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# Congressional Record

PROCEEDINGS AND DEBATES OF THE 103d CONGRESS, SECOND SESSION

## SENATE—*Tuesday, October 4, 1994*

*(Legislative day of Monday, September 12, 1994)*

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable BYRON L. DORGAN, a Senator from the State of North Dakota.

The PRESIDING OFFICER. The prayer this morning will be offered by guest chaplain, the Reverend Clifford T. Stewart.

### PRAYER

The Reverend Clifford T. Stewart, of St. Francis of Assisi Episcopal Church, Wilsonville, OR, offered the following prayer:

Let us pray:

Almighty God, in whom we live and move and have our being: We humbly pray Thee so to guide and govern us by Thy Holy Spirit, that in all the cares and occupations of our life we may not forget Thee, but may remember that we are ever walking in Thy sight.

We beseech Thee so to guide and bless our U.S. Senators in Congress assembled that they may enact such laws as shall please Thee, to the glory of Thy name and the welfare of this people. Grant them wisdom and grace in the exercise of their duties.

We pray in the name of our Lord and Savior, Jesus Christ. Amen.

### APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
*Washington, DC, October 4, 1994.*

*To the Senate:*

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable BYRON L. DORGAN, a Senator from the State of North Dakota, to perform the duties of the Chair.

ROBERT C. BYRD,
*President pro tempore.*

Mr. DORGAN thereupon assumed the chair as Acting President pro tempore.

### RESERVATION OF LEADER TIME

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

### THE GUEST CHAPLAIN

Mr. HATFIELD. Mr. President, it is with great pleasure that I welcome an old friend and very distinguished Oregonian to the Senate this morning to open the Senate Chamber with prayer, the Reverend Cliff Stewart, who, as it has been noted, has been the pastor of St. Francis of Assisi Episcopal Church in Wilsonville, OR. He is accompanied today by his wife, Eleanor, and by his son, Bob.

Mr. President, our friendship goes back over 50 years, when we attended Willamette University together and belonged to the same fraternity. I would like to say even in those days there were those upperclassmen who set the pace, who set the standard, who were the role models—and Cliff Stewart was one such person. In everything moral, in everything upright, in everything noble, he served as that kind of role model for all of us in that fraternity.

After 34 years as a distinguished member of an accounting firm, one of the six largest in the country, he retired and started teaching at Lewis and Clark College, and then was called into the ministry. He attended seminary and was ordained in 1989, and he has since been a minister and pastor to this particular congregation. He considers his ministry is an outreach serving the poor, the weak, the sick, and the lonely. I think we might all qualify here in this body this morning for the benefit of his prayer.

I thank the Chair.

### EXECUTIVE SESSION

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now go into executive session to proceed to the consideration of the nomination of H. Lee Sarokin, of New Jersey.

The Senate proceeded to the consideration of executive business.

The ACTING PRESIDENT pro tempore. The clerk will report the nomination.

### THE JUDICIARY

The assistant legislative clerk read the nomination of H. Lee Sarokin, of New Jersey, to be U.S. circuit judge for the third circuit.

The ACTING PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be divided and controlled equally between the Senator from Delaware [Mr. BIDEN] and the Senator from Utah [Mr. HATCH] or their designees.

The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I suggest the absence of a quorum and ask unanimous consent the time be divided equally.

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

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. HATCH. Mr. President, once again my colleagues on the other side of the aisle have adopted a tactic of prematurely filing a cloture motion, this time on President Clinton's controversial and ill-advised nomination of Judge Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. My colleagues, of course, are wholly within their rights in pursuing this type of a tactic, and we will undoubtedly hear many inaccurate cries of filibuster and obstructionism from their ranks. But my colleagues have, I am afraid, cried wolf far too often, and their credibility on this matter has long since worn thin.

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



AUTHENTICATED U.S. GOVERNMENT INFORMATION GPO

Let me make two points perfectly clear: First, I do not have, and have not ever had, any intention of filibustering the Sarokin nomination. Nor am I aware of any of my colleagues who have such a design. On the contrary, I and my Republican colleagues on the Judiciary Committee accommodated the senior Senator from New Jersey by making sure that Judge Sarokin received his confirmation hearing before the Senate took its August recess. Since that time, I have attempted to work out a time agreement for the orderly consideration of this nomination.

The second point that requires emphasis is that the nomination of Judge Sarokin is an important and controversial nomination that warrants careful consideration on the floor of this Senate. In the 15 years since he was appointed to the Federal district court in New Jersey by Jimmy Carter, Judge Sarokin has earned a nationwide reputation as a stridently liberal judicial activist. On a broad range of telltale issues—such as crime, quotas, reverse discrimination, pornography, and minimal community standards of decency and behavior—Judge Sarokin has pursued his own political agenda instead of following the law. In so doing, he has ignored, defied, and even stampeded binding Supreme Court and third circuit precedent, and he has flaunted his own biases and sentiments on the sleeve of his judicial robe.

These are not just my views, nor just the views of outside critics. The third circuit itself has, for example, lambasted Judge Sarokin for "judicial usurpation of power," for ignoring "fundamental concepts of due process," for destroying the appearance of judicial impartiality, and for "superimpos[ing his] own view of what the law should be in the face of the Supreme Court's contrary precedent." The New Jersey Law Journal on September 14, 1992, has reported that Judge Sarokin "may be the most reversed federal judge in New Jersey when it comes to major cases."

Law enforcement and victims rights organizations that have announced their opposition to Judge Sarokin's nomination include the Fraternal Order of Police, the Law Enforcement Alliance of America, the New Jersey State Police Survivors of the Triangle, Organized Victims of Violent Crime, the League of American Families, Citizens for Law and Order, Citizens Against Violent Crime, and Voices for Victims, Inc.

I just do not understand why, at a time when the President says that he is finally getting serious about crime, he is appointing to a top judgeship someone whose soft-on-crime views are so strongly opposed by many police and crime victims. Indeed, it is particularly notable that groups like the Fraternal Order of Police, which joined with President Clinton in supporting the crime bill, oppose Judge Sarokin's nomination.

Let me emphasize that this nomination is especially worrisome since Judge Sarokin, as a court of appeals judge, would have enormous power and would function, in effect, as the final decisionmaker in the vast majority of cases he hears. I believe that this nomination requires a reasonable airing.

The Clinton administration, having postured itself as tough on crime, wants to hide the fact that it is supporting soft-on-crime judges, like Rosemary Barkett and Lee Sarokin, who will undermine our Nation's anticrime effort. But the American people deserve to know what kind of judges this President is putting on the Federal courts of appeals.

Mr. President, I am prepared to have a reasonable time agreement on this nomination. I will vote in favor of cloture on this nomination, and I urge all of our colleagues on both sides of the floor to do so as well. I expect that most or all of my colleagues on this side of the aisle will vote the same way. But I will not abandon the Senate's duty to debate and expose this nomination. I therefore give notice that I and other Senators who are deeply concerned about this nomination intend to debate it after the cloture vote in order to present Judge Sarokin's record and to explain why we will vote against his nomination.

Having said all that, having met Judge Sarokin, having watched him, I have to say he is a genteel and interesting and apparently a very fine person. That does not necessarily qualify a person to the circuit court of appeals. He may be a fine person and I like him personally, but it is his judicial opinions that I am finding fault with and I think so many others have found fault with.

I notice the distinguished Senator from New Jersey is on the floor. At this point, I reserve the remainder of my time so he can speak to this nomination.

The ACTING PRESIDENT pro tempore. Who seeks recognition?

Mr. BRADLEY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from New Jersey [Mr. BRADLEY].

Mr. BRADLEY. Mr. President, let me say at the outset how much I appreciate the courtesy that has been extended to me by the distinguished Senator from Utah throughout this process. He has been more than generous and accommodating under difficult circumstances, and I appreciate very much his willingness and his cooperative spirit.

I hope, as he stated, that after the cloture vote takes place today around 10:20, as I understand it, that we will be able to get a time agreement so that we will not have to go for 30 hours after cloture is invoked, if it is invoked, as I hope it will be invoked. I know the distinguished Senator from Utah is working to achieve that objective, and I thank him very much.

Mr. President, I know we are awaiting the distinguished chairman of the Judiciary Committee, Senator BIDEN, who, I am sure, wants to make an opening statement, but since we have only until 10 o'clock before there is a vote, and he is not here—I am told he is on his way—I will go ahead and make a brief opening statement and reserve much of what I have to say for the debate as it evolves over the course of the day.

Mr. President, I speak in favor of the nomination of Judge H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. Judge Sarokin has served on the District Court for the District of New Jersey since 1979. He is a jurist of the highest principles and unquestioned integrity. His humility and fairness have been hallmarks of his legal career, and Judge Sarokin's demonstrated record as a district court judge indicates that he is eminently qualified to serve on the third circuit.

Before being named to the district court by President Carter, Judge Sarokin practiced law for 25 years. He was a partner and trial counsel in the firm of Lasser, Lasser, Sarokin & Hochman, which he joined in 1954. From 1959 to 1965, Judge Sarokin served part time as assistant Union County counsel. Judge Sarokin has taught real estate law at Rutgers Law School and is a frequent lecturer at Harvard and Yale, and other law schools across the country. He is a graduate of Dartmouth College and the Harvard Law School and the author of numerous scholarly legal articles. He is known for his keen intellect.

Mr. President, Judge Sarokin's achievements during his 15-year tenure on the bench are laudable. The following facts indicate that Judge Sarokin, based on his distinguished record as a 15-year veteran of the district court, is highly qualified to serve on the third circuit.

First, Judge Sarokin has received a unanimous "well qualified" rating from the American Bar Association, which is the highest possible rating. He has been an extremely effective jurist on the district court. His decisions have yielded a body of case law that is based on adherence to the Constitution and the rule of law. For example, of the over 2,000 written opinions issued by Judge Sarokin, approximately 50, or less than 3 percent, have been reversed or vacated on appeal. At least two of those reversals occurred when legislation was subsequently changed as a result of his rulings. In addition, two of the reversals were themselves reversed by the U.S. Supreme Court.

So Judge Sarokin's record and effectiveness is clear for anyone to see. Judge Sarokin has also held several

leadership positions within the Federal judiciary itself. He has been appointed by Chief Justice Rehnquist to the Judicial Conference Committee on Judicial Improvements and the Committee on Court Administration and Case Management. He has also served as the chair of the Subcommittee on Case Management.

In addition, he is the only judge chosen to chair the Third Circuit Judicial Conference twice and has twice served as the program chair of the Conference of Federal Judges and was recently reappointed as chair of the National Conference of Federal Judges.

Third, Mr. President, much of New Jersey's law enforcement community supports Judge Sarokin's nomination to the third circuit. Frank Ginesi, president of the New Jersey State Police Benevolent Association, by far the largest police organization in New Jersey representing over 30,000 police officers, urges Judge Sarokin's confirmation to the third circuit.

Also, David Blaker and Thomas Little, president of the State Troopers and Noncommissioned Officers Association and local 105 of the New Jersey State Policemen's Benevolent Association, representing over 5,000 correctional officers, respectively, have endorsed Judge Sarokin. In addition, the Bergen County Police Conference, the State Troopers Fraternal Association of New Jersey, and the Police Foundation have indicated their support for Judge Sarokin's elevation to the third circuit. According to the New Jersey State Troopers Association, Judge Sarokin's service on the Third Circuit Court of Appeals is "in the best interest of law enforcement."

Moreover—and I think this is an important point, Mr. President—the legal arm of Federal law enforcement is supportive of Judge Sarokin's nomination. Four former U.S. Attorneys for the District of New Jersey—Herb Stern, William Robertson, W. Hunt Dumont, and Michael Chertoff—have endorsed the nomination.

Mr. President, these are the Federal law enforcement officials who have practiced before the judge for the last 15 years. William Robertson served as the U.S. attorney for the Carter administration while Herbert Stern, Hunt Dumont, and Michael Chertoff served under the Nixon, Reagan, and Bush administrations, respectively.

Michael Chertoff, who recently served as the Republican minority counsel in the Whitewater hearings and was an outstanding U.S. attorney, states the following:

> In presiding over complicated and sometimes contentious criminal trials, Judge Sarokin was patient, firm, and fair.

In addition, James Zazzali, the former chairman of the New Jersey State Crime Commission and a former State attorney general, supports Judge Sarokin and states that the judge "would bring extraordinary talent, experience and perspective to the third circuit."

Mr. President, members of the New Jersey legal community also have endorsed Judge Sarokin's nomination and done so with enthusiasm. William McGuire, president of the New Jersey Bar Association, and Thomas Curtin, immediate past president of the New Jersey Bar Association, have proclaimed their support for Judge Sarokin.

Also, Gerald Eisenstat, a past president of the New Jersey Bar Association, and Vincent Apruzzese, another past president of the New Jersey Bar Association and a former member of the board of governors of the American Bar Association, have endorsed the nomination of Judge Sarokin.

Mr. President, how much time remains?

The ACTING PRESIDENT pro tempore. The Chair would advise the Senator from New Jersey the Senator from New Jersey has 17½ minutes remaining.

Mr. BRADLEY. Will the Chair please inform the Senator from New Jersey when he has 15 minutes remaining?

The ACTING PRESIDENT pro tempore. The Chair will do that.

Mr. BRADLEY. Mr. President, Judge Sarokin is held in high regard by his fellow judges in the third circuit. Now, these are the judges that we will hear a lot of comments about today and quotes from various opinions by these judges, and yet these judges overwhelmingly support Judge Sarokin's ascension to the third circuit.

According to Judge Leonard Garth, a Nixon appointee and senior judge of the third circuit who has known Judge Sarokin over 13 years, he has throughout his career "exhibited the compassion, the resourcefulness, the intelligence, the heart and the fairness that are hallmarks of an outstanding jurist."

In addition, Mr. President, every living former judge of the third circuit—Judge Ruggero J. Aldisert, Judge John Gibbons, and Judge Leon Higginbotham—has praised the exceptional judicial performance of Judge Sarokin. As I said, today we are likely to hear that the third circuit has reversed Judge Sarokin on a few occasions, and, indeed, what judge has not been reversed? But make no mistake about the support of these judges for their future colleague. Former Chief Judge Aldisert has written that Judge Sarokin is "one of the most outstanding district judges in the third judicial circuit, a true scholar, and at the same time a genuine humanitarian, constantly in quest for justice for the parties who appear before him."

Former Chief Judge Gibbons, a Nixon appointee who is presently a professor of law at Seton Hall Law School, stated that Judge Sarokin "would bring both intellectual strength and needed ideological balance to the Court of Appeals."

The ACTING PRESIDENT pro tempore. The Chair would advise the Senator that there are 15 minutes remaining.

Mr. BRADLEY. Mr. President, could I take 2 more minutes?

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

Mr. BRADLEY. In addition, former Chief Judge Higginbotham notes that Judge Sarokin is "thoughtful, fair and impressive." Judge Aldisert states that an ideal appellate judge should possess the following qualities: fairness, justice, and impartiality; second, devotion and decisiveness; third, clear thought and expression; fourth, professional literacy; fifth, institutional fidelity; sixth, political responsibility. With regard to Judge Sarokin's judicial abilities, Judge Aldisert writes that "Judge Sarokin passes these rigorous qualifications with flying colors."

Mr. President, there are many highly respected members of the academic community also who support Judge Sarokin's elevation. Professor George Priest of the Yale Law School, who testified in support of former Judge Robert Bork during his confirmation hearings, states that "Judge Sarokin is among the very first rank of Federal judges whose most important quality is what I would call a deep judiciousness, consisting of a combination of seriousness, a commitment to making sense of the law, and a devotion above all else to fair treatment of the parties to the litigation."

Prof. Owen Fiss of the Yale Law School echoes the sentiment of his colleague by noting that "Judge Sarokin's courtroom has become one of the temples of justice of this nation."

Moreover, Prof. Herbert Koh of the Yale Law School writes that Judge Sarokin is "extraordinarily well qualified for elevation to the third circuit."

Mr. President, I reserve the remainder of my time. I will finish in just 30 seconds.

Mr. President, I have known Judge Sarokin for over 20 years. He is a principled jurist who possesses the demonstrated judicial temperament to serve as a circuit judge. Based on his outstanding record as a 15-year veteran of the Federal bench and the broad level of support he has received from people knowledgeable of his accomplishments, Judge Sarokin is eminently qualified to be elevated to the third circuit. Indeed, George Priest has said, and many will agree with what he has said about Judge Sarokin's nomination, it "will prove to be among the country's most distinguished judicial appointments of many decades."

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from New Jersey yields the floor.

Who seeks recognition?

Mr. HATCH. Mr. President, I yield 5 minutes to the distinguished Senator from Idaho.

The ACTING PRESIDENT pro tempore. The Senator from Idaho [Mr. CRAIG] is recognized for 5 minutes.

Mr. CRAIG. Mr. President, there are few duties of the Senate more important than its role in the confirmation of the nominees for a position on the Federal bench. I do not know of any Senator who takes this responsibility lightly. Certainly this Senator does not. The lives of all Americans are daily affected by the decisions issuing from the judicial branch for a Federal judge's lifetime. For that reason, the qualifications of the nominees must be weighed critically and deliberately, no matter what level of the court system the nominee is supposed to join.

When I first joined the Senate, I was struck by how closely my colleagues scrutinized these appointments. Members on both sides of the aisle repeatedly cautioned the Senate not to blindly confirm the President's nominees, but to work as a vital partner in reviewing nominations.

I think it was the senior Senator from Illinois who once said "There should be no automatic presumption that the President gets the judges he wants."

And more recently, the senior Senator from New York said that "Any notion that there is a rebuttable presumption on behalf of a nomination—that the Senate ought to be basically pliant in response to a nomination—is altogether unconsitutional—even anticonstitutional, and speaks to a right of the American people."

My decision on a judicial nominee's fitness is based on my evaluation of three criteria: character, competence, and judicial philosophy—that is, how the nominee views the duty of the court and its scope of authority.

It is my strong belief that the judiciary should hold to its original purpose, neither rubberstamping legislative decisions nor overreaching to act as substitute legislators. Time and again, I have heard from citizens complaining about the harm done by social activists on the bench—harm that may only be reversed by an extraordinary action on the part of the legislative branch, if at all.

It is this aspect of the nomination before us that concerns me a great deal.

I have reviewed the background materials on Judge Sarokin provided by the administration and others, and I cannot ignore the nominee's penchant for imposing his own political vision on the case before him, regardless of settled precedent and fundamental principles of due process.

Now, I am not a lawyer. That is why in my own State of Idaho, I have worked to establish a Justice Department Nominee Review Commission modeled on those of a number of the States, to advise me on Idaho's Federal judicial nominees. It is why I have sought the views of other members of the legal profession on pending nominations.

And when it comes to how members of his own profession view Judge Sarokin's judicial activism, we have before us the remarkable action and opinion of the Third Circuit Court of Appeals in the Haines antitobacco case.

The administration has done its best to put a good face on that particular event, but the fact remains that the third circuit vacated Judge Sarokin's order and removed him from the case—an action the court itself said was an "extreme" remedy justified only in "exceptional circumstances amounting to a judicial usurpation of power." That is a pretty strong statement from the court. It characterized Judge Sarokin's ruling as being contrary to our "common law tradition," that it ignored "fundamental concepts of due process," and destroyed any appearance of impartiality.

I will leave the scholarly debate about Judge Sarokin's ruling to the lawyers here in the Senate. But even a rancher from Idaho can understand how seriously he departed from accepted judicial standards and practices.

He used his position to launch an unnecessary and inappropriate attack on the tobacco industry. Adding insult to injury, after having been rebuked and removed from the case by the third circuit, he accepted an award from an antismoking interest group for his "significant achievement" on the issue.

Mr. President, I am not a smoker. I am a reformed smoker. I am almost an antismoker. But I speak out on this issue because I think this judge went beyond the bounds of his responsibility.

Mr. President, that is not the kind of fairness, impartiality, and prudence Americans rightfully expect to see in those who occupy seats on the bench.

Even if that were the only incident of its kind, it would weigh very heavily with me. But Judge Sarokin's record contains a number of other troubling episodes. One example that struck me was another reversal by the third circuit in the Blum case, in which the court of appeals pointed out that Judge Sarokin had "proceeded in accordance with his own views" in defiance of Supreme Court precedent.

I know others have additional cases to discuss, so I will move on to another troubling aspect of this nominee: his record in criminal justice matters.

The administration's background information on this nominee stresses that he is supported by the law enforcement community. While some may support him, Mr. President, there are others in both the law enforcement and victim's rights communities that oppose this nominee, (for example: the Fraternal Order of Police, Law Enforcement Alliance of America, New Jersey State Police Survivors of the Triangle, Organized Victims of Violent Crime, Citizens for Law and Order, Voices for Victims Inc.

They oppose him because of his peculiar views in the area of criminal justice—views which are at odds with the kind of tough crime stance that this Senate has adopted and this administration claims to support. For example, in an article he wrote for the West Virginia Law Review, Judge Sarokin opposed preconviction detention of criminal defendants and opposed mandatory and uniform sentencing.

And if there has been one Senator, there have been a multitude of Senators that have spoken out in behalf of mandatory sentences for certain types of crimes and preconviction detention

I know the administration must make the best case possible for its nominees, but they cannot expect this Senate, or this Senator, to ignore "the rest of the story." Judge Sarokin's record reflects a pattern of disdain for settled legal precedent and principles of judicial decisionmaking, an eagerness to use his authority to accomplish social change, and a readiness to impose his own moral views on the case before him. In sum, I believe it would be a mistake to advance Judge Sarokin to the third circuit, and I will vote against cloture and against confirmation.

The ACTING PRESIDENT pro tempore. Who yields time?

Mr. BIDEN. Mr. President, I yield myself 5 minutes.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Delaware.

Mr. BIDEN. Mr. President, there are a lot of—as we used to say in law school—"red herrings" that have been raised about this nominee, as have been raised about others over the past months, years, and decades. It is part of the process. I think part of it has to do—I say this respectfully—with occasionally a lack of understanding of constitutionally guaranteed processes that are built into the Constitution and the State constitutions that on its face make things look relatively difficult. It is easy to overwhelmingly paint an overwhelmingly inaccurate picture of someone's record in the law because it is very difficult to in many cases in a matter of a sentence or two or paragraph or a book justify certain things that are stated.

For example, as I have said on this floor, I wonder how many people would voted if the vote were taken today in this body on having a fifth amendment, assuming we did not have a fifth amendment. We all pay homage. We just paid homage to the 200th anniversary of the Bill of Rights. I wonder how

many people would vote in here if we would factor our constituents and, say: By the way, we want to have an amendment which says when some bad guy is accused of doing something wrong that bad guy under oath can stand there and say, "I am takin' the fifth. I ain't saying nuttin'."

People may say, "That is ridiculous. Isn't that an awful thing?"

Obviously, these are bad guys. These are Mafia, or Colombian drug cartel people.

It is easy to say, "How could you possibly have a fifth amendment? Who would vote for a fifth amendment?"

Well, the point I am trying to make is a broad point, which is that if you take any one case of any one judge, particularly if you are not a trained lawyer or an academician, and you look at it, you can easily—with positive intentions, not attempting to misrepresent anything—come up with a very skewed picture.

Let us talk about this one case everybody talks about—James Landano, a bad guy, convicted in 1978 of shooting a police officer. I was riding through New York City yesterday on the way to visit my son, who is going to school up in New Haven and going through the Bronx. There was a great big billboard of a very eye-catching thing. It gives a number of such-and-such cop, and there is a splash of blood across the billboard, and it says there is a reward of $x$ thousand dollars for anybody reporting someone who has shot a police officer. And if it results in an arrest and conviction, which is a good thing, I am all for that.

The point is, the one thing you do not want to do—and there is good reason for it—is ever shoot a cop. And I am one who has written laws and voted for laws to strengthen the penalties for anybody who shoots at a cop, kills a cop, or maims a cop. I am one of the people who has increased the funding the families get for police officers killed in the line of duty. I do not think there are, well, there are as many as sympathetic but nobody more sympathetic than me. I see red when I hear someone has shot a cop or has been accused of shooting a cop. This guy, Landano, who is not someone, I suspect, you would want your daughter to go out with, and not somebody, I suspect, you would invite home for dinner, gets accused of shooting a cop. And if Landano committed that crime, the son-of-a-gun should fry, in my view. I support the death penalty. I think he should be put to death.

So on the face of it, you start off with this guy who is not the most appealing guy in the world, and he appeals to a judge after having been convicted of shooting a cop. Now you have a judge who has a Constitution, and he sits in front of him and he says this bad guy is sitting there, and it is not whether he committed the crime or not, although he has been convicted, but a guy who is not appealing. Landano comes along and says: Look, I am innocent, and the reason I am innocent is that they got a conviction based on false testimony. Somebody who testified lied. So Landano says: By the way, not only did this guy lie who caused my conviction, but the cops withheld evidence and the prosecutor withheld evidence that can prove that I am innocent.

He presented this evidence to Judge Sarokin, and the judge considered it carefully and rejected the petition. The first time out, he said, "I do not think you have shown me enough to generate any change in outcome here." So Landano came back a second time, and this time he came back with more proof. This time he did persuade Judge Sarokin that the trial he had was unfair because there was false testimony and because the prosecution withheld exculpatory evidence, which is a fancy way of saying they had facts which they were required to tell the court about that would have shed light on the possibility of innocence as opposed to the possibility of guilt.

But what you hear up here in the Senate—not from my friend from Utah, because he knows the law much too well—you would think after the judge saying: OK, I think you have presented sufficient evidence and, by the way, here is the key to your cell; unlock yourself, let yourself go, you are free. He did not say that. He said: Stay in jail; you are not going anywhere, you are still under arrest. We are going to give you a new trial, though. In this new trial you have a chance to bring up this additional evidence.

So he simply ordered a new trial. Far from being an outrageous decision, his ruling was fully vindicated by the New Jersey State courts. They looked at the same new evidence and looked at it independently. The guy is convicted now, remember. I want to make this as basic as I can. This guy, who you would not invite home to dinner, is convicted of killing a cop. After that, he says: I have proof, judge, that the guy who gave testimony against me lied and, second, that the prosecution had other evidence which would have sustained my case, and they did not let it come into court.

So the New Jersey State court, separate and apart from Judge Sarokin, a Federal court judge, reached the same conclusion. Now, I want to tell you something. If you want to make sure you are getting something straight, try to get a State court to overrule a conviction of a guy who is not the sweetest guy in the world for killing a New Jersey cop. The reason they did it is they are required to do that. They are required to do that.

So independently and separately from this Federal judge, who is one of the most respected minds, most respected intellects, most respected judges in the entire Federal court system, a New Jersey State court reaches the same conclusion. And it ruled that Landano was entitled to a new trial. Judge Sarokin's courageous act did not free a cop killer. Judge Sarokin found a fundamental flaw in a highly charged trial, and he sent it back so it could be retried. That is what Federal judges are supposed to do. It is not popular to do that. No one is going to be happy with that—I will end with this—and I guess we are going to get a lot of chances to debate this afterward, unfortunately, once we get cloture. Any of you that saw that movie about the military called "A Few Good Men," there is a young guy preparing for trial and he is the prosecutor. He is assigned to defend these military guys, and Jack Nicholson is the bad guy in the movie. He stands up there and he is going through this with the young prosecutors and young defendant, going through his preparation with the young people in his unit, and one says: "We can prove they did not do it." He turns and says, "It is not enough to prove our client did not do it. A good defense attorney not only has to prove that; he also has to prove who might have done it, or at least give the jury an answer as to who might have done it."

The reason everybody gets upset when you overturn a jury trial is because the jury wants to know "who done it." The public wants to know "who done it." When you say this guy did not do it and we do not know who did it, it leaves people uneasy.

The judge did what he should have done, what he had to do, and it was independently arrived at. It was the same conclusion by the other State court judges. It is not popular, but it is the right thing. We want judges to do the right thing.

The ACTING PRESIDENT pro tempore. The Senator from Utah controls 10½ minutes, and the Senator from Delaware controls 1½ minutes.

Mr. HATCH. Mr. President, one of the games that is being played around here is that whenever the majority leader wants to move something along, he files cloture, whether or not anybody has decided to use extended debate. I have heard the majority leader —who is a person I have great regard and respect for—say how beset we are with filibusters in this body.

Naturally, in the last week or so of a session, there is going to be the threat of some filibusters. It is one of the few tools that the minority has to protect itself and those the minority represents. But this is not a filibuster. I find it unseemly to have filed cloture on a judgeship nomination—where I have made it very clear that I would work to get a time agreement—and make it look like somebody is trying to filibuster a Federal court judgeship.

I think it is wrong, and I think it is wrong to suggest in the media that this is a filibuster situation, because it is not.

I personally do not want to filibuster Federal judges. The President won the election. He ought to have the right to appoint the judges he wants to.

On the other hand, when his appointed judicial activist judges ignore the law and substitute their own policy preferences for that of the law, then it is incumbent upon the Members of the U.S. Senate to stand up and say, "Hey, that is wrong," because if judges will not abide by the law, why should anyone else?

What are judges for other than to implement the laws, to abide by them, to interpret them, not to make them. They are not elected. This man, Judge Sarokin, was appointed for life as a district court judge. Nobody can take that away from him. The reason we appoint Federal court judges for life is because we know they will have awesome power to interpret the laws made by people like you, Mr. President, and myself, and others, who are duly elected and must stand for election on their ideas to make the laws.

It is our job to make the laws, not Judge Sarokin, and yet time after time after time, this judge, who I admit is a very bright man, who I admit is a nice man—I liked him personally, so this is it not a personal attack—time after time this judge has ignored the law which was clear on its face and has substituted his own policy preferences for that of the law.

If we ever allow that to occur on a broad-based basis, this country will no longer be a country that is ruled by law. Judges have extraordinary power. Federal judges have even more extraordinary power than State judges. They are interpreters of the laws, not makers of the laws. They should not act as judicial legislators in black robes.

That would indeed scare anybody, because Federal judges are unaccountable to the voting population. And that is why we believe the legislative branch at the Federal level should be especially vigilant, whereas in many States the voters directly elect judges who run for office just like any other common politician.

In the Federal courts we nominate these people, and we confirm them for their lives. We give them full salary when they retire. These are some of the most important positions in our society.

And here we have a judge who lacks the support of some of the most important organizations in New Jersey, Pennsylvania, Delaware, and other areas of this country because he has been a judicial activist who ignores what the law is.

Now, we will have to fully debate this matter after cloture is invoked, and I am recommending to all Members of our side to vote for cloture because we should never have had a cloture vote on this judgeship. We should have worked it out and had a reasonable debate. We now have to have postcloture debate because of this ridiculous use of the cloture rule and allow Senators an opportunity to stand up and say pro or con what they want to about this particular nomination.

But nobody should misconstrue this. These nominations are extremely important. This is one of the most important obligations the Senate has, and under the Constitution we are the only ones who have this obligation of confirming Federal court judges.

As to the basic arguments that Judge Sarokin's supporters have offered on behalf of this nomination, if I can define them, I would define them as three. The first argument is rooted in the fact that the White House and Judge Sarokin's other supporters have successfully solicited letters of support for Judge Sarokin from a number of judges and lawyers. If these people support Judge Sarokin, the argument goes, he cannot be all that bad.

Nevertheless, this ad homen argument is no substitute for the careful detailed analysis of Judge Sarokin's troubling record. A number of Judge Sarokin's supporters used misleading claims like the claim that Judge Sarokin has been reversed or vacated in less than 3 percent of his opinions, since a large but undisclosed number of Judge Sarokin's opinions were not even appealable. Since another presumably even larger a number of opinions were not even appealed, the 3 percent of Judge Sarokin's supporters cite is virtually meaningless. A far more relevant figure is what percentage of appeals from his decisions are successful. Judge Sarokin's supporters are strikingly silent on this matter.

Even more relevant is what Judge Sarokin's does in these major cases. Here the single most telling report is from the New Jersey Law Journal which says that Judge Sarokin's—and let me give a direct quote—"may be the most reversed Federal judge in New Jersey when it comes to major cases."

Judges hear a plethora of cases that are not major, innumerable cases that really do not mean all that much in the overall constitutional makeup of the country. But in major cases, the New Jersey Law Journal said he may be the most reversed Federal judge in New Jersey.

Third, Judge Sarokin's supporters sweep over his actual opinions and instead make unsubstantiated claims on his overall record. I believe the careful attention to Judge Sarokin's willful defiance of precedents in particular cases and the activist pursuit of ideological agenda is the best measure of what type of judge he really is. We find him wanting. We find him an activist judge who substitutes his own policy preferences, his own visceral preferences, for that of what the law really is.

Mr. President, I suggest the absence of a quorum and ask unanimous consent that the time be divided equally.

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

The time is divided equally.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

The Chair recognizes the Senator from New Jersey.

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

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

Mr. BRADLEY. Mr. President, since the debate has begun, the distinguished Senator from Utah has quoted the New Jersey Law Journal twice.

I will ask at this time to have printed in the RECORD the strong endorsement of this nomination by the New Jersey Law Journal in which the final sentence is "Lee Sarokin is a fine district judge who has served with distinction for a decade and a half. He would be a great judge for the Third Circuit."

I ask unanimous consent that this endorsement of Judge Sarokin's nomination be printed in the RECORD so that when we hear references to that quote from the New Jersey Law Journal, remember the New Jersey Law Journal has endorsed the candidacy for this nomination.

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

[From the New Jersey Law Journal, Aug. 1, 1994]

THE SAROKIN NOMINATION

President Bill Clinton, on the recommendation of Sen. Bill Bradley, has nominated United States District Court Judge H. Lee Sarokin in the Court of Appeals for the Third Circuit. The Senate Judiciary Committee will tomorrow hold a hearing on this nomination. We support confirmation.

As a federal judge, Sarokin has written more than 2,000 opinions, 250 of which have been published, and has presided over jury and nonjury trials, both civil and criminal. Judge Sarokin was twice chosen to chair the Third Circuit Judicial Conference. Recently he was named the national chair of the conference of the Federal Judge's Association. Chief Justice William Rehnquist has named Sarokin to two committees on judicial administration. As chair of the * * * management subcommittee, Sarokin was charged with implementation of the Civil Justice Reform Act.

While this litany impressed, the judgment of his peers impresses more. Judge Sarokin received a unanimous "well-qualified" rating from the American Bar Association, the highest rating possible. His nomination has been endorsed by Judges Ruggero J. Aldicers, John Gibbons, Joseph Weis, Jr., Leon Higginbotham and Leonard Garth, all the living former chief judges of our circuit.

Lee Sarokin is a fine district judge who has served with distinction for a decade and

a half. He would be a great judge for the Third Circuit.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, one comment. The facts count here, not endorsements. The facts are the law journal found he has been reversed in major cases basically because he decided them wrongly. Those are the facts.

It does not make any difference what they say otherwise. This is a bright man. This is a nice man. But do we want another judicial activist who ignores what the law is on the bench? And that is what is involved here. In this case, this man is an extreme judicial activist, I think a judicial activist in the worst sense of that term.

The ACTING PRESIDENT pro tempore. The Chair announces that the Senator from Utah controls 2 additional minutes, and the Senator from Delaware controls 30 seconds.

Mr. HATCH. I am happy to yield my colleague time if he wants it.

The ACTING PRESIDENT pro tempore. The Senator from Delaware.

Mr. BIDEN. Mr. President, it is my expectation that we will get cloture on this. I imagine we are going to have some discussion after cloture so I will reserve any remarks I have until then.

I am prepared to yield back the remaining 5 seconds I probably have.

The ACTING PRESIDENT pro tempore. The Senator from Delaware yields back his time.

Is the Senator from Utah willing to yield back time?

Mr. HATCH. I am happy to yield back my time.

## THE NOMINATION OF RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE A MEMBER OF THE FEDERAL DEPOSIT INSURANCE CORPORATION

The Senate resumed the consideration of the nomination.

Mr. BIDEN. Mr. President, I ask for the yeas and nays on the Tigert nomination.

The ACTING PRESIDENT pro tempore. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

Mr. D'AMATO. Mr. President, I rise today to oppose the nomination of Ricki Rhodarmer Tigert to be Chair of the Federal Deposit Insurance Corporation. I originally supported her nomination when it came out of the Banking Committee this past spring, and I had every intention of supporting her on the floor, but recent developments have raised questions concerning her ability to chair the FDIC in an independent manner. Until these doubts are resolved, I can not in good conscience support her nomination. Moreover, until she answers some questions about her independence and candor before the committee, I believe it is imprudent for the Senate to vote on the nomination.

Mr. President, on March 2, 1994, along with the Republican leader, Senator DOLE, and 41 other Republican Senators, I wrote to the distinguished majority leader, Senator MITCHELL.

The purpose of this letter was to inform the majority leader that we would object to any agreement to proceed to consideration of Ricki Tigert's nomination as Chairman of the FDIC until, and I quote, "the Senate Banking Committee has an opportunity to thoroughly examine the Resolution Trust Corporation's handling of its civil investigation into Madison Guaranty Savings & Loan." Following extensive correspondence, debate and numerous votes along partisan lines, the Senate voted to prevent such broad inquiry and limited the Banking Committee to hearings on subjects and areas that Independent Counsel Robert Fiske had completed investigating or was not going to investigate at all. On June 21, the Senate passed Senate Resolution 229. The Senate resolution instructed the Banking Committee to hold hearings in only three very narrow areas: the death of White House Counsel Vince Foster, contacts between the White House and the Department of Treasury, and the handling of documents in Vince Foster's office immediately following his death. These areas were referred to as the "Washington phase" of the investigation.

Mr. President, even though the resolution permitted inquiry into all three areas, shortly before our public hearings were scheduled to commence, Mr. Fiske informed the committee that had had not thoroughly completed his investigation into the handling of the Foster documents. Accordingly, we were down to two very narrow areas in which we were allowed to probe. I will refer to these hearings later, but it is clear that the Senate was blocked from looking into the RTC's handling of the Madison Guaranty Savings & Loan situation. Until we have those answers, I feel we should not proceed on the nomination.

Mr. President, I ask unanimous consent that the March 2 letter signed by 42 of my colleagues, be printed in full at this point in my remarks.

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

U.S. SENATE,
*Washington, DC, March 2, 1994.*

Hon. GEORGE J. MITCHELL,
*U.S. Senate,*
*Washington, DC.*

DEAR MR. LEADER: We are writing to inform you that we will object to any agreement seeking consent to proceed to the nomination of Ricki R. Tigert, President Clinton's nominee to chair the Federal Deposit Insurance Corporation, until the Senate Banking Committee has an opportunity to thoroughly examine the Resolution Trust Corporation's handling of its civil investigation into Madison Guaranty Savings and Loan.

As you know, the Acting Chief Executive Officer of the RTC, Roger Altman, recently disclosed that he sought a meeting with White House officials to give them a "heads-up" on the RTC's investigation. Needless to say, such a meeting is highly improper and raises very real questions about Mr. Altman's impartiality and the alleged independence of the investigation. Specifically, why were Harold Ickes and Margaret Williams present, in addition to White House Counsel Bernard Nussbaum? According to the Washington Post, Mr. Ickes, the Deputy Chief of Staff, is responsible for Whitewater "damage control". Ms. Williams, Chief of Staff for Mrs. Clinton, had previously participated with Mr. Nussbaum in searching Vincent Foster's office and sending all or some of the materials to David Kendall of Williams and Connally who is representing the President and Mrs. Clinton.

We believe public hearings are required to explore these and other questions involving the attendance of political operatives at the White House in briefings by the head of a supposedly independent agency on matters that have nothing to do with the Executive Office of the President.

We regret having to delay the Senate's consideration of Ms. Tigert's nomination. Nevertheless, the American people deserve to have confidence that the RTC conducts its important business in an independent and impartial fashion. A Congressional hearing is an appropriate forum in which to examine the important ethical and regulatory issues raised by the Altman-White House meeting.

Sincerely,

Alfonse D'Amato, Bob Dole, ——, ——, Malcolm Wallop, Phil Gramm, Judd Gregg, Larry E. Craig, Trent Lott, Dan Coats, Connie Mack, Conrad Burns, John McCain, Robert F. Bennett, Kit Bond, Ted Stevens, Lauch Faircloth, Bob Packwood, Arlen Specter, John H. Chafee, Jim Jeffords, Alan K. Simpson, Jesse Helms, Don Nickles, Mitch McConnell, Orrin G. Hatch, Strom Thurmond, Thad Cochran, Pete V. Domenici, Hank Brown, Frank H. Murkowski, Larry Pressler, Bill Roth, John C. Danforth, Chuck Grassley, Ben Nighthorse Campbell, Dave Durenberger, Slade Gorton, Richard G. Lugar, Bob Smith, Nancy Landon Kassebaum, John Warner, Dirk Kempthorne, Kay Bailey Hutchison.

Mr. D'AMATO. The following day, March 3, 1994, at a Senate Banking Committee hearing on regulatory consolidation, I made reference to our letter. I shared with my fellow committee members my concern that Federal banking regulators should be free of political pressure. I expressed dismay at the shocking disclosures about White House-Treasury meetings regarding the RTC's handling of Madison Guaranty. In my remarks at the hearing, I addressed the letter that my colleagues and I had sent to the majority leader regarding Ms. Tigert's nomination. I indicated that until we had hearings into the White House-Treasury secret meetings, we could have no confidence that she could head up the FDIC independently.

Mr. President, especially in light of the Banking Committee's recent

Whitewater hearings and the shocking testimony and documentation of numerous improper meetings between Treasury officials and the White House, I am now skeptical that the FDIC could be indpendently headed by Ricki Tigert any more than the RTC was headed independently by Roger Altman. The committee and the American people learned from these televised hearings that Ms. Tigert had contacts with White House and Treasury officials. Unfortunately, the committee has not had a chance to question her about these contacts and we should before the Senate is asked to vote on Ms. Tigert's confirmation. Spokesmen on her behalf have expressed her view that there were no contacts or one contact, but she has said little publicly about the meetings.

Mr. President, questions have been raised about the number and substance of these contacts which Ms. Tigert should address prior to confirmation. For example, a member of the White House Counsel's office said in a recent Wall Street Journal article that he had the one and only contact with Ms. Tigert. I doubt this is the full extent of the contacts between the White House and Ms. Tigert. Moreover, I believe there is direct evidence to the contrary. My colleagues should not forget that Roger Altman, who resigned his position as Deputy Secretary of Treasury following misleading testimony to Congress about his contacts with the White House involving his recusal from matters involving the Clintons, only admitted to one meeting until the committee pressed him for the truth. With Ricki Tigert, we should have a chance to question her and she should have a chance to defend herself. Until then, I cannot support her. There are just too many doubts about whether or not she could carry out her duties and responsibilities as chair of the FDIC independently and free of White House or Treasury interference.

Mr. President, the Banking Committee, under the able leadership of Chairman RIEGLE, has been tireless in improving the supervision and regulation of the banking and thrift industries. FIRREA and FDICIA are the best examples of legislation designed to prevent a reoccurrence of the freewheeling and inappropriate use of federally-insured deposits and, ultimately, to protect the taxpayer. In the community development bill that President Clinton signed into law 2 weeks ago, Congress successfully pruned costly and antiquated regulatory and paperwork burdens. Also, this year, Senator RIEGLE led the committee in an ambitious effort to consolidate the bank regulatory agencies. Democrats and the Republicans have worked together, shoulder to shoulder, to make certain the bank and thrift regulators were truly independent—of both the Congress and the administration. We have a long way to go, but the regulation and supervision of insured banks and thrifts has been both streamlined and strengthened. But no matter how much Congress works to ensure the independence of these agencies, all of our legislative efforts will go down the drain if the Senate votes to confirm nominees who are not truly independent.

And, Mr. President, I want to observe that many of the financial regulatory agencies are not functioning properly—they are either leaderless, run by temporary appointees or operating without a quorum.

Let us look at some of the agencies: the Resolution Trust Corporation is still without a chairperson; the FDIC has an Acting Chairperson, and only three of five members; it has not had a full Board in over 2 years.

The OTS has been run by an Acting Chairperson since December 1992; and the Federal Housing Finance Board has two of five members, not even a sufficient number of a quorum to allow that Board to do business. The committee held a hearing last Friday on two vacancies in an effort to correct this dismal record before we recess and authorize this important agency to act.

Mr. President, the existence of so many vacancies and temporary arrangements at so many important agencies is probably unprecedented. I know it is unwise and I think it dangerous. This situation has continued too long. It is now almost halfway through the term and the administration has neglected to nominate candidates for most of these important positions. Fortunately, we have had no emergencies and the acting leaders have done great jobs. I agree the FDIC needs a Chair; however, it took the President nearly 1 year into his term to nominate an FDIC candidate. The position has been vacant since August 1994. Let us fill this position, but let us fill it with a candidate who would have no conflicts of interest requiring recusal from any matter at the FDIC.

Mr. President, the Senate needs to confirm qualified candidates for these vital agencies—candidates in whom Congress and the American people can have total confidence. And by total confidence I mean confidence in both their independence and their lack of any conflict of interest. And the administration needs to restrain its penchant for attempting to interfere with the work and the decisions of supposedly independent agencies. During the Whitewater hearings, the Banking Committee heard firsthand testimony, under oath, about improper communications between the White House and RTC and Treasury officials designed to influence ongoing law enforcement activities and investigations at independent agencies, and to interfere with agency decisions involving the private affairs of the Clintons. We have direct testimony, diaries and documents that provide incontrovertible evidence of unethical—if not illegal—conduct by overzealous political associates and friends of the Clintons attempting to control and to influence the actions of agencies that Congress intended to be beyond the White House's political control and influence.

Mr. President, we have heard too much lately about recusals and conflicts of interests in connection with the bank regulatory agencies. The American people, as well as the Congress, must have total confidence in the independent financial regulators. This is why I have reconsidered my position concerning Ms. Tigert.

Mr. President, if confirmed as FDIC Chair, Ms. Tigert would preside over an agency that is already investigating Madison and the Rose law firm. At our recent Whitewater hearings, the former White House Counsel and others made repeated reference to her in the context of discussions about Roger Altman's recusal. At a minimum, the committee needs to examine Ms. Tigert and investigate these references further before her nomination is considered.

The Senate must not proceed to the nomination until we have complete answers on whether political pressure from White House political operatives and administration insiders also extended to Ms. Tigert's nomination and testimony before the committee on February 1, 1994.

Mr. President, I believe there is evidence that the White House interfered with Ms. Tigert's nomination and her decision to recuse herself from all matters dealing with the FDIC and the RTC's investigation into Madison Guaranty Savings & Loan. Recently, questions have been raised through newspaper articles and documents which suggest more contacts occurred between White House officials and Ms. Tigert in reference to her recusal. In the September 28 edition of the Wall Street Journal, Joel Klein, deputy White House counsel, admits that he discussed the issues of recusal with Ricki Tigert. I would like to insert a copy of this article in the RECORD.

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

REPUBLICANS HOLD UP TIGERT'S FDIC NOMINATION OVER WHETHER SHE IS A FRIEND OF THE CLINTONS

(By Albert R. Karr)

WASHINGTON.—Backers of Ricki Tigert are pushing an unusual argument for a Clinton nominee: She really *isn't* a friend of Bill, or Hillary.

President Clinton nominated Ms. Tigert, a Washington banking lawyer, last November to head the Federal Deposit Insurance Corp. In March, Senate Republicans vowed to block her confirmation until the Banking Committee was promised Whitewater hearings. The first hearings have come and gone. But Sens. Lauch Faircloth of North Carolina and Alfonse D'Amato of New York, who led

the call for hearings, are still holding her nomination hostage.

The problem isn't the qualifications of the former Treasury and Federal Reserve Board official. The problem, the senators say, is that the proposed regulator is a friend of the Clintons, even though she has said she has only met them at public functions. Meantime, the FDIC, which regulates 7,200 banks and insures bank and thrift deposits, has been without a head for two years.

The standoff is a case history of how in Washington a mere mention in the media can take on a political life of its own. The questions about Ms. Tigert's ties are built largely on one blurb in Time magazine's Jan. 17, 1994, issue about last New Year's Renaissance Weekend in Hilton Head, S.C., an annual gathering of the elite attended by the Clintons. It said in full: "Hillary's Favorite Activity: Hanging out with friends, including FDIC nominee Ricki Tigert, attorney Renee Ring and Patsy Davis, wife of lawyer Joel Klein, who replaced Vince Foster."

PUBLIC EVENTS

In interviews, Ms. Ring and Ms. Davis both say they are personal friends of Ms. Tigert, but not of Hillary Rodman Clinton. Ms. Ring says she considers herself only an "acquaintance" of Mrs. Clinton, adding that Ms. Tigert is "not as close an acquaintance" of the first lady as she is. Ms. Tigert, who isn't giving interviews, has told Senate staffers that she has only met Bill or Hillary Clinton casually at about 10 public events, mostly Renaissance Weekends, over the past eight years.

The White House and Ms. Tigert's defenders say the GOP senators are using the issue to renege on their promise to let the Senate confirm her once Democrats agreed to Whitewater hearings. In a March 3 letter to Senate Majority Leader George Mitchell, 43 Senate Republicans said they would oppose acting on Ms. Tigert's confirmation until the Banking Committee had "an opportunity" to examine the Resolution Trust Corp's investigation of the failed Madison Guaranty Savings & Loan in Little Rock, Ark., and any diversion of Madison funds to Whitewater Development Corp., which was partly owned by the Clintons when Mr. Clinton was Arkansas governor. The Republicans also said in a news release that they wanted hearings on briefings given White House officials by Roger Altman, then the Treasury deputy secretary and acting RTC chief executive.

"They really got everything they wanted and more," says Mr. Klein, the White House deputy counsel. "I must say, I am baffled as to why they are holding [Ms. Tigert] up. It's obviously an effort to use the confirmation process for political embarrassment, and it's unfair to her."

RECUSAL ISSUE

Sen. D'Amato says that from the Whitewater hearings "it seems clear" that the White House counsel and others were directly involved in advising Mr. Altman and Ms. Tigert on how to react to requests to recuse themselves from issues involving Whitewater and Madison. The Senate Banking Committee in February voted 18-1 to recommend Ms. Tigert's confirmation after she agreed—following initial reluctance—to recuse herself from FDIC actions involving the Clintons. Though he voted for Ms. Tigert's confirmation in committee, "I am reconsidering my position," Sen. D'Amato says. Deputy Counsel Klein says he had the only White House conversation with Ms. Tigert on the recusal issue, agreeing with her view that she should decide herself what to do.

Sen. Faircloth, who placed the original hold on the Tigert nomination after casting the lone vote against her, says, "It's still there, and I'm not taking it off." He says that "even the limited look" that the Banking Committee got of White House involvement in Madison-Whitewater "thoroughly convinced me that we need somebody independent to head the FDIC, not a friend of Bill's."

He says the continuing probe of Whitewater will include the FDIC's supervision of "all these banks" for which the Rose Law Firm did some work. Sen. Faircloth notes that Mrs. Clinton was a Rose partner and says that "Ricki Tigert is her favorite friend. We are appointing her to get documents from the Rose Law Firm? How more incestuous can you get?"

Ms. Tigert, a lawyer at the firm of Gibson, Dunn & Crutcher, has no Whitewater, Madison or RTC connection. Most of the controversy about her appears to be based on the Time mention. Sen. Faircloth took off from that blurb repeatedly during Ms. Tigert's confirmation hearing in February, calling her "a very close friend of the Clintons" and Mrs. Clinton's "closest personal friend;" and referring to this very, very close friendship with Mrs. Clinton, limited to her, [while she] says she enjoys hanging out with you." Ms. Tigert didn't try to rebut Sen. Faircloth's descriptions of her during the hearing, though she later referred to her "casual friendship with the Clintons in her recusal letter.

"HANGING OUT" PHRASE

In fact, the phrase that Mrs. Clinton enjoys "hanging out" with the women mentioned was Time's, not Mrs. Clinton's. Time columnist Margaret Carlson, who didn't attend the Renaissance Weekend, says she contributed the information that was used in the magazine's blurb. Ms. Carlson says Time editors decided to list the three women as Mrs. Clinton's friends and wrote the flashline. They apparently based their decision, she says, at least partly on what she gleaned from her sources.

One was a journalist who attended the Weekend, but who doesn't want to be quoted on the record. This man says he saw several women, including Ms. Tigert, sitting with the first lady at a Weekend brunch, and they "appeared to know each other." He says, "They seemed to be friends—I have no idea whether they were or not. I just saw them in a room together."

Ms. Tigert's associates say that at the Renaissance Weekend Mrs. Clinton arrived late at a brunch for 1,200 people and only happened to sit at Ms. Tigert's table, which was already occupied by the other women. Susan Ness, a Federal Communications Commission member, was at the same table and confirms their account.

So does Kathie Berlin, a former MGM executive and currently a free-lance public-relations woman, who says she walked into the brunch with Mrs. Clinton and sat down at the table with her. Ms. Berlin, who says she is a good friend of the first lady, says that she, Ms. Berlin, vaguely knew several people at the table, but that she had to ask others who Ms. Tigert was. "She wasn't a friend of any of ours," she says.

President Clinton's nomination of Ms. Tigert came after a recommendation by Fed Chairman Alan Greenspan. Three former high-level Reagan-and-Bush-administration officials, including former Treasury Undersecretary Beryl Sprinkel, recently wrote The Wall Street Journal to back her, saying: "The notion that she is a Clinton 'crony' is a canard. She has met the Clintons, but only in public. She has never spent time alone with either of them."

Sen. Mitchell says he plans to try to get the nomination moving, and at least some of the GOP senators who signed the March letter are ready to relent. A spokesman for Sen. Phil Gramm says the Texan feels that "it's time to get on with the [Tigert] nomination.

Mr. D'AMATO. He believes that he had the "only White House conversation with Ms. Tigert on the recusal issue." Nevertheless, the documents supplied to the Committee by the White House during the Whitewater hearings contain a memo written by David Gergen on March 7, 1994, on the subject of contacts with the RTC/FDIC. Mr. Gergen stated that Ricki Tigert called him at home to ask him if he felt she should recuse herself from matters relating to Whitewater. I ask unanimous consent to insert the entire Gergen memo into the RECORD.

There being no objection, the memorandum was ordered to be printed into the RECORD, as follows:

[Memorandum]

THE WHITE HOUSE,
*Washington, DC, March 7, 1994.*

From: David Gergen.

Subject: Contacts with RTC/FDIC.

To the best of my memory, I have not had any conversations—direct or indirect—with officials representing RTC about the content of subjects under investigation. My files also do not show any phone calls or contain papers which suggest contacts.

For purpose of the record, I wish to take note of the following:

Last Monday, February 28, I placed a call to Roger Altman to congratulate him on recusing himself with regard to Madison Guaranty. I though he had voluntarily taken the proper step and I wanted to be sure he knew of my support.

This past Saturday morning, March 5, Roger Altman called me to discuss a public letter he had sent to Senator Riegle explaining aspects of his earlier meeting with White House officials, including the fact that his office had obtained prior clearance from the Office of Ethics at Treasury. He wished to ensure that White House officials and members of the press were more fully apprised of the letter, and I assured him we would make an effort to make sure people knew of its contents. At the end of the conversation, I raised the subject of his coming testimony to Congress and I emphasized how strongly the President wished that in all such matters, his people be forthcoming and honest.

This past Sunday evening, March 6, my wife and I had dinner at Mr. Altman's home. It was largely a social occasion. He and I did talk about the controversies there were in the press re: Whitewater but we did not talk about anything which might have been untoward (e.g., we specifically avoided discussion of his forthcoming testimony at the request of Special Counsel Fiske). (I have previously attended one other dinner at Roger Altman's home but I believe the subject of the RTC never came up, nor can I recall any other conversations with Mr. Altman about it.)

On another front: about three Sundays ago (I may be off by a week or so), I received a call at home from Ricki Tigert, a friend, who wanted to discuss her pending appointment to the chairmanship of the FDIC and the question of whether she should recuse herself

from matters relating to Whitewater. She expressed a preference for recusal, and I encouraged her to seek such recusal. She asked if I would discuss her interest in a recusal with others at the White House, and I promised her that I would. Thereafter, I spoke with Joel Klein, who also supported a recusal. Joel notified me that Monday (possibly Tuesday) that Ricki would indeed be recusing herself.

My memory is a little hazy, but I believe these conversations represent my contacts with regulators in the Madison matter.

Mr. D'AMATO. If that is not a "White House conversation, or contact then what is? Only after questioning Ms. Tigert, will we know whether to characterize it as proper or improper? Is Ms. Tigert truly acting independently when she is seeking opinions and advice about her recusal from numerous White House officials? At the time, Mr. Gergen was a Senior White House Adviser to the President. Their conversation was a White House contact. In light of David Gergen's memo, Mr. Klein's version of Ms. Tigert's contacts with the White House is simply incorrect. We need to hear from Ms. Tigert, not her spokesman or her fan club. We need to know the truth before the Senate can vote on the nomination.

In preparation for the Whitewater hearings, the committee's special counsels deposed scores of administration officials. Ms. Tigert's name was mentioned frequently. In his sworn deposition, Dennis Foreman, Deputy General Counsel at Treasury and designated Agency Ethics Director, relates a conversation he had with Associate Counsel to the President Beth Nolan. Foreman was asked in his deposition: "What do you remember about the discussion [with Beth Nolan] concerning the Ricki Tigert nomination?" He answered: "That obviously that was a very visible matter in both Congress and in the media and showed the sensitivity of this recusal issue, not only as it related to her, but obviously it was not that distant from the question that Mr. Altman was facing."

In Beth Nolan's deposition, she was asked about the same conversation between herself and Dennis Foreman. She claims that Mr. Foreman contacted her after having read a newspaper article about Ricki Tigert's nomination. She continued by telling the special counsels that Mr. Foreman had called twice on February 4 to ask if the White House had a view on Tigert's decision to recuse herself. I ask unanimous consent to insert part of Beth Nolan's deposition into the RECORD.

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

EXCERPTS FROM BETH NOLAN'S DEPOSITION

A He [Foreman] had called me to ask my guidance on whether the White House should take a position with respect to Ricky Tigert's decision to offer to recuse herself during her confirmation process for FDIC.

Q What was that conversation?

A It was a fairly brief conversation. He indicated that I believe Ms. Tigert had called him and asked if the White House had a view. He asked me if I thought we had an interest in the matter. I believe I indicated that, yes. Again, we always had an institutional interest in recusal promises that could have precedental effect and mentioned that that was the same kind of interest that had been present. When I spoke with Mr. Foreman about Mr. Altman's recusal, he concluded the conversation by saying that he believed he was just going to tell her that she should do whatever she wanted.

Q He was going to tell Ricky Tigert?

A Yes.

Mr. D'AMATO. Mr. President, questions are raised. These questions require answers and explanations. Did Mr. Foreman ever discuss the issue of recusal with Ms. Tigert between her February 2 confirmation hearing and February 7 when she sent the committee her conditional recusal letter? I have copies of telephone messages, dated February 4 and February 9, to Beth Nolan from Dennis Foreman, that suggest further contacts among administration officials on this matter. I ask unanimous consent that these messages be reprinted in the RECORD.

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

To B.N.
Date: 2/4.
From: Dennis Foreman.
He said it was urgent! He said Mr. Nussbaum said you should talk this morning about. He said it was subject Mr. Nussbaum said you should discuss last night.

---

To B.N.
Date: 2/9.
From: Dennis Foreman.
Need to speak with you urgently.

---

To Beth.
Date: 2/9.
From: Dennis Foreman.
Wanted to add to last message. You should look at front page at business section in Washington Times article: Nominee to FDIC Ricki Tigert.

Mr. D'AMATO. Mr. President, why were Dennis Foreman, head ethics officer at Treasury, and Bernard Nussbaum, counsel to the President, discussing an FDIC nominees' indecisiveness to recuse? Why did Mr. Foreman feel that these calls were so urgent?

Many witnesses concurred that, in light of the pressure placed upon Ricki Tigert to recuse herself from all Madison matters, recusal "Q's and A's" were prepared for then Deputy Secretary Roger Altman's briefing book for the February 24 RTC oversight hearing in front of the committee. Former Treasury General Counsel Jean Hansen had discussions concerning the impact of Tigert's recusal upon Altman's decision to recuse. She was asked about those discussions during her prehearing sworn deposition. Here is her testimony.

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

Q. Between February 2 and February 24, did you have any discussions with anybody concerning the impact of Ricki Tigert's—the controversy over Ricki Tigert's recusal and the impact that that might have on Mr. Altman's decision about his own recusal?

A. Yes.

Q. Who were those discussions with?

A. I don't recall, but there was a question and answer prepared for the testimony, for the hearings, for the oversight hearing because there was a question that was considered to be possibly—that possibly could have been raised, which wasn't raised to my recollection during the oversight board hearing, as to why, if Ms. Tigert had recused herself, Mr. Altman did not.

Q. Other than that, did you—other than in the preparation of the question and answer, did you talk about the Ricki Tigert question with Mr. Altman in connection with whether that ought to influence his own decision?

A. Not to my recollection.

Mr. D'AMATO. Deputy White House Counsel Joel Klein, as I mentioned before, spoke directly with Ms. Tigert about the issue of recusal. During his deposition, Mr. Klein related the details of a conversation he had with White House Counsel Bernard Nussbaum concerning the possibility of the Senate calling for recusals for some of the pending nominations. Let me read the question posed to Mr. Klein:

Q. What did—can you recall about those discussions with Mr. Nussbaum?

A. Yeah, I remember a few things. I remember that the people on the Hill were calling for him to recuse himself. Simultaneously there was an issue regarding Ricki Tigert, who was then to be nominated for chair of the Federal Deposit Insurance Corporation and the issue of her recusal had been raised at her hearing and then subsequently she had decided to recuse herself.

In that context, there were discussions that I would have had with Bernie about the question of whether people would recuse themselves, should recuse themselves and those matters. And there are probably a few of them. So anyhow let me—why don't you follow up?

Q. Did you take a position on whether or not Ricki Tigert should recuse herself?

A. I took the position with Bernie Nussbaum—I took the following position in our discussions and it's my position generally, I think it's a very bad thing for people to sort of go through these hearing processes, these confirmation hearings and have other people extract sort of—a Senator extract a blanket recusal. That is something that sort of politicizes the events and I think is unfortunate. I took the position with Bernie that it was certainly my hope that this issue wouldn't come up for Ricki and indeed that she wouldn't be required, as a quid pro quo for confirmation, to recuse herself. I did take that position.

Mr. President, why were they so concerned about Ms. Tigert's recusal? How can they expect the Senate not to ask questions regarding blatant conflicts of interest? Did they want Ms. Tigert to be the decisionmaker at the FDIC concerning Madison as badly as they wanted Altman to be the ultimate decisionmaker at the RTC? We know the lengths the White House went to interfere with Roger Altman's attempt to recuse himself. Did the White House resist Ms. Tigert's recusal?

Bernard Nussbaum relates his side of the conversation by saying that he

agreed with White House senior adviser Bruce Lindsey and disagreed with Joel Klein. According to Mr. Nussbaum's deposition:

*A*. I believe I discussed it with Mr. Klein in my office who expressed sometimes disagreement with me. I think Mr. Klein thought that we should just let Ms. Tigert—he was involved in that confirmation process so his view contrary to my view, was maybe we should just—if she wants to recuse herself in advance, we should just let it go, which is not that important. I disagree with that and I let him know that.

Q. Who else?

*A*. I don't remember who else. It could have been people in the chief of staff's office. It could have been Harold Ickes. I believe there was such discussion with various other people. I just don't remember them now. I do remember discussing it with Mr. Lindsey. I remember Mr. Lindsey agreed with me. He had significant position. He was head of White House personnel or former head of White House personnel and I feel very strongly about this issue.

It seems as though everyone in the White House was talking about the Tigert nomination. Everyone had their own opinions on what she should do. How many of these people picked up the phone and discussed their opinions with her. Did Harold Ickes call her? Did Bruce Lindsey, call her? We know Mr. Klein spoke to her. But did Mr. Nussbaum share his strenuous objections to her to recusal with her? These are questions I think we need to ask her before the Senate votes. They will surely be asked at some point, even if she is confirmed.

Let me continue reading from Mr. Nussbaum's deposition.

*Q*. Did Mr. Klein also disagree with you about your view concerning whether Mr. Altman ought to recuse himself—I'm not talking about the fact that you had the conversation, but did he also agree with your view on the issue of whether Mr. Altman ought to recuse himself?

A. I don't specifically recall, but probably, because he also disagreed with me on Tigert, on Ricki Tigert. I don't remember actually discussing that ultimate issue with him, but I may well have. He's deputy counsel, and we discussed a lot of these things, but I do remember the discussion with respect to Tigert. He said let her recuse herself and I said that would violate at least the policy that I and the others at the White House wanted to put into effect.

What kind of general administration policy on recusal is Mr. Nussbaum referring to? More important, how does the administration enforce these policies?

It appears, Mr. President, that White House counsel felt that if conflicts of interest exist, it is irrelevant to the issue of recusal. The committee's special counsels asked Mr. Nussbaum whether he saw a difference between RTC decisions involving Madison as it affected Mr. Altman as CEO of the RTC and Ms. Tigert as head of the FDIC? Mr. Nussbaum responded: "No, because the issue was the principle, the principle of whether or not people should recuse themselves and they have no legal or ethical duty to do so. That principle is the same in both cases."

Mr. President, does White House counsel totally disregarded the conflict of interest that exist between FOB's and FOH's appointed to head independent agencies that will be looking into matters of Whitewater/Madison and the FDIC? Certainly, the Senate should not.

Mr. President, the interest shown by White House and Treasury officials over Ms. Tigert's recusal was not limited to statements made behind closed doors during sworn depositions. Administration officials publicly testified during the Senate Banking Committee Whitewater hearings that the Tigert nomination was of concern to many high level Clinton administration officials.

Roger Altman, Deputy Secretary of Treasury at the time of the hearings, said that his briefing book for the February 24th hearing contained a series of questions and answers on recusal.

I anticipated being asked directly about recusal, just as Ricki Tigert had been by the Committee a few weeks earlier, but I was asked no such questions.

He continued later in saying that he had thought about recusing himself when the issue had been raised about Ms. Tigert's recusal. Let me read you this dialog between Senator SARBANES and Mr. Altman.

Senator SARBANES. Now, it is the case that you had been debating this question of recusing yourself; isn't that correct?

Mr. ALTMAN. I'd been seeking advice on it.

Senator SARBANES. For what, a number of days or weeks?

Mr. ALTMAN. No, no, just one or two days. It didn't even enter my mind until I saw that Ricki Tigert issues come up in terms of the, you know, the pressure she came under to recuse herself in advance, and I think that was just a couple of days before February 2nd but I'm not positive.

Senator SARBANES. So when was the meeting set up with Mr. McLarty?

Mr. ALTMAN. I believe it was the day before.

Senator SARBANES. And you set that up by calling him and talking with him?

Mr. ALTMAN. Yes, sir.

Senator SARBANES. And at that time your intention was to talk about the procedural aspects on this—

At that point he sought advice on how to address the recusal issue from White House and Treasury officials. Let me read a comment and question posed by Chairman RIEGLE to Roger Altman at the Whitewater hearing.

The CHAIRMAN. Just on this question of you just stated a minute ago that the day before you were still sort of up in the air on the recusal, you'd stopped in to see Secretary Bentsen to get his advice. And I take it that sometime then in a sense between that meeting and the meeting in the White House on the 2nd, you actually had come to a judgment that you were going to go ahead and recuse yourself. And when you got into the meeting you gave that indication and that's when Mr. Nussbaum reacted vigorously to the contrary; is that—do I have that right?

Mr. ALTMAN. Yes, sir.

Again, I ask, who is making the recusal decision? Is it Altman or the White House? Is it Tigert or the White House?

Neil Eggleston, associate White House counsel, in answering a question I posed during the hearing, concerning whether Altman had a legal obligation to recuse himself, stated:

I don't have enough fingers to have quite counted up the number of entities, apart from myself, who are legal and ethics experts who have come to the conclusion that Mr. Altman did not have a legal or ethical obligation to recuse himself. The discussion and the issues that were under discussion at the time were not legal/ethical discussions. If he had a legal or ethical obligation to recuse himself, he would do so. It was political. It was how was it going to look. It was where was he going to take more heat. Was he going to take more heat if he stayed there or was the administration going to take more heat through the sort of impact of domino effect after Ricki Tigert.

A few minutes later Mr. Eggleston again makes reference to how there was White House concern that the Tigert nomination would cause a domino effect. He said:

The issue that Mr. Nussbaum was actually talking about at the time was the perception of recusals it was the perception of Rickie Tigert having to rescue. It was the perception for not legal or ethical reasons. She had told I think this committee that she would consult her ethics officer. And my recollection from the press really was that at least to some people that was not acceptable. And he was concerned about a perception sort of a domino effect of how it would look if people who did not have a legal or ethical obligation to recuse themselves were nevertheless either being forced to recuse or maybe sua sponte start recusing themselves even though they had no action. That was the matter, that was the perception that Mr. Nussbaum was talking about at the time as it relates to this issue.

As Mr. Eggleston finished his explanation of Mr. Nussbaum's involvement, Mr. Klein entered the discussion with the following:

Mr. KLEIN. Senator RIEGLE, if I can add to that because I had numerous discussions—it is my view as well and I think this is something that Senator Sarbanes raised before that when this started with Rickie Tigert and is, sort of the price of admission other confirmation was that she had to agree to a blanket recusal, no specific matter before her because she was a "friend of the First Family's," when I know the extent of Rickie Tigert's familiarity with the First Family.

This seemed to me the worst sort of politics, to be perfectly candid about it, that somehow this was going to be used against the President that his nominees could not sit on any matter that was in any way relevant to him and so the cost of all these matters would be an extraction of recusal. So when Mr. Eggleston says that there were important political considerations, there were important political considerations and I at least was very concerned about the politics of the matter. And I think that——

The CHAIRMAN. In that sense.

Mr. KLEIN. And so was Mr. Nussbaum in that sense.

Mr. President, recusal must have been the hottest topic in the White

House in February. Ms. Tigert signed a limited recusal agreement after initially resisting it. Treasury and White House officials wanted Roger Altman to resist pressure from Congress as well as resist his own judgment and the advice of others at Treasury to recuse himself. The officials did want Altman to get flustered if he were to be questioned about recusing. All involved staff wanted to be sure that Altman would come across better than Tigert if the issue of recusal surfaced during the Banking Committee's RTC oversight board hearing to be held on February 24. Assistant to the President and Staff Secretary John Podesta met with Assistant Secretary of Treasury for Legislative Affairs Michael Levy. At the hearing, Podesta said the following about his conversations with Assistant Secretary Levy:

On February 15, I met with Mike Levy, assistant secretary of the Treasury, and discussed the expected RTC oversight board hearing in the Senate Banking Committee. Mr. Levy briefed me on the composition and functions of the RTC oversight board. During the remainder of that week, Mr. Levy and I had several telephone conversations concerning the hearing. We never discussed the underlying investigation of Madison, nor did I discuss that subject any else at Treasury or the RTC.

Mr. Levy and I did briefly discuss the fact that Roger Altman would need to be prepared to answer questions about recusal in light of the fact that Ricki Tigert, our nominee to chair the Federal Deposit Insurance Corporation, had been pressured on recusal during her confirmation hearings.

Senator BOND asked Podesta if he were involved in any preparation or followup to the February 24 hearing. He says his only work on the hearing was the conversation with Michael Levy the week of February 14:

Senator BOND. You were involved only in the follow-up after the hearings? Is that the extent of your activity with Mr. Altman as respects——

Mr. PODESTA. That's the only time I spoke with Mr. Altman and I did not—I was not involved in his preparation or, as it were, I testified to the two things I did that might be responsive to your question. One was I did have a conversation the week of the 14th with Mr. Levy saying he needed to be prepared to answer a question on recusal. I think that was in light of the fact that Ricki Tigert had been pressured the week before that in this Committee.

Bernard Nussbaum, former counsel to the President, stated in his opening statement that the possibility of recusal was not just academic, but a matter of principle. He said in his opening statement that recusal was of immediate concern to the administration.

Just a day before this February 2nd meeting a nominee for the Chair of the FDIC, Ricki Tigert, had been asked by certain Senators on this Committee to agree to commit in advance to rescue herself on any issues connected to Madison or Whitewater. She was asked to do so for the stated reasons that she knew the Clintons and was being nominated by the President.

Ms. Tigert had taken the position that, if she were confirmed and asked to address Madison/Whitewater-related questions, she would consult the appropriate agency ethics officer and follow his or her advice. The inquiring Senators told—the inquiring Senators indicated that Ms. Tigert's response was not sufficient. She told her if she would not agree to recuse herself in advance, regardless of whether she was legally or ethically required to do so, they would block her nomination.

White House Counsel continued by saying that during the February 2 meeting, he and other White House officials felt it was important to resist nominees being forced to recuse themselves in advance, when recusal is not legally or ethically required.

At the time of the February 2 meeting, I and others in the White House believed it was important for the Executive Branch to resist efforts to force nominees to agree in advance to rescuse themselves in situations where recusal was not legally or ethically required. We felt that those seeking Ms. Tigert's commitment to rescuse herself were tampering with the agency adjudicative process.

Mr. President, what kind of adjudicative process is he referring to? What about the need to avoid the appearance of conflict? Why did they take such a narrow view—probably, they worked to make certain that Roger Altman would not have to recuse himself from acting RTC Chairman in connection with the Clinton personal affairs and that Tigert could preside over such discussions and decisions at the FDIC.

Mr. President, we may need to consider the issue of recusals in the future. The report the committee is preparing for the Senate pursuant to Senate Resolution 229 may even discuss the subject at some length. White House Counsel refers to the principle at stake; I am more concerned about the practice of putting into such a key position individuals with close personal relationships to high public officials—not to mention the President and his wife—who are already the targets of ongoing investigations. The narrow view that recusal is warranted only in the narrowest of circumstances—where it is legally or ethically required—is not acceptable. Even Ms. Tigert endorsed a broader view of recusal before the Banking Committee.

When asked about recusing herself during her February 2 confirmation hearing, Ms. Tigert stated:

With respect to any matter where there is an appearance of conflict of interest, after consultation with the appropriate ethics officials, I will take the necessary steps to assure the credibility of the regulatory and enforcement process.

On February 7, only 5 days after her confirmation hearing, I received this letter and her notarized recusal statement. In her letter she states:

In addition to my own sensitivity about the need to avoid even the appearance of a conflict of interest, I have also consulted with ethics officials of the Federal Deposit Insurance Corporation (FDIC) and through them with the Office of Government Ethics. They have informed me that no actual conflict of interest is involved, given the casual nature of my friendship with President and Mrs. Clinton. Nevertheless, because of the attention this issue has received, the FDIC ethics officials concur that it would be consistent with agency precedent to rescuse myself to avoid even the appearance of a conflict of interest.

Let me repeat: "the FDIC ethics officials concur that it would be consistent with agency precedent to recuse myself to avoid even the appearance of a conflict of interest." During her confirmation hearing, she was not really worried about appearances. In answering my question on recusing herself, all she worried about was whether an ethics official would say she was ethically or legally required to recuse. The technicality of even though it may not look good, if the ethics officer says it is legally and ethically OK, then I'm not going to worry about it is the connection between Ricki Tigert's recusal and Roger Altman's recusal. No one cared how things appeared. These officials just cared how some ethics officer interpreted the rules on conflict of interest and recusals.

Mr. President, without a chance to question Mr. Tigert and others carefully about these statements and documents that have come to public attention since Ms. Tigert was before the committee, I must conclude that the White House wanted her in this position in order to monitor and, if necessary, intervene to protect the interests of the First Family. The record is clear with respect to White House interference with the RTC; it is probably the same with the FDIC. I intend to find out, sooner or later. I would prefer—and I think Ms. Tigert should welcome—a chance to address these questions and dispel the doubts that I and many others have as a result of participating in the committee's Whitewater hearings in July and August.

Mr. Nussbaum relates that at this February 2 meeting, Altman out of the blue said he was inclined to remove himself from the RTC investigation. He said:

So when Mr. Altman said, sort of out of the blue without any advance notice, that he was inclined to remove himself from the RTC investigation, without a legal or ethical basis for doing so, I felt he might create an unfortunate precedent for our administration and future administrations and would make a shambles of our position in the Tigert nomination.

As White House Counsel, as an Executive Branch official, I was concerned about what Mr. Altman was considering doing. But I did not tell him to remain in the matter.

Let me repeat this—White House Counsel said that Altman's recusal "might create an unfortunate precedent for our administration and future administrations and would make a shambles out of our position in the Tigert nominations." What kind of

shambles? Should the White House have been involved in this? Was it? Shouldn't we have an opportunity to find out before the nominee is confirmed?

White House Counsel continued by saying that he did not urge Altman to stay on the case. He said it was Altman's decision to make. He goes on to explain the reason he told Altman to consider not recusing himself:

I made it because of the principle I previously discussed, that a public official has a duty to do his or her duty. I also made it because an Altman recusal would undermine our position on the Tigert nomination.

In concluding his opening statement, Nussbaum asserts:

In Mr. Altman's case, it was all the more important to urge careful deliberation since he and others such as Ms. Tigert were being pressed by the President's political opponents to recuse themselves.

As I have stated, I believed then, and I firmly believe now that Executive Branch officials and agency heads should not remove themselves from sensitive matters simply because of political advantage or expediency or for their own personal convenience. They should do their duty.

Chairman DON RIEGLE addressed Mr. Nussbaum at the hearing, stating that Mr. Nussbaum was wrong in interfering with Altman's recusal decision. Nussbaum justified his position by saying:

An Executive Branch official has a duty to do his duty unless he's legally or ethically required to recuse himself. This affects all Executive Branch officials. We were handling the Tigert nomination. What Mr. Altman was suggesting would have had an effect on that nomination. I was acting in my role as a senior Executive Branch official in order to get him to consider whether or not he should do something which might adversely impact that important policy.

Mr. President, what is it that Mr. Nussbaum is saying? These appointees have an obligation to the American people to make decisions which will affect everyone. If there is a shadow of a doubt on whether a person could be a 1,000 percent impartial on a decision, then that person should not make that decision. It does not matter if some Government ethics manual or an ethics officer says recusal is not necessary. That person should not be involved in any aspect of the decision.

Why, Mr. President, would Roger Altman's recusal make shambles out of the White House's position on the Tigert nomination? What would one official's recusal have to do with the other recusal? These agencies are supposed to be independent. The White House and Department of the Treasury should have no say or influence in the recusal of an independent agency official, particularly when that agency is already conducting investigations involving the President, the First Lady, their partners, and their associates. It was Congress's understanding that the White House was not taking a position on the issue of recusal. We know differently now.

There is another point, Mr. President, that just does not make sense. How would Altman's recusal undermine the White House position on the Tigert nomination? Again, I ask, how and why would Tigert's recusal affect Altman's decision? As Ms. Tigert and Mr. Altman were friends of the Clintons, does the administration believe that these officials would be completely impartial on any decision connected to the investigations of Madison Guaranty and the investigation of the Rose Law firm? And who knows. This was not the time to play "Let's wait and see." The American people could not wait to cross the Whitewater bridge once we got there. The decision to recuse had to be made prior to the Madison-Rose issues coming up before the FDIC and the RTC.

Mr. President, the issue of Ricki Tigert's nomination now before the Senate is more than her friendship with the Clintons. The issue of her nonination is more than her decision of whether or not to recuse herself. The real issue before this Chamber at this moment is whether or not Ricki Tigert can effectively lead the Federal Deposit Insurance Corporation. As I said earlier, many of the financial regulatory agencies are not functioning properly—they are either leaderless, run by temporary appointees or operating without a quorum. I want to see this corrected. But not at the expense of the effectiveness and credibility of the agency. Given the particular factors surrounding Ms. Tigert's nomination and the need, in my opinion, for further hearings in committee, I do not believe she can lead this agency through the important issues it must address in the months and years ahead.

Mr. President, let me make one thing clear—I am not motivated by personal animosity toward Ms. Tigert—in fact, I voted to report her nomination from committee last February. Rather, I am motivated by a desire to get the facts on the table, and to make sure that independent regulatory agencies are permitted to operate in an independent fashion.

Mr. President, we have now had extensive hearings into these secret and improper meetings between the White House and Treasury officials. But even now, do the American people have confidence that there was not improper interference by other independent agencies? How will the people know that interference won't continue, this time plugging any leaks and destroying all evidence? How can the American people be certain of Ms. Tigert's ability to head up the FDIC in a truly independent fashion?

Mr. President, due to stonewalling by the RTC led by Roger Altman and influenced by White House staff, Congress had to extend the statute of limitions for Madison and other savings and loans by statute. Earlier this year, we passed a 5-year extension of the RTC's civil statute of limitation, by a vote of 95 to 0, as part of the Emergency Supplemental Appropriations Act.

Mr. President, Congress should have been able to rely on the agencies to ensure that investigation and enforcement of the laws are pressed to the fullest. We now know that the administration attempted—and succeeded—in interfering with the implementation of these laws by agencies that are supposed to be independent. The White House overstepped proper boundaries in its relationships with Roger Altman and Jean Hansen. The President personally sought advice about Madison from Eugene Ludwig, the Comptroller of the Currency and a member of the FDIC Board. The exact relationship between the Clintons and Ms. Tigert, and the White House staff and Ms. Tigert remains unknown but it is at least possible—if not probable—that the White House has stepped across the border of propriety in its contacts with Ms. Tigert. Maybe not, but we won't know unless we look into the matter further.

Mr. President, the FDIC is an independent agency with a crucial role to play in assuring that the Nation's banks and S&L's operate safely, and retain the faith of the millions of ordinary Americans who deposit their savings in FDIC-insured institutions. Unfortunately, the FDIC has another crucial role—in the Whitewater/Madison Guaranty controversy.

Ms. Tigert's relationship with the Clintons, particularly Hillary Rodham Clinton, has been well-documented. In January it was reported that Mrs. Clinton's favorite activity at Renaissance Weekend was hanging out with a group of friends that included Ms. Tigert. I ask unanimous consent that the text of the article be inserted into the RECORD.

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

[From Time Magazine, Jan. 17, 1994]

SHOULD AULD CONNECTIONS BE FORGOT

As their somewhat wonky way of celebrating New Year's, President Clinton, Hillary Rodham Clinton and their daughter Chelsea joined about a thousand other people on Hilton Head Island, South Carolina, for the "Renaissance Weekend," an annual gathering the Clintons have attended for a decade, at which successful liberal yuppies talk about policy and personal growth and make contacts. To be included in the Renaissance Weekend, one must promise not to discuss publicly what happens there, but despite this vow of omerta, some information could be gleaned:

What Bill Talked About in His Speech: You've got to be persistent.

What Hillary Talked About in Her Speech: Making choices—I made the choice to follow Bill to Arkansas, and I've never regretted it.

Bill's Favorite Activity: Golf.

Hillary's Favorite Activity: Hanging out with friends, including FDIC nominee Ricki Tigert, attorney Renee Ring, and Patsy Davis, wife of lawyer Joel Klein,who replaced Vince Foster.

Zoe Baird Moment: In audience when Bill said you sometimes end up hurting people.

Dress Code: Ultracasual. Hillary in jogging suit and no makeup.

How This Year Was Different from Last Year: No printed, networker-friendly list of participants' professional affiliations.

Cost: About $1,000, not including air fare and hotel room.

What Rush Limbaugh Was Doing over the Same Weekend: Sailing in the Virgin Islands with Bush Commerce Secretary and millionaire Robert Mosbacher and his wife Georgette.

Mr. D'AMATO. Now, these connections to the Clintons may not be a cause for alarm in and of themselves. But Ms. Tigert has been nominated to run the FDIC. And that is a crucial point—Ms. Tigert has been nominated to run the FDIC—an agency that the Rose law firm had extensive and controversial dealings with—and one of the agencies with a central role in the Whitewater quagmire. Recent news accounts have claimed that she is not a close acquaintance of the Clintons. She has recently claimed during meetings with my Senate colleagues and their staffs, that she has only met the President and First Lady casually at about ten public events, mostly Renaissance weekends, over the 8 past years. However, during her February 1 confirmation hearing before the Senate Banking Committee, an issue was posed regarding her friendship with the Clintons:

Q. Is it accurate to say that you are a personal friend of both Mrs. Clinton and President Clinton?

A. I have known the President and Mrs. Clinton for 8 years and I respect and admire both of them.

At no time during this hearing did she mention the fact that she was merely an acquaintance of the first family. On the contrary, when terms such as "you are a very close friend of the Clintons," "this very, very close friendship with Mrs. Clinton," "favorite hanging out buddy," and "closest personal friend" were spoken, Ms. Tigert never tried to dispute that fact that the Clintons and Ms. Tigert were more than acquaintances. She was even asked "Are they really your close, personal friends?" She never answered the question.

The agency that Ms. Tigert would head up has extensive ties to the Rose law firm. The Rose firm has represented the FDIC on a number of occasions. Rose also represented the former FSLIC, on numerous occasions—and the FDIC is FSLIC's successor. Several of these representations were plagued with possible conflicts of interest and overbillings.

In February of this year, Mr. President, the FDIC did a report on the Rose law firm. The report has been criticized in the press and by Members of Congress. The shortcomings of this report are blatant:

The FDIC report concludes that "In 1989, the Legal Division lacked formal procedures regarding the determination of conflicts of interest. * * *" This raises some serious questions:

What exactly did the FDIC's rules require with respect to disclosure of potential conflicts in 1989?

How do the FDIC's current rules differ from those in effect when the Rose firm was retained to sue Frost & Co?

Would the Rose law firm's involvement in the Frost & Co. lawsuit constitute a violation of the FDIC's current conflict-of-interest rules if they had been in place in 1989?

How can it be said that the Rose law firm did not maintain a close relationship with Madison Guaranty, when the Rose firm had been retained by Madison Guaranty for 15 months only several years earlier?

What consideration, if any, did the FDIC give in their analysis to the implications of Mrs. Clinton's involvement with former Madison Guaranty owner Jim McDougal in the Whitewater land deal?

Were witnesses whose statements were incorporated in the FDIC report questioned under oath?

Is it true that no documents were reviewed as part of the FDIC's internal review that produced this report?

My point is that the FDIC is already deeply involved with investigations of the Clintons, their former associates and business partners, and their business activities.

Let me get back to Ms. Tigert and her reluctance to recuse herself. Now, it is true that Ms. Tigert has recused herself from "any investigation, inquiry, or determination concerning the President or Mrs. Clinton in their personal capacities, currently or hereafter pending before the Federal Deposit Insurance Corporation* * *." I should take this opportunity to insert Ms. Tigert's recusal into the RECORD.

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

GIBSON, DUNN & CRUTCHER,
*Washington, DC, February 7, 1994.*

Hon. ALFONSE M. D'AMATO,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR D'AMATO: During my confirmation hearing, you raised a question about whether I would recuse myself from a matter that could personally involve the President or Mrs. Clinton. As I stated in the hearing, I have no personal knowledge of any such matter other than what I have read in the press, but I am very mindful of the concerns you have raised. I want to resolve this issue as expeditiously as possible and I assure you that I will recuse myself from any such matter. I am extremely sensitive about even the appearance of any conflict of interest.

In addition to my own sensitivity about the need to avoid even the appearance of a conflict of interest, I have also consulted with ethics officials of the Federal Deposit Insurance Corporation (FDIC) and through them with the Office of Government Ethics. They have informed me that no actual conflict of interest is involved, given the casual nature of my friendship with President and Mrs. Clinton. Nevertheless, because of the attention this issue has received, the FDIC ethics officials concur that it would be consistent with agency precedent to recuse myself to avoid even the appearance of a conflict of interest.

The FDIC has a long and distinguished, 60-year history as an independent bank regulatory agency. The continued independence of the FDIC, and the credibility of the regulatory process, are my foremost concerns.

Therefore, if I am confirmed by the United States Senate, I will recuse myself from any consideration of this matter. Attached is a copy of the statement of recusal that I have signed today.

Sincerely,

RICKI RHODARMER TIGERT.

Attachment.

RECUSAL STATEMENT

In order to avoid any appearance of conflicts of interest or loss of impartiality in connection with any investigation, inquiry, or determination concerning President or Mrs. Clinton in their personal capacities, currently or hereafter pending before the Federal Deposit Insurance Corporation, I, Ricki Rhodarmer Tigert, will, if confirmed by the United States Senate to the office of Chairperson of the Federal Deposit Insurance Corporation, recuse myself immediately from participation in any such investigation, inquiry, or determination.

In Witness Whereof, I have hereunto subscribed my name in the City of Washington, District of Columbia, this 7th day of February, 1994.

RICKI RHODARMER TIGERT.

Mr. D'AMATO. Mr. President, even this recusal leaves open questions: what does the reference to personal capacities mean? Does it cover Mrs. Clinton in all her capacities as a private citizen, or just in her personal capacity as an investor in Whitewater?

The Rose firm, in which Mrs. Clinton and other former administration were partners, provided legal services to the FDIC on numerous occasions. Not all these legal services were rendered by Hillary Rodham Clinton, but we can't deny that she and the President have a stake in avoiding disclosure of possible ethical violations at her former law firm.

The Rose-FDIC connection is one of the many topics that is not covered by the hearing format that the Senate adopted on a party-line vote in Senate Resolution 229. Since the Rose-FDIC connection was not a part of the Senate Banking Committee's hearings this past July, I will take a moment to summarize some of the allegations for my colleagues:

First, there have been allegations that the Rose law firm overbilled certain clients.

When a law firm represents a Federal agency, the American taxpayer ultimately gets stuck with the bill. If there are improprieties involving the Rose law firm's representation of the FDIC, the American taxpayer is entitled to know.

A second question with respect to the FDIC-Rose connection: did the Rose law firm fail to disclose possible conflicts of interest to Federal agencies?

In 1989, the FDIC retained the Rose law firm to sue Madison's outside auditors, Frost & Co. for failing to conduct adequate audits of Madison. The lawsuit, which sought $6 million in damages was ultimately settled by the Rose law firm for $1 million.

There is no evidence that the Rose law firm disclosure potential conflicts of interest in that case.

The potential conflicts included the fact that Webster Hubbell, who was at that time a partner of the Rose law firm, had family members who were in litigation involving the FDIC and Madison.

It was Webster Hubbell who handled the FDIC's lawsuit against Frost & Co. Meanwhile, his father-in-law, Seth Ward, obtained a $325,000 judgment against Madison which the FDIC was challenging in court.

Webster Hubbell's brother-in-law, Seth Ward II was also in litigation with Madison.

Hubbell's situation was so outrageous that FDIC staff raised red flags about it.

One FDIC attorney warned that Hubbell's access to information contained in the Madison audit files could be "damaging to our case"—referring to the FDIC lawsuit with Webb Hubbell's father-in-law. He also wrote that there "appears to be a conflict in representation and a question of loyalties."

I ask unanimous consent to insert a letter prepared by an FDIC attorney into the RECORD.

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

MADISON GUARANTY,
*Little Rock, AR, June 8, 1989.*

Re No. 8313 Madison Guaranty Savings and Loan, Little Rock, Arkansas, In Conservatorship March 2, 1989, Madison Guaranty Savings & Loan vs. Frost & Company, Case No. 88-1193, Circuit Court of Pulaski County, Arkansas

Ms. APRIL BRESLAW,
*Federal Deposit Insurance Corporation, Washington, DC.*

DEAR APRIL: The referenced audit suit was transferred from the Gerrish & McCreary Firm to the Rose Law Firm shortly after March 27, 1989. The Managing Agent and Sue Strayhorn, litigation coordinator for Madison, have informed me that the staff attorney to whom these files were delivered is Webb Hubbell. Mr. Hubbell is the son-in-law of Seth Ward, a Madison insider, who was able to obtain a judgment against Madison of approximately $447,000. Mr. Hubbell was present at the trial of the Seth Ward matter and appears to have been an interested (indirectly) participant in the Ward proceedings.

Since the conservatorship, the case has been removed and later remanded back to the State Court of Appeals. An appeal of the remand order is being vigorously pursued. After appeal, a new trial will be sought whether in state or federal court. At a minimum, the state judgment will be attacked under various special FDIC defenses on its general inappropriateness. Ms. Strayhorn has informed me that information contained in the audit files could be damaging to our case, especially if a new trial is granted.

In addition to the Seth Ward matter, Mr. Hubbell's brother-in-law, Seth Ward, II, has initiated a suit against Madison claiming a side agreement containing an interest rate concession. This case was referred to the Friday firm for removal to Federal court.

I offer this information because there appears to be a conflict in representation and a question of loyalties. Mr. Hubbell may or may not be able to compromise our interests in the Seth Ward matter. However, I believe it important that you are aware of this situation so that you are able to deal with it appropriately.

Sincerely,

PAUL A. JEDDELOH,
*FDIC Staff Attorney.*

Mr. D'AMATO. Another FDIC staffer stated that it was "naive" to believe that none of the information that Hubbell had access to would get back to his family.

I ask unanimous consent to insert this letter into the RECORD.

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

MADISON GUARANTY,
*Little Rock, AR, August 10, 1989.*

Mr. JOHN O'DONNELL,
*FDIC S & L Project Area Coordinator, c/o First Federal Savings & Loan, Little Rock, AR.*

DEAR JOHN: Since arriving at Madison Guaranty on August 7th, a situation concerning a possible conflict of interest has come to my attention involving Madison Guaranty vs. Frost & Company. Madison Guaranty sued their former accountants in 1988 for negligence and breach of contract involving their 1984 and 1985 audits of the institutions.

At the time of the conservatorship, the action was removed from Madison Guaranty's attorney to the Rose Law Firm of Little Rock at the behest of April Breslaw, FDIC investigations attorney. The attorneys who are handling these accounts are Rick Donovan and Webb Hubbell.

An apparent conflict exists in that Mr. Hubbell is the son-in-law of Seth Ward who was an insider at Madison Guaranty and is the brother-in-law of Seth Ward, II. Both of these men have sued Madison Guaranty. We are currently defending an action from Seth Ward, II concerning a side agreement for interest rate concessions and are appealing a judgment in a case we lost to Seth Ward (Sr.) to the tune of $470,000.

Our attorney, April Breslaw, was made aware of this possible conflict. Her response is encaptulated in the attached letter and letters she requested from Mr. Hubbell.

In the process of our suit against Frost & Company, we will most certainly examine practices and procedures Madison Guaranty used in day to day operations. We are making this information available, in detail, to Mr. Hubbell. To believe that none of this information will make it back to his family is naive. I do not know whether or not any information upcoming will be damaging. However, I would like someone with a wider scope of authority to review the situation and possibly eliminate this conflict.

Sincerely,

KEN K. SCHNECK,
*Credit Specialist.*

Mr. D'AMATO. The FDIC's February 1994 report on this conflict situation ducked a lot of issues and offered little more than half-answers.

Mr. President, at the urging of the Senate Banking Committee, the FDIC's inspector general is busy reviewing the Rose firm's work for the Government. They apprised the Senate of their progress in the following correspondence:

[Memorandum]

FEDERAL DEPOSIT INSURANCE CORPORATION,
*Washington, DC, February 25, 1994.*

To: James A. Renick, Inspector General.
From: Andrew C. Hove, Jr., Acting Chairman.
Subject: Investigation of the Rose Law Firm.

This is to request that you initiate investigation into the following two matters: (1) the handling by the Rose Law Firm of a lawsuit (captioned First American Savings and Loan Association v. Lasater and Co.) on behalf of the FSLIC conservatorship of First American Savings and Loan Association, Oak Brook, Illinois during 1986 and 1987 and (2) the 1989 retention by the FDIC of the Rose Law Firm for the FSLIC conservatorship of the Madison Guaranty Savings and Loan Association, Little Rock, Arkansas. In your investigation, please determine whether there were any conflicts of interest or other improprieties in those representations and, if so, what, if any, sanctions or other actions are warranted.

Because of the serious nature of this matter, please try to complete your investigation and submit your report to me within 90 days. If additional time is necessary, please advise me accordingly.

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FEDERAL DEPOSIT INSURANCE CORPORATION,
*Washington, DC, March 30, 1994.*

Hon. ALFONSE M. D'AMATO,
*Ranking Minority Member, Committee on Banking, Housing and Urban Affairs, U.S. Senate, Washington, DC.*

DEAR SENATOR D'AMATO: I am writing to you to request any information which you may have relating to the law enforcement inquiry being conducted by my office into the retention of the Rose Law Firm by the Federal Deposit Insurance Corporation. As your staff has been informed, Acting FDIC Chairman Hove on February 25, 1994, requested me to conduct an independent inquiry into this matter. My office has initiated an audit and investigation, and has contacted your staff to inform them and to obtain any available information relating to this inquiry.

Our inquiry will cover allegations of conflict of interest by the Rose Law Firm in representing the FDIC in two cases: the handling by the Rose Law Firm of a lawsuit (captioned First American Savings and Loan Assoc. v. Lasater and Co.) on behalf of the FSLIC conservatorship of First American Savings and Loan Association, Oak Brook, Illinois during 1986 and 1987; and the 1989 retention by the FDIC of the Rose Law Firm for the FSLIC conservatorship of the Madison Guaranty Savings and Loan Association, Little Rock, Arkansas. The inquiry also will review the report dated February 17, 1994 by the FDIC Legal Division on the retention of the Rose Law Firm for the Madison Guaranty Savings and Loan conservatorship. Lastly, our auditors will review and analyze fee bills and charges by the Rose Law Firm relating to First American, Madison, and other FDIC, TRC, and FSLIC legal matters managed by the FDIC. We are coordinating our efforts in these areas with Mr. Fisk's staff at the Office of the Independent Counsel, and with the Inspector General of the Resolution Trust Corporation, both of whom are conducting related inquiries.

It is imperative that we fully address the allegations of conflicts of interest relating to the Rose Law Firm. Therefore, I would appreciate receiving any documents, reports, and other information relating to the retention of the Rose Law Firm by the FDIC, including possible additional sources of information. My staff will contact your staff regarding these matters.

Thank you for your assistance. If you have any questions regarding this request, please do not hesitate to call me at (202) 942-3620, or have your staff call Carolyn R. Ryals, Deputy Inspector General, at 942-3615, or Thomas D. Coogan, Assistant Counsel, at 942-3622.

Sincerely,

JAMES A. RENICK,
*Inspector General.*

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[Memorandum]

FEDERAL DEPOSIT
INSURANCE CORPORATION,
*Washington, DC, April 29, 1994.*

To: Andrew C. Hove, Acting Chairman.
From: James A. Renick, Inspector General.
Subject: Investigation of the Rose Law Firm.

In your request that the Office of Inspector General conduct an investigation into certain aspects of the activities of the Rose Law Firm in performing work for the FDIC and the former FSLIC you asked that I advise you if the time necessary to complete our work would exceed 90 days. This time frame would require issuance of a report approximately June 1, 1994.

Members of my staff have now been deeply involved in this work for two months. Moreover, we are coordinating our work with the RTC Inspector General and the Independent Counsel. Due to the complexity of the work involved, the scope of the activity under investigation, the volume of documents and investigative interviews, and the difficulty we are experiencing in obtaining some subpoenaed documents I must inform you that it will not be possible to issue a report by June 1. Even at this time we are not sure when certain documents will be made available.

Let me assure you that we realize the seriousness of this matter and are giving this work our highest priority. Unfortunately, the nature of investigative activity does not lend itself to projecting completion dates with any certainty. However, you should know that because of the various factors previously mentioned we do not anticipate an early completion of this project.

Mr. President, I have no reason to believe that the FDIC is not diligently pursuing its duty. But what if this investigation does not resolve all of the questions about the Rose-FDIC connection? What assurances do we have that the complete truth will be made available to the American people? What assurances do we have that the FDIC will follow up on the IG's findings in an independent fashion?

Unfortunately, the limited scope of the Banking Committee's first round of hearings under Senate Resolution 229 did not allow us to touch upon anything other than Treasury-White House contacts. Chairman RIEGLE and I met with Independent Counsel Kenneth Starr last week and have concluded that no more "public hearings will be scheduled until we believe such hearings will not impede his investigation." But, it will take many more hours of hearings to get the complete story. It may take the committee years to get to the bottom of the entire issue. Piece by piece, bit by bit, I will be persistent in trying to get to the bottom of all of it. Hundreds and hundreds of questions have yet to be answered. And as the investigation continues and more information surfaces, more questions will need to be answered.

Mr. President, the potential conflict problems for Ms. Tigert as FDIC chair, are not limited to the Clintons. They also involve former Associate Attorney General Webster Hubbell. After all, Hillary Clinton and the Rose law firm were also on retainer to Madison Guaranty during 1984 and 1985.

And Madison Guaranty wasn't the only failed S&L that the Rose law firm did legal work for. In fact, the Rose law firm actively solicited S&L work from the FDIC. On February 28, 1989, the same day that Madison was deemed insolvent, a letter was sent to the FDIC from the Rose law firm seeking work on insolvent institutions. In fact, the Rose law firm did extensive work for the FDIC and the former FSLIC, handling legal work on a number of failed banks and S&L's, such as:

Corning Bank of Corning, AR;

Penn Square Bank, N.A., of Oklahoma City, OK;

First Continental Bank and Trust Company of Del City, OK;

First National Bank of Oklahoma City, OK;

Bohemian Savings and Loan Association, of St. Louis, MO;

Central Savings and Loan Association, of Conway, AR;

Guaranty Federal Savings and Loan, of Harrison, AR;

Home Federal Savings and Loan Association, of Bartlesville, OK;

Knox Federal Savings and Loan Association, of Knoxville, TN;

First American Savings and Loan Association, of Oak Brook, IL;

Sunbelt Federal Savings Bank of Baton Rouge, LA;

Sunrise Savings and Loan Association, of Boynton Beach, FL;

State Federal Savings and Loan Association, of Lubbock, TX;

Ultimate Savings Bank/Citizens Federal, of Richmond, VA;

Madison County S&L, of Granite City, IL;

Home Savings and Loan Association, of Mountain Home, AR;

Independence Federal Savings and Loan Association, of Batesville, AR;

First State Savings Bank, of Mountain Home, AR;

Savers Federal Savings and Loan, of Little Rock, AR;

Home Federal Savings and Loan, of Centralia, IL;

Capital S&L, of West Helena, AR;

First Federal Savings, of Fayetteville, AR;

Capitol Federal S&L, of Little Rock, AR;

First State Savings, of Mountain Home, AR;

Aspen Savings Bank, of Aspen, CO;

Independence S&L, of Batesville, AR;

Clinton Federal S&L, of Little Rock, AR;

First Federal of Arkansas, of Little Rock, AR;

Arkansas Federal S&L, of Little Rock, AR;

Savers Federal S&L, of Little Rock, AR;

San Jacinto Savings, of Bellaire, TX;

Security Federal S&L, of Albuquerque, NM;

American Home Savings, of Edmond, OK;

Midwest Federal Savings, of Minot, ND;

Tennessee Federal S&L, of Cookeville, TN; and

Citizens Security Bank, of Borser, TX.

Mr. President, in addition to Madison Guaranty Savings & Loan, there are a number of other financial institutions that have been linked to the Whitewater Development Corp. In order to fully understand the operations of Whitewater, it will probably be necessary to understand the full relationship between these institutions, the McDouglases, the Clintons, and Whitewater Development Corp. Many of these institutions are supervised by the FDIC, and the FDIC will be called upon to provide information and cooperation in any investigation. Further, to the extent that wrongdoing is discovered, the FDIC will have primary responsibility to take administrative enforcement actions. FDIC independence is thus critical. And again, lest we forget, it's worth noting that Madison Guaranty is not the only relevant depository institution connected to Whitewater, there are several others identified in the press to date:

Madison Bank and Trust (Bank of Kingston) Kingston, AR. This bank was acquired by James McDougal in 1980. On December 16, 1980, Hillary Clinton obtained a mortgage from this bank secured by Whitewater property. The proceeds of the loan were used to build a model home on the Whitewater tract. Whitewater Development Corp. paid the interest on the loan.

First Bank of Arkansas (Bank of Cherry Valley), Wynne, AR. This bank made a $50,000 loan to Clinton used to finance Clinton's 1984 gubernational campaign. Whitewater Development Corp. obtained a loan from this bank. Whitewater Development was allowed to overdraw its account at this bank by more than $9,000.

Citizens Bank and Trust, Flippin, AR. In 1978, the Clintons and McDougals obtained a loan from this bank secured by a 230 acre tract that became Whitewater. Whitewater real estate agent Chris Wade says he deposited all Whitewater money into a bank in Flippin, AR.

Security Bank, Paragould, AR. In 1993, Clinton borrowed $20,800 from this

bank. The loan proceeds were made payable to Madison Bank (formerly Bank of Kingston). The proceeds were used to pay off Hillary Clinton's $30,000 loan from the Bank of Kingston. On October 4, 1984, Whitewater paid Security Bank $4,811 on Bill Clinton's $20,800 loan. This payment resulted in an overdrawn account. On November 7, 1985, Whitewater paid Security Bank $7,322 on Clinton's loan.

Mr. President, if the Senate approves through this nomination the majority will have closed the loop. The wagons will have been completely circled; the Whitewater stonewall will be complete. A stonewall that started in Little Rock, will now run from 1600 Pennsylvania Avenue right up to the Capitol. The Republican minority will have lost its most effective tool to ensure that the White House will not have too much influence in what is supposed to be an independent agency.

