his remarks.

The PRESIDING OFFICER. Is there objection?

Mr. LEAHY. What was the request?

Mr. HATCH. That immediately following the vote on Judge Pickering, the distinguished Senator from Tennessee be given time to finish his remarks because he has prepared extensively.

Mr. LEAHY. Would the Senator like to ask for time to finish the remarks now, with the same amount of time given to this side? If my friend from Tennessee wants to finish his speech now, I will ask consent that he be given that amount of time with an equal amount of time added to this side.

Mr. HATCH. That will be fine with me.

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

Mr. ALEXANDER. Mr. President, that is very generous. How much time do I have to finish the speech?

Mr. LEAHY. How much time does the Senator need?

Mr. ALEXANDER. May I ask for 10 minutes?

Mr. HATCH. We have no objection.

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

Mr. LEAHY. That is with an equal amount of time to our side.

The PRESIDING OFFICER. The Senator is correct.

Mr. LEAHY. Mr. President, this will be pushing the time of the vote back to about 10:20, 10:30.

The PRESIDING OFFICER. It will be approximately 55 minutes from now.

Mr. ALEXANDER. Mr. President, I thank the Senator from Vermont and the Senator from Utah for their generosity.

Let me remake my first point. I care about this case because I care about the Fifth Circuit Court of Appeals. Many of the Senators know or knew Judge John Minor Wisdom. They knew what a great judge he was.

They knew what the times were like in the Deep South during the 1960s and 1970s. I remember Judge Wisdom once telling me the Ku Klux Klan had burned a cross in the intersection between his home and that of Congressman Hale Boggs. Judge Wisdom said: They were getting both of us with one cross burning.

So I set out some time ago, with my staff, to look through the record of Judge Pickering to see what he has done. All the evidence is that Judge Pickering, like Judge Wisdom, like Judge Tuttle, Judge Rives, and Judge Brown, stuck his neck out for civil rights at a time when it was hardest to do. Mississippians know that.

William Winter, with whom I served, a leading former Democrat Governor, a leader for racial justice, strongly supports Judge Pickering. Frank Hunger, who served on that court with me as a law clerk back in the 1960s, President Clinton's Deputy Attorney General, Al Gore's brother-in-law, strongly supports Judge Pickering. I have lived in the South for a long time, about the same amount of time as Judge Pickering. I have learned to tell those who are racists, those who stood silently by, and those who stuck their necks out.

Let me invite my colleagues to go back with me to Mississippi, to the late 1960s. James Meredith had become the only Black to graduate from the undergraduate school at Ole Miss. Reuben Anderson, who has endorsed Judge Pickering, had become the first Black graduate of the Ole Miss Law School.

In Nashville, where I went to school at Vanderbilt, the first integrated class had just graduated from Vanderbilt University. Robert Clark became the first black elected to the Mississippi Legislature since the Reconstruction.

It was not until 1968, that the first blacks were permitted to participate in intercollegiate athletics at the University of Florida and Georgia and Tennessee and other Southeastern Conference schools.

The law had changed but there were still plenty of ''colored only'' signs on restroom doors in plenty old southern cities during the late 1960s. Martin Luther King was murdered in Memphis during 1968. Alabama Governor George Wallace won the Democrat primary for president in 1976 in Mississippi, and in Boston, Massachusetts.

Perhaps my colleagues saw the movie, ''Mississippi Burning.'' That was about events during 1967 in Mississippi. Civil rights workers Goodman, Schwerner, and Chaney were murdered. They were picked up by three carloads of Klansmen, shot and their bodies were buried in a 15-foot earthen dam. In 1967, seven men were convicted of federal conspiracy charges, eight were acquitted and three received mistrials. At the time, the state of Mississippi refused to file murder charges. To this day, no one has ever been tried for those murders.

Wes Pruden, a young reporter at the time, told me he went to a Mississippi courtroom and everybody in the courtroom except the judge had a button on that said ''Never.'' That was the environment in which Charles Pickering was living in Laurel, Mississippi in Jones County in the late 1960s.

Blacks were just beginning to serve on juries. A few Blacks voted. Schools were being desegregated one grade at a time starting with the lower grades so that older children would have less opportunity to interact socially. Race was not a theoretical issue in Laurel in the late sixties, or even a political issue. People were killing people based on race in the late 1960s in Jones County, MS.

The White Citizens Council, a group of white collar, non-violent segregationists was the country club version of resistance to integration in Laurel. Klan members were known at that time in Laurel for putting on their white robes, opening up their bibles, building a bonfire in a pasture, crossing a sword and a gun over a bible, and proceeding to burn down the home of a black person. The KKK in Laurel shot into homes and beat blacks over the head with baseball bats. One did not speak out lightly against the Klan because its members could very well be your neighbor or your co-worker.

The Klan infiltrated law enforcement departments and juries. The Klan put out fliers instructing residents not to cooperate with the FBI on cases.

Laurel was Klan territory. It was the home of Sam Bowers. Bowers had created the White Knights of the Ku Klux Klan because he believed that the regular KKK was not violent enough. The Klan was out to resist integration, but that was not enough for Sam Bowers. The White Knights set out to oppose racial integration ''by any means necessary.''

Since 9/11 we have heard a lot of talk about terrorists. This is not the first time we have seen terrorists in America. We had terrorists then. Sam Bowers and the White Knights of the Ku Klux Klan in Laurel, MS, were the terrorists of the 1960s. The FBI said the White Knights were responsible for at least 10 killings then. The Times of London said Bowers himself was suspected of the orchestration of 300 bombings.

According to the Baton Rouge Advocate, Sam Bowers was ''America's most violent living racist.''

Charles Pickering made public statements condemning Klan violence. He worked with the FBI to prosecute and stop Klan violence. In the late 1960s, Bowers came up for trial for the murder of the slain civil rights worker, Vernon Dahmer, and Judge Pickering testified publicly against Bowers.

I ask unanimous consent to submit for the record two documents. The first is a Klan newsletter from 1967 criticizing Pickering for cooperating with the FBI. The second is Bowers' own Motion for Recusal filed in Federal court, asking Pickering to remove himself from hearing a case involving Bowers because of Pickering's previous testimony against Bowers and taking credit for defeating Judge Pickering in a statewide race for attorney general.

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

[From the Citizen-Patriot]

A NEWSLETTER DEDICATED TO TRUTH AND THE CHRISTIAN CIVILIZATION

''*Where the Spirit of the Lord is, there is Liberty*.—2 Corinthians 3:17.

When in the course of human events it becomes necessary for the Truth to be told concerning massive animal corruption in Public Office, it is the Duty of the Public Press to inform the Citizens. Unfortunately for the citizens of Jones County, J.W. West, the Chief-Communist Propagandist, not only refuses to tell the Truth, but actually takes a leading part in the direction of the evil public corruption which is strangling liberty in America. The Responsibility to Truth must there be filled by the Citizens themselves. These are the Publishers and Distributors of the Citizen-Patriot.

PUBLIC OFFICE IS A PUBLIC TRUST

Its successful administration requires from its Officials a Fear of God, rather than a fear of men, and those Officials who serve justly must be ambitious for the Glory of the Heavenly Father rather than ambitious for their own personal advancement or the advancement of some device to which they have a vested attachment. Our Father has promised and amply demonstrated that He will prosper a Nation whose Officers serve Him. And, conversely, He will wreak vengeance and punishment upon a Nation whose officers are self-serving men pleasures. All citizens owe a high Duty to law and government, but all men owe a higher duty to our Heavenly Father, the Author of Truth and Liberty.

LET FACTS BE SUBMITTED TO A CANDID POPULATION

The Base of the Political Corruption which is sweeping our Beloved Land of America lies in the Establishment of a National Police Bureau, which brings pressure to bear upon local officials. By a calculated means of Fear and Lust for Reward, this Beast of Satan directs its pressure in such a way that the local government is, in fact, woed against the local citizens and their local interests.

The honest citizens of Jones County have recently been defrauded by certain officials in an outstanding and clear-cut example of the above, whereby the Spirit of the Law was frustrated under the Color of the form and letter of legality by the clever manipulations of Chet Dillard and Charles Pickering. Fortunately, this pair were not completely successful in their attempt to pervert justice in the Circuit Court. By the cunning use of their official positions for personal benefit they were able to operate their evil _____ before the Honorable Grand Jury; but the Honorable Trial Jurors in the Roy Strickland case saw through their scheme, and struck a blow in favor of Justice by returning a verdict of ''Not Guilty.''

Praise be the Blessed Name of the Heavenly Father, The Guardian of our Liberty Whose Holy Word is the only Truth and Anchor in a stormy world ruled by evil men operating under color of Law

The honest facts regarding the Roy Strickland Case are as follows:

In the late summer of 1965 a series of wholesale arrests were made in Jones County with regard to a car theft ring. These arrests were made by local officials at the urging of FBI Special Agent Bob Lee of Laurel, Miss. Lee, following standard FBI practice, misrepresented the amount of evidence which he had regarding the car thefts, and deceived the local officials in order to get them to make a larger number of arrests than his evidence would warrant. Bob Lee's motive in this was not so much to convict anyone with regard to the car thefts, but rather to bring additional underworld characters under FBI control where they could be used for criminal action and as stool pigeons. Roy Strickland was Bob Lee's chief target in this regard. After being arrested in the late summer of 1963, Strickland was allowed and easy bond and released. Strickland was eventually arrested and indicted (and released without bond in two instances) on five separate counts of car theft which alleged to have occurred during August and September of 1965. The arrests and indictments for these offenses spanned a period form September 1963 through March 1966. At no time prior to April of 1967, however, did Dillard or Pickering make an attempt to prosecute Roy Strickland on any of these cases. They were all continued from time to time and from term to term in the Circuit Court of Jones County at the request of the prosectution. Strickland was allowed to walk out of the courtroom without even making bond on two of the indictments until early in 1967. Then, on short notice, the oldest of the five cases was quickly called up for trial on April 22, 1967.

Why? the sudden change of attitude on the part of Messers. Dillard and Pickering from that of a relaxed indulgence for a year and a half to that of a sudden, vicious persecution of Roy Strickland on charges that were nothing more than frame-ups in the first place? Let's look into the Hidden Truth which the Communist, J.W. West is trying to conceal from the citizens of Mississippi.

_____ was out on bond doing work on oil rigs in Louisiana in January of 1966 when he was contacted by Ford O'Neil. O'Neil advanced a proposition to Strickland asking him to help the State Investigators and the FBI in some work to kidnap and torture a confession out to Lawrence Byrd on the Dahmer case. Ford O'Neil promised Ray Strickland that in exchange for this work, the FBI and State Investigators would pressure Chet Dillard not to prosecute Strickland on the car thefts. Strickland agreed to assist in the Lawrence Byrd kidnap and torture, and brought in Jack Watkins, another ex-convict, who at that time was wanted for burglary and armed robbery in the Coast area. Jack Watkins was also promised immunity from his crimes by the State Investigators and FBI agents. Later, Roy Strickland, Jack Watkins, Ford O'Neil, MHSP, Steve Henderson, NHSP, Roy K. Moore, Chief Special agent, FBI, and Bill Dukes, Gulfport Special agent, FBI, got together to make final plans and arrangements for the actual kidnapping and torture of Lawrence Byrd. To show ''good faith'' Roy Moore gave Ford O'Neil a hundred dollars, and Ford passed it over to Roy Strickland to bind the deal. Several days later Strickland, Watkins and several others did carryout the actual kidnap

and torture of Lawrence Byrd. The FBI men stood in the bushes out of sight and directed Byrd's statements while Watkins tortured Byrd. This was the confession which resulted in the arrest of a dozen or so innocent white men in the Dahmer case.

At first, it seemed that the evil plot of the FBI would succeed. J.W. West was giving them massive doses of propaganda in order to convince the men before the ever entered the courtroom and to the general public they were looking like ''Lynden's Little Angels.'' But there was a cloud on the horizon. The plot started coming to pieces when Strickland was arrested on a drunk charge early in 1967 in Jones County. FBI Chieftan, Roy K. Moore, was getting worried about Strickland, as was Ford O'Neil. They wanted him to stay out of Jones County until after the Dahmer case was tried. Strickland was worrying them by coming back to Jones County at frequent intervals and going on drinking sprees. All during 1966 rumors had been circulating in Laurel that Strickland knew something about the Lawrence Byrd kidnap-torture, and there was an ever-present danger that Strickland might reveal the whole thing to the wrong person during one of his binges. Roy K. Moore could not rest easy as long as Roy Strickland was in Jones County, whether in or out of jail, but it was finally agreed that it was better to leave Strickland in jail, and try to ease him off to Parchman, even if it meant double crossing him.

However, Strickland began to realize that the FBI was trying to use everybody against everybody, and then betray everybody for the sole benefit and advancement of the FBI. Strickland then decided to tell the truth and take his chances in open court. He contacted the defense attorneys in the Dahmer case and gave them the full facts about the FBI-engineered kidnap and torture of Lawrence Byrd. This, and much other supporting evidence was turned over to Chet Dillard in order to obtain a just indictment for kidnapping against Roy K. Moore, Bill Duke, Ford O'Neil, Steve Hendrickson and Jack Watkins. When first given the evidence, Dillard appeared to be interested in enforcing the law without fear or favor, but when the proper FBI pressure was applied to him he caved in like a ripe watermelon, and defended the FBI men before the Grand Jury, and worked against the indictment, using trickery, lies and deceit to hobble the work of the Honest Jurors. (The District Attorney is permitted to lie to the jurors because he is not under oath, all witnesses must testify under the oath.)

The FBI is desperately trying to suppress the truth in this case (just as they did in the Kennedy assassination) and Dillard and Pickering are Helping the FBI to conceal its crime against the people of Jones county. Roy K. Moore, Chief special Agent of the National Police Bureaucracy in Mississippi is a highly trained, brilliant, self-serving savage. The American Government means nothing to him, beyond its mechanical ability to collect taxes from honest working people, and then pay money back to him in the form of a large, comfortable, unearned salary, and present him the power and prestige of an official ruler over mankind. Roy K. Moore is a criminal who was smart enough to acquire an education and an official position BEFORE he began to prey upon the honest and productive members of the community. Now, he will, like any other criminal, threaten, beat, rob, torture, persecute and kill anyone who interferes with the advancement of his personal career, which, to him, is the ''whole of the law.'' Truly, it may be said that these highly trained criminals of the National Police Bureaucracy are the most dangerous animals upon the face of the earth.

Understandably, weaklings such as Dillard and Pickering are afraid of the FBI, but they should realize that Public Service in America requires a Personal Sacrifice on the part of the officeholder, and that the purpose of Law in America, is Equal Justice, rather than the protection of official Bureaucratic Criminals.

Whatever his past, Roy Strickland was working on an honest job when the FBI enticed him to kidnap Lawrence Byrd. Whether or no he stole the car? He is charged with, there is little or no real evidence against him in any of them to establish his guilt. But the Supreme Injustice of the whole business is that he is being persecuted by Chet Dillard not for car theft, or contempt, or perjury, but because he told the Truth about the FBI kidnapping and torturing a ''confession'' out of Lawrence Byrd. Thanks to the Infinite Mercy of the Heavenly Father, the people of Jones County understand the purpose of the Law better than their Public Officials. We respectfully invite the loyal citizens of Jones County to return to the polls on Aug. 8, 1967, and have Then and There this WRIT.

[From the Citizen Patriot]

In times past, this publication has repeatedly alerted the citizens of Jones County to the danger to Life, Liberty and Property, which is posed by the continued operation of a communist newspaper under the director of the evil J.W. West.

Violence and anarchy always follow in the wake of atheists and materialistic economic claptrap which communists preach, and Laurel is no exception.

Freedom of the Press is predicated upon the press telling the truth. But, of course, West is interested in centralized power and control of the population, so he is not going to print the truth about what is going on in the Circuit Court of Jones County.

District Attorney Chet Dillard and Charles Pickering have been furnished with positive proof concerning the kidnap and beating of Lawrence Byrd in January of 1966 in Laurel, but they will not bring these facts before the Grand Jury. The facts show the following:

1. Lawrence Byrd was kidnapped under the direction of the F.B.I., with collaboration by Mississippi State Highway Patrol investigators and assistance of ex-convicts and wanted felons. The convict felons were hired and paid by the F.B.I. and promised immunity by the state investigators in order to get them to kidnap and torture Byrd.

2. The motive for the kidnap was to beat and torture Lawrence Byrd into confessing to the Dahmer incident and force him into implicating a large number of other men who are politically opposed to dictatorship. This was to enhance the prestige of the F.B.I. as an investigative organization, and to frighten the citizens of Jones County and Mississippi into submitting to dictatorship.

3. The men who arranged and conducted the Byrd kidnap were: Roy Moore, F.B.I.; Bill Dukes, F.B.I.; Steven Henderson, M.H.P.; Ford O'Neil, M.H.P.; Jack Watkins, convict felon, Roy Strickland, convict felon, and others. Dillard and Pickering have sworn affidavits in their possession, but they refuse to do their duty and present the whole body of evidence to the Jones County Grand Jury. They offer as their lame excuse that ''too many important persons are involved.''

Since when has the LAW been a respecter of persons?

It is high time that we found out the real truth about the American Gestapo, the F.B.I. If some ''important persons'' get hurt by truth that is just too bad. They are a disgrace to law enforcement.

How about 15 innocent men being thrown into Federal Prison just because they have been a political embarrassment to the police dictators and J.W. West?

How about a Laurel citizen and businessman being kidnapped and tortured into confession something he had not done?

Are you going to enforce the law without fear or favor, Messrs Dillard and Pickering, or are you going to crawl and whine at the feet of the unconstitutional national police bureaucracy? Are you going to do your duty and arrest Jack Watkins or are you going to continue to try and confuse, mislead and manipulate the Grand Jury?

Why were Dillard and Pickering so anxious to persecute old Buck, who only stole a few hundred dollars, yet so reluctant to indict the F.B.I. criminals who are stealing the life and liberty of the whole country. Which way is the money moving now?

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, HATTIESBURG, MISSISSIPPI

Sam Bowers, Katie Perrone, Michelle O'Hara, Jeff Rexroad, and Shawn O'Hara (Plaintiffs), vs. Mike Moore and the State of Mississippi (Defendants).

MOTION FOR RECUSAL

Comes now Shawn Richard O'Hara, on his behalf, and on the behalf of Sam Bowers, Michelle O'Hara, and Jeff Rexroad, asking that both Judge Charles Pickering and the honorable magistrate who is handling this civil action to remove themself as a result of some or all of the reasons listed below.

1. Both men live in Mississippi and cannot fairly hear this case, since said plaintiffs claim Mississippi has no legal state constitution, thus meaning that if either of the said judge or magistrate was licensed to practice law in said state, since there is, and was no legal state constitution, said judge and/or magistrate may not be legally licensed to practice law.

2. Specifically Judge Pickering has personally prejudiced himself against Sam Bowers by testifying against him in one of Mr. Bowers state hearing, saying Sam Bowers was an ''undesirable individual.''

3. Specifically Judge Pickering has prejudiced himself against Shawn O'Hara, by tainting this court document, and cannot prove Shawn O'Hara has ever filed four frivolous federal lawsuits. Therefore, the said judge has openly, intentionally, and unfairly lied against Shawn O'Hara, even though the Bible says ''thou shall not lie.'' (See Exhibit A.)

4. In conclusion, since both Judge Charles Pickering and the honorable magistrate both live in Mississippi (a state in which its state constitution is asserted to be illegal), and because both men work together, and because Shawn O'Hara is asserting Judge Charles Pickering has been an unfair judge handling this matter, and that the said judge will never be a fair judge in a case which Sam Bowers and/or Shawn O'Hara is a part of such a case, both Judge Pickering and the federal court's magistrate are asked to remove themself from said case.

CONCLUSION

It is prayfully requested of this court, that a new federal court judge and magistrate be appointed from a northern state, or from a western state, since a southern judge will not fairly hear the issue that the State of Mississippi is operating under an illegal constitution of 1890, which all state officials are asked to swear to it, and uphold it, even though it was never ratified, voted on by the people of the State of Mississippi.

Respectfully submitted by: on behalf of Shawn Richard O'Hara, Sam Bowers, Michelle O'Hara, and Jeff Rexroad.

V. It is a well-known fact, Charles Pickering was defeated in his personal race for federal office against Thad Cockran, because

Sam Bowers and his thousands of supporters throughout Mississippi worked very hard to defeat Pickering in that political race.

VII. It is a well-known fact that Sam Bowers' friends helped defeat Charles Pickering, Sr. when he ran against Bill Alian for Attorney General of the State of Mississippi.

[From Byron York, NR White House Correspondent, Jan. 9, 2003]

THE CROSS BURNING CASE: WHAT REALLY HAPPENED

In their renewed attacks on Bush appeals-court nominee Charles Pickering, Democrats have focused on Pickering's rulings in a 1994 cross-burning case. Accusing Pickering of ''glaring racial insensitivity,'' they charge that he abused his powers as a U.S. District Court judge in Mississippi to give a light sentence to a man convicted of the crime. ''Why anyone would go the whole nine yards and then some to get a lighter sentence for a convicted cross burner is beyond me,'' New York Democratic Sen. Charles Schumer said Wednesday. ''Why anyone would do that—in 1994 and in a state with Mississippi's history—is simply mind-boggling.''

But a close look at the facts of the case suggests that Pickering's actions were not only not mind-boggling but were in fact a reasonable way of handling a difficult case. Here is what happened:

The crime took place on January 9, 1994. Three men—20-year-old Daniel Swan, 25-year-old Mickey Herbert Thomas, and a 17-year-old whose name was not released because he was a juvenile—were drinking together when one of them came up with the idea that they should construct a cross and burn it in front of a house in which a white man and his black wife lived in rural Walthall County in southern Mississippi. While it is not clear who originally suggested the plan, it is known that the 17-year-old appeared to harbor some sort of hostility toward the couple; on an earlier occasion, he had fired a gun into the house (no one was hit). Neither Swan nor Thomas was involved in the shooting incident.

The men got into Swan's pickup truck, went to his barn, and gathered wood to build an eight-foot cross. They then drove to the couple's house, put up the cross, doused it with gasoline, and set it on fire.

Because the case involved a cross burning covered under the federal hate-crimes statute, local authorities immediately brought in investigators from the Clinton Justice Department's Office of Civil Rights. After the three suspects were arrested in late February, 1994, lawyers for the civil-rights office made the major decision in prosecuting the case.

In a move that baffled and later angered Judge Pickering, Civil Rights Division prosecutors early on decided to make a plea bargain with two of the three suspects. The first, Mickey Thomas, had an unusually low IQ, and prosecutors decided to reduce charges against him based on that fact. The second bargain was with the 17-year-old. Civil Rights Division lawyers allowed both men to plead guilty to misdemeanors in the cross-burning case (the juvenile also pleaded guilty to felony charges in the shooting incident). The Civil Rights Division recommended no jail time for both men.

The situation was different for the third defendant, Daniel Swan, who, like the others, faced charges under the hate-crime statute. Unlike the others, however, Swan pleaded not guilty. The law requires that the government prove the accused acted out of racial animus, and Swan, whose defense consisted mainly of the contention that he was drunk on the night of the cross burning, maintained that he simply did not have the racial animus necessary to be guilty of a hate crime under federal law.

The case went to trial in Pickering's courtroom. During the course of testimony, Pickering came to suspected the Civil Rights Division had made a plea bargain with the wrong defendant. No one questioned the Justice Department's decision to go easy on the low-IQ Thomas, but the 17-year-old was a different case. ''It was established to the satisfaction of this court that although the juvenile was younger than the defendant Daniel Swan, that nevertheless the juvenile was the ring leader in the burning of the cross involved in this crime,'' Pickering wrote in a memorandum after the verdict. ''It was clearly established that the juvenile had racial animus. . . . The court expressed both to the government and to counsel for the juvenile serious reservations about not imposing time in the Bureau of Prisons for the juvenile defendant.''

In addition to the 17-year-old's role as leader, there was significant evidence, including the fact that he had once fired a shot into the mixed-race couple's home, suggesting that he had a history of violent hostility to blacks that far outweighed any racial animosity felt by Daniel Swan. Swan had no criminal record, and seven witnesses testified that they were not aware of any racial animus he might have held against black people. On the other hand, one witness testified that he believed Swan did not like blacks, and Swan admitted under questioning that he had used the ''N'' word in the past. In the end, Swan was found guilty—there was no doubt that he had taken an active role in the cross burning—and the Justice Department recommended that he be sentenced to seven and a half years in jail.

At that point, the Justice Department had already made a no-jail deal with the 17-year-old. When it came time to sentence Swan, Pickering questioned whether it made sense that the most-guilty defendant got off with a misdemeanor and no jail time, while a less-guilty defendant would be sentenced to seven and a half years in prison. ''The recommendation of the government in this instance is clearly the most egregious instance of disproportionate sentencing recommended by the government in any case pending before this court,'' Pickering wrote. ''The defendant [Swan] clearly had less racial animosity than the juvenile.''

Compounding Pickering's concern was a conflict between two federal appeals-court rulings over the applicability of a statutory mandatory minimum sentence to the case. The Justice Department insisted that Swan be sentenced to a minimum of five years under one statute and two and a half years under a separate law. Pickering doubted whether both were applicable to the case and asked Civil Rights Division lawyers whether the same sentencing standards were used in cases in other federal circuits. The prosecutors said they would check with Washington for an answer.

Pickering set a sentencing date of January 3, 1995. As the date approached, he waited for an answer from the Justice Department. He asked in November, 1994 and received no response. He asked again in December and received no response. He asked again on January 2, the day before the sentencing, and still received no response. He delayed sentencing, and on January 4 wrote a strongly-worded order to prosecutors demanding not only that they respond to his questions but that they take the issue up personally with Attorney General Janet Reno and report back within ten days.

Shortly after issuing the order, Pickering called assistant attorney general Frank Hunger, a Mississippian and friend of Pickering's who headed the Justice Department's Civil Division at the time (Hunger was also well known as the brother-in-law of vice president Al Gore). Pickering says he called Hunger to express ''my frustration with the gross disparity in sentence recommended by the government, and my inability to get a response from the Justice Department in Washington.'' Hunger told Pickering that the case wasn't within his area of responsibility. It appears that Hunger took no action as a result of the call. (Hunger later supported Pickering's nomination to the federal appeals courts.)

Finally, Pickering got word from Civil Rights Division prosecutors, who said they had decided to drop the demand that Swan be given the five-year minimum portion of the recommended sentence. Pickering then sentenced Swan to 27 months in jail. At the sentencing hearing, Pickering told Swan, ''You're going to the penitentiary because of what you did. And it's an area that we've got to stamp out; that we've got to learn to live, races among each other. And the type of conduct that you exhibited cannot and will not be tolerated . . . . You did that which does hinder good race relations and was a despicable act . . . . I would suggest to you that during the time you're in the prison that you do some reading on race relations and maintaining good race relations and how that can be done.''

So Swan went to jail, for a bit more than two years rather than seven. Every lawyer in the case—the defense attorneys, the prosecutors, and the judge—faced the difficulty of dealing with an ugly situation and determining the appropriate punishment for a bad guy and a somewhat less-bad guy. Pickering, who believed the Civil Rights Division went too easy on the 17-year-old bad guy, worked out what he believed was the best sentence for Daniel Swan. It was a real-world solution to the kind of real-world problem that the justice system deals with every day. And it was the end of the cross-burning case until Pickering was nominated by President Bush to a place on the Fifth Circuit Court of Appeals.

[From Byron York, NR White House Correspondent, Jan. 13, 2003]

THE CROSS-BURNING CASE: WHAT REALLY HAPPENED, PART II

After the publication last Thursday of ''The Cross Burning Case: What Really Happened,'' readers have asked follow-up questions about the 1994 trial that Democrats cite to accuse federal-appeals-court-nominee Charles Pickering of ''racial insensitivity.'' New York Sen. Charles Schumer and others charge that Pickering, a U.S. District Court judge in Mississippi who has been nominated for a place on the Fifth Circuit Court of Appeals, abused his powers to win a light sentence for a man convicted of burning a cross in the front yard of a mixed-race couple. Here are some of the questions that have been asked about the case, along with answers based on the best available information:

Why did the Clinton Justice Department give a no-jail misdemeanor plea bargain to the 17-year-old defendant—who was the ringleader in the crime, who appeared to be motivated by racial hatred, and who had on an earlier occasion fired a shot into the home of the mixed-race couple—while demanding that the other defendant, Daniel Swan—who was not the ringleader, who apparently did not share the 17-year-old's racial animus, and who had no role in the shooting incident—be sent to jail for seven and a half years?

The answer is not entirely clear; the Justice Department's prosecution memos and other internal deliberation documents are

confidential, and no one who was involved in the prosecution has publicly explained the department's motives. but there is enough publicly available evidence to suggest a few conclusions. First, and most obviously, the 17-year-old agreed to plead guilty, which often helps a defendant receive a reduced sentence. (It's not clear why the Justice Department dealt with the 17-year-old as a juvenile; given the seriousness of the crime, he could have been treated as an adult.) Swan did not agree to plead guilty. While he never denied that he took part in the cross burning, he did deny that he acted out of racial animus, which is required for a heavy sentence under the federal hate crimes statute. He chose to take his chances at trial, and was convicted. At that point, there was no question he would go to prison. Pickering felt strongly that Swan should serve time, but he believed that seven-and-a-half years was too long, in light of the leniency given to the 17-year-old and the other circumstances of the case (discussed below).

Another possible explanation for the easy treatment given to the 17-year-old is that the no-jail plea offer was made by the United States Attorney's Office in Mississippi (and accepted by the defendant) before all the facts of the case were known. The government's insistence on a mandatory minimum seven-and-a-half year sentence for Swan came later, after lawyers from the Justice Department's Civil Rights Division became involved. While they wanted a stiff sentence for Swan, it appears that the Civil Rights Division lawyers also realized that letting the 17-year-old off with no jail had been a mistake. In a February 12, 2002 letter to Republican Sen. Orrin Hatch, Pickering cited the transcript of an open court session in which he told Civil Rights Division lawyer Brad Berry that he felt the Swan case was an example of disparate sentencing. Berry answered, according to the transcript cited by Pickering, that, ''Perhaps the lesson—the lesson that I take from that, your Honor, is that perhaps the government should have been more tough—should have asked for a more stringent or stronger or longer sentence for the other defendants in this case.''

There are also some indications that at least one Justice Department lawyer involved in the case agreed with Pickering that the department's sentencing demand for Swan was too severe. In a January 5, 1995 memo to Linda Davis, who was head of the criminal section of the Civil Rights Division, federal prosecutor Jack Lacy recounted several sessions with Pickering on the Swan issue (memo was made public as part of Pickering's confirmation hearings.) ''The impulse to the conversation is always the same,'' Lacy wrote. ''He thinks the sentence facing Swan is draconian, and he wants a way out. He has been careful to phrase his concern in such terms as, 'I wish you could suggest some way that this harsh sentence could be avoided.'" Later in the letter, Lacy wrote that he ''personally agreed with the judge that the sentence is draconian,'' but said he also reminded Pickering that Swan could have pleaded guilty but instead, ''the defendant repeatedly chucked our offers in our teeth.''

Finally, as the last few words of that passage suggest, it is possible that Swam—and the whole vexing case—simply made prosecutors mad. They could not undo the damage they had done by letting the 17-year-old off with no jail time, but they could compensate by meting out heavy punishment to Swan.

How did Pickering know that the 17-year-old harbored the racial animus required for a severe sentence under the hate crime statute, while Swan did not?

The first and clearest reason is the earlier incident in which the 17-year-old had fired a shot into the home of the mixed-race couple in whose yard he and Swan would later burn the cross. (The Justice Department allowed the 17-year-old to plead guilty to a felony in that incident, all as part of the no-jail plea bargain.) Swan had nothing to do with that shooting, and had no criminal record. The other evidence of racial animus came out during the sentencing phase of the trial—well after the government had agreed to the juvenile's guilty plea. This is how Pickering explained it in his February 12, 2002 letter to Hatch:

''At sentencing. . . . courts must also take into account evidence of the defendant's history. This is where the breadth of disparity in racial animus between the 17 year-old and Swan became clear. While the 17 year-old and Swan had both used the ''N-word'' previously, the 17 year-old's own grandmother stated that he did not like ''blacks'' and his own mother stated that he ''hated N - - - s.'' (Emphasis added.) In contrast, seven witnesses and Swan's mother stated that he had no racial animus; only one witness stated that Swan did not like African Americans, and this was disputed. Further, the 17 year-old had acted on his ''hate'' by fighting with African Americans at school, resulting in his suspension. Swan had neither fought with African Americans nor been suspended for any racial incident. Moreover, the 17 year-old had shot a firearm into the home of the mixed-race couple in whose yard the cross was later burned and bragged about ''shooting at some N - - - - s.'' Swan had never shot at or into the home of African Americans, or anyone else. In short, even though both participated in the heinous crime, the 17 year-old defendant also had a history of escalating violence motivated by the racial hatred that culminated in his participation in the cross burning, while Swan did not.''

Was Pickering's communication with the Justice Department improper?

At Pickering's second confirmation hearing, North Carolina Democratic Sen. John Edwards accused him of violating the Code of Judicial Conduct by calling top Justice Department official (and fellow Mississippian) Frank Hunger to discuss the Swan case. In that call, Pickering expressed his frustration with the Justice Department's position; Hunger told Pickering the case wasn't within his area of responsibility, and the two men ended the conversation.

The section of the Code to which Edwards referred is a rule intended to prevent judges from making secret deals with one side or another in a case. It says: ''A judge should . . . neither initiate nor consider exparte communications on the merits, or procedures affecting the merits, of a pending or impending proceeding.'' Pickering explained to the Judiciary Committee that he had previously discussed his concerns at length with both sides in the Swan case and that the call to Hunger was a ''follow-up'' to see if the Justice Department was going to respond to his questions about the sentencing. None of that, he explained, touched on the merits of the case, and thus the call was not improper.

In addition, last February, Hunger, a lifelong Democrat who also happens to be Al Gore's brother-in-law, wrote a letter to the Judiciary Committee saying, ''I think it appropriate that it be known that I have little or no recollection of the call. The significance of this to me is that had I felt at the time that there was anything inappropriate or improper about Judge Pickering's call I would most assuredly remember it today.'' Continuing, Hunger told the committee, ''I have known Judge Pickering for nearly thirty years and have the utmost respect for him as a fair-minded judge who would never knowingly do anything improper or unethical.;;

Had Pickering ever shown similar concerns about heavy sentencing of other defendants, particularly African Americans, in cases that had nothing to do with race?

On March 14, 2002, at the Judiciary Committee meeting in which Democrats killed the Pickering nomination, Sen. Edward Kennedy suggested that Pickering practiced a selective form of leniency—that he went easy on a racist cross burner and tough on everybody else, including blacks convicted of crimes in his court. One week later, on March 21, Pickering sent Hatch a letter in which he said,''I have consistently sought to keep from imposing unduly harsh penalties on young people whom I did not feel were hardened criminals.'' (Swan was a first-time offender.) Pickering went on to describe several cases in which ''departed downward,' that is, reduced the sentences of first-time offenders from the mandatory minimums required by law.

''One case involved a 20-year-old African American male who faced a mandatory minimum five year sentence,'' Pickering wrote. ''I departed downward to 30 months. I also recommended that he be allowed to participate in the intensive confinement program which further reduced his sentence.'' Pickering also described the case of a 58-year-old black man who faced a five-year mandatory sentence, plus a minimum of 46 months for a separate drug charge. Pickering again sentenced the man to 30 months. In two other cases, he threw out any jail time for men who faced prison terms of 18 and 40 months, respectively. Both defendants were black. ''I have departed downward in far more cases involving African Americans than I have in cases involving white defendants,'' Pickering wrote.

Pickering sent Hatch the names of the cases, the case numbers, letters from the defense lawyers involved, and the phone numbers of people to call to check his account of his sentencing practices. Of course, by that time, Democrats on the committee had already killed his nomination on a straight party-line vote.

[From the Atlanta Journal-Constitution, Mar. 9, 2003]

THE CROSS-BURNING TRIAL, JUDGE'S HANDLING OF ONE CASE GAVE HIS CRITICS AMMUNITION

(By Bill Rankin)

Charles Pickering has heard hundreds of legal arguments and handed down thousands of rulings, but his judicial reputation hangs almost entirely on one explosive case.

In 1994, the federal judge put extraordinary pressure on federal prosecutors to slash the sentence of Daniel Swan, a man who had burned a cross outside an interracial couple's home in rural Mississippi. Democrats and liberal interest groups have hammered Pickering with the case, branding him as racially insensitive and unfit to serve on a federal appeals court.

''Why anyone would go the whole 9 yards, and then some, to get a lighter sentence for a convicted cross-burner is beyond me,'' Sen. Charles Schumer (D–N.Y.) said during a hearing on Pickering's first appeals court nomination last year. ''Why anyone would do that in 1994, and in a state with Mississippi's sad history of race relations, is simply mindboggling.''

But a review of the case by The Atlanta Journal-Constitution, part of the newspaper's broad look at Pickering's record on the bench, finds that the judge apparently acted out of a concern for fairness. Two cross-burning co-defendants, including the purported ringleader, had received far lighter sentences than Swan, and Pickering saw that as unjust.

Prosecutors would have no reason to sympathize with the judge, as it was the stiff sentence they sought that the judge was attacking. Yet an internal Justice Department account of a closed-door meeting held by Pickering shows the judge deeply troubled by the sentencing disparity.

At the same time, the Justice Department memo, written by a lawyer in the case, lends at least some support to the charges of Pickering's opponents. It depicts the judge worrying about how a harsh sentence on Swan would play in the community—presumably the white community—a factor that should be irrelevant to the pursuit of justice.

In the case, two men and a 17-year-old boy were out drinking on the night of Jan. 9, 1994. They set fire to an 8-foot-tall cross outside the Improve, Miss., home of a white man and his African-American wife.

Two defendants—Mickey Herbert Thomas and the juvenile—pleaded guilty to federal civil rights charges. Following recommendations from prosecutors, Pickering sentenced both to probation with home confinement. As it turned out, the 17-year-old was likely the instigator, who would later admit to firing a shot through the interracial couple's window.

The final defendant, Swan, 20, went to trial. He admitted being at the scene but said he was not there out of racial animosity. The jury found otherwise, convicting him on three counts. Federal prosecutors then asked Pickering to sentence Swan to 7½ years in prison.

Pickering strongly criticized the sentencing disparity. He persuaded prosecutors to drop one count in order to void one conviction that required a five-year mandatory sentence. Pickering eventually sentenced Swan to two years and three months in prison.

FAITH IN JUSTICE ''DESTROYED''

That move troubled Brenda Polkey, one of the victims of the cross-burning incident. Last year, she wrote to the Senate Judiciary Committee in opposition to Pickering's appeals court nomination, fueling the Democrats' attack.

Polkey, who had lost a family member to a racial killing, said she had ''experienced incredible feelings of relief and faith in the justice system'' when a predominantly white jury convicted Swan.

''My faith in the justice system was destroyed, however, when I learned about Judge Pickering's efforts to reduce the sentence of Mr. Swan,'' she wrote. ''I am astonished that the judge would have gone to such lengths to thwart the judgment of the jury and to reduce the sentence of a person who caused so much harm to me and my family.''

The AJC review of the judge's rulings, however, shows that Pickering—like many other federal judges who face rigid U.S. sentencing rules—has gone out of his way many times to reduce prison sentences in cases where he thought the result would be unreasonable. And many of the defendants who benefited are black.

William Moody, an African-American drug defendant, was arrested in 2000, seven years after his indictment. Authorities could not find him because he was living in New York, holding a steady job and supporting his family. Upon learning about Moody's apparent turnaround, Pickering delayed his sentencing a year, allowing his continued good behavior to be used as a basis for punishment with no prison time.

Five years earlier, in a large-scale cocaine case, Pickering learned months after sentencing black defendant Richard Evans to 12½ years in prison that prosecutors were recommending he sentence a more culpable co-defendant also an African-American, to no more than nine years. Pickering quickly vacated Evans' sentence and later sent him to prison for 10 years—five months less than what the co-defendant received.

''He has tried to treat people fairly,'' said Lloyd Miller, a U.S. probation officer who prepared sentencing reports in Pickering's courtroom for more than a decade. ''It didn't matter whether you were black or white, whether you were a pauper or if you had money.''

Pickering, who would not comment for this article pending a vote on his renomination, has said that in almost all the criminal cases that came before him involving nonviolent first offenders, he has tried to lessen their sentences.

''I have consistently sought to keep from imposing unduly harsh penalties on young people whom I did not feel were hardened criminals,'' Pickering wrote in a letter to Senate Judiciary Chairman Orrin Hatch (R–Utah) following his combative confirmation hearings last year.

Pickering has not addressed his reported worry about a white backlash in the cross-burning case because the Justice Department memo has not been publicized until now. But there is substantial evidence, both from his civic life and judicial record, to believe that he does not cater to white people's particular interests.

In a 1999 essay on race relations in the Jackson Clarion-Ledger, Pickering addressed racial bias in the courts, empathizing with black, not white, concerns. He counseled whites who were angry about the recent acquittal of a black murder suspect to look at the justice system from a black perspective.

White Mississippians may not realize that African-Americans are treated differently by the system, he wrote, but ''it is the truth and a most disturbing one if you are black.''

As a judge, Pickering has thrown out only two jury verdicts, both times because he felt the verdicts were biased against minority plaintiffs.

In one of the cases, in 1993, an African-American woman was injured at a restaurant. The jury awarded the woman only what the restaurant argued she should receive. Pickering ordered a new trial, and the second jury awarded the woman a larger judgment.

OTHER ISSUES

Interest groups opposing the judge maintain the cross-burning case is just part of a pattern of the judge's racially questionable rulings.

Opponents point to the Pickering's ruling involving the Voting Rights Act, an important civil rights law that mandates federal oversight of Southern elections to keep white authorities from suppressing the black vote. The law has allowed black-majority voting districts to be created in some cases, boosting the number of minorities elected to political office.

Laughlin McDonald, director of the American Civil Liberties Union's Southern regional office in Atlanta, acknowledged that Pickering had enforced the Voting Rights Act to the satisfaction of minority plaintiffs in some cases.

''But what is disturbing is the philosophy that seems to pervade his decisions,'' he said. ''He has an obvious hostility to the federal courts getting involved in this issue.''

In several cases reviewed by the AJC, Pickering did question how far the federal courts should go to resolve certain voting-rights issues. The judge wrote from the perspective of a former legislator who once had to draw lines for voting districts himself—and who still respects lawmakers' prerogatives.

In a 1993 decision, Pickering wrote at length about the history of the one-person, one-vote principle, suggesting courts may have applied it too rigidly sometimes.

The courts ''should be cautions in their obtrusion into what otherwise would be a legislative manner,'' he wrote in denying a challenge to election districts in Forrest County, Miss.

Legislative bodies, when drawing voting districts, must consider the convenience of new districts to voters and their costs, Pickering wrote. Court rulings that ordered some districts be redrawn have shown, Pickering added, ''that very few of those responsible for handing down these decisions ever had the responsibility themselves of carrying out these decisions or trying to comply with them.'' Pickering's application of judicial restraint is in line with that of many federal judges. Like many other jurists put on the bench by Republican presidents, Pickering appears disinclined to tinker at the margins of social dilemmas as would a more activist judge.

As such, Pickering would find himself at home at the 5th U.S. Circuit Court of Appeals, widely considered one of the more conservative appellate courts in the country.

A WILL TO GET HIS WAY

Liberal critics have complained about the judge's general conservatism. But it is questionable how much those complaints would resonate without the cross-burning case against Swan and his two co-defendants.

The case shows Pickering exerting his will and the power of the federal bench to get his way from the Justice Department's civil rights lawyers in Washington.

At trial, Swan was convicted of three counts: violating the interracial couple's civil rights, interfering with their federally protected housing rights and using fire when he committed a crime, which prosecutors said carried a mandatory, consecutive five-year sentence.

Pickering not only thought the 7½-year sentence sought by prosecutors for Swan was unfair, but he also questioned whether a five-year mandatory sentence for one of the counts applied to the cross-burning case, as prosecutors contended. Pickering noted there was a split in the federal appeals courts on that very issue.

Pickering repeatedly asked Civil Rights Division lawyers to explain to him whether the same sentencing standards were being used in other cases across the country. After receiving no answers, Pickering demanded the issue be addressed to then-U.S. Attorney General Janet Reno. Pickering even called Vice President Al Gore's brother-in-law, Frank Hunger, a longtime friend who headed the Justice department's Civil Division, to express his frustration.

Pickering summed up his thoughts about the sentencing disparities in the cross-burning case clearly when Swan was to be sentenced on Nov. 15, 1994.

''He committed a reprehensible crime, and a jury's found that,'' Pickering said from the bench. ''And he's going to pay a price for it. But I have never, since I've been on this bench, seen a more contradictory, inconsistent position by the government than they're taking in this case.''

Bradford Berry, a civil rights prosecutor from Washington, responded by saying perhaps the Justice Department should have asked for harsher punishment against Swan's two co-defendants.

''You're the one working for the Justice Department, not me,'' Pickering shot back. ''I didn't take that position. The Justice Department took that position.''

Pickering postponed the sentencing another two months. He also called all the lawyers involved back to his chambers, without a court reporter to transcribe the discussion.

In a memo written after the meeting, Berry gave an extraordinary account of what transpired.

Pickering told the lawyers about his civil rights background, saying that while not at the forefront of the movement, he was a supporter, according to Berry's memo. Pickering said he'd testified against a Ku Klux Klan leader, had twice thrown out jury verdicts in trials when he thought the results were tainted with racism and had encouraged his son to make certain his fraternity at the University of Mississippi was not discriminating against a black student who wanted to join.

''Pickering said he has carefully examined his conscience in this case an is confident that his discomfort with the sentence is not the product of racism,'' berry wrote.

But Pickering also gave another reason the case disturbed him, Berry noted. The judge said that ''in the current racial climate in that part of the state, such a harsh sentence would serve only to divide the community.''

Pickering then asked prosecutors to consider agreeing to dismiss the count against Swan that mandated a five-year sentence. By the time prosecutors returned for Swan's sentencing two months later, they had capitulated, agreeing to drop it.

Don Samuel, former president of the Georgia Association of Criminal Defense Lawyers, who studied Berry's memo, said Pickering's aggressive posture in the cross-burning case is not uncommon among the federal judiciary.

''There are judges who want a just result and try to convince the parties to find a way that enables them to do so under the federal sentencing guidelines, which can be very harsh and rigid,'' Samuel said. ''These things happen. Often it's very well-intentioned to get around a harsh result.''

But Samuel said he found troubling Berry's account of Pickering's concern about a harsh sentence dividing the community. ''That doesn't seem like a very good basis and it shouldn't be,'' the defense lawyer said.

University of Georgia criminal law professor Ron Carlson said the only part of the community that would be divided by such a sentence would ''probably be rural white people.''

But Carlson said it is unfortunate that Pickering has been condemned for his action in the cross-burnings case. ''That's because this is certainly not a racist judge overseeing the cross-burning case,'' he said. ''Quite the opposite. He's very fulsome in his condemnation.''

When the sentence was finally imposed on Jan. 23, 1995, Pickering told Swan he had committed ''a despicable act.''

''The type of conduct you exhibited cannot and will not be tolerated,'' the judge said. He suggested to Swan that ''during the time that you're in prison . . . do some reading on race relations and maintaining good race relations and how that can be done.''

Mr. ALEXANDER. Mr. President, I will not dwell on the lifelong record of Mr. Pickering. But his testimony against Sam Bowers was not an isolated instance. I will not dwell on the charge some have made about a 1994 case. Senator HATCH dealt with that, although I ask unanimous consent to include two articles, one from the National Review Online and the Atlanta Journal-Constitution explaining what really happened. In short, the Justice Department botched the case and the ringleader in the cross burning was turned loose. Pickering then properly reduced a juvenile accomplice's sentence from seven and one half years to 27 months, severely criticizing him.

In terms of the struggle for equality and freedom, I have seen the South and our Nation change for the better during my lifetime. I have tried to help bring about that change. When I look back now, it seems embarrassingly slow and amazing that it was so hard. I remember as a student at Vanderbilt in 1962, when we raised the issue of integrating the student body, the student body voted no. I remember in 1980 I appointed the first Black Tennessee supreme court justice, and he was defeated in the next election. I remember it was 1985 before we had the Martin Luther King Holiday, and the legislature nearly voted it down. I appointed the first two African American vice presidents of the University of Tennessee, but that did not happen until 1989.

Our country, from its beginning, has truly been a work in progress. And on this issue, racial justice, we have had an especially hard time making progress. We have had a hard time changing our minds. The truth is, most members of my own generation have had one view about race in the 1960's and another view today. Many of the men and women who are judges, who are mayors, who are legislators, who are Senators today, opposed integration in the 1950s, opposed the Voting Rights Act in the 1960s. They were against the Martin Luther King holiday in the 1980s, and we welcome them to society today. We have confirmed some of them to the Federal bench, some of them Democrats, some of them Republicans.

What is especially ironic about this incident is that Judge Pickering was not one of those people whose ideas we have to excuse. He led his times. He spoke out. He would have, I am certain, joined Judge Wisdom, Judge Tuttle, Judge Rives, and Judge Brown in ordering Ole Miss to admit James Meredith to the University of Mississippi 40 years ago.

Why would we not now recognize this man, who lived in the Deep South, who did what we all hope we would have had the courage to do, but might not have done in the late 1960s? Why would we not now honor and recognize that service by confirming his nomination to this appellate court?

I care about the court. I care about these issues. I have studied the record as carefully as I could. All of the evidence supports the fact that Charles Pickering is a worthy successor on the Fifth Circuit to the court of Judge John Minor Wisdom, Judge Elbert Tuttle, Judge Richard Rives, and Judge John R. Brown.

Mr. President, I rise today to say a few words concerning the nomination of Judge Charles Pickering.

Throughout the entire history of the Senate, no judicial nominee has ever been defeated by a filibuster. Yet in this session alone, four nominations have been blocked by this unconstitutional obstruction. Soon, there will be five, six, and likely even more nominees facing partisan filibusters. this obstruction flies in the face of more than 200 years of Senate tradition, the constitutional role of the Congress, and the consent of the governed.

While all of these filibusters are wrong, it seems to me that the tactics employed against certain nominees is particularly disgraceful.

First, we witnessed the hostile attitude towards Leon Holmes, a nominee for the Eastern District of Arkansas. Despite having earned the support of each of his home state Senators—both members of the minority—Mr. Holmes was sharply criticized—not for his legal work, but for his personal writings about his religious views.

Then we witnessed the strident animus directed toward Alabama Attorney General, Bill Pryor—who was repeatedly challenged over whether his ''philosophy'' and ''deeply held views,'' particularly those arising from his religious beliefs, precluded him from becoming a judge.

And now, today, we are witnessing the terrible treatment of Judge Charles Pickering. This is an issue that is of particular importance to my state, because Judge Pickering has been nominated to a long-standing vacancy on the Fifth Circuit—which covers Texas and Louisiana in addition to Mississippi.

Like the other nominees, Judge Pickering is a deeply religious man. He is also a man from the South. And I believe he is clearly qualified to serve on the federal bench, as he has been serving for over a decade. Yet Judge Pickering has, like others, become the target of a venomous special interest group campaign, one directed against Southerners and against those who take their faith seriously. A representative of one of these groups recently called Judge Pickering a ''racist,'' a ''bigot,'' and ''a woman-hater.''

It is sad to see this shameful caricature of a well-qualified, respected man. And it is sadder still to see these special interests dominate the other side of the aisle. I hoped such tactics would never gain apologists among any members of this body, but hearing this debate today, I fear that my hope was all for naught.

This Nation, both North and South, has for too long suffered from the scourge of racism. We have made a great deal of progress so far, and there is more to go. but even as we condemn racism with all our might, we must also condemn false charges of racism. Every false charge of racism weakens a true charge of racism, and ultimately, that hurts us all.

Judge Pickering has been praised and supported by those who know him best—by those who have worked by his side, and seen him fight racism in his home state of Mississippi.

My fellow Southerners who have reviewed the record carefully agree. All six Mississippi statewide officeholders, including five Democrats, have stated that Judge Pickering's ''record demonstrates his commitment to equal

protection, equal rights and fairness for all.'' The senior Senator from Louisiana has applauded Pickering's lifelong campaign against racism, characterizing them as ''acts of courage.'' And the Senators from Georgia have written that, ''Pickering's critics have and will continue to unfairly label him a racist and segregationist,'' and that ''nothing could be further from the truth.''

