However, I have given my word that these two nominees should at least have the opportunity for a vote. We did work out an agreement last year, and I made a commitment that these two nominees would have a Senate vote on their confirmation. With that in mind, in order to accomplish this—while I had hoped it would not be necessary, again, I emphasize, as I did last year and earlier this year, I think it is a mistake to begin to have cloture votes on judicial nominations on the floor. We had one instance of that last year, and I said to my Democratic friends I thought that was a mistake, and pretty shortly thereafter we worked that out and moved that nomination.

I don't like to have to file cloture on these nominations either, but in order to fulfill the commitments that have been made and have a good debate but some limit on it where we would get a vote, I send a cloture motion to the desk on the nomination of Marsha Berzon to the Ninth Circuit Court of Appeals.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The 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. 159, the nomination of Marsha L. Berzon, to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, James M. Jeffords, Robert F. Bennett, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Harry Reid of Nevada, Charles E. Schumer, and Tom Daschle.

Mr. LOTT. Mr. President, I send to the desk also a cloture motion on the pending nomination of Richard Paez.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The 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. 208, the nomination of Richard A. Paez to be United States Circuit Judge for the Ninth Circuit:

Trent Lott, Orrin G. Hatch, Susan M. Collins, Arlen Specter, Ted Stevens, Thad Cochran, Robert F. Bennett, Harry Reid of Nevada, Richard G. Lugar, Chuck Hagel, Conrad Burns, John W. Warner, Patrick J. Leahy, Charles E. Schumer, Tom Daschle, and Barbara Boxer.

Mr. LOTT. Mr. President, I ask unanimous consent that notwithstanding rule XXII, these cloture votes occur in the order in which they were filed at 5 p.m. on Wednesday, and that the mandatory quorum under rule XXII in each case be waived.

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

Mr. LOTT. Mr. President, it is my understanding that if cloture is invoked in each case, Senator SMITH of New Hampshire will require 5 hours of total debate on both nominations under his control, and following the conclusion of the time, the Senate would be in a position to vote in a back-to-back sequence on the confirmations of Berzon and Paez. I will not propound that request at this time but will put Members on notice that this is the fashion in which I see the Senate considering these nominations.

I have discussed that with Senator DASCHLE, and he understands that. Of course, there will be a need to have equal debate on both sides, if that is required by Senators.

I thank all my colleagues for their cooperation. I look forward to further debate on these nominees during tomorrow's session prior to the 5 p.m. back-to-back cloture votes. In light of this agreement, we can announce that there will be no further votes this evening.

Mr. DASCHLE. Mr. President, I know there is another unanimous consent to propound.

Let me briefly thank the majority leader for keeping his commitment. He and I both hoped we wouldn't have to file cloture. We may yet have the opportunity to vitiate cloture if something can be worked out. I am hopeful that we will have an opportunity to have the votes as he has anticipated tomorrow at 5 o'clock. This agreement accords everybody their rights. People will have an opportunity to further discuss this matter. They will be able to respond to whatever statements may be made on the floor. We will have a good debate about these nominees tomorrow, even though we will be taking up other legislation.

I think this is a very good agreement. I am grateful to him and to all of our colleagues for their cooperation. I appreciate the fact that we have come this far.

I yield the floor.

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

Mr. LOTT. I am glad to yield.

Mr. LEAHY. Mr. President, I wish to associate myself with the comments of the distinguished Senator from South Dakota. I was privileged to be part of some of the discussions the distinguished Republican leader and the Democratic leader had last fall, along with the distinguished Senator from Mississippi. He has fulfilled the commitment he made to us at that time. I suspect that some aspects probably will not be debated with great ease. I wish to commend them for doing that. As I have said all along, I want to be in the position where Senators can vote up or down on these two outstanding nominees.

I thank the Chair.

Mr. LOTT. Mr. President, I thank both Senators for their comments.

LEGISLATIVE SESSION

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

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I ask unanimous consent that at 9:30 a.m. on Wednesday, the Senate proceed to the conference report to accompany H.R. 1000, the Federal Aviation Administration reauthorization bill. I further ask unanimous consent that there be 60 minutes of debate equally divided as follows: 20 minutes for the majority manager, 20 minutes for the minority manager, and 20 minutes for Senator LAUTENBERG.

I further ask unanimous consent that following that debate time, the conference report be laid aside with a vote on adoption to occur at 5 p.m. just prior to the scheduled cloture votes with no intervening action or debate.

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

Mr. LOTT. Mr. President, it will be my intention that following the hour of morning business, at 11:30 a.m. on Wednesday the Senate proceed to the Export Administration Act. I am not propounding that at this time, but that would be the next legislation on which we have been working. It has broad bipartisan support. It involves a very important segment of our economy. We need to move forward with this legislation as soon as possible. We would like to start on that at 11:30 tomorrow. Between that time and the stacked votes at 5 o'clock, we could have opening statements and begin to move forward on this very important Export Administration Act.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader.

Mr. DASCHLE. Mr. President, I think this is a very good agreement. I think we can have a good discussion about the conference report.

I know there are other Senators who may want to enter into a colloquy with the majority leader or others with regard to some of the implications of the FAA bill. This will accommodate any colloquies Senators may desire.

I also am pleased that we are able to move to the Export Administration Act. As the majority leader noted, this bill is important. We ought to finish it this week. There is no reason why we can't finish it this week, if we can get agreement. It passed out of the committee unanimously. It is long overdue. It is important for us to act on it.