In March, we informed the majority leader that we would object to seeking an agreement to proceed on the Tigert nomination until the Senate Banking Committee has an opportunity to thoroughly examine the RTC's handling of its civil investigation into Madison. That examination has not thoroughly occurred, and we should not allow the majority to push through this nomination at this time.

And I would remind my colleagues that of the two Houses of the Congress, it is the Senate that has rules that allow the minority a real voice. In the check and balances that this Government is based upon, the Senate has the responsibility of confirming Presidential appointments and judges. I strongly believe that we, the Senate, will be doing a disservice to the American people by confirming this nominee at this time. I don't question Ms. Tigert's competence or her ability to manage such a vital part of the U.S. banking system as the FDIC. However, I strongly feel that the FDIC Chairperson must be someone who can run the place as an independent agency. I do not think that person is Ricki Tigert.

Mr. President, I want to have confidence that the regulators will exercise independent judgment. I want to have confidence that issues will not be decided based on politics or personal relationships. I want every issue decided on the facts and the merits. We cannot afford to have regulators who are, or even appear to be, susceptible to undue political influence. And this is a standard that I want followed by every regulator and in every administration, no matter which party controls the White House or the Congress.

Mr. President, the American people have heard too much lately about recusals and conflict of interest in connection with the bank regulatory agencies. The American people, as well as the Congress, must have total confidence in the financial regulators.

For these reasons, Mr. President, I changed my position on the nomination of Ms. Tigert to chair the FDIC. I voted for confirmation in February. But I must strenuously oppose her confirmation today. If confirmed as FDIC Chair, Ms. Tigert would preside over an agency that is already investigating Madison and the Rose law firm. At our recent Whitewater hearings, the former White House Counsel and others referenced her name in discussing Roger Altman's recusal. At a minimum, the committee needs to investigate these references further before her nomination is considered.

Mr. President, I am forced to conclude that it would be imprudent for the Senate to consider Ms. Tigert's nomination. Despite her considerable qualifications, I do not believe she should be confirmed by the Senate for this position. I urged the President to withdraw her name. Today, I urge my colleagues to vote against her confirmation.

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now vote on the nomination.

The question is, will the Senate advise and consent to the nomination of Ricki Rhodarmer Tigert, of Tennessee, to be a Member of the Board of Directors of the Federal Deposit Insurance Corporation?

On this question, the yeas and nays have been ordered, and the clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KENNEDY] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND] and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

The PRESIDING OFFICER (Mr. WELLSTONE). Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 7, as follows:

[Rollcall Vote No. 317 Ex.]

YEAS—90

| | | |
|---|---|---|
| Akaka | Dole | Kerry |
| Baucus | Dorgan | Kohl |
| Bennett | Durenberger | Lautenberg |
| Biden | Exon | Leahy |
| Bingaman | Feingold | Levin |
| Boren | Feinstein | Lieberman |
| Boxer | Ford | Lott |
| Bradley | Glenn | Lugar |
| Breaux | Gorton | Mack |
| Bryan | Graham | Mathews |
| Bumpers | Gramm | McCain |
| Burns | Grassley | McConnell |
| Byrd | Gregg | Metzenbaum |
| Campbell | Harkin | Mikulski |
| Chafee | Hatch | Mitchell |
| Coats | Hatfield | Moseley-Braun |
| Cochran | Heflin | Moynihan |
| Cohen | Hollings | Murkowski |
| Conrad | Hutchison | Murray |
| Coverdell | Inouye | Nickles |
| Craig | Jeffords | Nunn |
| Danforth | Johnston | Packwood |
| Daschle | Kassebaum | Pell |
| DeConcini | Kempthorne | Pressler |
| Dodd | Kerrey | Pryor |
| Reid | Sarbanes | Specter |
| Riegle | Sasser | Thurmond |
| Robb | Shelby | Warner |
| Rockefeller | Simon | Wellstone |
| Roth | Simpson | Wofford |

NAYS—7

| | | |
|---|---|---|
| Brown | Faircloth | Wallop |
| D'Amato | Helms | |
| Domenici | Smith | |

NOT VOTING—3

| | | |
|---|---|---|
| Bond | Kennedy | Stevens |

So the nomination was confirmed.

## EXECUTIVE CALENDAR

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the following nominations en bloc:

Ricki Tigert, to be chairperson of the FDIC, Executive Calendar No. 693; Andrew Hove, to be a member of the FDIC, Executive Calendar No. 694; Andrew Hove, to be vice chairperson of the FDIC, Calendar No. 695.

Under the previous order, the nominations shall be considered as having been confirmed en bloc; that the motions to reconsider be laid on the table en bloc; and that the President be notified of the Senate's action.

So the nominations were considered and confirmed en bloc.

## CLOTURE MOTION

The PRESIDING OFFICER. Under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on Executive Calendar No. 1126, the nomination of H. Lee Sarokin to be United States Circuit Judge for the Third Circuit:

Frank R. Lautenberg, George Mitchell, Byron L. Dorgan, D.K. Inouye, Kent Conrad, Carl Levin, John F. Kerry, Pat Leahy, J. Lieberman, Bill Bradley, Ben Nighthorse Campbell, Paul Simon, John Glenn, Harry Reid, Charles S. Robb, Don Riegle, Joe Biden.

## CALL OF THE ROLL

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

## VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the nomination of H. Lee Sarokin, of New Jersey, to be U.S. circuit judge for the third circuit shall be brought to a close?

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

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KENNEDY] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Missouri [Mr. BOND] and the Senator from Alaska [Mr. STEVENS] are necessarily absent.

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

The yeas and nays resulted—yeas 85, nays 12, as follows:

[Rollcall Vote No. 318 Ex.]

YEAS—85

| | | |
|---|---|---|
| Akaka | Exon | Mathews |
| Baucus | Faircloth | McConnell |
| Bennett | Feingold | Metzenbaum |
| Biden | Feinstein | Mikulski |
| Bingaman | Glenn | Mitchell |
| Boren | Graham | Moseley-Braun |
| Boxer | Grassley | Moynihan |
| Bradley | Gregg | Murkowski |
| Breaux | Harkin | Murray |
| Brown | Hatch | Nunn |
| Bryan | Hatfield | Packwood |
| Bumpers | Heflin | Pell |
| Burns | Hollings | Pressler |
| Byrd | Hutchison | Pryor |
| Campbell | Inouye | Reid |
| Chafee | Jeffords | Riegle |
| Coats | Johnston | Robb |
| Cochran | Kassebaum | Rockefeller |
| Cohen | Kempthorne | Roth |
| Conrad | Kerrey | Sarbanes |
| Craig | Kerry | Simon |
| Danforth | Kohl | Simpson |
| Daschle | Lautenberg | Smith |
| DeConcini | Leahy | Specter |
| Dodd | Levin | Warner |
| Dole | Lieberman | Wellstone |
| Domenici | Lott | Wofford |
| Dorgan | Lugar | |
| Durenberger | Mack | |

NAYS—12

| | | |
|---|---|---|
| Coverdell | Gramm | Sasser |
| D'Amato | Helms | Shelby |
| Ford | McCain | Thurmond |
| Gorton | Nickles | Wallop |

NOT VOTING—3

| | | |
|---|---|---|
| Bond | Kennedy | Stevens |

The PRESIDING OFFICER. On this vote, the yeas are 85, the nays are 12. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

Mr. PRESSLER. Mr. President, under rule XXII, I yield my 1 hour of debate to the leader, Senator DOLE.

The PRESIDING OFFICER. The Senator has that right.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, I would be pleased to yield to the majority leader.

Mr. MITCHELL. Mr. President, I thank my colleague.

## UNANIMOUS-CONSENT AGREEMENT

### APPOINTMENT OF CONFEREES ON S. 21

Mr. MITCHELL. Mr. President, as if in legislative session, I ask unanimous consent that the Senate turn to the message from the House on S. 21, the California desert bill; that the Senate request a conference with the House on the disagreeing votes of the two Houses, and that the Chair be authorized to appoint conferees.

The PRESIDING OFFICER. Is there objection?

Mr. WALLOP. Mr. President, reserving the right to object, and I shall not, but at a later time today, I will make a statement about this legislation. The statement will go to the effect that I have no objection—and I think the Senator from California realizes—to the protection of the desert, though I feel that it is now. But I have an equal feeling and obligation to the National Park System and Park Service which in effect are being taxed beyond their capacity by the endless addition of new parks and new demands on them. So with the understanding, Mr. President, that at some moment during the day in connection with this I may make that statement, I will not delay it now.

There being no objection, the Presiding Officer (Mr. WELLSTONE) appointed Mr. BUMPERS, Mr. JOHNSTON, and Mr. WALLOP conferees on the part of the Senate.

Mr. MITCHELL. I thank my colleague.

Mr. THURMOND. Mr. President, I rise today in opposition to the nomination of Judge Sarokin to serve on the U.S. Court of Appeals for the Third Circuit.

Judge Sarokin was appointed to the district court 15 years ago by President Carter and since that time he has earned the reputation as a liberal judicial activist. In 1992, the New Jersey Law Journal observed that Judge Sarokin is considered the most liberal member of the Federal bench in New Jersey and further that Judge Sarokin may be the most reversed Federal judge in New Jersey when it comes to major cases. Additionally, the Almanac of the Federal Judiciary stated that "Sarokin is the most liberal judge on the District of New Jersey bench, according to a majority of civil attorneys." Also, the third circuit, the very court to which he has been nominated, has criticized Judge Sarokin for "judicial usurpation of power", for ignoring "fundamental concepts of due process", for destroying the appearance of judicial impartiality, and for "superimposing his own view of what the law should be in the face of the Supreme Court's contrary precedent."

Mr. President, these comments and a thorough review of Judge Sarokin's opinions have caused me great concern that he may be elevated to such an important court as the U.S. Court of Appeals for the Third Circuit. I questioned Judge Sarokin extensively during his nomination hearing before the Senate Judiciary Committee and his responses did little to mitigate my concerns based on his record before us.

For example, I questioned Judge Sarokin on his opinion in the case of Kreimer versus Bureau of Police for the Town of Morristown where he was reversed by the third circuit. In that case, Kreimer was a homeless man who frequented the public library in Morristown. According to the library staff, Kreimer often exhibited offensive and disruptive behavior, including following library patrons, talking loudly to himself and others. Also, according to the library staff, Kreimer's odor was so offensive that it prevented library patrons from using certain areas of the library and prohibited library employees from performing their jobs. In 1989, the library enacted a written policy prohibiting certain behavior in the library and authorizing the library director to expel persons who violated them. After he was expelled from the library at least five times for violating these rules, Kreimer sued the library and others in Judge Sarokin's court. In granting summary judgments in favor of Kreimer, Judge Sarokin ruled that the library policy was facially unconstitutional.

Judge Sarokin found that the library is a traditional public forum. Under Supreme Court precedent, the category of traditional public forums covers public places, such as streets, sidewalks, and parks, that have, by long tradition, been devoted to assembly and debate. Of course, under the Supreme Court's precedent, regulations affecting speech in a "traditional public forum" are accorded a strict standard of review.

As I stated earlier, Judge Sarokin found that a public library is a "traditional public forum", yet he cited no precedent in support of that ruling. I do not believe that his ruling was faithful to existing precedent.

Mr. President, I would just point out that the third circuit found Judge Sarokin's ruling to be clearly wrong. As the third circuit observed and I quote, "Obviously, a library patron cannot be permitted to engage in most traditional First Amendment activities in the library, such as giving speeches or engaging in any other conduct that would disrupt the quiet and peaceful library environment." End quote. Also, I note that the third circuit disagreed with Judge Sarokin that a library is a full-fledged designated public forum. Under Supreme Court precedent, a full-fledged designated public forum is a public place that has been designated by the government as devoted to assembly and debate. Clearly under this precedent, the third circuit got it right, a library is not a place of open assembly and debate.

Additionally, Judge Sarokin also ruled that the library policy was unconstitutional overbroad and he relied heavily on a misreading of a 1966 Supreme Court ruling in Brown versus Louisiana. Judge Sarokin defended his opinion on a position taken only by a plurality of the Supreme Court in the

Brown decision. Again, the third circuit did not see it his way and found that the library policy was not substantially overbroad.

Additionally, Judge Sarokin ruled that the library policy was unconstitutionally vague. In fact, he stated that paragraph one of the library policy was "hopelessly vague." Mr. President, the following is paragraph one of the library policy which Judge Sarokin found unconstitutional and "hopelessly vague":

"Patrons shall be engaged in activities associated with the use of a public library while in the building. Patrons not engaged in reading, studying, or using library materials shall be required to leave the building."

Frankly, Mr. President, that paragraph seems clear to me and certainly not muddled enough to be unconstitutionally vague as Judge Sarokin found it. In fact, the third circuit had no difficulty concluding that paragraph one and the other paragraphs of the library policy were sufficiently clear.

Judge Sarokin also concluded that the library policy violated the equal protection clause. According to his analysis, just as a poll tax for voting draws an improper line based on wealth, so does the library's hygiene rule, since it has a disparate impact on those poor patrons who do not have regular access to shower and laundry facilities. The third circuit, noting that the homeless do not constitute a suspect class, rejected his analysis and held that the library policy did not violate equal protection.

Mr. President, I have spent a significant amount of time on this case because it appears to be a good example of Judge Sarokin's approach to judging, one of judicial activism. The third circuit made clear that in each of his rulings on the issues I have just discussed, he was patently wrong. It strikes me that Judge Sarokin's ruling in this case distorts precedent.

I find this ruling as one in furtherance of an ideology which, whether intended or not, restricts a community from enforcing even minimal standards essential to the public good. This concerns me as to how Judge Sarokin would approach a community's ability to govern itself. I would just note that my concerns are heightened by his opinions in cases like E-Bru, Inc. versus Graves—in which Judge Sarokin spoke for the right of those who want to open adult book stores in communities that do not want them—and Knoedler versus Roxbury Township—in which Judge Sarokin ruled facially invalid an ordinance prohibiting the sale of drug paraphernalia.

Mr. President, I would now like to turn to Judge Sarokin's 1984 opinion in United States versus Rodriguez. In this case, Mr. Rodriguez was arrested on theft-related charges. At FBI headquarters, he was handed a form in Spanish advising him of his rights and stating that by his signature he agreed to waive them. Mr. Rodriguez read the form, but rather than signing his own name, he signed a false name. He then answered certain questions asked of him by an FBI agent.

Despite Judge Sarokin's express finding that Rodriguez read the form and was aware of his rights before he spoke with the FBI agent, Judge Sarokin granted his motion to suppress evidence of his statements to the FBI agent.

Judge Sarokin offered two primary reasons in support of his conclusion. First, he cited the fact that Rodriguez signed a false name to the waiver form. In Judge Sarokin's view, and I quote, "it does not strain logic to find the use of a name other than one's own to be wholly inconsistent with a voluntary waiver of rights: defendant might well have believed that by using a false name he was not committing himself to anything." End quote. In short, Judge Sarokin's ruling adopts a per se rule that anytime a defendant signs a false name, he cannot be deemed to have voluntarily waived his rights, no matter how compelling other evidence is concerning voluntariness.

Mr. President, there is no precedent of which I am aware that compels his result. In his opinion, Judge Sarokin cited United States versus Chapman which held that a false signature is not relevant to the issue of the voluntariness of the confession. This is contrary to Judge Sarokin's ruling that the use of a false name is inconsistent with a voluntary waiver of rights.

The defendant's appearance before the magistrate was the second factor on which Judge Sarokin relied in finding his statements to the FBI agent involuntary. Mr. Rodriguez was asked by the magistrate whether he wanted a lawyer and he stated that he did. It was Judge Sarokin's opinion that this "certainly gives rise to an inference of nonvoluntariness with respect to the earlier waiver."

Mr. President, I see no logical inconsistency between the fact that Rodriguez told the magistrate that he wanted a lawyer for assistance at trial and a conclusion that earlier he voluntarily agreed to speak with an FBI agent in the absence of counsel. It appears to me that Judge Sarokin made quite a stretch here for excluding the evidence in his case.

Mr. President, I have mentioned several cases where Judge Sarokin's activist approach to judging causes concern. My colleagues have gone into other opinions by Judge Sarokin which leave doubt to his service as an impartial jurist should he be elevated to the U.S. Court of Appeals for the Third Circuit.

I accord the President considerable deference in his constitutional responsibility to nominate individuals to the federal judiciary. In fact, we are fast approaching 100 Federal judges nominated by President Clinton which I have supported. However, in this instance, I cannot in good faith support the elevation of Judge Sarokin to the U.S. Court of Appeals for the Third Circuit. Although a pleasant and engaging individual, Judge Sarokin's record is one of judicial activism where time and time again he followed his own agenda rather than adhering to binding judicial precedent from the Supreme Court and the third circuit. It is for these reasons that I will vote against the nomination of Judge H. Lee Sarokin to serve on the U.S. Court of Appeals for the Third Circuit.

Mr. President, I ask unanimous consent that the letters I now submit be printed in the CONGRESSIONAL RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

CONGRESS OF THE UNITED STATES,
*Washington, DC, Aug. 5, 1994.*

Hon. STROM THURMOND,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR THURMOND: As you appraise the nomination of Judge H. Lee Sarokin of the U.S. District Court in New Jersey to the Third Circuit Court of Appeals, we urge you to carefully consider his record and reject his nomination.

Judge Sarokin has a lengthy record of freeing criminals at the expense of their victims. His nomination by President Clinton to a higher federal court is opposed by the National Sheriffs' Association, the Law Enforcement Alliance of America, the Fraternal Order of Police, Organized Victims of Violent Crime, the U.S. Business and Industrial Council, and the League of American Families.

In one of his more infamous trials—Landano v. Rafferty—Judge Sarokin gave freedom without redemption to James Landano, who shot several times at close range and killed a Newark, NJ police officer. Landano was convicted to life imprisonment by the New Jersey Superior Court; however, due to Judge Sarokin's personal judicial activism, Landano has been freely roaming the streets. In this particular case, Judge Sarokin's rulings to free Landano have been so egregious that the U.S. Court of Appeals was forced to reverse his decisions four times.

In the Landano case, Judge Sarokin attempted to project his authority over the State's highest court and to extend Landano's opportunities for release. Additionally, he ordered the FBI to turn over federal documents to Landano for use in his defense, despite the fact that the FBI felt that this would jeopardize the safety of federal informants. In the final reversal, rejecting Sarokin's permission to release Landano on bail, the Third Circuit intimated that Judge Sarokin's personal bias was an obstacle to justice in this case: "[the U.S. District Court for NJ] has already determined that [Landano] may be innocent of the charges for which he was convicted."

Crime has become so prevalent in our neighborhoods that Americans have nearly become desensitized to it. And much of the blame lies with judges like H. Lee Sarokin who have neglected the rights of Americans to be safe in their communities. As Representatives from the State over which

Judge Sarokin presently presides, we can attest to the fact that New Jerseyans are becoming fed up with this elitist attitude from the bench.

Just last week in Hamilton Township, an average middle-class suburb of Trenton, a seven-year old girl was brutally raped and murdered by a man living in her neighborhood. The killer had been twice convicted of violent sex-crimes against children and had been released from jail after serving only three-fifths of his sentence. Residents of Hamilton joined a nationwide "night out" on Tuesday to show criminals, like the one who confessed to killing little Megan Kanka, that they will no longer tolerate such deviant behavior. We believe that it is critical for members of our judicial system to keep criminals in jail. Judge Sarokin's inclination for early release of criminals runs contrary to community sentiment and therefore should not be rewarded.

Enclosed are materials from Coalitions for America and the Free Congress Foundation, as well as a Wall Street Journal editorial from August 3, 1994, summarizing Judge Sarokin's record. We hope that you will take these facts into consideration when voting on Judge Sarokin's nomination.

We appreciate your attention to this matter.

Sincerely,

JIM SAXTON.
DEAN A. GALLO.
CHRISTOPHER H. SMITH.
DICK ZIMMER.
BOB FRANKS.

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LAW ENFORCEMENT ALLIANCE OF AMERICA,
*July 26, 1994.*

Hon. ORRIN G. HATCH,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR HATCH: The recent nomination of U.S. District Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit by President Clinton is the latest example of the liberalization of our criminal justice system that began 30 years ago.

Judge Sarokin has repeatedly made use of his judicial position to promote social and personal issues and causes. He has also made it plain that he will continue to do so if confirmed to the United States Court of Appeals.

Crime is the number one concern of the American public. People are demanding real criminal justice reform—life imprisonment for repeat offenders, greater involvement for victims in the judicial process, the building of more prisons to take violent criminals off our streets.

Confirming Judge Sarokin will place another roadblock in the path of justice. Judge Sarokin, in the West Virginia Law Review, stated that he was opposed to both pre-trial detention of violent criminals and mandatory minimum sentencing guidelines. He also stated that admission of evidence guidelines should be stricter to protect criminals' rights.

Clearly, criminals will have a friend on the bench of the United States Court of Appeals if Judge Sarokin is confirmed.

The 40,000+ law enforcement officers, victims of crime and concerned citizens of the Law Enforcement Alliance of America ask you to not confirm Judge Sarokin to the United States Court of Appeals. Justice will not be served in America as long as the rights of criminals are placed above the rights of law-abiding citizens.

Sincerely,

JAMES J. FOTIS,
*Executive Director.*

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FRATERNAL ORDER OF POLICE,
NATIONAL LEGISLATIVE COMMITTEE,
*Lindenwold NJ, August 5, 1994.*

Re nomination of H. Lee Sarokin to the U.S. Court of Appeals.

U.S. SENATE,
*Washington, DC.*

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the 250,000 member National Fraternal Order of Police and, in particular, the members of the Fraternal Order of Police in the State of New Jersey, I am informing you that we are in total opposition to the appointment of Judge Sarokin to the U.S. Court of Appeals for the Third Circuit.

In at least one case, he has shown a propensity to be more of an advocate of social and personal causes than a judge. In a case involving the murder of a Newark, New Jersey police officer Judge Sarokin made it his mission to set a convicted person free.

Briefly stated, in 1976, Vincent Landano was convicted and sentenced to life in prison for the murder of a police officer during an armed robbery. Ignoring his oath of office and even after at least four reversals by the U.S. Court of Appeals for the Third Circuit and the U.S. Supreme Court, Judge Sarokin ordered Landano's release in June of 1989.

We, in the F.O.P., find this action appalling and adamately request that Judge Sarokin's nomination be denied. Our legal counsel in Washington is currently researching other cases that Judge Sarokin was involved in and hope to be able to bring more information to you as it becomes available.

Respectfully,

ROBERT J. ROBBINS,
*New Jersey National Trustee.*

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LEAGUE OF AMERICAN FAMILIES,
*Ringwood, NJ, August 4, 1994.*

Senators HATCH and DOLE,
*U.S. Senate,*
*Washington, DC.*

GENTLEMEN: The Senate is considering the nomination of H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. I strongly urge you to oppose this nomination for two reasons. First, as evidenced by his removal from the tobacco liability case by the U.S. Court of Appeals, he lacks the basic judicial temperament to be a judge. All Americans should demand judges who will be fair and impartial. Judge Sarokin has proven—even to the satisfaction of the liberal New York Times—that he lacks these qualities. His excuse at his hearing yesterday that, well, he is just "irrepressible" at times, is ridiculous.

Second, Judge Sarokin injects into his cases personal views that will have a devastating effect on American families. You have received information about his views on criminal justice issues. His opposition to pretrial detention of criminal defendants would, in particular, put families and children especially at risk.

In E-Bru v. Graves, 566 F.Supp. 1476, a case dealing with the town of Paterson's prohibition on an adult bookstore opening, Judge Sarokin delivered the kind of lecture that characterizes many of his decisions. He made the outrageous statement that "the harmful effect" of pornography "has never been clearly established."

Since you voted last year to condemn the Justice Department's attempt to weaken the child pornography laws, you must know that this statement is simply false. New books have been published just in the last few years cataloging the harms of pornography. In addition, however, why does Judge Sarokin find this question significant at all? The Supreme Court has ruled that a community's ability to control pornography does not depend on scientific specifics. This is another example of his imposing his own personal standards in place of what the law requires.

Judge Sarokin testified at his hearing on August 3 that he would object to an adult bookstore opening near his home. Apparently, he is perfectly willing to impose on others an evil that he does not have to endure himself. America has enough judges who are so ignorant of the real-world impact of their decisions. Please do not add Judge Sarokin to that list by elevating him to the U.S. Court of Appeals.

Very truly yours,

JOHN T. TOMICKI, J.D.

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COUNTY OF CUMBERLAND,
OFFICE OF THE SHERIFF,
*Bridgeton, NJ, July 21, 1994.*

President WILLIAM CLINTON,
*The White House,*
*Washington, DC.*

DEAR PRESIDENT: As a Sheriff from New Jersey with over thirty-five years experience in the Law Enforcement, I find it incredible that you would consider nominating H. Lee Sarokin to the U.S. Court of Appeals.

I don't know who advised you on this but they were either asleep at the switch or they really don't give a damn about Law Enforcement. Judge Sarokin's crusade in behalf of cop-killer Landano is legendary in New Jersey.

As a Democrat, I'm astounded that you would make such a nomination. As a Law Enforcement Officer, I'm disappointed, disillusioned, and damned mad.

Please reconsider this nomination of this notorious cop-hating Judge.

Thanking you, I am

Very truly yours,

JAMES A FORCINITO,
*Sheriff, Cumberland County.*

Mr. THURMOND. Mr. President, these several letters are in opposition to Judge Sarokin.

The first letter I received was from five Members of the U.S. House of Representatives—all from New Jersey where Judge Sarokin currently sits—in opposition to Judge Sarokin's nomination. These Congressmen state unequivocally their opposition to Judge Sarokin and state that he has "a lengthy record of freeing criminals at the expense of their victims."

Another letter comes from Mr. James Fotis, executive director of the Law Enforcement Alliance of America [LEAA] in opposition to this nomination. In his letter speaking on behalf of the LEAA, Mr. Fotis stated that "Judge Sarokin has repeatedly made use of his judicial position to promote social and personal issues and causes." He further stated that "confirming Judge Sarokin will place another roadblock in the path of justice."

The 250,000 member National Fraternal Order of Police sent a letter to the U.S. Senate expressing their "total opposition" to Judge Sarokin's nomination.

Still another letter comes from the League of American Families strongly urging opposition to Judge Sarokin's nomination. The League of American Families believes that Judge Sarokin lacks the judicial temperament and the ability to be a fair and impartial jurist on the U.S. Court of Appeals for the Third Circuit.

Finally, I have submitted a letter from the sheriff of Cumberland County in New Jersey to President Clinton in opposition to Judge Sarokin. This Democrat sheriff with over 35 years of experience in law enforcement stated to the President that he was astounded, disappointed, and disillusioned over this nomination.

Mr. President, these letters come from people who know Judge Sarokin's record and they speak loud and clear concerning his nomination to the Circuit Court.

I yield the floor.

Mr. LAUTENBERG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. LAUTENBERG] is recognized.

Mr. LAUTENBERG. Mr. President, I rise to express my support for the confirmation of Judge H. Lee Sarokin to the Third Circuit Court of Appeals. My senior colleague, Senator BRADLEY, recommended Judge Sarokin to the President for this position, and I support him in that recommendation.

Judge Sarokin is a native of my home State of New Jersey. He has had a distinguished career as a trial lawyer and a district court judge. He has received the unanimous, well-qualified backing of the American Bar Association.

Throughout his career, Judge Sarokin has demonstrated that he is a man of deep insight and keen intellect and is held in the highest esteem by colleagues, as well as numerous attorneys who have appeared before him in the court. I have spoken to a lot of those people, and their judgment is almost unanimously supportive. Without question at all, he has the talent and temperament to discharge the duties of his office with distinction and with fairness.

Both Democrats and Republicans have expressed their support for Judge Sarokin's nomination. As a matter of fact, Senator SPECTER, a distinguished Republican Senator and former prosecutor from Pennsylvania, has supported Judge Sarokin's nomination and voted in his favor in the Judiciary Committee. Judge Sarokin has also been endorsed by four former U.S. attorneys in New Jersey, including Michael Chernoff, now Republican counsel to the Whitewater hearings. He has been supported also by the noted conservative Yale law professor, George Priest, who describes Sarokin as among the very first rank of Federal judges.

But, Mr. President, despite Judge Sarokin's impressive background and sound credentials, we are going to hear some opposition to his confirmation and questions about his fitness to serve on the Third Circuit Court of Appeals. I think that is because Judge Sarokin has not shirked from hard decisions, whether they affect the tobacco industry, the first amendment, or about other controversial issues.

His decisions were based on deeply thought out legal principles and objective judicial analysis, even though they might not have passed a popularity litmus test at the moment. In fact, Judge Sarokin was criticized by tobacco companies for lacking objectivity, and yet, despite his strong criticism of the industry, he actually ruled in their favor more often than not in pretrial motions.

Judge Sarokin has also been criticized for a decision that he made in the famous case of James Landano. Landano was convicted in 1978 of shooting a police officer during an armed robbery. He is now free because of new evidence suggesting that he might be innocent. The murder of a police officer is a heinous crime, and it ought to be punished swiftly, severely, and certainly. Police officers put their lives on the line for us each and every day, and I would not support confirmation of a judge who willy-nilly lets a cop killer go free.

But before we get lost in the debate on the Landano case, we should remember the facts as we heard them from the distinguished chairman of the Judiciary Committee earlier this day. It is worth repetition. Landano filed a habeas corpus petition with Judge Sarokin in 1987 after the chief witness against him recanted and said that his testimony at the trial was fabricated. When this occurred, Judge Sarokin, harboring serious doubts about Landano's guilt, still did not grant the petition, because a State judge before him had already rejected the petition. Landano stayed in prison for 2 more years. And then in 1989 Landano brought forth additional evidence pointing to his innocence. At this point, because of the new evidence, it was appropriate for the district court to review the case again. And Judge Sarokin, this time, granted the habeas corpus request.

In the literature from conservative organizations that oppose Judge Sarokin's nomination, they would have you believe that Judge Sarokin is personally responsible for the fact that James Landano is out of jail. It simply is not the case. It was a New Jersey State court, a court within our State, an appeals court, that ultimately decided that there was enough new evidence to raise serious doubt about Landano's guilt, and it was a New Jersey State court that decided to grant him a new trial. Even at this moment, prosecutors have not yet made a decision that there is sufficient evidence to present a new case against him.

Federal judges are constantly besieged with habeas corpus petitions, and during his 15 years on the Federal bench, Judge Sarokin has reviewed between 500 and 1,000 of these requests. In all that time, he has granted just 5 of those appeals. That is far less than 1 percent.

Of course, we want Federal judges who are going to pursue the law and lock up the bad guys, but we also want judges who are fair. And sometimes the circumstances that we read about present a different view than those who are in the courtroom hearing the case or judging the case. We want judges who can take a step backward and make sure that in our eagerness to fight crime, and all of us are bent on that mission today, that we are not locking up innocent men and women.

Five times in 15 years, Judge Sarokin has seen something disturbing in a conviction and has granted a habeas corpus petition. That certainly does not make him soft on crime.

So as we listen to this debate, let us remember that Judge Sarokin's occasional statement has not affected the substance of his decisions and that he is by no means soft on crime or criminals.

Mr. President, Judge Sarokin has not allowed his personal views to affect his judicial decisions. And we should not allow our personal or political views to affect our judgment on his fitness for the job.

Judge Sarokin's decisions have been consistently upheld by the Third Circuit Court of Appeals, the court to which he is now being nominated. Less than 3 percent of his written opinions have been reversed or vacated, and at least two of those reversals were ultimately reversed again themselves by our Supreme Court.

In a New York Times editorial last month, the minority leader said that Republicans have not tried to thwart President Clinton's Cabinet and judicial nominees because he believes that a President should have a fairly free hand in choosing those nominees.

I believe that is why we saw in the vote just taken such strong support, 85 votes for cloture, and a conclusion to this matter.

We should not allow partisan bickering to stall Judge Sarokin's confirmation to the third circuit.

I want to say to my colleagues on the other side, obviously by the vote taken this does not register as a general partisan accusation. A lot of them voted for cloture. I would be interested in hearing the comments.

But he is a thoughtful, fair-minded jurist with a deep commitment to justice, the law, the public it serves, and our most cherished liberties.

I am confident that he will be a distinguished addition to that court, and I

urge my colleagues on both sides of the aisle to confirm this nomination for this well-qualified judge without further delay.

I yield the floor.

The PRESIDING OFFICER (Mr. GRAHAM). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I rise today to speak in opposition to President Clinton's nomination of H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. I do so with regret because I believe Judge Sarokin to be well-intentioned and capable. But I do so with the firm conviction that his record establishes that he will pursue his own ideological agenda instead of applying the law.

Before turning to Judge Sarokin's record, let me place this nomination in broader context. By the time his term ends in 1997, President Clinton may well have appointed well over 200 lower-court Federal judges. In many or most of the cases that come before them, these judges will effectively be the final decisionmakers. In short, they have enormous power. This is particularly true of Federal appellate judges. Because the Supreme Court is able to review so few cases, Federal appellate judges function in effect as the Supreme Court—the Court of last resort—in the cases that they decide.

Nowhere, in my view, is it more important how judges exercise their enormous power than in the criminal field. No matter how much Government leaders talk about crime, no matter how many tough measures we enact, no matter how much money liberal Democrats force taxpayers to spend on social program boondoggles that are marketed as preventing crime, if we have judges who are activist on behalf of criminals and who undermine public order, then everyone's anticrime efforts are wasted.

Let me be clear about this. Because the conference report on the crime bill contained billions of dollars in pork that were not in the original Senate bill, and because important tough-on-crime provisions in that original bill were taken out by the Democrat-controlled conference, I opposed the final crime bill. At the same time, largely as a result of Republican amendments, the final crime bill did contain a number of good provisions that I support. But if even these provisions are watered down or overridden by soft-on-crime judges, then the whole crime bill effort will have been an utter waste by any measure.

Unfortunately, it is clear that President Clinton does not have the battle against crime as a priority—or even as a consideration—in his selection of lower court judges. Even worse, he has in fact, appointed some judges who are demonstrably soft on crime—Rosemary Barkett is just one notable example—and he has appointed a number of others whose records raise serious questions.

Let me now turn to Judge Sarokin and his record. In the 15 years since he was appointed to the Federal district court in New Jersey by Jimmy Carter, Judge Sarokin has earned a nationwide reputation as a stridently liberal judicial activist. On a broad range of telltale issues—such as crime, quotas, reverse discrimination, pornography, and minimal community standards of decency and behavior—Judge Sarokin has pursued his own political agenda instead of following the law. In so doing, he has ignored, defied, and even stampeded binding Supreme Court and third circuit precedent, and he has flaunted his own biases and sentiments on the sleeve of his judicial robe.

These are not just my views, nor just the views of outside critics. The third circuit itself has, for example, lambasted Judge Sarokin for "judicial usurpation of power," for ignoring "fundamental concepts of due process," for destroying the appearance of judicial impartiality, and for "superimpos[ing his] own view of what the law should be in the face of the Supreme Court's contrary precedent." The New Jersey Law Journal [9/14/92] has reported that Judge Sarokin "may be the most reversed Federal judge in New Jersey when it comes to major cases."

Law enforcement and victims rights organizations that have announced their opposition to Judge Sarokin's nomination include the Fraternal Order of Police, the Law Enforcement Alliance of America, the New Jersey State Police Survivors of the Triangle, Organized Victims of Violent Crime, the League of American Families, Citizens for Law and Order, Citizens Against Violent Crime, and Voices for Victims, Inc.

Now I just do not understand why, at a time when the President says that he is finally getting serious about crime, he is appointing to a top judgeship someone whose soft-on-crime views are so strongly opposed by many police and crime victims. Indeed, it is particularly notable that groups like the Fraternal Order of Police, which joined with President Clinton in supporting the crime bill, oppose Judge Sarokin's nomination.

A careful examination of Judge Sarokin's record highlights the concerns that these law enforcement and victim rights organizations have raised about Judge Sarokin's liberal judicial activism. These concerns are aggravated by Judge Sarokin's own testimony at his confirmation hearing.

Judge Sarokin has described himself as a "flaming liberal" as a judge. [Speech to Federalist Society, May 16, 1994.] On this point there should be no disagreement. Take, for example, Judge Sarokin's views on pretrial detention of dangerous criminal suspects. Judge Sarokin argues that pretrial detention is "in direct contradiction of the presumption of innocence." [90 West Va. L. Rev. 1003, 1005 (1988).] Let me repeat that: Judge Sarokin argues that pretrial detention is "in direct contradiction of the presumption of innocence." With all due respect to Judge Sarokin, this position is dead wrong. The presumption of innocence establishes that the burden of proof at trial lies with the Government. It does not require that society turn a blind eye to the fact that certain arrested criminal suspects would pose a grave threat to society if they were released. A completely separate set of procedural guarantees—including, for example, the requirement of probable cause to arrest and detain a suspect—affords the necessary constitutional protections against unlawful detention.

Judge Sarokin's position that dangerous criminal suspects should not be subject to pretrial detention would, if taken seriously, have tragic consequences for society. Repeat violent criminals would be unleashed to prey on innocent law-abiding citizens. Witnesses to the crime for which the criminal suspect had been arrested would be subjected to brutal intimidation. The liberal revolving door for criminals would spin even faster.

Judge Sarokin has likewise argued that the rules governing disclosure of information in criminal cases need to be loosened up in favor of the criminal defendants, in order to provide more information sooner. As Judge Sarokin recognizes, the balance struck by the existing rules is designed to protect against the serious problem of witness intimidation and witness tampering. But in Judge Sarokin's view, "the assumption of such improper conduct undermines the presumption of innocence accorded to the accused." [43 Rutgers L. Rev. 1089 (1991).] Here again, Judge Sarokin distorts the presumption of innocence—an important but narrow rule that sets forth who has the burden of proof at trial—into a wholesale obligation to bend all rules in favor of the criminal defendant. Under Judge Sarokin's logic, one might as well say that criminal defendants should not be subjected to trial since trial is inconsistent with the presumption of innocence. The sorry fact is that witness intimidation and tampering are severe problems. The existing rules structure pretrial disclosure of information in a way that minimizes these problems at the same time that they preserve the defendant's right to a fair trial. There is no reason to change these rules to benefit criminal suspects and to harm innocent citizens.

If my disagreement with Judge Sarokin on these and other matters were simply a matter of differing policy views, I might not be so troubled by his nomination, since judges should not engage in policymaking. But the fact

of the matter is that Judge Sarokin has worked to smuggle his soft-on-crime views into his criminal opinions. For example, in granting a defendant a hearing to review his continuing pretrial detention, Judge Sarokin expressed, and relied on, his view that pretrial detention conflicted with the presumption of innocence. [*United States* v. *Mendoza*, No. 87-5 (D.N.J. 1987) ("The concept that those presumed to be innocent can be held in custody on the assumption that they will commit further crimes if released poses grave concerns in a free society").] In yet another case, the third circuit reversed Judge Sarokin on the ground that he had no authority to order the release on bail of an undocumented alien. [*In re Ghalamsiah*, 806 F.2d 68 (3d Cir. 1986), reversing No. 86-767 (D.N.J. 1986).]

Similarly, in his opinions Judge Sarokin has stated and implemented his view that "the discovery obligations of the government in criminal matters should be construed as broadly as possible" and has expressed his "amazement" that existing rules are not broader than they are. [*United States* v. *Khater*, No. 84-148 (D.N.J. 1985).]

Judge Sarokin has a clear record of implementing his liberal ideological agenda in the guise of judicial opinions. Judge Sarokin is perhaps most notorious for his precedent-defying opinion in the case of *Kreimer* v. *Bureau of Police for the Town of Morristown* [765 F. Supp. 181 (D.N.J. 1991), rev'd, 958 F.2d 1242 (3d Cir. 1992)]. Kreimer was a homeless man who lived outdoors in Morristown, NJ. According to various news accounts, Kreimer was homeless because he had squandered a $340,000 inheritance, turned down job offers, and refused to live in a shelter. In any event, Kreimer frequently occupied the public library in Morristown. According to library staff, Kreimer often engaged in offensive and disruptive behavior, including staring at and following library patrons and talking loudly to himself and others. Also, according to library staff, Kreimer's body odor was so offensive that it prevented others from using certain areas of the library and kept library employees from performing their jobs. A logbook instituted to catalog disciplinary problems faced by the library described incidents such as "Kreimer's odor prevents staff member from completing copying task," "Kreimer spent 90 minutes—twice—staring at reference librarians, "Kreimer was belligerent and hostile toward [the library director], and "Patron [was] followed by Kreimer after leaving Library."

In 1989, the library enacted a written policy prohibiting certain behavior in the library and authorizing the library director to expel persons who violated them. After he was expelled from the library at least five times for violating these rules, Kreimer sued the library and others in Federal district court, alleging that the library's policy violated the first amendment and the due process and equal protection clauses of the 14th Amendment.

In a remarkable ruling, Judge Sarokin granted summary judgment in favor of Kreimer. Judge Sarokin's ideological bias is manifested in his grandiose assertion that "[i]f we wish to shield our eyes and noses from the homeless, we should revoke their condition, not their library cards." This rhetoric is, of course, a red herring: The library was not revoking the library cards of the homeless, nor was it singling them out. It was instead simply requiring that all patrons comport with minimal standards of behavior and decency.

Judge Sarokin proceeded to concoct a number of specious arguments that the library policy was unconstitutional. Judge Sarokin ruled that the library policy violated the first amendment. He ruled that it was unconstitutionally overbroad. He ruled that it was unconstitutionally vague. He ruled that it violated substantive due process. He ruled that it violated equal protection. And he ruled that it violated the New Jersey Constitution.

One problem with these six separate rulings by Judge Sarokin is that all of them are clearly, conspicuously, and extravagantly wrong. Not surprisingly, the third circuit, in a thorough opinion, unanimously reversed each of Judge Sarokin's six rulings. In order to understand how baseless and lawless Judge Sarokin's opinion was, it is useful to examine some of the many flaws in his rulings.

Judge Sarokin's first ruling was that the library policy was not a reasonable time-place-and-manner regulation and therefore violated the first amendment. This ruling hinged in part on Judge Sarokin's assertion that a public library is a traditional public forum, like the public streets, sidewalks, and parks. Notably, Judge Sarokin did not cite any precedent in support of this assertion. Nor could he, for the assertion is untenable under Supreme Court precedent. Judge Sarokin's assertion that the library is a full-fledged designated public forum was also without any support in precedent. Remarkably, Judge Sarokin did not even explore the alternative that the library was a limited-purpose public forum, as the third circuit ruled it was.

Judge Sarokin's second ruling—that the library policy was unconstitutionally overbroad—misstated the holding of the Supreme Court case on which it purported to rely. Judge Sarokin took the position, both in his opinion and in his hearing testimony, that the Supreme Court had held that the protesters in a 1966 case called *Brown* v. *Louisiana* [383 *United States* 131 (1966)] had engaged in a "constitutionally protected protest." In fact, Judge Sarokin mistakenly attributed to the Supreme Court a position taken by only a three-Justice plurality, as Justice Brennan's opinion concurring in the judgment in the *Brown* v. *Louisiana* case makes clear. The distinction between a holding of the Supreme Court and a position taken by a plurality is elemental. Yet Judge Sarokin ignored this distinction in making his mistaken ruling. In the remainder of his overbreadth analysis, he then engaged in the sort of hyperimaginative hypothesizing that would doom every statute.

Judge Sarokin's third ruling—that the library policy was unconstitutionally vague—was also defective in many respects, as the third circuit ruled. Among other things, Judge Sarokin applied the vagueness standard applicable to criminal statutes even though the library policy was civil in nature. In addition, the library policy listed specific behavior that was proscribed, and its hygiene provisions rested on an objective test of reasonableness. It is difficult to see how any policy could ever survive Judge Sarokin's approach. Indeed, this approach, if applied consistently, might well deprive society of the power to set any rules of behavior.

Judge Sarokin's fourth and fifth rulings employ two of the standard tools of the liberal judicial activist: so-called substantive due process and the equal protection clause. Under well-established Supreme Court precedent, courts must give very broad deference to rules unless those rules impinge on a fundamental right or affect a suspect class. Judge Sarokin's ruling ignored this precedent. Remarkably, Judge Sarokin asserted that the library policy imposed "a reader-based restriction, analogous to prohibited speaker-based restrictions," even though he acknowledged that "the restriction is not because of the reader's views." Judge Sarokin's creation of a suspect class defined by poor hygiene or homelessness had no basis in equal protection precedent. His use of disparate impact analysis also defied the Supreme Court's decision in Washington versus Davis, which makes clear that discriminatory intent—along a recognized suspect line—is necessary to trigger strict scrutiny. Judge Sarokin's disparate impact approach would enable judges to impose pervasive quotas throughout society. More generally, Judge Sarokin's freewheeling use of substantive due process and equal protection poses the threat of judicial nullification of whatever laws or rules displease him or disserve his liberal agenda.

Finally, Judge Sarokin's sixth ruling—that the library policy violated the State constitution—was without precedent in State law and illustrates the dangers of activist judges using State constitutions as a weapon to override the political process.

In sum, Judge Sarokin's opinion in the Kreimer case is liberal judicial activism at its worst. Each of Judge Sarokin's rulings noted above is not just wrong, but patently wrong. Judge Sarokin does not simply misread precedent. He defies it and distorts it in furtherance of an ideology that prevents a community from enforcing even minimal standards essential to the public good. By effectively giving Richard Kreimer a right to disrupt and disturb a library, Judge Sarokin deprives the mass of citizens of the right to use a library in peace.

As the Wall Street Journal noted in a fine editorial [6/12/91], the conduct that Judge Sarokin protects when engaged in by a homeless man would never be tolerated if done by anyone else:

> When a college professor or business executive looks at a woman in a way she considers disturbing, he nowadays may be subject to reprimands, departmental hearings, threats to his job and status, and accusations of sexual harassment. Mr. Kreimer, on the other hand, has been treated as a hero, embraced by the politically correct who have apparently decided that harassing women is acceptable so long as the harasser is homeless.

I am also troubled by the fact that Judge Sarokin painted a very misleading picture of Kreimer at his hearing. Here is what Judge Sarokin had to say about this case:

> There were two issues that were presented to me. * * * The first one was whether or not there was a constitutional right of access to the library under the first amendment. I said that there was, and the third circuit agreed. * * * [T]he only issue with which the third circuit disagreed was whether or not the regulations were vague and overbroad. They did not disagree about the first amendment analysis." [46:1–5,19–22]

Judge Sarokin's summary of Kreimer is mistaken or distorted in several critical respects. First, as I have discussed, there were at least six separate legal claims decided by Judge Sarokin. The third circuit reversed Judge Sarokin on every claim. In short, Judge Sarokin was 0-for-6, not 1-for-2. Second, the question whether the first amendment was implicated at all by the library policy was a minor—and easy—part of the determination whether the policy was a reasonable time-place-and-manner regulation. Judge Sarokin properly devoted only about a half page of his 17-page opinion to this issue, yet he incorrectly stated at his hearing that this was one of two major issues in the case.

Third, the real question on the basic first amendment analysis was what standard of review applies. Judge Sarokin held, without any basis in precedent, that a library is both a traditional public forum and a full-fledged designated public forum and that all the provisions of the library policy were therefore subject to a high level of scrutiny. These holdings are strikingly groundless, and were repudiated by the third circuit. In short, the third circuit did "disagree about the First Amendment analysis"—and it did so vigorously.

Fourth, it is especially worrisome that Judge Sarokin did not even recall that he had relied on unprecedented uses of substantive due process and equal protection to strike down the library policy. Is a judge who wields these weapons so carelessly and thoughtlessly fit for elevation to the third circuit? These two constitutional provisions, if misused, are among the most powerful available to a judge who seeks to substitute his own views for those of the legislative branch.

The White House's defense of Judge Sarokin's ruling in this case is as false and feeble and slick as its defense of the pork-laden crime bill. The White House claims that the third circuit "agreed with Judge Sarokin that the strictest scrutiny would apply to the library's hygiene regulation." One problem with this claim is that it is not true: The standard applied by the third circuit to the hygiene regulation is distinct from, and far more permissive than, the standard of strict scrutiny for race-based classifications under the equal protection clause. Another problem with the White House's claim is that it is deceptive: The White House deliberately obscures the fact that the third circuit subjected most of the provisions of the library policy to a very deferential reasonableness test. In short, the White House's effort to present Kreimer as a "close" case upon which reasonable minds could differ is absurd.

Judge Sarokin's opinion in the Kreimer case is just one example of a slew of opinions by liberal activist judges that deprive communities of the ability to regulate themselves and to maintain minimal standards of decency and public order. All too often, when communities attempt to combat such scourges as drug dealing, prostitution, and pornography, liberal activist judges concoct excuses to cripple these efforts. The link between these liberal activist rulings and this Nation's growing crime problem is, in my view, beyond fair dispute. In short, if we have activist judges like Judge Sarokin who are eager to override community standards, our crime problem will only get worse. Another case that illustrates Judge Sarokin's soft-on-crime liberal activism is the 1984 case of *United States* v. *Rodriguez* [Crim No. 84–18 (D.N.J. 1984)]. In that case, Judge Sarokin found that the defendant, Rodriguez, had read a form advising him of his Miranda rights, had signed the part of the form waiving those rights, and was aware of those rights before he spoke with an FBI agent. Judge Sarokin nonetheless granted Rodriguez' motion to suppress evidence of his statements to the FBI agent. In concluding that Rodriguez did not waive his Miranda rights and that his statement should therefore be deemed involuntary, Judge Sarokin relied heavily upon the fact that Rodriguez did not sign his own name to the waiver form, but instead signed the false name Lazaro Santana. According to Judge Sarokin, "it does not strain logic to find the use of a name other than one's own to be wholly inconsistent with a voluntary waiver of rights: Defendant might well have believed that by using a false name he was not committing himself to anything." It does indeed strain logic to conclude that signing an alias is wholly inconsistent with a voluntary waiver: the far more natural conclusion is that Rodriguez, use of the alias may simply have been an effort to conceal his identity. But what is even more remarkable is that Judge Sarokin's ruling was directly contrary to controlling third circuit precedent, as Judge Sarokin himself recognized.

At his hearing, Judge Sarokin claimed that the third circuit had held only that the use of a false name is "certainly not dispositive" but could well be relevant. [91:15] Such a claim is contrary to the reading of that precedent made by Judge Sarokin himself in Rodriguez. It also finds no support in the third circuit case. But as a result of Judge Sarokin's liberal judicial activism, critical evidence against a criminal suspect was suppressed.

Mr. President, we do not need more judges who will handcuff the police in the war on crime. We do not need more judges who will create hypertechnical rules that free the guilty. We do not need more judges who will ignore existing precedent and twist laws to favor criminals. Liberal judicial activism has taken that approach for the past 30 years, and the results have been all too predictable: Soaring rates of murder, rape, and other violent crimes, and communities riddled with drugs and at the mercy of gangs of thugs. Enough is enough.

Numerous other cases also illustrate Judge Sarokin's propensity to pursue his own agenda and to defy precedent. The case of Haines versus Liggett Group—which involved a personal injury action against cigarette manufacturers—is an all-too-telling example. [140 F.R.D. 681 (D.N.J. 1992), writ granted, 975 F.2d 81 (3d Cir. 1992).] In this case, the plaintiff Haines sought discovery of certain documents that the defendant cigarette companies said were protected by the attorney-client privilege. Haines argued that even if the documents were within the scope of the attorney-client privilege, the crime-fraud exception applied and annulled the privilege. A magistrate judge determined that the documents were privileged and that the crime-fraud exception did not apply.

Haines appealed the magistrate judge's order to Judge Sarokin. Judge Sarokin ordered the parties to supplement the record with materials from

the record in a similar case, Cipollone, in which he was the trial judge. He then issued a ruling that the crime-fraud exception did apply and that Haines was entitled to discovery of the documents at issue.

Three aspects of Judge Sarokin's opinion merit special attention:

First: Judge Sarokin opened his opinion on this discovery dispute with this inflammatory prologue:

> In light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, sales over safety, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their prosperity!
>
> As the following facts disclose, despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation.

Second: Judge Sarokin held that the magistrate judge's ruling could not survive under even the clearly erroneous standard of review—a standard of review that is supposed to be very deferential and that, not incidentally, is the standard of review that court of appeals judges are generally obligated to apply to trial court factual findings. In reversing the magistrate judge's ruling, Judge Sarokin relied not only on the supplemental evidence that he ordered from the Cipollone trial but also on his "own familiarity with the evidence adduced at the Cipollone trial discussed in the directed verdict Opinion" in that case. [140 F.R.D., at 694.] Judge Sarokin stated that having heard the trial evidence in Cipollone, he was "in the unique position of being able to evaluate the full scope of evidence supporting plaintiff's crime/fraud contention in the instant case." [Id., at 694 n. 12.]

Third: In a stated effort to show "some of the most damaging evidence" on this crime-fraud exception, Judge Sarokin quoted extensively from those documents as to which privilege had been found to exist by the magistrate judge. [140 F.R.D., at 695.]

In a remarkably impressive opinion, the third circuit unanimously granted an extraordinary writ vacating Judge Sarokin's order and removing him from the case. The third circuit emphasized that a writ was an extreme remedy to be used "only in extraordinary situations" and that "only exceptional circumstances amounting to a judicial usurpation of power will justify the invocation of this extraordinary remedy." [975 F.2d, at 88 (internal quotes omitted and emphasis added).] But the third circuit found that Judge Sarokin's ruling was in fact a judicial usurpation of power. Among other things, the third circuit ruled that in reviewing the magistrate judge's order under the clearly erroneous standard, Judge Sarokin was not permitted to receive further evidence. [975 F.2d, at 91.] As it observed, our "common law tradition [does not] permit a reviewing court [(in this case, the district court)] to consider evidence which was not before the tribunal of the first instance." [Id., at 92.] Because Judge Sarokin considered and relied on portions of the Cipollone record that were not in the record before the magistrate judge, his order could not stand. [Id. at 93.]

The third circuit also sharply scolded Judge Sarokin for disclosing the contents of the documents as to which privilege had been claimed. In its words:

> This, too, must be said. Because of the sensitivity surrounding the attorney-client privilege, care must be taken that, following any determination that an exception applies, the matters covered by the exception be kept under seal or appropriate court-imposed procedures until all avenues of appeal are exhausted. Regrettably this protection was not extended by the district court in these proceedings. Matters deemed to be excepted were spread forth in its opinion and released to the general public. In the present posture of this case, by virtue of our decision today, an unfortunate situation exists that matters still under the cloak of privilege have already been divulged. We should not again encounter a casualty of this sort. [975 F.2d, at 97.]

Finally, in what the third circuit described as "a most agonizing aspect of this case," it then removed Judge Sarokin from the case on the ground that the prologue to his opinion on this preliminary discovery issue destroyed any appearance of impartiality. The court noted that the prologue stated "accusations" on the "ultimate issue to be determined by a jury" in the case: whether defendants "conspired to withhold information concerning the dangers of tobacco use from the general public." It further noted that Judge Sarokin's inflammatory remarks were reported prominently in the press throughout the nation. [975 F.2d, at 97–98.]

The third circuit's observations that Judge Sarokin's ruling amounted to a judicial usurpation of power, was contrary to our common law tradition, ignored fundamental concepts of due process, eviscerated the defendants' rights of appeal, and destroyed any appearance of impartiality scratched only the surface of Judge Sarokin's betrayal of the role of a judge in this litigation. Consider, for example, some of the many other respects in which Judge Sarokin's prologue was grossly inappropriate: What do his blanket assertions about the values of businessmen say about his ability to preside fairly in any dispute between an individual and a business? To whom is he referring as the other rising pretenders to the throne of concealment and disinformation?

Incidentally, at his confirmation hearing, Judge Sarokin ultimately made only a modest concession: "I concede that the language was strong and maybe unduly strong; and if I could take it back, I probably would." [60:11–13] The fact of the matter is that Judge Sarokin could have taken it back: these were carefully composed written comments, not off-the-cuff oral remarks.

Judge Sarokin also stated that "I was also hoping that I could discourage the tobacco companies from continuing to conceal the risks of smoking and deny that they existed." [110:20–23] This statement vindicates the third circuit's concern that Judge Sarokin was broadcasting his opinion on the ultimate issue to be decided by the jury. It also shows that Judge Sarokin was pursuing an agenda rather than simply deciding the legal issue before him.

Similarly, Judge Sarokin's reliance in Haines on his familiarity with the evidence in another case, Cipollone, is a flat admission of predisposition and bias. Judge Sarokin was, in his words, "unique[ly] position[ed]" to decide the issue only in the sense that he had already made up his mind.

Perhaps the most troubling aspect of this whole case is the manner in which Judge Sarokin responded to the third circuit's order removing him from the case. In referring to this removal in a written opinion, Judge Sarokin flamboyantly declared: "I fear for the independence of the judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence, in forceful language that addresses the precise issues presented for determination." In short, Judge Sarokin not only voiced his disagreement with the ruling of the higher court. He also cast aspersions on the independence and integrity of the third circuit judges by charging that a powerful litigant had caused them to rule as they did.

Equally remarkably, unchastened by his well-earned scolding, Judge Sarokin personally accepted "the C. Everett Koop Award for significant achievement toward creating a smokefree society." This award, from an organization called the New Jersey Group Against Smoking Pollution was given for the very comments that led to the third circuit's order removing him from the cigarette case. It is disturbing enough as an ethical matter that a judge would accept an award for an opinion in a particular case. It is beyond the pale that he would accept an award for a case in which he had already been found to have destroyed the appearance of impartiality, especially when the award is given for the very act that destroyed the appearance of impartiality.

It is true that in removing him from Haines, the third circuit stated that Judge Sarokin "is well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperament." But in context,

this can only be understood as sugarcoating a bitter pill.

Yet another case that illustrates Judge Sarokin's willful implementation of his own agenda is *Blum* v. *Witco Chemical Corp.* [702 F. Supp. 493 (D.N.J. 1988), rev'd, 829 F.2d 367 (3d Cir. 1987).] This case involved an award of attorney's fees in an age discrimination suit. In his opinion, Judge Sarokin first criticized and sarcastically attacked the governing Supreme Court precedent and the third circuit opinion construing that precedent. For example, he stated:

> The Supreme Court has sent a Christmas gift to this court delivered via the Third Circuit Court of Appeals. It is called "How To Make an Attorney Fee Multiplier." However, the instructions are so confusing and inconsistent that this court has been unable to put the gift together. [702 F. Supp., at 494–496 (citation omitted).]

Significantly, Judge Sarokin purported to be "duty bound to apply the [Supreme Court and third circuit precedent] to the facts of this case." [702 F. Supp., at 497.] But the third circuit, in unanimously reversing his ruling, found that Judge Sarokin had simply defied this precedent. In the Third Circuit's words, Judge Sarokin, "without concealing its disapproval of both the Supreme Court's decision and ours, proceeded in accordance with [his] own views." [888 F.2d, at 977 (citation omitted).] The third circuit cited "at least four respects" in which Judge Sarokin had deviated from precedent, [id., at 981–983] and it scolded Judge Sarokin for "superimpos[ing his] own view of what the law should be in the face of the Supreme Court's contrary precedent." [888 F.2d, at 983–984.] In short, the third circuit recognized that Judge Sarokin defiantly refused to follow precedent even while professing to follow it.

One final case that warrants careful attention is *Vulcan Pioneers* v. *New Jersey Dep't of Civil Service*, [588 F. Supp. 716 (D.N.J. 1984), vacated, 588 F. Supp. 732 (D.N.J. 1984)]. This case is of particular interest because it illustrates Judge Sarokin's sympathies for unconstitutional race-based quotas.

This case concerned a 1980 consent decree that some New Jersey cities entered into regarding the hiring and promotion of firefighters. The decree set numerical hiring goals, or quotas, for racial and ethnic minorities. A few years later, Newark, faced with a fiscal crisis, threatened to lay off firefighters. Both nonminority and minority firefighters went back to court to protect their respective interests. The union sought to have seniority honored, as required by State law. The minority firefighters sought to have the seniority system disregarded in favor of affirmative action quotas.

In May 1984, when a ruling by the Supreme Court in Firefighters versus Stotts on this very issue was known to be imminent, Judge Sarokin modified the consent decree to require layoffs on a proportional basis rather than according to seniority. Thus, more senior nonminority firefighters were to be laid off in favor of less senior minority firefighters.

In an especially bizarre twist, Judge Sarokin ruled that his order denying whites their seniority rights constituted an unconstitutional taking and that the Federal Government—which vigorously opposed Judge Sarokin's modification of the consent decree—should nonetheless be required to provide compensation for the taking.

Shortly thereafter, the Supreme Court, in the Stotts case, effectively reversed Judge Sarokin's decision regarding the layoffs. In his original opinion, Judge Sarokin had expressed sympathy for the nonminority firefighters who would have lost their jobs under his ruling: "Though not themselves the perpetrators of the wrongs inflicted upon minorities over the years, these senior firefighters are being singled out to suffer the consequences." In vacating his own ruling in June 1984, Judge Sarokin changed his tone and attacked the nonminority firefighters:

> The non-minority firefighters and the unions who represent them resisted layoffs in this matter on the ground that they were blameless and innocent of any wrongdoing. But, in reality, they know better. If they have not directly caused the discrimination to occur, many certainly have condoned it by their acquiescence, their indifference, their attitudes and prejudices, and even their humor. [588 F.Supp. at 734.]

In short, once he was unable to pursue his own quota agenda, Judge Sarokin lashed out at those nonminority firefighters whom he thought should have had to lose their jobs.

Mr. President, considerations of time do not permit me to explore in detail all the other matters that cause me grave concern over this nomination. So let me conclude with the observation that Judge Sarokin has shown, time and time again, that he will pursue his own liberal ideological agenda on the bench in lieu of applying the law. If he is elevated to the federal court of appeals, Judge Sarokin would have even greater freedom and opportunity to implement his own ideological biases. And so I say to my colleagues, if you truly respect the fundamental distinction between judging and policymaking, if you truly care about handcuffing criminals rather than the police, if you truly want judges who follow precedent and apply the law, you should vote against the confirmation of Judge Sarokin.

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

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I have great respect for my friend from Utah but I must tell you, I used to have a teacher in high school who, when we would stand up and say something in defense of a position we used to have to defend—he would put forward a proposition and the question was put before the class: Defend or reject the proposition. Some would stand up and debate form and debate style and make some conclusory statements, unsubstantiated by the facts. And he used to look down and say, "Poppycock." I never used to know what poppycock meant literally. I knew it meant you did not like whatever someone said, but you had to sustain your point.

I was reminded of that because there is a lot of poppycock today. I thought we were refighting the crime bill. The Republicans tried to exercise their gridlock and filibustered for a total of 2 years in earnest. They tried the last time to defeat the crime bill. They told the public how awful this crime bill was. We passed the crime bill, the toughest crime bill. Even a Wall Street Journal poll says the American people support what we passed, including the prevention provisions.

Here we are again. We have now this new deal that somehow the Republicans tried to make the crime bill tougher. I say poppycock, they did not make anything tougher. I wrote that bill. I wrote into the bill the death penalty, the enhanced penalties for the commission of certain crimes. They added nothing. They added nothing except gridlock. They added nothing except saying no. And now this crime bill, which I guess they like parts of now because it is playing differently out there, somehow they made some contribution to it.

Six or seven Republicans did make a contribution. They voted for the crime bill. It passed because of their help. I guess that makes it bipartisan.

We have a new definition of bipartisan. If you can get three Republicans to raise their hands and say they are for something, it is now bipartisan.

Look what we are going through here. We just went through this exercise in gridlock. We were forced to go to a cloture vote on this. I ask the clerk—72 Members voted for cloture? What the devil did we have the cloture vote for? The reason we had the cloture vote is they wanted to stall. They wanted to stall, stall, stall, stall, stall. My friend from Michigan said the GOP should be renamed the "Gridlock Only Party" instead of the "Grand Old Party." This is gridlock only.

Why do we have to negotiate this thing for days to get this to the floor—and I will say for the RECORD, my friend from Utah tried to get a time agreement so we could do this. No, we are forced to go to a cloture vote, eating up more time. Why? So we do not get to other things on the agenda we should deal with. Here we are now relitigating the crime bill with the debate on this judge.

Pretrial detention was mentioned. I am having my staff check to be precise about this, but I am 90 percent certain that that is a bill that I drafted in 1984, the Bail Reform Act of 1984. It never occurred before. The Democrats put that bill in place back in 1984.

Mr. President, we have done so much good stuff on crime, I have forgotten what we have done—what, when, the time. So we have pretrial detention. That came out of my subcommittee because what I found was more and more of these drug dealers were posting bail. The Presiding Officer knows this better than anyone. Down in Florida, you arrest somebody, the judge would post a million dollars bail, they would post their bail and leave because they had $5 or $7 or $10 million from a drug deal they did. That is why we put in pretrial detention, and it has worked. The Democrats did that.

Now I am told, OK, we have a judge here: "Isn't he a terrible guy? Yeah, he's brilliant; yeah, he's this, he's a terrible guy," because he made a speech and it was recorded in the West Virginia Law Review, I think it was, speaking to a bunch of Law Review editors, and he stated the obvious. Pretrial detention is, in fact, on its face—and I am the guy who proposed it, OK—it is on its face a contradiction to the presumption that someone is innocent, if you just look at it in layman's terms, because usually we say, OK, you are accused. What we are going to do, as long as we think you are going to show up for trial, what we do is we let you go free until you have a trial, and they decide at the trial whether you are guilty or innocent. The presumption is you are innocent, though.

We did this unusual procedure, relatively speaking, because we found that people, even though we still had the presumption of innocence, that they, in fact, were skipping town after posting an awful lot of bail because it did not matter to them because they were probably guilty, is why they did not come back. So we accommodated that.

That cannot be done anymore. If a judge finds they are a danger to the community, and a few other things, he can say, "We are going to keep you in jail until your trial," because, again, the Democrats passed the Speedy Trial Act Amendments Act, which I did author with the help of a staffer named Mark Gitvenstein in 1979, saying you have to take someone within 60 days—90 under certain exceptions, another 30 days—because we found these are the people out there committing the crimes, people out on bail.

So now we are told that we have a judge, appointed by this awfully liberal President and this liberal panoply of judges we have now voted for under this liberal environment. And we say this judge made a critical comment or an observation—not even a critical comment—about pretrial detention. What he was doing, he was talking to a bunch of Law Review editors basically saying, "Look, the mood out there is ugly and we have a serious problem with crime and what we have to keep our eye on here is we do not give up civil liberties, the thing that ultimately protects us as citizens, in order to get at the bad guy."

That was the thrust of what he was saying, and he stated the obvious about pretrial detention. But let me tell you, in over 100 cases, this judge affirmed keeping someone in jail without bail before trial. Over 100 times. Where is this wacko liberal judge who is against pretrial detention, that you would think, listening to my Republican friends, they invented? Like all of a sudden now they somehow are for the crime bill. This is absurd.

Let us talk about these liberal judges my friend from Utah keeps talking about. Let me just state the record. You all draw your own conclusions. We have had two Supreme Court Justices. Unlike previous Presidents, this President did not pick people based on an ideological litmus test, and he said he was going to pick moderate, mainstream judges. He did. He has only had two chances to pick Supreme Court Justices, and who did he pick? Justice Breyer and Justice Ginsburg. Every single person in the academic world writing about them is talking about them forming the moderate middle with Kennedy, O'Connor and I think probably the best Justice that we, in my view, have ever confirmed since I have been here, Justice Souter, a Republican Justice.

If this President were as these guys paint him, why did he not send us left-wingers, like President Reagan and Bush sent us right-wingers most of the time? Why did he not do that? And if they were so bad, why did they not vote against them?

Mr. President, Republicans overwhelmingly voted for these two wacko liberal judges. The vote counts for these two Supreme Court Justices were 96–3 for Justice Ginsburg, and 87–9 for Justice Breyer.

We have confirmed out of the committee 72 Federal judges. Again, I thank my Republican colleagues—and I mean this sincerely—on the committee. Under the leadership of Senator HATCH, they have not engaged, in that committee, in gridlock. They have let these people come up and be voted on, this liberal cadre of judges which, out of 72 judges, 70 passed with unanimous consent.

I may be mistaken—I see my friend from Montana on the floor, he is a conservative Republican. I see other people come on the floor. I do not remember them saying, "By the way, these liberal judges you Democrats are putting through, stop them." To the best of my knowledge—and I will stand corrected and I may be wrong, I may be a judge or two off—twice we have been asked to vote on a judge on this floor and there has been objection. One was Rosemary Barkett, a distinguished justice from the State of Florida, and the second one was this one.

Maybe there has been a couple of others that never got out of committee. There have been some that did not get out of committee. Once they got to the floor, if you listen to my friend, you would think—if you are sitting in the gallery or watching on TV—they would have been pushing through a bunch of really liberal judges out there and that this has been a real fight and this has been tough.

Look at the Supreme Court of the United States of America and the two judges that a Democratic President and a Democratically controlled Senate with the overwhelming support of Republicans voted for. Are they the liberals he is talking about? Are they in this panoply of liberal activists that he is talking about? Or maybe it is—I think we confirmed—I will ask my staff who does nominations to give me an exact number. But I think we have confirmed roughly 70 Federal court judges so far. I want to be precise. I believe we confirmed 70 so far. We have not confirmed them on the floor of the U.S. Senate. They are passed—72 judges we have passed so far out of the U.S. Senate to take their seats on the bench. Where are the liberals among them? Where are these activists among them?

I do not quarrel with the fact that my friend from Utah or any of my Republican friends argued against Rosemary Barkett, or argued against this judge. But to turn that into what sounded like the speech that somehow there is this overwhelming liberal bias in putting these criminal-loving judges on the bench is preposterous, or, as my high school teacher would say, "poppycock."

Let us look at the two judges that have been the focus of opposition, legitimate by the way. I do not argue with the right of any Senator or group to stand up and say that judge is too conservative, that judge is too liberal, that judge is not honest, too honest, whatever they want to say. They have a right to do so. Rosemary Barkett, I have been hearing some of the political advertising that has been going on around this country and arguments against her, and this is incredible. It is absolutely incredible. As a matter of fact, I am told Senator HATCH—I was off the floor—in his opening statement mentions Rosemary Barkett as a soft-on-crime judge. I will come back to that because I want to speak to that. But that is preposterous as well. But, at least we are in the ball park because they have been involved in some controversial decisions, both Barkett and Sarokin.

I want the record to show, and I challenge anyone here to come on the floor—any Republican or any Democrat to come on the floor —and sustain the argument that this President has sent up and we have confirmed a bunch of liberal "1960" judges who are soft on crime. I challenge anyone. I hope everyone back in their office is listening. I ask every Republican Senator to come to the floor and make that case. I want to hear it. I am fascinated by it because, if it is true, why did they let go by consent—which is the same in this place as unanimously passing—the vast majority of these judges? I guess because they are soft on crime, or they are procriminal. Is that the reason?

So, No. 1, I hope we will stop this malarkey about judges generally in this administration.

Let us get specific about these two judges. One of the things is that we are told—and a couple of cases are taken, I would argue, slightly out of context although I would argue not intentionally by people who have spoken thus far about how bad this judge is because they give a fact pattern in a case that actually occurred and let this person go. First of all, let us make it clear. This judge did not let anybody go. He has ordered a retrial in the case that we keep hearing about, a case involving a fellow who was convicted in the lower court of killing a cop. He ordered a retrial. Let us get that part straight.

Again, I have seen a couple of ads where people actually ran ads in this political campaign period. So letting free these people saying you have to have a new trial is not letting you go free. At least I do not think it is. I do not think any legal scholar would say it is. No one with any shred of intelligence would say it is. But some without the intelligence, some without any insight, some engaged in pure demagoguery would say it is. No one on the floor has said that to the best of my knowledge. I am commenting on the universe of what I am hearing out there and some of ads.

But let us focus on this case. If you take a single case and say you draw a conclusion from that case, like with Rosemary Barkett, they say she is against the death penalty. She voted for the death penalty well over a hundred times. She voted for the death penalty as a supreme court justice in Florida over a hundred times. But she is against the death penalty.

Now we are hearing this guy is soft on crime because of a case they cite involving a guy named Landano. I would suspect that there is no one in this Chamber who would argue, for example, that who do you think the most—if we were to sit down and say, OK, let all of us in the Chamber pick out who we think is the most well-known conservative judge in all of America is. I will make you a bet. No, I can prove it. But I will make you a bet if you gave everybody 5 minutes and told them to write down on a piece of paper, every Member of this body, who they thought the most conservative judge or jurist in America is, I will bet you anything that you would get the name Scalia written on a piece of paper more than any other name.

I doubt whether anybody would suggest that Justice Scalia is a liberal. As a matter of fact, he is the most brilliant conservative Justice and jurist probably in the country. He is anything but soft on crime.

Let us reverse roles here. Let us assume Scalia was up for reconfirmation and I wanted to make the case because we know it is damaging if you say any judge is soft on crime, and I went through the following case with you. Let me make sure I have the facts exactly right. I stood on the floor and turned to my friend from Iowa who is standing on the floor and others and said, you know, can you believe what this judge did, this procriminal judge, this prodefendant, anticop judge named Scalia did?

Let me tell my friend what he did. In 1987, when he sat on the Supreme Court of the United States in a case which was originally a Florida case, Justice Scalia wrote an opinion for the Court. Justice Scalia wrote that he should reverse the death sentence of a man who was convicted of strangling his 13-year-old stepniece. These are the facts; strangled his 13-year-old stepniece. The defendant confessed that he had killed his stepniece. And do you know why he killed her? He said he killed her because she threatened to tell her parents that he had intercourse with her. So he raped her. These are the facts. She was 13 years old. He raped her. She threatened to tell her mom and dad and he killed her. And then he admitted that he killed her and told the reason why he killed her. And guess what? That "radical, liberal" Judge Scalia insisted that the case of that person who was sentenced to death be sent back. He insisted that the State of Florida erred and they should reconsider and hear additional evidence as to whether or not that person should get the death penalty. I can see the gallery sort of nodding—my God, how could he do that? He must be a cop hater. He must be a wacko liberal. Obviously, that is why he did that.

Well, obviously, Justice Scalia is no liberal. Obviously, Justice Scalia is a pantheon of conservative intellects serving on the Court—and he is—who is anything but prodefendant. But guess what? He is a judge. He is required to follow the law and the Constitution. And out of all the cases, he wrote, for a unanimous Court, that this guy, who raped and then murdered his niece when she threatened to tell her parents, should have his case heard again. Maybe we should start a petition to impeach him. My conservative friends might vote for that. Let us impeach the judge for doing this.

Mr. HATCH. Will the Senator yield on that point?

Mr. BIDEN. Yes.

Mr. HATCH. Is it not true that he later repudiated that?

Mr. BIDEN. I do not know whether he later repudiated it. But is there a denial he wrote that?

Mr. HATCH. No, not at all. He has later repudiated that. Our argument is that he has not applied existing precedent. He made precedent out of old cloth.

Mr. BIDEN. I will get to that. We have no disagreement as to what Scalia did. My friend said that is what all of them did, and he is dead right. He made the right decision under the Constitution and law and existing precedence. The point I am making is that you can stand up here and take the hundreds of cases that any judge has decided and find a gruesome fact pattern—in fact, patterns—that in fact would make it look like this judge must be, for example, against pretrial detention. There is one paragraph out of a law review article, even though over 100 times he has held people without bail pending trial. There are a total of 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 sentences.

Mr. BRADLEY. Will the Senator yield at that point?

Mr. BIDEN. Yes.

Mr. BRADLEY. It should be re-emphasized that not only was this a comment, there is nothing in or around these sentences you point to that says in any way whatsoever that Judge Sarokin opposes pretrial detention. There is no sentence stated anywhere that he opposes pretrial detention. To the contrary, since he has been a sitting judge, he has ordered pretrial detention in over 100 cases.

So I think the Record should reflect what the facts are.

Mr. BIDEN. The Senator has made the point more clearly. He was commenting, as I read the article, on the overall environment and why these young law review editors should, in fact, focus on the Constitution and not forget the underlying basic principles in the Constitution.

But, again, I want to make it clear for the record that Justice Scalia is a fine and honorable Justice. Justice Scalia is not a liberal; he is not prodefendant; Justice Scalia is not someone who probably was appalled by the facts in the case I read. But he applied the law, as Judge Sarokin did, as he saw it and believed it to be. But you can make anybody look like they are foolish by citing these cases, by picking out a handful of cases. The fact of the matter is that in the case of Landano, the one they keep referring to about why he is soft on crime, on February 25, 1994, the appellate division of the State of New Jersey overturned the New Jersey trial court ruling and agreed with Judge Sarokin on

virtually every count, finding that the prosecutor withheld exculpatory evidence in granting Landano a new trial.

The New Jersey appellate court found independently what Judge Sarokin found. Let me cite the grounds upon which they ordered a new trial, and they did not set anybody free.

First, the State suppressed evidence that Joseph Pascutti, the only eyewitness to the shooting, rejected Landano's photograph because the perpetrator had curlier hair than Landano. In other words, the prosecutor had that evidence. The chief witness against, the only eyewitness against Landano—I do not care whether he is guilty or innocent—but the only eyewitness initially, when the cops gave them the photograph of Landano, said, "No, that is not him. The other guy's hair was a lot curlier." They had that. Under our rules that exist for fair trials in America, the prosecution is supposed to share that evidence because, remember, the prosecution's job is not to convict, it is to do justice. That is why we have that rule. That is why we have the rule. That was the first thing the appellate court said in New Jersey. It stated this evidence, and they did not tell it during the trial so that they would have all the facts. They did not tell the jury they had that.

The second thing was that the State—the prosecutor—suppressed evidence that his chief witness, Roller, an alleged accomplice, committed two armed robberies similar to the one for which they convicted Landano and that the State suppressed further evidence that the witness and his closest associate had committed an earlier armed robbery in Jersey City in 1975, in which the gun used to kill officer Snowe had been fired. That evidence, again, under our rules, generally speaking, to do justice, they were supposed to let the jury know that and let the defendant know that, and they did not.

The third reason why the New Jersey court—not Sarokin, the New Jersey court—agreed with Sarokin independently was that the State further suppressed evidence that its principal identification witness, the proprietor of the check-cashing shop, Jacob Roth, was under investigation for having ties with organized crime and was suspected of having engaged in loan sharking and money laundering. That can provide motive, among other things. And, further, on the very day that the witnesses' earlier tentative identification of Landano became positive, he was questioned about his involvement in illegal activities. So you have this guy Roth, who is under investigation. The day that he identifies Landano is the day that he is being questioned for further illegal activities and potential ties with organized crime.

Why is that important for a jury to know? The jury can weigh that evidence. But it may be they figured, oh, wait a minute. If we know that, maybe ROTH made a deal. Maybe ROTH is trying to get himself out of difficulty.

I do not know that to be the truth. No one knows that is the truth. But the jury is entitled to know that.

The fourth thing that the New Jersey appellate court found was another witness, a waitress who had seen the codefendant and his companion the day before and the morning of the robbery and killing, also rejected Landano's photograph because the individual that she met was younger than Landano. The State had that evidence, too.

Now, under our system, just like Judge Scalia had to send back that case I talked about where a guy admits to raping and murdering his niece because she was going to tell her mom and dad about being raped, this judge said, hey, wait a minute, under our system, you are not allowed to do that, prosecution. Go back and give this guy a fair trial under what we have 100 years of precedent for.

That is what happened here. But to listen to my friends, you would think we have a guy out there saying:

> You know, these guys who kill cops, I cannot blame them really. They were raised in an environment where police were not nice to them. And you know what further happens is they probably did not get the right formula when they were kids and they were in a position where that affected their psyche and they were raised in a circumstance in a community that has an antagonism toward police. So I can understand and empathize with someone who would go kill a cop.

That is what they make it sound like, this sort of psychobabble that comes from the far left.

Well, the problem is I am not, and Senator BRADLEY, the President, the judge, are not on the far left. Republicans would like to get us there.

But back to the thing I said this morning, I say to my friend, who is a graduate of Harvard Law School, in school we used to talk about red herrings. When there is a fact thrown in that has nothing to do with anything that has to do with the case, it is to throw you off, that is a red herring. That has nothing to do with this. Or it is a straw man. We are setting up a straw man here to knock down with his liberal psychobabble they talk about.

That is not this judge, again, anymore than Scalia is the judge—if I took that one case and that was the only thing you knew about Justice Scalia, what would my colleagues in here think? If I gave you nothing but that, you knew nothing at all about Scalia except that case, you would say: "Oh, my God." You would not say you know he is an honest jurist required to follow the law and precedents. He did that. We would all stand up here because we do not want to offend anybody and we would say: "Oh, my God, he is one of those wacko liberals, lover of cop killers, lover of people who rape 13-year-old nieces."

It is ridiculous. It is beneath this place. It should be beneath this institution. But, my lord, I keep hearing it and hearing it and hearing it.

I am talking too long, and I do not want to delay this. I have two of my colleagues here to speak, and I will have plenty of time to rebut their assertions, although maybe I will agree with their assertions. They are all enlightened people, and redemption is all part of the process. Now that they know some of the facts, they may change their views. For the RECORD, I am being facetious.

Pretrial detention. In a speech to law students that Senator HATCH referred to, Judge Sarokin talked about pretrial detention—keeping accused persons in jail before they have been charged. In this academic speech, Judge Sarokin said that this type of detention before trial was in some conflict with the presumption of innocence.

But you have to look at what Judge Sarokin has done as a judge. As a judge, he has detained hundreds of defendants before trial, applying the law as passed by Congress, without flinching.

So whatever Judge Sarokin may have said in an academic speech is not relevant to our task today. Our task today is to look at his record as a judge, and that record shows he is entirely willing to detain defendants before trial, as the law requires.

I also will at a later time, in response, speak in more detail to what I think is an emerging pattern here, at least as we get closer to an election, of characterizing the actions of judges in what I think are a distorted fashion.

I am not suggesting everyone who votes against Judge Sarokin is engaging in misrepresentation. There is reason enough if you want to vote against Judge Sarokin. The Constitution says to give advice and consent. It does not set out how you give it. It does not say it has to be reasonable. It does not say it has to be based on anything at all other than what you think your particular inclination or whim is at the time. It does not set out in any detail the circumstance under which you can exercise or withhold that consent. So, that is everyone's right.

The only thing I am asking for here is I am asking to put in focus, No. 1, where all of the judges, if you take them all as a whole, who have been sent up by this President fit in the political spectrum. You will not find any conservative or liberal act of omission, who is an expert on the Court, who will say that this is a new left-wing coterie of judges that has been put in place by this President and this Senate. It simply does not even approach reality.

No. 2, as to the assertion that you have this overwhelming liberal machine that is running through this place and putting all these judges on the bench, I again cite for you that we have had 72 judges confirmed. I do not know of any of those judges who did not either have a majority of all the Republicans, or all of the Republicans through unanimous consent before them, and of the two Supreme Court Justices no one is accused of being liberal.

As a matter of fact, if my friend, the Presiding Officer, will recall, those who opposed them and spoke against them were liberals. It was HOWARD METZENBAUM who did not like Breyer—not personally did not like him—but his concern that Breyer was too liberal. Most of the questions about Breyer, the new Supreme Court Justice, were from the left and not the right, from the center and not the right.

So I hope we will stop this malarkey about procrime/anticrime judges and justices, and the like. Maybe as we refine further the criminal justice system, maybe from this point on we will actually have Republican participation and willingness to pass something as we go down in terms of and start to deal with our whole effort to deal with drugs in society and our antidrug legislation.

Other than Barkett and possibly this nominee, a majority of Republicans, to the best of my knowledge, voted for every one of the other justices. Again, I will stand to be corrected on that if that is not true.

So if that is the case, either we have a majority of Republicans who are liberals or these judges are not, and they are mainstream, moderate judges by and large.

But as I said, there is much more to say on this. I see my friend from New Hampshire is here. I will be delighted to yield the floor to him or anyone else who seeks recognition.

The PRESIDING OFFICER (Mr. BREAUX). The Senator from New Hampshire is recognized.

Mr. SMITH. Mr. President, I rise in opposition to the confirmation of President Clinton's nomination of H. Lee Sarokin to be a circuit judge of the U.S. Court of Appeals for the Third Circuit.

Mr. President, true to his political strategy—and I think it is a political strategy—of portraying himself as a "New Democrat," Bill Clinton has done an awful lot of talking on crime and about how we need to be tough on crime in this country. I certainly agree with him that we do need to be tough on crime.

But as the old proverb tells us, "actions speak louder than words." And President Clinton's act of nominating Judge Sarokin to the U.S. Court of Appeals, the level of the Federal judiciary just below the Supreme Court, speaks volumes, I believe, as to how the President really stands on the issue of crime.

Frankly, Mr. President, Judge Sarokin's views on criminal law issues make him better suited, I think, to a seat on the board of directors of the American Civil Liberties Union than a seat on the U.S. Court of Appeals.

Now, some would say this is harsh. But I want to point out that in this country today there is a great wave, almost, I would say, a tidal wave of support for dramatic efforts in this country to put away criminals, especially violent ones, make them serve their sentences and keep them from preying on the rest of us in society. In order to do that, you have to nominate and ultimately appoint and confirm tough judges. That is the secret.

Ask anybody. Ask any law enforcement official about how they feel about the sentences that judges give out and then on top of that the situation when they get out on the street not too many years after they have been sentenced.

We see in the State of Virginia Governor Allen's no parole; overwhelming support in the State. This is a wave that is going across this country.

But the President is not caught up in that wave, I regret to say. He is in rhetoric, I would agree, but in the actions, in the nominees that he is sending to the judiciary, unfortunately, it does not back up the President's rhetoric.

As the recently enacted crime bill demonstrated, those who control the White House—and both Houses of Congress, I might add—believe passionately in what I believe to be the fundamentally misguided notion that a lack of sufficient government spending on social programs causes crime. It is as if to say, if we do not spend hundreds of millions and billions of dollars on all of these social programs, if we do not do that, we are not doing our part to stop crime.

Now, we have been spending hundreds of millions of dollars and billions of dollars on social programs and we still have crime. Not only do we have crime, we have more crime than we had when we started spending the money on these social programs.

Speaking at a conference in Washington in May of this year, Judge Sarokin made it clear that he is an enthusiastic proponent of what I believe to be an erroneous point of view.

"If we truly want to deal with crime and make our streets pleasant and safe," Judge Sarokin proclaimed, "we must identify the mentally and physically ill, the drug addicts and the alcoholics, and then either treat them or hospitalize them." "And," Judge Sarokin continued, "we must feed, clothe, and shelter the homeless and, most important, for those who can benefit, we must educate and train them so that they can have some hope and some reason to live."

Now, I am not critical at all of identifying mentally and physically ill people, treating them, hoping to treat alcoholics and drug addicts and see that they recover, hospitalize the sick, feed, shelter, and clothe the homeless. There is nothing wrong with any of that. But what does that have to do with the violent crime in the United States of America today?

Mr. President, as that quotation demonstrates, Judge Sarokin does not get it. He just does not get it. "It's the criminal, stupid," to use an expression that was used in the last campaign, referring to the economy. Criminals cause crime.

Why do we all have to feel guilty because somebody who had a tough childhood or some social problem commits a violent crime? And it is our fault, not his fault or her fault; not the perpetrator of the crime. It is not their fault. It is society's fault—do not accept any responsibility in society today, absolutely not; blame somebody else; whatever happens to me, it is somebody else's fault. If I commit a murder it is not my fault. I had a tough childhood. I did not get any help from the rest of society when I needed it. So, therefore, somebody else is to blame for the fact I killed somebody.

In his public statements, his written articles, and his opinions in cases on which he has sat as a Federal district judge, Judge Sarokin has shown time and again that he has inordinate sympathy for criminal defendants, that he has a disturbing attitude toward law enforcement, and that he gives insufficient weight to the requirements of public safety.

This is the nomination that we are faced with here today on the floor of the U.S. Senate. The President makes a choice. We do not challenge that. We confirm. The question is, if you want someone who is tough on crime, really tough on crime, is Judge Sarokin your man? Not in my estimation.

A prime example of this, what I call, soft-on-crime philosophy is Judge Sarokin's steadfast opposition to the preconviction detention of criminal defendants. In a 1988 article entitled "Beware the Solutions!" which was in the West Virginia Law Review, Judge Sarokin stated his belief that any incarceration of accused criminals violates the presumption of innocence and, therefore, he opposes "[p]utting people in jail before they are convicted."

Now, that is a very, very dramatic and far-reaching statement—very much so. A violent person who is accused—admittedly accused—of a crime but a very violent one should not be jailed. The people around that person in that community should not be protected from that person, even though he committed a violent crime or may

have committed a violent crime, is accused of committing a violent crime. He should not be incarcerated. We should leave him out on the street.

So that would include, I suppose, under the judge's definition, Charles Manson, Sirhan Sirhan, and others. Let them back out. They are not convicted yet. Leave them out on the street. Maybe they will do it again to somebody else four or five more times. How many times do they have to do it, I would say to the judge? Do they have to kill 25 times, 6, 7, 8, 15, before we finally say, "Well, this is a violent person; we ought to keep them incarcerated pending trial"? How many times? What is the threshold?

The time-honored presumption of innocence, however, relates to conviction and not to preconviction detention. And that is a very important point.

As the Washington Post reported in a July 1994 news article, more and more violent crimes are being committed by criminal defendants who are released pending trial. The American people are not interested in this kind of a judicial attitude. The American people are interested in trying and convicting and punishing violent criminals. Period. They do not want them out on the street.

Judge Sarokin does not get it. President Clinton does not get it, because if he did he would not be sending this nomination to the U.S. Senate.

This same Post report focused on how witnesses to crime are increasingly being terrorized and even murdered. The people who witnessed the crime are being terrorized and even murdered by the accused. If Judge Sarokin's extreme view were to become the law, I believe this trend would get worse.

Mr. President, not only does the judge that is before the Senate right now for confirmation, Judge Sarokin, think that the accused—and often dangerous—criminals should be allowed on the streets before they are convicted, he is also a very strong supporter of a liberal legal doctrine that makes it harder to get them convicted at all—at all.

In his West Virginia Law Review article, Judge Sarokin stated his opposition to even the good-faith exception to the controversial so-called "exclusionary rule. Judge Sarokin believes that suppressing evidence obtained by a search that is later to have been determined to have been improper is necessary to deter police lawlessness, even when the police acted in the good faith belief that their search was conducted properly, and even when it means that a guilty defendant will go free. Even in that circumstance, even in that circumstance, Judge Sarokin believes that this evidence obtained by that search is improper.

This is a very liberal view of the law—a very, very liberal view of the law. And in my opinion out of touch, way out of touch with the mainstream of the citizenry of this country.

Judge Sarokin took this view, even though the Supreme Court recognized just such a good-faith exception to the exclusionary rule 4 years before his law review article appeared. Not only does this judge think that even violent criminals should roam free pending conviction, and not only does he have a view of the exclusionary rule that makes it more difficult for prosecutors to get criminals convicted, but Judge Sarokin also opposes tough sentences even for criminals who have been convicted. In this very revealing article in the 1988 West Virginia Law Review, Judge Sarokin took the position that he is opposed to "mandatory and uniform sentencing." Such tough-on-crime approaches to criminals, the judge says, "deprive judges of the right to grant mercy." That deprives judges of the right to grant mercy.

So, this judge wants the right to grant mercy to a convicted murderer. I do not think the American people are interested in mercy for a convicted murderer. How about some mercy for the victims? How about some compassion for the victims of the murderer, and their families?

We see, again, the judge and the President just do not get it. That is not what the American people are saying when they say get tough on crime. Again, it goes back to the crime bill debate. Everybody is against crime. Where we differ is punishment for the crime committed—that is where we differ. That is where Republicans and Democrats have had some huge debates on this issue. Do you punish the violent criminal or not? That is why parole in Virginia was eliminated—or will be. That is why, because in Virginia, as well as other States all across America, they are sick and tired of the rhetoric, they are sick and tired of the inaction, they are sick and tired of judges letting people out on the street as fast as the police officers arrest them. That is what the American people are saying. And if you want to change it, you want to stop it, you cannot put judges in powerful positions like this one. And in spite of the rhetoric, in spite of all the talk on the tough crime bill, here comes this appointment.

Thus far I have illustrated Judge Sarokin's liberal philosophy on crime by quoting from a speech that he made, and from his 1988 law review article. Let us take a look, now, at his judicial record on the U.S. District Court for New Jersey. In 1984, in the case of U.S. versus Rodriguez, which I know has been discussed earlier in this debate, the defendant was arrested on theft-related charges and given his Miranda warning. In addition, the defendant was then provided with a form, again advising him of his rights, and stating that by voluntarily signing the form—voluntarily signing the form—he could agree to waive those rights. Rodriguez did, indeed, voluntarily sign the form, thus indicating his waiver of his rights. But in so doing he used a false name.

Notwithstanding Rodriguez's voluntary written waiver of his rights, Judge Sarokin granted the defendant's motion to suppress his subsequent incriminating statements to the FBI—to suppress his incriminating statements to the FBI. Ruling in direct contravention of governing third circuit precedent, Judge Sarokin contended that Rodriguez' use of a false name made his waiver of rights somehow involuntary.

I guess that sends out a pretty clear message to anybody who is apprehended by a law enforcement official anywhere around the country, does it not? If you get caught red-handed, give a false name and you are home free. That really makes a lot of sense. I guess there are people—judges, I suppose are a lot smarter than the rest of us. They seem to be a lot smarter than the American people—at least they think they are. You tell me how in the world anyone could justify that kind of an argument? That is what it says. All the criminals out there listening to this debate, or any potential criminal, just give a false name and you are home free. Do not sign your name because then you have given yourself the waiver. Sign somebody else's name and you get off. The Rodriguez case demonstrates Judge Sarokin's propensity to ignore settled, governing law in order to create loopholes for criminal defendants. That is a fact.

Perhaps the worst example of where Judge Sarokin's soft-on-crime judicial philosophy has led him in the criminal cases that have come before him on the district court is his record in the case of a convicted cop killer by the name of James Landano, a case to which a number of Senators have alluded to and referred to during this debate. Judge Sarokin was reversed no less than 4 times—4 times—by the U.S. Circuit Court of Appeals and the U.S. Supreme Court during the course of his consideration of the Landano case.

In one of his opinions in that case, Judge Sarokin offered the following social commentary. Remember, Landano was a murderer, a cop killer. Here is what the judge said.

> We must ask ourselves why the current clamor and rush to carry out death sentences, but no similar urgency in freeing one who might be wrongly convicted and confined. * * * Rather than crying out for speedy convictions for those who have been convicted of capital crimes, we should be crying out for prompt release of those who may have been wrongly convicted and confined—cries of freedom rather than death.

It is interesting, no one would disagree that if somebody is wrongly convicted we should be crying out for prompt release. But why would you make a statement like that during the

case of a convicted cop killer? It is obvious, because, again, the sympathy is with the accused. The sympathy is with the killer—not with the victim. Do you hear the victim mentioned anywhere? Not that I hear; not that I read.

Mr. President, that statement by Judge Sarokin in this case seems to me to reveal a very clear prejudice on his part toward the death penalty. President Clinton has said—this is where it really gets interesting. Let us just put the rubber right on the road. President Clinton has repeatedly said he supports the death penalty. Once again we see a certain divergence, to put it kindly, as nicely as I can, between Mr. Clinton's tough-on-crime rhetoric and his latest soft-on-crime judicial nominee.

Actions do speak louder than words. Is it not a pretty simple question that involves a basic simple answer? If you are for the death penalty, and you are the President of the United States, why would you not appoint judges who are for the death penalty? You are only President, if you are lucky, for 8 years; and most for 4. You do not have that many judicial appointments, nominations. When you make them, why not appoint people who back up and support your feelings on the various issues?

Here again, this is not the first one. There have been others. He sends us a judge who does not support the death penalty. So do not tell me President Clinton supports the death penalty. I know he carried it out as a Governor of Arkansas. But he has a chance to impact, for years, crime in this country, by appointing tough Federal judges. And he is not doing it.

Do not believe me. Read the cases. Read the facts. Listen to the debate. Early in his administration President Clinton nominated another liberal law professor, Lani Guinier, to be the Assistant Attorney General in charge of the Civil Rights Division of the Justice Department. As some of her more radical writings on legal issues came to light, President Clinton's nomination of Ms. Guinier came under increasing fire. Finally, President Clinton reported, he sat down and read some of the most controversial of Ms. Guinier's legal articles. After doing so, President Clinton said, he decided to withdraw the Guinier nomination.

Mr. President, I would respectfully suggest that President Clinton ought to sit down and read Judge Sarokin's 1988 West Virginia Law Review article. While he is at it, he ought to study Judge Sarokin's actions in the Rodriquez and Landona cases. As the Wall Street Journal noted in its fine editorial opposing the Sarokin nomination, "* * * perhaps Mr. Clinton doesn't even know his real record."

Mr. President, if President Clinton really means it when he talks tough on crime, then I trust that he will conclude that he has no choice but to withdraw the Sarokin nomination. Failing that, Mr. President, I urge my colleagues in the Senate to vote against confirming Judge Sarokin for a seat on the Court of Appeals for the Third Circuit.

Thank you, Mr. President. I yield the floor.

## RECESS

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

Thereupon, at 12:30 p.m., the Senate recessed until 2:16 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mrs. MURRAY).

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont.

## LEGISLATION PENDING

Mr. LEAHY. Madam President, I am going to shortly put the Senate into a quorum. Before doing so, I will mention that there are a couple major pieces of legislation still pending—actually more than a couple, I should say, but certainly two in which I am most interested. One is the digital telephony bill.

I am greatly, greatly concerned that at least a couple Members of the Senate have felt a necessity to hold up this bill—one, until this morning and, since then, yet another one. I am not sure why. I suspect it is a piece of legislation with a rollcall vote that would pass virtually unanimously. In all likelihood, it could go through on a voice vote.

I mention it because I hope that nobody, for whatever personal reason they might have, or political reason, holds up this bill just for the sake of holding it up. If they want to vote against it, of course any Senator has that right. But this will allow the FBI and Federal law enforcement to follow the exact same laws we have today and same rules we have today, to be able to conduct wiretap in kidnaping cases, national security cases and others.

I suggest to Senators if anybody does want to hold it up, I hope that at this time next year, neither they nor their constituents, nor anybody they know, is a kidnap victim or victim of a terrorist, and have somebody ask why nothing can be done, and be told because a law that had probably 99 percent support in the House and the Senate did not pass.

On another matter, Madam President, which I am hoping that we will pass very soon—in the next day or so—the Department of Agriculture reorganization bill, basically the Leahy-Lugar bill that we passed twice in the U.S. Senate and has now been passed in the other body.

I think that if Leahy-Lugar comes back here and passes yet again, it will be the third time. I see my friend from Indiana on the floor. That will be the third time our legislation will have passed, and I urge this body to do it. I think it will be the most significant reorganization of the Department of Agriculture, literally, in my lifetime. It will save the taxpayers billions of dollars and it is something that the Senator from Indiana and I have worked on in a bipartisan fashion now for more years probably than either he or I want to think about.

With that, Madam President, I suggest the absence of a quorum. I withhold my request.

The PRESIDING OFFICER. The Senator from Indiana is recognized.

Mr. LUGAR. Madam President, I join my distinguished chairman in commending the U.S. Department of Agriculture reorganization legislation, the administration that offered the bill, my chairman, and others who have been so vigorous in support of it.

This clearly meets the challenge that the Nation has given to us; namely, is it possible that a bureaucracy can be reorganized, can be downsized, can be made more efficient.

The U.S. Department of Agriculture bureaucracy is the fourth-largest in all of Government. It has a significant project to rationalize what people are doing in that Department. It is apparent that the Secretary will have the authority to reduce 43 agencies to 29, to reduce the number of employees by 8,500, to reduce the expenditures by several billions of dollars over the next 5 years alone with the reorganization of the field offices as well as the bureaucracy. I think it is an exciting moment for our Government, and we are delighted that this action could occur in this Congress in these final days.

I thank the Chair. I yield the floor.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado.

## NAME REMOVED AS A COSPONSOR

Mr. BROWN. Madam President, I ask unanimous consent my name be removed as a cosponsor from S. 1770.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. MITCHELL addressed the Chair.

The VICE PRESIDENT. The majority leader.

Mr. MITCHELL. Mr. President, I ask that the Senate be in order and that all Senators take their seats.

The VICE PRESIDENT. The Senate will be in order. Senators will please take their seats.

## RECESS

Mr. MITCHELL. Mr. President, and Members of the Senate, the camera is located in this corner of the gallery. I ask that all Senators turn their chairs toward the camera, and then there will be a total of 10 flashes.

So I ask Senators to remain until the photographer has indicated that they have completed their work.

Mr. President, I now ask that the Senate stand in recess subject to the call of the Chair.

There being no objection, the Senate, at 2:34 p.m. recessed until 2:40 p.m.; whereupon, the Senate at 2:40 p.m. reassembled when called to order by the Presiding Officer (Mrs. MURRAY).

## EXECUTIVE SESSION

### NOMINATION OF H. LEE SAROKIN, OF NEW JERSEY, TO BE U.S. CIRCUIT JUDGE FOR THE COURT OF APPEALS FOR THE THIRD CIRCUIT

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER. The majority leader is recognized.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. GRASSLEY. We are on the nomination of Judge Sarokin; is that right?

The PRESIDING OFFICER. The Senator is correct.

Mr. GRASSLEY. Mr. President, I believe that a President is entitled to great deference in confirming executive nominees. And even in the case of judicial nominees, a President is entitled to some level of deference as well. I recognize that President Clinton won the election, and as President, he has the sole power to nominate Federal judges. I also accept that few of the individuals President Clinton has nominated to the Judiciary would have been nominated by Presidents Reagan or Bush. Whether the nominee comes from a Democratic or Republican President, I have applied the same criteria in determining whether to vote to confirm them: Does the individual have the requisite intellect, knowledge, integrity, judicial temperament, and philosophy to serve. Of the approximately 140 judicial nominees that President Clinton has transmitted, I have been able so far to vote to confirm 98 percent. I have voted to confirm both of his Supreme Court nominees. And I have voted for every lower court nominee but one, Rosemary Barkett, until now. Some of the Clinton lower court nominees have been of very high quality, such as Jose Cabranes of the second circuit and William Bryson on the Federal circuit. And the President's sole nominee for a Federal judgeship in Iowa, Mark Bennett, was a very fine selection. Therefore, I am sorry to say that I must now oppose a second nominee, Judge H. Lee Sarokin.

Judge Sarokin is a known quantity. He is 65 years old and has been a Federal judge in New Jersey for 15 years. Thus, his record is well established. And it forms my basis for opposing him. In my view, the district judges that should be elevated to the courts of appeals are those who have been the best and deserve a promotion. My reading of his record is that he is one of the worst Federal judges anywhere. I regret that he was appointed to the district court, and I see no reason why he should be elevated. I place no weight on the American Bar Association's "well qualified" rating of Judge Sarokin, any more than I have relied on the ABA's "not qualified" ratings of a number of Clinton judicial nominees that I have voted for. Any singularly activist judge who repeatedly follows his own views instead of the law, and who repeatedly disregards controlling precedent is not qualified, let alone "well qualified," to be a Federal appellate judge.

One of the reasons Senators should rarely oppose lower court nominees is that such judges are bound by precedent, unlike Supreme Court Justices. Some people thus might wonder why so many Senators would be concerned about a lower court nominee. Indeed, unlike district judges, court of appeals judges can do nearly nothing on their own. Those courts hear cases in panels of threes, and these judges need to be able to convince another judge to prevail in any case. Additionally, the third circuit is 1,000 miles from my home State of Iowa. So why should we spend time debating this nomination?

The answer is that Federal judges have power that extends beyond their circuits. Federal judges across the country look to courts of appeals decisions from other circuits when their own courts have yet to decide particular legal issues. Additionally, as the number of court of appeals decisions have increased, while the number of Supreme Court decisions have declined, the court of appeals is effectively the court of last resort for the vast majority of cases. Yesterday was the first Monday in October. And for the first time in modern history, the Supreme Court convened a new term without granting a single petition for a writ of certiorari, although it granted some in September. The Court is hearing only about half as many cases as it did in the early 1980's. That makes the courts of appeals more important than ever.

I questioned Judge Sarokin about a number of his troubling opinions at his confirmation hearing before the Judiciary Committee. For example, in 1991, in Lebrun versus Thornburgh, Judge Sarokin struck down two former provisions of the Immigration laws. One provision required that for children born out of wedlock to American fathers and foreign mothers to become citizens, the father must acknowledge the child before age 21. And the second required that the child live in the United States for a particular period before reaching age 28. Despite the clear Supreme Court precedent that congressional enactments on the subject of Immigration are entitled to great deference, Judge Sarokin struck down both provisions.

In disregarding the law requiring deference, Judge Sarokin instead set forth his moral objection to the statute. He wrote, "It is wrong for a father to have the unilateral ability to confer or to deny citizenship to his daughter." Judge Sarokin failed to defer to Congress, which determined that citizenship should not be afforded to someone who had never lived in the United States, or who had no connection or familiarity with our country. And Congress wanted to foster parental responsibility by making parents acknowledge paternity.