But perhaps the most compelling views on this subject have been expressed by Mr. Charles Evers. He is the brother of the slain civil rights leader Medgar Evers, and he has personally known Judge Pickering for over 30 years. He is intimately familiar with Judge Pickering's numerous actions throughout his career to fight racism, often with deep sacrifice and personal cost.

Mr. Evers wrote in the Wall Street Journal in support of Judge Pickering, saying,

> As someone who has spent all my adult life fighting for equal treatment of African-Americans, I can tell you with certainty that Charles Pickering has an admirable record on civil rights issues. He has taken tough stands at tough times in the past, and the treatment he and his record are receiving at the hands of certain interest groups is shameful . . . Those in Washington and New York who criticize Judge Pickering are the same people who have always looked down on Mississippi and its people, and have done very little for our state's residents.

I hope that today the Senate will take a stand against the despicable tactics of radical special interest groups. We must not allow the special interests' exploitation of religious views, stereotypes, or false caricatures—concerning Southerners or any other people—to decide a vote on any nominee. Such reprehensible practices have no place in this debate. And it is a dark day for the Senate and for America's independent judiciary when we allow special interests to dictate the basis for disqualification.

I ask my fellow Senators to vote to confirm Judge Pickering, to reject the inhuman caricature that has been drawn by special interest groups intent on vilifying, demonizing, and marginalizing an admirable nominee. I hope that my colleagues will give all these qualified nominees what they deserve, and allow them to have an up or down vote.

For the sake of the Senate, the Nation, and our independent judiciary, I hope that these days of obstruction finally end.

Mr. BUNNING. Mr. President, I speak today in support of Judge Charles Pickering and his nomination to the Fifth Circuit Court of Appeals.

Judge Pickering was unanimously confirmed to be a Federal district judge in 1990, where he has served honorably ever since. He graduated first in his law school class at the University of Mississippi while serving on the Law Journal and Moot Court. In addition to practicing in a law firm, Judge Pickering was both a city and county prosecutor and a municipal court judge. Judge Pickering continued his public service in the Mississippi State Senate. He also has served his fellow man by helping others through organizations like the Red Cross and the March of Dimes. Judge Pickering has also devoted his life to Christ, serving at the First Baptist Church in Laurel, MS, as a Sunday school teacher and a deacon.

Those things tell us much about the man that Charles Pickering is. But there is much more. You see, Judge Pickering has spent his career as a leader in race relations in Mississippi. What is truly telling, however, is he spent his whole career tearing down barriers for minorities in the South, including during the 1960s and 1970s. Those actions did not make him a popular man among many in Mississippi at the time.

I remember the 1960s and 1970s. I regularly traveled around the country during those years and I remember what race relations were like in the South and throughout America. I remember what it was like as professional baseball gradually accepted then embraced minorities. It was a tumultuous time in our country and many brave men and women willingly staked their careers, their reputations, and even their lives on doing what was just and right. Charles Pickering was one of those men.

The stories of how Judge Pickering stepped above the fray and reached out to bring racial equality to Mississippi have been told many times. In recent years Judge Pickering has served on race relations committees in Mississippi including the Institute for Racial Reconciliation at the University of Mississippi. He has spent time working with at-risk minority children.

Those actions are laudable in and of themselves, but the actions that tell the true story of who Charles Pickering really is come from the 1960s and 1970s, those years when racial tensions were at their highest and the South was so volatile. In 1967 Judge Pickering was Prosecuting Attorney Pickering in Jones County, MS. Knowing it was to his own personal detriment, Charles Pickering took the witness stand to testify against the ''Imperial Wizard'' of the Ku Klux Klan in a trial for killing a black civil rights activist in a fire-bombing attack. By standing up for equality and justice, Prosecuting Attorney Pickering put himself and his family in danger and lost his reelection.

You can never really judge the strength of a man's convictions until standing up for those beliefs costs him something. Judge Pickering's willingness to stand up against racial violence cost him his job as a prosecutor. But that did not dissuade him from continuing to fight for racial justice. Possibly the most contentious race issue in the 1960s and 1970s was the integration of the public schools. Integration came to Laurel, MS, in 1973. Integration has been fought for years and creating a plan was not an easy task. The black and white communities in Laurel were split and Charles Pickering worked to bring them together and create a plan to integrate the schools. In the end many white families still moved their children to private schools to avoid integration and Judge Pickering easily could have done the same with his kids. Instead, he believed in integration and kept his children in the public schools.

Unfortunately, the reason Charles Pickering has been singled out by the radical left has nothing to do with the man or his qualifications. It has everything to do with ideology and the remaining adherents of a failed liberal orthodoxy holding on to their last vestiges of power in this Nation—the courts.

A radical liberal minority in this country is scared of Judge Pickering. They do not think he will do a bad job because he is unqualified. After all, the American Bar Association rated Judge Pickering ''well qualified.'' Last I had heard, the liberal minority obstructing Judge Pickering's nomination called that rating their gold standard for judicial nominees.

The reason the liberal special interests are scared of Judge Pickering is that he is a judge who knows his role, who follows the law, and has a stellar civil rights record. These special interests have lost out in the public opinion and mainstream politics. They cannot successfully achieve their goals in the normal course of governance so they turn to the court system, which they have successfully used to roll back traditional values, traditional roles of Government, and individual rights. A judge with a proven record of following the law and understanding the difference between the legislature and the judiciary is a roadblock in their path of legislating through the judiciary.

I really believe Judge Pickering was singled out because of his stellar record on civil rights. It seems to me the liberal special interest groups that seem to be dictating the moves of the minority party in the Senate needed a test case to see if they could stop President Bush's nominees at will. They researched all his nominees and picked one who would be impossible to defeat on the merits and decided to distort his record and assassinate his character. They needed to see if they could get away with it. So last year they gave it a shot. And it worked. These special interests found willing accomplices in the Senate and in the media. Facts became irrelevant as lies flew and Charles Pickering was demagogued. But that was only a preview of what was to come.

While the filibustering by a minority of the Senate of Judge Pickering is an abdication of constitutional responsibility of the Senate, the wholesale assault on President Bush's nominees is truly egregious. Judge Pickering is not alone. The minority has taken aim at Miguel Estrada, Carolyn Kuhl, Janice

Rogers Brown, Bill Pryor, Priscilla Owen, and Henry Saad. Each nominee has a fantastic story and a stellar record. Each has been singled out for his or her adherence to the law and the traditional roles of government.

Radical liberals have long fancied themselves as the champions of women and minorities in this country, and I have no doubt that many on the left do strive for equality for all Americans. But the radical left has achieved its power through the politics of division. A conservative Hispanic or conservative woman or conservative Arab or conservative black woman or conservative religious man is anathema to their dominance of these issues. Rather than celebrating the achievements of these gifted human beings ascending to the job for which he or she was selected by the President of the United States, these ultra liberals would rather defame their characters and demagogue their beliefs.

There seems to be no end in sight to these tactics and political showdowns. But I hope and pray that day will soon come.

Mr. MCCONNELL. Mr. President, today we will vote on whether the Senate shall be allowed simply to consider the nomination of Charles Pickering to the Fifth Circuit Court of Appeals. From my review of Judge Pickering's record, I have been struck by one resounding virtue—moral courage.

As the tide of racial equality swept America in the 1950s and 1960s, it unfortunately met with fierce resistance in certain areas. Laurel, MS was one. Unlike New England, integration was not popular in Jones County. Unlike New York, the press was not friendly to integration in Jones County. Unlike large Southern cities such as Atlanta and Birmingham, there was no substantial segment of the community that had an enlightened view on race relations. Indeed, the town of Laurel, in Jones County, MS, with a small population was the home territory of the Imperial Wizard of the Ku Klux Klan, Sam Bowers.

In the 1960s, Klan-incited violence escalated in Jones County, MS. The Klan would drive by homes in the middle of the night and shoot into them. The Klan would firebomb the homes of African Americans and those who helped them. The Klan would murder its enemies who stood for civil rights.

Because these shootings, bombings, and murders violated the law, the victims looked for justice. They found it in Jones County Attorney Charles Pickering.

On the one hand, Charles Pickering had his duty to enforce the law. On the other hand, he had public opinion, the press, and most state law enforcement personnel against vigorously prosecuting Klan violence. A 27-year-old Charles Pickering stared in the face his political future, many in his community, and the press and chose to do his duty of enforcing the law against the men who committed such violence. In the 1960s in Mississippi, this took courage.

Soon County Attorney Charles Pickering found that he had to choose against between those in law enforcement who would only go through the motions of investigating the Klan and those who sought to vigorously prosecute and imprison Klansmen. He chose to work with the FBI to investigate, prosecute, and imprison Klansmen. In the mid-1960s in Mississippi, this took courage.

Then came the threats. The Klan threatened to have County Attorney Pickering whipped. With the Klan already firebombing and murdering other whites whom it viewed as helping black citizens, the Pickering family could have easily been next.

At night, County Attorney Charles Pickering would come back to his small home and look into the eyes of his young wife Margaret. He would look into the eyes of his four small children who believed daddy could do anything and who did not understand hate and murder. One can only imagine how his wife Margaret would lie awake in fear, hoping that she would hear her husband's footsteps coming home.

Charles Pickering had no money to protect his family. He had no press to stand up for him and his family. He had no covering of popular opinion to hide behind. And in this time of hate, bombings and murder, Charles Pickering reached down deep in his soul, embraced the only thing he did have, his religious faith.

He then testified against Sam Bowers, the Imperial Wizard of the Ku Klux Klan in the firebombing trial of civil rights activist Vernon Dahmer in 1967. And Charles Pickering signed the affidavit supporting the murder indictment of Klansman Dubie Lee for a murder committed at the Masonite Corporation's pulpwood plant in Jones County. The took courage.

While it is easy in Washington, DC, in 2003, to make a speech or sign a bill in favor of civil rights after decades have changed racial attitudes in schools, in society, and in the press, who among us would have had the courage of Charles Pickering in Laurel, MS in 1967? Who among us would have had the courage of his wife Margaret to stand with him?

There are those who would say ''We are pleased that Pickering was one of the few prosecutors who actually prosecuted crimes committed by the KKK in the 1960s, but he should have also gone further by calling for immediate integration of schools and the workplace.''

That argument is tantamount to saying, ''We are pleased that Harry Truman integrated the federal armed forces in 1948, but he should have gone further and called for the integration of the state national guards as well.'' Or to say, ''We are pleased that Lyndon Johnson signed the Civil Rights Act in 1964, after opposing civil rights, but he should have gone further and demanded that all businesses adopt an affirmative action hiring plan.''

To judge the words and actions of these Civil Rights Champions in the 1940s, 50s, and 60s, by a 2003 standard, would leave them wanting. We must remember that in Mississippi and other Southern States in the 1960s, most elected prosecutors sat on their hands when the Klan committed acts of violence. Young Charles Pickering had to deal with white citizens and politicans who resisted integration and civil rights. He had to deal with these people in language that would not incite further violence and with requests for action that he had a chance of getting people to take. He did so with moral courage.

And because he acted with courage at such a young age, Charles Pickering was able to continue with more progressive actions decade after decade. In 1976, he hired the first African American field representative for the Mississippi Republican Party. In 1981, he defended a young black man who had been falsely accused of the armed robbery of a teenage white girl. In 1999, he joined the University of Mississippi's Racial Reconciliation Commission. And in 2000 he helped establish a program for at-risk kids, most of whom were African Americans, in Laurel, MS—where 35 years earlier he had backed his principles with his and his family's lives. This is a record of courage. It is a record to be commended.

In the years since the 1960s, attitudes in Mississippi and elsewhere have dramatically improved. Schools are integrated. The Klan is no longer a powerful force capable of intimidating whole communities. And the support from Mississippians—black and white, men and women—who have known Charles Pickering for decades has been overwhelming. This support no doubt results from the moral courage of Charles Pickering.

In 1990, the Judiciary Committee unanimously reported the nomination of Charles Pickering, and the Senate unanimously confirmed him to the district court bench. In his 12 years on the bench, he had handled 4,500 cases. In approximately 99.5 percent of these cases, his rulings have stood. The American Bar Association rated Judge Pickering ''well qualified'' for the Fifth Circuit Court of Appeals—once upon a time, the vaunted ''gold standard'' of my Democrat colleagues.

I was present at Judge Pickering's confirmation hearing. I listened to the testimony and reviewed the record. I have measured the allegations and those who made them, against the entire record and the courage of Judge Pickering. I have found the allegations to be unfounded and the special interest group accusers lacking in the moral courage that Judge Pickering possesses.

The Senate now has a chance to show the courage that Charles Pickering has consistently demonstrated. Unfortunately, I fear it will shrink from this

moment. And for that I apologize, in advance, to Judge Pickering and his family. I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I was going to speak first, but I understand the senior Senator from New York, as happens with so many of us, is supposed to be in two places at once. While he is capable of many good things, that is one thing he has not figured out how to do yet.

I yield 5 minutes to the Senator from New York. Once he has finished, I will then speak and answer some of the things that have been said on the other side.

The PRESIDING OFFICER. The Senator from New York is recognized.

Mr. SCHUMER. I thank my colleague for yielding.

Mr. President, this is a difficult decision in a very certain sense. I listened to the sincere words of my colleague from Tennessee. I think they were heartfelt and well spoken. I have tremendous respect for my two colleagues from Mississippi, and I know particularly to my friend Senator LOTT how much this means. He has worked very hard and diligently on behalf of Judge Pickering's nomination.

I must rise to oppose it, and let me explain both to my colleagues and to everybody, I guess, why. I am a patriot. I love America. My family came to this country 5, 3, and 2 generations ago, poor as church mice, discriminated against in Europe. My dad could not graduate from college, and I am a United States Senator. God bless America. What a great country.

I study the history of America. One of the things I try to study is what are our faults, what are our strengths, how do we make sure what happened to the Roman Empire and the British Empire does not happen to this country. One of the most profound scholars who studied America was Alexis de Tocqueville. He came to America in 1832 or so, traveled across the country, including upstate New York, and he wrote a couple of things. First, he wrote then when we were a small nation, not mighty like the great European nations of Britain, France, or Russia. He wrote that we would become the greatest country in the world. That was pretty omniscient. But he also wrote that there was one thing that could do America in, and that was the poison of race.

We have made great progress. We all know it and everybody knows it. Much of the progress was made—all of it just about—in the last 40 years. We did not make much progress from 1865 to, say, 1960 or 1955.

I guess Brown v. Board started the whole wellspring. Frankly, for the first time in my life I am optimistic about racial relations in America. I think, over time, things will heal. I didn't used to think that, even 5 years ago.

But we still have a lot of healing to do, despite the progress. I have to say I don't think the nomination of Judge Pickering—I know he is people's friend; I know lots of fine people think he is a fine man—helps that healing. I think it hurts it. I base my decision not only on his record, which—I would have to disagree, in all due respect, with my friend from Tennessee—on race issues is, at best, mixed. The cross-burning case bothers me greatly because if you are sensitive to race, even if you think a case was wrongly decided, you don't go through the extra legal means, on a cross-burning case, to do what you have to do.

Does that mean a person should be put in jail or excoriated? No. Does it mean if he runs for public office that he is going to lose? No.

But on the Fifth Circuit, the circuit that has had the great names at healing race and racial divisions that my colleague from Tennessee mentioned, should not we be extra careful about trying to bring a unifying figure to that bench, particularly when it represents more minorities than any other?

The bottom line is, while we can find individual names, to me it is overwhelmingly clear that the Black community in Mississippi—which ought to have pretty good judgment about who did what, when, and how far we have come—is quite overwhelmingly against Judge Pickering.

You can say it is politics. But when we hear the head of the NAACP say, as he told us yesterday, that every single chapter—I don't remember how many there were, like 140—were against Judge Pickering, that means something. When you hear that all but a handful of the Black elected officials in Mississippi are against Judge Pickering, that means something.

Frankly, in this body we don't have an African American to give voice to their view, the African American view, diverse as it is, about whether Judge Pickering is a healing figure and deserves to be on this exalted circuit. We are not demoting him. We are not excoriating him. We are debating whether he should be promoted to this important bench, particularly when it comes to race and civil rights. And the overwhelming voice is no.

I ask unanimous consent from my colleague to be given an additional 3 minutes.

Mr. LEAHY. I yield another 3 minutes to the distinguished Senator from New York.

The PRESIDING OFFICER (Mr. ENZI). The Senator from New York is recognized.

Mr. SCHUMER. So the overwhelming voice is no. The elected Black officials of Mississippi—I don't know the percentage, but I think it is against him. The only Black Member of Congress speaks strongly against him. He doesn't just say, well, I wouldn't vote for him, but it is an either/or situation, and that has to influence us. It is not dispositive. People can say ''these groups.'' Well, the NAACP is not just a group. It has been the leading organization. It is a mainstream African-American organization.

There are groups on the other side lobbying for Judge Pickering. There are groups on this side against. I don't know why my colleagues, some on the other side, say the groups that lobby against what they want are evil, and the groups that lobby for are doing American justice. That is what groups do, and we listen to them sometimes.

I, from New York, don't know that much about this. I try to study history, but I haven't lived there. I haven't gone through the history that my colleagues from Mississippi or Tennessee have. But I have to rely on other voices as well.

So the fork in the road we come to here is this: On this nomination in this important circuit which has, indeed, done so much to move us forward—and I do believe we will continue to move forward as a country; even as Alexis de Toqueville said, on the poison of race—do we appoint a man who, on racial issues, has a record that at best is mixed, and who recently, at a very minimum, has shown insensitivity on the cross-burning case? Sure, there was a disparity of sentence. One thing I know quite well, in criminal law there are always disparities of sentence when there is a plea bargain, and prosecutors always go to someone in the case and say: If you plea bargain, you will get fewer years than if you don't. So that is not a great injustice. It happens every day in every court in this land. On this particular case, that is where Judge Pickering's heart was, to take it to a higher level. It is bothersome, particularly when it comes to nominating someone, not just to be a district court judge—which he is now—but nominated to the exalted Fifth Circuit, the racial healer in America for so long.

So in my view—no aspersions to my colleagues from Mississippi who feel so strongly about this; no aspersions to my colleague from Tennessee who was eloquent, in my opinion; and no aspersions to Judge Pickering as well—but we can do better, particularly on the Fifth Circuit, when it comes to the issue of race, which has plagued the regions of the Fifth Circuit and plagued my region as well. We can do better.

I urge this nomination be defeated.

(At the request of Mr. DASCHLE, the following statement was ordered to be printed in the RECORD.)

● Mr EDWARDS. Mr. President, I rise today to speak against the nomination of Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit.

I oppose this nomination because Judge Pickering has repeatedly demonstrated a disregard for the principles that protect the rights of so many of our citizens. Judge Pickering's record as a judge is full of instances in which he has elevated his personal views above the law. For example, Judge Pickering has shown a lack of respect for the Supreme Court's landmark

legal precedents, especially those that protect rights. He has harshly criticized the Supreme Court's ''one person, one vote'' rulings and has been reversed numerous times by the Fifth Circuit Court of Appeals for his failure to follow ''well-settled principles of law.''

In one case, Judge Pickering took extraordinary steps to reduce the sentence required by law for a man convicted of cross burning. In addition, he exerted extraordinary efforts to reduce the 5-year sentence mandated by Federal sentencing guidelines in the cross-burning case and went so far as to make an ex parte phone call to Justice Department officials in an attempt to assist the defendant.

And, since his hearing, Judge Pickering has actively solicited the support of this nomination from attorneys who appear in his courtroom. This behavior not only calls into question Judge Pickering's commitment to protecting the constitutional rights of all Americans, but legal experts agree that his actions violated the canons of judicial ethics.

Unfortunately, some of our colleagues on the other side of the aisle, in their drive to push through every Bush judge at all costs, have turned this process into a personal attack on the integrity and motivations of those of us who oppose this nomination. We have been accused of anti-Southern bias. Of course, anyone listening to me talk would have to figure that I am the last person to hold an anti-Southern bias.

We have even been accused of calling Judge Pickering a racist, something we have not done. I do not presume to know what is in Judge Pickering's heart. But I do know what is in his record. That record proves him unfit to serve as a Court of Appeals judge.

We have tried our best to facilitate consensus and cooperation in judicial nominations. Unfortunately, most of our efforts are being rejected, which doesn't make a bit of sense, since we accomplish so much when we all work together.

We have seen what happens when the President meets us halfway. He has done it before—rarely, but he has done it. He reached out to us on Allyson Duncan, an outstanding North Carolinian who just yesterday was formally installed as a judge on the Fourth Circuit Court of Appeals, breaking a log-jam that had held our State back for a decade.

In that case, President Bush did more than just pay lip service to our constitutional obligation to advise and consent. He reached out to us before he made his decision. He consulted with us. He sought our advice. And in making his decision, the President selected a nominee who represents the mainstream of our State.

Throughout Judge Duncan's confirmation process, I commended the President for consulting with us and making an excellent nomination. And I told him that if he takes this approach to future judicial nominations we have a real opportunity to find common ground in the search for excellence on the federal bench. When we work together, we find outstanding nominees like Allyson Duncan, who represents the best of North Carolina and America.

But rather than accept my call for consensus, the President just said no.

There is a saying that if you see a dog and a cat eating from the same dish, it might look like a compromise, but you can bet they are eating the cat's food. That is how things seem to be working in Washington these days. My colleagues and I have tried and tried to find common ground. We have said yes to Bush judges, time after time after time. We have said yes to more than 160 Bush judges. But but my colleagues on the other side of the aisle have instead dug in their heels and demanded that unless we agree to every judicial nominee the President sends up here, no matter how unacceptable they are, we are being obstructionist.

We can do better than this. And we should do better. It is time for this President to stop saying no to judges who respect our civil rights. Let's say yes to judges who will fairly apply the law. Let's say yes to judges who will not allow their extreme personal views to color their decision-making. Let's say yes to judges who will protect our civil rights. I am proud to stand with my colleagues today as we say a resounding yes to fairness, equality and justice.●

Ms. CANTWELL. Mr. President, Federal judges serve lifetime terms, and are responsible for interpreting our Constitution, and our laws, in ways that have real implications for the rights of regular Americans. Last year I joined my colleagues on the Judiciary Committee in voting not to report the nomination elevating Federal District Court Judge Charles Pickering to the Circuit Court of Appeals to the Senate floor. I stand by that vote. I continue to have very real concerns about Judge Pickering's ability to be a fair and neutral Court of Appeals judge.

In evaluating judicial nominations, among the factors I consider are whether the nominee demonstrates the highest level of professional ethics and integrity, and has the ability to distinguish between personal beliefs and interpreting the law. Unfortunately, I believe Judge Pickering falls short in meeting these criteria. Judge Pickering is an honorable person, but he is simply the wrong person to fill this very important position.

Like my colleagues, I am troubled by Judge Pickering's handling of the case of United States v. Swan, where a white defendant was tried for burning a cross on the lawn of an interracial couple. Judge Pickering had multiple ex parte conversations with prosecutors and Justice Department officials in an effort to reduce the sentence of Mr. Swan. In doing so, Judge Pickering seems to have lost sight of the ethical limitations on his actions, and the extent to which he was failing to maintain judicial independence. As Brenda Polkey, the victim of the cross burning, said, her ''faith in the justice system was destroyed'' by Pickering's efforts to reduce Mr. Swan's sentence. In every aspect of government we need to work hard and keep faith with the public.

This case indicates how deeply held Judge Pickering's views are, and how far he will go to arrive at an outcome he believes to be correct. The difficulty that he has in keeping his personal views out of his judicial decision-making are obvious, not only in this case, but in several opinions in which he goes beyond the facts of the case to state his belief of what the law ought to be. Judge Pickering's efforts to solicit letters of support from lawyers appearing before him in direct violation of the canons of judicial ethics is another example of his lack of understanding and adherence to the ethical guidelines that are critical to maintaining the independence and integrity of the Federal judiciary.

Because of this troubling record of not following precedent, and of overstepping ethical bounds to achieve a particular outcome, I asked Judge Pickering questions at his hearing that focused on the right to privacy. I asked Judge Pickering about privacy as it pertains to consumers' rights, specifically medical and financial records, as it pertains to an individual's right to privacy in the context of government surveillance, and with regard to a woman's right to make personal decisions about her body. In response, he declined to state whether he believed that any right to privacy was conferred by our Constitution.

While my concern about how Judge Pickering would rule on cases of fundamental privacy rights is not the only factor in my decision to oppose his elevation to the Circuit Court, it is one I believe is important.

The Fifth Circuit covers three States—Louisiana, Texas and Mississippi—that have passed more anti-choice legislation restricting a woman's right to make personal choices about her own body than any other States. In fact, all three States continue to have unconstitutional and unenforceable laws on their books prohibiting a woman from having an abortion, because the legislature in each of these States will not repeal the laws. This is the context against which we must consider the President's nomination of Judge Pickering.

While Judge Pickering has repeatedly pledged to restrain his personal ideological views and follow the precedent of the Supreme Court, given the unique role that the Fifth Circuit plays in protecting not only the constitutional right to privacy enunciated in Roe and affirmed in Casey, but also in protecting women's access to abortion providers in the States with the Fifth

Circuit, I am concerned about Judge Pickering's willingness to say where in the Constitution privacy is protected and his willingness to follow the law.

Judge Pickering's actions on the bench reveal a lack of understanding of the requirements of judicial ethics and a failure to meet the very highest standards of the legal profession. Judge Pickering has exhibited a lack of ability to distinguish his personal believes from judging the issues before the court, and I therefore cannot support his elevation to the Fifth Circuit.

Mr. FEINGOLD. Mr. President, I will vote no on cloture on the nomination of Charles Pickering to be a judge on the U.S. Court of Appeals for the Fifth Circuit.

We had a fair process in the last Congress on this nominee—two hearings, a lengthy period of deliberation and debate, and a fair vote. The nomination was defeated. The Judiciary Committee's consideration of this nomination was thorough and fair. Obviously, some did not like the result, but I do not think they can in good faith find fault with the process.

It is my view that a process that gives a nominee a hearing, and then a vote in the Judiciary Committee is not an unfair process, or an ''institutional breakdown,'' as some critics of our work in the committee last year called it. It is the way the Judiciary Committee is supposed to work. During the 6 years prior to last Congress, the Judiciary Committee did not work this way. Literally dozens of nominees never got a hearing, as Charles Pickering did, and never got a vote, as Charles Pickering did. Those nominees were mistreated by the committee; Charles Pickering was not. What happened in the Judiciary Committee last year provides no justification whatsoever for the President's unprecedented action of renominating someone who has been considered by the committee and rejected.

Judges on our Federal courts of appeals have an enormous influence on the law. Whereas decisions of the district courts are always subject to appellate review, the decisions of the courts of appeals are subject only to discretionary review by the Supreme Court. Because the Supreme Court agrees to hear only a very small percentage of the cases on which its views are sought, the decisions of the courts of appeals are in almost all cases final. That means that the scrutiny that we in the Senate and on the committee give to circuit court nominees must be greater than that we give to district court nominees.

I would think that this would be self-evident, and certainly the debates over circuit court nominees over the years have been much more heated than those relating to district court nominees. But I begin with this point because there are some who have argued that because the Senate confirmed Judge Pickering to the district court by a unanimous vote in 1990, he must be elevated to the circuit court.

Judge Pickering now has a substantial record as a district court judge that he did not have in 1990, and Senators are entitled—indeed it is our duty—to review and evaluate that record. Even leaving that aside, a court of appeals judgeship is different from a district court judgeship.

There is another factor that I think requires us as a committee to give this nomination very careful consideration. During the last 6 years of the Clinton administration, this committee did not report out a single judge to the Fifth Circuit Court of Appeals. That is right. Not a single one.

And as we all know, that was not for lack of nominees to consider. President Clinton nominated three well-qualified lawyers to the Court of Appeals—Jorge Rangel, Enrique Moreno, and Alston Johnson. None of these nominees even received a hearing before this committee. When the chairman held a hearing in July 2001 on the nomination of Judge Clement for a seat on this circuit court, only a few months after she was nominated, it was the first hearing for a Fifth Circuit nominee since September 1994. We have since confirmed another Fifth Circuit nominee, Edward Prado.

So there is a history here and a special burden on the administration to consult with our side on nominees for this Circuit. Otherwise, we would simply be rewarding the obstructionism that the President's party engaged in over the last 6 years by allowing him to fill with his choices seats that his party held open for years, even when qualified nominees were advanced by President Clinton. And I say once again, my colleagues on the Republican side bear some responsibility for this situation, and they can help resolve it by urging the administration to address the injustices suffered by so many Clinton nominees.

With that background, let me outline the concerns that have caused me to reach the conclusion that Judge Pickering should not be confirmed. Except for the DC Circuit, the Fifth Circuit has the largest percentage of residents who are minorities of any circuit—over 40 percent. It is a court that during the civil rights era issued some of the most significant decisions supporting the rights of African American citizens to participate as full members of our society. It is a circuit where cases addressing the continuing problems of racism and discrimination in our country will continue to arise.

Judge Pickering's record as a Federal district court judge leads me to conclude that he does not have the dedication to upholding the civil rights laws that I believe a judge on this circuit must have. Judge Pickering has a disturbing habit of injecting his own personal opinions about civil rights laws into his opinions and of criticizing plaintiffs who seek through legal action to correct what they perceive to be discriminatory conduct. In two separate opinions in unrelated employment discrimination cases, Judge Pickering not only found against the plaintiffs but saw fit to disparage their claims in identical language. This is what he said:

> The fact that a black employee is terminated does not automatically indicate discrimination. The Civil Rights Act was not passed to guarantee job security to employees who do not do their job adequately. . . . The Courts are not super personnel managers charged with second guessing every employment decision made regarding minorities. The Court should protect against discrimination but it can do no more. This case has all the hallmarks of a case that is filed simply because an adverse employment decision was made in regard to a protected minority.

The use of this kind of language as a boilerplate does not indicate to me a judge who has an open mind about employment discrimination lawsuits. I think that people who have legitimate claims under the civil rights laws of this country have reason to be concerned about whether a judge who would go out of his way to say these kinds of things in legal opinions will hear their cases fairly.

Indeed, during his confirmation hearing, Judge Pickering seemed to confirm that he has a predisposition to believe that employment discrimination claims that come before him are not meritorious. He testified that as he understands the law, the Equal Employment Opportunity Commission ''engages in mediation and it is my impression that most of the good cases are handled through mediation and are resolved.'' He went on to say, ''The cases that come to court are generally the ones that the EEOC has found are not good cases, so then they are filed in court.'' That is emphatically not the law, and it was extremely disturbing that a sitting federal judge who has ruled in numerous employment discrimination cases would so profoundly misunderstand the role of the EEOC in these cases.

Judge Pickering has also expressed troubling views in voting rights cases, including criticizing the concept of ''one person, one vote.'' That concept is one of the bedrock constitutional foundations of our political system. Judge Pickering opined in one case: ''It is wondered if we are not giving the people more government than they want, more than is required in defining one man, one vote, too precisely.'' I do not believe that we can give the people too much democracy, and I am not inclined to elevate to a higher court a judge who seems not to take this constitutional principle seriously.

Another area of the law where Judge Pickering has demonstrated what seems like a hostility to certain kinds of claims is that of prisoner litigation. We all know that there is a significant problem of frivolous lawsuits being filed by prisoners. Congress addressed this problem in 1996 with the Prisoner Litigation Reform Act, where it provided certain sanctions for prisoners who file repeated frivolous claims. Judge Pickering, however, has taken

the law into his own hands on numerous occasions by threatening to order prison officials to restrict prisoners' privileges if they filed another frivolous lawsuit. And he did this even after Congress specified certain sanctions for repeated frivolous lawsuits in the 1996 Act.

I believe that this kind of threat is inappropriate behavior for a Federal judge. Judge Pickering's opinions could not help but chill even legitimate complaints from prisoners. While it is true that much frivolous litigation is filed by prisoners, it is also true that some celebrated cases upholding and explaining the constitutional rights of the accused have had their genesis in a prisoner complaint where the prisoner did not have a lawyer. Gideon v. Wainwright, which established the right to an attorney, was such a case. Just the day before Judge Pickering's second hearing, the Washington Post ran a story about a prisoner who received a favorable Supreme Court decision in a case that began with such a complaint. And the petition for certiorari was filed by the prisoner without a lawyer, as well. I believe that judges at all levels must have an open mind toward all types of cases. Engaging in tactics that will frighten people into not asserting their rights is a highly questionable thing to do.

Judge Pickering did respond to my written questions about his decisions in prisoner litigation. I was gratified to learn that he never actually imposed the sanctions he threatened, and I appreciate his and the Justice Department's efforts to find legal authority for his orders. I find those efforts unconvincing, particularly with respect to the orders that he entered after Congress passed the Prisoner Litigation Reform Act. Judge Pickering states in answer to my questions that ''[m]y objective was to stop prisoners who were filing frivolous litigation from doing so,'' and that ''I do not believe that legitimate complaints by prisoners were chilled by this approach.'' I simply do not know how Judge Pickering could be so certain now, or when he was making these orders, that threatening to order prison officials to take away unspecified privileges if a prisoner filed another frivolous complaint was a tactic that would discourage only frivolous suits by prisoners, but not legitimate ones.

I also have concerns about two different ethical issues that arose during the consideration of his confirmation. I questioned him about one such issue at his second hearing before Judiciary Committee last year. After his first hearing, Judge Pickering asked a number of lawyers who practice before him to submit letters of recommendation. He asked them to send those letters to his chambers so that he could fax them to Washington. And he testified that he read the letters before forwarding them to the Justice Department, which sent them on to the committee. Now when I asked Judge Pickering about this, he seemed confused by the questions, as if he thought I was objecting to the fact that the letters had been faxed rather than mailed. Let me be clear, I have no problem with faxes. I get them all the time. What I do have a problem with is a sitting Federal judge asking lawyers who practice before him to send letters supporting his nomination to a higher court and having those letters sent to him rather than directly to the Justice Department or the Senate. That seems to raise an obvious ethical issue, and I was surprised that Judge Pickering didn't recognize it, even when I questioned him about what he did.

I asked Professor Stephen Gillers of NYU Law School, one of the leading experts on legal and judicial ethics in the country, for his views on this issue. Professor Gillers responded in a letter to me. He confirmed my concern about Judge Pickering's actions. Let me read a portion of that letter. Professor Gillers wrote:

> It was improper for Judge Pickering to solicit letters in support of his nomination from lawyers who regularly appear before him. It is important to my answer that the Judge asked the lawyers to fax him the letters so that he could send them to the Justice Department for transmittal to the Senate. He did not ask the lawyers to send any letters directly to Washington. Consequently, the Judge would know who submitted letters and what the letters said, as would be obvious to the lawyers.

Last year, Senator HATCH obtained a letter on this issue from a professor Richard Painter. Professor Painter answers only the question of whether soliciting letters of support violates existing rules of judicial conduct and never mentions the additional fact that Judge Pickering asked for the letters to be sent to him rather than to the Senate. That makes Professor Painter's views much less relevant to the questions I asked.

Furthermore, Professor Painter's analysis seems to be limited to an effort to show that the authorities relied upon by Professor Gillers are not exactly on point and that the standards governing the solicitation of letters of support for nominations are vague. He argues that the rules should be clarified and made more specific. And perhaps he is right about that. But it seems to me to be an insufficiently low standard to set that judges need only make sure they don't clearly violate the ethical rules. We should not want judges who simply avoid clear violations of rules of ethical conduct. We should not want judges who either don't spot ethical issues or treat them as obstacles to be parsed and tiptoed around. We should want judges who are beyond reproach, who know that ethical conduct is at the core of their responsibilities, because such conduct helps ensure that the public will respect their decisions. I believe that Judge Pickering's conduct fell far short in this instance.

Before this year's committee vote on Judge Pickering, some additional information came to light on this matter that suggests that Judge Pickering's conduct presents even more serious ethical questions. In his response to my inquiry about Judge Pickering's solicitation of letters of support, Prof. Gillers also noted the following:

> The impropriety becomes particularly acute if lawyers or litigants with matters currently pending before the Judge were solicited. Then the desire to please the Judge would be immediately obvious and the coercive nature of the request even more apparent. In addition, soliciting favorable letters from lawyers or litigants in current matters could lead to recusal on the ground that the Judge's ''impartiality might reasonably be questioned.'' 28 U.S.C. § 455(a).

We identified 18 separate letters, all written in late October 2001, that came to the committee from Judge Pickering's chambers. We now know that at least seven of the lawyers who wrote letters on behalf of Judge Pickering at his request actually had cases pending before him at the time. A number of those lawyers had more than once case pending. One lawyer received Judge Pickering's request for a letter when a previously scheduled settlement conference was a little over a month away. Another lawyer whom Judge Pickering solicited represented the plaintiffs in a class action against a major drug company. The defendant filed a motion to dismiss for lack of personal jurisdiction in May 2001, and the motion was still pending before Judge Pickering when he requested the letter.

Now I have to ask my colleagues: Suppose you were a lawyer in a case and your opponents filed a motion trying to get your case dismissed. The judge has not yet ruled on the motion and you get a call from him asking you to write a letter of recommendation because he has been nominated to serve on a higher court. What would you do? Wouldn't you be troubled? Wouldn't you feel at least a bit of pressure to comply? And would you write a fully candid letter, especially if the judge asked you to send the letter to him directly so he could see it before forwarding it to the Judiciary Committee?

I will submit for the RECORD a chart indicating the lawyers with cases pending before Judge Pickering who wrote letters for him upon his request. I consider this a very serious ethical breach, and Prof. Gillers agrees. This violation of judicial ethics casts serious doubt on Judge Pickering's fitness to serve on the Court of Appeals.

It is within this framework that I evaluate the other ethical issue that has arisen, Judge Pickering's conduct in the Swan cross-burning case. This case and Judge Pickering's handling of it have been the subject of a great deal of controversy and public discussion, and I will not repeat the details. I will only say that I am very troubled by the Swan case, for a number of reasons. Judge Pickering, it seems to me, improperly stepped out of his judicial role, to try to get a result that he favored in the case. He had an ex parte

contact with the Justice Department about the case. He threatened to rule on a legal issue in a way that he apparently did not believe was correct if the Justice Department did not change its sentencing position. He twice told the Justice Department that he might order a new trial even though it was clearly outside of his authority to do so. And he took unusual and apparently unjustified steps to keep his order secret, which prevented public scrutiny of his actions.

Judicial nominations should not be like legislation that can be reintroduced and reconsidered by a succeeding Congress. The Senate, acting through this committee, and exercising its constitutional responsibility, refused to give its consent to this nomination last year. I believe it was wrong for the President to re-nominate Judge Pickering.

I do not believe Judge Pickering is a racist, nor do I believe that he is a bad person. I did not come to this decision to vote against his confirmation lightly or because of pressure from interest groups or other Senators. I sincerely believe that Judge Pickering is not the right choice for this position. I wish him well in his continued work on the district court.

Mr. President, I ask unanimous consent to print in the RECORD the letter to which I referred.

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

NEW YORK UNIVERSITY,
SCHOOL OF LAW,
New York, NY, February 20, 2002.

Hon. RUSSELL D. FEINGOLD,
U.S. Senate,
Washington, DC.

DEAR SENATOR FEINGOLD: I am replying to your inquiry of February 12, 2002. I assume familiarity with Judge Pickering's testimony and will address the two questions you ask. I address only these questions. I take no position on whether Judge Pickering should be confirmed for the Fifth Circuit or the weight, if any, that should be given to my analysis. Obviously, many facts are relevant to a confirmation vote.

It was improper for Judge Pickering to solicit letters in support of his nomination from lawyers who regularly appear before him. It is important to my answer that the Judge asked the lawyers to fax him the letters so that he could send them to the Justice Department for transmittal to the Senate. He did not ask the lawyers to send any letters directly to Washington. Consequently, the Judge would know who submitted letters and what the letters said, as would be obvious to the lawyers.

I will assume initially that none of the lawyers whose letters the judge solicited had current cases pending before the judge. If a solicited lawyer (or litigant) did have a pending matter, the situation is more serious, as discussed further below.

Judge Pickering's solicitation creates the appearance of impropriety in violation of Canon 2 of the Code of Conduct for U.S. Judges. This document, based on the A.B.A. Code of Judicial Conduct, contains the ethical rules that apply to all federal judicial officers below the Supreme Court.

Judge Pickering's conduct creates the appearance of impropriety, in part, because of the power federal judges, and particularly federal trial judges, have over matters that come before them. Federal judges enjoy a wide degree of discretion, which means that many of their decisions will be upheld absent an abuse of discretion. This is a highly deferential standard. It means that for many decisions, the district judge is the court of last resort and lawyers know that.

Given this power over their cases, and therefore over the lawyers whose cases come before them, ethics rules for judges forbid them to make certain requests of lawyers and others that ''might reasonably be perceived as coercive.'' Canons 4(C); 5(B)(2). These particular Canons deal with soliciting charitable contributions. They absolutely forbid the judge ''personally'' to participate in charitable or other non-profit fundraising activities. They also forbid participation in ''membership solicitation'' that ''might reasonably be perceived as coercive.'' A narrow exception is made for fundraising from other judges ''over whom the judge does not exercise supervisory or appellate authority.'' Canon 4(C).

In these situations, of course, the judge would be soliciting a benefit for an organization, and not, as here, for the judge himself. That difference makes the present case more troubling because a judge would ordinarily have a greater, and certainly a personal, interest in a significant promotion than he or she would have in a contribution to an organization with which the judge is affiliated.

Judge Pickering's solicitations was ''coercive'' because a lawyer who regularly practices before him was not free to fail to provide a letter endorsing Judge Pickering's promotion. Given the risk to lawyers' (and their firms') clients—a risk they would readily perceive—lawyers would feel coerced to comply with the Judge's solicitation of letters and in fact to exaggerate their support for the Judge.

I do not suggest that Judge Pickering would actually retaliate against a non-complying lawyer or his or her clients. Nor should the word ''coercive'' be understood to describe the Judge's subjective intent. Canon 2 tells judges to ''avoid . . . the appearance of impropriety in all activities.'' In evaluating Canon 2, we use an objective standard. We do not ask whether Judge Pickering would in fact ''punish'' a recalcitrant lawyer or what was really on his mind. We should not have to make that inquiry. We focus on the situation itself and how it will appear to the public.

Directly on point is Advisory Opinion 97 (1999), which I attach. It was written by the Committee on Codes of Conduct of the Judicial Conference of the United States (the body of federal judges that interprets the Code of Conduct in response to questions from judges). The Committee was asked whether and when a person being considered for the position of U.S. Magistrate, or for reappointment to that position, must recuse himself or herself under the following circumstances.

Initial appointments as a magistrate judge are made by district judges from a list compiled by a panel of lawyers and others. Identity of the members of the panel is public. Reappointments as a magistrate judge are made following a report of the same kind of panel.

The Committee wrote in Opinion 97 that a person appointed or reappointed as a federal magistrate judge did not have to recuse himself or herself from sitting in a case where a lawyer before the magistrate judge had been on the panel recommending the appointment or reappointment. But the opinion emphasized that the panel ''operates under a requirement of strict confidentiality,'' so that the candidate was ''privy to the individual opinions of the panel members concerning any candidate.'' If this were not so for a particular panel member, recusal might be required. (The Opinion states: ''Of course, in the unlikely event that during the selection process something were to occur between a panel member and the magistrate judge that bears directly on the magistrate judge's ability to be, or to be perceived as being, fair and impartial in any case involving that panel member, then the facts on that particular situation would have to be evaluated by the magistrate judge to determine if recusal is an issue and if notification should be provided to the parties.'') In the situation you present, Judge Pickering removed the opportunity for confidentiality by having the lawyers' letters sent directly to him for transmittal to Washington.

The testimony does not clarify whether any of the lawyers or litigants whom Judge Pickering solicited had current matters pending before him. The only reference to this issue is at line 23 on page 81, where you ask whether ''present or former litigants, parties in cases that you handled'' were asked to write letters. Judge Pickering answered ''some.'' This is ambiguous.

The impropriety becomes particularly acute if lawyers or litigants with matters currently pending before the Judge were solicited. Then the desire to please the Judge would be immediately obvious and the coercive nature of the request even more apparent. In addition, soliciting favorable letters from lawyers or litigants in current matters could lead to recusal on the ground that the Judge's ''impartiality might reasonably be questioned.'' 28 U.S.C. §455(a). As stated below, judges are instructed to avoid unnecessary recusals.

In Opinion 97, the Committee addressed the situation where a lawyer currently appearing before a magistrate judge was simultaneously sitting on a panel considering whether to recommend the same judge's reappointment. The Committee concluded that while the issue of the magistrate judge's reappointment was under consideration by a panel, the judge should not sit in any matter in which a lawyer on the panel represented a party. This was true even though the lawyer's own position on the panel was confidential and unknown to the judge. (The Opinion states: ''Therefore, in the opinion of the Committee, during the period of time that the panel is evaluating the incumbent and considering what recommendation to make concerning reappointment, a perception would be created in reasonable minds that the magistrate judge's ability to carry out judicial responsibilities with impartiality is impaired in any case involving an attorney or a party who is a member of the panel.'') Here, of course, the situation is more serious because Judge Pickering would know what, if anything, a lawyer wrote.

Opinion 97 is consistent with court rulings that have disqualified judges, or reversed judgments, when the judge, personally or through another, was exploring the possibility of a job with a law firm or government law office then appearing before him. See, e.g., Scott v. U.S., 559 A.2d 745 (D.C. 1989) (conviction reversed where judge was negotiating at the time for a job with the Justice Department). Pepsico, Inc. v. McMillen, 764 F.2d 458 (7th Cir. 1985) (judge disqualified after headhunter for judge contacted law firms appearing before judge). Recusal has also been required where the judge's contact with a litigant or lawyer in a pending case was not employment-related but was otherwise viewed as favorable to the judge. Home Placement Service, Inc. v. Providence Journal Co., 739 F.2d 671 (1st Cir. 1984) (recusal required where judge cooperated with a newspaper reporter in a complimentary article about the judge and his wife while newspaper's case was pending before judge).

The Code of Conduct for U.S. Judges requires judges to refrain from activity that could lead to unnecessary recusal. Canon 3 states that the ''judicial duties of a judge takes precedent over all other activities.'' Canon 5 instructs judges to ''regulate extrajudicial activities to minimize the risk of conflict with judicial duties.'' Opinion 97 and the cases cited would have given a current litigant who did not write (or whose lawyer did not write) a letter recommending the Judge a strong legal basis to seek to recuse the Judge in the litigant's case. A litigant whose case came before the Judge reasonably soon thereafter, but whose lawyer had not written a letter in response to the Judge's earlier request (as the Judge would be aware), would also have a basis for a recusal motion.

I hope this letter assists your important work.

Sincerely yours,

STEPHEN GILLERS.

Mr. KOHL. Mr. President, today we are considering the nomination of Charles Pickering to the Fifth Circuit Court of Appeals. Despite the fact that the Judiciary Committee rejected his confirmation little more than 18 months ago, the President has seen fit to renominate Judge Pickering for this appellate court judgeship. But nothing that has occurred in the last year should alter our conclusion that we should not confirm Judge Pickering.

The President's decision to again advance Judge Pickering's nomination at this time is hard to understand. Had new facts come to light regarding Judge Pickering's qualifications or record which assuaged our doubts concerning his fitness for this judgeship, or new explanations emerged for his rulings and actions while a district judge, we could understand the President's decision to renominate him. But absolutely nothing of the kind has happened. His record was scrutinized at length and in detail by this Committee last year, and a majority found it deficient. Rather than examining the qualifications and record of a new nominee, we are once again rehashing the already well-documented and well-established problems with this nominee. And our conclusion today is the same as it was last year—Judge Pickering does not warrant a promotion to the Fifth Circuit.

As Judge Pickering's record became known last year, we grew more and more concerned about his ability to apply and make the law without interjecting his strongly held opinions. Many of Judge Pickering's decisions are far outside of the mainstream and appeared to be motivated by a rigid ideological agenda. For example, he has shown an unrelenting hostility to persons bringing cases of employment discrimination on the grounds of race, ethnicity or gender. In voting rights cases, he has demonstrated a callous attitude toward the core democratic principle that every vote must count.

And we are all aware of Judge Pickering's disgraceful actions to reduce the sentence of a man convicted burning a cross in the front lawn of an interracial couple. Judge Pickering's extraordinary behavior on behalf of a defendant in a cross-burning case seriously calls into question his impartiality, his judgment, and his fitness to serve as an appeals court judge. This incident looks no better today than it did 18 months ago.

We are further troubled by Judge Pickering's continued active solicitation of support of letters of recommendation from lawyers practicing before him. Judge Pickering admitted at his confirmation hearing last year that he asked several lawyers who practiced before him to write letters of support and to send those letters to his chambers so that he could send them on to the Justice Department. This conduct obviously constitutes an abuse of a judge's position. Even after hearing the ethical concerns of many last year, he has continued this inappropriate practice. Such plain disregard for judicial proprieties and ethics speaks loudly against promoting Judge Pickering to the Fifth Circuit.

The deficiencies in Judge Pickering's record are particularly intolerable in a candidate for an appellate judgeship. Once confirmed to their positions for life, federal judges are unanswerable to the Congress, the President, or the people. But this fact has special force when we are considering an appellate court nominee. On the circuit court, a judge enjoys the freedom to make policy if he chooses with little concern of being overruled. Subject only to the infrequent review by the Supreme Court, Court of Appeals judges are the last word with respect to our liberties, our Constitution, and our civil rights.

I also should stress that I do not oppose Judge Pickering because his political views might be different than mine. The President has a right to appoint judges of his own political leanings. But in the case of Judge Pickering, it appears his ideology is so strong, and his convictions so settled, as to interfere with his ability to fairly dispense justice and protect the rights of the most vulnerable in our society. Judge Pickering's record as a judge over the past decade has called into question whether he can enter the courtroom and apply the law fairly, objectively, and without prejudice. This reason alone compels us to oppose his nomination.

I must also dissent from the charge that filibustering this nomination is an abuse of our Constitutional duty to advise and consent. While such a step is not—and should not—be done routinely, filibusters of judicial nominations have been undertaken under the leadership of both parties several times in recent years. This does not even take into account the silent filibuster known as a ''hold''—often anonymous—which permits one objector to block consideration of a judicial nominee. President Clinton's nominees were routinely defeated by anonymous holds. And those holds only defeated the nominees who were lucky enough to even get a hearing and a committee vote. In the case of Judge Pickering, his candidacy has been reviewed and debated twice by the Judiciary Committee. Plainly he has received fair consideration of his nomination.

Judge Pickering is simply unfit for promotion to the U.S. Court of Appeals for the Fifth Circuit. No new facts have come forward which justifies reconsideration of the Judiciary Committee's decision to reject his nomination last year. For these reasons, I must vote against cloture on his nomination.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, over the years, I have spoken many times in the Chamber. In 29 years I have spoken on everything from arms control treaties to relatively routine matters. In this particular case, I come here with mixed feelings. The Senator from New York spoke about his two friends from Mississippi, and that does bother me because the Senate—and I believe I am very much a creature of the Senate—on many issues, gets along with comity. The Senators from Mississippi are both good friends.

I consider the senior Senator from Mississippi, Mr. COCHRAN, one of my closest friends in this body. We traveled together in Mississippi, in Vermont, abroad, and we have always worked closely together on everything from appropriations to agricultural matters.

Senator LOTT has always been very courteous to me and is a good friend. We even compare photographs of our grandchildren. I think we have both come to the conclusion that is the best part of life.

We are at a challenging time in our Nation's history. Over the last several days more than 200 people have been killed or wounded in Baghdad. The number of unemployed Americans has been at or near levels not seen in years, poverty is on the rise in our country, and the current administration seems intent on saddling our children and grandchildren with trillions in deficits and debt. For the first time in a dozen years, charitable giving in this country is down. That is not the type of compassion we heard about just 3 short years ago.

While negative indicators are spiking, the Republican leadership of the Congress now is choosing to abandon work on very real problems in education, health care and national security to turn the Senate's attention to wheel-spinning exercises involving the most controversial judicial nominees.

Ironically, in spite of the heated rhetoric on the other side of the aisle, we have made progress on judicial vacancies when and where the administration has been willing to work with the Senate. Indeed, just the other day the Senate confirmed the 167th of this President's judicial nominees—100 of them, confirmed by the previous Democratic-controlled Senate.

