

budget will not work. The economy will not be fixed by hastily arranged press conferences such as we had last week when they found there was a 4.9-percent unemployment rate. There was a quick press conference held, and all the congressional leadership ran to the White House, and that is where they came up with this brilliant statement; it doesn't matter what is happening now; what we need to look at is what going to happen a year from now.

We need to work with the President in righting this problem, but we need some direction from the White House.

STEM CELL RESEARCH

Mr. REID. Mr. President, 3 years ago a young man by the name of Steve Rigazio, president and chief operating officer for the largest utility in Nevada, Nevada Power—a fine, fine young man—was diagnosed with Lou Gehrig's disease. It is a devastating illness that affects the nerve cells in the spinal cord and causes muscles to wither and die very quickly. He has lived longer than people expected. The normal time from the time of diagnosis, when you are told you have this disease, until the time you die, is 18 months. He has lived 3 years. He no longer works. He finally had to give up his job.

Because Lou Gehrig's disease attacks the body but leaves the mind intact, this vibrant man has had to watch his body deteriorate around him. He is a man of great courage, and I hope he lives much longer than people expect. He deserves it.

I have had visiting me for a number of years now two beautiful little girls from Las Vegas. They are twins. They are now 12 years old. One of the twins, Mollie Singer, has struggled with juvenile diabetes since she was 4 years old. She has had thousands of pricks of her skin—thousands. She is a beautiful little girl who believes that we in Washington can help her not have to take all these shots. As do the million Americans who suffer from this illness, Mollie fears that her kidneys will fail, she will get some kind of infection and have one of her limbs amputated or even lose her sight as a result of this diabetes.

There is something that gives Mollie and Steve hope, and that is stem cell research. It gives hope to tens of millions of Americans and their families who, like Steve Rigazio and Mollie Singer, suffer from Lou Gehrig's disease, diabetes, or Alzheimer's, Parkinson's, lupus, heart disease, spinal cord injuries, and other illnesses. Since stem cells can transform into nearly all the different tissues that make up the human body, they can replace defective or missing cells. Scientists are really very optimistic that one day stem cells will be used to replace defective cells in children with juvenile diabetes or even to create rejection-free organs.

Knowing that stem cells may have the power to save and improve lives, we cannot deny researchers the tools they need to fully realize the potential of stem cells. If we fail to seize promising research opportunities, we will fail millions of Americans and their families and people all over the world.

Early last month, President Bush announced he would limit Government funding for research to the stem cell lines that already existed at the time of his announcement. This was obviously a political compromise. I am pleased that the President left the door open for Federal funding of stem cell research in some capacity, but I am very concerned that he has not opened the door far enough to allow scientists to fully realize the life-saving potential of stem cells.

Last week, Secretary Thompson announced that no more than 25 of the 64 stem cell lines the National Institutes of Health listed as falling under the President's criteria are fully developed. We still do not know whether the remaining 40 stem cell lines would be useful to science. What we do know about the 25 viable stem cell lines that fall under the President's guidelines is very troubling. Why? Most, if not all, of the existing stem cell lines have been mixed with mouse cells. As a result, these cells could transfer deadly animal viruses to people, human beings.

It is also unclear whether these cells will be suitable for transplanting into people. Just last week, Dr. Douglas Melton, a professor of molecular and cellular biology at Harvard, testified that cells derived from mice "have proven unreliable over time for research, either dying out or growing into diseased forms."

Even though scientists are working on ways to grow human embryonic cell lines without using mouse cells, they will not be eligible for Federal research money because they will be created after President Bush's arbitrary August 12 deadline. Last week the administration confirmed it would not reconsider this deadline, even if it were later discovered that none of these cell lines was suitable for long-term research.

If we fail to fund research for the new stem lines that are created without mouse cells, foreign scientists will still conduct research on stem cell lines that fall outside his guidelines. This research is going to go forward. Shouldn't it go forward under the greatest scientific umbrella in the history of the world, the National Institutes of Health? The answer is yes, that is where it should go forward, not in the little communities throughout the world that are trying to get a step up on the United States. This research is going to go forward. Let's do it the right way.

As a result of the guidelines of the President, we will not have the ability

to provide any oversight of this research, if it is done overseas, to ensure that it is conducted by ethical means. Not only will we risk losing our most talented scientists to foreign countries, but we also jeopardize our potential as a nation to remain a world leader in stem cell research.

Over the course of the next several months, scientists will continue to determine whether President Bush's policy will allow stem cell research to advance at a reasonable pace. As we continue to evaluate the President's funding guidelines, we need to keep in mind that millions of Americans who suffer from devastating illnesses do not have the luxury of time—Steve Rigazio as an example. We cannot continue to dangle the hope of cure or the promise of scientific breakthrough before these patients and their families without adequately supporting research to allow scientists to achieve these very important discoveries.

I suggest the absence of a quorum.

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

The legislative clerk proceeded to call the roll.

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

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

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 2002

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of H.R. 2500, which the clerk will report.

The legislative clerk read as follows:

A bill (H.R. 2500) making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 2002, and for other purposes.

The PRESIDING OFFICER. The distinguished Senator from South Carolina, the chairman of the Commerce Committee, is recognized.

AMENDMENT NO. 1533

Mr. HOLLINGS. Mr. President, I send an amendment to the desk and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself and Mr. GREGG, proposes an amendment numbered 1533.

Mr. HOLLINGS. I ask unanimous consent reading of the amendment be dispensed with.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

(The text of the amendment is printed in the RECORD under "Amendments Submitted.")

The PRESIDING OFFICER. Under the previous order, the amendment is considered adopted.

The amendment (No. 1533) was agreed to.

Mr. HOLLINGS. Mr. President, I am pleased to present to the Senate the fiscal year 2002 State, Justice, Commerce, the Judiciary, and related agencies appropriations bill. This bill was accepted unanimously by the full committee in July. As in past years, this has been an extremely bi-partisan effort on the part of the members and staff of this subcommittee. In particular, I would like to thank the ranking member, Senator GREGG, for his dedication to producing a fair and well rounded bill. He has chaired this subcommittee in a distinguished fashion during the past 4 years. He knows this bill through and through and his assistance during the change over has been greatly appreciated. Also, I want to recognize the hard work of my subcommittee staff; my majority clerk, Lila Helms, Jill Shapiro Long, Luke Nachbar, and Dereck Orr; as well as the minority clerk, Jim Morhard along with Kevin Linskey, Katherine Hennesey, and Nancy Perkins.

This is my 31st year on the CJS Subcommittee, and this is the 25th annual appropriations bill for CJS that I have been privileged to present to the Senate either as chairman, or as ranking member of the subcommittee. I am still amazed at the range of important issues that this bill addresses.

Funds appropriated under this bill directly affect the daily lives of all Americans.

Under CJS, the Nation's primary and secondary schools are made safer by providing grants for the hiring of school resource officers to ensure that our children can grow and learn in a protected environment. This bill provides funds to protect all Americans by increasing the number of police officers walking the Nation's streets, providing additional funds to fight the growing problem of illegal drug use, guarding consumers from fraud, guarding children from internet predators and protecting Americans from acts of terrorism here at home and abroad.

People throughout this country benefit from weather forecasting services funded through this bill, whether they are farmers receiving information necessary to effectively manage their crops, or families receiving lifesaving emergency bulletins regarding tornadoes, floods, torrential rains, and hurricanes.

Small communities benefit from the economic development programs funded in this bill. Nearly 1,500,000 small

businesses benefit from the free SBA assistance provided in this bill. All American businesses and their employees benefit from the funding provided to enforce our trade laws and to prevent illegal, often dangerous products, from being dumped on our markets.

This appropriations bill provides funds to improve technology in a host of areas; funding is provided for developing cutting edge environmental satellites, for developing cutting edge industrial technologies that keep us competitive, and for developing basic communications tools for State and local law enforcement so that they can do their jobs more safely and effectively.

In all, the CJS bill totals \$41.5 billion in budget authority, which is \$719.9 million above the President's request. There are four specific accounts that benefit from the increased funding above the President's request. They are MARAD, COPS Universal Hiring Program, NIST's Advanced Technology Program, and the Small Business Administration.

First, the President's budget proposed to move MARAD into the Department of Defense. The subcommittee received letters from over one-third of the senate indicating opposition to such a move. The committee bill reflects that request and provides \$98.7 million for the Maritime Security Program and \$100 million for the Title XI Loan Guarantee Program.

Second, the President's budget proposed to fund only the school resource officer component of the COPS Program. The committee bill before the Senate today fully supports the School Resource Officers Program, but also restores the Universal Hiring Program. The committee bill provides \$190 million for the Universal Hiring and Cops More Program.

Third, the President's request proposed to zero out the Advanced Technology Program. The committee bill restores this program and provides the same level of funding, \$60.7 million, for new awards as was provided last year. As a result, the bill includes \$190 million above the President's request for the ATP Program.

Finally, the President's request proposed to move SBA from a service agency to a fee for service agency. In order to correct this misguided understanding of the services SBA provides this country's more than 1,500,000 small businesses, the committee bill provides an additional \$231 million above the President's request to restore funding for all the proposed taxes contained in the President's request.

In addition to restoring the funding for Priority National Programs, the Commerce, Justice, State appropriations bill also focuses on replacing the aging information technology and other core infrastructure needs of the Departments of Justice, Commerce, and State.

As I said before, this is a well rounded bill with a number of important accounts. I would like to take a few more minutes to go over some of the specific funding highlights from the CJS bill the committee is bringing before the Senate today.

Once again, the FBI's Preliminary Annual Uniform Crime Report released this past May demonstrates how well these programs are working. According to the FBI's report, in 2000, serious crime has leveled to mark a decline of 7-percent from 1998, and marking 9 consecutive years of decline. This continues to be the longest running crime decline on record. Bipartisan efforts to fund DOJ's crime fighting initiatives have impacted this reduction in crime during the past 10 years.

The bill provides \$3.47 billion for the FBI, which is \$216 million above last year's funding level. To meet the FBI's training, resources, and equipment needs, the bill provides \$142 million for the FBI's Computer Modernization Program, trilogy; \$6.8 million to improve intercept capabilities; \$7 million for counter-encryption resources; \$12 million for forensic research; \$4 million for four mitochondrial DNA forensic labs; and \$32 million for an annex for the engineering research facility, which develops and fields cutting edge technology in support of case agents.

To highlight the changing mission of the FBI, the bill provides a new budget structure. Three old criminal divisions were combined into two, and new divisions for cybercrime and counterterrorism were created. The new structure provides the Bureau with more flexibility and should improve the Bureau's responsiveness to changing patterns of crime and headquarters' support of the field. The bill also directs the FBI to re-engineer its workforce by hiring and training specialists that are technically-trained agents and electronics engineers and technicians.

The bill provides \$1.5 billion for DEA, \$8.8 million above the budget request. Increased funds are provided for technology and infrastructure improvements, including an additional \$30 million for DEA's computer network, firebird, and an additional \$13 million for DEA's laboratory operations for forensic support.

To combat drugs that are reaching our streets and our children, the bill provides \$52.8 million to fight methamphetamine and encourages the DEA to increase efforts to combat heroin and emerging drugs such as oxycontin and MDMA, also known as ecstasy. The bill also directs DEA to renew its efforts to work with Mexico to combat drug trafficking and corruption under the country's new President Vicente Fox.

For the INS, the bill includes \$5.5 billion, \$2.1 billion of which is derived from fees. This funding provides the

necessary resources to address border enforcement and benefits processing. For border enforcement, the bill provides \$75 million for 570 additional Border Patrol Agents, \$25 million for 348 additional land border inspectors, and \$67.5 million for additional inspectors and support staff.

To better equip and house these agents and inspectors, the bill provides \$91 million for border vehicles, \$22 million for border equipment, such as search lights, goggles and infrared scopes, \$40.5 million to modernize inspection technology; and \$205 million for Border patrol and detention facility construction and rehabilitation.

For INS' other hat, benefits processing, the bill provides \$67 million additional funds to address the backlog and accelerate the processing times.

This bill includes \$3.07 billion for the Office of Justice Programs, which is \$259.8 above the amount requested by the President. This bill provides for the funding of a number of important law enforcement programs.

The committee has provided \$2.08 billion for State and Local Law Enforcement Assistance Grants. Within this amount; \$400 million is for the Local Law Enforcement Block Grant Program; \$390.5 million is for Violence Against Women Act—VAWA—programs, including programs to assist disabled female victims, programs to reduce violence against women on college campuses, and efforts to address domestic and child abuse in rural areas; and \$265 million is provided for the State Criminal Alien Assistance Program which reimburses States for the incarceration costs of criminal aliens.

Within the amount provided for the Office of Justice Programs, a total of \$328.5 million has also been recommended for juvenile justice programs. These funds will go towards programs aimed at reducing delinquency among at-risk youth; assisting States in enforcing underage drinking laws; and enhancing school safety by providing youth with positive role models through structured mentoring programs, training for teachers and families so that they can recognize troubled youth, and training to students on conflict resolution and violence reduction.

This bill includes \$1.019 billion for the COPS office in new budget authority, which is \$164.7 billion above the President's request. As in prior years, the Senate has provided \$180 million for the Cops-in-Schools Program to fund up to 1,500 additional school resource officers in FY02, which will make a total of 6,100 school resource officers funded since Senator GREGG and I created this program in 1998.

This committee also remains committed to providing grant funds for the hiring of local law enforcement officers through the COPS Universal Hiring

Program. Although the President did not seek funding for this program in FY02, the committee has provided \$190 million to continue to hire officers, as well as to provide much needed communications technology to the Nations law enforcement community.

Within the COPS budget, the committee has also increased funding for programs authorized by the Crime Identification and Technology Act, CITA. In FY02, \$150.9 million is provided for programs that will improve the retention of, and access to, criminal records nationwide, improve the forensic capabilities of State and local forensic labs, and reduce the backlog of crime scene and convicted offender DNA evidence.

And finally, the committee has provided \$48.3 million within COPS to continue the COPS methamphetamine initiative. These funds will provide for the clean-up of meth production sites which pose serious health risks to law enforcement and the surrounding public. Funds will also be provided to State and local law enforcement to acquire training and equipment to safely and effectively dismantle existing meth labs.

For the Department of Commerce in fiscal year 2002, the committee has focused on the separate but equally important goals of improving departmental infrastructure and promoting the advancement of technology. The Nation is blessed with an outstanding group of individuals who go to work every day, across the Nation, for the Department of Commerce. Thirty-seven thousand people work in agencies as diverse as the Economic Development Administration, the National Oceanic and Atmospheric Administration, and the Bureau of the Census. They are highly-trained experts who are responsible for a huge array of critical programs. These people help minority businesses and small manufacturers flourish, run trade missions to open foreign markets to American goods, forecast hurricanes, estimate the Nation's gross domestic product, set standards and measurements recognized and used world-wide, fly satellites, manage the Nation's fisheries, conduct censuses, and process patents. These missions of the Department of Commerce are the glue that holds together the U.S. economy, both domestically and abroad.

There is no doubt as to the importance of the missions under the purview of the Department of Commerce. There is, however, a crisis looming in terms of the infrastructure available to the employees who work there. In many cases, Mr. President, these people are going to work in World War II-era buildings that are literally crumbling around them. We saw this last year in Suitland where we had leaks in the roof, lead in the water, and asbestos in the air systems and we provided

funding for new buildings. The average age of the NOAA fleet of research vessels is close to 30 years old. Employees in Department of Commerce bureaus are working with antiquated computer systems that often do not speak to the outside world.

The bill we have before us begins to turn the tide on infrastructure needs. In all cases, the bill funds the President's request for capital upgrades. This includes new information technology systems at the Minority Business Development Agency, the Bureau of the Census, the Economic Development Agency, and the Office of Economic and Statistical Analysis. The bill includes a \$76 million increase for the next generation of polar-orbiting satellites. It also includes a new radio spectrum measurement system at the National Telecommunications and Information Administration.

In other cases, this bill jump-starts capital projects that were not requested by the President when they should have been. For example, funding is included to begin work on upgrading the Boulder, CO, campus of the National Institute of Standards and Technology. We also encourage the United States Patent and Trademark Office to reflect on its infrastructure needs and to report back on what we can do to help in the future.

In terms of NOAA, the bill includes funding for 2 new research vessels and funds to refurbish 6 others. In addition, funding is included for needed repairs at the Beaufort, Oxford, and Kasitsna Coastal Laboratories. Sufficient funding is provided to begin construction on regional National Marine Fisheries Service Buildings in Hawaii and in Alaska. The bill provides funding to start building visitor facilities at National Marine Sanctuaries.

Mr. President, the funding provided in this bill for these purposes is a down-payment on the future of a robust Department of Commerce. I believe that the people at the Department are its greatest asset and that these targeted funds will allow those people to better do their jobs for decades to come.

In terms of advancing technology, in addition to the satellite programs, research vessels, radio spectrum management systems and other programs that I mentioned earlier, the bill provides \$696.5 million for the National Institute for Standards and Technology—NIST. This amount aggressively funds scientific and technical research and services that are carried out in the NIST Laboratories in Gaithersburg and in Boulder. The bill provides the current year funding level of \$60.7 for new ATP awards. The ATP is an industry-led, competitive, and cost-shared program to help the U.S. develop the next generation of breakthrough technologies in advance of its foreign competitors. ATP contracts encourage companies to

undertake initial high-risk research that promises significant widespread economic benefits. Over one-half of the ATP awards go to small companies. To date, Mr. President, 41 ATP competitions have been held; 4,435 proposals have been submitted involving 7,343 participants; 526 awards have been issued involving 1,167 participants, and 248 ATP projects have been completed. Of the 526 awards, 173 are joint ventures, and 353 are single applicants. Fifty-nine percent of the projects are led by small businesses and 71 percent of the single applicant projects are led by small business. More than 150 different universities are involved in 280 ATP projects and over 100 new technologies have been commercialized as products or services. Companies have identified nearly 1,400 potential applications of ATP research.

Is ATP a success? The answer clearly is "yes." The Advanced Technology Program has been extensively reviewed. Since its inception, there have been 52 studies on the efficacy and merits of the program. These assessments reveal that the ATP does not fund projects that otherwise would have been financed in the private sector. Rather, the ATP facilitates so-called "Valley of Death" projects that private capital markets are unable to fund. In June 2001, the National Academy of Sciences' National Research Council completed its comprehensive review of the ATP. It found that the ATP is an effective Federal partnership that is funding new technologies that can contribute to important societal goals. They also found that "the ATP could use more funding effectively and efficiently." A March 1999 study found that future returns from just 3 of the 50 completed ATP projects—improving automobile manufacturing processes, reducing the cost of blood and immune cell production, and using a new material for prosthesis devices—would pay for all projects funded to date by the ATP. Measurement and evaluation have been part of the ATP since its beginning. What the analysis shows time and time again is that the ATP is stimulating collaboration, accelerating the development of high-risk technologies, and paying off for the Nation.

The bill includes a total of \$7.6 billion for the Department of State and related agencies, an increase of \$617 million above last year's funding level of \$7.0 billion. Within the State Department account, \$1.1 billion has been provided for worldwide security upgrades of State Department facilities. Additionally, the bill provides \$773 million to continue our Nation's international peacekeeping activities.

During the past several years, the worldwide security accounts and the peacekeeping account have accounted for the majority of increases in the Department's budget while the day-to-day operations have been neglected. As a

result, many of the Department's quality of life initiatives and the Department's other infrastructure needs—communications, transportation, office equipment—have suffered. The funding provided in this bill fully funds all current services for the Department of State. In addition, this bill funds all quality of life initiatives such as: additional language, security, leadership and management training; monetary incentives to attract employees to hardship posts; incentives to allow civil service employees to compete for 2-year overseas assignments; and replacement of obsolete furniture and motor vehicles.

As with the other departments funded through this bill, full funding is provided for information technology upgrades. The worldwide web has become essential to the conduct of foreign policy. Yet, very few overseas posts have that capability. The funding provided in this bill fully supports Secretary Powell's decision to place information technology among the Department's top priorities and fully funds the Department's efforts to provide internet access to all State Department desktops by January 2003.

Let me conclude by saying again this is a solid piece of legislation that addresses issues that affect the daily lives of all Americans. It is a good bill that balances the needs on many diverse missions, and the interests of members from both parties. Every year, we face difficulties with respect to limited funding and multiple, sometimes competing, priorities. This year was no different. And, as in past years, the CJS Subcommittee made those decisions in a bipartisan and judicious manner. This could not have happened without the assistance of Senator GREGG and the endless hours of work that both my and his staff put into drafting the bill before the Senate today. With the help of my colleagues, I look forward to swift passage of this vital legislation.

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

Mr. GREGG. Mr. President, I rise in support of the bill brought forward by the Senator from South Carolina. I thank Senator HOLLINGS for the tremendous courtesy and teamwork approach he has taken on this bill relative to the Republican side of the aisle. I especially thank his staff, led by Lila Helms, for their efforts to make sure we had an approach that involved all the different players on the committee.

This has been a bill which Senator BYRD, during the full committee markup, described as the "most bipartisan bill in his memory." We are very proud of that. I think it is very much a reflection of the leadership of Senator HOLLINGS and the approach he has taken. So I express my deep and sincere thanks to him.

Senator HOLLINGS has outlined pretty specifically the areas this bill funds and some of the initiatives in the bill. Let me talk about a couple, however, that I would like to highlight myself.

First, the appropriation level on this bill is significant, \$41.5 billion, which is over the President's request by a fair amount—about one-half billion dollars. It is my hope—and I have discussed this with Senator HOLLINGS—as we move through the process that we can come a little closer to the President's request. I note, however, that the bill is within our budget resolution and the allocation given to this committee. So as a practical matter it does not in any way negatively impact the budget. It is a rather responsible bill. The reason it spends these dollars is because it has significant agencies that it funds.

The Department of Justice is, of course, a critical agency; the Department of State; Department of Commerce; Judiciary; FTC; FCC; and the SEC. These are all agencies that play a huge role in the deliverance of quality Government in our country. It is our obligation to strongly support them.

One area on which we have focused a considerable amount of time in the committee has been the issue of terrorism and our preparation for terrorism as a government. Earlier in the year, we had a joint hearing that involved a large number of Senators participating, at which hearing we had present and testifying all the major agencies that impact terrorism within the Federal Government—I believe the number is 42, or maybe 46. I myself even lost count, even though I stay fairly attentive to this issue. We heard from the leaders of each agency. We heard from the Secretary of State, the head of FEMA, the Attorney General, of course, and down the line. We heard from leaders within our communities and agencies. We heard from the Deputy Secretary of Defense.

The conclusion, which was clear and regrettably unalterable, is that there are simply too many people trying to cook this pie, too many people trying to stir the stew, and, as a practical matter, the coordination necessary in order to deliver a thoughtful and effective response to the threat of terrorism is not that strong.

Terrorism can be divided into three basic areas of responsibilities, the first being intelligence, both domestic and international; the second being interdiction, again domestic and international; and the third being consequence management should an event occur.

In all these areas, there is a significant overlap of responsibility and, as a result, through this hearing and many other hearings we have held, we have come to the conclusion that we have to become more focused within especially the Justice Department, which has a huge role in this area, but within other

agencies which naturally fold into the Justice Department.

We have suggested in this bill that we create a Deputy Attorney General who would serve as a national go-to person on the issues relating to domestic terrorism. This individual would obviously work in tandem with a lot of other major players, including FEMA, but as a practical matter at least we would have one central place where we could begin and where people could look to more response to terrorism. It would be a central place where not only the response would occur but the responsibility would occur and therefore we would have accountability, which is absolutely critical and which today does not exist.

This bill creates that position and funds it, along with funding a significant increase in the counterterrorism activity at a variety of levels which are critically important to our efforts to address this issue.

I do not want to sound too pessimistic about our efforts in this area. Compared to 4 or 5 years ago when we began this initiative, we are way down the positive road. We have, in effect, up and running a first responder program in a number of communities across this country, and we are moving aggressively across the country to bring critical areas up to speed.

We have an effective intelligence effort and effective interdiction effort, but we still have a long way to go. If you put it on a continuum time of a person, it is as if this person were born 5 years ago and we were now in mid-adolescence, in our late teens, moving, however, aggressively into a more mature approach to the issue.

Another area I think needs to be highlighted, on which I congratulate the chairman, as I have with counterterrorism, is the issue of NOAA. NOAA is absolutely a critical agency for us. It is one of the premier agencies in our Nation in addressing the question of scientific excellence. I was just watching the weather today and noticed there is a hurricane off the northern part of our east coast. It is going to be pushed off the coast in New England because of the weather patterns.

Mr. HOLLINGS. Hopefully it will not hit New Hampshire.

Mr. GREGG. Hopefully it will not hit New Hampshire.

Because of NOAA, we can predict where a hurricane will go with a great deal more accuracy. Certainly, States such as South Carolina and those that are located along the hurricane trough have taken full advantage of it.

This agency goes way beyond the issues of atmospheric. It goes into quality of water, ocean activity, marine fisheries, and we have made a huge commitment in this area in this bill.

Environmental conservation is extraordinarily important as part of the

NOAA initiative in this bill, and, as the chairman was reciting, we have put a large amount of dollars into it, especially in the Coastal Zone Management Program and the National Estuarine Research Reserve.

The committee recognizes that 90 percent of the commerce in this country enters through our ports, and our nautical charts are grossly outdated. This year we address this problem by aggressively increasing funding for mapping and charting, electronic navigational charts, shoreline mapping, the survey backlog, and securing additional hydrographic ships.

Because of the critical importance of fishing to our economy and our cultural history, the committee is funding a new \$54 million fishery research vessel, as was mentioned by the chairman—this is absolutely critical—along with making a significant effort to protect and preserve the right whale population which is very important to my part of the country.

Given the current concerns regarding our national energy policy, the committee is providing funds through NOAA again to examine an extension of the U.S. claim to the mineral continental shelf, implementation of a regional temperature forecasting system to better project electricity demands, and to develop an air quality forecasting system to minimize the impact of powerplant emissions on air quality.

The committee funded the following programs: Coastal Zone Management grants at \$65 million, \$5 million over last year's level; National Sea Grant College Program at \$56 million, the same level as the budget request; the National Weather Service's Local Warnings and Forecasts Program at \$80 million; the National Polar Orbiting Environmental Satellite System at \$156 million. This is a recognition by this committee of the significance and importance of NOAA and the role it plays in maintaining the quality of our science in this country but, more importantly, the quality of the life of our citizenry.

As was mentioned by the chairman of the committee, we have made a strong commitment to the judiciary which has its own unique problems, and we continue to work hard, especially in the area of pay. I personally believe we should do something aggressively in the area of paying our judges. I suspect the Chair also feels this way, as he is the fellow responsible for these judges. The fact is, it is very hard to attract into the judiciary high-quality individuals who might have young children or especially families whose kids are about to head off to college under the present pay scale, and something needs to be done. We are trying to address that in this bill.

Again, as was mentioned by the chairman, the State Department has been aggressively addressed. I am

happy to report, as the chairman has alluded, that the arrears situation is much improved, thanks to the good work of our former Ambassador to the U.N., Richard Holbrooke. Mr. Holbrooke accomplished what many said could not be done: He successfully negotiated a new U.S. assessment rate both for the regular budget and the peacekeeping account so that the burden is more fairly distributed.

For me, the renegotiation of the assessment scale is a perfect example of how the United States can use its large contribution to the U.N. as a leverage to demand fairness, accountability, and reform. Our "tough love" policy vis-a-vis the U.N., the basis of the Helms-Biden legislation, is successful because it is premised on good intentions and high expectations.

I also want to mention that funds have been made available in this bill for information technology in the total of \$210 million. As the chairman of this committee mentioned, for the last 4 years I have been extremely supportive of this attempt to try to upgrade the IT capabilities of the State Department. I have been disappointed, however, by the lack of progress made by the Department in this area.

The only goal the State Department has achieved is providing e-mail capability to all Department desktops. Most desktops still do not have Web access. The networks of various U.S. agencies operating overseas have not been integrated, and the classified system needs to be overhauled.

I am encouraged by Secretary Powell's recognition of IT as one of the Department's top priorities. The fiscal year 2002 mark fully funds IT, and I congratulate Senator HOLLINGS for his commitment in this area. Hopefully, the Department will make good use of these funds.

Lastly, I want to mention something that is especially important to me personally, and that is the bill's effort to eliminate the illegal diamond trade that has fueled the violent conflict in African nations such as Sierra Leone, Congo, and Angola.

Nowhere has the effect of this illicit diamond trade been more graphic than in Sierra Leone. As early as 1991, a criminal gang called the Revolutionary United Front, or RUF, began taking control of many of the Sierra Leone diamond mines. Since then, RUF has used profits from the sale of diamonds to terrorize civilians for no other reason than to expand their influence. The RUF is notorious for its use of forced amputations, murder, and rape in waging its war of terrorism. I assure you, there will be no end to the violence unless we address this problem at its root. As long as the RUF can profit from the sale of conflict diamonds, the butchery will continue.

What is needed is a ban on the importation into the United States of diamonds from countries that fail to observe an effective diamond control system. Clearly, this will involve substantial commitment on the part of the Africa's diamond-producing countries. But the onus cannot fall entirely on them. It is equally the responsibility of diamond-importing countries to do all we can to ensure we are not facilitating the trade in conflict diamonds.

In the past, we have been unable or unwilling to act even while effective preventive measures, measures such as the ones I have introduced today and which Senator HOLLINGS has been kind enough to include in this bill, are at our fingertips. There are things we can do to make the situation in Africa better. The key is to act. We have a chance to save lives, to promote peace, merely by changing the way we do business. This bill goes a long way in addressing the appalling events currently taking place in much of West Africa.

Again, I thank Senator HOLLINGS for his commitment in this area and his willingness to support this effort and be a leader on it. In conclusion, I also thank Senator HOLLINGS, and especially his staff, for all they have done to make this a bipartisan bill and a bill which I can enthusiastically support.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 1535

Mr. HOLLINGS. I send to the desk a managers' package of technical amendments.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for himself, and Mr. GREGG, proposes an amendment numbered 1535.

Mr. HOLLINGS. 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:

On page 91, line 15, before the “.”, insert the following: “, of which \$13,000,000 shall remain available until expended for capital improvements at the U.S. Merchant Marine Academy”.

On page 18, line 20, before the “.”, insert the following: “, of which \$11,554,000 shall be available only for the activation of the facility at Atwater, California, and of which \$13,323,000 shall be available only for the activation of the facility at Honolulu, Hawaii”.

On page 53, line 23, strike “\$54,255,000” and insert “\$23,890,000”.

On page 55, starting on line 4, and finishing on line 5, strike “provided under this heading in previous years” and insert in lieu thereof “in excess of \$22,000,000”.