Judge Sarokin cited a 1972 Supreme Court decision that struck down certain classifications based on illegitimacy. It is telling to compare Judge Sarokin's treatment of this decision with Justice Breyer's view of the same case. Justice Breyer said that in light of the changes in society since 1972 in the number of children born out of wedlock and the social ills associated with such births, the 1972 decision might be worth revisiting.

While Members of Congress from both parties seek to take steps to discourage illegitimacy, and President Clinton has given speeches encouraging the postponement of pregnancy until after marriage, Judge Sarokin found distinctions on the basis of legitimacy to be "an archaic reminder of the past discriminatory treatment, in addition to being inhuman and unfair. In this way, a distinction on the basis of legitimacy is also an impractical distinction in today's society where unwed mothers abound and single parenthood has become a norm." Of course, over the last 25 years, illegitimacy has skyrocketed as judges like Judge Sarokin have destroyed legal distinctions between births to married and unmarried parents.

Even worse, Judge Sarokin extended the 1972 Supreme Court decision more broadly than any other judge. And in doing so, he disregarded other controlling Supreme Court precedents. The Supreme Court cases involved intentional classifications against illegitimacy. But Judge Sarokin struck down the residency requirements in the Lebrun case due to their "impact of discriminating against a protected group, in violation of the equal protection clause." But the Supreme Court has expressly held, in Washington versus Davis, that disparate impact is not an available theory under the 14th amendment. There must be both discriminatory intent and effect for a classification to violate equal protection. Yet, when I cited Washington versus Davis to Judge Sarokin, he did not even "pretend to remember the specific holding." This was a landmark equal protection case, and yet, Judge Sarokin was unfamiliar with it. This may explain why he applied his own views that run very much counter to those of the American people, rather than the law.

Does President Clinton really want to reduce illegitimacy, as he said recently? Or is there a gap between rhetoric and his real position when he nominates someone who would strike down statutes designed to reduce illegitimacy?

Let me expose another gulf between President Clinton's rhetoric and the actuality of this nominee's views. President Clinton opposes drug use. But Judge Sarokin thinks excessively broad notions of privacy are much more important than reasonable measures aimed at stopping drug use. In 1986, Judge Sarokin wrote in the Capua case that drug testing "Is George Orwell's Big Brother society come to life." He struck down random drug testing for firefighters. To avoid a case from a higher court that had approved drug testing for jockeys, Judge Sarokin actually ruled that the State's interest in making sure that jockeys' drug use did not interfere with racing is greater than its interest in making sure that firefighters' drug use did not interfere with fighting fires or rescuing victims. Where does President Clinton truly stand on the issue of reducing drug use? Does he believe what he says or what his nominee says?

There is also a large gap between President Clinton's professed views on crime and Judge Sarokin's views. Judge Sarokin opposes mandatory minimum sentences and sentencing guidelines that "deprive judges of the right to grant mercy in those circumstances in which the facts may cry out for it." In fact, Judge Sarokin has stated that it should be relevant in imposing a sentence that the defendant had a tough life.

These guidelines and mandatory minimums were enacted precisely to deprive judges like Judge Sarokin from quickly letting dangerous criminals back on the streets to commit new crimes upon new victims. President Clinton says he supports at least one kind of mandatory minimum, three-strikes-and-you're-out. Yet he chose this nominee.

Judge Sarokin told me that he has never departed from the sentencing guidelines, except when the Government wanted a stiffer sentence imposed. This is not so. And given Judge Sarokin's overall philosophical opposition to sentencing guidelines, I am concerned that he has not always followed the guidelines. For instance, last year, in United States versus M.B., a woman who had been the subject of incest and physical abuse had been charged with embezzlement. I am sympathetic to the victims of these crimes, and I understand when no reasonable person can resist any longer the abuse that they suffer. But in this case, the abuser was not present when the embezzlement occurred. Under the guidelines, the sentence was to be 10 to 16 months. The defendant asked for probation based on her mental and emotional background. The guidelines say that mental and emotional conditions are not relevant, unless they are extraordinary. Judge Sarokin found the defendant's mental condition was extraordinary. He sentenced the defendant to probation, mental health counseling, drug counseling or treatment, and restitution.

At his nomination hearing, Judge Sarokin stated that both the probation officer and the Government recommended the downward departure from the guidelines. Had the Government recommended probation, I would of course have cause to think that a departure from the guidelines was warranted. Since Judge Sarokin did not mention the Government's position in his opinion, I asked him to check the file and tell me whether indeed the Government recommended probation. In fact, the Government opposed probation and recommended that imprisonment be imposed, as the guidelines required. Judge Sarokin disagreed.

Judge Sarokin also opposes the use of illegally obtained evidence even if the police acted in good faith. The Supreme Court has ruled that evidence so obtained satisfies the requirements of the fourth amendment. Judge Sarokin also opposes requiring lawyers to disgorge payments they have received from the illegal proceeds of their clients' criminal acts. He believed that such a process hurts the lawyer-client privilege and harms the effective assistance of counsel. The Supreme Court disagreed with him on this issue as well. Does President Clinton agree with Judge Sarokin on these criminal law positions of Judge Sarokin?

Judge Sarokin also opposes pretrial detention of the accused, which he has called a "direct contradiction of the presumption of innocence." I think most people recognize that pretrial detention saves lives. A very large number of crimes today are committed by people who have already been arrested for another crime, but are set free before they have to face trial. Thousands of people are needlessly victimized by the policy that Judge Sarokin advocates. Let me mention one example that hit home for me recently. A former intern of mine, Daniel Huston, last month was fatally shot in the back in an attempted carjacking in suburban Maryland. Three persons were arrested in connection with the crime. One of them, according to the Washington Post, "was arrested last month and charged with possession of a handgun and drugs, according to Maryland court records. After posting bond, [the suspect] was released but failed to appear for a court date a week later. A judge issued an arrest warrant on Sept. 2, records show." Pretrial detention might well have saved Daniel Huston's life. Without pretrial detention, the State of Maryland expended resources to take this suspect into custody for the earlier crime. Then, they let him go. Then, when he failed to show, the State spent additional resources swearing out a warrant in order to spend resources to capture the suspect a second time. That is the wrong way to do it. I support pretrial detention, I am pleased that we have it in the Federal system, and I applaud the Senators of whatever party who have enacted it. But Judge Sarokin does not support it.

Although Judge Sarokin is not to blame for this murder, the American people are understandably fed up with policy views like his, which favor criminals and lead to unnecessary deaths and injuries. No wonder his nomination is opposed by the National Fraternal Order of Police and its New Jersey chapter, the Law Enforcement Alliance of America, the Federal Investigators Association, Organized Victims of Violent Crime, Citizens for Law and Order, and Citizens Against Violent Crime. Does President Clinton share his nominee's views on this issue as well?

Judge Sarokin's views on obscenity are also of great concern. In 1983. Judge Sarokin considered a challenge to the application of a zoning requirement that kept an adult bookstore from opening. The only issue before Judge Sarokin was whether the zoning ordinance had been applied in a discriminatory fashion. But Judge Sarokin used his courtroom as a soapbox, issuing personal opinions on the subject of pornography. These opinions were not necessary to decide the case, and their content is very troubling. He wrote:

> If a merchant announced his intention to open a store dedicated to murder mysteries, no matter how violent or bloody, nary a picket or protester would appear. But should one announce that sex is to be the main

theme, then organized opposition is inevitable. The public permits books, movies and television to inundate us with murder by gun or knife, strangling, rape, beatings and mayhem, all of which are illegal. But the depiction of sexual acts, most of which are legal, are condemned with a furor. We will tolerate without a murmur a movie showing the most brutal murder, but display a couple in the act of love and the outcry is deafening. . . . We must remember that we are dealing only with words and pictures, the harmful effect of which, if any has never been established.

I am appalled that Judge Sarokin reached out to write those words. The Supreme Court has ruled that legislative bodies can ban words and pictures that are obscene without demonstrating harmful effects from any of them. We can legislate based on the common sense view that these materials harm the people who pose for them, the people who use them, and the public generally. There is even evidence that some crimes are committed by people as a result of their exposure to obscenity. Judge Sarokin's extreme libertarianism on the subject of obscenity is very troubling.

Last November, all 100 Senators voted to disapprove of the Justice Department's position in the Knox child pornography litigation. That case had been decided by the third circuit, the court to which Judge Sarokin has been nominated. The third circuit ruled that child pornography need not portray the children in total nudity. In that case, the videos focused unnaturally on the scantily clothed genitals of young girls. The Justice Department argued that the child must be nude, and that the child must herself intend to act lasciviously. Thus, posed or sleeping young girls could not be protected in the Justice Department's view of the statute.

Because of the Justice Department's switched position, the Supreme Court reversed its decision to hear the case and sent the case back to the third circuit. And the third circuit again affirmed its position—a position that reflected congressional intent in enacting the statute—and rejected the Justice Department's liberation view. I shudder to think how a Judge Sarokin sitting on the third circuit would have decided this case.

Judge Sarokin to my knowledge has not decided any child pornography cases. And he might say that he strongly opposes child pornography. But even if that is true, that does not satisfy my concerns about his obscenity cases. Child pornography is not any more illegal than obscenity. One is not better than the other. Both are illegal. Both kinds of laws can be enacted without an explicit showing of harm. Both kinds of laws are to be equally enforced. But in a case where obscenity laws were not themselves at issue, Judge Sarokin reached out to decide that the harmful effects of these materials have not been established. And he also criticized citizens who sought to keep adult bookstores out of their neighborhood, notwithstanding what often occurs near locations where adult bookstores are established. I believe that citizens should be able, if they choose, to take legal measures to try to keep their families safe from obscene materials. They do not need a lecture from Judge Sarokin that first amendment principles, which do not apply to obscenity in any way, should make people welcome these bookstores.

Judge Sarokin, if confirmed, may be assigned to another appeal in the third circuit that is the subject of a Justice Department shift. Sharon Taxman, a high school teacher in New Jersey, was laid off her job solely because of her race, which is white. Taxman and another teacher were equally qualified and had equal seniority. The school district decided to lay off a business education teacher and the choice was between Ms. Taxman and a Ms. Williams, a black teacher. In the past, the decision of who to lay off in these circumstances would have been decided by lot. And I think that would have been fair.

Instead, the school district decided that in an effort to ensure diversity and to create role models for minority students, the teacher laid off would be Ms. Taxman because she was white. They made this decision despite the fact that the school district had never discriminated and that the proportion of teachers in the district that were members of minority groups was higher than the minority percentage of the population of the district as a whole. The district decided that this one department should always have an African-American teacher. Under the school District's view, for the first time, race conscious plans would be used to maintain a racial balance, not to achieve one. Moreover, the district's plan would go on without end.

The school district's position is not supported by Supreme Court decisions. And the Justice Department under President Bush and also under President Clinton took the side of Ms. Taxman against the School District. But recently, even though the Justice Department won the case in the district court, it filed a brief in support of the school district, even though the Department had obtained all kinds of client confidences and attorney work product from Ms. Taxman.

Given the importance of this case and Judge Sarokin's record on affirmative action, I fear that if this case comes before a circuit Judge Sarokin, Ms. Taxman's lawyer should just forget it. I think that despite the law on Ms. Taxman's side, there is virtually no chance that a circuit Judge Sarokin would support Ms. Taxman. Does President Clinton think that people should be laid off solely because of their skin color, even when the employer has never discriminated, and already employs a work force that has a greater proportion of minority members than the workforce as a whole?

Let us consider another of Judge Sarokin's cases, the notorious Kreimer versus Bureau of Police. In that 1991 decision, Judge Sarokin considered a case of a homeless person who had been barred from a public library. Mr. Kreimer, who had recently inherited a large sum of money, and who had refused job offers, failed to bathe. His odor made it impossible for other library patrons to use the library for its ordinary purpose. In addition, Mr. Kreimer harassed and followed individuals around the library, which also prevented people from using the library for its intended purpose.

Judge Sarokin ruled against the library's policy of removing people from the library who were not able to conform their conduct to that necessary for the functioning of a library and who were not using the library as a library. Judge Sarokin wrote that,

Society has survived not banning books which it finds offensive from its libraries; it will not survive banning persons whom it likewise finds offensive from its libraries. The greatness of our country lies in tolerating speech with which we disagree; the same toleration must extend to people, particularly where the same toleration must extend to people, particularly where the cause of revulsion may be of our own making. If we wish to shield our eyes and noses from the homeless, we should revoke their condition, not their library cards.

The library insisted that people act a certain way to use the library so that others may also use it. But Judge Sarokin said that it was the fault of the people who followed the rules that the homeless Mr. Kreimer could not behave. He said that the public could not insist that Mr. Kreimer follow the rules; rather, the community effectively had to turn the library into a homeless shelter. Of course, the town spent many millions of dollars on social services, but because of Judge Sarokin's ruling, which was eventually overturned, the town had to spend hundreds of thousands of dollars on legal fees, money that could have gone to better the town and its people.

President Clinton has delivered speeches stressing the importance of personal responsibility. But Judge Sarokin believes it is the responsibility of the community to make sure that homeless people are clean or otherwise tolerate the smell and behavior of homeless people in libraries. Is it President Clinton's speech or his nomination of Judge Sarokin that reflects his true view of personal responsibility?

Judge Sarokin's decision applied his personal views, not the law. Describing himself as a "flaming liberal," Judge Sarokin recently stated his personal view that,

If we truly want to deal with crime and make our streets pleasant and safe, we must identify the mentally and physically ill, the drug addicts and the alcoholics, and either treat them or hospitalize them. And we must feed, clothe, and shelter the homeless and, most important, for those who can benefit, we must educate and train them so that they can have some hope and some reason to live.

What a remarkable coincidence it is that Judge Sarokin's personal view and the decision he reached in Kreimer coincided exactly.

Not only does Judge Sarokin's ruling defy common sense, it also disregarded controlling Supreme Court decisions. The cases relied on were twisted beyond recognition in order to support the result that Judge Sarokin had already determined that he wanted to reach. Although he testified that the third circuit agreed with him on the issue of access, this is plainly false. Judge Sarokin considered the library to be a designated public forum, a key issue on the subject of access. The court of appeals disagreed. Moreover, Judge Sarokin once again failed to follow Supreme Court precedent by ruling that the library policy was "an irrational and unreasonable wealth classification with a disparate impact on the poor." As I mentioned in connection with the Lebrun case, disparate impact has been foreclosed as a basis for equal protection decisions by the Supreme Court. In fact, Judge Sarokin's decision in Kreimer shows even more disregard for precedent than did Lebrun. In Lebrun, at least the classification related to a group, children born out of wedlock, who receive heightened scrutiny under the equal protection clause. But the Supreme Court 20 years before the Kreimer decision ruled that the poor are not a suspect class that is entitled to heightened constitutional protection. Once again, Judge Sarokin followed his own social views rather than the law. Nor should we forget his cases in which he has explicitly failed to follow binding precedent.

Judge Sarokin also has the unfortunate distinction of being removed from a case by a higher court for an appearance of bias. This occurred only 2 years ago in a case involving cigarettes. In deciding a mere discovery motion, not in making a final decision in the case, Judge Sarokin wrote,

In light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their own prosperity!

The third circuit found that these comments reflected an appearance of bias on Judge Sarokin's part. And the appellate court found that Judge Sarokin had committed "a judicial usurpation of power." The New York Times, which editorialized in the third circuit's opinion, agreed, finding that Judge Sarokin had "flunked an important test of credibility."

Moreover, Judge Sarokin made his comments about the breast implant industry even though no breast implant company was a defendant in the case. So Judge Sarokin made the comments about breast implants based solely on personal opinion and not on any evidence. Additionally, the cigarette materials were under a protective order. Judge Sarokin's decision destroyed any effect of that protective order, by quoting from the documents. When the third circuit took Judge Sarokin off the case and revoked his ruling, there was no way for the defendant to be made whole for the damage that Judge Sarokin caused it.

It has been argued that Judge Sarokin cannot really be biased against tobacco companies because he ruled in their favor in pretrial motions more often than not. I submit that this is a weak argument. Judges who want to rule against particular litigants frequently rule in that litigant's favor in pre-trail motions, then rule against them when it matters. When the losing litigant appeals, what arguments for reversal can he raise? Since all of the pretrial rulings went in favor of that litigant, the litigant will have no basis for appeal. That is one of the reasons why it is so hard to show bias and why it is so infrequent that judges are removed for an appearance of bias.

Some will say that Judge Sarokin would not have been removed from the case under a very recent Supreme Court decision. That may be true. However, the law that the third circuit applied was certainly the governing law at the time that Judge Sarokin made his decision. And the bias issue is quite real, given that Judge Sarokin accepted an award from an antismoking group for this decision. Even worse, after he was taken off the case, Judge Sarokin wrote, "I fear for the independence of the judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence, in forceful language that addresses the precise issues presented for determination." To be sure, Judge Sarokin, in a confirmation conversion, now says that he regrets the language that he used. Of course, these words cast unjustified aspersions on the character of the judges who reversed him. And because they were written down after reflection, not oral comments, I think one can conclude that Judge Sarokin had such animosity toward the tobacco companies that he had lost all ability to be objective.

Under our constitutional system, Congress makes the laws. Judges rule on their meaning and their constitutionality. In deciding constitutionality, judges are to disregard any personal opinions. Judge Sarokin, however, never misses an opportunity to state his view of the wisdom of laws, a subject that should not concern him. For example, in 1980, Judge Sarokin wrote that:

Section 94 of the National Bank Act should be repealed or the appellate courts should reconsider the constitutionality thereof. . . . Whatever justification existed for the original enactment no longer exists today . . . having thus vented its views on the statute in question, the court considers the subject case.

Federal judges are not to vent their views. That is not their role. That is not consistent with the judicial temperament that the Framers intended and that the American people are entitled to.

Whether the issue is crime, illegitimacy, drugs, obscenity, personal responsibility, or sentencing, Judge Sarokin has revealed himself to be the Joycelyn Elders of the judiciary.

Judge Sarokin's nomination is like something out of Casablanca. In that movie, Bogart is asked why he came to Casablanca. He replies that he came to Casablanca for his health, for the waters. But he is told that Casablanca has no waters; it is in the middle of the desert. Bogart replies, "I was misinformed." I thought that President Clinton was a new Democrat. I thought he was tough on crime, illegitimacy, personal irresponsibility, and drugs. I think the American people want to believe that. But when President Clinton nominates judges like Judge Sarokin to important posts, then, like Bogart in Casablanca, the American people have been misinformed.

It is bad enough to give a lifetime appellate judicial appointment to someone who holds such disturbing views. What is worse, Judge Sarokin ignores the law and imposes those views in his decisions through judicial activism. If there is a more activist sitting Federal judge in this country, I am unaware who it is. I fear that Judge Sarokin was nominated precisely because of his radical views and style of judging.

Mr. President, when nominees are considered, we in the Senate often recognize the checks and balances function of the advise and consent clause of article II. But we often overlook a critical reason why the Framers of the Constitution gave the power to nominate to the President and the power to confirm to the Senate. That system was adopted in order to hold the President and Senators accountable for appointments. As Hamilton wrote in Federalist No. 77, "The circumstances attending an appointment, from the mode of conducting it, would naturally become matters of notoriety, and the public would be at no loss to determine what part has been performed by the different actors." As a result, "The blame of a bad nomination would fall

upon the President singly and absolutely. The censure of rejecting a good one would lie entirely at the door of the Senate. * * * If an ill appointment should be made the Executive for nominating and the Senate for approving would participate though in different degrees in the opprobrium and disgrace."

In my view, the appointment of H. Lee Sarokin to the third circuit would be a disgrace for the reasons I have stated. The President is solely responsible for making such an ill-considered nomination. And any Senator who supports it will share in the responsibility if he is confirmed. The American people will hold both the President and any Senators who support the nomination accountable for it, as the Framers intended. I know that Senator BRADLEY, for whom I hold great respect, strongly favors Judge Sarokin's confirmation. Regrettably, I do not share his opinion. For myself, I am quite sure that I fulfill my constitutional responsibility as to this nominee by opposing this poor appointment.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The Senator from Mississippi [Mr. LOTT] is recognized.

Mr. LOTT. Mr. President, I rise to oppose the nomination of H. Lee Sarokin, U.S. district judge for New Jersey, to be a judge to the U.S. Court of Appeals for the Third Circuit.

I commend the distinguished Senator from Iowa for the remarks he just delivered. I thought they were very thoughtful, and obviously as a member of the Judiciary Committee, he has done a lot of work on this nomination. I certainly agree with his findings with regard to this confirmation.

I, too, have the highest respect for the Senator from New Jersey [Mr. BRADLEY], and I understand his support for this nominee. But after reviewing Judge Sarokin's conduct in the lower court and a number of law review articles he has written, and cases that he has participated in, I just do not feel that it is proper to promote this judge to the U.S. Court of Appeals for the Third Circuit.

Mr. President, I remember in 1968, when I was a relatively young man, I was privy to a conversation between the then chairman of the House Rules Committee, Chairman Bill Colmer, and the newly elected President of the United States. That President, a Republican, called this House committee chairman to establish contact with him and tell him he wanted to work with him on behalf of our country. And I remember Chairman Colmer, who was a man of relatively few words, giving one piece of advice to this newly elected President. He said: "Nothing that you do will be more important for the long-term future of the country than the appointments you make to the Federal judiciary." He said: "We have major problems now with activist Federal judges that are trying to write the laws instead of interpreting the laws and the Constitution, who seem to be more concerned with the rights of the criminals than the rights of victims and the rights of society. Judicial appointments will be the most important thing you do. I hope you will appoint strong law and order men and women to the Supreme Court and throughout the judiciary."

That conversation made an indelible impression on me, because I was hearing one end of a conversation between a Congressman and the President of the United States, and I certainly agreed with what Chairman Colmer has said.

I oppose this nomination because Judge Sarokin has a soft-on-crime judicial philosophy and does not have, in my opinion, the proper judicial temperament for this appointment. I oppose him on the basis of philosophy, on the basis of temperament but, most importantly, I oppose him on the basis of judgment. I think that is totally legitimate territory for Members of the U.S. Senate, in our role of advise and consent, to consider a judge's, or prospective judge's, judgment.

Philosophy should not be the determining factor. There are many times when Democrats and Republicans, conservatives and liberals, vote across party lines and philosophical lines. I have done that this year. I voted to support one of the President's nominees to the Supreme Court this year.

Temperament certainly is something we should consider but, again, it is not totally definitive. But judgment is the point that I have used on the floor of this Senate with regard to other nominees in the past, where if there is a problem there, if there is a question there, if a man or woman lacks good judgment, then surely they should not sit in the appellate court system.

I have said before here in the Senate, Mr. President, that I have always felt the President of the United States is entitled to his own nominations, and only in extreme circumstances should the Senate vote down a Presidential nominee. I still feel that way. But that brings me back to the point that I was making about the conversation earlier. These are very important appointments, and Presidents need to be very careful about the men and women they appoint to these positions. In this case, I have great difficulty reconciling the President's rhetoric about fighting crime in America and this appointment and some of the other appointments.

When I have been home recently, I have had constituents come up to me and say: We heard about the crime bill, but whether or not that was a good bill or did all it was supposed to do, what is the Federal role? What can you do at the Federal level to fight crime in America?

Our constituents quite often are smarter than we are. They know that in the final analysis, crime is going to have to be fought at the local level and in the hearts of men and women and in the families and in the communities, with policemen and State law enforcement agencies. The role of the Federal Government really is quite limited. But we have a clear role. There is no question that our law enforcement organizations—FBI, DEA, and others—are very important in fighting crime in America.

But one place where we clearly can help fight crime is the confirmation process of judges who go on the bench and start coming up with the problems we have in America now, where we have endless appeals. We have not been able to reform habeas corpus. There was nothing in the crime reform package to deal with that. Yet, if you ask average Americans what do you think we ought to do in the criminal justice system, that is one they will certainly mention. Stop these endless, expensive appeals.

Another one is the exclusionary rule. We did nothing to support the good-faith efforts of our policemen in seizing evidence and arresting victims. That was not in the crime bill either. The people we put on the Federal bench have a lot to do with the criminal laws in America, how they are interpreted, how our district attorneys and attorneys general can do their jobs, and certainly our law enforcement people. So when I see a nominee like this by the President of the United States, I first have to question what would this activist judge do on the appellate court, and why did the President nominate such a person with the record that he has?

Judge Sarokin is an extreme case. This judge is another extremist judge who has been sent to the Senate by the Clinton administration who, in my opinion, is out of the mainstream. I remember a few years ago a nominee was defeated because he was not in the mainstream. This judge is clearly not in the mainstream.

I remember in the midst of the recent crime bill debate the administration sent the nomination of Rosemary Barkett, an obviously soft-on-crime judge, to the Senate for confirmation.

Judge Barkett, nominated to the Eleventh Circuit Court of Appeals, blamed society for criminals' behavior. She was known as the most procriminal judge in the State of Florida.

While the President has been talking about being tough on criminals, he sent that judge to the Senate, and now he has sent this judge to the Senate for promotion to a higher court. These are judges who, based on their record, it seems to me, would undermine our efforts to keep our streets safe and keep criminals behind bars.

The crime bill has been signed. Maybe it will help. Obviously, we still

need to do more to fight crime in America. The American people want more action on our part.

The nomination of Judge Sarokin is not the type of action, I believe, that Americans want. Over 80 percent of Americans feel that the judicial system is "too soft" on crime and criminals. Judge Sarokin is the poster boy for soft-on-crime judges. These are some of the things he believes.

He believes that criminals should not be jailed before conviction. In many instances, think what you are talking about here. These are potential murderers, rapists, and violent felons. But they should not be jailed before conviction? What do you think they are going to be doing? They are going to be running loose on the streets, in many instances doing the same thing again. This is not a position that is in the mainstream of thinking for the American people.

He believes that there should be no minimum sentencing or even no uniform sentencing. Judge Sarokin, then, is against "three strikes and you're out," which was the amendment that I got added to the Senate crime bill last year and President Clinton stood in the front of the House Chamber in the joint session and endorsed. I do not see how you reconcile that position with the position of this judge. He is against minimum sentencing even if it is three times you have committed a violent felony.

He believes there should be no good faith exception to the exclusionary rule. If policemen stop a car in good faith and find drugs in the car, then, in Judge Sarokin's eyes, the cops are bad and the drug dealer should go free.

How ridiculous. How many of us have heard about and read about cases where, on technicalities, evidence is thrown out and criminals go free back on the streets to commit their crimes again? We all know the statistics. Most of the really heinous crimes in America are committed by repeat offenders, and many times they go through the revolving door right back out on the street because the policemen did not comply with every little technical requirement that Federal judges, judges like this one, have imposed on the law enforcement system in America.

This judge believes that crime is society's fault, because society does not provide enough social services like job training. Oh, surely we can do more there. We should do it. Preventive efforts, absolutely. But is crime society's fault? I do not accept that.

Judge Sarokin's views are definitely out of the mainstream. In fact, in May of this year, at a conference he described himself as "a flaming liberal." That has been referred to earlier. I did not call him that. That is what he called himself. And somebody might say, "So what?"

Well, for a judge, a man or woman, who is supposed to be showing impartiality, they should not describe themselves as flaming anything, liberal, conservative or anything else. They should consider the facts of the cases and not be coming at it from a biased position like I think this judge does. We do not need social crusaders on the court of appeals. We still have too many there today. Judge Sarokin has overstepped his bounds as a judge for political ends. And here are some of the things that he has done or that has happened to him.

He has been removed from a case by the third circuit, a lawsuit against several tobacco companies he had presided over for 9 years. Because of Judge Sarokin's bias, the third circuit court blasted him, in what I thought was unusually tough language, when they said "judicial usurpation of power" and for "ignoring fundamental concepts of due process."

This is a rare event. It is unusual when the appellate court removes a district court judge, certainly when he has been on a case for 9 years, because he was so biased and exhibited it so clearly that he had ignored fundamental concepts of due process.

This judge engaged in a personal crusade to free a convicted cop killer, James Landano. Judge Sarokin was reversed not once, not twice, not three times—four times—by the U.S. Court of Appeals, to which he now would be promoted, and by the Supreme Court for getting involved in a State criminal matter because he made up his mind about how that case should be decided about the innocence or guilt of this criminal.

This judge ruled that homeless people can loiter and harass patrons of public libraries, expanding the rights of the homeless at the expense of patrons who go to libraries to read, not to be harassed.

This judge has been called by the New Jersey Law Journal the most liberal and most reversed judge in New Jersey.

This judge, Judge Sarokin, has been opposed by many organizations, including the 250,000-member National Fraternal Order of Police and Organized Victims of Violent Crime.

Judge Sarokin has shown hesitancy in getting tough on criminals. He has shown, in my opinion, a lack of respect for due process, for community standards, for law enforcement agencies.

Where are our colleagues now who on this floor called for more crime control, for tough crime control this year when we were talking about the crime bill? Where are they now when a judge with certainly a very questionable record when it comes to criminals comes before this Chamber for confirmation?

Mr. President, I ask unanimous consent to print in the RECORD a report by Thomas L. Jipping, called "Flunking the Credibility Test: Judicial Temperament and Judicial Philosophy," parts 1 and 2.

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

[From Coalitions for America, July 20, 1994]

FLUNKING THE CREDIBILITY TEST: JUDICIAL TEMPERAMENT AND JUDICIAL PHILOSOPHY

(An analysis of President Bill Clinton's nomination of H. Lee Sarokin to be a judge on the U.S. Court of Appeals for the Third Circuit by Thomas L. Jipping[1])

"Judge Sarokin Flunked an Important Test of Credibility"—Editorial, The New York Times, 9/10/92.

President Clinton has nominated H. Lee Sarokin, currently a U.S. District Judge in New Jersey, to the U.S. Court of Appeals for the Third Circuit (PA, NJ, DE, VI). His record includes a rare combination of factors arguing against confirmation. First, Judge Sarokin has demonstrated that he lacks judicial temperament. His personal bias has been so severe that the U.S. Court of Appeals—the very court to which he has now been nominated—had to remove him from a case over which he had presided for nine years. The Supreme Court has held that this extraordinary step is reserved only for situations where a judge's behavior amounts to a "judicial 'usurpation of power'."[2]

In addition, Judge Sarokin has an extremely activist judicial philosophy that places him far outside the mainstream. He has made unusually plain his intention to use his judicial role to pursue social or personal causes. Pursuing that goal, he repeatedly ignored or misinterpreted precedent, applied incorrect standards, or invented new rights. As a result, Judge Sarokin has repeatedly been reversed and chastised by higher courts, sometimes several times in the same case.

The court of appeals has criticized him for basing decisions on his "own views"[3] or his "own intuition" and that he tries "to superimpose [his] own view of what the law should be in the face of the Supreme Court's contrary precedent."[4]

This nominee, then, has the distinction of both an injudicious temperament and an extremely activist philosophy of judging. While reasonable people may differ about the second, they should not tolerate the first. Most Americans would, no doubt, be utterly mystified at the criteria that would justify putting someone like this on the second most powerful court in the land.

I. PERSONAL INFORMATION

Born in New Jersey in 1928, H. Lee Sarokin received his B.A. from Dartmouth College and his law degree from Harvard. He was in private practice in Newark from 1955 to 1979, during which time he served as assistant county counsel for Union County, New Jersey from 1959 to 1965. President Jimmy Carter appointed him to the U.S. District Court in New Jersey in 1979.

II. JUDICIAL TEMPERAMENT

Debates over judicial nominees usually focus on judicial philosophy. The cases reviewed below, along with many others, demonstrate that Judge Sarokin has an extremely activist record. He is unusually plain in announcing and implementing his intention to use his judicial role for personal and social causes.

Even those Senators, however, who adopt a fairly deferential posture on judicial nominations, should at least demand that nominees exhibit appropriate judicial temperament, the ability to be fair and impartial. As

[1]Footnotes at end of article.

the Supreme Court has said, "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."[5] Every Senator—Democrat and Republican, liberal and conservative—should demand appropriate judicial temperament.

Judge Sarokin has demonstrated that he lacks these essential qualities. He presided over a very high-profile and lengthy lawsuit against the tobacco industry. His decisions and behavior in the case evidenced such personal bias that the U.S. Court of Appeals took the extraordinary step of removing him from the case because he could no longer maintain even the appearance of impartiality.

*A. A "Judicial 'Usurpation of Power'"*

1. facts

The daughter of a man who died after smoking for 40 years sued several tobacco companies and the Tobacco Institute. During the discovery process, she sought documents related to the Council for Tobacco Research, a foundation formed to finance research on the potential health hazards of smoking. The defendants objected, arguing that the documents were protected by the attorney-client privilege since the Council was created to respond to possible legal action. The plaintiff argued that, if the privilege did apply, the crime-fraud exception to the privilege should still make the documents available since the tobacco companies were allegedly using the legal advice to further an ongoing conspiracy of fraud. The plaintiffs sought to publicly disclose as much of this information as possible.

Judge Sarokin appointed a special master who concluded that the attorney-client privilege did apply to some of the documents at issue. He also appointed a magistrate who decided that the crime-fraud exception to the attorney-client privilege did not require the defendants to produce those documents. The plaintiffs appealed to Judge Sarokin.

2. Judge Sarokin's decision

Judge Sarokin reversed the magistrate's decision and, in his published opinion, actually included portions of the documents the magistrate had concluded were protected by the attorney-client privilege. He then launched a scathing attack on the tobacco industry, beginning with these words:

"In light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, sale over safety, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their own prosperity! As the following facts disclose, despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation."[6]

3. The Court of Appeals' decision

Because this decision concerned a discovery request and was not a final judgment, the defendants could not appeal it in the ordinary manner. Instead, they went to the U.S. Court of Appeals and asked for a writ of mandamus.[7] The defendants sought a writ ordering Judge Sarokin to vacate his order that they produce the documents and removing Judge Sarokin from the case because of his personal bias.

It is very important to understand what an extraordinary step this is for a court of appeals to issue a writ of mandamus. Citing Supreme Court precedent, the court of appeals wrote: "Because the remedy is so extreme, courts should invoke it only 'in extreme situations.'"[8] The Supreme Court has held that "only exceptional circumstances amounting to a judicial 'usurpation of power' will justify the invocation of this extraordinary remedy."[9]

*a. reversing Judge Sarokin*

Judge Sarokin initially faced a critical choice, namely, whether to be deferential to, or substitute his own judgment for, the magistrate's decision. The court of appeals called it "undisputed"[10] as well as "clear and unambiguous"[11] that the correct standard was deference; Judge Sarokin could only consider the evidence that was before the magistrate and could only overturn a decision that was "clearly erroneous and contrary to law."

Judge Sarokin ignored the law, ordered the parties to submit evidence from a different case that the magistrate had not even seen, and substituted his own judgment. This was a sufficiently serious judicial "usurpation of power" to warrant the "extraordinary" and "exceptional" remedy of a writ of mandamus.

*b. removing Judge Sarokin*

But Judge Sarokin's behavior in this case was even more serious. The court of appeals called its decision to remove Judge Sarokin's "a most agonizing aspect of this case."[12] Noting that the media had prominently reported Judge Sarokin's accusations throughout the country,[13] the court wrote that "it is impossible for us to vindicate the requirement of 'appearance of impartiality' in view of the statements made in the district court's prologue to its opinion."[14]

"The New York Times applauded the Third Circuit's decision to remove Judge Sarokin, editorializing that he had been "far out of line" and concluding: "Judge Sarokin flunked an important test of credibility."[15]

The court of appeals concluded not only that Judge Sarokin had committed a judicial "usurpation of power" in his substantive decisions in this case, but also that he had forsaken even the appearance of impartiality, rendering him unable to be fair and no longer fit to preside in this litigation. This extraordinary conclusion relates to Sarokin's judicial temperament rather than his judicial philosophy and ought to gravely concern those who ordinarily are tolerant of a nominee's substantive views.

Judge Sarokin not only committed a judicial usurpation of power, but thereafter accepted an award from an anti-smoking interest group. The Group Against Smoking Pollution (GASP) give its 1993 C. Everett Koop Award to Judge Sarokin "for significant achievement toward creating a smokefree environment." According to the New Jersey Law Journal, "Sarokin won the award for sentiments contained in an opinion he wrote in February 1992 in Haines v. Liggett Group."[16] To state is clearly, Judge Sarokin abandoned the appearance of impartiality in Haines, for which he was removed as the presiding judge and then rewarded by an interest group. It would be difficult to imagine a more stark violation of a judge's duty. If Judge Sarokin wants to be an anti-smoking crusader, he should resign from the bench and work toward that political and social cause.

*B. A Pattern of Disregarding the Law*

Even if this were an isolated incident, it would be a terrible stain on this nominee's record and would seriously call into question his fitness to serve on the very court that was forced to remove him from presiding over the Haines litigation. But this was not the first time that Judge Sarokin ignored the law and substituted his own judgment in this manner. And is was not the first time that the U.S. Court of Appeals had to take the extraordinary step of issuing a writ of mandamus on the same issues to correct Judge Sarokin's judicial usurpation of power.

Discovery in the Haines litigation was supervised by a magistrate and merged with another lawsuit against the same defendants brought by the same attorney. In March 1985, after two years of discovery, the magistrate granted the defendant's request for a protective order. The plaintiffs appealed to Judge Sarokin, who reversed the magistrate's decision and ordered production of the documents. The defendants sought a writ of mandamus to block Judge Sarokin's decision, which the court of appeals granted.

1. standard of review

The Federal Magistrate Act states that "a magistrate's order is not to be reconsidered unless it is 'clearly erroneous or contrary to law.'"[17] The U.S. Supreme Court,[18] the Federal Rules of Civil Procedure[19] and the General Rules of Judge Sarokin's own court[20] say the very same thing. Judge Sarokin ignored the law and substituted his own judgment. As the court of appeals put it: "The 'clearly erroneous' standard obviously would have been less onerous for the defendants than was the district court's plenary review standard."[21] Judge Sarokin ignored the law precisely so he could be as onerous as possible on the parties he disfavored. Such ad hoc invention of new judicial standards raises serious questions about his suitability to be a judge at all.

2. interpretation of precedent

Judge Sarokin also completely misinterpreted the applicable Supreme Court precedent.[22] He again had to decide between an interpretation that was deferential to the magistrate's decision and one that allowed him to substitute his own judgment. He chose the latter, and the reason did not escape the court of appeals. Judge Edward Becker cited Sarokin's "perception that [the magistrate's order] would favor the economically powerful defendants."[23] Indeed, Judge Sarokin had written that he could not "ignore the might and power of the tobacco industry and its ability to resist the individual claims asserted against it and its individual members."[24] This was also serious enough to constitute an independent ground for the writ of mandamus.

This is a rare, but very serious, matter. The Supreme Court has said that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."[25] Judge Sarokin has failed this test in the most blatant and obvious way. No Senator, regardless of the view of judicial philosophy, should support someone who thus lacks the demonstrated ability to be fair and impartial.

III. JUDICIAL PHILOSOPHY

For those who evaluate judicial nominees also according to judicial philosophy, seeking to ensure that those activists who are plainly outside the mainstream do not occupy lifetime positions on the federal bench, Judge Sarokin's record offers great cause for concern. The New Jersey Law Journal observed that "Sarokin, the former civil litigator who was appointed by President Carter

in 1979 and who is considered the most liberal member of the federal bench the New Jersey, has met resistance from the higher court. Although the Third Circuit does not keep statistics on reversals, Sarokin may be the most reversed federal judge in New Jersey when it comes to major cases."[26] The Almanac of the Federal Judiciary also states that "Sarokin is the most liberal judge on the District of New Jersey bench, according to a majority of civil attorneys."[27]

*A. Fighting to Free a Cop-Killer*

In 1976, a Newark, New Jersey, police officer was shot several times at close range and killed. Vincent Landano was convicted of the crime and sentenced to life in prison. His efforts to appeal his conviction and to obtain a new trial were unsuccessful and Landano sought freedom in 1982 by petitioning for a writ of habeas corpus in state court.

He offered the statement of Raymond Portas, a witness who had placed Landano at the crime scene but had recanted his testimony, claiming undue police influence. During the hearing on Landano's petition, however, Portas was very equivocal: "It's hard to know whether you've been influenced or not, as far as I am concerned, I don't know."[28]

The New Jersey Superior Court denied Landano's petition, finding Portas' recantation to be "untrustworthy" and "lack[ing] the capacity to cast serious doubt upon the truth of his trial testimony."[29] While Portas had apparently believed that his testimony alone convicted Landano, three other witnesses, including an accomplice, also testified. The New Jersey Supreme Court also denied relief.

In October 1985, Landano sought relief from Judge Sarokin. Because the prosecutor had repeatedly reminded Portas that his testimony was under oath, Judge Sarokin insisted that the state court's evidentiary hearing "was not a search for the truth, but rather an exercise in harassment and intimidation in an effort to dissuade the witness from any recantion."[30] He personally believed Portas' recantation[31] but a federal statute[32] prevented him from simply substituting his own judgment outright for the state court's finding. He seemed to adopt freedom for his cop-killer as a personal mission, writing:

"The court candidly admits an exhaustive search for grounds to grant the writ, but could find none without violating the court's oath to follow existing precedent. In upholding the law, the court fears a great injustice has occurred and respectfully invites reversal of its decision.[33]

In "a bitter exercise in judicial restraint,"[34] Judge Sarokin denied Landano's petition. Landano then took Sarokin's invitation for reversal to the U.S. Court of Appeals. That court declined, holding that the state court's hearing "comported with due process standards and was otherwise 'full, fair, and adequate.'"[35] The U.S. Supreme Court refused even to review this decision.[36]

Judge Sarokin continued his quest to free this cop-killer. On June 7, 1989, Landano sought to reopen the previous habeas corpus proceeding in Judge Sarokin's court because he supposedly had new evidence. This time, Judge Sarokin issued a conditional writ of habeas corpus and ordered New Jersey to release Landano or grant him a new trial within 90 days.[37] Landano has been free to this day.

The U.S. Court of Appeals overturned Sarokin's order, ruling that a federal district court has no jurisdiction until a convict first exhausts his remedies in state court.[38]

On May 1, 1991, after staying Landano's arrest following the Third Circuit's decision, the New Jersey Supreme Court ordered that Landano could be arrested. The next day, Judge Sarokin granted Landano federal bail so he could remain free pending a decision on his latest state court appeal.[39] Judge Sarokin then attempted to bully the New Jersey courts into granting Landano's habeas corpus petition by declaring:

"Either the state court will grant the relief which this court previously granted or, failing same, this court will do so when the matter is returned to it—the same facts and law being presented."[40]

He offered the following social commentary:

"We must ask ourselves why the current clamor and rush to carry out death sentences, but no similar urgency in freeing one who might be wrongly convicted and confined. * * * Rather than crying out for speedy executions for those who have been convicted of capital crimes, we should be crying out for prompt release of those who may have been wrongly convicted and confined—cries of freedom rather than death.[41]

After securing the release of this cop-killer, and virtually ordering the state courts to give him yet another chance, Judge Sarokin next ignored the clear precedent of the U.S. Court of Appeals in seeking to give Landano additional tools to enhance his chances for success in future proceedings. When the FBI refused Landano's request under the Freedom of Information Act (FOIA) for the agency's files on his case, Judge Sarokin ordered the FBI to comply. He rejected the FBI's argument that two exemptions from FOIA, protecting individuals named in such documents[42] as well as individuals who supplied information during an investigation,[43] applied.

The Third Circuit reversed Judge Sarokin regarding individuals named in the documents.[44] The U.S. Courts of Appeals for at least seven different circuits have upheld this principle—including the Third.[45] On appeal, the U.S. Supreme Court left this conclusion undisturbed. It seems Judge Sarokin's commitment to his "oath to follow existing precedent"[46] had evaporated.

While the Third Circuit affirmed Judge Sarokin regarding individuals who supplied information during the investigation, this decision was unanimously reversed by the U.S. Supreme Court.[47] As such, none of Judge Sarokin's efforts to help Landano by compromising the FBI were consistent with the law.

The Third Circuit later reversed Judge Sarokin one more time on the question of granting Landano federal bail so he could remain on the streets. In doing so, the court demonstrated just how much Judge Sarokin was letting his personal bias displace his judicial duty by flatly rejecting all of Judge Sarokin's arguments. One of these was that "this court has already determined . . . that petitioner may be innocent of the charges for which he was convicted."[48] The court of appeals pointed out that "probable innocence" is a factor relating to granting a writ of habeas corpus, not to granting bail.[49] Judge Sarokin also argued that Landano "has been at large since this court issued the writ of habeas corpus . . . and, to the court's knowledge, has done nothing to suggest that he presents a risk of flight or danger to the public."[50] The court of appeals reminded him that there was no legal impediment to the arrest.[51]

*B. Refusing to Follow Supreme Court Precedent*

In *Blum v. Witco Chemical Corp.*,[52] Sarokin again blatantly disregarded the precedents of both the U.S. Court of Appeals and the U.S. Supreme Court in his quest for his own preferred results.

In this case, three chemists brought an age discrimination suit against their former employer. Sarokin awarded them attorney's fees plus a 20% multiplier for pre-judgment delay and risk. The Third Circuit ordered Sarokin to reconsider the multiplier award in light of a recent Supreme Court decision.[53] Sarokin appointed a magistrate who recommended that the plaintiffs' request for a free multiplier be denied. Sarokin originally adopted the magistrate's recommendation but, after considering the plaintiffs' objections, changed his mind and awarded a 50% multiplier instead!

Judge Sarokin's opinion began as follows:

"The Supreme Court has sent a Christmas gift to this court delivered via the Third Circuit Court of Appeals. It is called "How to Make an Attorney Fee Multiplier" However, the instructions are so confusing and inconsistent that this court has been unable to put the gift together.[54]"

Even though Sarokin conceded that the Supreme Court's decision precluded a multiplier in this case,[55] he increased the multiplier he was originally ordered to reconsider. Not surprisingly, the Third Circuit reversed Sarokin and correctly identified the problem by writing that "the district court, without concealing its disapproval of both the Supreme Court's decision and ours, proceeded in accordance with its own views."[56] Because Judge Sarokin had offered no explanation for awarding a 50% multiplier (after earlier rejecting the plaintiffs' request for the same thing), the court of appeals observed:

"[T]he error with the district court's judgement was the 50 percent multiplier it arrived at was supported only by the court's own intuition. This is precisely what the Supreme Court and this court held is impermissible. Neither the district court nor this court is free to superimpose its own view of what the law should be in the face of the Supreme Court's contrary precedent."[57]

*C. Inventing Rights*

1. the right to loiter and harass library patrons

*a. facts*

In perhaps his most infamous decision, Sarokin turned one town's effort to ensure that all its citizens can use its library facilities into a personal crusade that cost the town nearly a quarter of a million dollars and damage to its reputation. It also exacted a heavy cost from the cause of justice.

Richard Kreimer was a homeless man in Morristown, New Jersey, and often visited the town's public library. He claimed he did so to read or contemplate, but the library staff contended that Kreimer engaged in offensive and disruptive behavior including staring at patrons and staff, following them around the library and even when they left the building, talking loudly to himself and others, and emitting such a foul odor that patrons were prevented from using entire portions of the library and staff were prevented from effectively accomplishing their duties.[58] The staff kept a detailed log documenting Kreimer's "belligerent and hostile" behavior. The Morristown mayor said that other homeless people used the library facilities without similar disruption.[59]

The library's board tried to implement new rules to deal with "problem behavior" so that all patrons could use the facilities. With the aid of the American Civil Liberties Union, Kreimer filed suit seeking damages for "pain and suffering, emotional distress, humiliation, negligence, violation of . . .

civil rights to enter a public building, first amendment rights violations, harassment, defamation of character, and discrimination because of his [homeless] state."[60]

*b. Judge Sarokin's decision*

Judge Sarokin first appointed two pro bono attorneys to assist Kreimer in his lawsuit even though Kreimer received nearly $500 per month in Social Security payments, had split a $340,000 inheritance with his brother, and inherited a house which he had sold for $61,000.[61] One of those attorneys admitted later that if Judge Sarokin had not taken this step, the case "would have gone away in three weeks."[62] Instead, Kreimer made so many claims against so many defendants that the city's insurance company settled for $80,000 a case that the city later won on appeal. He also won a $150,000 settlement in a separate harassment suit against the police department.[63]

In the suit against the town's library, Judge Sarokin rules for Kreimer, insisting that the library was intentionally discriminating against Kreimer because of his homeless condition, his appearance, and his odor. He struck down the library rules on their face, without considering evidence of Kreimer's actual behavior, by granting a motion for summary judgment. He concluded that the generally applicable hygiene requirements violated the due process clause and the equal protection clause of the Fourteenth Amendment, as well as the First Amendment rights of free assembly and association.[64] Once again, he opened his opinion with a sermon revealing a personal crusade. He wrote:

"The danger in excluding anyone from a public building because their appearance or hygiene is obnoxious to others is self-evident. The danger becomes insidious if the conditions complained of are borne of poverty. . . . Society has survived not banning books which it finds offensive from its libraries; it will survive not banning persons whom it likewise finds offensive from its libraries. The greatness of our country lies in tolerating speech with which we do not agree; that same toleration must extend to people, particularly where the cause of the revulsion may be of our own making. If we wish to shield our eyes and noses from the homeless, we should revoke their condition and not their library cards."[65]

The Third Circuit reversed. While Sarokin insisted that deferring to the library board's discretion in such decisions was "entirely inconsistent with the applicable law,"[66] the court of appeals ruled that indeed "we must accord some deference to the library officials."[67] The court also stated a principle so obvious that only blindness from one's personal crusade could ignore it:

"Kreimer's right has no lesser, or greater, significance than that of other residents. Accordingly, his right to reasonable access to the Library cannot be expanded to such an extent that it denies others the same guarantee."[68]

The evidence shows that Richard Kreimer was not merely down on his luck, homeless beyond his control, and helpless in his condition. Citizens in Morristown had attempted to help Kreimer, and the town had several homeless shelters; he was thrown out of one because he had urinated in the chapel. Some of the officials actually named in the lawsuit had tried to help him. One member of the city council allowed him to spend most of one winter in her home; he left after she repeatedly insisted that he clean himself up.[69]

"The *New York Times* editorialized that society's general attitude toward the homeless doesn't mean that library users need to endure being stared at, followed around or simply driven away by body odor. . . . The rightful lesson of this case is that society need not apologize or surrender to every accusation of unfairness."[70]

2. THE PROTECTED STATUS OF PRISON-PARALEGALS

In 1977, the U.S. Supreme Court ruled that prisoners must be afforded meaningful access to the courts.[71] The Court held that prisoners must be provided with either an adequate law library or legal assistance in preparing legal documents. In 1981, the Third Circuit added that this right "must be freely exercised without hindrance or fear of retaliation."[72] The number of lawsuits over prison conditions filed by inmates in federal court has skyrocketed[73] and activist judges use them as opportunities to maintain supervisory control over correctional facilities.

In 1993, a group of prisoner-paralegals filed suit before Judge Sarokin alleging that the senior corrections officer in the East Jersey State Prison violated their constitutional rights by harassing them.[74] They said he verbally abused them, searched their legal materials, and denied one inmate a meal on two occasions. The defendant filed a motion for summary judgment, claiming that the prisoner-paralegals lacked standing to bring the suit and that the undisputed facts did not support the cause of action.

Sarokin admitted that verbal harassment does not amount to a constitutional violation.[75] He admitted that three searches of materials and two denied meals did not rise to the level of "cruel and unusual punishment" prohibited by the Eighth Amendment.[76] One would think that the case would be over if the judge decided against those claiming constitutional rights violations. Judge Sarokin, however, had another personal mission to pursue and insisted that someone's rights had been violated. He concluded that inmates not even before the court were the real victims in this case. He wrote:

"Because a prisoner has no protected interest in providing legal representation to other inmates . . . the only right of access at stake in this case is that of the prisoners whom the plaintiffs assist in the preparation of litigation. . . . [I]f the legal assistance provided by the . . . paralegals is constitutionally necessary, then it is clear that defendant's alleged harassment of the paralegals gives rise to a constitutional violation."[77]

Not only is this conclusion bizarre to the extreme,[78] but the issue of other inmates' due process rights had never been raised in this case! No evidence was offered that their access to the courts had been affected in any way by the alleged actions of the defendant prison official. Undeterred, Sarokin ordered the parties to brief this new issue and appointed counsel to assist the plaintiffs in preparing their brief.[79]

V. CONCLUSION

Judge Sarokin lacks the judicial temperament necessary to justify his appointment to the U.S. Court of Appeals. No Senator should support a nominee who has so clearly and egregiously demonstrated his inability to be fair and impartial. Judge Sarokin has, by his own actions, forfeited his chance to be elevated to the second highest court in the land. Even those Senators who apply a more lenient standard regarding judicial philosophy must apply a strict test regarding judicial temperament. Judge Sarokin flunks that test.

In addition, however, Judge Sarokin's judicial philosophy is extremely activist and places him outside the mainstream. He repeatedly ignores applicable law and pursues his own social and personal causes in spite of being repeatedly reversed and rebuked by higher courts. His efforts to free cop-killer James Landano are especially outrageous and is invention of constitutional rights so that he can effect changes in social policy demonstrate his inability to distinguish policymaking from judging.

FOOTNOTES

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[2] *Will v. United States*, 389 U.S. 90,95 (1967).

[3] *Blum v. Witco Chemical Corp.*, 888 F.2d 975,977 (3d Cir. 1989).

[4] *Id.* at 983.

[5] *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968)

[6] *Haines v. Liggett Group*, 140 F.R.D. 681,683 (D.N.J. 1992).

[7] The All Writs Act, 28 U.S.C. 1651(a), allows courts of appeals to issue "all writs necessary or appropriate in aid of their respective jurisdictions."

[8] *Haines v. Liggett Group, Inc.*, 975 F.2d 81,88 (3d Cir. 1992), quoting *Kerr v. United States District Court*, 426 U.S. 394,402 (1976).

[9] *Will v. United States, 389 U.S. 90,95 (1967).*

[10] *Haines*, 975 F.2d at 92.

[11] *Id.* at 91.

[12] *Id.* at 97.

[13] The court cited newspapers including the *New York Times*, *Wall Street Journal*, and *Washington Post* on the east coast to the *Chicago Tribune* in the midwest and the *Los Angeles Times* on the west coast. *Id.*

[14] *Id.* at 98.

[15] Editorial, *New York Times*, September 10, 1992, at A22.

[16] Kanige, "Sarokin Upheld, by Anti-Smoking Group," *New Jersey Law Journal*, June 7, 1993, at 14.

[17] *Cipollone v. Liggett Group, Inc.*, 785 F.2d 1108,1113 (3d Cir. 1986), citing 28 U.S.C. 636(b)(1)(A).

[18] See *United States v. Raddatz*, 447 U.S. 667,673 (1980).

[19] See Fed.R.Civ.P. 72(a).

[20] See General Rule 40D(4) of the U.S. District Court for the District of New Jersey.

[21] *Cipollone*, 785 F.2d at 1120.

[22] That precedent is *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984).

[23] *Cipollone*, 785 F.2d at 1114 n.8.

[24] *Cipollone v. Ligget Group, Inc.*, 106 F.R.D. 573,577 (D.N.J. 1986).

[25] *Commonwealth Coatings Corp. v. Continental Casualty Co.*, 393 U.S. 145 (1968).

[26] Schroth, "Sarokin Off Tobacco Case After Circuit's Rare Move," *New Jersey Law Journal*, September 14, 1992.

[27] *Almanac of the Federal Judiciary*, vol. 1, at 17 (1994).

[28] *Landano v. Rafferty*, 670 F.Supp. 570,577 (D.N.J. 1987).

[29] *Id.*

[30] *Id.* at 578.

[31] *Id.* at 579.

[32] 28 U.S.C. 2254. This statute creates a presumption of correctness for factual findings by state courts during habeas corpus proceedings. See *Landano*, 670 F.Supp. at 581-82.

[33] *Landano*, 670 F.Supp. at 572.

[34] *Id.* at 590.

[35] *Landano v. Rafferty*, 856 F.2d 569,572 (3d Cir. 1988), quoting 28 U.S.C. 2254(d)(6).

[36] *Landano v. Rafferty*, 489 U.S. 1014 (1989).

[37] *Landano v. Rafferty*, 126 F.R.D. 627 (D.N.J. 1989).

[38] *Landano v. Rafferty*, 897 F.2d 661,673 (3d Cir. 1990).

[39] *Landano v. Rafferty*, 782 F.Supp. 986,990 (D.N.J. 1992).

[40] *Id.* at 987. Sarokin's threat my have had some effect. When Landano went back to state court with his new evidence, the trial court again denied his request for a new trial, but the appeals court said Landano should have yet another bite at the apple. That decision is now on appeal to the New Jersey Supreme Court.

[41] *Id.* at 987-88.

[42] Exemption 7(C) of FOIA exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute

an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C).

[43] Exemption 7(C) of FOIA exempts from disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information . . . could reasonably be expected to disclose the identity of a confidential source." 5 U.S.C. 552(b)(7)(D).

[44] *Landano v. U.S. Department of Justice*, 956 F.2d 442,426 (3d Cir. 1992).

[45] See *Patterson by Patterson v. FBI*, 893 F.2d 595 (3d Cir.), *cert. denied*, 111 S.Ct. 48 (1990).

[46] *Landano*, 670 F.Supp. at 572.

[47] *Department of Justice v. Landano*, 113 S.Ct. 2014 (1993).

[48] *Id.* at 986.

[49] *Landano v. Rafferty*, 970 F.2d 1230,1241 (3d Cir. 1992).

[50] *Landano*, 782 F.Supp. at 993.

[51] *Landano*, 970 F.2d at 1241.

[52] 702 F.Supp. 493 (D.N.J. 1988).

[53] *Pennsylvania v. Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987).

[54] *Blum*, 702 F.Supp. at 495.

[55] *Id.*

[56] *Blum v. Witco Chemical Corp.*, 888 F.2d 975,977 (3d Cir. 1989).

[57] *Id.* at 983.

[58] *Kreimer v. Bureau of Police for Town of Morristown*, 958 F.2d 1242,1246–47 (3d Cir. 1992).

[59] See Pliskin, "Homelessness No Bar to Library, Judge Rules," *New Jersey Law Journal*, May 30, 1991.

[60] *Kreimer*, 958 F.2d at 1248–49.

[61] See Span, "Morristown's Man on the Street," *Washington Post*, October 14, 1992.

[62] *Id.*

[63] See Gottlieb, "Settlement Ends Portion of Morristown Homeless Case," *New Jersey Law Journal*, March 9, 1992.

[64] *Kreimer v. Bureau of Police for Town of Morristown*, 765 F.Supp. 181,196 (D.N.J. 1991).

[65] *Id.* at 182–83.

[66] *Id.* at 187.

[67] *Kreimer*, 958 F.2d at 1267.

[68] *Id.* at 1265.

[69] See Shah, "He's Homeless and He Won't Simply Go Away," *St. Petersburg Times*, May 11, 1992. This reporter described Kreimer's body odor as "so foul it gives one the sensation of being garroted in the underarm of a caveman."

[70] Editorial, "Library Hygiene in Morristown," *New York Times*, March 28, 1992, at 22.

[71] See *Bounds v. Smith*, 430 U.S. 817 (1977).

[72] *Milhouse v. Carlson*, 652 F.2d 371,374 (3d Cir. 1981).

[73] See Smith, "Jailhouse Blues," *National Review*, June 13, 1994, at 40–44 (number of suits alleging inhumane treatment has risen from 218 in 1966 to 53,713 in 1993).

[74] *Prisoners' Legal Association (PLA) v. Roberson*, 822 F.Supp. 185 (D.N.J. 1993).

[75] *Id.* at 189.

[76] *Id.* at 189.

[77] *Id.* at 190–91.

[78] Neither of the cases Sarokin cited were on point. Both *Milhouse v. Carlson*, 652 F.2d 371 (3d Cir. 1981) and *DeTomaso v. McGinnis*, 970 F.2d (7th Cir. 1992), involved allegations of harassment against prisoners who were themselves seeking access to the courts, not against persons providing legal assistance for other prisoners.

[79] *Prisoner's Legal Association*, 822 F.Supp. at 192.

[From Coalitions for America, Aug. 20, 1994]

FLUNKING THE CREDIBILITY TEST, PART 2: COMPARING THE TESTIMONY TO THE TRUTH

(By Thomas L. Jipping)[1]

President Clinton has nominated H. Lee Sarokin, currently a U.S. District Judge in New Jersey, to the U.S. Court of Appeals for the Third Circuit (NJ, PA, DE, VI). The Senate Judiciary Committee conducted a hearing on the nomination on August 3, 1994. Senators fulfilling their constitutional role of advice and consent look at a nominee's substantive record and testimony at his hearing. Coalitions for America has already provided extensive analysis of Judge Sarokin's record;[2] this memorandum examines his hearing testimony. Judge Sarokin was, at best, disingenuous and, at worst, dishonest about some of the very controversial parts of his record. His testimony painted a picture of a judge who consistently respects precedent and maintains his proper role as a judge no matter what his personal views, a judge whose decisions are rarely reversed on appeal, and a judge with mainstream views on important issues. Comparing the testimony to the truth shows that this picture is false.

I. INVENTING NEW RIGHTS

*A. The testimony*

In the so-called "library case," arguably Judge Sarokin's most infamous decision, he struck down a library's rules for the behavior and hygiene of patrons. On the one hand, it is just one of many activist decisions that was reversed on appeal. On the other hand, however, it is a striking example of how Judge Sarokin attempts to advance social and personal causes in the guise of judicial decisionmaking. It is also a clear example of how Judge Sarokin misled the Judiciary Committee and, therefore the Senate, about the very controversial nature of his record.

In *Kreimer v. Bureau of Police for Town of Morristown*,[3] Judge Sarokin effectively created a constitutional right not to be discriminated against on the basis of behavior or hygiene. He struck down regulations adopted by the Morristown library board regarding behavior and hygiene standards for library patrons. The board had adopted those regulations after repeated, yet unsuccessful, attempts to handle a continually disruptive and obnoxious patron. At his August 3 hearing, and in other settings, Judge Sarokin maintained that "[t]here were two issues that were presented to me," namely, a First Amendment issue and a vagueness/overbreadth issue. He claimed that "the only issue with which the Third Circuit disagreed was whether or not the regulations were vague and over-broad. They did not disagree about the First Amendment analysis."

*B. The truth*

This is simply not true and it is difficult to understand how Judge Sarokin could so blatantly misrepresent his own decision and the basis for the Third Circuit's reversal. In fact, the Third Circuit disagreed with every substantive part of Judge Sarokin's First Amendment analysis as well as every other issue. The record is very clear about what Judge Sarokin decided and what the Third Circuit reversed:

Judge Sarokin held that a library is a "traditional" or "quintessential" public forum for the expression of ideas[4] akin to "streets and parks".[5] The Third Circuit reversed that decision.[6]

Judge Sarokin held that a library is a full-fledged "designated public forum."[7] The Third Circuit disagreed.[8]

Judge Sarokin held the library's rules were "not reasonable time, place, or manner restrictions."[9] The Third Circuit reversed that decision.[10]

Judge Sarokin held that the library's rules were unconstitutionally overbroad.[11] The Third Circuit reversed that decision.[12]

Judge Sarokin held that the library's rules were unconstitutionally vague.[13] The Third Circuit reversed that decision.[14]

Judge Sarokin held that the library's rules violated the due process clause of the Fourteenth Amendment.[15] The Third Circuit reversed that decision.[16]

Judge Sarokin held that the library's rules violated the equal protection clause of the Fourteenth Amendment.[17] The Third Circuit reversed that decision.[18]

Judge Sarokin held that the library's rules violated the New Jersey Constitution.[19] The Third Circuit reversed that decision.[20]

Anyone reading these decisions, each a matter of public record, will see that at least these eight issues were addressed in the *Kreimer* case. The appeals court reversed Judge Sarokin on every one of them. Given the clarity of the record, his statement to the Judiciary Committee that there were only "two issues" involved and that the appeals court disagreed on only one could only have been an attempt to cover up the strikingly activist and very controversial nature of his record. This lack of candor is cause for serious concern about this nominee and his fitness to serve on the second highest court in the land.

The Third Circuit not only reversed Judge Sarokin on all of these issues, it also disagreed with several of his interpretations of important precedents. For example, citing a Supreme Court decision, Judge Sarokin insisted that the Court has "consistently held that government must limit time, place, and manner restrictions of a public forum to prohibitions of activity which actually and materially interferes with the peaceful and orderly management of the public space."[21] As the appeals court pointed out, this is not at all what the Court has held.[22] The case Judge Sarokin cited involved prohibition of particular symbolic political speech on the basis of its content; this lies at the heart of the First Amendment and this type of regulation would be subject to the strictest judicial scrutiny. In addition, that case involved the unique setting of public schools. There is neither a factual nor legal parallel in the *Kreimer* case.

Senator Strom Thurmond (R–SC) asked Judge Sarokin if he believed his ruling on vagueness was faithful to Supreme Court precedent. The nominee insisted that the Supreme Court's decision in *Brown v. Louisiana*,[23] which he had cited in his opinion in *Kreimer*, explicitly held protected by the First Amendment activity (sitting in silent protest) which the library's regulation in *Kreimer* would have prohibited. As he told the Committee, "that is why I thought it was unconstitutional." Yet, as Justice Brennan's concurring opinion in *Brown* clearly emphasizes, only a three-Justice plurality took the position that silent protest was protected under the First Amendment.

Perhaps H. Lee Sarokin, with 25 years of litigation experience and another 15 years as a U.S. District Judge, simply misread an important Supreme Court decision (he told the Committee that *Brown* was "the most significant case on this issue"). If this is the case, he should long ago have been willing to admit this and correct his mistake. Yet later in his hearing, after Senator Thurmond had pointed out his misreading of *Brown*, Judge Sarokin repeated his error, again insisting that the opinion of a Supreme Court plurality was actually the holding of a Supreme Court majority and, therefore, dictated his decision in *Kreimer*.

Perhaps Judge Sarokin simply utilized whatever he could to buttress his preferred result. As this memorandum points out below, the Third Circuit in other cases has rebuked Judge Sarokin for deciding cases on the basis of his own "intuition,"[24] his "own views"[25] and for refusing to follow binding precedent with which he disagreed.[26] In a 1984 case, Judge Sarokin even cited the very Third Circuit precedent that he ignored to reach his preferred result.[27] Perhaps in *Kreimer* he knew what he was doing after all.

II. OPPOSITION TO PRETRIAL DETENTION AND MANDATORY SENTENCING

*A. The testimony*

On March 20, 1987, Judge Sarokin addressed the Mid-Atlantic Conference of Law Reviews.

Footnotes at end of article.

This speech was published as an article in the *West Virginia Law Review*.[28] He stated that law journals should analyze various proposals for changes in the civil and criminal law. He also made very plain his own opinion about some of those proposals. He stated:

"Look at what is happening in the criminal area. We have pretrial detention of the accused in direct contradiction of the presumption of innocence. . . . Mandatory and uniform sentencing is in the wings depriving judges of the right to grant mercy.[29]

*B. The truth*

There is no question about Judge Sarokin's opinion of pretrial detention, mandatory sentencing, and uniform sentencing—he opposes each of them. These are very controversial views. Perhaps understanding this, he responded at his hearing to a question by Senator Thurmond by insisting that "I merely outlined for them a number of issues that I thought Law Reviews should take up. I certainly did not suggest to them how they should come out." This statement is simply not true, and one need only read the article to see this on its face. He made very clear what his opinion on these matters were. Again, it is very difficult to square Judge Sarokin's statements to the Judiciary Committee with the clear public record.

III. DEFERENCE TO LOWER COURTS

Senator Joseph Biden (D-DE), Judiciary Committee Chairman, asked Judge Sarokin some questions about his judicial philosophy to determine whether the nominee has a sufficient understanding of his proper role as a judge. At various times, this role requires a judge to be deferential to lower courts as well as respectful to higher courts. Senator Biden asked Judge Sarokin about both areas.

*A. The testimony*

In certain instances, appellate judges must be deferential to decisions by lower courts. Because trial judges are finders of facts in the first instance, appellate judges must defer to those factual findings unless they are "clearly erroneous." This means appellate judges cannot simply substitute their own judgment whenever they wish. Senator Biden asked Judge Sarokin whether, if appointed to the appeals court, he could "accept factual findings by the lower court." Not surprisingly, Judge Sarokin assured the Committee he would "certainly" do this successfully.

*B. The truth*

Senators need not wait until Judge Sarokin sits on the appeals court, however, to know the truth about this important issue. Even in his capacity as a trial judge, Judge Sarokin has been required to apply the same deferential standard and has already demonstrated that he cannot do so successfully. The Federal Magistrate Act states that "a magistrate's order is not to be reconsidered unless it is 'clearly erroneous or contrary to law.'"[30] The U.S. Supreme Court,[31] the Federal Rules of Civil Procedure[32] and the General Rules of Judge Sarokin's own court[33] require the same standard. Judge Sarokin, therefore, is presently required to apply to magistrates' decisions the very same standard that, as an appellate judge, he would have to apply to district judges' decisions.

He has repeatedly refused to apply this deferential standard and has instead applied a "plenary" standard that allowed him to substitute his own judgment. In one high-profile case, the U.S. Court of Appeals reversed Judge Sarokin for applying the wrong standard and wrote: "The 'clearly erroneous' standard obviously would have been less onerous for the defendants than was the district court's plenary review standard."[34] Judge Sarokin ignored the law precisely so he could be as onerous as possible on the parties he disfavored.

Several years later, in the very same case, Judge Sarokin again had to review a magistrate's recommendation. The court of appeals said it was "undisputed"[35] as well as "clear and unambiguous"[36] that the correct standard was deference; Judge Sarokin could only consider the evidence that was before the magistrate and could only overturn a decision that was "clearly erroneous and contrary to law." Instead, he ignored the law, ordered the parties to submit evidence from a different case that the magistrate had not even seen, and substituted his own judgment. This was a sufficiently serious judicial "usurpation of power"[37] to warrant the "extraordinary" and "exceptional" remedy of a writ of mandamus reversing this decision. In addition, as described below, the Third Circuit actually removed Judge Sarokin as the presiding judge in this case because he could not maintain an appearance of impartiality.

Judge Sarokin may well say that he will, as an appellate judge, have no problem applying the deferential "clearly erroneous" standard to lower court findings. His record, however, shows that he has disregarded this very standard as a district judge when reviewing magistrate recommendations.

IV. RESPECT FOR HIGHER COURTS

*A. Supreme Court*

1. The testimony

As part of his discussion about judicial philosophy, Senator Biden also asked Judge Sarokin if, as a court of appeals judge, he would follow binding precedent. Judge Sarokin responded that he would be "clearly bound by any Supreme Court precedent" and that he would "have no trouble with that" whether or not he agreed with the particular precedent.

2. The truth

The truth is that, in some cases, Judge Sarokin has been more than willing to distort Supreme Court precedent to fit his jurisprudential needs and, in other cases, quick to disregard entirely Supreme Court precedent that does not allow him to achieve his preferred results.

For example, in *Kreimer v. Bureau of Police for the Town of Morristown*,[38] discussed above, Judge Sarokin held that library rules governing patron behavior and hygiene were unconstitutional. He cited the Supreme Court's decision in *Brown v. Louisiana*[39] and insisted that the Court there had held that a silent protest in a library was "constitutionally protected."[40] Yet, as Justice William Brennan's concurring opinion in *Brown* emphasized, only a plurality of the Court believed that the silent protest was protected.

In *Blum v. Witco Chemical Corp.*,[41] three chemists brought an age discrimination suit against their former employer. Judge Sarokin awarded them attorney's fees plus a 20% multiplier. The U.S. Court of Appeals ordered him to reconsider in light of a recent Supreme Court decision.[42] He appointed a magistrate who recommended that no multiplier be awarded, but he granted a 50% multiplier instead. The appeals court reversed Judge Sarokin and, noting that he had "offered no explanation why the specific figure of 50 percent was chosen"[43] and earlier had actually "rejected plaintiffs' request for a 50 percent increase,"[44] severely criticized Judge Sarokin for imposing his personal views and ignoring relevant precedent. among the Third Circuit's criticisms were the following:

[T]he district court, without concealing its disapproval of both the Supreme Court's decision and ours, proceeded in accordance with its own views.[45]

We conclude that in at least four respects essential to its decision, the district court applied the incorrect legal standard.[46]

It appears that the court proceeded to follow its own view of the relevant market in ascertaining the availability of adequate legal representation.[47]

In making its determination on the risk associated with this individual case, the court failed to follow the clear direction of [the Third Circuit and the Supreme Court]. . . . The district court made no secret of its disagreement with the instruction it received on this issue.[48]

[I]n another departure from the task set for it, the district court established a contingency multiplier for this individual case rather than setting a standard which would be applicable to future litigation within the same market.[49]

Finally, and perhaps most importantly, although the district court concluded that the plaintiffs had failed to meet their burden of proof by not quantifying the contingency premium, the court nonetheless relieved the plaintiffs of their burden of proof.[50]

The court finally rebuked Judge Sarokin by concluding that "the error with the district court's judgment was the 50 percent multiplier it arrived at was supported only by the court's own intuition. This is precisely what the Supreme Court and this court held is impermissible. Neither the district court nor this court is free to superimpose its own view of what the law should be in the face of the Supreme Court contrary precedent."[51] This is an unusually harsh series of rebukes, justified because Judge Sarokin had rendered an unusually activist series of decisions, openly expressing his personal distaste for binding precedent and openly ignoring that precedent.

Similarly, in *LeBrun v. Thornburgh*,[52] Judge Sarokin made clear his personal views of the issues and law involved and followed those personal views rather than the law. In this cases, Judge Sarokin held that certain immigration law provisions violated the equal protection clause of the Fourteenth Amendment. These provisions (which are no longer operative) required that in order for children born out of wedlock to American fathers and foreign mothers to be U.S. citizens, the father must acknowledge the child before age 21 and the child must live in the United States for a certain number of years before age 28. Judge Sarokin made clear his personal objection to the statutory provisions, calling them "inhumane and unfair" as well as "sexist."[53] He even took exception to using the term "illegitimate" to describe children born out of wedlock, calling it "discriminatory" and "archaic."[54] The basis for his decision seemed to be his personal observation that the policy in the statue "is wrong."[55]

In addition to clearly stating his personal moral objections to this requirement, Judge Sarokin wrote that his holding "may be analogized to the 'disparate impact' doctrine under Title VII."[56] The Supreme Court has explicitly held, however, that the equal protection clause requires showing intentional discrimination; the disparate impact theory does not apply. Judge Sarokin was simply wrong as a matter of law to hold otherwise. Yet, in response to a question by Senator Charles Grassley, however, he insisted that

there was "ample case law to support that conclusion."

*B. U.S. Court of Appeals*

1. The testimony

Later in the hearing, Senator Thurmond asked Judge Sarokin if, as a district judge, he is presently bound by the U.S. Court of Appeals for the Third Circuit. Not surprisingly, Judge Sarokin agreed that he is. Yet just as he has openly defied Supreme Court precedent and decided cases based on his own views and own intuition, Judge Sarokin has ignored binding precedent from the Third Circuit. It is no wonder that he is the most reversed federal judge in New Jersey.

2. The Truth

In one of the more egregious examples, Judge Sarokin not only refused to follow binding Third Circuit precedent, he even cited the very precedent he was ignoring. In *U.S. v. Rodriguez*,[57] a criminal suspect read and signed a waiver of his *Miranda* rights. He signed the waiver with a false name. Judge Sarokin held that, because of this, the waiver was not voluntary. In doing so, he included the following citation:

"*But see United States v. Chapman*, 448 F.2d 1381, 1386 n.7 (3d Cir. 1971)" (contention that signature was not one's own is not relevant to the issue of the voluntariness of the confession).

Judges or authors use "but see" to introduce the citation of legal authority that may contradict but does not affect their conclusion. That is, Judge Sarokin thought to reference this directly contrary Third Circuit precedent, and even to describe its contrary holding, but did so in such a way as to indicate his belief that it was of interest but no consequence for his decision. In response to a question by Senator Thurmond at his hearing, however, Judge Sarokin insisted that this decision was "definitely" in accord with Third Circuit precedent.

In response to a question by Senator Hank Brown (R–CO), Judge Sarokin stated that the Third Circuit had decided in *Chapman* that using a false name was not "dispositive" on the question of voluntariness. Yet in *Rodriguez*, Judge Sarokin himself described the Third Circuit's decision in *Chapman* as holding that using a false name is not even "relevant" to that question.

Later in the hearing, Senator Brown read a question submitted by Senator Orrin Hatch (R-UT) about the same issue. Judge Sarokin stated that "I can't imagine that the Third Circuit's ruling would be that use of an alias was never relevant in this type of a proceeding." Yet this is exactly the way Judge Sarokin himself described the Third Circuit's holding in *Chapman*. Judge Sarokin insisted that "it would be inconceivable to me that I found the Third Circuit decision that said you can't use this as a factor and in the same sentence I said I am going to." Yet in *Rodriguez*, Judge Sarokin cited the Third Circuit's decision in *Chapman*, described that holding as saying that using a false name is "not relevant" to the issue of voluntariness, then held that the suspect in the case before him had not made a voluntary waiver because he had signed the waiver with a false name. The contradiction should be plain for all to see.

V. IGNORING PRECEDENT IN OBSCENITY AND PORNOGRAPHY CASES

*A. The testimony*

In *E-Bru, Inc. v. Graves*,[58] Judge Sarokin granted an injunction blocking the town of Paterson, New Jersey, from applying its zoning ordinance to an adult bookstore. In his opinion, Judge Sarokin wrote: "We must remember that we are dealing only with words and pictures, the harmful effects of which, if any, has never been clearly established."[59] At his August 3 hearing, Judge Sarokin responded to questions by Senator Charles Grassley (R-IA) about this case and insisted such statements were his way of emphasizing "that there were First Amendment implications here that necessitated the action that I took. It was an effort on my part to try to explain and justify the legal ruling that I had made."

*B. The truth*

Judge Sarokin did not even attempt to explain why evidence of harm from pornography was at all relevant to his discussion of the legal issues. He provided no basis for his conclusory statement that such harm "has never been clearly established." And he never distinguished, or even cited, the Supreme Court's rejection of the argument that scientific data conclusively demonstrating adverse effects is necessary for communities to regulate pornography and obscenity.[60] How can it be, then, that his assertion that harm from "words and pictures" has not been established was necessary to "explain and justify" his legal ruling? It cannot be. As in so many other cases, the only explanation is Judge Sarokin basing his decisions on his personal views and, further, injecting his personal views directly into his written opinions.

VI. JUDICIAL TEMPERAMENT

Judge Sarokin presided over a high-profile lawsuit against several tobacco companies. The plaintiffs sought thousands of documents and the defendants argued that some of them were protected by the attorney-client privilege. Judge Sarokin appointed a special master who concluded that the attorney-client privilege did apply to some of the documents. He also appointed a magistrate who concluded that the crime-fraud exception to the privilege did not apply. Judge Sarokin not only reversed the magistrate's decision but actually included portions of the documents in his published opinions. The Third Circuit reversed him and, based on actions like these and outrageously biased statements against one of the parties before Judge Sarokin, actually issued a writ of mandamus removing him as the presiding judge in the case.

*A. Judge Sarokin's testimony*

At his August 3 hearing, responding to Senator Brown, Judge Sarokin admitted that disclosing these documents "probably was an error" and said that "probably I should have avoided it." Yet he still attempted to justify this extraordinary breach of judicial duty by saying that "there was not some wholesale disclosure." This is another example of how Judge Sarokin's personal biases or views drive his jurisprudence. Those biases lead him to make decisions which, like this one, are often reversed on appeal. Those biases also prompt him to make statements or take actions which are completely unnecessary to decide the legal issues before him, but instead serve to pursue his own personal agenda.

*B. The truth*

The Supreme Court has said that "any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias."[61] The Third Circuit removed Judge Sarokin as the presiding judge in this case after concluding that "it is impossible for us to vindicate the requirement of appearance of impartiality in view of the statements made in the district court's prologue to its opinion."[62] Those statements were included in a diatribe against all big business, claiming they place "money over morality" and "put the buying public at risk solely for the purpose of making profits."[63] He called the very companies who were parties before him in that case "the king of concealment and disinformation."[64] While the Third Circuit had refused a request earlier in the litigation to remove Judge Sarokin because of his obvious bias,[65] this time the court had had enough. Even the liberal *New York Times* agreed with removing Judge Sarokin, concluding that he had "flunked an important test of credibility."[66]

CONCLUSION

Judge H. Lee Sarokin has a very activist and very controversial record, a record he tried to cover up or run away from at his hearing before the Judiciary Committee.

He claimed, in response to a question by Senator William Cohen, that his record on appeal is "maybe a little bit better" than "anyone else on the [district] court." Yet the *New Jersey Law Journal* concluded that "Sarokin may be the most reversed federal judge in New Jersey when it comes to major cases."[67]

These are just some of the obvious and serious discrepancies between Judge Sarokin's testimony at his hearing and the record he has developed during his years as a federal judge. It is perhaps understandable that he would want to downplay his very liberal, very activist, and very controversial record. But just as he had to be removed from an important case because he could no longer even maintain an appearance of impartiality, he should be prevented from assuming a seat on the U.S. Court of Appeals because he cannot maintain the appearance of candor or restraint.

FOOTNOTES

[1] Legal Affairs Analyst, Coalitions for America.

[2] See "Flunking the Credibility Test: Judicial Temperament and Judicial Philosophy," report dated July 20, 1994; two Nomination Memoranda dated August 18, 1994; Nomination Memoranda dated August 4 and July 25, 1994.

[3] 765 F.Supp. 181 (D.N.J. 1991)

[4] *Kreimer*, 765 F.Supp. at 187.

[5] *Id.* at 186, quoting *Perry Education Assn.* v. *Perry Local Educators' Assn*, 460 U.S. 37,45 (1983).

[6] *Kreimer*, 958 F.2d at 1256.

[7] *Kreimer*, 765 F.Supp. at 187.

[8] *Kreimer*, 958 F.2d at 187.

[9] *Kreimer*, 765 F.Supp. at 189.

[10] *Kreimer*, 958 F.2d. at 1262–64.

[11] *Kreimer*, 765 F.Supp. at 190.

[12] *Kreimer*, 958 F.2d at 1265.

[13] *Kreimer*, 765 F.Supp. at 193.

[14] *Kreimer*, 958 F.2d at 1267–68.

[15] *Kreimer*, 765 F.Supp. at 195.

[16] *Kreimer*, 958 F.2d at 1269.

[17] *Kreimer*, 765 F.Supp. at 196.

[18] *Kreimer*, 958 F.2d. at 1269 n.36.

[19] *Kreimer*, 765 F.Supp. at 197.

[20] *Kreimer*, 958 F.2d. at 1270.

[21] *Kreimer*, 765 F.Supp. at 188, citing *Tinker* v. *Des Moines Indepenent Community School District*, 393 U.S. 503 (1969).

[22] *Kreimer*, 958 F.2d 1242, 1263 n.25.

[23] 383 U.S. 131 (1966).

[24] See, e.g., *Blum* v. Witco Chemical Corp., 888 F.2d 975,983 (3d Cir. 1989).

[25] *Id.* at 977.

[26] *Id.* at 982.

[27] See *United States v. Rodriguez*, Crim. No. 84–18 (D.N.J. 1984).

[28] Sarokin, "Beware the Solutions!," 90 *West Virginia Law Review* 1003 (1988).

[29] *Id.* at 1005.

[30] *Cipollone* v. *Liggett Group, Inc.*, 785 F.2d 1108,1113 (3d Cir. 1986), citing 28 U.S.C. §636(b)(1)(A).

[31] See *United States* v. *Raddatz*, 447 U.S. 667,673 (1980).

[32] See Fed.R.Civ.P. 72(a).

[33] See General Rule 40D(4) of the U.S. District Court for the District of New Jersey.
[34] *Cipollone*, 785 F.2d at 1120.
[35] *Haines* v. *Liggett Group, Inc.*, 975 F.2d 81,92 (3d Cir. 1992).
[36] *Id.* at 91.
[37] See *Will* v. *United States*, 389 U.S. 90,95 (1967).
[38] 765 F.Supp. 181 (D.N.J. 1991), *rev'd*, 958 F.2d 1242 (3d Cir. 1992).
[39] 383 U.S. 131 (1966).
[40] *Kreimer*, 765 F.Supp. at 191.
[41] 702 F.Supp. 493 (D.N.J. 1988), *rev'd*, 888 F.2d 975 (3d Cir. 1989).
[42] That decision was *Pennsylvania* v. *Delaware Valley Citizens' Council for Clean Air*, 483 U.S. 711 (1987).
[43] *Blum* v. *Witco Chemical Corp.*, 888 F.2d 975,979 (3d Cir. 1989).
[44] *Id.* at 980.
[45] *Id.* at 977.
[46] *Id.* at 981.
[47] *Id.* at 982.
[48] *Id.*
[49] *Id.*
[50] *Id.* at 983.
[51] *Id.* at 977.
[52] 777 F.Supp. 1204 (D.N.J. 1991).
[53] *Id.* at 1206.
[54] *Id.* at 1213.
[55] *Id.* at 1212.
[56] *Id.* at 1213 n.6.
[57] Crim. No. 84-18 (D.N.J. 1984).
[58] 566 F.Supp. 1476 (D.N.J. 1983).
[59] *Id.* at 1478.
[60] See *Paris Adult Theatre I* v. *Slaton*, 413 U.S. 49,58,60 (1973).
[61] *Commonwealth Coatings Corp.* v. *Continental Casualty Co.*, 393 U.S. 145 (1968).
[62] *Haines* v. *Liggett Group, Inc.*, 975 F.2d 81,98 (3d Cir. 1992).
[63] *Haines* v. *Liggett Group, Inc.*, 140 F.R.D. 681,683 (D.N.J. 1992).
[64] *Id.*
[65] *See Cipollone* v. *Liggett Group, Inc.*, 822 F.2d 335 (3d Cir. 1987).
[66] Editorial, *New York Times*, September 10, 1992, at A22.
[67] Schroth, "Sarokin Off Tobacco Case After Circuit's Rare Move," *New Jersey Law Journal*, September 14, 1992.

Mr. LOTT. Mr. President, I also ask unanimous consent to print in the RECORD, in case they have not been included, a whole group of letters that have been sent in opposition to Judge Sarokin's nomination.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

FRATERNAL ORDER OF POLICE,
NATIONAL LEGISLATIVE COMMITTEE,
*Lindenwold, NJ, August 5, 1994.*

Re nomination of H. Lee Sarokin to the U.S. Court of Appeals.

U.S. SENATE,
*Washington, DC.*

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the 250,000 member National Fraternal Order of Police and, in particular, the members of the Fraternal Order of Police in the State of New Jersey, I am informing you that we are in total opposition to the appointment of Judge Sarokin to the U.S. Court of Appeals for the Third Circuit.

In at least one case, he has shown a propensity to be more of an advocate of social and personal causes than a judge. In a case involving the murder of a Newark, New Jersey police officer Judge Sarokin made it his mission to set a convicted person free.

Briefly stated, in 1976, Vincent Landano was convicted and sentenced to life in prison for the murder of a police officer during an armed robbery. Ignoring his oath of office and even after at least four reversals by the U.S. Court of Appeals for the Third Circuit and the U.S. Supreme Court, Judge Sarokin ordered Landano's release in June of 1989.

We, in the F.O.P., find this action appalling and adamately request that Judge Sarokin's nomination be denied. Our legal counsel in Washington is currently researching other cases that Judge Sarokin was involved in and hope to be able to bring more information to you as it becomes available.

Respectfully,

ROBERT J. ROBBINS,
*New Jersey National Trustee.*

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FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,
*Newark, NJ, September 22, 1994.*

Hon. TRENT LOTT,
*U.S. Senate, Washington, DC.*

DEAR SENATOR: I am writing to you at this time in order to express our strongest opposition to the appointment of Judge H. Lee Sarokin to the Federal Court of Appeals. As President of the Newark Fraternal Order of Police with an excess of 1,500 members, the appointment of this liberal jurist to such an important position would be an insult to every Newark Police Officer who ever wore a badge.

On August 13, 1976, Newark Police Officer John Snow was brutally slain by a coward named James Landano. Mr. Landano was subsequently convicted by a jury of his peers. Over the ensuing years, Mr. Landano began to use the court system in an attempt to gain his release from prison.

Judge Sarokin became involved in the case and began to interject his social opinions into the case rather than just interpret the law. Even though several of Judge Sarokin's attempts to free Mr. Landano were reversed, Judge Sarokin eventually had Mr. Landano freed from jail. After 18 years, Mr. Landano still stands indicted for the murder of our brother officer.

We ask you to stand with our 250,000 members of the Fraternal Order of Police and show that it is time to get tough with criminals and there is no room for a liberal jurist in a position such as this who frees "COPKILLERS". We ask you to send a message to "SET 'EM FREE LEE" and other jurists interested in pushing their own social beliefs upon the rest of society, that they are in the wrong profession.

Thank you for your anticipated help.

Fraternally,

JACK MCENTEE,
*President.*

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FRATERNAL ORDER OF POLICE,
PHILADELPHIA LODGE NO. 5,
*September 15, 1994.*

Re Judge H. Lee Sarokin.

Senator TRENT LOTT,
*U.S. Senate, Washington, DC.*

DEAR SENATOR LOTT: The Fraternal Order of Police, Philadelphia Lodge No. 5, is opposed to the appointment of Federal Judge H. Lee Sarokin, to the United States Court of Appeals for the Third Circuit.

Our reasons for opposition are illustrated by the manner in which Judge Sarokin handled three important cases which illustrate his unacceptable judicial philosophy.

1. U.S. v. James Landano, convicted of the murder of Newark N.J. Police Officer John Snow, on August 13, 1976, at the Hi-Way Check Cashing Service, near Kearny, N.J. The murder took place during the course of a robbery. Judge Sarokin unwisely freed Landano based on specious, unverified evidence from an unknown alleged witness.

2. Cipollone v. Liggett Group, Inc. In this case, Judge Sarokin was ousted from his position as Trial Judge, sitting in the U.S. District Court in New Jersey. He was disqualified because of remarks considered intemperate and biased. The disqualification judgement was issued by the U.S. Court of Appeals for the Third Circuit, in Sept. 1992.

3. Richard Kreimer v. Public Library of Morristown, N.J. In this case, Judge Sarokin was reversed after ruling against the Public Library, which had barred entry to Richard Kreimer, a homeless resident of the park. The Library had barred Kreimer's presence on account of his offensive smell and disruptive behavior, which interfered with the research and study activities of other Library patrons. In upholding vagrant Kreimer, Judge Sarokin revealed less concern for the peaceful patrons than for the disruptive vagrant.

These three cases illustrate an insensitivity to the public interest by Judge Sarokin, which bodes ill for the legitimate interest of those who nurture and protect our society. The philosophy which led to these flawed judgements, augurs poorly for the future.

Of particular concern to us as Police Officers, is that to free one convicted of a police officer's deliberate and cold-blooded murder, on the most trivial and deceptive grounds, which sported with the legal system, reveals a disdainful unconcern for officers whose lives are increasingly treated as expendable.

It is with this in mind that we urge you to reject H. Lee Sarokin's appointment to the federal bench. Thank you for your consideration.

Sincerely,

MICHAEL G. LUTZ,
*President.*

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JULY 26, 1994.

Hon. JOSEPH R. BIDEN, JR.,
*U.S. Senate, Washington, DC.*

DEAR SENATOR BIDEN: The recent nomination of U.S. District Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit by President Clinton is the latest example of the liberalization of our criminal justice system that began 30 years ago.

Judge Sarokin has repeatedly made use of his judicial position to promote social and personal issues and causes. he has also made it plain that he will continue to do so if confirmed to the United States Court of Appeals.

Crime is the number one concern of the American public. People are demanding real criminal justice reform—life imprisonment for repeat offenders, greater involvement for victims in the judicial process, the building of more prisons to take violent criminals off our streets.

Confirming Judge Sarokin will place another roadblock in the path of justice. Judge Sarokin, in the West Virginia Law Review, stated that he was opposed to both pretrial detention of violent criminals and mandatory minimum sentencing guidelines. He also stated that admission of evidence guidelines should be stricter to protect criminals' rights.

Clearly, criminals will have a friend on the bench of the United States Court of Appeals if Judge Sarokin is confirmed.

The 40,000+ law enforcement officers, victims of crime and concerned citizens of the Law Enforcement Alliance of America ask you to not confirm Judge Sarokin to the United States Court of Appeals. Justice will not be served in America as long as the rights of criminals are placed above the rights of law-abiding citizens.

Sincerely,

JAMES J. FOTIS,
*Executive Director.*

ORGANIZED VICTIMS OF VIOLENT CRIME,
*Madison, TN, August 2, 1994.*

Senator ORRIN HATCH,
*Senate Judiciary Committee,*
*Washington, DC.*

DEAR SENATOR HATCH: In reference to President Bill Clinton's nomination of Judge H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. We strongly urge you to vote NO on his forthcoming Confirmation Hearing to this court. This same Court for which the President has nominated him to has found much fault with him and his lack of Judicial temperment and his abundance of Judicial activism. This same Court also was forced to remove him from a nine year old case on grounds of "usurpation of power".

The Organized Victims Of Violent Crime has no doubt the Senate Judiciary Committee is well aware of the extreme liberal behavior and decisions of which he is already responsible for while currently sitting as a U.S. District Judge in the state of New Jersey. Not only does Judge Sarokin practice extreme activist Judicial philosophy, he based his decisions on his own views and radical beliefs. We feel no Judge should practice his or her own Judicial bias or personal activism. We do not feel Judge Sarokin will be an asset to our Judicial System on such a Court as powerful as the U.S. Court of Appeals of the Third Circuit. He has demonstrated many times over that he lacks the essential qualities of Judicial fairness and temperment to be called "Your Honor". The American people should never have to accept or tolerate any Judge who ignores the tried and tested and true laws in favor of writing his own as he skims along.

The Organized Victims Of Violent Crime still remembers and still chaffs from the appointment of Martha Craig Daughtery to the 6th Circuit Court of Appeals. Her Judicial philosophy and temperment matches that of Judge Sarokin.

As we have watched carefully and sadly, we have seen more and more liberal socialist gaining a foothold in the highest offices in our Government. They now control our courts also.

We believe our Congress can rid us of this blight that has been forced upon us. First though, Congress must clean up it's own houses. What better place to start than the Senate Judiciary Committee who has the responsibility of saying who gets voted into whatever certain high positions of such great importance to our entire nation. America must once again become the great free Republic she once was that was the envy of the world. Until then, God help us all!!

Sincerely,

EDITH S. HAMMONS,
*President.*

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COUNTY OF CUMBERLAND,
OFFICE OF THE SHERIFF,
*Bridgeton, NJ, July 21, 1994.*

WILLIAM CLINTON,
*President of the United States,*
*Washington, DC.*

DEAR PRESIDENT: As a Sheriff from New Jersey with over thirty-five years experience in the Law Enforcement, I find it incredible that you would consider nominating H. Lee Sarokin to the U.S. Court of Appeals.

I don't know who advised you on this but they were either asleep at the switch or they really don't give a damn about Law Enforcement. Judge Sarokin's crusade in behalf of cop-killer Landano is legendary in New Jersey.

As a Democrat, I'm astounded that you would make such a nomination. As a Law Enforcement Officer, I'm disappointed, disillusioned, and damned mad.

Please reconsider this nomination of this notorious cop-hating Judge.

Thanking you, I am

Very truly yours,

JAMES A. FORCINITO,
*Sheriff.*

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LEGAL DEFENSE FUND, INC.,
*Manalapan, NJ, August 4, 1994.*

DEAR SENATORS BIDEN, HATCH, AND ALL MEMBERS OF THE JUDICIARY COMMITTEE: We write to urge you to reject the nomination of Judge H. Lee Sarokin to the U.S. Court of Appeals.

Our organization is composed of law enforcement officers, their families, and supporters. We find his handling of the case of cop killer Vincent Landano, and his obsession with putting this criminal back on the streets repugnant.

if Sarokin is confirmed, New Jersey's "thin blue line" and its supporters will not forget those responsible for the promotion of this radical judge.

Please reject this nomination.

Sincerely,

GREG KAYE.

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LEAGUE OF AMERICAN FAMILIES,
*Ringwood, NJ, August 4, 1994.*

Senators HATCH and DOLE,
*U.S. Senate, Washington, DC*

GENTLEMEN: The Senate is considering the nomination of H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. I strongly urge you to oppose this nomination for two reasons. First, as evidenced by his removal from the the tobacco liability case by the U.S. Court of Appeals, he lacks the basic judicial temperament to be a judge. All Americans should demand judges who will be fair and impartial. Judge Sarokin has proven—even to the satisfaction of the liberal New York Times—that he lacks these qualities. His excuse at his hearing yesterday that, well, he is just "irrepressible" at times, is ridiculous.

Second, Judge Sarokin injects into his cases personal views that will have a devastating effect on American families. You have received information about his views on criminal justice issues. His opposition to pretrial detention of criminal defendants would, in particular, put families and children especially at risk.

In *E-Bru* v. *Graves*, 566 F.Supp. 1476, a case dealing with the town of Paterson's prohibition on an adult bookstore opening, Judge Sarokin delivered the kind of lecture that characterizes many of his decisions. He made the outrageous statement that "the harmful effect" of pornography "has never been clearly established."

Since you voted last year to condemn the Justice Department's attempt to weaken the child pornography laws, you must know that this statement is simply false. New books have been published just in the last few years cataloging the harms of pornography. In addition, however, why does Judge Sarokin find this question significant at all? The Supreme Court has ruled that a community's ability to control pornography does not depend on scientific specifics. This is another example of his imposing his own personal standards in place of what the law requires.

Judge Sarokin testified at his hearing on August 3 that he would object to an adult bookstore opening near his home. Apparently, he is perfectly willing to impose on others an evil that he does not have to endure himself. America has enough judges who are so ignorant of the real-world impact of their decisions. Please do not add Judge Sarokin to that list by elevating him to the U.S. Court of Appeals.

Very truly yours,

JOHN T. TOMICKI, J.D.,
*League of American Families.*

Mr. LOTT. Mr. President, those letters opposing Judge Sarokin come from the National Organization of Fraternal Order for Police, the Fraternal Order of Police in Newark, NJ, the Fraternal Order of Police in Philadelphia, the Law Enforcement Alliance of America, the Organized Victims of Violent Crime, the sheriffs in New Jersey, the Joe Occhipinti Legal Defense Fund, and the League of American Families.

And I would like to read from one of the letters just a passage that really bothered me. It is from the Fraternal Order of Police, Newark, Lodge Number 12.

DEAR SENATOR: I am writing at this time in order to express our strongest opposition to the appointment of Judge H. Lee Sarokin to the court of appeals. As President of the Newark Fraternal Order of Police with excess of 1,500 members, the appointment of this liberal jurist to such an important position would be an insult to every Newark police officer who ever wore a badge.

That is pretty strong, and that is from New Jersey. That is from the area where this judge has been ruling.

There are comments like this throughout these letters and they are not frivolous, light letters. They refer to specific cases and specific rulings by this particular judge.

I would like to note, also, a piece that has been written by the Coalition of America that goes through a list of concerns about Judge Sarokin and including several of the cases that have already been referred to about how he opposes mandatory uniform sentencing and his involvement in the cop killer case and that he has ignored law to create loopholes for criminal defendants.

The evidence against Judge Sarokin is clear. He should not be given a promotion. He really should be under questioning about why he should be allowed to stay where he is with all this conduct, like being taken off a case by the appellate court—and now we are going to promote him to serve in that same appellate court. I think he has done enough damage already. Putting on a robe of a judge does not make anybody above the law or precedents.

Our legal system is meant to find justice, not to undertake crusades. Our judges should follow the law and punish wrongdoing, not throw away laws when it is convenient, or free criminals because of the judge's own views or the politics of the case.

Judge Sarokin has thrown out law and precedent, he has undertaken crusades, and he has not been impartial. Can we trust him now with a higher, more important position?

How many times will it take for the administration to realize that it is undermining its own program of making this country safer for all Americans when they come up with judges like this?

Many Members have said they want to be tough on crime. Well, a vote for Judge Sarokin is not a vote for tougher criminal penalties, or respect for law and standards. The reverse is true.

I urge the opposition of all my colleagues to this nomination. If you really do want strong law and order, if you really do want to do something about fighting crime in America, then you should vote against this nominee. He does not deserve to be promoted.

I yield the floor, Mr. President.

Mr. LEAHY. Mr. President, I join in supporting Judge H. Lee Sarokin to be a judge on the U.S. Court of Appeals for the Third Circuit. Judge Sarokin has served with distinction on the U.S. District Court for the District of New Jersey since 1979. Before that he worked in private practice for 24 years before that appointment. He has taught at Rutgers University. He has received high marks from the American Bar Association and the New Jersey Bar Association.

During his service on the district court, Judge Sarokin's work and reputation have earned him the distinction of being named chair of the Third Circuit Judicial Conference twice. He was also Chair of the 1993 Nation Conference of Federal Judges, and has been named to chair this conference again in 1997. He was also reappointed to a second term as chair of the Federal Judges Association.

He has received support from many people, including former Chief Judges of the third circuit Ruggero Aldisert, Leon Higginbotham, and John Gibbons. Former Nixon appointees to the third circuit, Judge Joseph Weis and Judge Leonard Garth both support and speak very highly of him. I think we can all agree that this is indeed a distinguished group of supporters. And if that were not enough, four former U.S. attorneys, a former New Jersey Attorney General, and the former chairman of the New Jersey State Crime Commission strongly endorse his nomination.

He has also received strong support from the New Jersey State Policemen's Benevolence Association, the Bergen County Police Conference, the State Trooper's Noncommissioned Officers Association, the Police Foundation, and the State Troopers Fraternal Association. He has the support of numerous prominent law professors.

Judge Sarokin's legal ability is highly respected and his integrity is beyond question. Judge Sarokin received his undergraduate education from Dartmouth and his law degree from Harvard. He taught law for 5 years at Rutgers University, and has lectured at numerous other prominent law schools, including Harvard and Yale. He has done a wide variety of pro bono work, including representing indigent persons at the request of judges.

Lee Sarokin is a judge of proven competence, temperament, and fairness. He is a humble person. He has the exceptional experience of 15 years on the district court. I believe Judge Sarokin is an excellent choice for the Third Circuit Court of Appeals.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Chair recognizes the Senator from New Mexico [Mr. DOMENICI].

Mr. DOMENICI. Mr. President, I am not going to speak on this subject, but rather seek consent that I be permitted to speak for 5 minutes, as if in morning business.

The PRESIDING OFFICER. Hearing no objection, the Senator from New Mexico is recognized for up to 5 minutes, as if in morning business.

Mr. DOMENICI. Thank you Mr. President. In particular I want to thank Senator BROWN, who is scheduled to go next on the subject before the Senate, for yielding 5 minutes of his time. I know it is an inconvenience, but I thought I would make a report to the Senate about a very important event that occurred today.

## NATIONAL CHARACTER COUNTS WEEK

Mr. DOMENICI. First of all, let me remind the Senate that 6 months ago, a very distinguished group of U.S. Senators from both sides of the aisle—Senators NUNN, DODD, COCHRAN, DANFORTH, BENNETT, LIEBERMAN, and MIKULSKI—joined me in introducing a resolution calling upon the President to issue a proclamation declaring the week of October 16 through the 22d as National Character Counts Week. That resolution was soon joined by many other Senators from both sides of the aisle.

It was then introduced by House Members. The group in the House that put it together and worked very hard to get it passed were Representatives TONY HALL, FRANK WOLF, EMERSON from Missouri, HAMILTON, HUGHES, HENRY HYDE, MOAKLEY of Massachusetts, and SMITH of Maine.

Now all of these are bipartisan, about equal from both sides. And sooner rather than later, the resolution passed both Houses in identical language and was signed.

We introduced this very simple resolution for two reasons. First, we believed that it is time to stand up with thousands of Americans who are supporting the issue of character development; and, second we believe that there were six core elements of character with which we could identify and find no disagreement. We actually took these from a group in America, bipartisan in nature, cochaired in terms of its spokesmen by former Representative Barbara Jordan of Texas and movie actor Tom Selleck, as the cospokesmen for the Character Counts Coalition.

They developed, over a long period of debate, six core elements of character. They are very simple but profound. They are trustworthiness, respect, responsibility, fairness, caring, and citizenship.

The U.S. Senate, urged by the eight Senators that I have just referred to, now believe that these six core elements are fundamental precepts that transcend religious, socioeconomic, and cultural differences.

Today, we had a celebration in anticipation of this October 16 through the 22d National Character Counts Week. A number of organizations, many of them from around the country, came and sent representatives so as to show the grass roots support across America for this endeavor.

I ask unanimous consent that the formal list of participants be printed in the RECORD at this point.