In less than 3 years' time, the number of President George W. Bush's judicial nominees confirmed by the Senate

has exceeded the number of judicial nominees confirmed for President Reagan in all 4 years of his first term in office. Republicans acknowledge Ronald Reagan as the ''all time champ'' at appointing Federal judges, and already the record compiled by the Senate in confirming President George W. Bush's nominees compares very favorably to his. Since July 2001, despite the fact that the Senate majority has shifted twice, a total of 167 judicial nominations have been confirmed, including 29 circuit court appointments. One hundred judges were confirmed in the 17 months of the Democratic Senate majority, and now 67 more have been confirmed during the comparative time of the Republican majority.

One would think that the White House and the Republicans in the Senate would be heralding this landmark. One would think they would be congratulating the Senate for putting more lifetime appointed judges on the Federal bench than President Reagan did in his entire first term and doing it in three-quarters of the time. But Republicans have a different partisan message. The truth is not consistent with their efforts to mislead the American people into thinking that Democrats have obstructed judicial nominations. Only a handful of the most extreme and controversial nominations have been denied consent by the Senate. Until today only three have failed. One-hundred sixty-seven to three. That record is in stark contrast to the more than 60 judicial nominees from President Clinton who were blocked by a Republican-led Senate.

Not only has President Bush been accorded more confirmations than President Reagan was during his entire first term, but the Senate also has voted more confirmations this year than in any of the 6 years that Republicans controlled the Senate when President Clinton was in office. Not once was President Clinton allowed 67 confirmations in a year when Republicans controlled the pace of confirmations. Despite the high numbers of vacancies and availability of highly qualified nominees, Republicans never cooperated with President Clinton to the extent Senate Democrats have. President Bush has appointed more lifetime circuit and district court judges in 10 months this year than President Clinton was allowed in 1995, 1996, 1997, 1998, 1999, or 2000.

Last year, the Democratic majority in the Senate proceeded to confirm 72 of President Bush's judicial nominees and was savagely attacked nonetheless. Likewise, in 1992, the last previous full year in which a Democratic Senate majority considered the nominees of a Republican President, 66 circuit and district court judges were confirmed. Historically, in the last year of an administration, consideration of nominations slows, the ''Thurmond rule'' is invoked, and vacancies are left to the winner of the Presidential election. In 1992, however, Democrats proceeded to confirm 66 of President Bush's judicial nominees even though it was a Presidential election year. By contrast, in 1996, when Republicans controlled the pace for consideration of President Clinton's judicial nominees, only 17 judges were confirmed, and not a single one of them was to a circuit court.

In fact, President Bush has now already appointed more judges in his third year in office than in the third year of the last five Presidential terms, including the most recent term when Republicans controlled the Senate and President Clinton was leading the country to historic economic achievements. That year, in 1999, Republicans allowed only 34 judicial nominees of President Clinton to be confirmed all year, including only 7 circuit court nominees. Those are close to the average totals for the 6 years from 1995 to 2000 when a Republican Senate majority was determining how quickly to consider the judicial nominees of a Democratic President. By contrast, the Senate to this point has confirmed 67 judicial nominees, including 12 circuit court nominees, almost double the totals for 1999.

These facts stand in stark contrast to the false partisan rhetoric by which Republican partisans have sought to demonize the Senate for having blocked seemingly all of this President's judicial nominations. The reality is that the Senate is proceeding at a record pace and achieving record numbers. We have worked hard to balance the need to fill judicial vacancies with the imperative that Federal judges need to be fair.

In so doing, we have reduced the number of judicial vacancies to 39, according to the Republican Web site for the Judiciary Committee. Had we not added more judgeships last year, the vacancies might well stand below 25. More than 95 percent of the Federal judgeships are filled. After inheriting 110 vacancies when the Senate Judiciary Committee reorganized under Democratic control in 2001, I helped move through and confirm 100 of the President's judicial nominees in just 17 months. With the additional 67 confirmations this year, we have reached the lowest number of vacancies in 13 years. There are more Federal judges on the bench today than at any time in American history.

But, despite this record of progress, made possible only through good faith effort by Democrats on behalf of a Republican President's nominees, and in the wake of the years of unfairness shown the nominees of a Democratic President, the Republican leadership has decided to use partisan plays out of its playbook as this year winds down.

Today we discuss the nomination of a candidate for a judgeship whose record already has been thoroughly examined and rejected by the Senate Judiciary Committee. Instead of debating and voting on the appropriations bills remaining to us for this year, including the bill that funds the Justice Department, the State Department, the Commerce Department and the Federal judiciary. The Senate is being asked to devote its time to the nomination of a candidate for a judgeship who has demonstrated that his record as a lower court judge is not deserving of a promotion. Instead of putting partisanship aside and bridging our differences for the sake of accomplishing what we can for the American people, we are asked to participate in a transparently political exercise initiated by a President who claimed to want to be a uniter, not a divider. With respect to his extreme judicial nominations, President George W. Bush is the most divisive President in modern times. Through his extreme judicial nominations, he is dividing the American people and he is dividing the Senate.

The nominee we are being asked by the majority to consider today is Charles W. Pickering, Sr., currently a lifetime appointee on the Federal trial court in Mississippi. Originally nominated in 2001 by President Bush, this nominee's record underwent a thorough examination by the Senate Judiciary Committee and was found lacking. Rejected for this promotion by the committee last year because of his poor record as a judge and the ethical problems raised by his handling of his duties in specific instances, Judge Pickering's nomination was nonetheless sent back to the Senate this year by a President who is the first in our history to reject the judgment of the Judiciary Committee on a judicial nominee. This is the only President who has renominated someone rejected on a vote by the Judiciary Committee for a judicial appointment.

For a while this year this renomination lay dormant while Republicans planned a followup hearing in their effort to reinterpret the facts and the record. Every once in a while we would read a news account reporting that some Republican official or other would insist that the nomination was to resurface. Judge Pickering himself told an audience at a recently delivered speech that several hearings on his nomination were scheduled and cancelled over the last year by the Republicans.

Recently, however, Republicans decided to forego any pretense at proceeding in regular order. They simply placed the name of Judge Pickering on the committee's markup agenda and voted him out by means of their one-vote majority. There was no reason given for suddenly bringing this nomination to the fore again. There are plenty of nominees for the committee to consider whom it has not previously rejected. The committee had been told since January that a new hearing would first be held, but none was.

So the timing has begged the question: Why Judge Pickering, and why now? Why not move ahead to confirm well-qualified candidates, such as

Roger Titus or Gary Sharpe? Why expend the Senate's valuable time rehashing arguments about a controversial nomination that has already been rejected once before?

Some have charged that the timing of this vote has been arranged to coincide with the gubernatorial election next Tuesday in Mississippi. That is because for month, after month, after month—10 months, in fact—this renomination lay dormant, and Republicans seemed reluctant to bring it back to the committee, let alone to the Senate floor, for votes.

Next Tuesday, the people of Mississippi will be voting for their Governor in what newspapers report may be a pretty tight race. So now that this nomination is back, coinciding so neatly with an election in which Haley Barbour, a savvy Republican political operative, is challenging an incumbent Democratic Governor, Ronnie Musgrove, it does make you wonder—especially when Governor Musgrove supports the Pickering nomination. Let us hope that the Senate is not being used for that partisan purpose.

Here we have a nominee defeated by the Judiciary Committee entirely on the merits—a nominee who, as Democratic Senators have shown, has a record that does not merit this promotion, who injects his personal views into judicial opinions, and who has made highly questionable ethical judgments. We also have a record of misleading and unfair arguments made by the nominee's supporters in the Senate in the wake of his first defeat, examples of Republican Senators implying that Democrats opposed the nominee because of his religion or region.

Some believe that the political calculation has been made to ignore the facts, to pin some unflattering characterization on Democratic candidates in Mississippi, and to count on cynicism and misinformation to rule the day. Introduce the red herring that opposition to Judge Pickering's confirmation is tantamount to some kind of insult to the South, and hope nobody sees through that deception.

The poorly named ''Committee for Justice,'' an organization created to make the ugliest and most partisan political arguments in favor of President Bush's nominees, and an organization run by the first President Bush's White House Counsel, Boyden Gray, has already produced television advertisements in support of Judge Pickering, designed to put pressure on Democratic Senators. How long before we see those ads running on Mississippi television stations? And out of whose offices does the ''Committee for Justice'' do its business? None other than the Washington lobbying firm still controlled by and named after the Republican nominee himself, Mr. Haley Barbour. And now, as part of an orchestrated campaign, Republican partisans in the House have also been pressed into service for this misinformation campaign.

Another shameful thing we will hear today is a distortion of the history of the filibuster. Some Republicans would now have the public believe that a filibuster of a nominee is, in their words, ''unprecedented.'' This is another deception. As some of these same Republicans well know, they filibustered the nominations of Judge Paez and Judge Berzon on the floor of the Senate in 1999 and 2000, as they conceded at that time. By way of example, I note that several Republicans currently serving voted against cloture, the motion to close debate, after the Paez nomination had been pending before the Senate for more than four years. I have already noted that even after losing the cloture vote, Republicans led by Senator SESSIONS moved to indefinitely postpone a vote on Judge Paez's nomination, and a number of Republican Senators currently serving voted to continue to block action on the Paez nomination in 2000. Yet some Republican Senators now claim that it is unprecedented to filibuster or deny a circuit court nominee an up or down confirmation vote on the Senate floor.

Their filibuster of Judge Paez's nomination is just one example of Republican filibusters of Democratic nominees. Others include Dr. David Satcher to be Surgeon General in 1998; Dr. Henry Foster to be Surgeon General in 1995; Judge H. Lee Sarokin to the Third Circuit in 1994; Ricki Tigert to the Federal Deposit Insurance Corporation in 1994; Derek Shearer to be an Ambassador in 1994; Sam Brown to an ambassador-level position in 1994; Rosemary Barkett, a Mexican-American attorney, nominated to the 11th Circuit, 1994; Larry Lawrence, to be ambassador in 1994; Janet Napolitano at the Justice Department in 1993; and Walter Dellinger to be Assistant Attorney General for the Office of Legal Counsel at the Justice Department in 1993.

The nominations of Dr. Foster and Mr. Brown were successfully filibustered on the Senate floor by Republicans. Similarly, the nomination of Abe Fortas by President Lyndon B. Johnson to the Supreme Court of the United States was successfully filibustered by Republicans with help from some Southern Democrats.

In addition, to the nominees of Democratic Presidents whose nominations were subject to sometimes fatal delay on the floor, Republicans made an art form of killing nominations in committee so that they would never even have a vote on the floor. According to the public record, more than 60 of President Clinton's judicial nominees were defeated by willful refusal to allow them a vote, and more than 200 executive branch nominees, including several Latinos, of President Clinton met the same fate, with their nominations nixed in the dark of night without any accountability. They were filibustered and never allowed votes on the Senate floor. I discussed this history in more detail on February 26, 2003, in the CONGRESSIONAL RECORD.

In addition, in the CONGRESSIONAL RECORD on March 5, 2003, March 11, 2003, and March 13, 2003, I summarized the history of filibusters of nominees. I also spoke on May 19, 2003, about the history of Senate debate and the constitutionality of Rule XXII of the Senate rules. The fact of the matter is that many nominees have been blocked from receiving votes throughout the Senate's history. For example, 25 Supreme Court nominees were not confirmed in the Senate's history. Eleven of those nominations were defeated by delay, not by confirmation votes on the Senate floor, including the nomination of Justice Fortas. Since the early 19th century, nominees for the highest court and to the lowest short-term posts have been defeated by delay, while others were voted down. Not even all of President Washington's nominees were confirmed, nor were many other Presidents', often for political or ideological reasons. Filibusters and other parliamentary practices to delay matters were known to the Framers. There was even a filibuster in the first Congress over locating the capital.

It is too bad that it has come to a filibuster on Judge Pickering's nomination, but the White House's refusal to accept the Senate's advice has made it inevitable.

Let me clearly outline, once again, the reasons why I cannot support this nomination.

Judge Pickering was nominated to a vacancy on the Fifth Circuit on May 25, 2001. Unfortunately, due to the White House's change in the process that had been used by Republican and Democratic Presidents for more than 50 years, his peer review conducted by the ABA's Standing Committee on the Federal Judiciary was not received until late July of that year, just before the August recess. At that point the committee was concentrating on expediting the confirmation hearing of the new Director of the Federal Bureau of Investigation, who was confirmed in record time before the August recess, and other nominations.

As a result of a Republican objection to a Democratic leadership request to retain all judicial nominations pending before the Senate through the August recess, the initial nomination of Judge Pickering was required by Senate Rules to be returned to the President without action. Judge Pickering was renominated in September, 2001.

Although Judge Pickering's nominations was not among the first batch of nominations announced by the White House and received by the Senate, in an effort to accommodate the Republican Leader, I included this nomination at one of our three October hearings for judicial nominations. The day before his hearing, held on October 18, the three Senate office buildings were evacuated because of the threat of anthrax contamination. Rather than cancel the hearing in the wake of the September 11 attacks and the dislocations due to the anthrax letters, we sought to go forward.

Senator SCHUMER chaired the session in a room in the Capitol, but only a few

Senators were available to participate. Security and space constraints prevented all but a handful of people from attending. In preparation for the October 18 hearing, we determined that Judge Pickering had published a comparatively small number of his district court opinions over the years. In order to give the committee time to consider the large number of unpublished opinions that Judge Pickering estimated he had written in his 12 years on the bench, and because of the constraints on public access to the first hearing, the committee afforded the nominee an opportunity for a second hearing.

I continued to work with Senator LOTT and, as I told him in response to his inquiries that December, I proceeded to schedule that follow-up hearing for the first full week of the 2002 session. There was, of course, ample recent precedent for scheduling a follow-up session for a judicial nominee. Among those nominees who participated in two hearings over the last few years were Marsha Berzon, Richard Paez, Margaret Morrow, Arthur Gajarsa, Eric Clay, William Fletcher, Ann Aiken and Susan Mollway, among others. Unlike those hearings, some of which were held years after the initial hearings, Judge Pickering's second hearing was held less than 4 months after the first one and, as promised, during the first full week of the following session.

I should note that the committee worked with Senators LOTT and COCHRAN from the time of the change in the majority to ensure swift confirmation of other consensus candidates to the Federal bench, and as United States Attorneys and United States Marshals. On October 11, 2001, the Senate confirmed United States District Court Judge Michael Mills for the Northern District of Mississippi; on October 23, James Greenlee was confirmed as the U.S. Attorney for the Northern District of Mississippi; and on November 6, Dunn Lampton received Senate approval to be the U.S. Attorney for the Southern District of Mississippi; Nehemiah Flowers was confirmed as the U.S. Marshal for the Southern District of Mississippi on February 8 although he was not nominated until the week before adjournment last session; and Larry Wagster was confirmed as the U.S. Marshal for the Northern District of Mississippi on February 8 although he was not nominated until the day before adjournment the session before. We moved forward quickly that year to fill all these crucial law enforcement vacancies in Mississippi.

After determining that the number of Judge Pickering's published opinions was unusually low, and within a week of the first hearing, the committee made a formal request to Judge Pickering for his unpublished opinions. Judge Pickering produced copies of those opinions to us. They came to the committee in sets of 100 or more at a time, including a delivery of more than 200 the day before Judge Pickering's second hearing, and another 200 or more nearly a week after. It took three written requests from the committee and more than 3 months, but eventually we were assured that all available computer databases and paper archives for all existing unpublished opinions had been searched.

We appreciated Judge Pickering and his clerks providing the requested materials. Other nominees had been asked by this committee to fulfill far more burdensome requests than producing copies of their own judicial opinions. For example, 4 years after he was nominated to the Ninth Circuit, Judge Richard Paez was asked to produce a list of every one of his downward departures from the Federal Sentencing Guidelines during his time on the Federal district court. That request required three people to travel to California and join the judge's staff to hand-search his archives. Margaret Morrow, who was nominated to a district court judgeship, was asked to disclose her votes on California referenda over a number of years and required to collect old bar magazine columns from years before. Marsha Berzon, who was nominated to the Ninth Circuit, was asked to produce her attendance record from the ACLU of Northern California. She was also asked to produce records of the board meetings and minutes of those meeting so that Senators could determine how she had voted on particular issues. Timothy Dyk, nominated to the Federal circuit, was asked for detailed billing records from a pro bono case that was handled by an associate he supervised at his law firm.

The Judiciary Committee only asked Judge Pickering to produce a record of his judicial rulings. They are public documents but were not readily available to the public or the committee. Given the controversial nature of this nomination and the disproportionately high number of unpublished opinions, this request was appropriate as part of our efforts to provide a full and fair record on which to evaluate this nomination, as some Republican Senators have conceded.

I set forth this background, for the record, to ensure that no one misunderstands how the committee went about evaluating Judge Pickering's record. We did not engage in a game of tit-for-tat for past Republican practices, nor did we delay proceeding on this nomination, as so many nominations were delayed in recent years. Rather, the Senate Judiciary Committee seriously considered the nomination, gave the nominee two opportunities to be heard, and promptly scheduled a Committee vote. I also postponed a business meeting of the committee 1 week at the request of the Republican leader, out of deference and courtesy to him.

The responsibility to advise and consent on the President's nominees is one that I take seriously. I firmly believe that Judge Pickering's nomination to the Court of Appeals was given a fair hearing and a fair process before the Judiciary Committee. Those members who had concerns about the nomination raised them and gave the nominee the opportunity to respond, both at his hearing and in written follow-up questions. In particular, I thank Senator SCHUMER for chairing the October 18 hearing and for his fairness then and, again, at the February follow-up hearing. I commend Senator FEINSTEIN for her fairness in chairing that follow-up hearing. I said at the time that I could not remember anyone being more fair than she was that day, and I reiterate that today.

My regret is that she and so many Democrats on the Judiciary Committee were subjected to unfair criticism and attacks on their character and judgment after last year's committee vote defeating the nomination. I was distressed to hear that Senator FEINSTEIN received calls and criticism, as have I, that were based on our religious affiliations. That was wrong. I was disappointed to see Senator EDWARDS subjected to criticism and insults and name-calling for asking questions. That was regrettable. While Democrats and most Republicans have kept to the merits of this nomination, it is most unfortunate that others chose to vilify, castigate, unfairly characterize and condemn without basis some Senators who were working conscientiously to fulfill their constitutional responsibilities.

I would like to explain exactly what it is about Judge Pickering's record as a judge that so clearly argues against his confirmation. My first area of concern, which I raised at his hearing, is that Judge Pickering's record on the United States District Court bench, as reflected by several troubling reversals, does not commend him for elevation. Instead, it indicates a pattern of not knowing or choosing not to follow the law, of relying to his detriment on magistrates and of misstating and missing the law.

At his hearing, I asked Judge Pickering about many of these reversals. Looking at his record, I saw that he had been reversed by the Fifth Circuit at least 25 times. And in 15 of those cases, the Fifth Circuit reversed him without publishing their decisions, which according to their rules and practice indicates that the appellate court regards its decision as based on well-settled principles of law. Those Fifth Circuit reversals on well-settled issues indicated that Judge Pickering had committed mistakes as a judge in either not knowing the law or in not applying the law in the cases before him. That is fundamental to judging.

I asked Judge Pickering about a toxic tort case, Abram v. Reichhold Chemicals. There he dismissed with prejudice the claims of eight plaintiffs because he held that they had not complied with a case management order. That means he dismissed them and denied them all rights to bring the case. Again, the Fifth Circuit reversed Judge Pickering's dismissal, holding he had

abused his discretion because he had not tried to use lesser sanctions before throwing the plaintiffs out of court permanently, without hearing the case on the merits. Again, the Fifth Circuit did not publish its reversal, indicating that it was settled law that a dismissal with prejudice was appropriate only where the failure to comply was the result of purposeful delay or contumaciousness, and the record reflects that the district court employed lesser sanctions before dismissing that action. The Fifth Circuit found none of those conditions existed.

Approximately 3 years before reversing Judge Pickering in the Abram case, it had reversed him on the same legal principle in a case called Heptinstall v. Blount. There the Fifth Circuit held that he had abused his discretion in dismissing a case with prejudice for a discovery violation without any indication that he had used this extreme measure as a remedy of last resort. And in its ruling in Heptinstall, the Court cited another of its previous rulings which stated the same principle of law. Thus, this was not a principle with which Judge Pickering was unfamiliar, he had been reversed on that basis once and committed the same error again. This was binding Fifth Circuit authority of which he was aware but chose not to follow.

At his hearing, I asked Judge Pickering to explain his ruling in Abram, especially in light of the prior reversal by the Fifth Circuit on the same principle of law in another of his earlier cases. And while he offered his recollection of the facts of the case, he offered no satisfactory explanation of why he ruled in a way contrary to settled and binding precedent.

I asked Judge Pickering about a first amendment case, Rayfield Johnson v. Forrest County Sheriff's Department. This was a case in which a prison inmate filed a civil rights lawsuit claiming that a jail's rules preventing inmates from receiving magazines by mail violated his first amendment rights. In an unpublished one-paragraph judgment, Judge Pickering adopted the recommendation of a magistrate and granted the jail officials' motion to grant them summary judgment. In other words, he said that the petitioner's claim of a first amendment right to religious materials which he wanted to get through the mail would be denied without further proceedings.

In its unpublished opinion, the Fifth Circuit Court of Appeals, not considered by many a liberal circuit or one that coddles prisoners, reversed Judge Pickering and said that the inmate's first amendment rights had been violated. In explaining why he was wrong, the Fifth Circuit relied on and cited a published decision of its own from several years before, Mann v. Smith. In that case, they struck down a jail rule prohibiting detainees from receiving newspapers and magazines, holding that it violated the first amendment.

What was of concern here was that in the Mann case, the prison officials had made much the same argument about fire hazards and clogged plumbing that were made by prison officials and accepted by Judge Pickering in the Johnson case. This was a case with almost identical facts in his own circuit, what we call in the law a case ''on all fours'' with the Johnson case, and he did not cite it. Indeed, he turned his back on it and ruled the other way. We do not know whether he did not know the law or did not follow it. At the hearing, Judge Pickering admitted that the magistrate who had worked on the matter and he had ''goofed'' and that he was unaware of the law and the recent, binding precedent in his own circuit.

There are many other reversals, which continue to concern me for the same reasons that I remain concerned about the Johnson case and about the Abram case.

One of them is a case called Arthur Loper v. United States. This is another case in which Judge Pickering was reversed in an unpublished Fifth Circuit opinion, which again means that he violated ''well-settled principles of law.'' This case dealt with an enhanced sentence that the Fifth Circuit found he had imposed improperly on a criminal defendant. When the defendant made a motion for the sentence to be corrected or set aside, Judge Pickering denied the inmate's motion without giving him a hearing but without even waiting for the government to respond. On appeal, the Fifth Circuit reversed Judge Pickering's denial of the motion, noting that the government conceded that the defendant was correct, and that an error had been made that prohibited the judge from imposing the sentence that he did. The Fifth Circuit also cited the statute under which the inmate filed his motion, which requires that under ordinary circumstances, the trial judge ''shall . . . grant a prompt hearing'' and ''make findings of fact and conclusions of law'' on the petitioner's claims. The Fifth Circuit criticized Judge Pickering for denying the motion in a ''one-page order that did not contain his reasoning.'' And then the court went on to remind him that ''[a] statement of the court's findings of fact and conclusions of law is normally 'indispensable to appellate review.''' Reading this case, I can only wonder why Judge Pickering did not abide by the statute and follow the law. Was he unaware of the requirements of the law or had he decided to follow his own view of what the law should be on the matter?

There is another case in which Judge Pickering denied a petitioner's motion for a hearing and missed controlling Fifth Circuit precedent. The case was U.S. v. Marlon Johnson, in which a prisoner claimed that his rights had been violated because of ineffective assistance of counsel and asked that his guilty plea be set aside. The inmate claimed that he had asked his counsel to file a direct appeal of his conviction.

Once again, in another unpublished opinion, the Fifth Circuit reversed Judge Pickering's denial of the inmate's motion, explaining that the inmate's ''allegation that he asked his counsel to file a direct appeal triggered an obligation to hold an evidentiary hearing.'' This time the court of appeals relied on two of its own published decisions for its conclusion, neither of which Judge Pickering mentioned in his ruling. Again, there was settled law in the circuit of which Judge Pickering was unaware of that he chose not to follow.

I know that something will likely be made of statistics purporting to show that Judge Pickering does not have an unusually high ''reversal rate,'' and that other judges, some appointed by Democrats, have higher numbers of unpublished reversals. Whatever these numbers purport to represent about the quantity of Judge Pickering's reversals—and I cannot vouch for them one way or another, not knowing their source or meaning—they do not in any way excuse the poor quality of his underlying opinions.

In addition to the many times that Judge Pickering has been reversed by the Court of Appeals for not knowing or following the law, there are numerous instances of Judge Pickering misstating the law in cases that were not appealed to a higher court and other cases in which he stated a conclusion without any legal support.

An example is a statement by Judge Pickering in a case called Barnes v. Mississippi Department of Corrections. In an earlier go-round in this case, the Fifth Circuit had reversed Judge Pickering on one point, and in this later opinion, he tried to explain that they did so, in part, on the basis of a 1993 Supreme Court case called Withrow v. Williams. In particular, Judge Pickering wrote that the Supreme Court, ''acknowledg[ed] in Withrow that the Miranda warning is not a constitutional mandate.'' This was clearly a misreading of Withrow. I trust that Judge Pickering would now acknowledge that the Supreme Court recently made clear in Dickerson v. United States that the Miranda warning is indeed derived from a constitutional mandate.

An example of an entirely unsupported conclusion comes in a case called Holtzclaw v. United States, where Judge Pickering presided over a habeas corpus petition by a Federal petitioner whom he had convicted. Although this was the first habeas petition the prisoner had filed, Pickering termed the petition frivolous. He regarded the petition as restating claims that had already been made at trial. He dismissed it, and stated that he would order prison officials to punish the petitioner if he filed another frivolous petition. Judge Pickering also conducted a ''survey'' of cases within his district to determine how many frivolous habeas petitions had been filed. However, in the section of his opinion dealing with the sanctions, he did not cite a single statute, rule of procedure, local

rule or case as support for his decision. He stated:

> In the future, this Court will give serious consideration to requiring prison authorities to restrict rights and privileges of prison inmates who file frivolous petitions before this Court. Specifically, this Court gives notice to Roger Franklin Holtzclaw that should he file another frivolous petition for habeas corpus in the future, that the Court will seriously consider and very likely order the appropriate prison officials to restrict and limit the privileges and rights of Petitioner for a period of from three to six months and/or that the Court will also consider other appropriate sanctions. Petitioner Roger Franklin Holtzclaw is instructed not to file further frivolous petitions.

Judge Pickering relied on no authority when he threatened to impose sanctions. This sort of action by a federal judge is disturbing. Through consideration and passage of habeas corpus reforms in 1996, Congress has made very deliberate decisions about what sanctions ought to be imposed for frivolous and repetitious petitions. In Holtzclaw, Judge Pickering went beyond Congress' intent, and in what could be described as judicial activism, threatens sanctions not contemplated by the statute.

Another example of Judge Pickering's misunderstanding the basics of Federal practice and due process occurred in a case called Rudd v. Jones, where he presided over a prisoner's civil rights claim before the enactment of the Prisoner Litigation Reform Act. He properly noted that the Supreme Court required that a pro se plaintiff is ''entitled to have his complaint liberally construed'' and admitted that, under this rule, the complaint ''could be construed to state a cause of action.'' Nevertheless, he claimed that the complaint was stated in only conclusory terms and decided that, ''based upon previous experience with complaints that are couched in such a highly conclusory fashion, this Court is aware that plaintiffs in such cases are very rarely successful and very seldom come forward with any facts that would even justify a trial.'' Therefore, on his own motion, the Judge ordered the plaintiff to refile the complaint with more specific allegations or have the case dismissed before defendant had to respond. He also did another ''survey'' to prove that Federal courts were wasting their resources on frivolous prisoner civil rights claims.

In forcing the plaintiff to refile, Judge Pickering entirely disregarded Federal Rule of Civil Procedure 8, which requires only notice pleading. This is a basic tenet of the American system of jurisprudence, laid out by the Supreme Court in 1957 in Conley v. Gibson.

In yet another case, Judge Pickering disregards the applicable law. In United States v. Maccachran, he denied a habeas corpus petitioner's motion for recusal without referring the matter to another judge. The petitioner filed affidavits stating that the judge had a personal bias against him. The relevant statute, 28 U.S.C. §144, states:

> Whenever a party to any proceeding in a district court makes and files a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding.

According to the statute, the Judge had to allow another judge decide whether he should be recused or not. However, Judge Pickering did not follow the law, and he decided the case himself, stating that the affidavit was false. In support of his decision, he cited the dissent in a Fifth Circuit case.

I am also concerned about Judge Pickering's rulings and the attitude they signal on one of the most precious rights we have as Americans: voting rights. In Fairly v. Forrest County, a 1993 case, Judge Pickering rejected a ''one-person, one-vote'' challenge to voting districts that deviated in population by more than the amount deemed presumptively unconstitutional by the Supreme Court. He called the doctrine of one-person, one-vote ''obtrusive,'' expressing skepticism about the role of the Federal courts in vindicating rights under the Voting Rights Act in order to ensure meaningful participation by all citizens in elections. In that case he also denigrates the value of each citizen's vote, arguing that the impact of any malapportionment ''is almost infinitesimal'' because an individual voter holds so little power. While we have always known about the power and value of individual votes, the last Presidential election has certainly taught all of us a new respect for the impact of each citizen. Judge Pickering's disregard for such a vital American right and for the worth of each American's vote is extremely troubling.

Additional questions arise from another disturbing trend that emerges from a review of Judge Pickering's opinions, published and unpublished: his habit of inserting his personal views into written decisions in such a way as to create a terrible impression of bias to categories of plaintiffs and hostility to entire types of claims before the Federal courts.

One entire category of claims in which Judge Pickering demonstrates hostility and bias is employment discrimination actions. This is also a category of cases where an examination of the judge's unpublished opinions was crucial, because over the last 12 years on the Federal bench, he chose to publish only one of his employment discrimination decisions. The remaining 12 were all among the unpublished decisions he produced to the committee upon request after his first hearing last October.

What is significant in these cases are the times in the unpublished opinions that Judge Pickering went beyond merely ruling against the plaintiff to make unnecessary, off-the-cuff statements about all the reasons he believes plaintiffs claiming employment discrimination should not be in court, and about the general lack of substance of claims brought under the federal anti-discrimination statutes.

For example, in a 1996 case, Johnson v. Southern Mississippi Home Health, Judge Pickering did not limit his opinion to a legal conclusion based on the facts presented. Instead he made sure to note that:

> The fact that a black employee is terminated does not automatically indicate discrimination. The Civil Rights Act was not passed to guarantee job security to employees who do not do their job adequately.

In a case called *Seeley v. Hattiesburg*, No. 2:96–CV–327PG, (S.D. Miss. Feb. 17, 1998), where he should have limited himself to the facts and the law, Judge Pickering went on to comment about other matters relating to race discrimination lawsuits apparently on his mind at the time, writing that:

> [T]he Courts are not super personnel managers charged with second guessing every employment decision made regarding minorities. . . The federal courts must never become safe havens for employees who are in a class protected from discrimination, but who in fact are employees who are derelict in their duties.

In a credit discrimination case, Judge Pickering ruled on the case before him, and then included a lengthy lecture giving his very personal views on anti-discrimination laws. He wrote:

> This case demonstrates one of the side effects resulting from anti-discrimination laws and racial polarization. When an adverse action is taken affecting one covered by such laws, there is a tendency on the part of the person affected to spontaneously react that discrimination caused the action. Sometimes this is true and sometimes it is not true. All of us have difficulty accepting the fact that we sometimes create our own problems. When expectations are created that are incapable of fulfillment. . . Plaintiffs fail to recognize that whatever your race—black, white, or other—natural consequences flow from one's actions. The fact that one happens to be protected from discrimination does not give one insulation from one's own actions.

All of this unnecessary editorializing is ironic given Judge Pickering's testimony at his first hearing in October of last year, when he explained to the committee why he has chosen to publish so few of his opinions over the years. He explained that, ''Americans were drowning in information,'' and that there is, ''absolutely too much,'' law written down. He testified that his view is, ''[i]f you are not establishing precedent, why make lawyers have to read,'' and that, ''there is too much being written out there.'' ''If you don't have anything to add . . . that is going to be helpful to somebody,'' he said, ''you are just cluttering up the information.''

After reading statements like those I have just read, it seems to me that a plaintiff with a discrimination claim, reading or knowing about Judge Pickering's hostile position toward anti-discrimination laws and claimants, would be justified in fearing that

the judge had already made up his mind.

Such blatant editorial comments, reflecting such a narrow view of the important goals of our Nation's civil rights law, and coming from the pen of the one person who is supposed to guarantee a fair hearing and a just result, are troubling. Judges are not appointed to inject their own personal beliefs into a case.

Judge Pickering voiced another disturbing aspect of his views on employment discrimination cases almost as an afterthought at his second hearing. In an attempt to explain his statements on the weakness of many of these cases in response to Senator KENNEDY, Judge Pickering demonstrated a troubling misunderstanding of the role of Equal Employment Opportunity Commission in reviewing employment cases. He stated that he believed that, ''the EEOC engages in mediation and it is my impression that most of the good cases are handled through mediation and they are resolved. The cases that come to court are generally the ones that the EEOC has investigated and found that there is no basis, so then they are filed in court.'' But this is completely wrong. The EEOC has a backlog of almost 35,000 cases. Both parties must agree to mediation. The commission lack resources. Yet Judge Pickering had already prejudged employment discrimination cases filed in court as without merit. That kind of erroneous and unfair a generalization about the strength of discrimination cases by a Federal judge responsible for presiding over them, was extremely disconcerting. That a Federal judge, on the bench for a dozen years, could so misunderstand the legal and practical mechanisms behind employment discrimination cases was disturbing.

While fair treatment in employment on the basis of race, sex, national origin, age and disability is fundamental to the American dream, and crucial to a free and thriving economy, due process in criminal proceedings can be a matter of life and death. Here, too, Judge Pickering has misunderstood the law and injected his personal views.

In a 1995 case, Barnes v. Mississippi Department of Corrections, Judge Pickering presided over a habeas corpus case in which a prisoner claimed that his confession was involuntary because he had been held in custody for more than three days before being given an initial hearing by a magistrate. The judge denied the petition and the Fifth Circuit reversed his decision. After remand, he again denied the petition, stating that granting such a habeas petition ''is far more cruel than denying to a known murderer a procedural right regardless of how important that right is.'' He cited the Bible and Coke's treatise to make the point that habeas corpus should be limited to petitioners who can prove actual innocence. That was a misstatement of the law in contradiction to Supreme Court precedent. He further stated that, ''[i]t is the fundamental responsibility of government to protect the weak from the strong, but it is also a fundamental responsibility of government to protect the meek from the mean—the law-abiding from the law violating.'' He cited no legal precedent for this apparently personal view that society's natural law rights to be free from crime override the specific protections contained in the Bill of Rights.

In Drennan v. Hargett, a 1994 case over which Judge Pickering presided, a habeas corpus petitioner claimed that he had been denied access to the courts and received ineffective assistance of counsel. He had pleaded guilty to a charge of capital murder at age 15 and received a life sentence. He claimed that his attorney had threatened him with the gas chamber if he did not plead guilty and that his lawyer did not make important motions, such as a motion to suppress his confession under Miranda. He also claimed that he did not know how to obtain relief from the courts for several years because of his youth and because his representatives misled him. Judge Pickering denied the claim, and devoted a third of his opinion, three pages of a nine-page opinion, to arguing that habeas corpus should not be allowed unless a petitioner can prove actual innocence. In this unusual opinion, he cited the ninth and tenth amendments, the Preamble to the Constitution and the Declaration of Independence in support of his views, adding that he believes the Bill of Rights is in tension with the preamble on this point. Again, he cited no legal precedent for these odd and extremely personal views, almost entirely unrelated to the controlling law.

And in Washington v. Hargett, a 1995 habeas corpus case, Judge Pickering rejected the plaintiff's request for DNA testing required to prove his actual innocence, but stated that an attempt to prove actual innocence was, ''the only reason why this Court or any other federal court should be considering a petition for habeas corpus,'' so long after the trial. While that may be Judge Pickering's personal opinion, it is undeniably contrary to Supreme Court and statutory law. They state that a prisoner petitioning for a writ of habeas corpus is contesting the legality of his detention. The Supreme Court explained as much two years before Judge Pickering decided this case.

Interestingly, whatever the answer to that question, in the same case where Judge Pickering declared the importance of actual innocence, he denied a petitioner the only thing that could have possibly proved his—a DNA test. It was in that case of Washington v. Hargett that Judge Pickering summarily rejected the plaintiff's motion for a DNA test in order to prove his claim of innocence. The case involved a rape that occurred in August 1982, before DNA was generally available and accepted in the courts. Yet the judge suggested in his opinion that DNA testing was inappropriate simply because the request came in 1995—13 years after the trial. As he put it:

> Plaintiff had a fair criminal trial. He was, and is, entitled to nothing more. He was not entitled to a perfect trial. No such trial can be held. Plaintiff states that he wants DNA testing now thirteen years later. He wants a new trial. A new trial, now, 13 years later, would be much less reliable than the one that occurred 13 years ago.

As Judge Pickering may well know, over the last decade, post-conviction DNA testing has exonerated well more than 100 people, including 11 who were awaiting execution.

I have introduced legislation that would, among other things, afford greater access to DNA testing by convicted offenders. Senator HATCH and Senator FEINSTEIN have also introduced bills to promote the use of DNA testing in the post-conviction context. In recent weeks I joined with Chairman HATCH and others in introducing a bill drawn from these earlier efforts. Attorney General Ashcroft has stated that ''DNA can operate as a kind of truth machine, ensuring justice by identifying the guilty and clearing the innocent.'' Judge Pickering appears in this case to have created an exception to his own oft-expressed view that habeas corpus should be considered would be to establish actual innocence.

I have asked in a number of different cases and areas of the law whether Judge Pickering was unaware of the law in different areas or whether he was trying to impose his own views in spite of the law. Another area of great concern to me—Judge Pickering's intervention on behalf of a convicted criminal—raises this same fundamental question.

In this 1994 case, United States v. Swan, Judge Pickering presided over a case brought against three people accused of burning a cross on the lawn of an interracial couple. Two of the defendants, one a juvenile and the other with significant mental disabilities, accepted plea bargains offered by the prosecution. The third, Daniel Swan, the only competent adult of the three, was also offered a plea up to the last minute, but chose to go to trial, and was convicted of all three counts brought by the Government. The story of what happened next is what troubles me about Judge Pickering.

But before I get to that, I think it is important for us to understand exactly what the facts were in the case. From the trial transcript we know that on a night in early January of 1994, three young men hanging out and drinking in front of a convenience store got the idea to go and burn a cross on the lawn of a local family where the husband, Earnest Polkey, was a white man, and his wife, Brenda, was African American. Testimony at trial shows that two of the defendants, Jason Branch, who was at the time a juvenile, and Daniel Swan, a competent adult, were the moving forces behind this idea. The third man, Mickey Thomas, had a very low IQ and mental difficulties. It really

was Branch and Swan who referred to the Polkey family using awful racial slurs, and together they cooked up this idea.

After deciding what they would do, they moved into action, and using Daniel Swan's pickup truck, his wood, his nails, his gasoline and his lighter, the three men constructed a cross, took it to the Polkey's front lawn, leaned it up against a tree, and lit it on fire.

Not long afterward, the three were caught by the FBI and all three were charged with the identical counts: 18 U.S.C. 241, conspiracy to deprive victims of their civil rights, 18 U.S.C. 3631(a), intimidation on account of race, and 18 U.S.C. 844(h)(1), the use of fire in the commission of a felony. All three were also offered a plea bargain which would result in little or no jail time, and two of them took the offer. Two of them, Jason Branch, the minor, and Mickey Thomas, who has a mental disability, took the deal. They decided not to roll the dice with a jury, and to admit their responsibility for the crime. These kinds of deals happen every day. They permit the justice system to function, and they offer defendants opportunities to admit their guilt.

One of the defendants, Daniel Swan, didn't take the offer. Instead, Mr. Swan, who had boasted to friends before he was caught that he would never do any time even if he was caught, decided to take his chances in front of a jury. Well, it was not a wise decision for Mr. Swan, because once the jury heard the evidence that I recounted earlier, they convicted him on all counts. And that is where Judge Pickering's unethical behavior comes in.

Instead of doing what the law required of him and sentencing Daniel Swan to at least the congressionally required mandatory minimum sentence of 5 years for his conviction of the use of arson in a felony, he started to act like one of Daniel Swan's defense attorneys and to advocate for him, insisting that the Justice Department drop the arson charge so Swan could get a more lenient sentence.

Why would the Government drop a charge after having secured a conviction in such a terrible hate crime? Why would the prosecution agree to imposition of such a reduced sentence for someone already found guilty by a jury of his peers? According to documents that the Department of Justice produced to the committee only minutes before Judge Pickering's second hearing was to begin, and documents that they agreed to make public in a heavily redacted form a week after that, Judge Pickering made them an offer that they could not refuse. He threatened them. He threatened them with bad law—with a decision that would have called into question the applicability of the arson charge to cross burnings. And he threatened to make—and presumably grant his own motion for a new trial for Mr. Swan—a motion for which there would have been no basis in law.

He badgered them, ordering them in extraordinary terms to consult personally with the Attorney General, to report on all prior Justice Department prosecutions for cross burnings, and to agree to dismiss an already secured conviction, in the face of the fact that the law did not permit the result he sought. And when the prosecutors, career assistants in the United States Attorneys Office and career prosecutors in Washington, refused to cave in to his bullying, Judge Pickering took things a step further, and he called an old friend, then in a high-ranking position at the Department of Justice. As he admitted in a letter to me and in testimony at his second hearing, Judge Pickering, unhappy with the answer he was receiving from those prosecuting the case, called the Assistant Attorney General for the Civil Division, a friend of long standing from Mississippi, to, as he explained it, express his frustration with the prosecutors. Judge Pickering insisted in his testimony to the committee that he did not ask his old friend to do anything or take any action but he did not deny the contact.

This sort of contact with the Department of Justice during a pending case is extremely troubling. These sorts of ex parte contacts are expressly prohibited by every code of conduct and canon of ethics ever written, and for good reason. The credibility of our entire system of justice rests on the presumption that the conduct of every trial, criminal or civil, is fair and above board, and that no one side has any real or perceived advantage. Judge Pickering's phone call and actions undermine that assumption in very disturbing ways.

Judge Pickering and his defenders in this matter will tell you that he intervened in this case not because he took pity on Daniel Swan, a convicted hate criminal, but because he was concerned about the disparity among the sentences handed down to the three offenders. He blamed the Government for agreeing to lower sentences for the two parties who pleaded guilty and then ''recommending,'' as he inaccurately puts it, a higher sentence for the party who took his chances with a trial. He tried to give the impression that upon the sentencing for Mr. Swan he was surprised to learn about certain aspects of the crime and the defendants' behavior in them. But it is clear, upon examining the record, that none of the defendants was sentenced until after Mr. Swan's trial, until after all the testimony about their actions and relative culpability had been revealed in sworn public testimony. Judge Pickering is the one who sentenced all these defendants after having presided over the case.

Moreover, I know of no other criminal cases in which Judge Pickering intervened based on a concern about disparate sentencing or another case in which he took action to avoid imposing a sentence based on a statutory mandated minimum. His defenders will point to a few cases where he properly showed leniency within the law, but they are different from this one. In those cases it is clear he had the legal discretion to reduce sentences, but those advocating this nomination can point to no specific legal justification here.

The law has very real consequences, as this letter from Mrs. Brenda Polkey makes clear. It was sent to me last year when I was Chairman of the Committee. Mrs. Polkey says:

My now-deceased husband, Ernest Polkey, and I were the victims of a cross-burning at our home in Improve, Mississippi in 1994. We had purchased the home in Southern Mississippi while I was still active military and my husband had retired from the military. The cross-burning case was prosecuted by the Justice Department in Judge Charles Pickering's court.

I write to express my profound disappointment in learning of Judge Pickering's actions toward the defendant, Daniel Swan. As you can imagine, my family suffered horribly as a result of the conduct committed by Mr. Swan and the two other defendants. My daughter actually saw the cross in our yard the morning of the incident. I still have a photograph of the cross that I took that morning to make sure that the crime was documented properly.

The trial of Daniel Swan was extremely emotional for me and my family. As a native Southerner, I had grown up in the 1960's with violent acts based on race, and I lost a member of my family due to a racial killing. I never imagined that violence based on racism would come my way again in the 1990's. We helped in the prosecution of the case, and I testified at the trail. The local NAACP gave me a certificate for my role in pursuing the case.

I experienced incredible feelings of relief and faith in the justice system when the predominantly white Mississippi jury convicted Daniel Swan for all three civil rights crimes. I had hoped against hope that the jury would do the right thing and convict Mr. Swan of this horrible deed. The jury came to a guilty verdict on all three counts after only two hours.

My faith in the justice system was destroyed, however, when I learned about Judge Pickering's efforts to reduce the sentence of Mr. Swan. I cannot begin to explain what his actions have done to my longstanding opinion that we were correct in helping to prosecute the case, in trying to bring about justice and in trying to prevent hate crimes from being committed against other persons. I am astonished that the judge would have gone to such lengths to thwart the judgment of the jury and to reduce the sentence of a person who caused so much harm to me and my family.

I am very much opposed to any effort to promote Judge Pickering to a higher court. Respectfully yours, Mrs. Brenda Polkey.

When I raise questions about this case and Judge Pickering's involvement in the case and suggest it violates every Canon of Judicial Ethics, it is not just my opinion. It is the opinion of some of the Nation's foremost legal scholars on judicial ethics. Let me read to you what some of them have said. Professor Stephen Gillers of the New York University School of Law, one of the foremost, if not the foremost, legal ethics experts in the country, told Senator EDWARDS after Judge Pickering's hearings: ''Judge Pickering exceeded

his powers as the trial judge in the Swan case in a way that undermined decisions of the political branches of government. He then sealed the Order that would have fully revealed his actions.''

The professor concludes that this is a violation of Canon 2A and 3A(1) of the Code of Conduct for U.S. Judges because of his failure to respect and comply with the law or to be faithful to the law. He substituted his judgment not only for the judgment of the prosecutors, but also for the judgment of the legislators, this Senate and the House, instead of sticking to his role as a judge. And by sealing the order that revealed his position, he made certain that no judicial review of his actions could occur.

Professor John Leubsdorf, legal ethics professor and Judge Lacey Distinguished Scholar at Rutgers Law School, agreed with Professor Gillers. Professor Leubsdorf, who has been studying and teaching Legal Ethics for 25 years, has taught at Columbia, Cornell, and the University of California-Berkeley's law schools, and has published articles in the Harvard, Yale, Stanford, Texas, NYU, Pennsylvania, Minnesota, and Cornell law reviews, could not have been clearer. After reviewing the judge's actions, he concludes that, ''[w]hatever Judge Pickering's motives may have been, this was no way for a judge to behave,'' and that he ''cannot escape the conclusion that Judge Pickering departed from his proper judicial role of impartiality in the Swan case to become an advocate for the sentence he considered proper.''

Steven Lubet, a Professor of Law at Northwestern University Law School, director of the law school's Program on Advocacy and Professionalism, and the author of numerous articles on legal ethics, reached much the same conclusion. He tells us that, ''Judge Pickering's actions raise serious questions under the Code of Conduct for United States Judges. In particular, it appears that Judge Pickering initiated a prohibited ex parte communication in violation of Canon 3A(4),'' and that his, ''extended efforts to reduce Swan's sentence for cross burning appear to have compromised his impartiality, taking him nearly into the realm of advocacy, thus implicating Canons 2A and 3A as well.''

The ethics concerns raised by the judge's behavior in the cross burning case are not the only ethical problems Judge Pickering's nomination presents. There is also the very serious matter of his having solicited letters of support and having asked to review them before forwarding them to the Justice Department and to the Senate. As Professor Gillers for NYU explains, this is a matter of grave concern. The letter, which has been made a part of the record, recounts the various Canons of the Code of Conduct for U.S. Judges implicated by this behavior, and is just another reason why I cannot approve of Judge Pickering's elevation.

I should note that Judge Pickering's behavior in this matter is similar to that of a nominee from more than 20 years ago, Charles Winberry. Nominated to the U.S. District Court in North Carolina by Democratic President Jimmy Carter, Mr. Winberry's nomination was defeated in the Judiciary Committee in 1980. Among the grounds on which I opposed this nomination, sent to the Senate by a President of my party, were my objections to Mr. Winberry's having solicited letters from lawyers who would be appearing before him, if he were confirmed, and for asking for blind copies of those letters.

The increasing frequency of nominees campaigning for confirmation to the federal bench is a troubling development and one that threatens the very independence of our judiciary. I was concerned about it in 1980 and I remain concerned about it in 2002.

During the course of these proceedings, some have falsely contended that Democratic Senators have called Judge Pickering a racist. That did not happen and that criticism is a smokescreen to obscure the real problems with this nomination. I attended the committee hearings on this nomination and witnessed Democratic Senators asking questions and the nominee being given opportunity after opportunity to make his best case for elevation to the Fifth Circuit. Some have even insinuated that Senators who oppose this nomination are anti-Southern or anti-Christian, a smear that is as wrong as it is ugly. The talking points distributed by the other side are partisan, political and intentionally misleading. They have been accepted and repeated by some who have failed to review the record. That is unfortunate.

I think the nominee's past views and actions during a difficult time in Mississippi's history were not irrelevant, but I based my decision on his years on the bench and the record amassed and reviewed at our hearings.

So let me sum up for my colleagues what Judge Pickering's own record makes clear. Judge Pickering's record is replete with examples of bad judging and is littered with cases that demonstrate a misunderstanding of the law in many crucial and sensitive areas. Judge Pickering's record shows a judge inserting his personal views into his judicial opinions and putting his personal preferences above the law. It is a record that does not merit this promotion to one of the highest courts in the land. Based on Judge Pickering's record, I will vote against invoking cloture, and should cloture be invoked, I will vote against this nomination.

If Judge Pickering's nomination is not ultimately successful, he will nonetheless remain a Federal judge of the Southern District of Mississippi with life tenure. He will be responsible for presiding over cases and determining matters central to the lives and well-being of many people in Mississippi and from elsewhere. He has served as a prosecutor, a State legislator, a local leader, and now as a Federal judge.

The oath taken by Federal judges is a solemn pledge to administer justice fairly to those who come before the court seeking justice. It extends to those who are rich or poor, white or black, Republican or Democrat, without regard to gender or sexual orientation, national origin or disability.

Judge Pickering remains a very important and powerful person in Mississippi. I understand that he may be the only Federal judge who sits in Hattiesburg. The judge's ability faithfully to discharge the duties of the office are important every day, on every case, with respect to every claim and regarding every litigant. I bear him no malice and wish him and his family well.

Parliamentary inquiry: How much time remains for the distinguished Senator from Utah and myself?

The PRESIDING OFFICER. Each side has 7½ minutes.

Mr. LEAHY. Mr. President, I will yield 3 minutes to the distinguished senior Senator from Massachusetts in just a moment.

I would hope, after this debate, we might start debating judicial nominees based on the facts and not on some of the innuendoes we have heard.

Mr. President, before I yield, I understand that again we are reserving the last 5 minutes for the distinguished senior Senator from Mississippi; is that correct?

The PRESIDING OFFICER. That is correct. You asked for 5 minutes, but you will not have 5 minutes after allotting the 3.

Mr. LEAHY. I understand. I thank the distinguished Presiding Officer, who is, after all, a model of propriety and fairness.

I yield 4 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I oppose the nomination of Judge Charles Pickering on his record. I want to be absolutely clear about that. Charles Pickering has a disturbing record as a U.S. district court judge that simply does not qualify him for appointment to the Fifth Circuit. He has often been hostile to plaintiffs bringing civil rights claims, he has questioned the value of important constitutional protections such as ''one-person, one-vote,'' and he has tried to restrict habeas corpus. His cases are filled with dicta and with expressions of his own personal opinion. This all calls into question his ability to enforce statutory and constitutional protections and his judicial temperament.

The States of the Fifth Circuit are among the poorest in the Nation. They have a population that is 42 percent minority—the highest of any circuit. For many years, the Fifth Circuit had a critical role in the Nation's history in applying and interpreting the civil rights laws. Not long ago, the circuit was hailed for its courage in protecting

the civil rights of African Americans. When Congress passed the 1964 Civil Rights Act and the 1965 Voting Rights Act, many State and local governments in the South resisted these measures. Federal judges such as Elbert Tuttle, Frank Johnson, and John Minor Wisdom helped to make the promise of equality a reality by enforcing these landmark laws of our time. It is particularly important that a judge appointed to this court have a commitment to civil rights, to the constitutional safeguards that protect all Americans, and to the rule of law.