I think this would be a good week for us to be able to deal not only with these nominations, not only with the FAA, but also with the Export Administration. We have an opportunity to do some real good work, and this agreement accommodates that.

I appreciate Senators' cooperation on both sides.

I yield the floor.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. THOMPSON. Mr. President, I indicated that I might object to the motion to proceed to the Export Administration Act. It is not my intention to do that. In checking with my other colleagues who have been concerned with this matter, I have learned they are satisfied, as I am, that there have been negotiations in good faith with regard to some of the provisions of the Export Administration Act that cause us great concern; therefore, I will be content to offer amendments tomorrow. But I would like to state for the record that I do not intend immediately to enter into any time agreement.

The chairman of the Banking Committee has indicated that he does not intend to ask for any time agreement going in. There will be amendments. We need thorough discussion of this matter. This is not something we can hastily go into and dispense with. It is very complicated. It is very important. It has to do with our export policy with regard to our dual-use items—very sensitive items which some countries are now using to enhance their nuclear and other weapons of mass destruction capabilities. There is hardly anything more serious than that.

My own view is that we have needed to reauthorize the Export Administration Act for some time. But we need to tighten the rules, not loosen the rules. My concern is that this does, indeed, loosen some of the important rules.

While I will not object to a motion to proceed, I want it understood that we are going to need a full discussion of the issue.

I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. LOTT. 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. LOTT. Mr. President, we have been able to work through an agreement on consenting to go to the Export Administration Act.

I ask unanimous consent, following an hour of morning business, that at 11:30 a.m. on Wednesday the Senate begin debate on the Export Administration Act.

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

Mr. LOTT. Thank you, Mr. President. I thank my colleagues for their cooperation on this.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

MORNING BUSINESS

Mr. ENZI. Mr. President, I now ask consent there be a period for the transaction of routine morning business, with Senators permitted to speak for up to 10 minutes each.

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

NOMINATION OF TIMOTHY B. DYK

Mr. KENNEDY. Mr. President, Senate action on Timothy Dyk's nomination to the U.S. Court of Appeals for the Federal Circuit is long overdue. He has waited almost two years for this vote. Yet he is a nationally known and exceptionally well-regarded attorney who received a ''Qualified'' rating from the American Bar Association and was well received by the Senate Judiciary Committee. He deserves a favorable vote by the Senate here today.

Mr. Dyk is an honors graduate of both Harvard College and Harvard Law School. After graduation he served as a law clerk for Chief Justice Earl Warren, and for Justices Stanley Reed and Harold Burton. He served in the Justice Department for a year in the early 1960's and has spent the last 37 years as a distinguished and highly respected attorney in private practice in Washington, DC. He has argued cases before the Supreme Court and in numerous Federal courts of appeals, including five cases before the Federal Circuit. He clearly has the qualifications and ability to serve on the Federal Circuit with great distinction.

Mr. Dyk's nomination is supported by a variety of corporations and organizations, including the U.S. Chamber of Commerce, the National Association of Manufacturers, the National Association of Broadcasters, the Labor Policy Association, the American Trucking Association, Kodak, and IBM.

Timothy Dyk is highly qualified to serve on the Federal Circuit. He should have been confirmed long ago, and I urge my colleagues to approve his nomination today.

THE COUNTERINTELLIGENCE REFORM ACT OF 2000

Mr. LEAHY. Mr. President, I am pleased to join my colleagues Senators GRASSLEY, SPECTER and TORRICELLI, and others, in cosponsoring the Counterintelligence Reform Act of 2000, S. 2089. I look forward to working with my colleagues on making any improvements and refinements to the legislation which may become apparent as we hold hearings. This is an important issue with serious implications for the careful balance we have struck between the need to protect our national security and our obligation to defend the constitutional rights of American citizens.

This legislation was crafted in response to perceived problems in the investigation of nuclear physicist Wen Ho Lee. Our review of that matter is far from complete and, in view of the pending criminal case, must be put in abeyance to avoid any prejudice to the parties or suggest political influence on the proceedings. Based on the Subcommittee's review to date, however, I do not share the views of some of my colleagues who have harshly criticized the Justice Department's handling of this matter. Notwithstanding my disagreement, as explained below, with those criticisms of the Justice Department, I support this legislation as a constructive step towards improving the coordination and effectiveness of our counterintelligence efforts. Senators GRASSLEY, SPECTER and TORRICELLI have provided constructive leadership in crafting this bill and bringing together Members who may disagree about the conclusions to be drawn from the underlying facts of the Wen Ho Lee investigation.

My view of the Justice Department's handling of the Wen Ho Lee investigation differs in at least three significant respects from those of the Department's critics in the Senate.

First, the Justice Department's demand in the summer of 1997 for additional investigative work by the FBI has been misconstrued as a ''rejection'' of a FISA application for electronic surveillance. FBI officials first consulted attorneys at DOJ on June 30, 1997, about receiving authorization to conduct FISA surveillance against Lee. The request was assigned to a line attorney in the Office of Intelligence and Policy Review (OIPR), who, appreciating the seriousness of the matter, drafted an application for the court over the holiday weekend. A supervisor in the OIPR unit then reviewed the draft and decided that further work by the FBI would be needed ''to complete the application and send it forward.'' Further discussions then ensued and two additional draft applications were prepared.

In August 1997, FBI agents met again with OIPR attorneys about the FISA request. The OIPR supervisor testified at a Governmental Affairs Committee hearing on June 9, 1999 that ''[f]ollowing that meeting, the case was put back to the Bureau to further the