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

PARTICIPANTS

Don Whatley, Albuquerque Teachers Federation.
Sal Panzetti, American Youth Soccer Organization.
Rev. Monsignor Joseph W. Ariano, Boys Town.
City of Albuquerque, Mary Jane Aguilar.
Michael Casserly, Council of Great City Schools.
Frances Hesselbein, Tom Selleck and Michael Josephson from the Character Counts! Coalition.
Keith Sovereign, Joseph P. Kennedy, Jr. Foundation, Community of Caring.
Sylvia Peters, Crossroads.
Vic Hackley, Chancellor, Fayetteville University.
Alma Hobbes, Deputy Director, Dept. of Agriculture for the 4-H.
William Rable, Goodwill Industries.
Steve Keener, Little League Baseball.
Diane Berreth, Association for Supervision and Curriculum Development.
John Martin, Character Education Partnership.
Dr. Fred Close, Ethics Resource Center.
Rocco Marano, National Ass'n of Student Councils and National Ass'n of Secondary School Principals.
Fred Brigham, Nat'l Catholic Educational Ass'n.
Raul Yzaguirre, Nat'l Council of La Raza.
Father Leonard Wenke, Nat'l Federations for Catholic Youth Ministries.
Richard Schubert, Points of Light Foundation.
Nancy Van Gulick, Youth at Risk, Red Cross of America.
Linda Blick, The Chesapeake Institute.
Nancy Kennedy, United Way of America.
C.J. VanPelt, YMCA of USA.
Terry Bomar, Young Adventurers, Inc.
Ray Nickoliason and Arlene Bomar, Young Adventurers.
Ellen Mugmon, Maryland Governors Council on Child Abuse & Neglect.
Mary Johnston, Sponsor-A-Child.

Mr. DOMENICI. Mr. President, this morning, Senators NUNN, DODD, COCHRAN, BENNETT, LIEBERMAN and MIKULSKI from the U.S. Senate—original cosponsors of this resolution—joined me

with our friends from the House, and we addressed a number of cameras and hundreds of people, a number of newspaper people, and many radio people. We urged that the United States take seriously this National Character Counts Week. Many superb words of admonition, concern and praise were stated this morning by Members of both Houses and by others who joined with us in stating to the people of our country that we all want to join with the grass roots efforts across our land, which is going to try to put these six core elements of character back into our daily lives.

This group of Senators and Representatives, joined by leaders of different organizations—including the leadership of the Character Counts Coalition—do not want to tell anyone what to do but, rather, we want to join with what apparently is a national effort, growing by leaps and bounds, indicating anxiety and concern, feeling confident that what we need are the imposition of these six core elements of character into our lifestyles, into our schools, into our businesses, into all our institutions. Many cities, many counties, many States, many public officials and many grass roots organizations today expressed their willingness to make these six character pillars of character, these six elements of character, part of our daily lives, indicating that that week would be used to stimulate the original enthusiasm to get this effort going. We were also privileged to hear the positive and inspiring remarks about the importance of these efforts from a number of distinguished friends and guests: Tom Selleck, Frances Hesselbein, and Michael Josephson of the Character Counts! Coalition; Keith Sovereign of the Joseph P. Kennedy Foundation; Rocco Marano of the National Association of Student Councils; John Martin of the Character Education Partnership; Diane Berreth of the Association for Supervision and Curriculum Development; Fred Close of the Ethics Resource Center; Alma Hobbes, Deputy Director, Department of Agriculture, 4-H; Fred Brigham of the National Catholic Educational Association; and Vic Hackley, Chancellor of Fayetteville University.

We joined together, not because we are interested in this week, October 16 through the 22nd, but because we are interested in this effort of reestablishing the basic character, the basic virtue of America, back into our society through these six pillars of character. We did this because we want this to be an ongoing effort by our parents, by those who run playgrounds, by those who run youth organizations, by those who run schools and businesses and the like.

It was a very big success. But it will not be successful unless more and more Americans decide that they want to be part of this growing grass roots phenomenon of Americans to put character back into our daily lives and lifestyles, and pushing hard for such basic principles and concepts of trustworthiness, respect, responsibility, fairness, caring and citizenship, becoming part of our daily lives.

I thank the Senate for yielding me 5 minutes out of order to discuss our original success one step at a time. Today was a second success since passing the resolution in both Houses and getting it signed by the President. The week of October 16 will be the next big success. And after that, if it catches on and becomes part of our daily lives, indeed we might have started something that will cause this country of ours to be less anxious about itself, less concerned, less worried, because indeed we will get to the root of our problem which seems to have to do with the relationship of individuals to individuals, of individuals to society, and whether they can make their hearts and their heads come together and work on very simple character qualities that must be part of a civilized society.

To paraphrase the great Greek philosophers: A country without character is a country that is lost, and a country with character is a country where people have character.

Those of us joining in this effort believe that wholeheartedly. We think it is time everyone make an effort to put that back in our daily lives.

I yield the floor.

Mr. HELMS addressed the Chair.

The PRESIDING OFFICER (Mrs. FEINSTEIN). The Senator from North Carolina is recognized.

Mr. HELMS. I thank the Chair.

I want to be certain that the distinguished Senator from New Jersey does not wish to speak now, because he has been on the floor, too.

I thank the Senator.

I ask unanimous consent that it be in order for me at this point to make a relatively brief statement about another matter which is of some consequence.

The PRESIDING OFFICER. Is there objection? There being none, the Senator is recognized to speak as if in morning business.

Mr. HELMS. And then, Madam President, of course, I will proceed to the Sarokin nomination.

## USDA AGREES TO REINSTATE DR. KARL MERTZ

Mr. HELMS. Madam President, earlier today, I lifted the holds that I felt obligated several months ago to place on all agriculture legislation and nominations. I lifted the holds when the able Secretary of Agriculture, Mr. Espy, and I agreed last evening on a mechanism by which a gentleman named Dr. Karl Mertz will be reinstated to his previous job, a job from which he should not have been dislodged in the first place.

Secretary Espy has assured me in a letter that this will be done without further delay.

Dr. Mertz, by way of explanation, is the highly respected USDA employee who earlier this year was removed from his job simply because he questioned a proposal by the Department of Agriculture to adopt a number of elements of the homosexual agenda. That is putting it mildly.

To be blunt about it, the Department of Agriculture is being overrun by homosexuals, and they have been running the store to a great extent. I took offense at that, particularly when this good man, Dr. Mertz, was removed from his job for having made a sensible statement.

Dr. Mertz was in Biloxi, MS, on personal leave when he was interviewed by a television reporter who asked him about the homosexual practices and proposals in the USDA. Dr. Mertz made the statement that we ought to be heading "toward Camelot, not Sodom and Gomorrah."

By nightfall, this good man was being removed from his job and transferred to another job for which he was not qualified and had no experience, and the USDA stonewalled when I protested. That is when I put the holds on everything on the calendar involving the U.S. Department of Agriculture. I am not going to stand idly by when a good and decent man is persecuted by homosexuals in the USDA.

I finally won my point last night. Secretary Espy assured me in writing that he would reinstate Dr. Mertz, and he gave his commitment that Dr. Mertz would not again be removed without first being provided the opportunity of a public hearing, a public hearing that will occur here in Washington, DC, if that is where Dr. Mertz wants it to be conducted.

Let me read just a portion of Secretary Espy's letter to me, dated October 3. It will be only a portion but I ask unanimous consent to have printed in the RECORD the entire letter at this point.

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

THE SECRETARY OF AGRICULTURE,
*Washington, DC, October 3, 1994.*

Hon. JESSE HELMS,
*U.S. Senate, Washington, DC.*

DEAR SENATOR HELMS: Let me take this opportunity to inform you of the status of Dr. Karl Mertz of our Agricultural Research Service. As you know, Dr. Mertz was reassigned from his position as an Equal Employment Opportunity officer because of actions he took which strongly indicate that Dr. Mertz disagrees with, and cannot faithfully implement, our current nondiscrimination policy.

Since that time, Congress has adopted legislation which requires the Department of Agriculture to provide the opportunity for a public hearing to anyone in Dr. Mertz's situation prior to removing the employee from his or her current position. This legislation

requires the Department to return to his or her former position any employee who has been removed for publicly criticizing department policies since February 15, 1994. This legislation applies to Dr. Mertz.

In keeping with this Congressional mandate, the Department will return Dr. Mertz to his former Equal Employment Opportunity position without further delay pending an opportunity for a public hearing. As you know, Dr. Mertz has filed a complaint with the Federal Office of Special Counsel. If the Special Counsel determines that Dr. Mertz's constitutional or legal rights were violated Dr. Mertz will, if he so chooses, retain his job as an Equal Employment Opportunity manager. If the Special Counsel does not determine that Dr. Mertz's constitutional or legal rights were violated, before the Administration transfers Dr. Mertz to a position he finds unacceptable, the Department will give Dr. Mertz the opportunity for a public hearing pursuant to the Congressional legislation at a mutually acceptable location.

Sincerely,

MIKE ESPY.

Mr. HELMS. Secretary Espy says: "In keeping with this congressional mandate"—and he is speaking of an amendment that I have put on two pieces of legislation requiring the USDA to do precisely what Secretary Espy agreed to do in writing last night. So:

In keeping with this Congressional mandate, the Department will return Dr. Mertz to his former Equal Employment Opportunity position without further delay pending an opportunity for a public hearing. As you know, Dr. Mertz has filed a complaint with the Federal Office of Special Counsel. If the Special Counsel determines that Dr. Mertz's constitutional or legal rights were violated Dr. Mertz will, if he so chooses, retain his job as an Equal Opportunity Employment manager. If the Special Counsel does not determine that Dr. Mertz's constitutional or legal rights were violated, before the Administration transfers Dr. Mertz to a position he finds unacceptable, the Department will give Dr. Mertz the opportunity for a public hearing, pursuant to the Congressional legislation at a mutually acceptable location.

That letter is perfectly satisfactory to me. I believe my previous unanimous-consent request covers the printing of the entire letter.

The PRESIDING OFFICER. The Senator is correct.

Mr. HELMS. I thank the Chair.

Now, Madam President, Senators may also be interested to note that, included in the crop insurance bill, which is likely to pass the Senate today and be sent to President Clinton for his signature, is the amendment that I offered which, in effect, codifies this agreement between Secretary Espy and this Senator. It reads:

Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be peremptorily removed, on or after February 15, 1994, from the position of the employee without an opportunity for a public or nonpublic hearing, at the option of the employee, because of remarks made during personal time in opposition to policies, or proposed policies, of the Department, including policies or proposed policies regarding homosexuals. Any employee removed on or after February 15, 1994, without the opportunity for such a hearing shall be reinstated to the position of the employee pending such a hearing.

Madam President, I wrote that amendment consciously to give Secretary Espy no alternative, unless he was willing to violate the law at the demand of the homosexuals in his Department.

So, Mr. President, 6 months after Dr. Mertz was summarily removed from his job, it appears that this issue has been resolved, and Dr. Mertz' amendment rights upheld.

Let me remind Senators what happened to Dr. Karl Mertz, a former equal employment opportunity manager for the 10 State southeastern region of the Agricultural Research Service in Athens, GA.

Despite his spotless record, Dr. Mertz was—on March 28, 1994—handed a letter by his supervisor telling him he had been removed from the EEO staff. As Dr. Mertz put it, he was summarily "stripped of a title, tripped of support staff, stripped of working in the field of [his] expertise," and then transferred immediately to a busy work position newly created job dealing with workforce forecasting—whatever that is—which was a purgatory created for him by his superiors.

What was Dr. Mertz's heinous offense that cost him his position in USDA? On his own time, and after making it clear his views did not reflect those of the Department, he dared to criticize the Department's transparent efforts to promote the homosexual agenda in the Federal workplace.

Shortly after a March 4, 1994, USDA conference, and while on his personal time, WLOX-TV in Biloxi, MS, interviewed Dr. Mertz about the Department's proposed homosexual initiatives. Dr. Mertz stated that on a personal level, he took exception with the USDA's proposals that partners of homosexual employees be offered the same taxpayer funded benefits as the legally married spouses of heterorsexual workers, saying:

USDA has had a reputation, rightly or wrongly, of having a plantation mentality, and no one would deny we need to get away from that kind of situation. But we need to be moving toward Camelot, not toward Sodom and Gomorrah, and I'm afraid that thats' where our leadership is trying to take us.

This, I say again Mr. President, was after Dr. Mertz made clear that he was voicing his own views—not the Department's. By that evening, reports the Wall Street Journal, the homosexual lobby had contacted the "higher-ups" at the Department demanding they remove Dr. Mertz.

So, for exercising his rights under the first amendment of the Constitution, Dr. Mertz lost his job. Sure, he retained his grade and salary, but he was stripped of his field of work, his responsibilities, and everything that made his work meaningful to him.

Mr. President, I do not recall seeing where it says that one must check his or her constitutional rights at the door when one joins the staff of the Department of Agriculture. But that is evidently the case now if you want to exercise those rights in opposing the agenda of the powerful homosexual lobby.

After reading of Dr. Mertz's case in the Wall Street Journal and the Washington Times, I called Secretary Espy, and I wrote him a letter, dated June 27, 1994, requesting that he put Dr. Mertz back on his job. Once Secretary Espy was willing to rectify this situation by restoring Dr. Mertz to his rightful position, I would then remove my holds from USDA nominations and their projects before the Senate.

Mr. President, I ask unanimous consent that the articles in the Wall Street Journal and the Washington Times as well as my June 27, 1994, letter to Secretary Espy be placed in the RECORD at the conclusion of my remarks.

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

[See exhibit 1.]

Mr. HELMS. It was ironic that neither I, nor my staff, heard from Secretary Espy until the day I was on the floor of the U.S. Senate offering the first of two amendments to the fiscal year 1995 agriculture appropriations bill. In fact, I heard from Secretary Espy twice on July 19. Apparently he thought the situation grave enough at that time to pen not just one, but two letters explaining his decision to push Dr. Mertz around at the behest of the homosexual lobby.

The next day, I offered, and the Senate passed, my second amendment to the fiscal year 1995 appropriations bill protecting the free speech rights of employees. The amendment, passed by a vote of 59–41, prohibits USDA from removing any employee from his or her position without public hearings on the basis of their remarks on their own time opposing the Department's policies on homosexuals. The amendment would have restored an individual—such as Dr. Mertz—to his or her position if such action had occurred prior to the law's enactment.

During the debate on my amendment, I addressed the discrepancies in Secretary Espy's letter regarding the direction in which the Department of Agriculture is heading regarding special rights for homosexuals and lesbians. Of course, the U.S. Senate concurred with me the day before when they passed my first amendment to the fiscal year 1995 appropriations bill—by a vote of 92–8—that would have prohibited USDA from using Federal funds to conduct seminars or other activities to encourage or to promote homosexuality as a morally acceptable lifestyle.

Senator BUMPERS promptly offered an amendment which gutted the amendment to restore Dr. Mertz to his position. The Senate then passed my original amendment by voice vote as part of the Federal Crop Insurance Reform Act of 1994. Fortunately for the employees at the USDA, this provision will remain in the compromise struck between the House and Senate on crop insurance legislation—H.R. 4217—and will be signed into law once this bill passes the Senate.

Mr. President, I ask unanimous consent that my amendment which will be included in H.R. 4217 be included in the RECORD at the conclusion of my remarks.

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

[See exhibit 2.]

Mr. HELMS. Mr. President, since I decided to place a hold on all agricultural nominees until Dr. Mertz was returned to his previous position, I heard from folks inside and outside the Beltway. I had nothing personal against any of the individuals on the calendar whose nominations were reported by the Agriculture Committee. In fact, I daresay the 13 other Senators who signed a letter to Senator DOLE objecting to any unanimous consent agreements on the various agriculture nominees had anything personal against them as well.

But these 13 other Senators realize, as I did, that the Federal Government, and in particular the USDA, wronged Dr. Mertz. The American people realized Dr. Mertz had been wronged as well. Scores of letters have poured into my office from folks around the country applauding Dr. Mertz's courage to speak out against moral decay in the Federal Government as it attempts to indoctrinate its employees.

However, in his three letters to this Senator, not once did Secretary Espy admit what the Senate felt to be the truth when it voted on July 20, 1994—that Dr. Karl Mertz had been punished because he dared to speak his conscience when it comes to a matter of moral and spiritual significance.

Perhaps Secretary Espy or someone at the Department read the Washington Times editorial on July 23, 1994, titled "HELMS vs Espy, Round One" which stated "Whether Mike Espy will see the error of his ways remains to be seen." The Wall Street Journal, in an editorial on August 4, 1994, accurately pointed out that "The ball is now in Agriculture Secretary Mike Espy's court."

Mr. President, I ask unanimous consent that the editorials from the Wall Street Journal and the Washington Times be printed in the RECORD at the conclusion of my remarks.

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

[See exhibit 3.]

EXHIBIT 1

[From the Wall Street Journal]

A DIFFERENT KIND OF WHISTLE BLOWER

(By Max Boot)

Karl Mertz is a whistle-blower. But unlike most members of that species, he's not exposing sexual harassment on the job or military contractors who overbill the government. He's blowing the whistle on a less publicized kind of fraud: the promise that affirmative action policies result in a more "just" society.

Mr. Mertz has seen how such policies operate from the inside. Since 1987, he's been a senior Equal Employment Opportunity manager at the Agriculture Department in Atlanta, a commissar in the battle against racism, sexism and other "isms." Before that, he performed similar jobs for the Labor Department and the Army. It's a calling for which he has impeccable credentials: After getting a Vanderbilt doctorate, he went to work as a Methodist pastor in Mississippi and promptly got in trouble with the locals for preaching racial tolerance.

Like most Americans, Mr. Mertz is dedicated to "equal opportunity" for all, no matter what race, creed or sex. But he quickly found that those rules don't apply to white males like himself. When he's applied for numerous EEO jobs at other federal agencies since 1984, he's been turned down cold. At the Internal Revenue Service, he got top scores on his exam but didn't even land a job interview; all eight finalists were black females. Mr. Mertz tried pursuing a job-discrimination claim against the government, but when that proved fruitless he decided to express his frustration on CNN.

On the program, aired Feb. 20, Mr. Mertz declared: "People in the '60s set up a big policy machine and said we're going to try and open up doors for people who have been wrongly excluded from society, and then they put the machine in gear, and kind of turned their backs on it. Now it's rumbling across the landscape doing pretty much what it wants."

Mr. Mertz tells some hair-raising stories about what the machine is doing. Agriculture Department managers hire "twofers" (say, a black female) or "threefers" (say a disabled Hispanic female) in order to get a bonus for meeting affirmative action quotas. Postdoctoral fellowships are funded for one year if the recipient is a white male, two years if he (or, more likely, she) is a minority. And—get this—a new training program at the department, designed to build self-esteem, is open only to senior African-American male managers. "These people are already in senior positions!" Mr. Mertz exclaims. "Why spend taxpayers' money to boost their self-esteem?"

Mr. Mertz has had to live with such programs for a while. What he wasn't prepared for was Agriculture Secretary Mike Espy's gay-rights agenda, part of the Clintonites' kowtowing to a key group.

At a Washington meeting of the department's affirmative-action administrators on Feb. 25, Mr. Mertz listened to a report by the head of the department's gay employees group. An outline distributed by the gay activist during her presentation states: "Until our relationships are recognized and respected and benefits are available to our partners and families, we are not full members of Team USDA." Top executives pledged to hold "sensitivity training" to spread this message among the ranks, and to punish those who don't toe the line.

In other words, homosexual employees aren't just asking to be left alone—Mr. Mertz is in favor of that. They want other employees to actively approve of their lifestyle. And Mr. Espy is backing the gay-rights agenda with taxpayer-funded indoctrination courses for the department's workers. "I was pushed as far as I could go," Mr. Mertz says.

A week later, on March 4, Mr. Mertz attended a departmental conference in Biloxi, Miss. Afterward, a local TV reporter asked him to comment on the gay-rights policy. After making clear that he was voicing his own views, not the department's, the Christian expressed his disapproval of homosexuality and said that the Agriculture Department should be headed "toward Camelot, not Sodom and Gomorrah."

When he got home to Atlanta later that night, Mr. Mertz received a phone call from a Washington-based Agriculture Department bureaucrat who said he had heard about the TV interview from gay activists. Then silence—until March 28, when Mr. Mertz was summoned into the office of Mary Carter, South Atlantic area director of the department's Agriculture Research Service.

Without waiting to hear his side of the story, Ms. Carter handed him a momorandum announcing that his TV interview "reflect[s] a disagreement with Departmental Civil Rights Policy, which could seriously undermine your ability to perform your responsibilities." Then without hint of due process, he was transferred, effective immediately, to a newly created job dealing with something called "work force forecasting."

Ms. Carter insists that the reassignment "isn't punishment," but try telling that to Mr. Mertz. "I've been stripped of a title, stripped of support staff, stripped of working in the field of my expertise," he complains.

The truly noxious part of this is that Mr. Mertz is being punished for exercising his First Amendment rights, not—as the memo claims—failing to do his job. In a telephone interview, Ms. Carter couldn't name a single instance when Mr. Mertz had failed to enforce department policy for homosexuals or anyone else. In fact, Mr. Mertz's evaluation forms give him high marks in every category, including "supports EEO and Civil Rights Programs."

Given what's happened, it's a bitter irony that Mr. Espy's statement on civil rights policy says: "I am especially concerned about allegations of a 'culture of reprisal' at USDA." The secretary was writing about reprisals for filing affirmative action complaints, but that concern is equally pertinent here.

Mr. Mertz is appealing for help from those who traditionally champion the cause of whistle-blowers, ranging from the federal Office of Special Counsel to "60 Minutes" to various government-watchdog groups. It will be interesting—and highly telling—to see what support he gets.

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[From the Washington Times, June 13, 1994]

MAN'S OPINIONS LEAD TO TRANSFER—HE SPOKE AGAINST GAY RIGHTS AT AGRICULTURE DEPARTMENT

(By Ruth Larson)

Karl Mertz has spent his professional life helping guarantee equal employment opportunities for federal employees, but voicing his personal opinions on homosexuality cost him his job at the Department of Agriculture.

For seven years Mr. Mertz, 49, was the equal employment opportunity manager for the 10-state Southeastern region of the Agricultural Research Service, based in Athens, Ga. On March 28 he was removed from his

GM-13 post for remarks made during a March 4 TV interview.

In the interview, Mr. Mertz took exception with USDA policies on homosexuals. In particular, he opposed departmental proposals that partners of homosexual workers be offered the same benefits as spouses of heterosexual workers.

"USDA has had a reputation, rightly or wrongly, of having a plantation mentality, and no one would deny we need to get away from that kind of situation," Mr. Mertz said. "But we need to be moving toward Camelot, not toward Sodom and Gomorrah, and I'm afraid that that's where our leadership is trying to take us."

As an EEO manager, Mr. Mertz enforced the Civil Rights Act, which forbids discrimination based on race, sex, age or religious beliefs.

Mr. Mertz was on annual leave at the time of the interview, and the segment, which aired that evening on WLOX-TV in Biloxi, Miss., made clear that his comments reflected his personal views.

In a telephone interview, Mr. Mertz said his reassignment to work force forecasting—a job in which he has "no experience, no training and no interest"—was in retaliation for his views.

"I believe that my freedoms of speech and religion have been trampled," Mr. Mertz said in a letter to The Washington Times. "Furthermore, I sincerely believe that USDA and the Agricultural Research Service have created, and are expanding upon, a work environment hostile to heterosexual employees."

Mr. Mertz has filed a complaint with the Office of Special Counsel, arguing that he was removed without due process and that he suffered reprisals for exercising his First Amendment right to free speech.

Government employees who disclose fraud or abuse are protected under whistleblower laws. But their rights under the First Amendment must relate to matters of public concern, and their interests are weighed against the government's, an administration official said.

USDA spokesman Tom Amontree declined to comment on the case because it is a personnel issue.

But at a department diversity conference in April, Agriculture Secretary Mike Espy urged participants to cultivate increased sensitivity when managing "people of different ethnic and religious groups, people with different lifestyles, people of the opposite sex."

Homosexual advocacy groups decried Mr. Mertz's view.

"It undermines the whole concept of the discrimination-free workplace, and it's particularly inappropriate coming from an EEO manager," said Gregory King, spokesman for the Human Rights Campaign Fund.

Mr. Mertz said that when he arrived home in Atlanta the evening the interview was broadcast, a senior USDA official called to tell him Mr. Espy had received complaints from homosexual groups.

On March 28, Mr. Mertz was handed a letter telling him he was being removed from the EEO staff. The letter said his statements in the interview "reflect a disagreement with departmental civil rights policy" that could hamper his ability to handle EEO duties.

"As a private citizen you have every right to express your opinions freely. * * * However, you must recognize the fact that in publicly disagreeing with an admittedly controversial position of the departmental leadership, you have made it difficult for employees and managers of the agency to accept that you actively support these same policies in your official assignment," the letter said.

Mr. Mertz was allowed to retain his grade and salary in the move.

"Getting that letter was a shock," Mr. Mertz said. "No due process—I'd broken no laws. In fact, the things we're being asked to do, accepting the homosexual lifestyle, are illegal. They're not part of the civil rights law, they're not the law of the land, and they are a personal affront to all I believe."

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U.S. SENATE,
*Washington, DC, June 27, 1994.*

Hon. MIKE ESPY,
*Secretary, Department of Agriculture,*
*Washington, DC.*

DEAR MIKE: You're too nice a guy and have far too much going for you to be participant in letting Dr. Karl Mertz's career go down the drain. He's a good guy and has served USDA well. However, I've got no ax to grind except that Mertz—and you and I, and everybody else—deserve better than to risk reprisal for taking a stand on moral and spiritual matters.

I appreciate your calling me back. I merely wanted you to know of my respect for you—and of my determination that neither USDA nor any other federal entity is going to get by with pushing faithful people like Mertz around. I don't know the man but I have looked into this episode—and Mertz does not deserve the treatment he's getting.

Put Mertz back on his job and I'll remove my holds from USDA nominations and projects.

Kindest personal regards.

Sincerely,

JESSE HELMS.

EXHIBIT 2

**SEC. 302. FIRST AMENDMENT RIGHTS OF EMPLOYEES OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.**

Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be peremptorily removed, on or after February 15, 1994, from the position of the employee without an opportunity for a public or nonpublic hearing, at the option of the employee, because of remarks made during personal time in opposition to policies, or proposed policies, of the Department, including policies or proposed policies regarding homosexuals. Any employee removed on or after February 15, 1994, without the opportunity for such a hearing shall be reinstated to the position of the employee pending such a hearing.

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EXHIBIT 3

[From the Wall Street Journal, Aug. 4, 1994]

HELP FROM HELMS

Senator Jesse Helms is often a figure of fun for the nattering classes but unlike many of his colleagues, he doesn't shy away from unpopular causes. Karl Mertz can be grateful for that. As reported on this page by Max Boot ("A Different Kind of Whistle-Blower," April 27), Mr. Mertz is the Agriculture, Department equal employment opportunity officer removed from his post for questioning a new gay-rights policy. In an effort to get redress for Mr. Mertz, Senator Helms has put a hold on several administration nominees and proposed two amendments, passed by the Senate, to the agriculture appropriations bill. The most important of the Senate's amendments retroactively forbids the Agriculture Department from removing an employee from his job without hearings for making remarks about gay policies outside of working hours. The ball is now in Agriculture Secretary Mike Espy's court.

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[From the Washington Times, July 23, 1994]

HELMS VS. ESPY, ROUND ONE, ETC.

First amendment alert: Sen. Jesse Helms is in the middle of a bravura performance in defense of mistreated Agriculture Department employee Karl Mertz, pulling out all the legislative and rhetorical stops in his quest for restitution.

For seven years Mr. Mertz, 49, had been the equal employment opportunity manager for the 10-state Southeastern region of the Agricultural Research Service, based in Athens, Ga. But his career in that office came to a screeching halt when, on March 4, while on vacation, he voiced his objections to new USDA policies on homosexuals in a TV interview, particularly the department's move to allow homosexual partners of Agriculture employees to be covered by agency benefits. Reaction from the thought police was virtually instantaneous: When he arrived home in Atlanta the evening the interview was broadcast, a senior USDA official called to tell him Mr. Espy had received complaints from homosexual groups.

And then, on March 28, Mr. Mertz was handed a letter telling him he was being removed from the EEO staff. The letter said his statements in the interview "reflect a disagreement with departmental civil rights policy" that could hamper his ability to handle EEO duties. "As a private citizen you have every right to express your opinions freely. * * * However, you must recognize the fact that in publicly disagreeing with an admittedly controversial position of the departmental leadership, you have made it difficult for employees and managers of the agency to accept that you actively support these same policies in your official assignment," the letter said.

Mr. Helms just couldn't agree that a government employee should be penalized for voicing his personal opinions. Last week, he put a "hold" on confirmation of four administration nominees in an effort to force Agriculture Secretary Mike Espy to reinstate Karl Mertz to his job (he was reassigned, to a job for which he has no training, no experience and no interest). And this week, he proposed an amendment—passed by the Senate 59-41—prohibiting removal, without public hearings, of employees who make remarks on personal time opposing the USDA's homosexual policies. Another Helms amendment, prohibiting "the use of taxpayer funds to encourage employees to accept homosexuality as a legitimate or normal lifestyle," passed 92-8.

Whether Mike Espy will see the error of his ways remains to be seen. But here's to Sen. Helms, a man who could never be accused of pulling his punches where principle is concerned.

Mr. HELMS. Mr. President, whatever the reason, I am pleased that Secretary Espy agreed to return this faithful employee to his position at the Department of Agriculture. I am confident that the homosexual lobby is displeased and I am sure their disapproval of Secretary Espy's actions will be heard loud and clear.

But regardless of who stands in the way, the defense of our citizens' constitutional right to express freely their opinions when it comes to moral and spiritual convictions is a defense well

worth the fight. When the Federal Government decides that this right is no longer valid, the miracle of America will be in grave jeopardy.

THE CRIME BILL

Mr. HELMS. Madam President, having been a Member of the Senate for 22 years, it still seems remarkable to contemplate that, for no more than 1 or 2 years out of those 22, there has been, every year, a so-called crime bill and, without exception the American people have been exhorted, every year, to believe that this crime bill would take care of the crime problem in America once and for all.

I remember hearing it day after day, year after year: "This is it. Just spend these billions of dollars or hundreds of millions of dollars," and so forth. And what did it get us? Nothing.

The proponents of each of these crime bills have boasted that this one, their crime bill, do you not see, would be the sure-fire miracle cure. Every time there have been assurances that crime in the streets would be stopped and drug trafficking and murders and rapes and other acts of violence would be things of the past.

These statements were made by Senators in good faith who I am sure believed what they were saying. Slowly but surely, it has finally become obvious that America's crime problem will be solved only when one or two other problems have been solved. As a nation, the American people must—and I underline "must"—restore some fundamental principles upon which this country was founded in the first place. If we do not do that, nothing is going to work.

For weeks this year, there has been a steady flow of the same old political rhetoric about the 1994 crime bill with numerous charges and countercharges. Last month at a church outside of Washington, President Clinton said that the 1994 crime bill gives America a chance, a chance to be tough and smart. I do know what he meant by that statement, but that is what he said. It was certainly an interesting semantical performance. Then, with a great oratorical flourish, the President launched into bewildering comments. He said:

> My fellow Americans, the problem of violence is an American problem.

Is that news?

Then he said:

> It has no partisan nor philosophical element. Therefore, I urge you to find ways as quickly as possible to set aside partisan differences and pass a strong, smart, tough crime bill.

When I heard him say that on the news—there was a taped portion of the President's speech being replayed in a newscast—it occurred to me that so many Americans have already compared this rhetoric with the President's actions on crime prevention.

Consider, for example, his nominee for the Eleventh Circuit Court of Appeals, Rosemary Barkett, confirmed by the Senate 61 to 37 on April 14 of this year. Sixty-one Senators out of 100 chose to ignore the fact that during her tenure on the Supreme Court of Florida, Judge Barkett sought to prevent the enactment of laws to ban obscenity and preserve community order and decency. She was opposed to it, and she made no bones about it.

She contrived roadblocks to laws that are essential to community policing and to maintaining law and order. While on the Florida bench, Judge Barkett issued a series of search and seizure decisions which, if and when implemented, would severely hamper the ability of the police to enforce laws against drug trafficking and other crimes.

Mr. Clinton put this woman on the Eleventh Circuit Court of Appeals, and in the next breath he says, "Look at how tough I am."

This is another case, I suppose, of an emperor having no clothes, strutting around saying, "Look at my dress." That story is familiar to every child, I expect.

Less than 3 weeks after Mr. Clinton signed the crime bill, he directed the Senate majority leader to take up the nomination of Judge Lee Sarokin, the Clinton nominee to fill a vacancy on the U.S. Court of Appeals for the Third District. So here we go again.

Mr. Sarokin is one of those judges with curious notions, to say the least. If he were a farmer, he would put a fox in charge of the hen house. One of his bright ideas was to release prisoners who are charged with violent crimes and put them right back on the streets where they committed mayhem before they were tried and convicted and sent to prison.

In an article in the West Virginia Law Review, volume 90, summer of 1988, Judge Sarokin declared that jailing those charged with violent crimes until tried, violates, he said, the presumption of innocence. If the judge is right about that, Madam President, law enforcement has been stood on its ear. Vicious criminals, such as those who bombed the World Trade Center, would be set free under Judge Sarokin's notion, set free to roam the streets or to escape trial, and left free to commit further deadly crimes.

The Senate, I happily note for the RECORD, recognizes that pretrial detention is an essential public safety precaution. The crime bill, passed by the Senate almost a year ago, encouraged the States to have pretrial detention laws in place for characters charged with violent crimes.

Judge Sarokin has likewise taken aim at mandatory sentencing, insisting, and I quote him, insisting that "mandatory and uniform sentencing deprives judges of the right to grant mercy in those instances in which facts cry out for it."

Madam President, after reviewing Judge Sarokin's sympathies for criminals, Senators may wish to consider his judicial temperament.

While serving on the Federal district court in New Jersey, Judge Sarokin presided over a case in which several tobacco companies were the defendants. And during the trial, Judge Sarokin's bias against the defendants was so blatant that the third circuit, the very same court for which President Clinton now wants Judge Sarokin to serve, took the extraordinary step of removing Judge Sarokin from the case. Even the New York Times applauded the Sarokin removal saying Sarokin has been "far out of line." And the New York Times further said Judge Sarokin had flunked an important test of credibility.

The third circuit court has had other things to say about Judge Sarokin. The third circuit court lambasted him for his "judicial usurpation of power" and for ignoring "fundamental concepts of due process" for destroying the appearance of judicial impartiality and for "superimposing his own view of what the law should be in the face of the Supreme Court's contrary precedent."

In fact, we have before us a nominee, nominated by President Clinton, of course, who has repeatedly downplayed or avoided the most controversial aspects of his record. During the Sarokin nomination by the Senate Judiciary Committee—and that was, I believe, on August 2—one of the Senators asked him about his infamous decision that struck down regulations about a library that had adopted a policy of unruly behavior and hygiene. Judge Sarokin said in this case that this policy discriminated against the homeless. During his U.S. Senate confirmation hearing, Judge Sarokin insisted that the Court of Appeals had agreed with him. The fact is, however, the court had reversed him on every major first amendment issue.

Judge Sarokin has demonstrated an unusual penchant for ignoring judicial precedent in reaching his own desired findings. His refusal to follow precedent was so blatant in one case that it prompted the Third Circuit Court of Appeals to remind Judge Sarokin that the court was not free "to superimpose its own view on what the law should be in the face of the Supreme Court's contrary precedent."

There is more. The New Jersey Law Journal considers Judge Sarokin to be the most liberal and most often reversed Federal judge in New Jersey. So, Madam President, the question is apparent, obvious: Is this the kind of man Senators want to have sitting on the Court of Appeals for the Third Circuit, a judge who has set free a criminal because the criminal had used a false name to sign a waiver of his Miranda rights?

There is a reason why the national Fraternal Order of Police and, in particular, the Fraternal Order of Police in the State of New Jersey, oppose Judge Sarokin's nomination. These law enforcement officers, speaking for countless other officers, describe Judge Sarokin as "more of an advocate of social and personal causes than a judge." One New Jersey sheriff was so appalled that President Clinton had nominated Judge Sarokin for the third circuit that the sheriff wrote President Clinton a little letter. Let me quote from it. He said:

DEAR MR. PRESIDENT: I don't know who advised you on this but they were either asleep at the switch or they really don't give a damn about Law Enforcement. As a Democrat, I'm astounded that you would make such a nomination. As a Law Enforcement Officer, I'm disappointed, disillusioned, and damned mad.

So, Madam President, I guess the bottom line is that even if Congress ever gets around to passing anything resembling the toughest crime bill in history, that still will make no difference whatsoever if the President insists on nominating a manifestly unsuitable judge like Lee Sarokin to one of the Nation's highest courts.

Bear in mind, I say to the American people who might be looking at these proceedings on C-SPAN, that Judge Sarokin will have lifetime tenure. He will serve for life if he wants to on the U.S. Court of Appeals for the Third Circuit. And if he continues to conduct himself as he has as a district court judge, Mr. Sarokin's liberal philosophy will permeate his decisions, and he will not hesitate to abuse his judicial power to override the actions of elected representatives of the people.

If the Senate confirms Judge Sarokin, nothing will have been done to remedy the cataclysmic problem of crime in America's streets. Indeed, this nominee, when he becomes a judge for the third circuit, based on his record, could do little more than exacerbate the problems that already exist.

Therefore, Madam President, I cannot support this nomination. His confirmation, if it happens, will be among the many great mistakes made during this 103d Congress.

I truly hope that it does not happen.

I thank the Chair. I yield the floor.

Mr. BROWN addressed the Chair.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

Mr. BROWN. Thank you, Madam President. I rise in opposition to Judge Sarokin's nomination.

Madam President, the judge has been described as liberal in his philosophy and thinking. I think that is probably true. But that is not totally unique with regard to nominees and it should not be the only basis on which one makes a decision.

I, like others, have voted for the administration's nominees 99 percent of the time, not because I agreed with 99 percent of them. I do not. But it is the practice, and I think with some basis, to let the President exercise the powers of that office. But that does not mean and should not mean that the Senate's power of confirmation should be ignored or avoided. At least to this Member, we have a responsibility to review the nominees to see if they are capable, if they are honest, and if they are bright. In this case, at least in my view, Judge Sarokin satisfies all of those criteria. He has a bright, engaging personality. He is intellectually bright as well as socially bright. I found nothing that would indicate to me that he is anything less than honest, and he is quite clearly of capable intellect.

But, Madam President, I have concerns about the nomination, and I am going to oppose the nomination because I think there are other standards for a judge as well, not simply whether you like them because he is quite likeable, and not simply because he has the intellectual potential because he clearly does. I am concerned about two things that I observed in his record, that I have confirmed by reviewing his cases and his opinions and that I discovered in questioning.

Basic to a judge is whether or not that judge will follow the law. We, in the U.S. Senate, and in the U.S. Congress, expect the judges that are nominated to follow the law; that is, if the law is clear, the judge ought to follow it.

I believe an objective review of the judge's opinions will indicate that he is reluctant to follow laws that he disagrees with; that is, the law can be clear, and, if he does not like it, he will ignore it. That is a serious charge, Madam President. But I intend to go through specific examples that suggest to me that Judge Sarokin has placed his own view above that of Congress and he is likely to ignore the law if he is confirmed.

I think we have a right to expect that judges will enforce the law, will enforce the law that he likes, and will enforce the law that he does not like. Why? If we are offered protection under the law, it ought to apply to all Americans, not simply ones that a judge likes and not with those he does not like. It ought to apply to all Americans. It ought to be the kind of thing that citizens can count on. We have a right to expect that if there are protections in our Constitution or in our statutes that they apply to everyone and that you are not faced with your rights being lost if the judge does not like the color of your skin, does not like our occupation, or does not like your appearance. I believe an objective review of the cases that Judge Sarokin has ruled on indicates that he is unable to be objective in those areas. Those are serious charges. I want to be specific because I think the specific examples can be quite illustrative.

The Rodriguez case involved a question of the admissibility of a statement made to police. Judge Sarokin created a new rule for voluntary waiver of rights. If this rule were a new area of law, it might be called for, but it is not. The judge acknowledged in his own opinion that the third circuit had ruled differently on the very point that was in question, and he flatly and openly disregarded the ruling of the third circuit.

Let me repeat that because I think it is important. The judge acknowledged in his own opinion that the third circuit had a different view, the circuit court which governs his district court, and he declined to follow their guidelines. This is a clear example of the judge declining to follow the law in an attempt to further his own view.

Here are the facts of the Rodriguez case. The FBI picked up a suspected thief. They brought him in for questioning. Ultimately, they obtained damning evidence. The accused challenged the statements he made to the FBI. What can you challenge your own admissions, your own statements on? You can challenge them on the basis that you did not make those statements.

But, apparently, that was not the case here. This defendant challenged the statements on the basis they were not made voluntarily. Our Constitution protects us from involuntary statements. We do not want police beating a confession out of someone. The reason we do not is out of concern for the person but also out of concern for the validity of the statement. If it is made involuntarily, we, as a society, question the validity of what was said.

The basis of Judge Sarokin's denying admissibility of these statements was that they were involuntary. Let us take a look at what Judge Sarokin says is involuntary.

Here are the facts of how the FBI obtained the statement. I think, as all Members know, the FBI is not the bottom of the grade with regard to our police, but the top—the top in education, training, and performance. Here is what they did: The FBI spoke to the accused in Spanish, his own language. They went out of their way to speak in a foreign language to the accused so he would understand them. They provided a written description of his rights in English and Spanish. They not only spoke the language of his preference, but they also provided his rights, written in both languages. They asked if he wanted a lawyer. The accused said that he did not want a lawyer and he signed a form, written in his language, that explained his rights, and waived the right to counsel while making a statement.

What is wrong with this? Well, the accused signed a false name. The accused gave the wrong name. He signed the form but gave the wrong name.

Judge Sarokin said that this shows that his statement was involuntary. Let me repeat that. Because the accused lied about his identity, the judge ruled that the confession was involuntary. This is incredible. There is no allegation that the FBI did anything wrong. There is no allegation they beat him or tortured him or mislead him. There is no indication that they failed to give him the Miranda rights, or that they failed to speak in a language of his preference. There is no indication that they did not give his rights, both verbally and in writing. What the judge found is that because the accused lied, he was going to rule out the confession. This is not just liberal, this is saying that if you lie, you can undermine the admissibility a confession.

Madam President, Judge Sarokin's analysis means that no matter what the police go through, no matter what procedures are followed, no matter how reasonable they are, no matter how voluntary the statement is, this judge is on the side of the accused.

We expect that judges will be objective, that they will apply the law, and that they will render justice.

It is this Senator's viewpoint that this judge departed from that standard. It is my view that this judge had his mind so set with regard to the outcome, he was willing to ignore the clear rulings of the third circuit, willing to ignore the law, and was willing to throw out the statement.

The problem for Mr. Sarokin's analysis is that the third circuit, which Judge Sarokin is bound to follow, had already addressed this issue in another case. Madam President, that is right. This particular issue had already been addressed by the circuit. They had found that signing a false name was not relevant to finding voluntariness. In other words, the issue on which the judge ruled had already been reviewed by the court of the third circuit and it ruled the opposite way Judge Sarokin had ruled.

He simply, consciously chose to ignore the precedent and ignore the law. Madam President, it is not just a question of whether you agree or disagree with the judge; it is a question of whether or not we should allow judges to ignore the law and decide cases based on their own personal viewpoint.

Once we have judges that do that, we destroy the integrity of the system. It is not just a question of whether or not we agree with that judge, it is a question of whether that judge will ignore the law and the rulings and the precedents. Virtually every judge that comes before the Judiciary Committee is asked whether, and virtually everyone responds, they will follow the laws and the rules as they understand them.

Here is a judge who has clearly not done that. Let me go on, because there are other specific examples. In the Blum case, Judge Sarokin first ruled to award attorney fees to the prevailing party, as well as a multiplier, as a penalty. The court of appeals suggested that Judge Sarokin reanalyze his approach and suggested, as the magistrate in the case did, that his award was unfounded. In other words, the judge made a ruling, and it was appealed and remanded back to his court with directions that the judge had been incorrect in the way he handled it.

What did the judge do? Well, I think we would all expect the judge to follow the ruling of the superior court. Perhaps even some of us would have felt a bit sheepish about getting the rule wrong. Judge Sarokin did not do that. As a matter of fact, rather than follow the dictates of the superior court, Judge Sarokin mocked the Supreme Court and the court of appeals for their opinions on the subject. He mocked their rulings and did just the opposite. This approach to judging is sort of in your face. This is sort of like saying: I do not care what the Supreme Court says, or what the circuit court says, and I do not care that it has been remanded and reversed. I am going to do what I want in despite of all that.

And did he show them. He not only mocked them in his opinion, but he turned around and did the opposite of what they suggested. He commented in his opinion on the attorney's fee multiplier, with mocking disregard of the court. He said, "The Supreme Court has sent a Christmas card to this court delivered via the Third Circuit Court of Appeals. It is called 'How to make an Attorney Fee Multiplier.' However, the instructions are so confusing and inconsistent that this court has been unable to put the gift together," referring to the rulings of the superior court. The court of appeals, in criticizing Judge Sarokin for failing to following precedent, said: "The district court, without concealing its disapproval of the Supreme Court's decision and ours, proceeded in accordance with its own views."

The court of appeals went on to say, "Neither the district court nor this court is free to superimpose its own views on what the law should be in the face of the Supreme Court's contrary precedent." I will repeat that because it describes the approach of Judge Sarokin. The circuit court of appeals in describing his approach said: "Neither the district court nor this court is free to superimpose its own views on what the law should be in the face of the Supreme Court's contrary precedent."

Madam President, this is a judge who does not follow precedent, even though he sees it and hears it and understands it. He still places above everything else his own view.

If this body confirms Judge Sarokin, they will be saying that even a judge who is unwilling to follow the law and the rulings of superior courts is going to be confirmed. Ask yourself: If you are required to go to court, if you are sued or you go to the courts to sue for justice, do you really want a judge that will ignore the law, ignore the precedents, ignore the rulings? That is what is at stake in this confirmation vote.

In the Kreimer case, Judge Sarokin broke new ground in constitutional law, raising numerous constitutional issues. When the case was appealed, Judge Sarokin was not only reversed, he was reversed on almost every constitutional issue that he raised. That particular case involved a homeless man who harassed patrons of a public library.

The library was responding to a problem of harassment that plagued the library and its patrons, denying them the ability to receive and enjoy information in accordance with an ordinance drafted to preserve order at the public library. So what we have here is a city that has a library, and they are trying to help people use it, and they draft an ordinance to protect the people using it. The judge found the ordinance unconstitutional. He said the city council's ordinance was unconstitutional. He found a number of ways to protect the rights of the homeless man. He held that the ordinance was vague, overbroad, and violated substantive due process and violated equal protection. The third circuit reversed him on all those counts. The third circuit simply acknowledged the obvious: A library may constitutionally impose order and quietude.

Ask yourself what happens to your public library if it is unconstitutional for a library to try and preserve order and quietude. That makes no sense at all. It is not simply a matter of expressing concern for someone who is homeless or who has a problem. It is a matter of being so wrapped up in your own views that you do not consider the views of other people, and you do not consider the Constitution and the clear rulings of superior courts. The troubling part is that Judge Sarokin reached out so aggressively and widely to reach the result he wanted that he ignored existing law. Judge Sarokin equated imposing order in a public library with a violation of substantive due process. He equated imposing order in a public library with a violation of due process. It makes no sense.

Using the Constitution, particularly the idea of substantive due process, to subvert the legislative process is a dangerous trend in our courts.

How can this body complain if any court ignores our legislation if we confirm judges like Judge Sarokin? If Judge Sarokin can throw out those ordinances and the will of the people elected to represent this community, by saying it simply violates his idea of substantive due process, we threaten and undermine the whole concept of our representative democracy.

Madam President, I do not want to go into too many cases, but I want to

assure the Members if they will look at the cases and the rulings of the judge, they will be shocked by what he has said and done, and they will find numerous examples, not only of where he has been reversed, but examples of where he has ignored the plain meaning of the law.

Here is one of the most striking examples. In the Vulcan Pioneers case, which Judge Sarokin ultimately vacated, he plainly disregarded the civil rights statute. Let me read it because there is no question that the judge knows what the statute says. It is printed in the opinion. It is title VII of the Civil Rights Act of 1964. Here is the statute which he has quoted:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation for different terms, conditions or privileges of employment pursuant to a bona fide seniority system.

The statute goes on to point out that this applies unless the results show an intention to discriminate. In other words, it specifically mentions that it is all right to follow the seniority system. In the case, the judge does not find that this seniority system had the intention to discriminate. In other words, the one out that is in the statute, the judge found did not apply.

So the judge is aware of the statute, he quotes the statute, he agrees that the intent of the statute is not to discriminate. And what does he do? He ignores the statute. Having cited it, having read it, having pointed out that the one out does not apply, the judge then proceeds to ignore it. Here are his words:

> The act does not insulate such systems from alteration as an aspect of the relief available under this act.

In other words, he can do what he wants to. That is indeed what he does. He casts aside the statute. He set a numerical racial goal even though there was no intent to discriminate and he found there was no intent to discriminate in place on a bona fide seniority system.

Now, Madam President, what we are looking at here is a very clear statute and a very clear ruling and a judgment by the judge that, in spite of what this statute says, he is going to render the kind of opinion that he wants. No one in this Chamber should vote on this issue without knowing in advance that this judge is not going to follow the law if he does not like it and not going to follow the precedents if he does not like them.

This is one Member who recognizes the President's ability to nominate people of his preference. I have voted for both of his Supreme Court nominees. I have voted for the vast majority of his nominees to other courts. But, Madam President, this is a judge who says in your face, "I am not going to follow the law, and I am not going to follow the precedents."

I think it is a mistake for either party, either Democrat or Republican or liberal or conservative, to put a judge on the bench who makes it so clear that he is not going to follow the law, and I think it is a disservice to the American people to have someone of that ilk serve on the bench.

The voters of this country rightly believe that, regardless of what your party is, you ought to at least listen to them when they have a concern about legislation. I think they rightly believe that a judge in court ought to be objective enough to at least listen to what both sides of the case are before they make up their mind, and they ought to be at least reading the laws and trying to follow them. I think most Americans, regardless of their party affiliation or their philosophy, would expect that judges would follow the law and follow the rules whether they agreed with them or not.

This nomination tests that. In the Haines case, Judge Sarokin was reversed for his ruling on the confidentiality of the material prepared in anticipation of litigation. The issue in the case was whether the information was to remain confidential.

Madam President, you could rule either way on this. I assume there are precedents that deal with it. But what the judge did says a lot about the kind of judge Mr. Sarokin really is. When he issued his opinion, he quoted a portion of the confidential information that was in question. In other words, regardless of what the circuit court of appeals did, or other courts did, the confidentiality of the information had been destroyed.

I suspect most Members will find it hard to believe what the judge did. There was a question about whether the information came under the attorney/client privilege and whether or not it should be kept confidential or whether it could be introduced in evidence or be made public. It was a question of confidentiality.

Judge Sarokin ruled that it would be admissible. But, in his opinion, he quoted a significant portion of the language—not all of it—a portion of it, so it was made public. In other words, if he was wrong, the case would be lost anyway.

What he said was, in effect, that he felt so strongly about the issue, he did not care whether it was wrong or right, he was going to make it public whether it was reversed on appeal or not. Ask yourself if this is impartial justice.

Let me read to you what happened. The magistrate who sits on these matters and determines these matters reviewed the issue of privilege. He decided that the information should not be disclosed, that it came under the attorney/client privilege.

The law allows Judge Sarokin to review the magistrate's ruling on disclosure to determine whether it was erroneous, given the facts that the magistrate considered, not if he was right or wrong, but whether it was erroneous under the facts considered. The judge reversed the magistrate and considered new evidence contrary to the established review standard. He believes so strongly in his view that he revealed parts of the privileged information in his opinion, thereby ending any effective appeal the party might have otherwise had.

Ask yourself if you think that is just or fair. His opinion was so outrageous in the case that the appeals court took two extraordinary steps. They did not simply overrule him. Here is what they did.

First, the court of appeals issued a writ of mandamus, which is reserved for exceptional cases, cases resulting in judicial usurpation of power; second, the court of appeals removed Judge Sarokin from the case.

Madam President, this is not a normal judge. This is a judge who would prejudice the constitutional rights of the people before his court when he disagrees with existing law.

When commenting on his removal, Judge Sarokin suggested that moneyed interests controlled the judiciary and that his own position represented the truth.

Well, each of us who serve in this body are familiar with examples when we are convinced we represent the truth and the other side surely represents evil. But to overrule someone's constitutional rights and publicly make public the information in a way that someone is deprived of those rights is unfair. It is not only the wrong opinion, it is unfair to those people.

Madam President, I want to just go through a couple of the things that the circuit court of appeals said about Judge Sarokin, and I want to give you the quotes. These are directly from the circuit court as they reversed Judge Sarokin in the Blum decision.

They said four things.

First:

> It appears the court proceeded to follow its own view of the relevant market in ascertaining the availability of adequate legal representation.

Second: In making its determination on the risk associated with this individual case, the court failed to follow the clear direction, and here they are referring to the third circuit and the Supreme Court. The district court made no secret of its disagreement with the instructions it received on the issue.

Third:

> In another departure from the task set for it, the district court established a contingency multiplier for this individual case rather than setting a standard which would be applicable to future litigation within the same market.

Fourth:

Finally, and perhaps most importantly, although the district court concluded that the plaintiffs had failed to meet their burden of proof by not quantifying the contingency premium, the court nevertheless relieved the plaintiff of the burden of proof.

Madam President I believe any Member who objectively reviews the cases that we have talked about, and many, many others, will conclude that this is not a judge that is able to protect people's rights when he disagrees with them.

If justice in this country means the rule of law and not the whim of man, then Judge Sarokin should not be on the circuit court.

But I hope Members, before they vote, be they liberal or conservative, be they a friend of Judge Sarokin or not, will give some thought to the precedent we set, because I believe with this vote and with this judge, the message goes forth that it does not matter what the law is, and it does not matter what the precedents are, if Judge Sarokin does not agree with you, you are in trouble.

That is not the justice system that America prides itself on. It is not consistent with what we think the role of a judge is. And I would submit that this is not a judge this body ought to confirm.

I yield the floor, Madam President.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER (Mr. CAMPELL). The Senator from Utah is recognized.

Mr. HATCH. Mr. President, at this particular point I would like to just put some letters in the RECORD.

Take for instance, the August 6, 1994 letter from Robert J. Robbins, National Fraternal Order of Police, New Jersey Fraternal Order of Police, National Legislative Committee.

To the Members of the United States Senate,

On behalf of the 250,000 member National Fraternal Order of Police and, in particular, the members of the Fraternal Order of Police in the State of New Jersey, I am informing you that we are in total opposition to the appointment of Judge Sarokin to the U.S. Court of Appeals for the Third Circuit.

Or take this other letter from the Fraternal Order of Police, Newark Lodge, dated August 4.

DEAR SENATOR HATCH: I am writing to you at this time urging you to reject Judge H. Lee Sarokin in his quest to become a member of the Federal Court of Appeals.

It has been reported that Judge Sarokin has the support of law enforcement. Nothing could be further from the truth. The Newark Fraternal Order of Police Lodge #12, is the largest police organization in the city of Newark with over 1500 members and is the largest lodge in the State of New Jersey. We vehemently oppose this liberal jurist's appointment to such an important post.

Then in the last paragraph, it says:

There is a part of the new Crime Bill entitled "Three Strikes and you're in!" Well, Judge Sarokin has already given criminals more "Strikes," at the citizens of New Jersey than has Nolan Ryan in his Hall of Fame career! I would urge you to truly show the citizens of this state and country, that you are serious about crime in this country, and to do this you must reject Judge Sarokin's appointment to the Court of Appeals.

Or this letter from the Law Enforcement Alliance of America.

DEAR SENATOR HATCH: The recent nomination of U.S. District Court Judge H. Lee Sarokin to the United States Court of Appeals to the Third Circuit by President Clinton is the latest example of liberalization of our criminal justice system that began 30 years ago.

Judge Sarokin has repeatedly made use of his judicial position to promote social and personal issues and causes. He has also made it plain that he will continue to do so if confirmed to the United States Court of Appeals.

Crime is the number one concern of the American public. People are demanding real criminal justice reform—life imprisonment for repeat offenders, greater involvement for victims in the judicial process, the building of more prisons to take violent criminals off our streets.

Confirming Judge Sarokin will place another roadblock in the path of justice.

Or the last two paragraphs:

Clearly, criminals will have a friend on the bench of the United States Court of Appeals if Judge Sarokin is confirmed.

The 40,000-plus law enforcement officers, victims of crime and concerned citizens of the Law Enforcement Alliance of America ask you to not confirm Judge Sarokin to the United States Court of Appeals. Justice will not be served in America as long as the rights of criminals are placed above the rights of law abiding citizens.

Or this letter from the League of American Families, dated August 4; or the letter from Citizens Against Violent Crime, dated October 3 of this year; or the letter from the Organized Victims of Violent Crime, which is dated August 2 of this year; or Voices for Victims, Inc., dated August 9; or the New Jersey State Police Survivors of the Triangle. This is dated August 1. I will read just a couple of lines from this letter.

My name is Donna Lamonaco. I am a mother of three, and a widow of New Jersey State trooper Philip Lamonaco, who was gunned down and murdered, four days before Christmas in 1981.

The two murderers, members of a terrorist revolutionary group, plotting to overthrow the United States Government, were captured three and a half years later, and the last trial ended in December of 1991, ten years after my husband's death.

I can't express the fear, trauma and emotion, myself and my family went through, but we survived, partly because the system worked.

I understand President Clinton plans to nominate Judge H. Lee Sarokin, to the 3rd circuit court of appeal, tomorrow. I am asking you to help all the survivors of police families and society in which we live, by opposing the nomination of Judge Sarokin.

Or this letter from Citizens for Law and Order, Inc., dated August 8, 1994. I will just read one paragraph out of it. It is written to Senator DOLE.

Senator DOLE, Judge Sarokins' views on crime and criminal procedure are unusual and dangerous, and his confirmation to sit on the U.S. Court of Appeals for the Third Circuit should be rejected by the United States Senate.

Finally, let me put one more in, from the County of Cumberland, James A. Forcinito, Sheriff, Office of the Sheriff, written to the President of the United States.

As a Sheriff from New Jersey with over thirty-five years experience in the Law Enforcement, I find it incredible that you would consider nominating H. Lee Sarokin to the U.S. Court of Appeals.

I don't know who advised you on this but they were either asleep at the switch or they really don't give a damn about Law Enforcement.

One other sentence:

As a Democrat, I'm astounded that you would make such a nomination.

This is a Democrat writing.

As a Law Enforcement Officer, I'm disappointed, disillusioned, and damned mad.

To be honest with you, we have had a year of talking about the crime bill and about being tough on crime. And we see these kinds of nominees coming before the Senate who have a reputation of being very soft on crime—not just crime but a whole raft of other issues as well in the law. It is a matter of great concern to me because I think in this day and age we have to have judges who are fair, constitutionally sound, and are not activist apologizers for criminals and especially violent criminals who are killing our society as well as individual people.

I ask unanimous consent that all of these letters be printed in the RECORD at this point.

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

ORGANIZED VICTIMS OF VIOLENT CRIME,
*Madison, TN, August 2, 1994.*

Senator ORRIN HATCH,
*Senate Judiciary Committee, Senate Office Building, Washington, DC.*

DEAR SENATOR HATCH: In reference to President Bill Clinton's nomination of Judge H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit. We strongly urge you to vote NO on his forthcoming Confirmation Hearing to this court. This same Court for which the President has nominated him to has found much fault with him and his LACK OF Judicial temperment and his abundance of Judicial activism. This same Court also was forced to remove him from a nine year old case on grounds of "unsurpation of power."

The Organized Victims of Violent Crime has no doubt the Senate Judiciary Committee is well aware of the extreme liberal behavior and decisions of which he is already responsible for while currently sitting as a U.S. District Judge in the state of New Jersey. Not only does Judge Sarokin practice extreme activist Judicial philosophy, he bases his decisions on his own views and radical beliefs. We feel no Judge should practice his or her own Judicial bias or personal activism. We do not feel Judge Sarokin will be an asset to our Judicial System on such a Court as powerful as the U.S. Court of Appeals of the Third Circuit. He has demonstrated many times over that he lacks the

essential qualities of Judicial fairness and temperment to be called "Your Honor". The American people should never have to accept or tolerate any Judge who ignores the tried and tested and true laws in favor of writing his own as he skims along.

The Organized Victims of Violent Crime still remembers and still chaffs from the appointment of Martha Craig Daughtery to the 6th Circuit Court of Appeals. Her Judicial philosophy and temperment matches that of Judge Sarokin.

As we have watched carefully and sadly, we have seen more and more liberal socialists gaining a foothold in the highest offices in our Government. They now control our courts.

We believe our Congress can rid us of this blight that has been forced upon us. First though, Congress must clean up it's own houses. What better place to start than the Senate Judiciary Committee who has the responsibility of saying who gets voted into what ever certain high positions of such great importance to our entire nation. America must one again become the great free Republic she once was that was the envy of the world. Until then, God help us all!!

Please distribute a copy of this opposition to all members of your committee.

Sincerely,

EDITH S. HAMMONS,
*President.*

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VOICES FOR VICTIMS, INC.,
*Hackettstown, NJ, August 9, 1994.*

To: Senator Orrin Hatch.
From: Richard C. Kramer.

Voices For Victims Inc., is a support group formed in 1988 made up families of murder victims as well as other victims of violent crime.

As a citizen, I believe Judges should be impartial and open to all arguments. I personally believe that Sarokin is following his own twisted agenda, and has already placed himself above the Supreme Court clearly indicating he is intent on writing his own book of law. Giving him additional powers affecting a larger population of the United States is fightening, especially to those of us who are crime victims and have suffered re-victimization by the system. We have had enough with bleeding hearts concerned with the care and feeding of murderers and rapists while we stand outside looking in. Pleased hear us, don't let Sarokin in the U.S. Court of Appeals, he is doing enough damage where he is.

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NEW JERSEY STATE POLICE,
SURVIVORS OF THE TRIANGLE,
*Belvidere, NJ, August 1, 1994.*

Senator ORRIN HATCH,
*U.S. Senate*
*Washington, DC.*

DEAR SENATOR HATCH: My name is Donna Lamonaco, I am a mother of three, and a widow of New Jersey State Trooper Philip Lamonaco, who was gunned down and murdered, four days before Christmas in 1981.

The two murderers, members of a terrorists Revolutionary group, plotting to overthrow the United States Government, were captured three and a half years later, and the last trial ended in December of 1991, ten years after my husband's death.

I can't express the fear, trauma and emotion, myself and my family went through, but we survived, partly because the system worked.

I understand President Clinton plans to nominate Judge H. Lee Sarokin, to the 3rd. circuit court of appeal, tomorrow. I am asking you to help all the survivors of Police families and society in which we live, by opposing the nomination of Judge Sarokin.

In 1976, a New Jersey police officer was killed, after rehearing the case, Judge Sarokin released his murderer, just five years ago.

We do not need anyone filling the Judgeship position, who allows Cop Killers to be released.

Please help, by opposing the nomination of Judge Sarokin, by President Clinton, to the 3rd. circuit court of appeal.

Respectfully,

DONNA E. LAMONACO,
*Secretary.*

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FRATENRAL ORDER OF POLICE,
NATIONAL LEGISLATIVE COMMITTEE,
*Lindenwold, NJ, August 5, 1994.*

Re nomination of H. Lee Sarokin to the U.S. Court of Appeals.

U.S. SENATE,
*Washington, DC.*

TO THE MEMBERS OF THE U.S. SENATE: On behalf of the 250,000 member National Fraternal Order of Police and, in particular, the members of the Fraternal Order of Police in the State of New Jersey, I am informing you that we are in total opposition to the appointment of Judge Sarokin to the U.S. Court of Appeals for the Third Circuit.

In at least one case, he has shown a propensity to be more of an advocate of social and personal causes than a judge. In a case involving the murder of a Newark, New Jersey police officer Judge Sarokin made it his mission to set a convicted person free.

Briefly stated, in 1976, Vincent Landano was convicted and sentenced to life in prison for the murder of a police officer during an armed robbery. Ignoring his oath of office and even after at least four reversals by the U.S. Court of Appeals for the Third Circuit and the U.S. Supreme Court, Judge Sarokin ordered Landano's release in June of 1989.

We, in the F.O.P., find this action appalling and adamately request that Judge Sarokin's nomination be denied. Our legal counsel in Washington is currently researching other cases that Judge Sarokin was involved in and hope to be able to bring more information to you as it becomes available.

Respectfully,

ROBERT J. ROBBINS,
*New Jersey National Trustee.*

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FRATERNAL ORDER OF POLICE,
NEWARK LODGE NO. 12,
*Newark, NJ, August 4, 1994.*

DEAR SENATOR HATCH: I am writing to you at this time urging you to reject Judge H. Lee Sarokin in his quest to become a member of the Federal Court of Appeals.

It has been reported that Judge Sarokin has the support of law enforcement. Nothing could be further from the truth! The Newark Fraternal Order of Police Lodge #12 is the largest police organization in the city of Newark with over 1500 members and is the largest lodge in the state of New Jersey. We vehemently oppose this liberal jurist's appointment to such an important post.

Judge Sarokin is responsible for the freeing of a convicted "COP KILLER", James Landano. Mr. Landano is the coward who gunned down Newark Police Officer John Snow, on August 13, 1976. Judge Sarokin's decision has turned a career criminal into a media celebrity. Although 18 years have passed since his murder, the members of our FOP lodge have not forgotten this vicious act and never will! We also will not forget who has allowed this vermin back into society. Some other of Judge Sarokin's decisions are so far out into "Left Field", he is no longer even in the "Ball Park", but somewhere in the parking lot. When someone in Law Enforcement is asked why we have the crime problems that exist in the United States today, they will tell you it is because of jurists such as Mr. Sarokin.

There is a part of the new "Crime Bill" entitled, "Three strikes and you're in!". Well, Judge Sarokin has already given criminals more "Strikes", at the citizens of New Jersey than has Nolan Ryan in his Hall of Fame career! I would urge you to truly show the citizens of this state and country, that you are serious about crime in this country, and to do this you must reject Judge Sarokin's appointment to the Court of Appeals.

Fraternally,

JACK MCENTRE,
*President.*

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LAW ENFORCEMENT ALLIANCE
OF AMERICA, INC.,
*Falls Church, VA, July 26, 1994.*

Hon. ORRIN G. HATCH,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR HATCH: The recent nomination of U.S. District Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit by President Clinton is the latest example of the liberalization of our criminal justice system that began 30 years ago.

Judge Sarokin has repeatedly made use of his judicial position to promote social and personal issues and causes. He has also made it plain that he will continue to do so if confirmed to the United States Court of Appeals.

Crime is the number one concern of the American public. People are demanding real criminal justice reform—life imprisonment for repeat offenders, greater involvement for victims in the judicial process, the building of more prisons to take violent criminals off our streets.

Confirming Judge Sarkoin will place another roadblock in the path of justice. Judge Sarokin, in the West Virginia Law Review, stated that he was opposed to both pretrial detention of violent criminals and mandatory minimum sentencing guidelines. He also stated that admission of evidence guidelines should be stricter to protect criminals' rights.

Clearly, criminals will have a friend on the bench of the United States Court of Appeals if Judge Sarokin is confirmed.

The 40,000+ law enforcement officers, victims of crime and concerned citizens of the Law Enforcement Alliance of America ask you to not confirm Judge Sarokin to the United States Court of Appeals. Justice will not be served in America as long as the rights of criminals are placed above the rights of law-abiding citizens.

Sincerely,

JAMES J. FOTIS,
*Executive Director.*

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LEAGUE OF AMERICAN FAMILIES,
*Ringwood, NJ, August 4, 1994.*

Seator HATCH and DOLE,
*U.S. Senate,*
*Washington, DC.*

GENTLEMEN: The Senate is considering the nomination of H. Lee Sarokin to the U.S. Court of Appeals for the Third Circuit, I strongly urge you to oppose this nomination for two reasons. First, as evidenced by his removal from the tobacco liability case by the U.S. Court of Appeals, he lacks the basic judicial temperament to be a judge. All Americans should demand judges who will be fair

and impartial, Judge Sarokin has proven—even to the satisfaction of the liberal New York Times—that he lacks these qualities. His excuse at his hearing yesterday that, well, he is just "irrepressible" at times, is ridiculous.

Second, Judge Sarokin injects into his cases personal views that will have a devastating effect on American families. You have received information about his views on criminal justice issues. His opposition to pretrail detention of criminal defendants would, in particular, put families and children especially at risk.

In *E-Bru v. Graves*, 566 F.Supp. 1476, a case dealing with the town of Paterson's prohibition on an adult bookstore opening, Judge Sarokin delivered the kind of lecture that characterizes many of his decisions. He made the outrageous statement that "the harmful effect" of pornography "has never been clearly established."

Since you voted last year to condemn the Justice Department's attempt to weaken the child pornography laws, you must know that this statement is simply false. New books have been published just in the last few years cataloging the harms of pornography. In addition, however, why does Judge Sarokin find this question significant at all? The Supreme Court has ruled that a community's ability to control pornography does not depend on scientific specifics. This is another example of his imposing his own personal standards in place of what the law requires.

Judge Sarokin testified at his hearing on August 3 that he would object to an adult bookstore opening near his home. Apparently, he is perfectly willing to impose on others an evil that he does not have to endure himself. America has enough judges who are so ignorant of the real-world impact of their decisions. Please do not add Judge Sarokin to that list by elevating him to the U.S. Court of Appeals.

Very truly yours.

JOHN T. TOMICKI, J.D.,
*League of American Families.*

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CITIZENS AGAINST VIOLENT CRIME,
*Charleston, SC, October 3, 1994.*

Hon. ORRIN G. HATCH,
*Ranking Member, Senate Judicial Committee, Washington, DC.*

DEAR SENATOR HATCH: Citizens Against Violent Crime (CAVE) is a victim's advocacy group based in Charleston, SC and Charlotte, NC. We number approximately 30,000 members in North & South Carolina.

We have followed the Judge Sarokin case very closely and wish to express our intense wish that this judge not be seated on the federal bench.

CAVE has fought reviews of South Carolina circuit court judges on past occasions. We know first hand the terrible impact a bad judge can have on victims. Judge Sarokin is a bad judge. Probably not a bad person, but definitely a bad judge.

CAVE has been fighting for everything Judge Sarokin detests; increased pre-trial detention, mandatory sentences and removal of all but minimal civil rights for convicted felons. It is the job of our Congress and State Assemblies to provide space for criminals—this issue is not, and cannot be a factor used by the judge to sentence criminals.

The confirmation of Judge Sarokin would be a gross step backward for the criminal justice system.

Sincerely,

JAMES M. GREGG,
*Founder and Chairman.*

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CITIZENS FOR LAW AND ORDER, INC.,
*Oakland, CA, August 8, 1994.*

Re Rejection of President Clinton's nomination of Judge H. Lee Sarokin.

Senator BOB DOLE,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR DOLE: Citizens for Law and Order (CLO) believes all citizens have the basic right to live in physical safety in our communities, homes, schools and places of business.

Working within our nation's constitutional framework, CLO's 5,000 members seek to significantly decrease the incidence of violent crime, restore victims and survivors to a central position within the criminal justice system, eliminate inequity and unfairness from our judicial process and reduce further victimization.

For the past two decades CLO has been a strong promoter of hard-hitting anti-crime legislation, a severe critic of overly lenient judges and district attorneys, and a caring advocate for crime victims.

Perhaps most disturbing, Judge Sarokin suggests that the pre-trial and pre-conviction detention of those charged with violent crimes violates the presumption of innocence. Sarokin, "Beware the Solutions," 90 West Virginia Law Review at 1003, 1004, 1006 (1988).

Judge Sarokin also opposes post-conviction incarceration whenever a judge thinks a criminal "might be" innocent. He was reversed four times by the U.S. Court of Appeal and the U.S. Supreme Court during his effort to free cop-killer James Landano. See *Landano* v. *Rafferty*, 782 F.Supp 986, 988 (D.N.J., 1992).

Judge Sarokin opposes even a "good faith" exception to the exclusionary rule. 90 West Virginia Law Review, note 1, at 1006. Such a view is in direct conflict with the decisions of the United States Supreme Court in the cases of *United States* v. *Leon*, 468 U.S. 897 (1984) and *Illinois* v. *Krull*, 480 U.S. 340 (1987).

Finally, Judge Sarokin opposes mandatory and uniform sentencing. He believes these approaches to sentencing deprive judges of the right to grant mercy. 90 West Virginia Law Review, note 1, at 1005. Apparently, Judge Sarokin prefers lenient treatment of criminals rather than punishment that would protect public safety.

Senator Dole, the members, directors and officers of Citizens for Law and Order, Inc., are appalled at the soft on crime philosophy exemplified by Judge Sarokin. We join with other crime victims rights organizations as well as other national law enforcement organizations to urge the United States Senate to reject the nomination of Judge Sarokin.

Sincerely,

KEVIN WASHBURN,
*President.*

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COUNTY OF CUMBERLAND,
OFFICE OF THE SHERIFF,
*Bridgeton, NJ, July 21, 1994.*

The PRESIDENT,
*The White House.*

DEAR PRESIDENT: As a Sheriff from New Jersey with over thirty-five years experience in Law Enforcement, I find it incredible that you would consider nominating H. Lee Sarokin to the U.S. Court of Appeals.

I don't know who advised you on this but they were either asleep at the switch or they really don't give a damn about Law Enforcement. Judge Sarokin's crusade in behalf of cop-killer Landano is legendary in New Jersey.

As a Democrat, I'm astounded that you would make such a nomination. As a Law Enforcement Officer, I'm disappointed, disillusioned, and damned mad.

Please reconsider this nomination of this notorious cop-hating judge.

Thanking you, I am

Very truly yours,

JAMES A. FORCINITO,
*Sheriff.*

Mr. HATCH. Mr. President, when I look at this nomination I have mixed emotions because I like Judge Sarokin personally. That has nothing to do with it. He is clearly a nice person. I believe he is an honest man who almost anybody would like.

The difference is that it is one thing to be a nice person. It is another thing to be a judicially activist judge who ignores what the law really says and does whatever his viscera tells him to do. That is not what we need in the Federal courts.

I think it is the wrong time in our society's history to put a judge on the bench who is always looking for ways of letting the criminals off the hook, who is always looking for a way of finding some excuse for what the criminals have done, and always looking for a way to blame society instead of the criminals for what happens.

So, while the President is talking about being tough on crime, at the same time he is putting judges in who are not tough on crime, who are known for being weak against criminals, and who are known for making excuses and blaming society rather than having people stand up and take individual responsibility for what they have done. I am concerned about it.

We do not take on many judges. Look, if I was President of the United States I would not have recommended a lot of these judges that we have passed through the Senate this year. By the end of this congressional term, our subcommittee—and I am ranking member on this committee and I have worked hard to do this—will have passed through the Senate and confirmed well over 100 judges to the Federal bench, both the circuit courts of appeals and the district courts and two Supreme Court Justices.

Most of them have gone through here without any difficulty at all, even though they may be more liberal than I like. The fact that Judge Sarokin is very liberal is not the issue. He can be as liberal as he wants as long as he interprets the laws as they were meant to be interpreted instead of applying his own ideas and enforcing his own ideas in contravention of the laws. That is one of the problems that we have here and it has been a big problem.

So we have only taken on a few of these judges and this is one we just felt duty bound to take on, especially following the crime bill that we all worked so hard on, and especially in this year when every one of us know

one of the major issues for the American people is: Are we going to get tough on these criminals?

The answer to that is, "I suppose, but." And the "but" is pretty big. Because if the President continues to send up people like this we might as well hang it up because this society is going to be crime-ridden and we are going to see nothing but problems from this time on.

I notice the distinguished Senator from Wyoming is here so I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I thank the Presiding Officer.

I have listened to the debate by my good friends. They are indeed—Senator HATCH, Senator BRADLEY—two people I greatly enjoy and enjoy working with in this remarkable Senate Chamber and in our committee efforts and in our work.

I am here to support this judge. I have also advised Senator HATCH and my colleague I have visited with this man. I asked all the tough questions. I hope every one of us could have visited with this gentleman for 35 or 40 minutes, 1 hour, or 1½ hours. I did take some time. I believe Judge Sarokin has the education and the judicial experience to be a very capable appellate judge.

He is a graduate of Dartmouth College and Harvard Law School. You have heard his credentials. He has served as a Federal district judge now for 15 years—that is quite a record.

Prior to his appointment to the U.S. District Court in New Jersey, the judge practiced law as a trial lawyer. He was a part-time county counsel and he taught law at Rutgers University. He received a unanimous "well-qualified" rating from the American Bar Association.

I am one who has often said that our decisions should not swing on the ABA. I certainly do not swing with the ABA. But their views are worthy of note, in any event. And that is the unanimous "well-qualified" rating. Judge Sarokin's fellow jurists, his own peers, have shown their confidence in him by naming him twice as the chairman of the National Conference of Federal Judges.

Yes, he is controversial, we know that through the debate. We have had a few of those kind. But, as I say, I have visited with him. He can and does listen. He has done some boneheaded decisions, and your loyal correspondent has done some boneheaded decisions in his life—myself. I know what that is. If we are just judged on our errors in life, for the times we miscue and misstep, it would not be much. So he has admitted what occurred in these cases; he has grown and matured on the bench. He is ready for this challenge. He will do well. He will do what the law requires and not allow his own human biases to control or intervene.

He is also very fortunate to have Senator BILL BRADLEY on his side and as his friend. He, being a dear friend of many of us, has greatly aided the Senate passage which I think will take place.

I am personally very satisfied that this man possesses the education, judicial experience, temperament to serve as a Federal appellate judge. Those are the things we should weigh, and I will vote to confirm the nomination.

The PRESIDING OFFICER. Who seeks recognition?

The Senator from Utah [Mr. HATCH] is recognized.

Mr. HATCH. Mr. President, another case that illustrates Judge Sarokin's soft-on-crime liberal activism is the 1984 case of *U.S.* v. *Rodriguez* [Crim. No. 84-18 (D.N.J. 1984)]. In that case, Judge Sarokin found that the defendant, Rodriguez, had read a form advising him of his Miranda rights, had signed the part of the form waiving those rights, and was aware of those rights before he spoke with an FBI agent. Judge Sarokin nonetheless granted Rodriguez' motion to suppress evidence of his statements to the FBI agent. In other words, to keep his agreed-upon statements out of the record in the trial. In concluding that Rodriguez did not waive his Miranda rights and that his statement should therefore be deemed involuntary, Judge Sarokin relied heavily upon the fact that Rodriguez did not sign his own name to the waiver form, but instead signed the false name Lazaro Santana. According to Judge Sarokin,

> It does not strain logic to find the use of a name other than one's own to be wholly inconsistent with a voluntary waiver of rights: defendant might well have believed that by using a false name he was not committing himself to anything.

That indeed, strains logic to conclude that signing an alias is wholly inconsistent with a voluntary waiver: The far more natural conclusion is that Rodriguez's use of the alias may simply have been an effort to conceal his identity. But what is even more remarkable is that Judge Sarokin's ruling was directly contrary to controlling third circuit precedent, as Judge Sarokin himself recognized.

At his hearing, Judge Sarokin claimed that the third circuit had held only that the use of a false name is "certainly not dispositive" but could well be relevant [91:15]. Such a claim is contrary to the reading of that precedent made by Judge Sarokin himself in Rodriguez. It also finds no support in the third circuit case. But as a result of Judge Sarokin's liberal judicial activism, critical evidence against a criminal suspect was suppressed. That means not allowed in.

Mr. President, we do not need more judges who will handcuff the police in the war on crime. We do not need more judges who will create hypertechnical rules that free the guilty. We do not need more judges who will ignore existing precedent and twist laws to favor criminals. Liberal judicial activism has taken that approach for the past 30 years, and the results have been all too predictable: soaring rates of murder, rape, and other violent crimes, and communities riddled with drugs and at the mercy of gangs of thugs. Enough is enough.

I just gave you that one little case. It is just an illustration of the way this man is judicially an activist, somebody who ignores what the law really says and just does what he thinks is right. That is not good enough for me. I think when people are nominated and confirmed for lifetime appointments, with full pay upon retirement, that they ought to stand up and uphold the law, they ought to know what the role of judges is, and it is not to create laws from the bench.

Frankly, I do not know how anybody could vote to sustain this person on the Third Circuit Court of Appeals, when you read these cases. True, we cannot go into all his cases. It would take forever on the floor. We are only bringing up a number of them. But these are significant and they are illustrative of what Judge Sarokin's judicial philosophy and judicial propensities really are. So I am really concerned, Mr. President. I am concerned about what is happening here.

Mr. President, there are numerous other cases which illustrate Judge Sarokin's approach to the law that I think we all ought to be concerned about and which I think illustrate his propensity to pursue his own agenda and to defy precedent.

The case of Haines versus Liggett Group—which involved a personal injury action against cigarette manufactures—is an all-to-telling example. [140 F.R.D. 681 (D.N.J. 1992), writ granted, 975 F.2d 81 (3rd Cir. 1992).] In this case, the plaintiff Haines sought discovery of certain documents that the defendant cigarette companies said were protected by the attorney-client privilege. Haines argued that even if the documents were within the scope of the attorney-client privilege, the crime-fraud exception applied and annulled the privilege. A magistrate judge determined that the documents were privileged and that the crime-fraud exception did not apply.

Haines appealed the magistrate judge's order to Judge Sarokin. Judge Sarokin ordered the parties to supplement the record with materials from the record in a similar case, Cipollone, in which he was the trial judge. He then issued a ruling that the crime-fraud exception did apply and that Haines was entitled to discovery of the documents at issue.

Three aspects of Judge Sarokin's opinion merit special attention:

First: Judge Sarokin opened his opinion on this discovery dispute with this inflammatory prologue:

In light of the current controversy surrounding breast implants, one wonders when all industries will recognize their obligation to voluntarily disclose risks from the use of their products. All too often in the choice between the physical health of consumers and the financial well-being of business, concealment is chosen over disclosure, sales over safety, and money over morality. Who are these persons who knowingly and secretly decide to put the buying public at risk solely for the purpose of making profits and who believe that illness and death of consumers is an appropriate cost of their prosperity!

As the following facts disclose, despite some rising pretenders, the tobacco industry may be the king of concealment and disinformation.

Second: Judge Sarokin held that the magistrate judge's ruling could not survive under even the "clearly erroneous" standard of review—a standard of review that is supposed to be very deferential and that, not incidentally, is the standard of review that court of appeals judges are generally obligated to apply to trial court factual findings. In reversing the magistrate judge's ruling, Judge Sarokin relied not only on the supplemental evidence that he ordered from the Cipollone trial but also on his "own familiarity with the evidence adduced at the Cipollone trail discussed in the directed verdict Opinion" in that case [140 F.R.D., at 694.] Judge Sarokin stated that having heard the trial evidence in Cipollone, he was "in the unique position of being able to evaluate the full scope of evidence supporting plaintiff's crime/fraud contention in the instant case." [Id., at 694 n. 12.]

Third: in a stated effort to show "some of the most damaging evidence" on this crime-fraud exception, Judge Sarokin quoted extensively from those documents as to which privilege had been found to exist by the magistrate judge. [140 F.R.D., at 695.]

In a remarkably impressive opinion, the third circuit unanimously granted an extraordinary writ vacating Judge Sarokin's order *and removing him from the case*. The third circuit emphasized that a writ was an "extreme" remedy to be used "only in extraordinary situations" and that "only exceptional circumstances amounting to a *judicial usurpation of power* will justify the invocation of this extraordinary remedy." [975 F.2d, at 88 (internal quotes omitted and emphasis added).] But the third circuit found that Judge Sarokin's ruling was in fact a judicial usurpation of power. Among other things, the third circuit rules that in reviewing the magistrate judge's order under the clearly erroneous standard, Judge Sarokin was not permitted to receive further evidence. [975 F.2d, at 91.] As it observed, our "common law tradition [does not] permit a reviewing court [(in this case, the district court)] to consider evidence which was not before the tribunal of the first instance." [Id., at 92.] Because Judge Sarokin considered and relied on portions of the Cipollone record that were not in the record before the magistrate judge, his order could not stand. [Id. at 93.]

The third circuit also sharply scolded Judge Sarokin for disclosing the contents of the documents as to which privilege had been claimed. In it words, it said this:

This, too, must be said. Because of the sensitivity surrounding the attorney-client privilege, care must be taken that, following any determination that an exception applies, the matters covered by the exception be kept under seal or appropriate court-imposed procedures until all avenues of appeal are exhausted. Regrettably this protection was not extended by the district court in these proceedings. Matters deemed to be excepted were spread forth in its opinion and released to the general public. In the present posture of this case, by virtue of our decision today, an unfortunate situation exists that matters still under the cloak of privilege have already been divulged. *We should not again encounter a casualty of this sort.* [975 F.2d, at 97 (emphasis added).]

That is strong language from the appellate court, the court that Judge Sarokin is going to be elevated to if he is confirmed today.

Finally, in what the third circuit described as "a most agonizing aspect of this case," it then removed Judge Sarokin from the case on the ground that the prologue to his opinion on this preliminary discovery issue destroyed any appearance of impartiality. The court noted that the prologue stated accusations on the ultimate issue to be determined by a jury in the case: whether defendants "conspired to withhold information concerning the dangers of tobacco use from the general public." It further noted that Judge Sarokin's inflammatory remarks were reported prominently in the press throughout the nation. [975 F.2d, at 97–98.]

The third circuit's observations that Judge Sarokin's ruling amounted to a judicial usurpation of power, was contrary to our common law tradition, ignored fundamental concepts of due process, eviscerated the defendants' rights of appeal, and destroyed any appearance of impartiality scratched only the surface of Judge Sarokin's betrayal of the role of a judge in this litigation. Consider, for example, some of the many other respects in which Judge Sarokin's prologue was grossly inappropriate: What do his blanket assertions about the values of businessmen say about his ability to preside fairly in any dispute between an individual and a business? To whom is he referring as the other "rising pretenders" to the throne of "concealment and disinformation"?

Incidentally, at his confirmation hearing, Judge Sarokin ultimately made only a modest concession: "I concede that the language was strong and maybe unduly strong; and if I could take it back, I probably would." [60:11–13] The fact of the matter is that Judge Sarokin could have taken it back: these were carefully composed written comments, not off-the-cuff oral remarks.

Judge Sarokin also stated that "I was also hoping that I could discourage the tobacco companies from continuing to conceal the risks of smoking and deny that they existed." [110:20–23] This statement vindicates the third circuit's concern that Judge Sarokin was broadcasting his opinion on the ultimate issue to be decided by the jury. It also shows that Judge Sarokin was pursuing an agenda rather than simply deciding the legal issue before him.

Similarly, Judge Sarokin's reliance in Haines on his familiarity with the evidence in another case, Cipollone, is a flat admission of predisposition and bias. Judge Sarokin was, in his words, "unique[ly] position[ed]" to decide the issue only in the sense that he had already made up his mind.

Perhaps the most troubling aspect of this whole case is the manner in which Judge Sarokin responded to the third circuit's order removing him from the case. In referring to this removal in a written opinion, Judge Sarokin flamboyantly declared: "I fear for the independence of the judiciary if a powerful litigant can cause the removal of a judge for speaking the truth based upon the evidence, in forceful language that addresses the precise issues presented for determination." In short, Judge Sarokin not only voiced his disagreement with the ruling of the higher court, the court that he is about to ascend; he also cast aspersions on the independence and integrity of the third circuit judges by charging that a "powerful litigant" had "caused" them to rule as they did.

Equally remarkably, unchastened by his well-earned scolding, Judge Sarokin personally accepted "the C. Everett Koop Award for significant achievement toward creating a smokefree society." This award, from an organization called the New jersey Group Against Smoking Pollution, was given for the very comments that led to the third circuit's order removing him from the cigarette case. It is disturbing enough as an ethical matter that a judge would accept an award for an opinion in a particular case. It is beyond the pale that he would accept an award for a case in which he had already been found to have destroyed the appearance of impartiality, especially when the award is given for the very act that destroyed the appearance of impartiality.

It is true that in removing him from Haines, the third circuit stated that Judge Sarokin "is well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperament." But in context, this can only be understood as sugarcoating a bitter pill.

Mr. President, I notice the distinguished Senator from Texas is here in the Chamber, and so I will yield the floor at this time.

The PRESIDING OFFICER. The Senator from Texas [Mr. GRAMM] is recognized.

Mr. GRAMM. Mr. President, I wish to thank the distinguished Senator from Utah for going through and documenting all of the cases involving Judge Sarokin.

Let me say, Mr. President, in order to save the time of the Senate, the point I want to make in this debate is not directly related to this judge. It is related to the person who has nominated this judge.

Whether you are talking about bums who are harassing people at the library or whether you are talking about brutal murderers who kill police officers, we have here a documented case of a judge who engages in a sort of a moral crusade to right society's wrongs by blaming society for all of the wrongs that exist and holding individuals responsible for virtually nothing they do, a person who seems to visualize himself as a lawmaker in robes. I think basically that the question is not why does this judge act as he does, with some of his decisions overturned by the very appellate court to which the President seeks to appoint him, but the question is why did the President appoint him in the first place?

Now, let me go back and try to address each of these issues. I have always taken the position that it is not my job to judge people's basic political philosophy. I am a firm believer that elections have consequences, and when the American people elected Bill Clinton President, they knew or they should have known that he was going to appoint liberals to the Federal bench. So I have taken the position in thousands of nominations the President has made that I am not going to vote against somebody simply because I disagree with him. If I voted against the President's nominees simply because I disagree with him philosophically, very, very few people nominated by Bill Clinton would have gotten my vote.

What I have tried to do is to set up what I believe is a reasonable test, and the test is not does this person's philosophy reflect my opinion, but the test is, is this an individual that the American people could have reasonably expected Bill Clinton, who was a candidate in 1992, to appoint?

From anything that then Governor Clinton said in the campaign about crime and punishment, about the role of the courts, could the American people have expected him to appoint a person who has the record of the nominee before us? In his viewpoint as a judge, with a documented record of having cases overturned because of the injection of his values rather than the law into the case, is that person in the mainstream of liberal thought in our courts to such an extent that people who voted for Bill Clinton should have known at least that this is the kind of person who would have been appointed?

I believe that Judge Sarokin fails on that test.

I have also tried to set out a couple of other standards. One standard is, does this person have the temperament that goes with the job for which they are nominated? I believe the judge before us fails that test. I could repeat some of the things that Senator HATCH and others have said. We are all familiar with this now famous court decision because it has been written up in editorials all over the country, basically because it is such an outrageous decision.

A person named Kreimer, who had inherited the nucleus of a small fortune, $340,000, which he had squandered, basically became a nuisance who hung out at the library, did not change his clothes, harassed people, taxpayers, who paid for the library. When women came into the library, he stalked them and followed them around and gawked at them, and people complained about it. After all, they paid for the library.

Now, when people complained about it, when the case went to court, and when it ultimately found its way before our judge in question, here is what he said about it. And I think this is relevant because this shows a temperament that is not suited to someone who will be wearing a black robe and interpreting the law. Quite frankly, it is a temperament that perfectly suits many of the people who run for public office. The problem is this judge wants to make the law without the inconvenience of having to run for public office, to be credentialed to do it. So here is a case—and I do not think anybody disputes the facts. You have a bum who is hanging out at the public library harassing people who are trying to use the library in Morristown, NJ, people who paid for it. They come to the library. He harasses them. He follows women around. He sits and stares at them. He stinks. He does not change his clothes. So they throw him out of the library—perfectly reasonable behavior, it seems to me. In the America in which I grew up, they would have thrown him out of the library and they would have arrested him had he come back, and for good reason. Now, this case comes before this particular Federal judge, and here is what he says:

> The greatness of our country lies in tolerating speech with which we do not agree. That same toleration must extend to people particularly where the cause of revulsion may be of our own making. If we wish to shield our eyes and nose from the homeless, we should revoke their condition and not their library card.

Mr. President, here is the point. First of all, not that it is terribly relevant to this case, but this guy was not poor. This person inherited more money than most Americans accumulate in their lifetime. This person was not out giving speeches about his position on moral values or overthrowing the Government or some other activity protected by the first amendment. He was stalking and staring at women who had come to the library. He was harassing people who were trying to use a public asset that, after all, they had paid for with their taxes.

What this particular judge basically said is that society should be dealing with this person's plight and that, in fact, he has every right to rub their noses in his problem; he has every right to deny them use of a facility that they have paid for. And what this judge is citing is not the law of nuisance or the right of people to extend their freedom as long as it does not interfere with anybody else's—what this judge is doing is failing to quote any law by which he forced this library to pay this person.

What he is doing is stating his opinion. It is his opinion that society ought to do something about people who want to come to the library and harass taxpaying citizens.

Mr. President, if this individual had decided to run for the Senate in New Jersey, I certainly would not have supported him. I would have voted against him, had I been voting in New Jersey. But it is a perfectly reasonable position to take if you want to run for the Senate and say I think smelly, offensive people who want to brutalize people at the library ought to be able to do it, and I am going to write a law that says they can do it. Personally, I think it would be a silly law. I would vote against it. And I cannot imagine anybody elected from New Jersey or anywhere else who would propose such a law.

But the point is that is legitimate. It is not legitimate to put your hand on the Bible and swear to uphold, protect, and defend the Constitution and the laws of the country, and then go around moralizing about what society ought to be and what society ought to do, when your job is not to moralize, your job is not to make the law; your job is to interpret the law and to carry out the law.

I could get into a bunch of other cases. Senator HATCH has gone through dozens of cases. Let me mention another one. I do not smoke; I have spent lots of time in my life trying to get my mom to quit smoking; I will not let her smoke in my house. She has always threatened when she goes out on the porch in the cold that she is going to call somebody from the newspaper and tell them my poor old mom is out in the cold because I am mean to her.

I do not have a lot of truck with people who smoke; I do not like it; I cannot imagine being married to anybody who smokes. But it is a free country. People have a right to smoke.

But if you read this judge's language, a judge who is supposed to be impartial, who is supposed to carry out the law and judge the facts, if you read what he says about smoking and about tobacco companies putting money over morality—who empowered a Federal judge to judge money or morality in American free enterprise?

If someone was a Member of Congress, or a social critic, or an author, or an editorialist, or a bum at the library, they would have every right to be moralizing about whether tobacco companies ought to be trying to make money on tobacco, or whether it was moral to sell it. I mean those are kind of goofy views, in my opinion. I do not blame the tobacco company that my mother smokes. They are not making her smoke. She is choosing to do it. Of course, she says she has lived to be older doing it than I probably will live not doing it.

But the point is, should we have Federal judges engaging in these sorts of moral pronouncements and in turn substituting them for the existing law of the land when making decisions?

I could go on and talk about hoodlums who brutally murdered police officers—on and on—but I am not going to get into those details of the case for two reasons: One, I made my point and, number two, I am not in a position to judge the technicalities of the law here. That is not my point.

My point is this: I am a strict constructionist. I believe if you want to make the law, you ought to run for Congress, you ought to submit your ideas to the American people. If you get elected, you ought to come up here and try to convince people to change the law. And if you are successful, you can change it. That is how this system works.

I believe judges ought to be in the business of interpreting the laws, not making them. I knew when Bill Clinton was elected that he was going to appoint liberals and activists to the bench. I have supported a lot of them. I voted for a lot of them. I would say there probably are not 10 of them—maybe none of them—that I or a Republican in a similar position would have appointed. But I have always felt when people voted for Bill Clinton they knew, or they should have known, that he was going to appoint liberals to the bench who, to some degree or another, take the view that it is their job to fill in the blanks in the law, rather than asking Congress to do it.

But I believe, Mr. President, in the case of this particular judge, that he steps way over the line of what anybody should expect from someone like Bill Clinton; he steps over the line of a judge that someone would expect the Bill Clinton, who ran for President in 1992, to appoint to the Federal bench.

That is the point. The point is not that this is a bad person. My guess is that this is a wonderful person. My guess is that he is very much consumed by all these things. He might be the kind of guy I would like to live next door to. I might want him to be the father-in-law of my children. But the point is that a person who holds his views chose the wrong business. The person who holds his views ought not to be an appellate judge. In fact, many of his decisions have been reversed by the very appellate court that the President is now appointing him to, and not just reversals where they said we believe that while one could take the interpretation of the law that this particular judge has taken, that it is our opinion that his decision was wrong.

The court to which he is being appointed today has said that his view was so outrageous, so far from the law, so out of bounds, that in unanimous rulings they have thrown out his opinion.

So the concluding point I want to make is this: I am going to vote against this judge because Americans voting in 1992 could never have believed that the person who was running for President, named Bill Clinton, who was a new kind of Democrat, who believed in the death penalty, who wanted to be tough on crime—there was no reason that they would have believed that he was going to nominate this judge to be a Federal circuit judge. There was no way a rational person could have concluded that this nomination could have been expected or reasonable.

Second, a person who wants to substitute their own values for the law, in my opinion, does not have the temperament to be a Federal judge. So I am going to vote against this nomination. But I want to make an important point.

A great political philosopher said: In no way can you get a truer insight into the nature of a leader than to look at the people he surrounds himself with. If you want to know who somebody is, look at who they appoint, look at the people that they empower through their individual decisions. And I have to reflect, as I have on maybe six or seven other nominations—our Surgeon General being one, the Ambassador to Finland, who, for 25 years, argued against the very fundamental foundation of American capitalism and economic freedom, was another—I believe this nomination tells us something about our President, and I think it tells us that our President was not leveling with the American people when he ran for office in 1992.

I think it tells us that our President was elected under false pretenses. I do not think you can look at this nomination and conclude that President Clinton is serious about grabbing violent criminals by the throat. I think when you combine this nomination with his crime bill, which overturned minimum mandatory sentencing for drug felons, that what we are seeing is a huge gulf between what he is telling the American people about getting tough on crime and what is being done.

So I believe that the nomination of this judge is out of bounds. I think it is out of reason as to what people could expect. I do not challenge the fact that the American people elected Bill Clinton and that they knew or should have known that he was going to appoint liberals. But this person is not just a liberal. This judge is a person who wants to substitute his individual opinion, his moral values, his conception of the world and how it ought to be under the Constitution for the existing law of the land. And while that is a reasonable thing to do, and it is a high calling, it is not the job of a Federal judge. As a result, I do not believe this judge should be elevated to the appellate court. I think this is a bad mistake and, of course, he is going to be there for a long time.

So I cannot support this nomination, and I think the nomination reflects on the person who made this appointment.

I yield the floor.

Mr. McCONNELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Kentucky [Mr. McCONNELL], is recognized.

Mr. McCONNELL. Mr. President, regrettably, I, too, must oppose this nomination. Although I believe the President should be accorded deference in the exercise of his constitutional power to nominate, this particular nominee, as previous speakers have pointed out, is incredibly flawed. I, for one, have serious concerns about Judge Sarokin's ability to be impartial, his tendency to legislate from the bench, and his lack of regard for judicial precedent.

For example, he approached a personal injury case against tobacco companies with a direct bias against the defendants. In an early pretrial proceeding, before evidence had been introduced into the record, Judge Sarokin accused cigarette manufacturers of being "the king of concealment and disinformation." From the bench, imagine that, Mr. President, from the bench, early in the case, the judge says that the tobacco companies, cigarette manufacturers, who were a party in the case before him, were the "kings of concealment and disinformation."

His decision—to override the attorney-client privilege and allow certain evidence to be admitted as evidence of crime-fraud—was subsequently reversed by the third circuit, and Judge Sarokin was removed from the case. This is a fellow who is up for elevation to the next circuit. They removed him from the case for his obvious bias.

The third circuit found extremely exceptional circumstances, "amounting to a judicial usurpation of power" in removing him from the case. The third

circuit said, exceptional circumstances "amounting to a judicial usurpation of power." That is what they said in justifying his removal.

The third circuit also found Judge Sarokin violated our "common law tradition," with his ruling, in removing him, and that he violated the defendant's right to due process. Judge Sarokin let his bias against the defendants interfere with their right to a fair trial. He was so totally biased against one side in this case, said the higher court in removing him from the case, that he simply violated their right to a fair trial. Every litigant who walks into a courtroom, Mr. President, should be entitled to fairness. Parties should not have to face a judge who they know has a prejudice against them—in this case, openly stated as a prejudice against them in advance.

Shortly after being disqualified from the case, after he was removed from the case for his obvious bias, Judge Sarokin accepted an award—still on the bench—from an antismoking group for his significant achievement toward creating a smoke-free society. Here we have a judge accepting awards of this sort. It is troubling that any judge would accept any award for his role in a particular case. But that Judge Sarokin accepted this award in the face of the third circuit's finding that he lost all impartiality in the case is exceptionally disturbing.

Judge Sarokin's lack of impartiality should disqualify him from being elevated to the third circuit. But this is not the only strike against this nominee. He also practices judicial activism. He legislates from the bench, imposing his view of right and wrong upon parties who appear in his courtroom.

In one case, Judge Sarokin struck down a town library's rule against vagrants loitering in the library. He ruled on behalf of the vagrant, intent on disrupting and disturbing law-abiding citizens' use of the library. To achieve his result, the judge misused relevant precedent. In this case, the third circuit unanimously reversed the nominee.

In another case, dealing with an award of attorneys' fees, Judge Sarokin showed disdain for a relevant Supreme Court decision. When the third circuit again reversed the nominee before us, the court found he had "simply defied the Supreme Court's opinion * * *" He just defined it. He did not like it. So he would not follow it.

The third circuit also stated that Judge Sarokin followed his own views and he "failed to follow the clear direction" of both the third circuit and the Supreme Court.

Finally, Mr. President, Judge Sarokin has shown excessive leniency in criminal cases.

He is on record as opposing the detention of criminal defendants until they are finally convicted; he opposes mandatory minimums as well as uniform sentencing guidelines. He does not want to punish those who murder, rob, and rape. Instead, he would rather dispense shelter, provide job training and turn our prisons into therapy centers.

The New Jersey Law Journal has called the nominee before us the most liberal, as well as the most reversed Federal judge in New Jersey. The Senate should not reward Judge Sarokin for his bias, for his judicial activism, for his substituting his own judgment for that of the political branches of Government, or for his disregard of precedent.

Mr. President, I think this is a particularly flawed nomination. I hope the Senate will not approve him.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Jersey [Mr. BRADLEY], is recognized.

Mr. BRADLEY. Mr. President, I have listened all afternoon to the opponents of the nomination of Judge Sarokin. I would at this time like to make a few points in support of his nomination, given the context and content of what we have heard during the afternoon.

The first thing that needs to be said is that Judge Sarokin has written over 2,000 opinions, and only actually a little less than 50 of those have been reversed and 2 of those have been reversed again by the Supreme Court and 2 have been reversed because of a change in the law after the opinion.

There are those who say, well, 50 out of 2,000, that is about a 3 percent reversal rate. That is pretty good. Others say, well, you know all of his opinions were not appealed. So the reversal rate might be higher.

All I can say is that any case in any district court has the right of automatic appeal to the circuit, and if they were not appealed, then clearly both sides felt they were correct, which is one of the marks of a successful jurist. So of the over 2,000 opinions, less than 3 percent have been reversed.

Now, is it possible out of 2,000 opinions to find 5, 6, 7, or 8 isolated opinions to focus on and exaggerate? Sure it is possible for virtually any judge who sat as long as Judge Sarokin has on the district court since 1979.

A lot has been made of the New Jersey Law Journal saying he was the most reversed judge in New Jersey, and when there is a major case; yet the New Jersey Law Journal has endorsed his ascension to the third circuit. The New Jersey Law Journal has strongly stated its support for him. And if you are going to take major as meaning controversial, then of course he has had some controversial cases. There is no question about that. When you have a controversial case which often involves issues of first impression, sometimes you will be reversed, and indeed he has, but only 3 percent out of over 2,000 opinions.

There has been a point raised by an article by Mr. Jipping.

I ask unanimous consent that a point-by-point rebuttal of his article be printed in the RECORD.

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

PRISONER'S LEGAL ASSOCIATION (PLA) V. ROBERSON: HARASSMENT OF PRISON PARALEGALS

What really happened?

The PLA and several prisoners who served as paralegals alleged that a prison official had harassed them in retaliation for helping another prisoner file a claim against him. They made claims under the Eighth and Fourteenth Amendments. Defendant moved for summary judgment.

Judge Sarokin ruled that verbal harassment, several denials of meals, and several searches did not constitute cruel and unusual punishment under the Eight Amendment.

The paralegals also asserted a Fourteenth Amendment claim on behalf of the prisoners to protect the prisoner's right of access to the courts. Judge Sarokin denied defendant's motion for summary judgment on this issue because there was no evidence in the record indicating whether the prisoners had access to the courts other than through the paralegals.

Since the parties had not extensively addressed whether the paralegals could assert third-party standing to enforce the prisoner's rights, Judge Sarokin decided additional briefing was appropriate.