I am disturbed by the rhetoric I have heard today that those of us who oppose this nomination are a ''lynch mob.'' This rhetoric is a profoundly cynical misuse of race and disregards the lessons that we should all have learned from history. Those who cannot tell the difference between a mob bent on murder and torture of an innocent individual solely because of the color of his skin, on the one hand, and those of us in the Senate who seek to focus on genuine issues in Judge Pickering's record, on the other hand, needs a serious history lesson. Frankly, such a comparison is not only unfair, but it does an injustice to those African Americans who suffered and died at the hands of real lynch mobs in the South, including in the State of Mississippi. This is not a lynch mob, this is reasoned debate, and it is part of our constitutional role of advice and consent to engage in such debate.

Judge Pickering's troubling record on civil rights and his injection of his personal opinion can be seen in his extraordinary intervention on behalf of a cross-burning defendant. Pickering repeatedly pressured the Federal Government to drop a charge against a convicted cross-burner to avoid having the defendant serve a congressionally mandated 5-year minimum sentence. Pickering went so far as to threaten to order a new trial, and to initiate an ex parte communication with a high-ranking official of the Justice Department while the case was pending before him. Three ethics experts have written Senator EDWARDS stating that this conduct violated the Code of Judicial Conduct.

I have spent a great deal of time thinking about this case, and I have come to the conclusion that Judge Pickering's efforts to reduce the defendant's sentence of a convicted cross-burner in United States v. Swan cannot be justified by the fact that other participants in the cross-burning received lesser sentences.

The other two participants in the cross-burning pled guilty and therefore were not subject to mandatory minimum sentences. Mr. Swan was tried and found guilty of a crime that has a mandatory minimum sentence. This eliminated any sentencing discretion Judge Pickering might have had under the law. Thus, this case raises the question of whether Judge Pickering will follow the law even if he does not agree with it.

Mr. Swan was an adult of average intelligence at the time of the crime. By contrast, one of the other participants was severely limited in intelligence, with an IQ of 80, and the other was a juvenile. Thus, Mr. Swan arguably bore greater responsibility for the hate crime. Finally, the materials used to build the cross, the gasoline used to douse it, the truck used to transport it, and the lighter used to ignite it all belonged to Mr. Swan.

The PRESIDING OFFICER. The Senator has used 4 minutes.

Mr. LEAHY. Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. Two minutes.

Mr. LEAHY. I yield the 2 minutes to the Senator from Massachusetts.

Mr. KENNEDY. Judge Pickering has a duty to follow the law and the canons of judicial ethics whether or not he agrees with them. His failure to do so in this recent case cast doubt on whether he would do so if confirmed to the Fifth Circuit.

In a letter to Senator HATCH, Judge Pickering admitted that he has departed downward from other mandatory minimum sentences only when the Sentencing Guidelines allowed an exception.

I have heard some say that the fact that some black Mississippians may support Judge Pickering should be enough to have him confirmed. Many black Mississippians, including those from organizations representing thousands of African Americans in Mississippi have come out against Judge Pickering. The State's major African American Bar Association—the Magnolia Bar Association—has written a letter to the Committee opposing Judge Pickering. He is also opposed by Eugene Bryant, President of the Mississippi State Conference of the NAACP, which represents one hundred chapters of the NAACP.

Democrats have not smeared Judge Pickering's reputation by examining his record. Judge Pickering has a complex legacy. On the one hand, he testified against the KKK and has spoken in favor of racial reconciliation. On the other, he has opposed civil rights laws, and the concept of ''one-person, one-vote'' under the Voting Rights Act. Democrats on the Judiciary Committee have never said that he is a racist. But the committee has to determine what sort of judge he will be, not what kind of neighbor he is or the nature of his historical legacy. His 12 years as a district court judge provide us with a clear record that he is unwilling to apply or respect the law when he disagrees with it, and I will vote against his nomination.

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

The PRESIDING OFFICER. The Senator from Utah has 7 minutes 29 seconds, with 5 minutes being reserved for the Senator from Mississippi.

Mr. HATCH. Is that all the time left on either side?

The PRESIDING OFFICER. That is correct.

Mr. HATCH. Mr. President, I have heard my distinguished friends on the other side say we have approved 167 judges but have rejected only 3 with a filibuster. Actually, that is a little bit of an untruth because Miguel Estrada was filibustered and, of course, withdrawn. Priscilla Owen is presently being filibustered. Carolyn Kuhl, there is a threatened filibuster on her. These are all circuit court of appeals nominees. William Pryor has already been filibustered. Charles Pickering is being filibustered. This is a cloture vote to determine whether we can even have the dignity of an up-or-down vote.

Leon Holmes has been threatened with a filibuster. Janice Rogers Brown has been threatened with a filibuster. Claude Allen has been threatened with a filibuster.

The fact is, we have never had a filibuster before in the history of the Senate, in the history of this country, with regard to judicial nominees.

I have heard a lot of comments about what a nice man Judge Pickering is and all of this; it is the record they disagree with. This is a man who has been on the bench for a long time, and he would be a rare person if you didn't find one or two cases with which you disagree. I have to say that in all honesty, most of these arguments they have made are smokescreen issues and arguments.

Mr. LEAHY. Will the Senator yield for a question?

Mr. HATCH. I can't right now because I have a limited time.

Every one of them can be answered. Let me tell the principal reason behind this. After we voted Judge Pickering out of the committee a few weeks ago, we held a press conference. One of the people who appeared with us at the press conference was one of the leading civil rights ministers of the South, former head of the ACLU in Mississippi, really one of the most respected people in the civil rights cause. His life had been threatened. He came and spoke fervently for Judge Pickering. Before he did, I got up and I said: This is all about abortion.

After he spoke, he came up to me and he said: Senator, as you know, I am pro-choice, but you are absolutely right. This is all about abortion. Let me make that case by putting up this chart, the National Abortion Rights Action League.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. HATCH. I ask unanimous consent for 30 seconds for each side.

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

Mr. HATCH. The National Abortion Rights Action League, Pro-choice America sent this out to everybody they could: ''Urge your Senators to stop anti-choice nominee Pickering'' because they know he is pro-life, even though he has agreed he will abide by the law. He will abide by Roe v. Wade.

He will abide by the other abortion cases. That is what this is all about. Frankly, I have it on impeccable information that that is what this is all about.

I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. I am sorry the Senator from Utah was unwilling to yield for a question. He mentioned a threatened filibuster on Mr. Holmes. I assure him, we have cleared Holmes on our side. The Republicans could bring him up any time they want. There is no filibuster being threatened over here. I don't know why they don't bring him up. Gary Sharpe of New York, I don't know why they don't bring him up. These are judges they could bring up any time they wanted. They have been cleared for a vote on this side. We may vote for or against them. But Mr. Holmes is not being filibustered. That is a mistake on the part of the Senator from Utah.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, Charles Pickering has been subjected to the most intense and thorough scrutiny that I can remember any judicial nominee enduring since I have been in the U.S. Senate. After all of his opinions as a United States district judge have been read and reread and dissected, this is what the record shows.

In 13 years on the Federal bench, he has demonstrated a sense of fairness and good judgment that has reflected credit on the Federal judiciary. He has become known throughout our State as someone who is above reproach, who is totally honest and honorable, and who applies the law without regard to race, creed, or ethnicity in an intelligent, thoughtful, and sensible manner.

He is widely respected as a United States district judge. I have no doubt that if confirmed by the Senate, he will serve with distinction and dedication on the United States Court of Appeals for the Fifth Circuit.

Before he became a Federal judge, Charles Pickering served ably in the Mississippi State Senate and was the chairman of the Mississippi Republican Party. He was elected county prosecuting attorney after he had been engaged in the practice of law for only 2 years. When Charles Pickering was nominated to serve on the U.S. District Court for the Southern District of Mississippi in 1990, he was approved unanimously by the Senate Judiciary Committee. And he was confirmed unanimously by the U.S. Senate.

As U.S. district court judge, he has become one of the highest rated judges in the Nation. Judge Pickering has received the highest rating from the American Bar Association. He has a lower reversal rate than both the national and Fifth Circuit average. Mr. President, 99.5 percent of his cases have been affirmed or not appealed. Of those cases that have been appealed, Judge Pickering has only a 7.9-percent reversal rate, which is 20-percent lower than the national average of the Department of Justice, and two times lower than the average district court judge in the Fifth Circuit.

He has been endorsed by the current president and the past 17 presidents of the Mississippi State Bar. He is endorsed by all of the major newspapers in Mississippi. He has also been endorsed by all of our State government officials who were elected statewide, including the Democrats who serve as Governor, attorney general, and secretary of state.

The people who know Charles Pickering the best are the residents of my State, and they overwhelmingly support his confirmation as a court of appeals judge.

It is time to end this effort to discredit and demean this good man. It is time for the Senate to do what is right and confirm this well-qualified and honorable nominee.

The PRESIDING OFFICER. Has all time been yielded back?

The majority leader.

Mr. FRIST. Mr. President, on leader time, I wish to make a few closing statements with regard to this vote and this nomination.

In a few minutes, we will have the opportunity to vote on whether Judge Pickering, whom the Senate has once before confirmed to the Federal district court without blemish, can be given the simple fairness, the simple honesty of an up-or-down vote or whether he will be denied that fairness.

The vote matters to many people because none of the President's judicial nominees has suffered more indignities and distortions than this superbly qualified man, Judge Pickering.

Others in the past and over the course of the morning have spoken much more ably about the qualifications with regard to this superbly qualified individual, Judge Charles Pickering.

I know the passion of the two Mississippi Senators from whom we just heard. We heard Senator LOTT speak about this man, and we heard the strong support from Mississippi Senator THAD COCHRAN for this nominee, and we know of the hard work of the chairman of the Judiciary Committee, Chairman HATCH—all of whom have worked so hard to bring this nomination to the floor over the last 2½ years since he was first nominated by President Bush—again, 2½ years ago.

It had always been my hope over the last 10 months since I became majority leader that we would be able to put much of the unfortunate history of the 106th Congress behind us when it came to judicial nominations. By that, I refer to the inaction on nominees in committee to their outright defeat in committee which denied the opportunity for all Senators to exercise the constitutional responsibility of advise and consent, and the ability and opportunity to vote up or down on judicial nominations. I think we have made huge progress over the course of this year in that regard, thanks to Chairman HATCH.

While in many ways we closed that chapter of Senate history, a new chapter has opened and, once again, I believe we will see it today, and that is this unprecedented use of the partisan filibuster in the Senate to deny Senators the opportunity and the ability to have an up-or-down vote to speak clearly, and the way we have the power to do that is through our votes, either for a judicial nomination or against a judicial nomination.

What bothers me as majority leader is what that says about our institution and about the future of this institution. Many of us have spoken to this and have warned over the past several months about the dangers of departing from this 200-year history of the Senate, that tradition of precedent from which all of a sudden we are seeing this departure over the course of this year.

Today, in just a few minutes, once again we have a choice, an opportunity to move ahead and make progress and to discharge that constitutional responsibility of an up-or-down vote. This is not only a vote to decide whether the Senate will say yes or no to a man who, as we all know, is perfectly qualified, a good man, a man of high integrity and character, an able jurist who we all know will bring credit to the Federal appeals court.

To vote yes on cloture, in my view, is the latest referendum on whether or not we want to reaffirm our history in this body, the Senate, whether or not we want to shut this new chapter of unprecedented delay and destruction, whether or not we want to return the Senate to the well-worn path that it has tried over the last 200 years but from which over the course of this year we seem to be deviating, a path of men and women coming to this body and by their vote being able to take direct responsibility of either confirming or rejecting a nomination.

I represent the State of Tennessee. Right now I represent my party as Republican leader. In addition, I, as majority leader, believe I have a responsibility to this entire body. Together we look to the past and we build for the future. I appeal once again to my colleagues to remember the history we have as stewards, as servants to this institution; that we remember the responsibilities charged to us by the Constitution, responsibilities of advise and consent, and vote aye on cloture, and then vote up or down but vote one way or another on the nomination of Charles Pickering. To do any less than that does fail the history we have had the privilege to recognize and be part of. Indeed, it adds one more obstacle to the progress we could make as we go forward.

Finally, it does ensure that with this new course foisted on the Senate, we will have to meet that radical departure from 200 years of history with responses that will reestablish a more regular order of action in the future.

Mr. President, I close by simply saying I urge our colleagues to support an opportunity for an up-or-down vote—that is all we ask—on Judge Charles Pickering.

The PRESIDING OFFICER. All time has expired.

Mr. REID. Will the majority leader yield for a question not related to the Pickering nomination?

Mr. FRIST. Through the Chair, I will be happy to yield.

Mr. REID. Mr. President, we were originally going to have a vote on the global warming issue. It would have been about 12:45 p.m. This will necessitate that vote occurring around 1:15 p.m., but under the regular process here, on Thursdays we do not vote during the hour of 1 p.m. to 2:15 p.m. I wonder if the leader will be able to at this time indicate that the managers of the Healthy Forests issue should be here about 1:15 p.m., or thereabouts, so they can start on that issue prior to voting on the global warming issue, which I hope can occur at 2 o'clock because there are a number of people on our side who need to vote on that. I hope the leader understands what I am saying.

Mr. FRIST. Mr. President, I do. Let me talk to the managers before actually agreeing to anything. I have not talked with them about the scheduling. Before committing to a schedule, let me make an announcement right after this vote.

Mr. LOTT. Mr. President, has all time expired?

The PRESIDING OFFICER. All time has expired.

Mr. LOTT. Mr. President, I ask unanimous consent that the cloture vote be vitiated and that the Senate immediately proceed to a vote to confirm the nomination of Judge Charles Pickering to the Fifth Circuit Court of Appeals.

Mr. REID. I object.

The PRESIDING OFFICER. Objection is heard.

CLOTURE MOTION

The PRESIDING OFFICER. By unanimous consent, pursuant to rule XXII, the Chair lays before the Senate the pending cloture motion, which the clerk will report.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar No. 400, the nomination of Charles W. Pickering, Sr., of Mississippi, to be United States Circuit Judge for the Fifth Circuit.

Bill Frist, Orrin Hatch, Trent Lott, Conrad Burns, Lamar Alexander, Arlen Specter, Mitch McConnell, Mike DeWine, Chuck Hagel, Rick Santorum, Craig Thomas, Thad Cochran, John Ensign, Lindsey Graham, Elizabeth Dole, Michael B. Enzi, Gordon Smith.

The PRESIDING OFFICER. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on the nomination of Charles Pickering, Sr., of Mississippi, to be United States Circuit Judge for the Fifth Circuit shall be brought to a close? The yeas and nays are mandatory under the rule. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) and the Senator from Massachusetts (Mr. KERRY) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. NELSON) is absent attending a family funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

I further announce that, if present and voting, the Senator from Nebraska (Mr. NELSON) would vote ''yea.''

The PRESIDING OFFICER (Mr. ENSIGN). Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 54, nays 43, as follows:

[Rollcall Vote No. 419 Ex.]

YEAS—54

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Bennett	Ensign	Murkowski
Bond	Enzi	Nickles
Breaux	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Jeffords	Talent
Cornyn	Kyl	Thomas
Craig	Lott	Voinovich
Crapo	Lugar	Warner

NAYS—43

Akaka	Dorgan	Lieberman
Baucus	Durbin	Lincoln
Bayh	Feingold	Mikulski
Biden	Feinstein	Murray
Bingaman	Graham (FL)	Nelson (FL)
Boxer	Harkin	Pryor
Byrd	Hollings	Reed
Cantwell	Inouye	Reid
Carper	Johnson	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Kohl	Schumer
Corzine	Landrieu	Stabenow
Daschle	Lautenberg	Wyden
Dayton	Leahy	
Dodd	Levin	

NOT VOTING—3

Edwards	Kerry	Nelson (NE)

The PRESIDING OFFICER. On this question, the yeas are 54, the nays are 43. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

CLIMATE STEWARDSHIP ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of S. 139, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 139) to provide for a program of scientific research on abrupt bankrupt climate change, to accelerate the reduction of greenhouse gas emissions in the United States by establishing a market-driven system of greenhouse gas tradeable allowances that could be used interchangeably with passenger vehicle fuel economy standard credits, to limit greenhouse gas emissions in the United States and reduce dependence upon foreign oil, and ensure benefits to consumers from the trading in such allowances.

Pending:

Lieberman/McCain amendment No. 2028, in the nature of a substitute.

The PRESIDING OFFICER. The assistant Democratic leader.

Mr. REID. Mr. President, we are now on global warming. Because of scheduling problems, the managers of the bill, Senator INHOFE, Senator MCCAIN, and Senator LIEBERMAN, have agreed to each give up 15 minutes on their side. Therefore, the vote will occur at 12:45. I ask unanimous consent that be the case—that the vote occur at 12:45.

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

Under the previous order, there are 90 minutes equally divided for debate between the chairman and the Senator from Connecticut, or their designees.

Mr. LIEBERMAN. Mr. President, I yield 6 minutes to the distinguished Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I rise to support the Climate Stewardship Act offered by Senators LIEBERMAN and MCCAIN and to cosponsor this aggressive plan to fight global warming.

When President Bush walked away from the Kyoto Protocol negotiations in March 2001, he promised the American people he would come up with an alternative. More than 2 years later, the President has yet to deliver on his promise and we simply cannot wait any longer to start making progress.

Here in the Senate we have a worthy plan that will cut greenhouse gas emissions. I want to applaud Senators LIEBERMAN and MCCAIN for presenting this meaningful and comprehensive plan.

The McCain-Lieberman bill will require mandatory greenhouse gas emissions reductions in the United States from broad sectors of our economy. Rather than just aiming to limit industrial emissions—as other plans have done—this legislation will require emissions reductions from four major sectors of the economy: electric utilities; industrial plans; transportation; and large commercial facilities. These four sectors contribute 85 percent of the greenhouse gases produced in America.

The McCain-Lieberman legislation relies on a national ''cap and trade'' system to reduce the air pollutants that contribute to climate change. Many of my colleagues are familiar with this approach. It was first used on a national scale to combat acid rain under Title IV of the Clean Air Act

Amendments of 1990. A cap and trade system establishes an overall total limit on emissions and then allows pollution sources to trade emissions allowances. It gives participants the flexibility of the marketplace, and it works.

In fact, the acid rain program has reduced sulfur dioxide emissions from power plants—and it has done it at less than a quarter of the predicted cost to industry.

The McCain-Lieberman program will mandate that by 2010, the four sectors involved must reduce their emissions to 2000 levels. This is a meaningful and substantial reduction in emissions—a 5 percent reduction over the next 7 years.

Some critics suggest that you can't ''grow the economy'' without emitting more greenhouse gases. We know that is not true. As the acid rain program proved, the cap and trade system works well.

There were nay-sayers in 1990, and they were proven wrong. There are nay-sayers now, and we must prove them wrong again.

This is also an opportunity for American companies to get ahead of trends that we know are coming. We know that the future of energy production lies in renewable energy and in alternatives to fossil fuels. I want American workers to lead the way, and I want American companies to share in the benefits.

It is projected that over the next 20 years, $10–$20 trillion will be spent globally on new energy technologies. This is an enormous market, and much of the investment will take place outside of the U.S., in places such as China. I want American companies to sell the technologies that will be needed and used throughout the world. By passing this legislation, we will give American companies incentives to pursue new, clean energy technologies. And new technologies mean new jobs—especially compared to older energy sources.

Today, for every 1 percent of market share, renewable energy technologies generate 12,500 jobs. By the same measure, the coal industry only generates 3,000 jobs.

So this new technology holds a lot of promise in helping American companies and the American economy.

Let me mention briefly the President's so-called clear skies plan. This administration's approach to global climate change has been to focus on reducing greenhouse gas intensity. That is the ratio of carbon emission to gross domestic product. What most people do not know is greenhouse intensity is already declining. As the economy modernizes, it naturally becomes more efficient in terms of energy use, so when the President says he wants to reduce greenhouse gas intensity by 18 percent over the next 10 years with his Clear Skies Initiative, we should ask how much would the intensity decrease over the next 10 years without the Clear Skies Initiative.

The answer is stunning and underscores how little this administration really wants to do to reverse global warming. According to CRS, greenhouse gas intensity is projected to fall by over 14 percent over the next 10 years under current environmental regulations. The President's proposal is nearly as weak as existing law. President Bush thinks the Federal Government's primary climate change goal should be to encourage voluntary measures to reduce greenhouse gas intensity by only 4 percent over the next decade.

That is an utterly irresponsible approach to global warming. Our country should be taking an aggressive lead on reducing pollution. I am confident by using market-oriented strategies and new technologies, American ingenuity can find ways to reduce emissions without harming the economy. As I mentioned earlier, it will help our economy.

The threat of global warming is real. The Pacific Northwest stands to lose much from climate change from increasing severe storms to rising sea levels to negative impacts on our forests, our coasts, our salmon, and our agriculture. Those resources define the quality of life where I live.

In Washington State, increasing temperatures over the next decades could cause salmon in Puget Sound to migrate north. It could cause some crops to shift their natural habitats into Canada.

The western governors understand this. In September, the governors of California, Oregon, and my home State of Washington got together to curb greenhouse gas emissions by promoting tougher emissions standards for new power plants.

Governors and legislatures in the Northeast have taken similar measures.

Soon the Nation will face a patchwork of regional regulations, making it costly and cumbersome for industries to comply.

We in Congress need to take action since this White House has failed to act. It's time for a real policy to reduce our impacts on the global climate.

We know that a clean environment contributes to the health and quality of life for every Washingtonian and for every American. The McCain-Lieberman bill is an important first step.

I urge my colleagues on both sides of the aisle to vote for this legislation.

I ask unanimous consent to have printed a New York Times article that reported on the regional regulations.

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

[From the New York Times, Oct. 29, 2003]

THE WARMING IS GLOBAL BUT THE LEGISLATING, IN THE U.S., IS ALL LOCAL

(By Jennifer 8. Lee)

WASHINGTON, Oct. 28—Motivated by environmental and economic concerns, States have become the driving force in efforts to combat global warming even as mandatory programs on the Federal level have largely stalled.

At least half of the States are addressing global warming, whether through legislation, lawsuits against the Bush administration or programs initiated by governors.

In the last three years, State legislatures have passed at least 29 bills, usually with bipartisan support. The most contentious is California's 2002 law to set strict limits for new cars on emissions of carbon dioxide, the gas that scientists say has the greatest role in global warming.

While few of the State laws will have as much impact as California's, they are not merely symbolic. In addition to caps on emissions of gases like carbon dioxide that can cause the atmosphere to heat up like a greenhouse, they include registries to track such emissions, efforts to diversify fuel sources and the use of crops to capture carbon dioxide by taking it out of the atmosphere and into the ground.

Aside from their practical effects, supporters say, these efforts will put pressure on Congress and the administration to enact Federal legislation, if only to bring order to a patchwork of State laws.

States are moving ahead in large part to fill the vacuum that has been left by the Federal Government, said David Danner, the energy adviser for Gov. Gary Locke of Washington.

''We hope to see the problem addressed at the Federal level,'' Mr. Danner said, ''but we're not waiting around.''

There are some initiatives in Congress, but for the moment even their backers acknowledge that they are doomed, given strong opposition from industry, the Bush administration—which favors voluntary controls—and most Congressional Republicans.

This week, the Senate is scheduled to vote on a proposal to create a national regulatory structure for carbon dioxide. This would be the first vote for either house on a measure to restrict the gas.

The proposal's primary sponsors, Senator John McCain, Republican of Arizona, and Senator Joseph I. Lieberman, Democrat of Connecticut, see it mainly as a way to force senators to take a position on the issue, given the measure's slim prospects.

States are acting partly because of predictions that global warming could damage local economies by harming agriculture, eroding shorelines and hurting tourism.

''We're already seeing things which may be linked to global warming here in the state,'' Mr. Danner said. ''We have low snowpack, increased forest fire danger.''

Environmental groups and officials in state governments say that energy initiatives are easier to move forward on the local level because they span constituents—industrial and service sectors, Democrat and Republican, urban and rural.

While the coal, oil and automobile industries have big lobbies in Washington, the industry presence is diluted on the state level. Environmental groups say this was crucial to winning a legislative battle over automobile emissions in California, where the automobile industry did not have a long history of large campaign donations and instead had to rely on a six-month advertising campaign to make its case.

Local businesses are also interested in policy decisions because of concerns about long-term energy costs, said Christopher James, director of air planning and standards for the Connecticut Department of Environmental Protection. As a result, environmental groups are shifting their efforts to focus outside Washington.

Five years ago the assumption was that the climate treaty known as the Kyoto Protocol was the only effort, in town, said Rhys

Roth, the executive director of Climate Solutions, which works on global warming issues in the Pacific Northwest states. But since President Bush rejected the Kyoto pact in 2001, local groups have been emerging on the regional, state and municipal levels.

The Climate Action Network, a worldwide conglomeration of nongovernment organizations working on global warming, doubled its membership of state and local groups in the last two years.

The burst of activity is not limited to the states with a traditional environmental bent.

At least 15 states, including Texas and Nevada, are forcing their state electric utilities to diversify beyond coal and oil to energy sources like wind and solar power.

Even rural states are linking their agricultural practices to global warming. Nebraska, Oklahoma and Wyoming have all passed initiatives in anticipation of future greenhouse-gas emission trading, hoping they can capitalize on their forests and crops to capture carbon dioxide during photosynthesis.

Cities are also adopting new energy policies. San Franciscans approved a $100 million bond initiative in 2001 to pay for solar panels for municipal buildings, including the San Francisco convention center.

The rising level of state activity is causing concern among those who oppose carbon dioxide regulation.

''I believe the states are being used to force a federal mandate,'' said Sandy Liddy Bourne, who does research on global warming for the American Legislative Exchange Council, a group contending that carbon dioxide should not be regulated because it is not a pollutant. ''Rarely do you see so many bills in one subject area introduced across the country.''

The council started tracking state legislation, which they call son-of-Kyoto bills, weekly after they noticed a significant rise in greenhouse-gas-related legislation two years ago. This year, the council says, 24 states have introduced 90 bills that would build frameworks for regulating carbon dioxide. Sixty-six such bills were introduced in all of 2001 and 2002.

Some of the activity has graduated to a regional level. Last summer, Gov. George E. Pataki of New York invited 10 Northeastern states to set up a regional trading network where power plants could buy and sell carbon dioxide credits in an effort to lower overall emissions. In 2001, six New England states entered into an agreement with Canadian provinces to cap overall emissions by 2010. Last month, California, Washington and Oregon announced that they would start looking at shared strategies to address global warming.

To be sure, some states have decided not to embrace policies to combat global warming. Six—Alabama, Illinois, Kentucky, Oklahoma, West Virginia and Wyoming—have explicitly passed laws against any mandatory reductions in greenhouse gas emissions.

''My concern,'' said Ms. Bourne, ''is that members of industry and environment groups will go to the federal government to say: 'There is a patchwork quilt of greenhouse-gas regulations across the country. We cannot deal with the 50 monkeys. We must have one 800-pound gorilla. Please give us a federal mandate.' '' Indeed, some environmentalists say this is precisely their strategy.

States developed their own air toxics pollution programs in the 1980's, which resulted in different regulations and standards across the country. Industry groups, including the American Chemistry Council, eventually lobbied Congress for federal standards, which were incorporated into the 1990 Clean Air Act amendments.

A number of states are trying to compel the federal government to move sooner rather than later. On Thursday, 12 states, including New York, with its Republican governor, and three cities sued the Environmental Protection Agency for its recent decision not to regulate greenhouse-gas pollutants under the Clean Air Act, a reversal of the agency's previous stance under the Clinton administration.

''Global warming cannot be solely addressed at the state level,'' said Tom Reilly, the Massachusetts attorney general. ''It's a problem that requires a federal approach.''

Mrs. FEINSTEIN. Mr. President, I rise in support of the McCain-Lieberman amendment. I would like to begin by thanking the distinguished Senators from Arizona and Connecticut for their work on this bill. Their efforts are moving the Senate and the country forward on this very important issue.

I strongly believe that it is time for the United States to take real action against climate change. The science is solid. It is time to stop debating whether to do something and start discussing how to do it.

This modest bill is an affordable and crucial step forward. It is time to act.

The McCain-Lieberman amendment would create the infrastructure needed to track and trade greenhouse gas emissions and require the U.S. to return to year 2000 emissions levels by 2010.

The amendment would give us 7 years to reach year 2000 level emissions. Because of the recession, our national emissions actually went down in 2001. So we are actually at about year 2000 levels right now.

So we have 7 years just to get back to our current level of emissions. This is a modest step but it is a step forward.

As the world's largest greenhouse gas emitter, the U.S. has a duty to act.

With only 4 percent of the world's population, we produce 20 percent of the world's greenhouse gas emissions. Much of the world is already reducing their greenhouse gas emissions. The world is counting on us to do the same.

If we continue to ignore the problem, it will only get worse. If we wait, we will need to make bigger cuts in our emissions and we will have less time. Action will become more expensive rather than less.

I understand that many people are concerned about the costs of any efforts to reduce emissions. I also want to make sure that whatever program we wind up with is a good deal for the American people.

I strongly believe that the cap and trade program in this bill is a good deal for America.

Concerns about the cost of action are important.

But I want to ask my colleagues to consider very carefully the cost of doing nothing. The evidence is getting stronger and stronger that climate change will be very expensive.

According to the best available research, not acting will cost my State dearly. Our large population, our geography, and especially our reliance on snow runoff for water make California extremely vulnerable to global warming.

Frankly, the models predicting the impacts of global warming on California are frightening.

Climate change threatens the agricultural and natural resource industries that are central to California's economy and quality of life.

As the Senate knows, I am especially concerned about the future of California's water supply. More than 36 million people live in California right now, and we expect to have 50 million people by 2020.

Even without climate change, it would be a struggle to supply enough water for all of these people. But report after report indicates that climate change will further threaten a water supply that is already tight.

Models from NASA, Lawrence Livermore National Laboratories, and the Union of Concerned Scientists all indicate that climate change is likely to increase winter rain and decrease snowfall in California.

More winter rain means winter flooding. Less snow means less water for the rest of the year.

But California's natural environment as we know it depends on gradual runoff from snow.

Furthermore, we have spent billions of dollars on water infrastructure in California that depends on this runoff. And yet we already struggle to provide enough water for our farms, our cities, and our fish and wildlife.

As my colleagues know, I have worked hard to plan for the future of California's water supply. Climate change threatens even to make those plans insufficient.

We are already seeing alarming changes. According to scientists at Lawrence Livermore National Laboratory, the past century has seen a decline in spring and summer runoff in some California streams.

In 1910, half of the Sacramento River's annual runoff took place between April and July.

Today, that number is closer to 35 percent and is continuing to decline. We can no longer count on this runoff.

We are also already seeing a rise in sea level. Average sea level has risen considerably in San Francisco since 1850, with the most marked increase occuring since 1925. My colleagues from coastal states understand the potential cost of rising sea levels to coastal communities.

We are seeing other effects of climate change throughout the world:

The Union of Concerned Scientists has found that the global sea level has risen about three times faster over the past 100 years than the previous 3,000 years.

In July, the World Meteorological Organization released an unprecedented warning about extreme weather events. According to the organization's press release, ''recent scientific assessments

indicate that, as the global temperatures continue to warm due to climate change, the number and intensity of extreme events might increase.''

According to the World Meteorological Organization, the United States experienced 562 tornadoes in May of this year. The tornadoes killed 41 people. This was 163 more tornadoes than the United States had ever experienced in one month.

We are seeing similar record extremes around the world. These extreme weather events are a predicted result of climate change.

Climate change is also affecting some of our most treasured places. Last November, the Los Angeles Times published an article about the vanishing glaciers of Glacier National Park in Montana. Over a century ago, 150 of these magnificent glaciers could be seen on the high cliffs and jagged peaks of the surrounding mountains of the park. Today, there are only 35. And the 35 glaciers that remain today are disintegrating so quickly that scientists estimate the park will have no glaciers in 30 years.

Closer to home for me, on October 12 of this year, the Los Angeles Times reported that glaciers in the Sierra Nevada are disappearing. Many of these glaciers have been there for the last thousand years.

We are seeing similar melting around the world, from the snows of Mt. Kilimanjaro in Tanzania to the ice fields beneath Mt. Everest in the Himalayas.

Dwindling glaciers offer a clear and visible sign of climate change in America and the rest of the world.

We are already seeing some of these changes. The science tells us to expect even more. The evidence that climate change is real is overwhelming: including reports from the National Academies of Science, the Intergovernmental Panel on Climate Change, and even the Congressional Budget Office.

To quote a CBO report released in May, ''scientists generally agree that continued population growth and economic development over the next century will result in substantially more greenhouse gas emissions and further warming unless actions are taken to control those emissions.''

The Intergovernmental Panel on Climate Change estimates that the Earth's average temperature could rise by as much as 10 degrees in the next 100 years—the most rapid change in 10,000 years.

The latest evidence also indicates that climate change is likely to lead to more forest fires. Models indicate that warming will lead to dryer conditions in many places. Furthermore, warming is allowing bark beetles to spread farther north and to higher altitudes than ever before.

In parts of Alaska, bark beetles now have two generations per year instead of one, leading to drastic increases in population and destruction of our forests.

As we know too well, dry conditions and insect kill makes our forests into tinder boxes.

I strongly believe that we have the evidence that we need in order to act. Not addressing climate change will cost us dearly.

Yet, so far, the United States has not really taken action against climate change. Not only are we not part of the Kyoto Protocol, but the administration refuses to take part in shaping another solution. This is a big mistake.

We emit more greenhouse gases than any nation on Earth. The world is counting on us, and we have a responsibility to help.

We should be a leader—not an obstacle—when it comes to combating global warming. In his speech to the joint session of Congress—which many of us cited as among the best we have ever heard—British Prime Minister Tony Blair challenged the U.S. to take action now. Mr Blair said:

> Climate change, deforestation, the voracious drain on natural resources cannot be ignored. Unchecked, these forces will hinder the economic development of the most vulnerable nations first and ultimately all nations.

Mr. Blair went on to say:

> We must show the world that we are willing to step up to these challenges around the world and in our own backyards. If this seems a long way from the threat of terror and weapons of mass destruction, it is only to say again that the world security cannot be protected without the world's heart being won. So America must listen as well as lead.

Prime Minister Blair is right. If we fail to act now, we will face devastating consequences in the future. We will impose those same consequences on future Americans and the rest of the world.

Continued failure to act will also further strain our relationships with our allies. These relationships are already tense enough.

The administration has said that we need more research before acting. I agree that we should continue to study climate change. But we also need to start reducing our emissions of greenhouse gases now.

Prime Minister Blair has committed to a 60 percent cut in Britain's emissions by 2050. We need to make sure the U.S. is not left behind.

The McCain-Lieberman amendment is the right place to start.

This is a modest amendment. We would need to be back to our current level of emissions by 2010. In reality, much of the reduction in ''net emissions'' will come through increased carbon sequestration in forest and agricultural land. Emissions could actually increase as long as there is enough sequestration to offset the increases.

The amendment is comprehensive. The amendment covers six greenhouse gases and the vast majority of our greenhouse gas emissions.

The amendment is low cost. Repeated analyses have shown that cap-and-trade programs are the most cost effective way to reduce emissions. According to the Massachusetts Institute of Technology, this amendment would cost less than $20 per household over the life of the program—we can afford this cost.

The amendment would not lead to rapid fuel switching to natural gas. According to the Massachusetts Institute of Technology, coal use would actually continue to increase under this amendment. Natural gas use would decrease from business as usual because the bill would spur conservation measures.

During the latest energy crisis, California showed that conservation can make a huge difference. This bill will help us create better incentives for conservation.

Even the Energy Information Administration, EIA, says that this amendment would not result in fuel switching. EIA was concerned about the costs of the original Climate Stewardship Act. I believe that the agency's models are flawed and biased toward higher costs. But even those models indicate that this amendment will cost little and will not lead to price spikes.

There is a lot of misinformation floating around about this amendment. Some of the models were analyzing the Kyoto Protocol, which would have required a 20 percent emissions reduction by 2010. This amendment requires us to get back to our current emissions by 2010, an entirely different proposition.

Other models are based on an ''energy shock.'' Coming from California, I am quite familiar with energy crises. Shocks happen when businesses do not have time to prepare. This amendment is not a shock. We are giving industry 7 years' warning. According to the Massachusetts Institute of Technology, 7 years is enough time for the economy to adjust without job losses.

Businesses throughout the country have shown that efforts to reduce emissions can increase efficiency and actually save companies money.

Voluntary programs simply are not doing the job. We need to give incentives for all companies to increase efficiency and cut emissions.

We need to move forward with a national solution to climate change. So far, we have placed all of the burden on the states.

I am proud to say that California has been a leader. California has created a registry of greenhouse gas emissions that will be a model for the nation. Several other states are already looking to adopt the California Climate Action Registry's standards.

Similarly, California has a groundbreaking regulation affecting greenhouse gas emissions from automobiles.

Many states are moving forward, and they are now pressing harder for Federal action.

Local officials are also pressing for a national plan. My colleagues know that I am partial to mayors. Recently, 155 mayors, including 38 from my State alone, signed a statement calling for national action.

State and local programs are important and I applaud these efforts. But we need national leadership on this issue.

The McCain-Lieberman approach has widespread public support. According to a recent national poll, three-fourths of Americans support this approach to global warming—including solid majorities from both parties. We need to listen.

We know that agreement on climate change is possible in the Senate. The Senate has passed a modest provision in the Energy Bill 2 years in a row. The Foreign Relations Committee has recognized the urgency of the issue for our diplomatic relations.

It is time for the entire Senate to go on record on this important topic. We need to show Americans and the rest of the world that we are listening and that we are doing something about climate change.

I believe we can unite behind this bill and move the debate forward.

As Mr. Blair said, we have a responsibility to listen and to lead. I urge my colleagues to support this amendment.

Mr. INHOFE. Mr. President, I will yield in a minute to the Senator from Nebraska.

Last night we went into a lot of detail in this debate and I used three groups of scientists, numbering over 20,000, who refute the science on which global warming is based. Only two criticisms did I get from the other side. One was comments I made about supposedly misquoting Professor Schneider. After looking at this, I find I did not misquote him at all. He is one who adheres to the MIT study that says there is far less than 1 percent chance temperatures would rise to 5.18 degrees or higher, while there is a 17 percent chance that temperatures would rise lower than 1.4 degrees. These are the guys who are for this.

More significant—and this is setting the framework for this debate today. This is not about a pared-down bill McCain-Lieberman are coming up with now. They have both said this is just a start.

I will quote Professor Wigley, one I was criticized for misquoting. We find out I did not. He said:

> Senator Inhofe quotes my 1998 publication . . . where I pointed out that adhering to the emissions reductions outlined in the Kyoto Protocol would have only a small effect on the system. What he fails to point out is this analysis assumed that Kyoto was followed to 2010, and there were no subsequent system climate mitigation policies. The point of the paper was to show that Kyoto was to be considered only the first step of a long and complex process of reducing our dependency on fossil fuels as a primary energy source.

The chart of Senator SUNUNU shows how little change would be possible under this.

I yield to the Senator from Nebraska for 8 minutes.

Mr. HAGEL. I very much appreciate the leadership of the chairman on this issue and on this important debate.

I am here this morning to discuss the United States response to global climate change. How our Nation addresses global climate change may prove to be one of the most important economic and environmental decisions of our time. As we debate the McCain-Lieberman Climate Stewardship Act of 2003, it is important to keep in mind this is not a debate about who is for or against the environment. There is no Member of Congress who wants dirty air, dirty water, a dirty environment, or declining standards of living for their children and grandchildren. We all agree on the need for a clean environment. We all want to leave our children a better, cleaner, more prosperous world.

The debate on climate change, however, has moved beyond the Kyoto protocol. In 1997, by a 95–0 vote, this body, the Senate, adopted the Byrd-Hagel resolution which stated the United States would not sign any international treaty that excluded action on the part of developing nations or that would cause serious economic harm to the United States.

However, the concerns about our climate have not abated. We should recognize the efforts of Senators MCCAIN and LIEBERMAN and others on this particular issue. Although I disagree with the approach they have proposed, I understand and share their concerns. It is important to keep the debate moving forward in order to develop and implement practical policies to deal with climate change.

The McCain-Lieberman bill would create mandatory emissions reductions for greenhouse gasses here in this country. The consequences of such mandates are severe. This bill would raise energy prices for consumers, agricultural producers, business, and industry, and have a very negative impact on our economy. The mandates would also be very difficult to reach.

The Department of Energy's own independent Energy Information Administration projects the greenhouse gas emission levels in 2010 would have to be reduced by 14 percent in order to achieve the 2000 emission level quota set by this bill, not the 1.5 percent reduction that supporters of this bill are claiming.

This means utilities and manufacturers will have to find alternatives to coal, the predominant fuel used in this country. In most cases, this means switching to natural gas. That would mean higher costs for homeowners, businesses, industry, and farmers, as well as possible natural gas shortages.

A fuel shift of this magnitude demanded by this bill for the utility industry would require natural gas production and pipeline capacity this country simply does not have nor will have in 2010.

We have recently seen the effects of high natural gas prices in this country. A recent GAO report concluded the natural gas price fight in the years 2000 to 2002 led to a 25 percent reduction in domestic production of nitrogen fertilizer and a 43 percent in nitrogen imports. This was a significant blow to this country, especially to our agricultural producers.

Record demands and higher prices for natural gas caused America's farmers and ranchers to spend an additional $1.5 billion just to plant and fertilize their crops this past spring.

The question we are faced with is not whether we should take action but what kind of action would best address the climate change challenge we face now and into the future. Our actions should be focused on incentivizing and achieving voluntary emissions reductions in developing and disseminating clear technologies.

I supported such actions in the past in addressing our national climate change policy: The establishment of a voluntary registry for carbon emissions reductions; tax credits for emissions reductions; and research into climate change science and carbon sequestration. Closing the gaps in our knowledge, our science, our industry, and our technology builds a solid foundation for a wise climate policy for the future.

Although there are inconsistencies in the science, there has been a human impact on the Earth's atmosphere—we all accept that—and we should consider steps to mitigate that impact. The sooner we begin, the smaller and less painful the changes will have to be in the future. Global warming does not recognize national borders. The changes under consideration today are proposed solely for the United States, but our global warming policy must be broader. The United States alone cannot improve the Earth's climate. The only way forward is through international cooperation and collaboration—engaging, helping, partnering with all nations, especially developing nations. Developing nations are quickly becoming the major emitters of greenhouse gasses, but they are exempted from international agreements to reduce these emissions. There are some good reasons for this. These nations cannot achieve greenhouse gas reductions until they achieve higher standards of living. They lack clean energy technology, and they cannot absorb the economic impact of the changes necessary for emissions reductions. Our partnerships with developing nations can help increase the efficiency of their energy use and reduce their greenhouse gas emissions. Industrialized nations must help less developed nations by sharing cleaner technology so developing countries can leapfrog over the highly polluting stages of development that the United States and other countries have already been through. The Bush administration has taken the initiative in developing these public-private partnerships and projects with all developing nations.

The United States Chamber of Commerce has called for a Marshall plan for developing emissions-free technologies. Part of that plan includes the dissemination of those technologies to developing nations. This will take time. We should be thinking and planning 20 to 50 years out.

By partnering with developing nations, we will export American technology and expertise, and improve all economies along the way.

These are the types of plans the U.S. should be reviewing. Investments can be spread over time and gradual and effective change is the least painful to individuals, industries and nations—and it is the most lasting. It also allows all nations to participate in workable climate change policies. It is the only way to ensure both global climate change success and global prosperity.

Mr. President, I yield the floor.

Mr. NELSON of Florida addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Mr. President, I yield my friend and colleague from Florida 6 minutes.

The PRESIDING OFFICER. The Senator from Florida is recognized for 6 minutes.

Mr. NELSON of Florida. Mr. President, thank you. And in 6 short minutes I want to give you my observations of why this is an extremely critical piece of legislation to the future of Planet Earth.

I bring back to my mind's eye a picture that is embedded in my memory, looking out the window of our spacecraft 17 years ago back at Planet Earth. It is such a beautiful creation, suspended in the middle of nothing. It is a blue and white ball—blue from the oceans and white from the clouds—suspended in the middle of this black backdrop of space that goes on and on for billions of light years—an airless vacuum. And there, suspended in the midst of it is life. It is our home.

When you look at the rim of the Earth from space, you see a thin little film, and that is the atmosphere that sustains all of life. From space, the Earth looks so beautiful and yet it looks so fragile. From that experience of 17 years ago, it made me want to be all the more a better steward of this planet, particularly when, with the naked eye, from that altitude I could actually see, for example, coming across South America—with the color contrast—the destruction of the rain forest in the upper Amazon region and, from the same window of the spacecraft, see the results of that destruction. Looking to the east, to the mouth of the Amazon River, I could see the silt that discolored the waters of the Atlantic for hundreds of miles.

I give you that backdrop purely as an intro to tell you that when we face a major change in climate, it is going to have devastating effects on the very delicate ecological balance that we have on this Earth.

Clearly, one of the places that would be most devastated would be my own State of Florida, which has more coastline than any other State. The rising of the temperatures would cause the rising of the oceans. The scientific community, that has been fairly unanimous on this—despite what you hear in this debate, that there is this disagreement in the scientific community—it is overwhelming in the scientific community that what is going to happen is that the oceans are going to rise.

Can you imagine what that is going to do to a place such as my State of Florida, where most of the development in the State is along the coastline? With the rise of the temperatures, that means the storms are going to be more ferocious and frequent.

Florida is this land we know as paradise, that is a peninsula that sticks down in the middle of something we know as ''Hurricane Highway.'' The storms are going to become more ferocious and frequent, and the plagues are going to be more intense.

If that is not enough for passing this legislation and blunting the critics of this legislation—you would think that argument would stand on its own, but there is even more. And I must say, I was delighted, in the hearing we had in our Commerce Committee on this issue, to see, for the first time, some American insurance companies step up and say this is going to be a problem.

In the past, European companies have stepped up. But now subsidiaries of those companies, doing business in America, are acknowledging the same thing, that it will have devastating effects upon our business climate here in this country.

For example, the reinsurance company, Swiss Re—this is their quote from our Commerce Committee hearing:

> Swiss Re believes the best way to lessen potential loss is through sound public policy, utilizing market mechanisms which strike the right balance between environmental precaution and societal policy objectives.

Because the person testifying for Swiss Re said, ''Climate change driven natural disasters are forecasted to cost the world's financial centers as much as $150 billion per year over the next 10 years,'' that should be sufficient reason for us to stop putting our heads in the sand and saying global warming is not a problem. We know it is a problem environmentally. Now we have to recognize that it is going to be a major problem with regard to American business and all of the investments we have, particularly since so much of our urbanized area is along the coast of the United States.

So, Mr. President, I wanted, as one voice, who strongly supports the McCain-Lieberman legislation, to speak in favor of it.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. CRAIG addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I yield up to 10 minutes to Senator CRAIG.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. CRAIG. Mr. President, as many of my colleagues in the Senate know, I have been fascinated and awed by the complexity of the climate change issue for quite some time.

Certainly, being born and raised in the high desert region of the State of Idaho located in the rugged and majestic Pacific Northwest, I grew up with reverence for the natural beauty of our world and a deep respect for the awesome power of nature.

I have stated several times on the floor of the Senate that climate change is one of the most significant issues of our time. I have not changed my view.

I come to the floor of the Senate today to both compliment my colleagues, Senators MCCAIN and LIEBERMAN, for their determination to legislatively address the issue of climate change and to object to the manner in which they have chosen to do so.

Their proposal, S. 139, The Climate Stewardship Act, is portrayed by its proponents to be a modest legislative attempt to reduce emissions of carbon dioxide and other greenhouse gases.

It is hard for me accept the word ''modest'' as an accurate descriptive term for the legislation when I measure the bill by what it does—it regulates carbon dioxide—a gas that is not a criteria pollutant under the Clean Air Act is not a poisonous gas or toxic substance, and does not represent a direct threat to public health.

When I decided to enter politics, I was guided by a deep belief in personal freedom—the maximum amount possible for the citizens of our Nation that is consistent with an orderly society.

By freedom I mean the opportunity to achieve one's true potential, whether as an individual, a community, or a business. Freedom spawns discovery and innovation and in turn discovery and innovation solve problems and create opportunities. Regulation is the antithesis of freedom. It certainly retards, if not completely extinguishes our natural desire to discover and be innovative, and yet, we, as a Nation, seem more and more inclined to willingly accept the form of a regulatory state.

I am periodically awed by the prescience of Alexis de Tocqueville's 1839 work—''Democracy in America.'' In Part II of Chapter 6, Tocqueville voiced perhaps his greatest concern for the future conditions of American democracy.

In general terms, he said that democracies have a sort of soft ''despotism'' to fear. That is, conditions of democracy include toward men's equality, and in that equality, the government takes care of all of man's necessities, needs, and desires, in order to maintain this patterned equality among men. Tocqueville's description of this ''soft despotism'' aptly describes the modern regulatory state.

I note that there are 2,620 pages in the 1936 Federal Register, a year after the Federal Register Act was passed in 1935. In the Federal Register for the year 2000, there are 74,258.

A quote from Chapter 6 of Tocqueville's work is quite pertinent

to our discussion here. In discussing the regulatory threat, he states:

That power is absolute, thoughtful of detail, orderly, provident, and gentle . . . It provides for their security, foresees and supplies their necessities, facilitates their pleasures, manages their principal concerns, directs their industry, makes rules for their testaments, and divides their inheritances . . . Thus it makes the exercise of free choice less useful and rare, restricts the activity of free will within a narrower compass, and little by little robs each citizen of the proper use of his own faculties.

Tocqueville goes on to note that regulation:

is not at all tyrannical, but it hinders, restrains, enervates, stifles, and stultifies so much that in the end each nation is no more than a flock of timid and hardworking animals with the government as its shepherd.

Now, let me be clear, regulation, indeed, has its place. But this extremely powerful Government tool should be employed only as a last resort after facts developed by a comprehensive and systematic analysis clearly indicate that it is necessary to protect the public welfare.

It is with this analytical perspective that I have reviewed carefully the underlying scientific and economic support for this bill, S. 139.

The bill assumes that there is currently a definitive scientific basis for imposing a regulatory structure on industry. I am unable to agree with that basic assumption. There is no definitive evidence supporting regulation. Surface temperatures have warmed. We are not sure why. Since the mid-1990s, I have paid close attention to the developing science on global warming.

Indeed, I have organized and attended meetings at scientific research venues, set-up and participated in numerous conference calls with scientists from the National Academy of Sciences, and, along with the Board of the NAS convened a high level conference at the Academy's headquarters in Washington, DC to discuss the state of the science on global warming.

That conference, held on June 6, 2001, was a marvelous opportunity to talk with eleven scientists that included several Nobel Laureates who just finished responding to the now well publicized ''Key Questions'' request of President Bush.

We couldn't have had better timing for such a conference and the conference was set up solely to address concerns of the U.S. Senate.

Yet there were only two other Senators besides myself who made the effort to attend. Senators BINGAMAN and SESSIONS joined me, former Treasury Secretary O'Neill and former Chairman of the President's Council of Economic Advisors, Glenn Hubbard.

I can say to all in the Chamber today that the forum was a veritable feast for the mind and wonderfully successful in explaining matters of extraordinary scientific complexity. But it had to be quite a disappointment for the Academy. Only three U.S. Senators took the time to attend.

The National Academy made extraordinary efforts to get Members of the Senate to attend its intensive Climate Science Forum, including sending a letter one month in advance of the forum to each Member of the Senate, followed by a personal phone call to each Senate office.

What more could the Academy have done to encourage attendance? I don't think much else could have been done.

For some, it appears contentment on the science issue comes from simply learning about it from media reports contained in newspapers and popular magazines. Is that a fair knowledge base for regulation?

Indeed, a little over a year before the NAS conference I organized and attended, with Senator LINCOLN CHAFEE and former Senator Bob Smith, a meeting of over 30 scientists working at the Woods Hole Oceanographic Institute in Woods Hole, MA, to discuss the state of science on climate change.

Again, I could tweak the interest of only a handful of Members to join me at that excellent scientific conference held exclusively for members of the United States Senate. This issue is too economically and environmentally important for Congress to continue to have only casual interest in its scientific complexity.