On page 53, starting on line 16 and continuing through line 18, strike “for expenses necessary to carry out “NOAA Operations, Research and Facilities sub-category”” and insert in lieu thereof “for conservation activities defined”.

On page 58, starting on line 7 and ending on line 8, strike “the “NOAA Procurement, Acquisition, and Construction sub-category”” and insert in lieu thereof “conservation activities defined”.

On page 58, line 10, after “amended”, insert “including funds for”.

On page 58, strike all after “expended” on line 12 through “limits” on line 16.

On page 58, line 16, after “That”, insert the following: “, notwithstanding any other provision of law.”.

On page 58, line 17, strike “for” and insert in lieu thereof “used to initiate”.

On page 58, line 18, insert before the “.”, the following: “, for which there shall be no matching requirement”.

On page 59, starting on line 2 and ending on line 3, strike ““NOAA Pacific Coastal Salmon Recovery sub-category”” and insert in lieu thereof “conservation activities defined”.

On page 59, line 5, after the second “.”, insert the following: “including funds for”.

On page 59, line 9, strike all after “expended” through “limits” on line 13.

On page 65, line 13, after “funds”, insert the following: “, functions, or personnel”.

On page 66, line 5, strike “\$40,000,000” and insert “7,000,000”.

On page 66, line 7, before the “.”, insert the following: “or support for the Commerce Administrative Management System Support Center”.

On page 66, line 8, after the “(B)”, strike “not more than \$15,000,000” and insert in lieu thereof “None”.

On page 67, after line 15, insert the following new subsection:

“(f) The Office of Management and Budget shall issue a quarterly Apportionment and Reapportionment Schedule, and a Standard Form 133, for the Working Capital Fund and the “Advances and Reimbursements” account based upon the report required by subsection (d)(1).”.

On page 75, after line 11, insert the following new section:

“SEC. 306. Pursuant to section 140 of Public Law 97-92, Justices and judges of the United States are authorized during fiscal year 2002, to receive a salary adjustment in accordance with 28 U.S.C. 461: Provided, That \$8,625,000 is appropriated for salary adjustments pursuant to this section and such funds shall be transferred to and merged with appropriations in title III of this Act.”.

On page 42, line 21, strike “\$49,386,000” and insert “\$51,440,000”.

Strike section 107 and renumber sections 108-111 as “107-110”.

On page 102, line 20, strike “\$3,750,000,000” and insert “\$4,500,000,000, as provided under section 20(h)(1)(B)(ii) of the Small Business Act”.

On page 103, line 1, after “loans”, insert “for debentures and participating securities”.

On page 103, line 3, strike “\$4,100,000”, and insert “the levels established by section 200(h)(1)(C) of the Small Business Act”.

On page 105, line 5, before the “.”, insert the following: “, to remain available until expended”.

On page 104, line 24, strike “\$14,850,000 and insert \$6,225,000”.

On page 10, line 18, strike “\$724,682,000” and insert “\$712,682,000”.

Mr. HOLLINGS. Mr. President, in this managers' package, I have listed some two dozen technical amendments clarifying the funding level for the Merchant Marine Academy; another technical amendment clarifying the

funding level for the Prison Activations; a technical amendment clarifying the funding level for NOAA Executive Administration, going right on down the list.

Mr. President, I ask unanimous consent that this description of the managers' package be printed in the RECORD.

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

MANAGER'S PACKAGE

1. Hollings technical amendment [clarifying the funding level for the Merchant Marine Academy].

2. Hollings technical amendment [clarifying the funding level for prison activations].

3. Hollings technical amendment [clarifying the funding level for NOAA executive administration].

4. Hollings technical amendment [clarifying the amount of NOAA's prior year deobligations].

5. Hollings technical amendment [clarifying language on conservation activities].

6. Hollings technical amendment [clarifying language on conservation activities].

7. Hollings technical amendment [clarifying the definition of the Coastal and Estuarine Land Conservation Program].

8. Hollings technical amendment [striking extraneous language].

9. Hollings technical amendment [clarifying the availability of funds for the Coastal and Estuarine Land Conservation Program].

10. Hollings technical amendment [clarifying the availability of funds for the Coastal and Estuarine Land Conservation Program].

11. Hollings technical amendment [clarifying the availability of funds for the Coastal and Estuarine Land Conservation Program].

12. Hollings technical amendment [clarifying language on conservation activities].

13. Hollings technical amendment [clarifying language on conservation activities].

14. Hollings technical amendment [striking extraneous language].

15. Hollings technical amendment [clarifies the use of the Commerce Working Capital Fund].

16. Hollings technical amendment [clarifies the uses of the Commerce Working Capital Fund].

17. Hollings technical amendment [clarifies the uses of the Commerce Working Capital Fund].

18. Hollings technical amendment [clarifies the uses of the Commerce Working Capital Fund].

19. Hollings technical amendment [clarifies the uses of the Commerce Working Capital Fund].

20. Hollings amendment [providing a cost of living adjustment for justices and judges].

21. Hollings for Byrd amendment [adjusting the funding level of the International Trade Commission].

22. Hollings for Durbin/Lieberman amendment [eliminating an extraneous section].

23. Hollings for Kerry/Bond amendment [improving SBA's loan authority].

24. Hollings for Kerry/Bond amendment [improving SBA's loan authority].

25. Hollings for Kerry/Bond amendment [improving SBA's loan authority].

26. Gregg for Murkowski amendment [to clarify the availability of funds to the U.S.-Canada Alaska Rail Commission].

27. Hollings technical amendment [prioritizing spending].

28. Hollings technical amendment [prioritizing spending].

Mr. HOLLINGS. I thank the distinguished Chair, and I urge the adoption of the amendment.

The PRESIDING OFFICER. Is there any further debate on the amendment?

If not, the question is on agreeing to amendment No. 1535.

The amendment (No. 1535) was agreed to.

Mr. HOLLINGS. I move to reconsider the vote.

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

The motion to reconsider was laid upon the table.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. CRAIG. Madam President, I ask unanimous consent the order for the quorum call be dispensed with.

The PRESIDING OFFICER (Mrs. LINCOLN). Without objection, it is so ordered.

AMENDMENT NO. 1536

Mr. CRAIG. Madam President, I send an amendment to the desk to the pending legislation.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] for himself, Mr. MILLER, Mr. HELMS, Mr. SMITH of New Hampshire, Mr. ALLEN, Mr. CRAPO, Mr. LOTT, Mr. NICKLES, Mr. SANTORUM, Mr. BENNETT, Mr. ALLARD, Mr. KYL, Mr. BOND, and Mr. INHOFE, proposes an amendment numbered 1536.

Mr. CRAIG. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the availability of funds for cooperation with, or assistance or other support to, the International Criminal Court or the Preparatory Commission)

At the end of title VI, add the following:

SEC. 623. (a) FINDINGS.—Congress makes the following findings:

(1) On July 17, 1998, the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, meeting in Rome, Italy, adopted the "Rome Statute of the International Criminal Court". The United States voted against final adoption of the Rome Statute.

(2) As of April 30, 2001, 139 countries had signed the Rome Statute and 30 had ratified it. Pursuant to Article 126 of the Rome Statute, the Statute will enter into force on the first day of the month after the 60th day following the date on which the 60th country deposits an instrument ratifying the Statute.

(3) Any American prosecuted by the International Criminal Court will, under the Rome Statute, be denied procedural protec-

tions to which all Americans are entitled under the Bill of Rights to the United States Constitution, such as the right to trial by jury.

(4) Members of the Armed Forces of the United States deserve the full protection of the United States Constitution wherever they are stationed or deployed around the world to protect the vital national interests of the United States. The United States Government has an obligation to protect the members of its Armed Forces, to the maximum extent possible, against criminal prosecutions carried out by United Nations officials under procedures that deny them their constitutional rights.

(5) In addition to exposing members of the Armed Forces of the United States to the risk of international criminal prosecution, the Rome Statute creates a risk that the President and other senior elected and appointed officials of the United States Government may be prosecuted by the International Criminal Court for national security decisions involving such matters as responding to acts of terrorism, preventing the proliferation of weapons of mass destruction, and deterring aggression.

(6) The claimed jurisdiction of the International Criminal Court over citizens of a country that is not a state party to the Rome Statute is a threat to the sovereignty of the United States under the Constitution of the United States.

(b) PROHIBITION.—None of the funds appropriated or otherwise made available by this Act shall be available for cooperation with, or assistance or other support to, the International Criminal Court or the Preparatory Commission. This subsection shall not be construed to apply to any other entity outside the Rome treaty.

Mr. CRAIG. Madam President, at this time I ask for the yeas and nays on the amendment.

The PRESIDING OFFICER. Is there a sufficient second? There appears to be a sufficient second.

The yeas and nays were ordered.

AMENDMENT NO. 1537 TO AMENDMENT NO. 1536

Mr. CRAIG. Madam President, I now submit a second-degree amendment to the amendment, which I think is at the desk as I speak.

The PRESIDING OFFICER. The clerk will report the amendment.

The assistant legislative clerk read as follows:

The Senator from Idaho [Mr. CRAIG] proposes an amendment numbered 1537 to amendment numbered 1536.

Mr. CRAIG. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the availability of funds for cooperation with, or assistance or other support to, the International Criminal Court or the Preparatory Commission) Strike line 2 and all that follows, and insert the following:

SEC. 623. None of the funds appropriated or otherwise made available by this Act shall be available for cooperation with, or assistance or other support to, the International Criminal Court or the Preparatory Commission. This subsection shall not be construed to apply to any other entity outside the Rome treaty.

Mr. CRAIG. Madam President, I take this time to address with my colleagues a matter that I believe has the most grave consequence on our national sovereignty.

I also submit for the RECORD three articles that pertain to this issue that I think are fundamentally important for my colleagues to have and understand. One of those happens to be an op-ed of mine that appeared in the Washington Posts in August, another one from John Bolton, and another one from Mr. Lee Casey. I ask unanimous consent they be printed in the RECORD.

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

[From the Washington Post, August 22, 2001]

(By Larry E. Craig)

At its founding, the mission of the United Nations, as stated in its charter, was "to save succeeding generations from the scourge of war." It made no claim to supersede the sovereignty of its member states. Article 2 says that the United Nations "is based on the principle of the sovereign equality of all its Members," and it may not "intervene in matters which are essentially within the domestic jurisdiction of any state."

Since then, the United Nations has turned the principle of national sovereignty on its head. Through a host of conventions, treaties and conferences, it has intruded into regulation of resources and the economy (for example, treaties on "biological diversity," marine resources and climate change) and family life (conventions on parent-child relations and women in society). It has demanded that countries institute racial quotas and laws against hate crimes and speech. Recently the United Nations tried to undermine Americans' constitutional right to keep and bear arms (with proposed restrictions on the international sale of small arms).

Fortunately, many of these have been dead on arrival in the U.S. Senate, successive presidents have refused to endorse others, and in any case the United Nations had little power of enforcement. But in 1998, one mechanism of global government came to life with the so-called "Rome Statute" establishing a permanent International Criminal Court. Once this treaty is ratified by 60 countries, the United Nations will wield judicial power over every individual human being—even over citizens of countries that haven't joined the court.

While the court's stated mission is dealing with war crimes and crimes against humanity—which, because there is no appeal from its decisions, only the court will have the right to define—its mandate could be broadened later. Based on existing U.N. tribunals for Yugoslavia and Rwanda, which are models for the International Criminal Court, defendants will have none of the due process rights afforded by the U.S. Constitution, such as trial by jury, confrontation of witnesses or a speedy and public trial.

President Clinton signed the Rome treaty last year, citing U.S. support for existing U.N. war crimes tribunals. Many suppose the court will target only a Slobodan Milosevic or the perpetrators of massacres in Rwanda, or dictators like Iraq's Saddam Hussein. But who knows? To some people, Augusto Pinochet is the man who saved Chile from communism; to others he is a murderer. Who

should judge him—the United Nations or the Chilean people?

In dozens of countries, governments use brutal force against insurgents. Should the United Nations decide whether leaders in Turkey or India should be put in the defendants' dock, and then commit the United States to bring them there? How about Russia's Vladimir Putin, for Chechnya? Or Israel's Ariel Sharon? Can we trust the United Nations with that decision?

The court's critics rightly cite the danger to U.S. military personnel deployed abroad. Since even one death can be a war crime, a U.S. soldier could be indicated just for doing his duty. But the International Criminal Court also would apply to acts "committed" by any American here at home. The European Union and U.S. domestic opponents consider the death penalty "discriminatory" and "inhumane." Could an American governor face indictment by the court for "crimes against humanity" for signing a death warrant?

Milosevic was delivered to a U.N. court (largely at U.S. insistence) for offenses occurring entirely within his own country. Some say the Milosevic precedent doesn't threaten Americans, because the U.S. Constitution protects them. But for Milosevic, we demanded that the Yugoslav Constitution be trashed and the United Nations' authority prevail. Why should the International Criminal Court treat our Constitution any better?

Instead of trying to "fix" the Rome treaty, the United States must recognize that it is a fundamental threat to American sovereignty. The State Department's participation in the court's preparatory commission is counterproductive. We need to make it clear that we consider the court an illegitimate body, that the United States will never join it and that we will never accept its "jurisdiction" over any U.S. citizen or help to impose it on other countries.

[From the Washington Post, January 4, 2001]

UNSIGN THAT TREATY

(By John R. Bolton)

President Clinton's last-minute decision to authorize U.S. signing of the treaty creating an International Criminal Court (ICC) is as injurious as it is disingenuous. The president himself says that he will not submit the Rome Statute to the Senate for ratification because of flaws that have existed since the treaty was adopted in Rome in 1998. Instead, he argues that our signature will allow the United States to continue to affect the development of the court as it comes into existence.

Signing the Rome Statute is wrong in several respects.

First, the Clinton administration has never understood that the ICC's problems are inherent in its concept, not minor details to be worked out over time. These flaws result from deep misunderstandings of the appropriate role of force, diplomacy and multilateral institutions in international affairs. Not a shred of evidence; not one; indicates that the ICC will deter the truly hard men of history from committing war crimes or crimes against humanity. To the contrary, there is every reason to believe that the ICC will shortly join the International Court of Justice as an object of international ridicule and politicized futility. Moreover, international miscreants can be dealt with in numerous other ways, as Serbia may now be proving with Slobodan Milosevic.

Second, the ICC's supporters have an unstated agenda, resting, at bottom, on the desire to assert the primacy of international

institutions over nation-states. One such nation-state is particularly troubling in this view, and that is the United States, where devotion to its ancient constitutional structures and independence repeatedly brings it into conflict with the higher thinking of the advocates of "global governance." Constraining and limiting the United States is thus a high priority. The reality for the United States is that over time, the Rome Statute may risk great harm to our national interests. It is, in fact, a stealth approach to eroding our constitutionalism and undermining the independence and flexibility that our military forces need to defend our interests around the world.

Third, the administration's approach is a thinly disguised effort to block passage of the American Servicemembers' Protection Act, introduced last year in Congress. This bill, if adopted, would unequivocally make it plain that the United States had no interests in accepting or cooperating with the ICC. Sponsored by Sen. Jesse Helms and Rep. Tom DeLay, the proposal has garnered impressive political support, including from former secretaries of State Henry Kissinger, George Shultz, James Baker and Lawrence Eagleburger, Secretary of Defense-designate Donald Rumsfeld and former secretary Caspar Weinberger and former national security advisers Zbigniew Brzezinski, Brent Scowcroft and Richard Allen.

So what will signing the Rome Statute do? The president is undoubtedly thinking of Article 18 of the Vienna Convention, which requires signatories to a treaty, before ratification, not to undertake any actions that would frustrate its objectives. President Clinton has used this provision before. After the Senate defeated the Comprehensive Test Ban Treaty, the administration cited Article 18 (rather than the president's constitutional authority as commander in chief) to justify a continued moratorium on underground nuclear testing. Obviously, the pending anti-ICC bill would divorce the United States from the court and violate Article 18, or so we will soon hear.

Relying on Article 18, which cannot sensibly apply to our government of separated powers, is wrong in many respects, not least that the United States has never even ratified this Vienna convention. Ironically, however, President Clinton's "midnight decision" to sign the Rome Statute provides guidance to solve the problem he has needlessly created, and others as well.

After appropriate consideration, the new administration should straightforwardly announce that it is unsigning the Rome Statute. President Clinton himself stated that he will not submit the treaty to the Senate, so this is a purely executive decision. What one president may legitimately (if unwisely) do, another may legitimately (and prudently) undo. The incoming administration seems prepared to take similar actions in domestic policy, and it should not hesitate to do so internationally as well.

Not only would an unsigning decision make the U.S. position on the ICC clear beyond dispute, it would also open the possibility of subsequently unsigning numerous other unratified treaties. It would be a strong signal of a distinctly American internationalism.

The writer, a senior vice president of the American Enterprise Institute, was assistant secretary of state for international organization affairs in the first Bush administration.

[From the Washington Legal Foundation, May 18, 2001]

THE INTERNATIONAL CRIMINAL COURT: UNDEMOCRATIC AND UNCONSTITUTIONAL

(By Lee A. Casey)

Lee A. Casey is a partner in the Washington, D.C. office of the law firm Baker & Hostetler. He served in the Department of Justice's Office of Legal Counsel and Office of Legal Policy during the Reagan and George H.W. Bush administrations. Mr. Casey writes and speaks frequently on international law and constitutional issues.

The 1998 Rome Treaty, which would establish a permanent International Criminal Court ("ICC"), creates a number of unprecedented challenges for the United States. The ICC will have the power to investigate and prosecute a series of international criminal offenses, such as "crimes against humanity," heretofore enforceable only in national courts, or in ad hoc tribunals of very limited application. If the U.S. ratifies this treaty, the ICC would have the authority to try and punish American nationals for alleged offenses committed abroad, or in the United States, and that court will be entirely unaccountable for its actions. The ICC would, in fact, be in a position to punish individual American officials for the foreign policy and military actions of the United States, and would not offer even the minimum guarantees of the Bill of Rights to any of the defendants before it.

President Clinton made a serious mistake when he signed the Rome Treaty in the waning days of his Administration. The ICC treaty regime is inconsistent with the most basic political and legal principles of the United States, and U.S. ratification of this treaty would, in fact, be unconstitutional. President Bush should move forward and withdraw the Clinton signature.

United States Participation in the ICC Treaty Regime Would Threaten American Democracy. The United States was founded on the basic principle that the American people have a right to govern themselves. The elected officials of the United States, as well as its military and the citizenry at large, are ultimately responsible to the legal and political institutions established by our federal and state constitutions, which exercise the sovereignty of the American people. The Rome Treaty would erect an institution, in the form of the ICC, that would claim authority superior to that of the federal government and the states, and superior to the American electorate itself. This court would assert the ultimate authority to determine whether the elected officials of the United States, as well as ordinary American citizens, have acted lawfully on any particular occasion. In this, the Rome Treaty is fundamentally inconsistent with the first tenet of American republicanism—that anyone who exercises power must be responsible for its use to those subject to that power. The governors must be accountable to the governed.

Moreover, the ICC would be a powerful tool, for both our adversaries and our allies, to be used against the United States when states that have ratified the Rome Treaty disagree with U.S. foreign and military policy decisions. The offenses within the ICC's jurisdiction, although they are "defined" in the Rome Statute, are remarkably flexible in their application. As was acknowledged by the Prosecutor's office of the UN International Criminal Tribunal for the Former Yugoslavia ("ICTY"), which is widely recognized as the model for the ICC, whether any

particular action violates international humanitarian norms is almost always a debatable matter and: “[t]he answers to these questions are not simple. It may be necessary to resolve them on a case by case basis, and the answers may differ depending on the background and values of the decision-maker.” See Final Report to the Prosecutor by the Committee Established to Review NATO Bombing Campaign Against the Federal Republic of Yugoslavia, para. 50 (June 13, 2000).

The “values” of the ICC’s prosecutor and judges are unlikely to be those of the United States. The Rome Treaty has been embraced by many states with legal and political traditions dramatically different from our own. This includes states such as Algeria, Cambodia, Haiti, Iran, Nigeria, Sudan, Syria and Yemen, all of which have been implicated in torture or extra-judicial killings, or both. Even our closest allies, including European states following the civil law system, begin with very different assumptions about the power of the courts and the right of the accused. Nevertheless, if it is permitted to be established, the ICC will claim the power to try individual Americans, including U.S. service personnel and officials acting fully in accordance with U.S. law and interests. The court itself would be the final arbiter of its own power, and there would be no appeal from its decisions.

United States Ratification of the Rome Treaty Would Be Unconstitutional. Not surprisingly, U.S. ratification of the Rome Treaty would be unconstitutional. By ratifying that agreement, the United States would become a full participant in the ICC treaty regime, affirmatively vesting in the court jurisdiction over its nationals. At the same time, the ICC would not provide the rights guaranteed to all Americans by the Bill of Rights. There would be no jury trials in the ICC, which would follow the Continental “inquisitorial” system rather than the Common Law “adversarial” system. Moreover, that court would not guarantee Americans the rights to confront hostile witnesses, to a speedy and public trial, and against “double jeopardy.”

For example, the Sixth Amendment guarantees a criminal defendant the right to “confront” all hostile witnesses, and, therefore, the right to exclude from evidence most “hearsay” evidence. This right is not preserved on the international level. In the ICTY, a court that, like the ICC, theoretically guarantees the right of the confrontation, both anonymous witnesses and virtually unlimited hearsay evidence have been permitted in criminal trials. Similarly, although, like the ICC, the ICTY theoretically preserves the right to a speedy and public trial, defendants often wait years in prison for a trial, large portions of which are conducted in secret. In addition, although the Constitution’s guarantee against “double jeopardy” prevents the prosecution in a criminal case from appealing a judgment of acquittal, acquittals in the ICC would be freely appealable by the prosecution, as they are now in the ICTY—where the Prosecutor has appealed every judgment of acquittal.

ICC supporters incorrectly suggest that U.S. participation would not be unconstitutional because that court would not be “a court of the United States,” to which the Constitution applies, and invariably point to extradition cases, where the Supreme Court has ruled that Americans may be extradited to face trial overseas in courts without the guarantees of the Bill of Rights. In fact, and unlike the situation in an ordinary extra-

dition case, if the U.S. ratified the Rome Treaty, it would be a full participant in the ICC and its governing structures, and any prosecution brought by the ICC would be as much on behalf of the U.S. as any other state party.

Although the Supreme Court has not directly faced such a case, it has suggested that, where a prosecution by a foreign court is, at least in part, undertaken on behalf of the United States, for example, where “the United States and its allies had enacted substantially similar criminal codes aimed at prosecuting offenses of international character . . .” then the Bill of Rights would have to apply “simply because that prosecution [would not be] fairly characterized as distinctly ‘foreign.’ The point would be that the prosecution was as much on behalf of the United States as of the prosecuting nation. . . .” *United States v. Balsys*, 525 U.S. 666 (1998). This would, of course, be exactly the case with the ICC. Since the full and undiluted guarantees of the Bill of Rights would not be available in the ICC, the United States cannot, constitutionally, ratify the ICC Treaty.

In addition, by ratifying the Rome Treaty, the United States would vest the ICC with jurisdiction over offenses committed entirely within its territory. The Supreme Court has, however, made clear that criminal offenses committed in the United States, and otherwise within the judicial power of the United States, must be tried in Article III courts, with the full panoply of the Bill of Rights. As the Court explained in the landmark *Civil War* cases of *Ex parte Milligan* (1866), 71 U.S. 2 (1866) reversing a civilian’s conviction by a military tribunal, “[e]very trial involves the exercise of judicial power,” and courts not properly established under Article III can exercise “no part of the judicial power of the country.” Thus, since the ICC would not guarantee all of the protections of the Bill of Rights, and because it would not be an “Article III” court, the United States cannot vest that institution with any judicial authority over its nationals or its territory.

Mr. CRAIG. Madam President, last December, President Clinton deposited his signature to the Rome treaty, thereby making the United States party to the creation of a permanent International Criminal Court with unlimited jurisdiction. Once created, this court will have the right to prosecute U.S. citizens without any of the guarantees or protections provided by the Constitution. This will also affect our ability to protect men and women of our uniformed services and meet our military commitments to our allies.

President Clinton even acknowledged as he deposited his signature that the Rome treaty had, in his own words, “significant flaws” and would not send it to the Senate for ratification.

In his confirmation hearing testimony, Secretary Powell made it clear that the administration would not send this treaty to the Senate for ratification. However, in my opinion and the opinion of others, this is not enough. Once the 60th country ratifies the treaty, the United States and her citizens will become subject to the jurisdiction of the ICC, regardless of Senate approval under the treaty’s own terms.

This is precisely why we cannot simply allow the treaty to just be confirmed and collect dust. I believe it is incumbent upon all of us to try to bring, in essence, the treaty down.

U.S. Armed Forces operating overseas in peacekeeping operations could conceivably be prosecuted by the ICC for protecting the vital interests of the United States. In other words, the Senate of the United States could support our men and women going to war in a foreign nation only to have an international court rule them as criminals against the state or, in essence, criminals against the world.

Furthermore, Americans prosecuted by the ICC will not be guaranteed any of the procedural protections to which all Americans are entitled under the Bill of Rights. I can recite those for us. We have heard them all of our lives: The rights such as the right to a trial by jury or the right to a jury of one’s own peers and the right to question one’s accusers—that is just to name a few of the very rights that we now walk away from for our citizens if we do not stand up boldly and say the International Criminal Court should, in fact, not become an arm of the United Nations.

Currently, the Rome treaty already has 139 signatories, and over half of the necessary countries have already ratified it. In short, the ICC will soon become a reality unless we act now. The question is whether the United States will oppose it—and we have already opposed Kyoto, Biodiversity, CTBT, and other bad treaties—or whether we will simply acquiesce to it. The answer to that question is not only one of protecting our service personnel; it is also one of principle. Are we fundamentally committed to the sovereign rule of the domestic law of our country under the U.S. Constitution as opposed to global justice under the U.N. auspices? I think that is a question on which this amendment comes right to the point. And are we fundamentally committed to helping other countries establish and maintain their own constitutions and their own rule of law?

The consequence of allowing this court to come to fruition stretches far beyond the threat of prosecution of American military personnel. It will also put some of our closest allies in direct jeopardy, as we have seen in the example of the World Conference on Racism that we have heard about over the last good many months. We have seen that action taken by the United Nations and its institutions are not always impartial in their findings. In fact, at the World Conference Against Racism, language was adopted hostile to Israel, and it is not limited to the text regarding Zionism. Reference to it has attracted much attention in light of the 1975 U.N. General Assembly Resolution 3379, which passed in November of 1975, which condemned Zionism in

similar though not identical terms, as “a threat to world peace and security,” a “racist and imperialist ideology,” and as “a form of racism and racial discrimination.”

Largely due to American efforts, the General Assembly finally revoked Resolution 3379 in 1991 with a substantial vote.

Ironically, some nations that took part in the World Conference Against Racism, and who were supporters of language denouncing Zionism as racism, are currently still practicing slavery and the trafficking of human beings. As a result of this controversy over Zionism, one could easily see the International Criminal Court become nothing more than another U.N. forum for anti-Semitism where the same players that caused the United States and Israel to walk out on the World Conference on Racism would reappear. The result could be the extradition and prosecution of Prime Minister Ariel Sharon on charges of crimes against humanity for taking actions to protect the citizens of Israel against terrorism within the sovereign boundaries of his own nation. Another document connected to the Durban conference charges Israel with “genocide” and “crimes against humanity”—judicial terms that directly setting the stage for a future prosecution in an international criminal court.

I will be the first to admit that atrocities are being committed in some parts of the world, and that the perpetrators of such atrocities must be brought to justice. And whenever possible the United States should serve as a facilitator for that justice to take place, and always be a shining city on a hill, a supreme example for all nations, particularly those with fledgling democracies and judicial systems. But the answer to that problem is not to create a permanent International Criminal Court with supra-national jurisdiction capable of undermining democratic governments, Constitutions, and judicial systems, just because the court is not satisfied with the outcome of a domestic ruling. Rather we should work hard to strengthen the rule of law within foreign countries, by helping them to establish their own impartial courts capable of ensuring justice for all.

When the United Nations was founded in 1945, its primary mission, as stated in the preamble of the U.N. Charter, was “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind.” Initially composed only of countries that had been allied against the Axis, it soon became seen as a dispute resolution forum for all countries.

In principle at least, the United Nations initially made no claim to supersede the sovereignty of its member states. Even its own Charter, Article 2,

says that the U.N. “is based on the principle of the sovereign equality of all its Members,” and it may not “intervene in matters which are essentially within the domestic jurisdiction of any state.”

That is what its charter says. Let’s remember what it has done in the last few years.

Even in the U.N.’s premiere judicial body, the International Court of Justice, the principle of state sovereignty was maintained, with the Court only having limited jurisdiction in disputes between nations. It had no authority over individual citizens of those nations.

Unfortunately, in recent years the U.N. has turned the principle of national sovereignty on its head. Through a proliferating host of conventions, treaties, conferences, commissions, and initiatives, the U.N. has intruded into virtually every aspect of human life once thought to be the exclusive preserve of national governments, not to mention private citizens. These include efforts to regulate resources and the economy, for example treaties on “biological diversity,” the use of marine resources, and climate change. They include claims over family life, such as conventions on parent-child relations and the role of women in society. They include, under the guise of anti-racism, demands that countries institute quotas and hate crimes and hate speech laws.

While all of these on the surface appear to be good, and in many instances many of us would support them, we must stop short in saying that the U.N. has the right to bring them down on any nation and tread on that nation’s sovereignty.

Recently, under the pretext of fighting illicit trafficking in weapons, the U.N. has even set its sight on undermining American’s constitutional right to keep and bear arms under the second amendment.

Thankfully, many of these initiatives have been dead-on-arrival in the Senate, and successive Presidents have refused to endorse others. Moreover, despite the U.N.’s evolution toward governmental authority it had little to enforce its will. Ideas for global taxation and a standing U.N. army have so far gained little ground.

But one key mechanism of global government began to be realized in 1998 with the adoption of the so-called “Rome Statute” establishing a permanent International Criminal Court (ICC). Once this dangerous treaty is ratified by 60 countries, the ICC will come into existence. For the first time, the U.N. will wield a judicial power not just over nations, but directly over every individual human being. It will even claim authority over citizens of countries whose governments have refused to join the ICC. While the ICC’s stated mission is dealing with war

crimes and crimes against humanity—which, since there is no appeal from its decisions, only the ICC will have the right to define—nothing prevents the U.N. from broadening its mandate later. Defendants will have none of the due process rights afforded by the U.S. Constitution, a speedy and public trial, protection against double jeopardy, or protection against self-incrimination, and others previously mentioned. As with other U.N. panels, it can be expected that it will include “justices” from countries notorious for their human rights abuses.