Judge Sarokin made no ruling on the merits of the claim.

Didn't Judge Sarokin search for a claim that the parties hadn't raised and then appoint counsel to brief it?

The plaintiff's primary claim for relief was their Fourteenth Amendment claim. It would have been impossible for Judge Sarokin to ignore it.

The defendant, not Judge Sarokin, raised the standing issue on which he requested further briefing.

The defendant, not the plaintiffs, challenged the ability of the PLA to proceed without an attorney. Based upon recent Supreme Court precedent requiring that all "associations" be represented by licensed counsel in court, Judge Sarokin appointed counsel. Legally, the matter could not have proceeded otherwise.

Didn't Judge Sarokin create a protected status for prison paralegals?

In fact, Supreme Court precedent clearly establishes a prisoner's right of effective access to the courts, either through a law library or legal assistance. Furthermore, under established Third Circuit law, otherwise permissible actions by prison officials are unconstitutional if taken in reaction to a prisoner exercising his constitutional right of access.

In this case, Judge Sarokin recognized that if the paralegals provided the only access to courts, then preventing their assistance would prevent exercise of this right.

HAINES V. LIGGETT: MANDAMUS OVER DISCOVERY ORDERS AND REASSIGNMENT OF TOBACCO LITIGATION

What really happened?

In two actions six years apart, the Third Circuit Court of Appeals disagreed with

Judge Sarokin's decisions in disputes over discovery in the hard-fought litigation between the tobacco companies and heirs of those killed by smoking. It issued writs of mandamus to reverse the decisions.

In the second action, the Third Circuit was also asked to exercise its supervisory powers (*not* to issue a writ) to reassign Judge Sarokin because the tobacco companies felt he had evinced prejudice in the language of one of his orders. The Court said that while it did "not agree that [Judge Sarokin] was incapable of discharging judicial duties free from bias and prejudice," it would reassign the case in order to preserve "*not only the reality* but also the appearance" of neutrality.

Isn't extremely unusual?

Issuing a writ of mandamus, although not an everyday occurrence, is not an earth-shattering event. The Court of Appeals was required to issue writs of mandamus on the discovery orders because such orders are not appealable through the normal process. During the 15 years that Judge Sarokin has been on the bench, the Third Circuit has issued 31 writs of mandamus to District Court judges [—Republicans and Democrats, liberals and conservatives.] Even if Judge Sarokin was wrong on the law—on these two motions out of [hundreds] decided during the tobacco litigation—his actions and the writs of mandamus issued by the Court of Appeals were "typical of trial court error common in the day-to-day supervisory experience of an appellate court." (N.J. Law Journal, 10/5/92)

Reassignment is much less common, to be sure. But the same year it took action against Judge Sarokin, the Third Circuit reassigned Reagan appointee Judge Kelly (E.D.Pa.) from asbestos litigation.

Did Sarokin really 'ignore the law' in the two discovery motions on which he was reversed?

In fact, both cases turned on the relatively technical question of the standards and methods of review of magistrates' decisions on discovery motions in particular settings.

In the earlier case, involving a protective order against public disclosure of documents, Judge Sarokin had interpreted a Supreme Court decision to require an expansive standard of review because constitutional guarantees of free speech were implicated. At least [two] Court[s] of Appeals had reached the same conclusion. The Third Circuit, in a decision announced *two months after* Judge Sarokin's decision, reached the opposite conclusion. Thus, the law he is alleged to have ignored did not exist at the time.

In the later case, Judge Sarokin had, in reviewing the magistrate's decision, considered evidence from a related case. Although the Third Circuit, apparently addressing the question for the first time, disagreed with this approach, Judge Jack B. Weinstein (E.D.N.Y.) endorsed it (Brooklyn Law Review 1993). Contrary to the allegations of Judge Sarokin's critics, this was a close question, not a lawless seizure of power.

Judge Sarokin's critics have distorted the language of the Third Circuit's opinion. References to "judicial usurpation" are *not* used to describe Judge Sarokin but are rather boilerplate references to Supreme Court precedents on mandamus. The actual discussion of Judge Sarokin's actions turn on close questions of law.

Most importantly, *Judge Sarokin was not reassigned because of his rulings of law*, on which reasonable judges can and have disagreed, but *because of the way he expressed himself.*

Don't Sarokin's remarks show a lack of judicial temperament?

In fact, in announcing its "most agonizing" decision to re-assign Judge Sarokin, the Third Circuit stated unequivocally that he "is well known and respected for *magnificent abilities and outstanding jurisprudential and judicial temperaments.*" Even a critic of his remarks in the tobacco litigation has called Sarokin "*one of our best judges.*" Prof. Monroe Freedman, Hofstra Law School (Brooklyn Law Review 1993).

The Court of Appeals did not hold that Judge Sarokin abandoned "*even* the appearance of impartiality," as Judge Sarokin's critics have chosen to twist the opinion to say. The Court stated outright that Sarokin could be fair *in fact* and that only the appearance of impartiality was implicated by his remarks.

Was Sarokin's removal consistent with the law?

Judge Sarokin's remarks, although perhaps ill-considered, came after years of reviewing evidence in the tobacco litigation. No one alleged that his views—whatever they were—came from anything but the evidence. Five of the six Circuit Courts that had considered the question—including the Third Circuit, *see Johnson* v. *Trueblood*, 629 F.2d 287 (1980)—had clearly held that appearances of judicial bias originating in judicial proceedings should not result in removal. These courts recognized that in order to issue rulings, a judge must develop views based upon the weight of the evidence presented.

Most commentators agreed that Judge Sarokin should not have been removed under the prevailing legal standard:

"[T]he *Haines* opinion is troubling because it appears to directly contradict the well-settled Third Circuit position . . .. Judge Sarokin was making a determination regarding whether the crime-fraud exception applied to certain documents. The Third Circuit Court of Appeals did not address how the judge was to make his determination without addressing the issue of whether the tobacco companies had engaged in concealment." Comment, Seton Hall Law Review (1994).

"[T]he [Third Circuit's] decision . . . ignored both governing statutory authority and the fundamental distinction between judicial and extrajudicial bias . . .. [T]he court's failure even to mention this issue was judicially dishonest . . .." Prof. Paul C. Gluckow, Seton Hall Univ. Law School (Seton Hall Law Review 1993).

"What Sarokin said was . . . intemperate, but I don't think it warranted disqualification under the case law. The distinction between information that is judicially acquired, or not, is an important distinction." Prof. Jeffrey Stempel, Brooklyn Law School (quoted in N.J. Law Journal, 9/14/92).

"I have found no other case where a judge has been disqualified for an appearance of bias for remarks contained in a judicial opinion, based on facts in the record, and relating to the merits of the case." Prof. Bennett L. Gershman, Pace Univ. Law School (N.Y. Law Journal, 9/21/92).

In fact, the United States Supreme Court recognized this distinction earlier this year in its decision in *Litekey* v. *United States*, 114 S.Ct. 1147 (1994). The Court sided with the majority of Circuit Courts who had held that although a judge may often appear biased because of views developed from hearing the evidence in judicial proceedings, removal is required only when the judge "display[s] a deep-seated favoritism or antagonism that would make fair judgement impossible." 114 S.Ct. at 1157. Since the Third Circuit explicitly stated that it did not doubt Judge Sarokin's *actual* ability to adjudicate the case impartially, its decision in *Haines* v. *Liggett* could not survive the Supreme Court's decision in *Litekey*.

But why was Sarokin making these remarks?

Judge Sarokin had to decide a technical question of attorney-client privilege, the so-called crime-fraud exception. He needed to determine whether documents otherwise protected by the privilege had been generated as part of an effort to conceal facts about tobacco from the public. So the degree of deceptiveness of the tobacco companies was directly relevant to the question presented, even though it was also inevitably related to the issue to be decided at trial.

Judge Sarokin, after considering the evidence, did his duty. He found that the manufacturers had indeed engaged in fraud and ordered them to disclose some (not all) of the documents. His strong comments on the evils of concealing health risks and the statement that the tobacco industry 'may be the king of concealment and disinformation' were within the scope of the issue." Prof. John Leubsdorf, Rutgers Law School (New York Times, 9/16/92).

[H]is introductory remarks were made in the context of a judicial determination finding that prima facie evidence existed demonstrating that the tobacco industry defendants had engaged in widespread fraud and deception. . . . Seen in this context, Judge Sarokin's statement in the prologue of his opinion . . . becomes interconnected with his judicial evaluation of the proof. There is no more of an appearance of bias here than in the case of a judge who concludes after a trial that a witness has given false testimony, or who, after reviewing a record, concludes that a party is guilty of a cover-up." Prof. Bennett L. Gershman, Pace Univ. Law School (N.Y. Law Journal, 9/21/92).

"Judge Sarokin was asked to rule on the viability of plaintiffs' fraud theory, namely that the defendants knew about, but concealed and, in fact, distorted the hazards of smoking cigarettes. He was *required* to examine the facts presented by both sides to determine whether it was reasonable to conclude that the cigarette industry had in fact attempted to mislead the public. Finding 'sufficient prima facie evidence of fraud in connection with the public assurances made by defendants to declare the crime-fraud exception shall apply in this matter' was *an appropriate exercise of judicial power.*" Judge Weinstein (Brooklyn Law Review 1993).

LANDANO V. RAFFERTY

What really happened?

Landano was convicted in 1977 for murdering Newark police officer John Snow during a robbery of a check-cashing establishment. In 1985, he brought the first of two *habeas corpus* proceedings in federal District Court. After an evidentiary hearing, Judge Sarokin found that there was good reason to believe some of the evidence against Landano was not reliable. He nevertheless denied the petition because principles of judicial restraint required him to defer to the state court's findings.

In 1989, Landano brought another *habeas* petition based on *new* evidence that had not been available to the state court. Judge Sarokin found that this new evidence indicated that the prosecution had suppressed evidence that would have exculpated Landano and therefore Sarokin granted the petition. The Third Circuit reversed not because it disagreed with Sarokin's evidentiary conclusions, but because Landano had not exhausted his state remedies by bringing the new evidence in the first instance to the attention of the state court.

In 1994, *the Appellate Division of the New Jersey agreed with Judge Sarokin on virtually every count and granted Landano a new trial. State* v. *Landano*, 637 A.2d 1270 (1994). The court found as follows:

"First, the State suppressed evidence that its principal identification witness [the proprietor of the check-cashing shop] was under investigation for having ties with organized crime . . . [and] on the very day his earlier tentative identification of [Landano] became positive, he was questioned about the possibility he had paid illegal gratuities to Officer Snow.

"Second, the State suppressed evidence that its chief witness [Landano's alleged accomplice] . . . had committed numerous armed robberies similar to [this one and had suppressed evidence that] the witness "and his closest associate had committed an earlier armed robbery in which the gun used to kill Officer Snow had been fired.

"Third, the State suppressed evidence that the only eyewitness to the shooting rejected [Landano's] photograph . . ." 637 A.2d at 1271.

Wasn't Sarokin on some kind of crusade to free Landano?

Far from engaging in a crusade, Judge Sarokin denied the first petition *even though he felt the evidence indicated a strong possibility that Landano was innocent.* The opportunity to free a prisoner whom one believes to be innocent is the strongest temptation to which a judge can be subjected, but Sarokin said in his opinion that he could not do so "without violating the court's oath to follow existing precedent." 670 F.Supp. at 572.

Sarokin's critics have mocked his statement that he conducted "an exhaustive search for grounds to grant the writ," but in doing so for a prisoner he believed to have been done an injustice, Judge Sarokin was upholding the finest traditions of the federal courts.

If Sarokin was engaged in a crusade, why did he wait four years to re-open the case? Because he did not re-open it. In fact, Landano brought a new petition, having worked on his own to develop new evidence that the prosecution had suppressed exculpatory evidence at the first trial.

After concluding that the prosecution did suppress evidence, a conclusion with which the state court ultimately agreed, Judge Sarokin granted the second petition. He concluded that Landano had effectively met the requirement that he exhaust his state remedies because the substance of his claim—that another man had done the killing and that the state had suppressed evidence—had already been presented to the state court.

Two of the three judges on the Third Circuit panel disagreed; the third, Judge Rosenn, agreed with Judge Sarokin that "[t]hough the newly discovered evidence . . . may be a new development for the petitioner, it is not for the State. It had possession of the information during the entire habeas corpus proceedings in the state courts and during the initial hearing before the United States District Court and failed to fulfill its constitutional duty to divulge the evidence." Judge Rosenn said that "the State's case [against Landano], erected upon a house of cards, has little, if any, credible foundation to it." 897 F.2d at 685.

Didn't the third circuit reverse Sarokin again when he granted Landano bail?

Sarokin did grant Landano federal bail while he pursued his remedies in the state court system, a process that culminated in the Appellate Division's ordering him a new trial. The Third Circuit split 2 to 1 in reversing. Contrary to the claims of some critics, the court said nothing to indicate that it believed that Judge Sarokin was letting personal bias displace his judicial duty. Rather, the Third Circuit agreed with the fundamental proposition that there was precedent for the authority of a federal court to grant bail to a state prisoner under these circumstances. In dissent, Judge Sciraca went further, agreeing with Judge Sarokin that "a finding of probable innocence" warranted Landano's bail.

Didn't Sarokin Stretch FOIA to permit Landano access to FBI files? And didn't the Supreme Court reverse him?

When Landano asked for access to his FBI files, the government took the position that it was entitled to what the Supreme Court later characterized as a "sweeping presumption" that all persons or entities giving information to the FBI in the course of a criminal investigation were confidential sources and not FOIAble. Judge Sarokin accepted this presumption as to regular FBI informants, but said that as to other named sources the government would have to make a particularized showing. The Third Circuit affirmed.

The Supreme Court, in *U.S. Department of Justice* v. *Landano*, 113 S.Ct. 2014 (1993), *agreed with Judge Sarokin's essential holding* that the government's position was untenable. Speaking for a unanimous Court, Justice O'Connor held that the government "offers no persuasive evidence that Congress intended for the Bureau to be able to satisfy its burden in every instance simply by asserting that a source communicated with the Bureau during the course of a criminal investigation." 113 S.Ct. at 2023. The Supreme Court did go on to say, however, that the government establish a presumption in favor of nondisclosure of information in "more narrowly defined circumstances." *Id. Using the very example that Judge Sarokin had below,* Justice O'Connor said that "it is reasonable to infer that paid informants normally expect their cooperation with the FBI to be kept confidential." *Id.*

KREIMER V. BUREAU OF POLICE FOR THE TOWN OF MORRISTOWN HOMELESS MAN EXPELLED FROM LIBRARY

What really happened?

Judge Sarokin ruled that the Morristown library's policy banning those with poor hygiene from the library infringed upon established First Amendment rights.

The Court of Appeals agreed with Judge Sarokin that the strictest scrutiny would apply to the library's hygiene regulation, because it effectively prevented some from enjoying their First Amendment rights. And while it did disagree with Judge Sarokin, finding the regulation survived constitutional "strict scrutiny" (a test rarely passed), its painstaking analysis reveals how close a question this was.

Didn't Judge Sarokin invent a new right?

The Court of Appeals agreed fully with Judge Sarokin that the First Amendment guarantees all citizens not only the right to express their ideas to others, but also "the right to receive information and ideas" from others. It described a long line of Supreme Court case supporting this right as essential to a democratic society. It called the public library "the quintessential locus of the receipt of information," affirming Judge Sarokin's determination that citizens enjoy a right of access to the public library. Thus, Judge Sarokin in no way invented a new right.

Didn't Judge Sarokin insist the library was discriminating against Mr. Kreimer?

Actually, the library freely admitted that its policy (which also includes prohibitions on loitering and annoying other patrons) was designed explicitly to restrict the access of Mr. Kreimer and other homeless people to the library. It created the policy specifically to respond to Mr. Kreimer. The library's own statements, not Judge Sarokin's insistence, established the discriminatory intent.

What was the real problem with the regulations?

Judge Sarokin found not that the library couldn't regulate access to its facilities, but that the regulations, because they were so *vague*, would allow library officials to discriminate *arbitrarily*. He believed that the prohibitions against hygiene falling below "community standards" and against "annoying" behavior gave too much discretion to library officials, allowing them to use the regulations as a justification to expel those of whom they did not approve. A similarly open-ended law may give a police officer discretion to remove a speaker or a member of her audience solely because that person annoyed others or because his or her hygiene did not meet community standards.

While the Court of Appeals did not agree that the regulations were unconstitutionally vague, at least one commentator, Jeremy Rabkin of Cornell University, has said the Court of Appeals decision went "against the trend." He points out that the Supreme Court has struck down traditional vagrancy laws as excessively vague and threatening to the First Amendment right of assembly (William and Mary Law Review 1992).

Didn't Judge Sarokin fail to consider Mr. Kreimer's behavior?

The case wasn't really about Mr. Kreimer at all. Because the library itself sought summary judgement only on whether the regulations were valid "on their face," Judge Sarokin had no choice but to consider only the general application of the regulations, regardless of Mr. Kreimer's conduct. The Court of Appeals properly followed this same course.

Mr. BRADLEY. Mr. President, there is a question raised, Is this one of those judges who is soft on crime? I would assert that Judge Sarokin on criminal justice issues falls within the broad mainstream of the Federal judiciary.

Let me give you some examples that I think you have not heard on the floor today about Judge Sarokin. There has been talk about the Landano case, and there has been talk about the Rodriguez case, but you did not hear about Holland versus the Attorney General of New Jersey. Holland versus the Attorney General of New Jersey was in 1985 where a convicted armed robber sought a writ of habeas corpus, and Judge Sarokin denied the writ of habeas corpus to this convicted armed robber. He was reversed. He was reversed. We did not hear about that reversal. This is an example, one, of a tough judge.

Take another reversal. In 1992, Judge Sarokin was reversed in U.S. versus Rodriguez for imposing excessive sentences on drug traffickers. He was reversed for imposing excessive sentences on drug traffickers. You did not hear about that reversal on the floor here today either.

So, if we went down to take just a few others—I mean there are 2,000

cases. You could pick many. But just take a couple. There is the case of U.S. versus Clark in 1991. It was an upward departure from the guidelines, an upward departure from the guidelines. People worry about him going downward. It was an upward departure from the guidelines to impose a life sentence for kidnapping a postal employee, and the life sentence was imposed because of the impact that kidnapping had on the victim's family, an upward sentence.

Is he weak on crime? No. He is tough on crime.

What about U.S. versus Vegoa, in 1985, where before there were any guidelines, in 1985, before there were any sentencing guidelines, he imposed a 30-year sentence for cocaine importation. Does that sound like that is a coddling judge? No.

Or take U.S. versus Hernandez in 1988 where he denied a motion to suppress wiretap evidence even though the wiretap violated State law. Does that sound like a judge who is soft on crime? The answer is absolutely not.

These are just a few examples out of the over 2,000 cases that clearly refute the contention that Judge Sarokin is soft on crime.

What about pretrial detention? We heard that Judge Sarokin is a little soft on pretrial detention. Judge Sarokin has never stated he opposed pretrial detention. He has himself imposed pretrial detention in over 100 cases.

So, what is all this talk about him not wanting pretrial detention? He has imposed it over 100 times since he has been sitting on the Federal bench.

Or what about he has never stated that he opposes a good faith exception to the exclusionary rule, never. No one has put that in the RECORD today.

He has never stated that he opposes mandatory or uniform sentences. Indeed, the only time that he has ever departed downward from sentencing guidelines was upon the final recommendation of a probation officer.

So, Mr. President, I think you could easily argue that Judge Sarokin is in the mainstream of the Federal judiciary when it concerns criminal justice.

Now, a lot of time has been devoted to the so-called Landano case on the floor today, and Senator BIDEN, the distinguished Senator from Delaware, the chairman of the committee, I thought did a very effective job of laying the context and also the evidence out for Judge Sarokin's actions, but just to recap quickly:

An individual was murdered, a police officer, in 1976. In 1977, a James Landano was convicted in a New Jersey trial of that murder. In 1985, 8 years later, Mr. Landano came before Judge Sarokin, filed a petition for a writ of habeas corpus. Judge Sarokin denied the petition because principles of judicial restraint required him to defer to the State court finding. Four years later, Landano came back with new evidence, new evidence. Judge Sarokin then issued a conditional writ.

The third circuit reversed Judge Sarokin, not because it disagreed with his evidentiary conclusions—meaning that the facts had changed, that there was new evidence—but because Landano had not exhausted his State remedies by bringing the new evidence in the first instance to the attention of the State court. In other words, a procedural grounds for reversal.

Well, it went back to the State court system and in February 1994, the appellate division of the New Jersey Superior Court overturned the New Jersey trial court's ruling and agreed with Judge Sarokin on virtually every count, on virtually every count.

So in 1994, the New Jersey appellate division and the Supreme Court essentially agreed with what Judge Sarokin had stated in 1989. And the grounds were that the State suppressed evidence; that the only eyewitness to the shooting rejected Landano's photograph because the perpetrator had curlier hair than Landano. In other words, there was a photograph. The only eyewitness rejected that it was Landano. That was not shared with the defense. The State suppressed evidence that its chief witness, Alan Roller, Landano's alleged accomplice, had committed two armed robberies similar to the one that Landano was charged with and had also suppressed evidence that the witness and his closest associates had committed an earlier armed robbery in which the gun used to kill Officer Snow had been fired. That was not shared, either, with the defendant.

Further, the State suppressed evidence that the principal identification witness, the proprietor of the check cashing shop, was under investigation at the time for having ties with organized crime and was suspected of having engaged in loan sharking and money laundering. And, further, on the very day that the witness identified Landano, he had been questioned about his involvement in possible illegal activities.

Now, none of this was shared with the defense. These were the grounds, in addition to others, for the New Jersey appellate court, sustained by the Supreme Court, to overturn the trial court and order a new trial, which has not taken place. The prosecution has not brought the case.

In addition, this is a very difficult and trying case because there was indeed an officer killed.

I would like to have printed in the RECORD a letter from the individual who was the director of the Newark Police Department at the time, Hubert Williams, who is now the head of the Police Foundation in support of the Sarokin nomination. I think the letter itself speaks both of the anguish of seeing a fallen officer and the merit of Judge Sarokin's elevation to the Circuit Court.

I would also like to have printed in the RECORD a letter of support from the NOBLE organization.

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

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

REPRESENTATIVES OF POLICE ORGANIZATIONS

POLICE FOUNDATION,
*Washington, DC, October 4, 1994.*

Hon. BILL BRADLEY,
*U.S. Senate, Hart Building, Washington, DC.*

DEAR SENATOR BRADLEY: I served as director of the Newark Police Department for 11 years before coming to Washington, D.C. as president of the Police Foundation. When Officer Snow was killed in a bank holdup in Newark, New Jersey, I was the director of the Newark Police Department. This killing sent shock waves throughout our department.

I've seen the judicial process unfold and I've watched the attacks made on Judge Sarokin, who rendered a decision in this matter that was not necessarily the one that we in law enforcement wanted, but which was clearly based upon a careful assessment and judicial application of the facts to the law. This decision was ultimately upheld by the appellate division of the New Jersey Superior Court and the New Jersey Supreme court.

It is my view that litmus tests for our judiciary must not be predicated upon the outcome of a decision but on whether or not the facts are applied to the law and a just and reasonable determination is made regarding the question of innocence or guilt. If we pursue any other course, the justice that we all hold dear will perish in the process. We cannot allow that. For these reasons, I think that based on Judge Sarokin's record as a whole, he deserves elevation to the appellate division. I understand the pain and anguish of the members of my department who, as I do, still suffer from the trauma associated with the brutal killing of one of our brother officers. But our judicial system must function beyond emotions. Reason and judicial temperament must be the determining factors in the selection of jurists.

Judge Sarokin has a long and distinguished career that warrants his elevation to the appellate division. I strongly endorse and urge his confirmation.

Sincerely yours,

HUBERT WILLIAMS,
*President.*

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NATIONAL ORGANIZATION OF BLACK LAW ENFORCEMENT EXECUTIVES,
*October 4, 1994.*

Hon. BILL BRADLEY,
*Hart Building, Washington, DC.*

DEAR SENATOR BRADLEY: The National Organization of Black Law Enforcement Executives (NOBLE) comprises over 3,500 members, Chief Executive Officers of Law Enforcement Agencies at federal, state, county and municipal levels, administrators, command personnel and criminal justice instructors and officials.

As Executive Director of NOBLE, I am writing to articulate our staunch support for the nomination of Judge H. Lee Sarokin to the Third Circuit Court of New Jersey. We have consulted with our members who are familiar with the work and reputation of

Judge Sarokin and the responses are unanimous. He is very highly respected and admired by prudent, fair and objective-minded officials and private citizens. He is noted for his enlightened approach to judicial decisions that crucially impact families and invidiauls of our distressed communities. We appreciate his courage and willingness to induce fairness and compassion into his decisions.

Although we consider this fine Jurist's attitude toward justice and fairness to be paramount, we are equally impressed with his strong criminal justice and academic background.

We are very proudly urging confirmation of the Honorable Judge H. Lee Sarokin to The United States Court of Appeals for the Third Circuit.

Sincerely,

IRA HARRIS,
*Executive Director.*
HUBERT T. BELL,
*National President.*

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*July 22, 1994.*

Re Nomination of the Honorable H. Lee Sarokin for appointment to the United States Court of Appeals For the Third Circuit.

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: As Chairman of the Bergen County Police Conference I am pleased to write you in support of the nomination of Judge Sarokin for appointment to the United States Court of Appeals for the Third Circuit. Our police conference represents over 3,000 law enforcement officers. His opinions in areas effecting our membership have been examplary and well composed. He is, without question, a jurist exhibiting the highest standards of integrity and impartiality.

We are privileged to have this opportunity to offer our support for Judge Sarokin's nomination.

Very truly yours,

MICHAEL J. MADONNA,
*Chairman,*
*Bergen County Police Conference.*

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NEW JERSEY STATE POLICEMEN'S BENEVOLENT ASSOCIATION, INC.,
*Woodbridge, NJ, May 16, 1994.*

Re nomination of the Honorable H. Lee Sarokin for Appointment to the United States Court of Appeals for the Third Circuit.

Hon. JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR BIDEN: I serve as President of the New Jersey State Policemen's Benevolent Association, an organization which represents 30,000 police officers in the State of New Jersey. It is, beyond question, the largest law enforcement organization in this State, and one of the largest in the nation.

I am pleased to support the nomination of United States District Court Judge H. Lee Sarokin for appointment to the United States Court of Appeals for the Third Circuit.

Judge Sarokin has a reputation, and justly so, for faithful and impartial application of the law. His integrity and independence, his compassion and courage, have earned the respect of all citizens of the State of New Jersey. There is no question but that he would bring exceptional competence to the Circuit.

Thank you for your kind attention.

Very truly yours,

FRANK J. GINESI,
*State President.*

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STATE TROOPERS FRATERNAL ASSOCIATION OF NEW JERSEY, INC.,
*Manasquan, NJ, May 6, 1994.*

Re Honorable H. Lee Sarokin Nomination.

Hon. JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: As President of the State Troopers Fraternal Association of New Jersey, an organization representing 1665 State Troopers, it is my privilege and pleasure to recommend the nomination of the Honorable H. Lee Sarokin for appointment to the United States Court of Appeals for the Third Circuit.

During over 14 years of service as a District Court Judge, Judge Sarokin has earned the respect of law enforcement for his faithful and impartial application of the law as required by the Constitution of the United States. Judge Sarokin is a scholarly, knowledgeable and honest jurist, and his integrity and impartiality have earned him the esteem of the law enforcement community.

Please use your valuable influence in support of Judge Sarokin's nomination; his service on the Third Circuit Court of Appeals is in the best interests of law enforcement and will greatly benefit our great State and Nation in general. Please feel free to contact me if you have any questions.

Respectfully,

THOMAS J. ISKRZYCKI.

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STATE TROOPERS NCO ASSOCIATION OF NEW JERSEY, INC.,
BORDENTOWN, NJ, JULY 26, 1994.

Re Nomination of the Honorable H. Lee Sarokin.

Hon. JOSEPH R. BIDEN,
*Russell Senate Building, Washington, DC.*

DEAR SENATOR BIDEN: I am president of the New Jersey State Troopers Non-Commissioned Officers Association, an organization which represents all New Jersey State Police non-commissioned officers. In that capacity, I am often asked to recommend individuals for various positions. This recommendation is the easiest recommendation I have ever made.

The Honorable H. Lee Sarokin has been nominated for appointment to the United States Court of Appeals for the Third Circuit. I highly commend Judge Sarokin to you. He has almost fifteen years service as a District Court Judge and has earned the respect of the law enforcement community and the federal Bar. Judge Sarokin's decisions are based on knowledge, impartiality, honesty and concern for those who appear before him.

Again, I highly commend Judge Sarokin to you and request you favorably view his nomination. Judge Sarokin will vigorously and impartially apply all relevant laws, regulations and rules.

Most respectfully yours,

DAVID E. BLAKER.

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POLICE FOUNDATION,
*May 10, 1994.*

Hon. JOSEPH R. BIDEN, JR.,
*Chairman Committee on the Judiciary, U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

SENATOR BIDEN: This is to express our strong support for the nomination of Judge Lee Sarokin to the Third Circuit. He is an outstanding jurist with a deep sense of commitment to fairness and impartiality. We believe that his appointment would be of benefit to society in general and to the law enforcement community in particular. We urge his confirmation.

Sincerely,

HUBERT WILLIAMS.

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FORMER U.S. ATTORNEYS
LATHAM & WATKINS,
ATTORNEYS AT LAW,
*New York, NY, June 17, 1994.*

Re nomination of Honorable H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

Hon. JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR: Please accept this letter in support of the nomination of the United States District Court Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

Although I am currently a Partner at the above-named law firm, for the past ten years I have been a federal prosecutor, first in the Southern District of New York and then in the District of New Jersey. From 1990 until my resignation this past May, I was the United States Attorney for the District of New Jersey, having been appointed by President Bush.

As United States Attorney I was thoroughly familiar with Judge Sarokin's work and reputation as a United States District Judge in New Jersey. In addition to significant personal contact with Judge Sarokin on official business, I was personally involved in supervising matters handled by the United States Attorney's office in his court.

I support Judge Sarokin's nomination to the Third Circuit without reservation. Judge Sarokin's written opinions exhibit genuine scholarship and lucid exposition. In presiding over complicated and sometimes contentious criminal trials, Judge Sarokin was patient, firm and fair. In my experience, Judge Sarokin has interpreted and applied governing law faithfully. By intellect, temperament and experience, H. Lee Sarokin is highly qualified to sit on the United States Court of Appeals.

I would be delighted, of course, to render any further assistance to the Judiciary Committee in its consideration of this nomination.

Respectfully submitted,

MICHAEL CHERTOFF.

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ROBINSON, ST. JOHN & WAYNE,
ATTORNEYS AT LAW,
*Newark, NJ, May 6, 1994.*

Hon. JOSEPH R. BIDEN,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I am writing to urge your Committee to endorse the recent nomination of Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

Since Judge Sarokin's appointment to the federal bench in New Jersey in 1979, I have had occasion to appear before him for motions, a trial and on numerous occasions as an observer. These appearances were both as a private practitioner and as U.S. Attorney for the District of New Jersey between 1981 and 1985.

Judge Sarokin is a highly intelligent and thoughtful individual, who, in my experience, was always well prepared and fair to both lawyers and litigants alike. However, his greatest asset is probably the many written opinions which he was authored over the years as a Federal Judge.

Evidence of the quality of Judge Sarokin's opinions and the manner in which he has conducted proceedings, is his rare reversal rate by the Court of Appeals. Moreover, he has handled a number of landmark cases in this District and rendered some very significant decisions in vital areas of the law. Through it all, he has always been courteous to those before him.

I fully recommend Judge Sarokin to your Committee and to the United States Senate as a whole for confirmation to the Third Circuit Court of Appeals.

Sincerely,

W. HUNT DUMONT.

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HANNOCH WEISMAN,
COUNSELLORS AT LAW,
*Roseland, NJ, May 10, 1994.*

Re The Honorable H. Lee Sarokin Judge, U.S. District Court for the District of New Jersey.

Hon. JOSEPH R. BIDEN,
*U.S. Senator, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I write to unequivocally support the nomination of The Honorable H. Lee Sarokin, Judge of the United States District Court for the District of New Jersey, to the United States Court of Appeals for the Third Circuit.

I have had the privilege of knowing Judge Sarokin throughout his tenure as a Judge for the United States District Court for the District of New jersey, having myself served as an Assistant United States Attorney (1972–1976); Chief of the Department of Justice Organized Crime Strike Force for the District of New Jersey (1975–1978); First Assistant United States Attorney (1978–1980); and, finally, as the United States Attorney for the District of New jersey (1980–1981).

Throughout the course of all of my appearances in whatever capacity before Judge Sarokin, the vast majority of which were on behalf of the United States, he has consistently demonstrated an extraordinary ability to handle the most difficult matters many of which were multi-defendant and of high public visibility. On behalf of the United States I was always confident that my client had received a complete, fair and intelligent evaluation of the merits of its position and ultimately that justice was done. From my observation of other matters (primarily civil matters in which the United States was not a party), I can attest that at all times Judge Sarokin performed his duties in a similar fashion.

I sum, there are very few words that I could muster to describe the high regard in which Judge Sarokin is held by all of my colleagues who have had the privilege of practicing before him. He will be unquestionably an asset to an already distinguished Circuit bench. I unequivocally support the nomination and am ready to provide whatever further information you or the other members of the Committee may require.

Respectfully yours,

WILLIAM W. ROBERTSON.

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STERN & GREENBERG,
COUNSELORS AT LAW,
*Roseland, NJ, May 9, 1994.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I am in the unusual position of having had Judge Sarokin appear before me when I was United States District Judge, serving with him as a colleague on the Federal Bench, and now having appeared before him as a lawyer in the private practice of law.

From each of the vantage points, I can say that he is an individual of intelligence, compassion and a judicial demeanor of the highest order. I firmly believe that his nomination to the United States Court of Appeals for the Third Circuit is not only deserving but one which will enrich all of us who care about our Federal Courts.

I write this letter in full support of the nomination of Judge Sarokin.

Respectfully submitted,

HERBERT J. STERN.

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PRACTICING ATTORNEYS
NEW JERSEY STATE BAR ASSOCIATION,
*New Brunswick, NJ.*

Hon. JOSEPH BIDEN,
*U.S. Senator, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: As a practicing New Jersey lawyer for 25 years and as the current President of the New Jersey State Bar Association, I am pleased to support the decision of Senator Bill Bradley to recommend the Honorable H. Lee Sarokin to the Third Circuit Court of Appeals.

Judge Sarokin distinguished himself as a practitioner and citizen of this state and has a distinguished career on the United States District Court for the District of New Jersey.

He has the respect, admiration and affection of the citizens of this state and, particularly, the lawyers of this state, whom he has treated with respect and dignity.

Judge Sarokin, in often difficult circumstances, has found a way to lend dignity and respect to our system of justice.

I am pleased to applaud the decision of Senator Bradley and recommend Judge Sarokin for the Third Circuit Court of Appeals and hope that you will support Judge Sarokin.

If you have any questions, please call me.

Respectfully,

THOMAS R. CURTIN,
*President.*

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APRUZZESE, MCDERMOTT,
MASTRO & MURPHY,
*Liberty Corner, NJ.*

Hon. JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: My purpose in writing is to strongly endorse the nomination of Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit. As past president of the New Jersey State Bar Association, a former member of the Board of Governors of the American Bar Association, and a member of the American College of Trial Lawyers, in all my experience there are few people with the intellect, integrity, humor, demeanor and sense of fairness who could better grace the bench than Judge Sarokin. He is uniformly praised by lawyers everywhere for his decorum in the courtroom and intellectual ability. I think the legal system is enriched by having people of his caliber willing to serve.

I thoroughly endorse his nomination and solicit your strong support for his nomination.

Respectfully,

VINCENT J. APRUZZESE.

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EISENSTAT, GABAGE,
BERMAN & FURMAN,
*Vineland, NJ.*

Senator JOSEPH R. BIDEN
*Russell Senate Office Building, Washington, DC.*

MY DEAR SENATOR BIDEN: I am aware that President William Clinton has submitted the name of the Honorable H. Lee Sarokin to be a Judge of the United States Court of Appeals for the Third Circuit. I have known Judge Sarokin for a number of years and have worked with him as a Past President of the New Jersey State Bar Association. The elevation of Judge Sarokin to the Third Circuit would be of great benefit to the judiciary in this Circuit. Judge Sarokin has demonstrated the highest level of intellectual and legal experience, as well as the compassion necessary to elevate that fine court to one of the preeminent courts in the nation.

If you desire additional information from me with respect to this recommendation, please feel free to contact me.

Very truly yours,

GERALD M. EISENSTAT.

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GREENBERG DAUBER & EPSTEIN.
COUNSELLOR AT LAW,
*Newark, NJ, May 12, 1994.*

Hon. JOSEPH R. BIDEN,
*221 Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I am writing to you in support of the nomination of Judge H. Lee Sarokin to the United States Court of Appeals for the Third-Circuit. While I am not acquainted with Judge Sarokin personally, as a practitioner before the United States District Court for the District of New Jersey and as the former Executive Assistant Attorney General for the State of New Jersey, I am familiar with Judge Sarokin's performance on the Bench.

Judge Sarokin is a thoughtful, intelligent jurist of the highest integrity and is someone who is known to address each case with concern and dignity. During his tenure on the District Court, he has had the occasion to deal with cases of the utmost complexity and has handled them in an exemplary fashion.

I have no doubt that Judge Sarokin will be an excellent complement to the fine Judges of the Third Circuit now sitting, and I would hope that the Senate would move speedily to confirm his nomination.

Respectfully yours,

EDWARD J. DAUBER.

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ZAZZALI, ZAZZALI, FAGELLA &
NOWAK, ATTORNEYS AT LAW,
*Newark, NJ, May 9, 1994.*

Senator JOSEPH R. BIDEN,
*221 Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I had the privilege of meeting you in New Jersey at Fariborz's Wedding and occasionally on the MetroLiner coming up from Washington.

I take this opportunity to respectfully recommend the nomination of United States District Court Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

Rather than the usual cliched recommendation, please allow me to make two observations.

First, without putting too fine a point on it, Judge Sarokin would be more than an outstanding Circuit Court Judge. He would be an extraordinary addition to the Third Circuit. That Court is a fine Circuit Court and, without in any sense diminishing it, Judge Sarokin would bring extraordinary talent, experience and perspective to the Court. Indeed, I believe he would prove to be one of the outstanding Circuit Judges in the nation within a short period of time.

Second, I come to this recommendation with a somewhat unique point of view. A substantial part of my career has been spent in law enforcement in the public sector including service as an Assistant Essex County

Prosecutor; Chairman of the New Jersey State Crime Commission, having been appointed and reappointed to the Commission by Governor Kean; and Attorney General of the State, having been appointed to that position by Brendan Byrne. Further, as an attorney in private practice, I have also been privileged to represent various law enforcement associations. I am confident that Judge Sarokin would be able to give appropriate consideration to the interests of law enforcement, individual interests, and most of all, the public interest, and that he would do so in a balanced and reasoned way.

Very truly yours,

JAMES R. ZAZZALI.

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*Livingston, NJ, May 6, 1994.*

Re Hon. H. Lee Sarokin.

Hon. JOSEPH R. BIDEN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR BIDEN: As a member of the bar of New Jersey, I wish to commend for your consideration as a judge of the Court of Appeals for the Third Circuit, Judge H. Lee Sarokin, now a district judge of New Jersey. I have known Judge Sarokin for the last 29 years. My first employment as a practitioner was as a part-time associate in the Newark firm then known as Lasser, Lasser, Sarokin and Hochman. Lee Sarokin was my preceptor, and to this day, I feel enriched by the knowledge which he imparted to me.

Through the years that followed my association with him, he continued as one of New Jersey's most distinguished trial lawyers and later brought those great skills to the bench, where he has justifiably earned the plaudits and genuine admiration not only of the bench and bar communities but also, in my observation, of the public-at-large. I have been an assistant Essex County prosecutor, a member of the New Jersey Division of Criminal Justice and, most recently, a member of the State Commission of Investigation. In those positions as well as in my private practice, I have rarely seen a jurist with greater intellectual capacity or with a stronger sense of humanity as well as humility.

Inevitably, a judge who is responsible to his oath and to his sense of justice may render decisions that will be controversial. I am sure that is true of Judge Sarokin, and it would probably be unfortunate if it were not. But I am convinced that he would be a most worthy member of the Court of Appeals. I am proud to join my voice with those who urge his confirmation. Thank you for your consideration of this letter.

BARRY H. EVENCHICK,
*Attorney at Law.*

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TOMPKINS, MCGUIRE & WACHENFELD, COUNSELORS AT LAW,

*Newark, NJ, May 23, 1994.*

Hon. JOSEPH R. BIDEN,
*U.S. Senator,*
*Washington, DC.*

DEAR SENATOR: It is my understanding that Honorable H. Lee Sarokin is under consideration for appointment to the United States Court of Appeals for the Third Circuit. I have known Judge Sarokin for many years and have always been impressed with his dedication to his duties. I have appeared before Judge Sarokin and have been treated at all times courteously and professionally. He is well-prepared; he treats counsel respectfully and he renders decisions rather expeditiously.

As an attorney primarily involved in defense of civil cases, I have the utmost respect for him. He articulates positions clearly and he gives every consideration to arguments that are presented to him. In my judgment he is a fair-minded jurist who is entitled to every consideration for the position of Judge of the United States Court of Appeals for the Third Circuit. I endorse his candidacy and I trust you will agree with this assessment.

Respectfully submitted,

WILLIAM B. MCGUIRE.

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MEDVIN & ELBERG,
ATTORNEYS AT LAW,
*Newark, NJ, May 6, 1994.*

Re Third Circuit nomination of Hon. H. Lee Sarokin.

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR BIDEN: As a Past President of the New Jersey affiliate of The Association of Trial Lawyers of America, it is my distinct honor and privilege to write and enthusiastically support the nomination of the Honorable H. Lee Sarokin to the Third Circuit Court of Appeals. In my opinion, President Clinton could not have nominated a finer judge nor a finer human being to this most important position.

Judge Sarokin has been a District Court judge for nearly twenty-five years. During that time, he has earned a reputation for judicial excellence in every respect. His intelligence, perceptiveness, impartiality, fairness, temperament and respect that he shows to the lawyers and litigants who appear before him are unparalleled.

I have tried two significant cases to conclusion before Judge Sarokin. The first, Rodriguez v. United States of America, was a non-jury trial which lasted approximately four weeks. The second matter, Cervantes v. St. Joseph's Hospital, was a complicated medical malpractice trial which lasted eight days and was tried to a jury. In both of these cases, all parties left after the completion of their cases with the distinct feeling that they had received a fair trial and were treated with the utmost respect by the judge. He was unfailingly courteous to and considerate of the lawyers, litigants and witnesses who appeared before him, listened to arguments on both sides, and rendered decisions that were thoughtful, well reasoned, articulately expressed and, most importantly, eminently fair.

In short, I can think of no federal trial judge more deserving of appointment to the Court of Appeals that H. Lee Sarokin.

Respectfully submitted,

ALAN Y. MEDVIN.

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LOWENSTEIN, SANDLER, KOHL, FISHER & BOYLAN, COUNSELLORS AT LAW,

*Roseland, NJ, May 19, 1994.*

Re nomination of Judge Sarokin to third circuit.

Hon. JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR BIDEN: I am writing this letter in both my capacity as the General Counsel of the New Jersey NAACP and as a litigator in the New Jersey federal courts during the past 17 years. I am a 1976 graduate of the Harvard Law School and the Harvard Business School. Following law school, I served as a law clerk to Judge John J. Gibbons, on the United States Court of Appeals for the Third Circuit. I have participated in numerous cases in the federal courts of New Jersey at both the trial and appellate levels. I am a Fellow of the American College of Trial Lawyers.

I highly recommend the nomination of United States District Court Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit. I have personally appeared before Judge Sarokin on a number of occasions and I have also observed his performance in matters where I had no personal involvement. In my opinion he is one of the best trial judges in the United States: he is smart, he works extraordinarily hard, and he has a judicial demeanor that communicates a sense of fairness. He also clearly loves the law, and his many published opinions are a testament to his ability to grapple with highly difficult issues.

In my experience Judge Sarokin comes to each case with a clean slate and no predisposition beyond the fact that his job is to be fair to the litigants and to apply the law to the facts. Ultimately, what all litigants and lawyers want from judges at both the trial and appellate level is that they have the intelligence to truly understand the issues, the willingness and stamina to work hard, a basic sense of fairness and the ability to communicate both orally and in writing the reasoning behind their opinions. Judge Sarokin has all of these qualities in abundance, and I urge on behalf of the New Jersey NAACP and myself personally that you approve his nomination.

Very truly yours,

THEODORE V. WELLS, Jr.

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ROBINSON, ST. JOHN & WAYNE,
ATTORNEYS AT LAW,
*Newark, NJ, May 6, 1994.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR BIDEN: I urge your Committee to endorse the nomination of Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

Judge Sarokin has been sitting as a District Court Judge in Newark, New Jersey for nearly 15 years. He is highly qualified. My litigation practice is principally in the Federal Courts in New Jersey where I have appeared hundreds of times in the past 35 years before all of our Federal Judges. Judge Sarokin, in my opinion, ranks at the top. His judicial qualities include a keen intellect, an even temper, and fairness to litigants.

Evidence of Judge Sarokin's intellectual ability is that his reversal rate in the Court of Appeals is unusually low; only a few of his appealed decisions have been reversed and many of those decisions have been in the controversial areas of criminal habeas corpus, civil product liability and difficult tax questions. Through all these judicial travails, he has, as I have personally experienced and know by his reputation, never been discourteous to any litigant or lawyer.

The President and Judge Sarokin's sponsoring Senators are to be praised for their choice. I hope your Committee quickly acts so that this important vacancy can be filled without any more delay.

Sincerely,

DONALD A. ROBINSON.

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POPLAR & EASTLACK,
ATTORNEYS AT LAW,
*Turnersville, NJ.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

Re: The Hon. H. Lee Sarokin.

DEAR SEN. BIDEN: I have for many years been an active practicing attorney in the Federal Court for the District of New Jersey.

I am writing to recommend and encourage the nomination and Senatorial approval of

the Hon. H. Lee Sarokin for Judge to the United States Court of Appeals for the Third Circuit.

Judge Sarokin has served with distinction as a Federal District Court Judge presiding over both civil and criminal matters. He is hardworking, scholarly and fair to all who appear before him. Even in difficult cases he unhesitatingly and faithfully relies on and applies applicable precedents and statutes.

The public and the judiciary will be well served by Judge Sarokin's ascension to the Court of Appeals.

I will be available at any time to you or your staff if you have any further questions.

Very truly yours,

CARL D. POPLAR,
*Esquire.*

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STERN & GREENBERG,
COUNSELORS AT LAW,
*Roseland, NJ, May 4, 1994.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATOR BIDEN: I write in support of the nomination of Judge Sarokin. I have known Judge Sarokin for more than twenty years as an adversary, a fellow member of the Bar and a United States District Court Judge.

I remember well when he first went on the bench how excited and happy he was to achieve this position. He has never lost that fervor for the fair and impartial administration of justice.

I would hope that his nomination to the United States Court of Appeals for the Third Circuit is swiftly approved by the United States Senate.

Respectfully submitted,

STEPHEN M. GREENBERG.

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LAW PROFESSORS
YALE LAW SCHOOL,
*New Haven, CT, June 9, 1994.*

Re the Honorable H. Lee Sarokin.

Senator JOSEPH R. BIDEN, Jr.,
Senator ORRIN G. HATCH,
*Russell Senate Office Building,*
*Washington, DC.*

DEAR SENATORS BIDEN AND HATCH: I am writing in support of the nomination of H. Lee Sarokin for the Third Circuit Court of Appeals. My support of Judge Sarokin's nomination might be regarded as unusual because my last participation in a Senate confirmation hearing was my appearance before your Committee in 1987 in support of the nomination of Robert H. Bork to the Supreme Court. Moreover, I am a registered Republican, regard myself as a conservative, and believe deeply in what are regarded as conservative ideals. As is well known, the views and approaches to the law of Judge Sarokin and Judge Bork differ very substantially, and Judge Sarokin could not fairly be regarded as conservative.

My support of Judge Sarokin, however, transcends these various political differences which, I believe, in the larger scope of matters are of lesser relevance for the evaluation of the abilities of a judge. I have known and observed Judge Sarokin for many years. Judge Sarokin has attended several academic conferences at Yale Law School (where he was always among the most brilliant of participants, including the academic participants). I have read many of Judge Sarokin's writings (he is clearly among the very few of the federal judiciary to produce articles of truly high distinction. I have attended many of his talks and addresses. I have heard a great deal about him from many of my students who have served as his clerks (as an example of a different form of market evaluation, his clerkships are among the most highly sought after by Yale Law students). In addition, I have worked closely with him over the past five years in my capacity as Special Master in the class action litigation, *McLendon* v. *The Continental Group, Inc.* through these many contacts over many years, I believe that I know Judge Sarokin well.

Despite our different political views, I believe strongly that Judge Sarokin will prove a distinguished addition to the Third Circuit. Judge Sarokin is among the very first rank of federal judges. Judge Sarokin is intellectually and analytically brilliant. I have observed on many occasions his extraordinary ability to see to the heart of a legal issue far better and more thoroughly than the lawyers who after lengthy preparation have presented the issue to him. His most important quality, however, is what I would call a deep judiciousness, consisting of a combination of seriousness, a commitment to making sense of the law, and a devotion above all else to fair treatment of the parties to litigation.

These qualities in a judge are far more important to the country than a judge's political views or inclinations. Qualities of this nature transcend politics in the best tradition of the judiciary because, as implemented in decisionmaking, they provide assurance to all parties that their arguments have been heard, have been carefully considered, and that the resulting outcome is fair to all. Judge Sarokin has heard many important and controversial cases; in some of these cases, his outspokenness is well known. However the press may characterize his opinions, from my own readings of them and from my experience viewing Judge Sarokin in action, I have not the slightest doubt that his judgments uniformly, without exception, are fair and reasonable given the evidence put before him. Judge Sarokin's opinion in the *McLendon* case (on which I have worked) is perhaps the strongest and most outspoken opinion that he has ever written. From my detailed knowledge of the facts of the case, his outspokenness was merited entirely and can easily be defended to conservative and liberal alike as a fair and just evaluation of the evidence.

There are many fine and able members of the Courts of Appeals, many of whom I know well and many of whom are regarded as conservative (including, for example, Judges Buckley, Ginsburg and Williams of the D.C. Circuit, Judge Winter of the Second Circuit, Judge Boggs of the Sixth Circuit, Judges Posner and Easterbrook of the Seventh Circuit, and Judge Kosinsky of the Ninth Circuit, among others). President Clinton has nominated many other able persons to the Courts of Appeal (including my colleague, Dean of the Yale Law School, Guido Calabresi to the Second Circuit). Judge H. Lee Sarokin is the equal of all of these judges, and will prove to be among this country's most distinguished judicial appointments of many decades.

Should you find it helpful, I would be honored to be given the opportunity to expand and defend these views in appearance before your Committee.

Yours sincerely,

GEORGE L. PRIEST.

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HARVARD LAW SCHOOL,
*Cambridge, MA, June 23, 1994.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I write this letter in support of the nomination of H. Lee Sarokin who currently sits on the Federal District Court of New Jersey, for a position on the United States Court of Appeals for the Third Circuit. Given his outstanding accomplishments over the last four decades, I am confident that Judge Sarokin will be a valuable asset to the Third Circuit and provide many lasting contributions.

I have known Judge Sarokin for over a decade. While many applaud him for his outstanding career as a litigator for twenty-five years, as well as his strikingly comprehensible and comprehensive opinions as a member of the United States District Court for the state of New Jersey, I have seen him in a very different capacity. For most of the past decade, Judge Sarokin has served as a faculty member for the Harvard Law School Trial Advocacy Workshop. The Trial Advocacy Workshop is Harvard Law School's nationally respected trial skills program offered to second and third year law students. I serve as director of the Trial Advocacy Workshop. Twice a year, we invite judges and lawyers from around the country to critique and advise our students on trial skills. No one is compensated for his or her participation in the program. Over the past decade, Judge Sarokin has not only volunteered to critique the students and their performances, but has also willingly served as a presiding judge at some of the hearings, and on a couple of occasions played the role of a lawyer in a cross-examination exercise. He has always been willing to assume any responsibility in the program to ensure that the students get the maximum feedback to prepare them as ethical litigants in the legal field.

Judge Sarokin has impressed me with his extensive level of preparation, his knowledge of the significance of minor details, and his witty ability to use critique as a means of both instructing students to improve their performance, and praising the modest progress they make over time. These are the same qualities of gentle persuasion and clarity of instruction that would make him a true asset to the Third Circuit Court of Appeals.

Many who have read Judge Sarokin's opinions as a district court judge will call him controversial. I consider that an asset rather than a liability. Judge Sarokin is not one to make law, nor is he an ideologue. What he does is insist that the parties are well-prepared and well-represented, and that all the issues that are protected under the constitution are fairly presented and objectively decided. He has great passion and respect for the law and precedent, and yet is willing to re-examine issues that are outdated and contrary to the demands of our constitution. His is a unique intellect with a sense for wit, timing, and incisive analysis, and he will be a true asset to the Appellate Court.

I am sure that there are many outstanding candidates under consideration for the Third Circuit Court of Appeals. However, I am confident that Judge Sarokin has to rank high on that list. I would be happy to answer any questions you may have, and I recommend Judge H. Lee Sarokin to you most enthusiastically.

Sincerely,

CHARLES J. OGLETREE.

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YALE LAW SCHOOL,
*New Haven, CT, June 10, 1994.*

Senator JOSEPH BIDEN,
*Senate Judiciary Committee, Russell Senate Office Building, Washington, DC.*

Re: H. Lee Sarokin.

DEAR SENATOR BIDEN: The Judiciary Committee will soon hold hearings regarding the

confirmation of H. Lee Sarokin. United States District Judge for the District of New Jersey, as a judge on the United States Court of Appeals for the Third Circuit. This letter enumerates why I believe Judge Sarokin to be extraordinarily well-qualified for such elevation.

Judge Sarokin has, during more than fifteen years on the federal bench, established himself as one of the most distinguished and courageous federal trial judges in the country. A native of New Jersey, he has lived virtually his entire life in the state, apart from his education at Dartmouth and Harvard Law School. During his time on the bench, Judge Sarokin has repeatedly demonstrated himself to be energetic, innovative, scrupulously fair, compassionate and scholarly.

From the trial bench, Judge Sarokin has already left his mark on the law in an unusually broad array of areas: products liability, habeas corpus; management of complex litigations; criminal law; drug testing; Freedom of Information, the vagueness doctrine, and affirmative action. As a jurist, he remains fully aware of the constitutional restraints on his power as a member of the unselected judiciary, yet courageous enough to act within the scope of his judicial discretion to further the achievement of substantive and procedural justice. He is a jurist of great intelligence; he writes beautifully and clearly; and his opinions are taut, thoroughly researched and carefully reasoned. He is a charming man of great character and decency, who will build consensus among the judges of the appellate court (most of whom already know and respect him greatly).

Judge Sarokin has been a distinguished district judge in the grand tradition of Charles Wyzanski, Jack Weinstein, and Gehard Gesell. His rulings blend pragmatism with principle, creativity with scholarship, and judiciousness with compassion. Even without sitting on the Court of Appeals, he has created a judicial legacy that is all the more distinctive because he has spoken alone, and all the more remarkable because his has not been the last word. I believe that he will render remarkable service on the Third Circuit, and would be an enormous credit to it. I urge your committee to confirm him swiftly and enthusiastically.

Sincerely,

HAROLD HONGJU KOH,
*Gerard C. and Bernice Latrobe Smith Professor of International Law.*

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SETON HALL UNIVERSITY,
SCHOOL OF LAW,
*Newark NJ.*

Senator JOSEPH R. BIDEN,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATOR BIDEN: I submit this letter in support of the nomination of United States District Court Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit.

I have known Judge Sarokin for many years. I initially met him as my very able adversary in a complex litigation. Thereafter I had the privilege of appearing before him in Federal Court. I have also had contact with him during the past six years in my capacity as Dean of Seton Hall Law School. In every capacity in which I have known Judge Sarokin, he has always demonstrated the highest integrity, skill and professionalism.

Judge Sarokin possesses the highest intellectual capabilities and at the same time has grant sensitivity to and compassion for his follow human beings. He will bring this balance with him to the Court of Appeals just as he has served with great distinction on the District Court.

I strongly urge that Judge Sarokin be appointed to the Third Circuit Court of Appeals.

Sincerely,

RONALD J. RICCO,
*Dean.*

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YALE LAW SCHOOL,
*New Haven, CT, July 22, 1994.*

Senator JOSEPH R. BIDEN,
Senator ORRIN G. HATCH,
*Russell Senate Office Building, Washington, DC.*

DEAR SENATORS: Judge Sarokin has served the nation with great distinction and would be a marvelous addition to the Third Circuit.

Our relationship has been entirely professional. I have read some of Sarokin's opinions and speeches, watched him judge a moot court exercise at Yale, participated with him in academic conferences here, and conferred with him on the selection of law clerks. I have also had the benefit of the views of those students who actually served as his law clerks, all of whom came away from the experience with the greatest respect and admiration for the man.

The judge is a man of great intelligence—as quick and insightful as any of the judges I know on the federal bench. Indeed, on this score I would put him in the same category as Richard Posner, Ralph Winter, Frank Easterbrook, Douglas Ginsburg, Pierre Leval, and Michael Boudin—some of the very best judges. (Posner and Winter were colleagues of mine; Easterbrook and Ginsburg, students; Leval and Boudin, law school classmates.) I have also marveled at the judge's openness. He can be as firm and decisive as the next judge, but until the moment of decision, he stands ready to listen to arguments from both sides.

Judging is more than intelligence and more than openness; it also requires a measure of empathy, a capacity to understand the positions of all litigants—to weigh their concerns and take them upon oneself. This too is one of Judge Sarokin's strengths. No side of a lawsuit is ever forgotten; no interest is ever slighted; and he shoulders this burden of judging with a lightheartedness that is truly remarkable.

Over the years, Judge Sarokin's courtroom has become one of the temples of justice of this nation. My students look to it; I look to it for guidance and inspiration. An appointment to the Court of Appeals will be an appropriate recognition of his contribution to our collective life; even more, it will put him in a position to deepen and broaden that contribution.

Sincerely,

OWEN M. FISS.

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SETON HALL UNIVERSITY,
SCHOOL OF LAW,
*Newark, NJ, May 20, 1994.*

Hon. ORIN G. HATCH,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR SENATOR HATCH: I am writing to share with you my views as to the nomination of Judge H. Lee Sarokin to the United States Court of Appeals for the Third Circuit. As you know, I had occasion from 1979 until my retirement in January of 1990 to review Judge Sarokin's work as a district court judge. Throughout that period he demonstrated consistently that he was a highly intelligent and thoughtful jurist, always well-prepared, and always even-handed. He is a thoughtful student of the law and an excellent legal craftsman.

I anticipate that you will hear criticism of Judge Sarokin from two quarters. The first is the tobacco industry, since he had the bad luck to preside at the *Cipalone* trial, a product liability action against certain cigarette manufacturers. That industry has pursued a "take no prisoners" approach to product liability litigation. My review of Judge Sarokin's work in connection with the litigation in question has left me convinced, however, that he acted with complete propriety throughout the litigation.

The second source of criticism probably will be with respect to two habeas corpus cases: *Carter* and *Landano*. Both of these were high-visibility cases, one involving boxer "Hurricane" Carter and the other involving an alleged killer of a police officer. In both instances the prisoners were ultimately released by the New Jersey courts; properly so. There is nothing in either case to suggest that Judge Sarokin has been anything but even-handed in his approach to criminal defendants, pre- or post-petition. Indeed, the Court of Appeals has on occasion reversed him for failing to conduct a hearing in habeas corpus cases, and his reputation with respect to the trial of criminal cases is that he is even-handed.

In short, there is no reason whatever for you to be other than an enthusiastic supporter of the confirmation of this very able judge. He is extremely well qualified to make a distinguished contribution to the Court I love.

Sincerely,

JOHN J. GIBBONS.

Mr. BRADLEY. Mr. President, the issue of whether Judge Sarokin is soft on crime, I believe, has not been proven; has not even been seriously argued. He is well within the mainstream and his record demonstrates that.

Now another charge that we have heard today on the floor is that Judge Sarokin does not follow precedent; that he does his own thing.

One charge was made that Judge Sarokin created a new rule for voluntariness, signing a false name, and that was in the U.S. versus Rodriguez case. What are we talking about when we are talking about U.S. v. Rodriguez? We are talking about a suppression motion. They wanted to suppress a statement that Rodriguez made so that it cannot be admitted into evidence in a trial, I suppose. I am not a lawyer, but that is how I think it works.

Well, Judge Sarokin gets about 50 suppression motions per year. He has been there about 15 years. That is about 700 suppression motions. And I think he has granted two or three out of 15 years.

Now, in this one, which he did grant, the suppression of Rodriguez's statement, was consistent with longstanding authority on the subject. Again, this is a fact determination. It is a determination of fact. Judge Sarokin's decision rested primarily on the fact that FBI agents brought Rodriguez in for incommunicado questioning, instead of first presenting him to a magistrate; and also that Rodriguez was presented to a magistrate over 20 hours following his arrest.

Now, the Supreme Court really has not decided the question, but a number

of circuits, including the second circuit, the ninth circuit, the D.C. Circuit, have held that an unreasonable prearraignment delay of greater than 6 hours, pursuant to 18 U.S.C. 3501(c), may compel a finding that defendant's Miranda waiver was involuntary. And 18 U.S.C. 3501(c) expressly provides that delay is directly relevant to the question whether a defendant's waiver was voluntary.

This is a man who spoke limited English, low level of education, did not request counsel after being asked if he wanted to. He did, when he was asked by the magistrate, request counsel, when the magistrate, who spoke to him in Spanish, asked him.

Now, the important point here is Judge Sarokin did not create a new rule of voluntariness. Judge Sarokin stated that the use of the alias, the false name that was signed, was only one factor to be considered. It was not the deciding factor. It was one factor to be considered in the totality of circumstances.

Now, even in the hearing before the Judiciary Committee, the distinguished Senator from Colorado, who spoke eloquently on this subject earlier, admitted and said, "I personally would agree that it would not be logical to say"—that it, meaning the defendant's use of an alias —"could never be a factor."

So it was only one among several factors. The larger fact was the 20-hour delay in bringing him before a magistrate.

Then there was the question that he flaunted or he disregarded the third circuit's precedents in United States versus Chapman.

Well, Judge Sarokin did not disregard the third circuit precedent, because Chapman is not controlling on the issue of the use of an alias.

The legal question in Chapman is different from that in Rodriguez. First, it is different because the defendant in Chapman did not use an alias. So how could it be the same?

In Chapman, he did not use an alias, so how can it be controlling? He used his real name, not an alias. Second, unlike Rodriguez, Chapman denied even signing the confession that the prosecution entered in evidence.

In a footnote, the third circuit observed that the jury had rejected Chapman's contention. The circuit court added, in any event, the voluntariness of the confession did not hang on whether or not the prosecution had introduced the wrong piece of paper in evidence. Thus, the issues in the two cases were different.

So why did Judge Sarokin reference Chapman? He referenced it in order to—as a conscientious jurist, the reference to the footnote in Chapman was designed just to be helpful to the bar. It was designed to remind future readers that a different but somewhat related case existed in the third circuit regarding a factor that was different from the factor analyzed in Rodriguez, which is not relevant to the question of whether a defendant's waiver of his Miranda rights was voluntary.

There was another series of points made on Blum versus Whitkey. There it is a very simple set of things, a fee-setting case. There was a confusing Supreme Court ruling. Judge Sarokin ruled; set the fees. The third circuit said, "There is an intervening Supreme Court decision, why do we not remand it, take a look at this again."

Judge Sarokin himself took a look at it again, returned it to the third circuit—they reversed him. But, interestingly, the Supreme Court, a short while later, in City of Burlington versus Dack, vindicated Judge Sarokin's views because the Supreme Court revisited the issue of awarding enhancement fees and determined the case that Judge Sarokin was supposed to look at and, clearly, derive his answer from, was simply unworkable. And who said it? Justice Scalia.

Justice Scalia, speaking for the majority of the court, noted that the approach in the case that Judge Sarokin was supposedly diverting from—Judge Scalia said, "We do not see how it can intelligibly be applied."

Indeed. So, Judge Sarokin participated as an active and constructive participant in the process by which the judiciary seeks to fashion and modify rules which are both principled and workable. He did not ignore the precedent. The Supreme Court said it was impossible to even tell what the precedent meant, what the case meant. So he was not ignoring it, he was applying it as he understood it.

Mr. President, a great deal has been made of the Haines case, and Judge Sarokin himself has said if he had it to do over again he would have used language that was different. I take him at his word. But on the issue of removal I think it is important to make a few points that relate to the fitness of Judge Sarokin to serve on the third circuit.

The third circuit itself in announcing his removal said it was the most agonizing decision, to reassign Judge Sarokin, because, the third circuit stated unequivocally, he "is well known and respected for magnificent abilities and outstanding jurisprudential and judicial temperaments ."

Even a critic of his remarks in the tobacco litigation, Professor Monroe Freedman of Hofstra Law School, has called Judge Sarokin "one of our best judges."

So, even in the decision itself was an acknowledgment of his superior abilities.

What did the court of appeals state? They stated outright that Judge Sarokin could—it was possible—Judge Sarokin indeed could be fair in fact, and that only the appearance of impartiality was implicated by his remarks.

Judge Aldisirt of the third circuit, the judge who sat on the panel that rendered the decision removing Judge Sarokin from the tobacco litigation, has stated the following about his elevation to the third circuit. He has said:

> The addition of Judge Sarokin to the third circuit will bring a high degree of judicial strength because of the respect he has earned among his peers, his warmth and wisdom, and the solid contributions he will make because of his magnificent and profound experience.

Judge Aldisert goes on to say:

> An ideal appellate judge should possess the following qualities: Fairness, justness, impartiality, devotion, decisiveness, clear thought and expression, professional literacy, institutional fidelity, and political responsibility.

And after laying out this criteria he states—and this is the judge who wrote the opinion that removed Judge Sarokin from the tobacco case. He states:

> Judge Sarokin passes these rigorous qualifications with flying colors.

Flying colors.

So, if that was not enough, five of six circuit courts that have considered the question of appearance/fact removal, including the third circuit in Johnson versus Trueblood, had clearly held that:

> The appearance of judicial bias originating from facts developed in a judicial proceeding should not result in removal.

Consistent with these rulings Judge Sarokin's remarks, although perhaps ill-considered, came after years of reviewing evidence in the tobacco litigation. And no one—no one has alleged that his views came from anything but the evidence.

Finally, I ask unanimous consent to have printed in the RECORD the comments of legal commentators that Judge Sarokin should have not been removed from the Seton Hall Law Review: Prof. Paul Gluckow, Seton Hall University Law School; Prof. Jeffrey Stempel, Brooklyn Law School; Prof. Bennett Gershman, Pace University Law School—all of whom in one way or another stated he should not have been removed.

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

> Was Sarokin's removal consistent with the law?
>
> Judge Sarokin's remarks, although perhaps ill-considered, came after years of reviewing evidence in the tobacco litigation. No one alleged that his views—whatever they were—came from anything but the evidence. Five of the six Circuit Courts that had considered the question—including the Third Circuit, *see Johnson* v. *Trueblood*, 629 F.2d 287 (1980)—had clearly held that appearances of judicial bias originating in judicial proceedings should not result in removal. These courts recognized that in order to issue rulings, a judge must develop views based upon the weight of the evidence presented.

Most commentators agreed that Judge Sarokin should not have been removed under the prevailing legal standard:

"[T]he *Haines* opinion is troubling because it appears to directly contradict the well-settled Third Circuit position . . .. Judge Sarokin was making a determination regarding whether the crime-fraud exception applied to certain documents. The Third Circuit Court of Appeals did not address how the judge was to make his determination without addressing the issue of whether tobacco companies had engaged in concealment." Comment, Seton Hall law Review (1994).

"[T]he [Third Circuit's] decision . . . ignored both governing statutory authority and the fundamental distinction between judicial and extrajudicial bias . . .. [T]he court's failure even to mention this issue was judicially dishonest . . .. Prof. Paul C. Gluckow, Seton Hall Univ. Law School (Seton Hall Law Review 1993).

"What Sarokin said was . . . intemperate, but I don't think it warranted disqualification under the case law. The distinction between information that is judicially acquired, or not, is an important distinction." Prof. Jeffrey Stempel, Brooklyn Law School (quoted in N.J. Law Journal, 9/14/92).

"I have found no other case where a judge has been disqualified for an appearance of bias for remarks contained in a judicial opinion, based on facts in the record, and relating to the merits of the case." Prof. Bennett L. Gershman, Pace Univ. Law School (N.Y. Law Journal, 9/21/91).

In fact, the United States Supreme Court recognized this distinction earlier this year in its decision in *Litekey* v. *United States*, 114 S.Ct. 1147 (1994). The Court sided with the majority of Circuit Courts who had held that although a judge may often appear biased because of views developed from hearing the evidence in judicial proceedings, removal is required only when the judge "display[s] a deep-seated favoritism or antagonism that would make fair judgement impossible." 114 S. Ct. at 1157. Since the Third Circuit explicitly stated that it did not doubt Judge Sarokin's *actual* ability to adjudicate the case impartially, its decision in *Hanes* v. *Liggett* could not survive the Supreme Court's decision in *Litekey*.

Mr. BRADLEY. Mr. President, finally on the removal question, the U.S. Supreme Court recognized this distinction earlier this year, when the Court sided with the majority of the circuit courts who had held that:

Although a judge may often appear biased because of views developed from hearing the evidence in judicial proceedings, removal is required only when the judge displays a deep-seated favoritism or antagonism that would make fair judgment impossible.

So, since the third circuit explicitly stated that it did not doubt Judge Sarokin's actual ability to adjudicate the case impartially, its decision in Haines would not likely survive the Supreme Court's recent decision.

So, I think a fair reading of Judge Sarokin's record would refute any proposition that he is soft on crime—far from it. And it would refute any proposition that he has not followed precedent—far from it.

While I do not agree with all of his opinions, what his record does reveal is a jurist who possesses demonstrated judicial temperament to serve on the circuit court. And based on his record as a 15-year veteran of the Federal branch, and the broad level of support he has received from people knowledgeable of his accomplishments, from all the former U.S. attorneys to all the former judges—chief judges of the third circuit, U.S. attorneys in New Jersey, Judge Sarokin is eminently qualified to sit on that court.

I think and I hope many Senators will concur with Professor Priest of Yale that Judge Sarokin's nomination, "will prove to be among this country's most distinguished judicial appointments of many decades."

I yield the floor.

The PRESIDING OFFICER. Is there further debate on the nomination?

The Senator from Utah.

Mr. HATCH. Mr. President, I believe the minority leader would like to speak on this issue and perhaps he will be our next speaker.

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

The PRESIDING OFFICER (Mr. FEINGOLD). The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. DOLE. 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. DOLE. Mr. President, my statement is very brief. I will not take over 5 minutes. Following that statement, as I understand, there will be a vote on this nomination?

Mr. BIDEN. Mr. President, reserving the right to object, quite frankly—

Mr. DOLE. I was not asking for consent.

Mr. BIDEN. I am sorry. I beg your pardon. I thought you were asking for consent.

Mr. DOLE. As I understand, we will be voting fairly soon.

Mr. BIDEN. Mr. President, yes.

The PRESIDING OFFICER. The Republican leader is recognized.

Mr. DOLE. Mr. President, last August, I expressed a number of concerns about Judge Lee Sarokin who had been nominated by President Clinton for the Third Circuit Court of Appeals. These concerns continue to be very troubling and, as a result, I intend to vote against his confirmation.

All this stuff has been gone over a number of times, so I will not repeat it because I have been listening to some of the debate about the statements in the West Virginia Law Review and about pretrial and preconviction detention of those who have been criminally charged violates the "presumption of innocence."

I think there are a number of concerns that if these views were to prevail, vicious criminals, like the World Trade Center bombers, and others, would be free to roam the streets. We passed a crime bill. We talk about being tough on crime and then we continue to confirm judges who apparently have some difficulty being tough on crime.

Of course, in the article, too, he also criticized mandatory sentencing on the theory that it deprives a judge of the right to grant mercy in those instances in which the facts cry out for it.

So I think for all the reasons that have been suggested, it is no wonder that the Fraternal Order of Police in New Jersey, the National Fraternal Order of Police, the Law Enforcement Alliance of America, and others, are opposed to this nomination.

I know it has also been discussed about his bias against the defendants in a tobacco case. He may have been right on the facts. It was so blatant, so well publicized that the Third Circuit Court, the court to which the judge has been nominated, took the extraordinary action of removing him from the case. Even the New York Times applauded the removal stating Sarokin had been "far out of line" and "flunked an important test of credibility."

So, Mr. President, Lee Sarokin may be a decent person. I am certain he is. He is a man of integrity and, needless to say, I fully expect he will be confirmed some time in the next few minutes. I wish him well as he assumes his new position on the third circuit.

Hopefully, today's debate will serve as a wake-up call to him that the criminal-as-a-victim-of-society approach that appears to have dominated his decisionmaking at the district court level just will not cut it on the third circuit. If he learns that simple lesson, then perhaps today's debate will have been a worthwhile effort after all.

I think also that, hopefully, the administration will get the word: No more Rosemary Barketts, no more Lee Sarokins, no more liberal activists and no more judges up here when the President talks about being tough on crime and then sends up these kind of nominees.

We can pass all the crime bills we want, but it will not make any difference if the Federal bench is going to be dominated by judges who seek to expand the rights of criminal defendants and hamstring law enforcement in the process. I think that is the bottom line. If the President wants to be tough on crime, he can begin by nominating judges who view law and order as something more than just a slogan.

Mr. President, last August, I expressed a number of concerns about Judge Lee Sarokin, who has been nominated by President Clinton to the Third Circuit Court of Appeals. These concerns continue to be very troubling, and as a result, I intend to vote against his confirmation.

In an article appearing in the West Virginia Law Review, Judge Sarokin

suggests that the pretrial and preconviction detention of those charged with violent crimes violates the "presumption of innocence." I repeat: Judge Sarokin has suggested that the pretrail and preconviction detention of those who have been criminally charged violates the presumption of innocence.

If this view were to prevail, vicious criminals like the World Center bombers, or the killer of 12-year-old Megan Kanka, would be free to roam the streets of our country at any and all times prior to their actual convictions. The impact on public safety would be immeasurable.

In the same West Virginia Law Review article, Judge Sarokin also criticizes mandatory sentencing, insisting that "mandatory and uniform sentencing * * * depriv[es] judges of the right to grant mercy in those instances in which the facts cry out for it." And he argues for an air-tight exclusionary rule, even when the police act in a good faith belief that their search is lawful. The Supreme Court, of course, took a contrary view in the Leon decision, upholding a "good faith" exception.

It is no wonder, then, that the National Fraternal Order of Police, the New Jersey FOP, the Law Enforcement Alliance of America, and other law enforcement organizations are publicly opposed to the Sarokin nomination.

Not only is Judge Sarokin's soft-on-crime judicial philosophy a source of concern, his judicial temperament is an issue as well.

As a Member of the Federal district court in New Jersey, Judge Sarokin presided over a case in which several tobacco companies were the defendants. During the trial, Judge Sarokin's bias against the defendants was apparently so blatant and so well-publicized that the Third Circuit Court of Appeals—The court to which Judge Sarokin has been nominated—took the extraordinary step of actually removing him from the case. Even the New York Times applauded the removal, stating that Sarokin had been "far out of line" and had "flunked an important test of credibility."

So, Mr. President, Lee Sarokin is obviously not my kind of judge. Unfortunately, his views on key criminal justice issues are so far removed from the mainstream, so reflective of his own liberal bias, that I cannot in good conscience support his nomination.

Let me just say, though, that Judge Sarokin appears to be a decent person and a man of integrity. And, needless to say, I fully expect that he will be confirmed sometime this week, perhaps as early as today. Once confirmed, I wish the judge well as he assumes his new position on the third circuit.

Hopefully, today's debate will serve as a wakeup call to him that the "criminal-as-a-victim-of-society" approach that appears to have dominated his decisionmaking at the district court level just will not cut it on the third circuit. If Judge Sarokin learns this simple lesson, then perhaps today's debate will have been worthwhile after all.

Finally, Mr. President, a word of advice and caution to the administration: Please, no more Rosemary Barketts. No more Lee Sarokins. No more liberal activists.

We can pass all the crime bills in the world, but they will not make a bit of difference, if the Federal Bench is dominated by judges who seek to expand the rights of criminal defendants and hamstring law enforcement in the process. quite simply, we don't need judges, like Lee Sarokin, who oppose the pretrial detention of violent offenders. We do not need judges who oppose mandatory sentencing. And we do not need judges who are insensitive to the daily struggles of our professional law enforcement officers.

If President Clinton wants to be tough on crime, then he can begin by nominating judges who view law and order as something more than just a slogan.

Mr. BIDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I am, at least, on this side ready to vote on this. I will make a 30-second comment.

The bottom line is this President has sent up and we have confirmed 72 judges. The Republicans, almost to a person, voted for almost every one of them. He sent up two Supreme Court Justices which received accolades before, after, during and now on the bench.

The President, unlike previous Presidents, has not sent ideologues to us. He has sent seasoned lawyers and seasoned judges who do not come with a brief. we are ready to vote.

Mr. HATCH. Are the yeas and nays ordered?

Mr BIDEN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Is there further debate? If not, the question is, will the Senate advise and consent to the nomination of H. Lee Sarokin, of New Jersey, to be U.S. circuit judge for the third circuit?

The yeas and nays have been ordered. The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Massachusetts [Mr. KENNEDY] is necessarily absent.

Mr. SIMPSON. I announce that the Senator from Alaska [Mr. STEVENS] is necessarily absent.

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

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

[Rollcall Vote No. 319 Ex.]

YEAS—63

| | | |
|---|---|---|
| Akaka | Feinstein | Metzenbaum |
| Baucus | Glenn | Mikulski |
| Biden | Graham | Mitchell |
| Bingaman | Gregg | Moseley-Braun |
| Boren | Harkin | Moynihan |
| Boxer | Hatfield | Murkowski |
| Bradley | Heflin | Murray |
| Breaux | Hollings | Nunn |
| Bumpers | Inouye | Packwood |
| Campbell | Jeffords | Pell |
| Chafee | Johnston | Pressler |
| Cohen | Kassebaum | Pryor |
| Conrad | Kerrey | Riegle |
| Danforth | Kerry | Robb |
| Daschle | Kohl | Rockefeller |
| DeConcini | Lautenberg | Sarbanes |
| Dodd | Leahy | Simon |
| Dorgan | Levin | Simpson |
| Durenberger | Lieberman | Specter |
| Exon | Lugar | Wellstone |
| Feingold | Mathews | Wofford |

NAYS—35

| | | |
|---|---|---|
| Bennett | Domenici | McCain |
| Bond | Faircloth | McConnell |
| Brown | Ford | Nickles |
| Bryan | Gorton | Reid |
| Burns | Gramm | Roth |
| Byrd | Grassley | Sasser |
| Coats | Hatch | Shelby |
| Cochran | Helms | Smith |
| Coverdell | Hutchison | Thurmond |
| Craig | Kempthorne | Wallop |
| D'Amato | Lott | Warner |
| Dole | Mack | |

NOT VOTING—2

| | |
|---|---|
| Kennedy | Stevens |

So the nomination was confirmed.

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

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

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. Without objection, the President will be immediately notified of the confirmation of the nomination.

## LEGISLATIVE SESSION

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate now proceed to legislative session.

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

## IMPROVING AMERICA'S SCHOOLS ACT OF 1994—CONFERENCE REPORT

Mr. MITCHELL. Mr. President, I submit a report of the committee of conference on H.R. 6 and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The legislative clerk read as follows:

The committee on conference on the disagreeing votes of the two Houses on the amendment of the bill (H.R. 6) to extend for six years the authorizations of appropriations for the programs under the Elementary and Secondary Education Act of 1965 and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses

this report, signed by a majority of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of September 28, 1994.)

## CLOTURE MOTION

Mr. MITCHELL. Mr. President, I send a cloture motion to the desk, and I ask that it be stated.

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

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report to accompany H.R. 6, the Elementary and Secondary Education Bill:

George J. Mitchell, Daniel K. Akaka, Max Baucus, Harris Wofford, Carl Levin, Claiborne Pell, J.J. Exon, Barbara Boxer, Jay Rockefeller, D. Inouye, Byron L. Dorgan, Howell Heflin, Harry Reid, J. Lieberman, Patty Murray, Dianne Feinstein, Russell D. Feingold.

## MORNING BUSINESS

Mr. MITCHELL. Mr. President, I ask unanimous consent that there now be a period for morning business with Senators permitted to speak therein for up to 10 minutes each.

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

Mr. DOLE addressed the Chair.

The PRESIDING OFFICER. The Republican leader.

## CONGRATULATIONS TO THE NEW MISS AMERICA

Mr. DOLE. Mr. President, I rise today to recognize the remarkable personal odyssey and achievement of the new Miss America, Heather Whitestone.

Miss Whitestone hails from Alabama. She is very much like the other contestants—smart and talented.

But the new Miss America also uses a hearing aid. She is the first Miss America with a disability.

Miss Whitestone lost most of her hearing when she was 18 months old. Today, she supplements her very limited hearing by reading lips and using sign language.

But her disability has not held her back, because she and her family have not let it. Miss Whitestone spent 6 years in speech therapy just to learn how to say her name.

Echoing Helen Keller, Miss Whitestone has been quoted as saying, "The most handicapped (person) in the world is a negative thinker." As a child, her mother would tell her that the last four letters of "American" spell "I can."

Anyone who saw Miss Whitestone on television Saturday night saw proof of her mother's wisdom. She gave a moving ballet performance, dancing by sensing the vibrations of the music.

Mr. President, for over 25 years this Nation has pursued a national policy based on ability, not disability; on inclusion, rather than exclusion. It is a policy that has not always been well understood or popular. But it is the right thing, and the crowning of the new Miss America shows it works—for people with disabilities and for all Americans. We are better and richer for the contributions of people like Heather Whitestone.

Over the next year, Miss Whitestone plans to reach out to young people, including those with disabilities, to let them know that anything is possible. I know she will bring unique credibility to that message.

Mr. President, every Miss America has a demanding schedule, often traveling 20,000 miles a month to make speeches and for other appearances. It will not be easy for Miss Whitestone. But she has shown she has the right stuff, and we wish her the best of luck and God's speed.

## TRIBUTE TO JANEAL CABBAGE

Mr. DOLE. Mr. President, I want to take a moment to recognize Janeal Cabbage of Hutchinson, KS, a dedicated member of my staff who has served her home State and this institution since 1985. Janeal has taken on new responsibilities in New Mexico, and I and my staff wish her the best.

Janeal performed one of the most important jobs in the office: keeping the computers up and running so that the rest of us could do our work. We all know the difficulty involved with that task. Modern Senate offices, packed as they are with the latest electronic wonders, keep the systems administrator on call night and day. Janeal was endlessly patient with her fellow staff members as she taught them to use the computers to their fullest extent. She knew first hand that the computing needs of the staff never cease; that even the best equipment is temperamental; and that staff expectations can outpace the most rapidly advancing technology.

Despite the challenges facing her, Janeal carried out her responsibilities with a good measure of common sense, expertise, and cheer.

Mr. President, we will greatly miss Janeal's assistance, and I extend to her my thanks for a job well done, and wish her success in her new venture.

## TRIBUTE TO HARRY NALTCHAYAN

Mr. DOLE. Mr. President, I have spoken often about the late Dr. Hampar Kelikian, the gifted surgeon who became one of my closest friends.

It was through Dr. Kelikian that I was first introduced to Armenian-American community. Over the years, I have been privileged to become acquainted with many outstanding members of this community. One of the most prominent of those was Harry Naltchayan, who passed away on September 16 at the age of 69.

Harry was a true citizen of the world. From Armenian background. Born in Lebanon. He traveled the globe as a prize-winning photographer, first as a free lancer and then for the Washington Post.

During his 35-year career with the Post, Harry photographed every President since Eisenhower, and was a familiar face at the White House, on Capitol Hill, and along Embassy Row.

Gentleman is a word that many regard as a bit old-fashioned in today's modern society. I disagree. And no doubt about it, with his kind and courteous nature, and his civility in a business that is often uncivil, Harry Naltchayan was a true gentleman.

I know that all Members of the Senate join with me in extending our condolences to Harry's wife, Elizabeth, and their four children.

## ON THE LIFE OF JOHN H. FILER

Mr. DODD. Mr. President, it is with sadness that I rise to pay tribute to John H. Filer, who passed away on Sunday, September 18, after a long illness. Although he will be sorely missed by family, friends, and colleagues, I know that his distinguished record of service to the State of Connecticut, both as a business leader and a philanthropist, will be remembered far into the future.

As the chairman of Aetna Life & Casualty for 12½ years, John obtained widespread recognition for his commitment to corporate responsibility. Demonstrating a sincere concern for both profits and people, he ardently believed that businesses and communities benefit from each other only when they work together. In an era when the corporation depended on the community for prosperity and the community depended on the corporation for growth, John built a socially conscious and beneficent Aetna.

I ask unanimous consent that a Hartford Courant editorial, which I believe best captures the true essence of John Filer, appear in the RECORD at the conclusion of my remarks.

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

[From the Hartford Courant Sept. 20, 1994]

JOHN H. FILER, COMMUNITY BUILDER

John H. Filer, chairman of Aetna Life & Casualty Co. for a dozen years and long a dominant presence in Hartford, was one of the great business and civic leaders of his

generation. Mr. Filer, who died Sunday at age 70, was called by some the "shadow mayor" and the "archbishop"—suggesting he was first among equals in the city's corporate hierarchy. A quiet, forceful leader, he deserved such accolades.

Mr. Filer was as concerned about Hartford as he was his company's profits. Corporations, he noted, did business "at the sufferance of the community.

His advocacy of corporate social responsibility and philanthropy led to several major projects in Hartford and the leadership of a commission to promote private giving. He also led Aetna's rise to become the nation's largest shareholder-owned insurance organization.

A native of New Haven and former state senator, the tall, soft-spoken Mr. Filer joined the Aetna in 1958 as a counsel and was named CEO 14 years later. During his stewardship, Aetna tripled its assets but saw its operating earnings fall, largely because of diversification.

It was during his tenure that Aetna made several major community commitments, including much of the funding to build the Hartford Civic Center complex and bring the Hartford Whalers to the city. As the leader of a small group of the city's top corporate officials known informally as the bishops, he was able to galvanize others' support.

And although other companies were leaving the city or considering such a move, he expanded Aetna's Hartford base.

Mr. Filer recruited numerous socially and politically concerned younger people to work for the Aetna Foundation and other outreach programs. He backed low- and moderate-income housing projects along with educational, civil rights, legal defense and health programs.

He was active on the state and national scenes as well, heading a commission bearing his name that studied ways to streamline the state bureaucracy and advising and serving presidents.

The recent decline in corporate giving and community involvement troubled Mr. Filer. In a recent interview, he lamented the current focus on short-term profits and competition. Business leaders, he said, "should be part of the enlightened group that calls the different factions and players together and tries to do some intelligent planning and tries to do some intelligent demonstration projects."

To the benefit of Hartford, John Filer lived by those words. Others would do well to remember his legacy of conducting business for corporation and community.

## TRIBUTE TO MARIA BOUCHELLE CAMPBELL

Mr. HEFLIN. Mr. President, the professional life of one of my constituents, Ms. Maria Bouchelle Campbell, has recently taken a dramatic turn. Maria was formerly the executive vice president, secretary and general counsel at AmSouth Bank in Birmingham, capacities in which she served with distinction for 20 years. Effective September 1, she became assistant to the rector of the Parish of Trinity Episcopal Church on Wall Street in New York City. In this new position, Maria will bring to bear her knowledge and experience in law and business on the work of a unique Christian institution.

Maria Campbell received her bachelor and law degrees at the University of Georgia. Over the years, she has been a dedicated leader in numerous professional and civic organizations, as well as in the Episcopal Church. She has served on the board of directors of the YWCA; as a commissioner on the Birmingham district housing authority; and as chairman of the lawyers committee of the National Association of Bank Holding Cos. She has also served as the chancellor, as a member of the canonical revision committee, and as treasurer and chairman of the department of finance of the Episcopal Diocese of Alabama.

Among the selected honors that have come Maria's way over the years are her honorable mention as a National Merit Scholar, her selection as executive editor of the Georgia Law Review, and her inclusion on 1989's list of Top Ten Birmingham Women, published by the Birmingham Business Journal. She has been admitted to practice law by the Supreme Courts of Georgia, Florida, and Alabama, as well as the U.S. Courts of Appeals for the 5th and 11th Circuits and the U.S. District Court for the Northern District of Alabama. She has been listed in Who's Who in America, Who's Who of American Women, and Who's Who in American Law.

I regret that she has left Alabama, because she leaves a tremendous void in both the business and legal communities in my State that will be difficult to fill. But Maria's new position with her beloved Episcopal Church will offer new challenges and rewards. I congratulate her and wish her all the best for an exceptionally bright and stimulating future.

## STEELMAN IN WING TIPS

Mr. HATCH. Mr. President, the July 4, 1994, issue of Forbes magazine included a profile of one of Utah's distinguished citizens: Joe Cannon, chief executive officer of Geneva Steel Corp.

I want to join Forbes in recognizing the important work done by Joe Cannon. Through ingenuity, integrity, and plain old-fashioned hard work, Joe Cannon, together with his partner Robert Grow, took a troubled company and made it prosper.

Their efforts have helped make Geneva Steel a leader in this tough industry and the employer for 3,000 Utahns. Joe has also been a great community leader, participating in many charitable projects as well as in educational partnerships with the Provo and Orem School Districts. Geneva has been an inspiration for emerging businesses and promising entrepreneurs across the country.

I ask unanimous consent, that the article from Forbes be inserted in the CONGRESSIONAL RECORD.

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

STEELMEN IN WING TIPS

(By Seth Lubove)

"The fact of the matter is, we didn't know a thing about the steel industry," admits Joseph Cannon, chief executive of Geneva Steel Corp. "We were too stupid to know it was stupid to buy a steel mill." But they weren't too stupid to ask some very basic questions that helped turn a white elephant into a successful company.

Cannon, a cherubic, bespectacled lawyer, has demonstrated how creative entrepreneurship can increase economic value in an ingrown industry. Formerly a division of U.S. Steel, and the only integrated steel mill west of the Mississippi, the sprawling Geneva Steel Works in Vineyard, Utah was a rusting relic of World War II, when it was built as part of the war effort and as a move to decentralize industrial production away from the militarily vulnerable coasts.

In 1986 U.S. Steel faced a choice: Spend $1 billion to modernize Geneva or shut the mill down. For the Pittsburgh-based U.S. Steel management, it wasn't a tough choice. It had just signed a deal to get cheaper raw steel for its finishing mill in California from Korea's Pohang Iron & Steel Co. Good-bye, Geneva. Who needed its high-cost steel that had to be hauled over land to the coast? U.S. Steel decided to shut the mill and lay off its 1,850 workers.

The shuttering would be a blow to Utah. Almost 1% of the total personal income in the state was generated by the mill's payroll. Its belching smokestacks may have been offensive to trendy skiers on their way to actor Robert Redford's Sundance ski resort, but they meant jobs with good benefits that pay a lot more than does scrubbing toilets at Redford's resort.

At the time of the threatened closing, Cannon, a Utah native and a Mormon, was practicing environmental law in San Francisco, after a stint in the Reagan Administration's Environmental Protection Agency. He proposed to Robert Grow, a Salt Lake City lawyer and longtime friend, that they try to save Geneva Steel to help the community. Grow knew as little about steel as Cannon did. He had been practicing real estate and corporate law.

U.S. Steel was happy to sell. It asked $44 million—a tiny fraction of what the mill had cost. Cannon and Grow scratched around for capital, finally borrowing $34 million of the purchase price. They tapped a now failed Texas savings and loan, Union Carbide's pension fund, ITT Financial Corp. and an insurance company. To sweeten the pot, Cannon and Grow gave the lenders 49.6% of the equity in the newly formed company. U.S. Steel agreed to defer payment on the remaining $10 million (which has since been paid off). To get the plant running again, Cannon and Grow and some local law and accounting firms put in $4 million.

The United Steelworkers of America also made concessions, and U.S. Steel agreed to absorb the mill's extensive liabilities for paying retired pensioners. The steel giant also accepted partial liability for previous environmental costs.

But to whom would Geneva sell its steel? With its costs sharply reduced and heavy environmental and pension costs shed, Geneva could produce at a very competitive price. Luck was with it, too. Demand was picking up. Cannon and Grow began selling on the spot market in the South and Midwest through independent distributors. From 1988 onward, the plant was profitable.

It was soon after they took over that Cannon and Grow demonstrated why motivated

and shrewd outsiders can sometimes breathe new life into a hidebound business. Cannon had intended to leave management to the steelmen, but when orders began pouring in 12 days after the deal closed in August 1987, he asked the management to restart a second blast furnace. The plant manager balked, arguing that it was financially too risky to bet that heavily on continuing demand. Prove it, Cannon told him. After a cost study to quantify the risk conducted at Cannon's request, the plant manager changed his mind. The furnace was relined and started up again. It has run ever since.

This experience was a kind of epiphany for Cannon. "For a company to modernize and stay competitive takes more than just the technical skills," he says. "Strategic vision is important." To Cannon, that vision was the ability to see the big picture. He adds: "The lesson for me was, hey, we can add value. We're not just a bunch of lawyers here." To bone up on steelmaking, Cannon, 44, read through a pile of Harvard Business School case studies. Grown, also 44, checked out 60 books on steelmaking from the University of Utah library. "Then we talked to people everywhere," Grow says.

There remained the problem of modernization. Now profitable, Geneva could borrow more readily, and borrow it did. So far Geneva has spent $354 million on modernizing the plant, with another $59 million slated for the next two years. Debt has mounted to $325 million and carrying costs are $33 million a year, but the modernization came in at just 41% of the $1 billion U.S. Steel had estimated. For instance, U.S. Steel thought it would cost more than $250 million to replace a set of obsolete open hearth furnaces with more modern basic oxygen furnaces. "We said we can't afford that," says Grow, standing in front of a cracked conference table inherited from U.S. Steel. So Cannon and Grow scrounged around for used basic oxygen furnaces, which they found in a shuttered Republic Steel mill, Total cost: just $80 million. That upgrade cut costs significantly. Economics Associates Inc., a consulting firm, estimates Geneva's production cost for hot-rolled steel at $280 per ton, second only to Nucor's $265 per ton and far lower than Armco's $315 per ton.

The other major part of the modernization, just completed, is a new continuous caster. The caster, made by the same firm that built Nucor Corp.'s innovative casting system, is designed to produce the industry's widest steel slabs, a high-margin product used in railcars, ships and holding tanks.

That will open up Geneva's market enormously. Before, the plant made a lot of flat-rolled steel coils out of ingots. The total market for that product is about 5 million tons, for which Geneva must battle with the big integrated steel mills and some minimills. When the modernization program is completed next year, its costs will have been reduced by $39 a ton since 1992, to $270 a ton. Total capacity will expand to 1.9 million tons from 1.4 million tons.

Geneva's unionized labor force was accustomed to the autocratic management of a big company. "The workers still felt they could check their brains at the gate," Cannon says. He and Grow have encouraged workers to offer their ideas to cut costs. One suggestion: Plant workers argued that they could dispose of the detritus from the mill's scrubbers at a lower cost than the waste company that had the contract. Geneva now has a "supersucker" truck to clean out the scrubber's baghouses. In return for waiving work rules, Cannon and Grow agreed to distribute 10% of pretax profits (after deducting a portion of capital expenses).

In the intensely cyclical steel business, the recent recession took a toll. Sales fell to $465 million last year from $525 million in 1989. After reporting earnings for the four years following the acquisition, Geneva lost $25 million in fiscal 1992 and 1993. It was barely profitable in the first fiscal quarter that ended Dec. 31, and reported a loss for the second quarter due to startup costs of the new caster and the early retirement of debt. But analysts who follow the company expect Geneva will be back in the black by the fourth quarter. In a market that is turning upward, Geneva benefits early since it sells entirely to the spot market, where price increases show first. Piper Jaffray analyst Bob Toomey estimates Geneva's operating profit per ton will increase from just over $10 in 1991 to $83 in 1995.

Cannon and Grow took the company public in March 1990, raising $28 million for 22% of the shares. The original lenders cashed out their nearly 50% interest at that time. Cannon and Grow ended up with 15% of the shares, with a market value of $40 million, but 62% of the voting shares. The company's shares more than doubled in value to 21, before falling back to 18⅞ recently.

"To this day, I still can't make steel," says Cannon. "My added value was in seeing a bigger picture and being extremely future oriented." Inexperience when combined with intense curiosity and entrepreneurial drive can be a virtue in business.

## THE CONSUMER REPORTING REFORM ACT OF 1994, S. 783

Mr. BOND. Mr. President, I rise today to stress how critical it is that we reform the Fair Credit Reporting Act [FCRA] before Congress recesses to finally bring relief to American consumers. As many of you know, I have been working for the last 4 years to pass legislation to revamp credit reporting laws.

This bill is one of the most significant pieces of consumer legislation to be considered by the Congress this year. We have victory within our sights. The House has already acted and all that remains is Senate approval before being sent to the President for signature. What we will have accomplished with passage of S. 783 is consumer protections against the devastation of mistaken credit reports.

If we are to be successful in correcting this situation, then S. 783 needs to clear the Senate without ornamentation. Far too often, in the last minute rush that occurs at the end of a Congress when everyone tries to get their own legislation passed, crucial measures get lost. Or worse, are in danger of becoming a Christmas tree. If that happens, there is no hope of final passage by the House this year.

The Fair Credit Reporting Act is ripe for revision. I have heard horror stories from many of my constituents who have tried to fix mistakes on their credit reports. They have encountered the same obstacles as millions of other consumers—months of waiting for credit reports to be fixed, credit grantors who are unresponsive and no one to listen to their complaints. These are not new problems.

While it traditionally takes an inordinate amount of time for credit bureaus to fix credit reports, this bill will speed up the process by requiring action be completed in 30 days. If information in a report cannot be verified by the creditor who submitted it within 30 days, it will be removed from the report. In addition, it cannot be reinserted later unless the consumer is notified. And, if a consumer goes through the reinvestigation process and the errors remain, the consumer now has the right to sue the creditor for not correcting the information it submitted to the credit bureau.

To ensure that consumers can reach someone at the credit bureaus to talk to them, our bill requires that credit bureaus establish toll-free numbers and have people available for consumers to talk to about their reports. In addition, consumers are provided three free reports throughout the reinvestigation process. And, free reports are available for people who are unemployed, on welfare, or have reason to believe that there is inaccurate information in their report due to fraud. All other consumers may get their report once a year for the lesser of cost or $3 each.

Everyone wins by reforming credit reporting laws. The free flow of accurate information will help all sides by promoting good economic decisions in our free market economy. Consumers get increased disclosure and a time limit of 30 days for reinvestigations and the credit industry gets a limited Federal preemption, the ability to share information among affiliates, broader prescreening abilities and the certainty that only comes in law.

Consumers need this legislation and I believe that the only responsible course for this body is to move quickly to passage. I urge my colleagues to put aside any political infighting and act on S. 783 immediately.

Thank you, Mr. President.

## APPROPRIATIONS BILLS PASS IN RECORD TIME

Mr. DOLE. Mr. President, with all the talk about gridlock, filibuster, and cloture, no one seems to have noticed that the Congress has passed all 13 appropriations bills before the start of the new fiscal year for only the third time since 1948. In fact, the last time Congress managed this feat was 1988—the year President Ronald Reagan shamed the Democrat Congress into doing its work on time.

There are few pieces of legislation more important to running the Government than appropriations bills. If Congress fails to pass its funding bills by October 1, Government departments shut down, Federal employees don't get paid, retirees don't get their Social Security checks, and—in the case of the

D.C. appropriations bill—the Redskins can't play football at RFK Stadium.

The only way around this problem is to pass a continuing resolution to provide stop-gap funding. Continuing resolutions have ranged in size from a single bill to all 13 appropriations bills. A continuing resolution may keep Amtrak, but it is sure no way to run a railroad or a government.

No doubt about it, achieving a new appropriations speed record doesn't happen without the assistance of the minority. Republicans worked long hours, limited debate, and withheld important amendments to assure timely passage of each one of these bills. Unfortunately, this kind of cooperation doesn't make the headlines.

Senate Republicans are not the agents of gridlock. We have worked, and will continue to work, to expedite passage of good legislation, including NAFTA and these 13 appropriations bills.

I want to congratulate Senator BYRD and Senator HATFIELD, as well as the chairman and ranking member of each appropriation subcommittee, for their dedication to passing each of these funding bills on time. The news media may not have noticed their accomplishments, but the history books certainly will.

## BUDGET OFFICE ESTIMATES ON S. 2066 AND S. 2319

Mr. JOHNSTON. Mr. President, on September 26, the Committee on Energy and Natural Resources filed the reports to accompany S. 2066, the Mni Wiconi Act Amendments of 1994, and S. 2319, a bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.

At the time these two reports were filed, the Congressional Budget Office had not submitted its budget estimates regarding these measures. The committee has since received these communications for the Congressional Budget Office, and I ask unanimous consent that they be printed in the RECORD in full at this point.

There being no objection, the estimates were ordered to be printed in the RECORD, as follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 30, 1994.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2066, the Mni Wiconi Act Amendments of 1994.

Enactment of S. 2066 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

ROBERT D. REISCHAUER, *Director.*

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2066.

2. Bill title: Mni Wiconi Act Amendments of 1994.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 26, 1994.

4. Bill purpose: S. 2066 would make a number of changes affecting the construction and maintenance of the Oglala Sioux, Rosebud Sioux, and Lower Brule Sioux water systems projects, and the West River and Lyman-Jones rural water systems projects. The bill would increase the authorization of appropriations to $263 million through 2003 for this purpose. It also would authorize such sums as may be necessary to pay for operating and maintaining the Oglala Sioux, Rosebud Sioux, and Lower Brule Sioux rural water systems and to conduct feasibility studies on wastewater disposal systems.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|
| Estimated authorizations of appropriations | (1) | 20 | 21 | 21 | 22 |
| Estimated outlays | (1) | 17 | 21 | 21 | 22 |

[1] Less than $500,000.

The costs of this bill fall within budget function 300.

Basis of estimate: For the purposes of this estimate, CBO assumes that the amounts authorized would be appropriated. The estimated authorization level reflects the increases, relative to current law, in the federal share of the amounts authorized through 2003, adjusted for inflation. Outlays are based on proposed spending by the Bureau of Reclamation (BOR) for these activities.

S. 2066 would amend the Mni Wiconi Project Act of 1988 by increasing from $120 million to $263 million the amounts authorized for planning, designing, and constructing various water supply projects. It also would extend the time for completing the projects through 2003. Cooperative agreements with nonfederal entities require that they share in a portion of these costs. S. 2066 would increase the federal share for construction-related activities from 65 percent to 80 percent. As a result, the federal share of the authorized spending would increase by about $145 million, before any adjustment for inflation. CBO estimates that BOR would spend about $75 million of this amount between 1995 and 1999.

The bill also would authorize such sums as may be necessary to operate and maintain the water supply systems and to conduct feasibility studies on waste water disposal systems. Based on information from the BOR, we estimate that the studies would cost approximately $250,000 in 1995 and that the annual operating costs would total about $1.9 million. S. 2066 would require that nonfederal entities begin to pay a portion of the operating expenses, which would vary each year based on water usage, but are expected to represent about 30 percent of the total annual cost. On this basis, CBO estimates that the federal share of operating and maintenance costs would total about $5 million over the 1995–1999 period.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: As part of a cooperative agreement, the state of South Dakota is expected to advance about $18 million over the life of the Mni Wiconi project for constructing and maintaining the West River and Lyman-Jones Rural Water systems. These monies will be paid back to the state over time from fees charged to water users.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Mary Maginniss.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
*Washington, DC, September 28, 1994.*

Hon. J. BENNETT JOHNSTON,
*Chairman, Committee on Energy and Natural Resources, U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 2319, a bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.

Enactment of S. 2319 would not affect direct spending or receipts. Therefore, pay-as-you-go procedures would not apply to the bill.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM
(For Robert D. Reischauer, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 2319.

2. Bill title: A bill to amend the Colorado River Basin Salinity Control Act to authorize additional measures to carry out the control of salinity upstream of Imperial Dam in a cost-effective manner.