Sure, there have been several congressional hearings during the last year debating different views of the science. But how much do we really learn in a couple of hours under restrictive time limits for questions, particularly when we invite mostly ''advocates'' of a particular position, instead of objective scientists? Not much. Surely, not as much as we learned at reputable scientific forums.

So, today, the Senate is asked to pass legislation that will regulate carbon dioxide, an emission that has no health impacts—we humans exhale it with every breath—and heretofore has never been listed as an ''air pollutant.'' Stated simply, the scientific case for regulation is unpersuasive.

Those Senators who assert that the science is settled are, in my opinion, simply wrong.

The 2001 NAS Report on the ''Analysis of Some Key Questions,'' often quoted to establish the basis for regulatory action, contains a sentence that is often half-quoted, and I will read it here in its entirety:

The changes observed over the last several decades are likely mostly due to human activities, but we cannot rule out that some significant part of these changes is also a reflection of natural variability.

This is the third sentence in the summary at the very beginning of the report.

Even a cursory reading of the report indicates that the uncertainties are real and they are significant. Indeed, the report uses the words ''uncertain'' and ''uncertainty'' 43 times in its 28 pages.

Some press accounts have said that this report acknowledged a dire, near term threat to the environment from climate change. This is not true.

One of the conclusions of the Report was that:

[a] causal linkage between the buildup of greenhouse gases in the atmosphere and the observed climate changes during the 20th Century cannot be unequivocally established.

Natural variations in climate that occur over decades and even centuries have been identified by the NAS as also playing a role in climate change, and so it is not correct to say that this problem results only from human activities, or that reduction of emissions of heat-trapping gases will entirely solve it.

Mr. President, 2 years before the NAS prepared its 2001 ''Analysis of Some Key Questions'' it issued one of this country's most comprehensive reports on climate change science entitled: ''Research Pathways for the Next Decade.''

The Pathways report is short on creative literature and long on technical issue framing—not particularly suitable for catchy media headlines, which may explain why many newspapers showed little interest in its existence or import. But its critical and thorough scientific analysis of the current state of our climate change knowledge is what makes the Pathways report so important to policy makers.

Now, if you are like me and you find out that America's National Research Council has just published the most comprehensive report in history on the state of Climate Science, you don't want to read all 550 pages!

You want to cut to the chase and read the report's bottom line conclusion. And the last thing you want is a report that provides more questions than answers.

But the Pathways Report authors are brutally honest. To best explain the current state of climate science they had no choice but to lay out a whole series of potentially show-stopping questions.

Let me stop for a moment and reflect on my trip to Woods Hole, MA, that I mentioned earlier. I spent a day at the Oceanographic Institute exploring these questions with over 30 scientists. It was a real eye-opening experience.

Dr. Berrien Moore, who coordinated the publication of the Pathways Report, helped lead a discussion on where science and public policy intersect.

Two themes came through clearly in those discussions:

No. 1, there are significant gaps in scientific understanding of the way oceans and the atmosphere interact to affect climate; and

No. 2, scientists need more data, especially from the oceans to better understand and predict possible changes.

It was humbling to get a glimpse of how much we don't know.

You need to know what is in the ''Pathways Report'' in order to fully understand the Research Council's ''Analysis of Some Key Questions''—if

read objectively, I think you will find that both Reports are consistent—both highlight the uncertainty of our current understanding of climate science.

Another important point to highlight is that the United Nations Framework Convention on Climate Change does not define what is meant by ''dangerous interference with the climate system'' nor does it specify a ''dangerous'' level of greenhouse gas concentrations.

To my knowledge, no Federal or federally supported scientific entity has firmly established what is a ''dangerous'' level of greenhouse gas. We simply don't know!

Recently, James Schlesinger, a former Secretary of Energy under President Jimmy Carter stated in the Washington Post:

We cannot tell how much of the recent warming trend can be attributed to the greenhouse effect and how much to other factors. In climate change, we have only a limited grasp of the overall forces at work. Uncertainties have continued to abound—and must be reduced. Any approach to policy formation under conditions of such uncertainty should be taken only on an exploratory and sequential basis. A premature commitment to a fixed policy can only proceed with fear and trembling.

The President understands that reality.

The administration's Scientific Strategic Plan for climate change research is a valuable effort to develop a framework for acquiring and applying knowledge of the Earth's global environment through research and observations. It is a long overdue decision and should be welcomed by all.

The President's approach is most prudent. At this time, it is my preferred option over regulation. Despite claims to the contrary, no government administration has aggressively pursued a voluntary action program. The President's plan is well conceived and deserves a chance.

The simply truth is that any cap-and-trade scheme is a hidden tax on consumption. Like a tax, it would raise the cost of production.

Moreover, a cap-and-trade on CO_2 emissions will be a regressive tax which will hurt those on low or fixed income—that is the poor and elderly—disproportionately. I will submit for the record a letter sent to me as Chairman of the Aging Committee from ''The 60 Plus Association'' with membership of 4.5 million senior citizens including 10,000 in Idaho, asking me to oppose S. 139.

A quote from a June, 2001 CBO study entitled ''An Evaluation of Cap-and-Trade Programs for Reducing U.S. Carbon Emissions'' is revealing on this subject:

This analysis does not address the issue of taxing carbon emissions. However, the economic impacts of cap-and-trade programs would be similar to those of a carbon tax: both would raise the cost of using carbon-based fuels, lead to higher energy prices, and impose costs on users and some suppliers of energy.

Another instructive quote from that study states:

The higher prices for energy and energy-intensive products that would result from a cap-and-trade program would reduce the real income that people received from working and investing, thus tending to discourage them from productive activity. That would compound the fact that existing taxes on capital and labor already discourage economic activity.

The only way to reduce CO_2 emissions from powerplants is to reduce the amount of coal, oil or natural gas consumed at the power plant.

Placing a cap on CO_2 emissions from powerplants means those plants simply will not be able to generate any significant amounts of new electricity. There are no control technologies like selective catalytic reduction or scrubbers for CO_2.

Capping CO_2 emissions from power plants will make the current crisis in electricity markets permanent. It will force shuttering of most of U.S. coal fired steam electric generation prematurely and will essentially mandate reliance on new natural gas fired power plants without any assurance that adequate gas supplies will be available.

Further, a report by the U.S. Energy Information Administration found that reductions of SO_2, NO_X, and CO_2 at levels consistent with the current proposal drives up electricity costs substantially. The report shows that electricity prices would rise by 21 percent by 2005 and 55 percent by 2010.

The report goes on to attribute most of the rise in prices to controlling CO_2 emissions.

The report, Mr. President, also was prepared when natural gas prices were a third of what they are today which means that future electricity prices likely would be much higher because the report assumes that most new generating capacity would be gas fired.

The last point that must be addressed is the assertion that the United States is somehow out of step with the rest of the world on this issue. Climate change is as much an economic issue as it is an environmental issue. We must ensure that our global competitiveness is not compromised. Let's not allow our nation to be duped into assisting our competitors in the global market to achieve competitive advantage under the subterfuge of environmental policy. When viewed in comparative perspective, the process by which environmental policy is developed and implemented has been far more ''conflictual and adversarial'' in the United States than in Europe or Japan. In the U.S., while fines for violations have grown larger, numerous violations of environmental laws have been reclassified as ''felonies'' and many now carry prison sentences.

Contrast this with Europe and Japan. Japan implements its policies without resorting to legal coercion or overt enforcement. Japanese MUST negotiate and compromise to ensure compliance. Europe emphasizes mutual problem-solving rather than arm's length enforcement and punishment.

Our legal system allows Third Party lawsuits. Europe and Asian countries do not. In a 2003 study on the direct costs of the U.S. Tort system, it was estimated that costs equal 2.2 percent of our nations GDP. Europe and Asian countries give no standing to Third Parties in environmental compliance and enforcement cases.

Perhaps, if we were a less litigious nation, we could accomplish more in environmental compliance, and be less fearful of international environmental treaties becoming law. However, for better or worse, when our nation commits to a particular environmental policy, we enforce that commitment with the heavy hammer of civil penalties and criminal prosecution. Europe, Japan, and other nations do not. Our global competitiveness and economic security is ''in the balance.''

Mr. President, I ask unanimous consent that a letter from a large senior citizen organization expressing their fear about high costs of energy based on S. 139 be printed in the RECORD.

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

THE 60 PLUS ASSOCIATION,
Arlington, VA, October 28, 2003.

Hon. LARRY E. CRAIG,
Chairman, Senate Special Committee on Aging, Dirksen Senate Office Building, Washington, DC.

DEAR SENATOR CRAIG: As Chairman of the Senate Special Committee on Aging, you are a proven fighter for seniors. Accordingly, I'd like to bring to your attention legislation that, if enacted, would be very detrimental to the elderly.

We are very much opposed to S 139, the Climate Stewardship Act, which seeks to do by statute much of what the discredited Kyoto Protocol would have done by treaty. (The Kyoto Protocol was rejected by you and your Senate colleagues in 1997 by a 95–0 vote.) S 139 would seriously adds to the costs of both electricity and gasoline for seniors and others on a fixed income.

According to a June 2003 report by the Energy Information Administration at the U.S. Department of Energy, this legislation would increase electricity rates by 46%, natural gas prices by 79%, and the cost of gasoline by as much as 40 cents a gallon.

Seniors on a fixed income are least able to afford these higher prices.

During the cold winter months, many seniors must choose between staying warm and having enough food to eat and medicine to stay healthy. And in the heat of the summer, an inability to cool a home can be a death sentence to the elderly.

The very last thing public policies should do is to add to the costs of electricity and natural gas for the elderly. Likewise, many seniors and their families must be able to afford gasoline to be able to get to their doctor's office, grocery store, and pharmacy.

Government mandates which increase the costs of electricity, natural gas, and gasoline are tantamount to a tax on those least able to pay it.

On behalf of 4.5 million seniors, including nearly 10,000 in Idaho, please do everything you can to prevent S. 139 from being passed.

Cordially,

JAMES L. MARTIN,
President.

Mr. CRAIG. Mr. President, I have come to the floor on more than one occasion over the last 5 years to discuss and debate the issue of climate change.

Many of us engaged in this issue believe it to be a serious and important issue. That I cannot deny. The Senator from Florida talked about it being of critical character. I do not dispute that. The question is, Can we do anything about it and are we the cause of it? And I am speaking ''we'' as mankind. That is the essence of the debate today.

Also, S. 139, the Climate Stewardship Act, would portray, in part, that we are the cause and, therefore, let us make some moderate adjustment changes in our regulatory structure in this country to begin to mitigate greenhouse gases.

Let me suggest that the word ''modest'' has been used, but I would guess if you read the legislation, and then you downstreamed it through the regulatory process, it might be anything less than modest.

Here is what is most important about regulating carbon dioxide. It is a gas. It is not a pollutant under the Clean Air Act. It is not a poisonous gas or a toxic substance. It does not represent a direct threat to public health. That is what scientists tell us. Yet somehow we are going to be able to regulate and shape it in a way that controls what we believe to be the cause of producing greenhouse gas.

I suggest that probably the most invasive process we are going through right here with this legislation is the regulatory process that will ultimately come.

The Senator from Arizona and I, more often than not, are critics of big government and the regulatory process. What De Tocqueville said a good number of years ago—in fact, well over a century ago—was about the great democracy of America and the despotism of fear that is produced in the regulatory process that limits freedom.

He talks about the regulatory process as being soft despotism.

I note that in 1936, there were about 2,600 pages of the Federal Register. In the year 2000, there were 74,258 pages of the Federal Register. We have become a phenomenally regulated and controlled economy and country. In so doing, de Tocqueville would note very clearly, as we all understand and as the Senator from Arizona understands as well as anyone, we begin to shape our freedoms, control our freedoms in a very interesting way. That is what this bill is all about, a massive new regulatory process to reshape certain utilizations of energy in a way that will have a significant impact on our economy. And we would be led to believe that somehow it is going to improve the environment in which we live.

That is the issue at hand. That is the one that we now need to discuss. That is, does scientific evidence support what S. 139 is all about.

I have spent a good deal of time on the science. You have to. That is probably the greatest frustration that all of us have, is trying to comprehend this massive body of science that is assembling out there and what it means and is it valid and, from it, should we begin to reshape our economy; if it is invalid or inaccurate, what would be the impact of the reshaping that S. 139 might accomplish.

Organized meetings have been held all over. I organized one with the assistance of the National Academy of Sciences in June 2001. It was a high-level conference meeting here in our Nation's Capital. Every Senator was invited to come. Three showed up. Only three showed up to listen. Senator BINGAMAN and Senator SESSIONS attended, along with Secretary O'Neill, to listen to the President and the President's Council of Economic Advisers, to listen to some of our noted scientists from all over the world. No one else came. O'Neill at that time was serving as Secretary of the Treasury and was a somewhat outspoken advocate of changing our economy for the sake of climate change. He went away from that meeting not confused but recognizing that there was a broad field of science out there that he had not yet explored and that scientists had not, in fact, come together in a way to understand.

We worked with a variety of scientists from the National Academy of Scientists. In 2000, I went up to Woods Hole Oceanographic Institute. Senator CHAFEE and Senator Bob Smith went along at that time. We listened to the best scientists out there, scientists who have studied this for decades. They cannot in any absolute way suggest that greenhouse gases are the creator of a heating trend or a warming trend that does exist and most agree does exist.

The Senator from Arizona, the authors of S. 139, would suggest that this is the definitive document, the ''Analysis of Some Key Questions,'' of climate change science by the National Research Council. This is a total of 27, 28 pages. I am not saying this document is wrong, but I am saying, to understand this document, you better read this document: ''Pathways Study,'' 550 pages. Now, it is not a hot topic, and it will put you to sleep. It is all science. From this document, they concluded this document.

And what does this document conclude? That the science today is not yet assembled that can in any definitive way argue that greenhouse gases and man's presence in the production of those greenhouse gases is creating the heating trend in our global environment at this time.

There are not many sound bites here. The press did ignore this. Those who want the politics of this issue largely ignored this document. But they must go hand in glove. I am not a critic of this document at all. I have not read all of them, not all 550 pages. But I have thumbed through a lot of it. I have read a good deal of it. Anyone who wants to be the advocate of climate change darn well better read the bible on it first before they conclude that all of the world's scientists have come together with a single statement to suggest that the global warming we are experiencing can be in any way clearly the product of the production of greenhouse gas around this globe and as a part of it.

Because we have not totally understood it yet, there is no question that we ought to try to understand it before we begin to craft a massive body of regulation to reshape the economy, all in the name of climate change. That is what the President understood. That is why the President denounced Kyoto.

The administration's strategic scientific plan for climate change research is a valuable effort to build the body of science that can truly allow those of us as policymakers a foundation from which to make the right choices. If we fail to make the right choices, if we head this massive regulatory effort in the wrong direction without question—and many have spoken to it over the last few hours—we could badly damage, if not curtail, much of the growth in our economy.

I think the effort that is underway ought to be the preferred option over regulation. Voluntary action based on clear evidence is a much preferred way to go.

Let me talk for a moment about economic impact because that ultimately is the issue. S. 139 wants to change our country, wants to change the utilization of carbon and the emission of gases. You do it through a regulatory process. Between 1990 and the year 2000, industrial GDP increased 35 percent.

The PRESIDING OFFICER. The Senator's time has expired.

Mr. CRAIG. The reality is, our industrial growth is climbing. Its emissions have rapidly dropped. The emission today of greenhouse-like gases, as we would argue, do not come from our industrial base. Yet this is where we send our regulatory effort.

I oppose the legislation. I hope the Senate will vote against it.

The PRESIDING OFFICER. Who yields time?

Mr. LIEBERMAN. Mr. President, I yield 6 minutes to the distinguished Senator from New Jersey.

The PRESIDING OFFICER. The Senator from New Jersey is recognized.

Mr. LAUTENBERG. Mr. President, I thank Senators LIEBERMAN and MCCAIN for developing this amendment. It makes sense. Mr. President, I rise to speak in support of the Lieberman/McCain bill. This bill offers a reasonable, proven, market-based approach to addressing the problem of global warming. It establishes a greenhouse gas ''cap and trade'' system which is modeled on the most successful pollution reduction program ever—enacted the Acid Rain Program.

Since 1980, that program has reduced sulfur dioxide emissions by 40 percent—despite significant economic growth during that period. I say, it's about time.

A few years ago I traveled to Antarctica and I saw the effects of global

warming firsthand. The Antarctic Peninsula ice shelves are melting. Over 1,250 square miles of ice have broken off and melted in just the last few years. Scientists believe these massive ice shelves have stood undisturbed for 12,000 years. Now they are gone. Many of us were dismayed but not surprised by the report last month of the break-up of the Arctic's largest ice shelf.

It is stunning that some of the world's glaciers have lost as much as 70 percent of their ice. Why is all this ice melting? Because, as literally thousands of climate scientists have reported—the earth is heating up! Yes, global warming is real and America should be leading the international community in addressing it—not lagging behind. The scientific discoveries on climate change are nothing short of astonishing. Ice core samples from Greenland and the Antarctica show that atmospheric concentrations of carbon dioxide are at their highest level in the last one million years. In the Arctic, the permafrost is melting. The average thickness of the arctic ice shelf has decreased by a staggering 40 percent, just since 1950.

All that melting ice is steadily raising sea levels. Globally, the sea has risen between 4 and 8 inches. This impact is particularly damaging to flat coastlines like in Texas where the relative sea level has already risen from 8 to 10 inches. From primitive thermometer readings to the analysis of tree rings and coral reefs, the evidence is clear: this last century has been the hottest in the last 1,000 years.

The evidence of profound climactic change continues to mount. A study published last January in Nature—probably the most respected scientific journal in the world—reported some remarkable discoveries. It reported that of 1,700 habitats studied, 370 are moving northward. The habitat of the Red Fox has moved 600 miles to the north in the last 30 years. Frightening disease vectors, such as the mosquito which carries the deadly West Nile Virus, are pushing into North America. Perhaps most ominous of all, night time temperatures are rising. Medical authorities tell us that this lack of relief from elevated temperatures at nighttime is a chief reason that 500 to 700 people died in Chicago during the 1995 heat wave.

While the Federal Government sits fiddling, States are not waiting for Rome to burn. At least 27 States—more than half—have started their own programs to reduce greenhouse gas emissions. According to David Danner, the energy adviser for the State of Washington, States are moving ahead to fill the vacuum left by the Federal Government. Danner said, ''We hope to see the problem addressed at the federal level, but we're not waiting around.'' A number of those States have initiated reasonable regulatory programs that will soon begin to reduce greenhouse gas emissions. The Federal Government should be leading this effort, but isn't. At the very least, we should start catching up. Surely, none of us here doubt the United States possesses the capacity and the skill to confront global warming? I for one, do not.

Now is the time to harness America's ingenuity and skills and tackle global climate change. I have to ask: What is there about the facts of global warming that makes the administration duck for cover?

We cannot ''spin'' our way out of the impacts of global warming. But that is the strategy the opponents of this bill are pursuing. Look at this chart: Republican pollster Frank Luntz is urging his side to call it ''climate change'' not global warming, because ''climate change'' is ''less frightening.'' The implication here is that people won't demand immediate action on something that is ''less frightening'' and ''more controllable.'' How irresponsible. No matter how much word-smithing that's done, no matter how much faux science the other side uses—that will not change the true, consensus, peer-reviewed science that has accumulated for 30 years.

The ominous impacts of Global Warming affect our health, affect our safety, and effect our economy. These impacts will not simply go away because we turn a blind eye to the facts and pretend the climate is not changing. In 2002, the National Research Council reported on the science of global warming. It said:

> Greenhouse gases are accumulating in earth's atmosphere as a result of human activities. National policy decisions made now and in the longer-term will influence the extent of the damage suffered by vulnerable human populations and ecosystems later in this century.

Clearly, the decisions we make here and now will determine how much ''damage'' is inflicted on our children and our grandchildren. The National Research Council represents the brain trust of the most educated country in the world. If we cannot believe the Council, who can we believe?

Global warming poses a clear and present danger to us all. The global warming bandwagon is getting full—and the President would be smart to get on it. A partial list of those who urge market-based action now, includes: 2,500 eminent economists from MIT, Yale, Harvard, Stanford and other top universities, including eight Nobel Laureates who said, ''a market-based policy could achieve its climatic objectives at minimum cost.''

Major corporations, including the petroleum giant BP—which has already reduced its greenhouse gas emissions 10 percent below its 1990 levels—and saved $600 million in energy costs doing it.

Last night we heard from Senators who were repeating the scare propaganda that is circulating about higher fuel prices. But what is more reliable, guesses about the future or a record of the past? If BP, DuPont and other major corporations can save money by reducing their greenhouse gases—surely they rest of the country can also. Other supporters of a market-based approach include Silicon Valley investors, multi-religion interfaith groups, the world's largest re-insurance company, a bipartisan group of 155 mayors—the list goes on and on.

I urge my colleagues: let's be the leaders we were elected to be. Let's act now and vote for the Lieberman/McCain bill.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I yield 7 minutes to probably the best informed Senator who was the chairman of the Governor's clean air committee.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. VOINOVICH. Mr. President, I wish to comment on some of the statements made by my distinguished colleague, Senator LIEBERMAN, during the debate last night.

Senator LIEBERMAN was correct when he said concerns about climate change and atmospheric concentrations of carbon are widespread and bipartisan. He was also right when he said that support for increasing our scientific understanding of this issue and reducing atmospheric concentration of carbon is widespread and bipartisan.

However, I note that opposition to the language offered by Senator LIEBERMAN and Senator MCCAIN is both widespread and bipartisan, including labor and management.

The bill is opposed by a large number of stakeholders, including the Chemistry Council, the American Farm Bureau, the American Health Care Association, the American Highway Uses Alliance, the American Iron and Steel Institute, the National Association of Corn Growers, and the National Association of Wheat Growers, and the list goes on of the organizations opposed to this legislation.

The legislation is also opposed by a large number of labor unions, including the Brotherhood of Locomotive Engineers; the International Brotherhood of Boilermakers; the Iron Ship Builders, Blacksmiths, Forgers, and Helpers; the International Brotherhood of Electrical Workers; the International Brotherhood of Teamsters; the Marine Engineers Beneficial Association; the United Food and Commercial Workers International Union; the United Mine Workers of America; the United Transportation Union; the Utility Workers Union of America; and several locals of the United Steelworkers of America.

I also note that Senator LIEBERMAN stated that over 75 percent of people in a recent poll support this language. I would argue if these people had been told of the negative effects of this legislation on heating and electrical costs and the loss of jobs, the results of that poll would have been much different.

As I discussed last night, Thomas Mullen of Catholic Charities testified last year against the Lieberman-Jeffords bill saying it would have a devastating impact in significantly higher

heating prices on the poor and elderly. I also point out that the Department of Energy has stated that high energy costs consume a disproportionately large share of the income of the poor and elderly on fixed incomes. They are left out of this debate.

I would also like to address statements by Senator MCCAIN and Senator LIEBERMAN that because they offered a substitute to their original version of S. 139, all the comments and analyses cited by opponents of this bill, including myself, are irrelevant. That statement could not be further from the truth.

I refer to a letter I recently received from many of the stakeholders against S. 139:

The undersigned commercial, industrial, small business and agricultural organizations strongly urge you to oppose S. 139, the Climate Stewardship Act, or any substitute that may be offered by its sponsors, Senators Joe Lieberman and John McCain, when this measure comes before the Senate. As they proclaimed, the vote on S. 139 (or its substitute) will be a test vote on the most appropriate response to concerns about our changing climate.

Among all the policy options available to the Congress to improve our understanding of climate systems, the arbitrary imposition of energy rationing as embodied in S. 139 is one of the worst possible options the Senate could choose for farmers, industry, the poorest of Americans, and the economy as a whole.

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

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

OCTOBER 22, 2003.

U.S. SENATE,
Washington, DC.

DEAR SENATOR: The undersigned commercial, industrial, small business and agricultural organizations strongly urge you to oppose S. 139, the Climate Stewardship Act, or any substitute that may be offered by its sponsors, Senators Joe Lieberman and John McCain, when this measure comes before the Senate. As they have proclaimed, the vote on S. 139 (or its substitute) will be a test vote on the most appropriate response to concerns about our changing climate.

Among all the policy options available to the Congress to improve our understanding of climate systems, the arbitrary imposition of energy rationing as embodied in S. 139 is one of the worst possible options the Senate could choose for farmers, industry, the poorest of Americans and the economy as a whole. The Energy Information Administration projects that electricity prices alone would increase 46 percent and the price of gasoline would rise by 40 cents per gallon if this legislation were adopted.

When S. 139 is brought up in the Senate under the July 31 unanimous consent agreement, the sponsors of S. 139 will be permitted to offer an amendment in the nature of a substitute. They have announced that, in order to increase votes for their proposal, this substitute will eliminate the bill's unrealistic second phase objective of limiting greenhouse gas emissions in 2016 to 1990 emissions levels. However, make no mistake about it; the equally unrealistic first phase of S. 139's reduction mandate of limiting 2010 emission levels to levels of 2000 will, by itself, highly destructive to jobs and prosperity.

The sponsors of S. 139 have stated that the first phase of greenhouse gas reductions in their bill would ''only require a 1½ percent reduction from today's greenhouse gas levels.'' However, the Energy Information Administration projects that emissions levels in 2010 would have to be reduced by 14 percent in order to achieve the 2000 emission levels quota set by S. 139's first deadline of 2010. Moreover, S. 139's first phase of reductions would require the economy to have to make additional cuts in fossil energy use every year following 2010, simply to stay under the 2000 emissions cap in the face of increasing demand for more energy from a growing population and economy. Thus, meeting S. 139's first emissions cap would cause increasing, major economic disruptions for farmers, businesses, industry and the poorest Americans who can least afford higher electricity and natural gas price increases in the future. The modified bill will also result in the export of countless additional manufacturing jobs; a unbearable prospect in light of the more than 2.8 million jobs the manufacturing sector has already lost since the summer of 2000.

Addressing the climate change issue does not have to come at the expense of the American economy. Voluntary emissions reduction measures and innovative ideas for market-based incentive programs are needed in the near-term, while progress continues to be made in perfecting new technologies to improve efficiency and sequester greenhouse gases. The Senate/House energy conference report on H.R. 6 is expected to contain many provisions to increase energy efficiency; provide incentives for renewable fuel use, nuclear energy and clean coal technologies; and expand energy research and development programs. The Senate does not need to resort to S. 139's command-and-control rationing program to address energy policy.

Finally, S. 139 or its substitute would force electric generators to switch from coal to natural gas in order to meet the limits of the bill. The repercussions of a Senate vote to support S. 139 or its substitute cannot be understated. Any indication that the Senate favors coal-switching to natural gas will immediately influence many investment decisions that will affect, not just the future of natural gas prices for all consumers, but the very availability of natural gas for industry in the future. A vote for S. 139 or its substitute would contribute to the current natural gas supply/demand imbalance and almost immediately exacerbate the high natural gas prices and occasional shortages that are already plaguing the economy.

On behalf of the men and women in large and small businesses in agriculture, commerce and industry who depend on reasonably priced energy for a prosperous future for this country, we urge you to oppose S. 139 and the sponsors' substitute when this legislation is concerned by the Senate.

Sincerely,

Alliance of Automobile Manufacturers.
American Boiler Manufacturers Association.
American Coke and Coal Chemicals Institute.
American Farm Bureau Federation.
American Iron and Steel Institute.
Coalition for Affordable and Reliable Energy (CARE).
Council of Industrial Boiler Owners.
Edison Electric Institute.
IPC—The Association Connecting Electronics Industries.
National Association of Manufacturers
National Corn Growers Association.
National Electrical Manufacturers Association.
National Mining Association.
National Oilseed Processors Association.
National Petrochemical & Refiners Association.
Portland Cement Association.
Small Business Survival Committee.
Society of Glass and Ceramic Decorators.
The Fertilizer Institute.
The Industrial Energy Consumers of America.
The Salt Institute.
Toy Industry Association.
U.S. Chamber of Commerce.

Mr. VOINOVICH. Mr. President, this legislation is the first step in our country toward participating in the Kyoto protocol at a time when Russia and Australia have indicated they will not ratify the treaty, and when China, India, Brazil, and South Korea are exempt because they are ''developing countries.''

Our trade deficit with China alone is $103 billion. Yet supporters of this legislation want to shut down American plants and send American jobs overseas to these ''developing countries'' that do not have the environmental safeguards that we have in America. I can hear the giant sucking sound of jobs leaving our country every time I return to Ohio.

Let me be perfectly clear, carbon caps are lethal to our economy. Carbon caps—any carbon caps—will cause a switch to burning coal with clean coal technology. That will cause fuel switching to natural gas. It will mean the end of manufacturing jobs in my State. It will send thousands of American jobs overseas and will significantly drive up natural gas and electricity prices and put millions of Americans out of work.

Too many Americans have lost their jobs because we have not harmonized our energy and environmental policy in this country. We need a truly comprehensive energy policy that protects our environment while also protecting our energy security and our economy. We do not need legislation such as S. 139 that attempts to protect the environment while completely disregarding negative impacts on our energy security and economy.

As I stated last night, I strongly oppose any legislation that will exacerbate the loss of jobs in my State and drive up the cost of energy for the least of our brethren, the poor and the elderly. I urge my colleagues to vote no on this legislation.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I thank Senator VOINOVICH for making his statement. I will be specific. The amount of jobs in his State alone, if this passes, would be 178,000.

For any other Members who want to know how their States will be affected, we have that breakdown. It is a study by Penn State University. I thank the Senator for his comments.

Mr. LIEBERMAN. Mr. President, I yield 5 minutes to the Senator from New Mexico.

The PRESIDING OFFICER. The Senator from New Mexico is recognized for 5 minutes.

Mr. BINGAMAN. I thank the Chair. Mr. President, I thank my colleague, Senator LIEBERMAN, for yielding me time.

Mr. President, I have heard three arguments against this legislation since I have been privileged to hear this debate. The first argument is there is no such thing as climate change. Climate change is a reality if we are to believe the scientists we hire or who are willing to advise us.

A clear consensus of the scientific community is there is a change going on. The global climate is warming, and that is a fact.

The second argument I have heard is, OK, even if there is such a thing as climate change, there is no real proof human activity is the cause of that climate change. Again, I point out the scientific community believes it. The scientific community says human activity over the last 150 years has been a major contributor to the problem. Most of these human activities that contribute to this problem relate to energy production and use. Carbon dioxide emissions account for 84 percent of the annual emissions of greenhouse gases in the United States and 98 percent of the carbon dioxide emissions are associated with energy production or use.

The third argument which I have heard this morning is we do not totally understand this issue and, therefore, the Congress should not be legislating. If we use that standard, we will not legislate on virtually any subject in this body. Clearly, we have to take the best information we have, make the best judgments we can, and then if we find we are in error, we can adjust our policies as we move forward.

As the ranking member of the Energy Committee, I have argued repeatedly for the last several years that part of our national energy policy and part of the energy legislation we were trying to craft should be a recognition of the importance of climate change, and we should include in a bill some provision for dealing with climate change issues. Unfortunately, I am informed the energy conference that is still in existence, although it does not meet, will not include any language related to climate change, even though the bill the Senate produced does contain some provisions in that regard.

This is an issue of global concern. It is sad that the United States is not leading this debate. We should have a leadership role, both because we have the capability to understand the science and to do the science, and the technology. We also have the capability to come up with an appropriate response. It is sad we are not doing that.

This administration has totally failed to lead with regard to this issue. The President's plan to deal with the greenhouse gases has been little more than a business-as-usual approach. The President's voluntary target of an 18 percent reduction in greenhouse gas intensity over the next decade sounds impressive until one looks at the data. The approach will allow climate-altering pollution to continue to climb as long as it increases more slowly than our economy grows.

The voluntary commitments would meet a goal that are no more aggressive than business as usual. Greenhouse gas pollution intensity in the United States has been declining because the part of our economy that is growing the fastest is the service sector, which produces fewer greenhouse gases than manufacturing for certain. President Bush's voluntary approach will not change the trend in greenhouse gas emissions over what is likely to happen anyway, and it certainly does not put us on a path to reductions in the future.

We have been trying a voluntary approach to reducing greenhouse pollution for almost a decade, and greenhouse gas emissions have actually increased 14 percent. Many of the commitments industry is making today are the same or similar to what these companies promised nearly a decade ago.

While negotiations on an international framework to address global warming continue for the next several years, our domestic industry will have to make significant investment decisions on new energy infrastructure. We have no domestic framework on greenhouse gas emissions that would guide or even inform these investment decisions. Addressing these issues up front would reduce business costs and risks. Maintaining our present course will increase the probability of future economic losses and waste in the energy sector.

This Climate Stewardship Act is a modest first step in trying to deal with this important issue. Senator LIEBERMAN and Senator MCCAIN deserve great credit for forcing this issue to be considered in the Senate today and to be voted on. They have put together an innovative framework that deserves our attention. It is unfortunate, frankly, that this bill was not able to receive the hearings in committee it deserves. The debate should be no longer about whether climate change is a reality, which is what we have been talking about on the Senate floor, but instead on how we can deal with it. Ideally, the debate we would be having on the Senate floor would be to consider amendments, to consider alternatives to this proposal, so we could come to grips with this very difficult issue. I would prefer to be offering amendments on ways in which the framework could be improved, but given the politicizing that has surrounded this scientific and environmental issue, I am left with only one option, and that is to vote for the bill and send a signal that the Senate must show leadership on climate change.

The PRESIDING OFFICER. The Senator's time has expired.

Who yields time?

Mr. INHOFE. Mr. President, I yield 2½ minutes to the Senator from New Hampshire, Mr. SUNUNU. I hope we will look very carefully at the chart he has. It is probably the most significant chart, other than the jobs chart we have.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, we have heard a number of speakers who I think have raised a number of important points. We have heard questions and discussions about the science of climate change. The science is important, and over time we hope to better understand the Earth's climate. I hope this is an area where we do research, where we can develop better models. It is one of the most complex areas of investigation.

We have heard about the costs, both direct costs of this legislation that will increase energy costs for everyone in America, but also indirect costs, because other countries that have been mentioned by Senator VOINOVICH, for example, such as China, India, Brazil, Russia, or Australia, do not adopt such stringent controls on emissions, and they will benefit by American jobs moving overseas.

In particular, it stands to reason in those areas of our economy that are most dependent on energy as an import, energy incentive industries like manufacturing, steel, smelting, and the like, those are the jobs that will be the first to go overseas.

I want to speak about the environmental issue because if we look closely at the environmental impact of this legislation, it actually undermines the legislation. It shows its weakness and it illustrates why it should not be adopted. If we were to agree on the increase in temperature of the last 50 or 100 years, agree there was some relationship between manmade emissions of CO2 and that increase, and assume the full impact of the Climate Change Commission, the IPCC and the Kyoto protocols, let us look at what the environmental impact might be. This is a forecast of increasing temperatures over the next 50 years, a forecast projected increase of up to 1.2 degrees Celsius, maybe 2 degrees Fahrenheit. The benefits of Kyoto are enormously small, perhaps one or two-tenths of a degree Celsius. Over 100 years, if the projected change is 4 or 5 degrees Fahrenheit, the impact of Kyoto might be four or five-tenths of one degree.

The question is: What benefit would that provide at the significant economic costs that are not likely but certain? Supporters have pointed out their legislation, but our legislation is not as dramatic as Kyoto. It is not as harsh as Kyoto, and that means the environmental benefit will be even less.

Questionable environmental benefit, enormous cost. I certainly urge my colleagues to vote no.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The Senator's time has expired. Who yields time?

Mr. MCCAIN. Mr. President, how much time remains on each side?

The PRESIDING OFFICER. Twenty minutes 59 seconds on the minority side; 17 minutes 11 seconds on the majority side.

Mr. MCCAIN. Who is the minority side?

The PRESIDING OFFICER. Well, I do not know. That is a good question.

Mr. MCCAIN. How much time is controlled by Senator INHOFE and how much time is controlled by Senator LIEBERMAN?

The PRESIDING OFFICER. Senator LIEBERMAN has 20 minutes 59 seconds.

Mr. LIEBERMAN. Mr. President, I yield however much of the 10 minutes Senator MCCAIN will eventually have as he wishes to consume now.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. MCCAIN. Mr. President, I would like to use 8 minutes of my 10 minutes.

My favorite author is Ernest Hemingway, as he is of many millions of people throughout the world. One of his most famous short stories is entitled ''The Snows Of Kilimanjaro.'' At the beginning of the short story he says:

Kilimanjaro is a snow covered mountain 19,710 feet high, and is said to be the highest mountain in Africa. Its western summit is called by the Masai ''Ngaje Ngaje,'' the House of God. Close to the western summit there is the dried and frozen carcass of a leopard. No one has explained what the leopard was seeking at that attitude.

As the photograph shows here, the snows of Kilimanjaro may soon exist only in literature.

There has been a lot of debate here about the scientific evidence—17,000 scientists say this, 10,000 scientists say that, my scientist says this—although clearly the National Academy of Sciences and other organizations including the World Meteorological Organization, I think, and others, should have some weight with my colleagues.

If I might quote the punch line from an old joke, ''You can believe me or your lyin' eyes.''

These are facts. These are facts that cannot be refuted by any scientist or any union or any special interest that is weighing in more heavily on this issue than any issue since we got into campaign finance reform.

That is the Arctic Sea. That is the Arctic Sea. If you look at the red line, that is the boundary of it in 1979. Look at it now. You can believe me or your lyin' eyes.

Look at Mount Kilimanjaro. That picture was taken in 1993. That picture was taken in February of the year 2000.

All of us cherish our national parks. Have a look at the Glacier National Park, which will have to have its name changed. The picture above was taken in 1932. That is a glacier ice cake. This picture is from the Glacier National Park archives. That is from 1932. Look at it 50 years later. It is not there. There will be no more glaciers in Glacier National Park, so we may have to give it a different name.

We see devastating fires across California. It is very interesting that we have this debate while devastating fires, unprecedented in nature, are sweeping across California, fueled by unusual drought conditions. I don't have to tell people what the consequences of that are.

An ice dam lake drained recently when the Ward Hunt Ice Shelf, which a century ago rimmed the coast, broke up along the coast of northeast Canada. NASA has confirmed that part of the Arctic Ocean that remains frozen year round has been shrinking at a rate of 10 percent per decade since 1980. At a conference in Iceland in August, scientists told senior government officials the Arctic is heating up fast, disclosing disturbing figures from a massive study of polar climate change.

Dr. Robert Corell, who heads the Arctic Climate Impact Assessment Team, said:

If you want to see what will be happening in the rest of the world 25 years from now, look at what is happening in the Arctic.

Destruction of 70 percent of heat-sensitive coral reefs, in the world—70 percent of the heat-sensitive coral reefs in the world due to increases in water temperatures—places reef fisheries in jeopardy. I don't know what happens when the beginning of the food chain disappears.

There is increasing coastal damage from hurricanes. Researchers at the University of Texas, Wesleyan University, and Stanford University earlier this year reported in the journal Nature that global warming is forcing species around the world, from California starfish to alpine herbs, to move into new ranges or altered habitats that could disrupt ecosystems.

In an article in the July 3 Journal of Hydrology, ''Winters In New England Are Getting Shorter,'' according to the USGS scientists, northern New England winters have receded by 1 to 2 weeks during the past 30 years.

Paul Eckstine, Harvard Medical School:

Concerns about climate change are often mistakenly placed into the distant future but as the rate of climate change increases, so do the biological responses and costs associated with warming and unstable weather. The influence of intensifying drought on the spread of west Nile virus in the U.S., and the impacts of rising carbon dioxide levels on allergies and asthma, demonstrate that global warming has come into our backyards.

Finally, Dr. Adare of the Climate Research Committee of the National Academy of Sciences, says:

The planet has a fever and it is time to take action.

Mr. President, I ask my colleagues not to listen so much to the opinions of labor unions, business special interests, or even scientists. Look at what is happening around the world. Use your eyes to see what is happening. The devastation wrought by climate change so far has been remarkable.

There is a long series of happenings around the world. Key reports have been issued in the last few years by a number of bodies composed of the world's most eminent climate scientists, including the United Nations Intergovernmental Panel on Climate Change, the National Academy of Sciences, U.S. Global Change Research Program, and these experts all reached the same conclusions:

No. 1. Greenhouse gasses are increasing in the atmosphere because of human activities and they are trapping increasingly more heat.

No. 2. Increased amounts of greenhouse gases are projected to cause irreparable harm as they lead to increased global temperatures and higher sea levels.

No. 3. The gases we emit to the atmosphere today will remain for decades or longer. Every time we emit now will require greater reductions later, making it more difficult to protect the environment.

It is interesting to me that in July of the year 2003, Governor Pataki of New York announced that 9 States had formally agreed to join New York in developing a regional strategy in the Northeast to reduce greenhouse gas emissions—10 States. The States agreeing to participate are Connecticut, New Jersey, Vermont, New Hampshire, Delaware, Maine, Pennsylvania, Massachusetts, and Rhode Island. The cap-and-trade initiative recommended by Governor Pataki would include developing a market-based emissions trading system that would apply to power generators emitting carbon dioxide, and it is modeled after the highly successful acid rain program of the 1990 Clean Air Act.

This amendment is modeled on the highly successful acid rain program of the 1990 Clean Air Act. It is modest in its proportions.

The PRESIDING OFFICER. The Senator has consumed 8 minutes.

Mr. MCCAIN. I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, while I appreciate the comments made by my good friend from Arizona, I would only say some of the things there—I know he doesn't intend to say things that aren't true. I would like to quote an article that was in this morning's USA Today. James Morison, who is a scientist with the University of Washington—this is a front page article in USA Today—said the temperature increases and the shifts in winds and ocean currents occurred early in the 1990s and have since ''relaxed.'' This is a recent discovery.

These big changes ''are not related to (global) climate change.''

This was just in this morning's paper, speaking of the Arctic Circle.

So if we have time, when I have a chance to wind up, I want to repeat some of the things I said about the flawed science on which all these things are based. Until then, I recognize the Senator from West Virginia, Mr. BYRD, for a time not to exceed 12 minutes.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. BYRD. Mr. President, I come to the floor today to discuss the very critical issue of global warming and to summarize events of recent years that have led us to this point. We are discussing the paramount energy and environmental challenge of our time; namely, the inexorable increase in greenhouse gasses in our atmosphere that will lead to changes in the global climate.

The primary contributor to global warming is the burning of fossil fuels that create carbon dioxide, and it remains in the atmosphere for over a century. These human-produced emissions are adding to a growing concentration in the global atmosphere that is expected to more than double by the end of this century. Therefore, we are bequeathing this problem and its consequences to our children, our grandchildren, and our great grandchildren.

While I am very concerned about the challenge posed by global warming, let me state at the outset that I have long been a strong critic of climate change policies that are not in the national interest of the United States. I will yield to no one on that point. I have insisted on a rational and cost-effective approach to dealing with climate change.

As the coauthor, along with Senator HAGEL, of S. Res. 98, that passed 95 to zero in 1997, during the 105th Congress, I sought at that time to express the sense of the Senate regarding the provisions of any future binding, international agreement that would be acceptable to the Senate. The Kyoto protocol, in its current form, does not comply with the requirements of S. Res. 98. That resolution was supported by many industrial trade associations and opposed by many environmental organizations.

While those on both sides of the issue have attributed many interpretations and misinterpretations to S. Res. 98, no one has misrepresented and misconstrued S. Res. 98 more so than this present administration.

S. Res. 98 was intended to provide the sense of the Senate on what should be included in any future binding international treaty. The resolution laid out the conditions under which the Senate could agree to a new binding treaty that would subsequently be considered at the Kyoto conference. S. Res. 98 directed that any such treaty must include new scheduled commitments for the developing world in addition to any such requirements for industrialized nations but requirements that would be binding and mandatory and lead to real reductions in the emissions of greenhouse gases over time. This is clearly different than the minimal, vague, and voluntary commitments that we are currently pursuing.

As I explained in 1997, a voluntary approach had already been tried and had already failed. The United Nations Framework Convention on Climate Change, also known as the Rio Convention, failed to reduce emissions largely because it was voluntary. That is why Kyoto concerned binding commitments, and S. Res. 98 was intended to guide that effort rather than kill that effort.

The administration's climate team has merely returned to the voluntary approach of Rio, despite a complete lack of evidence that this so-called plan will ever succeed. Industrial nations have never initiated significant reductions in pollution of any type on a strictly voluntary basis. This administration must finally come to terms with taking action toward globally binding commitments.

As well, developing nations, especially the largest emitters, need to be a part of any binding global climate change treaty. Another point that has been misunderstood is what S. Res. 98 would require of developing countries. An international treaty with binding commitments can and should provide for the continued growth of the world's developing nations. Unrealistically stringent emissions targets need not choke off their economic growth. The initial commitments could be relatively modest, pacing upwards depending on various factors, with a specific goal to be achieved. Today, however, the world is even further away from a credible, workable global strategy to deal on climate change than we were in 1997.

The blame for this circumstance can be laid squarely at the feet of this administration which abandoned international negotiations in which it could have kept pressure on developing nations to agree to some level of mandatory emissions reductions. Moreover, developing nations should be a prime market for clean energy technology projects. But, with little pressure on those nations to reduce or contain the growth of emissions, a huge and fruitful market for those types of technologies—technologies that are being developed in the U.S.—is likely to dry up. In other words, while this nation has been making great strides in developing technologies to use our own energy resources more efficiently and more cleanly, significant efforts to help deploy these technologies overseas have been undercut by this administration's unilateral approach to climate change.

Thus, S. Res. 98 was an effort to strengthen the hand of the administration as it undertook international negotiations. It enabled our negotiators to walk into talks and point to the ever-present Congress, looking over their shoulders, to ensure that the interests of the U.S. would be protected in any agreement that eventually came to fruition.

The Bush administration has never understood the value of S. Res 98. Rather than employing that tool to positively influence international negotiations, it used the resolution as cover to simply walk away from the table. Having abandoned a constructive role in the global negotiations on climate change, this administration has left the U.S. in a much weaker position globally.

The Bush administration must be challenged on its environmental, economic, and energy responsibilities, both domestically and internationally. The U.S. is in the best position of any nation to positively influence an international response to global climate change. Yet, we will all suffer from the consequences of global warming in the long run because we are all in the same global boat.

This administration has attempted to hide behind S. Res. 98 to defend its current do-nothing and know-nothing policies on climate change, and I strongly object to that. The difference between my view and that of this administration is simple. I believe the problem is real and demands action. The administration does not. The President also claimed early in his administration that his goal was to oppose Kyoto. If the President's representatives had stayed at the table and negotiated in good faith on a treaty to comply with S. Res. 98, then the administration could have guided the world toward a new binding treaty with mandatory requirements to reduce emissions that would correct the deficiencies of Kyoto.

The reality is quite different. Our nation has been represented at the international negotiations in name only. We would be better represented at the international negotiations by a row of empty chairs. That would at least accurately represent the vacuous nature of our current policies. For President Bush not only disavowed the Kyoto Protocol; he also turned his back on any negotiations because they concern a binding treaty that includes mandatory commitments. The rest of the world was outraged by this unilateral rejection of a decade of negotiations and of the new American isolationist approach to deal with climate change.

And what will happen in one year or five years when a new administration enters office? What will happen if Russia does decide to ratify the Kyoto Protocol, and it enters into force? Will the administration be able to go back to the table and demand changes to binding international law that will have been in force for perhaps many years? The President's industry supporters may one day wake up and realize that they live in a partially Kyoto-controlled world where there is no turning back.

One senses confusion and a lack of direction in the administration. It seems that the administration's right hand does not know what the far right hand is doing regarding its climate change policies. The White House does not know whether to believe the science or not, and they have certainly not articulated a plan of action.

Finally, I am compelled to observe that it is the height of hypocrisy for this administration or its supporters in industry to claim that they are defending the goals and provisions of S. Res.

98. They cannot make such a claim in the debate today or in any international forum. Nothing could be further from the truth. This administration can no longer hide behind the mantle of that resolution.

It is this administration that undermined the tenets of that resolution. They now support only vague, voluntary measures. That is true both domestically and internationally. The evidence suggests that the President's negotiators have even formed an alliance with the key emitters in the developing world, and together they oppose any additional discussion during the international negotiations of binding commitments for the developing world as called for under S. Res. 98. That is of course a logical result of the administration's policies, since it is impossible to apply binding commitments to China if we refuse to apply such standards to ourselves. We now have little hope of seeing an effort made to produce a treaty that will comply with S. Res. 98—at least not during the tenure of this President.

If there is no prospect for a binding international treaty, then how can we deal with the enormous challenge posed by global warming? The critics of the amendment before us argue that we should stay the course and support the President's policies. If I may ask—what are those policies? What concrete programs have been put in place? In point of fact, the administration has asked the industry trade associations to develop their own voluntary reduction programs. The proposals are vague and actually allow emissions to continue to increase. Taken together, none of these programs is expected to result in any serious decrease in emissions.

These events over the last three years have led me to conclude that we must look elsewhere for effective action on global warming. The Senate should not be put in the position in which it now stands. It should not be faced, as we are now, with the prospect of considering an energy bill devoid of provisions to address climate change. The Senate should be considering our nation's energy security from a broad view that includes a global response to climate change and the international politics of energy.

Proponents of the amendment now before us argue that it sends the clear message to the White House: If President Bush rejects the advice of this body, then he is refusing to negotiate in good faith toward a binding international treaty and is only offering hollow domestic programs. The Senate has little choice but to consider further steps, including modest mandatory approaches, that would apply to our domestic economy.

The amended version of S. 139 freezes emissions at their current levels rather than seeking a sharp reduction as has been the case in other approaches. The McCain-Lieberman bill also allows companies to offset their emissions, for example by planting trees that absorb and sequester carbon dioxide (CO_2) or by constructing more efficient power plants in the developing world than what those nations would otherwise build—and claim the difference as an earned offset or credit.

I would prefer not to be faced with a measure like this today. I note that this bill has not had committee consideration. That said, it is very much the case that several key chairmen with jurisdiction over energy or environmental policy have shown very little interest in seriously dealing with climate change. We have certainly witnessed this in the energy bill. I want to further commend Senators MCCAIN and LIEBERMAN for their diligence and hard work to find a middle ground. They have come a long way on this proposal. If the principles of their proposal were combined with those of other Members like mine, then the Senate could have a strong package to offer the American people. While I will not be able to vote for the amendment today, I want to make it very clear that I will work with the sponsors of this bill and other Republican and Democratic Senators who want to go beyond this administration's empty-headed approach.

In closing, I want to express my own growing frustration for our seeming inability to deal with the problem at hand. I have been troubled by this for a long time. I do not believe I need any more scientific evidence to show that we have seen these changes. I have seen the changes in weather patterns, and those changes that I have personally seen during my nearly 86 years lead me to believe that there is something happening. We need to do something about it. What we do may be painful in some respects, but we owe it to our children and grandchildren to have the foresight to see that something is happening and to understand that we ought to do something about it soon. If not, we may be going beyond retrieval.

So, I would say again that the two Senators are to be very much complimented. I will vote with Mr. INHOFE, for the reasons I have stated. I yield back the balance of my time.

The PRESIDING OFFICER. The Senator from Connecticut.

Mr. LIEBERMAN. Mr. President, I thank Senator BYRD for his statement. Obviously, I regret that he is not going to support the McCain-Lieberman proposal today. But I appreciate very much this fact: He recognizes that there is a problem here. I don't know how some of our distinguished colleagues can say there is not a problem. The science is there. The facts are there. We see it with our own eyes. We can disagree on what to do about the problem.

But Senator BYRD, with his characteristic directness and honesty and sense of history, has recognized that there is a problem. I look forward to working with him in the months ahead to see that we can fashion together a common ground response that will deal with the problem that he quite honestly has recognized. I thank the Senator.

Mr. BYRD. Mr. President, I thank the distinguished Senator. I thank our colleagues for the work they have done. I, again, thank Senator INHOFE.

Mr. LIEBERMAN. Mr. President, I yield 5 minutes to the Senator from Delaware who has been an active, helpful, and constructive supporter of this proposal, for which I thank him.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. CARPER. Mr. President, I thank Senator LIEBERMAN and Senator MCCAIN and others who brought this legislation to the floor. I stand today as a cosponsor of the amended version of the McCain-Lieberman Climate Stewardship Act and I will vote for it today. I do so because I believe it is a sensible first step toward addressing the real problem of increasing levels of greenhouse gas emissions and global warming about which Senator BYRD and others have spoken.

Senator BYRD, Senator MCCAIN, and others have spoken about the convincing science which shows that not only greenhouse gas emissions are increasing but also that those emissions are linked to human activity and are having a negative impact on the climate in which we live.