It is tempting for many to suppose the ICC will only target the likes of a Slobodan Milosevic or the perpetrators of massacres in Rwanda, or maybe rogue state dictators like Iraq’s Saddam Hussein, Libya’s Muammar Qadhafi, or Cuba’s Fidel Castro. But who can be sure that will be their only target? To some people, former Chilean Dictator Augusto Pinochet is a patriot who saved his country from a communist coup.

Again, in the eyes of the beholder, what is he? There are different opinions and different attitudes. Who has responsibility? I would suggest that the U.N. should not be allowed to be the judge, or that the U.N. should not be allowed to be the court. Ultimately, the people of Chile; in this case, Pinochet. They were the people who made the decisions. They were the judges.

In dozens of countries governments enjoy brutal force to suppress violent insurgencies. Should we empower the U.N. to decide whether the military authorities in Algeria, Turkey, Macedonia, Sri Lanka, China, and India should be put in the defendants’ dock, and then commit the United States to employ sanctions or even military force to bring them there? How about Russia’s Vladimir Putin for his war in Chechnya? Or Israel’s Ariel Sharon for his war against the Palestinian intifada? Are we ready to trust the U.N. to tell us who should be prosecuted and who shouldn’t? Critics of the ICC rightfully cite the danger it presents to the safety of U.S. military personnel. What will be the consequences for U.S. national defense and our alliance obligations? Since the death of even one person can qualify as a war crime or even genocide in the ICC, how can we be sure a U.S. soldier serving abroad will not be indicted for what we see as just doing their duty?

The ICC applies not just to soldiers, and not just to acts committed abroad; it also would apply to acts “committed” by any American here at home.

Let me suggest, Is this a stretch of my imagination? It is not. Statements are broad. The argument of authority within the Rome treaty is broad.

Even today, our friends in the European Union join domestic critics in

branding the death penalty in the United States as “discriminatory” and “inhumane.” My guess is some of our colleagues would agree with that, while others would not.

Who can guarantee that an American Governor might not face an indictment by the ICC for “crimes against humanity” for signing a death warrant, or that someday, under some foreign judge’s idea of “arms trafficking,” a U.N. court will not demand the extradition of a private American citizen for selling a gun to his neighbor?

It has been suggested that Milosevic’s extradition does not set an ICC precedent threatening U.S. citizens because they will be protected by the U.S. Constitution. But why? In the Milosevic case, we demanded that the newly established Yugoslav Constitution be trashed for the authority of the United Nations. We are not defending a constitutional right at that point; we are simply saying that an international body has a higher authority. Once the ICC is up and running, why should we assume that our Constitution would not be thrown in the trash as well as that of Yugoslavia? Nothing in the treaty requires them to respect us and to respect our Constitution and our citizens’ rights.

Trying to “fix” the Rome treaty’s flaws so we can live with it is like zipping a silk purse out of a sow’s ear or putting lipstick on that little piggy. Instead of mistakenly trying to fix the Rome treaty’s flaws, the United States must recognize that the ICC is a fundamental threat to American sovereignty and civil liberty, and that no deal, nor any compromise, is possible. We need to make it clear that we consider the ICC an illegitimate body, that the United States will never become part of it, and that we will never accept its jurisdiction over any U.S. citizen or help to impose it on other countries. President Bush has flatly rejected the Kyoto global warming convention. It is no less urgent that we act as forthrightly on the ICC.

According to the administration, the State Department is already engaging in what we call low-level participation in the ICC Preparatory Commission. Why are we helping to establish an institution that is created by a treaty that the administration has stated they will not send to the Senate for ratification? Any kind of participation that would lend legitimacy to the Rome treaty would be a mistake and would send a wrong message to our friends in the international community.

That is why during my recent meeting with Secretary Powell, and in my own op-ed that was published on August 22 in the Washington Post, I have encouraged the administration to remove our signature from the Rome treaty and to discontinue assistance to the International Criminal Court’s Pre-

paratory Commission. Such a statement of policy would send a clear signal to those countries that are currently wrestling with the issue of ratification that the United States does not support the creation of the Court. This clear signal has already been sent by the House of Representatives earlier this year when they passed an amendment, with overwhelming bipartisan support, to the State authorization bill that prohibits cooperation with the International Criminal Court.

To complement the administration’s efforts, and the efforts of the House of Representatives, I am offering this first- and second-degree amendment to Commerce-State-Justice, and the Judiciary appropriations bill that would prohibit funding to the International Criminal Court and its Preparatory Commission. I have discussed this issue with Senator HELMS. He and many others have indicated their strong support for the proposal.

When we stand to cast a vote on these amendments, we literally are voting about American sovereignty. My guess is, when the dust settles and the stories are written and this amendment is analyzed, that is exactly how it will be viewed. It is a vote to protect the men and women of our Armed Forces—without question—and a vote to protect our allies that have become subject to the Court.

I will be darned if American sovereignty and the U.S. Constitution become subject to an International Criminal Court on my watch. And I would hope all of my colleagues would agree.

The creation of an international court is not a foregone conclusion. We can intervene. We can state a position. We can ask that we step back and withdraw our signatures from this critical action and say to all the world that we will not support an International Criminal Court’s ratification, and we would ask other nations in the world to act accordingly.

Madam President, at this time I know of no others in this Chamber who wish to debate this issue, so I ask unanimous consent to temporarily set aside my amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

Mr. CRAIG. I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

AMENDMENT NO. 1538

Mr. SMITH of New Hampshire. Madam President, on behalf of Senators HARKIN, WARNER, INHOFE, COCHRAN, and myself, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from New Hampshire [Mr. SMITH], for himself, Mr. HARKIN, Mr. WARNER, Mr. INHOFE, and Mr. COCHRAN, proposes an amendment numbered 1538.

Mr. SMITH of New Hampshire. Madam President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide protection to American Servicemen who were used in World War II as slave labor)

At the appropriate place, add the following:

SEC. . None of the funds made available in this Act may be used by the Department of Justice or the Department of State to file a motion in any court opposing a civil action against any Japanese person or corporation for compensation or reparations in which the plaintiff alleges that, as an American prisoner of war during World War II, he or she was used as slave or forced labor.

Mr. SMITH of New Hampshire. Madam President, there are many things that happen in war of which, when we look back, many of us on both sides of the aisle are not always proud. But I want to point out that sometimes things happen that must be corrected just because it is the right thing to do. This amendment I am offering is likely to be mischaracterized. There will be a lot of things said about what my amendment does not do. I want to make sure everybody understands what my amendment does. This concerns something that happened during World War II. I want to refer to it before I go to the actual context of the amendment.

There is an article written by Peter Maas I want printed in the RECORD which is entitled “They Should Have Their Day In Court.” I ask unanimous consent a copy of that article be printed in the RECORD. It is a Parade magazine article.

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

[From Parade Magazine, June 17, 2001]

THEY SHOULD HAVE THEIR DAY IN COURT

(By Peter Mass)

Tears suddenly fill Lester Tenney’s eyes. “I’m sorry,” he says. “It’s been a long time, but it’s still very hard sometimes to talk about.” All I can do is nod dumbly. Words fail me as I listen to the horror he is describing.

On April 9, 1942, Tenney, a 21-year-old Illinois National Guardsman, was one of 12,000 American soldiers who surrendered to the Japanese at the tip of Bataan Peninsula, which juts into Manila Bay in the Philippines. Ill-equipped, ill-trained, disease-ridden, they had fought ferociously for nearly five months against overwhelming odds, with no possibility of help, until they ran out of food, medical supplies and ammunition.

As prisoners of war, Tenney among them, they were taken to a prison camp by the Japanese army on what became infamous as the nine-day, 55-mile-long Bataan Death March, during which 1000 of them perished. The atrocities they suffered have to some extent been revealed. But what happened afterward—when they were forced into inhuman slave labor for some of Japan’s biggest corporations—remains largely unknown. These

corporations, many of which have become global giants, include such familiar names as Mitsubishi, Mitsui, Kawasaki and Nippon Steel.

Through interviews with former POWs and examinations of government records and court documents, I learned that in 1999 Tenney had filed a lawsuit for reparations in a California state court. His suit was followed by a number of others by veterans who had suffered a similar fate. The Japanese corporations, instead of confronting their dark past, went into deep denial. Represented by American law firms, they maintained that, by treaty, they didn't owe anybody anything—not even an apology.

Surprisingly, the U.S. government stepped in on behalf of the Japanese and not only had these lawsuits moved to federal jurisdiction but also succeeded in getting them dismissed by Vaughn R. Walker, a federal judge in the Northern District of California. In his ruling, Judge Walker declared in essence that the fact that we had won the war was enough of a payoff. His exact words were "The immeasurable bounty of life for themselves [the POWs] and their posterity in a free society services the debt." In applauding the judge's decision, an attorney for Nippon Steel was quoted as saying, "It's definitely a correct ruling." She did not dwell on what these men had gone through.

What befell Lester Tenney as a POW was by no means unique. He got an inkling of what was to come on that April day in 1942 when he surrendered and one of his captors smashed in his nose with the butt end of a rifle. Forced to stumble along a road of crushed rock and loose sand, the men—wracked with malaria, jaundice and dysentery—were given no water. Occasionally, they would pass a well. Anyone who paused to scoop up a handful of water was more likely than not bayoneted or shot to death. The same fate awaited most POWs who could no longer walk. "If you stopped," Tenney recalls, "they killed you."

As Tenney staggered forward, he saw a Japanese officer astride a horse, wielding a samurai sword and chortling as he tried, often successfully, to decapitate POWs. During a rare respite, one prisoner was so disoriented that he could not get up. A rifle butt knocked him senseless. Two of his fellow POWs, were ordered to dig a shallow trench, put him in it and bury him while he was still alive. They refused. One of them immediately had his head blown off with a pistol shot. Two more POWs were then ordered to dig two trenches—one for the dead POW, the other for the original prisoner, who had begun to moan. Tenney heard him continue to moan as he was being covered with dirt.

Tenney was one of 500 POWs packed into a 50-by-50-foot hold of a Japan-bound freighter. The overhead hatches were kept closed except when buckets of rice and water were lowered twice daily. Each morning, four POWs were allowed topside to hoist up buckets of bodily wastes and the corpses of anyone who had died during the night, which were tossed overboard.

In Japan, the prisoners were sent to a coal mine about 35 miles from a city they had never heard of, called Nagasaki. The mine was owned by the Mitsui conglomerate, which is today one of the world's biggest corporations. You see the truck containers it builds on every highway in America. The mine was so dangerous that Japanese miners refused to work in it.

The Geneva Convention of 1929 specified that the POWs of any nation "shall at all

times be humanely treated and protected" and explicitly forbade forced labor. Japan, however, never ratified the treaty. That was how it justified putting POWs to work during World War II, freeing up able-bodied Japanese men for military service.

Lester Tenney and his fellow POW slave laborers worked 12-hour shifts. Their diet, primarily rice, amounted to less than 600 calories a day. This was subsequently reduced to about 400 calories. When he was taken prisoner, Tenney weighed 185 pounds. When he was liberated in 1945, he weighed 97 pounds.

Vicious beatings by Mitsui overseers at the mine were constant. Tenney's worst moment came when two overseers decided he wasn't working fast enough and went at him with a pickax and a shovel. His nose was broken again. So was his left shoulder. The business end of the ax pierced his side, just missing his hip bone but causing enough internal damage to leave him with a permanent limp.

Frank Bigelow was a Navy seaman on the island fortress of Corregodor in Manila Bay. It was lost about a month after Bataan fell, so Bigelow escaped the Death March. But he ended up in the same Mitsui coal mine as Tenney. He was in the deepest hard-rock part of the mine when a boulder toppled onto his leg, snapping both the tibia and fibula bones 6 inches below the knee. A POW Army doctor, Thomas Hewlett, was refused plaster of Paris for a cast. Hewlett tried to construct a makeshift splint, but it didn't work. Bigelow's leg began to swell and become putrid. Tissue-destroying gangrene had set in.

With four men holding Bigelow down, Hewlett performed an amputation without anesthesia, using a razor and a hacksaw blade. Bigelow recalls: "I said, 'Doc, do you have any whiskey you could give me?' and he said, 'If I had any. I'd be drinking it myself.'" To keep the gangrenous toxins from spreading, Hewlett packed the amputation with one item readily available in the prison camp—maggots. Bigelow still can't comprehend how he withstood the excruciating pain. "You don't know what you can do 'till you do it," he says.

Another seaman, George Cobb, was aboard the submarine *Sealion* in Manila Bay when it was sunk in an air attack three days after Pearl Harbor. Cobb was shipped to a copper mine in northern Japan owned by the Mitsubishi corporate empire. Clad only in gunnysacklike garments, the POWs had to tunnel to the mine through 10-foot-snowdrifts in bitter winter cold. Of 10 captured *Sealion* crewmen, Cobb is the sole survivor. "I try not to remember anything," he says. "I want it to be a four-year blank."

One day in August 1945, Lester Tenney and his fellow POWs saw a huge, mushroom-shaped cloud billowing from Nagasaki. None of them, of course, knew it was the atom bomb that would end the war. They found out on Aug. 15 that Japan has surrendered when they were given Red Cross food packages for the first time during their long captivity. They then found a nearby warehouse crammed with similar packages and medical supplies that had never been distributed. They also would learn that the Japanese high command had a master plan to exterminate all the POW slave laborers, presumably to cover up their horrific ordeal.

After the POWs returned home, they were given U.S. government forms to sign that bound them not to speak publicly about what had been done to them. America was in a geopolitical battle with the Soviet Union and, later, Red China for the hearts and minds of the postwar Japanese and did not

want to do anything that might prove offensive to our recent enemy. The State Department's chief policy adviser to Gen. Douglas MacArthur, who headed up the occupation of Japan, rhetorically asked: "Is it believed that a Communist Japan is in the best interests of the United States?"

But Tenney, possibly because of his extended hospitalization, never got one of those forms. In 1946 he wrote a letter to the State Department citing his experience and requesting guidance on how to mount claims against those who had beaten, tortured and enslaved him. The State Department replied that it was looking into the matter and advised him not to retain an attorney.

Hearing nothing further, Tenney, a high school dropout, decided to get on with his life. He eventually earned a Ph.D. in finance and taught at both San Diego State University and Arizona State University. Meanwhile, the U.S. and Japan finalized a peace treaty in 1951.

Two years ago, Tenney read that the U.S. government not only had successfully worked on behalf of Holocaust victims in Europe but also was brokering an agreement with Germany to compensate those forced into slave labor during the Nazi regime. It was then that he filed his own lawsuit against Mitsui.

The U.S. State Department and Justice Department intervened for the Japanese corporate defendants on the basis of the 1951 treaty, a clause of which purports to waive all future restitution claims. But the treaty contains another clause, which the U.S. government to date has chosen to ignore, stating that all bets would be off if other nations got the Japanese to agree to more favorable terms than our treaty. Eleven nations—including the then Soviet Union, Vietnam and the Philippines—got such terms.

There is still hope for the surviving POWs, their widows and heirs. Last March, two California Congressmen, Republican Dana Rohrabacher and Democrat Mike Honda, co-sponsored a bill (H.R. 1198) calling for justice for the POWs.

Notably, Honda is a Japanese-American who, as an infant, was interned by the U.S. with his mother and father during World War II. The U.S. has since paid each surviving internee \$20,000 in restitution and, perhaps more important, acknowledged that the internment was wrong. "I believe," Honda told me, "that these POWs not only fought for their country but survived, and now they are trying to survive our judicial system. They should have their day in court."

Mr. SMITH of New Hampshire. Madam President, I think most of us are familiar with or have heard discussions about the Bataan Death March. That was a terrible experience for a lot of American GIs. But I think what happened after the Bataan Death March, to some of those same people, and others, is particularly outrageous.

I want to refer to a couple of paragraphs from this article because it certainly sums up why they should have their day in court and what exactly we are talking about with regard to these American GIs and POWs. Let me read a couple of paragraphs.

On April 9, 1942, a gentleman by the name of Lester Tenney, one of 12,000 POWs, American soldiers, surrendered to the Japanese at the tip of Bataan Peninsula. They were taken to a prison camp by the Japanese Army on what

became infamous as the 9-day, 55-mile-long Bataan Death March during which 1,000 of them perished. I will not go into all of the details, but a few details will show why a day in court is justified and is important. The atrocities they suffered—some have been revealed; some have not—and what happened afterward, where they were forced into slave labor camps for some of Japan's biggest corporations, remains largely unknown. Frankly, until I got involved in this a few months ago, I didn't know some of this had happened.

Many of these corporations have become global giants today, including some names that would certainly get one's attention: Mitsubishi, Matsui, Kawasaki, and Nippon, to name just a few.

Through interviews with former POWs, we have come to learn a lot. But to my amazement, the United States Government stepped in on behalf of the Japanese and not only had lawsuits thrown out to get reparations for what happened—they moved to Federal jurisdiction—but also succeeded in getting them dismissed. I found that particularly outrageous. This is all pointed out by Mr. Maas in his article.

I want to quote one paragraph as to what happened during that march and then go into a little bit about what happened after the Bataan Death March:

What befell Lester Tenney as a POW was by no means unique. He got an inkling of what was to come on that April day in 1942 when he surrendered and one of his captors smashed his nose with the butt end of a rifle. Forced to stumble along a road of crushed rock and loose sand, the men—wracked with malaria, jaundice and dysentery—were given no water. Occasionally, they would pass a well. Anyone who paused to scoop up a handful of water was more likely than not bayoneted or shot to death. The same fate awaited most POWs who could no longer walk. "If you stopped," Tenney recalls, "they killed you."

As Tenney staggered forward, he saw a Japanese officer astride a horse, wielding a samurai sword and chortling as he tried, often successfully, to decapitate POWs. During a rare respite, one prisoner was so disoriented that he could not get up. A rifle butt knocked him senseless. Two of his fellow POWs were ordered to dig a shallow trench, put him in it and bury him while he was still alive. They refused. One of them immediately had his head blown off with a pistol shot. Two more POWs were then ordered to dig two trenches—one for the dead POW, the other for the original prisoner, who had begun to moan. Tenney heard him continue to moan as he was being covered with dirt.

Tenney was one of 500 POWs packed into a 50-by-50-foot hold of a Japan-bound freighter. The overhead hatches were kept closed except when buckets of rice and water were lowered twice daily. Each morning, four POWs were allowed topside to hoist up buckets of bodily wastes and the corpses of anyone who had died during the night. . . .

This is what happened to them after the Bataan Death March. When they

survived that, they were put on these freighters and taken into these coal mines and basically made slaves.

Vicious beatings by Mitsui overseers at the mine were constant. Tenney's worst moment came when two overseers decided he wasn't working fast enough and went at him with a pickax and a shovel. His nose was broken again. So was his left shoulder. The business end of the ax pierced his side, just missing his hip bone but causing enough internal damage to leave him with a permanent limp.

Most of us are familiar enough with stories that came out of the Bataan Death March to know what happened there. But to think of surviving that 55-mile trek over a 9-day period, basically being bayoneted if you helped a friend who fell down or beaten or whatever, to survive all of that and then be placed into camps, slave labor camps on behalf of these corporations by these corporations.

I want to read the amendment I am offering because it is important to understand what the content is. All it says is:

None of the funds made available in this act may be used by the Department of Justice or the Department of State to file a motion in any court opposing a civil action against any Japanese person or corporation for compensation or reparations in which the plaintiff alleges that, as an American prisoner of war during World War II, he or she was used as a slave or forced labor.

All this says is that no funds will be used to block the right of these folks to go to court. It doesn't provide any money to anybody. It doesn't assume that anybody is going to win this case. It doesn't do any of that. We are probably going to hear that. That is not the case.

All it says is that the State Department stays out of it, the Justice Department stays out of it, and these folks are allowed to have their day in court.

Let me explain why I introduced this amendment. As I said, to go through what they went through in the Bataan Death March, and then to be put into slave camps by Japanese companies was atrocious. I want to make clear what I mean by Japanese corporations. War is a terrible reality. I have said that. What happens during war is tragic, and sometimes it just happens. There is not a heck of a lot you can do about it. What happened in World War II at the hands of these private Japanese companies is especially tragic because there has never been anything done about it. We are not talking about the Japanese Government torturing American prisoners. I want to make that clear. The war is over. A treaty was signed. Whatever happened, happened. That is behind us.

What we are talking about is private Japanese corporations, many of which exist today, corporations that Americans know and trust, who used Ameri-

cans as slaves, who should have been offered protection under the Geneva Convention—not the Japanese Government, please understand, the Japanese corporations.

Out of the 36,000 U.S. soldiers who were captured by the Japanese, 5,300 roughly are alive today. They are not getting any younger.

Several of those veterans live in New Hampshire. I was astounded to find out that eight or nine of them do actually live in New Hampshire. I am sure they can be found in every State in the Union. I met with some of those veterans during the August recess. It was a very emotional meeting, but the interesting thing about it, there was no anger presented to me about what happened in the war. The anger and frustration that was expressed to me was what happened with these private companies that went beyond what happened in the war.

Arthur Reynolds from Kingston, NH, spent 3½ years as a POW, 2 years of which he spent shoveling coal under unspeakable conditions for a private Japanese company. He lost 100 pounds in captivity and weighed less than 100 pounds when he was liberated. He survived on barely 500 calories a day, suffered countless beatings. Now he is being told by his Government—not the Japanese Government, the United States Government—that they are on the side of the Japanese corporation that enslaved him.

I say to my colleagues, that is just flat out wrong. Whatever happens in the courtroom happens in the courtroom. That is why we have lawyers on both sides. But what we are talking about here is the right to sue.

That is what we are talking about—not the right to have a victory when you sue, just the right to sue. However you feel, I have some very strong feelings that they should win this case and many Americans—most, I hope—also do. We are not asking for a victory, as much as I would like to see it. We are asking for the right to sue.

Arthur is 85 years old. How much longer is Arthur going to live? Manford Dusett from Seabrook, NH, spent 3½ years as a POW. Like Arthur Reynolds, he is a survivor of the Bataan Death March and the so called hell ships that transported the prisoners to Japan. He was forced to work in a coal mine for 10 to 12 hours a day, with almost no food and under the worst imaginable conditions. He suffered a broken leg in the mine. Frankly, he is lucky to be alive today. He was able to get just enough medical treatment to survive. Manford, as his colleague, weighed less than 100 pounds when he was released. There were others from New Hampshire. This gentleman in the picture here is Roland Stickney from Lancaster. I met with him. There are others from New Hampshire: Roland Gagnon from Nashua, Roland Stickney from Lancaster,

Arthur Locke from Hookset, Wesley Wells from Hillsboro, Bill Onufrey from Freedom, Ernest Ouellette of Boscawen, and I am sure I missed a few. I tried to find everybody.

My colleagues who might be familiar with the plight of these veterans, I have submitted for the RECORD the Parade magazine article. It is important you read that to understand not only what happened to them in the Bataan Death March but, after that, how they survived when they were put on those ships. Imagine being taken in those ships to the coal mines and other places where they were reported to work as slaves.

These veterans are seeking compensation through our legal system—that is all they are doing—from the Japanese corporations that used them as slave laborers. That is all they are doing. Yet, believe it or not, our Government, the U.S. Government, is trying to stop that. They are opposing veterans' efforts to seek proper redress through our judicial system. Is that constitutional?

Should our Government be stopping a private citizen from seeking his or her day in court for a grievance? I don't think so. I think it is wrong. I am, frankly, ashamed it is happening, which is why I am on the floor of the Senate. I am not here to redebate the war, refight the war, or bring up and point out the atrocities of the war. That is not why I am here. I don't think the veterans would want me to do that. The State Department facilitated, ironically, a recent agreement between German companies and their victims who were used as slave laborers during World War II. I commend them for that. That was the right thing to do.

Last year this body passed S. Con. Res. 158, introduced by my colleague and good friend, Senator HATCH, and urged the Secretary of State to facilitate discussions between these veterans and the guilty corporations. But the State Department chose to ignore this recommendation, unlike what they did in the German case. When it comes to the Japanese case, they chose to ignore this. In the case of the Japanese companies, the State and Justice Departments argued—listen carefully—that the private claims of the veterans were waived by the 1951 peace treaty with Japan. I will repeat that because it is very important to the whole discussion of this case. The State and Justice Departments argued that the private claims of veterans were waived by the 1951 peace treaty with Japan. I am going to say, with the greatest respect, that that is flatout wrong. Their rights were not waived. Why do they maintain this position then?

Let me read from the 1951 peace treaty, article 14(b). Let me read from article 14(b) in the 1951 peace treaty:

[E]xcept as otherwise provided in the present Treaty, the Allied Powers waive all

reparation claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war and claims of the Allied Powers for direct military costs of occupation.

If I had only read article 14(b), which I just read, I might have agreed—and probably would have—that the claims of these veterans were waived by the treaty because that is what it sounds like. But the issue is a lot deeper than that. So if someone is going to read article 14(b) on the Senate floor and say, therefore, these claims are waived, then we have to go beyond that. Let me go beyond that:

Article 14(b) does not waive private claims against private Japanese companies.

Don't be mistaken. The State Department knew this in 1951 when the treaty was signed. In fact, John Foster Dulles, the chief negotiator for the treaty—prior to his being Secretary of State—orchestrated a confidential exchange of diplomatic notes between the Japanese and the Dutch to address this very issue in 14(b). In short, the Dutch didn't want any part of 14(b). They refused to waive the private claims of their nationals because, as the United States—remember the fifth amendment—the Dutch were constitutionally barred from doing so without due process of law. So they had a constitutional problem like we have. They can't waive the private claims. Fortunately, the diplomatic notes—and this is what burns me up, frankly, if I may say it as nicely as I can. We find so much information classified in Government. It is the old cover-your-you-know-what routine. That is why we keep it classified. There are legitimate reasons to classify materials, but 50 years later we finally get the truth declassified. All these guys, for all these years, were being denied their day in court when the truth was buried in the classified files. It is just absolutely unbelievable. I am not saying I am the first to find it. I know lawyers have found it for the others, for those doing this, those who are suing. But let me go right at it.

What did those diplomatic notes say? We have it right here. This is September 7, 1951, just declassified in 2000, 50 years later, after all these guys have fought all these years trying to get reparations, and most of them have died. Only 5,300 remain out of 12,000. Here we are. I will read this letter:

Dear Mr. Prime Minister,
I beg to draw the attention of Your Excellency to the paragraph in the address to President and Delegates of the Peace Conference I made yesterday, reading as follows: "Some question has arisen as to the interpretation of the reference in article 14(b) to 'claims of Allied Powers and their nationals'—"

It sounded as if we waived everybody's rights—

which the Allied Powers agree to waive.

It is my Government's view that article 14(b) as a matter of correct interpretation does not involve the expropriation by each Allied Government of the private claims of its national so that after the Treaty comes into force these claims will be non-existent.

The question is important because some Governments, including my own, are under certain limitations of constitutional and other governing laws as to confiscating or expropriating private property of their nationals.

Signed by the Prime Minister of Japan.

This one is signed by Dirk Stikker, Minister of Foreign Affairs of the Netherlands. A copy was sent to the Japanese Government. It says, in part:

Also, there are certain types of private claims by allied nationals, which we would assume the Japanese Government might want voluntarily to deal with in its own way as a matter of good conscience or of enlightened expediency

And so forth.

To get to the fourth chart, this is from the Prime Minister of Japan to the Dutch, and I will read this portion outlined:

With regard to the question mentioned in Your Excellency's note, I have the honor to state as follows:

In view of the constitutional legal limitations referred to by the Government of the Netherlands, the Government of Japan does not consider that the Government of the Netherlands by signing the Treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the Treaty comes into force these claims would be nonexistence.

The Japanese Government is saying that:

However, the Japanese Government points out that, under the Treaty, Allied nationals will not be able to obtain satisfaction regarding such claims, although, as the Netherlands Government suggests, there are certain types of private claims by Allied nationals which the Japanese Government might wish to voluntarily deal with.

These two documents remained classified for 50 years while these guys tried for 50 years to get their day in court. Our own Government would not give these documents to our own soldiers. What an outrage that is. That is an absolute outrage.

The 1951 peace treaty in no way obligates the Government of Japan to pay any private claims. I admit that. It does not obligate them to do anything. We are not talking about the Government of Japan.

At the same time, the treaty does not waive private claims against private Japanese companies, as the State and Justice Departments would like you to believe, and it is right there in declassified documents finally after 50 years.

How is an exchange of diplomatic notes between the Government of Japan and the Government of the Netherlands relevant to the United States and its citizens? Good question. The answer lies in article 26 of the peace treaty, and this is what article 26 says:

Should Japan make a peace settlement or war claims settlement with any state granting that state greater advantages than those provided by the present treaty, those same advantages shall be extended to the parties of the present treaty.

In other words, if they make a deal with the Netherlands, it does not involve anybody else who has the same constitutional problems. This occurred in an exchange of diplomatic notes. Japan made it clear the treaty did not waive the private claims of Dutch citizens, and article 26 automatically extends this to American citizens. Pure and simple. End of story.

This would have been resolved 20 or 30 years ago if somebody had just declassified these documents. If somebody can please tell me why these documents were classified for 50 years because of national security, I will be happy to say we should classify them again.

The Departments of State and Justice are on the side of Japanese corporations. That is what this amendment is about: Are you on the side of our Justice Department and State Department that are on the side of the Japanese corporations that did this to our Americans, against the intent of that treaty, or are you on the side of the American GIs and POWs who for 50 years have been denied their day in court?

That is it. There is nothing complicated about my colleagues' vote on this one. That is it: You are either for the American GIs who served and were prisoners and were slaves or you are on the side of the Japanese corporations that put them in slave camps and your own Justice Department and State Department which kept the documents classified for 50 years so they could not get their day in court. Whose side are you on? That is it. There is nothing complicated about it.

What has happened is wrong. It goes against the historical record, and my amendment simply prevents the unnecessary interference of the Departments of State and Justice in this case. I repeat, because it is very important to understand, I do not predetermine the outcome with my amendment.

Before I yield the floor, I want to repeat what the amendment says so that everybody understands it:

None of the funds made available in this act—

The underlying legislation, the Departments of Commerce, Justice, State—

None of the funds made available in this Act may be used by the Department of Justice or the Department of State to file a motion in any court opposing a civil action

In other words, we do not want Justice and State to come in now and oppose the action of this court, of these men, mostly men. Why? Because for 50 years these documents were classified

and they did not even have the opportunity to do it. We did them a disservice. These are men who fought and suffered horribly in a terrible war.