3. Bill status: As reported by the Senate Committee on Energy and Natural Resources on September 26, 1994.

4. Bill purpose: S. 2319 would authorize appropriations of $75 million for the Bureau of Reclamation to develop a new program to reduce salinity in the Colorado River basin from saline springs, leaking wells, irrigation sources, industrial sources, erosion of public and private land, or other sources. This appropriation also could be used to cover costs associated with ongoing salinity control projects. The federal government would be reimbursed over time for 30 percent of this appropriation through the Upper Colorado River Basin Fund (UCRBF) and the Lower Colorado River Basin Development Fund (LCRBDF), which collect surcharges from power users through the Western Area Power Administration.

5. Estimated cost to the Federal Government:

[By fiscal years, in millions of dollars]

| | 1994 | 1995 | 1996 | 1997 | 1998 | 1999 |
|---|---|---|---|---|---|---|
| Authorization of appropriations | 0 | 0 | 7 | 7 | 10 | 15 |
| Estimated outlays | 0 | 0 | 6 | 7 | 9 | 15 |

The costs of this bill fall within budget function 300.

Basis of estimate: Based on information from the Department of the Interior, CBO estimates that the $75 million in appropriations would be used entirely for new salinity control projects. We expect that funding for these new projects would be required beginning in fiscal year 1996 and that outlays would reflect historical spending patterns for similar construction projects. We estimate that outlays for these projects would total $37 million over the 1996–1999 period.

The reimbursement requirements would not affect outlays over the 1994–1999 period. Fifteen percent of the reimbursable portion of the appropriation would be paid from collections to the UCRBF within 50 years after a project becomes operational, and the remaining 85 percent of the reimbursable costs would be paid from collections to the LCRBDF as costs for construction are incurred. To cover the reimbursable costs allocated to the UCRBF, CBO expects that the Federal government would increase its power surcharge rate beginning in fiscal year 2002. We expect that no rate change would be made to cover costs allocated to the LCRBDF.

6. Pay-as-you-go considerations: None.

7. Estimated cost to State and local governments: None.

8. Estimate comparison: None.

9. Previous CBO estimate: None.

10. Estimate prepared by: Susanne S. Mehlman.

11. Estimate approved by: C.G. Nuckols, Assistant Director for Budget Analysis.

## S. 21, THE CALIFORNIA DESERT PROTECTION ACT

Mr. WALLOP. Mr. President, I rise in opposition today to talk about a few of the many problems with the California desert bill. And more important, I rise to speak on the problems it causes to the rest of our outstanding National Park System.

The impact of S. 21 on the integrity of the National Park System is substantial. The bill increases the National Park System by over 4 million acres, but there is no new funding for these additions to the Park System.

Put in simple terms, this legislation adds the equivalent of two new Yellowstone National Parks to the System, and pays for it by taking something away from each of the other 367 units of the National Park System.

Mr. President, no one in this Chamber would advocate reducing the needed funding and the number of ranger personnel from a national park within their State. Yet, that is exactly what will occur should this legislation be enacted.

I know the two Senators from California would wage a battle royal on this floor if there was legislation to reduce the funding and the number of rangers at Yosemite or Point Reyes or at Santa Monica Mountains, yet that is exactly what they are doing.

Mr. President, we all know that there is no new money, there are no new ranger positions. In order to maintain and operate this equivalent of two new Yellowstone's, other parks in the System will be raided to fund and operate these new parks. The alternative is to let California desert lands remain under BLM management where they are currently being protected by a plan created with and negotiated by California environmentalists.

Under President Clinton's plan to reinvent Government, the National Park Service must reduce its work force by 1,350 positions. S. 21 will further reduce the number of park personnel at existing parks. Adding new parks is degrading old parks. Congress must stop.

According to the National Park Service in its 1992 self-appraisal, the Vail Agenda, Park Service employees concluded "there is a wide and discouraging gap between the Service's potential and its current state, and the Service has arrived at a crossroads in its history."

From the Grand Canyon to Acadia and back across the country to the 22 parks in California, infrastructure decay, accelerated by deferred maintenance, is clearly punishing not only the Park System's roads but its trails, septic systems, employee housing, and visitor facilities as well. Americans deserve better.

According to the most recent edition of National Geographic, the Superintendent of Great Smokey Mountains speaks to the park's 800 miles of erodible backcountry trails "* * * we can't keep up with it." The Superintendent at Sleeping Bear Dunes states in the same article, "we have scores of historic 19th century buildings here, and they're all just moldering into the ground."

Mr. President, Great Smokey Mountains and Sleeping Bear Dunes are not unique. The problem is nationwide. According to the General Accounting Office, 60 percent of National Park Service employee housing needs repair at an estimated cost of $500 million. We do not even have the ability to properly house the caretakers. If we can't properly house rangers in existing parks because we don't have the money, how can we stand here and authorize millions of dollars for new parks? It is not right. Our priorities are completely out of order.

According to information supplied to Congress by the National Park Service, the agency currently faces a 37-year backlog in construction funding and a 25-year backlog for land acquisition. No one argues that the cost of existing infrastructure repair is literally in the billions of dollars while the cost of authorized but unacquired land acquisition seems to mimic the national debt.

This bill would add another 700,000 acres of private property to the list the Federal Government must acquire. To add insult to injury, the House added another 6,000 acres of private property when they included the Bodie Bowl provisions in their version of the legislation. Mr. President, many of America's national parks are, and indeed the Park Service itself is, now in trouble. There is no money to repair or replace the broken pieces. there is certainly no money to add new units to the System without further raiding and in the process degrading existing units.

The Congress' appetite for new parks is tremendous and its stomach for appropriations is nonexistent. It is absolutely irresponsible to buy new parks when you cannot fix the existing ones.

To live up to its promises to restore the original vision of the parks, Congress needs to act in a responsible fashion.

We have yet to pay for Santa Monica Mountains National Recreation Area. Members of the California congressional delegation have already introduced legislation referred to as the headwater bill to buy out a private landowner in northern California to the tune of $1.5 billion. They have also introduced legislation which would extend Point Reyes National Seashore to Bodega Bay which will cost $4 billion. These bills were introduced before we have even disposed of this very expensive piece of business. It is not only irresponsible, it is outrageous.

Mr. President, I am extremely disturbed, even angry that we are apparently willing to assist in the destruction of what used to be considered the best park system in the world.

Throughout my Senate career, I have been one of the strongest advocates for the National Park System. There have been times when I have disagreed with certain actions taken by the individuals in the Service, but I have always been supportive of the concept and vision that was created in 1872.

This year I have been instrumental in advancing the Presidio legislation—not because it adds a new park to an overburdened system, but because the legislation as written would reduce the expenditures that would otherwise be required by the National Park Service. Unfortunately this legislation, S. 21, only serves to increase National Park Service expenditures of funds and personnel. It does absolutely nothing to enhance the system.

I am further troubled by the fact that the Secretary of the Interior explained to us during his confirmation hearing that he was going to listen to the professionals in the field. Well, when you ask the professionals in the field privately, they will tell you that the Park Service cannot afford legislation of this magnitude. The Secretary may be listening, but he has ignored the advice of the professionals.

The bill places the National Park Service in a position of managing a multiple-use unit. Given our experience at the Big Cypress Preserve, it is very apparent that the Park Service has more than a difficult time managing such an area. They just cannot philosophically adjust to multiple-use activities. They are not in that business nor should they be. The Secretary knows this, he has heard from the National Park Service professionals but he has chosen to ignore their pleas.

This legislation is unfortunate for the National Park Service, the Bureau of Land Management, and for the people of California who believe that being in a preserve will protect their property rights and their lifestyles. The opposite will be true. The National Park

Service will impose all sorts of limits on multiple-use activities—they always do, and it places the service in constant conflict with its neighbors.

The administration's agenda is clear, and only the users of the public lands will become endangered in this administration's war on the West.

Mr. President, the California desert is about 12 million acres of which 8 million acres will be made into parks and wilderness. Another 3 million acres will be set aside as critical desert tortoise habitat which leaves 1 million acres for multiple-use activities. Unfortunately, the 1 million acres are not contiguous, they are scattered throughout the desert and most are surrounded by wilderness making those parcels of land inaccessible anyway. Also, thousands of miles of roadways have been included in wilderness and will be closed.

The Federal Government currently owns more than half of all the land in the 12 Western States. Unfortunately, recent actions taken by the Clinton administration have made it clear that the Federal Government is managing these lands for the benefit of specific political interest groups with little regard for the legitimate interests of western citizens and businesses.

As a result, citizens of western States have little or no control over vast areas of land that were contemplated as a source of their livelihood at the time of statehood.

In effect, another 12 million acres will be added to the Federal reserve if this legislation is enacted. The people of the Inyo, San Bernadino, Kern, Riverside, and Imperial counties must be thrilled to death. The bill will withdraw over 8 million acres of land from any further mineral exploration and development, affecting jobs and economy in California forever. While the senior Senator eliminated a few of the larger mining companies from getting entrapped in wilderness, hundreds and hundreds of other businesses were not so fortunate.

Golden Quail Resources Ltd. is just one example. According to their prospectus they have proven reserves of approximately 200,000 ounces of gold having a market value of $80 million and have potential for much more. To date they have spent over $3 million on their project including over $200,000 in claim fees to the BLM. They also pay local taxes. All of this will be gone if this bill passes.

The company has some 2,000 American stockholders, 500 of whom are Californians. All of them invested in a project with certain ground rules and now their own Government is looking to change those rules to their detriment. The project will close.

There are many other similar cases in this parade of horribles, but all have the same bottom line, they will be out of business.

In enacting S. 21, we're handing the National Park Service a one-way ticket to mediocrity, and sentencing the thousands of affected private landowners to a generation of injustice. If we continue ill-considered ideas such as this, historians will look back at the demise of our great park system and characterize it as "death by a thousand hugs." Unfortunately everyone loved it, wanted more of it, but they couldn't pay for it. No Senator will admit to doing that, but each Senator who supports this bill is doing just that.

## IN HONOR OF JOHN "HOB" GEHRINGER AND THE PEOPLE OF HAMPSHIRE, IL

Ms. MOSELEY-BRAUN. Mr. President, I rise before you to commend John "Hob" Gehringer of Hampshire IL. Mr. Gehringer is a pillar of his community. He is active in the Lion's Club, the Hampshire Catholic Community, and the Snowmobile Club as well as coaching Little League baseball and basketball. It is clear he is well loved by the other members of his community.

Tragically, John Gehringer has recently been diagnosed with leukemia and is in dire need of a bone marrow transplant.

This could be a sad story; however, the people of Hampshire have instead transformed it into a story of hope. Chuck Gehringer had agreed to donate his bone marrow. However, Mr. Gehringer and his family still face the prohibitive cost of the process. Therefore, the community of Hampshire has organized a benefit dance and raffle to raise the money for John Gehringer's operation.

I join in John Gehringer's appreciation of the people of Hampshire and I wish Mr. Gehringer himself good luck

## CONSOER TOWNSEND'S 75TH ANNIVERSARY

Ms. MOSELEY-BRAUN. Mr. President, I would like to take a moment to congratulate the company Consoer Townsend and its president Bob Fischer. Consoer Townsend is one of Chicago's largest consulting engineering firms and will celebrate the 75th anniversary of its founding this month.

Consoer Townsends is one of the Nation's leading infrastructure consulting engineering firms, with offices in 15 cities across the Nation. It was founded in 1919 by A.W. Consoer and by 1929 it was the largest municipal engineering firm in Chicago. Since that time, Consoer Townsend has been involved in every major transportation and environmental project in the Chicago area, including the deep tunnel project, O'Hare Intentional Airport, the University of Illinois at Chicago, the Illinois toll highways, Navy Pier, and the new downtown Circulator. Consoer Townsend employs over 500 people, and is completely owned by those employees.

Robert H. Fischer, currently Consoer Townsend's chief executive office, has served in that office for the past 4 years. He has been with the company for the last 22 years, and has helped contribute greatly to the company's success.

As Consoer Townsend celebrates its 75th birthday I would like to congratulate Mr. Fischer and the rest of employee-owners for their many accomplishment up to this date, and wish them many more successful years. I am proud to call them fellow Illinoisans.

## ON S. 2475, THE AFRICAN CONFLICT RESOLUTION ACT

Mr. JEFFORDS. Mr. President, I am pleased to join as a cosponsor of S. 2475, the Africa Conflict Resolution Act.

My colleagues may note that this legislation does not break ground with new policy. What it does do, however, is underline the importance of an American partnership with African regional organizations in efforts to strengthened African conflict resolution capabilities. We are already attempting to do much of what is discussed in this legislation, but nowhere is the rationale clearly stated or the focus clearly defined. This legislation does this. It also calls for development of a comprehensive U.S. plan for interaction with the various African organizations that share our approach to conflict mediation. It is high time that such legislation is enacted, and as one who has pushed for it for some time, I am pleased to join my colleagues in supporting its passage today.

The Africa Conflict Resolution Act highlights the important role of regional, subregional and nongovernmental organizations in conflict resolution in Africa. It also acknowledges the urgent need to promote demobilization and reintegration of military and security forces as a key to diffusing tensions and maintaining stability in countries in transition to civil societies.

Past experience has shown that when we fail to invest in efforts to maintain the peace, we pay a much high price to restore the peace. Witness the costs in resources and human suffering which became necessary in Rwanda, Somalia, and Sudan, to name but a few examples.

Earlier in this session, we approved a $170 million supplemental appropriation to the Department of Defense to cover the added costs of its much needed and highly effective humanitarian relief operations in Rwanda and Zaire. Yet much of the tragedy we are witnessing in Rwanda today could have been avoided if there had been effective involvement by the international community, particularly African mediators, early on in the process—and at a fraction of the cost of the subsequent

humanitarian relief effort. One can see here the wisdom of the old adage, "An ounce of prevention is worth a pound of cure."

Demobilization of military and security forces has also proved critical to the success of national reconciliation efforts. In Angola, where civil war has raged since the mid 1970's, a promising peace accord failed in 1992, in large measure because of a failure to disarm and reintegrate the combatants into society. In order to avoid such pitfalls in the future, the United States, through the Agency for International Development, is developing a number of projects to aid in the demobilization process in Angola, Mozambique, Ethiopia, Uganda, and elsewhere in Africa. This bill acknowledges the value of such endeavors and encourages expanded projects of this nature, if conditions permit.

The administration, and some Members of Congress—including myself, have called on regional and subregional organization to assume a more active role in conflict resolution in their own backyards. These organizations have expressed their willingness to accept these responsibilities. Yet they lack the expertise, infrastructure and resources to act effectively. Our legislation recognizes the importance of these organizations. Through our joint efforts, we can make progress in preventing, mediating, and resolving conflicts.

The Foreign Relations Subcommittee on African Affairs, on which I sit, heard the testimony of several individuals with long and distinguished careers in Africa conflict resolution. It also solicited the views of a wide variety of organizations on the contents of this proposal, as well as the capacity of the OAU, subregional and nongovernmental organizations to be effective partners in conflict resolution. We appreciate their contribution to this effort and look forward to working with the Departments of State, Defense, and the Agency for International Development in the implementation of this legislation.

I urge my colleagues to lend their support to this valuable and long overdue initiative. I hope that we can become more engaged in the facilitation of peace and therefore less frequently called upon to mitigate the effects of war.

## REPUBLICAN DEPUTY STAFF DIRECTOR OF THE BANKING COMMITTEE IRA PAULL LEAVES THE SENATE

Mr. DOMENICI. Mr. President, I would like to recognize the fine contribution Ira Paull has made to the Senate Banking Committee. When I first joined the committee in 1991, I quickly became aware that the committee had a vast and complicated jurisdiction.

To exercise that jurisdiction, the Banking Committee under Chairman RIEGLE has been a hearing-intensive committee. It has not been uncommon for the committee to have three, four or even five hearings in any given week. When I first joined the committee, Ira was the senior counsel who always seemed to be on top of all the issues. From my first day on the Committee I knew I could count on Ira Paull for solid, straight answers. Over the years, I have found Ira to be an exceptionally knowledgeable and helpful professional staff member who can explain any issue quickly and concisely. He can always come up with the appropriate analogy, or phrase that says it all.

Members will recall that the 102d Congress Banking Committee agenda was the ambitious modernization of our financial services laws. Ira took on the difficult but wave-of-the-future assignment of developing appropriate firewalls for banks and securities firms and the repeal of the Glass-Steagall Act. I was new to the committee and was impressed that we produced a fairly comprehensive reform. Unfortunately, the House was not as forward thinking.

During this Congress financial system modernization moved from the top of the agenda and other issues took its place. With a billion dollars a day being invested in mutual funds and with many mutual funds investing in derivatives, these new products captured the committee's attention.

While derivatives are created by mathematicians and physicists, Ira, a lawyer and CPA by training, understands the benefits and risks they pose to our capital markets.

Another issue during the 103d Congress has been the credit crunch. The committee became concerned that banks had more funds invested in Treasury notes than in loans. We explored new ways to make more capital available to small businesses. One promising approach is securitization.

Ira understands the securitization process and I have no doubt countless small businesses and commercial real estate ventures will find credit more available as a result of his work on the securitization legislation that was signed into law last month.

During the 6 years Ira has worked in the Senate he was instrumental in crafting major securities legislation that has been enacted—market reform international securities enforcement and shareholder communications. His accounting expertise was invaluable in crafting thrift capital requirements and independent audit requirements for savings and loans.

Since 1992, Ira has served as Republican staff director.

I want to thank Ira Paull for his 6 years of service to the Senate. Ira is leaving the Senate to work for Freddie Mac. Freddie Mac's gain is the Senate's loss—the phrase that says it all.

## SENATOR DANIEL K. INOUYE

Mr. KOHL. Mr. President, last night Senator DAN INOUYE was honored by the Jewish Institute of National Security Affairs with the Henry M. Jackson Distinguished Service Award. In recognition of this achievement, I want to take a moment of the Senate's time to salute our colleague, the senior Senator from Hawaii, for his truly distinguished service to the Senate and to the American people.

Senator DAN INOUYE so richly deserves this honor. Not only has he dedicated his life to public service, but he embodies the values and commitment to justice and our national security that were the hallmark of Senator Henry Jackson's tenure in the Senate.

DAN INOUYE is a true military hero in our midst. He fought with distinction in Europe during World War II and was recognized for his bravery with the Distinguished Service Cross, the Bronze Star, and the Purple Heart among other honors. He returned home unable to pursue his dream of becoming a surgeon because his right arm was shattered by a rifle grenade in combat, so he decided to embark on a career in politics.

In the Senate, where he has served for the last 32 years, he is held in the highest of esteem. He represents a tradition of bipartisan respect for the institution and loyalty to his colleagues which has become all too rare in the partisan gridlock of recent times.

It has been an honor for me to work with this able legislator, most closely on the Appropriations Committee, where his judicious manner and his leadership have earned the respect of his colleagues. He has made his mark as the chairman of the Defense Appropriations Subcommittee with his cautious approach to our declining defense budget. Although he and I have not always agreed on Defense, I respect his sense of history which recognizes the danger of cutting too deep, too fast.

Chairman INOUYE previously chaired the Foreign Operations Appropriations Subcommittee, where he also demonstrated his commitment to our national security, as a staunch supporter of our ally in the Middle East, Israel.

DAN INOUYE has never shied away from championing unpopular causes at the expense of betraying the values he holds dear. I am proud to submit for the RECORD, for our colleagues and others, Senator INOUYE's remarks upon his acceptance of the Henry M. Jackson Distinguished Service Award.

The remarks follow:

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

THE UNITED STATES AND ISRAEL

I am most honored by this extraordinary award which brings back many memories of

the great contributions made by the late Senator Henry Jackson, my friend and my mentor.

I would like to take a moment this evening to discuss with you an important issue which our country will face in the 1990's. It is an issue which I know Scoop Jackson would have recognized as an important national security interest for the United States.

On September 13, 1993 Israeli Prime Minister Yitzak Rabin and PLO Chairman Yasser Arafat shook hands before a beaming President Clinton. The Declaration of Principles—really, a peace agreement—signed that day was a historic document.

The response to that historic handshake was electrifying. The audience—as one—stood in instantaneous applause. I could see many, many eyes filled with tears of joy and, yes, tears of remembered sadness and losses brought by so many years of conflict. And, amid that joy and exuberance, which was so uplifting and inspiring, I began to hear the whispers which have come to trouble me so deeply.

You may have heard them as well—"Perhaps, now Israel will not need so much of our assistance," they said. "Perhaps, now Israel will not object, if we cut the $3 billion in annual assistance we provide to Israel," they said. They said, "Perhaps, now we can set aside the endless quest for peace in the Middle East and turn our attention and our resources elsewhere." The voices said, "With this signing, Israel won't need as much military and economic aid."

On that day—in July—the President of the United States was quoted as saying that aid would not be cut. He was said to have assured the Government of Israel that there would be no changes in the aid package . . . for fiscal year 1995.

Instead of reassurances, I'm afraid he left uncertainty about what could be anticipated for fiscal year 1996, and thereafter.

Let us remember that the events of last September, the signing of a peace agreement became a reality because Israel was militarily strong. Her neighbors were well aware of that, and those who had been threatening her over the years were not about to test the strength and resolve of this small country.

And yet, now, as much as all of us dream about and want to believe that peace has come and that peace will finally prevail in that part of the world, we must remember that this day came about not because of good wishes or intentions, not because of dreams, but because Israel was strong and because the United States commitment had been demonstrated over the years in words, in deeds, and in money—we had demonstrated our commitment to Israel's existence, viability, and strength.

The $3 billion which the United States provides to Israel in support of our partnership has a larger significance than the transfer of resources. It is the transfer of confidence and trust which is vastly more important. The $3 billion—which is a combination of $1.2 billion in economic aid through the economic support fund and $1.8 billion in military aid in the Foreign Military Financing Program—has a significant symbolic value.

This amount was first proposed in 1985 in the Foreign Operations Subcommittee of the U.S. Senate, which I was privileged to chair. Since that time, the total has not changed. The $3 billion became the measure of commitment.

To be sure, with inflation, the real value of that $3 billion has declined, but the measure of commitment—the symbolic value has not changed. It has become symbolic of our commitment and support of democracy and security in Israel and, I would argue, democracy and security in the Middle East. Ask yourself, if it were not for United States involvement in Israel, would Jordan be a free country today or would it have been swallowed by Iraq or Syria?

I am convinced that, if we truly desire the establishment of peace in the Middle East then now is, most assuredly, not the time to weaken the symbol of the ties between the United States and Israel. Were we to do so, it would have an impact of Israel and on Jordan and on Egypt and on Saudi Arabia. I am convinced that evidence of a weakening bond between Israel and the United States would erode the foundation of this peace and most certainly cause it to crumble in ruins.

It is, therefore, in our national interest and in the interest of world peace that we continue our assistance to Israel. You have my pledge and Senator Henry Jackson has my pledge, that I will stand firm in my support for a strong and viable Israel.

## IS CONGRESS IRRESPONSIBLE?—YOU BE THE JUDGE OF THAT

Mr. HELMS. Mr. President, as of the close of business on Monday, October 3, the Federal debt stood at $4,686,470,224,029.22, meaning that on a per capita basis, every man, woman and child in America owes $17,975.17 as his or her share of that debt.

## THE 75TH ANNIVERSARY OF THE HARVARD UNIVERSITY BAND

Mr. KENNEDY. Mr. President, this fall marks the 75th anniversary of the founding of the Harvard University Band. The band will be joined by the Harvard wind ensemble in a special concert this Friday to celebrate the occasion and to mark its outstanding contributions to America's musical heritage. The program will feature American music, and three past conductors of the band will return to participate in the concert.

Throughout its existence, the band has entertained audiences at sports events and concerts, including performances at such prestigious sites as Symphony Hall in Boston and Carnegie Hall in New York City. The band is among the Nation's premier marching bands, with high musical standards and national renown for its innovative techniques. Their unique scramble marching style has now been adopted by large numbers of other marching bands throughout the country.

The band is well known not only for its musical and marching accomplishments, but also for its commitment to public service and its support for the community. The band has visited many hospitals and participated in numerous other efforts on behalf of charitable organizations, including the multiple sclerosis walkathon and the Red Cross blood drive. The band is also a familiar sight at community events, including performances at Boston's Duckling Parade, opening day for the Red Sox, and the St. Patrick's Day Parade.

A year ago the band played at the dedication of the new museum at the John F. Kennedy Presidential Library. Upon the arrival of President Clinton at the ceremony, the band played "Yale Medley." President Clinton commented that he had "the best of both worlds—the Harvard Band playing the Yale fight song."

This diamond anniversary celebration is an excellent opportunity for all of us who know and admire the band to pay tribute to the remarkable history and contributions of this unique organization. I commend the musicians, past and present, and all the others associated with the band over the years. The band has had a great 75 years, and I am confident that the next 75 years will be just as great.

## PRIME MINISTER BHUTTO'S CAIRO SPEECH

Mr. PELL. Mr. President, earlier this month, while in Cairo for the third global conference on population and development, Pakistani Prime Minister Benazir Bhutto gave a highly publicized address to the delegates. In that address, Prime Minister Bhutto tackled some tough, controversial issues, which were at the forefront of the debate during the conference, and which will have a tremendous impact on international development and population growth in the coming decades.

While I cannot say that I agree with everything that Prime Minister Bhutto said in the address, I do think that she made a pivotal contribution to the conference's proceedings. I would therefore ask unanimous consent that the text of her speech be inserted into the RECORD at the conclusion of my remarks.

I would also like to take a moment to express my personal regard for Prime Minister Bhutto. I have known her since the days when the military dictators of Pakistan kept her under house arrest, because she and her family represented a popular, democratic alternative to martial rule. I admired her tenacity and courage as a political prisoner then, much as I admire her ability and sense of purpose as Prime Minister now.

In her address to the conference, Prime Minister Bhutto brings a special perspective to the issues. As she said in her own words, she can speak "as a woman, as a mother, as a wife," but also "as the democratically elected Prime Minister of a great Moslem nation—the Islamic Republic of Pakistan." It is, in my view, significant that Prime Minister Bhutto spoke candidly and directly in a forum that many of her Moslem colleagues avoided. As I suggested a moment ago, I think the Prime Minister played a crucial role in bringing the issues at the conference into sharp focus, and I commend her address to my colleagues.

There being no objection, the speech was ordered to be printed in the Record, as follows:

ADDRESS BY MOHTARMA BENAZIR BHUTTO, PRIME MINISTER OF PAKISTAN

Mr. President, Secretary General, Distinguished Delegates, Ladies and Gentlemen, I come before you as a woman; as a mother; as a wife. I come before you as the democratically elected Prime Minister of a great Muslim nation—the Islamic Republic of Pakistan. I come before you as the leader of the ninth largest population on earth, Ladies and Gentlemen.

We stand at the cross roads of history. The choices that we make today will affect the future of mankind. Out of the debris of the second world war arose the impulse of reconstruct the world. Large communities of people exercised their right of self-determination by establishing nation-states of their own.

The challenge of economic development led, in several instances, to group-formation where states subordinated their individual destiny to collective initiatives. It seemed for a while that these collective efforts would determine the political architecture of the future. The events of the last few years have, however, made us aware of the growing complexity and contradictions of the human situation. The end of the Cold War, should have freed immense resources for development.

Unfortunately, it led to the re-emergence of sub-regional tensions and conflicts. In extreme cases, there was a break-up of nation-states.

Sadly, instead of coming nearer, the objective of a concerted global action to address common problems of mankind, seems lost in the twilight. The problem of population stabilization faced by us today cannot be divorced from our yesterdays. Ironically enough, population has risen fastest in areas which were weakened most by the unfortunate experience of colonial domination. The third world communities have scarce resources spread thinly over a vast stretch of pressing human needs. We are unable to tackle questions of population growth on a scale commensurate with the demographic challenge.

Since demographic pressure, together with migration from disadvantaged areas to affluent states, are urgent problems, transcending national frontiers, it is imperative that in the field of population control, global strategies and national plans work in unison. Perhaps that is a dream. But we all have a right to dream.

Ladies and gentlemen I dream of a Pakistan, of an Asia, of a world where every pregnancy is planned, and every child conceived is nurtured, loved, educated and supported. I dream of a Pakistan, of an Asia, of a world not undermined by ethnic divisions brought upon by population growth, starvation, crime and anarchy. I dream of a Pakistan, of an Asia, of a world, where we can commit our social resources to the development of human life and not to its destruction.

That dream is far from the reality we endure. We are a planet in crisis, a planet out of control, a planet moving towards catastrophe. The question before us at this conference is whether we have the will, the energy, the strength to do something about it. I say we do. We must.

What we need is a global partnership for improving the human condition.

We must concentrate on that which unites us. We should not examine issues that divide us. Our document should seek to promote the objective of planned parenthood of population, of population control. This conference must not be viewed by the teaming masses of the world as a universal social charter seeking to impose adultery, abortion, sex education and other such matters on individuals, societies and religions which have their own social ethos. By convening this conference, the international community is reannouncing its resolve that problems of a global nature will be solved through global efforts.

Governments can do a great deal to improve the quality of life in our society. But there is much that governments cannot do. Governments do not educate our children. Parents educate children. More often mothers educate children. Governments do not teach values to our children. Parents teach values to our children. More often mothers teach values to children. Governments do not socialize youngsters into responsible citizens. Parents are the primary socializing agents in society. In most societies, that job belongs to the mother.

How do we tackle population growth in a country like Pakistan? We tackle it by tackling infant mortality. By providing villages with electrification. By raising an army of women, 33,000 strong, to educate our mothers, sisters and daughters in child welfare and population control. By setting up a bank run by women for women, to help women achieve economic independence. And, with economic independence, have the wherewithal to make independent choices. I am what I am today because of a beloved father who left me independent means, to make independent decisions, free of male prejudice in my society, or even in my family.

As chief executive of one of the nine largest populated countries in the world, I and the Government are faced with the awesome task of providing for homes, schools, hospitals, sewerage, drainage, food, gas, electricity, employment and infrastructure.

In Pakistan, in a period of 30 years—from 1951 to 1981—our population rose by 50 million. At present it is 126 million. By the year 2020, our population may be 213 million. In 1960 one acre of land sustained one person. Today one acre of land sustains 2½ people. Pakistan cannot progress, if it cannot check its rapid population growth.

Check if we must, for it is not the destiny of the people of Pakistan to live in squalor and poverty condemned to a future of hunger and horror. That is why, along with the 33,000 lady health workers and the women's bank, the government has appointed 12,000 community motivaters across the country. To educate and motivate our people to a higher standard of living through planned families, spaced families, families that can be nurtured.

In our first budget, we demonstrated our commitment to human resource development. We increased social sector spending by 33%. And by the year 2000, we intend to take Pakistan's educational expenditure from 2.19% where we found it to 3% of our GNP. This is no easy task for a country with a difficult IMF structural program. With a ban on economic and military assistance from the only super power in the world. With 2.4 million Afghan refugees forgotten by the world. With more Kashmiri refugees coming in needing protection.

But we are determined to do it. For we have a commitment to our people. A commitment based on principles. Such a commitment demands that we take decisions which are right, which are not always popular. Leaders are elected to lead nations. Leaders are not elected to let a vocal narrow-minded minority dictate an agenda of backwardness. We are committed to an agenda for change.

An agenda to take our mothers and our infants into the 21st century with the hope of a better future. A future free from diseases that rack and ruin. A future free from polio, from goiter, from blindness caused by deficiency in vitamin A. These are the battles that we must fight, not only as a nation but as a global community. These are the battles on which history—and our people—will judge us. These are the battles to which the mosque and the church must contribute, along with governments and NGO's and families. Empowerment of women is one part of this battle.

Today women pilots fly planes in Pakistan, women serve as judges in the superior judiciary, women work in police stations, women work in our civil service, our foreign service and our media. Our working women uphold the Islamic principles that all individuals are equal in the eyes of God. By empowering our women, we work for our goal of population stabilization and, with it, promotion of human dignity. But the march of mankind to higher heights is a universal and collective concern.

Regrettably, the conference's document contains serious flaws in striking at the heart of a great many cultural values, in the north and in the south, in the mosque and in the church. In Pakistan our response will doubtless be shaped by our belief in the eternal teachings of Islam. Islam is a dynamic religion committed to human progress. It makes no unfair demands of its followers. The Holy Quran says: "Allah wishes you ease, and wishes not hardship for you." Again the Holy Book says: "He has chosen you, and has not laid on you any hardship in religion."

The followers of Islam have no conceptual difficulty in addressing questions of regulating population in light of available resources. The only constraint is that the process must be consistent with abiding moral principles. Islam lays a great deal of stress on the sanctity of life. The Holy Book tells us: "Kill not your children on a plea of want. We provide sustenance for them and for you."

Islam, therefore, except in exceptional circumstances rejects abortion as a method of population control. There is little compromise on Islam's emphasis on the family unit. The traditional family is the basic unity on which any society rests. It is the anchor on which the individual relies as he embarks upon the Journey of Life.

Islam aims at harmonious lives built upon a bedrock of conjugal fidelity and parental responsibility. Many suspect that the disintegration of the traditional family has contributed to moral decay. Let me state, categorically, Mr. Chairman, that the traditional family is the union sanctified by marriage. Muslims, with their overriding commitment to knowledge, would have no difficulty with dissemination of information about reproductive health, so long as its modalities remain compatible with their religious and spiritual heritage. Lack of an adequate infrastructure of services and not ideology, constitutes our basic problems.

The major objective of the population policy of the newly elected democratic government is a commitment to improve the quality of life of the people through provision of family planning and health services.

Mr. Chairman, we refuse to be daunted by the immensity of the task. But the goals set

by this conference would become realistic only with the whole-hearted cooperation amongst the nations of the world. Bosnia, Somalia, Rwanda and Kashmir are but a few examples of nation-states under siege. The rise of so-called fundamentalism in some of our societies, and the emergence of neo-fascism, in some western communities, are symptoms of a deeper malaise. I believe the nation-states might just have failed to meet their people's expectations within their own limited national resources of ideological framework. If so, the malady is probably none other than a retreat from the ideals of the founding fathers of the United Nations.

We can, perhaps, still restore mankind to vibrant health by returning to those ideals of Global Cooperation.

Given the background, I hope that the delegates participating in this conference will act in wisdom, and with vision to promote population stabilization. Pakistan's delegation will work constructively for the finalization of a document enjoying the widest consensus.

Ladies and Gentlemen, our destiny does not lie in our stars. It lies within us. Our destiny beckons us. Let us have the strength to grasp it. Thank you President Mubarak, for hosting this Conference on such an important global concern. And thank you Mr. Secretary General and Dr. Nafis Sadik for making it possible.

## CONVENTION ON BIOLOGICAL DIVERSITY

Mr. PELL. Mr. President, I take the floor to express my strong support for Senate advice and consent to ratification of the Convention on Biological Diversity. The convention was ordered reported by the Committee on Foreign Relations on July 11, 1994. Since that time, attempts to bring it to the floor for consideration have been frustrated. I am hopeful nonetheless that the Senate will be able to act on this important convention prior to sine die adjournment.

The convention has three unobjectionable goals; the conservation of biological diversity; the sustainable use of biological diversity; and the fair and equitable sharing of its benefits. It was negotiated over the course of 1½ years and was opened for signature at the Earth Summit in June 1992.

The United States participated in the negotiation of the convention, but the Bush administration ultimately decided not to sign, citing concerns regarding the convention's financial mechanism, treatment of intellectual property rights, and treatment of biosafety issues. I ask unanimous consent that the Department of State's press release announcing the decision to be inserted in the RECORD following my remarks.

Upon taking office, the Clinton administration shared the Bush administration's concerns with the convention, but recognized also that the convention would enter into force with or without the United States as a party. The issue thus became, how best could U.S. interests be served?

The administration decided, correctly in my view, that the most prudent course of action was to explore avenues that would allow the United States to become a party to the convention, but that resolved U.S. concerns. Working in close consultation with the pharmaceutical and biotechnology industry, as well as environmental groups, the administration succeeded in this task.

In transmitting the convention to the Senate, the administration requested that seven understandings be included in the Senate's resolution of advice and consent to ratification. These understandings address each of the concerns first identified by the Bush administration. Mr. President, I ask unanimous consent that the resolution reported by the committee appear immediately following my remarks.

With these understandings in place, the pharmaceutical and biotechnology industries, industries that previously had opposed the convention came out in support of U.S. ratification. I ask unanimous consent that letters in support of ratification from the Biotechnology Industry Organization, the Pharmaceutical Manufacturers Association and Merck & Co, Inc. appear immediately following my remarks in the RECORD.

Mr. President, the convention was ordered reported from the Committee on Foreign Relations on July 11, 1993, by a vote of 16 to 3. It also enjoyed the strong backing of environmental community as well as the pharmaceutical and biotechnology industries. No witness testified against the convention.

Support for the convention is not limited to these industries alone however. The convention has received strong support from other sources as well, including a broad range of agriculture groups. These include: the U.S. Council for International Business, the American Seed Trade Association, Inc., the Archer Daniels Midland Co., and the American Corn Growers Association. I ask unanimous consent that letters from these and other organizations in support of the convention appear immediately following my remarks in the RECORD.

I was surprised therefore when we attempted to bring the convention to the floor for consideration in August and an entirely new set of questions was raised, some of which were truly bizarre. For example, some opponents of the convention argued that the treaty would violate the Constitution by forcing Americans to worship nature. Mr. President, this sort of claim underscores the absurd and wildly unsubstantiated charges that are being raised by some groups or individuals about the convention.

More substantive questions were raised by a number of Members in a letter to the majority leader asking that the Senate delay consideration of the convention until a series of questions that they had could be answered. That letter was sent on August 5. On August 8, the Department of State provided a comprehensive response to those questions. I ask unanimous consent that both the original letter and the administration's response be included following my remarks in the RECORD.

I would note that most of the questions raised in the letter were never identified as issues of concern by the Bush administration, by Members of Congress, or by outside groups during the course of negotiations.

In addition to responding to the questions raised by Members of this body, the administration also met with representatives of the National Cattlemen's Association and the American Farm Bureau Federation to discuss their concerns with the convention. These consultations resulted in a memorandum of record sent by Secretaries Babbitt, Christopher, and Espy to the majority leader on August 16. The memorandum reflects those consultations and explains why ratification of the convention is of fundamental national importance. I ask unanimous consent that these items appear in the RECORD immediately following my remarks.

(See exhibit 1.)

More recently Mr. President, the New York Times and the Washington Post both ran editorials calling for the Senate to act on the convention prior to adjournment. Just yesterday, this full page advertisement appeared in both the Washington Post and the Washington Times calling on the Senate to approve the convention. The ad is sponsored by the World Wildlife Fund and the many business and agricultural organizations concerned with America's interest in conserving biological diversity. I ask unanimous consent that editorials and advertisement also follow my remarks in the RECORD.

Mr. President, throughout the process of trying to bring the convention to the floor, the administration has gone the extra mile, indeed the extra 30 miles, to respond to questions raised about the convention. I want to thank the administration for their efforts.

I also want to thank the majority leader for his leadership in ongoing efforts to try to move the convention. It is a tribute to his commitment to environmental issues that at a time when the Senate has been grappling with up to five cloture petitions, he is willing to devote time and effort to the convention. Supporters of the environment will sorely miss his leadership in the years to come.

Mr. President, it is my hope that the Senate will yet be able to consider the convention. At that time, I will respond in a more substantive fashion to the concerns that have been raised. In

the meantime, however, I urge my colleagues to look at the material I have submitted for the RECORD. I believe that a review of those materials will show that the importance of the convention is clear, that the questions about the convention have been answered, that the support for the convention is there, and that it is time for the Senate to act.

Mr. President, I yield the floor.

EXHIBIT 1—Department of State: Office of the Assistant Secretary

CONVENTION ON BIOLOGICAL DIVERSITY

Negotiations on a convention on biological diversity, held under the auspices of the United Nations Environment Program, concluded in Nairobi on May 22.

The United States strongly supports the conservation of biological diversity and was an early proponent of a convention. The United States is disappointed that the negotiations on this convention have produced a text which we believe is seriously flawed in a number of respects. The United States is not willing to sign a convention that does not address U.S. concerns; principal U.S. objections are listed below.

The U.S. record on protecting biodiversity is unparalleled.

The Endangered Species Act requires that threatened and endangered species be identified and given special protection;

The United States has set aside nearly 180 million hectares of public land where the diversity of native plant and animal species is protected;

The United States is a strong proponent of the Convention on the International Trade in Endangered Species.

However, issues of serious concern to the United States were not adequately addressed in the course of the negotiations of the framework convention. The United States is particularly concerned about provisions related to:

*Intellectual property rights (IPR)*: The convention focuses on IPR as a constraint to the transfer of technology rather than as a prerequisite;

*Funding*: The convention contains unacceptable language on the transfer of funds from developed to developing countries:

The role of the Global Environment Facility (GEF) of the World Bank differs from that agreed to by the Participants in the GEF less than a month ago.

The United States is prepared to help others protect our world's biological resources, but the funding system must be workable.

*Biotechnology*: The convention does not treat biotechnology and biosafety appropriately.

In every negotiation, no matter how important the subject matter, the actual outcome must always be considered; the United States does not and can not sign an agreement that is fundamentally flawed merely for the sake of having that agreement.

As the record shows, the United States is committed to protecting biological diversity. The United States will continue to take measures domestically and internationally to conserve and protect biological diversity.

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BIOTECHNOLOGY INDUSTRY ORGANIZATION,
*Washington, DC, March 9, 1994.*

Re Convention on biological diversity

Hon. CLAIBORNE PELL,
*U.S. Senate, Russell Senate Office Building, Washington, DC.*

DEAR CHAIRMAN PELL: In his letter of November 19, 1993, transmitting the Convention on Biological Diversity to the Senate, President Clinton specifically noted that adequate and effective protection of intellectual property rights is an important economic incentive which not only encourages the development of innovative technologies, but which improves all parties' ability to conserve and sustainably use biological resources. To this we add that the conservation and preservation of biological materials is an important social goal. These resources are necessary to sustain our biosphere and offer tremendous opportunities for the development of new products to address human and animal health, nutrition, and other societal needs for us and future generations.

The biotechnology industry believes that the key element of a fair and balanced Biodiversity Convention is a recognition of the value of the products of nature, as well as the contributions made by persons and institutions who modify those products into useful articles of commerce. The value of biological materials is enhanced when intellectual property rights are created, protected and enforced by all nations. Without adequate and effective intellectual property protection there will be less incentive to make contributions to developing nations whose territory encompasses much of the worlds' biological material.

The Biodiversity Convention as written is an admirable set of policy goals which have at their core the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of benefits arising out of the utilization of genetic resources. Unfortunately, we feel these enumerated goals may be difficult to reach because the technology transfer provisions of the Treaty are vague and subject to undesirable interpretations. We believe that the submission of an interpretive statement by the United States with the instruments of ratification is an important step towards ensuring that the Treaty is implemented in a manner that furthers the mutual interest of all nations which have become signatory. The additional submission by the Administration of its views on the Treaty to the Senate further clarifies how the United States will implement the Treaty.

From the point of view of the biotechnology industry there are two important questions which remain to be answered by the Senate during the hearing process. We submit that for the United States interpretive statement to have real world significance, it must be accompanied by an expressed willingness to withdraw from the convention in the event the contracting parties reach interpretations on the issues of intellectual property or governance which are counter to the national interests of the United States. While we recognize that the Convention already sets forth in its text the withdraw option, what is missing from the Administration's submission is a set of conditions under which that right would be exercised. Intellectual property is the very life blood of biotechnology and like other intellectual property reliant industries we need to be assured that the United States will withdraw from the convention if:

It is interpreted in a manner fundamentally inconsistent with the minimum level of intellectual property protection contained in the recent GATT round (this means the standards and not the transition rules attached thereto); or

It is used to deprive any United States persons of a recognized legal right to property.

We urge the Senate to obtain a second assurance, i.e., that the United States will not seek, and will in fact oppose, the development of a biosafety protocol under the convention. We believe that creation of any such entity would not result in scientific oversight to further ensure human safety, but rather in promotion of a political agenda serving a purpose other than science. Furthermore we believe the Administration should publicly commit to:

The inclusion of broadly representative industry participation in any and all international negotiations;

Insistence on a factual, science based approach to regulation as the essence of any national regulatory scheme for biotechnology processes and products; and

A clear statement that national laws regulating biotechnology should be based on the products and not merely on the fact that the process of biotechnology was used in their development or creation.

BIO is trade association representing more than 500 companies, academic institutions, state biotechnology centers and other organizations involved in the research and development of health care, agricultural and environmental biotechnology products. We respectfully submit these comments on behalf of our membership and want to indicate our willingness to appear as a witness at any future scheduled hearing.

Very truly yours,

CARL B. FELDBAUM,
*President.*

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MERCK & CO., INC.,
*Whitehouse Station, NJ, March 23, 1994.*

Senator CLAIBORNE PELL,
*Senate Russell Office Building, Washington, DC.*

DEAR SENATOR PELL: I am writing to you as Chairman and Chief Executive Officer of Merck & Co., Inc. to urge your support of a speedy ratification of the Convention on Biological Diversity. Senate approval of the Convention would send a strong message to the world community that the United States views the conservation and sustainable use of the Earth's biological resources as a critical component of future growth and development.

For Merck, the world's largest research-intensive pharmaceutical products company, the loss of biodiversity could literally mean lost opportunities for researching the mechanisms of disease and discovering important new medicines. Plants, insects, microorganisms and marine organisms have yielded some of the greatest pharmaceutical break throughs of this century, including Merck's Ivermectin, an incredibly effective and safe anti-parasitic that prevents the tropical disease Onchocerciasis, or river blindness. The Company's ongoing agreement with the Instituto Nacional de Biodiversidad (INBio) in Costa Rica embodies the principles of resource conservation, sustainable development, technology exchange and protection of strong private property rights for which we believe the Convention would provide an international framework.

As you may know, early on in the discussions over U.S. ratification of the Convention, the pharmaceutical and biotechnology industries raised some serious concerns about the potential for adverse interpretations of certain key Articles that addressed intellectual property rights. Last winter, Merck facilitated the creation of a working group of six representatives of industry, environmental and policy research organizations with interests in biodiversity and biotechnology to address these concerns. The State Department's Letter of Submittal to

the Senate incorporates the Interpretative Statement our working group sent to the President and clarifies all ambiguities in a manner that greatly enhances the potential for private sector participation under the Convention.

It is for these reasons that I support ratification of the Biodiversity Convention at the earliest possible date. If you need additional assistance to resolve any outstanding substantive concerns, please contact me directly or call Isabelle Claxton in our Washington office at (202) 638-4170.

Sincerely,

P. ROY VAGELOS.

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U.S. COUNCIL FOR INTERNATIONAL BUSINESS,
*New York, NY, April 11, 1994.*

Hon. CLAIBORNE PELL,
*Chairman, Committee on Foreign Relations, U.S. Senate, Dirksen Senate Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: I am writing to convey the views of the United States Council for International Business (USCIB) on the United Nations Framework Convention on Biological Diversity. In this regard we are pleased to endorse recommendations already conveyed to you by the Pharmaceutical Manufacturers Association and BIO, both of which are our members, emphasizing the importance of strong intellectual property right protection and objecting to a priori regulation of biotechnology under the treaty.

The U.S. Council fully supports the goal of protecting the world's biodiversity. Our membership includes companies that have been leaders in studying and preserving biodiversity—most recently through innovative partnerships with appropriate institutions within developing countries. In many developing countries. U.S. companies play a crucial role in furthering technology cooperation related to biodiversity protection and biotechnology. In addition, U.S. companies are a source of foreign investment which in turn brings funds to relieve poverty and lessen pressure on biological resources in those countries.

The U.S. Council was pleased to note both in President Clinton's November 19, 1993 letter of transmittal of the Convention, and in the Department of State's November 16, 1993 letter of submittal of the Convention to the President, strong statements of support for adequate and effective protection of intellectual property rights.

It should be remembered that the interpretive statement of the United States is only necessary because the Convention combines unduly broad, vague and ambiguous provisions which, U.S. industry fears, may be employed by other countries to the detriment of United States interests, e.g. to deny or undercut intellectual property protection or to impose unreasonable technology transfer or financial requirements.

The United States should be a constructive force in advancing its stated positions on the treaty in all appropriate fora. In addition, the United States should continue to strive to build support for its positions among OECD countries and to ensure that the effectiveness of those positions are not compromised by the actions of other countries. In particular, the U.S. Government should be insistent of intellectual property right protection and the development of biotechnology for society's greater benefit.

Hence, as the Senate prepares to provide its advice and consent to ratification of the U.N. Convention on Biological Diversity, we strongly recommend that you and the Committee obtain appropriate commitments from the Administration that it will:

(1) vigorously defend intellectual property rights within the terms of the Convention, and seek ways to build incentives for protection of those rights into future initiatives and instruments developed under the Convention, and in other fora, such as the Global Environmental Facility (GEF);

(2) oppose any process under the U.N. Framework Convention on Biological Diversity which seeks to regulate products of biotechnology based on the assumption that all such products are intrinsically dangerous to human health and the world's biodiversity. There is no need for a biosafety protocol. In any event, biosafety should be regulated on the basis of science, not fear.

The U.S. Council for International Business is the U.S. affiliate of the International Chamber of Commerce (ICC), the Business and Industry Advisory Committee (BIAC) to the OECD, and the International Organisation of Employers (IOE). The Council formulates policy positions on issues affecting the increasingly globally-oriented U.S. business community through committees and other working bodies drawn from its membership of some 300 major multinational corporations, service companies, law firms and business associations. It advocates these positions to the U.S. Government and such international organizations as the OECD, the GATT, ILO, UNEP and other bodies of the U.N. system with which its international affiliates have official consultative status on behalf of world business.

Our Environment Committee is the leader among American business organizations on international environmental policy and has been involved on behalf of American business in every phase of UNCED, including its follow-up within the United Nations Commission on Sustainable Development, and the ongoing negotiations of the United Nations Biodiversity Convention. Our Intellectual Property Committee has played a major role in preparing business positions on this important aspect of the GATT negotiations as well as on other negotiations such as the U.S.-Canadian Free Trade Area and NAFTA.

The U.S. Council is ready to discuss these matters further with you, other members of the Committee, or with appropriate members of your staff.

Sincerely,

ABRAHAM KATZ,
*President.*

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AMERICAN SEED TRADE ASSOCIATION, INC.,
*April 14, 1994.*

Hon. CLAIBORNE PELL,
*Chairman, Senate Committee on Foreign Relations, Washington, DC.*

DEAR SENATOR PELL: I am writing to express the views of the American Seed Trade Association (ASTA) and its members on the United Nations Convention on Biological Diversity. On behalf of the more than 600 members, I am pleased to add our fundamental support for ratification of this important intellectual property rights document, as it has been interpreted by the "interpretation statement" that was added by the United States and signed by President Clinton.

The ASTA, a national trade association representing the American seed industry, supports the basic goal of conservation and sustainable use of biological diversity in the Convention. Further, we acknowledge the importance of biological diversity for the evaluation and maintenance of life systems. For these and other reasons, ASTA member companies are actively engaged in the research necessary to develop new or improved genetic resources in the form of seed varieties. These efforts include the development of improved varieties of wheat, corn, soybeans, alfalfa, and others, all of which benefit American and international agriculture.

ASTA members invest millions of dollars each year in research and development projects that yield improved genetic strain of crop plants with better nutritional aspects and enhanced pest resistance, as well as improved tolerance to varying climatic conditions. These plants and their seeds are sold throughout the United States and the entire world. ASTA members expect to continue to invest heavily in the reserach of new and improved plant varieties, with the modern methods of biotechnology expected to play an increasing role.

Like other associated organizations, the ASTA was pleased to learn of the President's strong statements regarding intellectual property rights. The ASTA remains committed to strong and meaningful statements and policies affecting intellectual property rights and continues to devote a significant amount of time and effort in advancing such causes. In particular, our own efforts to amend the Plant Variety Protection act of 1970 (S. 1406 and H.R. 2927) reinforces this strong pursuit for members of the seed industry and the plant breeding community in general.

ASTA is concerned, however, that careful attention should be focused on potential interpretations of the text.

Therefore, as the United States Senate prepares to discuss the merits of the U.N. Convention on Biological Diversity, the ASTA strongly recommends that you and the Commission secure from the Administration commitments that will:

(1) Continue to unconditionally defend intellectual property rights of the Convention;

(2) Oppose any process under the U.N. Convention on Biological Diversity which would seek to regulate products of biotechnology based on an unfounded assumption that such products are intrinsically dangerous to human health and compromise the world's biodiversity; and

(3) Oppose the creation of a system of liability for perceived past wrongs to the genetic base of a participating party.

The ASTA Biotechnology Committee, comprised of member companies with established biotechnology programs, has reviewed the Convention, and in consultation with our Board of Directors, has determined it is of significant interest to the seed industry. In general, the ASTA views this Convention's impact on intellectual property rights as significant as language found in the GATT and NAFTA.

The ASTA would welcome the opportunity to discuss these matters with you and other committee members if necessary.

Sincerely,

DAVID R. LAMBERT,
*Executive Vice President.*

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BIOTECHNOLOGY INDUSTRY ORGANIZATION,
*Washington, DC, June 21, 1994.*

Hon. CLAIBORNE PELL,
*Chairman, Senate Foreign Relations Committee, Dirksen Senate Office Building; Washington, DC.*

DEAR MR. CHAIRMAN: Thank you for the opportunity to testify on behalf of BIO, the Biotechnology Industry Organization, at the Senate hearing, April 12, 1994, concerning

U.S. ratification of the Convention on Biological Diversity. As you are aware, BIO, which is the trade association that represents more than 500 companies, academic institutions, state biotechnology centers and other associations involved in the research and development of health care, agricultural and environmental biotechnology products strongly supports speedy Senate ratification of the Convention.

We have received your follow-up question to be submitted for the record in which you ask, "What would be the impact if the U.S. were to decide not to ratify the Convention, or if no decision has been reached before the deadline for countries to participate in the first Conference of Parties?"

Preliminary meetings of signatory parties are already taking place leading up to the first Conference of Parties scheduled for November 28–December 9, 1994 in Geneva, Switzerland. We believe it is essential that the U.S. position on the protection of intellectual property, the rights of parties under existing contracts and the undesirability of creating a formal biosafety protocol be appropriately represented at the Geneva Meeting. The position of our government will be best put forward by having official representatives at the conference table. It would be unconscionable for the U.S. to stand aside while other nations decide matters of importance to our economic future.

We are very appreciative of your willingness to consider these views.

Very truly yours,

RICHARD D. GODOWN,
*Senior Vice President.*

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ARCHER DANIELS MIDLAND CO.,
*August 11, 1994.*

DEAR SENATOR: Attached is the case for Senate ratification of the Convention on Biological Diversity which will have to occur in the next few days. Failing this, the United States will be excluded from the next international meeting being held on this subject.

Archer Daniels Midland Company considers that it is fundamentally important to American agribusiness, agriculture and other industries that the United States include itself in this Convention. It will be a sad day for us if these meetings have to occur without an participation on our part.

We see no downside risk for our country in ratifying this Convention.

Please consider the contents of this memorandum. We hope that you will be able to support and advocate our participation.

Sincerely,

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FACT SHEET

AGRICULTURE AND THE CONVENTION ON BIOLOGICAL DIVERSITY

This Convention deals with issues of interest to U.S. agriculture and agribusiness. U.S. ratification of the Convention benefits U.S. agriculture in three important ways.

I. What the Convention will do:

1. Protect access to plant genetic resources

The U.S. depends on access to foreign germplasm for plant breeding programs of such key crops as corn, wheat, soybeans, potatoes, cotton, and most vegetables.

All of these crops originated in other parts of the world, and the major sources of the variation essential to future improvements, though traditional breeding and biotechnology are located outside U.S. boundaries.

Access to this germplasm is essential to continuing to improve the productivity of U.S. crops. Experts estimate that this use of biodiversity to increase yields has added a value of $3.2 billion to our $11 billion annual soybean production and about $7 billion to our $18 billion annual corn crop.

Access to foreign germplasm also helps efforts to reduce the need for pesticides and chemicals because such germplasm can improve the ability of crops to combat disease and plant pests.

Becoming a party to the Biodiversity Convention will ensure that U.S. companies continue to have access to genetic resources.

Already some U.S. researchers have been excluded from germplasm collections in foreign countries.

The Convention will facilitate access to genetic resources in these and other countries.

As a Party the U.S. will also have improved access to material in national seed banks and the collections of international centers.

2. Encourage conservation of biodiversity in developing countries.

All countries, but especially the U.S., will lose if genetic resources of value to agriculture are lost through inadequate or nonexistent conservation practices.

While the U.S. has an extensive and effective set of conservation laws on the books, this is not the case in most developing countries.

The Convention lays out a general framework relating to conservation of natural resources (eg., parks, zoos, seed banks).

The Convention recognizes that if developing countries can benefit from providing their genetic resources to others they will have incentives to make these resources available for use now and in the future.

The Convention provides for development of voluntary agreements between the providers of such resources and those who wish to use them.

3. Limit regulation of biotechnology.

Ill-conceived regulation of biotechnology can place undue restrictions on U.S. exports of biotechnology products.

One of the many reasons the U.S. biotechnology industry and the Administration believe it essential to promptly ratify the Convention is to ensure that any biosafety protocol, should one be developed under the Convention, is scientifically based and analytically sound, and does not place undue restrictions on U.S. biotechnology products.

As a world leader in biotechnology the U.S. must participate as a member of the Convention to guide these discussions and protect our interests.

II. What the Convention will not do:

1. Affect farmers', ranchers', or foresters' ability to produce food and fiber from their land.

The Convention will not affect U.S. livestock, poultry, sheep, or hog policies.

References to alien species in Article 8(h) are intended to address harmful or nuisance species such as insect pests, noxious weeds, kudzu, and zebra mussels.

Such species have had profound adverse impacts on U.S. agriculture, fisheries, forestry, and livestock.

Livestock are considered domesticated species and do not fall within the scope of Article 8(h).

Impact domestic land-use and environmental policies

The Administration, in presenting the Convention to the Senate, determined that no changes to existing statutes, regulations, or programs are required. Nor is additional implementing legislation required.

The Convention will not place any additional requirements on private land use or otherwise encroach upon constitutionally protected rights.

The Convention will not dictate U.S. environmental policy. Unlike many treaties which set out very specific requirements, the Convention on Biological Diversity is a framework which is general and flexible.

Such flexibility is beneficial to the U.S. As a framework agreement, the U.S. has maximum flexibility in determining for itself how to implement the Convention.

Additionally if, in the future, more specific protocols to the Convention are negotiated, the U.S. will decide at that time, for itself, whether it is in its interest to become a Party to those protocols.

Joining the Convention in no way commits the U.S. to a particular course of action or dictates a particular outcome of the ongoing discussions within the U.S. on these issues, nor is there any international body under the Convention or elsewhere that can determine U.S. policy.

The Convention's conservation provisions require no new action by the U.S.

Reference in Article 8 (d) to promoting the protection of ecosystems does not commit the U.S. to adopting any new policy.

The Administration has made its position clear on this. As stated by the President in his letter of Transmittal to the Senate. "Biological diversity conservation in the United States is addressed through a tightly woven partnership of Federal, State, and private sector programs in management of our lands and waters and their resident and migratory species . . . These existing programs and authorities are considered sufficient . . . under the Convention."

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AMERICAN CORN GROWERS ASSOCIATION,
*Washington, DC, August 24, 1994.*

DEAR SENATOR: There has been much discussion lately about the Convention on Biological Diversity. The American Corn Growers Association believes that ratification of this treaty will be in the best interest of production agriculture.

For U.S. agricultural interests to be addressed, we must first have a seat at the table. Only through ratification by August 30th will the United States be able to partake of the discussion and debate. In addition, by being a party to the Convention, the U.S. will ensure continued access to genetic resources. This is important to agriculture because access to foreign germplasm for plant breeding programs for such crops as corn help advance our ability to provide quality products to our agricultural producers.

Of concern to some was the fear that the Convention could be used in place of current U.S. laws. This is not the case. The Convention's conservation provisions will not require any new environmental laws or regulations. Nor does the convention prohibit our country from enacting or amending current environmental laws.

The American Corn Growers Association supports the Convention on Biological Diversity and request that you support it as well by voting to verify.

Please feel free to contact our office if you have any questions.

Sincerely,

GARY GOLDBERG,
*National President.*

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
*Washington, DC, August 5, 1994.*

Senator GEORGE MITCHELL,
*Majority Leader, U.S. Senate,*
*Washington, DC.*

DEAR SENATOR MITCHELL: We have a number of concerns regarding the Convention on Biological Diversity (Treaty Doc. 103-20). We request that the Senate delay consideration of the Convention until these concerns can be addressed. If a delay is not possible, we will not be able to accept any time agreement limiting debate.

The treaty itself is vague in many areas and some of its provisions are contradictory. It appears that the treaty may have implications for U.S. domestic law and environmental policies. Before committing the United States to this Convention with the Senate's recommendation of ratification, we would like further information in a number of areas, including, but not limited to, the following:

Why does this convention prohibit state parties from making reservations to any of its provisions?

Will the understandings set forth in the resolution of ratification protect the U.S. interpretation in the event of a dispute?

Will the U.S. vote in decisions taken under this convention be commensurate with its financial contribution to the funding mechanism? If not, why not?

Could the eradication of "alien species which threaten ecosystems," called for by Article 8, affect U.S. livestock policies?

Who will interpret "as far as possible and appropriate," a clause which appears in several places in the convention? Will the United States be subject to mandatory dispute settlement?

How can the Senate, in fulfilling its Constitutional responsibilities to advise and consent, review the provisions of the treaty not decided until the meeting of the Conference of Parties?

How will the ratification of this convention influence the Endangered Species Act, the National Environmental Policy Act and other domestic environmental legislation?

Will the provisions regarding access to genetic resources (Article 15) impede United States access to germplasm and other genetic resources contained in international collection centers?

By what means will the Conference of Parties promote the transfer of technology to developing countries (Article 16)?

Is it likely or possible that the Conference of Parties may call for a biological safety protocol that will require a license for the transfer of any biologically modified organism?

These are just some of the issues that should be further clarified before we can responsibly recommend ratification.

We understand that the primary argument for speedy ratification is to ensure that the United States has a vote at the Conference of Parties in November 1994. However, we believe that the United States, as a major contributor to the funding mechanism under this convention, will wield considerable influence at the Conference of Parties even without a formal vote. If anything, the U.S. negotiating position will be strengthened by the continuing scrutiny of the Senate. We note that this is the course successfully followed by the United States in the Law of the Sea Convention process.

Thank you for your consideration.

Sincerely,

———, Malcolm Wallop, Chuck Grassley, Jesse Helms, Conrad Burns, Kit Bond, Lauch Faircloth, Thad Cochran, Dan Coats, Larry Pressler, John W. Warner, Kay Bailey Hutchison, Bob Smith, Robert F. Bennett, Arlen Specter, John C. Danforth, Slade Gorton, Pete V. Domenici, ———, Al Simpson, John McCain, Mitch McConnell, ———, Dirk Kempthorne, Strom Thurmond, ———, Don Nickles, Orrin Hatch, Trent Lott, Larry E. Craig, Phil Gramm, Connie Mack, Hank Brown, Bob Packwood, Ted Stevens.

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U.S. DEPARTMENT OF STATE
*Washington, DC, August 8, 1994.*

GEORGE J. MITCHELL,
*The Majority Leader,*
*U.S. Senate.*

DEAR MR. LEADER: The Committee on Foreign Relations, with broad bipartisan support, reported favorably the Convention on Biological Diversity to the full Senate on June 29, 1994. In response to requests for additional information by a number of Senators, I am writing to share with you and your colleagues the Administration's response. I am hopeful that this information will provide the Senate the background it needs to move forward expeditiously in providing advice and consent.

The Clinton Administration has worked with affected industry to address several concerns that existed at the time the Convention was opened for signature. Based on the seven understandings developed through cooperation with industry and set forth in the proposed Resolution of Ratification, the Administration urges the Senate to give its advice and consent to this treaty. The understandings set forth in the Resolution or Ratification clearly address concerns that were previously expressed about the Convention's provisions on technology transfer, finance and biosafety. In response to these efforts, the affected industries, state and local government officials and others now strongly support ratification of the agreement.

We have endeavored to answer all questions about the Convention and U.S. participation. The attached responses to the good questions raised by a number of Senators will further clarify the record and, we believe, provide Senators with the assurances they need to support this agreement. Most importantly, these responses make clear that: 1) no implementing legislation is required—the US meets and surpasses all treaty provisions—and the treaty provides flexibility for future changes to U.S. law; 2) the treaty does not and can not force the United States to undertake any action incongruent with its interests (and preserves the appropriate role of the Congress to provide advice and consent to any significant agreement); and 3) because no changes to existing statutes, regulations or programs are required, the Convention will not have any effect on farmers, ranchers or foresters.

I want to note that the timing of Senate consideration is critical—the Administration and key industries believe that it is essential that the U.S. complete work in time to enable submission of our articles of ratification by August 30, 1994, thus enabling us to participate fully at the first Conference of the Parties so that we can fully protect US interests. Failure to achieve ratification could have significant negative consequences for US interests.

Senate advice and consent would help complete the significant efforts and sound principles undertaken on a bipartisan basis by this and the previous Administration. Having addressed the appropriate and legitimate concerns raised in the past, it is now in the economic interests of the United States to ratify this agreement. We are hopeful that, pursuant to the recommendation of the Foreign Relations Committee, which made a favorable recommendation on a 16-3 vote, the Resolution of Ratification can be deliberated in a timely manner and that the full Senate will give its advice and consent to ratification. The Administration stands ready to provide any information that is necessary to facilitate this action.

Sincerely,

WENDY R. SHERMAN,
*Assistant Secretary,*
*Legislative Affairs.*

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CONVENTION ON BIOLOGICAL DIVERSITY

(The Administration's Responses to Questions Raised in a Letter to the Majority Leader on August 5, 1994)

1. Why does this convention prohibit state parties from making reservations to any of its provisions?

The purpose of the "no reservations" clause is to prevent parties from picking and choosing which provisions they are willing to accept.

2. Will the understandings set forth in the resolution of ratification protect the U.S. interpretation in the event of a dispute?

The United States is protected in the event of any dispute because the Convention does not require the United States to submit to binding dispute resolution.

The understandings are an authoritative statement of the United States' interpretation of the Convention. They will be deposited with the United States instrument of ratification and will be circulated by the United Nations to all parties.

3. Will the U.S. vote in decisions taken under this convention be commensurate with its financial contribution to the funding mechanism?

The United States objective is a rule of procedure relating to the funding mechanism that fully protect its interests as a major donor. The United States has supported a rule in the rules of procedure requiring that all decisions related to the funding mechanism be made by consensus. Only as a party will we be able to block consensus on the rules of procedure; as an observer we would have no such ability.

It should also be noted that the Global Environment Facility (GEF) currently operates the financial mechanism. The GEF is responsible for actual decisions on biodiversity project funding. The instrument restructuring the GEF also gives the United States a vote commensurate with our contribution.

4. Could the eradication of "alien species which threaten ecosystems," called for by Article 8, affect U.S. livestock policies?

No. The Convention will not affect U.S. livestock policies. Cattle (as well as poultry, sheep, and hogs) are considered under the Convention to be "domesticated species"—not alien species—and thus not subject to Article 8(h).

5. Who will interpret "as far as possible and appropriate," a clause which appears in several places in the convention?

This phrase is a common one in international agreements. It is a phrase that protects, not restricts, the interests of parties. In this Convention the phrase was deliberately inserted in order to give each party substantial flexibility in determining how best to implement the Convention. The United States will decide for itself how it will implement the Convention and how it interprets the phrase "as far as possible and appropriate."

6. Will the United States be subject to mandatory dispute settlement?

No. Dispute resolution involving the United States under the Convention is limited to non-binding conciliation. Binding dispute resolution (either through arbitration or submission of the dispute to the International Court of Justice) is optional.

The United States will not opt for binding dispute resolution under the Convention.

7. How can the Senate, in fulfilling its Constitutional responsibilities to advise and consent, review provisions and processes of the treaty that are not included in the treaty, but will be decided at the Conference of Parties?

It is common practice in international agreements to assign certain functions to the Conference of the Parties. Under treaties such as this, the rules of procedure are always decided at the first Conference of the Parties, typically after the Senate has given advice and consent. Examples include the Vienna Convention for the Protection of the Ozone Layer; the Montreal Protocol on Substances that Deplete the Ozone Layer; the UN Framework Convention on Climate Change; the Antarctic Environmental Protocol; the Cartagena Convention (Caribbean); the SPREP Convention (South Pacific); CITES; London (Dumping) Convention; Convention for a North Pacific Marine Science Organization (PICES); Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean; and the Convention for the Conservation of Salmon in the North Atlantic Ocean.

In addition, the Administration stands ready to apprise, and seek the views of, the Senate Foreign Relations Committee and any other interested Members on the status of U.S. participation in the Convention whenever the Committee deems appropriate. This will enable the Senate to remain fully advised of key developments related to the Convention.

8. How will the ratification of this convention influence the Endangered Species Act, the National Environmental Policy Act and other domestic environmental legislation?

The conservation provisions of the Biodiversity Convention are broad, framework provisions. They deliberately leave to individual countries to determine how the Convention should be implemented, as far as possible and as appropriate for each country.

There are many ways that the United States could craft a statute and still remain in compliance with the conservation provisions. Thus, the Convention will not require any change to any U.S. statute, regulation, or program. No additional implementing legislation is required. At the same time, the Convention would not foreclose amendment of domestic environmental legislation.

9. Will the provisions regarding access to genetic resources (Article 15) impede United States access to germplasm and other genetic resources contained in international collection centers?

No. The United States and all other countries will continue to have open access to collections of the International Agricultural Research Centers of the Consultative Group on International Agricultural Research. The Convention should also serve to facilitate access to collections recently closed to us where some countries have been waiting for a mechanism to establish benefit sharing arrangements. Overall, the Convention will enhance access to germplasm.

10. By what means will the Conference of Parties promote the transfer of technology to developing countries (Article 16)?

Following a dialogue with U.S. industry and others, we have developed an interpretation of the Convention and an approach for its implementation that we believe is fully consistent with U.S. public and private interests.

However, the Convention is clear: the Convention does not compel the involuntary transfer of technology to developing countries. The Convention promotes transfer of technology by encouraging voluntary, mutual agreements between the countries of origin of genetic resources and those entities that seek to commercially utilize those genetic resources.

11. Is it likely or possible that the Conference of Parties may call for a biological safety protocol that will require a license for the transfer of any biologically modified organism?

One of the many reasons the U.S. biotechnology industry and the Administration believe it is essential to promptly ratify the Convention is to ensure that any biosafety protocol—whether it includes a licensing requirement or not—is scientifically based, analytically sound, and does not place undue restrictions on U.S. exports of biotechnology products. Industry believes the United States can more effectively represent its interests in this regard as a party, rather than as an observer. Although the United States would not be obligated to become a party to a biosafety protocol with unacceptable provisions, the existence of a protocol among other countries could have significant adverse impacts on U.S. industry.

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THE SECRETARY OF STATE;
*Washington, August 16, 1994.*

Hon. GEORGE J. MITCHELL,
*The Majority Leader,*
*U.S. Senate.*

DEAR MR. LEADER: As you are aware, several issues have been raised recently by agricultural organizations regarding the Convention on Biological Diversity, which is now before the full Senate for advice and consent to ratification.

Representatives of the Departments of State, Agriculture and Interior have consulted with several agricultural organizations to answer their questions and address any concerns. The enclosed Memorandum of Record reflects those consultations and explains why ratification is of fundamental national importance. The Memorandum represents the Clinton administration's views as expressed during these consultations.

The Office of Management and Budget has advised that from the standpoint of the Administration's program there is no objection to this Memorandum of Record.

We hope that this information will help the Senate to complete the ratification process as soon as possible. For the reasons expressed throughout this year, we believe failure to ratify the Convention before adjournment would be detrimental to our interests, most especially those of our important agribusiness and biotechnology industries.

Sincerely,

BRUCE BABBITT,
*Secretary of the Interior.*
MIKE ESPY,
*Secretary of Agriculture.*
WARREN CHRISTOPHER,
*Secretary of State.*

Enclosure.

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MEMORANDUM OF RECORD

Pursuant to questions posed to the Administration by several agricultural organizations (Tab A), the Department of State, the Department of Agriculture and the Department of the Interior state the following on the importance of rapid ratification of the Convention on Biological Diversity and further elaborate on the letter and questions and answers submitted to the Senate Majority and Minority Leaders by the Department of State on August 8, 1994 (Tab B).

BENEFITS TO AGRICULTURE

U.S. ratification of the Convention benefits U.S. agriculture by providing leverage to limit the restriction of U.S. exports of biotechnology products, safeguarding U.S. access to agricultural genetic resources, and encouraging conservation of such resources in other countries.

The majority of important U.S. agricultural crops and livestock originated in other parts of the world, and the major sources of the variation essential to future improvements, through traditional breeding and biotechnology, are located outside U.S. boundaries (Tab C).

Access to this germplasm is essential to continued improvement in the productivity of U.S. crops. For example, experts estimate that our use of plant genetic material to improve agronomic traits and increase yields has added a value of $3.2 billion to our $11 billion annual soybean production and about $7 billion to our $18 billion annual corn crop. Access to foreign germplasm also helps efforts to facilitate the development of crops resistant to diseases and plant pests. Bioengineered products are making an ever increasing contribution of major economic value to agricultural advancement.

The U.S. must ratify the Convention by August 30 so that it can participate fully to shape discussions on the regulation of biotechnology that will occur at the first Conference of the Parties in November. There is strong pressure among countries who are already Party to the Convention to push ahead with development of a biosafety protocol on the safe transfer, handling and use of living modified organisms resulting from biotechnology.

Ill-conceived regulation of biotechnology can place undue restrictions on U.S. exports of biotechnology products whether in the agricultural or pharmaceutical areas. One of the many reasons the U.S. biotechnology industry and the Administration believe it essential to promptly ratify the Convention is to ensure that any biosafety protocol, should one be developed under the Convention, is scientifically based and analytically sound, and does not place undue restrictions on U.S. export of biotechnology products.

As the world leader in biotechnology the U.S. must be at the table as a party to the Convention to guide these discussions and protect our interests.

Also likely to be addressed at the first Conference of Parties in November are issues concerning access to genetic resources. The U.S. depends on access to foreign germplasm for plant breeding programs of such key crops as corn, wheat, soybeans, potatoes, cotton, and most vegetables. These crop improvements enhance our ability to provide quality forage for our livestock. In addition, introduction of genetic material from foreign animal breeds into our domestic livestock is crucial for improving livestock productivity, meat and fiber quality and other essential traits.

By becoming a party to the Biodiversity Convention, the U.S. will ensure continued access to genetic resources. Questions of sovereignty over genetic material and concern that holders of such material receive appropriate compensation for providing such material have begun to jeopardize U.S. access to

foreign material, particularly in the developing world. Already some U.S. researchers have been excluded from germplasm collections in foreign countries on the basis of such concerns.

The Convention will provide a forum to facilitate access to genetic resources in these and other countries. As a Party to the Convention, the U.S. will be able to work with other countries of the world to develop effective means to safeguard the open exchange of such material, building on the principles of open access and mutual agreement to such exchange. This will ensure and improve our access to important genetic material, whether in private hands, national collections or international centers.

The Convention also encourages conservation of such genetic resources in other countries. All countries, but especially the U.S., will lose if genetic resources of value to agriculture are lost through inadequate or nonexistent conservation practices. The U.S. enforces an extensive and effective set of conservation laws, yet this is not the case in most developing countries. The Convention lays out a general framework relating to conservation of natural resources.

The Convention recognizes that if developing countries can benefit from providing their genetic resources to others they will have incentives to make these resources available for use now and in the future. The Convention provides for development of voluntary agreements between the providers of such resources and those who wish to use them.

PRIVATE SECTOR INVOLVEMENT

As stated in the Report of the Secretary of State transmitted to the Senate by the President, "the participation of the private sector greatly enhances the attainment of economic value from genetic resources." Historically, the private sector in the U.S., including foresters, farmers, and ranchers, has had a vital and critical role in protecting and enhancing biological diversity. In addition, as stated above, agriculture producers need biological diversity to ensure adequate plant and animal genetic resources for improving and protecting domestic production of food and fiber. Access to the world's genetic resources is critical to agricultural production. For these reasons it is imperative that the U.S. agricultural sector participate in future international conferences on implementation of the Convention on Biological Diversity.

We recognize that the private agricultural sector—by harnessing biological and natural resources—has produced enormous benefits for the U.S. and its people. The agricultural industry has similar productive contributions to make during consideration of these issues internationally. In this regard, the Administration will conduct briefings and, consistent with applicable law, solicit views on upcoming issues prior to meetings of the Conference of the Parties and other critical events. The Administration will work to facilitate the participation of representative stakeholder interests, including those from agriculture, as observers at such meetings and, if appropriate and within delegation size constraints, as private sector advisors on the U.S. delegation. In addition the U.S. will use the opportunity of future meetings of the Convention to emphasize the importance of private sector arrangements with regard to the use and conservation of biodiversity.

THE CONVENTION MAY NOT BE USED IN PLACE OF U.S. LAWS

The provisions of Articles 7 and 8 of the Convention provide a broad framework for the conservation of biological diversity. The United States already has some of the world's most comprehensive and advanced programs for protecting public lands and enforcing environmental laws. In fact, the laws and regulations of the U.S. related to public land management and private land practices impose a higher standard than that called for in the Convention. For example, with regard to protected areas, the President cited, in his letter of Transmittal, the "extensive system of Federal and State wildlife refuges, marine sanctuaries, wildlife management areas, recreation areas, parks and forests" that already exists in the U.S.

Concerns have been expressed that the implementation of the Convention's conservation provisions may require new environmental laws or regulations or that the Convention itself could be used as the basis for regulatory action. The Administration has determined that neither is the case.

Implementation of the conservation provisions of the Convention will not require any change to any U.S. statute, regulation, or program. As stated in the report to the Secretary of State transmitted to the Senate by the President, "No additional legislation is required to implement the Convention. The United States can implement the Convention through existing Federal Statutes."

The Convention will not provide new authority for any administrative, civil, or criminal action not permitted under domestic law.

THE CONVENTION DOES NOT PREVENT AMENDMENT OF ENVIRONMENTAL LEGISLATION

Concern has been raised that ratification of the Convention by the U.S. could prevent any amendment of U.S. environmental laws. The conservation provisions of the Biodiversity Convention are broad, framework provisions. They are deliberately flexible enough to allow individual countries to determine how the Convention should be implemented, as far as possible and as appropriate for each country. There are many ways that the United States could craft relevant statutes and still remain consistent with the conservation provisions of the Convention. As noted above, in many respects existing environmental laws and regulations impose a much higher standard than what is required by the Convention. Although some basic environmental statutes are necessary to implement the Convention, we do not anticipate scenario in which the Convention would impede amendment of a domestic environmental statute.

THE CONVENTION DOES NOT PROVIDE FOR A PRIVATE RIGHT OF ACTION

Concerns have been expressed that domestic laws and regulations would be subject to challenge by private persons as not being in compliance with the Convention.

The Convention sets forth rights and obligations among countries. The Convention does not, expressly or by implication, create a private right of action under which a private person or group may challenge domestic laws and regulations as inconsistent with the Convention, or failure to enforce domestic laws or regulations promulgated thereunder.

NO BINDING DISPUTE RESOLUTION

Concerns have been raised that the Convention might allow other governments to force changes in U.S. domestic laws and policies through binding dispute resolution. This is not the case. Dispute resolution involving the United States under the Convention is limited to non-binding conciliation. Moreover, such procedures may be initiated only by a Party to the Convention; they are not available to private persons or groups. Binding dispute resolution (either through arbitration or submission of the dispute to the International Court of Justice) is optional. Accordingly, the Department of State, in reply to a question from Senator Pell for the record, stated that "the United States will not opt for compulsory dispute resolution under the Convention." This is consistent with past practice in environmental agreements in which the U.S. has not accepted binding dispute resolution.

EFFECT OF AMENDMENTS OR PROTOCOLS ON THE UNITED STATES

Concerns have been raised about the possible future impact of protocols to the Convention on U.S. domestic environmental laws. No amendment or protocol is binding on the United States without its express consent. Amendments to the Convention (apart from annexes which are restricted to procedural, scientific, technical, and administrative matters) will be submitted to the Senate for its advice and consent.

With respect to protocols, we would expect that any protocol would be submitted to the Senate for its advice and consent; however, given that a protocol could be adopted on my number of subjects, treatment of any given protocol would depend on its subject matter.

ATTACHMENTS

Tab A—Letter to Majority Leader Mitchell on August 5.

Tab B—State response to Mitchell letter of August 5.

Tab C—Examples of the Value of Biodiversity to U.S. Agriculture.

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EXAMPLES OF THE VALUE OF BIODIVERSITY TO U.S. AGRICULTURE

Prior to European settlement, the U.S. was largely void of plant or animal species of current commercial importance. Native plant species were pecan, blueberry, cranberry, tobacco, and sunflower. Animal species included longhorn cattle and buffalo. Americans have been and continue to be dependent upon the rest of the world for plant and animal genetic resources as a germplasm base for commercial agriculture. Based on commercial acreage, over 99 percent of U.S. crops are planted to plant species introduced from other countries. While the U.S. has developed a National Plant Germplasm System and is developing a similar system for animal germplasm, it is estimated that the germplasm repositories in the U.S. now represent only about 50 percent of available world resources.

The Convention on Biological Diversity stresses the sustainable use and management of biological diversity for agricultural, medicinal and industrial purposes. The convention will allow the U.S. to collaborate with countries by working together to preserve biodiversity of interest to all nations. U.S. agriculture has significantly benefitted from conservation of biological diversity in foreign countries and will continue to benefit through U.S. ratification. Numerous examples of agricultural benefits of biodiversity can be cited, but a few are worth mentioning.

In 1970, a severe disease epidemic, later identified as the southern leaf blight fungus, threatened the U.S. corn crop. The salvation of our corn crop was found in diverse varieties resistant to the disease which were maintained by U.S. plant breeders. The genes that provided leaf blight resistance had originally been introduced from Mexico. We do not know where or when the next epidemic will hit important U.S. crops, such as

late blight of potato, the disease which caused the Irish potato famine and is now a renewed threat to potato production worldwide. Potatoes are one of the world's leading non-cereal sources of calories. We do not always make the connection between the French fried potatoes we consume and biodiversity, but the connection is very real. At least 13 species of potatoes have been used in developing the varieties currently grown in the U.S. Many more wild potato species are under investigation as sources of disease and insect resistance, stress tolerance and nutritional quality for developing and developed nations. Diversity found in cultivated varieties or wild species of potatoes could be the key to resistance to the new strains of the late blight fungus that have recently caused serious production losses in the U.S. There has also been a recent discovery of resistance to the Colorado Potato Beetle and the source of resistance can be traced to wild potato species in South America. It is the interest of the U.S. that Parties to the Convention assure that these wild genetic resources are adequately protected. Ratification of this treaty will allow the U.S. to sit in the table with other Parties when world conservation priorities are established.

The peanut, a native of South America, is an important cash crop for our Southern states and a favorite food of American consumers. However, due to its susceptibility to a horde of insect and disease pests, the peanut is largely dependent upon germplasm introduced from abroad for its continued productivity and improvement. In a recent breakthrough, three species of wild peanuts found in Bolivia and Paraguay have been successfully hybridized with cultivated peanuts to produce breeding lines with high levels of resistance and even immunity to root knot nematodes and certain leafspot diseases. These are the most virulent pests affecting U.S. peanut production and the use of germplasm not native to the U.S. will greatly reduce the need to use chemical pesticides. The Convention specifically calls for all nations to safeguard their resources and make them available to contracting Parties.

We know that our insurance policy against such epidemics is found in collections of cultivated and wild relatives, such as those maintained by the Department of Agriculture (USDA) and having access to additional germplasm now not available in the U.S. This biological diversity insurance policy includes not only that housed in collections outside the country of origin of the species, but also the genetic resources preserved within the country of origin, such as the perennial relative of corn [*Zea diploperennis*] protected in a Mexican reserve and known to be tolerant or immune to seven of nine tropical corn viruses. Resources such as these and others will be of high priority for Parties to the Convention.

The food industries not only benefit from conservation of crop plants and their wild relatives, but also from countless beneficial microbes. One example is the new, award winning development of a FDA approved food additive, Gellan Gum, by Merck & Co., Inc. This product performs in a variety of ways as a gelling agent and suspending agent and is now used in confections, beverages, bakery goods, and jams worldwide. This product with current estimated annual sales worldwide of $10 million was not developed from a little known Amazonian plant, but from a newly discovered species of bacteria [*Pseudomonas elodea*] growing in a Pennsylvania pond. The value of undiscovered biological resources in our own backyard may be as important as that found in tropical rainforests. This treaty signifies our intent to sustainably use our own biological resources as well as continued reliance on the rest of the world.

The U.S. wheat crop is now under siege from a foreign insect known as the Russian Wheat Aphid. Over 26,000 samples of wheat were examined for possible resistance to this serious new threat. Only four sources of multiple resistance to this pest were discovered, all originating from countries of Southwest Asia and Eastern Europe. These varieties had been maintained by the USDA for 20–35 years before the present value was recognized. We might assure that today's genetic resources still exists for tomorrow's unforeseen need such as that demonstrated by these native varieties from Southwest Asia.

Soybeans are one of the most important agriculture products and exports for the U.S. All the progenitors and relatives of soybeans are native to foreign countries. Together with researchers in Australia, U.S. scientists have recently discovered new species related to the soybean that may provide future sources of disease resistance to U.S. soybean varieties. We are totally dependent on other nations to protect and preserve the ecosystems where these and other significant wild crop relatives occur. This treaty signifies the intent of contracting parties to conserve and manage such resources for the benefit of all humankind.

We need not look far to find examples of domestic biodiversity benefiting agriculture. In California the entire walnut industry, with an annual average value of over $250 million, literally rests on a rare plant species. The entire walnut production depends on using a rare native California walnut [*Juglans hindsii*] as a rootstock on which to graft varieties of the walnut of commerce. Without this native species walnuts would not be as productive in the soils of California.

The contribution of our native wild grape species as rootstocks for grapes worldwide is perhaps the most important contribution of U.S. biodiversity to world agriculture. The grape industry estimates that 95 percent of wine grape production in Europe uses American rootstocks. Our commitment to protecting our own biological resources is as of much concern to foreign countries as our concern for protection of biological diversity in foreign countries, especially that of developing countries.

While foods of animal origin today supply two-thirds of the protein, one-third of the energy, 80 percent of the calcium, 60 percent of the phosphorus and significant quantities of trace elements and "B" vitamins to the average Americans' diet, the ancestors of almost all of the animal germplasm needed to supply these nutrients were imported from other countries. Suitable native breeds of livestock simply were not available. Therefore, the importation of specific breeds, stains and flocks of livestock and poultry was an absolute necessity to the development of U.S. animal industries.

As an example, three beef cattle breeds—Angus, Hereford, and Shorthorn—which were imported from Great Britain between 1830 and 1865 have served as the foundation for the modern beef industry. From the 1960's to present, the additional importation of exotic beef cattle germplasm has greatly facilitated the production of today's lean beef. In the dairy area, today's high producing Holstein cow was developed in North America from European "black and white" ancestors.

The original genetic stock for the major white breeds of swine in the U.S. were imported from Great Britain and northern Europe about 1900. These breeds were used extensively in breeding programs to produce today's lean pig. Approximately 5 years ago, Chinese swine were imported and are not being evaluated for genetic resistance to diseases and increased litter size. The transfer of these traits into our domestic breeds will help improve production efficiency of the U.S. swine industry.

Recent examples of how imported germplasm has assisted the U.S. sheep industry are the importation in the 1960's of the Finnish Landrace breed which produced multiple births, and the importation of the Texel sheep in the 1980's to improve lean lamb production. It is important to U.S. animal industries to continue to have access to animal genetic stocks of the world.

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[From the Washington Post, Sept. 26, 1994]

THE BIODIVERSITY TREATY

One of the casualties of the mismanagement of this session of Congress and the current rush to adjourn could be the international Convention of Biological Diversity. It would be a major loss.

The Clinton administration signed the agreement in June of 1993; the Bush administration had declined. The principal goal is to preserve the present array of living species in the world, and diversity within each species. Scientists estimate that 20 percent of currently living plant and animal species could otherwise be lost by the year 2020. Much of the loss would occur through the destruction of forests and other development in the Third World. But the rest of the world would feel the effect. The United States, for example, is heavily dependent on plant strains from abroad to maintain the vitality of basic corps—corn, soybeans, wheat—and their ability to resist disease. The same is true for other food-producing countries.

The convention would seek to preserve not just the species themselves but international access to them. Safety and other standards could also be set for world trade in plant and animal strains produced through biotechnology, a subject of huge importance to U.S. industry. And because there are costs to conservation, richer countries, including the United States, would make contributions to help and induce poorer countries to conform.

The Senate Foreign Relations Committee approved the convention this June by 16 to 3. All Democrats and five Republicans—Richard Lugar, Nancy Kassebaum, Hank Brown, James Jeffords and Judd Gregg—voted aye. Three other Republicans—Jesse Helms, Larry Pressler and Paul Coverdell—voted no. Some agricultural groups then expressed alarm about some aspects of the pact, as have conservative organizations that see it as an environmental wedge and threat to U.S. sovereignty. Bob Dole and 34 other Republicans wrote majority leader George Mitchell asking that floor consideration be delayed until some questions could be answered. The administration provided answers; most of the agricultural groups have since withdrawn or muted their objections, and such influential agribusiness organizations as the Archer Daniels Midland Co. have joined the biotechnology and pharmaceutical industries in support. But a filibuster or possibly even the threat of one could still derail the convention.

The Republicans asked, among other things, whether the convention would preempt and force changes in U.S. law. The administration says U.S. law is already well in advance of what the convention requires. It also says the convention couldn't be used by

environmental groups as a basis for domestic litigation, as some critics profess to fear. Nor would there be a lack of control over the U.S. financial contribution to the undertaking.

A first conference of the parties to begin the implementation of the convention is scheduled Nov. 28. The United States will have a delegation there no matter what, but plainly in a stronger posture if the Senate has voted aye. Surely the Senate can find the means to brush aside the remaining weak objections and cast that vote before it goes home.

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[From the New York Times, Sept. 26, 1994]

BIODIVERSITY PACT ON THE ROPES

Chances that the Senate will ratify an international agreement aimed at preserving the world's biological diversity are diminishing as fast as the organisms the pact is designed to protect. Republican opposition and Democratic lethargy are combining to frustrate approval of the biodiversity convention, thus keeping the U.S. out of step with most of the rest of the world in the fight to save a wide range of biological species and habitats.

The convention was one of the major treaties approved at the 1992 world environmental summit meeting in Rio de Janeiro. It sets no firm requirements to save species or habitats but commits the signatories to develop national plans aimed at doing so. The treaty also seeks to promote an equitable sharing of benefits between the developing nations that possess biological resources and the industrialized nations that seek to use them for medical or agricultural purposes.

President Bush positioned the U.S. as an environmental outcast when he refused to sign the treaty because of ambiguous subsidiary clauses that seemed to threaten important American interests. Mr. Bush was right to be worried, and this page largely agreed with his reservations. One clause could be construed as giving poor countries control of the mechanism through which money would be raised and distributed for conservation projects. Other clauses looked as if they might threaten the protection of patents and intellectual property rights or impose undue restrictions, based on bogus safety concerns, on biotechnology exports.

Fortunately, these and other concerns have been addressed through clarifying interpretations issued by the Clinton Administration. President Clinton has signed the treaty and the Senate Foreign Relations Committee has strongly recommended ratification. Even some of the groups originally concerned about the treaty—notably the biotechnology and pharmaceutical industries—are now supporting prompt ratification. So are scientific and environmental organizations.

Even so, ratification has been held up by Republican opposition, triggered initially by Senator Jesse Helms, the ranking Republican on the Foreign Relations Committee, and then swelling to include 35 Senate Republicans, led by Bob Dole, the minority leader. The Republicans argue that the Administration's interpretations are not binding on other signatories and that some clauses could be construed to undermine this nation's ability to strike its own balance domestically between environmental values and competing interests.

The opponents fretted, for example, that clauses requiring nations to promote the protection of habitats and species might be used to push for "absolute" protection of the environment in the U.S., at the expense of commercial or even recreational purposes. That seems a far-fetched leap from a vaguely worded treaty with lots of weasel words, especially since the Clinton Administration insists the treaty neither requires nor prohibits changes in American environmental laws.

The opposition has already delayed ratification beyond the deadline that would have allowed the U.S. to participate as a signatory at a critical organizing meeting in late November. Americans can still participate as observers. Better yet, if the Senate ratifies the convention, they could attend with the added influence of a belated signatory.

Delay is not only pointless; it could be harmful. The U.S. needs to join this effort not only to enhance the global environment, but for its own good as well. Otherwise, American leadership in biotechnology and agriculture may be threatened as other countries deny the U.S. access to their genetic and biological resources.

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[From the Washington Post, Oct. 3, 1994]

BIODIVERSITY IS CRUCIAL TO OUR FUTURE

The Convention on Biological Diversity is the first comprehensive international agreement committing governments to conserve the earth's biological resources and use them in a sustainable manner. By producing clean water, oxygen, and food, biodiversity plays a critical role in maintaining the planet's life support systems.

The agreement is now before the Senate for approval. To date the Convention has been signed by over 160 countries and ratified by over 90, including the entire European Union, Japan, the United Kingdom, Germany, and France. The United States is one of the few industrialized nations yet to ratify the agreement.

Unfortunately, the Biodiversity Convention has stalled in the Senate because of partisan politics. This must stop. Neither a Democratic nor a Republican issue, the Convention is important to our nation as a whole, including U.S. business interests and agriculture.

Though the Convention is currently in limbo, the 103rd Congress is still in session, meaning the Senate still has time to consider the agreement and vote its approval.

The following are examples of the wide support the Convention has received from the environmental, business, and agricultural communities.

Th Biotechnology Industry Organization (BIO), representing over 500 biotechnology companies, university labs, and others, "strongly supports speedy Senate ratification" because the U.S. must be "at the conference table" to protect U.S. interests in "matters of importance to our economic future."

BIO, the Pharmaceutical Manufacturers Association, and the American Seed Trade Association: "As representatives of major U.S. industries which are successfully working to create new medicines, food, and agriculture products, plus a substantial number of jobs for U.S. citizens, we declare our support for the Biodiversity Convention . . . Senate ratification should proceed at the earliest possible time."

Merck & Co., a U.S. pharmaceutical company, one of the largest in the world, urges "support of a speedy ratification of the Convention," noting that biodiversity has generated "some of the greatest pharmaceutical breakthroughs of this century."

New York Biotechnology Association: ". . . ratification of the Convention on Biological Diversity is a matter of prime importance to the further development of the biotechnology industry in the State of New York."

Archer Daniels Midland Company, one of the largest agribusiness companies in the country, states that ". . . it is fundamentally important to American agribusiness, agriculture, and other industries that the United States include itself in this Convention. It will be a sad day for us if these meetings have to occur without any participation on our part. We see no downside for our country in ratifying this Convention."

Farmers Union: "The National Farmers Union (NFU) and its 253,000 family farm members strongly urge you to ratify the Convention on Biological Diversity before you adjourn in October."

The American Corn Growers Association ". . , believes that ratification of this treaty will be in the best interest of production agriculture. For U.S. agricultural interests to be addressed, we must first have a seat at the table. . . . In addition, by being a party to the Convention, the United States will ensure continued access to genetic resources. This is important to agriculture because access to foreign germplasm for plant breeding programs for such crops as corn will advance our ability to provide quality products to our agricultural processors."

American Soybean Association: "[We] hope for expedited consideration of the treaty."

National Cooperative Business Association: "We believe that prompt consideration [or ratification] by the Senate in September is critical if U.S. interests are to be brought to bear on the implementation of the Convention. [We] hope that its approval is not delayed any further."

American Farm Trusts represent thousands of farmers, rural residents, and others concerned with protection of farmland and conservation of natural resources. Ratification of the Biodiversity Convention would be a key step in the establishment of a sustainable national agricultural system, which is essential to the livelihood of the American farmer. Protection of biodiversity will help ensure the protection of strategic farmland—a primary resource for the future of American agriculture.

World Wildlife Fund: "The Biodiversity Convention is the first concerted effort by the world community to conserve the planet's irreplaceable, but vanishing biological wealth. An enlightened self-interest, for the benefit of both present and future generations, should compel prompt ratification by the U.S. Senate."

There's still time for the 103rd Congress to ratify the Biodiversity Convention before the scheduled October 7 recess.

This message is brought to you by World Wildlife Fund and the many business and agricultural organizations concerned with America's interest in conserving biological diversity.

For more information: 1250 24th Street N.W., Washington, DC 20037.

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## TRIBUTE TO COL. JACOB "JACK" A. TENORE, U.S.A., RETIRED

Mr. WARNER. Mr. President, I rise today to pay tribute to Colonel Jack Tenore, a dedicated soldier who has spent most of his adult life working for the military, its service members, and their families.

Born and raised in Hamilton, OH, Colonel Tenore earned his bachelor's degree from the University of Nebraska

and a master's degree in business administration from Syracuse University. As happened to so many young men of Jack's generation, his Nation called, and in 1949, he entered the Army. Little did he realize that this would be the start of a journey that would span 35 years.

Following his commissioning in 1951, Lieutenant Tenore was off to Korea where he served as a forward observer directing artillery fire. His duties would eventually include commanding field artillery batteries and battalions.

In 1964, the Army recognized that Jack had many other talents beyond field artillery. He was assigned to the first of his financial management billets, assignments which eventually would lead him to the Office of the Army Comptroller and, later, to the Office of the Army Chief-of-Staff.

His last two assignments reflect the high value the Army places on Jack's abilities. After leaving the Army Chief-of-Staff's Office, he was named to be the Comptroller and Chief-of-Staff for the Army's Test and Evaluation Command, a position involving the responsibility for literally hundreds of millions of dollars. However, his last assignment was perhaps his most challenging. As Comptroller for the Military Traffic and Management Command, he was responsible for managing the funding of all military materiel worldwide.

In 1979, following 30 years of military service, Jack retired from the Army to establish his own certified public accounting practice. But once again, a call to service interrupted his plans. In 1981, just 2 years after retiring, Colonel Tenore was named comptroller for the Retired Officers Association [TROA]. TROA is dedicated to ensuring that our Nation continues to maintain a strong national security posture as well as to defend and preserve entitlements earned by more than 400,000 active duty, Reserve, Guard, and retired members/officers, their families, and survivors.

During his tenure as comptroller of TROA, Colonel Tenore has fought to maintain the association's fiscal well-being. Thanks to his wise counsel and financial stewardship, the TROA scholarship fund has reached unprecedented levels, providing funding to an ever-growing number of worthy young dependents of all military personnel, officer and enlisted. His dedicated efforts and determined perseverance have ensured that this fund continues to garner more and more donors, and that there will be sufficient funding for years to come. This fund is a monument to his financial vision, insight, and planning.

Mr. President, as a final thought, Colonel Tenore has been a leader in combat and a leader in peacetime but most importantly, he has always been a leader to his fellow officers, whether active or retired. Colonel Tenore is a credit to his country, to the Retired Officers Association, and to our military. I extend every best wish to him in his future endeavors.

Colonel Tenore—your Nation thanks you for a job well done.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. EXON. Mr. President, I ask unanimous consent that I might proceed for 10 minutes, as if in morning business.

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

## THE RETIREMENT OF SENATOR GEORGE J. MITCHELL

Mr. EXON. Mr. President, as the current session of the Senate draws to a close, our Senate will lose its leader. The loss will be demonstrably felt.

The rise of GEORGE MITCHELL in the Senate has been a phenomenal one by any standard. He was appointed to his seat and quickly won election to a full term. During his first full term, GEORGE MITCHELL led the Democrats out of minority status to the oasis of being back into the majority as head of the Democratic Senatorial Campaign Committee. As a true measure of the power and respect of GEORGE MITCHELL the person, the Senate Democrats elected him as their leader immediately after his reelection to just his second full term in the Senate.

Perhaps only the leader himself understands the difficulty of attempting to make this institution move and do the work of the people.

In comparison to the House of Representatives, the U.S. Senate has very few ways in which to force action. It takes an extraordinary man to assume the leadership role here and operate successfully in a place where unanimous consent is necessary in order to do almost anything.

The legislative accomplishments of GEORGE MITCHELL, our leader, have been well documented and will be for many years to come. However, I would like to reflect on GEORGE MITCHELL, the man.

If there ever was a man who was more fair than GEORGE MITCHELL, I have not met him. If there ever was a man who could master the details of the many complex issues we face, it is GEORGE MITCHELL. If there ever was a man who was an impartial arbitrator, it was GEORGE MITCHELL.

I have watched the strain and stress under which GEORGE MITCHELL has had to operate as a leader in an institution where the rules give him few carrots and even fewer sticks in order to move forward. Yet he has always, without fail, carried out his duties in the calm and fair manner which he must have carried out all during his life and which he would have carried out when he was a judge and would have carried out if he had accepted the Supreme Court nomination that was offered to him by the President.

As Governor, I appreciate what judges do. I appointed more judges than any other Governor in my State's history during my tenure as Governor of the State of Nebraska. As a U.S. Senator, I have had similar responsibilities in my role as one who must vote on judicial confirmations. In both cases, one of my principal criteria has been whether or not I would like to have this individual be my judge should I ever stand before the Bench of justice. I not only believe that I would be comfortable with GEORGE MITCHELL as my judge; I also have the similar feeling with GEORGE MITCHELL as my leader.

GEORGE MITCHELL has always, without fail, carried out his difficult duties with grace, fairness to all, and a commanding sense of what is right.

He has been the leader of Senate Democrats. Yet, he has also been the leader of the entire Senate and has been our spokesman to the American people about the work of the people's business here in the Senate.

The Senate, and indeed our country, owes an enormous debt of gratitude to GEORGE MITCHELL for his service and I want to take this opportunity to express my deepest personal thanks and admiration to him as well. Fair winds and following seas to my friend GEORGE MITCHELL, as he embarks on a new phase of his life.

## THE RETIREMENT OF SENATOR HARLAN MATHEWS

Mr. EXON. Mr. President, I want to thank and commend the Senate service of our colleague, HARLAN MATHEWS.

Although he has only been with us a short time, HARLAN MATHEWS has certainly made his mark on the U.S. Senate. He has been a forceful advocate for the State of Tennessee and we have all benefited from his thoughtful approach to the many issues we face each day here in the U.S. Senate.

His courtesy, knowledge and helpfulness have been an example to us all.

As a son of Tennessee, he has ably followed in the footsteps of his predecessors, such as AL GORE and Howard Baker. I want to wish him all the best in the future and thank him for his service and friendship.

## THE RETIREMENT OF SENATOR HOWARD M. METZENBAUM

Mr. EXON. Mr. President, when the second session of the 103d Congress

ends, it will also be the end of an era with the retirement of Senator HOWARD METZENBAUM. And we all know "METZ."

HOWARD METZENBAUM has been one of the most tireless and knowledgeable Senators ever to occupy a seat in this Chamber. If there ever was a fighter in the Senate, HOWARD fit the definition. Working men and women all across America never had a better friend or more forceful advocate than HOWARD METZENBAUM.

When you stand with HOWARD METZENBAUM on an issue, you know you bring a powerful weapon to bear. On those unfortunate occasions when conscience dictates that you must oppose HOWARD, you had better roll up your sleeves and be prepared for a good and hard, but fair, fight.

I want to take this opportunity to wish HOWARD METZENBAUM, my dear friend, the wonderful future he deserves and to tell him how very much—how very, very much—he will be missed.

I have previously described him as "the conscience" of the Senate. History demonstrates that when a pillar of strength departs, the structure is supported by a replacement mainstay. I hope that is true. But finding a fitting replacement for HOWARD METZENBAUM is going to be a formidable task.

## THE RETIREMENT OF SENATOR DAVE DURENBERGER

Mr. EXON. Mr. President, as we close this session of the Senate, I want to take this opportunity to salute another dear friend of mine from the other side of the aisle, DAVE DURENBERGER.

Even though we have sat on opposite sides of the political aisle in the Chamber, I have never known partisanship to get in the way of DAVE DURENBERGER pitching in and doing good work on behalf of our country. A more recent example, one of many, was our joint collaboration to break the logjam on Senate passage of campaign finance reform legislation. The Exon-Durenberger compromise was the only reason we were able to gain bipartisan Senate passage of this legislation last year and served as a model for how this important reform could be enacted not only on the Federal level but on the State level, as well. I believe any future such reform effort will have to be based on this concept.

DAVE DURENBERGER has been a field commander in the long, hard fight to reform our health care system. While we have not met with success on that front, without the good work of DAVE DURENBERGER, we never would have even had a chance. We will miss his knowledgeable and conscientious approach to these and many other issues. I want to wish him well on his return to his beloved Minnesota and all the best in the future.

Mr. President, I thank the Chair, and I yield the floor.

Mr. President, 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. EXON. 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. EXON. Mr. President, I ask I may be allowed to continue as in morning business for a period of time.

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

Mr. EXON. I ask my friend, the assistant majority leader, to advise me at the time he is ready to close the Senate down.