Ten years ago I would not have stood here. Ten years ago I would not have been arguing that we should take mandatory steps toward addressing greenhouse gas emissions. But over the past decade or so as I learned more about the issue and had the opportunity to speak with people on both sides of this debate, and as Senator MCCAIN said, to see with my own eyes the changes that are occurring in this world, I have become convinced there is a real problem. It is not going away. We can do something about it. We can do something about it now. We should.

Senator LIEBERMAN and Senator MCCAIN should be commended for their work on this bill and for their willingness to make a significant modification to their original proposal. I don't know that I would have been so supportive of the original bill because of reductions that were required in that bill. Having said that, the modified version before the Senate today which seeks to turn over the balance of this decade greenhouse emissions to levels of the year 2000 has my strong support.

The fact is, if the Federal Government does not act in a meaningful way, and do so soon, the problem will get worse and the solution, when it comes, will be even more difficult and more disruptive of our economy and our way of living.

Addressing greenhouse gasses is a proper role for the Federal Government. In yesterday's New York Times, a reporter, Jennifer Lee, wrote about the increasing number of States fed up with a lack of certainty from the Federal Government with regard to climate change policy. Half the States, according to the article, have taken steps to address global warming.

On the one hand, I view the States' efforts as a positive development. However, regulating greenhouse gasses via 50 different laws is not, my friends, the best way to proceed on this issue. It is best for both the industries that will have to comply with these laws and the ecological benefits we expect from the passage that we adopt a uniform Federal standard. The Climate Stewardship Act does just that.

My own State of Delaware is proud to be the home of the DuPont Company, a global company with products touching each of us every day. DuPont is a major producer of greenhouse gasses. One might think they would be opposed to this legislation, but as it turns out they are not. They view this bill as a significant and serious contribution to the congressional debate on how to address climate change.

They think it is particularly noteworthy for three reasons, and I will mention those: No. 1, the measure includes market-based systems to achieve reductions efficiency; No. 2, it covers more than one sector of the economy; No. 3, it provides credit incentives for early action and includes flexibility mechanisms to allow companies to seek lower cost solutions that achieve the desired results.

DuPont is just one example of a company that has stepped forward and taken steps to reduce greenhouse gas emissions not because they have to but because they believe it is the right thing to do.

DuPont kept its energy use flat between 1990 and 2000, while at the same time increasing production by 35 percent. That means they found ways to become more efficient and thereby avoid increasing greenhouse gas emissions. If a company such as DuPont can find a way to meet the requirements of this bill, I suspect that just about any company can do the same.

In closing, today's vote is one of the more important votes we will take during our time in the Senate, certainly one of the more important votes of this year. In my mind, the issue it addresses is as important as the vote to authorize the President to use force in Iraq or whether we will make major changes in Medicare prescription drugs.

What we decide today will have a significant impact for our future. While we will not see noticeable, positive or negative effects before next year's Presidential election, or before next year's Senate elections, within our lifetime, as sure as we are gathered here today, it will be clear that we have made the right choice or, I might add, if we have made the wrong one.

I urge my colleagues to join me in what I believe is the right choice and that is a ''yes'' vote for the Climate Stewardship Act.

Mr. HARKIN. Mr. President, I would like to take a few moments to discuss S. 139, the Climate Stewardship Act and lay out the reasons I am supporting this bill.

The chief reason I support this bill is that I believe, as do the majority of scientists, that global climate change is occurring, and is due in part to human activities. I also believe that the U.S. has a responsibility to provide international and domestic leadership on this issue, and to begin to take action. This body, the U.S. Senate, has now passed three separate Sense of Congress Resolutions, this year and last year, urging U.S. leadership and reengagement in the international process to address global warming, and meaningful U.S. domestic action to begin to reduce our emissions of greenhouse gases that cause climate change. Two of these resolutions were included in the comprehensive energy bills passed by this body this year and last. Despite these resolutions, the United States remains inactive on these issues. We are not displaying enough leadership on combating global warming, either domestically or abroad. And we are beginning to see some early warning signals about the consequences if we persist in our inaction.

The World Meteorological Organization, WMO, in July of this year issued an unprecedented alert, saying: ''Record extremes in weather and climate events continue to occur around the world. Recent scientific assessments indicate that, as the global temperatures continue to warm due to climate change, the number and intensity of extreme events might increase.'' They go on to say that: ''New record extreme events occur every year somewhere in the globe, but in recent years the number of such extremes has been increasing.'' And, ''(w)hile the trend towards warmer globally averaged surface temperatures has been uneven over the course of the last century, the trend for the period since 1976 is roughly three times that for the past 100 years as a whole.''

In the United States, the WMO cited record-breaking statistics in a particularly dangerous category of extreme weather events: nationwide, 562 tornadoes occurred in May, 2003, resulting in 41 deaths—a record for the number of tornadoes in any month, far surpassing the June, 1992 U.S. record of 399 tornadoes.

In Iowa, as in much of the midwest, we have been experiencing a drought—a drought that is hurting my states' farmers, and farmers across the midwest and west. These dramatic weather events that we are experiencing—the tornadoes, the drought, the warming—these are exactly what scientists have been predicting would occur with unmitigated global warming. These events should not come as a surprise to any of us, they have been predicted for some years now.

The bill we are debating, the Climate Stewardship Act, will take the first, modest steps to put into place a U.S. system to begin to reduce our greenhouse gas emissions, to begin to take action. It will respond to the science, and it will do it in a manner that this administration has failed to do—with meaningful policies that will not harm the U.S. economy, but will at least put us on the right path.

Now I know some Members of this body and of some organizations and industries have expressed concerns that taking action will harm the U.S. economy, and will impact energy supplies. While their concerns are legitimate, they are misplaced, because scientists, economists and analysts in this administration and in the private sector agree that this bill that we are debating will not be onerous for the overall economy or for the various industries it impacts. The Energy Information Agency in the Department of Energy and the Massachusetts Institute of Technology, in separate assessments of the bill, indicate it will have minimal impacts on fuel prices and will even lower fuel prices in the case of natural gas, for instance, by generating efficiencies and providing market signals to drive efficiency. Furthermore, the bill has specific provisions to encourage clean, renewable fuel production from the agricultural sector and other sectors, which would not only reduce our reliance on imports of oil, but would also benefit the agricultural economy and the environment by reducing greenhouse gas emissions. I support those provisions.

Some critics have said that this bill would prevent the burning of coal, and would force coal-burning utilities to switch to using only natural gas. That is simply not true. Under this bill, coal use will actually increase, and financial incentives for clean coal technologies are also provided.

According to the MIT analysis of the bill, coal use will continue to expand 12 percent over current usage levels, out to 2025, which is the time frame that MIT looked at. Additionally, coal prices per metric ton are expected to drop 4 percent by 2015, and 5 percent by 2020.

A portion of the proceeds from the auctioning or sale of allowances in the bill will go to technology deployment programs. Specifically, integrated coal gasification systems will receive significant financial incentives. Such clean coal technologies are not only beneficial to the environment, but will ensure continued usage of this valuable fuel source well into the future, in an environmentally benign manner.

The agricultural sector and rural areas will continue to bear the brunt of severe weather events that can devastate farmers and rural economies as long as our inaction continues. However, U.S. agriculture can also make important, cost-effective contributions to offset a portion of U.S. emissions of greenhouse gasses in the near- and medium-term. With the proper incentives, agriculture can provide a low-cost bridge to a less fossil-fuel and greenhouse gas intensive future, while improving the sustainability and perhaps the profitability of this vital economic sector. The Climate Stewardship Act,

provides some of these incentives. A provision in the bill that I particularly support is financial incentives, through the auctioning of permits to capped sectors, to agricultural practices to reduce greenhouse gas emissions, including clean, renewable energy sources, such as wind power.

Agriculture can play an important role in mitigating global warming, and can provide valuable benefits to society. Carbon is a commodity already being traded and sold in this country and others, and farmers can not only ''farm'' for carbon, they can reap the rewards under this bill, and help keep costs of action down.

To make sure farmers can take advantage of this opportunity, I have negotiated with Senators MCCAIN and LIEBERMAN to guarantee that a specific portion of the credits that can be sold into this cap-and-trade system in the bill will be set aside for soil carbon sequestration. Soil carbon sequestration reduces U.S. net emissions of greenhouse gasses but also improves air and water quality by reducing run-off, and improves soil moisture retention. Soil carbon sequestration occurs through improved management practices such as no-till or reduced-till farming, the use of shelterbelts, grass waterways, wetland restoration, and improved irrigation systems, to name but a few. But most importantly for the farm sector, soil carbon enhances agricultural sustainability and profitability. We know this because agricultural and soil scientists have studied this issue for years—not because of global warming, but because of the associated environmental improvements and the improved crop productivity associated with greater soil carbon. These are complementary objectives with nice overlap. As a key benefit soil carbon sequestration has the potential to offset fully 10 percent of U.S. annual carbon emissions.

To help ensure that farmers and others in the agricultural sector thoroughly understand the issue of climate change, and that they can benefit from an emerging carbon market, we have negotiated additional language to institute an education and outreach initiative within USDA. The program would provide detailed information as well as technical assistance to these individuals and groups, as well as allow for the creation or utilization of existing centers on climate change.

This is a win-win policy for agriculture, for our citizens, and of course for our environment. That is why I support this bill.

Mr. LEAHY. I rise today in support of S. 139, the Climate Stewardship Act. I am pleased that the Senate is finally going to have an open and honest discussion about climate change, greenhouse emissions, global warming and their effects on the Nation and the world. It is clear that it is time for the Senate to act and pass this important legislation.

Climate change and global warming could cause grave problems to our Nation's economy, especially the economy of the Northeast. The economy of my home State of Vermont relies heavily on the revenue brought in from the maple, forest and ski industries. Maple syrup production is a major source of revenue in Vermont and there could be a dramatic loss of maple production in Vermont and the rest of the Northeast if fuel emissions continue to go unchecked.

There are about 2,000 maple farms in my home State, and most of them are family-owned businesses. Many if not all of these farms could suffer from a decrease in maple sugar income, and eventually they could lose their farms altogether. I have heard from many maple producers from my State who say they are tapping trees earlier every year. It used to be that Vermonters were tapping their trees around Town Meeting Day, the first Tuesday in March. Now, some are forced to tap a month earlier, during the first week in February. According to a report done by U.S. Office of Science and Technology Policy, sugar maple could eventually recede from all U.S. regions but the northern tip of Maine by 2100. This is unacceptable, but it is also preventable, and that is why the Senate should pass the Climate Stewardship Act of 2003.

One maple syrup producer from Vermont has become so concerned about the negative effects of global warming that he has joined a lawsuit against the Export Import Bank and the Overseas Private Investment Corporation. The plaintiffs in this case claim that these companies have illegally provided more than $32 billion for overseas oil fields, pipelines, and coal-fired power plants over the past 10 years without assessing their impact on global warming as required by law. The plaintiffs are not seeking financial compensation, only compliance with the National Environment Policy Act, which requires all Federal agencies to assess their programs' contributions to global warming.

Vermont also relies on revenue from the ski industry. Vermonters and others from all over the country enjoy the ski resorts in Vermont. There is a strong relationship between winter skiing conditions, the number of customers, and whether a ski resort has a successful or unsuccessful ski season. Vermont resort operators have already had to make improvements to snowmaking technology to ensure there is enough snow for the entire ski season. This can cost resorts hundreds of thousands of dollars. Warmer weather also means the resorts open later. In 2001, Killington Ski Resort, the largest ski resort in Vermont recorded its latest opening date in more than 15 years.

Many ski resorts across the country are doing their part to slow global warming. Four ski resorts in Vermont: Haystack Ski Area, Killington and Pico Resorts, Mad River Glen, and Mount Snow Resort have all adopted a policy on climate change to address the problem of global warming. Mount Snow Resort has cut energy consumption in half at the Main Base Lodge and Snow Lake Lodge by replacing hundreds of conventional light bulbs with compact fluorescents. They have also installed dozens of energy-efficient snowmaking tower guns, which reduce the energy needed to pump water and compressed air. I commend the efforts of these ski lodges and I believe that we should act today and do our part to reduce global warming.

I have two grandchildren a 5-year-old grandson and a granddaughter who is not quite a year old. I want them to be able to enjoy Vermont as I have: snow-covered Green Mountains in the winter, beautiful foliage in the fall, and Vermont maple syrup on pancakes as often as they please. It is time the U.S. took action to curb our greenhouse gas emissions. We can no longer look the other way as the rest of the world moves ahead while the current administration ignores global warming.

Mr. JEFFORDS. Mr. President, I stand to applaud the efforts of Senators LIEBERMAN and MCCAIN for pushing forward with a sensible and modest plan to address the threat of global warming.

I would prefer that we were debating a bill reported by the Environment and Public Works Committee, but the chairman of the committee has made it clear that he will never act on such legislation. That is unfortunate, since the evidence presented to our committee of jurisdiction is more than sufficient to justify taking prudent actions now to reduce greenhouse gas emissions.

There are those who say that climate change is a hoax, a concoction of radical environmentalists and a liberal media. That is simply hogwash or maybe the whitehouse effect. Global warming has been documented by hundreds and hundreds of credible scientific studies, including many world class institutions such as the National Academy of Science, the American Geophysical Union, and the International Panel on Climate Change. To ignore and dismiss the threat of climate change to the economy and the environment is like insisting the earth is flat. It flies in the face of reality.

The Climate Stewardship Act uses the same type of efficient cap-and-trade system that Congress established in the 1990 Clean Air Act amendments to reduce sulfur dioxide emissions and acid rain.

My bill, S.366, the Clean Power Act, uses that system to reduce carbon dioxide pollution from power plants to 1990 levels. That carbon cap and the cap in the bill before the Senate would stimulate the development of domestic technologies, like gasification and renewables. That would allow our Nation to continue burning coal, but more efficiently, cleanly and safely and with fewer carbon emissions.

Without some kind of carbon cap to drive technology, utilities and investors will continue turning away from

coal and toward natural gas. Without clear action by Congress on this matter, utilities and investors fear the uncertain timing of the inevitable carbon controls that are coming.

I will not go into great detail about the need to act now. Our committee's hearing record is replete with peer-reviewed scientific evidence that demonstrates that need and refutes the Senator from Oklahoma's statements.

But, I would like to note that the average global temperature in September 2003 was the hottest on record, and 1998 and 2002 were the first and second hottest years on record. That should concern us all.

It is urgent that we take action soon. The Senate's decision today will affect the atmosphere and climate for the next 100 years if not longer. Experts have advised us that we and the world must radically change the use of fossil fuels in the next 10 to 15 years or the consequences could be quite severe.

The need for the Senate to move this bill is tremendous. The United States emits approximately 25 percent of the world's carbon pollution. We are responsible for approximately 40 percent of the carbon concentrations now in the atmosphere. We have a moral obligation and an economic opportunity in leading the development of technologies and systems that will reduce greenhouse gas emissions.

This legislation gives businesses and Government a great opportunity to promote solar, wind, fuel cells and other sustainable energy sources as ''the next high tech revolution'' to meet our growing energy needs. It can also stimulate rural communities by making carbon sequestration economically attractive.

Twice now, in the energy bills, the Senate has passed resolutions asking the President to enter into negotiations with all nations to obtain a binding treaty to reduce greenhouse gas emissions. We have been ignored. The administration has taken no action to accomplish such a treaty or adopted any policy that will result in real and tangible reductions.

Senators should not take this vote lightly. This is the first time that the Senate will vote to control emissions that cause global warming. Senators can lead now and contribute to sustainable development and job creation or they can hide their heads in the sand and be blamed further for the climate change that is already occurring and for the chaos that warming is likely to bring.

I urge Senators to support the Lieberman-McCain bill.

Mr. FEINGOLD. Mr. President, I will be supporting the McCain-Lieberman climate change legislation, and I want to detail the reasons for my support. At the 1992 Earth Summit in Rio de Janeiro, the United States agreed to a goal of reducing emissions to 1990 levels by the year 2000, and we became a party to the Framework Convention on Climate Change. As a Member of the Senate, I have supported this agreement. In order to meet this commitment, our Government has engaged in a wide range of voluntary programs. But, despite these efforts, U.S. greenhouse gas emissions have increased by 14 percent between 1990 and 2000. We should take additional nationwide steps to meet this goal, and I believe this legislation is an appropriate first step.

In this legislation, my colleague from Connecticut, Senator LIEBERMAN, and my colleague from Arizona, Senator MCCAIN, would implement Phase I only of their broader bill on greenhouse gases, S. 139, the Climate Stewardship Act of 2003. This legislation will return the Nation's emissions to 2000 levels by 2010. It will do so by reducing emissions in the short term while providing market-based flexibility to minimize the cost to industry.

I continue to believe that we must take action on the national level now to slow the progression of climatic change. The costs of inaction are prohibitive across the country and in my home State of Wisconsin. Wisconsin's top officials acknowledged that climate change was a concern years ago. Nat Robinson, administrator of the State government's Energy Division in the administration of Governor Thompson, stated back in September of 1997, ''There was a time when the possible human influence on the atmosphere was hotly debated by scientists and lay persons alike. That time is past.'' In response, my home State has become one of the first with a statewide plan to address global warming.

Numerous signs suggest that the climate in Wisconsin may already be changing, and that the actions that the State of Wisconsin has taken are justified. UW-Madison scientist John Magnuson led a dozen other scientists in examining actual climate data recorded by a wide variety of sources around the world over the past 550 years. These data documented a steady 150-year warming trend in global temperatures. For example, the ''ice season'' of Dane County's Lake Mendota has decreased 22 percent since the mid-1800s. Similarly, the Aldo Leopold Foundation in Baraboo concluded that spring is arriving a week earlier than it did 62 years ago based on when various plants are flowering.

The Union of Concerned Scientists released a series of studies in April 2003 on climate change in the Great Lakes Region. That report states that by 2030 Wisconsin summers will feel like southern Illinois', and by the end of the century, Wisconsin's summer climate will resemble that of current-day Arkansas, with our winters like current day Iowa. This will cause a huge change in our life in Wisconsin, in our climate and ecosystems, in our ability to grow crops, in our need for additional summertime cooling for our residents. These are huge and costly challenges, and Wisconsin can't solve them alone. The pollutants emitted to the air know no political boundaries, and the effects are global, as well as local, in scope.

Unfortunately, this administration has chosen to step away from our current commitments on climate change and has not recognized state efforts on climate change. I too shared concerns about the Kyoto protocol, and joined with the Senate in support of a 98 to 0 vote on the Byrd resolution. That resolution called upon the State Department to seek meaningful commitments during the Kyoto negotiation process to reduce climate change from developing countries such as China and India that have the potential to develop using significant amounts of fossil fuels. I supported that resolution because I wanted any additional U.S. commitments to be to an agreement that addressed all current and future sources of climate change worldwide. That vote was not a repudiation of my belief that the U.S. must meet its current commitments.

Meeting our international commitment is important, especially at a time of strong anti-American sentiment abroad and challenges to U.S. leadership. Some of that sentiment and some of those challenges are a direct response to the Bush administration's misguided policies. Even our staunchest friends are troubled by the administration's inclination for unilateral action, its inconsistent words and deeds, and its dismissive response to their legitimate concerns.

Being part of the international community means engaging constructively with like-minded nations to build strong, sustaining institutions and alliances—and bringing emerging powers into this community so future conflict becomes less likely. The Bush Administration has demonstrated an unhealthy disregard for the opinions of fellow nations—a disregard that has squandered some of the support we received after the September 11, 2001, attacks and diminished our influence around the world.

The administration's approach to global warming is one such area. Though the United States produces about a quarter of the world's greenhouse gases and will be affected badly by climate change, the Bush Administration has shown no interest in doing anything about the problem. That undermines our stature and credibility and it causes an unnecessary rift with our allies. Constituents have approached me again and again at the town hall meetings I hold all over Wisconsin every year to share their concerns when the U.S. pulled out of the Kyoto negotiations, and I believe that they make a very strong point.

The most powerful Nation in the world must speak with a clear and consistent voice and lead all nations to face major global challenges together. The U.S. Government has paid dearly for pulling out of the Kyoto protocol and rejecting the Comprehensive Nuclear Test Ban Treaty. Although each

of these agreements was imperfect, each became more so when the United States moved to the sidelines. Helping to shape credible international institutions is not a sign of weakness; it is a sign of confidence in U.S. strength and ideals. By disengaging, this administration has marginalized U.S. policies, interests, and values.

For these reasons, I support the McCain-Lieberman legislation. The U.S. should proceed to implement the Framework Convention on Climate Change, and we need legislation to do just that.

Mr. KOHL. Mr. President, today the Senate took an important step toward expanding the debate on global warming. Greenhouse gasses and global warming are a real threat to our environment and our way of life. The National Academy of Sciences has verified the scientific evidence backing global warming. And the private sector is facing the real world impact of global warming as they contemplate the insurance costs of rising sea levels and more destructive storms. A decade ago, debate ranged within and without the ivory towers of academia over the hazy science backing claims of global warming. Today, the fog has lifted and we can see the impact that burning fossil fuels has had on the climate.

The changes to our environment are real. Our job now is to decide what to do about it. The approach set out by this version of the McCain-Lieberman bill is a reasonable first step. It is not perfect, and if we would have been able to take up and debate amendments there are several, significant changes I would have supported.

My biggest concern is that this bill would have us move toward reducing emissions without requiring the rest of the world to join us. While we have a responsibility to reduce our own emissions, we need to work with the international community. China, for example, is approaching the United States as a producer of green house gasses and must be a part of any practical effort to reverse global warming. If our unilateral efforts convince China they have no need to act, than our approach could do more harm than good. I vote for this bill today as a message to the administration that it is time to redouble efforts to spark a world effort to address global warning. I do not vote to commit the United States as the sole participant in that effort.

I strongly support including environmental standards as part of our trade agreements. Clean air and water issues should be discussed with our international trade partners during trade negotiations. Letting our competitors avoid environmental issues that impact everyone around the world is shortsighted. It hurts our environment and our business community.

The bill before us has other problems that could be addressed with a longer debate time and the opportunity to offer amendments. The Senate should carefully scrutinize the legislation's timetable and should consider giving industry more flexibility in earning credits. But while these issues need to be addressed, every journey starts with a single step, and this vote is that first step. We have begun seriously to struggle with climate change. And ultimately, inevitably, we need to make some tough decisions about climate change. We must reduce greenhouse gasses to protect our environment and our way of life for generations to come. A yes vote today sets us on the path to confront this issue head on.

Ms. CANTWELL. Mr. President, I rise today in strong support of the Climate Stewardship Act. I hope the Senate will seize the historic opportunity before it today and vote to begin seriously dealing with this worldwide threat.

Unfortunately, I am afraid Congress is not very good at passing laws that will only benefit future generations, especially when there might be a cost—no matter how small—for our constituents today. But I hope that this vote will be different and that my colleagues will join me in passing this sensible legislation to prevent a costly, and potentially catastrophic, rise in global temperatures.

As Senators JOHN MCCAIN, JOE LIEBERMAN, and others have already articulated, the scientific conclusion that greenhouse gas emissions are contributing to an accelerated rate of climate warming is beyond debate. Thousands of climate scientists convened under the United Nations and our own National Academy of Sciences have stated definitively that human activities—primarily the burning of fossil fuels—have contributed and will continue to contribute to rising atmospheric temperatures. I am not an atmospheric scientist, and I don't believe any of my colleagues are, so I hope everyone here will defer to their expertise on this matter.

Climate change is an existing and scientifically supported phenomenon which human beings have a responsibility to mitigate. And since the U.S. has the highest per capita greenhouse gas emissions in the world and one of the highest emissions rates per dollar of gross domestic product, we have a particular duty to lead the world on this critical issue.

Even the Bush administration, whose sincerity in dealing with this issue is suspect, acknowledges the reality that human activities cause climate change. Last year, in its United States Climate Report for 2002, the administration outlined a vast array of consequences climate change would inflict across our country. I would like to highlight some of the ''likely'' effects mentioned in that report that would have a particularly harsh impact on my home State of Washington.

The resulting changes in the amount and timing of runoff are very likely to have significant implications in some basins for water management, flood protection, power production, water quality, and the availability of water resources for irrigations, hydro power, communities, industry, and the sustainability of natural habitats and species.

Reduced snow-pack is very likely to alter the timing and amount of water supplies, potentially exacerbating water shortages, particularly through the western United States.

The projected increase in the current rate of sea level rise is very likely to exacerbate the nationwide loss of existing coastal wetlands.

Habitats of alpine and sub-alpine spruce-fir in the contiguous United States are likely to be reduced and, possibly in the long-term, eliminated as their mountain habitats warm.

Rising temperatures are likely to force out some cold-water fish species (such as salmon and trout) that are already near the threshold of their viable habitat . . . .

These conditions would also increase stresses on sea grasses, fish, shellfish, and other organisms living in lakes, streams, and oceans.

The non-profit group Environmental Defense compiled research that shows that the winter snow pack in the Cascades could decline by 50 percent within 50 years. A reduction even a fraction of that size would have a devastating impact on runoff that is vital for hydropower, agriculture, salmon habitat, and drinking water supplies. And I am sure many of my Western colleagues would be similarly alarmed by potential reductions in their scarce water resources.

Just the damages from decreased runoff would cost my State billions of dollars annually, dwarfing even the most pessimistic costs that some opponents contend may result from this bill. But besides the costs this legislation can help avoid, I think it is critical that we consider the tremendous benefits this bill would initiate.

Today, we know that the tired mantra that ''protecting the environment costs jobs'' is no longer true. In fact, the market-based mechanisms used in this bill would unleash unprecedented productivity and efficiency gains in our energy sector, as well as catalyze countless new environmental technology industries. That translates into many new high paying engineering and manufacturing jobs and tremendous new export opportunities.

A recent report by the U.S. Department of Energy, which included contributions from Washington State's Pacific Northwest National Laboratory, forecast significant job growth for jobs in a range of emerging ''green'' industries, such as wind power, biomass energy production, and other energy efficiency specialties.

I am proud that my State hosts one of the largest wind farms in the United States. I visited our Stateline project and saw first hand one of the many solutions that the market will find to meet the goals of this legislation.

These conclusions were confirmed by a 2001 study carried out in collaboration with public and private partners in the Pacific Northwest that found that the global market for clean energy technologies is expected to reach $180 billion a year—about twice the size

of the passenger and cargo aircraft industries—within the next two decades. Already, in Washington, Oregon, and British Columbia this sector is a $1.4 billion per year industry.

Despite the potential of these new markets, some of my colleagues have argued that the costs of addressing this problem are too high, because they believe this bill might raise energy costs. While that is highly disputable, I am curious if opponents of this measure also support lifting controls on other pollutants? I'm sure we could make coal-generated electricity even cheaper if we did not require pollution scrubbers. We could allow millions of tons of sulfur dioxide, mercury, and other toxins to flood our nation's air in the name of cheap energy. But of course we wouldn't do that because we know that true costs of such a policy—whether it be the health of our children, the effects of acid rain, or even the visibility at our national parks—would far outweigh any short-term financial gains we may achieve by removing emission controls.

The same principle is true of climate change. We may save some money now by ignoring this problem, but entire industries like timber and fishing—key sectors of my State's economy—would be dramatically impacted by climate change. There is no way to deny that greenhouse gases, including carbon dioxide, are pollutants and need to be monitored and controlled as such.

As I have listened to this historic debate, I have been frustrated by the dueling charts and reports which have been used to support one position or another. While I, along with many of our Nation's Governors and world leaders, believe that the scientific evidence is indisputable, there may be another important way to view this issue: as an insurance policy.

I am confident that even the most vocal opponents of this bill would be reluctant to say that there is absolutely no chance that the vast majority of climate scientists are right about this issue and that greenhouse gas emissions are causing global warming. Perhaps the climate skeptics would change their position if they realized that this legislation is really an insurance policy for our children, one that guarantees they will be able to enjoy the same natural world that benefits us today.

I believe that is how the American people instinctively understand this issue. This is borne out by a recent nationwide survey that showed that three-quarters of Americans support the McCain-Lieberman climate change bill and two-thirds agree that we can control greenhouse gases without harming our economy.

We are a problem-solving nation. When we are faced with a grave threat, we roll up our sleeves, put our heads together, and fix our problems; we don't push them off on our children and future generations. Like the threat of terrorism, climate change is too alarming and disturbing a problem to ignore.

The risks of ignoring this problem heavily outweigh the benefits of preserving the status quo. Allowing rapid changes in the temperature of the earth's surface and shifts in worldwide weather patterns that result from global warming would be devastating to the economies of my state, this nation, and the world. Let's make sure this problem gets the serious action it deserves. I urge my colleagues to support this critical bill.

Mr. BUNNING. Mr. President, I rise in opposition to this legislation, S. 139.

We have disputes over the scientific evidence on global climate change. And we can debate that science all day and never agree.

I believe the science we have seen does not support the need to engage in questionable policies to control so-called ''global warming''.

We need more evidence that the climate is actually affected by emissions, especially carbon emissions, before we act too quickly.

Let's make sure we really look before we leap.

Instead of arguing over scientific data, we should examine the impact S. 139 could have on American jobs and the economy.

This bill limits emissions of greenhouse gases to 2000 levels by 2010. This includes regulation of carbon dioxide emissions.

I am proud to be from a coal state. Generations of Kentuckians from Pike County to Crittenden County have worked in the coal fields and mines.

Coal plays an important role in our economy. More than half of our nation's electricity is generated from low-cost domestic coal.

We have over 275 billion tons of recoverable coal reserves. This is about 30 percent of the world's coal supply.

That's enough to supply us with energy for more than 250 years.

But this bill places caps on carbon. This has a negative affect on energy production because it affects the amount of coal we can use.

This will mean loss of jobs, particularly for workers in Kentucky and other coal states.

It also increases energy prices. Just as our economy is starting to turn around. We just don't need this.

I hope the energy bill encourages renewable fuels as well as clean coal so that we are not relying so much on foreign oil.

S. 139 goes in the other direction of the energy bill. It drives the use of natural gas instead of coal.

Placing caps on carbon means coal production will be 100 million tons lower in 2010 than what we expect to produce in 2003.

That is 25 percent below our expected 2003 level of coal production.

I have heard from coal operators in Kentucky who are on the verge of closing their doors because of natural gas prices.

But S. 139 causes an even worse situation. According to one analysis, it increases natural gas prices by 79 percent.

By forcing reliance on natural gas and a reduction in coal production, this bill results in a loss of 460,000 jobs through 2025 and electricity bills will increase 46 percent.

We already have a natural gas shortage. And for a decade coal was on the downturn because of governmental policies.

These policies have caused our demand for natural gas to exceed the supply.

High gas prices cause Americans to experience difficulties. With the winter coming, prices are expected to go up and put a noose on the American pocketbook.

We must focus on increasing production and using a variety of energy sources. Failing to do this puts our energy independence and national security at stake.

We are turning the corner on the economy and job growth. The last quarter grew by 7.2 percent. We do not need to be losing jobs or causing more companies to shut down business because of increased energy prices caused by the government.

The climate issue is being addressed in other ways that are more conducive to job creation and economic growth.

We are becoming more energy efficient. Energy efficiency has improved 20 percent since 1990. This means that emissions have declined.

In fact, we are expected to reduce emissions by 14 percent by 2012 without any new emission regulations.

Our automobiles are more efficient and running at a higher fuel efficiency than they did just a few a years go.

However, S. 139 ignores the strides we have made and could bring us back to 1970s gas rationing.

As a consequence of this rationing, the cost of gasoline is expected to increase 27 percent.

This increases fuel costs, and further slows our recovery, and takes money out of the pockets of Americans.

I don't see why we should vote to increase energy costs and unemployment. Voting for this bill does that.

It may make us feel better to support this bill because of its environmental symbolism.

But I will choose substance over symbolism any day.

American jobs are of substance. Getting a green star by your name on an environmental group's web site is symbolic.

And while that may make one feel good, watching Americans lose jobs from this kind of legislation won't.

I urge my colleagues to defeat this bill.

Mr. CONRAD. Mr. President, I would like to discuss the Climate Stewardship Act, which the Senate will vote on later today. Although I recognize the challenge of global climate change, I must oppose this legislation because of the drastic negative effect it would have on our national economy.

Our economy depends on affordable, reliable, and abundant sources of energy. Whether that means natural gas, petroleum, or coal, we have a responsibility to ensure that our businesses, manufacturers, and households have access to energy sources at reasonable costs. We depend on energy in almost everything we do in our lives, from turning on the light in the morning, to driving our cars to work, to cooking our dinner at the end of the day. We need access to these sources of energy, and we need access in a way that doesn't force us to choose between paying our power bill, buying gas at the pump, or buying essentials like groceries and medicine. During my time in the Senate, I have remained committed to keeping energy costs affordable for all North Dakotans and all Americans.

The bill before us would threaten the affordability of these sources of energy. It will require companies that produce and use natural gas, petroleum, and coal to acquire credits for each ton of greenhouse gas emissions for which they are responsible. These credits will have a value of anywhere from $8 to $13 for each ton of emissions. Our emissions levels are in the many millions of tons per year. This means dramatic cost increases ranging in the many millions of dollars for the energy industry, costs that will inevitably be passed on to the consumer.

According to a recent MIT study—the same study, by the way, that the sponsors of this bill cite in making their arguments—national demand for coal would increase much more slowly under the legislation. Petroleum and natural gas demand will also increase at slower rates. This is because the costs of these fuels will dramatically increase under the bill. It will mean higher gas prices, higher electricity bills, and higher home heating costs.

I am particularly concerned about the effects of these cost increases on our international competitiveness. The Kyoto Treaty has not yet taken effect, and it now appears that Russia may be backing away from ratification. In the absence of the Kyoto treaty, other nations across the globe will not be subject to strict greenhouse gas emissions controls. Moreover, even if the Kyoto Treaty does enter into force, there has been bipartisan agreement that the Kyoto treaty contains unbalanced provisions that would require disproportionate carbon dioxide reductions in this country while other countries would have to make much less significant changes.

If we were to adopt the bill before us at this time, we would risk putting U.S. manufacturing—which relies on affordable energy—at a significant competitive disadvantage with the rest of the world. Already, we are losing jobs to manufacturers in Mexico and China. If our energy costs were to increase because of this bill, our job loss to foreign countries would accelerate. With record Federal deficits and debt, our economy is already in trouble; now is not the time to be making our economic problems worse.

Let me be clear that I am fully aware of and fully acknowledge the reality of global climate change. We need only to look to the droughts in my part of the country over the last few years to see the very real effects of global climate change. Human activity since the industrial revolution is warming the planet, melting the polar ice caps, and causing severe weather events across the globe. These developments have very serious implications for this country, and for the world.

I do not dispute this ecological situation and I do not dispute the need to do something about it. Let me also state that I very much appreciate the efforts of Senator LIEBERMAN and Senator MCCAIN to try to address this issue. They have done so in a way that genuinely attempts to address a variety of constituent issues. However, I still do not think the legislation we are considering today is the right approach at the right time.

We need to continue working for a solution that carefully balances this need for action with the concerns about the impact on our economy and our competitiveness, and I hope to be a part of finding innovative and creative solutions to global climate change. We need to carefully consider impacts on States with energy dependent economies, such as North Dakota. We need to carefully consider the impact on different types of energy and make sure we do not put some forms of energy at an unfair disadvantage. For example, to have my support any legislation on this topic must address the unique circumstances of lignite coal, which is the primary source of electricity in North Dakota. And we need to carefully weigh the impacts that any plan will have on energy consumers. This will require an enormous amount of careful work, and I look forward to being part of the effort to address this very real problem.

These are enormously complex issues that will require very careful study and an opportunity for extensive public review and comment. Because of the circumstances under which we are considering this legislation, we have not had that opportunity for extensive review. Without that careful study and review to ensure that we understand in detail the impacts on energy production in my State, on our national economy, and on our international competitiveness, I cannot vote for this legislation. For that reason, I must vote against the bill today.

Mr. DORGAN. My colleagues, Senator MCCAIN and Senator LIEBERMAN, have brought to the Senate floor a serious proposal dealing with an important issue. The issue of climate change and global warming demands our attention. We live in this fragile spaceship called Earth, and we have but one environment to sustain us. We ignore the health of our environment at our peril.

So the question is not whether but rather how we address these questions that are being raised about our environment, about climate change and global warming.

The proposal we are voting on today is one that I think requires some additional work and some additional thought.

We now live in a global economy and these issues must be addressed globally.

We cannot create emissions caps and targets that we enforce unilaterally in a manner that encourages American companies to move overseas and avoid these restrictions. If we do that, we will end up doing little or nothing to protect our environment while harming our economy.

In this global economy, where companies can move from one country to another with ease, it seems to me the only way to achieve the goals of reducing emissions of greenhouse gases is to engage with all other countries in a global strategy for these reductions. Otherwise, these global companies will simply move their plants and their jobs to areas where they are not impeded by emission caps and other restrictions.

When a global agreement is negotiated, it cannot be an agreement that allows some countries to avoid emission caps while others embrace them. For example, if we through an international agreement will embrace emission caps for our country but allow the Chinese or the Indian governments to avoid them, we will simply be developing a strategy for companies to move out of the United States and move their plants and jobs to countries where they will not face such restrictions.

That approach would represent the worst of all worlds. There would be no environmental benefit but we in the U.S. would suffer a heavy economic penalty from plant flight and job loss.

I do not think the McCain-Lieberman proposal is the right way to address these issues, but my vote in opposition should not be seen as a denial that these are serious issues that do need to be addressed.

This amendment and today's debate and vote will be a constructive start of a healthy debate about what we do to provide leadership on these issues. While I think this proposal today falls short, I intend to be a constructive part of future proposals that can and will offer leadership in the right direction.

Mr. LEVIN. Mr. President, I cannot support the Climate Stewardship Act of 2003 since its effect, if enacted, will be the loss of more manufacturing jobs to countries which have few, if any, environmental standards. That won't help the environment, and it will hurt our economy. Climate change is not something we can tackle by shifting industries and their emissions to other countries, or by shifting manufacturing jobs to China or other countries which have no limits on emissions of greenhouse gases. The bill before us reflects a unilateral approach to a problem which can only be solved globally.

Let me give one example of how this bill would promote job loss in the U.S. with no benefit to the global environment. In the past decade, a large number of companies have moved their manufacturing plants overseas. Take, for example, a U.S. manufacturing company that had seven plants in the U.S. in the 1990s. Today it has only five left, because two moved to countries with cheaper labor. Assume that those five remaining domestic plants each emit 20,000 metric tons of carbon dioxide for a total of 100,000 metric tons. Under this legislation, reasonable estimates are that the company's cap could be placed at around 90,000 metric tons of carbon dioxide credits. The company, already under heavy competition because of cheap labor costs overseas, faces a choice: pay to reduce emissions at its five plants by 10 percent, or move another one of its plants overseas, say to China. If the company moves one of its five plants abroad, it has 10,000 credits remaining to play with which it can use to actually increase emissions at its four remaining plants, or it can sell them. So this bill adds to existing incentives, such as lower labor costs and no safety standards, to move manufacturing plants overseas, and the result is that we lose jobs and the environment gains nothing. In other words, when this bill's mandates are imposed on sectors of the economy that can pick up and move overseas, it adds another incentive to do just that.

The United States must take a leadership role in addressing climate change, but that leadership must move us in the right direction. It is not sound leadership to give additional incentives to U.S. businesses to move their facilities, and the jobs that go with them, to other countries that don't have the costly environmental standards which this bill would impose on U.S. businesses. It is not sound leadership to simply shift industrial emissions from American soil to countries which have no emissions standards. And it is certainly not sound leadership to act unilaterally in a way that puts U.S. manufacturers at a competitive disadvantage when there is no built-in incentive for other countries to follow. In fact, the opposite is true: the unilateral approach in this bill provides an economic incentive for countries who are picking up our manufacturing jobs not to follow our lead.

Effective and sound leadership would be to tell competing countries that we are going to adopt high environmental standards if they will join us, or, in the alternative, leadership is getting countries to agree (1) to the adoption of tough environmental standards, and (2) to refuse to purchase products from countries which won't adopt those environmental standards. Sound leadership, in other words, is working to create an international agreement where all countries take steps to reduce global warming, so that there is no incentive to move jobs and emissions from a country with high environmental standards to one with low environmental standards.

Climate change cannot be addressed unilaterally. It must be addressed multilaterally. It doesn't help the global environment to push down greenhouse gas emissions in one country only to have them pop up in others. We need a Kyoto-type treaty which binds all countries. Otherwise, there is a perverse incentive to move more and more jobs to countries with lower environmental standards. That does nothing to reduce greenhouse gas emissions and does damage to U.S. jobs.

To achieve a global agreement will require our putting maximum pressure on all countries to join it, so that the emissions of greenhouse gases can be reduced, not just shifted. Shifting manufacturing jobs and the production of greenhouses gases from here to other countries is not a solution to climate change. It would just be another economic blow to America at a time when our economy is already losing jobs at an historic and alarming rate.

We have already lost enough American jobs to countries with cheap labor, no safety standards and no environmental standards. To add more incentives for companies to move overseas to countries with no limits on greenhouse gas emissions, as this bill would promote, is not sound policy. Global climate change is just that: global and it needs to be dealt with globally, not unilaterally.

Mr. ENZI. Mr. President, anyone who has picked up a copy of this legislation and read it has to be forgiven if he or she was soon reminded of the words of Yogi Berra, ''It's deja vu all over again.''

After all, it is not as if this topic is unfamiliar to us. When the debate first began on the Kyoto talks, the U.S. Senate made a clear and direct statement of principle on the subject. We drew a line that was not to be crossed by the president and his negotiators in their effort to reach an international climate change agreement. By a vote of 95 to 0 the Senate passed Senate Resolution 98, also known as the Byrd-Hagel resolution, that sent a clear message to the world that the Senate would not support any climate change agreement that did not include all nations equally. We also said we would not support an agreement that would cause serious harm to our economy.

We crafted our message to the administration to counter the concerns that had been raised that a global climate change policy could be imposed on the United States that would ''result in serious harm to the United States economy, including significant job loss, trade disadvantages, and increased energy and consumer costs.'' The Senate was also concerned that efforts to reduce global emissions would be imposed only on developed nations, where the best emissions controls and most advances in emissions reductions already exist, and not on underdeveloped nations where emissions would continue without any effective controls.

What has changed since then?

Nothing.

We still need the benefits of a strong economy. We still need to protect American jobs. And we still need to avoid trade deficits and ensure consumers are not forced to choose between paying their energy bills and buying food.

We still need to protect American jobs, and global climate change is still a global issue.

Unfortunately, this reality contradicts the language of the proposal we are debating today just as surely as it contradicts the message we sent the administration with the Byrd-Hagel language.

The proposal before us, which is clearly an energy tax, would force the United States to unilaterally disarm its economy and force American jobs overseas without providing any environmental benefit. An energy tax, like the one proposed by Senators LIEBERMAN and MCCAIN would, in fact, be an environmental nightmare. Any loss of jobs in the United States would shift production to other parts of the world where there are no controls over the manufacturing process.

The best way to help the environment around the world is to ensure we have a strong economy here at home.

If we, as a Senate, really want to stand for improving global conditions then we should stand behind the principles of Byrd-Hagel and insist our global climate change policy does not harm America's workers. If we want to improve global conditions we must insist that all nations responsible for emitting greenhouse gasses participate and reduce their own emissions.

Just in case anyone is not clear about what is going on and what this legislation really does, I want to take a moment and explain how it would slow down our economy and force jobs out of the country.

To begin with, the bill establishes a requirement for registering all industrial emissions, and it requires the officials in charge to make assumptions about the level of total emissions that are due to transportation.

We can only assume that these assumptions are made for one of two reasons.

We want to know the transportation emissions level so we can blame the rest on industry, or, we want to know the transportation emissions level so we can start to apply limits and regulate family cars. I have had the opportunity to visit California and noticed a remarkable thing about this State that has done so much on its own to regulate and control private vehicles. While the rest of the highway was packed with cars, the HOV lanes were wide open and very poorly utilized. And yet this bill does nothing to account for private vehicles which is a major source of greenhouse gas emissions. I wonder, if this bill was so serious about

improving the environment, why would it leave out such a major source of emissions?

Don't be fooled. If this program is passed then that will be the next step. Why would we put in place such an ineffective control if we didn't intend to take it to the next step and regulate private transportation? We don't want to, they do.

This proposal would hold industry responsible for all other, nonindustrial or transportation emissions, emissions including human beings, who breathe out CO_2 on a regular basis, animals, plants, volcanoes, forest fires, and private homes that burn natural gas, fuel, coal or wood. Keep in mind that one natural cataclysmic event, such as a volcanic eruption or a catastrophic wildfire eclipses anything, by way of emissions, that all of mankind can produce together on an annual basis.

We also have a situation where our trees that once could have served as sponges to soak up greenhouse gasses, are now older and absorb less CO_2. In fact, because of the age of many of our forests they are now CO_2 emitters.

The bill also completely neglects the most common and prevalent greenhouse gas of all. Of all the gasses found in our atmosphere, this particular gas is the most insidious. It contributes to more fluctuations in temperature than any other gas. It has the greatest impact on local and global climate, and it too is emitted by industry and by numerous natural sources and yet it is not included anywhere in this bill.

What is this gas? It is water vapor, of course. Why, if we are really serious about using this legislation to control temperatures and climate, don't we include water? Because this effort is not about environmental protection. It is about imposing an energy tax and controlling the economy.

The next thing the bill does is impose a cap or limit on otherwise unregulated emissions by industry. Once again, this cap does not take into account the emissions generated by other sources. The result is that we would force industry to assume all responsibility and pay for all emissions, regardless of where they come from. Whether the emissions came from individuals or nature, we would still hold industry responsible. There is a new discovery that was recently made in Wyoming that illustrates the lunacy of holding man responsible for something that nature releases on its own in an abundance that man never has.

I will read from an AP article that ran in a Wyoming newspaper on October 27 of this year. ''Scientists measuring mercury levels made a startling discovery at the base of Roaring Mountain [in Yellowstone National Park]: possibly the highest levels of mercury ever recorded at an undisturbed natural area.'' According to their measurements, the scientists found that Yellowstone is a potentially big source of our nation's mercury. ''It is conceivable . . . that Yellowstone could emit as much mercury as all the coal-fired power plants in Wyoming. . . . 'That's not a real estimate but something based on just a few measurements,' [one of the scientists said] 'It could be even bigger than that, we just don't know.' ''

It would be intellectually dishonest, for us to assume that, given all of the uncertainty in these issues, that industry will sit back and quietly assume the cost and burden of emissions reductions without either passing them on to consumers or finding a way to excuse itself from the limits altogether. The cost of the tax will either be paid by consumers who can barely afford their own energy costs today, or we will force jobs offshore and into areas where there are no limits on energy consumption and pollution.

There should be no doubt in anyone's mind that this bill is all about economics, particularly because that's what the entire global warming debate is about. Kyoto was an economic conference disguised as an environmental conference.

EU Commissioner for the Environment Margot Wallstrom once said, ''This is not a simple environmental issue where you can say it is an issue where the scientists are not unanimous. This is about international relations, this is about economy, about trying to create a level playing field for big businesses throughout the world. You have to understand what is at stake and that is why it is serious.''

I had the opportunity to attend the meetings at Kyoto, and while I was there I met with the Chinese and discussed the role that they thought they should play in meeting the demands of global climate change. They, and all other developing nations have no obligation to participate in any climate change agreement. They don't even agree to voluntary participation at a future unspecified date. You can't be more open ended than that. Incidentally, they intend to be a developing nation forever, even after 2010 when they will be the world's biggest polluter.

Should we just sell out to the Chinese?

If we were to adjust global emissions and measure them on a per gross domestic product basis, or in other words, measure the efficiencies and end product gained for each energy unit consumed, the United States would come out, once again, as the most efficient and most productive nation on earth. Europe, on the other hand, come out on the other end of the spectrum.

Why?

There are a number of factors that contribute to this imbalance but the biggest reason has to do with the efficiency of the American worker. We produce more goods using less energy than any other nation in the history of the world. We are already milking our industrial output to a point where any additional efficiencies will result in dramatic increases in costs. We have already made the easy adjustments and reduced those emissions that are easiest and cheapest to reduce. The rest of the world is still catching up to us on those respects and it would be easy and cheap for Europe then to reach some of its targets and reduce emissions. All they have to do is use some of the technology we have already invented.

For the United States, however, to make the incremental gains it needs to make to comply with the limits that this bill would impose would require us to either assume costs that would be exponentially greater than those assumed by an other nation, or to push those gains off onto another sector, more specifically the transportation sector, and require us to impose costs on consumers and taxpayers that they clearly cannot afford.

It is a matter of economies of scale and Europe knows it.

The United States is much physically larger than any other nation that we compete against economically. Europe, as a whole, is much smaller, much more densely populated and uses much more efficient transportation. In the United States, we use our trains primarily to carry manufactured goods, as well as clean burning, low sulfur Wyoming coal, while Europe's trains, on the other hand, are used almost exclusively to carry people. It is much more practical for us to fly from Washington, DC to Los Angeles, CA and arrive in a matter of hours instead of wasting days on a train. But airplanes burn fuel in great amounts and with much less efficiency than other forms of transportation. The logical and most cost efficient controls then are not to limit emissions on industry but to convert those controls into limitations on transportation.

I was at the first Kyoto conference, and incidentally, the US was the only country that thought that conference was an environmental conference. Everyone else saw it as an economic conference.

You can understand why I am greatly disturbed when I see a cap proposal like the one put forward in this bill, especially when it includes calculations on transportation emissions. There is no reason to pass a bill like this, to create the kinds of agencies and offices that the bill creates and not expect it to lead to the next step where its controls over industry emissions-i.e., an energy tax, are converted into controls over transportation in other words a transportation tax.

Our Nation's massive transportation needs will never go away. Nor will Europe ever get bigger. As a result of size, then, the energy, or rather transportation, taxes required by this bill will put the United States at a tremendous economic disadvantage with regard to its competitors.

Fortunately, we are not the only ones to recognize this imbalance. Russia recently joined the United States in rejecting a proposal that would limit its emissions and put a similar damper

on its economy. In making a basic cost/benefit analysis, President Putin's chief economic advisor, Andrei Illarinov declared, ''If we are to double GDP within the next ten years, this will require an average economic growth rate of 7.2 percent. No country in the world can double its GDP with a lower increase in carbon dioxide omissions or with no increase at all.''

The great baseball philosopher, Yogi Berra, was right. It is deja vu all over again. These are issues we have considered before and we already have a clear statement of policy in place in the Byrd-Hagel resolution that says, in responding to global climate change concerns, we cannot agree to any proposal that would result in serious harm to the United States economy. It already says we must work to avoid significant job loss, trade disadvantages, and increased energy and consumer costs. It also makes it clear that this is a global issue, one we can't tackle alone. If we, as a Senate, really want to stand for improving global conditions then we should stand behind the principles of Byrd-Hagel and insist our global climate change policy does not harm America's workers and that all nations responsible for emitting greenhouse gasses participate in emissions reductions.

This proposal would clearly cause serious harm to our Nation's economy, cost us American jobs, and result in a tax on our nation's energy and transportation systems. These taxes would put our nation at a serious disadvantage with our competitors and do nothing to improve our environment.

Mr. ALLEN. Mr. President, fellow colleagues, please do not overreact by the claim that the climate is changing. The climate has always changed naturally. Thanks in large part to scientific research carried out in the United States, we know much more about our climate than we did a mere quarter-century ago. More than anything else, we now know that climate never has been, and never will be, constant.

When our civilization arose with the flowering of agriculture, some 5,000 years ago, climate scientists tell us the earth was a few degrees warmer than it is today. At one time, what is now the dry desert southwest was a much wetter tropical environment. Climate scientists also tell us that 300 years ago it was a few degrees colder, Europe suffered through the Plagues, ice skaters graced the Thames River in London. Mr. President, 150 years ago, when that ''Little Ice Age'' ended, America embarked upon its manifest destiny.

In the last 100 years, the Earth has warmed an additional degree, American crop yields quintupled, life span doubled, wealth became democratized beyond the wildest dreams of even the most optimistic. In that 100 years, our free economy was powered largely by fuels extracted from the earth. Some of these produce carbon dioxide, which scientists have known, since 1872, can slightly warm the surface of the earth.

At the same time, our competitive economy forced increased efficiency. The family car now uses half as much fuel as it once did. Hybrid automobiles achieve as much as seventy miles to the gallon. All in all, we produce a dollar's worth of goods and services with 40 percent less energy than we did a mere 30 years ago.