I urge my colleagues to please read my amendment when you come down to the Chamber to vote to give these men—brave men, heroes—the opportunity to go to court under the terms of the 1951 treaty, and give them an opportunity to be heard. That is all we are doing.

I also want to point out in all that—I did not say it at the time, but to give a little bit more credence to the argument, guess who drafted the memos we are talking about between the Dutch and the Japanese. Who was involved in that draft? None other than John Foster Dulles. That is the great tragedy of this. John Foster Dulles himself participated in the draft of those documents. We have all the evidence to that as well.

I hope my colleagues in the Senate will say to Justice and State: Step aside; it is the right thing to do. You kept this secret all these years by classifying documents and did not allow our guys a day in court. Step aside; do the decent thing and let these men go to court, as it is determined under the treaty we now know, and allow them to sue. If they lose, they lose. If they win, they win, but just let them go to court.

Madam President, I yield the floor.

Mr. WARNER. Mr. President, I rise today in support of the Smith amendment allowing American veterans—our U.S. citizens—who were used as slave laborers in Japan during WWII to have their day in court.

I appreciate the sensitive nature of this issue. Just prior to the recess, I received correspondence from my dear friend and former Secretary of State, George Schultz. He outlined the provisions of article 14 of the 1951 peace treaty with Japan which seemingly settles the question of restitution for the former POWs. His letter, quite properly, has been referred to in order to address this issue. I must, however, respectfully disagree with my valued friend and adviser.

I believe we must look at the entire treaty. Article 26 contains a provision which states that if Japan enters into any future treaties with other countries providing better terms than those extended to the United States, then those more favorable terms will be extended to the United States as well. It is my understanding that several other countries such as Sweden and Denmark have received such terms.

I have listened closely to my esteemed colleague from Hawaii speak on this subject, and I recognize our duty to honor our treaties. However, we must be sure to look at the entire treaty and honor our obligations to our veterans who survived under such horrible conditions.

I have been contacted by a significant number of veterans from my State, and I feel duty-bound to let them have their day in court. I ask my colleagues to consider their views and the entire treaty when making their vote.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Madam President, I thank my colleague and friend, the Senator from New Hampshire, Mr. SMITH, for proposing this important legislation and for offering this amendment today, which I am proud to co-sponsor.

Before I get into the need for the amendment and perhaps repeat some of the facts that the Senator from New Hampshire brought up, let me take a minute to summarize what happened in the Philippines and Japan between 1942 and 1945.

On March 11, 1942, Gen. Douglas MacArthur reluctantly left behind thousands of American troops in the Philippines. Arriving in Melbourne, Australia, he pledged, of course, those famous words: "I shall return."

General MacArthur did return. He liberated the Philippines and rolled back the forces of imperial Japan. Sadly, MacArthur was too late for the hundreds who had died in the infamous Bataan Death March. In that 3-day forced march, American troops were denied food and water, beaten and bayoneted if they fell to the ground. As many as 700 Americans lost their lives in those 3 days.

It also was too late for the thousands who lost their lives on the so-called hell ships that transported surviving POWs to Japan and Japanese-occupied territories. Packed into cargo holds, American POWs struggled for air, as temperatures reached 125 degrees. Almost 4,000 American servicemen would lose their lives just on these journeys in these cargo ships.

Those who survived Bataan and the hell ships would find little rest as Japanese POWs. For more than 3 years, they would serve as slave labor for private Japanese companies, the same companies whose names we revere today and whose products we buy daily, weekly, and monthly in the United States: Matsui, Mitsubishi, Nippon, and others.

Throughout the war, Americans worked in the mines of these companies, their factories, their shipyards, their steel mills. They labored every day for 10 hours or more a day in dangerous working conditions. Some of those who went into the mines were sent into the mines because it was too dangerous for Japanese to work in them. So they sent the American POWs into the coal mines to dig the coal. They were beaten on a regular basis.

Frank Exline of Pleasant Hill, IA, was one of those POWs. A Navy seaman who was captured April 9, 1942, Frank

spent 39 months working for Japanese companies in Osaka, Japan. He began on the docks unloading rock salt and keg iron. Later, he found himself toiling in the rice fields. He was fed two rice bowls a day and given very little water.

During his time with these Japanese companies, Frank was tortured and beaten, once for stealing a potato. Upon being caught, the potato was shoved in his mouth as he was forced to stand at rigid attention directly in the sun for 45 minutes. If he moved or even blinked, he was hit in the face.

Then there is Frank Cardamon of Des Moines, a marine who was stationed in China. His ship was sent back to the U.S. to get more supplies. When it stopped in the Philippines, of course, the ship was attacked and captured. Frank was captured at Corregidor and sent to Japan to work in an auto parts factory and then in the lead mines.

He was never paid for his work, fed two cups of rice a day, and went from 160 pounds to 68 pounds in his 3 years of capture. These men tell me they survived on sheer will, not on the food.

Last month in Iowa, as Senator SMITH did in New Hampshire, I met with three other POWs and their families on this issue. I met with William McFall of Des Moines, who received a Purple Heart and numerous other medals. He worked in the coal mines and told me about how dangerous it was working in the coal mines.

I met with the sisters of Jon Hood, a Navy seaman forced to work on the shipping docks. I met with Gene Henderson of Des Moines. He actually was not in the military. He was a civilian employee at the Pacific Naval Air Base on Wake Island. Gene Henderson was captured and sent to China to work on Japanese artillery ranges before he was sent to work in the iron ore pits in Japan.

Although she could not attend the meeting I held, Margaret Baker of Oelwin, IA, wrote me a letter in June about her late husband Charles Baker. Charles Baker, who was an Army private, survived the Bataan Death March before he was sent to work in the mines in Japan for 3 years. He died at age 54 in 1973. In her letter she wrote:

He suffered many injuries and hunger on the Death March during his imprisonment. We feel that his early death was caused by the suffering that he endured while working long hours in the mines, without food, rest and clothing.

I speak for this amendment and support it on behalf of these veterans and their families. These men and 700 of their fellow prisoners of war and their families are now seeking long delayed justice. They have gone to court to ask for compensation from the Japanese companies that used them as slave laborers during the war.

They deserve their day in court. Yet as the Senator from New Hampshire

has pointed out, our own State Department has come down on the side of the Japanese companies, not our POWs. The State Department has taken the view that the peace treaty signed in 1951 prohibits reparations from private Japanese companies for survivors such as Frank Cardamon or Gene Henderson. In fact, State Department officials have submitted statements to the Court in support of the view of the Japanese companies. I do not think that is right. I do not think it is fair. That is why I am a cosponsor of Senator SMITH's amendment that would stop the State Department and the Department of Justice from using taxpayer dollars to defend the interests of these Japanese companies.

I might add, the House passed this amendment in July by an overwhelming 393-to-33 vote, an amendment stating the State Department should not be allowed to use our tax dollars to fight against our American POWs in court. Now again, as Senator SMITH said, I am sure while we both believe the Japanese companies ought to pay reparations and ought to pay these POWs for the slave labor they provided during the war, that is not what our amendment says. Our amendment simply says let them go to court; let them make their case; let the Japanese companies come in and defend themselves, if they will.

That is all we are asking. We are not preconditioning the outcome. We are not setting up any kind of a standard by which they will be held in one view over the Japanese companies. We are simply saying let them have their day in court. We are saying our State Department should not be intervening in State or Federal courts against these POWs. Let the POWs have their own arguments and their day in court, and let us keep our State Department out of it.

These men courageously served our country. They endured unspeakable, wretched conditions as slave laborers for these Japanese companies. MacArthur was forced to leave them behind in 1942. In 2001, let us not leave them behind one more time. Let us give them their day in court.

My colleague has given all of the arguments. He has outlined what the treaty said in article 14(b). He laid out very cogently and clearly the side agreements that had been done by John Foster Dulles, at that time the chief negotiator for the allied nations, whose letters and side agreements were not brought to light until April of last year. So for all of these years these POWs and their lawyers really perhaps did not have a leg to stand on because of this treaty, but then after April of 2000 we found out the Japanese had made an agreement with the Government of the Netherlands to allow the private citizens of the Netherlands to pursue their private claims.

Then article 26 of the 1951 peace treaty sort of trumps article 14(b). Now article 14(b), as Senator SMITH pointed out, basically said: The allied powers waive all reparation claims of the allied powers, other claims of the allied powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war.

On its face, that ends it. That ends it right there. For all of these years, that is what sort of the basis in court was. Article 26 did state, should Japan make a peace settlement or war claims settlement with any state granting that state greater advantages than those provided by the present treaty, those same advantages shall be extended to the parties to the present treaty.

We did not know until April 2000 that the Japanese Government had indeed made a war claims settlement with another state granting greater advantages to the nationals of that state, and that was, of course, the Dutch citizens because the diplomatic note to the Japanese Prime Minister from the Dutch Foreign Minister—again which was read by the Senator from New Hampshire, and I just repeat it for emphasis sake—it said that: It is my Government's view—that is, the Government's view of the Government of the Netherlands—that article 14(b), as a matter of correct interpretation, does not involve the expropriation by each allied government of the private claims of its nationals. So that after the treaty comes into force, these claims will be nonexistent.

In other words, the Dutch Minister said: It is my Government's view that 14(b) does not prohibit private claims of the nationals of the Netherlands.

The Japanese Prime Minister responded:

In view of the constitutional legal limitations referred to by the government of the Netherlands, the government of Japan does not consider that the government of the Netherlands by signing the treaty has itself expropriated the private claims of its nationals so that, as a consequence thereof, after the treaty comes into force these claims would be nonexistent.

Taken out of international State Department legalese, what that basically says is the Government of Japan has said to the Government of Netherlands that just signing this treaty does not mean you take away from your citizens their right of private claims against the Government of Japan or the nationals of the nation of Japan.

This is the document we did not know about until April of 2000. So we know that article 26 of the treaty of 1951 now comes into full force and play, and because Japan made a war claims settlement with the Netherlands that gives them greater advantages than those provided in the present treaty, those same advantages should be extended to all of the parties of the present treaty. Therefore, we believe

very strongly that our private citizens, our POWs who worked as slave laborers, have every right to pursue their claims in whatever courts they can find to take up those claims.

Unfortunately, the Departments of State and Justice are not on the side of our POWs. They convinced a Federal judge to dismiss these lawsuits. This is fundamentally unfair. This amendment would correct this injustice. I do not know whether or not in a court of law these POWs will be able to prevail. I don't know all of the legal implications. I do know they should have their day in court to argue their claims against these private companies. It is not as if Mitsubishi, Matsui, and Nippon are bankrupt. These are multinational corporations. They are big.

As the Senator from New Hampshire said, our POWs are getting older and not that many remain. It seems to me this is the fair and right thing to do, to make final these reparations, and without interference from the executive branch of the Government.

I am constrained to say I hope no one interprets this amendment or our support for this amendment as somehow trying to bring up again World War II or bringing up in a way that would be detrimental to the present Government of Japan the actions taken during World War II. That is not our intention at all. We all recognize the Government of Japan is one of the great, strong democracies of our present world. They have a system of free government and free enterprise in Japan that is the envy of many places in the world.

For a year and a half I was privileged to serve my country as a Navy pilot stationed at Atsugi airbase in Japan in the mid to late 1960's. I spent a year and a half living on the Japanese economy. I worked every day with men and women who worked for the Nippon Aircraft Corporation. I was one of their test pilots. I worked with them every day. During my year and a half there, I can honestly say I became an admirer of the Japanese people and an admirer of many of the things they have done after World War II. I don't for one minute admire anything they did during World War II, what the warlords did, what they did to lead that nation into World War II. The atrocities they committed during World War II are a definite blot on their history.

Today, the Japanese Government stands as a beacon of democracy and representative government. The Japanese people, I think, have expunged themselves of this terrible legacy of World War II. I am saying this because I don't want anyone to interpret that we are using this amendment or offering this amendment as if making a detrimental statement about the present Government of Japan. That is not so.

We are saying we believe in the rule of law, just as the Japanese Govern-

ment, since World War II, believes in the rule of law. This rule of law we adhere to, that we believe in so strongly, says that people who are wronged, people who believe they have a claim against another person or a government, ought to have their day in court. That is all we are saying. Let them make their case. If the Japanese companies want to defend themselves and say they have already paid reparations, they have already paid in full for all of this, let them come to court and show us. That is all we are saying.

The administration argues this amendment violates our Constitution regarding the separation of powers. This type of restriction we are now placing on appropriations by the participation of the Attorney General in private litigation has been enacted in Congress before and has been accepted and complied with by the executive branch. There was an example offered by Warren Rudman, another Senator from New Hampshire, passed in 1983 that barred the Justice Department from intervening in certain types of private antitrust lawsuits. We have done that many, many times in the past. I don't think the argument that somehow this violates our separation of powers holds any water.

I thank my colleague from New Hampshire for his leadership on this issue, for sticking up for our POWs and for offering this amendment. I hope it is passed overwhelmingly so we can coordinate with the House, which passed it overwhelmingly, and permit these lawsuits to move ahead and give POWs their long overdue day in court. They may have been left behind in 1942 by General MacArthur; let's not leave them behind one more time.

I yield the floor.

The PRESIDING OFFICER (Mr. BAYH). The Senator from Hawaii.

Mr. INOUE. Mr. President, two of my most distinguished colleagues, the Senator from New Hampshire, Mr. SMITH, and the Senator from Iowa, Mr. HARKIN, have offered this amendment to the measure before the Senate. I will share my thoughts on this amendment and the reasons why I oppose it.

While listening to my colleagues' speak, I was reminded that a few days ago I was called upon by one of my dear friends in the Senate, advising me that I should not be involved in this matter; that it would be, without question, an amendment of high emotions, and that it would revive memories of a distant past, black memories.

Like some of my colleagues, I am old enough to recall those dark days in our history. Like some Members, I was involved in that ancient war, World War II. Sometimes I have my personal nightmares.

There is no question that none of us here would ever condone any of the actions taken by the Japanese in the Bataan death march. Being of Japanese

ancestry becomes a rather personal matter. Who knows, one of my cousins could have been the one with the bayonet and rifle. I have no way of knowing. But those men who mistreated our men were of the same ancestry.

Therefore, I stand before the Senate not with any great pleasure but because I feel it must be done. Two days ago, officials of our Nation and the high officials of Japan gathered in the city of San Francisco to commemorate the 50th anniversary of the signing of the Treaty of San Francisco which ended the hostilities of Japan in World War II. This treaty was a farsighted document designed very deliberately to eliminate the possibility of further Japanese aggression by paving the way for an enduring peace between our two countries.

Central to this goal was the recognition by the United States that it had a responsibility to rebuild war-torn Japan so that it could regain its economic self-sufficiency. The economic abandonment of Germany after World War I by the victorious nations of Europe and its horrific consequences were enough to convince the President and the Congress of the United States to avoid inviting a repetition in the Pacific. Accordingly, the provisions of the San Francisco treaty were specifically aimed at protecting the recovering economy of Japan, and among the most important of these was article 14(b) of that treaty. I think we should read this article 14(b) once again:

[E]xcept as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war[.]

It was clear that this language was intended to waive, unless otherwise provided in the treaty, all claims of the United States and allied nationals against Japan and Japanese nationals arising from World War II.

No one can deny the pain and the atrocities suffered by American citizens who were prisoners of war in Japan, and by agreeing to article 14(b), our Nation did not intend to turn its back on its own citizens.

I have had the privilege and the great honor of serving in the Congress now for nearly 42 years and during that time I believe my record is very clear when it comes to the support of the men and women in uniform. At this moment, I find myself in some disagreement with the great leaders of this Senate as to how the Defense Appropriations Subcommittee's bill should be handled. I have always maintained that we cannot do enough for men and women in uniform. Less than one-half of 1 percent of this Nation has stepped forward to indicate to the rest of us that they are willing to stand in harm's way and, if necessary, at the

risk of their lives. How can anyone say this is not something worthy of our support? So my support for the men in uniform, I hope, will not be questioned by any one of my colleagues.

When we signed the treaty and when we passed the War Claims Act of 1948 soon thereafter, our Nation assumed the responsibility of making reparations to our people using the proceeds of Japanese assets ceded by Japan under the treaty. We thought it was important enough at that moment in our history to take over that responsibility.

I do not stand before you to present any rationale or apology for Japanese war crimes because history has shown that during the war, as in many great wars, officers and men of competing armies oftentimes resort to treatment of prisoners so cruel and inhumane as to seem barbaric. There are no good people in a war.

Those of us on the committee, the Defense Appropriations Subcommittee, have one thing in mind—to prevent wars—because many of us have seen what war can do. There is no question that American prisoners in the hands of the Japanese suffered much. I think the evidence is rather clear, as pointed out by the Senator from New Hampshire and the Senator from Iowa. However, when the officials of our nations met with representatives of the defeated nation, Japan, these atrocities were recognized and taken into account in the consideration and ratification of the treaty of San Francisco.

Moreover, the Government of Japan has acknowledged the damage and suffering it caused during World War II. Last Saturday, September 8, the Minister for Foreign Affairs, Mr. Tanaka, reaffirmed Japan's feelings of deep remorse and heartfelt apologies that had been previously expressed in 1995 by then-Prime Minister Murayama.

Unfortunately, the amendment presented by my two distinguished colleagues attacks a central provision of the treaty by making it difficult, if not impossible, for the Departments of Justice and State to intervene in reparations suits and assert article 14(b) of the treaty.

I think we should remind ourselves that article II of the Constitution of the United States makes it very clear that it is the President of the United States who has the responsibility of negotiating treaties and making certain that the provisions of the treaties are carried out. It is not the right of any State or any individual, nor is it the right of this Congress.

Thus, if this amendment is approved by both Houses of Congress and signed into law by the President, it would announce our intention to abrogate a central term of the treaty of San Francisco. This action will abrogate that treaty. Some have suggested it might be a slap in the face of the Japanese.

Yes, it might be, but, more importantly, it will abrogate a treaty.

We who have stood on this floor time and again condemning other nations for slight deviation of their treaties are now coming forth deliberately to say that we are prepared to abrogate this treaty. This would be contrary to U.S. foreign policy because it would signal to the world that the United States cares little for its treaty obligations. It would be also contrary to U.S. national security policy because the San Francisco treaty is the cornerstone of U.S. security arrangements in the Asia-Pacific region.

In addition to the foreign and security policy considerations, this amendment might also encourage other nations to facilitate lawsuits against the United States, and against U.S. companies and the U.S. Government and its officials for actions by U.S. military and those who support such actions.

This is not farfetched. It could expose our Nation and our Nation's citizens to millions, if not billions, of dollars in claims. The administration of President Bush, in its policy statement issued through the Department of State, concurs with this analysis and strongly opposes the amendment.

Indeed, the administration additionally objected to the amendment because it would impair the executive branch's ability to carry out its core constitutional responsibility relating to treaties, article II of the Constitution. Accordingly, reopening this issue as the amendment now proposes would have very serious negative consequences for United States-Japan relations, and, sadly, would sow doubt about America's word among other allies.

Therefore, I oppose the amendment and I hope all of my colleagues will carefully consider the points that I have raised.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. Mr. President, I want to respond to my great friend—he is my great friend—and colleague from Hawaii. There is no one with whom I have greater respect and admiration in the Senate for all the years I have been here than the senior Senator from Hawaii, Mr. INOUE. Certainly, I commend him for his statement and the courage he has shown to take his position on this matter. No one should in any way misinterpret the action taken by Senator INOUE in opposing this amendment. I know he comes at it with conscience and with his own feeling of what is right.

I may not agree with his position on it, and let no one think that in any way Senator INOUE now or at any time has let down our country, or our veterans, or our military establishment. By his own life and by his own example, Senator INOUE has shown

what it means to be a patriot and to put himself in harm's way and possibly give one's life for his country. He did that during World War II.

No one could have been more proud than all of us here when President Clinton finally recognized his efforts, his dedication, and his sacrifice during war in finally granting Senator INOUE the Congressional Medal of Honor. It was a recognition that was long overdue.

I hope that no one misinterprets what the Senator said in his opening statement about taking his position. I certainly don't, and no one else should.

As I said, we have a disagreement. And, quite frankly, I am hard pressed to think of the last time I disagreed with the Senator from Hawaii because I have high regard for him in matters pertaining to our military, to our veterans, and the defense of our country. But I just happen to have a disagreement on this one issue.

Again, I point out that all we are trying to do is give the day in court for our rule of law. I believe we can do so without in any way abrogating a treaty or harming our relations with Japan. As I said earlier, I have the highest esteem for Japan and the people of Japan. I would want nothing in any way to be misinterpreted that we are in any way trying to bring up the dark days of World War II again. But I believe just as strongly that our rule of law commands us not to do otherwise. We must permit them to have their day in court. It is their right.

Again, I thank the Senator from New Hampshire for offering the amendment.

I particularly want to thank Senator INOUE for his years of dedication to our country, for his leadership during World War II, and for his 42 years of leadership in the Senate. I am sorry I have to disagree with him on this issue.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I want to associate myself with every single word the Senator from Iowa just said regarding our colleague, Senator INOUE. I want to state for the record that Senator INOUE has earned the right to say anything he wishes on the floor of the Senate with his distinguished service to our country. I think we have a difference of opinion on what the treaty said or didn't say. That is it as far as I am concerned, to make the record clear.

I want to respond to the point on the abrogation of treaties because I think it is important we understand that, in my view—and I think in the view of many—it doesn't abrogate the treaty at all. It limits the State and the Justice departments from interfering. That is all. The courts will decide the true intent of the treaty. That is what courts are supposed to do. But they

should be able to do so without what I would consider unnecessary meddling.

Article 26 of the treaty makes it very clear that the Japanese entered into a more advantageous agreement than those terms apply to all the signatories of the treaty.

We are not abrogating the treaty. We are fulfilling the treaty.

I think it is very important to understand those points that were made in the exchange between the Japanese Government and the Dutch Government and article 26 in the sense that the person who offered those documents, John Foster Dulles, made it very clear that we don't want to deny individuals under a constitutional government the right to have their constitutional rights fulfilled.

I would respond quickly to three or four points that were made by the opponents and then yield the floor.

We just talked about those who say it undermines the treaty obligations. It merely prevents the State and the Justice departments from distorting the true facts. I am not saying the State and Justice departments in any way directly are responsible for holding back documents. The truth is our own Government for 50 years never released these documents. Had these documents been available 50 years ago, I think this matter would have been resolved.

For all these years our veterans never had the opportunity to have this information and take it to court.

The judicial branch is perfectly capable and within its rights to interpret treaties without any assistance from or deference to the views of the executive branch or frankly, the legislative branch. This is law. That is how things are settled.

In any event, the amendment does not prevent the executive branch from executing the treaty. I want to make that very clear. It does not prevent the executive branch from executing the treaty. It merely prevents the executive branch from advocating a certain interpretation in court.

All we are doing with my amendment and that of Senator HARKIN and others who cosponsored it is to say we are not going to provide taxpayer dollars to allow that argument to be fought. Let it go to court. That is all. I think it is very important that we understand that.

Some say the amendment impairs the ability of the courts to interpret treaties. The courts are perfectly capable of interpreting treaties without the assistance of the executive branch. They are not bound by executive interpretation. In fact, the Supreme Court noted in one of its opinions that the courts interpret treaties for themselves. The courts remain the final arbiter of a treaty's meaning and have the right to interpret a treaty.

The courts observed that the views of the executive branch regarding a treat-

ty are entitled to no deference of any type when they appear to have been adopted either solely for political reasons or in the context of any particular litigation. I believe we are dealing with the latter in this case.

Let me also get to the point of damaging relations with Japan. No one wants to do that. I want to make it very clear that I believe Japan is a valuable ally in the Far East and that they are very important to us, especially as we look at the emergence of China and the threat of the Chinese. This is not about the Japanese Government. It is not about replaying the war. It is about interpreting a treaty the way it was intended and allowing people to have their day in court without losing their constitutional rights. That is for all of us.

It should not change our relationship with Japan. I do not know of anybody who wants to do that. We are strong allies. We are close friends. We are going to continue to be close friends after this. This should not, in any way, be construed as an unfriendly act. Secretary Powell, I think, recently called Japan our Pacific anchor. I think he is right. But it does send a serious message that as long as these veterans are with us, this is going to be an area of contention.

Frankly, I think it is better for Japanese-American relations to get it behind us. Let's move on. And the best way to do it is to allow these men to come to court without the interference of the Justice and State Departments; let them come to court, have their day in court, and get a decision. That was the right thing to do when the State Department did that in relation to the activities in the German case, and I think it is the right thing to do in this case.

Last year, again, as I said earlier in my statement, this body passed S. Con. Res. 158, offered by Senator HATCH, which urged the Secretary of State to facilitate discussions between the veterans and the Japanese. Unfortunately, though, the State Department chose to ignore that. All we are trying to do is to move forward and not have it hang out there any longer.

Again, this is an issue between private Japanese companies and private United States citizens who have been wronged by those companies. It is also important to remind people that we do have a Constitution and every single one of us has constitutional rights.

Under the fifth amendment: "No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

The Supreme Court has ruled that the Federal Government can take or espouse private claims of United States citizens against foreign governments and their agents, but this case involves

private claims against private corporations that are not agents of the Japanese Government. There are no constitutional or legal precedents for the Federal Government to take or espouse the private claims of its citizens against private foreign entities.

In fact, if you read article 14(b), which we have done a couple times, to mean "private versus private claims," this raises very serious fifth amendment concerns. The Federal Government does not have the right to espouse private versus private claims. There is an important difference between the private versus Government claims, which the Federal Government can espouse, and the private versus private claims, which the Federal Government cannot espouse. That is a big difference.

Just like the United States Government, the Dutch were faced with the same problem. The Dutch had a constitutional issue, which is why they raised the issue at the time, which is why article 26 was written. John Foster Dulles certainly had a hand in writing both of those letters and the exchange of letters between the Japanese and the Dutch. He understood both sides of it. And he understood it completely. That is why the letters were written and why the Dutch raised the question. And that is why they made certain that if another country raised similar objections, such as the United States, they would have the opportunity to have their citizens have their day in court.

So I hope that as we get to whatever point the leadership decides to call a vote on this, we understand that this is not about bringing up some old war stories or replaying the war or anything at all. It is simply about the right of an American citizen, who happened to be a POW, to get his or her day in court against a private company in another country and not be interfered with by our own Government.

All our amendment does is say that no funds under this act shall be used by our country or our Government to interfere with that claim. That is it.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

Mr. INOUE. Point of inquiry: Will this matter be voted upon at 5:30?

Mr. HOLLINGS. I think so. We are ready to make that request, but I want to say a word in debate.

Mr. INOUE. Fine.

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

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, I ask unanimous consent that the time until 3:15 p.m. be for debate with respect to the Smith amendment No. 1538; that at 3:15 p.m. the amendment be set aside to recur at 5 p.m. today, with all time equally divided and controlled between Senators SMITH of New Hampshire and

HOLLINGS or their designees; that a vote in relation to the amendment occur at 5:30 p.m. today, with no second-degree amendments in order prior to a vote in relation to the amendment; further, that at 3 p.m. Senator DORGAN be recognized to offer an amendment relating to TV Marti.

Mr. HOLLINGS. You mean 3:15.

Mr. REID. Yes, 3:15.

The PRESIDING OFFICER. Is there objection?

The Chair hears none, and it is so ordered.

Mr. REID. Mr. President, I extend my appreciation to the Senator from Idaho, who is not in the Chamber, for allowing us to move forward on this even though his amendment is pending.

Mr. HOLLINGS. Mr. President, I thank the distinguished Senator from Nevada, who keeps the trains running—and on time—and, incidentally, is fully informed on what is on that train. That is really the point to be made with Senator HARRY REID.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, there is no question when the chorus is formed to praise our distinguished senior colleague from Hawaii, I am going to be in that chorus. There is no one I admire more.

I remember the debate with respect to the reparations, and I was moved by our other wonderful Senator from Hawaii, Mr. Matsunaga. But mind you me, that was a very different situation.

Here is an individual of Japanese descent, DANIEL INOUE of Hawaii, who fought for over a year to try and gain acceptance as a soldier in the cause of the United States in World War II. And having done that—because I was in that particular theater—to go forward in Italy with the Nisei fighters, even after the armistice peace had been signed with Italy, with his arm gone and 22 slugs in his body.

He only got the Distinguished Service Cross. It hit my conscience that here was an individual, just because he was alone, and not recognized at that time, who only received the Distinguished Service Cross. And that was repaired last year when he, and others of those brave Nisei fighters, received the Medal of Honor. So the record has been made.

But this isn't on account of Senator INOUE's courage. I really am grateful, managing this bill myself, that he has taken this position that does take courage in one sense of the word. But under the Constitution, which the distinguished Senator from New Hampshire points out, there is no other course than to kill this particular amendment.

Let me speak again of my high regard for the Senator from New Hampshire and the Senator from Iowa in their feeling for the veterans, particularly those who suffered under that

death march from Bataan, because I was dragged into this thing myself in May of 1942, when others just ahead of me got caught up not only in the Bataan march but served as prisoners of war under such treatment that has been described by the distinguished Senators from New Hampshire and Iowa.

I think of Jack Leonard. I think of other classmates who suffered in that period of the war. So I share the feeling of the Senator from New Hampshire. You cannot be more devastated and defaced and tortured than these Japanese prisoners of war. They deserve every bit of consideration they can get under the Constitution. But if we are going to be a body of laws, there isn't any question about whose side—I was taken by the Senator from New Hampshire who said you are either on the side of the private Japanese corporations or you are on the side of the veterans. Not at all. You are either on the side of the Constitution or you are not. And our Constitution says: The treaty made duly ratified is the law of the land. That terminated any particular claims or their day in court.

To understand, read this amendment, not agreeing, if you please, with the Senator from New Hampshire, not agreeing, if you please, with the Senator from South Carolina, but it says:

None of the funds made available in this Act may be used by the Department of Justice or the Department of State to file a motion in any court opposing a civil action against any Japanese person or corporation for compensation or reparations in which the plaintiff alleges that, as an American prisoner of war during World War II, he or she was used as a slave or forced labor.

It says that the Department of Justice and the Department of State cannot function as a Department of Justice and a Department of State. Certainly, they don't want to do that. If it is to be that they have a right or day in court—and certainly nothing we vote on this afternoon will take away that right or day in court—it has been had, this time last year in the California court. The judge found it and studied it and objectively looked at it in every particular regard and found otherwise. Nothing that we vote on today one way or the other is going to take away their right in court.

But there is a right and a duty and a responsibility of the Department of State and the Department of Justice to defend the position of the United States. And we think that the position of the United States is under article 14 of that particular treaty with Japan, ratified in 1952 by an overwhelming vote that was entered into by President Truman, ratified by a 66-10 bipartisan vote in the U.S. Senate. If I raise my hand as a Senator, I hereby pledge to preserve, protect, and defend. So it is not the side of the corporation or the side of the veteran. It is the position under the Constitution. You have to defend the laws of the land.