## THE RETIREMENT OF SENATOR DAVID L. BOREN

Mr. EXON. Mr. President, I want to take this opportunity to salute my good friend—and a good, longstanding friend he is—DAVID BOREN, from the State of Oklahoma, as he retires from the U.S. Senate.

DAVID BOREN is one of my closest friends in the Senate. We came here at the same time following our service as Governors of our respective States. DAVID and Molly have been dear friends to Pat and me for many, many years and we will truly miss them here in the U.S. Senate.

DAVID BOREN can truly be described as a sound and sensible law maker. Even more than his tireless efforts to help bring fiscal sanity to our Federal Government, he may very well be even better known for his efforts to rejuvenate the ethics and procedures of this important body.

It was DAVID BOREN who has led the 8-year fight for campaign finance reform. Indeed, I was honored to be one of his foot soldiers in that longstanding effort.

Additionally, DAVID BOREN took on the daunting task of attempting to reorganize the Congress so that it may better serve the people.

DAVID BOREN has also been a leader in the important fight to reduce the perceived power of special interests and help restore the reputation of the U.S. Senate.

The normal types of bills which can be considered routine, although important, come and go. However, the types of issues that DAVID BOREN tackles head-on are the ones which can have even longer lasting and beneficial effects upon our Government.

So, as DAVID BOREN prepares to leave the Senate, I want to thank him for his friendship and all of his important work which we have shared during the past 16 years of our joint service.

Even though I never thought I would say this, I am happy for the University of Oklahoma that he will be assuming the helm and look forward to improved academic standards at Oklahoma and further de-emphasize on football.

Godspeed and the best of luck to my dear friend, DAVID BOREN.

## THE RETIREMENT OF DENNIS DECONCINI

Mr. EXON. Mr. President, I want to take this opportunity tonight to talk about another dear and wonderful friend who sits immediately adjacent to me in the U.S. Senate and has for a number of years. He is a departing friend and his name is DENNIS DECONCINI.

We have been seatmates, as I said, for a number of years and close friends and associates. The Senate will truly miss the senior Senator from Arizona when he retires at the end of his term, the end of this session. DENNIS DECONCINI is one of the most conscientious Members of this body. His common sense, knowledge, and persistence have become a hallmark in the U.S. Senate.

DENNIS and I have worked together on many important issues here in the Senate and he is a fighter who I have always been happy to have on my side.

For many years we had neighboring offices in the Hart Senate Office Building and it was also on his personal recommendation that I hired the principal consultant to my last reelection campaign.

The Senate owes a debt of gratitude to the outstanding work and personal contributions of DENNIS DECONCINI. I want to add his leaving is my own personal loss as well as that of the Senate, and wish him all the best in the future.

## THE RETIREMENT OF DONALD RIEGLE

Mr. EXON. Mr. President, when this session of the Senate concludes, and we expect it to conclude sometime in the latter part of this week, the Senate will lose one of the most colorful and conscientious Members of our body. He is DON RIEGLE, from Michigan. One of my first legislative fights on the floor of the U.S. Senate was with DON RIEGLE at my side. Even though we were very junior Members at the time, and were trounced in that early vote, I knew that I had made a friend and had found a forceful ally.

If there was a voice for fairness in the U.S. Senate, it was that of DON RIEGLE. If there was ever an advocate for ensuring that our actions here were the right ones for those who depend upon us the most, it was DON RIEGLE.

The Senate will truly miss him, as will I.

I wish him all the best in the future. I recognize and thank him for a quarter century of dedicated leadership in public service, and all of the accomplishments that he was instrumental in making.

I will miss a close friend and associate.

## THE RETIREMENT OF SENATOR MALCOLM WALLOP

Mr. EXON. Mr. President, as this congress comes to a close, a forceful and articulate voice in this body will be greatly missed, that of MALCOLM WALLOP.

From my neighboring State of Wyoming, MALCOLM WALLOP quickly earned my respect in this body. He is a man who will stand alone, if necessary, to advocate what he believes is right. He is a patriot and one whose stand on behalf of our national defense is outdone by no one.

Although a political aisle sometimes separated us in the Senate, MALCOLM WALLOP is a man upon whose word you could always count and whom I have always respected.

I want to take this opportunity to thank MALCOLM WALLOP for his friendship and service to our country and wish him all the best in the future.

While he will clearly be missed here, his great State of Wyoming will benefit from his return home full time.

## THE RETIREMENT OF SENATOR JOHN C. DANFORTH

Mr. EXON. Mr. President, the Senate will surely be losing one of its most thoughtful Members with the retirement of Senator JACK DANFORTH of Missouri, at the end of this session.

It is not often that someone gets elected to this body who has the breadth of experience of our distinguished colleague from Missouri. From business to the clergy to the law, JACK DANFORTH has been one of the key thinkers and doers on either side of the aisle. As one who has been both with and against JACK DANFORTH on various issues, I can say from experience that he can be a wonderful ally and a formidable foe.

JACK DANFORTH and I have served together for many years on the Senate Commerce Committee where together we have tackled some of the most complicated and vexing problems facing our country. The Senate will truly miss his keen understanding and knowledge in too many areas to mention today.

Additonally, JACK DANFORTH has been a good friend to whom you could always talk, learn something and get a straight answer.

I want to wish SENATOR DANFORTH all the best in his future endeavors. The Senate's loss will be the gain of those in the future who have the privilege of associating with him.

JACK DANFORTH and JIM EXON are both dedicated dyed-in-the-wool St. Louis Cardinal baseball fans. My challenge to him is, to demonstrate that my confidence in him is well placed, by challenging him to now go home and turn around the hapless fortune of the St. Louis Cardinals. If he can do this, I will forgive him even for being a registered Republican.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

## EXECUTIVE SESSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to executive session to consider the following nominations: Calendar items numbered 977, 978, 979, 980, 981, 982, 1123, 1178, 1191, 1226, 1294, 1295, 1296, 1297, 1298, 1299, 1300, 1301, 1302, 1303, 1304, 1305, 1306, 1307, 1308, 1309, 1310, 1311, 1312, 1313, 1314, 1315, 1317, and all nominations placed on the Secretary's desk in the Foreign Service; I further ask unanimous consent that the nominees be confirmed, en bloc, that any statements appear in the RECORD as if read, that upon confirmation the motions to reconsider be laid upon the table, en bloc, that the President be immediately notified of the Senate's action, and that the Senate return to legislative session.

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

The nominations considered and confirmed, en bloc, are as follows:

FEDERAL AGRICULTURAL MORTGAGE CORPORATION

Marilyn Fae Peters, of South Dakota, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

Clyde Arlie Wheeler, Jr., of Oklahoma, to be a Member of the Board of Directors of the Federal Agricultural Mortgage Corporation.

COMMODITY FUTURES TRADING COMMISSION

Sheila C. Bair, of Kansas, to be a Commissioner of the Commodity Futures Trading Commission for the remainder of the term expiring April 13, 1995.

Mary L. Schapiro, of the District of Columbia, to be Commissioner of the Commodity Futures Trading Commission for the term expiring April 13, 1999.

Mary L. Schapiro, of the District of Columbia, to be Chairman of the Commodity Futures Trading Commission, vice Wendy Lee Gramm, resigned.

FARM CREDIT ADMINISTRATION

Doyle Cook, of Washington, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for the term expiring May 21, 1998.

CORPORATION FOR PUBLIC BROADCASTING

Alan Sagner, of New Jersey, to be a Member of the Board of Directors of the Corporation for Public Broadcasting for the remainder of the term expiring January 31, 1998.

DEPARTMENT OF AGRICULTURE

Roger C. Viadero, of Virginia, to be Inspector General, Department of Agriculture.

DEPARTMENT OF THE TREASURY

Stuart L. Brown, of Maryland, to be an Assistant General Counsel in the Department of the Treasury (Chief Counsel for the Internal Revenue Service).

NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

Alan A. Diamonstein, of Virginia, to be a Member of the Board of Directors of the National Corporation for Housing Partnerships for the term expiring October 27, 1995.

UNITED STATES INFORMATION AGENCY

Robet B. Fulton, of Pennsylvania, to be an Association Director of the United States Information Agency.

AFRICAN DEVELOPMENT FOUNDATION

Cecil James Banks, of New Jersey, to be a Member of the Board of Directors of the African Development Foundation for a term expiring November 13, 1995.

INTER-AMERICAN FOUNDATION

Patricia Hill Williams, of New York, to be a Member of the Board of Directors of the Inter-American Foundation for a term expiring September 20, 2000.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

William Hybl, of Colorado, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring July 1, 1997. (Reappointment)

DEPARTMENT OF STATE

Vonya B. McCann, of Maryland, for the rank of Ambassador during her tenure of service as Deputy Assistant Secretary of State for International Communications and Information Policy.

UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

Walter R. Roberts, of the District of Columbia, to be a Member of the United States Advisory Commission on Public Diplomacy for a term expiring April 6, 1997. (Reappointment)

DEPARTMENT OF STATE

Patrick J. Leahy, of Vermont, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Frank H. Murkowski, of Alaska, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of United Nations.

Madeleine Korbel Albright, of the District of Columbia, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Edward William Gnehm, Jr., of Georgia, to be a Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

David Elias Birenbaum, of the District of Columbia, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Karl Frederick Inderfurth, of North Carolina, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

Victor Marrero, of New York, to be an Alternate Representative of the United States of America to the Forty-ninth Session of the General Assembly of the United Nations.

INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

Barbara Blum, of the District of Columbia, to be a Member of the Board of Trustees of

the Institute of American Indian and Alaska Native Culture and Arts Development for the remainder of the term expiring May 19, 1996.

LaDonna Harris, of New Mexico, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for a term expiring May 19, 2000.

Loren Kieve, of New Mexico, to be a Member of the Board of Trustees of the Institute of American Indian and Alaska Native Culture and Arts Development for the remainder of the term expiring May 19, 1996.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Harvey G. Ryland, of Florida, to be Deputy Director of the Federal Emergency Management Agency.

## NOMINATIONS PLACED ON THE SECRETARY'S DESK

IN THE FOREIGN SERVICE

Foreign Service nominations beginning Theodore Allegra, and ending Mary Elizabeth Swope, which nominations were received by the Senate and appeared in the Congressional Record of September 22, 1994.

Foreign Service nominations beginning George E. Moose, and ending Edward B. Wilson, which nominations were received by the Senate and appeared in the Congressional Record of September 22, 1994.

Foreign Service nominations beginning Charles E. Costello, and ending Eugene Morris, Jr., which nominations were received by the Senate and appeared in the Congressional Record of September 22, 1994.

Foreign Service nominations beginning Thomas J. Quinn, Jr., and ending Thomas L. Randall, which nominations were received by the Senate and appeared in the Congressional Record of September 22, 1994.

## STATEMENT ON THE NOMINATION OF ALAN SAGNER

Mr. HOLLINGS. Mr. President, I am pleased to rise in support of the nomination of Alan Sagner to be a member of the board of the Corporation for Public Broadcasting [CPB]. In his nomination hearing before the Senate Commerce Committee held on May 10, 1994, Mr. Sagner demonstrated that he is qualified to hold this important position.

Mr. Sagner has over 50 years of business experience. He has worked for many years for the States of New Jersey and New York, and has affiliations with numerous professional, civic, and charitable boards and associations.

As a member of the CPB board, Mr. Sagner will be called upon to maintain the commitment to quality and educational programming on public broadcasting, and to ensure that television fulfills its potential as a source of learning for all Americans in this country. In addition, Mr. Sagner will face the difficult challenge of identifying and funding the highest quality broadcast programming, while ensuring that the CPB demonstrates balance and objectivity.

I am a strong supporter of public broadcasting, which has made significant contributions not only to my home State of South Carolina but to all Americans. Public broadcasting has helped to fill the void left by commercial and cable television by providing countless hours of programming for educators, schools and universities, health care providers, and children and adults.

Mr. Sagner merits our support, and I urge the Senate to approve his appointment to the CPB board.

## LEGISLATIVE SESSION

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

## YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT ACT OF 1994—MESSAGE FROM THE HOUSE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 1146) to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, AZ, and for other purposes.

### TITLE I—YAVAPAI-PRESCOTT INDIAN TRIBE WATER RIGHTS SETTLEMENT

**SEC. 101. SHORT TITLE.**

This title may be cited as the "Yavapai-Prescott Indian Tribe Water Rights Settlement Act of 1994".

**SEC. 102. CONGRESSIONAL FINDINGS AND DECLARATIONS.**

(a) FINDINGS.—The Congress finds that—

(1) it is the policy of the United States, in fulfillment of its trust responsibility to the Indian tribes, to promote Indian self-determination and economic self-sufficiency, and to settle, wherever possible, the water rights claims of Indian tribes without lengthy and costly litigation;

(2) meaningful Indian self-determination and economic self-sufficiency depend on the development of viable Indian reservation economies;

(3) quantification of rights to water and development of facilities needed to utilize tribal water supplies effectively is essential to the development of viable Indian reservation economies, particularly in arid western States;

(4) on June 7, 1935, and by actions subsequent thereto, the United States established a reservation for the Yavapai-Prescott Indian Tribe in Arizona adjacent to the city of Prescott;

(5) proceedings to determine the full extent of Yavapai-Prescott Tribe's water rights are currently pending before the Superior Court of the State of Arizona in and for Maricopa County, as part of the general adjudication of the Gila River system and source;

(6) recognizing that final resolution of the general adjudication will take many years and entail great expense to all parties, prolong uncertainty as to the full extent of the Yavapai-Prescott Tribe's entitlement to water and the availability of water supplies to fulfill that entitlement, and impair orderly planning and development by the Tribe and the city of Prescott; the Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have sought to settle all claims to water between and among them;

(7) representatives of the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States have negotiated a Settlement Agreement to resolve all water rights claims between and among them, and to provide the Tribe with long term, reliable water supplies for the orderly development and maintenance of the Tribe's reservation;

(8) pursuant to the Settlement Agreement and the Water Service Agreement, the quantity of water made available to the Yavapai-Prescott Tribe by the city of Prescott and the Chino Valley Irrigation District will be secured, such Agreements will be continued in perpetuity, and the Tribe's continued on-reservation use of water for municipal and industrial, recreational and agricultural purposes will be provided for;

(9) to advance the goals of Federal Indian policy and to fulfill the trust responsibility of the United States to the Tribe, it is appropriate that the United States participate in the implementation of the Settlement Agreement and assist in firming up the long-term water supplies of the city of Prescott and the Yavapai-Prescott Tribe so as to enable the Tribe to utilize fully its water entitlements in developing a diverse, efficient reservation economy; and

(10) the assignment of the CAP contract of the Yavapai-Prescott Tribe and the CAP subcontract of the city of Prescott is a cost-effective means to ensure reliable, long-term water supplies for the Yavapai-Prescott Tribe and to promote efficient, environmentally sound use of available water supplies in the Verde River basin.

(b) DECLARATION OF PURPOSES.—The Congress declares that the purposes of this title are—

(1) to approve, ratify and confirm the Settlement Agreement among the Yavapai-Prescott Tribe, the city of Prescott, the Chino Valley Irrigation District, the State of Arizona and the United States;

(2) to authorize and direct the Secretary of the Interior to execute and perform the Settlement Agreement;

(3) to authorize the actions and appropriations necessary for the United States to fulfill its legal and trust obligations to the Yavapai-Prescott Tribe as provided in the Settlement Agreement and this title;

(4) to require that expenditures of funds obtained through the assignment of CAP contract entitlements by the Yavapai-Prescott Tribe and Prescott for the acquisition or development of replacement water supplies in the Verde River basin shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of riparian habitat, flows and biota of the Verde River and its tributaries; and

(5) to repeal section 406(k) of Public Law 101-628 which authorizes $30,000,000 in appropriations for the acquisition of land and water resources in the Verde River basin and for the development thereof as an alternative source of water for the Fort McDowell Indian Community.

**SEC. 103. DEFINITIONS.**

For purposes of this title:

(1) The term "CAP" means the Central Arizona Project, a reclamation project authorized under title III of the Colorado River Basin Project Act of 1968 (43 U.S.C. 1521 et seq.).

(2) The term "CAWCD" means the Central Arizona Water Conservation District, organized under the laws of the State of Arizona, which is the contractor under a contract

with the United States, dated December 1, 1988, for the delivery of water and repayment of costs of the Central Arizona Project.

(3) The term "CVID" means the Chino Valley Irrigation District, an irrigation district organized under the laws of the State of Arizona.

(4) The term "Prescott AMA" means the Active Management Area, established pursuant to Arizona law and encompassing the Prescott ground water basin, wherein the primary goal is to achieve balance between annual ground water withdrawals and natural and artificial recharge by the year 2025.

(5) The term "Prescott" means the city of Prescott, an Arizona municipal corporation.

(6) The term "Reservation" means the reservation established by the Act of June 7, 1935 (49 Stat. 332) and the Act of May 18, 1956 (70 Stat. 157) for the Yavapai-Prescott Tribe of Indians.

(7) The term "Secretary" means the Secretary of the United States Department of the Interior.

(8) The term "Settlement Agreement" means that agreement entered into by the city of Prescott, the Chino Valley Irrigation District, the Yavapai-Prescott Indian Tribe, the State of Arizona, and the United States, providing for the settlement of all water claims between and among them.

(9) The term "Tribe" means the Yavapai-Prescott Indian Tribe, a tribe of Yavapai Indians duly recognized by the Secretary.

(10) The term "Water Service Agreement" means that agreement between the Yavapai-Prescott Indian Tribe and the city of Prescott, as approved by the Secretary, providing for water, sewer, and effluent service from the city of Prescott to the Yavapai-Prescott Tribe.

**SEC. 104. RATIFICATION OF SETTLEMENT AGREEMENT.**

(a) APPROVAL OF SETTLEMENT AGREEMENT.—To the extent the Settlement Agreement does not conflict with the provisions of this title, such Agreement is approved, ratified and confirmed. The Secretary shall execute and perform such Agreement, and shall execute any amendments to the Agreement and perform any action required by any amendments to the Agreement which may be mutually agreed upon by the parties.

(b) PERPETUITY.—The Settlement Agreement and Water Service Agreement shall include provisions which will ensure that the benefits to the Tribe thereunder shall be secure in perpetuity. Notwithstanding the provisions of section 2103 of the Revised Statutes of the United States (25 U.S.C. 81) relating to the term of the Agreement, the Secretary is authorized and directed to approve the Water Service Agreement with a perpetual term.

**SEC. 105. ASSIGNMENT OF CAP WATER.**

The Secretary is authorized and directed to arrange for the assignment of, or to purchase, the CAP contract of the Tribe and the CAP subcontract of the city of Prescott to provide funds for deposit into the Verde River Basin Water Fund established pursuant to section 106.

**SEC. 106. REPLACEMENT WATER FUND; CONTRACTS.**

(a) FUND.—The Secretary shall establish a fund to be known as the "Verde River Basin Water Fund" (hereinafter called the "Fund") to provide replacement water for the CAP water relinquished by the Tribe and by Prescott. Moneys in the Fund shall be available without fiscal year limitations.

(b) CONTENT OF FUND.—The Fund shall consist of moneys obtained through the assignment or purchase of the contract and subcontract referenced in section 105, appropriations as authorized in section 109, and any moneys returned to the Fund pursuant to subsection (d) of this section.

(c) PAYMENTS FROM FUND.—The Secretary shall, subsequent to the publication of a statement of findings as provided in section 112(a), promptly cause to be paid from the Fund to the Tribe the amounts deposited to the Fund from the assignment or purchase of the Tribe's CAP contract, and, to the city of Prescott, the amounts deposited to the Fund from the assignment or purchase of the city's CAP subcontract.

(d) CONTRACTS.—The Secretary shall require, as a condition precedent to the payment of any moneys pursuant to subsection (c), that the Tribe and Prescott agree, by contract with the Secretary, to establish trust accounts into which the payments would be deposited and administered, to use such moneys consistent with the purpose and intent of section 107, to provide for audits of such accounts, and for the repayment to the Fund, with interest, any amount determined by the Secretary not to have been used within the purpose and intent of section 107.

**SEC. 107. EXPENDITURES OF FUNDS.**

(a) BY THE CITY.—All moneys paid to Prescott for relinquishing its CAP subcontract and deposited into a trust account pursuant to section 106(d), shall be used for the purposes of defraying expenses associated with the investigation, acquisition or development of alternative sources of water to replace the CAP water relinquished under this title. Alternative sources shall be understood to include, but not be limited to, retirement of agricultural land and acquisition of associated water rights, development of ground water resources outside the Prescott Active Management Area established pursuant to the laws of the State of Arizona, and artificial recharge; except that none of the moneys paid to Prescott may be used for construction or renovation of the city's existing waterworks or water delivery system.

(b) BY THE TRIBE.—All funds paid to the Tribe for relinquishing its CAP contract and deposited into a trust account pursuant to section 106(d), shall be used to defray its water service costs under the Water Service Agreement or to develop and maintain facilities for on-reservation water or effluent use.

(c) NO PER CAPITA PAYMENTS.—No amount of the Tribe's portion of the Fund may be used to make per capita payments to any member of the Tribe, nor may any amount of any payment made pursuant to section 106(c) be distributed as a dividend or per capita payment to any constituent, member, shareholder, director or employee of Prescott.

(d) DISCLAIMER.—Effective with the payment of funds pursuant to section 106(c), the United States shall not be liable for any claim or cause of action arising from the use of such funds by the Tribe or by Prescott.

**SEC. 108. ENVIRONMENTAL COMPLIANCE.**

The Secretary, the Tribe and Prescott shall comply with all applicable Federal environmental and State environmental and water laws in developing alternative water sources pursuant to section 107(a). Development of such alternative water sources shall not be inconsistent with the goals of the Prescott Active Management Area, preservation of the riparian habitat, flows and biota of the Verde River and its tributaries.

**SEC. 109. APPROPRIATIONS AUTHORIZATION AND REPEAL.**

(a) AUTHORIZATION.—There are authorized to be appropriated to the Fund established pursuant to section 106(a):

(1) Such sums as may be necessary, but not to exceed $200,000, to the Secretary for the Tribe's costs associated with judicial confirmation of the settlement.

(2) Such sums as may be necessary to establish, maintain and operate the gauging station required under section 111(e).

(b) STATE CONTRIBUTION.—The State of Arizona shall contribute $200,000 to the trust account established by the Tribe pursuant to the Settlement Agreement and section 106(d) for uses consistent with section 107(b).

(c) REPEAL.—Subsection 406(k) of the Act of November 28, 1990 (Public Law 101-628; 104 Stat. 4487) is repealed.

**SEC. 110. SATISFACTION OF CLAIMS.**

(a) WAIVER.—The benefits realized by the Tribe or any of its members under the Settlement Agreement and this title shall constitute full and complete satisfaction of all claims by the Tribe and all members' claims for water rights or injuries to water rights under Federal and State laws (including claims for water rights in ground water, surface water and effluent) from time immemorial to the effective date of this title, and for any and all future claims of water rights (including claims for water rights in ground water, surface water, and effluent) from and after the effective date of this title. Nothing in this title shall be deemed to recognize or establish any right of a member of the Tribe to water on the Tribe's reservation.

(b) WAIVER AND RELEASE.—The Tribe, on behalf of itself and its members, and the Secretary on behalf of the United States, are authorized and required, as a condition to the implementation of this title, to execute a waiver and release, except as provided in subsection (d) and the Settlement Agreement, of all claims of water rights or injuries to water rights (including water rights in ground water, surface water and effluent), from and after the effective date of this title, which the Tribe and its members may have, against the United States, the State of Arizona or any agency or political subdivision thereof, or any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona.

(c) WAIVER BY UNITED STATES.—Except as provided in subsection (d) and the Settlement Agreement, the United States, in its own right or on behalf of the Tribe, shall not assert any claim against the State of Arizona or any political subdivision thereof, or against any other person, corporation, or municipal corporation, arising under the laws of the United States or the State of Arizona based upon water rights or injuries to water rights of the Tribe and its members or based upon water rights or injuries to water rights held by the United States on behalf of the Tribe and its members.

(d) RIGHTS RETAINED.—In the event the waivers of claims authorized in subsection (b) of this section do not become effective pursuant to section 112(a), the Tribe, and the United States on behalf of the Tribe, shall retain the right to assert past and future water rights claims as to all reservation lands.

(e) JURISDICTION.—The United States District Court for the District of Arizona shall have original jurisdiction of all actions arising under this title, the Settlement Agreement and the Water Service Agreement, including review pursuant to title 9, United States Code, of any arbitration and award under the Water Service Agreement.

(f) CLAIMS.—Nothing in this title shall be deemed to prohibit the Tribe, or the United States on behalf of the Tribe, from asserting or maintaining any claims for the breach or enforcement of the Settlement Agreement or the Water Service Agreement.

(g) DISCLAIMER.—Nothing in this title shall affect the water rights or claims related to any trust allotment located outside the exterior boundaries of the reservation of any member of the Tribe.

(h) FULL SATISFACTION OF CLAIMS.—Payments made to Prescott under this title shall be in full satisfaction for any claim that Prescott might have against the Secretary or the United States related to the allocation, reallocation, relinquishment or delivery of CAP water.

**SEC. 111. MISCELLANEOUS PROVISIONS.**

(a) JOINING OF PARTIES.—In the event any party to the Settlement Agreement should file a lawsuit in any United States district court relating only and directly to the interpretation or enforcement of the Settlement Agreement or this title, naming the United States of America or the Tribe as parties, authorization is hereby granted to join the United States of America or the Tribe, or both, in any such litigation, and any claim by the United States of America or the Tribe to sovereign immunity from such suit is hereby waived. In the event Prescott submits a dispute under the Water Service Agreement to arbitration or seeks review by the United States District Court for the District of Arizona of an arbitration award under the Water Service Agreement, any claim by the Tribe to sovereign immunity from such arbitration or review is hereby waived.

(b) NO REIMBURSEMENT.—The United States of America shall make no claims for reimbursement of costs arising out of the implementation of the Settlement Agreement or this title against any lands within the Yavapai-Prescott Indian Reservation, and no assessment shall be made with regard to such costs against such lands.

(c) WATER MANAGEMENT.—The Tribe shall establish a ground water management plan for the Reservation which, except to be consistent with the Water Service Agreement, the Settlement Agreement and this title, will be compatible with the ground water management plan in effect for the Prescott Active Management Area and will include an annual information exchange with the Arizona Department of Water Resources. In establishing a ground water management plan pursuant to this section, the Tribe may enter into a Memorandum of Understanding with the Arizona Department of Water Resources for consultation. Notwithstanding any other law, the Tribe may establish a tribal water code, consistent with the above-described water management plan, under which the Tribe will manage, regulate, and control the water resources granted it in the Settlement Act, the Settlement Agreement, and the Water Service Agreement, except that such management, regulation and control shall not authorize any action inconsistent with the trust ownership of the Tribe's water resources.

(d) GAUGING STATION.—The Secretary, acting through the Geological Survey, shall establish, maintain and operate a gauging station at the State Highway 89 bridge across Granite Creek adjacent to the reservation to assist the Tribe and the CVID in allocating the surface flows from Granite Creek as provided in the Settlement Agreement.

**SEC. 112. EFFECTIVE DATE.**

(a) WAIVERS AND RELEASES.—The waivers and releases required by section 110(b) of this title shall become effective as of the date the Secretary causes to be published in the Federal Register a statement of findings that—

(1)(A) the Secretary has determined that an acceptable party, or parties, have executed contracts for the assignments of the Tribe's CAP contract and the city of Prescott's CAP subcontract, and the proceeds from the assignments have been deposited into the Fund as provided in section 106(d); or,

(B) the Secretary has executed contracts for the acquisition of the Tribe's CAP contract and the city of Prescott's CAP subcontract as provided in section 106(d);

(2) the stipulation which is attached to the Settlement Agreement as exhibit 9.5, has been approved in substantially the form of such exhibit no later than December 31, 1994;

(3) the Settlement Agreement has been modified to the extent it is in conflict with this title and has been executed by the Secretary; and

(4) the State of Arizona has appropriated and deposited into the Tribe's trust account $200,000 as required by the Settlement Agreement.

(b) DEADLINE.—If the actions described in paragraphs (1), (2), (3), and (4) of subsection (a) have not occurred by December 31, 1995, any contract between Prescott and the United States entered into pursuant to section 106(d) shall not thereafter be effective, and any funds appropriated by the State of Arizona pursuant to the Settlement Agreement shall be returned by the Tribe to the State of Arizona.

**SEC. 113. OTHER CLAIMS.**

(a) OTHER TRIBES.—Nothing in the Settlement Agreement or this title shall be construed in any way to quantify or otherwise adversely affect the land and water rights, claims or entitlements to water of any Arizona Indian tribe, band or community, other than the Tribe.

(b) FEDERAL AGENCIES.—Nothing in this title shall be construed to affect the water rights or the water rights claims of any Federal agency, other than the Bureau of Indian Affairs on behalf of the Tribe.

## TITLE II—AUBURN INDIAN RESTORATION

**SEC. 201. SHORT TITLE.**

This title may be cited as the "Auburn Indian Restoration Act".

**SEC. 202. RESTORATION OF FEDERAL RECOGNITION, RIGHTS, AND PRIVILEGES.**

(a) FEDERAL RECOGNITION.—Notwithstanding any other provision of law, Federal recognition is hereby extended to the Tribe. Except as otherwise provided in this title, all laws and regulations of general application to Indians or nations, tribes, or bands of Indians that are not inconsistent with any specific provision of this title shall be applicable to the Tribe and its members.

(b) RESTORATION OF RIGHTS AND PRIVILEGES.—Except as provided in subsection (d), all rights and privileges of the Tribe and its members under any Federal treaty, Executive order, agreement, or statute, or under any other authority which were diminished or lost under the Act of August 18, 1958 (Public Law 85-671), are hereby restored and the provisions of such Act shall be inapplicable to the Tribe and its members after the date of enactment of this title.

(c) FEDERAL SERVICES AND BENEFITS.—Notwithstanding any other provision of law and without regard to the existence of a reservation, the Tribe and its members shall be eligible, on and after the date of enactment of this title, for all Federal services and benefits furnished to federally recognized Indian tribes or their members. In the case of Federal services available to members of federally recognized Indian tribes residing on a reservation, members of the Tribe residing in the Tribe's service area shall be deemed to be residing on a reservation.

(d) HUNTING, FISHING, TRAPPING, AND WATER RIGHTS.—Nothing in this title shall expand, reduce, or affect in any manner any hunting, fishing, trapping, gathering, or water right of the Tribe and its members.

(e) INDIAN REORGANIZATION ACT APPLICABILITY.—The Act of June 18, 1934 (25 U.S.C. 461 et seq.), shall be applicable to the Tribe and its members.

(f) CERTAIN RIGHTS NOT ALTERED.—Except as specifically provided in this title, nothing in this title shall alter any property right or obligation, any contractual right or obligation, or any obligation for taxes levied.

**SEC. 203. ECONOMIC DEVELOPMENT.**

(a) PLAN FOR ECONOMIC DEVELOPMENT.—The Secretary shall—

(1) enter into negotiations with the governing body of the Tribe with respect to establishing a plan for economic development for the Tribe;

(2) in accordance with this section and not later than 2 years after the adoption of a tribal constitution as provided in section 107, develop such a plan; and

(3) upon the approval of such plan by the governing body of the Tribe, submit such plan to the Congress.

(b) RESTRICTIONS.—Any proposed transfer of real property contained in the plan developed by the Secretary under subsection (a) shall be consistent with the requirements of section 104.

**SEC. 204. TRANSFER OF LAND TO BE HELD IN TRUST.**

(a) LANDS TO BE TAKEN IN TRUST.—The Secretary shall accept any real property located in Placer County, California, for the benefit of the Tribe if conveyed or otherwise transferred to the Secretary if, at the time of such conveyance or transfer, there are no adverse legal claims on such property, including outstanding liens, mortgages, or taxes owed. The Secretary may accept any additional acreage in the Tribe's service area pursuant to the authority of the Secretary under the Act of June 18, 1934 (25 U.S.C. 461 et seq.).

(b) FORMER TRUST LANDS OF THE AUBURN RANCHERIA.—Subject to the conditions specified in this section, real property eligible for trust status under this section shall include fee land held by the White Oak Ridge Association, Indian owned fee land held communally pursuant to the distribution plan prepared and approved by the Bureau of Indian Affairs on August 13, 1959, and Indian owned fee land held by persons listed as distributees or dependent members in such distribution plan or such distributees' or dependent members' Indian heirs or successors in interest.

(c) LANDS TO BE PART OF THE RESERVATION.—Subject to the conditions imposed by this section, any real property conveyed or transferred under this section shall be taken in the name of the United States in trust for the Tribe or, as applicable, an individual member of the Tribe, and shall be part of the Tribe's reservation.

**SEC. 205. MEMBERSHIP ROLLS.**

(a) COMPILATION OF TRIBAL MEMBERSHIP ROLL.—Within 1 year after the date of the enactment of this title, the Secretary shall, after consultation with the Tribe, compile a membership roll of the Tribe.

(b) CRITERIA FOR ENROLLMENTS.—(1) Until a tribal constitution is adopted pursuant to section 207, an individual shall be placed on the membership roll if the individual is living, is not an enrolled member of another federally recognized Indian tribe, is of United Auburn Indian Community ancestry, possesses at least one-eighth or more of Indian blood quantum, and if—

(A) the individual's name was listed on the Auburn Indian Rancheria distribution roll compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85-671;

(B) the individual was not listed on, but met the requirements that had to be met to be listed on, the Auburn Indian Rancheria distribution list compiled and approved by the Bureau of Indian Affairs on August 13, 1959, pursuant to Public Law 85-671; or

(C) the individual is a lineal descendant of an individual, living or dead, identified in subparagraph (A) or (B).

(2) After adoption of a tribal constitution pursuant to section 207, such tribal constitution shall govern membership in the Tribe, except that in addition to meeting any other criteria imposed in such tribal constitution, any person added to the membership roll shall be of United Auburn Indian Community ancestry and shall not be an enrolled member of another federally recognized Indian tribe.

(c) CONCLUSIVE PROOF OF UNITED AUBURN INDIAN COMMUNITY ANCESTRY.—For the purpose of subsection (b), the Secretary shall accept any available evidence establishing United Auburn Indian Community ancestry. The Secretary shall accept as conclusive evidence of United Auburn Indian Community ancestry information contained in the Auburn Indian Rancheria distribution list compiled by the Bureau of Indian Affairs on August 13, 1959.

**SEC. 206. INTERIM GOVERNMENT.**

Until a new tribal constitution and bylaws are adopted and become effective under section 207, the Tribe's governing body shall be an Interim Council. The initial membership of the Interim Council shall consist of the members of the Executive Council of the Tribe on the date of the enactment of this title, and the Interim Council shall continue to operate in the manner prescribed for the Executive Council under the tribal constitution adopted July 20, 1991, as long as such constitution is not contrary to Federal law. Any new members filling vacancies on the Interim council shall meet the enrollment criteria set forth in section 205(b) and be elected in the same manner as are Executive Council members under the tribal constitution adopted July 20, 1991.

**SEC. 207. TRIBAL CONSTITUTION.**

(a) ELECTION; TIME AND PROCEDURE.—Upon the completion of the tribal membership roll under section 205(a) and upon the written request of the Interim Council, the Secretary shall conduct, by secret ballot, an election for the purpose of adopting a constitution and bylaws for the Tribe. The election shall be held according to section 16 of the Act of June 18, 1934 (25 U.S.C. 476), except that absentee balloting shall be permitted regardless of voter residence.

(b) ELECTION OF TRIBAL OFFICIALS; PROCEDURES.—Not later than 120 days after the Tribe adopts a constitution and bylaws under subsection (a), the Secretary shall conduct an election by secret ballot for the purpose of electing tribal officials as provided in such tribal constitution. Such election shall be conducted according to the procedures specified in subsection (a) except to the extent that such procedures conflict with the tribal constitution.

**SEC. 208. DEFINITIONS.**

For purposes of this title:

(1) The term "Tribe" means the United Auburn Indian Community of the Auburn Rancheria of California.

(2) The term "Secretary" means the Secretary of the Interior.

(3) The term "Interim Council" means the governing body of the Tribe specified in section 206.

(4) The term "member" means those persons meeting the enrollment criteria under section 205(b).

(5) The term "State" means the State of California.

(6) The term "reservation" means those lands acquired and held in trust by the Secretary for the benefit of the Tribe pursuant to section 204.

(7) The term "service area" means the counties of Placer, Nevada, Yuba, Sutter, El Dorado, and Sacramento, in the State of California.

**SEC. 209. REGULATIONS.**

The Secretary may promulgate such regulations as may be necessary to carry out the provisions of this title.

## TITLE III—CENTRAL UTAH PROJECT

**SEC. 301. APPLICATION OF THE WARREN ACT.**

(a) AUTHORITY.—The Secretary of the Interior may—

(1) enter into contracts with private entities pursuant to the Act of February 21, 1911 (commonly known as the "Warren Act") (36 Stat. 925 et seq., chapter 141; 43 U.S.C. 523 et seq.), for the impounding, storage, and carriage of nonproject water for domestic, municipal, fish and wildlife, industrial, and other beneficial purposes, using any facilities associated with the Central Utah Project, Utah; and

(2) enter into agreements, under terms and conditions authorized for contracts under such Act, with appropriate officials of other Federal agencies, municipalities, public water districts and agencies, and States for impounding, storage, and carriage of nonproject water for purposes described in paragraph (1) using facilities referred to in such paragraph.

(b) NONPROJECT WATER DEFINED.—In subsection (a), the term "nonproject water" means water that is not from a Federal Reclamation project.

**SEC. 302. UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION.**

Section 301(d) of Public Law 102-575 (106 Stat. 4626) is amended by adding the following new paragraph at the end:

"(8) Any employee of the District or member of the Board of Directors of the District may serve as a member of the Commission.".

## TITLE IV—MOUNTAIN PARK PROJECT

**SEC. 401. SHORT TITLE.**

This title may be cited as the "Mountain Park Project Act of 1994".

**SEC. 402. MODIFICATION OF MOUNTAIN PARK PROJECT.**

(a) IN GENERAL.—The first section of the Act entitled "An Act to authorize the Secretary of the Interior to construct, operate, and maintain the Mountain Park reclamation project, Oklahoma, and for other purposes" (Public Law 90-503; 82 Stat. 853) is amended by striking out "and controlling floods." and inserting in lieu thereof "controlling floods, and environmental quality activities. As used in this Act, the term 'environmental quality activity' means any activity that primarily benefits the quality of natural environmental resources.".

(b) REALLOCATION OF PROJECT COSTS.—Such Act is further amended by adding at the end the following new section:

"SEC. 7. (a)(1) Not later than 180 days after the date of enactment of the Mountain Park Project Act of 1994, the Secretary of the Interior (referred to in this section as the 'Secretary') shall—

"(A) conduct appropriate investigations to determine environmental quality activities that could be carried out for the Mountain Park project; and

"(B) on the basis of the determination made under subparagraph (A), make an appropriate reallocation of the costs of the project under sections 2 and 3 (referred to in this section as 'project costs') to accommodate the environmental quality activities that the Secretary authorizes pursuant to this subsection.

"(2) In conducting investigations under this subsection, the Secretary shall examine the benefits to natural environmental resources achievable from an environmental quality activity that requires reallocating water or using facilities or land of the Mountain Park project, including any of the following activities:

"(A) Developing in-stream flows.

"(B) Developing wetland habitat.

"(C) Any other environmental quality activity that the Secretary determines to be appropriate to benefit the overall quality of the environment.

"(b)(1) Upon completion of the investigations under subsection (a)(2), the Secretary shall carry out the following:

"(A) The preparation of a proposed reallocation of project costs in conformance with subsection (a)(1)(B).

"(B) Negotiations with the Mountain Park Master Conservancy District (referred to in this section as the 'District') to amend the contract executed by the District pursuant to this Act to adjust the obligation of the District to repay project costs, as described in section 2, to reflect the reallocation of nonreimbursable project costs.

"(2) For the purposes of paragraph (1), project costs associated with an environmental quality activity specified by the Secretary pursuant to subsection (a)(2) shall be nonreimbursable project costs.

"(c)(1) Notwithstanding any other provision of this Act, the Secretary is authorized to accept prepayment of the repayment obligation of the District for the reimbursable construction costs of the project allocated to municipal and industrial water supply for the city of Altus, Oklahoma, the city of Frederick, Oklahoma, or the city of Snyder, Oklahoma (or any combination thereof), and, upon receipt of such prepayment, the District's obligation to the United States shall be reduced by the amount of such costs, and any security held therefor, shall be released by the Secretary.

"(2) Any prepayment made pursuant to subsection (c)(1) shall realize to the United States an amount calculated by discounting the remaining repayment obligation by the interest rate determined in accordance with subsection (d).

"(d)(1) The Secretary of the Treasury shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget and the Department of Treasury Financial Manual. In determining the interest rate, the Secretary shall consider the price of the District's obligation if it were to be sold on the open market to a third party.

"(2) If the District uses tax-exempt financing to finance a prepayment under subsection (c)(1), then the interest rate by which the Secretary discounts the remaining payments due on the District's obligation shall be adjusted by an amount that compensates the United States for the direct or indirect loss of future tax revenues.

"(e) Notwithstanding any payment made by the District pursuant to this section or pursuant to any contract with the Secretary, title to the project facilities shall remain with the United States.".

(c) REPEAL.—Section 3101 of the Reclamation Projects Authorization and Adjustment Act of 1992 (Public Law 102-575; 106 Stat. 4698) is repealed.

## TITLE V—SAN ANGELO FEDERAL RECLAMATION PROJECT

**SEC. 501. INCREASE IN IRRIGABLE ACREAGE.**

(a) IN GENERAL.—The first section of the Act entitled "An Act to provide for the construction by the Secretary of the Interior of the San Angelo Federal reclamation project, Texas, and for other purposes", approved August 16, 1957 (71 Stat. 372), is amended by striking "ten thousand acres" and inserting "fifteen thousand acres".

(b) AMENDMENT TO CONTRACT.—The Secretary of the Interior is authorized to amend contract numbered 14-06-500-369 to reflect the amendment made by subsection (a), except that such amendment shall not be construed to require a change in the proportionate amount of all remaining payments due and payable to the United States by Tom Green County Water Control Improvement District No. 1.

## TITLE VI—SHOSHONE FEDERAL RECLAMATION PROJECT

**SEC. 601. CONVEYANCE TO THE BIG HORN COUNTY SCHOOL DISTRICT.**

The Secretary of the Interior shall convey, by quit claim deed, to the Big Horn County School District, Wyoming, all right, title, and interest of the United States in and to the following described lands in Big Horn County, Wyoming: Lot 18 of Block 22, Lots 1-6 of Block 25, all of Block 21, and all within the town of Frannie, Wyoming, in the S½NW¼NW¼ and N½SW¼NW¼ of T. 58N., R. 97 W., Big Horn County.

## TITLE VII—LAKE POWELL

**SEC. 701. ELIMINATION OF 24-HOUR RESTRICTION.**

The second sentence of section 104(c) of the Reclamation Development Act of 1974 (Public Law 93-493; 88 Stat. 1488) is amended by striking "or three million gallons of water in any twenty-four-hour period,".

## TITLE VIII—MNI WICONI RURAL WATER SUPPLY PROJECT

**SEC. 801. SHORT TITLE.**

This title may be cited as the "Mni Wiconi Act Amendments of 1994".

**SEC. 802. REFERENCE.**

Whenever in this title a section or other provision is amended or repealed, such amendment or repeal shall be considered to be made to that section or other provision of the Mni Wiconi Project Act of 1988 (102 Stat. 2566).

**SEC. 803. FINDINGS AND PURPOSES.**

(a) FINDINGS.—Subsection (a) of section 2 (102 Stat. 2566) is amended—

(1) in paragraph (1), by striking "Reservation" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation";

(2) by redesignating paragraphs (3), (4), and (5) as paragraphs (4), (5), and (6), respectively, and by inserting after paragraph (2) the following new paragraph:

"(3) the lack of water supplies on the Rosebud Reservation and Lower Brule Reservation restrict efforts to promote economic development on those reservations;";

(3) in paragraph (5), as redesignated by paragraph (2) of this subsection, by striking "Reservation;" and inserting "Reservation, Rosebud Indian Reservation, and Lower Brule Indian Reservation;"; and

(4) in paragraph (6), as redesignated by paragraph (2) of this subsection, by inserting "Rosebud Indian Reservation and Lower Brule Indian Reservation," after "Reservation,".

(b) PURPOSE.—Subsection (b) of section 2 (102 Stat. 2566) is amended by inserting ", Rosebud Indian Reservation, and Lower Brule Indian Reservation" after "Reservation" each place it appears.

**SEC. 804. OGLALA SIOUX RURAL WATER SUPPLY SYSTEM.**

(a) AUTHORIZATION.—Subsection (a) of section 3 (102 Stat. 2567) is amended—

(1) in the matter preceding paragraph (1), by striking "1988." and inserting "1988, and as more specifically described in the Final Engineering Report dated May, 1993."; and

(2) by amending paragraph (3) to read as follows:

"(3) facilities to allow for interconnections with the West River Rural Water System, Lyman-Jones Rural Water System, Rosebud Sioux Rural Water System, and Lower Brule Sioux Rural Water System;".

(b) CONSTRUCTION REQUIREMENTS.—Subsection (d) of such section (102 Stat. 2568) is amended—

(1) by striking "West River Rural Water System, and the Lyman-Jones Rural Water System,"; and by inserting "West River Rural Water System, the Lyman-Jones Rural Water System, the Rosebud Sioux Rural Water System, and the Lower Brule Sioux Rural Water System,"; and

(2) by striking "three systems" and inserting "five systems authorized under this Act".

(c) TITLE TO SYSTEM.—Subsection (e) of such section (102 Stat. 2568) is amended by inserting "or encumbered" after "transferred".

***SEC. 805. WEST RIVER RURAL WATER SYSTEM AND LYMAN-JONES RURAL WATER SYSTEM.***

*Section 4(a) of the Act is amended—*

*(1) in paragraph (2), by striking out "65 per centum" and inserting in lieu thereof "80 percent"; and*

*(2) in paragraph (3), by striking out "35 per centum" and inserting in lieu thereof "20 percent".*

**SEC. 806. ROSEBUD SIOUX RURAL WATER SYSTEM AND LOWER BRULE SIOUX RURAL WATER SYSTEM.**

The Act is amended by inserting after section 3 the following:

**"SEC. 3A. ROSEBUD SIOUX RURAL WATER SYSTEM.**

"(a) AUTHORIZATION.—The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Rosebud Sioux Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993. The Rosebud Sioux Rural Water system shall consist of—

"(1) necessary pumping and treatment facilities;

"(2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water System to the Rosebud Indian Reservation;

"(3) facilities to allow for interconnections with the Lyman-Jones Rural Water Supply System;

"(4) distribution and treatment facilities to serve the needs of the Rosebud Indian Reservation, and other areas described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Rosebud Indian Reservation;

"(5) appurtenant buildings and property rights;

"(6) necessary property and property rights;

"(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

"(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Rosebud Sioux Tribe and reservation villages, towns, and municipalities.

"(b) AGREEMENT WITH NON-FEDERAL ENTITY TO PLAN, DESIGN, CONSTRUCT, OPERATE AND MAINTAIN THE ROSEBUD SIOUX RURAL WATER SUPPLY SYSTEM.—

"(1) In carrying out subsection (a), the Secretary, with the concurrence of the Rosebud Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Rosebud Sioux Rural Water System.

"(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

"(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design; construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

"(B) the procedures and requirements for approval and acceptance of such design and construction; and

"(C) the rights, responsibilities, and liabilities of each party to the agreement.

"(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Rosebud Indian Reservation.

"(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Rosebud Sioux Tribe.

"(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Rosebud Sioux Rural Water System.

"(c) SERVICE AREA.—The service area of the Rosebud Sioux Rural Water System shall extend to all of Todd County, South Dakota, and to all other territory and lands generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993 and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May 1993.

"(d) CONSTRUCTION REQUIREMENTS.—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Rosebud Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the municipal, rural and industrial

water supply requirements of the Rosebud Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Rosebud Sioux Tribe Municipal, Rural and Industrial Water Needs Assessment, dated July 1993, and the Final Engineering Report for the Mni Wiconi Rural Water Supply Project dated May, 1993, taking into account the effects of the conservation plans described in section 5. The Rosebud Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Rosebud Sioux Rural Water System.

"(e) TITLE TO SYSTEM.—Title to the Rosebud Sioux Rural Water System shall be held in trust for the Rosebud Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

"(f) TECHNICAL ASSISTANCE.—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Rosebud Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Rosebud Sioux Rural Water System, including (but not limited to) operation and management training.

"(g) APPLICATION OF THE INDIAN SELF-DETERMINATION ACT.—Planning, design, construction, and operation of the Rosebud Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. 450).

**"SEC. 3B. LOWER BRULE SIOUX RURAL WATER SYSTEM.**

"(a) AUTHORIZATION.—The Secretary is authorized and directed to plan, design, construct, operate, maintain, and replace a municipal, rural, and industrial water system, to be known as the Lower Brule Sioux Rural Water System, as generally described in the Final Engineering Report for the Mni Wiconi Rural Water Supply Project, dated May 1993. The Lower Brule Sioux Rural Water System shall consist of—

"(1) necessary pumping and treatment facilities;

"(2) pipelines extending from the points of interconnections with the Oglala Sioux Rural Water Supply System to the Lower Brule Indian Reservation;

"(3) facilities to allow for interconnections with the Lyman-Jones Rural Water Supply System;

"(4) distribution and treatment facilities to serve the needs of the Lower Brule Indian Reservation, including (but not limited to) the purchase, improvement and repair of existing water systems, including systems owned by individual tribal members and other residents of the Lower Brule Indian Reservation;

"(5) appurtenant buildings and property rights;

"(6) necessary property and property rights;

"(7) electrical power transmission and distribution facilities necessary for services to water systems facilities; and

"(8) such other pipelines, pumping plants, and facilities as the Secretary deems necessary and appropriate to meet the water supply, economic, public health, and environmental needs of the reservation, including (but not limited to) water storage tanks, water lines, and other facilities for the Lower Brule Sioux Tribe and reservation villages, towns and municipalities.

"(b) AGREEMENT WITH NON-FEDERAL ENTITY TO PLAN, DESIGN, CONSTRUCT, OPERATE AND MAINTAIN THE LOWER BRULE SIOUX RURAL WATER SUPPLY SYSTEM.—

"(1) In carrying out subsection (a), the Secretary, with the concurrence of the Lower Brule Sioux Tribal Council, shall enter into cooperative agreements with the appropriate non-Federal entity or entities for planning, designing, constructing, operating, maintaining, and replacing the Lower Brule Sioux Rural Water System.

"(2) Such cooperative agreements shall set forth, in a manner acceptable to the Secretary—

"(A) the responsibilities of the parties for needs assessment, feasibility, and environmental studies; engineering and design, construction; water conservation measures; and administration of any contracts with respect to this subparagraph;

"(B) the procedures and requirements for approval and acceptance of such design and construction; and

"(C) the rights, responsibilities, and liabilities of each party to the agreement.

"(3) Such cooperative agreements may include purchase, improvement, and repair of existing water systems, including systems owned by individual tribal members and other residents located on the Lower Brule Indian Reservation.

"(4) The Secretary may unilaterally terminate any cooperative agreement entered into pursuant to this section if the Secretary determines that the quality of construction does not meet all standards established for similar facilities constructed by the Secretary or that the operation and maintenance of the system does not meet conditions acceptable to the Secretary for fulfilling the obligations of the United States to the Lower Brule Sioux Tribe.

"(5) Upon execution of any cooperative agreement authorized under this section, the Secretary is authorized to transfer to the appropriate non-Federal entity, on a nonreimbursable basis, the funds authorized to be appropriated by section 10(a) for the Lower Brule Sioux Rural Water System.

"(c) SERVICE AREA.—The service area of the Lower Brule Sioux Rural Water System shall be the boundaries of the Lower Brule Indian Reservation.

"(d) CONSTRUCTION REQUIREMENTS.—The pumping plants, pipelines, treatment facilities, and other appurtenant facilities for the Lower Brule Sioux Rural Water System shall be planned and constructed to a size sufficient to meet the municipal, rural, and industrial water supply requirements of the Lower Brule Sioux Tribe and the Lyman-Jones Rural Water System, as generally described in the Final Engineering Report of the Mni Wiconi Rural Water Supply Project, dated May 1993, taking into account the effects of the conservation plans described in section 5. The Lower Brule Sioux Rural Water System and Lyman-Jones Rural Water System may be interconnected and provided with water service from common facilities. Any joint costs associated with common facilities shall be allocated to the Lower Brule Sioux Rural Water System.

"(e) TITLE TO SYSTEM.—Title to the Lower Brule Sioux Rural Water System shall be held in trust for the Lower Brule Sioux Tribe by the United States and shall not be transferred or encumbered without a subsequent Act of Congress.

"(f) TECHNICAL ASSISTANCE.—The Secretary is authorized and directed to provide such technical assistance as may be necessary to the Lower Brule Sioux Tribe to plan, develop, construct, operate, maintain, and replace the Lower Brule Sioux Rural Water System, including (but not limited to) operation and management training.

"(g) APPLICATION OF THE INDIAN SELF-DETERMINATION ACT.—Planning, design, construction, and operation of the Lower Brule Sioux Rural Water System shall be subject to the provisions of the Indian Self-Determination Act (Public Law 93-638, 25 U.S.C. 450).".

**SEC. 807. WEST RIVER RURAL WATER SYSTEM AND LYMAN-JONES RURAL WATER SYSTEM.**

(a) SERVICE AREA.—Subsection (d) of section 4 (102 Stat. 2569) is amended by striking the period at the end thereof and inserting ", and Final Engineering Report dated May 1993.".

(b) INTERCONNECTION OF FACILITIES AND WAIVER OF CHARGES.—Section 4 of the Act (102 Stat. 2568) is amended by redesignating subsection (f) as subsection (g) and inserting after subsection (e) the following new subsection:

"(f) INTERCONNECTION OF FACILITIES AND WAIVER OF CHARGES.—The Secretary is authorized to interconnect the Lyman-Jones Rural Water System, and the West River Rural Water System, with each of the other systems authorized under this Act, and to provide for the delivery of water to the West River Rural Water System, and Lyman-Jones Rural Water System, without charge or cost, from the Missouri River and through common facilities of the Oglala Sioux Rural Water Supply System, Rosebud Rural Water System and Lower Brule Rural Water System.".

**SEC. 808. WATER CONSERVATION.**

Section 5 of the Act (102 Stat. 2570) is amended by striking "The non-Federal parties (including the Oglala Sioux Tribe)" and inserting "Each non-Federal party (including the Oglala Sioux Tribe, Rosebud Sioux Tribe, and Lower Brule Sioux Tribe)".

**SEC. 809. MITIGATION OF FISH AND WILDLIFE LOSSES.**

Section 6 of the Act (102 Stat. 2570) is amended—

(1) in subsection (a)—

(A) by inserting ", ROSEBUD SIOUX RURAL WATER SUPPLY SYSTEM, LOWER BRULE SIOUX RURAL WATER SUPPLY SYSTEM," after "SUPPLY SYSTEM"; and

(B) by inserting "Rosebud Sioux Rural Water Supply System, Lower Brule Sioux Rural Water Supply System," after "Supply System,"; and

(2) in subsection (b)—

(A) by inserting ", all Indian tribes residing on reservations within the State of South Dakota," after "South Dakota";

(B) by inserting "and terrestrial" after "wildlife";

(C) by striking "Such plans" and inserting "Such recommendations"; and

(D) by adding at the end the following:

"The Indian tribes shall be afforded an opportunity to review and concur within any recommendations affecting their reservations before they are submitted to Congress.".

**SEC. 810. PROHIBITION OF USE OF FUNDS FOR IRRIGATION PURPOSES.**

Section 7 of the Act (102 Stat. 2570) is amended by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Rural Water Supply System,".

**SEC. 811. RULE OF CONSTRUCTION.**

Section 8 of the Act (102 Stat. 2570) is amended—

(1) by inserting ", Rosebud Sioux Tribe, and Lower Brule Sioux Tribe" after "Tribe"; and

(2) by striking "or construct" and inserting "construct, maintain, or replace".

**SEC. 812. USE OF PICK-SLOAN POWER.**

(a) IN GENERAL.—Subsection (a) of section 9 (102 Stat. 2570) is amended by striking "sections 3" and inserting "sections 3, 3A, 3B,".

(b) DEFINITIONS.—Subsection (e)(1) of section 9 (102 Stat. 2571) is amended by striking "Supply System," and inserting "Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System,".

**SEC. 813. AUTHORIZATION OF APPROPRIATIONS.**

Section 10 of the Act (102 Stat. 2571) is amended to read as follows:

**"SEC. 10. AUTHORIZATION OF APPROPRIATIONS.**

"(a) PLANNING, DESIGN, AND CONSTRUCTION.—There are authorized to be appropriated $263,241,000 for the planning, design, and construction of the Oglala Sioux Rural Water Supply System, the Rosebud Sioux Rural Water Supply System, the Lower Brule Sioux Rural Water Supply System, the West River Rural Water Supply System, and the Lyman-Jones Rural Water Supply System described in sections 3, 3A, 3B, and 4. Such funds are authorized to be appropriated only through the end of the year 2003. The funds authorized to be appropriated by the first sentence of this section, less any amounts previously obligated for the Systems, may be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations in development costs incurred after October 1, 1992, as indicated by engineering costs indices applicable for the type of construction involved.

"(b) OPERATION AND MAINTENANCE OF OGLALA SIOUX RURAL WATER SUPPLY SYSTEM, ROSEBUD SIOUX RURAL WATER SUPPLY SYSTEM AND LOWER BRULE SIOUX RURAL WATER SUPPLY SYSTEM.—There are authorized to be appropriated such sums as may be necessary for the operation and maintenance of the Oglala Sioux Rural Water Supply System, Rosebud Sioux Rural Water Supply System and Lower Brule Sioux Rural Water Supply System. The operation and maintenance expenses associated with water deliveries to the West River and Lyman-Jones Rural Water Systems are a non-Federal responsibility and for such deliveries the Secretary shall enter into a contract with the West River and Lyman-Jones Systems for the payment of an annual operation and maintenance fee. Such fee shall be based on the incremental operation and maintenance costs for water actually delivered each year to the West River and Lyman-Jones Rural Water Systems. Such operation and maintenance payments shall be increased or decreased by such amounts as may be justified by reason of ordinary fluctuations as indicated by indices applicable to comparable regional rural water supply systems for the type of operation and maintenance involved.

"(c) WASTE WATER DISPOSAL SYSTEMS FEASIBILITY STUDIES.—There is authorized to be appropriated such sums as may be necessary to complete the feasibility studies authorized by section 15(c).".

**SEC. 814. WATER RIGHTS.**

Paragraph (5) of section 11 (102 Stat. 2571) is amended—

(1) by inserting "rights, benefits, privileges or claims, including" after "affect any";

(2) by inserting "Rosebud Sioux Tribe and Lower Brule Sioux Tribe," after "Tribe," the first place it appears;

(3) by striking "the Pine Ridge Indian Reservation" and inserting "their respective reservations"; and

(4) by striking "Tribe," the second place it appears and inserting "Tribe, Rosebud Sioux Tribe, Lower Brule Sioux Tribe,".

**SEC. 815. FEASIBILITY STUDIES.**

(a) ALTERNATE USES.—Section 3 of Public Law 97-273, as amended by section 12(b) of Public Law 100-516 (102 Stat. 2572), is amended by striking "Dakota," and inserting "Dakota and all Indian tribes residing on reservations within the State of South Dakota,".

(b) WASTE WATER DISPOSAL SYSTEMS.—Section 12 of the Act (102 Stat. 2572) is amended by adding at the end the following:

"(c) WASTE WATER DISPOSAL SYSTEMS.—(1) The Secretary is authorized and directed, in consultation with the Oglala Sioux Tribe, Rosebud Sioux Tribe and Lower Brule Sioux Tribe, to conduct feasibility studies on the need to develop waste water disposal facilities and systems, and rehabilitate existing waste water disposal facilities and systems, on the Pine Ridge Indian Reservation, Rosebud Indian Reservation and Lower Brule Indian Reservation, and to report to the Congress the findings of such studies along with his recommendations.

"(2) The feasibility studies authorized under this subsection shall be completed and presented to Congress within one year after the date that funds are first made available by the Secretary to complete the studies.".

## TITLE IX—BELLE FOURCHE IRRIGATION PROJECT

**SEC. 901. EXPANSION OF BELLE FOURCHE IRRIGATION PROJECT.**

(a) AUTHORIZATION OF ADDITIONAL ACTIVITIES.—The Act entitled "An Act to authorize rehabilitation of the Belle Fourche irrigation project, and for other purposes." (Public Law 98-157, 97 Stat. 989) is amended in the first section—

(1) by striking "That the general" and inserting in lieu thereof, so as to appear immediately after and below the enacting clause, the following:

"SECTION 1. (a) The general plan for"; and

(2) by adding at the end the following:

"(b)(1) In addition to the activities authorized under subsection (a), the general plan for the Belle Fourche project is modified to include the following:

"(A) Rehabilitation of the following major water control structures:

"(i) The Whitewood Siphon.

"(ii) 2 Belle Fourche dam outlets.

"(B) Lining at South Canal and rehabilitation of Johnson Lateral for water conservation.

"(C) Replacement or rehabilitation of deteriorated canal bridges.

"(D) Provision of minor lateral rehabilitation and contract support work by the Belle Fourche irrigation district.

"(E) Conduct of a detailed study of project-wide water use management and implementation of improved management practices for the purpose of achieving optimal conservation of water supplies.

"(2) The Federal share of the cost of activities under this subsection may not exceed $10,500,000. The State share of those costs may not exceed $4,000,000, and shall be paid concurrently with Federal expenditures for activities under this subsection.".

(b) EXTENSION OF REPAYMENT PERIOD.—Section 2(b) of that Act is amended by striking "the year in which such amendatory repayment contract is executed" and inserting "July 1, 1995".

(c) APPLICABLE RATES OF CHARGE AND ASSESSABLE ACREAGE.—Section 2(c) of that Act is amended to read as follows:

"(c)(1) Before July 1, 1995, the rates of charge to land class in the unit shall continue to be as established in the November 29, 1949, repayment contract with the district, as subsequently amended and supplemented. On and after July 1, 1995, such rates of charge and assessable acreage shall, subject to subsection (d), be in accordance with the amortization capacity and classification of unit lands as then determined by the Secretary.

"(2) After final completion of the rehabilitation and betterment program authorized by this Act, and at intervals agreed to by the Secretary and the Belle Fourche irrigation district, the rates of charge and assessable acreage may be amended as determined necessary by the Secretary.".

(d) AUTHORIZATION OF APPROPRIATION.—Section 7 of that Act is amended—

(1) by inserting "(a)" after "SEC. 7."; and

(2) by adding at the end the following:

"(b) In addition to amounts authorized under subsection (a), for activities under section 1(b) there are authorized to be appropriated $10,500,000, plus or minus such amounts (if any) as may be justified by reason of ordinary fluctuations in construction cost indexes applicable to types of construction conducted under that section.".

(e) AMENDMENT OF CONTRACT.—The Secretary of the Interior and the Belle Fourche irrigation district shall amend the contract numbered 5-07-60-WR170 to reflect the amendments made by this section.

## TITLE X—UPPER YAMPA WATER CONSERVANCY PROJECT

**SEC. 1001. SHORT TITLE.**

This title may be cited as the "Stagecoach Reservoir Project Act of 1994".

**SEC. 1002. SALE OF THE STAGECOACH RESERVOIR PROJECT LOAN.**

(a) AGREEMENT.—

(1) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary of the Interior shall conduct appropriate investigations regarding, and is authorized to sell, or accept prepayment on, the loan contract described in paragraph (2) to the Upper Yampa Water Conservancy District in Colorado (referred to in this title as the "District") for the Stagecoach Reservoir Project.

(2) LOAN CONTRACT.—The loan contract described in paragraph (1) is numbered 7-07-40-R0480 and was entered into pursuant to the Small Reclamation Projects Act of 1956 (43 U.S.C. 422a et seq.).

(b) PAYMENT.—Any agreement negotiated pursuant to subsection (a) shall realize an amount to the Federal Government calculated by discounting the remaining payments due on the loans by the interest rate determined pursuant to subsection (c).

(c) INTEREST RATE.—

(1) IN GENERAL.—The Secretary shall determine the interest rate in accordance with the guidelines set forth in Circular A-129 issued by the Office of Management and Budget concerning loan sales and prepayment of loans.

(2) DETERMINATION.—In determining the interest rate, the Secretary—

(A) shall not equate an appropriate amount of prepayment with the price of the loan if it were to be sold on the open market to a third party; and

(B) shall, in following the guidelines set forth in Circular A-129 regarding an allowance for administrative expenses and possible losses, make such an allowance from the perspective of the Federal Government as lender and not from the perspective of a third party purchasing the loan on the open market.

(3) ADJUSTMENT.—If the borrower or purchaser of the loan has access to tax-exempt financing, including tax-exempt bonds, tax-

exempt cash reserves, and cash and loans of any kind from any tax-exempt entity, to finance the transaction, and if the Office of Management and Budget grants the Secretary the right to conduct such a transaction, then the interest rate by which the Secretary discounts the remaining payments due on the loan shall be adjusted by an amount that compensates the Federal Government for the direct or indirect loss of future tax revenues.

(4) LIMITATION.—Notwithstanding any other provision of law, the interest rate shall not exceed a composite interest rate consisting of the current market yield on Treasury securities of comparable maturities.

(5) APPROVAL.—The Secretary shall obtain approval from the Secretary of the Treasury and the Director of the Office of Management and Budget of the final terms of any loan sale or prepayment made pursuant to this title.

**SEC. 1003. TERMINATION AND CONVEYANCE OF RIGHTS.**

Upon receipt of the payment specified in section 1002(b)—

(1) the obligation of the District under the loan contract described in section 1002(a)(2) shall terminate;

(2) the Secretary of the Interior shall convey all right and interest of the United States in the Stagecoach Reservoir Project to the District; and

(3) the District shall absolve the United States, and its officers and agents, of any liability associated with the Stagecoach Reservoir Project.

**SEC. 1004. TERMINATION OF AUTHORITY.**

(a) IN GENERAL.—Subject to subsection (b), the authority granted by this title to sell loans shall terminate 2 years after the date of enactment of this Act.

(b) TIME TO RESPOND TO OFFER.—The borrower shall have not less than 60 days to respond to any prepayment offer made by the Secretary.

## TITLE XI—MANCOS PROJECT

**SEC. 1101. SHORT TITLE.**

This title may be cited as the "Mancos Project Private Power Development Authorization Act of 1994".

**SEC. 1102. FINDINGS.**

Congress finds that—

(a) development of hydroelectric power at the Mancos Project consistent with the Feasibility Report and Engineering and Construction Report for the Jackson Gulch Reservoir Hydroelectric Project dated April 19, 1991, and revised on May 13, 1992, and February 10, 1993, by the Mancos Water Conservancy District—

(1) will be without cost to the United States;

(2) will not impair the efficiency of the project for irrigation purposes;

(3) will not alter the volume, timing or temperatures of flows from the reservoir; and

(4) is not likely to cause any new or increased adverse impacts to any federally listed or candidate species;

(b) That the Mancos Water Conservancy District is currently operating and maintaining facilities at the Mancos Project and that the development of hydroelectric power at the Mancos Project consistent with the Feasibility Report and Engineering and Construction Report for the Jackson Gulch Reservoir Hydroelectric Project dated April 19, 1991, revised on May 13, 1992, and February 10, 1993, by the Mancos Water Conservancy District will not increase operation and maintenance costs of the Federal Government; and

(c) That any lease of power privileges issued by the Secretary pursuant to this title does not constitute a "contract" under section 202(1) of Public Law 97-293 (96 Stat. 1261; 43 U.S.C. section 390bb) and that nothing in this title is intended to make applicable any section of Public Law 97-293 (96 Stat. 1261; 43 U.S.C. section 390aa et. seq.) that would not previously apply.

**SEC. 1103. AUTHORIZATION TO LEASE POWER PRIVILEGES.**

Notwithstanding the provisions of the Water Conservation and Utilization Act (16 U.S.C. sections 590y-590z-11) or any relevant provision of the repayment contract Ilr-384, dated July 20, 1942, as amended December 22, 1947, the Secretary is authorized to enter into a lease of power privileges at the Mancos Project, Colorado, with the Mancos Water Conservancy District.

**SEC. 1104. LEASE CONDITIONS.**

Any such lease of power privileges issued pursuant to section 1103 of this title shall not exceed a period of forty years and shall be consistent with rates charged by the Federal Energy Regulatory Commission for comparable sized projects. Moneys derived from such lease shall be covered into the reclamation fund in accordance with relevant parts of Federal reclamation law, the Act of June 17, 1902, and Acts supplementary thereto and amendatory thereof (43 U.S.C. 371).

**SEC. 1105. REVENUES DERIVED FROM POWER DEVELOPMENT.**

Notwithstanding the provisions of the Water Conservation and Utilization Act (16 U.S.C. sections 590y-590z-11) or any relevant provision of the repayment contract Ilr-384, dated July 20, 1942, as amended December 22, 1947, the Mancos Water Conservancy District may receive revenues from the sale of the power generated pursuant to such lease of power privilege.

## TITLE XII—YAKIMA RIVER BASIN WATER ENHANCEMENT PROJECT

**SEC. 1201. PURPOSES.**

The purposes of this title are—

(1) to protect, mitigate, and enhance fish and wildlife through improved water management; improved instream flows; improved water quality; protection, creation and enhancement of wetlands; and by other appropriate means of habitat improvement;

(2) to improve the reliability of water supply for irrigation;

(3) to authorize a Yakima River basin water conservation program that will improve the efficiency of water delivery and use; enhance basin water supplies; improve water quality; protect, create and enhance wetlands; and determine the amount of basin water needs that can be met by water conservation measures;

(4) to realize sufficient water savings from the Yakima River Basin Water Conservation Program so that not less than 40,000 acre-feet of water savings per year are achieved by the end of the fourth year of the Basin Conservation Program, and not less than 110,000 acre-feet of water savings per year are achieved by the end of the eighth year of the program, to protect and enhance fish and wildlife resources; and not less than 55,000 acre feet of water savings per year are achieved by the end of the eighth year of the program for availability for irrigation;

(5) to encourage voluntary transactions among public and private entities which result in the implementation of water conservation measures, practices, and facilities; and

(6) to provide for the implementation by the Yakama Indian Nation at its sole discretion of (A) an irrigation demonstration project on the Yakama Indian Reservation using water savings from system improvements to the Wapato Irrigation Project, and (B) a Toppenish Creek corridor enhancement project integrating agricultural, fish, wildlife, and cultural resources.

**SEC. 1202. DEFINITIONS.**

As used in this title:

(1) The term "Basin Conservation Plan" means a plan for implementing water conservation measures found in the various water conservation plans developed under the Basin Conservation Program.

(2) The term "Basin Conservation Program" means the Yakima River Basin Water Conservation Program established under section 1203(a).

(3) The term "comprehensive basin operating plan" means a plan that will provide guidance to the Yakima Project Superintendent for operation of the existing Yakima Project as modified by actions taken pursuant to this title.

(4) The term "Conservation Advisory Group" means the Yakima River Basin Conservation Advisory Group established under section 1203(c).

(5) The term "conserved water" means water saved and attributable to the program established under the Basin Conservation Program.

(6) The term "Irrigation Demonstration Project" means the Yakama Indian Reservation Irrigation Demonstration Project authorized in section 1204(b).

(7) The term "nonproratable water" means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is not subject to proration in times of water shortage.

(8) The term "on-district storage" means small water storage facilities located within the boundaries of an irrigation entity, including reregulating reservoirs, holding ponds, or other new storage methods which allow for efficient water use.

(9) The term "proratable water" means that portion of the total water supply available under provisions of sections 18 and 19 of Civil Action No. 21 (Federal District Court Judgment of January 31, 1945) that is subject to proration in times of water shortage.

(10) The term "Secretary" means the Secretary of the Interior.

(11) The term "System Operations Advisory Committee" means a group of fishery biologists—

(A) created by the Yakima Project Superintendent in response to the supplemental instructions entitled "Supplementary Instructions to the Water Master", and dated November 28, 1980, in the case of Kittitass Reclamation District, et al. vs. the Sunnyside Valley Irrigation District, et al. (E.D. Wash., Civil No. 21.);

(B) who advise the Yakima Project Superintendent on operations of the Yakima Project for fish and wildlife purposes; and

(C) who, together with others, were identified for consultation on November 29, 1990, in the amended partial summary judgment entered in the basin adjudication (Yakima County Superior Court No. 77-2-01484-5).

(12) The term "Toppenish Enhancement Project" means the Toppenish Creek corridor enhancement project authorized by section 1204(c).

(13) The term "Yakama Indian Nation" means the Confederated Tribes and Bands of the Yakama Indian Nation as redesignated under section 1204(g).

(14) The term "Yakima Project Superintendent" means the individual designated by the Regional Director, Pacific Northwest Region, Bureau of Reclamation, to be responsible for the operation and management of the Yakima Federal Reclamation Project, Washington.

**SEC. 1203. YAKIMA RIVER BASIN WATER CONSERVATION PROGRAM.**

(a) ESTABLISHMENT.—(1) The Secretary, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River basin irrigators, and other interested parties, shall establish and administer a Yakima River Basin Water Conservation Program for the purpose of evaluating and implementing measures to improve the availability of water supplies for irrigation and the protection and enhancement of fish and wildlife resources, including wetlands, while improving the quality of water in the Yakima Basin. The Secretary may make grants to eligible entities for the purposes of carrying out this title under such terms and conditions as the Secretary may require. Such terms and conditions shall include a requirement that all water districts, irrigation districts, individuals, or other entities eligible to participate in the Basin Conservation Program must equip all surface water delivery systems within their boundaries with volumetric water meters or equally effective water measuring methods within 5 years of the date of enactment of this Act.

(2) Conserved water resulting in whole or in part from the expenditure of Federal funds shall not be used to expand irrigation in the Yakima Basin, except as specifically provided in section 1204(a)(3) on the Yakama Indian Reservation.

(3) The provisions of this section shall not apply to the Yakama Indian Nation except as to any funds specifically applied for from the Basin Conservation Program.

(b) FOUR PHASES OF PROGRAM.—The Basin Conservation Program shall encourage and provide funding assistance for four phases of water conservation, which shall consist of the following:

(1) The development of water conservation plans, consistent with applicable water conservation guidelines of the Secretary, by irrigation districts, conservation districts, water purveyors, other areawide entities, and individuals not included within an areawide entity.

(2) The investigation of the feasibility of specific potential water conservation measures identified in conservation plans.

(3) The implementation of measures that have been identified in conservation plans and have been determined to be feasible.

(4) Post implementation monitoring and evaluation of implemented measures.

(c) CONSERVATION ADVISORY GROUP.—(1) Not later than 12 months after the date of enactment of this Act, the Secretary, in consultation with the State of Washington, the Yakama Indian Nation, Yakima River basin irrigators, and other interested and related parties, shall establish the Yakima River Basin Conservation Advisory Group.

(2) Members of the Conservation Advisory Group shall be appointed by the Secretary and shall be comprised of—

(A) one representative of the Yakima River basin nonproratable irrigators,

(B) one representative of the Yakima River basin proratable irrigators,

(C) one representative of the Yakama Indian Nation,

(D) one representative of environmental interests,

(E) one representative of the Washington State University Agricultural Extension Service,

(F) one representative of the Department of Wildlife of the State of Washington, and

(G) one individual who shall serve as the facilitator.

(3) The Conservation Advisory Group shall—

(A) provide recommendations to the Secretary and to the State of Washington regarding the structure and implementation of the Basin Conservation Program,

(B) provide recommendations to the Secretary and to the State of Washington regarding the establishment of a permanent program for the measurement and reporting of all natural flow and contract diversions within the basin.

(C) structure a process to prepare a basin conservation plan as specified in subsection (f),

(D) provide annual review of the implementation of the applicable water conservation guidelines of the Secretary, and

(E) provide recommendations consistent with statutes of the State of Washington on rules, regulations, and administration of a process to facilitate the voluntary sale or lease of water.

(4) The facilitator shall arrange for meetings of the Conservation Advisory Group, provide logistical support, and serve as moderator for the meetings.

(5) The Conservation Advisory Group shall consult an irrigation district when considering actions specifically affecting that district. For the purposes of this paragraph, an irrigation district includes the Yakima Reservation Irrigation District.

(6) The Conservation Advisory Group shall be nonvoting, seeking consensus whenever possible. If disagreement occurs, any member may submit independent comments to the Secretary. The Conservation Advisory Group shall terminate 5 years after the date of its establishment unless extended by the Secretary.

(d) COST SHARING.—(1) Except as otherwise provided by this title, costs incurred in the four phases of the Basin Conservation Program shall be shared as follows:

| Program Phase | Non-Federal | | Federal Grant |
|---|---|---|---|
| | State Grant | Local | |
| 1. Development of water conservation plans | 50% but not more than $200,000 per recipient | (Residual amount if any) | 50% |
| 2. Investigation of specific water conservation measures | 50% but sum of 1 and 2 not greater than $200,000 per recipient | 20% after deducting State funds for Item 2 | Residual amount after deducting State and local funds for Item 2 |
| 3 and 4. Implementation and post implementation monitoring and evaluation | 17.5% | 17.5% | 65.0% |

(2) The Yakima River Basin Water Enhancement Project is a Federal action to improve streamflow and fish passage conditions and shall be considered part of a comprehensive program to restore the Yakima River basin anadromous fishery resource. Related fishery resource improvement facilities which utilize funding sources under the Pacific Northwest Electric Power Planning and Conservation Act of 1989 (94 Stat. 2697) and independent water-related improvements of the State of Washington and other public and private entities to improve irrigation water use, water supply, and water quality, shall be treated as non-Federal cost share expenditures and shall be consolidated in any final calculation of required cost sharing. Within one year of the date of enactment of this Act, the Secretary shall enter into a binding cost sharing agreement with the State of Washington. The agreement shall describe the terms and conditions of specific contributions and other activities that may, subject to approval by the Secretary, qualify as non-Federal cost share expenditures.

(3) Costs of the Basin Conservation Program related to projects on the Yakama Indian Reservation are a Federal responsibility and shall be nonreimbursable and not subject to the cost-sharing provisions of this subsection.

(e) ENTITY WATER CONSERVATION PLANS.—To participate in the Conservation Basin Program an entity must submit a proposed water conservation plan to the Secretary. The Secretary shall approve a water conservation plan submitted under this subsection if the Secretary determines that the plan meets the applicable water conservation guidelines of the Secretary.

(f) BASIN CONSERVATION PLAN.—The Conservation Advisory Group shall, within 2½ years after the date of enactment of this Act, submit a draft basin conservation plan to the Secretary.

(g) PUBLIC COMMENT.—The Secretary shall distribute the draft basin conservation plan and the entity water conservation plans submitted under subsections (e) and (f), respectively, for public comment for a 60-day period.

(h) PUBLICATION OF BASIN CONSERVATION PLAN.—Within 60 days after the close of the comment period under subsection (g), the Secretary shall publish the Basin Conservation Plan which plan will provide the basis—

(1) for prioritizing and allocating funds to implement conservation measures under this title; and

(2) for preparing an interim comprehensive basin operating plan under section 1210 of this title as provided for in Public Law 96–162 (93 Stat. 1241).

(i) CONSERVATION MEASURES.—(1) Measures considered for implementation in the Basin Conservation Program may include, among others, conveyance and distribution system monitoring, automation of water conveyance systems, water measuring or metering devices and equipment, lining and piping of water conveyance and distribution systems, on-district storage, electrification of hydraulic turbines, tail-water recycling, consolidation of irrigation systems, irrigation scheduling, and improvement of on-farm water application systems. Basin Conservation Program funds may also be used throughout all four phases of the Basin Conservation Program to mitigate for adverse impacts of program measures.

(2) In addition to implementing existing technologies, the Secretary shall encourage the testing of innovative water conservation

measures. The Secretary shall, to the maximum extent possible under applicable Federal, State, and tribal law, cooperate with the State of Washington to facilitate water and water right transfers, water banking, dry year options, the sale and leasing of water, and other innovative allocation tools used to maximize the utility of existing Yakima River basin water supplies.

(3) The Secretary may, consistent with applicable law, use funds appropriated to carry out this section for the purchase or lease of land, water, or water rights from any entity or individual willing to limit or forego water use on a temporary or permanent basis. Funds used for purchase or lease under this paragraph are not subject to the cost sharing provisions of subsection (d). Efforts to acquire water should be made immediately upon availability of funds to meet the three-year goal specified in section 1205(a)(4) to provide water to be used by the Yakima Project Superintendent under the advisement of the System Operations Advisory Committee for instream flow purposes. The use of Basin Conservation Program funds under this paragraph are in addition to those specifically authorized to be appropriated by subsection (j)(4).

(4) On-farm water management improvements shall be coordinated with programs administered by the Secretary of Agriculture and State conservation districts.

(j) AUTHORIZATION OF APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary, at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, the following amounts for the Basin Conservation Program:

(1) $1,000,000 for the development of water conservation plans.

(2) $4,000,000 for investigation of specific potential water conservation measures identified in conservation plans for consideration for implementing through the Basin Conservation Program.

(3) Up to $67,500,000 for design, implementation, post-implementation monitoring and evaluation of measures, and addressing environmental impacts.

(4) Up to $10,000,000 for the initial acquisition of water from willing sellers or lessors specifically to provide instream flows for interim periods to facilitate the outward migration of anadromous fish flushing flows. Such funds shall not be subject to the cost sharing provisions of subsection (d).

(5) $100,000 annually for the establishment and support of the Conservation Advisory Group during its duration. Such funds shall be available for travel and per diem, rental of meeting rooms, typing, printing and mailing, and associated administrative needs. The Secretary and the State of Washington shall provide appropriate staff support to the Conservation Advisory Group.

**SEC. 1204. YAKAMA INDIAN NATION.**

(a) WAPATO IRRIGATION PROJECT IMPROVEMENTS AND APPROPRIATIONS.—(1) The Yakama Indian Nation's proposed system improvements to the Wapato Irrigation Project, as well as the design, construction, operation, and maintenance of the Irrigation Demonstration Project and the Toppenish Creek corridor enhancement project, pursuant to this title shall be coordinated with the Bureau of Indian Affairs.

(2) There is authorized to be appropriated to the Secretary not more than $23,000,000 for the preparation of plans, investigation of measures, and following the Secretary's certification that such measures are consistent with the water conservation objectives of this title, the implementation of system improvements to the Wapato Irrigation Project. Funding for further improvements within the Wapato Irrigation Project may be acquired under the Basin Conservation Program or other sources identified by the Yakama Indian Nation.

(3) Water savings resulting from irrigation system improvements shall be available for the use of the Yakama Indian Nation for irrigation and other purposes on the reservation and for protection and enhancement of fish and wildlife within the Yakima River basin. The conveyance of such water through irrigation facilities other than the Wapato Irrigation Project shall be on a voluntary basis and shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(b) IRRIGATION DEMONSTRATION PROJECT APPROPRIATIONS.—(1)(A) There is hereby authorized to be appropriated to the Secretary—

(i) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuations of applicable cost indexes, $8,500,000 for the design and construction of the Yakama Indian Reservation Irrigation Demonstration Project; and

(ii) such sums as may be necessary for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies for the period specified by the Secretary, which sums are in addition to operation and maintenance funds for wildlife and cultural purposes appropriated to the Secretary under other authorization.

(B) Funds may not be made available under this subsection until the Yakama Indian Nation obtains the concurrence of the Secretary in the construction, management, and administrative aspects of the Irrigation Demonstration Project.

(C) After the end of the period specified under subparagraph (A)(ii), costs for the operation and maintenance of the Irrigation Demonstration Project, including funds for administration, training, equipment, materials, and supplies referred to in that subparagraph, shall be borne exclusively by the lands directly benefitting from the Irrigation Demonstration Project.

(2) The Irrigation Demonstration Project shall provide for the construction of distribution and on-farm irrigation facilities to use all or a portion of the water savings, as determined by the Yakama Indian Nation, resulting from the Wapato Irrigation Project system improvements for—

(A) demonstrating cost-effective state of the art irrigation water management and conservation,

(B) the training of tribal members in irrigation methods, operation, and management, and

(C) upgrading existing hydroelectric facilities and construction of additional hydroelectric facilities on the reservation to meet irrigation pumping power needs.

(c) TOPPENISH CREEK CORRIDOR ENHANCEMENT PROJECT APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary $1,500,000 for the further investigation by the Yakama Indian Nation of measures to develop a Toppenish Creek corridor enhancement project to demonstrate integration of management of agricultural, fish, wildlife, and cultural resources to meet tribal objectives and such amount as the Secretary subsequently determines is necessary for implementation. There is also authorized to be appropriated to the Secretary such sums as may be necessary for the operation and maintenance of the Toppenish Enhancement Project.

(d) REPORT.—Within 5 years of the implementation of the Irrigation Demonstration Project and the Toppenish Enhancement Project, the Secretary, in consultation with the Yakama Indian Nation, shall report to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington on the effectiveness of the conservation, training, mitigation, and other measures implemented.

(e) STATUS OF IMPROVEMENTS AND FACILITIES.—The Wapato Irrigation Project system improvements and any specific irrigation facility of the Irrigation Demonstration Project (excluding on-farm irrigation facilities) and the Toppenish Enhancement Project shall become features of the Wapato Irrigation Project.

(f) TREATMENT OF CERTAIN COSTS.—Costs related to Wapato Irrigation Project improvements, the Irrigation Demonstration Project, and the Toppenish Enhancement Project shall be a Federal responsibility and are nonreimbursable and nonreturnable.

(g) REDESIGNATION OF YAKIMA INDIAN NATION TO YAKAMA INDIAN NATION.—

(1) REDESIGNATION.—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the "Confederated Tribes and Bands of the Yakama Indian Nation".

(2) REFERENCES.—Any reference in a law, map, regulation, document, paper, or other record of the United States to the Confederated Tribes and Bands of the Yakima Indian Nation referred to in subsection (a) shall be deemed to be a reference to the "Confederated Tribes and Bands of the Yakama Indian Nation".

**SEC. 1205. OPERATION OF YAKIMA BASIN PROJECTS.**

(a) WATER SAVINGS FROM BASIN CONSERVATION PROGRAM.—(1) The Basin Conservation Program is intended to result in reductions in water diversions allowing for changes in the present operation of the Yakima Project to improve stream flow conditions in the Yakima River basin. Except as provided by paragraph (5) of this subsection and section 1209, commencing with the enactment of this title, and notwithstanding that anticipated water savings are yet to be realized, the Secretary, upon the enactment of this title and acting through the Yakima Project Superintendent, shall (A) continue to estimate the water supply which is anticipated to be available to meet water entitlements; and (B) provide instream flows in accordance with the following criteria:

| | Water Supply Estimate for Period (million acre feet): | | | | Target Flow from Date of Estimate thru October Downstream of (cubic feet per second): | |
|---|---|---|---|---|---|---|
| | April thru September | May thru September | June thru September | July thru September | Sunnyside Diversion Dam | Prosser Diversion Dam |
| (1) | 3.2 | 2.9 | 2.4 | 1.9 | 600 | 600 |
| (2) | 2.9 | 2.65 | 2.2 | 1.7 | 500 | 500 |
| (3) | 2.65 | 2.4 | 2.0 | 1.5 | 400 | 400 |
| | | Less than line 3 water supply | | | 300 | 300 |

(2) The initial target flows represent target flows at the respective points. Reasonable fluctuations from these target flows are anticipated in the operation of the Yakima Project, except that for any period exceeding 24 hours—

(A) actual flows at the Sunnyside Diversion Dam may not decrease to less than 65 percent of the target flow at the Sunnyside Diversion Dam; and

(B) actual flows at the Prosser Diversion Dam may not decrease by more than 50 cubic feet per second from the target flow.

(3) The instream flows shall be increased for interim periods during any month of April through October to facilitate when necessary the outward migration of anadromous fish. Increased instream flows for such interim periods shall be obtained through voluntary sale and leasing of water or water rights or from conservation measures taken under this title.

(4)(A)(i) Within the three-year period beginning when appropriations are first provided to carry out the Basin Conservation Program, the instream flow goal in the Yakima River is as follows: to secure water which is to be used for instream flows to facilitate meeting recommendations of the System Operations Advisory Committee for flushing flows or other instream uses.

(ii) In addition to any other authority of the Secretary to provide water for flushing flows, the water required to meet the goal specified in clause (i) shall be acquired through the voluntary purchase or lease of land, water, or water rights and from the development of additional storage capability at Lake Cle Elum provided for in section 1206(a).

(iii) In addition to water required to meet the instream flow goal specified in clause (i), the System Operations Advisory Committee may recommend additional water to meet instream flow goals pursuant to judicial actions.

(B) After the period referred to in subparagraph (A), such instream flow goal is modified as follows:

(i) The goal increases so that the instream target flows specified in the table in paragraph (1) increase by 50 cubic feet per second for each 27,000 acre-feet of reduced annual water diversions achieved through implementation of measures under the Basin Conservation Program. Such increases do not apply to actions taken pursuant to section 1204. Such increases shall not further diminish the amount of water that otherwise would have been delivered by an entity to its water users in years of water proration.

(ii) The goal changes directly with the availability of water resulting from Federal expenditures under this title for purchase or lease of water under this title.

(C) The Yakima Project Superintendent shall maintain an account of funded and completed conservation measures taken under the Basin Conservation Program.

(D) No later than March 31 of each calendar year, the Yakima Project Superintendent shall meet with the State of Washington, Yakama Indian Nation, and Yakima River basin irrigators to mutually determine total diversion reductions and respective adjustments to the target flows referred to in this subsection. The Yakima Project Superintendent shall announce such adjustments with the announcements of Total Water Supply Available. For the purposes of this subparagraph, conserved water will be considered available for adjusting target flows in the first year following completion of a measure or following a result from the post implementation monitoring and evaluation program, as the case may be.

(5) Operational procedures and processes in the Yakima River basin which have or may be implemented through judicial actions shall not be impacted by this title.

(6)(A) Within three years after the date of enactment of this Act, the Secretary shall conduct a study and submit a report with recommendations to the appropriate committees of the Congress on whether the water supply available for irrigation is adequate to sustain the agricultural economy of the Yakima River basin.

(B) The target flows provided for under this subsection shall be evaluated within three years after the date of enactment of this Act by the Systems Operations Advisory Committee for the purpose of making a report with recommendations to the Secretary and the Congress evaluating what is necessary to have biologically-based target flows.

(C) The recommendations and reports under subparagraphs (A) and (B) shall provide a basis for the third phase of the Yakima River Basin Water Enhancement Project.

(b) WATER FROM LAKE CLE ELUM.—Water accruing from the development of additional storage capacity at Lake Cle Elum, made available pursuant to the modifications authorized in section 1206(a), shall not be part of the Yakima River basin's water supply as provided in subsection (a)(1). Water obtained from such development is exclusively dedicated to instream flows for use by the Yakima Project Superintendent as flushing flows or as otherwise advised by the System Operations Advisory Committee. Water may be carried over from year-to-year in the additional capacity to the extent that there is space available. Releases may be made from other Yakima Project storage facilities to most effectively utilize this additional water, except that water deliveries to holders of existing water rights shall not be impaired.

(c) STATUS OF BASIN CONSERVATION PROGRAM FACILITIES.—Measures of the Basin Conservation Program which are implemented on facilities currently under the administrative jurisdiction of the Secretary, except as provided in section 1204, shall be considered features of the Yakima River Basin Water Enhancement Project, and their operation and maintenance shall be integrated and coordinated with other features of the existing Yakima Project. The responsibility for operation and maintenance and the related costs shall remain with the current operating entity. As appropriate, the Secretary shall incorporate the operation and maintenance of such facilities into existing agreements. The Secretary shall assure that such facilities are operated in a manner consistent with Federal and State law and in accordance with water rights recognized pursuant to State and Federal law.

(d) WATER ACQUIRED BY PURCHASE AND LEASE.—Water acquired from voluntary sellers and lessors shall be administered as a block of water separate from the Total Water Supply Available, in accordance with applicable Federal and State law.

(e) YAKIMA PROJECT PURPOSE.—(1) An additional purpose of the Yakima Project shall be for fish, wildlife, and recreation.

(2) The existing storage rights of the Yakima Project shall include storage for the purposes of fish, wildlife, and recreation.

(3) The purposes specified in paragraphs (1) and (2) shall not impair the operation of the Yakima Project to provide water for irrigation purposes nor impact existing contracts.

**SEC. 1206. LAKE CLE ELUM AUTHORIZATION OF APPROPRIATIONS.**

(a) MODIFICATIONS AND IMPROVEMENTS.—There is hereby authorized to be appropriated to the Secretary—

(1) at September 1990 prices, plus or minus such amounts as may be justified by reason of ordinary fluctuation of applicable indexes, $2,934,000 to—

(A) modify the radial gates at Cle Elum Dam to provide an additional 14,600 acre-feet of storage capacity in Lake Cle Elum,

(B) provide for shoreline protection of Lake Cle Elum, and

(C) construct juvenile fish passage facilities at Cle Elum Dam, plus

(2) such additional amounts as may be necessary which may be required for environmental mitigation.

(b) OPERATION AND MAINTENANCE APPROPRIATIONS.—There is hereby authorized to be appropriated to the Secretary such sums as may be necessary for that portion of the operation and maintenance of Cle Elum Dam determined by the Secretary to be a Federal responsibility.

**SEC. 1207. ENHANCEMENT OF WATER SUPPLIES FOR YAKIMA BASIN TRIBUTARIES.**

(a) GENERAL PROVISIONS.—The following shall be applicable to the investigation and implementation of measures to enhance water supplies for fish and wildlife and irrigation purposes on tributaries of the Yakima River basin:

(1) An enhancement program authorized by this section undertaken in any tributary shall be contingent upon the agreement of appropriate water right owners to participate.

(2) The enhancement program authorized by this section shall not be construed to affect (A) the water rights of any water right owners in the tributary or other water delivering entities; (B) the capability of tributary water users to divert, convey, and apply water; and (C) existing water and land uses within the tributary area.

(3) The water supply for tributary enhancement shall be administered in accordance with applicable State and Federal laws.

(4) Any enhancement program authorized by this section shall be predicated upon the availability of a dependable water supply.

(b) STUDY.—(1) The Secretary, following consultation with the State of Washington, the tributary water right owners, and the Yakama Indian Nation, and agreement of appropriate water right owners to participate, shall conduct a study concerning the measures that can be implemented to enhance water supplies for fish and wildlife and irrigation purposes on Taneum Creek, including (but not limited to)—

(A) water use efficiency improvements;

(B) the conveyance of water from the Yakima Project through the facilities of any irrigation entity willing to contract with the Secretary without adverse impact to water users;

(C) the construction, operation, and maintenance of ground water withdrawal facilities;

(D) contracting with any entity that is willing to voluntarily limit or forego present water use through lease or sale of water or water rights on a temporary or permanent basis;

(E) purchase of water rights from willing sellers; and

(F) other measures compatible with the purposes of this title, including restoration of stream habitats.

(2) In conducting the Taneum Creek study, the Secretary shall consider—

(A) the hydrologic and environmental characteristics;

(B) the engineering and economic factors relating to each measure; and

(C) the potential impacts upon the operations of present water users in the tributary and measures to alleviate such impacts.

(3) The Secretary shall make available to the public for a 45-day comment period a draft report describing in detail the findings, conclusions, and recommendations of the study. The Secretary shall consider and include any comment made in developing a final report. The Secretary's final report shall be submitted to the Committee on Energy and Natural Resources of the Senate, the Committee on Natural Resources of the House of Representatives, and the Governor of the State of Washington, and made available to the public.

(c) IMPLEMENTATION OF NONSTORAGE MEASURES.—After securing the necessary permits the Secretary may, in cooperation with the Department of Ecology of the State of Washington and in accordance with the laws of the State of Washington, implement nonstorage measures identified in the final report under subsection (b) upon fulfillment of the following conditions:

(1) The Secretary shall enter into an agreement with the appropriate water right owners who are willing to participate, the State of Washington, and the Yakama Indian Nation, for the use and management of the water supply to be provided by proposed tributary measures pursuant to this section.

(2) The Secretary and the State of Washington find that the implementation of the proposed tributary measures will not impair the water rights of any person or entity in the affected tributary.

(d) OTHER YAKIMA RIVER BASIN TRIBUTARIES.—Enhancement programs similar to the enhancement program authorized by this section may be investigated and implemented by the Secretary in other tributaries contingent upon the agreement of the appropriate tributary water right owners to participate. The provisions set forth in this section shall be applicable to such programs.

(e) AUTHORIZATION OF APPROPRIATIONS.—(1) There is hereby authorized to be appropriated to the Secretary $500,000 for the study of the Taneum Creek Project and such amount as the Secretary subsequently determines is necessary for implementation of tributary measures pursuant to this section.

(2) There is also authorized to be appropriated to the Secretary such funds as are necessary for the investigation of enhancement programs similar to the enhancement program authorized by this section in other Yakima River basin tributaries contingent upon the agreement of the appropriate water right owners to participate. Funds for the implementation of any such similar enhancement program may not be appropriated until after the Secretary submits an investigation report to the appropriate congressional committees.

**SEC. 1208. CHANDLER PUMPING PLANT AND POWERPLANT-OPERATIONS AT PROSSER DIVERSION DAM.**

(a) AUTHORIZATION OF APPROPRIATIONS FOR ELECTRIFICATION.—In order to provide for electrification to enhance instream flows by eliminating the need to divert water to operate the hydraulic turbines which pump water to the Kennewick Irrigation District, there is authorized to be appropriated—

(1) $50,000 to conduct an assessment of opportunities for alternative pumping plant locations;

(2) $4,000,000 for construction; and

(3) such sums as may be necessary for the prorata share of the operation and maintenance allocated to fish and wildlife as determined by the Secretary.

(b) POWER FOR PROJECT PUMPING.—(1) The Administrator of the Bonneville Power Administration shall provide for project power needed to effect the electrification as provided in subsection (a).

(2)(A) There is authorized to be appropriated for the Bureau of Reclamation for each fiscal year in which the Administrator provides power under this subsection an amount equal to the cost to the Bonneville Power Administration of providing power under this subsection during such fiscal year. The rate to be utilized by the Administrator in determining the cost of power under this paragraph in a fiscal year shall be the rate for priority firm power charged by the Bonneville Power Administration in that fiscal year under section 7(b) of the Pacific Northwest Electric Power Planning and Conservation Act (16 U.S.C. 839e(b)).

(B) The Bureau of Reclamation shall, using funds appropriated pursuant to the authorization of appropriations in subparagraph (A), reimburse the Bonneville Power Administration for the costs of the project power provided under this subsection. Such funds shall be available for such purpose without fiscal year limitation.

(c) SUBORDINATION.—Any diversions for hydropower generation at the Chandler Powerplant shall be subordinated to meet the flow targets determined under subsection (f).

(d) WATER SUPPLY FOR KENNEWICK IRRIGATION DISTRICT.—The Secretary shall ensure that the irrigation water supply for the Kennewick Irrigation District shall not be affected by conservation, electrification, or subordination pursuant to this title and any reduction in its irrigation water supply resulting from conservation measures adopted or implemented by other entities pursuant to this title shall be replaced by water developed through subordination, electrification, or a combination of the two.

(e) TREATMENT OF CERTAIN FUNDS.—Funds appropriated and project power provided pursuant to this section shall be nonreimbursable since such funds are used for fish and wildlife purposes and such funds are not subject to cost share under section 1203(d).

(f) TARGET FLOWS.—Target flows measured at appropriate biological and hydrological location or locations shall be determined by the Yakima Project Superintendent in consultation with the System Operations Advisory Committee.

**SEC. 1209. AUGMENTATION OF KACHESS RESERVOIR STORED WATER.**

(a) AUTHORIZATION OF APPROPRIATIONS.—In order to augment Kachess Reservoir stored water supplies from flows of Cabin Creek and Silver Creek which are excess to system demands, there is authorized to be appropriated—

(1) such sums as may be necessary to carry out a feasibility study, including the benefits, costs, and environmental aspects, of the facility described in paragraph (2);

(2) for the construction of facilities to convey such flows to Kachess Reservoir, $20,000,000; and

(3) such sums as may be necessary for the pro rata share of the operation and maintenance allocated to fish and wildlife determined by the Secretary.

(b) LIMITATION.—Construction of the facilities described in subsection (a)(1) is contingent on the completion of the feasibility study referred to in subsection (a)(2).

(c) USE OF ADDITIONAL WATER.—The stored water supply resulting from the construction of facilities under this section shall be used by the Secretary to—

(1) enhance the water supply available to the Kittitas Reclamation District and the Roza Irrigation District in years of proration; and

(2) facilitate reservoir operations in the Easton Dam to Keechelus Dam reach of the Yakima River for the propagation of anadromous fish.

(d) TREATMENT OF COSTS.—The construction and operation and maintenance costs of the facilities under this section shall be allocated to irrigation and fishery enhancement, as follows:

(1) The portion of such costs allocated to irrigation is reimbursable, with the construction costs to be paid prior to initiation of construction by the Kittitas Reclamation District and the Roza Irrigation District.

(2) The portion of such costs allocated to fishery enhancement is nonreimbursable.

(e) KACHESS DAM MODIFICATIONS.—There is authorized to be appropriated $2,000,000 for the modification of the discharge facilities of Kachess Dam to improve reservoir operations for anadromous fish enhancement. Amounts appropriated under this subsection are nonreimbursable.

**SEC. 1210. INTERIM COMPREHENSIVE BASIN OPERATING PLAN.**

(a) DEVELOPMENT.—The Secretary shall, in consultation with the State of Washington, Yakama Indian Nation, Yakima River Basin irrigation districts, Bonneville Power Administration, and other entities as determined by the Secretary, develop an interim comprehensive operating plan for providing a general framework within which the Yakima Project Superintendent operates the Yakima Project, including measures implemented under the Yakima River Basin Water Enhancement Project, including (but not limited to)—

(1) operating capability and constraints of the system;

(2) information on water supply calculations an water needs;

(3) system operations and stream flow objectives; and

(4) the System Operations Advisory Committee activities.

(b) PROCESS REQUIREMENTS.—A draft of the interim comprehensive basin operating plan shall be completed within 18 months after the completion of the Basin Conservation Plan under section 1203(f) and, upon completion, published for a 90-day public review period. The Secretary shall complete and publish the final interim comprehensive operating plan within 90 days after the close of the public review period. The Secretary shall update the plan as needed to respond to decisions from water adjudications relating to the Yakima River basin.

(c) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated $100,000 to carry out this section.

**SEC. 1211. ENVIRONMENTAL COMPLIANCE.**

There are hereby authorized to be appropriated to the Secretary $2,000,000 for environmental compliance activities including the conduct, in cooperation with the State of Washington, of an inventory of wildlife and wetland resources in the Yakima River basin and an investigation of measures, including "wetland banking", which could be implemented to address potential impacts which could result from the activities taken under this title.

**SEC. 1212. SAVINGS AND CONTINGENCIES.**

(a) IN GENERAL.—Nothing in this title shall be construed to—

(1) affect or modify any treaty or other right of the Yakama Indian Nation;

(2) authorize the appropriation or use of water by any Federal, State, or local agency, the Yakama Indian Nation, or any other entity or individual;

(3) impair the rights or jurisdictions of the United States, the States, the Yakama Indian Nation, or other entities over waters of any river or stream or over any ground water resource;

(4) alter, amend, repeal, interpret, modify, or be in conflict with any interstate compact made by the States;

(5) alter, establish, or impair the respective rights of States, the United States, the Yakama Indian Nation, or any other entity or individual with respect to any water or water-related right;

(6) alter, diminish, or abridge the rights and obligations of any Federal, State, or local agency, the Yakama Indian Nation, or other entity, public or private;

(7) affect or modify the rights of the Yakama Indian Nation or its successors in interest to, and management and regulation of, those water resources arising or used, within the external boundaries of the Yakama Indian Reservation;

(8) affect or modify the settlement agreement between the United States and the State of Washington filed in Yakima County Superior Court with regard to Federal reserved water rights other than those rights reserved by the United States for the benefit of the Yakama Indian Nation and its members;

(9) affect or modify the rights of any Federal, State, or local agency, the Yakama Indian Nation, or any other entity, public or private with respect to any unresolved and unsettled claims in any water right adjudications, or court decisions, including State against Acquavella, or constitute evidence in any such proceeding in which any water or water related right is adjudicated; or

(10) preclude other planning studies and projects to accomplish the purposes of this title by other means: funded publicly, privately, or by a combination of public and private funding.

(b) CONTINGENCY BASED ON APPROPRIATIONS.—The performance of any activity under this title which requires accomplishment within a specified period that may require appropriation of money by Congress or the allotment of funds shall be contingent upon such appropriation or allotment being made.