This remarkable change, where the freest society on Earth became the most capable large economy, did not happen because of massive taxation in misguided attempts to direct the lives of free people. No, it happened because people were free—free to buy the most proficient technology, and, above all, free to invest in corporations who understand what people want. And one of those desires is abundant energy, used efficiently. As has been said, over and over, the future belongs to the efficient.

And what of the warming of the planet? In the blazing summer of 1988, in this Senate Chamber, NASA first raised the spectre of global warming caused by carbon dioxide. The alarm was sounded, even as others argued that the gloom-and-doom forecasts were overwrought and could lead to disastrous policies.

Fifteen years later, thanks in large part to research fostered by this body's committees on science, we know that the calm scientific heads were right.

NASA scientist James Hansen, who first sounded the alarm, now agrees with those who were once his critics. Writing in the Proceedings of the National Academy of Sciences, he recently stated that we know how much the planet will warm in the next 50 years to a very small margin of error. That amount is precisely the small warming that the calmer heads had forecast some 15 years earlier.

This same scientist has recently stated that some may have exaggerated the threat of global warming for political science purposes. Just last month, he wrote in the online journal ''Natural Science'': ''Emphasis on extreme scenarios may have been appropriate at one time, when the public and policymakers were relatively unaware of the global warming issue.'' Moreover, according to a report issued by the Global Climate Coalition, mandatory emissions goals could result in a loss of gross domestic product equal to $300 billion in 2010 alone, assuming that 2010 emissions are held at 1990 levels.

How many American jobs would be lost as a result? How many companies will have to close their doors? I would like to read to you, part of a letter from the Secretary of Commerce, Don Evans, Secretary of Labor, Elaine Chao, and Acting Administrator of the Environmental Protection Agency, Marianne Horinko:

> According to an analysis conducted by the independent Energy Information Administration, S. 139 would cause an estimated average loss of 460,000 American jobs through 2025.

It goes on to say,

> Instead of improving our economic security through economic growth and job creation, the job losses resulting from S. 139 would place an unacceptable burden on American workers and the American people.

Mr. President, I ask unanimous consent that the entire text of this letter be printed in the RECORD immediately following my remarks.

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

(See exhibit 1.)

Mr. ALLEN. It is not right for any scientist or any other person to exaggerate for political effect. But even as much has been made of the vociferous debates before the Senate about past climate change, little has been said about the remarkable scientific agreement about the future.

Scientists all agree that human affect on any climate change would warm the coldest air of winter much more than the heat of the summer. When Russia's Prime Minister Putin rejected the Kyoto Protocol last week, he noted that, more than anything else, humans have made Siberia more habitable, according to Dr. Pat Michaels, State Climatologist at The University of Virginia.

The most recent consensus of scientists is that the rate of any warming over a long period of time is very small. And, the slight warming trend is much lower than the alarmist projections of the United Nations, or those who may have touted ''extreme scenarios,'' or those who strive to profit politically from climate change scare tactics.

Then, one may ask, what is to be done? After all, we cannot go on adding carbon dioxide to the atmosphere forever. We won't. If history is any guide, our technology will continue to evolve toward increased efficiency, new materials and new propulsion methods in the next 100 years.

In 1800, we were a Nation and world moved by animals and wind on water. In the next 100 years, the locomotive transformed our economy and our Nation. In 1900, the automobile had just been invented. In the next 100 years, transportation and energy fueled the great democratization of wealth and the spread of culture.

In 1900, 7,000 people died in the Galveston Hurricane. Mr. President, 100 years later a similar storm hit Texas and killed no one, thanks to advances in meteorology and satellite technology. Could anyone have imagined this in 1900, as we buried the dead from the largest natural disaster in American history? Hardly. But this is how a free, creative world develops if the governments allow ingenuity to thrive to improve our lives.

What will be the technology of the future? No one can say for certain. But we all can spur its development by encouraging the marketplace in the vast, diverse fields of nanotechnology or aeronautics, for prime examples.

And that is the state of our climate. Climate will continue to change. That cannot be stopped. But so will technology change, unless the Government

chooses to hinder new investment in better materials, fuels and systems. Fortunately, now sound science, rather than political science, shows warming is a much slower process than was once feared.

My bottom line is that I cannot countenance the loss of tens of thousands of American jobs based upon the scientific factual evidence surrounding this measure.

EXHIBIT 1

OCTOBER 28, 2003.

Hon. BILL FRIST,
U.S. Senate,
Washington, DC.

DEAR SENATOR FRIST: We are writing to state our serious concerns about S. 139, ''The Climate Stewardship Act of 2003,'' and to strongly urge that you vote against this bill to avoid the significant job losses and economic harm that it would inflict on our economy, without necessarily achieving any reduction in global greenhouse gas emissions.

According to an analysis conducted by the independent Energy Information Administration (EIA), S. 139 would cause an estimated average loss of 460,000 American jobs through 2025, with estimated job losses reaching 600,000 by 2012. Instead of improving our economic security through economic growth and job creation, the job losses resulting from S. 139 would place an unacceptable burden on American workers and the American people. EIA's analysis further reveals the higher energy costs the legislation would impose on American energy consumers: once fully implemented, S. 139 would require a 40 cent per gallon increase in gasoline prices and cause nearly a 50% increase in natural gas and electricity bills.

As a result of these higher energy costs, EIA projects a net loss of $507 billion (1996 dollars) in Gross Domestic Product over the next two decades. These higher energy costs and reduced economic growth would likely lead American businesses to move overseas, taking jobs with them. As a result, S. 139 may actually lead to an increase in global greenhouse gas emissions as companies formerly in the U.S. move their operations (and emissions) overseas to countries that do not require similar emissions reductions. To compensate for the economic dislocation that S. 139 would cause, the legislation establishes a ''Climate Change Credit Corporation'' for ''transition assistance to dislocated workers and communities.'' However, we believe that the Senate should instead reject this legislation and avoid inflicting the harm that would create the need for such ''transition assistance'' in the first place.

President Bush has committed the U.S. to an ambitious and comprehensive strategy to address the issue of global climate change. It is based on the recognition that only a growing American economy can make possible the sustained investments in energy and carbon sequestration technologies needed to reduce the projected long-term growth in global greenhouse gas emissions. Because of its negative impacts on jobs and economic growth, we call upon the Senate to reject S. 139 as a misguided means of achieving our international environmental goals.

DONALD L. EVANS,
Secretary of Commerce.
ELAINE L. CHAO,
Secretary of Labor.
MARIANNE HORINKO,
Acting Administrator of the Environmental Protection Agency.

Mr. INHOFE. Mr. President, to draw to conclusion this debate, let me repeat a couple of things we did last night. I will briefly address the science issue. I know there are people out there thinking the science is settled. The science is not settled. Last night I went into detail and I will repeat a couple of significant points.

First, Frederick Seitz, the past president of the National Academy of Sciences, compiled the Oregon petition which had 17,800 independently verified signatures—most of those holding degrees of Ph.D. They came to this conclusion: There is no convincing scientific evidence that the human release of carbon dioxide, methane or other greenhouse gasses is causing or will in the foreseeable future cause catastrophic heating of the Earth's atmosphere and disruption of the Earth's climate.

Again, the Heidelberg Appeal, over 4,000 scientists, 70 of whom are Nobel Prize winners, signed this Heidelberg Appeal that says there is no compelling evidence that is existing today to justify controls of anthropogenic—man made—greenhouse gas emissions.

Dr. Richard Lindzen, MIT scientist and member of the National Academy of Sciences, said—and I don't think anyone would question his credentials—said there is a definite disconnect between Kyoto and science. Should a catastrophic scenario prove correct, Kyoto would not prevent it.

Lastly, the Harvard-Smithsonian study, the most exhaustive study out there, 240 peer-reviewed papers published by thousands of researchers over the last four decades, says the science is flawed. It is important people realize that is the situation.

Probably the most significant item we should have been talking about all the time instead of this science—since it is a fact now, I think people understand there are scientists on both sides of this issue—is what is the effect.

Last night we had a chance to talk about the National Black Chamber of Commerce and the Hispanic Chamber of Commerce, how it would disproportionately hurt them in losing jobs. A study that no one has challenged concluded that Kyoto would cost 511,000 jobs of Hispanic workers and 864,000 jobs held by Black workers. Is this something we all understand?

My chart is revealing if Members need statistics for their own State. The State of Illinois is losing 159,000 jobs; the State of Indiana loses 194,000. This is a study done by Penn State University.

The other significant point is that we are voting on an amendment. This amendment is somewhat pared down. Everyone realizes that this amendment, as has been stated many times by the distinguished Senator from Connecticut as well as the Senator from Arizona, is just a first step. So everyone has to look at this. This is the Kyoto Treaty. It needs to be looked at in that respect.

I reserve the remainder of my time.

Mr. LIEBERMAN. Mr. President, I yield to Senator MCCAIN the remaining 2 minutes.

Mr. MCCAIN. I thank my friend. Since I will not speak again, I thank the Senator from Oklahoma for engaging in a spirited and, I hope, informative debate. I thank, of course, my friend from Connecticut, Senator LIEBERMAN.

Briefly, as to this petition that keeps being referred to—the petition was led by Frederick Seitz, former president of the National Academy of Sciences—an article in the New York Times on April 22, 1998, entitled ''Science Academy Disputes Attack On Global Warms,'' states:

> The National Academy of Sciences has disassociated itself from a statement and petition circulated by one of its former presidents which disagrees with the scientific conclusions underlying international efforts to control greenhouse gas emissions.

By the way, Virginia Spice of the Spice Girls, BJ Hunnicutt of ''Mash,'' and Perry Mason were among the signatories to that. They are all respected in their individual fields.

I do not believe that 10 States in the Northeast would agree to a proposal that this is exactly modeled on, if there was going to be some devastating effect on the economies of 10 Northeastern States.

Let's get real. This is a very minimal proposal, one that is a first step. I agree with the Senator from Oklahoma because it does not begin to comprehensively address the problem, but we have to start somewhere. We have to start somewhere. We have to begin to address this issue.

This debate is important. I assure my colleagues, we will be back because those pictures that I showed are going to get worse and worse until we begin to address this issue.

I thank my colleagues and yield the remainder of my time.

The PRESIDING OFFICER. Who yields time?

Mr. INHOFE. Mr. President, I inquire as to how much time is remaining on both sides.

The PRESIDING OFFICER. Two minutes thirty seconds for the Senator from Oklahoma. The Senator from Connecticut has 3 minutes 45 seconds.

Mr. INHOFE. All right. I say to the Senator from Connecticut, if it is your wish, I will be very glad to defer to you to conclude debate on this matter.

Mr. LIEBERMAN. No thank you.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, let me get back to something the Senator from Arizona said. He is not on the floor now. He mentioned some of the signatures were not verified. They keep using this same argument, which has been refuted over and over again. The Perry Mason he refers to happens to be a Ph.D. chemist. It is documented. Again, we are talking about some 17,000 scientists there. There are 4,000 scientists on the Heidelberg Petition.

Of course, Richard Lindzen, I don't think anyone is going to question his credibility. These studies—particularly the Harvard-Smithsonian study—is a very significant one.

I think the debate has been good. I do not question it when the Senator from Arizona—who I respect immensely—says we will be back. I am hoping it will be necessary to come back because I am hoping we will defeat this amendment. But it is very significant.

Lastly, let me mention I do not know how so many of these groups could be wrong. We have almost every union in the country—the International Brotherhood of Electrical Workers, the International Brotherhood of Teamsters, the United Mine Workers, the United Steel Workers. We have all these jobs shown up here, some 3.6 million jobs, that would be lost. This analysis was done by a credible organization, Penn State University.

I cannot imagine that any Member of this Senate would come up here and look at this chart and not realize that here we are—we have been going through a recession that began in March of 2000, and we are now pulling out of this recession. The jobs are looking good right now. For something such as this to pass would push us right back in a devastating position.

So when you look at what we are talking about today, we are talking about something that would pass in America and that would not have anything to do with Mexico, anything to do with China, anything to do with India. I can assure you, right now people from those countries are sitting back with their fingers crossed, hoping this passes, because this would be the biggest jobs bill for Mexico and India and the other developing nations that we could pass.

I say to Senator LIEBERMAN, thank you very much for the spirited debate, as I also thank the Senator from Arizona.

Mr. President, I reserve the remainder of my time, if there is any.

The PRESIDING OFFICER. You have 1 second.

Mr. INHOFE. I reserve that.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Oklahoma as well. It has been a spirited debate. It has been an important and historic debate, but it is the first, I would guess, of many on this critical subject.

I must say, it has been a disappointing debate in one regard for me; that is, we are still disagreeing about whether global warming is a problem. The fact is, the overwhelming evidence, upheld by scientists around the world and in America—the National Academy of Sciences, et cetera—says that the planet is warming, and it is happening because of human activity.

You cannot look at this picture, a satellite picture—seeing the reduction of the white part from where it was; and the red lines show what it was in 1979, 24 years ago—and not say it is real.

Senator AKAKA from Hawaii told us last night that the sea level is rising around Hawaii. Senator SNOWE of Maine told us that the sugar maples are dying because it is getting warmer. I myself reported on a story from Inupiat Indians in Alaska saying they had seen robins for the first time in their village because it is getting warmer.

This is real. I wish we could agree on the reality and then argue about what we should do about it. As I hear the science—so-called—cited on the other side, I want to predict, respectfully, that we are going to look back at those scientific testaments and put them in the same category as the scientific studies that were introduced by the tobacco industry years ago, saying that tobacco did not harm health or cause cancer, or the studies that were introduced by the chemical industry that said chlorofluorocarbons did not put a hole in the ozone layer, all of which we know now were just plain bunk. I am afraid that is the way we are going to look back at this evidence offered in this debate.

Secondly, a lot of the argument about the impact of our proposal on costs and cost of living and jobs is not related to our proposal. It is about the Kyoto protocol. It is about earlier legislation. It is not about the McCain-Lieberman amendment before the Senate for a vote.

The one study on our amendment, the MIT independent study, says, in fact, costs will go down in the energy field, that the average cost per household will be $20 a year—well worth what we are going to get in return for a safer, better life for our children and grandchildren. They say there is no job loss that can be expected. In fact, a lot of major entrepreneurs and investors—and I put a letter in the RECORD to Senator SNOWE from 60 leading entrepreneurs from Silicon Valley, who say our amendment will create hundreds of thousands of jobs. I ask unanimous consent that letter be printed in the RECORD.

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

SILVER LAKE PARTNERS,
Menlo Park, CA, October 17, 2004.

Senator OLYMPIA SNOWE,
Washington, DC.

DEAR SENATOR SNOWE; I am pleased to enclose a letter from 60 Silicon Valley business leaders concerned about the growing threat of global warming. This group comprises CEOs and successful entrepreneurs, distinguished engineers, scientists, and investors. Together, we manage companies with total revenues of $70 billion and over 300,000 employees around the world. Our firms have an aggregate market value of over $160 billion. The venture capitalists and private equity investors among us, primarily focused on commercializing new technology, manage over $44 billion in risk capital.

Operating at the core of our modern economy, we recognize the role science and industry play in keeping our country vital. While we are Democrats, Republicans and Independents with often contrasting political views, we share a deep concern about the specter of global warming and potentially devastating effects of climate change. We urge you to take appropriate measures to address this critically important issue.

Thank you for your consideration.

Kind regards,

DAVID ROUX,
Managing Director.

OPEN LETTER FROM BUSINESS LEADERS,
October 17, 2003.

Senator OLYMPIA SNOWE,
Washington, DC.

DEAR SENATOR SNOWE: We are business leaders and scientists alarmed by the reality of global warming.

Schooled in science and innovation, we recognize that the risks and complexities of climate change are significant, but strongly believe that drive and ingenuity can manage those risks and solve those complexities. While any response that is sufficient to avert dangerous climate change will be long term, the nature of the problem requires action now. The required response—global and domestic—must be equitable and support economic growth based on free market principles.

As entrepreneurs who co-exist with government policies, we know that truly effective policies set clear goals and leave businesses free to decide how to meet those goals at lowest cost. We trust any policies you propose have serious environmental goals and encourage the prudent use of market forces to achieve them.

Policies employing strict goals and flexible means unleash the power of competition and spur innovation to protect the environment. A healthy economy and a healthy environment go hand in hand. American business has the ingenuity to solve the problem of global warming while continuing to prosper. Indeed, businesses that find ways to lead in solving this problem will prosper even more.

While there is still debate about the levels of greenhouse gas reductions necessary to stabilize the climate and protect the United States economy, several things are clear:

Reductions must begin immediately;

Voluntary efforts alone won't do the job; and

Any mandatory restrictions must employ market incentives.

We congratulate you for recognizing these needs and for your efforts to see that the Senate addresses them.

Sincerely,

BUSINESS LEADERS TAKING ACTION ON CLIMATE CHANGE.

Mr. LIEBERMAN. Mr. President, this is a call to responsibility. It is a call to leadership.

I remember last year, as we were coming close to the vote on the Iraq resolution, I met with a group of officials from the administration and Congress—members of both parties—with the Minister of Defense from an allied government. Somebody from the administration said: How can we get the Europeans to support us more on the potential of a war against Saddam?

The European Minister said: Get the administration to do something about global warming.

This inaction, lack of leadership, debunking by the administration of the problem, failure to accept responsibility is part of the reason we are so deeply divided from some of our closest allies.

Senator MCCAIN and I and our cosponsors on both sides of the aisle have

put ourselves on a course. History calls us to action. We will not leave this course until the day—may it come sooner than later—when we adopt this amendment or something very much like it.

I thank the Chair. I thank my colleagues and yield the floor.

The PRESIDING OFFICER. All time has expired.

Mr. INHOFE. I believe, Mr. President, I have 1 second remaining.

The PRESIDING OFFICER. Yes.

Mr. INHOFE. Mr. President, in my last second, I ask unanimous consent that the list of labor unions, agricultural organizations, and other organizations opposing S. 139 be printed in the RECORD.

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

WHAT DO ALL THESE GROUPS AGREE ON? LIEBERMAN-MCCAIN IS BAD FOR AMERICA

The 60 Plus Association, Aluminum Association, American Association of Port Authorities, American Bakers Association, American Boiler Manufacturers Association, American Chemistry Council, American Health Care Association, American Highway Users Alliance, American Iron and Steel Institute, American Public Power Association, American Road and Transportation Builders Association, American Sheep Industry Association, American Short Line and Regional Railroad Association, American Trucking Association, American Waterways Operators, Americans for Tax Reform, Association of Equipment Manufacturers, Brotherhood of Locomotive Engineers, Brotherhood of Railroad Signalman, Center for Energy and Economic Development, Council of Industrial Boiler Owners, Edison Electric Institute, Federation of American Hospitals, Frontiers of Freedom, General Mills, Goodman Manufacturing Corporation, Institute of Makers of Explosives, Intermodal Association of North America, International Brotherhood of Boilermakers, International Brotherhood of Electrical Workers, International Dairy Foods Association, Motor Freight Carriers Association, National Association of Manufacturers, National Association of Wheat Growers, National Cattleman's Beef Association, National Food Processors Association, National Grange, National Mining Association, National Restaurant Association, National Retail Federation, National Rural Electric Cooperative Association, National Waterways Conference, Inc., Portland Cement Association, Railway Supply Institute, The Salt Institute, The Seniors Coalition, Small Business Survival Committee, Snack Food Association, US Chamber of Commerce, United Mine Workers of America, United Seniors Association, United Transportation Union.

Mr. INHOFE. Mr. President, thank you very much.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I have not spoken to the two managers, but I feel confident it would be OK with them. This is not in the form of a unanimous consent request.

Following the vote, Senator BOXER wishes to speak for 10 minutes. Following that, Senator BINGAMAN is ready to offer his amendment. He will take a limited period of time. Following that, Senator LEAHY has an amendment. He has asked for 30 minutes.

So that is just general information we are going to try to move on as quickly as possible on the Healthy Forests matter.

The PRESIDING OFFICER. The question is on agreeing to the Lieberman-McCain amendment.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS) is necessarily absent.

I also announce that the Senator from Nebraska (Mr. NELSON) is attending a family funeral.

I further announce that, if present and voting, the Senator from Nebraska (Mr. NELSON) would vote ''nay.''

The PRESIDING OFFICER (Mr. BUNNING). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 43, nays 55, as follows:

[Rollcall Vote No. 420 Leg.]

YEAS—43

Akaka	Feingold	Lugar
Bayh	Feinstein	McCain
Biden	Graham (FL)	Mikulski
Bingaman	Gregg	Murray
Boxer	Harkin	Nelson (FL)
Cantwell	Hollings	Reed
Carper	Inouye	Reid
Chafee	Jeffords	Rockefeller
Clinton	Johnson	Sarbanes
Collins	Kennedy	Schumer
Corzine	Kerry	Snowe
Daschle	Kohl	Stabenow
Dayton	Lautenberg	Wyden
Dodd	Leahy	
Durbin	Lieberman	

NAYS—55

Alexander	DeWine	McConnell
Allard	Dole	Miller
Allen	Domenici	Murkowski
Baucus	Dorgan	Nickles
Bennett	Ensign	Pryor
Bond	Enzi	Roberts
Breaux	Fitzgerald	Santorum
Brownback	Frist	Sessions
Bunning	Graham (SC)	Shelby
Burns	Grassley	Smith
Byrd	Hagel	Specter
Campbell	Hatch	Stevens
Chambliss	Hutchison	Sununu
Cochran	Inhofe	Talent
Coleman	Kyl	Thomas
Conrad	Landrieu	Voinovich
Cornyn	Levin	Warner
Craig	Lincoln	
Crapo	Lott	

NOT VOTING—2

Edwards	Nelson (NE)

The amendment (No. 2028) was rejected.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Oklahoma.

Mr. INHOFE. Mr. President, I have a unanimous consent request. We have just voted on the amendment. I ask unanimous consent that the underlying bill be referred back to the Committee on Environment and Public Works.

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

Mr. SPECTER. Mr. President, after extensive consideration of the views of many constituents who have contacted me on this very important bill, I decided to vote against it because of the open questions on the impact on climate and the consequences for the national and State economies, which are very fragile at the moment.

It is always a difficult matter to balance environmental protection and the need for economic development and jobs. I believe that global warming is a matter of great international importance and the 43 votes in favor of this bill puts the administration and others on notice that there is considerable sentiment for stronger action to address this problem.

I have voted for environmental protection for renewable energy and conservation measures, and I have initiated legislation to limit the amount of oil which will be consumed at various intervals in the future.

As a Pennsylvania Senator, I have a particular interest in the continued use of coal, our Nation's most abundant energy supply, especially in the context of the billions of tons of bituminous coal in the western part of Pennsylvania and anthracite coal in the eastern part of Pennsylvania. This bill would have a serious impact on our steel industry, our chemical industry, and manufacturing.

In this context, it is very difficult to adopt a limit by the year 2010 since we cannot predict at this time what the situation will be with our national and State economies.

In addition, it is very difficult to limit industry in the United States when we do not have a plan for the rest of the world in curbing green house gas emissions. That would have a harmful effect on the competitiveness of the United States. An international plan is necessary. Unilateral action by the United States would not solve the problem. I have, with other Senators, urged the President to work through international means to address global climate change. I support his efforts and those of the individual companies to curb voluntarily domestic emissions, but it is likely that stronger action will have to be taken in the future on a multilateral basis.

These questions remain: What would the reductions under this legislation do to climate change? What are the anticipated costs? Who would pay the costs? What are particularly vulnerable industries that could not, for instance, pass on any increased energy costs? What is the expected impact on fuel supply and demand, particularly with regard to fuel-switching and natural gas prices? What will happen to economic growth and overall competitiveness in a global economy if only U.S. emissions are reduced?

While I was unable to support this particular bill, I believe it will give impetus to action to deal with global warming. I look forward to working with my colleagues in the Senate on this important issue in the hopes of finding common ground and a sensible balance between the goals of environmental protection and economic development. I encourage supporters and opponents of this bill to consider the concerns of each other and work in earnest to bridge the many differences in support of the common good.

Mrs. LINCOLN. Mr. President, although I am extremely concerned about global warming, I voted in opposition to Senator MCCAIN and Senator LIEBERMAN's Climate Stewardship Act. My chief concern was that this bill would raise gas and electric prices at a time when Arkansas' economy is struggling to recover and many residents from my state are finding it difficult to make ends meet.

I firmly believe that we have a responsibility to seek a solution to global warming. But at this time, when our economy is struggling and our federal deficit is at record levels, I can not support a measure which in all likelihood will result in higher energy prices for consumers in Arkansas and a loss of jobs in my state. If the United States stands alone on this issue, I fear other countries will be able to take businesses away from our country with the lure of weaker environmental regulations. A comprehensive global solution must be developed that includes all nations. I do believe we must continue to work toward initiatives to reduce our dependence on foreign oil and encourage cleaner sources of energy, such as the numerous biodiesel measures I have fought to include in the Energy bill.

I would like to take this opportunity to voice my opposition to the Bush administration's view on this subject. The indifferent and callous approach taken to global climate change sent a message to the world that this issue is not a priority. President Bush has stated that compelling evidence of global warming does not exist. I disagree. It is time for the administration to change its policy. It is only through cooperation with the global community that we can see these warming trends reversed. I applaud the efforts of Senators MCCAIN and LIEBERMAN in bringing this bill before the Senate when few committee chairmen showed interest in it. While I was not able to support them today for the reasons I have stated, I am eager to work with them in the future to find a solution to this important issue.

Mr. BAUCUS. Mr. President, I would like to take this opportunity to explain why I had to oppose the McCain-Lieberman Climate Stewardship Act.

First, let me say that my vote does not reflect a change my belief that global climate change is a serious problem, perhaps one of the most serious long-term environmental and public health problems facing the world over the next century. I am deeply disappointed that this administration has decided not to actively engage the world on this issue and has in fact disengaged itself from the world on global climate change. I echo the concerns of the distinguished Senator from West Virginia, Senator BYRD, that the administration's approach is short-sighted, and that it is no longer constructive to argue that human-caused emissions are not contributing to the warming of the earth. The science is just too strong to believe otherwise.

The administration's approach is frustrating because engaging the world particularly the developing world—is the only way we will ever get a handle on rising greenhouse gas emissions. Small reductions in emissions made by the U.S. will be meaningless if those reductions are made unilaterally. We must have assurances that the world is moving hand in hand with us—and is making similar sacrifices—before we handicap our own economy.

This will take time, but solving the problem of global warming is a lifetime endeavor by any estimate, for our generation, and the next. Part of this effort will include massive investments in new energy technologies, in renewables, in alternative energy, in hybrid cars and fuel cells, and in making our economy and the world's economy more energy efficient. It will likely, if and when the United States takes the leadership roll on this issue that it should, involve mandatory greenhouse gas reductions by all nations.

I would like to compliment Senators MCCAIN and LIEBERMAN for working so hard on this proposal, and for attempting to find a balanced solution. If we had more time, and more attention from the administration, I am confident that we could work together on a common sense bill that would achieve meaningful reductions in U.S. greenhouse gas emissions without threatening the U.S. economy or our global competitiveness. Such a bill would hopefully complement a meaningful and real global consensus on how to address human-caused climate change.

I voted against McCain-Lieberman today because I don't think the country is ready to take the steps outlined in their bill and because I was concerned about the impacts on my state, particularly agriculture, from increased natural gas prices. But I agree that we must move forward aggressively to put the United States and the world on track to significantly reduce global greenhouse gas emissions. It will only get harder the longer we continue to ignore the problem.

Mrs. BOXER. Mr. President, I want to thank my colleagues, Senators MCCAIN and LIEBERMAN, for all their hard work on S. 139, the Climate Stewardship Act, and express my full support for this legislation. Unfortunately, this bill did not pass the Senate. This bipartisan legislation would have been a meaningful step in the right direction toward reducing our Nation's greenhouse gas emissions and would have helped address the problem of global warming.

There is no question that climate change is one of the most serious environmental challenges facing this nation and the world. We know that climate change is real. The overwhelming weight of scientific opinion supports the idea that climate change is occurring, that it is human-induced, that it will have significant and harmful consequences, and that we need to do something about it.

California has a great deal to lose if we do not take steps to halt and reverse climate change. My State enjoys tremendous ecological diversity ranging from our cool and wet redwood forests of the North Coast, to the hot Mojave and Colorado deserts in the southeast, to the vast fertile agricultural stretches in the Central Valley. Climate change is a very real threat to those natural ecosystems.

Scientific predictions indicate that human-induced global warming may produce a 3- to 10-degree rise in temperature over the next 97 years. That may not initially sound dramatic. But it would be enough to change the timing and amount of precipitation in my State. This could, for instance, lead to decreased summer stream flows, which would intensify the already significant controversy over the allocation of water for urban, agricultural and environmental needs.

Scientists also predict that by the year 2050, California will face higher average temperatures every month of the year in every part of the State. The average temperature in June in the Sierra Nevada Mountains, for instance, could increase by 11 degrees Fahrenheit. The snowpack in the Sierra, which is a vital source of water in the State, is expected to drop by 13 feet and to have melted entirely nearly 2 months earlier than it does now. This means that the precious water on which we now rely for agriculture, drinking water, and other purposes.

In light of the threat global warming poses to my State, the Nation, and the world, I believe we must take steps to reduce our greenhouse gas emissions.

The Climate Stewardship Act would have required companies in the energy, transportation and manufacturing sectors to reduce their greenhouse gas emissions to 2000 levels by 2010. The bill would have provided tax incentives for the development of energy-efficient technology. The Climate Stewardship Act would have also encouraged the use of environmentally-friendly manufacturing technology.

This bill would have provided a reasonable approach to help us achieve the goal of reducing greenhouse gases and addressing global warming. I am extremely disappointed that the Senate did not pass this legislation.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, what is the regular order?

HEALTHY FORESTS RESTORATION ACT OF 2003

The PRESIDING OFFICER. The regular order is under the previous order the Senate will resume consideration of H.R. 1904, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 1904) to improve the capacity of the Secretary of Agriculture and the Secretary of the Interior to plan and conduct hazardous fuel reduction projects on National Forest System lands and Bureau of Land Management lands aimed at protecting communities, watersheds, and certain other at-risk lands from catastrophic wildfire, to enhance efforts to protect watersheds and address threats to forest and rangeland health, including catastrophic wildfire, across the landscape, and for other purposes.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. We need the manager of the bill on the floor for the majority. Senator BINGAMAN is ready to offer an amendment. He was here all day yesterday.

What we would like to do is have Senator BINGAMAN offer his amendment—I have not spoken to the two leaders—have that set aside temporarily and then move to the Leahy amendment. They will both be relatively short in time, and then we can arrange an appropriate time for voting on these.

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

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

Mr. FRIST. Mr. President, I ask unanimous consent that I may speak for 5 minutes as in morning business.

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

GOOD ECONOMIC NEWS

Mr. FRIST. Mr. President, as we prepare over the next several minutes to shift gears back to a very important piece of legislation, I just want to take this opportunity to comment on another issue and that is the issue of the economy. There is very good news, news that was released today, and that is that the economy grew by 7.2 percent in this last quarter—in July, August, and September. This to me is really a spectacular piece of news, especially as we know the people are following this economy very closely, especially to see what the response is to the President's tax relief package several months ago.

Mr. President, 7.2 percent is spectacular in so many ways. In fact, it has been nearly 19 years—I guess the last date was in 1984—that the economy last saw such growth. This news is not totally unexpected. For the last several days I have come to the Senate Chamber to suggest that this is the sort of figure we could expect, in large part because of the policies we enacted earlier this year, specifically the tax reductions which we knew would result in such growth. Indeed, we are now seeing that hard data of growth—7.2 percent in the last quarter.

This positive news was also reflected and added to by this morning's numbers which showed that personal consumption has increased at 6.6 percent as well. It is interesting that consumption makes up about 70 percent of our economic growth. That is, 70 percent of all of this economic growth is accounted for by consumption. If we looked at just that impact of consumption alone, we would have seen growth in our economy of 4.6 percent.

Equally if not more important for the longer term, another measure, business investment, grew by 11.1 percent. To me, this suggests we will continue to see growth well into the future as they rebuild, as they reinvest, as they retool their factories and prepare for the future.

Government spending, another component of growth which accounted for much of the growth earlier this year, was not the most important factor accounting for today's news. Indeed, Government spending only increased about 1.4 percent. I say that because a lot of people say we are just spending so much these days in terms of Government; that is why the economy is growing. But as the figures show, most of that growth is in this dramatic increase in consumption, an increase of 6.6 percent according to today's news.

Maybe lost in the big news this morning is what really matters in this growth—the jobs issue. The Department of Labor reported this morning that the initial claims for unemployment declined by 5,000 last week, affirming this downward trend in unemployment. So this morning we have good news released. The numbers released today indeed indicate a ramp up to recovery. I do expect the growth in the quarters ahead will settle down to a more realistic and sustainable level.

The point is, we are making progress. We are making real progress. The policies we put into place are beginning to take hold.

We clearly have a lot more work to do. We must do more to create jobs and bring economic recovery to all of our citizens. Thus, we really can't rest on these reports today. But at the same time, in this body we must continue to work toward reducing the cost of doing business in this country.

I immediately turn to issues we are talking about, both on the floor and off—health care, energy, class action, litigation costs. We need to remove barriers to investment and economic growth so employers can create jobs.

Our work here in the Congress must go forward with renewed dedication. Today we do see firsthand the effects of the President's economic policies. Such results should encourage all of us to work even harder to bring economic recovery to the doorstep of every American.

Mr. REID. Mr. President, I, too, am pleased at the good news that the GDP has gone up. But for the 3 million people who have lost jobs, J-O-B is more important than G-D-P. This last month, another 46,000 jobs have been lost in this country; during this administration, more than 3 million jobs. This is the only President since Herbert Hoover who has had a net loss in jobs. I think this is very unfortunate. I hope the GDP continues to grow and in the process create jobs.

Mr. President, the distinguished chairman of the committee that has jurisdiction of the bill now before the Senate and I spoke with the majority leader and minority leader a few minutes ago. It is the wish of the distinguished chairman of this committee, the manager of this bill, that when an amendment is offered—unless there is some exception—we are going to debate that and vote on it, dispose of it one way or the other.

As we spoke to the majority leader, the distinguished Senator from Mississippi and I—everyone should be—we were both in tune with the majority leader. Today's votes are going to take 20 minutes. After 20 minutes, the majority leader said he is going to ask that the clerk announce the vote. There are going to be people who miss votes, but that is their problem. All staffs who are listening to me, everyone should understand, if the majority leader follows through on what he said—and I am confident he will—a few people will miss votes. But I think fewer will miss them the second time and fewer the third time.

If we are going to finish this most important bill, we cannot have votes going 40 minutes, and that is what they were going yesterday. It is unfair to the managers of the bill, unfair to the Senate, unfair to the country.

I hope that following the vote of Senator BINGAMAN, we will stick to 20-minute votes, no matter who isn't here for the vote.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, let me compliment the distinguished acting leader. He correctly states the content of the conversation that we had which included the majority leader. The custom, in recent history anyway, has been to accumulate amendments and then have the votes stacked to occur at a certain time. That is well and good, if you know how many amendments you have. We don't have a finite list of amendments. That is one thing we need. If Senators would let us know which amendments they intend to offer, we can probably manage this bill more efficiently and save time for everybody.

We want to finish the bill tonight. That is my intention. I think that is

the intention of the acting Democratic leader as well.

The regular order is, if you have an amendment, come and offer it. We will debate it and dispose of it. We will give you a vote on it and move to table it or we will accept it.

Senator BINGAMAN is here with an amendment. It is an important amendment. I understand that he is going to seek the floor and offer that amendment. We will debate it and dispose of it.

I very much thank the two leaders for their effort to help move this bill along and ensure that the votes we have are held to a minimum amount of time. We are going to try to enforce that.

I thank everybody concerned.

Mr. REID. Mr. President, if I could say one additional thing, we have run a hotline on our side. We are very close to having a finite list of amendments. That will be offered on this side. We know the intense interest in this bill from all sides. No one exemplifies the interest in this bill more than the Senator from Oregon. Senator WYDEN has been very responsive to the bill that is before us. He has been here virtually every minute this matter has been on the floor. Like so many people who are concerned about this, he wants this bill to be completed as quickly as possible. I think with the cooperation of the Senate we can do that.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I will be very brief. I want to recognize my friend from New Mexico who has spent a lot of time on this bill and has an important amendment.

As we go to the amendments this afternoon—particularly those from my side—I think it is critically important that the bipartisan compromise which was consummated yesterday in a 97-to-1 vote on the floor of the Senate not become unraveled today. This is, in my view, the only bill that can make it to the President's desk. It is a balanced approach on management. It ensures that the public has every single opportunity to participate in the debate about forestry but, at the same time, it does not establish a constitutional right to a 5-year delay on every conceivable matter that may relate to the forestry sector.

In particular, it provides for potentially lifesaving hazardous fuel reduction projects in our national forests. We have to respond to what we have seen in California. It is a heartfelt need in that State.

If this legislation as set out in the compromise doesn't become law, what we have seen in California in the last few days, and as we saw in Oregon last year, is going to be what the country faces year after year.

I am very interested in working with our colleagues in an expeditious manner. I thank Senator COCHRAN again for all of his cooperation. Senator BINGAMAN has been waiting for a long time.

I intend to work with all of our colleagues on this amendments today. What I especially look forward to is completing the work on this legislation. It was a very exciting development to have yesterday's vote by such a large plurality. It shows what you can do if you stay at it and try to find common ground in an area that is about as contentious as you can find. As Senator COCHRAN noted, we hope colleagues will bring amendments to the floor and move expeditiously.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 2031

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

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 2031.

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

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

The amendment is as follows:

(Purpose: To provide the Secretary of Agriculture with the authority to borrow funds from the Treasury to pay for firefighting costs that exceed funds available and to provide funding to conduct hazardous fuels reduction and burned area restoration projects on non-Federal lands in and around communities)

At the appropriate place, insert the following two new sections:

SEC. ___. BORROWING AUTHORITY FOR FIRE SUPPRESSION.

(a) IN GENERAL.—The Secretary of the Treasury shall, upon the request of the Secretary of Agriculture, make available to the Secretary of Agriculture, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary in each fiscal year to carry out fire suppression activities. The Secretary of Agriculture may make such request only if fire suppression costs exceed the amount of funding available to the Forest Service for fire suppression in a fiscal year.

(b) AUDIT.—Not later than 180 days after the Secretary of Agriculture exercises the authority provided by this section, the Inspector General of the Department of Agriculture shall submit to the Secretary and to the Congress an audit of expenditures of funds provided under this section. Upon a determination by the Inspector General that specific amounts of such funds were used for purposes other than fire suppression, or upon a determination that specific expenditures of such funds were both unreasonable and excessive, the Secretary, not later than 30 days after receiving the audit of the Inspector General, shall reimburse the Treasury, out of unobligated balances for the Forest Service for the fiscal year in which the funds were provided, for the amounts so identified by the Inspector General.

SEC. ___. COMMUNITY PROTECTION AND BURNED AREA RESTORATION.

(a) IN GENERAL.—During fiscal years 2004 through 2008, the Secretaries shall carry out a joint program to reduce the risk of wildfire to structures and restore burned areas on non-Federal lands, including county-owned lands, tribal lands, nonindustrial private lands, and State lands, using the authorities available pursuant to this section, the National Fire Plan and the Emergency Watershed Protection program.

(b) COST SHARE GRANTS.—In implementing this section, the Secretaries may make cost-share grants to Indian tribes, local fire districts, municipalities, homeowner associations, and counties, to remove, transport, and dispose of hazardous fuels around homes and property to—

(1) prevent structural damage as a result of wildfire, or

(2) to restore or rehabilitate burned areas on non-Federal lands.

(c) NON-FEDERAL CONTRIBUTION.—The non-Federal contribution may be in the form of cash or in-kind contribution.

(d) APPROPRIATION AND AVAILABILITY OF FUNDS.—The Secretary of Treasury shall make available to the Secretaries out of any money in the Treasury not otherwise appropriated $100,000,000 for each of fiscal years 2004 through 2008 to carry out this section, which shall remain available until expended.

Mr. BINGAMAN. Mr. President, although I interrupted the clerk before the clerk was able to read the entire amendment, I think probably the best way for me to start my description of the amendment is to go through and read some portions of it so Members know what I am proposing.

There are two parts to the amendment. It adds two new sections to the bill in order to provide meaningful new authority and actual resources to protect communities at risk from unnaturally intense catastrophic wildfire.

We had a little bit of debate yesterday—and we will again today—about what exactly has been the problem and what the policy mistakes and failures are here in Washington that have contributed to this problem.

I would suggest to you that the major failure which has occurred here in Washington that has contributed to the problem is the one I am trying to address with this amendment; that is, inadequate funding with which to proceed not only to fight fires but to do the necessary thinning and the necessary restoration activities that we are all in agreement need to be made.

The first section that this amendment would add reads as follows: I will read through the most significant parts of it. It says:

The Secretary of the Treasury shall, upon the request of the Secretary of Agriculture—

And, of course, that is where the Forest Service is located, in the Department of Agriculture—

make available to the Secretary of Agriculture, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary in each fiscal year to carry out fire suppression activities. The Secretary of Agriculture may make such request only if fire suppression costs exceed the amount of funding available to the Forest Service for fire suppression in a fiscal year.

What we are saying is we are going to do our best here to appropriate money for fire suppression; that is, firefighting activities. But to the extent that we fall short, the Secretary of Agriculture can go to the Department of the Treasury and get funds with which to do that firefighting.

We have a second part of this section. It is an audit provision. It says:

Not later than 180 days after the Secretary of Agriculture exercises the authority provided by this section, the Inspector General of the Department of Agriculture shall submit to the Secretary and to the Congress an audit of expenditures of funds provided under this section. Upon a determination by the Inspector General that specific amounts of such funds were used for purposes other than fire suppression, or upon a determination that specific expenditures of such funds were both unreasonable and excessive, the Secretary, not later than 30 days after receiving the audit of the Inspector General, shall reimburse the Treasury, out of unobligated balances for the Forest Service for the fiscal year in which the fund were provided. . . .

Essentially, we are doing an audit. If there is any misuse of funds, if they are used for anything other than fire suppression, then the Forest Service in the Department of Agriculture shall essentially take those funds out of their hide and deal with the situation that way.

That is the first part of the amendment.

The second part of the amendment that I am offering is entitled, ''Community Protection And Burned Area Restoration.'' It says, in general:

During fiscal years 2004 through 2008, the Secretaries [the Secretary of Agriculture who has jurisdiction over the Forest Service and the Secretary of the Interior] shall carry out a joint program to reduce the risk of wildfire to structures and restore burned areas on non-Federal lands, including country-owned lands, tribal lands, nonindustrial private lands, and State lands, using the authorities available pursuant to this section, the National Fire Plan and the Emergency Watershed Protection Program.

We are talking about funds to do restoration work on land that the Federal Government doesn't own.

The second part of this talks about cost share grants. It says:

In implementing this section, the Secretaries may make cost-share grants to Indian tribes, local fire districts, municipalities, homeowner associations, and counties, to remove, transport, and dispose of hazardous fuels around homes and property to—

(1) prevent structural damage as a result of wildfire, or

(2) to restore or rehabilitate burned areas on non-Federal lands.

This is still on non-Federal lands. It says the non-Federal contribution may be in the form of cash or in-kind contribution, and then it authorizes the appropriation of $100 million in each of those years, 2004 through 2008, to do their work, to make these grants, to help these non-Federal agencies and entities deal with the problems.

Much of the fire we have seen on television in recent days is, in fact, not on Federal land. They are desperately in need of assistance from the Federal Government. This is assistance that would be of that type and should be in place every year.

I will go through a more complete description of the amendment. The amendment does add two new sections to the bill to provide meaningful new authority and actual resources to protect communities at risk from unnaturally intense catastrophic wildfire. If we are not going to add real resources as part of this bill, we are, in fact, making a false promise to the American people. We can give all the speeches about how we are going to pass the bill, the President is going to sign it, everything is going to be rosy, the clouds are going to clear, and we are going to be in the sunny uplands—the broad sunny uplands, is the way Churchill said it.

The reality is, if we do not provide resources to help, it is a false promise. This amendment will try to help provide those resources.

The first part of the amendment allows the Forest Service to borrow funds from the Treasury to pay for firefighting during the years in which available funds do not cover costs. Someone might say that is a pretty rare occasion, a year when the funds available do not cover the cost. Let me cite the last 3 years: 2001, 2002, and 2003, Forest Service firefighting funding.

We have three columns on my chart: The President's request, what was actually appropriated, and what was actually spent, what we wound up spending out of Federal Government funds to deal with this problem.

In 2001, the President requested the Congress appropriate the budget he sent us of $291 million. Fortunately, through the good offices of Senator COCHRAN and other Members, we did better than that. I very much appreciate that. Senator BYRD deserves credit, as do other Members on the Democratic side. We appropriated $469 million—not quite twice what the President asked for, but it is getting close. The amount that was actually needed was $683 million. So we missed it by a little—we were more than $200 million short of what the Forest Service actually had to spend for firefighting in that year.

In 2002, the President asked for more. He said $291 million was not enough, how about $325 million. This is for the whole country. He said, $325 million ought to be plenty for the whole country. In fact, we appropriated a little less than he asked for, $321 million. What was actually needed was $1.28 billion. So we missed it by not quite $1 billion. That is $1 billion that was spent by the Forest Service of funds not appropriated to them for this firefighting activity.

In 2003, which we just finished, the President said we need $421 million. The Appropriations Committee said no; let's make it $418 million. We spent over $1 billion—$1.02 billion.

There is a shortfall each year. It is a question of whether the shortfall is $1 billion, a couple hundred million, but every year we have done this. At least since this President has been in town, we have seen a significant shortfall. What I am trying to do is begin to address that problem.

The real problem that needs to be addressed with respect to the Forest Service situation is the practice of borrowing. Every time we do this, every time we give them much less money that turns out to be needed for firefighting, they have no choice but to take money from other accounts in order to deal with that problem. They do that.

Let me point out for the year 2002, the year we had the total amount transferred out of other accounts to fight fires was $1.02 billion. What did that come from? It came from different accounts, but a big chunk of it came out of accounts that are the accounts we are saying in the Senate are our highest priority. We want money for forest restoration, we want money for thinning of forests, for getting the underbrush out of the way so we do not have the fires. In fact, that funding is not available to the Forest Service because they are too busy using it to fight fires rather than to get ahead of the problem and deal with that.

There are many examples I will cite of the problem we are dealing with. In my home State of New Mexico, we have a publication, a 1-page sheet the Forest Service issued called ''Effects of Transferring Money to Fire Suppression.'' That is what this chart is reflecting. All of the money on the chart was transferred to fire suppression, to firefighting. This was issued in April by the Forest Service with regard to New Mexico. It says the 2002 fire season was intense. The cost of suppressing these fires was nearly $1.3 billion. The Forest Service transferred $1 billion from other discretionary and mandatory accounts to defray fire suppression costs. Over $55 million was borrowed from national forests in Arizona and New Mexico. Some critical projects in New Mexico were postponed for up to 1 year as a result of fire borrowing. These included wildland/urban interface fuels projects, in the Carson National Forest, in the Gila National Forest, in the Lincoln National Forest, in the Santa Fe National Forest; a contract for construction of a fuel break around the community at risk in the Cibola National Forest was postponed for 6 months.

What they have to do when they shift the money out of these accounts, they have to put that forest thinning or forest restoration project on hold because they cannot afford it. They are too busy fighting fires. We need the money to fight fires. We have caused them to do that every year.

A similar problem exists in many other States. I will indicate a few of those, States that have a great interest in this legislation. I have a document called ''Summary of Effects of Transferring Money to Fire Suppression.'' As a result of recent fire transfers in which money has been transferred from various Forest Service accounts to pay for emergency wildfire suppression, critical Forest Service projects were postponed or canceled throughout the West. There are literally hundreds of examples of unfortunate consequences

that resulted, including canceled prescribed burns, thinning projects, timber sales, evasive weed control programs, and emergency burned area rehabilitation projects.

The consequences are felt beyond dangerous forest conditions, and they range from the postponement of dam safety inspection to the inability to finalize a tribal energy development agreement.

I have already given examples from my State of New Mexico. In Idaho, spring burning projects in the Nez Perce National Forest were postponed.

A brush-cutting project in Clearwater National Forest could not be completed.

In Montana, a hazardous fuels reduction project in the wildland/urban interface of the Bitter Root National Forest was postponed and slated for possible cancellation.

In Oregon, watershed assessments and restoration activities associated with the Biscuit Fire were delayed. Numerous timber sales and wildland/urban interface thinning work was postponed.

In Washington, white pine blister rust thinning and pruning projects were deferred.

In California, nearly $6 million was transferred out of forest health vegetation management and ecological restoration accounts in 2003, resulting in having to withdraw stewardship contracts for wildland/urban interface fuels reduction projects and the failure to complete prescribed burns.

So this issue of borrowing is serious. It is one that we need to address as part of this bill.

I commend Senator BURNS and Senator DORGAN, who are the chairman and ranking member of the Interior Appropriations Subcommittee, for their efforts to secure $400 million to repay the accounts from which the agencies have borrowed to fight fires.

Now, what happens each year, when we, in fact, give the Forest Service less money for firefighting than they need, we have to come back the next year in supplemental appropriations and ask for funds with which to pay back those accounts so they can hopefully get back to those projects they had to postpone.

My understanding is that this amount, this $400 million, was included in the conference report that was agreed upon Monday night. I also appreciate Senator BURNS' comments that the $400 million is not the final word. I believe he said this is especially true since the Forest Service alone actually borrowed $695 million from other programs so far in this last year.

However, this year-to-year approach to the fire-borrowing problem is not an adequate solution. Even when our Senate appropriations colleagues do everything they can to make sure these accounts are repaid every year, on-the-ground restoration work is delayed—it is substantially delayed—while the Forest Service waits for Congress to pass a supplemental appropriations bill to once again give them the money they had originally been given but could not use for that purpose. They had to use it for firefighting.

The events that occurred earlier this year are a devastating example of that. I have sort of gone through that on this chart. The Senate approved $289 million in extra wildfire funding in the fiscal year 2003 supplemental spending bill. However, the House dropped it.

On July 28, Senator BURNS correctly stated on the floor:

> . . . without work in the House to help get these funds, we will be facing an even more drastic situation.

Nonetheless, the bill that was sent to the President did not contain these urgently needed funds.

In my State of New Mexico, some critical Forest Service hazardous fuels reduction projects were postponed for up to a year, last year, as a result of borrowing to fight fires. These include projects in all these national forests I have mentioned.

In February 2003, the Missoulian, which I understand is a Montana newspaper—I assume in Missoula—reported that because of fire borrowing, Montana and northern Idaho forests ''lost about $80 million, including $25 million intended for the repair and replanting of forests burned two years earlier on the Bitterroot National Forest.''

Moreover, as evidenced last year by a $200 million shortfall, the supplemental appropriations often are not sufficient to provide full repayment to the programs that have been raided.

So what you have, as we spend what we have on fighting fires—and there is no choice about that—the Forest Service gives up funds that were intended for other purposes. In many cases, this restoration work, that we all are now saying is so important—and I certainly agree is so important—then we never get around to giving them the full money. We never get around to replacing all the funds that we have taken.

Mr. President, let me talk a little about the second part of my amendment. The second part of the amendment provides $100 million annually to reduce fire risk and restore burned areas on non-Federal lands.

The Forest Service's own researchers state that 77 percent of all high-risk areas are on non-Federal lands. In addition, the National Academy of Public Administration, in their 2002 report, found that 47 percent of acres burned each year are on non-Federal lands. They concluded that decreasing the fuel on all owners' lands is needed to address the large scope of the fire hazard problem.

So the second part of the amendment I am offering provides real assistance to States and to local partners to conduct projects that will complement the work we are trying to do in national forests and on public lands.

If we send a bill to the President which just deals with the issue on Federal lands, and then declare victory, the truth is, we will not have dealt with the biggest part of the problem. Mr. President, 77 percent of all high-risk areas are not on Federal lands; they are on land owned by someone else. This second part of my amendment tries to provide some level of Federal support to those other entities to do the clearing they need to do.

Many communities that are adjacent to national forests are doing their part to better protect themselves from the risk of these catastrophic wildfires.

For example, last year—this, again, is an example from my home State—the village council in Ruidoso, NM, adopted new laws that set fire-resistant construction and landscaping standards and established forest health and fire danger reduction requirements. However, even with these new requirements, just a few months ago homeowners in Ruidoso received notices from insurance companies warning them to thin the trees on their lots or risk losing their coverage altogether.