Certainly, I am not totally familiar with this particular issue, certainly not as much so perhaps as the distinguished Senator from New Hampshire. But there have been others who have studied it very thoroughly.

I have a letter from a distinguished former Secretary of State. This is in June. He writes to the House chairman of Foreign Relations, I take it, at that particular time. I want to read from this letter from George P. Shultz:

Dear Mr. Chairman: I am writing to you to express my deep reservations about H.R. 1198, the Justice for the U.S. Prisoners of War Act of 2001.

This was passed overwhelmingly, incidentally, in the House of Representatives. We have too many pollsters in Government. My pollster, my political consultant said: Why don't you keep your mouth shut. Let DANNY INOUE defend it and you don't have to say anything. And then in the next election, you won't have to explain how the veterans now are all against you.

Life is too short for that kind of nonsense. You have to take positions here. Let me go ahead with Secretary Shultz's letter:

I express my opposition to the bill against the background of tremendous sympathy for the problems of the United States' citizens who have in one way or another been harmed, many severely, in the course of war and its sometimes dehumanizing impact.

But the bill in question would have the effect of voiding the bargain we made and explicitly set out in the Treaty of Peace between Japan, the United States, and forty-seven other countries. President Truman with the advice and consent of the Senate ratified the treaty and it became effective April 28, 1952.

The Treaty has served us well in providing the fundamental underpinning for the peace and prosperity we have seen, for the most part, in the Asia Pacific region over the past half-century.

The Treaty addresses squarely the issue of compensation for damages suffered at the hands of the Japanese. Article 14 in the treaty sets out the terms of Japanese payment "for the damage and suffering caused by it during the war." The agreement provides:

1. a grant of authority to Allied Powers to seize Japanese property within their jurisdiction at the time of the treaty's effective date;

2. an obligation of Japan to assist in the rebuilding of territory occupied by Japanese forces during the war; and

3. waiver of all "other claims of the Allied Powers and their nationals arising out of any action taken by Japan and its nationals of the war."

Let me divert from the reading of this letter. One says "to seize the property." That was done. Japanese property was seized. You constantly hear in the presentation that this is against private corporations. The treaty was against private corporations and their property and was distributed to the prisoners of war. It wasn't done enough; you and I both agree on that in a flash. I sympathize with the motivation of the distinguished Senator from New Hampshire, but we did seize the

property. And we did distribute it as reparations. That ended all claims of all nationals.

The waiver of all other claims of the allied powers and their nationals, that ended it. It didn't say whether 50 years from now we can find some memo with respect to the Netherlands and whether or not they had constitutional authority. There isn't any question that our Secretary of State, John Foster Dulles, had authority. There isn't any question that the President of the United States who signed the treaty, the Congress itself, the U.S. Senate that ratified that treaty, had its authority. This is by the board what was found 50 years later by the Netherlands. Let's find out what was found by the United States of America, its President and its Senate as constitutionally binding under the treaty.

Let me go back to the letter from George P. Shultz:

The interests of Allied prisoners of war are addressed in Article 16, which provides for transfer of Japanese assets in neutral or even me jurisdictions to the International Red Cross for distribution to former prisoners and their families.

H.R. 1198 challenges these undertakings head on, as it says, "In any action in a Federal court . . . the court . . . shall not construe section 14(b) of the Treaty of Peace with Japan as constituting a waiver by the United States of claims by nationals of the United States, including claims by members of the United States armed forces, so as to preclude the pending action."

I read further:

I have read carefully an opinion of Judge Vaughn R. Walker of the U.S. District Court in California rendered on July 21, 2000 . . .

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

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

H.R. 1198—THE JUSTICE FOR U.S. PRISONERS OF WAR ACT OF 2001

IN RE WORLD WAR II ERA JAPANESE FORCED LABOR, SEPTEMBER 21, 2000, DECISION BY JUDGE VAUGHN R. WALKER, U.S. DISTRICT COURT, N.D. CALIFORNIA

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

Master File No MDL-1347.

In Re: World War II Era Japanese Forced Labor Litigation.

This Document Relates To:

Alfano v. Mitsubishi Corp., CD Cal No 00-3174
Corre v. Mitsui & Co., CD Cal No 00-999
Eneriz v. Mitsui & Co., CD Cal No 00-1455
Heimbuch, et al. v. Ishihara Sangyo Kaisha, Ltd., ND Cal No 99-0064
Hutchison v. Mitsubishi Materials Corp., CD Cal No 00-2796
King v. Nippon Steel Corp., ND Cal No 99-5042
Levenberg v. Nippon Sharyo, Ltd., ND Cal No 99-1554
Levenberg v. Nippon Sharyo, Ltd., ND Cal No 99-4737
Poole v. Nippon Steel Corp., CD Cal No 00-0189
Price v. Mitsubishi Corp., CD Cal No 00-5484
Solis v. Nippon Steel Corp., CD Cal No 00-0188
Titherington v. Japan Energy Corp., CD Cal No 00-4383
Wheeler v. Mitsui & Co., Ltd., CD Cal No 00-2057

On December 23, 1941, after mounting a brave resistance against an overwhelming foe, the small American garrison on Wake Island in the South Pacific surrendered to Imperial Japanese forces. James King, a former United States Marine, was among the troops and civilians taken prisoner by the invaders. He was ultimately shipped to Kyushu, Japan, where he spent the remainder of the war toiling by day as a slave laborer in a steel factory and enduring maltreatment in a prison camp by night. When captured, King was 20 years old, 5 feet 11 inches tall and weighed 167 pounds. At the conclusion of the war, he weighed 98 pounds.

James King is one of the plaintiffs in these actions against Japanese corporations for forced labor in World War II; his experience, and the undisputed injustice he suffered, are representative. King and the other plaintiffs seek judicial redress for this injustice.

I

These actions are before the court for consolidated pretrial proceedings pursuant to June 5, 2000, and June 15, 2000, orders of transfer by the Judicial Panel on Multidistrict Litigation. On August 17, 2000, the court heard oral argument on plaintiffs' motions for remand to state court and defendants' motions to dismiss or for judgment on the pleadings.

This order addresses, first, all pending motions for remand. For the reasons stated below, the court concludes that notwithstanding plaintiffs' attempts to plead only state law claims, removal jurisdiction exists because these actions raise substantial questions of federal law by implicating the federal common law of foreign relations.

Second, the court addresses the preclusive effect of the 1951 Treaty of Peace with Japan on a subset of the actions before the court, namely, those brought by plaintiffs who were United States or allied soldiers in World War II captured by Japanese forces and held as prisoners of war. The court concludes that the 1951 treaty constitutes a waiver of such claims.

This order does not address the pending motions to dismiss in cases brought by plaintiffs who were not members of the armed forces of the United States or its allies. Since these plaintiffs are not citizens of countries that are signatories of the 1951 treaty, their claims raise a host of issues not presented by the Allied POW cases and, therefore, require further consideration in further proceedings.

II

Defendants may remove to federal court "any civil action brought in a State court of which the district courts of the United States have original jurisdiction." 28 USC §1441(a). "The propriety of removal thus depends on whether the case originally could have been filed in federal court." *Chicago v. International College of Surgeons*, 522 US 156, 163 (1997).

Federal courts have original jurisdiction over cases "arising under the Constitution, laws or treaties of the United States." 28 USC §1331. For purposes of removal, federal question jurisdiction exists "only when a federal question is presented on the face of the plaintiff's properly complaint." *Caterpillar Inc v. Williams*, 482 US 386, 392 (1987). Since a defense is not part of a plaintiff's properly pleaded statement of his claim, a case may not be removed to federal court on the basis of a federal defense. *Rivet v. Regions Bank of La.*, 522 US 470, 475 (1998).

Defendants' assertion of the Treaty of Peace with Japan as a defense to plaintiffs'

state law causes of action does not, therefore, confer federal jurisdiction. Recognizing this, defendants rely on a line of cases committing to federal common law questions implicating the foreign relations of the United States.

In *Banco Nacional de Cuba v. Sabbatino*, 376 US 398, 425 (1964), a case in which federal jurisdiction was based on diversity of citizenship, the Supreme Court held that development and application of the act of state doctrine was a matter of federal common law, notwithstanding the general rule of *Erie R Co v. Thompkins*, 304 US 64, 78 (1938), that federal courts apply state substantive law in diversity cases. The court reasoned that because the doctrine concerned matters of comity between nations, "the problems involved are uniquely federal in nature." Id at 424. Although the applicable state law mirrored federal decisions, the Court was "constrained to make it clear that an issue [involving] our relationships with other members of the international community must be treated exclusively as an aspect of federal law." Id at 425.

Under *Banco Nacional*, federal common law governs matters concerning the foreign relations of the United States. See *Texas Indus, Inc v. Radcliffe Materials, Inc*, 451 US 630, 641 (1981). "In these instances, our federal system does not permit the controversy to be resolved under state law, either because the authority and duties of the United States as sovereign are intimately involved or because the * * * international nature of the controversy makes it inappropriate for state law to control." Id.

If an examination of the complaint shows that the plaintiff's claims necessarily require determinations that will directly and significantly affect United States foreign relations, a plaintiff's state law claims should be removed. *Republic of Philippines v. Marcos*, 806 F2d 344, 352 (2d Cir 1986). This doctrine has been extended to disputes between private parties that implicate the "vital economic and sovereign interests" of the nation where the parties' dispute arose. *Torres v. Southern Peru Copper Corp.*, 113 F3d 540, 543 n8 (5th Cir 1997).

The court concludes that the complaints in the instant cases, on their face, implicate the federal common law of foreign relations and, as such, give rise to federal jurisdiction. Plaintiffs' claims arise out of world war and are enmeshed with the momentous policy choices that arose in the war's aftermath. The cases implicate the uniquely federal interests of the United States to make peace and enter treaties with foreign nations. As the United States has argued as amicus curiae, these cases carry potential to unsettle half a century of diplomacy.

After a thorough analysis, Judge Baird in the Central District of California denied remand in one of the cases now before the undersigned pursuant to the multidistrict litigation transfer order. *Poole v. Nippon Steel Corp.*, No. 00-0189 (CD Cal March 17, 2000). The court agrees with the analysis and the conclusion in that case. (In another related case in which remand was granted, *Jeong v Onoda Cement Co, Ltd.*, 2000 US Dist LEXIS 7985 (CD Cal May 18, 2000), the court did not consider the federal common law of foreign relations as a basis for federal jurisdiction.) Judge Baird held: "[T]his case, on its face, presents substantial issues of federal common law dealing with foreign policy and relations. * * * As such, plaintiffs may not evade this Court's jurisdiction by cloaking their complaints in terms of state law." The motions for remand are DENIED.

III

In addressing the motions to dismiss, the court refers again to a complaint that is representative of the actions by United States and Allied POWs, *King v. Nippon Steel Corp.*, No 99-5042.

As noted at the outset of this order, plaintiff King seeks redress for wrongs inflicted by his captors half a century ago. In count one of the complaint, he asserts a claim under California Code of Civil Procedure §354.6, a new law that permits an action by a "prisoner-of-war of the Nazi regime, its allies or sympathizers" to "recover compensation for labor performed as a Second World War slave labor victim * * * from any entity or successor in interest thereof, for whom that labor was performed * * *." Cal Code Civ Pro §354.6. Count two is an unjust enrichment claim in which plaintiff seeks disgorgement and restitution of economic benefits derived from his labor. In count three, plaintiff seeks damages in tort for battery, intentional infliction of emotional distress and unlawful imprisonment. Count four alleges that defendant's failure to reveal its prior exploitation of prisoner labor to present-day customers in California and elsewhere constitutes an unfair business practice under California Business and Professions Code §17204.

Defendants move pursuant to Federal Rule of Civil Procedure 12(c) for a judgment on the pleadings, arguing: (1) plaintiff's claims are barred by the Treaty of Peace with Japan; (2) plaintiff's claims raise nonjusticiable political questions; (3) the peace treaty, the War Claims Act of 1948 and the federal government's plenary authority over foreign affairs combine to preempt plaintiff's claims and (4) because the complaint alleges injuries caused by the Japanese government, plaintiff's claims are barred by the act of state doctrine and the Foreign Sovereign Immunities Act.

These arguments, and King's countervailing positions, arise in all of the cases before the court brought on behalf of Allied POWs against Japanese corporations. The court need not address all of them. For the reasons stated below, the court concludes that plaintiffs' claims are barred by the Treaty of Peace with Japan.

A

A motion for judgment on the pleadings pursuant to Federal Rule of Civil Procedure 12(c) is the proper means to challenge the sufficiency of the complaint after an answer has been filed. Depending on the procedural posture of the individual case, some defendants have filed motions pursuant to FRCP 12(c) and others have filed motions to dismiss pursuant to FRCP 12(b). The distinction in the present context is not important. In the Ninth Circuit, the standard by which the district court must determine Rule 12(c) motions is the same as the standard for the more familiar motion to dismiss under rule 12(b)(6): "A district court will render a judgment on the pleadings when the moving party clearly establishes on the face of the pleadings [and by evidence of which the court takes judicial notice] that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law." *Enron Oil Trading & Transp Co v. Walbrook Ins Co*, 132 F3d 526, 529 (9th Cir 1997) (citations omitted).

B

The Treaty of Peace with Japan was signed at San Francisco on September 8, 1951, by the representatives of the United States and 47 other Allied powers and Japan. Treaty of

Peace with Japan, [1952] 3 UST 3169, TIAS No 2490 (1951). President Truman, with the advice and consent of the Senate, ratified the treaty and it became effective April 28, 1952. *Id.*

Article 14 provides the terms of Japanese payment "for the damage and suffering caused by it during the war." *Id.* at Art 14(a). For present purposes, the salient features of the agreement are: (1) a grant of authority of Allied powers to seize Japanese property within their jurisdiction at the time of the treaty's effective date; (2) an obligation of Japan to assist in the rebuilding of territory occupied by Japanese forces during the war and (3) *waiver* of all "other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the * * *." *Id.* at Art 14(a)-(b) (emphasis added).

It is the waiver provision that defendants argue bars plaintiffs' present claims. In its entirety, the provision reads: "(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims if the Allied Powers for direct military costs of occupation." *Id.* at Art 14(b).

On its face, the treaty waives "all" reparations and "other claims" of the "nationals" of Allied powers "arising out of any actions taken by Japan and its nationals during the course of the prosecution of the war." The language of this waiver is strikingly broad, and contains no conditional language or limitations, save for the opening clause referring to the provisions of the treaty. The interests of Allied prisoners of war are addressed in Article 16, which provides for transfer of Japanese assets in neutral or enemy jurisdictions to the International Committee of the Red Cross for distribution to former prisoners and their families. *Id.* at Art 16. The treaty specifically exempts from reparations, furthermore, those Japanese assets resulting from "the resumption of trade and financial relations subsequent to September 2, 1945." *Id.* at Art 14(a)(2)(II)(iv).

To avoid the preclusive effect of the treaty, plaintiffs advance an interpretation of Article 14(b) that is strained and, ultimately, unconvincing. Although the argument has several shades, it comes down to this: the signatories of the treaty did not understand the Allied waiver to apply to prisoner of war claims because the provision did not expressly identify such claims, in contrast to the corresponding Japanese waiver provision of Article 19. Article 19(b) states that the Japanese waiver includes "any claims and debts arising in respect to Japanese prisoners of war and civilian internees in the hands of the Allied Powers * * *."

That the treaty is more specific in Article 19 does not change the plain meaning of the language of Article 14. If the language of Article 14 were ambiguous, plaintiffs' *expressio unius* argument would have more force. But plaintiffs cannot identify any ambiguity in the language of Article 14. To do so would be to inject hidden meaning into straightforward text.

The treaty by its terms adopts a comprehensive and exclusive settlement plan for war-related economic injuries which, in its wholesale waiver of prospective claims, is not unique. See, for example, *Neri v. United States*, 204 F2d 867 (2d Cir 1953) (claim barred by broad waiver provision in Treaty of Peace

with Italy). The waiver provision of Article 14(b) is plainly broad enough to encompass the plaintiffs' claims in the present litigation.

C

The court does not find the treaty language ambiguous, and therefore its analysis need go no further. *Chan v. Korea Airlines*, 490 US 122, 134 (1989) (if text of treaty is clear, courts "have no power to insert an amendment."). To the extent that Articles 19(b) raises any uncertainty, however, the court "may look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." *Air France v. Saks*, 470 US 392, 396 (1985). These authorities are voluminous and therefore of doubtful utility due to the potential for misleading selective citation. Counsel for both sides have proved themselves skilled in scouring these documents for support of their positions, and that both sides have succeeded to a certain degree underscores the questionable value of such resort to drafting history. Nevertheless, the court has conducted its own review of the historical materials, and concludes that they reinforce the conclusion that the Treaty of Peace with Japan was intended to bar claims such as those advanced by plaintiffs in this litigation.

The official record of treaty negotiations establishes that a fundamental goal of the agreement was to settle the reparations issue once and for all. As the statement of the chief United States negotiator, John Foster Dulles, makes clear, it was well understood that leaving open the possibility of future claims would be an unacceptable impediment to a lasting peace:

"Reparation is usually the most controversial aspect of peacemaking. The present peace is no exception.

"On the one hand, there are claims both vast and just. Japan's aggression caused tremendous cost, losses and suffering. * * *

"On the other hand, to meet these claims, there stands a Japan presently reduced to four home islands which are unable to produce the food its people need to live, or the raw materials they need to work. * * *

"Under these circumstances, if the treaty validated, or kept contingently alive, monetary reparations claims against Japan, her ordinary commercial credit would vanish, the incentive of her people would be destroyed and they would sink into a misery of body and spirit that would make them easy prey to exploitation. * * *

"There would be bitter competition [among the Allies] for the largest possible percentage of an illusory pot of gold."

See US Dept of State, Record of Proceedings of the Conference for the Conclusion and Signature of the Treaty of Peace with Japan 82-83 (1951) (Def Req for Judicial Notice, Exh I).

The policy of the United States that Japanese liability for reparations should be sharply limited was informed by the experience of six years of United States-led occupation of Japan. During the occupation the Supreme Commander of the Allied Powers (SCAP) for the region, General Douglas MacArthur, confiscated Japanese assets in conjunction with the task of managing the economic affairs of the vanquished nation and with a view to reparations payments. See SCAP, Reparations: Development of Policy and Directives (1947). It soon became clear that Japan's financial condition would render any aggressive reparations plan an exercise in futility. Meanwhile, the importance of a stable, democratic Japan as a bulwark to communism in the region increased.

At the end of 1948, MacArthur expressed the view that “[t]he use of reparations as a weapon to retard the reconstruction of a viable economy in Japan should be combated with all possible means” and “recommended that the reparations issue be settled finally and without delay.” Memorandum from General Headquarters of SCAP to Department of the Army (Dec. 14, 1948) at ¶8 (Def Req for Judicial Notice, Exh E).

That this policy was embodied in the treaty is clear not only from the negotiations history but also from the Senate Foreign Relations Committee report recommending approval of the treaty by the Senate. The committee noted, for example: “Obviously insistence upon the payment of reparations in any proportion commensurate with the claims of the injured countries and their nationals would wreck Japan’s economy, dissipate any credit that it may possess at present, destroy the initiative of its people, and create misery and chaos in which the seeds of discontent and communism would flourish. In short, [it] would be contrary to the basic purposes and policy of * * * the United States * * *.”

Japanese Peace Treaty and Other Treaties Relating to Security in the Pacific, S Rep No 82-2, 82d Cong, 2d Sess 12 (1952) (Def Req for Judicial Notice, Exh F). The committee recognized that the treaty provisions “do not give a direct right of return to individual claimants except in the case of those having property in Japan,” id at 13, and endorsed the position of the State Department that “United States nationals, whose claims are not covered by the treaty provisions * * * must look for relief to the Congress of the United States,” id at 14.

Indeed, the treaty went into effect against the backdrop of congressional response to the need for compensation for former prisoners of war, in which many, if not all, of the plaintiffs in the present cases participated. See War Claims Act of 1948, 50 USC §§2001-2017p (establishing War Claims Commission and assigning top priority to claims of former prisoners of war).

Were the text of the treaty to leave any doubt that it waived claims such as those advanced by plaintiffs in these cases, the history of the Allied experience in post-war Japan, the drafting history of the treaty and the ratification debate would resolve it in favor of a finding of waiver.

D

As one might expect, considering the acknowledged inadequacy of compensation for victims of the Japanese regime provided under the treaty, the issue of additional reparations has arisen repeatedly since the adoption of that agreement some 50 years ago. This is all the more understandable in light of the vigor with which the Japanese economy has rebounded from the abyss.

The court finds it significant, as further support for the conclusion that the treaty bars plaintiffs’ claims, that the United States, through State Department officials, has stood firmly by the principle of finality embodied in the treaty. This position was expressed in recent congressional testimony by Ronald J. Bettauer, deputy legal advisor, as follows: “The 1951 Treaty of Peace with Japan settles all war-related claims of the U.S. and its nationals, and precludes the possibility of taking legal action in United States domestic courts to obtain additional compensation for war victims from Japan or its nationals—including Japanese commercial enterprises.”

POW Survivors of the Bataan Death March, Hearing before the Senate Com-

mittee on the Judiciary (June 28, 2000) (statement of Ronald J. Bettauer, United States Department of State) (Def Req for Judicial Notice, Exh P).

In another recent example, in response to a letter from Senator Orrin Hatch expressing “disappointment” with the “fifty-five year old injustice imposed on our military forces held as prisoners of war in Japan” and urging the Secretary of State to take action, a State Department representative wrote: “The Treaty of Peace with Japan has, over the past five decades, served to sustain U.S. security interests in Asia and to support peace and stability in the region. We strongly believe that the U.S. must honor its international agreements, including the [treaty]. There is, in our view, no justification for the U.S. to attempt to reopen the question of international commitments and obligations under the 1951 Treaty in order now to seek a more favorable settlement of the issue of Japanese compensation.

“This explanation obviously offers no consolation to the victims of Japanese wartime aggression. Regrettably, however, it was impossible when the Treaty was negotiated—and it remains impossible today, 50 years later—to compensate fully for the suffering visited upon the victims of the war * * *.” Letter of Jan 18, 2000, from US Dept of State to The Hon Orrin Hatch at 2.

The conclusion that the 1951 treaty constitutes a waiver of the instant claims, as stated above and argued in the brief of the United States as amicus curiae in this case, carries significant weight. See *Kolovrat v. Oregon*, 366 US 187, 194 (1961) (“While courts interpret treaties for themselves, the meaning given them by the departments of government particularly charged with their negotiation and enforcement is given great weight.”); *Sullivan v. Kidd*, 254 US 425, 442 (1921) (“[T]he construction placed upon the treaty before us and consistently adhered to by the Executive Department of the Government, charged with the supervision of our foreign relations, should be given much weight.”). The government’s position also comports entirely with the court’s own analysis of the treaty and its history.

Plaintiffs raise several additional arguments that bear only brief mention. First is the characterization of these claims as not arising out of the “prosecution of the war,” as that phrase is used in the treaty. Plaintiffs attempt to cast their claims as involving controversies between private parties.

It is particularly far-fetched to attempt to distinguish between the conduct of Imperial Japan during the Second World War and the major industry that was the engine of its war machine. The lack of any sustainable distinction is apparent from the complaints in these cases. For example, the *King* complaint alleges that a class of war prisoners were forced to work “in support of the Japanese war effort,” Compl ¶ 56, and pursuant to a directive from the Japanese government that the “labor and technical skill” of prisoners of war “be fully utilized for the replenishment of production, and contribution rendered toward the prosecution of the Greater East Asiatic War,” id at ¶ 30. Furthermore, the complaint asserts that plaintiff worked in a factory “where motor armatures were manufactured for the war effort.” Id at ¶ 35. These allegations quite clearly bring this action within the scope of the treaty’s waiver of all claims “arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war.” Treaty at Art 14(b).

Plaintiffs also argue that waiver of plaintiffs’ claims renders the treaty unconstitu-

tional and invalid under international law. This position is contrary to the well-settled principle that the government may lawfully exercise its “sovereign authority to settle the claims of its nationals against foreign countries.” *Dames & Moore v. Regan*, 453 US 654, 679-80 (1981); See also *Neri*, 204 F2d at 868-69 (enforcing treaty waiver of reparations claims).

Finally, plaintiffs assert that subsequent settlements between Japan and other treaty signatories on more favorable terms than those set forth in the treaty should “revive” plaintiff’s claims under Article 26, which provides in relevant part: “Should Japan make a * * * war claims settlement with any State granting that State greater advantages than those provided by the present Treaty, those same advantages shall be extended to the parties to the present Treaty.” Treaty at Art 26. Without deciding whether the evidence plaintiff cites of other agreements implicates Article 26, the court finds that that provision confers rights *only* upon the “parties to the present treaty,” i.e., the government signatories. The question of enforcing Article 26 is thus for the United States, not the plaintiffs, to decide.

IV

The Treaty of Peace with Japan, insofar as it barred future claims such as those asserted by plaintiffs in these actions, exchanged full compensation of plaintiffs for a future peace. History has vindicated the wisdom of that bargain. And while full compensation for plaintiffs’ hardships, in the purely economic sense, has been denied these former prisoners countless other survivors of the war, the immeasurable bounty of life for themselves and their posterity in a free society and in a more peaceful world services the debt.

The motions to dismiss and/or for judgment on the pleadings are GRANTED. The clerk shall enter judgment in favor of defendants in the above-captioned cases.

IT IS SO ORDERED.

Vaughn R. Walker,
United States District Judge.

Mr. HOLLINGS. Quoting, again, from the letter:

I have read carefully an opinion of Judge Vaughn R. Walker of the U.S. District Court in California rendered on September 21, 2000, dealing with claims, many of a heart-rending nature. His reasoning and his citations are incisive and persuasive to me. He writes, “The cases implicate the uniquely federal interests of the United States to make peace and enter treaties with foreign nations. As the United States has argued as amicus curiae, there cases carry potential to unsettle half a century of diplomacy.” Just as Judge Walker ruled against claims not compatible with the Treaty, I urge that Congress should take no action that would, in effect, abrogate the Treaty.

The chief negotiator of the Treaty on behalf of President Truman was the clear-eyed and tough-minded John Foster Dulles, who later became Secretary of State for President Eisenhower. He and other giants from the post World War II period saw the folly of what happened after World War I, when a vindictive peace treaty, that called upon the defeated states to pay huge reparations, helped lead to World War II. They chose otherwise: to do everything possible to cause Germany and Japan to become democratic partners and, as the Cold War with the Soviet Union emerged, allies in that struggle.

As Judge Walker notes in his opinion, “the importance of a stable, democratic Japan as

a bulwark to communism in the region increased." He says, "that this policy was embodied in the Treaty is clear not only from the negotiations history, but also from the Senate Foreign Relations Committee report recommending approval of the Treaty by the Senate . . . and history has vindicated the wisdom of that bargain."

This is George P. Shultz, and I quote further:

I served during World War II as a Marine in the Pacific. I took part in combat operations. I had friends—friends close to me—friendships derived from the closeness that comes from taking part in combat together, killed practically beside me. I do not exaggerate at all in saying that the people who suffered the most are the ones who did not make it at all. I have always supported the best of treatment for our veterans, especially those who were involved in combat. If they are not being adequately taken care of, we should always be ready to do more.

If you have fought in combat, you know the horrors of war and the destructive impact it can have on decent people. You also know how fragile your own life is. I recall being the senior Marine on a ship full of Marines on our way back from the Pacific Theater after 3 years overseas. We all knew that we would reassemble into assorted forces for the invasion of the Japanese home islands. As Marines, we knew all about the bloody invasion of Tarawa, the Palau, Okinawa, Iwo Jima, and many other Islands. So we knew what the invasion of the Japanese home islands would be like.

Not long after we left port, an atomic bomb was dropped on Japan. None of us knew what that was, but we sensed it must be important since the event was newsworthy enough to get to our ships at sea. Then we heard of a second one. Before our ship reached the States, the war was over.

I have visited Japan a number of times and I have been exposed to Hiroshima and Nagasaki. Civilians there were caught up in the war. I am sympathetic toward them. I have heard a lot of criticism of President Truman for dropping those bombs, but everyone on that ship was convinced that President Truman saved our lives. Yes, war is terrible, but the treaty brought it to an end.

I can divert and express those same sentiments. I didn't get back until November. He is talking about August when those bombs were dropped in 1945. But there is no question that President Truman was the hero for dropping those bombs. But under the International Criminal Court, somebody could try to file a claim 50 years later that he was a war criminal. A kind of thinking that is going on today is that this is politically correct. I will resume reading the letter from George P. Shultz:

The Bill would fundamentally abrogate a central provision of a 50 year old treaty, reversing a longstanding foreign policy stance. The Treaty signed in San Francisco nearly 50 years ago and involving 49 nations could unravel. A dangerous legal precedent would be set.

Once again, I would say to you, where we have veterans, especially veterans of combat who are not being adequately supported, we must step up to their problems without hesitation. But let us not unravel confidence in the commitment of the United States to a Treaty properly negotiated and solemnly

ratified with the advice and consent of the United States Senate.

I submit this letter to you and other members of the House of Representatives with my deep respect for the wisdom of the congressional process, and for the vision embodied in the past World War II policies that have served our country and the world so well.

Sincerely yours,

GEORGE P. SHULTZ.

The PRESIDING OFFICER. The time of the Senator has expired. The time between now and 3:15 was to have been equally divided between the Senator from South Carolina and the Senator from New Hampshire.

Mr. HOLLINGS. Let me ask—my distinguished colleague from New Hampshire, I am sure, will say a word to extend the time. My understanding in the agreement was that it was 3:15.

I just say that the distinguished Senator's amendment is clear. It says, look, Mr. Secretary of State, Mr. Attorney General of the Justice Department, you shall not defend the U.S. position. Now, come on. If there is a dispute—and there obviously is—with the Senator's amendment with respect to the right of these veterans, then let it be determined with a comprehensive review, with all the documents and everything else in a court of law. This doesn't prevent the veterans from moving forward, but it certainly prevents the United States of America, through its Department of Justice and Department of State, from defending the position of the United States under this particular treaty.

The distinguished Senator from New Hampshire could well say, wait a minute, here is this information that has come to light 50 years later. Whether that has an effect or not is to be determined. No rights have been taken away from my veteran friend here who might stand at my side and say, HOLLINGS, I want you to bring the case. Nothing prevents the case from being brought. But this amendment says no one defends this particular treaty. The Senate, which ratified the treaty, doesn't want to take the position that its ratification cannot even be commented on by this particular amendment because all funds are removed, no motion can be made, no defense can be made. On that basis alone, I will support the Senator from Hawaii in his opposition and commend him again for his courage, and I commend my friend from New Hampshire for raising this particular question because it is a serious one, but it ought to be discussed in a court of law and both sides heard fully, without saying one particular side can't be defended at all.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, I wish to respond briefly to a couple of the points my colleague from South Carolina made. The argu-

ment that our former POWs have already been compensated under the War Claims Act and 1951 peace treaty is ridiculous, to be candid about it. POWs who were enslaved by private Japanese corporations received next to nothing in compensation. Many POWs received nothing—nothing, zip.

A Federal judge who dismissed many of the lawsuits wrote in his opinion—listen to this:

The immeasurable bounty of life for themselves and their posterity in a free society services the debt.

That is what he said. If that is not a ridiculous statement, even if it did come from a judge, I have never heard one. Here it is again:

The immeasurable bounty of life for themselves [POWs] and their posterity in a free society services the debt.

It is true under the War Claims Act POWs could receive minimal compensation—a dollar a day—for their claims against the acts of powers. They could not be compensated for claims against private corporations and nationals who were not agents.

I want to make it clear to my colleagues that a treaty that is signed between the United States and another government that says that a U.S. citizen cannot sue another U.S. citizen—excuse me, another citizen in a foreign country without due process—it is wrong. You can't do that.

You cannot deny due process. John Foster Dulles realized it when they wrote the side agreement and they wrote this memorandum of understanding and then buried it. They classified it. Senator INOUE and others have pointed out what article 14(b) says. I read it, and I agree. If article 14(b) is read alone without knowing any other background, then one could make the case these folks should not have that opportunity to proceed.

This is right out of the memorandum of understanding, and this was partially written by Dulles himself:

Following the conversation of September 3, 1951, between the Secretary of the Dutch Foreign Ministry . . . Dutch Ambassador, and others, we emphasize that the purpose of this statement was not to obligate the Japanese actually to pay out any money to the claimants. He realized fully this was an unlikely possibility. He emphasized, however, the statement he had made to the Secretary the day before that the Dutch Government was faced with a difficult legal problem; namely, without a proper interpretation agreed to by the Japanese, it would appear the Dutch Government was, by the act of signing the Japanese peace treaty, giving up without due process rights held by Dutch subjects.

That is the same issue with the United States, and Dulles realized it. You cannot sign a treaty that says we have no due process against another citizen in another country. You simply cannot do it.

Talk about sticking to the Constitution and defending the Constitution.

That is exactly what I am doing, and that is exactly what John Foster Dulles and others were doing because they realized article 14(b) was wrong. Then in an effort to cover it all up to satisfy the Dutch, he buried it. He classified it and kept it classified for 50 years to keep these people from having the right to go to court. That is what he did. That is what the U.S. Government did. That is wrong, and we need to correct it. We can correct it right here today.

We cannot say we are not defending the Constitution. We are not only defending the Constitution, we are defending the rights of individuals who live under this Constitution to have due process. That is what we are doing, and that is what this debate is about.

I yield the floor, Mr. President.

Mrs. FEINSTEIN. Mr. President, I rise to express my opposition to the Smith Amendment to the Commerce-Justice-State Authorization.

I do not do so because I think that the lawsuits filed against the Japanese corporations by the former Prisoners of War who were used as slave labor during World War II should not go forward—just the opposite—but because I believe that this Amendment takes the wrong approach to this issue.

I strongly support the right of the POWs to file lawsuits against the Japanese corporations. The POWs and veterans are only seeking justice from the private companies that enslaved them, and these claims should be allowed to move forward.

In fact, Senator HATCH and I introduced legislation earlier this year, S. 1272, the POW Assistance Act of 2001, precisely because I believe that it is important for those POWs who were used as slave labor during World War II to have their day in court, and an opportunity to press their claims for remuneration and compensation.

There are serious questions about whether the 1951 Treaty between Japan and the United States has settled these claims, and these questions should be dealt with seriously. But as these lawsuits go forward, I do not think that it is right and proper to enjoin the Department of State and the Department of Justice from offering the court their opinion on the meaning and interpretation of the 1951 Treaty. That opinion—which may ultimately be determined to be incorrect—is a perfectly legitimate part of the proceedings.

I strongly support the right of the POWs to seek justice. This is a matter that belongs before the courts. But I do not think that the Smith Amendment is the right way to go, and I urge my colleague to oppose its passage.

Mr. NELSON of Florida. Mr. President, I want to express my support for amendment No. 1538 of Senators SMITH and HARKIN regarding American POWs held in Japan. I do so with much respect for those who have served and

suffered horrible treatment as a result of their service. I was traveling with President Bush in Florida when the vote occurred, but had I been present, I would have voted “nay” to the motion to table the amendment.

We do have an international treaty with Japan to which we are bound. But, this amendment is not about what the Treaty signed 50 years ago does or does not allow. It is about due process to those Americans who suffered a grievous wrong. The point is that these brave Americans be allowed their day in court to have their case heard. Actions by the Departments of Justice and State to block such actions deprive them of fairness and due process. Congress should not be a party to such deprivations.

I support the Smith-Harkin amendment and wish to be on record as opposed to the motion to table it.

Mr. BYRD. Mr. President, during World War II, 36,000 Americans were captured and held prisoner by Japan. The story of the often horrific treatment of these prisoners is punctuated by episodes such as the Bataan Death March, where ten Americans lost their lives for every mile of the gruesome journey, and by the pictures of the emaciated soldiers who spent years in confinement on starvation rations. I cannot think of any way in which we, as a nation, could begin to repay the men who suffered through such abhorrent treatment.

The amendment before us today, offered by Senator SMITH and Senator HARKIN, however, puts in jeopardy constitutional principles that each member of the Armed Forces, and each member of this body, swore to uphold. The amendment would prevent the Department of State and the Department of Justice from defending the U.S. Government in court against lawsuits that challenge whether provisions in the Treaty of San Francisco will continue to be in force as the law of the land.

The treaty, which brought peace between Japan, the United States, and our Allies in World War II, explicitly settled all wartime reparations claims that might arise against Japan. The text of the peace treaty is very clear in this regard. Because, under Article VI of the Constitution, a ratified treaty is the supreme law of the land, it is equally clear that this treaty prohibits the Government of the United States, or its people, from seeking further reparations from the Government of Japan, or its people. This is the position that the Department of State and the Department of Justice have maintained since ratification of the treaty in 1952.

The amendment before us would prohibit those departments from arguing in court against lawsuits that violate the peace treaty. It would prevent the U.S. Government from upholding a supreme law of our land. It would pro-

hibit our government from acting in a responsible manner in support of our international obligations. It would stop the executive branch from taking action on this issue, which affects our foreign policy. I cannot support an amendment that challenges so many of our basic constitutional principles on the importance of treaties and the conduct of foreign policy.

This is not to say that our veterans who were held prisoner by Japan must be denied compensation or restitution for the inhumane treatment they suffered. Those veterans were eligible for compensation distributed by the U.S. Government under the War Claims Act of 1948. The proponents of the amendment before us may believe that compensation was not sufficient, which may be true. There are other ways to compensate our veterans that do not tread upon constitutional principles. One proposal is in the Fiscal Year 2002 Defense Authorization bill, as reported by the Armed Services Committee last Friday.

The bill authorizes the Department of Veterans Affairs to pay \$20,000 to former prisoners, or their surviving spouses, who were forced to perform slave labor while held by Japan. Such a proposal would allow those veterans to receive the compensation they seek, without challenging the legal status of a ratified treaty. There may be other proposals to compensate the veterans in question as well.

We must also consider how other countries would react to an action by Congress that would question our Nation's adherence to a 50-year-old treaty with one of our closest allies. Already this year, the United States has shown an alarming tendency toward unilateralism in regard to a number of international agreements: the Kyoto Protocol, the Anti-Ballistic Missile Treaty, the International Criminal Court, the Biological Weapons Convention, and the U.N. convention on small arms. A move to reverse a major provision of such a longstanding peace treaty would be an disconcerting confirmation, and escalation, of this trend. This is a particularly inopportune time to raise further questions about our Nation's ability to cooperate with other countries.

I urge my colleagues not to view the vote on the Smith-Harkin amendment as an up-or-down vote on our veterans. There are serious constitutional and foreign policy issues at stake, and other means to compensate these veterans have not yet been exhausted. We should take a closer look at alternative means of compensation, and reject this attempt to tie the hands of our government in discharging its constitutional duty to defend a ratified treaty.

The PRESIDING OFFICER (Mr. WYDEN). The Senator from Hawaii.

Mr. INOUE. Mr. President, I ask unanimous consent that the Senator

from Nebraska be given 10 extra minutes to present his statement.

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

Mr. HAGEL. Mr. President, I thank my friend, the distinguished senior Senator from Hawaii, who is, as we have heard today, one of the most distinguished veterans of World War II, as is his colleague, the distinguished Senator from South Carolina.

I am a bit of an interloper on this issue, except to say my father spent 3 years in the South Pacific during World War II in the Army Air Corps. So I know some of what my distinguished colleagues are talking.

I am most appreciative of the efforts and the motives of the distinguished Senator from New Hampshire, Mr. SMITH. I know of his father's great sacrifice during World War II, meaning the sacrifice Senator SMITH's family made to this country. I do not tread upon this subject lightly.

I rise to oppose this amendment. The Senator from South Carolina and the Senator from Hawaii have made very significant, substantive points as to why it is the wrong course of action, in the opinion of some, including this Senator from Nebraska.

I will say first, there is surely no way a grateful nation can ever adequately compensate or express our feelings to those brave men and women who gave so much to this country, who were the subjects of the slave labor camps, the forced marches, the unspeakable brutality, except this: We should put some of this in some perspective. What, indeed, was it that these brave men and women fought and endured for? It was freedom. It was the liberty for a nation, an individual, to have the kind of life and dignity for which America has stood for over 200 years. That is what it was about.

How do we compensate, how do we adequately thank these men and women? We cannot, of course, but we should remember this: What they fought for, what they endured, can be, in fact, recognized by knowing and understanding that the greatest legacy any of us can leave in life is a family, the world better than we found it, and accomplishing something much greater than our own self-interests. That is the most important dynamic for me as I have listened to this debate and as I have read the reasons and listened to the reasons that Senator SMITH has put forward to essentially change our treaty obligations.

Make no mistake. This is a very significant step that this body, this Congress, this Nation will take if, in fact, we vote for this amendment. Great nations honor their treaty commitments. Treaty commitments are important, and we can debate the specifics of sections and paragraphs of law and treaties, and as has been articulated rather

directly and plainly this afternoon, there are various interpretations of that. But we should make it very clear that this great Nation will, in fact, live up to its commitments of our treaties, a commitment that we made 50 years ago when that treaty was signed in San Francisco, which was, as expressed here, commemorated last weekend. It is a 50-year treaty.

Was it awkward? Was it done not exactly the right way? Were parts of that treaty misclassified? Why did we classify some of it in the way we did? I suppose we could take days, weeks, and months debating that, but that is part of a smaller issue. The bigger issue really, in fact, is: Are we, in fact, going to unilaterally reinterpret the commitment we gave to 48 other nations that signed this treaty 50 years ago? That is really the issue.

American prisoners of war forced into slave labor by Japan during World War II suffered unspeakable brutality, and their treatment by Japanese overseers violated every standard of human decency. Their sacrifice and heroism now forms one of the most distinguished chapters in American history.

While we must not forget these Americans who suffered so greatly, we also must not forget our country's historic and principled decision in the aftermath of this terrible conflict. Our peace treaty with Japan was not punitive. Although the United States had defeated a brutal enemy, we chose not to claim the spoils of war. Instead, the peace treaty with Japan reflected the great humanity, vision, spirit and generosity of the American people. Referred to at the time as a "Peace of Reconciliation," it looked forward to Japan's economic recovery and not backward to its defeat. Most important, it reflected the new stirrings of a great and magnanimous superpower.

In 1945, most Americans felt the terms of surrender with Japan were too lenient. By 1951, most Americans began to see Japan in a very different light—as a potential friend and ally in East Asia, not as an implacable foe. When John Foster Dulles negotiated our generous peace with Japan, waiving all reparation claims, the American public supported the treaty, and the Senate ratified it with a lopsided majority, 66-10, on March 20, 1952. The United States has stood behind this decision for 50 years. Last Saturday, on September 8, Secretary of State Powell and Japanese Foreign Minister Tanaka commemorated the 50th anniversary of the Treaty of San Francisco at San Francisco's War Memorial Opera House, and formally renewed the strategic partnership between the United States and Japan. This relationship stands as one of this country's most important—a tie of friendship and common interest that will grow stronger and become increasingly important to our strategic interest in East Asia and the world in the coming decades.

Senate amendment No. 1157, which has been offered today, would prevent the State and Justice Departments from stating our San Francisco Treaty obligations in court. This action is not insignificant. It would hamper the President's ability to conduct United States foreign policy, and it would violate the spirit, and likely the letter, of one of the most significant treaties of the 20th century. This would set a dangerous precedent. While many of my distinguished colleagues may no longer agree with the decision made by the United States in 1951, it still stands as a treaty obligation and the official United States position in U.S. court cases. We are a nation that upholds the rule of law and honors its treaty commitments.

How then should we honor and fairly compensate the Americans who suffered grievously as slave or forced labor in World War II without violating our long-held treaty obligation with Japan? Two of our World War II allies, Canada and the United Kingdom, recently provided compensation to their prisoners of war—recognizing that Japan has no obligation to do so under the Treaty of San Francisco. This is a model that we might consider using for the surviving American prisoners of war who suffered as Japanese slaves or forced laborers, without undermining our treaty obligations. Under the War Claims Act of 1948, and its 1952 amendment, the United States Government took all responsibility for compensating World War II prisoners of war. Our prisoners of war received some compensation in the decade following World War II. Senators BINGAMAN and HATCH introduced legislation, S. 1302, early last month to provide \$20,000 to each veteran or civilian internee, or their surviving spouses.

The last Congress, the 106th Congress, enacted Senate Concurrent Resolution 158 calling on the Secretary of State to facilitate discussions between American prisoners of war forced into slave labor during World War II and the Japanese companies that benefitted from their enslavement. The issue of forced and slave labor has been raised with the Japanese government at a variety of levels by our State Department. The recent decision by Germany to compensate slave and forced laborers during World War II may provide a model on this issue.

Japan and the United States commemorated the 50th anniversary of the Treaty of San Francisco over the weekend. The treaty underpins and supports the United States security structure in East Asia, and forms the basis of our friendship with Japan. Treaty commitments and symbolism are important. We should not risk our reputation as a reliable treaty partner by unilaterally reinterpreting an important provision of this treaty that has stood for 50 years. Great nations are consistent. We should act appropriately.

I will oppose this amendment.

Once again, I ask my colleagues to pay careful attention to this amendment, and in the next couple of hours, if you are not aware of what this amendment does, please make yourself aware of it because if we vote for this amendment, it will be about much bigger things than the specific point of this amendment. I do not believe that is in the best interests of our country, the best interests of the world, and, quite honestly, the best interests of the very families and the legacies these brave men and women will leave behind and what they endured for us.

I ask my colleagues to oppose this amendment as we vote this afternoon and once again recognize the Senator from New Hampshire for his motives, for his intent, but in this Senator's opinion it is the wrong approach to accomplish something that is important.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I believe there is no further statement to be made with respect to the Smith amendment and that now the unanimous consent agreement takes place whereby the distinguished Senator from North Dakota will ask to set the Smith amendment aside, to be brought up at 5 p.m. with the time equally divided between 5 p.m. and 5:30 p.m., and the vote to occur at 5:30 p.m. Until then, the agreement is the Senator from North Dakota will be recognized for him to offer an amendment.

The PRESIDING OFFICER. The Senator from North Dakota.

AMENDMENT NO. 1542

Mr. DORGAN. Mr. President, thank you and I thank the Senator from South Carolina.

I actually have two amendments. I will talk about the first, offer the amendment following my discussion of it, and then ask that it be set aside by consent and offer the second amendment.

I will take a moment to begin discussing the first amendment. The first amendment is an amendment to increase the amount of resources we are putting in this appropriations bill to deal with trade compliance and trade enforcement. The area of international trade is a very important area, and we are losing a lot of ground despite what one hears from some in Washington, DC.

I will put up a chart which shows the trade deficits we now have. This chart shows the ballooning trade deficits year after year. These are the merchandise trade deficits. They have risen from \$132 billion a year in 1993 to over \$450 billion a year in 2000, and will likely to go even higher in the year 2001.

Our trade deficits are out of control. They are growing larger and larger and larger. Now this trade deficit comes

from the following sources: In the year 2000, we had an \$81 billion trade deficit with Japan; an \$84 billion trade deficit with China; a \$56 billion trade deficit with the European Union; a \$50 billion trade deficit with Canada; and a \$24 billion trade deficit with Mexico. Many of our trading partners, as we all know, have a very poor record of complying with trade agreements.

This red book, which my colleague from South Carolina frequently holds up in debate, is a book called "Foreign Trade Barriers." It is a rather thick book that describes all of the trade barriers American producers and workers confront when trying to send American products abroad.

Let us talk for a moment about China, Japan, Canada, and Mexico. Do you know that the number of people at the Department of Commerce who are monitoring our trade with China has declined from 10 to 7 people between 1994 and the year 2000? We used to have 10 people monitoring our trade with China; last year we had only 7.

What do we have with China? An \$84 billion trade deficit. In 1992, China agreed to eliminate import licenses. Shortly after that agreement was signed, Beijing announced a new series of import registration requirements that covered many of the same products. They have reneged on commitments to make public the rules and regulations affecting foreign trade and investment. But that is just an example of how we negotiate agreements. We just negotiated a new bilateral agreement with China. Nobody seems to ever care whether the other country complies with its half of the bargain.

With respect to China, we used to have 10 people monitoring trade with China. Now we have seven, at a time when our trade deficit with China is \$84 billion.

How about Japan? With Japan, we have an \$81 billion trade deficit. In 1992, we had 17 people monitoring trade with Japan with respect to trade enforcement. In 2000, it was seven. So we went from 17 people down to 7 people monitoring trade agreements with Japan. Is that moving in the right direction, with a country that has an \$81 billion trade surplus with us or we a deficit with them? I do not think so.

With respect to Canada and Mexico, the number of trade monitors has gone from 33 to 13 people. Our ballooning deficit with both Canada and Mexico continues to increase. We used to have 33 people monitoring trade compliance and trade enforcement with Mexico and Canada. Last year, we had only 13.

The Senator from South Carolina has brought a bill that moves in the right direction. It is the right step. It increases these areas. I propose to further increase them to the point where we have a more robust ability to enforce and monitor these trade agreements. My amendment proposes to add

\$10 million for these activities. This is less than the \$30 million that the Senate Budget Resolution called for, but it's a step in the right direction. I will state where I want to get the money, but first let me continue on this trade issue and why it is important.

I spoke last week about international trade and why I get so upset about it from time to time. I mentioned in the area of trade, we have problems with China, Japan, Korea, Europe, Mexico, Canada. I mentioned we have nearly 570,000 motor vehicles coming into this country from Korea every year. Do you know how many vehicles we send to Korea? A little more than seventeen hundred. Think of that.

Today in Canada, they are loading molasses with Brazilian sugar. It is called stuffed molasses. Do you know what it is? It is a scheme. It is a fraud in international trade. Stuffed molasses is a way to artificially take Brazilian sugar and move it from Canada into this country in contravention of our trade agreement. Does anybody care much about it? No, not much.

China, I could go forever on China. Japan, the same thing. I could talk forever about the trade impediments and the barriers to try to get American products into those countries or to stop unfairly subsidized products from those countries coming into our country.

I come from a State where we produce wonderful potatoes up in the Red River Valley. We produce a lot of potatoes. Some are turned into potato flakes which are used in fast food. Try to send potato flakes to South Korea. Do you know what happens when you try to send potato flakes to Korea? They impose a 300-percent tariff on potato flakes. Outrageous. And we have a huge deficit with Korea.

How about with Mexico? We have a very large deficit with Mexico. Incidentally, before NAFTA we had a tiny surplus, and then we passed a trade agreement and turned it into a huge deficit. We try to send high fructose corn syrup to Mexico, and they put the equivalent of a 33- to a 73-percent tariff on it.

The fact is, this country does not stand up for its economic interests. Too many people in this country do not seem to care. This burgeoning trade deficit will make a difference. It will be repaid someday in some way by a lower standard of living in this country. We ought to get it under control now. We ought to do it by insisting on other countries owning up to the trade agreements they have reached with us and by insisting in this country that our own trade negotiators begin to negotiate trade agreements they do not lose in the first week of the discussion.

What am I proposing? I am proposing that we reverse the trend we have regarding a reduction in the number of people enforcing our trade agreements and monitoring compliance of these

agreements. As I mentioned, this number has gone from 10 people monitoring China down to 7 people; from 17 people monitoring Japan down to 7 people; from 33 people monitoring Canada and Mexico to 13 people. I am suggesting we reverse that trend.

How do we reverse it? By adding \$10 million as a first step back to this appropriations bill. How would I get the money to do that? To get the money to enforce our trade laws, I propose we cut funding for something called TV Marti. TV Marti, boy, that will spark some interest among some. Let me describe what TV Marti is.

TV Marti is the basis by which we broadcast television signals into Cuba to tell the Cubans the truth. The Cubans need to know the truth. They can get a lot of Miami radio stations and from Radio Marti. I support Radio Marti. It costs \$14 or \$15 million a year. Having been in Cuba, I understand the Cubans listen to and appreciate the broadcasts. Good for Radio Marti. Count me as a supporter.

But nobody sees TV Marti. Each year we spend lots of money on TV Marti, despite the fact that it is absurd to do so. Here is the television picture seen on TV Marti in Havana. Does it look like snow and only snow? It does, because it is jammed. The signal does not get through. It is a jammed signal.

We spend a substantial amount of money, about \$10 million a year, on TV Marti. TV Marti has 55 employees, broadcasting 4½ hours a day, from 3:30 a.m.—yes, that is right, 3:30 a.m.—until about 8 a.m. We broadcast a jammed signal, 4½ hours a day, starting at 3:30 a.m. We spend \$10 million a year to broadcast a signal no one can see. That is what we do as taxpayers. Is that a good deal? I don't think so. I think we ought to cut that and use the money to enhance our compliance in the area of international trade.

To make the rest of the case, I will describe more about TV Marti. As I said, I fully support Radio Marti. I know it is effective. TV Marti, on the other hand, is a total, colossal waste of the taxpayers' money, providing no picture to anyone, and does so at 3:30 in the morning.

Last year, we spent \$10.8 million beaming TV Marti to Cuba, where the viewership was approximately zero. Since the inception, we have spent about \$150 million of taxpayers' money on TV Marti. We continue to broadcast 4½ hours a day—31½ hours a week—from 3:30 a.m. until 8 a.m. What we broadcast are fuzzy lines, as I indicated before. TV Marti's broadcast to Cuba has been consistently jammed to the public. No one can view the programs.

To lessen the effects of jamming, the TV Marti signal is randomly shifted east and west of Havana during broadcast hours. Those who want to watch a snowy jammed signal that one cannot see have to catch it as a signal that

moves around Havana somewhere between 3:30 in the morning and 8 a.m.

TV Marti is seen by those who would visit the visa department at our Interest Section in Havana where they play videotapes of the program. Thus, it reaches those who have already decided they want to leave Cuba. We have plenty of evidence there are people who want to leave Cuba. I don't know that we have to tell the Cubans the difference between living in the United States and in Cuba. People living in Cuba understand what is happening in Cuba.

Let me talk about the question of whether we want to spend money on something that is not effective. We broadcast TV Marti through an antenna and a transmitter mounted on a tethered balloon 10,000 feet above Cudjoe Key in Florida. This is a picture of Fat Albert. Fat Albert is the aerostat balloon which we send up to 10,000 feet which broadcasts a line of sight signal to Cuba that is jammed at 3:30 in the morning. A Cuban television set can have snow. Fat Albert, of course, is not invincible. Television is easy to jam. TV Marti is easy to jam. TV Marti's signal, according to experts, is able to be jammed by several off-the-shelf antennas and 100-watt transmitters, the power of a light bulb. The antennas cost about \$5,000 each to block the signals.

Why waste money when the message can get through by radio and you can't get the message through by television signal? Transmitting by aerostat balloon is not perfect. They have to be taken up and down. They regularly require maintenance. They are affected by weather conditions.

TV Marti employs 55 people and keeps spending money even if the balloon cannot go up for various reasons. TV Marti did not broadcast from October 1999 to October 2000 because it lost its transmission balloon in a storm. Fat Albert got lost in a storm and they did not broadcast for an entire year. But they continued to operate at TV Marti at \$27,000 a day.

This was not the first time that a Fat Albert-type balloon had problems at Cudjoe Key. In the early 1990s, a Fat Albert balloon broke from its cable and landed in the Everglades 70 miles away where it was recovered by a team with a helicopter. And a balloon like Fat Albert escaped in 1981—before TV Marti started, of course—and local fishermen caught it and tethered it to the bow of the boat. As the sun warmed up the blimp, it started to rise higher and higher and actually lifted the fishing boat out of the water and the poor folks in the fishing boat had to dive off the boat. So much for Fat Albert and so much for tethered balloons.

That is how we broadcast a blocked signal to Cuba. We have an aerostat balloon, Fat Albert, broadcasting a jammed signal to Havana, Cuba, at 3:30

in the morning so people with a television set are unable to see a picture. And this is paid for with U.S. taxpayers' funds.

One might be able to ask the question with a straight face, is this good public policy? Does it serve the taxpayers interests? With Radio Marti, the answer to that would be yes. Radio Marti works. The signal gets through to Cuba and people listen to it. I think it is an effective piece of public policy.

TV Marti has been supported, notwithstanding the fact it does not work, by this Congress year after year because even waste has a constituency. No more, in my judgment.

Let Congress, where we are wasting money, stop wasting money and invest that money in something that is important for this country. In this case, we have a crying need to better enforce our trade laws and make sure that other countries comply with the trade laws that they have entered into with us. Let's not see a continued degradation of our ability to comply and enforce our trade laws with China and Japan and Europe and Mexico and Canada. Let's enhance that. Let's not degrade it.

Yet, what we have seen in recent times is a substantial diminution of our ability to require others to comply with our trade laws and to enforce those trade laws.

My proposition is simple: Abolish that which is wasteful, TV Marti. And, yes, we will get people coming to the floor who say: Gosh, this would be the wrong signal to send to Fidel Castro. He doesn't get the signal nor do the Cuban people get the signal. This is not about signaling anybody except the American taxpayer that we will quit wasting money.

I am sure people will make the point: We should not give aid and comfort to Fidel Castro. I am not interested in that. I am interested in giving aid and comfort to the American taxpayer. Cuba is a country that, in my judgment, needs a new government; its people deserve a new government. The approach that we use to deal with it ought not be an approach that wastes American taxpayers' money. It ought to be an approach that is effective, investing in the things that can help us give the Cuban people some assistance. Radio Marti does that. TV Marti does not.

I hope that if we decide to abandon a failed policy, we do not get into a debate about this failed policy somehow giving comfort to Fidel Castro. It does not make any sense to me.

In 1991 and 1994, the President's Task Force on U.S. Government International Broadcasting found there was not enough of an audience for TV Marti to continue funding it. That was nearly a decade ago when that judgment was made. A decade later we are still doing it. In 1994, it was concluded it was

pointless and wasteful to continue TV Marti's operations unless the viewing audience could be substantially expanded. The viewing audience in 2001 is about the same as it was in 1994, nearly zero.

It is time, in my judgment, long past the time, to use these funds in a more effective way. We should pursue a public policy that will strengthen the United States and help it with respect to its problems in international trade.

So that is my proposal. As I indicated, I know it will be controversial for some, not perhaps because I want to invest more in making sure we better enforce our trade law and have people monitoring its compliance with respect to other countries. It will be controversial because I propose abolishing the \$10 million of funding for TV Marti.

Again, let me say almost everyone will concede that virtually no one in Cuba sees the signals of TV Marti. As I mentioned before, Radio Marti is effective, but TV Marti is a colossal and tragic waste of taxpayers' money. I hope my amendment will be accepted as one that is thoughtful, useful, and one that will advance this country's interests.

Mr. President, I am going to ask the amendment at the desk be called up at this point.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. I have an amendment at the desk, and I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 1542.

Mr. DORGAN. I ask unanimous consent the reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To increase funds for the trade enforcement and trade compliance activities of the International Trade Administration and to reduce funds for TV Marti)

On page 44, line 1, strike "\$347,090,000" and insert "\$357,090,000".

On page 44, line 6, strike "\$27,441,000" and insert "\$32,441,000".

On page 44, line 7, strike "\$42,859,000" and insert "\$47,859,000".

On page 88, line 7, strike "and television".

On page 88, line 9, strike "and television".

On page 88, line 10, strike "\$24,872,000" and insert "\$14,872,000".

Mr. DORGAN. Mr. President, the amendment does exactly what I described with respect to the numbers.

That is all I have to say about the amendment. If there are others who wish to speak on it, I will be happy to entertain questions or engage in a discussion with them. If not, I ask consent to offer a second amendment to this legislation. I therefore ask unanimous consent to set aside the pending amendment so I may offer my second amendment.

The PRESIDING OFFICER. Is there objection?

Mr. HOLLINGS. Reserving the right to object, let me say a word. Will the Senator yield?

Mr. DORGAN. Perhaps the Senator from South Carolina should seek recognition, after which I will seek to be recognized.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, the distinguished Senators from Florida, both of them—Senator GRAHAM, I am sure, will be here momentarily. I think he is on the way to the floor. I am double-checking that now.

The junior Senator, Senator BILL NELSON, was with the President in Florida. Maybe that is where Senator GRAHAM is also. But that is why they are not here to be heard. It is very vital to their interests to be heard.

Barring that, let me say defending Fat Albert has always been a role of this particular subcommittee. Time and again, since its institution over 15 years ago, we have had reports—the most recent one, of course, is the one referred to by my distinguished colleague from North Dakota—the Report of the Advisory Panel on Radio Marti and TV Marti.

While it found it might not be economically feasible, I read the finding:

TV Marti's broadcasts are technically sound and contain essential information not otherwise available to the Cuban people. Persistent Cuban jamming does limit viewership on the island, however. These broadcasts could prove vital to the United States interests and to the welfare of the Cuban people now and in the future.

True it is, it comes on in the middle of the night, 3 in the morning, but then it goes on to early morning when it is generally picked up, except for that year's period when Fat Albert was down.