Clearly, we need to assist these communities and these homeowners to quickly accomplish that needed work. We need to attack the problem in a comprehensive way. If we reduce fuels on public lands, Federal lands, without also treating the adjacent non-Federal lands, we will not adequately protect our communities.

I think anyone who has watched television for the last several days has to believe that is the case. Obviously, many of these subdivisions are not on Federal land. They are, in some cases, adjacent to Federal land, but much of the thinning that has to occur, in order to protect communities, is not thinning on Federal lands.

A lack of adequate funding for forest health projects continues to constrain our efforts to actively manage the forests to reduce the threat of fire and insects and disease.

Three years ago, Congress found that funding was the main obstacle to improving forest health and reducing the threat of unnaturally intense catastrophic fire.

Specifically, we created the National Fire Plan. The National Fire Plan talked about $1.6 billion in new funding for programs to improve forest health conditions. At that time, we all agreed on the need to sustain a commitment to the National Fire Plan over a long enough period to make a difference. We were talking about perhaps 15 years.

That meant, at a minimum, sustaining the fiscal year 2001 funding levels for all components of the fire plan. Unfortunately, we have not followed through. The administration has systematically and continually proposed major cuts from that level. In some cases, they have proposed zeroing out critical programs within the National Fire Plan, including this burned area, restoration, and rehabilitation, the economic action programs, the community and private fire assistance.

The administration proposed these extreme cuts and the elimination of

funding, notwithstanding the clearly identified demand for these programs. We hear that demand from communities in all of our States where forest fires have burned in excess in recent years.

This provision, this amendment that I am offering, will also provide actual dollars to restore the burned areas on non-Federal lands. After a fire is extinguished, communities often face equally hazardous threats from landslides and flooding. There has been very little attention to that as yet because the fires continue to burn in California. But once those fires are out, we will start hearing about flooding and landslides. There needs to be assistance to deal with that as well.

In creating the national parklands 3 years ago, Congress provided $142 million for burned area restoration and rehabilitation. Nonetheless, in its fiscal year 2002 budget request, the administration requested $3 million—not $142 million—for burned area restoration and rehabilitation. In fiscal year 2004, they requested no funds for this account.

The amendment I am offering will provide funds for urgent community needs for activities such as soil stabilization after fires occur. The question we are faced with today is: Are we going to legislate solutions that will really make a difference on the ground?

I very much appreciate the provision in the Cochran amendment that authorizes $760 million, but as we all know, authorizing a certain level of funding in the Congress is not an adequate solution. In fact, agency officials tell me under current law there is no ceiling on the amount of money that could be appropriated to address this problem. Providing actual dollars, as my amendment does, clearly is part of the solution.

I urge my colleagues to support both sections of this amendment. This is an important issue. I believe that if we pass this legislation without dealing with both of these issues—the borrowing problem and the problem of not providing funds for work on non-Federal lands—we will be falling far short of where we should be.

I urge my colleagues to support the amendment.

I ask unanimous consent that Senator REID of Nevada be added as a cosponsor of the amendment.

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

Mr. BINGAMAN. I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, after looking at this amendment, I see it clearly increases mandatory spending and, if adopted, would cause the underlying bill to exceed the committee's section 302(a) allocation. Therefore, I raise a point of order against the amendment pursuant to section 302(f) of the Congressional Budget Act of 1974.

Mr. REID. Mr. President, I ask that the applicable sections of the Budget Act be waived.

The PRESIDING OFFICER. Is the Senator making a motion?

Mr. REID. I am.

Mr. COCHRAN. I ask for the yeas and nays on that.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, let me speak very briefly to the amendment of the Senator from New Mexico. I will be very brief. It is a debatable motion.

Mr. WYDEN. Parliamentary inquiry.

The PRESIDING OFFICER. The Senator from Idaho has the floor. Will the Senator yield for an inquiry?

Mr. CRAIG. For a parliamentary inquiry only.

Mr. WYDEN. I ask unanimous consent to be recognized very briefly after Senator CRAIG before we go to a vote.

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

Mr. CRAIG. Mr. President, I will be brief. The Senator from New Mexico makes eminently good sense. There is no question that we have a funding problem. I have spoken with the Assistant Secretary and the Chief. I chair the Forestry Subcommittee and the committee on which the Senator is the ranking member. What I am suggesting we do—because the motion that has just been made in this budget point of order is an appropriate one—is to reexamine the whole funding mechanism of the Forest Service. Your figures are accurate. The kinds of programs that go unfunded now, that would help to begin to correct our forest health problem that is in part driving these fires, is a very real question.

As you know, the Forest Service used to have a cash cow. We called it logging. Those revenues flowed in, and money moved around from different accounts. You could borrow, as we did during fire seasons, and they got replenished. So you raise a very important point. But it is a point that we need to totally reexamine. To actually allow the Forest Service to borrow from the Treasury without going through the appropriating process, in my opinion, doesn't really give us the kind of fiscal control and responsibility we all ought to have.

Certainly as ranking member of the authorizing committee and as a member of the authorizing committee myself, you and I, on an annual basis, ought to aggressively look at this budget, knowing that we have fallen far short, and deal with it in an appropriate way. But we have not done that.

You recognized, appropriately, the Senator from Montana, who chairs the Subcommittee on Interior that funds this, and others. We ought to get at it in an aggressive way. I have already tasked the Assistant Secretary and the Chief to look at a variety of mechanisms that fit the funding shortfalls that we need to create the new mechanisms necessary. But I don't believe that direct ability to borrow from the U.S. Treasury by an agency itself, without the authority of the authorizing committee and the appropriators, is an approach we ought to undertake at this time. It is, however, an issue whose time has come, and we ought to deal with it in the appropriate fashion.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, I have already indicated I want to make sure the compromise we voted on yesterday does not unravel. I will support the amendment of the Senator from New Mexico because I believe it will allow us to go forward and make sure the work that the bipartisan group did is not in vain.

The bottom line is very simple: To get the money to put the fires out, fire suppression, you have to go out and steal from every single Forest Service program around and then hope that at some point down the road you are going to get repaid. It makes a mockery out of any effort to responsibly budget in this area. In our part of the world, we see, in effect, funds robbed from nonprofit organizations such as Wallowa Resources, a small nonprofit in eastern Oregon.

My only concern about putting this off is that if we don't deal with this issue now, the question is, When will we deal with it? This is an extraordinarily important question. It will not, in my view, unravel the compromise which I will fight like crazy to protect, despite the fact that I think what the Senator from Mississippi and the Senator from Idaho have said has considerable validity as well.

I hope we will support this amendment and then figure out in the course of the afternoon some way in which we can find some common ground on this issue. Today the process of just stealing from every program around to fight fires really becomes almost farcical. The Bingaman amendment responds to that. I hope my colleagues will support it.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me briefly respond. I know the point of order has been made. A motion has been made to waive the Budget Act.

First, I ask unanimous consent to add Senator CANTWELL as a cosponsor of the amendment.

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

Mr. BINGAMAN. I appreciate the good intent of my friend from Idaho in saying that this is something on which we ought to start working or on which we ought to work. The reality is, this is our best chance. This legislation is likely to go to the President, likely to be signed into law in some form. If we don't take the opportunity this legislation presents to fix this problem, it

will remain unfixed. We can have all of the assurances we want from the administration, but the reality is, the administration is under very severe budgetary restraints as it goes into this next year. We in Congress are under very severe budgetary restraints. Everyone around this place is going to be looking for ways to save money. That means that when it comes to actually providing the resources to fight fires, the course of least resistance is to do what we have always been doing, what President Bush has done in the last several years: Ask for way too little money for firefighting. And then, when it turns out that you need an extra billion dollars, tell the Forest Service to take it out of their other accounts.

That is exactly what we have done in the last several years. We are getting ready to do that again. I, for one, am not persuaded that the concern the Senator from Idaho has expressed here is shared by all in the administration. I am confident he believes the issue is one that should be addressed. But each of us, as we know, has different priorities for what needs to be addressed. I would say this is a fairly low priority for the people putting the administration's budget proposal together, which we are going to receive this next January.

I very much think this issue needs to be addressed as part of this bill. Again, as I said a couple of times in my earlier statement, if we pass this bill without addressing the resource problem and the borrowing problem I am trying to get at in my amendment, we can give all the speeches we want, issue all the press releases, have all the press conferences we want saying what a great thing we have done for the American people, but 77 percent of the areas at highest risk are not going to have any Federal resources available to them.

In addition to that, the thinning activity, much of the forest restoration activity we all say we favor, is not going to be funded. So we need to deal with this as part of this bill.

Frankly, I am sorry to see the decision has been made to try to deal with this as a procedural vote. I think this is an important enough issue that we ought to have an up-or-down vote on it and let people express their point of view. When you raise a Budget Act point of order, basically what you are saying is this is not a big enough priority to justify changing the way the budget now sits. If that is the conclusion of most Members of the Senate, then I think shame on us. If we have the fires going in California, we have all the other problems we all talk about, and we are not willing to put that to the front of the priority list, then I think shame on us.

I very much prefer to see us have an up-or-down vote on this amendment. Obviously, that is not possible now with the Budget Act point of order and the motion to waive the Budget Act.

I will yield the floor, but I urge my colleagues to support the motion to waive the Budget Act.

The PRESIDING OFFICER. The question is on agreeing to the motion. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. NELSON) is absent attending a family funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea''.

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

The yeas and nays resulted—yeas 36, nays 60, as follows:

[Rollcall Vote No. 421 Leg.]

YEAS—36

Akaka	Durbin	Leahy
Baucus	Feinstein	Levin
Bayh	Graham (FL)	Mikulski
Biden	Harkin	Murray
Bingaman	Hollings	Nelson (FL)
Boxer	Inouye	Reed
Cantwell	Jeffords	Reid
Clinton	Johnson	Rockefeller
Corzine	Kennedy	Sarbanes
Daschle	Kohl	Schumer
Dayton	Landrieu	Stabenow
Dodd	Lautenberg	Wyden

NAYS—60

Alexander	Crapo	Lugar
Allard	DeWine	McCain
Allen	Dole	McConnell
Bennett	Domenici	Miller
Bond	Dorgan	Murkowski
Breaux	Ensign	Nickles
Brownback	Enzi	Pryor
Bunning	Feingold	Roberts
Burns	Fitzgerald	Santorum
Byrd	Frist	Sessions
Campbell	Graham (SC)	Shelby
Carper	Grassley	Smith
Chafee	Gregg	Snowe
Chambliss	Hagel	Specter
Cochran	Hatch	Stevens
Coleman	Hutchison	Sununu
Collins	Inhofe	Talent
Conrad	Kyl	Thomas
Cornyn	Lincoln	Voinovich
Craig	Lott	Warner

NOT VOTING—4

Edwards	Lieberman
Kerry	Nelson (NE)

The PRESIDING OFFICER. On this vote, the yeas are 36, the are nays 60. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected. The point of order is sustained and the amendment falls.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, I would like to ask how long that vote took.

The PRESIDING OFFICER. Twenty-nine minutes.

Mr. REID. Mr. President, I don't know what more we can do here. I want everyone to know we are doing our best over here to move these amendments. We have a lot of them over here. We are trying to move them. We can't do it if we waste a lot of time on these votes. I want everyone within the sound of my voice to know that we cannot finish the bill if these votes take 30 or 40 minutes. Everyone should understand that.

There are going to be people coming and asking: When can we leave? I have a plane. Are we going to have votes tomorrow?

We will have votes for days, the way this is going. We cannot finish this bill tonight with these votes taking as long as they are taking. I am disappointed, frankly, that the majority leader wasn't here to terminate the first vote. If we limit votes to 20 minutes, people would stop straggling in. It is not fair to the Senate.

Mr. COCHRAN. Mr. President, the Senator from Nevada is exactly correct in the fact that we are going to have to have more cooperation to move this bill along. We agreed before this vote that we could cut off votes after 20 minutes. We had the endorsement of that by the majority leader. But because Senators were on their way to vote and people told us they were on their way to vote, the vote dragged out longer than that.

I hope Senators will cooperate with the managers of the bill and leadership and let's get here and vote when the buzzer sounds and not wait until the last minute. These votes are going to be cut short. I hope everyone will cooperate with us.

Mr. REID. Mr. President, with the understanding of the manger of this bill, I ask unanimous consent that the Senator from Montana, Mr. BAUCUS, be recognized for 15 minutes to speak on the bill and whatever else he wishes to speak on; further, the Senator from New Mexico, Mr. BINGAMAN, who still has a number of other amendments that he wishes to be offered be recognized to offer the next amendment.

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

The Senator from Montana.

Mr. BAUCUS. Mr. President, first, I thank my friend, the Senator from Nevada, and the managers of the bill for their accommodation.

It is vital that we pass this legislation this year.

Montana recently suffered from devastating wildfires, as have other western States. As the Senator from California, Senator FEINSTEIN pointed out repeatedly, the current news from Southern California is a painful reminder of a very large problem.

Across this country forests are threatened by insects, disease and the build up of hazardous fuels. The impacts of these conditions are real. And they play out year after year, fueling large fires that destroy lives and homes, diminish water and air quality, and destroy wildlilfe habitat.

The cost of containing these large fires is staggering, straining State and Federal budgets and devastating local economies.

There are many reasons for the situation we are in today, ranging from weather and natural cycles to urban sprawl and the fire suppression policies of the past.

We can't do anything to change the weather and we certainly can't change the past, but we can use today's knowledge and the wisdom of our experience to do better.

Neglecting the problem is not the answer; nor is more talk. We have to try a new approach. The compromise healthy forests bill is not perfect, but I believe it offers options to more efficiently address our forest health problems and the consequences they have on real people. I also believe this bill will help put people in rural communities back to work in the woods, especially in my State of Montana.

I have said over and over again that a healthy forests bill must first allow federal agencies and communities to address dangerous fuel loadings on a local level, quickly and efficiently. Second, it must support small, independent mills and put local people to work in the forests and the mills. Third, it must promote and protect citizen involvement and be fair to the principles underlying the federal judicial system. And finally, it must protect and help restore special and sensitive places like wilderness areas.

I think we have achieved that with this legislation.

People impacted by forest health problems don't belong to just one political party.

This is a problem that requires all sides to work together. I would like to commend the tremendous efforts of my Democratic and Republican colleagues, including Senators FEINSTEIN, WYDEN, COCHRAN, CRAIG, CRAPO, MCCAIN and LINCOLN, who along with several other Senators and myself worked very had to put together the compromise on healthy forests that I am proud to support and co-sponsor.

This was no small feat; this bill touches on some very divisive issues that I wasn't sure we would ever find a way to solve. But, we did and that is why we are here today having a serious conversation about actually passing a bill.

I believe the compromise healthy forest bill is responsive to our need to more efficiently reduce the threat of wildfire while ensuring adequate environmental protections, citizen participation, and an independent judiciary.

There is nothing in this legislation that undermines existing environmental laws, or a person's ability to be involved in decisions that impact their public lands. In fact, this legislation requires citizen collaboration beyond existing law—current law does not require the secretary to encourage citizen collaboration or to hold a public meeting on proposed projects.

What I believe this legislation does do is help keep the process open and honest. I ask unanimous consent that an article for today's Missoulian newspaper, from Missoula, MT, be printed in the RECORD.

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

GROUPS FILE LAWSUIT OVER KOOTENAI FOREST TIMBER SALE

(By Sherry Devlin)

HARVEST THREATENS WATER, ENVIRONMENTALISTS ARGUE

Environmentalists filed another lawsuit against the Kootenai National Forest on Tuesday, hoping to stop a 12.5 million-board-foot timber sale they believe would pollute an already degraded stream.

At almost the same time, not knowing a lawsuit had been filed, the Forest Service awarded a contract for the Garver timber sale to Riley Creek Lumber Co.—which bid $1.3 million over the advertised price of $230,000.

Filed by Alliance for the Wild Rockies and The Lands Council, the complaint seeks to stop the Garver sale on grounds it violates the Clean Water Act and destroys habitat for species that depend on old-growth trees.

The groups used a similar lawsuit to stop the Lolo National Forest from logging in areas burned by wildfires during the summer of 2000.

In that case, environmentalists successfully argued that the logging would degrade water quality in streams identified as ''water-quality impaired'' by the state of Montana.

Until the state of Montana sets ''total maximum daily load'' figures for the streams, the Forest Service cannot adequately judge how much additional sediment the streams can handle, the lawsuit said.

Federal District Judge Don Molloy agreed, shutting down all post-burn logging until TMDL figures are available.

In the Garver sale, the at-risk stream is the West Fork of the Yaak River, which is also listed as water-quality impaired.

Logging caused the West Fork's problems, and more logging will make them worse, said Michael Garrity, executive director of Alliance for the Wild Rockies.

''It is exactly the same issue as in the Lolo,'' Garrity said. ''Instead of wasting the court's time and money, the Kootenai should just follow the judge's ruling.''

(The Forest Service has appealed Molloy's decision to the 9th Circuit Court of Appeals.)

At Kootenai forest headquarters, Supervisor Bob Castaneda did not know a lawsuit had been filed until contacted by the Missoulian. He quickly and vigorously defended his staff, which had just awarded the timber sale to Riley Creek Lumber.

''Ever since the Lolo decision, our approach has been to have a good analysis of the watershed and to use best management practices,'' Castaneda said. ''We think through some restoration efforts and by following BMPs, we can improve the current watershed condition.''

Would the logging pollute the West Fork of the Yaak? ''No,'' Castaneda said. ''I just don't agree with their statement. We worked very closely with the Yaak Valley Forest Council and used a lot of their recommendations in making the decision. They worked closely with us.''

The Kootenai forest did a number of water-quality surveys in the Yaak this past summer, he said, and the preliminary results are encouraging.

''They're telling us the water quality is much better than what the state suggested,'' Castaneda said.

He also rebutted the lawsuit's contention that the timber sale would cut into the Kootenai forest's declining base of old-growth trees.

The forest is, in fact, staying out of designated old-growth areas, Castaneda said.

In the lawsuit, the Alliance and the Lands Council cite the Forest Service's own environmental impact statement, which said the Garver sale would likely have adverse affects on every sensitive old-growth species in the Kootenai: fishers, wolverines, flammulated owls, black-backed woodpeckers, northern goshawks and others.

''It is time for the Forest Service and the Bush administration to start cleaning up our streams and protecting our wildlife instead of subsidizing timber corporations and breaking the law,'' Garrity said.

News of the lawsuit was a double-blow to Jim Hurst, co-owner of Owens and Hurst Lumber Co. in Eureka. He, too, had bid on the Garver sale but lost out to the north Idaho mill.

Now, he said, the lawsuit has the potential to make things even worse for lumbermen.

''It's just more of the same,'' Hurst said. ''Nothing coming from the environmental community would surprise me anymore.''

Another lawsuit filed earlier this year by The Ecology Center stopped several timber sales on the Kootenai forest, some of which were bound for Hurst's Eureka mill.

The Kootenai's timber sale program has decreased by 75 percent since 1989.

Mr. BAUCUS. Mr. President, this article demonstrates why the provisions of this bill would be beneficial to moving fuel reduction projects forward.

This article describes a lawsuit filed to stop a timber sale after the timber sale had been awarded. As I understand the situation, the lawsuit was based on an issue that had not been raised at any time during the environmental review process or the administrative appeals process. It was sprung at the last minute just to delay and stop the sale. It was sprung even after the Forest Service was thanked by other groups for doing a better job to address old growth issues that had been raised earlier.

Now, I know that this article is about a timber sale and not a hazardous fuels project, but the same concerns apply. If someone has particular concerns about the impact of a proposed project, the compromise healthy forests bill very appropriately requires that they raise that issue during the administrative review process before they can file a lawsuit.

No one is saying the public's concerns are not valid and that they should not have every right to raise those concerns, and appeal projects that they do not feel address their concerns. But, they should not be allowed to use the process simply to stop and delay. That's only fair. Particularly when we are talking about projects like those contemplated by the compromise healthy forests bill, which are projects intended to reduce the risks of dangerous fires. The compromise Healthy Forests bill simply requires citizens to be thoughtful and thorough when they oppose projects.

This in turn helps the agencies be more efficient, because they can do a better job of addressing controversial

issues—like old growth—earlier in the process, without wondering what might be coming at them from left field. This is a good example of why the compromise bill will have real, positive impacts on the ground.

Keeping Montana's small timber mills and forest workers in business is a top priority for me because of their importance to rural economies. But, the fact, is we also need this industry to accomplish the hazardous fuel reduction work on the ground.

I worked in committee to ensure this legislation provides support for building a thriving forest industry in rural communities. In particular, I worked with Senators CRAPO and LEAHY to develop the Rural Community Forestry Enterprise Program, included in Title VII of the bill. The Rural Community Forestry Enterprise Program, is intended to give a much needed economic boost to small businesses and small mills in rural communities, particularly those in Montana that have been hit hard in recent years.

The Program would establish forest enterprise centers around the country, including one in Montana, that would do the following: Ensure that the Small Business Administration timber set-aside program works better for Montana and other small mills; enhance technical and business management skills training; organize cooperatives, marketing programs, and worker skill pools; facilitate technology transfer for processing small diameter trees and brush into useful products; and enhance the rural forest business infrastructure needed for a fuel reduction program on both private and public lands.

Keeping small mills in Montana in operation is a top priority for me. These businesses are vitally important to rural economies, providing good-paying jobs and revenue to local communities. I support this legislation because I believe we do have a serious problem with hazardous fuel build-up in our National Forests that we must solve sooner rather than later.

I also believe the bi-partisan Healthy Forests bill has the elements necessary to allow local citizens and leaders to make wise decisions that address this problem efficiently and effectively. We need to pass this bill.

This is not a problem that we will solve overnight, or even in the next few years. But, we have to start somewhere, and this is a great place to start.

I am proud to support this compromise. I ask all of my colleagues to take a bold step and support it as well.

Mr. COCHRAN. Mr. President, I ask unanimous consent that, notwithstanding the order previously entered, the distinguished Senator from Maine be recognized up to 10 minutes.

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

The Senator from Maine, Ms. COLLINS.

Ms. COLLINS. Mr. President, I thank the Senator from Mississippi for his courtesy and also for the extraordinary job he has done in bringing together people of diverse views on this critical issue of forest management. I also thank the Senator from New Mexico for agreeing to let me deliver my comments before he offers his amendment.

Responsible management of our Nation's forests is vital to preventing the highly destructive forest fires that we are seeing plaguing the West and also to protecting our ecosystems. I am very pleased the Senate is moving forward with this important issue which I know matters greatly to the Presiding Officer as well.

No discussion of a responsible forest management system would be complete, however, without addressing another threat to our Nation's working forests and open spaces; that is, suburban sprawl. Sprawl threatens our environment and our quality of life. It destroys ecosystems and increases the risks of flooding and other environmental hazards. It burns the infrastructure of the affected communities, increases traffic on neighborhood streets, and wastes taxpayer money. It leads to the fragmentation of wood lots, reducing the economic viability of the remaining working forests.

Sprawl occurs because the immediate economic value of forests or farmland cannot compete with the immediate economic value of developed land in the areas that are experiencing rapid growth.

No State is immune from the dangers of sprawl. For example, the Virginia State Forester says that since 1992 the Commonwealth of Virginia has lost 54,000 acres of forest land per year to other uses. The Southeastern Michigan Council of Governments recently reported that southeastern Michigan saw a 17-percent increase in developed land between 1900 and 2000.

In my home State of Maine, suburban sprawl has already consumed tens of thousands of acres of forest land. The problem is particularly acute in southern Maine where a 108-percent increase in urbanized land over the past two decades has resulted in the labeling of the greater Portland area as the ''sprawl capital of the Northeast.''

I am particularly alarmed by the amount of working forest and open space in southern and coastal Maine that has given way to strip malls and cul-de-sacs. Once these forests, farms, and meadows are lost to development, they are lost forever. Maine is trying to respond to this challenge. The people of my State have approved a $50 million bond to preserve land through the Land For Maine's Future Program, and they contribute their time and their money to preserve important parcels and to support our State's 88 land trusts. It is time for the Federal Government to help support these local community-based efforts.

For these reasons, I will be offering an amendment, along with Senator HARKIN, that establishes a $50 million grant program, the Suburban and Community Forestry and Open Space Program, within the U.S. Forest Service, to support locally driven, market-based land conservation projects that will preserve our working forests and farms.

Locally driven and market based are the essential aspects of this program. This program is locally driven because it encourages communities and nonprofit organizations to work together with landowners to help promote sustainable forestry and public access. The program will allow local governments and nonprofits to compete for funds and hold title to land or easements purchased with programmed funds. Projects funded over this initiative must be targeted at lands located in parts of the country that are threatened by sprawl. In addition, the legislation requires that Federal grant bonds be matched dollar for dollar by State, local, or private resources.

This program is market driven because it relies upon market forces rather than government regulations to achieve its objectives. Rather than preserving our working forests and open spaces by zoning or other government regulation at the expense of the landowner, this program will provide the resources to allow a landowner who wishes to keep his or her land as a working farm or wood lot to do so.

The legislation also protects the rights of property owners with the inclusion of a ''willing seller'' provision that will require the consent of a landowner if a parcel of land is to participate in the program.

The $50 million that would be authorized would help achieve a number of stewardship objectives. First, the amendment would help prevent forest fragmentation and preserve working forests, helping to maintain the supply of timber that fuels Maine's most significant industry. Second, the resources would be a valuable tool for communities that are struggling to manage growth and to prevent sprawl.

Currently, if a town such as Gorham, ME, or another community is trying to cope with the effects of sprawl and turns to the Federal Government for assistance, they would find there is no program. My proposal would change that by making the Federal Government an active partner in preserving forest land and managing sprawl, while leaving decisionmaking at the State and local level where it belongs.

There is great work being done in Maine and in other States to protect our working forests for future generations. I am grateful for the many organizations that are lending support to this effort and which have also endorsed my legislation. There is a nationwide network of organizations that have endorsed my proposal, including the National Association of State Foresters, the New England Forestry Foundation, the Nature Conservancy, the Trust for Public Lands, the Land Trust Alliance, and many others.

By adopting this proposal and incorporating it into this bill, Congress can

provide a real boost to conservation initiatives, help prevent sprawl, preserve special open places, forest lands, and farms, and help sustain natural resource-based industries.

I thank Senator COCHRAN in particular for his assistance on this legislation. It is always a great pleasure to work with him. I hope this proposal will be incorporated into the final bill.

Thank you, Mr. President.

The PRESIDING OFFICER (Mr. CRAPO). The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from Maine for her contribution to the legislation we have before us today. She has been a leader in this effort, and we always appreciate the opportunity of working with her. I thank her for her kind comments as well.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 2035

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 2035.

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

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

The amendment is as follows:

(Purpose: To require the treatment of slash and other long term fuels management for hazardous fuels reduction projects)

At the appropriate place, insert the following new section:

''SEC. . LONG-TERM FUEL MANAGEMENT.

In implementing hazardous fuels reduction projects, the Secretaries shall ensure that—

(1) a slash treatment plan is completed;

(2) acres are not identified as treated, in annual program accomplishment reports, until all phases of a multi-year project such as thinning, slash reduction, and prescribed burning are completed; and

(3) a system to track the budgeting and implementation of follow-up treatments shall be used to account for the long-term maintenance of areas managed to reduce hazardous fuels.''

Mr. BINGAMAN. Mr. President, this amendment deals with the issue of the treatment of long-term fuel management and treating what is called slash. Many fuel reduction projects require two or more sequential treatments over several years on the same parcel of land—for example, an initial timber harvest, followed by the piling and burning of slash, which is, obviously, the brush and trees that have been cut down.

Completing these followup slash treatments in a timely manner is a very important part of forest restoration work. It is important because the slash provides fuel for wildfires, and it provides habitat for beetles and other insects.

I think we have some studies that demonstrate the insect disease problem expands where this slash is not properly treated. Everyone agrees it is important to conduct these followup treatments in locations where fuel reduction projects have been completed in order to prevent the area from returning to the condition that puts these locations at high risk of unnaturally intense catastrophic wildfire.

There is a recent GAO analysis in my State that found the Forest Service and the BLM completed about only 19 of 39 followup slash treatments in a timely manner.

In addition, the GAO found the agencies' reported figures for the acres treated were inflated because they had double-counted acres where the same acreage was treated in multiyear phases. Where you have this kind of a slash treatment necessary, we are getting inaccurate accounting by the Forest Service and by the BLM.

This is troubling because it means the Forest Service and the BLM are providing inaccurate data with respect to the number of acres on which this fire threat is actually being addressed. My amendment tries to ensure there is accurate accounting. In my view, it is a simple and straightforward amendment. I do not see why it should be controversial. It is a minor matter in the eyes of some, but the Forest Service's failure to properly manage this slash treatment has worsened the fire risk in some areas. Obviously, the focus of this legislation is to reduce that fire risk.

I think it is an appropriate amendment. I hope this is something the managers of the bill could accept. If not, obviously we can have a vote on it.

Let me just briefly describe the amendment in a little more detail and essentially read it. It says:

In implementing hazardous fuels reduction projects, the Secretaries—

That is the Secretary of Agriculture and the Secretary of the Interior—

shall ensure that—

a slash treatment plan is completed;

acres are not identified as treated, in annual program accomplishment reports, until all phases of a multi-year project such as thinning, slash reduction, and prescribed burning are completed; and

a system to track the budgeting and implementation of follow-up treatments shall be used to account for the long-term maintenance of areas managed to reduce hazardous fuels.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I am advised this amendment would really be a recipe for gridlock in that it mandates new requirements for the Forest Service as well as the Bureau of Land Management—processes they have to carry out and go through before they can engage in any fuel treatment processes.

It would require the Forest Service, for example, to prepare a plan for treatment of slash that contains all of the information and data specified in the amendment of the Senator from New Mexico. It opens up the Forest Service to legal challenges if someone has the opinion that the plan is inadequate for some reason. It forces the Forest Service to set up a new system for tracking the implementation of fuels treatment projects, and any followup treatments to them.

The amendment would add new reporting processes to hazardous fuel work. The amendment calls for the development of a plan which is already required but requires the agencies to develop multiyear treatment plans and report on those plans on an annual basis.

The whole purpose of this legislation is to try to help simplify and get the work done that needs to be done to reduce the chances of devastating fires like we have seen in California, to manage the forests in a more effective way, a safer way, for those who live in those areas, and to get more done in terms of enhancing survivability from insect infestation and generally improve the overall health of our national forest resources.

The Forest Service is going to end up spending more time, the Bureau of Land Management as well, in their offices working on plans, than out doing the work that they were actually hired to do under existing legislation. This amendment is, as I have said before, a recipe for gridlock. I urge that the amendment be opposed.

I don't know of any other Senators who wish to speak on the amendment. I will be prepared to move to table the amendment when those who want to speak have been heard.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. BINGAMAN. Mr. President, let me just say that I think this amendment is anything but a prescription for gridlock. There is the suggestion that all sorts of new program accomplishment reports are going to be required. Those reports are currently produced. And the real issue is, do we get proper accounting in those reports or do we not? The GAO has told us we do not. Each year they give us an accomplishment report, and they list acreage on which they have not completed the forest restoration work. They have done one of the phases of that forest restoration work, and then the next year they take credit for that acreage again by doing another phase. The next year they take credit for that acreage again by doing another phase.

All we are saying is that acres should not be identified as having been treated in these annual reports, which are already provided, until they have done all of the different phases—the thinning, slash reduction, and the prescribed burning.

We are not requiring additional reports. We are requiring accurate reports. That is not an unreasonable request.

I am somewhat disappointed. This is an amendment we delivered to the managers of the bill yesterday, to their

staff. We asked them to review it, to give us suggestions. If they had problems with any aspect of it, they did not get back to us, except to say it is unacceptable. That seems to be the position they are taking with regard to any and all suggested amendments to the bill.

This is intended as a constructive amendment. I see it as a constructive amendment to deal with a specific problem that the GAO has identified as existing with regard to management of the long-term fuel supply.

With that, I yield the floor.

Mr. COCHRAN. Mr. President, I move to table the amendment and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 2035. The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from New Mexico (Mr. DOMENICI) is necessarily absent.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. NELSON) is absent attending a family funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

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

The result was announced—yeas 58, nays 36, as follows:

[Rollcall Vote No. 422 Leg.]

YEAS—58

Alexander	Dole	Miller
Allard	Ensign	Murkowski
Allen	Enzi	Nickles
Baucus	Feinstein	Pryor
Bennett	Fitzgerald	Roberts
Bond	Frist	Santorum
Breaux	Graham (SC)	Sessions
Brownback	Grassley	Shelby
Bunning	Gregg	Smith
Burns	Hagel	Snowe
Campbell	Hatch	Specter
Chafee	Hutchison	Stevens
Chambliss	Inhofe	Sununu
Cochran	Kyl	Talent
Coleman	Landrieu	Thomas
Collins	Lincoln	Voinovich
Cornyn	Lott	Warner
Craig	Lugar	Wyden
Crapo	McCain	
DeWine	McConnell	

NAYS—36

Akaka	Dayton	Lautenberg
Bayh	Dodd	Leahy
Biden	Dorgan	Levin
Bingaman	Durbin	Mikulski
Boxer	Feingold	Murray
Byrd	Graham (FL)	Nelson (FL)
Cantwell	Harkin	Reed
Carper	Inouye	Reid
Clinton	Jeffords	Rockefeller
Conrad	Johnson	Sarbanes
Corzine	Kennedy	Schumer
Daschle	Kohl	Stabenow

NOT VOTING—6

Domenici	Hollings	Lieberman
Edwards	Kerry	Nelson (NE)

The motion was agreed to.

Mr. COCHRAN. Mr. President, I move to reconsider the vote, and I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 2036

Mr. BINGAMAN. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN] proposes an amendment numbered 2036.

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

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

The amendment is as follows:

(Purpose: To require collaborative monitoring of forest health projects)

At the appropriate place, insert the following new section:

''SEC. ___. COLLABORATIVE MONITORING.

(a) IN GENERAL.—The Secretaries shall establish a collaborative monitoring, evaluation and accountability process in order to assess the positive or negative ecological and social effects of a representative sampling of projects implemented pursuant to title I and section 404 of this Act. The Secretaries shall include diverse stakeholders, including interested citizens and Indian tribes, in the monitoring and evaluation process.

(b) MEANS.—The Secretaries may collect monitoring data using cooperative agreements, grants or contracts with small or micro-businesses, cooperatives, non-profit organizations, Youth Conservation Corps work crews or related partnerships with State, local, and other non-Federal conservation corps.

(c) FUNDS.—Funds to implement this section shall be derived from hazardous fuels operations funds.''

Mr. BINGAMAN. Mr. President, this amendment requires the Forest Service and the Bureau of Land Management to establish a collaborative monitoring process in order to assess the environmental and social effects of a representative sampling of projects implemented under this act. There are many forest-dependent communities that support collaborative monitoring of forest projects on public land. This simply means it is collaborative monitoring. That phrase simply means that interested communities and individuals may participate with Federal agencies in monitoring the ecological and social effects of forest health projects.

Proponents of the legislation that we are considering today continually state that they want more collaboration at the beginning of the process. However, unless there is collaborative monitoring of the effects of the projects, we will never be able to rebuild trust between rural communities and these agencies.

Congress enacted a similar requirement when authorizing the Stewardship Contracting Program. In addition, Senator CRAIG and I sponsored the community-based Forest and Public Land Restoration Act. That bill, which was passed by the Senate unanimously, also required collaborative monitoring. This is a simple amendment. I believe it is noncontroversial. I hope this is acceptable to the managers of the bill and can be adopted.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the distinguished Senator from New Mexico for this suggested change to the bill. It actually could be argued it is duplicative of a provision that is already in the bill at the request of Senator WYDEN and Senator FEINSTEIN, but it is not wholly inconsistent. We think it can be worked into the bill and will not cause confusion, so I am prepared to recommend that the Senate accept the amendment. I hope the Senate will vote for the amendment.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, just very briefly, Chairman COCHRAN has it exactly right. If there is one thing we want to accomplish in the natural resources area, it is to try to move this bill away from confrontation to collaboration. That is what we tried to do in the bipartisan compromise. I think we can reconcile that with the Bingaman amendment. I urge its support.

The PRESIDING OFFICER. Is there further debate on the amendment?

If not, without objection, the amendment is agreed to.

The amendment (No. 2036) was agreed to.

AMENDMENT NO. 2039

Mr. LEAHY. Mr. President, I am soon going to send to the desk an amendment.

The people of my State of Vermont, and Americans across the Nation, mourn with our colleagues, Senator FEINSTEIN and Senator BOXER, and with the people of California, over the tragic loss of life and property from the wildfires in San Diego County.

Today, we lost a firefighter from Novato, CA. These brave men and women on the front lines need to be recognized first in this debate. Our hearts go out to the firefighters' families and friends.

We have all been riveted by the vivid images we have watched, day after day, and by the heart-wrenching stories of loss and of bravery that go with these pictures.

Our hearts go out to all of these families that have lost so much. And our thanks go out to the courageous and diligent firefighters and emergency response team members who are fighting those fires and are doing all they can to protect these communities.

Here in the Congress, we need to do more to protect forests and communities from wildfires. That is why I introduced the Forest and Community

Protection Act this summer. This is a bill and an approach that would make a real difference for communities facing this kind of potential devastation.

The bill before us now, unfortunately, would not offer the same level of help.

The bill before us is a well-camouflaged attempt to limit the right of the American people to know and to question what their government is doing on the public's lands.

When you look at the tidal wave of regulatory changes the administration has produced in the last year to cut the public out of the process, it could not be clearer that the administration does not want the public or the independent judiciary looking over its shoulder.

Communities that face wildfire threats need real help, not false promises.

As this chart shows, the administration has been busy creating a broader number of projects that will be excluded from environmental analysis under the National Environmental Policy Act, limiting how, who and when citizens can appeal agency decisions, and even cutting out other agencies, such as the Fish and Wildlife Service, from advising the Forest Service on the impact of the actions on endangered species habitats.

Unfortunately, the bill before us today could be the last in this series of steps that completely erode the public's trust of the Forest Service. Many of us saw the aftermath of the salvage rider on our forests and the public trust. We should not go down that road again.

That is why I am offering an amendment today, along with Senators BINGAMAN, DURBIN, HARKIN and BOXER, to strike sections 105 and 106 of the bill. These sections go too far in undermining the decades of progress we have made in public participation and judicial review.

The administration has worked overtime to try to sell the false idea that environmental laws, administrative appeals and the judicial process are the cause of wildfires. But they have not been able to back up their scapegoating with facts. And the facts themselves contradict their claims.

In May, the GAO issued a study examining delays in all Forest Service fuels reduction projects, from appeals or litigation, during the last 2 fiscal years.

Contrary to what some advocates of this bill will tell you, the results show that neither appeals nor litigation have delayed fuels reduction projects.

As you can see, out of 818 projects, only a quarter were appealed. Of those, even fewer took more than the standard 90-day review period. In fact, only 5 percent of all the projects took more than 90 days.

And they can't honestly blame litigation, either, for the delays. Again, of the 818 projects, only 25 were litigated. Of those, 10 were either settled or ruled in favor of the Forest Service—meaning that only 9 out of 818 projects were delayed by court order.

That is only one percent. Where is the ''analysis paralysis'' my colleagues like to talk about so much?

On the ground, these appeals had even less effect. Of the 4.8 million acres covered by fuel reduction projects, only 111,000 acres were impacted by litigation. The numbers simply do not back up the administration's assertion that appeals and litigation are delaying projects.

The bill before us today rolls back environmental protections and citizen rights with no justification at all.

Enough about numbers. The bill before us is really a solution looking for a problem. So let's take a closer look at the solution on the table.

First, the bill would make it much more difficult for the public to have any oversight or say in what happens on public lands, undermining decades of progress in public inclusion.

In this new and vague pre-decisional protest process, this bill expects the public to have intimate knowledge of aspects of the project early on, including aspects that the Forest Service might not have disclosed in its initial proposal.

Section 105 gives the Forest Service a real incentive to hide the ball or to withhold certain information about a project that might make it objectionable such as endangered species habitat data, watershed analysis or road-building information.

If concerns are not raised about this possibly undisclosed information in the vaguely outlined predecisional process, the Forest Service can argue to the courts that no claims can be brought on these issues in the future when the agency either through intent or negligence withheld important information from the public.

I want to take a couple of minutes to respond to a couple of statements that my colleagues have made over the last 2 days with regard to appeals and judicial review.

First, my colleagues keep talking about ''analysis paralysis.'' This has become a mantra for those who want to cut the public out of decision-making and blame appeals and litigation.

When the administration went looking for a problem to fit their solution of cutting out appeals and judicial review, they came up with analysis paralysis.

When they went looking for facts to back up this new mantra, they threw together a Forest Service report that argued that 48 percent of decisions were appealed.

But when people starting asking questions about the report though, they found that the Forest Service spent just a few hours gathering information for the report. The so-called data it was based on was just phone conversations made in an afternoon.

In fact, the Forest Service does not actually track appeals. Until the GAO did its independent report, they really had no idea what impact appeals were having on fuel reduction projects.

But they, and many of my colleagues, already had their talking points. As we have seen with many other so-called environmental policies of this administration, facts are never allowed to get in the way of rhetoric.

When the facts did start coming out this spring, with an independent study by Northern Arizona University and the GAO, they showed that only 5 percent of projects are appealed and only 3 percent are litigated.

The report also found that opposition was not a leading factor in slowing fuel reduction projects:

> While the issue of formal public resistance, such as appeals and litigation, has recently been contentious, only a few local land unit officials we visited indicated that this type of resistance had delayed particular fuels reduction treatments.

What the facts do tell is that the main reasons fuel reduction projects could not proceed were due to the weather and the diversion of fuel reduction funds to fight wildfires.

Just this summer, while the President was out in Oregon pushing this bill, the Forest Service was back here cutting fuel reduction projects because the House Republicans refused to pass emergency funding for fire suppression.

Let's cut through the smokescreen and focus on the facts before leaping on board to a solution that will let the administration pick and choose 20 million acres of forestland around the country to cut with little real public accountability.

This is not a problem of analysis paralysis but a problem of situation exaggeration.

Essentially, this provision penalizes citizens and rewards agency staff when the agency does not do its job in terms of basic investigation and information-sharing regarding a project.

The other significant change to judicial review is section 106. Even under the ''compromise'' version of H.R. 1904, the provisions will interfere with and overload judges' schedules.

This section will force judges to reconsider preliminary injunctions every 60 days, whether or not circumstances warrant it.

In many ways, this provision could backfire on my colleagues' goal of expediting judicial review. It will force judges to engage in otherwise unnecessary proceedings slowing their consideration of the very cases that H.R. 1904's proponents want to fast track.

Moreover, taking the courts' time to engage in this process will also divert scarce judicial resources away from other pending cases.

It is also likely to encourage more lawsuits. Requiring that injunctions be renewed every 60 days, whether needed or not, gives lawyers another bite at the apple. Something they often find hard to resist.

Instead of telling the courts when and how to conduct their business, we should instead be working to find a workable and effective approach to reducing wildfire risks.

This bill does not achieve that, but through sections 105 and 106, it instead poses a real risk to the checks and balances that the American people and their independent judiciary now have on government decisions affecting the public lands owned by the American people.

Sadly, this bill is just a Halloween trick on communities threatened by wildfires. It is not fair to rollback environmental laws, public oversight or judicial review under the guise of reacting to devastating wildfires.

It will do nothing to help or to prevent the kind of devastation that Southern California is facing. It is a special interest grab-bag shrouded behind a smokescreen.

Let us offer real help and real answers, and let us not allow fear to be used as a pretext for taking the public's voice out of decisions affecting the public's lands and for ceding more power to special interests.

I hope my colleagues will join me in striking these provisions.

AMENDMENT NO. 2039

(Purpose: To remove certain provisions relating to administrative and judicial review)

Mr. LEAHY. Mr. President, I send the amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Vermont [Mr. LEAHY], for himself, Mrs. BOXER, Mr. HARKIN, Mr. BINGAMAN, and Mr. DURBIN, proposes an amendment numbered 2039:

Strike sections 105 and 106.

Mr. COCHRAN. Mr. President, there has been considerable attention paid to the provisions of the House-passed bill which was referred to in our Committee on Agriculture. The version the House passed has the same provisions that would change substantially the judicial review and appeals provisions of current law. When we were looking at the bill in our committee, it was decided that while we didn't disagree with the objectives of the House, we thought that there could be more appropriate language which would help ensure that litigation and appeals weren't abused to the extent that they created impasses and gridlock in the process.

I have to give credit to the distinguished Senator from Oregon, Mr. WYDEN, and the distinguished Senator from California, Mrs. FEINSTEIN, for coming up with suggestions for changes that were included in this bill that is now before the Senate. It was included in the language of the compromise that we made to substantially change title I as it relates to the judicial review section of the bill.

Let me point out that it balances risk, which is what this is about. Looking at ramifications of approving or not approving a fuel reduction project can be explained by looking at certain examples from which we have learned. On the Kenai Peninsula in south-central Alaska, for instance, over 300,000 acres of forest have been lost to a spruce bark beetle infestation which we are told could have been avoided but was not because of litigation and appeals that were generated over the project's proposal. The Dixie National Forest has 112,000 acres that have been devastated by the spruce bark beetle as well which could have been prevented with treatment but was slowed by the appeals and litigation in that situation.

Over the last 3 years, bark beetles have ravaged forests around Lake Arrowhead in the San Bernardino National Forest in southern California causing an 80-percent mortality rate and substantially increasing the fuel loads of that forest.

What I am afraid we are going to see if the Leahy amendment is approved is a reversal of efforts that we have made to come to a new approach which we think will improve forest help. We still have rigorous environmental safeguards in place, but the suggestions that courts do not bog down the process with endless appeals and litigation is one of the goals of this legislation.

I don't know if other Senators want to be heard on this amendment. But I would be prepared, after Senators have had an opportunity to express themselves, if they want to debate this issue, to move to table the Leahy amendment.

I move to table the Leahy amendment, and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The question is on agreeing to the motion. The clerk will call the roll.

The legislative clerk called the roll.

Mr. REID. I announce that the Senator from North Carolina (Mr. EDWARDS), the Senator from South Carolina (Mr. HOLLINGS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I also announce that the Senator from Nebraska (Mr. NELSON) is absent attending a family funeral.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''nay.''

The PRESIDING OFFICER (Mr. SMITH). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 62, nays 33, as follows:

[Rollcall Vote No. 423 Leg.]

YEAS—62

Alexander	DeWine	McCain
Allard	Dole	McConnell
Allen	Domenici	Miller
Baucus	Ensign	Murkowski
Bennett	Enzi	Nickles
Bond	Feinstein	Pryor
Breaux	Fitzgerald	Roberts
Brownback	Frist	Santorum
Bunning	Graham (SC)	Sessions
Burns	Grassley	Shelby
Campbell	Gregg	Smith
Chafee	Hagel	Snowe
Chambliss	Hatch	Specter
Cochran	Hutchison	Stevens
Coleman	Inhofe	Sununu
Collins	Johnson	Talent
Cornyn	Kyl	Thomas
Craig	Landrieu	Voinovich
Crapo	Lincoln	Warner
Daschle	Lott	Wyden
Dayton	Lugar	

NAYS—33

Akaka	Dodd	Leahy
Bayh	Dorgan	Levin
Biden	Durbin	Mikulski
Bingaman	Feingold	Murray
Boxer	Graham (FL)	Nelson (FL)
Byrd	Harkin	Reed
Cantwell	Inouye	Reid
Carper	Jeffords	Rockefeller
Clinton	Kennedy	Sarbanes
Conrad	Kohl	Schumer
Corzine	Lautenberg	Stabenow

NOT VOTING—5

Edwards	Kerry	Nelson (NE)
Hollings	Lieberman	

The motion was agreed to.

NOTICE

Incomplete record of Senate proceedings. Except for concluding business which follows, today's Senate proceedings will be continued in the next issue of the Record.

PROGRAM

Mr. FRIST. For the information of all Senators, tomorrow the Senate will be in a period of morning business. There will be no rollcall votes during tomorrow's session.

The hour is late, but it is well worth it. We completed action on both the Healthy Forests legislation today, and the Foreign Operations appropriations bill.

On Monday, we will debate the Iraq supplemental. However, that conference report will be agreed to without a vote. We will also consider the Interior appropriations conference report on Monday, and Members can expect a vote on that sometime between 5 p.m. and 6 p.m. We will have more to say tomorrow about the schedule.

I congratulate the managers of both bills that were completed today. It has been a very long and very productive day.

ADJOURNMENT UNTIL 10 A.M. TOMORROW

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent the Senate

stand in adjournment under the previous order.

There being no objection, the Senate, at 11:44 p.m., adjourned until Friday, October 31, 2003, at 10 a.m.

NOMINATIONS

Executive nominations received by the Senate October 30, 2003:

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES ARMY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. JOHN M. CURRAN, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be vice admiral

REAR ADM. WALTER B. MASSENBURG, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral (lower half)

CAPT. TIMOTHY J. MC GEE, 0000

IN THE ARMY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT AS A PERMANENT PROFESSOR, UNITED STATES MILITARY ACADEMY, IN THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 4333(B):

To be colonel

LANCE A. BETROS, 0000

THE FOLLOWING NAMED OFFICERS FOR REGULAR APPOINTMENT IN THE GRADES INDICATED IN THE UNITED STATES ARMY UNDER TITLE 10, U.S.C., SECTIONS 531 AND 3063:

To be colonel

THOMAS B. SWEENEY, 0000

To be lieutenant colonel

ELLIS G. BROCKMAN, 0000
SHARALYN W. BROWN, 0000
KENNETH E. COZZIE, 0000
PAU7L J. FAMELI, 0000
DANIEL L. JOHNSON, 0000
FREDERICK N. KAWA, 0000
SARAH H. PERRY, 0000
DARYL S. REY, 0000
LEON R. WILSON III, 0000

To be major

TODD K. ALSTON, 0000
CHRIS L. ANDREWS, 0000
RALPH D. ARCHETTI, 0000
JACQUELINE BAEHLER, 0000
EARL C. BEDFORD, 0000
JONATHAN D. BERRY, 0000
JOHN D. BEURY, 0000
CHRISTINA M. BLOSS, 0000
ROBERT E. BUZAN JR., 0000
KEITH BYRD, 0000
JESS H. CAPEL, 0000
ROGER D. CARSTENS, 0000
DONALD R. CECCONI, 0000
JOHN M. CREAN, 0000
GREGORY L. DEDEAUX, 0000
SONIA R. DEYAMPERT, 0000
ERIC P. EHRMANN, 0000
JOHN M. ESPOSITO III, 0000
ALAN L. GUNNERSON, 0000
JOSEPH J. HAYDON JR., 0000
DAVID E. HECKERT, 0000
CARL G. HERRMANN, 0000
TINA L. HOLT, 0000
JACQUELINE C. HOWELL, 0000
WILLIAM S. HUSING, 0000
ROBERT L. HUTCHISON, 0000
RONALD D. JACK, 0000
NATHAN C. JOSEPH, 0000
PETER K. KEMP, 0000
VERNER M. KIERNAN, 0000
CHARLES D. KIRBY 0000
MARK R. KOVACEVICH, 0000
CHARLES P. LITTLE, 0000
DARRYL. L. LONG, 0000
SHEILA H. LYDON, 0000
MARK A. MCCOMBS, 0000
ROBERT G. MCNEIL, 0000
GERARD J. MESSMER III, 0000
MARTIN L. MORFORD, 0000
ROBERT M. MURRAY, 0000
STEVEN C. PEDERSEN, 0000
JOHN W. PENREE, 0000
SANTOMERO V. RILEY, 0000
JOHN N. RIOS, 0000
PAUL G. SCHLIMM, 0000
DOVER SEAWRIGHT, 0000
TERRY L. SIMPSON, 0000
MARK A. SMITH, 0000
PHILIP W. STANLEY, 0000
MICHAEL A. STEVENS, 0000
SCOT N. STOREY, 0000
MICHAEL G. THILGES, 0000
DONALD S. TRAVIS, 0000
NATHAN E. WALLACE, 0000
LISA M. WEIDE, 0000
JOSEPH E. WICKER, 0000
JOHN F. WINTERS, 0000
MACHIELLE WOOD, 0000
PAUL L. ZANGLIN, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DAVID B. MOREY, 0000

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

PATRICK J. MORAN, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES NAVY UNDER TITLE 10, U.S.C., SECTION 624:

To be lieutenant commander

LAWRENCE J. CHICK, 0000