Our distinguished friend Larry King made himself famous. I used to be on his program when it was out on the west coast at 1 in the morning. It was only, what, 10 o'clock or 11 o'clock in California. But he came on at midnight to 3 in the morning and got so famous that we can't get him off the air now. He is on the east coast at 9 o'clock every night. I don't think he should be off the air. I think it is wonderful programming.

So my emphasis is on the timing of it. We are going to have these debates back and forth on this particular amendment. As I understand the unanimous consent agreement, we are going to vote on the Smith amendment after a half hour equally divided, from 5 to 5:30. We are going to vote at 5:30 on the Smith amendment. Then we'll have the other votes with respect to the amendment of the distinguished Senator from Idaho relative to the International Crime Commission. The Fat Albert amendment, which the Senator from North Dakota has up, is subsequent thereto.

Having the floor, I cannot pass the opportunity, because as my friend from West Virginia carries around the Constitution, I carry around the record of waste. I heard the word "waste" but it was in regard to about \$10 million. Let's talk about billions—\$1 billion a day waste.

I hold in my hand the public debt to the penny, put out by the Department of Treasury as of this morning. We are already in the red this fiscal year, which is going to end now in about 3 weeks' time, \$100 billion.

That didn't happen overnight. I guess \$74 billion came from that tax cut—that didn't help the economy—and the rest just followed suit. But that is another debate to be had at a different time.

But let's pay attention to the fact that the public debt is \$100 billion. If anybody wants to get into this yin-yang about the public debt and the Government debt—yes, the public debt has gone down \$59 billion but the Government debt has gone up \$159 billion. So it is paying off your Visa card with your MasterCard. That gets people confused. But there is not any confusion on the actual figure put out by the Treasury Department of \$100 billion.

Under President Bush's budget and under the CBO budget, both of them submitted within the last 3 weeks, they estimate a deficit ending the fiscal year, that is September 30—today is the 10th, 20 days from now, of \$123 billion or \$124 billion.

Consequently, since we ran a deficit last year of \$23.2 billion, and we are going to run a deficit this year—where is the surplus that everyone talks about? I have been on the floor since January saying: Wait a minute, there is not any surplus, there is not any surplus. But everybody was talking surplus to get that tax cut. Now they are all running around saying where has the money gone?

The big waste is the interest cost, when the debt goes up, up and away, from \$5.674 trillion at the end of the last fiscal year, to now, this minute, it is at \$5.774 trillion. The interest costs necessarily go up. As that interest goes up, the waste goes up.

Having talked about waste, let me say a word about the current account deficit, or the deficit in the balance of trade. This is a favorite subject of mine. It used to be just \$17 billion. Monitoring that \$81 billion deficit in the balance of trade with Japan, that \$17 billion is down to \$7 billion; or that \$10 billion, monitoring the \$84 billion deficit in the balance of trade with the People's Republic of China, is down to \$7 billion.

There is a question about this particular International Trade Commission receiving more money. I have found from some 34, almost 35 years' experience, that the International Trade Commission is a gimmick. The

reason I call it a gimmick, advisedly, is through hard experience.

Time and again, corporate America has taken its trade violation case against Japan, against China etc., to the International Trade Administration in the Department of Commerce, and they have found a dumping case, that the goods are being sold at less than cost.

I have a Lexus. Let's say that Lexus costs \$35,000. Go buy that same Lexus in Tokyo, Japan. Its cost is \$45,000.

The Japanese article imported into this country is sold here for much less. Time and time again it is proven that it is being sold at less than cost. Take the Kodak case. What happens? That is what I call a gimmick. Then they go for a fix before the Finance Committee of the Senate to find out, even though there is dumping, if there is injury. That is the question before the International Trade Commission. And they file for injury.

It is very interesting that there is now a steel case the President is disturbed about because over 20 mills have closed down in the last 18 months with a loss of 40,000 steel jobs. Since NAFTA, the State of South Carolina has lost 48,600 textile jobs, which are just as important as the steel jobs to the economy—found so by a special hearing under President Kennedy. But time and again you go before the International Trade Commission, and that is why they don't enforce the laws.

There is no such thing as free trade.

That was a pretty good wag at the end of World War II when we had the whole industry and we were in the cold war and wanted capitalism to defeat communism. We put in the Marshall Plan. We more or less gave up our manufacturing sector in pursuit of the defeat of communism with capitalism. It has worked. Nobody is complaining about that. It has persisted in Europe, even with the fall of the Soviets, and certainly is strong and viable in the Pacific rim.

I was just in the People's Republic of China. They are on the right track. But don't misunderstand my statement. China is communist, and many human rights abuses occur there. But as the seed of capitalism takes over more and more each day, as it finally prevailed in the Soviet Union, the hope of the free world will prevail in the People's Republic of China.

We have really gone awry with respect to international trade that the distinguished Senator talks about.

I say there is no such thing as free trade. Let's go back to the earliest day when this country was built on protectionism. The debate ensued. Colonies had just won their freedom. The United Kingdom said to the fledgling colonies, you trade with us what you produce best and we will trade back with you what we produce best. Early economist David Ricardo put forth his doctrine of

comparative advantage. However, the trade debate really was between Thomas Jefferson, the agriculturalist, and Alexander Hamilton, the industrialist. Hamilton wrote a booklet called "Reports on Manufacturing." There is one copy left in the Library of Congress. But in a line, without reading that booklet, he told the Brits to bug off; we are not going to remain your colony and ship you our agriculture, our foodstuffs, our timber, our iron ore, and bring in the finished products from England.

As a result, the second act that passed this Congress in its entire history—the first act was for the seal—but on July 4, 1789, the second act in its history that passed Congress was an act of protectionism and a 50-percent tariff on 60 articles.

We began the United States by building up its manufacturing capacity. Lincoln kept it going at the very beginning of the War Between the States whereby we were trying to build a transcontinental railroad. They said we were going to get the steel rails from England. President Lincoln said no. He said we would build up our own steel capacity, and when we were through, we would have not only the transcontinental railroad, but we would have a steel industry.

It comes right on down the line with America's agriculture and the darkest days of the Depression when the only hope we had was hope itself. It was Roosevelt who put in the best of the best protections.

We will be passing an agriculture bill. I don't know where we are going to find the money. But you can bet your boots it will be \$5 billion to \$6 billion for America's agriculture. We subsidize—protect, if you please.

My point was made best by Akio Morita of Sony some 20 years ago up in Chicago when we had a conference up there, and he was addressing the emerging Third World nations. He admonished that they had to develop a strong manufacturing sector to become a nation state. He pointed at me and said: Senator, the world power that loses its manufacturing capacity will cease to be a world power.

Where are we? From 41 percent of the workforce in manufacturing down to 12—making what? Nothing.

I was sort of amazed at Alan Greenspan saying in February that we have so much productivity we must have a surplus as far as the eye can see, and so we ought to have a tax cut when the productivity has gone overseas.

We have lost 1 million manufacturing jobs in the last year in the United States of America. That is the problem that we have with respect to trade. There is no question that if we don't begin to compete—as the distinguished Senator from North Dakota wants to do with respect to these trade deficits going up, up, and away—we will finally

learn the lesson that has already been given us.

In 1989, we passed a resolution to have hearings with respect to China on human rights. And the Chinese went down to New Zealand, to Australia, and over to Africa and their friends. They never had a hearing on that resolution. About 5 months ago the United States was kicked off the Human Rights Commission. Sudan and Libya remained on the commission.

The atom bomb, the aircraft carrier, forget it. It is the economy, stupid. It is the industrial power, and your money in international affairs as well as domestic politics.

We don't seem to realize that the name of the game out there is market share. The name of the game in the United States is standard of living. So we continue to add not just a minimum wage, Social Security, Medicare, Medicaid, plant closing notices, clean air and clean water, safe workplace conditions, safe machinery, and on and on. Ergonomics was the last one. I am glad we voted it down. But they think up all kinds of things here for the high standard of living, and then don't want to protect the economy of the United States.

The security of our Nation is like a three-legged stool. You have the values as a nation, the one leg; unquestioned. Everyone knows that America stands for indivisible rights and freedom. The second leg is the military; unquestioned. But the third leg is industrial capacity. Industrial capacity has been fractured.

I am glad the distinguished Senator from North Dakota brought this subject up when we have just a few minutes.

What we should be doing is paying the bill. What we should be doing is getting competitive and enforcing the laws on the books.

Does the Senator from North Dakota want to set aside his amendment and go to another amendment?

I yield the floor.

The PRESIDING OFFICER (Mr. NELSON of Nebraska). The Senator from North Dakota.

Mr. DORGAN. Mr. President, there is nothing quite like the sight of the Senator from South Carolina in full voice in support of things he cares about passionately. Among them are trade and related issues. He is kind of like a jockey on a horse who are is running when he is moving on these issues. Then I watched him turn to the support of Fat Albert. He had the body language of someone headed toward a dental chair. There is no one, in my judgment, less capable of defending Fat Albert, based on his good record of public service, than the Senator from South Carolina.

I would only like to refer to the 1994 CRS report to Congress about TV Marti. It said TV Marti is worthless. It does not reach the population. It is easily jammed. It broadcasts at 3:30 in the morning. Nobody sees it.

I am not interested in being soft on Castro, nor am I interested in being hard on the American taxpayer. So my point is very simple: Let's get rid of wasteful spending. I understand why some have to defend Fat Albert, but Fat Albert is indefensible. So let's get rid of that \$10 million and move on and invest in something that really does strengthen this country and our manufacturing center. Let's demand and insist that other countries with whom we have trade relationships own up to those trade relationships and begin to exhibit fair trade practices with this country.

Again, let me say to my friend, the Senator from South Carolina, I have always enjoyed the Senator from South Carolina when he gets a full head of steam on the issue of international trade. He is interesting to listen to and knows his stuff. I hope he agrees with me that we should increase the number of people engaged in monitoring the compliance and requiring the enforcement of our trade laws with respect to other countries. Compliance and enforcement has decreased rather than increased, and as a result, our trade deficit has dramatically ballooned.

AMENDMENT NO. 1543

Having said all that, let me now turn to my next amendment. I will be mercifully brief. I will offer this amendment because I think it is important to have this discussion and to pass a piece of legislation such as it.

This amendment deals with the Small Business Administration. Many of you will remember the disaster in the State of North Dakota when the city of Grand Forks—the Red River Valley, in fact—experienced a very large flood in 1997. The city of Grand Forks, a city of nearly 50,000 people, had to be nearly completely evacuated. It is almost an unprecedented event in this country, in the last 150 years, to have a city of that size be nearly completely evacuated as a result of a flood.

In the middle of that flood, a fire broke out in the downtown business section. So we had a raging flood of the Red River, that had required the evacuation of a city. Then, we had a roaring fire in the middle of that downtown that had been evacuated. You might remember on television the images of firefighters trying to fight a fire in the middle of a flood. It was really quite a remarkable sight.

That disaster, as other disasters in this country, prompted the Small Business Administration, and other agencies, including FEMA and HUD, to come in with some assistance. We do that in times of disaster. Our Government programs are meant to say to people who are down and out, flat on their back, hit with a natural disaster: We are here to help you. Here is a helping hand. We want to help you during troubled times. So we did that.

One of the things we did was provide Small Business Administration low-in-

terest loans, 4-percent loans. There were some grants and other things as well, but the centerpiece was an SBA loan to a homeowner or a business that had been dramatically flooded and was in very difficult trouble.

What I did not know at the time, and what I think many of you perhaps do not know in this Chamber, is that those loans by the SBA, including the disaster loans I am now discussing, were later packaged together and then sold to the highest bidder. Companies that are engaged to bring money together to invest in Government loans decide: We are going to now buy a package of loans from the SBA. Then they bid 50 cents on the dollar or 60 cents on the dollar, and they buy the loans from the Small Business Administration.

I never thought much about that. I suspect most people have not thought about that. The problem is when the SBA sells disaster loans, you have the potential for a second disaster for a family or business. Here is why.

The SBA, when it serviced those disaster loans itself, was always reasonably flexible in dealing with people. Oh, we want people to pay those loans back. That is for sure. But if someone got stuck in a tough situation, the SBA would work with them. For example, if a business had to sell one asset and replace it with another asset that was more efficient and if the old asset had an SBA disaster lien on it, the SBA would say: Yes, we will work with you on that; we will transfer the lien. And the business was able to deal with that.

Now these disaster loans are sold to financial companies, and the financial companies say: We are sorry, we don't intend to transfer any liens. We are sorry, there is no flexibility here. We are not going to do what the SBA did for you.

I will give you an example—there are many—but I will offer an example of a woman in Grand Forks, ND. This is one of many letters I have received:

I'm another flood victim trying to find a way to transfer the current loan I have from the SBA to another property. My SBA loan was sold to [blank—I will not name the company—] and I've been told by them they don't transfer loans, period. So I am out of luck. Personal circumstances made it necessary for me to sell my property. And I need this low interest rate in order to afford another property to get back on my feet.

She had the disaster. The disaster still hurts, but something happened in her circumstance where she had to sell that property and replace it with another property because of family circumstances. In the past, the SBA always would have said: Yes, we will work with you to transfer the lien, as long as we still have a lien on the property. The new investors—now that the loans have been sold—say: We're sorry, we won't change the interest rate on you. We won't change the terms of the loan. But there is no flexibility. Any

changes at all might cost you a huge fee. And in some cases they say: There's no fee because there are no changes. We have no flexibility.

So I have talked to the head of the SBA. I had a visit with him, in fact, on Friday of this past week. He understands there can be some problems in these areas. He told me he is going to try to put an advisory panel together to see if they can work on individual cases. But I really believe we ought not be selling disaster loans. I do not object to selling other loans, if they want loan processing to be done by someone else in ordinary circumstances, but I do not believe disaster loans represent ordinary circumstances. I believe disaster loans ought to be serviced by the SBA. That way, the SBA controls and maintains the policies with respect to how these loans are treated.

My preference is that the SBA go ahead and sell whatever loans they want, except disaster loans. The SBA, I believe, has a responsibility and an obligation to service those disaster loans.

CBO tells me there is no scoring on this amendment.

So I am offering the amendment. I do not know whether a copy of my amendment is at the desk. If not, I will send it to the desk at this point.

The PRESIDING OFFICER. The clerk will report the amendment.

The senior assistant bill clerk read as follows:

The Senator from North Dakota [Mr. DORGAN] proposes an amendment numbered 1543.

Mr. DORGAN. Mr. President, I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To prohibit the sale of disaster loans authorized under section 7(b) of the Small Business Act)

At the appropriate place, insert the following:

SEC. . PROHIBITION ON SALE OF DISASTER LOANS.

Notwithstanding any other provision of law, no amount made available under this Act may be used to sell any disaster loan authorized by section 7(b) of the Small Business Act (15 U.S.C. 636(b)) to any private company or other entity.

Mr. DORGAN. Mr. President, I will not continue further. I have been appreciative of the efforts by the Senators from South Carolina and New Hampshire to allow me to offer these amendments. I know they will set them aside to proceed with other things on the bill.

I will continue to work with those in the authorizing committee on a couple of these issues. But it is my hope we will be able to consider both pieces of legislation favorably. I know one of them is—or can be—controversial; it should not be. As I said, even waste has a constituency, I guess, in Congress and perhaps in some parts of the country. But I think, to the extent we can—

especially as we suffer an economic downturn in this country—when we see waste, we really ought to eliminate it. On behalf of the American taxpayer, we ought to take action. So my hope is that the Senate will find its way to be supportive of both amendments I have offered.

Mr. President, I understand there will be a request to set these aside. I will be happy to work with the chairman and the ranking member to see if we can find a way to clear one or both of these amendments as we proceed.

I yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, I want to hear momentarily from the Small Business Administration with respect to the handling of these disaster loans. The position of the distinguished Senator from North Dakota is very appealing. It sounds logical to me.

On the other hand, think of it for a second, and you understand that SBA is selling these particular loans and taking the funds and leveraging even more SBA loans. Because of some of the wrongs that may have occurred with the private sector purchasing the loans, as well as other administrative problems, I want to hear from the Small Business Administration.

I am not trying to put it off, but I will learn quite shortly. I know there will be opposition to Fat Albert. There are a lot of people on a diet, but not Fat Albert.

Mr. DORGAN. Mr. President, if the Senator from South Carolina will yield, my hope is that as he continues to consider this issue, he will be the last to come to the aid of Fat Albert, having heard my discussion about Government waste and knowing his position on Government waste. My hope is he will be the last in line to be supportive of the aerostat balloon called Fat Albert, a balloon that broadcasts a signal no one can see at 3:30 in the morning.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. HOLLINGS. 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. HOLLINGS. Mr. President, as I understand the pending business, and I ask the Chair to confirm, at 5 o'clock we come back to the Smith-Harkin amendment relative to compensation for the POWs, Japanese prisoners of war, with the time equally divided between Senator SMITH and Senator INOUE, 15 minutes per side.

The PRESIDING OFFICER. The Senator is correct.

Mr. HOLLINGS. I suggest the absence of a quorum, with the time to be

equally allocated to both Senator SMITH and Senator INOUE.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SMITH of New Hampshire. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

Mr. SMITH of New Hampshire. Mr. President, it is my understanding we have the vote on the Smith amendment at 5:30. Is that correct?

The PRESIDING OFFICER. That is correct.

Mr. SMITH of New Hampshire. I say to my colleagues who are also here to speak, I will be very brief in deference to those on both sides who wish to speak.

I want to say what the Smith amendment does. It says:

None of the funds made available in this Act may be used by the Department of Justice or the Department of State to file a motion in any court opposing a civil action against any Japanese person or corporation for compensation or reparations in which plaintiff alleges that, as an American prisoner of war during World War II, he or she was used as slave or forced labor.

All this says is that no funds in this act will be used to block that lawsuit.

That is it. We are not making any editorial comment on the merits or demerits of the lawsuit or who should win it. I have personal feelings about who should win it. I believe the American POWs should win the lawsuits. That is up to the courts. All we want to do is let that process proceed.

I also want to make it very clear that this amendment does not abrogate the 1951 peace treaty with Japan. I repeat, it does not abrogate the 1951 peace treaty with Japan. It merely limits the State and Justice departments from interfering in the veterans' lawsuits.

Why does it not do it? Because article 26 makes it very clear that if the Japanese should enter into any agreement that is more advantageous, then the same terms apply to all the signatories to the treaty. That is what it says. Should Japan make a war claims settlement with any state granting that state greater advantage than those provided by the present treaty, those same advantages shall be extended to the parties to the present treaty.

Did that happen? The answer is, yes, it did—right here in an agreement that was written between the Japanese Government and the Dutch. The point is it did happen.

We are not violating the treaty. Article 26 is part of the treaty. We are simply complying with the treaty.

The bottom line is we are not only not abrogating it, but we are com-

plying with the treaty. This is about whether or not we are going to side with Japanese companies or American war heroes. That is the bottom line. That is the issue. As Senator HOLLINGS said a while back, this is about the Constitution and about the treaty; it is not. We are complying with the treaty with this amendment.

This is about siding with Japanese companies in this lawsuit or with American war heroes.

That is the issue. We are not even doing that. We are just allowing the process to move forward because American war heroes can have their day in court. That is all we are doing. The treaty allows for that very clearly.

As I indicated in my previous remarks today, John Foster Dulles, when he did the background and memorandum of understanding and wrote some of this language, understood it, too. Then this was classified for 50 years.

We didn't know about it. The lawyers who are trying to present these lawsuits on behalf of American war heroes—the greatest generation—didn't have access to this information until it was declassified a year ago. That is what this is about, pure and simple. There is nothing complicated.

You are either for allowing American war heroes who were in the Bataan Death March and who were forced into slave labor camps to have their day in court—you don't even have to be for them winning, as I happen to be, and as I know many others are. You just have to be for allowing them their day in court as is prescribed under that 1951 treaty, period. That is what it is about. You are either for that or you are for the Japanese companies that basically forced them into slave labor.

That is the difference. That is what we are talking about in this amendment.

I yield the floor.

The PRESIDING OFFICER (Mr. CORZINE). The Senator from Hawaii is recognized.

Mr. INOUE. Mr. President, I believe all of us will agree that the atrocities committed and the inhumane treatment of our war prisoners cannot be condoned and cannot in any way be justified. We condemn those atrocities. It is not a question of Japanese corporations versus American heroes. What is involved is the Constitution of the United States. Article II makes it very clear that treaties are to be negotiated by the President or the executive branch of this country—not by any State, nor by any individual, nor by the Senate. It will be by the executive branch. There is no question about that.

The document that my dear friend from New Hampshire has referred to which was arranged by our then-Secretary of State, John Foster Dulles, should be praised and not condemned. I would like to explain.

I believe the references to this arrangement is a bit misleading. I say so most respectfully. This arrangement which was engineered by Secretary Dulles was simply a side agreement designed to address a domestic issue for the Dutch and thereby enabling the Dutch to sign on as a signatory to the treaty of peace in San Francisco.

It does not in any way change the terms of the treaty. My colleagues from New Hampshire and Iowa have read the documents. But somehow we have slid over certain words. If I may, very carefully I will quote from their document.

However, the Japanese Government points out that under the treaty allied nationals will not be able to obtain satisfaction regarding such claims. Although, as the Netherlands government suggests, there are certain types of private claims by allied nationals which the Japanese Government might wish voluntarily to deal with.

We have somehow skimmed over that word "voluntarily."

At this moment, Mr. President, if you wanted to sue me and I said to you, I voluntarily open myself up to you, we need not go to court, no one is going to fuss over that. If at this moment a prisoner of war of the United States should decide that he wants to sue the Japanese Government or a Japanese national notwithstanding the treaty, and if that Japanese national or the Japanese Government should say, yes, they voluntarily expose themselves, we don't have to break the treaty. But if the Japanese Government or the Japanese national should resist and challenge that claim, then I say the executive branch of the Government of the United States should have every right to intervene in such a suit because it does impact upon the treaty of San Francisco.

I think we should read this again:

There are certain types of private claims by allied nationals which the Japanese Government might wish voluntarily to deal with.

This amendment is not necessary. If you want to sue the Japanese Government or its national at this moment, and the Government and the national said to you, yes, they will voluntarily enter into an agreement with you to compensate you for whatever claims you may have, no one is going to complain. But this amendment will without question impact upon the treaty. It will abrogate the treaty. Then other countries will begin to doubt our good word. Is our word good? Are the promises made by the United States good? We are constantly criticizing other nations for violating, if I may say, provisions of treaties.

This is very simply an attempt on the part of the United States to violate a provision of a treaty. I hope that my colleagues will not lead us down this very dangerous path. If we violate, how can we be critical of other nations violating provisions of their treaties? So I

hope this matter will be settled. And accordingly, if I may, Mr. President, I move to table the Smith amendment.

The PRESIDING OFFICER. The motion is premature while time remains.

Mr. INOUE. I assumed the Senator had finished.

Mr. SMITH of New Hampshire. Senator HARKIN wishes to speak.

Mr. INOUE. I am sorry.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. HARKIN. How many minutes do we have?

The PRESIDING OFFICER. Six minutes.

Mr. HARKIN. Mr. President, first of all, we are not abrogating any treaties with this amendment. How could we abrogate a treaty with an amendment that simply says: No moneys can be expended by the State Department Attorney General to go into court opposing our POW cases against private Japanese companies? That is all we are saying. Again, we have done this time and time and time again in the history of this country. This is not something new.

We have the power to do that. We have the power of the purse strings. We are not abrogating the treaty. We are just saying that the U.S. Government cannot go into court using taxpayer money to oppose the POWs who are filing these lawsuits.

If the court upholds the treaty and says that they cannot get anything, that they have already been compensated, well, that's the end of it. I guess they can appeal it to the Supreme Court of the United States, but if the courts find, as my friend from Hawaii says, that this treaty holds and would be abrogated, and we can't do that, then that is the end of the case, but at least the POWs will have had their day in court.

That is all we are asking with this amendment. We are not abrogating any treaties; we are simply trying to uphold the rule of law and our own private citizens' rights.

Let's keep in mind whom we are talking about: 30,000 men who served their country in unbearable conditions in Japanese prisoner-of-war camps. Now we are talking about at least 700 of them—some from my own State of Iowa—seeking some long-delayed justice. They have gone to court to demand compensation from the Japanese companies that used them as slave laborers.

And who were these companies? Mitsubishi, Mitsui, Nippon Steel. These are not tiny, little companies that are going to go broke because they might have to pay these people some back wages and compensation for what they endured during those war years.

I think it is unconscionable that our own State Department has intervened in the courts to keep them from pressing their case. That is not right. It is not fair.

So, No. 1, this amendment does not, in any way, undermine the treaty. Let the court decide that. All we are saying is, the State Department cannot use our taxpayers' money—the very taxes paid by these former POWs—to go into court to keep them from seeking redress.

No. 2, this does not violate a separation of powers. We have, time and time again, used the power of the purse strings to say that the Attorney General cannot intervene in certain court cases. That is nothing new. We have done that before.

No. 3, they have said the POWs have already been compensated by the United States. Well, I talked to three POWs from Iowa who were slave laborers in Japan during the war, and not one of them got paid. So I do not know whom they are talking about, but they did not get a dime.

No. 4, it has been said this opens up the United States to lawsuits from other countries. Again, the United States was known to treat our POWs more decently. Many of the German POWs who worked here in the cotton fields were indeed paid for their work when they worked in the United States as POWs.

Again, we can get wrapped up in all these details, but let's keep in mind what we are talking about. We are talking about men who survived on a cup of rice a day. The one person I knew in Iowa, who is still alive, went from 160 pounds down to 68 pounds in 3 years working in a Japanese auto parts factory and then in the lead mines in Japanese occupied territory.

Again, these survivors and their families should at least give them their day in court. That is all we are asking. Mitsubishi, they have a lot of money. Nippon Steel, they can hire the best lawyers if they want to argue this case.

Mr. President, I ask unanimous consent to have printed in the RECORD the number of former POWs in various States who would be affected by this class action suit: 1,454 in California, 200 in Arizona, 200 in Colorado, 150 in Georgia, 150 in Illinois—I am not going to read the whole list, but I ask to have that list printed in the RECORD.

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

STATE BY STATE LISTING OF SURVIVORS AND THEIR FAMILIES WHO WOULD BENEFIT OR WOULD BE AFFECTED BY THE CLASS ACTION SUIT

Arizona: 200.
California: 1,454
Colorado: 200.
Georgia: 150.
Illinois: 150.
Louisiana: 140.
Maryland: 1,154.
New York: 240.
Virginia: 189.
Oregon: 250.
Texas: 972.
Washington: 350.

Wisconsin: 106.
Ohio: 100.
North Carolina: 100.
Pennsylvania: 100.
Massachusetts: 100.

Mr. HARKIN. Mr. President, again, let's keep in mind that all the Smith-Harkin amendment says is: Do not use taxpayers' money to have the State Department come into court to fight our former POWs who are seeking compensation from Japanese companies that never paid them. That is all we are asking. If the judge and the Supreme Court of the United States find that they cannot abrogate that treaty, that is the end of it, but at least give them their day in court.

Let's not turn our backs on them. They suffered long enough. It is time they get their just compensation.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. SMITH of New Hampshire. Mr. President, just a unanimous consent request.

I ask unanimous consent that Senator WAYNE ALLARD be added as a cosponsor to the amendment.

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

The sponsors' time has expired.

Who yields time?

The Senator from Hawaii.

Mr. INOUE. Mr. President, as I indicated earlier this afternoon, it was certain that this debate would become a highly emotional one. A few of us were involved in that ancient war, and we know what the Bataan Death March was all about. We do not condone that; we condemn it. We are not here to justify or provide a rationale for the actions taken by the Japanese troops; far from it. But we are here to maintain the integrity of our country and our treaties.

Yes, we have provided provisions in the appropriations bill stopping our Departments from suing on certain issues, but never on a treaty. This one will break a treaty.

So, Mr. President, I hope my colleagues will go along in support of my motion to table.

Mr. SMITH of New Hampshire. Mr. President, before the motion is made, I have one more unanimous consent request.

I ask unanimous consent that Senator BEN CAMPBELL also be added as a cosponsor to the amendment.

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

Who yields time?

Mr. INOUE. Mr. President, what is the time situation?

The PRESIDING OFFICER. The opposition has 2 minutes remaining.

Mr. INOUE. I yield back the remainder of our time and move to table the Smith amendment.

Mr. HOLLINGS. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be.

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 Missouri (Mrs. CARNAHAN), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), the Senator from Florida (Mr. NELSON), the Senator from Michigan (Ms. STABENOW), and the Senator from New Jersey (Mr. TORRICELLI) are necessarily absent.

Mr. NICKLES. I announce that the Senator from Arizona (Mr. KYL) and the Senator from Arizona (Mr. MCCAIN) are necessarily absent.

The PRESIDING OFFICER (Mr. CARPER). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 34, nays 58, as follows:

[Rollcall Vote No. 276 Leg.]

YEAS—34

Akaka	Fitzgerald	Mikulski
Biden	Gregg	Murkowski
Bond	Hagel	Nelson (NE)
Byrd	Helms	Nickles
Carper	Hollings	Reed
Chafee	Inouye	Reid
Cleland	Jeffords	Rockefeller
Corzine	Kohl	Sarbanes
Daschle	Levin	Stevens
Dodd	Lott	Thompson
Enzi	Lugar	
Feinstein	McConnell	

NAYS—58

Allard	DeWine	Lincoln
Allen	Domenici	Miller
Baucus	Dorgan	Murray
Bayh	Durbin	Roberts
Bennett	Ensign	Santorum
Bingaman	Feingold	Schumer
Boxer	Frist	Sessions
Breaux	Graham	Shelby
Brownback	Gramm	Smith (NH)
Bunning	Grassley	Smith (OR)
Burns	Harkin	Snowe
Campbell	Hatch	Specter
Cantwell	Hutchinson	Thomas
Clinton	Hutchison	Thurmond
Cochran	Inhofe	Voinovich
Collins	Johnson	Warner
Conrad	Kennedy	Wellstone
Craig	Landrieu	Wyden
Crapo	Leahy	
Dayton	Lieberman	

NOT VOTING—8

Carnahan	Kyl	Stabenow
Edwards	McCain	Torricelli
Kerry	Nelson (FL)	

The motion was rejected.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 1538) was agreed to.

Mr. SMITH of New Hampshire. I move to reconsider the vote.

Mr. NICKLES. 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 Missouri.

Mr. BOND. I rise very briefly to give my colleagues some bad news and some good news. The bad news is the house of my colleague, Senator JEAN CARNAHAN, was struck by lightning Saturday evening. It suffered serious

damage from a fire and also from water.

I spoke with Senator CARNAHAN. She is in Rolla, MO. There are about 30 good friends helping her retrieve her belongings and to work with insurance companies. It is a real mess and she is therefore unable to attend this vote.

The record should show because of this grave, unfortunate circumstance, she did not vote. The good news is she sounded to be in good spirits, no one was hurt, and she expects to return to this body as soon as she can complete arrangements in Rolla. I thank the Chairman, and I thank my colleagues.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, we made some good progress this afternoon. Aside from this particular vote, we have three amendments pending, two by the distinguished Senator from North Dakota, Mr. DORGAN, on both the aerostat of TV Marti and the Small Business Administration amendment.

We have the amendment by the Senator from Idaho, Mr. CRAIG, relative to the International Criminal Court. There being no further debate, as I understand it, I am waiting to check with the leadership on both sides of the aisle on how they intend to continue, but we will meet early in the morning and I am asking all Senators, please, if they have any amendments, get ready and let us bring them up and let us see if we can move along like we did today.

I thank the Chair.

The PRESIDING OFFICER. The Senator from Connecticut.

AMENDMENT NO. 1538

Mr. DODD. Mr. President, I want to be heard on the Craig amendment, unless there is some reason why I cannot. Is that in order?

The PRESIDING OFFICER. The Senator from Connecticut is recognized on the Craig amendment.

Mr. DODD. I thank the President, and I thank my colleagues.

Mr. President, I rise to speak in opposition to the amendment offered by my good friend from Idaho. I do so because it goes back a long time. As a matter of revealing past history, I take great pride in the fact that the person at whose desk I now stand and in whose chair I now sit from time to time was the executive trial counsel at the Nuremberg trials. I was about a year old, a year and 2 months old, when my father went off to Nuremberg as a young lawyer and became an executive trial counsel at the end of those historic trials at the end of World War II.

I remember vividly growing up with my father and others of his generation arguing most strongly that had there been in the 1920's or 1930's criminal courts of international justice the tragedies of World War II might have been avoided.

He never said it would have been absolutely because obviously that would

be an impossibility to predict, but there was no place, there was no forum in which the civilized world could gather, in a sense, to denounce or to indict a madman such as Adolf Hitler.

As a result of the world's silence, in many ways, through the 1930's, the events and the tragedies in the latter part of that decade, of course, the events of the first part of the 1940's occurred. So after World War II, there were many highly responsible individuals in this country and elsewhere who argued most strongly for the establishment of such a court. In fact, it was the United States that led the way to establish a United Nations system. It was the Eisenhower administration.

In fact, some of the strongest conservatives of that era argued very strongly that it was in the interest of the United States, in our own self-interest, as the leader of free peoples around the globe to have some place where we could indict those who would commit the horrors and tragedies of human rights violations.

So it is somewhat ironic—in a way sadly so—that we find ourselves at the outset of the 21st century with the United States apparently leading the charge to see to it that no such organization should ever come into existence.

Let me quickly say to my colleagues, I do not at all support the present configuration or proposal on an international criminal court. It is tremendously flawed as a proposal. It is very much in our interest, as a nation, to be at the table to help fashion this court.

Ultimately we may vote against it. We may try to see to it that it does not become established. However, there is a great risk that it will become established. In the absence of our participation, it could end up being a lot worse—for us, for men and women in uniform in this country, for the interests of the United States in an ever-shrinking global community.

I am deeply concerned, as I am now told the administration is as well, with this amendment as presently proposed. As I understand it, the Craig amendment bars the United States from using funds in support of the International Criminal Court or to continue to participate in meetings of the Preparatory Commission which is working to finalize matters relating to the Court.

I think this is a dangerous amendment in many ways. I have proposed language which we have not yet considered in the Foreign Relations Committee dealing with one of the major concerns being raised about the establishment of a criminal court; that is, the vulnerabilities of our men and women in uniform.

The legislation that I have drafted is gathering wide-range support. The administration itself finds an awful lot included in the bill that they would like to support. We are working with

them to fashion something to meet their support.

The adoption of this amendment, however, is a major setback, in my view, in this effort. As currently drafted, the Craig amendment forecloses one of the options the Bush administration is currently reviewing with respect to how to remain actively engaged internationally in support of the rule of law.

It is my understanding that the Bush administration strongly opposes, in fact, what our good friend and colleague from Idaho is suggesting with this amendment. Under existing law, the administration is currently prohibited from expending funds in support of the Court. That is the law today. That was adopted in 1999. The law has left the door open for the Bush administration to determine whether or not it wishes to participate in the work of the Preparatory Commission. It makes all the sense in the world to be so involved. The structure of the Preparatory Commission is such that it is charged with finalizing the details of the implementing language of the Court in resolving outstanding definitions, ambiguities, and difficulties with the Rome statute.

The Craig amendment closes the door with respect to the possibility of U.S. participation in the Preparatory Commission. This, in my view, is very shortsighted since there are a number of issues which we would want to and should work to resolve or clarify, even if we never decide to become a party to the treaty.

Clearly, I am hopeful President Bush will choose to stay part of the Preparatory Commission process, but the decision as to whether or not to do so is up to him, not up to the Congress. Frankly, to prohibit the President from participating in the Preparatory Commission is probably a violation of the President's constitutional treaty power to conduct negotiations with other states on behalf of our own Nation. Moreover, I think this amendment sends a terrible signal just as the international community gathers in New York to listen to President Bush address the United Nations for the first time since coming to office. What message will they derive from yet another U.S. unilateral rejection of internationalism? Perhaps they will take it as a signal that we in the United States no longer intend to be leaders in the international advocacy of the rule of law and human rights.

How ironic, how truly ironic that is. How quickly we seem to have forgotten the Holocaust and the international community's decision to convene the Nuremberg trial of the leading Nazi war criminals following World War II, or that this war crimes tribunal was largely an American initiative. Justice Robert Jackson's team drove the process of the drafting of the indictments,

the gathering of the evidence, and the conducting of that extraordinary trial. The trial was a landmark in the struggle to deter and punish crimes of war and genocide, setting the stage for the Geneva and Genocide Conventions.

The surrender of Slobodan Milosevic to the International Criminal Tribunal for Yugoslavia is a strong reminder that war crimes are not a thing of the distant past. At Nuremberg Justice Jackson said: It is common to think of our own time as standing at the apex of civilization. The reality is that in the long perspective of history, the present century will not hold an admirable position, unless its second half is to redeem its first.

My father, Thomas Dodd, served as executive trial counsel at the trials at Nuremberg, among his proudest accomplishments as a human being. But it was also part of the common theme that rang through a lifetime of public service. He believed that America had a special role to make the rule of law relevant in every corner of the globe. I believe my father was correct, that Justice Jackson was correct, and those who came after that generation, the reason they fought so hard at the trials and subsequently was that they believed that had there been a forum, a place for the rule of law where natural law could reside, we might very well have avoided the Holocaust and other such events that gripped the midpart of the 20th century.

I believe my father would have endorsed President Clinton's decision to sign the Rome statute last December on behalf of the United States. President Clinton did so, knowing full well much of the work remained to be done before the United States would ever become a party to the U.N. convention establishing an international criminal court.

The Bush administration is currently reviewing its options with respect to the Rome statute and with respect to the ongoing preparatory work that will make the Court operational only once 60 parties have ratified it. If the Craig amendment is adopted, it will foreclose the Bush administration from opting to stay engaged as a participant in the work of the Preparatory Commission in order to protect U.S. interests and interact with friends and allies on these matters.

Let there be no doubt; at some date in the future an international criminal court will come into existence; 36 states have already ratified the treaty, including all members of the European Community. For the United States to be totally on the sidelines as the last details of procedures are hashed out is clearly contrary to our national self-interests. There may also be times when, on a case-by-case basis, the United States may want to assist in the prosecution of foreign war criminals, particularly those cases where

the crimes are against American citizens.

We just debated, ironically, a proposal dealing with the war crimes of World War II. I think but for the treaty of San Francisco, it would have been adopted 100 to 0. As related in the persuasive arguments of DAN INOUE and others, we believe treaties are important and should not be violated. How ironic that we find ourselves in this particular matter, depriving ourselves of the opportunity to be able to fight hard where war crimes are committed, and, in fact, U.S. citizens may be the victims because we will not allow the option to be involved in the Preparatory Commission of such a court.

Elie Wiesel has warned that legislation of this kind would erase America's Nuremberg legacy by ensuring that the United States will never again join the community of nations to hold accountable those who commit war crimes and genocide. A vote to shut the door forever on the International Criminal Court and bar the United States from being engaged, ironically, may be read by some as a signal that the United States accepts immunity from the world's worst atrocities. What a terrible possibility.

It is a sad day, as we embark on the 21st century, that the U.S. Senate, the great bastion of debate on international matters of such importance and weight, might vote to deprive us of even being involved in the Preparatory Commission considering an international court of criminal justice where human rights and genocide matters can be debated, where those who commit those crimes can be brought to the bar of justice.

I urge my colleagues to think more carefully about this vote. I accept there are problems with the Rome treaty as currently written. I would not support it. If the Rome treaty came to this Chamber as written, I would vote against it. But that is not the case. There is work to be done. We ought to be engaged in that work. That is why I introduced legislation before the August recess to protect U.S. interests until we can successfully work out our differences on this issue.

I hope the Foreign Relations Committee will hold hearings on this legislation as soon as possible.

This bill, the American Citizens Protection and War Criminal Prosecution Act of 2001—the American Citizens Protection Act, would both protect America's Nuremberg legacy while at the same time safeguarding the rights of American citizens who might be brought before foreign tribunals even if we are not a party to them. This bill calls for active U.S. diplomatic efforts to ensure that the ICC functions properly mandates the assertion of U.S. jurisdiction over American citizens and bars the surrender of U.S. citizens to the ICC once the U.S. has acted.

The Bush administration is currently studying this and other approaches to issues related to the ICC. We should permit that review to continue and give the President the flexibility to decide how best to serve U.S. interests in this important area.

The world is a global village in this new millennium. The U.S. must strike the right balance between protecting our citizens and our men and women in the armed forces who may be traveling or deployed abroad, and preserving United States leadership and advocacy of universal adherence to principles of international justice and the rule of law.

For those reasons, I urge my colleagues to reject the Craig amendment and let existing law stand with respect to limitations on funding in support of the ICC at this time.

This is no time for us to be walking away from a responsibility which we have shouldered proudly for the past half century.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

Mr. ALLEN. Mr. President, I rise to speak on the Craig amendment.

The PRESIDING OFFICER. The Senator is recognized.

Mr. ALLEN. Mr. President, I rise in support of the amendment of our colleague, Senator CRAIG of Idaho, of which I am a cosponsor. I listened very carefully to the eloquent words of the Senator from Connecticut, Mr. DODD, and his arguments in opposition to this amendment. In my view, the proposed International Criminal Court is a threat to the sovereignty of the United States and our individual God-given rights that are protected in the Constitution of the United States and in the constitutions and laws of several states. President Clinton, in my view, made a serious mistake when he signed the Rome treaty in the waning days of his administration. That treaty, which would establish a permanent international criminal court, creates a number of undesirable, unprecedented challenges for the people of the United States. The ICC will have the power to investigate and prosecute a series of international criminal offenses such as crimes against humanity, heretofore enforceable only in national courts or tribunals of limited application which have broad international support, such as the Nuremberg trials, which Senator DODD brought up.

Obviously, everyone here thinks the Nazis should be prosecuted.

We do support, obviously, the tribunal that is trying Milosevic right at this moment. The International Court in The Hague is the proper approach, which does not impinge upon our sovereignty.

Senator DODD, in arguing against this amendment, did mention he would oppose the Rome treaty as written if

we were going to be voting on it at this moment. But if the Senate were to ratify this ill-advised treaty, this International Criminal Court would have the authority to try to punish Americans for alleged offenses abroad or in the United States, and that Court will be entirely unaccountable for its actions.

This International Criminal Court, in fact, would be in a position to punish individual American officials for the foreign policy and military actions of the United States and would not offer even minimum guarantees afforded in the Bill of Rights to any defendants before it.

At the heart of the ICC is an independent prosecutor accountable to no one. The international prosecutor is empowered to enforce justice as that prosecutor sees fit. If the international prosecutor believes that a local trial in our U.S. courts has been inadequate, he or she is authorized to indict an alleged human rights abuser and demand a new international trial. The international prosecutor may think a local pardon or an amnesty or a finding of not guilty was improper. That international prosecutor can ignore that finding.

What this authority symbolizes is the theory that all nations, including constitutional democracies, should surrender their sovereignty to the altar of international control.

Control of our own courts is one of our most cherished internal decisions about justice and order in our civilization. The United States was founded on the basic principle that the people of the States and our country have the right to govern themselves and chart their own course. The elected officials in the United States, as well as our military and citizenry at large, are ultimately responsible to the legal and political institutions established by our Federal and State constitutions, which reflect the values and the sovereignty of the American people.

The Rome treaty would erect an institution in the form of the ICC that would claim authority superior to that of the Federal Government and the States and superior to the American voters themselves. This Court would assert the ultimate authority to determine whether the elected officials of the United States as well as any other American citizen have acted unlawfully on any particular occasion.

In this, the Rome treaty is fundamentally inconsistent with the first tenet of our American Republic, that anyone who exercises power must be responsible for its use to those subject to that power. In our country, the Government derives its just powers from the consent of the people. That is foundational and fundamental.

The values of the ICC's prosecutor and judges are unlikely to be the same values of those of the United States. The Rome treaty has been embraced by

many nations with legal and political traditions dramatically different from those of our own. This includes such states as Cambodia, Iran, Haiti, Nigeria, Sudan, Syria, and Yemen, all of which have been implicated in torture or extrajudicial killings or both.

Even our closest allies, including European states following the civil law system, begin with a very different assumption about the powers of courts and the rights of the accused. Nevertheless, if it is permitted to be established, the ICC will claim the power to try individual Americans, including U.S. service personnel and officials acting fully in accordance with U.S. law and our interests. The Court itself would be the final arbiter of its own power, and there would be no appeal from its decisions.

In 1791, Thomas Jefferson, our country's first Secretary of State, said:

No court can have jurisdiction over a sovereign nation.

Last year this Congress prohibited the use of taxpayers' money to support the International Criminal Court. I say, let's put another lock on that door by adopting this amendment, the Craig amendment, and let's put a lock on the door to the Preparatory Commission as well.

In closing, I quote again from Mr. Jefferson. Thomas Jefferson said:

It is the right of every nation to prohibit acts of sovereignty from being exercised by any other within its limits.

I urge my colleagues to join me in exercising this right and supporting this amendment to protect the sovereignty of the American people.

I yield the floor.

Mr. LEAHY. Mr. President, I rise today to voice my strong opposition to the Craig amendment to the International Criminal Court (ICC). While I have great respect for the Senator from Idaho, I believe it is unnecessary, damaging to the cause of international justice, and would further erode our standing with our European allies.

Even the Bush administration, which has no intention of sending the Rome treaty to the Senate for its advice and consent, opposes the Craig amendment.

Since the Rome treaty was approved over two years ago, it has been signed by more than 120 nations including all of the European Union members, all of our NATO allies except Turkey, as well as Israel, and Russia.

Joining our friends and allies, President Clinton signed the Rome treaty late last year, a decision which I wholeheartedly supported, as the ICC represents a significant step forward in bringing to justice those responsible for committing the most heinous crimes.

Throughout the negotiations on the ICC, the United States got almost everything it wanted and was able to obtain important safeguards to prevent American soldiers from being subjected

to politically-motivated actions by the Court.

There is room for improving the treaty, and that is precisely why I oppose the Craig amendment. The Craig amendment would prevent our diplomats from being at the table during the ongoing Preparatory Commissions on the ICC.

While this may make some feel good, the practical effect would be self-defeating. It would put us in a far worse position to advance U.S. interests within the ICC and obtain additional protections, ensure that the safeguards we already obtained operate effectively, and make sure that the Court serves its intended purpose of prosecuting crimes against humanity.

I do support the International Criminal Court. But, again, this vote is not about whether you support it or not. We already have a prohibition against the expenditure of U.S. funds for the "use by or support of" the ICC, unless the U.S. ratifies the treaty, which it is not going to do any time soon.

The issue is whether we will participate in discussions on the procedures of the court, or whether we are going to tie the hands of the administration by preventing the United States from even sitting at the table.

And, both the Clinton and Bush administrations have stated that they would not submit the Treaty to the Senate for consideration.

While some may want to "block" the treaty, this is very unlikely to be possible. The EU is already engaged in a campaign to obtain the ratifications that are needed to reach the required number of 60.

Blocking the International Criminal Court from coming into existence is likely to require a head-to-head confrontation with our European allies and over 80 countries outside of Europe that have signed the Treaty but not yet ratified.

Because the reality is that the Court will come into existence and have jurisdiction over non-parties, our best strategy is to remain engaged with the ICC to shape a Court that best represents our interests and values.

Irrespective of one's views on the ICC, it makes no sense to bury our heads in the sand and hope for the best. That is precisely what the Craig amendment will do and one of the major reasons why I strongly oppose it.

The other reason that I oppose the Craig amendment is the long-term harm that it could have on U.S. efforts to prosecute war criminals. Year after year, Senator McCONNELL and myself, alternating as chairman and ranking member of the Foreign Operations Subcommittee, have struggled to find enough money to help support the efforts of the international tribunals for the former Yugoslavia, Rwanda, and Sierra Leone.

Moreover, we may now be asked to contribute millions of dollars to sup-

port a tribunal to prosecute crimes of genocide by the Khmer Rouge in Cambodia, if the tribunal there meets international standards of justice.

The negotiations on these tribunals often takes years and involves endless wrangling over costs, over the laws and rules that will be applied to the proceedings, and over whether to even establish an ad hoc tribunal in the first place.

One of the primary goals of the ICC is to have a permanent forum to prosecute these heinous crimes wherever they may occur, and our allies have embraced the ICC for precisely this reason.

Once the ICC comes into existence, and our allies and the Security Council will no longer support establishing new ad hoc tribunals—which at that point could be unnecessary and duplicative—what will the United States do?

No longer help with the prosecution of war criminals, because we do not support the ICC? That would be ridiculous for a country whose Bill of Rights is a beacon of hope for victims of human rights abuses around the world.

Clearly, we all want to protect U.S. interests within the ICC. This amendment does not do that. In fact, it makes things worse by not even allowing our negotiators to be in the room while important issues are being discussed and could ultimately hinder our efforts to prosecute war criminals.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. I checked with several Senators interested in this amendment as well as its proponent, Senator CRAIG. If there is no other question, we need to move these amendments along as best we can.

I think we are ready for a voice vote.

I urge the question on the Craig amendment.

The PRESIDING OFFICER. Is there further debate on the amendment? If not, the question is on agreeing to the amendment in the second degree.

The amendment (No. 1537) was agreed to.

Mr. GREGG. Mr. President, I urge the question on the underlying amendment, as amended.

The PRESIDING OFFICER. Is there further debate? If not, the question is on agreeing to the amendment, as amended.

Mr. GREGG. Mr. President, I ask unanimous consent that the yeas and nays be vitiated on the amendment in the first degree.

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

Without objection, the amendment is agreed to.

The amendment (No. 1536), as amended, was agreed to.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

Mr. HOLLINGS. I thank the distinguished Chair, and thank my colleagues from New Hampshire and Virginia.

Mr. CONRAD. Mr. President, I rise to offer for the RECORD the budget Committee's official scoring for S. 1215, the Department of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act for Fiscal Year 2002.

The Senate bill provides \$38.627 billion in discretionary budget authority, which will result in new outlays in 2002 of \$26.026 billion. When outlays from prior-year budget authority are taken into account, discretionary outlays for the Senate bill total \$38.747 billion in 2002. The Senate bill is within its Section 302(b) allocation for budget authority and outlays. Once again, the committee has met its target without the use of any emergency designations.

I again commend Chairman BYRD and Senator STEVENS, as well as Senators HOLLINGS and GREGG, for their bipartisan effort in moving this and other appropriations bills quickly to make up for the late start in this year's appropriations process.

I ask unanimous consent that a table displaying the budget committees scoring of this bill be printed in the RECORD.

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

S. 1215, DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATION, 2002

[Spending comparisons—Senate-Reported Bill (in millions of dollars)]

	General purpose	De-fense	Con-serva-tion	Manda-tory	Total
Senate-reported bill:					
Budget Authority	37,772	604	251	572	39,199
Outlays	37,885	660	202	581	39,328
Senate 302(b) allocation:*					
House-passed:					
Budget Authority	37,534	567	440	572	39,113
Outlays	37,913	632	360	581	39,486
President's request:					
Budget Authority	37,178	465	284	572	38,499
Outlays	38,016	538	259	581	39,394
SENATE-REPORTED BILL COMPARED TO:					
Senate 302(b) allocation:*					
Budget Authority	0	0	(133)	0	(133)
Outlays	0	0	0	0	0
House-passed:					
Budget Authority	238	37	(189)	0	86
Outlays	(28)	28	(158)	0	(158)
President's request:					
Budget Authority	594	139	(33)	0	700
Outlays	(131)	122	(57)	0	(66)

Notes: Details may not add to totals due to rounding. Totals adjusted for consistency with scorekeeping conventions. For enforcement purposes, the budget committee compares the Senate-reported bill to the Senate 302(b) allocation.
 *The 2002 budget resolution includes a "firewall" in the Senate between defense and nondefense spending that will become effective once a bill is enacted increasing the discretionary spending limit for 2002. Because the firewall is for budget authority only, the appropriations committee did not provide a separate allocation for defense outlays. This table combines defense and nondefense outlays together as "general purpose" for purpose of comparing the Senate-reported outlays with the subcommittee's allocation.

MOUNTAIN VIEW HOUSE

Mr. GREGG. Mr. President, I would like to briefly mention to Senator HOLLINGS an EDA project that is of significant importance to employment in a section of New Hampshire that has traditionally experienced high levels of unemployment. The project is the Mountain View House. This project was inadvertently left out of the Senate Report, but it would be my hope that the Economic Development Administration would consider an application for the Mountain View House within applicable procedures and guidelines and provide a grant if warranted. Will you join with me in urging the EDA to consider this vital initiative in New Hampshire?

Mr. HOLLINGS. I would certainly join with the Senator from New Hampshire in recognizing and supporting the Mountain View House project. I will work with my colleague during conference to include this project in the committee report.

INS INSPECTORS AT PORT OF DETROIT

Mr. LEVIN. Mr. President, I would like to thank the chairman for addressing in this bill the severe INS staffing shortages at certain land border ports of entry. I would also like to thank him for recognizing and addressing the severe shortage of INS inspectors at Detroit's port of entry on the U.S.-Canadian border, which includes the Ambassador Bridge and the Detroit-Wind-

sor Tunnel. I am pleased this bill provides \$25,408,000 for 348 additional land border inspectors and specifically identifies the Detroit bridge and tunnel port of entry as being understaffed by a whopping 151 people. I appreciate the efforts of this Committee to address the significant INS staffing shortages on the Detroit-Canadian border and that a portion of the increase in INS inspectors funded by this bill will be allocated to address the Detroit shortfall.

I wish to seek clarification from the chairman of the Commerce-Justice-State Appropriations Subcommittee as to whether a significant portion of the funding provided for additional INS inspectors by this bill will be allocated to address the Detroit shortfall. The Ambassador Bridge is the most heavily traveled bridge and the most heavily traveled tunnel on the U.S.-Canadian border. Total traffic at the bridge has nearly doubled over the past 14 years. According to data compiled by the Bridge and Tunnel Operator's Association, in 1999 more than 12,000,000 auto and commercial vehicles crossed the Ambassador Bridge and more than 9,500,000 auto and commercial vehicles passed through the Detroit-Windsor Tunnel.

Ms. STABENOW. Mr. President, I too would like to express my thanks to the distinguished chairman for increasing INS staffing levels to address the past

under funding of land border inspectors, and to also seek clarification concerning the Detroit Port of Entry. The committee notes that the Detroit Port of Entry, which includes the Ambassador Bridge and the Detroit-Windsor Tunnel, requires a total of 175 personnel yet is currently staffed at only 23 inspectors. That leaves the port understaffed by 151 inspectors, the third worst staffing level at a U.S. port of entry as a percentage of total workload. This is a serious concern, particularly because the Detroit Port is the nation's busiest northern border crossing, and has resulted in unnecessary traffic congestion and delays. I appreciate the committee having recognizing the Port of Detroit as one of the nation's ports of entry most in need of these additional inspectors and look forward to more efficient INS inspections at the Detroit-Canada border once these additional inspectors are in place. Is it the intent of the chairman, that a significant number of these additional INS inspectors would go to the Detroit Port of Entry?

Mr. HOLLINGS. Mr. President, the Senators from Michigan are correct. This committee recognizes the problems faced at the Port of Detroit and its shortfall of 151 INS land border inspectors, and it is the committee's intent that a significant number of these additional INS inspectors funded in our bill will help fill that shortfall.

CLEARMADD, UNIVERSITY OF GEORGIA

Mr. CLELAND. Mr. President, I have previously brought to your attention the important capabilities of the Center for Leadership in Education and Applied Research in Mass Destruction Defense (CLEARMADD). This Center, to be supported by a consortium of institutions including the University of Georgia, the Medical College of Georgia, and the Savannah River Ecology Laboratory in South Carolina, has available substantial expertise regarding the threat posed domestically from weapons of mass destruction (WMD). In recent years, concerns have increased about the potential for terrorists or foreign states to use biological, nuclear or chemical weapons to inflict mass casualties in the United States. As a nation, we are only just beginning to develop an adequate response capability for such an attack. The consequences of the use of WMD in the United States would be catastrophic, particularly in terms of the ability of our health care system to respond. While other programs have focused on research and training to assist first responders in the event of a WMD, very little has been done to develop proper curriculum and training, including advanced degrees, for medical responders including doctors, nurses, emergency room personnel, pharmacists, toxicologists, and veterinarians. The experts assembled with CLEARMADD have significant capability to provide such curriculum development and training for these so-called second responders.

I understand that a total of \$364 million is included in the Senate version of the Fiscal Year 2002 Commerce-Justice-State appropriations bill for the Office of State and Local Domestic Preparedness Support (OSLDPS) of the Department of Justice to assist with training in the U.S. to respond to potential terrorist attacks. This is an increase of more than \$100 million over funding for Fiscal Year 2001. It is my view that the programs and expertise of CLEARMADD fit well within the OSLDPS mission and I believe funds should be found within the Fiscal Year 2002 budget of OSLDPS to take advantage of CLEARMADD's expertise to help develop model curricula and training programs to assist local health care professionals.

Mr. HOLLINGS. I appreciate the gentleman from Georgia, Mr. CLELAND, bringing CLEARMADD to my attention. There is a significant need for training of health professionals in the event of a chemical or biological attack. From what I have learned, CLEARMADD has significant capabilities in this regard, and is clearly a program that could provide significant assistance in helping achieve the mission of the OSLDPS. I will continue to work with Senator CLELAND to see that the Department of Justice takes advantage

of the expertise within the CLEARMADD consortium and finds ways to include CLEARMADD within the overall programs of the DOJ anti-terrorism program.

Mr. CLELAND. I thank the Senator for his support and attention to this matter and I look forward to working with you in the future on this issue of mutual interest.

HARTSFIELD ATLANTA INTERNATIONAL AIRPORT
INS OFFICERS

Mr. CLELAND. Mr. President, we have discussed on previous occasions the compelling need for additional Immigration and Naturalization Service (INS) officers assigned to Hartsfield Atlanta International Airport. The present staffing of 78 positions to handle 2.8 million arriving international passengers per year at Hartsfield is consistently generating extremely long lines, and is damaging the reputation of Hartsfield as an international gateway. The desired INS 45-minute processing time limit is being exceeded frequently with lines overflowing the inspection hall into the adjoining concourse. The 95 passengers per inspector during peak periods do not match the annual growth rate of 16 percent. As a result of the 1996 Olympics Games, Hartsfield has more than an adequate number of processing booths. Yet, today, at least 75 percent of those booths go unused on any given day. Hartsfield now has more arriving international passengers from Latin America and Africa, who require longer processing times, than from Europe. Overall, the airport has experienced a 108 percent increase in international flight arrivals from 1994 to 2000.

Mr. HOLLINGS. I appreciate the fact that the Senator from Georgia brought this matter to my attention. In fact, the fiscal year 2002 Commerce/Justice/State Appropriations bill includes 348 additional inspectors for the Nation's newest and busiest airports. These inspectors will help alleviate the long lines at several airports, including airports in the Southeast which have experienced tremendous growth over the last few years. The airports in my own home state of South Carolina illustrate this need as airlines and increasing numbers of passengers require more flights with fewer delays.

Mr. CLELAND. I applaud the chairman's decision to boost the number of INS inspectors for this next fiscal year. I would like to bring to the Senator's attention that of the 150 new INS inspectors placed at various points of entry last year, Hartsfield received no new positions. There are other notable disparities. For example, Atlanta conducts 70 percent more inspections than Boston, but has only 30 percent more inspectors. The number of passengers processed annually per inspector in Atlanta is 35,782. In comparison, Miami has a higher ratio of inspectors per passenger than Atlanta, and, as a con-

sequence, the average inspector in Miami processes 10,000 fewer passengers each year. Honolulu inspects less passengers than does Atlanta, but has twice as many inspectors. And because Hartsfield generates between \$18 million and \$19 million in user fees each year with less than \$8 million spent at Hartsfield there is concern that the Atlanta Airport is subsidizing inspections at other airports in the Nation.

In addition, the airlines serving Hartsfield are planning major expansions in their international service. Furthermore, recent census data reflects tremendous population growth in metro Atlanta over the past 10 years. This dynamic population increase, second only to that of New York, will cause ever greater demand for international travel. Given the time it takes to hire and train new inspectors, it is critical that INS address the shortfall at Hartsfield now, or we will lose our ability to attract international passengers, and the economic development of the region will suffer.

Mr. HOLLINGS. As chairman of the Commerce Committee, I am very aware of the increase in the number of flight delays at the Nation's airports. We have held numerous hearings on the increase in domestic and foreign travel and it is clear that additional INS agents are needed at the Nation's busiest airports. United States airports have experienced significant growth over the last several years and additional INS agents are needed to address the increased demand not only at the Atlanta airport but throughout the Nation's airports, including in my home State of South Carolina. I will continue to work with Senator CLELAND to ensure that the nation's business airports, Hartsfield Atlanta International Airport, receive the additional INS agents that it needs.

Mr. CLELAND. Mr. President, I thank you for your support and attention to this matter and I look forward to working with you in the future on this issue of national importance.

VOTE EXPLANATION

Mr. EDWARDS. Mr. President, I was unavoidably detained and therefore was unable to cast my vote on the motion to table the Smith-Harkin amendment No. 1538 to H.R. 2500. Had I been present, I would have voted against the motion to table.

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

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