Mr. FORD. Mr. President, I move that the Senate concur in the House amendment.

The PRESIDING OFFICER. The question is on agreeing to the motion.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the motion was agreed to.

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

The motion to lay on the table was agreed to.

Mr. FORD. Mr. President, I ask unanimous consent any statements on this measure appear in the RECORD at the appropriate place as though read.

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

## THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

Mr. FORD. Mr. President, I ask unanimous consent that the Labor Committee be discharged from further consideration of S. 340, a bill regarding alternate uses of new animal drugs and new drugs intended for human use; and that the Senate proceed its immediate consideration.

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

The clerk will report.

The legislative clerk read as follows:

A bill (S. 340) to amend the Federal Food, Drug, and Cosmetic Act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. FORD. Mr. President, I send a substitute amendment to the desk on behalf of Senator HEFLIN, and I ask that the amendment be agreed to, that the bill be read a third time and passed; the motion to reconsider be laid on the table and that any statements thereon appear at the appropriate place in the RECORD as though read.

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

AMENDMENT NO. 2612

Mr. FORD offered an amendment No. 2612 for Mr. HEFLIN.

The amendment is as follows:

Strike all after the enacting clause, and insert in lieu thereof the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Animal Medicinal Drug Use Clarification Act of 1994".

**SEC. 2. UNAPPROVED USES.**

(a) GENERAL RULE.—Section 512(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(a)) is amended by adding the following new paragraphs at the end:

"(4)(A) Except as provided in subparagraph (B), if an approval of an application filed under subsection (b) is in effect with respect to a particular use or intended use of a new animal drug, the drug shall not be deemed unsafe for the purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a different use or intended use of the drug, other than a use in or on animal feed, if such use or intended use—

"(i) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(ii) is in compliance with regulations promulgated by the Secretary that establish the conditions for such different use or intended use.

The regulations promulgated by the Secretary under clause (ii) may prohibit particular uses of an animal drug and shall not permit such different use of an animal drug if the labeling of another animal drug that contains the same active ingredient and which is in the same dosage form and concentration provides for such different use.

"(B) If the Secretary finds that there is a reasonable probability that a use of an animal drug authorized under subparagraph (A) may present a risk to the public health, the Secretary may—

"(i) establish a safe level for a residue of an animal drug when it is used for such different use authorized by subparagraph (A); and

"(ii) require the development of a practical, analytical method for the detection of residues of such drug above the safe level established under clause (i).

The use of an animal drug that results in residues exceeding a safe level established under clause (i) shall be considered an unsafe use of such drug under paragraph (1). Safe levels may be established under clause (i) either by regulation or order.

"(C) The Secretary may by general regulation provide access to the records of veterinarians to ascertain any use or intended use authorized under subparagraph (A) that the Secretary has determined may present a risk to the public health.

"(D) If the Secretary finds, after affording an opportunity for public comment, that a use of an animal drug authorized under subparagraph (A) presents a risk to the public health or that an analytical method required under subparagraph (B) has not been developed and submitted to the Secretary, the Secretary may, by order, prohibit any such use.

"(5) If the approval of an application filed under section 505 is in effect, the drug under such application shall not be deemed unsafe for purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a use or intended use of the drug in animals if such use or intended use—

"(A) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(B) is in compliance with regulations promulgated by the Secretary that establish the conditions for the use or intended use of the drug in animals.".

(b) OTHER AMENDMENTS.—

(1) SECTION 301.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

(A) in paragraph (e), by striking "507(d) or (g)," and inserting "507(d) or (g), 512(a)(4)(C),"; and

(B) by adding at the end the following:

"(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 512(a)(4)(A), 512(a)(4)(D), 512(a)(5).".

(2) SECTION 512(e).—Section 512(e)(1)(A) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)(1)(A)) is amended by inserting before the semicolon the following: "or the condition of use authorized under subsection (a)(4)(A)".

(3) SECTION 512(l).—Section 512(l)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)(1)) is amended by striking "relating to experience" and inserting "relating to experience, including experience with uses authorized under subsection (a)(4)(A),".

(c) REGULATIONS.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate regulations to implement paragraphs (4)(A) and (5) of section 512(a) of the Federal Food, Drug, and Cosmetic Act (as amended by subsection (a)).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the adoption of the final regulations under subsection (c).

**SEC. 3. MAPLE SYRUP.**

(a) PREEMPTION.—Section 403A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-1(a)) is amended—

(1) in paragraph (1), by inserting at the end the following: "except that this paragraph does not apply to a standard of identity of a State or political subdivision of a State for maple syrup that is of the type required by section 401 and 403(g),";

(2) in paragraph (2), by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(c) and that is applicable to maple syrup,"; and

(3) in paragraph (3) by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(h)(1) and that is applicable to maple syrup,".

(b) PROCEDURE.—Section 701(e)(1) (21 U.S.C. 371(e)(1)) is amended by striking "or maple syrup (regulated under section 168.140 of title 21, Code of Federal Regulations).".

Mr. HEFLIN. Mr. President, I rise today in support of S. 340, legislation In introduced last year with Senators SHELBY and PRESSLER, which will decriminalize the every day practice of veterinary medicine. No other licensed professions are forced to repeatedly break the law in order to responsibly carry out their professional duties. Due to an unintended consequence of legislation passed nearly 30 years ago, whenever a veterinarian uses an approved animal drug other than in strict accordance with its label, he or she is breaking the law. S. 340 permits the extra-label use of approved animal drugs under a veterinarian's prescription, within the context of a valid veterinarian-client-patient relationship and in accordance with FDA's regulation. S. 340 frees veterinarians from their criminal burden and permits them to legally practice in the most responsible and humane manner, while protecting consumers and their pets.

Extra-label drug use is an important issue for farmers and ranchers, veterinarians, pet owners, and consumers. For many years, FDA has recognized that the current Food, Drug and Cosmetic Act places veterinarians in an untenable position. On the one hand, the Veterinarian's Oath pledges the veterinarian to use "scientific knowledge and skills for the benefit of society through the protection of animal health, the relief of animal suffering, the conservation of livestock resources, the promotion of public health, and the advancement of medical knowledge." On the other hand, the use of many effective drugs is illegal because they are not specifically labeled for the use intended by the veterinary medical practitioners.

Unfortunately, it is not cost-effective for a pharmaceutical company to seek an approved label for all species and for which a drug is beneficial and safe. This bill gives veterinarians the ability to prevent pain, suffering, and death in their animal patients. Clearly, a drug like insulin, which was tested in dogs prior to its use in human beings, can be an effective therapy for diabetes in dogs, even though the product has never been formally approved for that use. Other medications, such as analgesics or anesthetics, may not be approved in cattle or goats, but are invaluable in relieving pain and making surgical procedures bearable. Can you imagine that in the United Kingdom it is illegal to dehorn a goat without an anesthetic—and that in the United States it is currently illegal to use one? By authorizing judicious extra-label use, this bill will rectify that situation.

At the same time, S. 340 gives FDA full access to the tools necessary to assure the continue safety of the food supply and to keep unwanted and illegal residues of animal drugs from contaminating our food. The bill grants FDA the authority it needs to restrict any use of animal drugs that pose a risk to public health.

This bill authorizes FDA to incorporate in its initial regulations the list of prohibited extra-label uses of drugs specifically listed by the name in the current compliance policy guide. Any new restrictions would have to go through the procedures established in this law prior to being prohibited.

As the law is laid out, if the Secretary of Health and Human Services finds that there is reasonable probability that the use of an animal drug may present a risk to the public health, the Secretary may establish safe levels for residues of that animal drug and require development of an analytical method that will enable diction of any residues above the safe level. Residues that exceed the safe level will be considered unsafe and enforcement action may be taken against the parties responsible for those residues. If appropriate safe levels cannot be scientifically established, or if the analytical method is not developed, the Secretary may, after affording an opportunity for public comment, prohibit the specific unapproved use of that drug that is of public health concern. All uses that are not of public health concern. All uses that are not of public health concern would still be permitted under these conditions.

The Secretary is also empowered to provide access to the prescribing records of veterinarians related to a specific unapproved use of an animal drug, once the Secretary has determined that specific use may present a risk to the public health.

The bill also prohibits the unapproved use of an animal drug when another drug is labeled for that use and that species, but only in cases where the product approved for that use contains the same active ingredient and is in the same dosage form and concentration as the other drug. This preserves the veterinarian's latitude for scientific judgment in cases where slight differences in the drugs' composition may be significant, while at the same time rewards the pharmaceutical manufacturers who have been the investment in securing a specific approval for their product. This restriction applies only to approved animal drugs.

S. 340 permits the extra-label use of human drugs in animals, subject to a valid veterinarian-client-patient relationship and a veterinarian's prescription, in accordance with FDA's regulations. Human drugs are used most extensively in companion animals, and in enacting S. 340, Congress intends to assist consumers and their pets by retaining access to the most medically effective, lowest cost products available.

Mr. President, this bill is cosponsored by 70 Members of this body and 290 Members of the House. Animal owners, farmers and ranchers, veterinarian, humane groups and manufacturers of animal health products have joined together to support this important legislation.

EXTRA-LABEL USE OF ANIMAL DRUGS

Mr. PRESSLER. Mr. President, today's action culminates 3 years of hard work with my colleagues Senators HEFLIN and SHELBY. I have worked closely with them and the veterinary industry to pass this legislation clarifying Food and Drug Administration [FDA] procedures regarding extra-label use of animal drugs.

I was first approached by veterinarians in South Dakota about the need for this legislation. Dr. Robert D. Snyder, a veterinarian from Groton, SD made a compelling argument regarding the need for this legislation in 1992. I worked closely with Dr. Snyder, and with leaders of the South Dakota Veterinary Association, including Dr. James Bailey and Dr. Fred Hubbard, on behalf of all veterinarians in South Dakota, to get this legislation passed.

They are to be commended for their hard work and diligence in achieving this goal.

The tireless efforts of the American Veterinary Association were also key in getting this legislation passed. I also want to thank my colleagues for supporting this bill, including the 69 Senators who cosponsored this measure.

The bill is a straightforward approach to resolving the current conflict between modern veterinary medicine and the law.

Current law prohibits the use of an animal drug for purposes other than those listed on the drug's label. It is not economically feasible under the present animal drug approval process to seek an approved label for all species and uses for which a drug is beneficial and safe. If a veterinarian is working to save the life of a cow or calf and the only effective treatment is a drug labeled only for horses, the letter of the law says a veterinarian cannot use the drug to save the cow or calf. This bill rectifies that situation and would allow the veterinarian to save the life of the animal without being in conflict with the law.

This is an important issue for South Dakota's 34,000 farmers and ranchers and my State's veterinarians and consumers. After visiting with several veterinarians and discussing their daily routines and practices, I became convinced that extra-label drug use is necessary. Currently approved therapies are insufficient to treat the conditions veterinarians routinely face in practice. All too often, veterinarians face situations in which an animal's health is immediately threatened and suffering or death would result from failure to provide prompt and effective treatment.

Mr. President, the FDA recognizes that a veterinarian, on occasion, will find it necessary to use an approved drug for a use not listed on the drug's label. In fact, the FDA has stated it will not institute regulatory action against licensed veterinarians for using or prescribing any drugs legally obtained. Thus, this bill codifies existing FDA practice.

This Nation's veterinarians use drugs in an extra-label manner to save animals' lives, and to prevent suffering. This bill provides the FDA and veterinarians with a clear, easily enforceable statute. The bill permits the FDA to develop practical and constructive regulations to define violations of the Food, Drug and Cosmetic Act. Most important to many of my constituents, it will resolve existing conflicts between modern veterinary medicine and the law.

Mr. President, I will continue to work for enactment of this bill this year.

So the bill was deemed read a third time, and passed, as follows:

S. 340

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Animal Medicinal Drug Use Clarification Act of 1994".

**SEC. 2. UNAPPROVED USES.**

(a) GENERAL RULE.—Section 512(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(a)) is amended by adding the following new paragraphs at the end:

"(4)(A) Except as provided in subparagraph (B), if an approval of an application filed under subsection (b) is in effect with respect to a particular use or intended use of a new animal drug, the drug shall not be deemed unsafe for the purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a different use or intended use of the drug, other than a use in or on animal feed, if such use or intended use—

"(i) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(ii) is in compliance with regulations promulgated by the Secretary that establish the conditions for such different use or intended use.

The regulations promulgated by the Secretary under clause (ii) may prohibit particular uses of an animal drug and shall not permit such different use of an animal drug if the labeling of another animal drug that contains the same active ingredient and which is in the same dosage form and concentration provides for such different use.

"(B) If the Secretary finds that there is a reasonable probability that a use of an animal drug authorized under subparagraph (A) may present a risk to the public health, the Secretary may—

"(i) establish a safe level for a residue of an animal drug when it is used for such different use authorized by subparagraph (A); and

"(ii) require the development of a practical, analytical method for the detection of residues of such drug above the safe level established under clause (i).

The use of an animal drug that results in residues exceeding a safe level established under clause (i) shall be considered an unsafe use of such drug under paragraph (1). Safe levels may be established under clause (i) either by regulation or order.

"(C) The Secretary may by general regulation provide access to the records of veterinarians to ascertain any use or intended use authorized under subparagraph (A) that the Secretary has determined may present a risk to the public health.

"(D) If the Secretary finds, after affording an opportunity for public comment, that a use of an animal drug authorized under subparagraph (A) presents a risk to the public health or that an analytical method required under subparagraph (B) has not been developed and submitted to the Secretary, the Secretary may, by order, prohibit any such use.

"(5) If the approval of an application filed under section 505 is in effect, the drug under such application shall not be deemed unsafe for purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a use or intended use of the drug in animals if such use or intended use—

"(A) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(B) is in compliance with regulations promulgated by the Secretary that establish the conditions for the use or intended use of the drug in animals.".

(b) OTHER AMENDMENTS.—

(1) SECTION 301.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

(A) in paragraph (e), by striking "507(d) or (g)," and inserting "507(d) or (g), 512(a)(4)(C),"; and

(B) by adding at the end the following:

"(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 512(a)(4)(A), 512(a)(4)(D), or 512(a)(5).".

(2) SECTION 512(e).—Section 512(e)(1)(A) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b(e)(1)(A)) is amended by inserting before the semicolon the following: "or the condition of use authorized under subsection (a)(4)(A)".

(3) SECTION 512(l).—Section 512(l)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)(1)) is amended by striking "relating to experience" and inserting "relating to experience, including experience with uses authorized under subsection (a)(4)(A),".

(c) REGULATIONS.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall promulgate regulations to implement paragraphs (4)(A) and (5) of section 512(a) of the Federal Food, Drug, and Cosmetic Act (as amended by subsection (a)).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the adoption of the final regulations under subsection (c).

**SEC. 3. MAPLE SYRUP.**

(a) PREEMPTION.—Section 403A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-1(a)) is amended—

(1) in paragraph (1), by inserting at the end the following: "except that this paragraph does not apply to a standard of identity of a State or political subdivision of a State for maple syrup that is of the type required by sections 401 and 403(g),";

(2) in paragraph (2), by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(c) and that is applicable to maple syrup,"; and

(3) in paragraph (3) by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(h)(1) and that is applicable to maple syrup,".

(b) PROCEDURE.—Section 701(e)(1) (21 U.S.C. 371(e)(1)) is amended by striking "or maple syrup (regulated under section 168.140 of title 21, Code of Federal Regulations).".

## COMMEMORATION OF THE 75TH ANNIVERSARY OF THE GRAND CANYON

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Senate Resolution 273, a resolution to commemorate the 75th anniversary of the Grand Canyon, submitted earlier today by Senators MCCAIN and DECONCINI; that the resolution be adopted; the motion to reconsider be laid upon the table; that the preamble be agreed to and any statements appear at the appropriate place in the RECORD as if read.

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

The resolution (S. Res. 273) was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 273

Whereas the Grand Canyon of the Colorado River is a feature of enormous scientific interest and significance, whose unique geological, biological and cultural resources represent a natural laboratory of unparalleled diversity;

Whereas Grand Canyon National Park represents an integral part of the greater Colorado Plateau Ecosystem whose significance to the health of the natural systems of the American West increases with time;

Whereas the Grand Canyon of the Colorado River is one of the most spectacular examples of arid-land erosion anywhere in the world and reveals a geologic record whose significance is unparalleled;

Whereas Grand Canyon is a world Heritage Site and a natural feature of international significance whose aesthetic beauty reflects the aspirations of a free and independent people;

Whereas Grand Canyon National Park has received over 100 million visitors since its establishment in 1919 and continues to serve the people of the United States and the world in their need for a place of outstanding natural beauty and refuge;

Whereas Grand Canyon National Park was established by Act of Congress on February 26, 1919;

*Be it resolved*, That the Senate of the United States of America on this date salutes Grand Canyon National Park and its custodians, the employees of the National Park Service, in honor of the park's 75th anniversary year.

## NATIONAL CHILDREN'S DAY

## PARENTS' DAY

## IRISH-AMERICAN HERITAGE MONTH

## NATIONAL PENNY CHARITY WEEK

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed, en bloc, to the immediate consideration of House Joint Resolution 389, House Joint Resolution 398, House Joint Resolution 401, and House Joint Resolution 415, just received from the House; that the joint resolutions each be read a third time and passed; that the preambles be agreed to, en bloc; that the motions to reconsider be laid upon the table, en bloc; and that any statements appear at the appropriate place in the RECORD, as if read.

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

The joint resolutions were deemed read a third time.

The joint resolutions (H.J. Res. 389, H.J. Res. 398, H.J. Res. 401, and H.J. Res. 415) were passed.

The preambles were agreed to.

## THE PATENT REEXAMINATION REFORM ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 682, S. 2341, relating to third party participation in patent and trademark cases, that the committee substitute be agreed to; that the bill be read a third time and passed, and the motion to reconsider be laid upon the table, and that any statements appear at the appropriate place in the RECORD as if read.

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

There being no objection, the Senate proceeded to consider the bill (S. 2341) to amend chapter 30 of title 35, United States Code, to afford third parties an opportunity for greater participation in reexamination proceedings before the U.S. Patent and Trademark Office, and for other purposes, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Patent Reexamination Reform Act of 1994".*

***SEC. 2. DEFINITIONS.***

*Section 100 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:*

*"(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.".*

***SEC. 3. REEXAMINATION PROCEDURES.***

*(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:*

***"§302. Request for reexamination***

*"Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title except for the best mode requirement. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Commissioner of Patents and Trademarks pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title. Unless the requesting person is the owner of the patent, the Commissioner promptly will send a copy of the request to the owner of record of the patent.".*

*(b) DETERMINATION OF ISSUE BY COMMISSIONER.—Section 303 of title 35, United States Code, is amended to read as follows:*

***"§303. Determination of issue by Commissioner***

*"(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and at any time, the Commissioner may determine whether a substantial new question of patentability is raised by patent or printed publications or by the failure of the patent specification or claims to comply with the requirements of section 112 of this title except for the best mode requirement.*

*"(b) A record of the Commissioner's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the third-party requester, if any.*

*"(c) A determination by the Commissioner pursuant to subsection (a) of this section will be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.".*

*(c) REEXAMINATION ORDER BY COMMISSIONER.—Section 304 of title 35, United States Code, is amended to read as follows:*

***"§304. Reexamination order by Commissioner***

*"If, in a determination made under the provisions of section 303(a) of this title, the Commissioner finds that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial Office action on the merits of the reexamination conducted in accordance with section 305 of this title.".*

*(d) CONDUCT OF REEXAMINATION PROCEEDINGS.—Section 305 of title 35, United States Code, is amended to read as follows:*

***"§305. Conduct of reexamination proceedings***

*"(a) Subject to subsection (b) of this section, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to the patent and a new claim or claims thereto. No proposed amended or new claim enlarging the scope of the claims of the patent will be permitted in a reexamination proceeding under this chapter.*

*"(b)(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a third-party reexamination request.*

*"(2) Any document (other than the reexamination request) filed in a reexamination proceeding by either the patent owner or the third-party requester shall be served on any other party.*

*"(3)(A) If the patent owner files a response to any Office action on the merits, the third-party requester may once file written comments within a reasonable period. At a minimum, such comments may be filed within 1 month after the date of service of the patent owner's response.*

*"(B) Comments filed under this paragraph shall be limited to issues covered by the Office action or the patent owner's response.*

*"(c) Unless otherwise provided by the Commissioner for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office.".*

*(e) APPEAL.—Section 306 of title 35, United States Code, is amended to read as follows:*

***"§306. Appeal***

*"(a) The patent owner involved in a reexamination proceeding under this chapter may—*

*"(1) appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent; or*

*"(2) be a party to any appeal taken by a third-party requester under subsection (b) of this section.*

*"(b) A third-party requester may—*

*"(1) appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent; or*

*"(2) be a party to any appeal taken by the patent owner, subject to subsection (c) of this section.*

*"(c) A third-party requester who files a notice of appeal or who participates as a party to an appeal by the patent owner under the provisions of sections 141 through 144 of this title is estopped from later asserting, in any forum, the invalidity of any claim determined to be patentable on appeal on any ground which the third-party requester raised or could have raised during the reexamination proceedings. A third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, within twenty days after the patent owner has filed notice of appeal, the third-party requester files notice with the Commissioner electing to participate.".*

*(f) REEXAMINATION PROHIBITED.—(1) Chapter 30 of title 35, United States Code, is amended by adding the following section at the end thereof:*

***"§308. Reexamination prohibited***

*"(a) Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued and published under section 307 of this title, unless authorized by the Commissioner.*

*"(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and a reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office, notwithstanding any provision of this chapter.".*

*(2) The table of sections for chapter 30 of title 35, United States Code, is amended by adding the following at the end thereof:*

*"308. Reexamination prohibited.".*

***SEC. 4. CONFORMING AMENDMENTS.***

*(a) BOARD OF PATENT APPEALS AND INTERFERENCES.—The first sentence of section 7(b) of title 35, United States Code, is amended to read as follows: "The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, or a patent owner or a third-party requester in a reexamination proceeding, review adverse decisions of examiners upon applications for patents and decisions of examiners in reexamination proceedings, and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title.".*

*(b) PATENT FEES; PATENT AND TRADEMARK SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended by inserting "or for an unintentionally delayed response by the patent owner in a reexamination proceeding," after "issuing each patent,".*

*(c) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134 of title 35, United States Code, is amended to read as follows:*

***"§134. Appeal to the Board of Patent Appeals and Interferences***

*"(a) An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.*

*"(b) A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.*

*"(c) A third-party requester may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.".*

*(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: "An applicant, a patent owner or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.".*

*(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In ex parte and reexamination cases, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal.".*

*(f) CIVIL ACTION TO OBTAIN PATENT.—Section 145 of title 35, United States Code, is amended in the first sentence by inserting "(a)" after "section 134".*

***SEC. 5. EFFECTIVE DATES.***

*This Act shall take effect six months after the date of enactment of this Act and shall apply to all reexamination requests filed on or after such date.*

So the bill (S. 2341) was deemed read the third time, and passed.

S. 2341

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Patent Reexamination Reform Act of 1994".

**SEC. 2. DEFINITIONS.**

Section 100 of title 35, United States Code, is amended by adding at the end thereof the following new subsection:

"(e) The term 'third-party requester' means a person requesting reexamination under section 302 of this title who is not the patent owner.".

**SEC. 3. REEXAMINATION PROCEDURES.**

(a) REQUEST FOR REEXAMINATION.—Section 302 of title 35, United States Code, is amended to read as follows:

**"§302. Request for reexamination**

"Any person at any time may file a request for reexamination by the Office of a patent on the basis of any prior art cited under the provisions of section 301 of this title or on the basis of the requirements of section 112 of this title except for the best mode requirement. The request must be in writing and must be accompanied by payment of a reexamination fee established by the Commissioner of Patents and Trademarks pursuant to the provisions of section 41 of this title. The request must set forth the pertinency and manner of applying cited prior art to every claim for which reexamination is requested or the manner in which the patent specification or claims fail to comply with the requirements of section 112 of this title. Unless the requesting person is the owner of the patent, the Commissioner promptly will send a copy of the request to the owner of record of the patent.".

(b) DETERMINATION OF ISSUE BY COMMISSIONER.—Section 303 of title 35, United States Code, is amended to read as follows:

**"§303. Determination of issue by Commissioner**

"(a) Within three months following the filing of a request for reexamination under the provisions of section 302 of this title, the Commissioner will determine whether a substantial new question of patentability affecting any claim of the patent concerned is raised by the request, with or without consideration of other patents or printed publications. On his own initiative, and at any time, the Commissioner may determine whether a substantial new question of patentability is raised by patent or printed publications or by the failure of the patent specification or claims to comply with the requirements of section 112 of this title except for the best mode requirement.

"(b) A record of the Commissioner's determination under subsection (a) of this section will be placed in the official file of the patent, and a copy promptly will be given or mailed to the owner of record of the patent and to the third-party requester, if any.

"(c) A determination by the Commissioner pursuant to subsection (a) of this section will be final and nonappealable. Upon a determination that no substantial new question of patentability has been raised, the Commissioner may refund a portion of the reexamination fee required under section 302 of this title.".

(c) REEXAMINATION ORDER BY COMMISSIONER.—Section 304 of title 35, United States Code, is amended to read as follows:

**"§304. Reexamination order by Commissioner**

"If, in a determination made under the provisions of section 303(a) of this title, the Commissioner finds that a substantial new question of patentability affecting any claim of a patent is raised, the determination will include an order for reexamination of the patent for resolution of the question. The order may be accompanied by the initial Office action on the merits of the reexamination conducted in accordance with section 305 of this title.".

(d) CONDUCT OF REEXAMINATION PROCEEDINGS.—Section 305 of title 35, United States Code, is amended to read as follows:

**"§305. Conduct of reexamination proceedings**

"(a) Subject to subsection (b) of this section, reexamination will be conducted according to the procedures established for initial examination under the provisions of sections 132 and 133 of this title. In any reexamination proceeding under this chapter, the patent owner will be permitted to propose any amendment to the patent and a new claim or claims thereto. No proposed amended or new claim enlarging the scope of the claims of the patent will be permitted in a reexamination proceeding under this chapter.

"(b)(1) This subsection shall apply to any reexamination proceeding in which the order for reexamination is based upon a third-party reexamination request.

"(2) Any document (other than the reexamination request) filed in a reexamination proceeding by either the patent owner or the third-party requester shall be served on any other party.

"(3)(A) If the patent owner files a response to any Office action on the merits, the third-party requester may once file written comments within a reasonable period. At a minimum, such comments may be filed within 1

month after the date of service of the patent owner's response.

"(B) Comments filed under this paragraph shall be limited to issues covered by the Office action or the patent owner's response.

"(c) Unless otherwise provided by the Commissioner for good cause, all reexamination proceedings under this section, including any appeal to the Board of Patent Appeals and Interferences, will be conducted with special dispatch within the Office.".

(e) APPEAL.—Section 306 of title 35, United States Code, is amended to read as follows:

**"§ 306. Appeal**

"(a) The patent owner involved in a reexamination proceeding under this chapter may—

"(1) appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any decision adverse to the patentability of any original or proposed amended or new claim of the patent; or

"(2) be a party to any appeal taken by a third-party requester under subsection (b) of this section.

"(b) A third-party requester may—

"(1) appeal under the provisions of section 134 of this title, and may appeal under the provisions of sections 141 through 144 of this title, with respect to any final decision favorable to the patentability of any original or proposed amended or new claim of the patent; or

"(2) be a party to any appeal taken by the patent owner, subject to subsection (c) of this section.

"(c) A third-party requester who files a notice of appeal or who participates as a party to an appeal by the patent owner under the provisions of sections 141 through 144 of this title is estopped from later asserting, in any forum, the invalidity of any claim determined to be patentable on appeal on any ground which the third-party requester raised or could have raised during the reexamination proceedings. A third-party requester is deemed not to have participated as a party to an appeal by the patent owner unless, within twenty days after the patent owner has filed notice of appeal, the third-party requester files notice with the Commissioner electing to participate.".

(f) REEXAMINATION PROHIBITED.—(1) Chapter 30 of title 35, United States Code, is amended by adding the following section at the end thereof:

**"§ 308. Reexamination prohibited**

"(a) Notwithstanding any provision of this chapter, once an order for reexamination of a patent has been issued under section 304 of this title, neither the patent owner nor the third-party requester, if any, nor privies of either, may file a subsequent request for reexamination of the patent until a reexamination certificate is issued and published under section 307 of this title, unless authorized by the Commissioner.

"(b) Once a final decision has been entered against a party in a civil action arising in whole or in part under section 1338 of title 28 that the party has not sustained its burden of proving the invalidity of any patent claim in suit, then neither that party nor its privies may thereafter request reexamination of any such patent claim on the basis of issues which that party or its privies raised or could have raised in such civil action, and a reexamination requested by that party or its privies on the basis of such issues may not thereafter be maintained by the Office, notwithstanding any provision of this chapter.".

(2) The table of sections for chapter 30 of title 35, United States Code, is amended by adding the following at the end thereof:

"308. Reexamination prohibited.".

**SEC. 4. CONFORMING AMENDMENTS.**

(a) BOARD OF PATENT APPEALS AND INTERFERENCES.—The first sentence of section 7(b) of title 35, United States Code, is amended to read as follows: "The Board of Patent Appeals and Interferences shall, on written appeal of an applicant, or a patent owner or a third-party requester in a reexamination proceeding, review adverse decisions of examiners upon applications for patents and decisions of examiners in reexamination proceedings, and shall determine priority and patentability of invention in interferences declared under section 135(a) of this title.".

(b) PATENT FEES; PATENT AND TRADEMARK SEARCH SYSTEMS.—Section 41(a)(7) of title 35, United States Code, is amended by inserting "or for an unintentionally delayed response by the patent owner in a reexamination proceeding," after "issuing each patent,".

(c) APPEAL TO THE BOARD OF PATENT APPEALS AND INTERFERENCES.—Section 134 of title 35, United States Code, is amended to read as follows:

**"§ 134. Appeal to the Board of Patent Appeals and Interferences**

"(a) An applicant for a patent, any of whose claims has been twice rejected, may appeal from the decision of the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

"(b) A patent owner in a reexamination proceeding may appeal from the final rejection of any claim by the primary examiner to the Board of Patent Appeals and Interferences, having once paid the fee for such appeal.

"(c) A third-party requester may appeal to the Board of Patent Appeals and Interferences from the final decision of the primary examiner favorable to the patentability of any original or proposed amended or new claim of a patent, having once paid the fee for such appeal.".

(d) APPEAL TO COURT OF APPEALS FOR THE FEDERAL CIRCUIT.—Section 141 of title 35, United States Code, is amended by amending the first sentence to read as follows: "An applicant, a patent owner or a third-party requester, dissatisfied with the final decision in an appeal to the Board of Patent Appeals and Interferences under section 134 of this title, may appeal the decision to the United States Court of Appeals for the Federal Circuit.".

(e) PROCEEDINGS ON APPEAL.—Section 143 of title 35, United States Code, is amended by amending the third sentence to read as follows: "In ex parte and reexamination cases, the Commissioner shall submit to the court in writing the grounds for the decision of the Patent and Trademark Office, addressing all the issues involved in the appeal.".

(f) CIVIL ACTION TO OBTAIN PATENT.—Section 145 of title 35, United States Code, is amended in the first sentence by inserting "(a)" after "section 134".

**SEC. 5. EFFECTIVE DATES.**

This Act shall take effect six months after the date of enactment of this Act and shall apply to all reexamination requests filed on or after such date.

## THE CALENDAR

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed, en bloc, to the immediate consideration of Calendars Nos. 679, 685, 686, 687, 688 and 690; that the committee substitutes and committee amendments, where appropriate, be agreed to; that the bills each be deemed read the third time, passed; that the resolutions be agreed to, the motions to reconsider be laid upon the table, en bloc, that the title amendments and preambles, where appropriate, be agreed to, en bloc; that the consideration of these items appear individually in the RECORD as if read.

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

So the bills and resolutions (S. 927, S. 2475, Senate Resolution 136, Senate Resolution 223, Senate Resolution 258, and H.R. 810) were deemed read the third time, and passed, or agreed to, as follows:

## THE WADE BOMAR PRIVATE RELIEF ACT

The Senate proceeded to consider the bill (S. 927) for the relief of Wade Bomar, which had been reported from the Committee on the Judiciary, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

**SECTION 1. RELIEF OF WADE BOMAR.**

The Secretary of the Treasury shall pay, out of any money in the Treasury not otherwise appropriated, $100,000 to Mr. Wade Bomar in full settlement of a claim for injuries sustained by Mr. Bomar in the line of duty on August 6, 1989, while fighting the Pryor Gap fire, permanently depriving him of the use of his limbs.

The amendment was agreed to.

The bill was ordered to be engrossed for a third reading, read the third time, and passed.

The title was amended so as to read: "A bill for the relief of Wade Bomar, and for other purposes."

## RELIEF OF BENCHMARK RAIL GROUP

The bill (S. 2457) for the relief of Benchmark Rail Group, Inc., was considered, ordered to be engrossed for a third reading, read the third time, and passed; as follows:

S. 2457

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDING AND PURPOSE.**

(a) FINDING.—The Congress finds that Benchmark Rail Group, Inc., of St. Louis, Missouri, satisfactorily performed emergency work after the Northridge earthquake, but has not been reimbursed as a result of a technicality under California State law.

(b) PURPOSE.—The purpose of this Act is to fairly compensate Benchmark Rail Group, Inc., for the work for which, except for the technicality under California State law, it would otherwise have been paid under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

**SEC. 2. PAYMENT.**

(a) IN GENERAL.—Not later than 30 days after the date of enactment of this Act, the

director of the Federal Emergency Management Agency shall pay to Benchmark Rail Group, Inc., of St. Louis, Missouri, an amount equal to the total amount owed to Benchmark Rail Group, Inc., by the Federal Emergency Management Agency and the State of California to compensate Benchmark Rail Group, Inc., for the emergency work and services performed at the request of the Southern California Regional Rail Authority, to the extent that such work and services are otherwise eligible for reimbursement under the Robert T. Stafford Disaster and Emergency Assistance Act. The payment shall be made from funds appropriated to implement such Act.

(b) DEOBLIGATION OF FUNDS.—The Federal Emergency Management Agency shall deobligate an equal amount to that obligated previously for payment to the State of California to cover the costs of work performed for the Southern California Regional Rail Authority by Benchmark Rail Group, Inc., after the Northridge earthquake which would have been eligible for reimbursement under such Act.

Mr. DANFORTH. Mr. President, S. 2457 provides relief to the Benchmark Rail Group, Inc., a company in St. Louis that performed emergency work following the Northridge earthquake and, because of a technicality in California State law, has not been reimbursed for that work.

Immediately following the Northridge earthquake, the Southern California Regional Rail Authority [SCRRA] approached Benchmark about assisting in emergency repair work on rail lines in the Los Angeles area. Five days later, Benchmark was performing the work. Several weeks into the work, Benchmark learned of a provision of California State law which states that State agencies can only hire contractors licensed to do work in the State of California. While SCRRA and the State of California were satisfied with Benchmark's work, this provision of State law disqualified Benchmark from receiving payment.

Section 406(a) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (P.L. 93-288, amended by P.L. 100-707) authorizes the Federal Emergency Management Agency [FEMA] to contribute at least 75 percent of the net eligible cost of repair, restoration, reconstruction, or replacement of public facilities. In the case of the Northridge earthquake, FEMA is contributing 90 percent of such repairs. Routinely, State or local governments or other public entities hire contractors to perform emergency repair work on specific projects. Following approval by FEMA of a project, funds are obligated to the State—the grantee—for dispersal to other public entities—subgrantees—or directly to contractors. The funds may not be drawn down by the State for disbursement to a subgrantee or contractor until the work is completed and documentation supporting the associated costs has been submitted to FEMA.

In the case of the Northridge earthquake, on August 23, 1994, funds in the aggregate amount of $27,517,779 were obligated by FEMA through two damage survey reports for various eligible repair/restoration projects undertaken by Metropolitan Transit Authority-related [MTA] transit districts, including SCRRA. Benchmark is owed approximately $500,000. The 90-percent Federal share of the work performed by Benchmark is included in this obligation. However, because of the provision of California State law, those funds cannot be awarded to Benchmark by the State of California or SCRRA.

FEMA is very sympathetic to Benchmark's quandary. In an August 25, 1994, letter to Gov. Pete Wilson, Richard W. Krimm, Associate Director of FEMA for Response and Recovery Directorate, wrote that "it is our understanding that this company, Benchmark Rail Group of St. Louis, Missouri, traveled halfway across the country at the invitation of the Southern California Regional Rail Authority [SCRRA] to help people in dire need of assistance. This action was clearly an example of the concept of people-helping-people at work. The State should take whatever action is appropriate to facilitate reimbursement to Benchmark for these efforts, based upon dollars already obligated by the Federal Emergency Management Agency [FEMA].

According to the letter, "FEMA is precluded from directly paying Benchmark or otherwise effectuating or facilitating payment to Benchmark because of limitations imposed by both State and Federal law." It cannot pay Benchmark for two reasons. First, because "the Federal Government, in the performance of its duties and responsibilities, cannot ignore or abrogate State law. Since the failure to have a particular California license is the obstacle to payment by the State, FEMA is not legally in a position to do what the State of California, the Metropolitan Transit Authority and SCRRA cannot do." Second, the Stafford Act and applicable regulations authorize reimbursement by FEMA only to the grantee of the Federal share of disaster assistance funds, which, according to section 406 (a) of the act, must be either "a State or local government." In this case, the State is the grantee. Benchmark, a private company, "is not an eligible grantee."

Like FEMA, the State of California recognizes the problem. This summer, Gov. Pete Wilson worked closely with the California State legislature in an attempt to amend California law to authorize payment to Benchmark. However, the effort got underway late in the legislative session and failed. On September 8, 1994, Governor Wilson wrote to FEMA that "we are hopeful that this problem can be resolved if FEMA obtains the administrative flexibility to make the Stafford Act payment directly to Benchmark."

The legislation that I introduced would do just that. It directs FEMA to pay directly to Benchmark all that Benchmark is owed for its work in Southern California that is eligible for reimbursement. This includes the 90-percent share that FEMA would ordinarily reimburse to the State through the public assistance program, and the 10-percent share that the non-Federal entity would ordinarily contribute for reimbursement. The clause in the bill "to the extent that such work and services are otherwise eligible for reimbursement under the Robert T. Stafford Disaster and Emergency Assistance Act" is intended to mean that FEMA reimburses Benchmark for all work which is eligible for reimbursement under the Stafford Act, including both the 90-percent share that FEMA would ordinarily pay and the 10-percent share that the nonFederal entity would pay.

I have required FEMA to reimburse all 100 percent because Benchmark is in trouble and my goal is to make the company whole. Until the payment issue is resolved, Benchmark has ceased operations. I have no idea when and whether the California State legislature will amend State law to permit Benchmark to be reimbursed.

I believe that local and State governments should contribute a match for disaster assistance. Under ordinary circumstances, I would want FEMA to contribute 90 percent of the reimbursement and California (or the local rail authority) to contribute 10 percent. Under this legislation, FEMA must pay 100 percent. However, I think it is fair, and makes very good sense, for FEMA to recover the 10 percent share from the State or from the local rail authority after it reimburses Benchmark the full 100 percent.

It is very unfortunate that in exchange for Benchmark's responsibility in responding to this emergency, it has had to endure a disaster of its own. This legislation will finally permit Benchmark to receive that which it is owed. I believe that we have a responsibility to make this happen, and I urge passage of this bill.

I ask unanimous consent that the two letters I referred to be printed in the RECORD.

There being no objection, the letters were ordered to be printed in the RECORD, as follows:

FEDERAL EMERGENCY MANAGEMENT AGENCY,
*Washington, DC, August 25, 1994.*

*Hon.* PETE WILSON,
*Governor of California, State Capital, Sacramento, CA.*

DEAR GOVERNOR WILSON: I am writing to encourage you to take the appropriate actions to ensure that an out-of-state company that performed emergency work in California without required State licensing, following the Northridge earthquake, can be compensated for the eligible work that was performed.

It is our understanding that this company, Benchmark Rail Group of St. Louis, Missouri, travelled halfway across the country

at the invitation of the Southern California Regional Rail Authority (SCRRA) to help people in dire need of assistance. This action was clearly an example of the concept of people-helping-people at work. The State should take whatever action is appropriate to facilitate reimbursement to Benchmark for these efforts, based upon dollars already obligated by the Federal Emergency Management Agency (FEMA).

The Benchmark Rail Group performed repair and restoration work at the request of SCRRA soon after the Northridge Earthquake. However, due to complications arising from the fact that they did not have the required California license, they have been unable to obtain reimbursement for their work.

FEMA is precluded from directly paying Benchmark or otherwise effectuating or facilitating payment to Benchmark because of limitations imposed by both State and Federal law. First and foremost, payment to Benchmark is prevented because of the State's licensing requirement. Further restrictions come into play by way of applicable grant administration regulations.

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act—the enabling legislation for our disaster assistance program) and applicable grant administration regulations authorize the provision by FEMA to the *grantee* of the Federal share of disaster assistance funds for eligible subgrantee projects and costs. The State, as grant administrator, then disburses these funds to the subgrantee based on documented costs of eligible work. The subgrantee then pays its contractors. In this case, the subgrantee is the Metropolitan Transit Authority (MTA), an umbrella organization for several transit districts, including SCRRA.

The provisions of the Stafford Act and the above-mentioned regulations provide that funds will be obligated (i.e., made available to the State) upon approval of a project by FEMA. These funds may not, however, be drawn down by the State for disbursement to the subgrantee until the work is completed and documentation supporting the associated costs has been submitted by the subgrantee. Accordingly, the State, as grant administrator, may not disburse grant funds to the subgrantee for work for which it has not incurred any costs, as would be the case if Benchmark is not paid by the MTA.

In addition, the provisions of the Stafford Act would prohibit us from providing such funds directly to Benchmark, since the company is not an eligible grantee. Beyond these strict considerations of enabling legislation, the Federal government, in the performance of its duties and responsibilities, cannot ignore or abrogate State law. Since the failure to have a particular California license is the obstacle to payment by the State, FEMA is not legally in a position to do what the State of California, MTA and SCRRA cannot do.

On August 23, 1994, funds in the aggregate amount of $27,517,779 were obligated by FEMA through two Damage Survey Reports (DSRs) for various eligible repair/restoration projects undertaken by the MTA-related transit districts, including SCRRA. This means that funds are now reserved and available to the State (and represent the 90 percent Federal share of eligible costs for the project) for reimbursement of the subgrantee's eligible costs, subject to the scope of work parameters set forth in the DSR and within the parameters of State law. It is our understanding that work performed by Benchmark is included within the scope of work recognized as eligible in the Damage Survey Reports.

We hope that this information is helpful in resolving issues concerning the payment of the Benchmark Rail Group. This is a unique situation that we have not encountered before in response to this disaster. We support your efforts to work with SCRRA, the Benchmark Rail Group and others to resolve this unfortunate situation. We would appreciate it if you would notify us when you reach a final resolution of this matter. If I may be of further assistance, please feel free to contact me.

Sincerely,

RICHARD W. KRIMM,
*Associate Director,*
*Response and Recovery Directorate.*

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GOVERNOR PETE WILSON,
*Sacramento, CA, September 9, 1994.*

Mr. RICHARD W. KRIMM,
*Associate Director, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC.*

DEAR. MR. KRIMM: I received your letter regarding compensation to Benchmark Rail Group for emergency repair and restoration work done after the Northridge Earthquake.

As you know, Southern California Regional Rail Authority has taken the position that State law precludes it from paying Benchmark since it did not have the required license. Although an attempt was made to amend legislation late in the legislative session to authorize payment to certain unlicensed contractors who performed work in response to the Northridge earthquake, no action was taken by the Legislature.

My office has been in contact with Senator Danforth regarding this situation. We are hopeful that this problem can be resolved if FEMA obtains the administrative flexibility to make the Stafford Act payment directly to Benchmark.

Thank you for your assistance.

Sincerely,

PETE WILSON.

## THE HORACE MARTIN ACT OF 1994

The Senate proceeded to consider the resolution (S. Res. 136) to refer S. 1325 entitled "A bill for the relief of Horace Martin," to the chief judge of the U.S. Claims Court for a report thereon, which had been reported from the Committee on the Judiciary, with an amendment.

The amendment was agreed to.

The resolution, as amended, was agreed to.

The resolution, as amended, and the title, as amended, are as follows:

S. RES. 136

*Resolved*, That the bill (S. 1325) entitled "A bill for the relief of Horace Martin", now pending in the Senate, together with all accompanying papers, is referred to the Chief Judge of the United States Court of Federal Claims. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, and report back to the Senate, at the earliest practicable date, giving such finding of fact and conclusions that are sufficient to inform Congress of the amount, if any, legally or equitably due from the United States to the claimant.

Amend the title so as to read: "To refer S. 1325 entitled 'A bill for the relief of Horace Martin', to the Chief Judge of the United States Court of Federal Claims for a report thereon.".

## REFERRAL OF S. 2188 TO THE U.S. COURT OF FEDERAL CLAIMS

The resolution (S. Res. 223) to refer S. 2188 entitled "A bill for the relief of the Pottawatomi Nation in Canada for the proportionate share of tribal funds and annuities under treaties between the Pottawatomi Nation and the United States, and for other purposes", to the Chief Judge of the U.S. Court of Federal Claims for a report on the bill was considered and agreed to; as follows:

S. RES. 223

*Resolved*, That S. 2188 entitled "A bill for the relief of the Pottawatomi Nation in Canada for the proportionate share of tribal funds and annuities under treaties between the Pottawatomi Nation and the United States, and for other purposes", now pending in the Senate, together with all accompanying papers, is referred to the Chief Judge of the United States Court of Federal Claims. The Chief Judge shall proceed according to the provisions of sections 1492 and 2509 of title 28, United States Code, and report back to the Senate, at the earliest practicable date, providing such findings of fact and conclusions that are sufficient to inform the Congress of—

(1) whether the claims against the United States of the Pottawatomi Nation in Canada that would have been compensable under the Indian Claims Commission Act (25 U.S.C. 70 et seq.) but for the residence of the Pottawatomi Nation in Canada and outside of the territorial limits of the United States are legal or equitable in nature;

(2) the amount of damages (if any) that the Pottawatomi Nation in Canada would have been entitled to receive under such Act but for the residence of the Pottawatomi Nation in Canada and outside of the territorial limits of the United States that is payable to the Pottawatomi Nation in Canada in accordance with section 1(1) of S. 2188; and

(3) the amount of interest that is payable on the amount referred to in paragraph (2) in accordance with section 1(2) of S. 2188, calculated at a rate of 5 percent per year.

## REFERRAL OF S. 974 TO THE U.S. COURT OF FEDERAL CLAIMS

The resolution (S. Res. 258) resolution to refer S. 974 entitled "A bill for the relief of Richard Kanehl of Mobile, Alabama." to the chief judge of the U.S. Court of Federal Claims for a report thereon was considered, and agreed to; as follows:

S. RES. 258

*Resolved*, That, as a supplement to S. Res. 108 of the 103d Congress, the bill S. 974 entitled "A bill for the relief of Richard Kanehl of Mobile, Alabama." now pending in the Senate, together with all the accompanying papers, is referred to the chief judge of the United States Court of Federal Claims. The chief judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Code, notwithstanding the bar of any statute of limitations, laches, res judicata, collateral estoppel, or bar of sovereign immunity, and report thereon to the Senate, at the earliest

practicable date, giving such findings of fact and conclusions thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimants from the United States. In complying with this resolution, the Court of Federal Claims is requested to consider the records of any previous trial of the issues in this case, including the records of Merchants National Bank v. United States (7 Cl. Ct. 1; 1984).

## RELIEF OF ELIZABETH M. HILL

The bill (H.R. 810) for the relief of Elizabeth M. Hill was considered, ordered to a third reading, read the third time, and passed.

## UNANIMOUS-CONSENT AGREEMENT—S. 2467

Mr. FORD. Mr. President, I ask unanimous consent that during the consideration of S. 2467, the GATT implementation legislation, or its House companion; that the vote on any motion to waive the Budget Act not occur until all time on the legislation has been used or yielded back, and that the previous consent agreement governing committee consideration apply to both S. 2467 and the House companion.

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

## MEASURE PLACED ON CALENDAR—H.R. 4944

Mr. FORD. Mr. President, I ask unanimous consent that H.R. 4944 Water Desalination Act of 1994, just received from the House, be placed on the calendar.

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

## AFRICAN CONFLICT RESOLUTION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of calendar No. 694, S. 2475, a bill to promote the peaceful resolution of conflicts in Africa; that the bill be deemed read the third time, passed the motion to reconsider laid on the table, and any statements thereon appear in the RECORD at the appropriate place as though read.

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

So the bill (S. 2475) was deemed read the third time, and passed, as follows:

S. 2475

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION. 1. SHORT TITLE.**

This Act may be cited as the "African Conflict Resolution Act".

**SEC. 2. FINDINGS AND STATEMENT OF POLICY.**

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

(1) It is in the national interest of the United States to help build African capability in conflict resolution. A relatively small investment of assistance in promoting African conflict resolution—

(A) would reduce the enormous human suffering which is caused by wars in Africa;

(B) would help the United States avoid huge future expenditures necessitated by Somalia-like humanitarian disasters; and

(C) would reduce the need for United Nations intervention as African institutions develop the ability to resolve African conflicts.

(2) Africa, to a greater extent than any other continent, is afflicted by war. Africa has been marred by more than 20 major civil wars since 1960. Rwanda, Somalia, Angola, Sudan, Liberia, and Burundi are among those countries that have recently suffered serious armed conflict.

(3) In the last decade alone, between 2,000,000 and 4,000,000 Africans have died because of war. There were 5,200,000 refugees and 13,100,000 displaced people in Africa in 1993.

(4) Millions more Africans are currently at risk of war-related death. Looming or ongoing conflicts in Zaire, Angola, Sudan, Rwanda, and other countries threaten Africa's future.

(5) War has caused untold economic and social damage to the countries of Africa. Food production is impossible in conflict areas, and famine often results. Widespread conflict has condemned many of Africa's children to lives of misery and, in certain cases, has threatened the existence of traditional African cultures.

(6) Conflict and instability in Africa, particularly in large, potentially rich countries such as Angola, Sudan, and Zaire, deprive the global economy of resources and opportunities for trade and investment. Peace in these countries could make a significant contribution to global economic growth, while creating new opportunities for United States businesses.

(7) Excessive military expenditures threaten political and economic stability in Africa while diverting scarce resources from development needs. Demobilization and other measures to reduce the size of African armies, and civilian control of the military under the rule of law are in the interest of international security and economic development.

(8) Conflict prevention, mediation, and demobilization are prerequisites to the success of development assistance programs. Nutrition and education programs, for example, cannot succeed in a nation at war. Billions of dollars of development assistance have been virtually wasted in war-ravaged countries such as Liberia, Somalia, and Sudan.

(9) Africans have a long tradition of informal mediation. This tradition should be built upon to create effective institutions through which Africans can resolve African conflicts.

(10) The effectiveness of U.S. support for conflict resolution programs requires coordination and collaboration with multilateral institutions and other bilateral donors.

(11) African institutions are playing an active role in conflict resolution and mediation utilizing the experience of elder statesmen. Groups such as the All African Council of Churches have assisted in defusing conflicts. The Economic Community of West African States (ECOWAS) has sought to address the conflict in Liberia by deploying an African peacekeeping force. The Southern African states have been working to prevent a crisis in Lesotho. The Intergovernmental Authority on Desertification and Drought (IGADD) has been engaged in attempting to resolve the conflict in Sudan.

(12) The Organization of African Unity, under the leadership of Secretary General Salim Salim, has established a conflict resolution mechanism and has been active in mediation and conflict resolution in several African countries.

(b) UNITED STATES POLICY.—The Congress declares, therefore, that a key goal for United States foreign policy should be to help institutionalize conflict resolution capability in Africa.

**SEC. 3. IMPROVING THE CONFLICT RESOLUTION CAPABILITIES OF THE ORGANIZATION OF AFRICAN UNITY.**

(a) AUTHORIZATION OF ASSISTANCE.—The President is authorized to provide assistance to strengthen the conflict resolution capability of the Organization of African Unity, as follows:

(1) Funds may be provided to the Organization of African Unity for use in supporting its conflict resolution capability, including providing technical assistance.

(2) Funds may be used for expenses of sending individuals with expertise in conflict resolution to work with the Organization of African Unity.

(b) FUNDING.—Of the foreign assistance funds that are allocated for sub-Saharan Africa, not less than $1,500,000 for each of the fiscal years 1995 through 1998 should be used to carry out subsection (a).

**SEC. 4. IMPROVING CONFLICT RESOLUTION CAPABILITIES OF MULTILATERAL SUBREGIONAL ORGANIZATIONS IN AFRICA.**

(a) AUTHORIZATION OF ASSISTANCE.—The President is authorized to provide assistance to strengthen the conflict resolution capabilities of subregional organizations established by countries in sub-Saharan Africa, as follows:

(1) Funds may be provided to such organizations for use in supporting their conflict resolution capability, including providing technical assistance.

(2) Funds may be used for the expenses of sending individuals with expertise in conflict resolution to work with such organizations.

(b) FUNDING.—Of the foreign assistance funds that are allocated for sub-Saharan Africa, such sums as may be necessary for each of the fiscal years 1995 through 1998 may be used to carry out subsection (a).

**SEC. 5. IMPROVING CONFLICT RESOLUTION CAPABILITIES OF NON-GOVERNMENTAL ORGANIZATIONS.**

(a) AUTHORIZATION OF ASSISTANCE.—The President is authorized to provide assistance to nongovernmental organizations that are engaged in mediation and reconciliation efforts in sub-Saharan Africa.

(b) FUNDING.—Of the foreign assistance funds that are allocated for sub-Saharan Africa, such sums as may be necessary for each of the fiscal years 1995 and 1996 should be used to carry out subsection (a).

**SEC. 6. AFRICAN DEMOBILIZATION AND RETRAINING PROGRAM.**

(a) AUTHORIZATION OF ASSISTANCE.—In order to facilitate reductions in the size of the armed forces of countries of sub-Saharan Africa, the President is authorized to—

(1) provide assistance for the encampment and related activities for the purpose of demobilization of such forces; and

(2) provide assistance for the reintegration of demobilized military personnel into civilian society through activities such as retraining for civilian occupations, creation of income-generating opportunities, their reintegration into agricultural activities, and

the transportation to the home areas of such personnel.

(b) FUNDING.—Of the foreign assistance funds that are allocated for sub-Saharan Africa, $25,000,000 for each of the fiscal years 1995 and 1996 should be used for the assistance described in subsection (a), if conditions permit.

(c) CIVILIAN INVOLVEMENT.—The President is also authorized to promote civilian involvement in the planning and organization of demobilization and reintegration activities.

**SEC. 7. TRAINING FOR AFRICANS IN CONFLICT RESOLUTION AND PEACEKEEPING.**

(a) AUTHORIZATION.—The President is authorized to establish a program to provide education and training in conflict resolution and peacekeeping for civilian and military personnel of countries in sub-Saharan Africa.

(b) FUNDING.—Of the funds made available under chapter 5 of part II of the Foreign Assistance Act of 1961, such sums as may be necessary for each of the fiscal years 1995 and 1996 should be used for the purposes of subsection (a).

**SEC. 8. PLAN FOR UNITED STATES SUPPORT FOR CONFLICT RESOLUTION AND DEMOBILIZATION IN SUB-SAHARAN AFRICA.**

(a) IN GENERAL.—Pursuant to the provisions of sections 3 through 7, the President should develop an integrated long-term plan, which incorporates local perspectives, to provide support for the enhancement of conflict resolution capabilities and demobilization activities in sub-Saharan Africa.

(b) CONTENTS OF PLAN.—Such plan should include:

(1) The type, purpose, amount, and duration of assistance that is planned to be provided to conflict resolution units in sub-Saharan Africa.

(2) The type and amount of assistance that is planned to be provided for the demobilization of military personnel of countries of sub-Saharan Africa, including—

(A) a list of which countries will receive such assistance and an explanation of why such countries were chosen for such assistance; and

(B) a list of other countries and international organizations that are providing assistance for such demobilization.

(3) The type and amount of assistance that is planned to be provided to nongovernmental organizations that are engaged in mediation and reconciliation efforts in sub-Saharan Africa.

(4) A description of proposed training programs for Africans in conflict resolution and peacekeeping under section 7, including a list of prospective participants and plans to expand such programs.

(5) The mechanisms to be used to coordinate interagency efforts to administer the plan.

(6) Efforts to seek the participation of other countries and international organizations to achieve the objectives of the plan.

(c) REPORT.—Not later than 180 days after the date of the enactment of this Act, the President shall submit to the appropriate congressional committees a report containing a description of the plan developed under this section.

**SEC. 9. REPORTING REQUIREMENT.**

(a) REQUIREMENT.—The President shall submit to the appropriate congressional committees a report describing the efforts and progress made in carrying out the provisions of this Act.

(b) DATE OF SUBMISSION.—The first report submitted under subsection (a) shall be submitted no later than 180 days after the date of the enactment of this Act, and shall be submitted annually thereafter.

**SEC. 10. CONSULTATION REQUIREMENT.**

The President shall consult with the appropriate congressional committees prior to providing assistance under sections 3 through 7.

**SEC. 11. APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.**

For purposes of this Act, the term "appropriate congressional committees" means the Committee on Foreign Affairs and the Committee on Appropriations of the House of Representatives and the Committee on Foreign Relations and the Committee on Appropriations of the Senate.

## UNITED STATES POSITION ON DISINSECTION OF AIRCRAFT

Mr. FORD. Proceed to the immediate consideration of Senate Concurrent Resolution 77, a concurrent resolution regarding United States position on the disinsection of aircraft at the 11th meeting of the Facilitation Division of the International Civil Aviation Organization, submitted earlier today by Senator LEAHY, and others; that the concurrent resolution and preamble be agreed to, en bloc; that the motion to reconsider be laid upon the table, and that any statements appear in the RECORD as if read.

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

So the concurrent resolution (S. Con. Res. 77) was considered, and agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, was agreed to as follows:

S. CON. RES. 77

Whereas the United States has a responsibility to protect the health and safety of United States air travelers in the United States and abroad;

Whereas the United States ended the practice of aircraft cabin disinsection 15 years ago after determining that the process was ineffective and posed a possible health risk to aircraft passengers;

Whereas 27 countries require disinsection of aircraft cabins by the spraying of an insecticide while passengers are on board the aircraft or by a residual pesticide treatment which is not registered for use in the United States;

Whereas nearly 10,000,000 people fly every year from the United States to countries that require disinsection of aircraft;

Whereas United States pilots and flight attendants on flights to such countries are repeatedly exposed to the chemicals used in disinsection of aircraft;

Whereas approximately 53,000,000 Americans, more than 20 percent of the population, suffer chronic respiratory problems that put them at special risk to aircraft cabin disinsection procedures;

Whereas no tests have been conducted to determine whether insecticides used for aircraft cabin disinsection are safe for use in unventilated aircraft cabins or for people with chemical sensitivities or breathing conditions;

Whereas there has been a decrease in the number of insecticides registered for aircraft cabin disinsection by the Environmental Protection Agency be reason of the health concerns raised with respect to such insecticides, and there is no indication that insecticides produced in foreign countries which might serve to replace such insecticides present any less threat to health;

Whereas Annex 9 to the Convention on International Civil Aviation, done at Chicago, December 7, 1944, states that "Contracting States shall ensure that their procedures for disinsecting or any other remedial measure are not injurious to the health of passengers and crew and cause the minimum of discomfort to them";

Whereas the Facilitation Division of the International Civil Aviation Organization is scheduled to meet in the Spring of 1995 to discuss changes to the standards set forth in Annex 9 to the Convention; and

Whereas the United States will be a participant at that meeting: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That it is the sense of Congress that the United States delegation to the Spring 1995 meeting of the Facilitation Division of the International Civil Aviation Organization—

(1) seek to amend the Convention on International Civil Aviation, done at Chicago, December 7, 1944, to end aircraft disinsection practices that threaten the health of aircraft passengers and crew; and

(2) make every effort to gain the support and cosponsorship of other member nations of the organization in that amendment.

## NORTH AMERICAN WETLANDS CONSERVATION ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 615, H.R. 4308, the North American Wetlands Conservation Act authorization; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table; that any statements appear in the RECORD as if read; provided further, that upon disposition of H.R. 4308, Calendar No. 543, the Senate companion, S. 1857 be indefinitely postponed.

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

So the bill (H.R. 4308) was deemed read the third time, and passed.

## FEDERAL PAYMENT REAUTHORIZATION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 2902, Federal Payment Reauthorization Act of 1994, just received from the House; that the bill be deemed read the third time, passed, and the motion to reconsider be laid upon the table; that any statements relating to this matter be placed in the RECORD at appropriate place as if read.

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

So the bill (H.R. 2902) was deemed read the third time, and passed.

Mr. ROTH. Mr. President, the legislation now before us, the Federal Payment Reauthorization Act of 1994, is much more than a simple 1-year reauthorization of the Federal payment to

the District of Columbia. Its most important features are its amendments to the District's Home Rule Act, which strengthen the city's accountability to the Congress for its fiscal and programmatic management.

In recent years Congress has sought to improve these forms of accountability within the Federal Government itself. In 1990, it aimed at financial accountability, with enactment of the Chief Financial Officers Act. Then last year it enacted my legislation, the Government Performance and Results Act, which aims at accountability for program performance. Now Congress is addressing those concerns within D.C. government.

Under the Constitution, Congress has exclusive legislative jurisdiction over the District of Columbia. With the Home Rule Act 20 years ago, Congress delegated primary responsibility for the affairs of the District to the D.C. government. But under the constitutional scheme, the District government must remain accountable to Congress, as well as to its own citizens, for its stewardship of that responsibility.

Unfortunately, the D.C. government is widely recognized to have fallen far short in the effectiveness of its fiscal and programmatic management. H.R. 2902 represent a bipartisan acknowledgement in the Congress of this fact. As such, it is an effort to help the District help itself, by requiring systematic goal-setting, measurement, and reporting of program performance and financial management.

I would like to address in particular the requirement for program performance accountability, as this provision was inspired by the Federal Government reform I authored—the Government Performance and Results Act. Each year from now on, the Mayor of the District is required to submit a performance accountability plan for all significant activities of all departments, agencies, and programs of D.C. government. Each plan will include performance goals that are measurable and objective, for both the quantity and quality of the activities, and will include measures of program outcomes and results. And very important, the manager most directly responsible for achieving each goal, and that person's immediate supervisor, will be identified.

The idea is to instill something that many people believe has been missing from District government—personal accountability for the effectiveness of program management. To measure that effectiveness, each significant activity will have two goals: one for an acceptable level of performance, and one for a superior level. It is my hope that the District will now take it upon itself to tie achievement of those goals into a meaningful pay-for-performance and promotion system, so that Congress won't feel the need to do so.

With respect to the actual activities that will be covered by goals, it should be emphasized that the legislation envisions a large number of such measurements. We are not talking about a mere handful. The report on this legislation by the House Committee on the District of Columbia points out that this type of goal-based performance measurement has its roots in the city of Sunnyvale, CA.

In that city, which has a much narrower range of responsibilities than does the District, the annual budget shows over 300 different service level objectives. I might add, Sunnyvale's budget also identifies the name and title the responsible manager for each such goal, and their pay can go down as well as up, depending on how well they meet or exceed their goals.

There are a wide variety of ways the performance of government programs can be measured. There are measures for response time, error rates, percentage of reduction in the incidence of a problem, processing time, participation rates, and the cost-per-unit of activity, to name just a few. The most important measures are of program efficiency and effectiveness—not just how much was done, but how well. And perhaps the single most important measure of all is the citizen satisfaction survey. Every program dealing with the public ought to ask its customers how they rate the experience.

Mr. President, I sincerely believe that with today's legislation, we are not just requiring useful information for the Congress. Perhaps even more important, the mandated program performance and financial management information will be available tools for the District itself as it seeks to strengthen the effectiveness of home rule, and for the citizens of the District as they seek to hold their own government accountable for their tax dollars.

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## CROW BOUNDARY SETTLEMENT ACT

Mr. FORD. Mr. President, I ask unanimous consent that title amendment to S. 1216, the Crow Boundary Settlement Act, the bill previously passed, be agreed to, and that the motion to reconsider be laid upon the table.

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

The title was amended so as to read:

"A bill to resolve the 107th meridian boundary dispute between the Crow Indian Tribe and the United States.".

The text of the bill (S. 1216) to resolve the 107th Meridian boundary dispute between the Crow Indian Tribe, the Northern Cheyenne Indian tribe, and the United States and various other issues pertaining to the Crow Indian Reservation, as passed by the Senate on October 3, 1994, is as follows:

S. 1216

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Crow Boundary Settlement Act of 1994".

**SEC. 2. FINDINGS AND PURPOSE.**

(a) FINDINGS.—Congress finds the following:

(1) Under the treaty between the United States of America and the Crow Tribe of Indians concluded May 7, 1868 (commonly known as the "Fort Laramie Treaty of 1868"; 15 Stat. 649), the eastern boundary of the Crow Indian Reservation was established as the 107th meridian for approximately 90 miles from the Yellowstone River to the boundary between Montana and Wyoming.

(2) Under Executive orders issued in 1884 and 1900, the western boundary of the Northern Cheyenne Reservation was established as the 107th meridian. The 107th meridian was intended to be the common boundary between the Crow Reservation and Northern Cheyenne Reservation for approximately 25 miles.

(3) From 1889 through 1891, a survey was conducted of the eastern boundary of the Crow Reservation. The 1891 survey line strayed to the west, and resulted in the exclusion from the Crow Indian Reservation of a strip of land of approximately 36,164 acres. Approximately 12,964 acres of such strip of land were included in the Northern Cheyenne Reservation. Deposits of low sulphur coal underlie the land excluded from the Crow Indian Reservation, including the land included in the Northern Cheyenne Indian Reservation.

(4)(A) The erroneous nature of the survey was not discovered for several decades. Meanwhile, the areas along the 107th meridian to the north and south of the Northern Cheyenne Indian Reservation were opened to settlement in the late nineteenth century and early part of the twentieth century. Patents were issued to non-Indian persons and to the State of Montana for most of the surface land and a significant portion of the minerals in these areas between the 107th meridian and the 1891 survey line.

(B) The 12,964 acres included in the Northern Cheyenne Reservation have been treated as part of the Northern Cheyenne Reservation and occupied by the Northern Cheyenne Tribe and the Northern Cheyenne allottees, and their successors in interest.

(5) Legislation to resolve the 107th meridian boundary dispute was introduced in Congress in the 1960's and 1970's, and again in 1992, but no such legislation was enacted into law.

(b) PURPOSE.—The purpose of this Act is to settle the 107th meridian boundary dispute created by the erroneous survey of the eastern boundary of the Crow Indian Reservation made by the Federal Government described in subsection (a)(3).

**SEC. 3. DEFINITIONS.**

As used in this Act:

(1) CROW TRIBE.—The term "Crow Tribe" means the Crow Tribe of Indians, the duly recognized governing body of the Crow Indian Reservation.

(2) DISPUTED AREA.—The term "disputed area" means the approximately 36,164 acres of land, including the minerals, located between the 107th meridian on the east and the 1891 survey line on the west from the Yellowstone River on the north to the boundary between the State of Wyoming and the State of Montana on the south.

(3) 1891 SURVEY.—The term "1891 survey" means the survey of the eastern boundary of the Crow Reservation conducted by the United States Government from 1889 through 1891.

(4) 1891 SURVEY LINE.—The term "1891 survey line" means the erroneous boundary line resulting from the survey of the 107th meridian which was completed in 1891.

(5) NORTHERN CHEYENNE TRIBE.—The term "Northern Cheyenne Tribe" means the Northern Cheyenne Tribe of Indians, with the Northern Cheyenne Tribal Council as the duly recognized governing body of the Northern Cheyenne Indian Reservation.

(6) 107TH MERIDIAN BOUNDARY DISPUTE.—The term "107th meridian boundary dispute" means the dispute resulting from the disparity between the location of the 107th meridian and the location of the 1891 survey line.

(7) 107TH MERIDIAN ESCROW FUND.—The term "107th meridian escrow fund" means the revenues that arise from, or are derived from, parcel number 2, including all accrued interest on such revenues, which are held by the Bureau of Indian Affairs in an escrow account as of the date of enactment of this Act.

(8) PARCEL NUMBER 1.—The term "parcel number 1" means the area, encompassing approximately 11,317 acres, bounded on the south by the Montana-Wyoming border, on the east by the 107th meridian, on the north by the extension to the west of the southern boundary of the Northern Cheyenne Indian Reservation, and on the west by the 1891 survey line.

(9) PARCEL NUMBER 2.—The term "parcel number 2" means the area, encompassing approximately 12,964 acres, bounded on the south by the extension to the west of the southern boundary of the Northern Cheyenne Indian Reservation, on the east by the 107th meridian, on the north by the extension to the west of the northern boundary of the Northern Cheyenne Indian Reservation, and on the west by the 1891 survey line.

(10) PARCEL NUMBER 3.—The term "parcel number 3" means the area, encompassing approximately 2,469 acres, bounded on the south by the extension to the west of the northern boundary of the Northern Cheyenne Indian Reservation, on the east by the 107th meridian, on the north by the northern boundary of the Crow Indian Reservation, and on the west by the 1891 survey line.

(11) PARCEL NUMBER 4.—The term "parcel number 4" means the area, encompassing approximately 9,415 acres, bounded on the south by the northern boundary of the Crow Indian Reservation, on the east by the 107th meridian, on the north by the midpoint of the Yellowstone River, and on the west by the 1891 survey line.

(12) PUBLIC LANDS.—The term "public lands" means any land or interest in land owned by the United States (without regard to the means by which the United States acquired ownership of the land or interest in land) and administered by the Secretary through the Bureau of Land Management.

(13) ROYALTIES RECEIVED AND RETAINED BY THE UNITED STATES.—The term "royalties received and retained by the United States" means the royalties derived from minerals owned by the United States that the United States retains after all payments from the royalties have been made to the State of Montana or any unit of local government of the State of Montana.

(14) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(15) SETTLEMENT AGREEMENT.—The term "Settlement Agreement" means the agreement between the Secretary, on behalf of the United States and the Crow Tribe, that provides for the resolution of all claims held by the Crow Tribe arising from the 107th meridian boundary dispute.

(16) UNDISPOSED OF COAL.—The term "undisposed of coal" means coal that has not been conveyed to private parties or to the State of Montana by the United States.

(17) UNDISPOSED OF SURFACE LANDS.—The term "undisposed of surface lands" means surface land that has not been conveyed to private parties or to the State of Montana by the United States.

(18) UNDISPOSED OF OIL, GAS, COAL METHANE, OR OTHER MINERALS.—The term "undisposed of oil, gas, coal methane, or other minerals" means oil, gas, coal methane, or other minerals (excluding coal) that have not been conveyed to private parties or to the State of Montana by the United States.

**SEC. 4. SETTLEMENT AGREEMENT.**

(a) EXECUTION OF THE SETTLEMENT AGREEMENT.—Subject to the terms and conditions of this Act, the Secretary shall enter into the Settlement Agreement with the Crow Tribe.

(b) RATIFICATION OF THE SETTLEMENT AGREEMENT.—Subject to the conditions set forth in section 9(a), the United States hereby approves, ratifies, and confirms the Settlement Agreement, to the extent that such Settlement Agreement does not conflict with this Act.

(c) MODIFICATION OF THE SETTLEMENT AGREEMENT.—The terms and conditions of the Settlement Agreement may be modified by mutual agreement of the Crow Tribe and the Secretary if such modification—

(1) is not inconsistent with this Act; and

(2) does not diminish or impair any right or benefit secured to the Northern Cheyenne Tribe, the Northern Cheyenne allottees, or their successors in interest by or pursuant to any provision of this Act.

(d) ENFORCEMENT OF THE SETTLEMENT AGREEMENT.—

(1) IN GENERAL.—Except as provided in paragraph (2), the Settlement Agreement shall be subject to the enforcement provisions under chapter 7 of title 5, United States Code.

(2) ADDITIONAL ENFORCEMENT.—If, with respect to the enforcement of the Settlement Agreement, the remedies available under the provisions referred to in paragraph (1) do not provide adequate or complete relief, the Settlement Agreement shall be subject to the enforcement provisions under section 1505 of title 28, United States Code.

**SEC. 5. SETTLEMENT TERMS AND CONDITIONS AND EXTINGUISHMENT OF CLAIMS.**

(a) PROPERTY WITHIN PARCEL NUMBER 1.—

(1) IN GENERAL.—With respect to the property within parcel number 1, the following provisions shall apply:

(A) The boundary of the Crow Indian Reservation shall be the 107th meridian.

(B) Title to the undisposed of coal of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(C) Title to the undisposed of surface lands of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(D) Title to the undisposed of oil, gas, coal methane, or other minerals of such parcel shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(2) PROHIBITION.—Nothing in this Act or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any right, title, or interest of any person or entity in any land, coal, oil, gas, coal methane, or mineral within parcel number 1 that is based on the 1891 survey line, except for the specific rights that are vested in the United States for the sole use and benefit of the Crow Tribe pursuant to subparagraphs (B) through (D) of paragraph (1).

(3) WAIVERS AND RELEASES.—The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, title, claim, or interest in all the land and minerals within parcel number 1, except for the rights, titles, and interests recognized as beneficially owned by the Crow Tribe and as part of the Crow Indian Reservation in subparagraphs (B) through (D) of paragraph (1).

(B) A release by the Crow Tribe of all persons and entities, including the United States, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 1.

(b) PROPERTY WITHIN PARCEL NUMBER 2.—

(1) IN GENERAL.—With respect to the property within parcel number 2, the following provisions shall apply:

(A) The boundary between the Crow and Northern Cheyenne Indian Reservations shall be the 1891 survey line.

(B) All surface lands and minerals of such parcel shall constitute part of the Northern Cheyenne Reservation.

(C) All surface lands, including all rights appurtenant to the surface lands, of such parcel shall be vested in the United States in trust for the sole use and benefit of the Northern Cheyenne Tribe, except that surface lands that have been allotted shall be recognized as held in trust for, or owned in fee by (as the case may be), the Northern Cheyenne allottees or their successors in interest.

(D) The oil, gas, coal, coal methane, and other minerals, including all rights appurtenant to such minerals, of such parcel shall be vested in the United States in trust for the sole use and benefit of the Northern Cheyenne Tribe.

(2) WAIVERS AND RELEASES.—The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, jurisdiction, title, claim, or interest in the lands and minerals within parcel number 2, including all rights appurtenant to such land and minerals.

(B) A release by the Crow Tribe of all persons and entities, including the United States, the Northern Cheyenne Tribe, the Northern Cheyenne allottees and their successors in interest, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 2.

(3) ENFORCEMENT.—The provisions of subsection (b) may be enforced, in law or in equity, by the Northern Cheyenne Tribe, Northern Cheyenne allottees, and their successors in interest, in accordance with their respective interests.

(c) PROPERTY WITHIN PARCEL NUMBER 3 AND PARCEL NUMBER 4.—

(1) IN GENERAL.—With respect to the property within parcel number 3 and parcel number 4, the boundary of the Crow Indian Reservation shall be the 1891 survey line.

(2) PROHIBITION.—Nothing in this Act or the Settlement Agreement may alter, diminish, disturb, or cause to be divested any

right, title, or interest of any person or entity in any land, coal, or mineral within parcel number 3 or parcel number 4 that is based on the 1891 survey line.

(3) WAIVERS AND RELEASES.—The following waivers and releases shall be included in the Settlement Agreement:

(A) A disclaimer and relinquishment by the Crow Tribe of all right, jurisdiction, title, claim, or interest in the lands and minerals situated within parcel number 3 and parcel number 4.

(B) A release by the Crow Tribe of all persons and entities, including the United States, from any liability arising from, or related to, the 1891 survey and the subsequent occupancy and use of parcel number 3 and parcel number 4.

(d) EXCHANGE OF PUBLIC LANDS.—With respect to the land exchanges with the State of Montana and private landowners made under this Act the following provisions shall apply:

(1) IN GENERAL.—(A) The Secretary shall negotiate with the State of Montana for the purpose of exchanging public lands within the State of Montana for State trust lands within the Crow Reservation having a total value substantially equal to the value of the surface estate of the approximately 46,625 acres of State trust lands obtained by the State of Montana pursuant to the Act of February 22, 1889 (commonly known as the "Montana Enabling Act"; 25 Stat. 676, chapter 180), and the Act entitled "An Act to provide for the allotment of lands of the Crow Tribe for the distribution of tribal funds and for other purposes" approved June 4, 1920 (commonly known as the "Crow Allotment Act"; 41 Stat. 751, chapter 224) within the Crow Indian Reservation and the disputed area.

(B) The exchange described in subparagraph (A) shall be in accordance with the exchange procedures set forth in section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

(C) In determining the fair market value of the lands described in subparagraph (A), the parties to the exchange shall give due consideration to the value of improvements on the lands.

(D) The Secretary shall ensure that lands exchanged pursuant to this paragraph as part of the settlement of the 107th Meridian boundary dispute made pursuant to this Act shall be selected in such manner that the financial impact on local governments, if any, will be minimized.

(E) The Secretary shall provide such financial or other assistance to the State of Montana and to the Crow Tribe as may be necessary to obtain the appraisals, and to satisfy administrative requirements, necessary to accomplish the exchanges made pursuant to subparagraph (A).

(F) Upon approving an exchange made pursuant to this paragraph, the Secretary shall—

(i) receive title to the State trust lands involved in the exchange on behalf of the United States; and

(ii) transfer title to the public lands disposed of pursuant to the exchanges with the State of Montana by such means of conveyance as the Secretary considers appropriate.

(G) Title to the State trust lands acquired pursuant to the exchanges made with the State of Montana pursuant to this paragraph shall be vested in the United States in trust for the sole use and benefit of the Crow Tribe and shall be recognized as part of the Crow Indian Reservation.

(2) REQUIREMENT FOR EXCHANGES.—(A) In carrying out the exchanges with the State of Montana pursuant to paragraph (1), the Secretary shall, during a period of at least 5 years beginning on the date on which the Settlement Agreement becomes effective, give first priority to the exchange of public lands within the State of Montana for State trust lands owned by the State of Montana as of the date of the enactment of this Act.

(B) Subject to subparagraph (C), if, for any reason, after the expiration of the period specified in subparagraph (A), the exchanges of the State trust lands identified in paragraph (1) have not provided the Crow Tribe with a total of 46,625 acres of surface lands within the boundaries of the existing Crow Indian Reservation (including parcel number 1), the Secretary shall, at the request of, and in cooperation with, the Crow Tribe, develop and implement a program to provide the Crow Tribe with additional land within the Crow Indian Reservation (including parcel number 1) through land exchanges with private landowners.

(C) The total value of—

(i) the value of the lands exchanged and acquired for the Crow Tribe pursuant to paragraph (1), and

(ii) the value of the lands exchanged and acquired for the Crow Tribe pursuant to this paragraph,

shall not exceed the value of the surface estate of the 46,625 acres of land identified in paragraph (1)(A).

(D) In carrying out a program developed pursuant to this paragraph, the Secretary may exchange public lands within the State of Montana for private lands of substantially equal value within the boundaries of the existing Crow Indian Reservation in accordance with section 206 of the Federal Land Policy Management Act of 1976 (43 U.S.C. 1716).

(E) In determining the fair market value of the lands described in subparagraph (D), the parties to an exchange made pursuant to subparagraph (D) shall give due consideration to the value of improvements on the lands.

(F) If the Secretary obtains private lands pursuant to subparagraph (D), the Secretary shall transfer title to such lands to the Crow Tribe.

(G) Title to any private or public lands transferred to the Crow Tribe pursuant to this paragraph shall—

(i) be vested in the United States in trust for the sole use and benefit of the Crow Tribe; and

(ii) be recognized as part of the Crow Indian Reservation, if such lands are located within the boundaries of the Crow Indian Reservation.

(H) The Crow Tribe shall assist in obtaining prospective willing parties to exchange private lands within the Crow Indian Reservation for public lands within the State of Montana pursuant to this paragraph.

(e) CROW TRIBAL TRUST FUND.—The Settlement Agreement shall include provisions governing the distribution of interest income to the Crow Tribe from the Crow Tribal Trust Fund pursuant to the terms and conditions described in section 6.

**SEC. 6. ESTABLISHMENT AND ADMINISTRATION OF CROW TRIBAL TRUST FUND.**

(a) ESTABLISHMENT OF CROW TRIBAL TRUST FUND.—

(1) IN GENERAL.—There is established in the Treasury of the United States a trust fund to be known as the "Crow Tribal Trust Fund".

(2) AVAILABILITY OF AMOUNTS IN THE CROW TRIBAL TRUST FUND.—Amounts in the Crow Tribal Trust Fund shall be available, without fiscal year limitation, to the Secretary for distribution to the Crow Tribe in accordance with subsection (d).

(b) CONTRIBUTIONS TO CROW TRIBAL TRUST FUND.—

(1) IN GENERAL.—Subject to paragraph (2) and the requirements of section 10—

(A) on or before November 30, 1994, the Secretary of the Treasury shall deposit into the Crow Tribal Trust Fund an amount equal to the amounts of royalties received and retained by the United States during fiscal year 1994 from the East Decker, West Decker, and Spring Creek coal mines; and

(B) commencing with fiscal year 1995 and for such period thereafter as may be necessary, the Secretary and the Secretary of the Treasury shall make necessary and proper arrangements for the monthly payment, transfer, or deposit (or any combination thereof) into the Crow Tribal Trust Fund of the royalties received and retained by the United States for the immediately preceding month from the East Decker, West Decker, and Spring Creek coal mines in the State of Montana for the life of such mines, including any extensions of the existing leases for such mines and any expansions of such mines to nearby and adjacent federally owned coal deposits, as specified in the Settlement Agreement.

(2) AMOUNT OF ROYALTIES.—The total amount of royalties described in paragraph (1) that are paid, transferred, or deposited into the Crow Tribal Trust Fund shall not exceed, in the aggregate, $85,000,000, excluding—

(A) any interest earned on moneys in the Crow Tribal Trust Fund; and

(B) the funds transferred to the Suspension Accounts pursuant to section 10.

(3) PAYMENTS OF ROYALTIES RECEIVED AND RETAINED BY THE UNITED STATES.—Subject to paragraph (2) and the requirements of section 10, the royalties received and retained by the United States from the East Decker, West Decker, and Spring Creek coal mines shall be paid, transferred or deposited into the Crow Tribal Trust Fund not later than 30 days after the date on which the royalties are due and paid.

(4) ADDITIONAL PAYMENTS.—The Federal Government shall make payments, in addition to the payments referred to in paragraph (3), from the royalties received and retained by the United States from other coal mines within the State of Montana into the Crow Tribal Trust Fund in an amount equal to any lost interest income (as determined by the Secretary), if any portion of the sums described in paragraph (3) are not paid, transferred or deposited into the Crow Tribal Trust Fund within the 30-day period prescribed in paragraph (3).

(c) INVESTMENT.—The Secretary and Secretary of the Treasury shall invest all sums deposited into, accruing to, and remaining in, the Crow Tribal Trust Fund in interest-bearing deposits and securities in accordance with the Act of February 12, 1929 (45 Stat. 1164, chapter 178; 25 U.S.C. 161a) or the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a).

(d) DISTRIBUTION OF INTEREST.—

(1) IN GENERAL.—Only the interest received on funds in the Crow Tribal Trust Fund shall be available for distribution by the Secretary to the Crow Tribe for use for education, land acquisition, economic development, youth and elderly programs or other tribal purposes in accordance with plans and budgets developed and approved by the Crow Tribe and approved by the Secretary.

(2) REQUIREMENTS FOR DISTRIBUTION OF INTEREST.—Commencing with fiscal year 1996

and for each fiscal year thereafter, without fiscal year limitation, the interest received on monies in the Crow Tribal Trust Fund shall be available for distribution under this subsection only if—

(A) the United States and the Crow Tribe enter into the Settlement Agreement; and

(B) the requirements of section 9 relating to the approval and execution of the Settlement Agreement are satisfied.

(3) PROHIBITION.—No portion of the Crow Tribal Trust Fund or the interest earned on the Crow Tribal Trust Fund may be distributed to members of the Crow Tribe on a per capita basis.

(e) USE OF INTEREST FOR ECONOMIC DEVELOPMENT.—Notwithstanding any other provision of law, the Crow Tribe may, subject to approval by the Secretary, assign the right of the Crow Tribe to the interest earned on monies in the Crow Tribal Trust Fund to a third party in connection with loans made for economic development projects on or near the Crow Indian Reservation.

(f) LIMITATION.—Notwithstanding any other provision of law, no portion of the principal of the Crow Tribal Trust Fund shall be available for withdrawal or disbursement or used for any purpose other than the purposes specified in this section and section 10.

**SEC. 7. ELIGIBILITY FOR OTHER FEDERAL SERVICES; TAX EXEMPTION.**

No payments made or benefits conferred pursuant to this Act shall—

(1) result in the reduction or denial of any Federal services or programs to any tribe or to any member of a tribe to which the tribe or member of the tribe is entitled or eligible because of the status of the tribe as a federally recognized Indian tribe or the status of a member of such tribe as a member; or

(2) be subject to any Federal or State income tax.

**SEC. 8. EXCHANGES OF LAND OR MINERALS.**

(a) IN GENERAL.—(1) Subject to approval by the Secretary, the Crow Tribe may exchange any land or minerals to which its title is recognized in or obtained pursuant to this Act for other land or minerals of substantially equivalent value within the Crow Indian Reservation (including parcel number 1).

(2) Lands or minerals received by the Crow Tribe in any exchange made pursuant to paragraph (1) shall be—

(A) vested in the United States in trust for the sole use and benefit of the Crow Tribe; and

(B) recognized as part of the Crow Indian Reservation.

(b) OWNERSHIP BY NON-INDIANS.—Any land or minerals received by a person who is not an Indian in an exchange referred to in subsection (a) shall be owned in fee.

**SEC. 9. APPLICABILITY.**

(a) IN GENERAL.—The Act shall take effect upon the occurrence of the following conditions:

(1) The Settlement Agreement is approved and executed by the Secretary.

(2) The Settlement Agreement is approved and executed by the Crow Tribe.

(3) The Settlement Agreement and the releases and waivers required by section 5 are approved and duly executed by the Crow Tribe in accordance with the requirements and procedures set forth in the constitution of the Crow Tribe.

(4) The Settlement Agreement becomes effective in accordance with the terms and conditions specified in the Settlement Agreement.

(b) APPROVAL OF RELEASES AND WAIVERS.—The United States hereby approves and confirms the releases and waivers required by section 5.

**SEC. 10. ESCROW FUNDS.**

(a) IN GENERAL.—As soon as practicable after the date of enactment of this Act, the Secretary shall make distributions from the 107th meridian escrow fund as follows:

(1) One-half of the fund shall be distributed to the Crow Tribe.

(2) One-half of the fund shall be distributed to the Northern Cheyenne Tribe.

(3) The receipt and acceptance by a tribe of funds distributed under this section shall be deemed to be—

(A) a disclaimer, relinquishment and waiver by such tribe of all right, claim or interest in the 107th meridian escrow fund; and

(B) a release by such tribe of all persons and entities, including the United States, from any liability arising from, or related to, the establishment and administration of the 107th meridian escrow fund.

(b) ESTABLISHMENT OF SUSPENSION ACCOUNTS.—As soon as practicable after the Settlement Agreement is executed and approved pursuant to this Act, the Secretary of the Treasury shall establish in the Treasury of the United States two interest bearing accounts to be known respectively as the "Crow Tribal Suspension Account" and the "Northern Cheyenne Tribal Suspension Account" (collectively referred to in this subsection as the "Suspension Accounts"), consisting of—

(1) such amounts as are transferred to the Suspension Accounts under subsection (c); and

(2) any interest earned on investments of amounts in the Suspension Accounts under subsection (e).

(c) CONTRIBUTIONS TO THE SUSPENSION ACCOUNTS.—

(1) IN GENERAL.—Beginning with fiscal year 1995, and ending on the date on which the total amount deposited pursuant to this subsection into the Suspension Accounts is equal to $200,000 for each such account (as specified in subsection (d)), the Secretary and the Secretary of the Treasury shall make necessary and proper arrangements for the monthly payment, transfer, or deposit (or any combination thereof) into each of the Suspension Accounts of an amount equal to one-half of the royalties received and retained by the United States for the immediately preceding month, as determined in accordance with section 6(b)(1), by the date specified under section 6(b)(3).

(2) SUBSEQUENT DEPOSITS.—At such time as the amount deposited pursuant to this subsection into the Suspension Accounts is equal to $200,000 for each such account (as specified in subsection (d)), in accordance with section 6(b)(1), the Secretary and the Secretary of the Treasury shall thereafter deposit any remaining amounts determined under section 6(b)(1) in the Crow Tribal Trust Fund established under section 6(a).

(d) LIMITATION.—The Secretary and the Secretary of the Treasury shall not transfer more than a total amount equal to $200,000 to each of the Suspension Accounts from the amounts determined under section 6(b)(1).

(e) INVESTMENT.—All sums deposited in, accruing to and remaining in the Suspension Accounts shall be invested by the Secretary and the Secretary of the Treasury in interest bearing deposits and securities in accordance with the Act of June 24, 1938 (52 Stat. 1037, chapter 648; 25 U.S.C. 162a).

(f) WITHDRAWALS AND TERMINATION.—

(1) IN GENERAL.—(A) Beginning on the date that is 5 years after the date of enactment of this Act, the Crow Tribe and the Northern Cheyenne Tribe may each submit a duly authorized request to the Secretary for the withdrawal of all of the funds from the Suspension Account of the tribe established under subsection (b).

(B) Not later than 60 days after receiving a request for the distribution of funds from a Suspension Account made by a tribe under subparagraph (A)—

(i) the Secretary shall, in cooperation with the Secretary of the Treasury, withdraw and distribute such funds in accordance with such request; and

(ii) the Secretary of the Treasury shall terminate the Suspension Account.

(2) OTHER MEANS OF TERMINATION—With respect to a Suspension Account established under subsection (b) that is not terminated pursuant to paragraph (1), at such time as the corpus and the accrued interest of the Suspension Account of the Crow Tribe or the Northern Cheyenne Tribe is approximately equal to the amount specified in paragraph (1) or (2) of subsection (a), the Secretary of the Treasury shall terminate the Suspension Account and the Secretary of the Interior shall distribute the funds from the Suspension Account to the tribe.

**SEC. 11. FORT LARAMIE TREATY OF 1868.**

Except for the adjustment to the eastern boundary of the Crow Indian Reservation, nothing in this Act or in the Settlement Agreement shall affect or modify the terms and conditions of the treaty between the United States of America and the Crow Tribe of Indians concluded May 7, 1868 (commonly known as the "Fort Laramie Treaty of 1868"; 15 Stat. 649).

**SEC. 12. SATISFACTION OF CLAIMS.**

The benefits available to the Crow Tribe under the terms and conditions of this Act and the Settlement Agreement shall constitute full and complete satisfaction of all claims by the Crow Tribe and the members of the Crow Tribe arising from or related to the erroneous survey of the 107th meridian described in section 2(a)(3).

**SEC. 13. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated to the Department of the Interior such sums as are necessary to carry out this Act.

## FEDERAL CROP INSURANCE REFORM ACT OF 1994—MESSAGE FROM THE HOUSE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (H.R. 4217) to reform the Federal crop insrance program, and for other purposes.

**SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

(a) SHORT TITLE.—This Act may be cited as the "Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I—FEDERAL CROP INSURANCE REFORM

Sec. 101. Short title; references.
Sec. 102. Definitions.
Sec. 103. Members of Board of Directors of Corporation.
Sec. 104. General powers.
Sec. 105. Personnel.
Sec. 106. Crop insurance.
Sec. 107. Crop insurance yield coverage.

Sec. 108. Preemption.
Sec. 109. Advisory Committee.
Sec. 110. Funding.
Sec. 111. Noninsured crop disaster assistance.
Sec. 112. Payment and income limitations.
Sec. 113. Producer eligibility.
Sec. 114. Ineligibility for catastrophic risk and noninsured assistance payments.
Sec. 115. Elimination of gender references.
Sec. 116. Prevented planting.
Sec. 117. Report on improving dissemination of crop insurance information.
Sec. 118. Crop insurance provider evaluation.
Sec. 119. Conforming amendments.
Sec. 120. Effective date.

TITLE II—DEPARTMENT OF AGRICULTURE REORGANIZATION

Sec. 201. Short title.
Sec. 202. Purpose.
Sec. 203. Definitions.

Subtitle A—General Reorganization Authorities

Sec. 211. Transfer of Department functions to Secretary of Agriculture.
Sec. 212. Authority of Secretary to delegate transferred functions.
Sec. 213. Reductions in number of department personnel.
Sec. 214. Consolidation of headquarters offices.
Sec. 215. Combination of field offices.
Sec. 216. Improvement of information sharing.
Sec. 217. Reports by the Secretary.
Sec. 218. Assistant Secretaries of Agriculture.
Sec. 219. Pay increases prohibited.

Subtitle B—Farm and Foreign Agricultural Services

Sec. 225. Under Secretary of Agriculture for Farm and Foreign Agricultural Services.
Sec. 226. Consolidated Farm Service Agency.
Sec. 227. State, county, and area committees.

Subtitle C—Rural Economic and Community Development

Sec. 231. Under Secretary of Agriculture for Rural Economic and Community Development.
Sec. 232. Rural Utilities Service.
Sec. 233. Rural Housing and Community Development Service.
Sec. 234. Rural Business and Cooperative Development Service.
Sec. 235. Conforming amendments regarding Rural Electrification Administration.

Subtitle D—Food, Nutrition, and Consumer Services

Sec. 241. Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

Subtitle E—Natural Resources and Environment

Sec. 245. Under Secretary of Agriculture for Natural Resources and Environment.
Sec. 246. Natural Resources Conservation Service.
Sec. 247. Reorganization of Forest Service.

Subtitle F—Research, Education, and Economics

Sec. 251. Under Secretary of Agriculture for Research, Education, and Economics.
Sec. 252. Program staff.

Subtitle G—Food Safety

Sec. 261. Under Secretary of Agriculture for Food Safety.
Sec. 262. Conditions for implementation of alterations in the level of additives allowed in animal diets.

Subtitle H—National Appeals Division

Sec. 271. Definitions.
Sec. 272. National Appeals Division and Director.
Sec. 273. Transfer of functions.
Sec. 274. Notice and opportunity for hearing.
Sec. 275. Informal hearings.
Sec. 276. Right of participants to Division hearing.
Sec. 277. Division hearings.
Sec. 278. Director review of determinations of hearing officers.
Sec. 279. Judicial review.
Sec. 280. Implementation of final determinations of Division.
Sec. 281. Conforming amendments relating to National Appeals Division.
Sec. 282. Expansion of issues covered by State mediation programs.
Sec. 283. Authorization of appropriations.

Subtitle I—Miscellaneous Reorganization Provisions

Sec. 291. Successorship provisions relating to bargaining units and exclusive representatives.
Sec. 292. Purchase of American-made equipment and products.
Sec. 293. Miscellaneous conforming amendments.
Sec. 294. Removal of obsolete administrative provisions.
Sec. 295. Proposed conforming amendments.
Sec. 296. Termination of authority.

TITLE III—MISCELLANEOUS

Sec. 301. Poultry labeling.
Sec. 302. First Amendment rights of employees of the United States Department of Agriculture.
Sec. 303. Adjusted cost of thrifty food plan.
Sec. 304. Office of Risk Assessment and Cost-Benefit Analysis.
Sec. 305. Fair and equitable treatment of socially disadvantaged producers.
Sec. 306. Aviation inspections.

## TITLE I—FEDERAL CROP INSURANCE REFORM

**SEC. 101. SHORT TITLE; REFERENCES.**

(a) SHORT TITLE.—This title may be cited as the "Federal Crop Insurance Reform Act of 1994".

(b) REFERENCES TO FEDERAL CROP INSURANCE ACT.—Except as otherwise expressly provided, whenever in this title an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

**SEC. 102. DEFINITIONS.**

(a) IN GENERAL.—Section 502 (7 U.S.C. 1502) is amended—

(1) by striking the section heading and "SEC. 502." and inserting the following:

**"SEC. 502. PURPOSE AND DEFINITIONS.**

"(a) PURPOSE.—"; and

(2) by adding at the end the following new subsection:

"(b) DEFINITIONS.—As used in this title:

"(1) ADDITIONAL COVERAGE.—The term 'additional coverage' means a plan of crop insurance coverage providing a level of coverage greater than the level available under catastrophic risk protection.

"(2) APPROVED INSURANCE PROVIDER.—The term 'approved insurance provider' means a private insurance provider that has been approved by the Corporation to provide insurance coverage to producers participating in the Federal crop insurance program established under this title.

"(3) BOARD.—The term 'Board' means the Board of Directors of the Corporation established under section 505(a).

"(4) CORPORATION.—The term 'Corporation' means the Federal Crop Insurance Corporation established under section 503.

"(5) DEPARTMENT.—The term 'Department' means the United States Department of Agriculture.

"(6) LOSS RATIO.—The term 'loss ratio' means the ratio of all sums paid by the Corporation as indemnities under any eligible crop insurance policy to that portion of the premium designated for anticipated losses and a reasonable reserve, other than that portion of the premium designated for operating and administrative expenses.

"(7) SECRETARY.—The term 'Secretary' means the Secretary of Agriculture.

"(8) TRANSITIONAL YIELD.—The term 'transitional yield' means the maximum average production per acre or equivalent measure that is assigned to acreage for a crop year by the Corporation in accordance with the regulations of the Corporation whenever the producer fails—

"(A) to certify that acceptable documentation of production and acreage for the crop year is in the possession of the producer; or

"(B) to present the acceptable documentation on the demand of the Corporation or an insurance company reinsured by the Corporation.".

(b) CONFORMING AMENDMENTS.—

(1) The first sentence of section 503 (7 U.S.C. 1503) is amended by striking "(herein called the Corporation)".

(2) Section 504 (7 U.S.C. 1504) is amended—

(A) in subsection (a), by striking "Board of Directors of the Corporation" and inserting "Board"; and

(B) in subsection (d), by striking "Federal Crop Insurance Corporation" and inserting "Corporation".

(3) The first sentence of section 505(a) (7 U.S.C. 1505(a)) is amended by striking "(hereinafter called the 'Board')".

(4) Except in section 502, the Act is amended—

(A) by striking "Board of Directors" each place it appears and inserting "Board";

(B) by striking "Department of Agriculture" each place it appears and inserting "Department"; and

(C) by striking "Secretary of Agriculture" each place it appears and inserting "Secretary".

**SEC. 103. MEMBERS OF BOARD OF DIRECTORS OF CORPORATION.**

The second sentence of section 505(a) (7 U.S.C. 1505(a)) is amended—

(1) by striking "or Assistant Secretary" the first place it appears; and

(2) by striking "the Under Secretary or Assistant Secretary of Agriculture responsible for the farm credit programs of the Department of Agriculture" and inserting "one additional Under Secretary of Agriculture (as designated by the Secretary of Agriculture)".

**SEC. 104. GENERAL POWERS.**

Section 506 (7 U.S.C. 1506) is amended—

(1) by redesignating subsections (j) through (n) as subsections (k) through (o), respectively;

(2) by inserting after subsection (i) the following new subsection:

"(j) SETTLING CLAIMS.—The Corporation shall have the authority to make final and conclusive settlement and adjustment of any claim by or against the Corporation or a fiscal officer of the Corporation.";

(3) in subsection (l) (as so redesignated)—

(A) in the first sentence, by inserting ", and issue regulations," after "agreements"; and

(B) in the second sentence, by striking "contracts or agreements" each place it appears and inserting "contracts, agreements, or regulations";

(4) in subsection (n)(1) (as so redesignated), by striking subparagraph (B) and inserting the following new subparagraph:

"(B) disqualify the person from purchasing catastrophic risk protection or receiving noninsured assistance for a period of not to exceed 2 years, or from receiving any other benefit under this title for a period of not to exceed 10 years.";

(5) in subsection (o) (as so redesignated)—

(A) by redesignating paragraphs (1) through (4) as subparagraphs (A) through (D) and aligning the margins of each subparagraph with the margins of subparagraph (A) of subsection (n)(1) (as redesignated by paragraph (1));

(B) by striking "(o) ACTUARIAL SOUNDNESS.—The Corporation" and inserting the following:

"(o) ACTUARIAL SOUNDNESS.—

"(1) PROJECTED LOSS RATIO AS OF OCTOBER 1, 1995.—The Corporation";

(C) in subparagraph (A) (as redesignated by subparagraph (A)), by striking "from obtaining adequate Federal crop insurance, as determined by the Corporation" and inserting "(as defined by the Secretary) from obtaining Federal crop insurance";

(D) in subparagraph (C) (as so redesignated)—

(i) by inserting ", agents, and loss adjusters" after "participating producers"; and

(ii) by inserting ", agents, and loss adjusters" after "identify insured producers"; and

(E) by adding at the end the following new paragraphs:

"(2) PROJECTED LOSS RATIO AS OF OCTOBER 1, 1998.—The Corporation shall take such actions, including the establishment of adequate premiums, as are necessary to improve the actuarial soundness of Federal multiperil crop insurance made available under this title to achieve, on and after October 1, 1998, an overall projected loss ratio of not greater than 1.075.

"(3) NONSTANDARD CLASSIFICATION SYSTEM.—To the extent that the Corporation uses the nonstandard classification system, the Corporation shall apply the system to all insured producers in a fair and consistent manner."; and

(6) by adding at the end the following new subsections:

"(p) REGULATIONS.—The Secretary and the Corporation are each authorized to issue such regulations as are necessary to carry out this title.

"(q) PROGRAM COMPLIANCE.—

"(1) TIMELINESS.—The Corporation shall work actively with approved insurance providers to address program compliance and integrity issues as the issues develop.

"(2) NOTIFICATION OF COMPLIANCE PROBLEMS.—The Corporation shall notify in writing any approved insurance provider with whom the Corporation has an agreement under this title of any error, omission, or failure to follow Corporation regulations or procedures for which the approved insurance provider may be responsible and which may result in a debt owed the Corporation. The notice shall be given within 3 years of the end of the insurance period during which the error, omission, or failure is alleged to have occurred, except that this time limit shall not apply with respect to errors, omissions, or procedural violations that are willful or intentional. The failure to timely provide the notice required under this subsection shall relieve the approved insurance provider from the debt owed the Corporation.

"(r) PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.—

"(1) SENSE OF CONGRESS.—It is the sense of Congress that, to the greatest extent practicable, all equipment and products purchased by the Corporation using funds made available to the Corporation should be American-made.

"(2) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity for the purchase of equipment and products to carry out this title, the Corporation, to the greatest extent practicable, shall provide to the entity a notice describing the statement made in paragraph (1).".

**SEC. 105. PERSONNEL.**

Section 507 (7 U.S.C. 1507) is amended—

(1) in subsection (a), by striking ", and county crop insurance committeemen";

(2) in subsection (d), by striking "of this Act," and all that follows through "agency"; and

(3) by adding at the end the following new subsection:

"(g)(1) The Corporation shall establish a management-level position to be known as the Specialty Crops Coordinator.

"(2) The Specialty Crops Coordinator shall have primary responsibility for addressing the needs of specialty crop producers, and for providing information and advice, in connection with the activities of the Corporation to improve and expand the insurance program for specialty crops. In carrying out this paragraph, the Specialty Crops Coordinator shall act as the liaison of the Corporation with representatives of specialty crop producers and assist the Corporation with the knowledge, expertise, and familiarity of the producers with risk management and production issues pertaining to specialty crops.

"(3) The Specialty Crops Coordinator shall use information collected from Corporation field office directors in States in which specialty crops have a significant economic effect and from other sources, including the extension service and colleges and universities.".

**SEC. 106. CROP INSURANCE.**

Section 508 (7 U.S.C. 1508) is amended to read as follows:

**"SEC. 508. CROP INSURANCE.**

"(a) AUTHORITY TO OFFER INSURANCE.—

"(1) IN GENERAL.—If sufficient actuarial data are available (as determined by the Corporation), the Corporation may insure, or provide reinsurance for insurers of, producers of agricultural commodities grown in the United States under 1 or more plans of insurance determined by the Corporation to be adapted to the agricultural commodity concerned. To qualify for coverage under a plan of insurance, the losses of the insured commodity must be due to drought, flood, or other natural disaster (as determined by the Secretary).

"(2) PERIOD.—Except in the cases of tobacco and potatoes, insurance shall not extend beyond the period during which the insured commodity is in the field. As used in the preceding sentence, in the case of an aquacultural species, the term 'field' means the environment in which the commodity is produced.

"(3) EXCLUSIONS.—Insurance provided under this subsection shall not cover losses due to—

"(A) the neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in such areas and under such circumstances as it is customary to reseed; or

"(C) the failure of the producer to follow good farming practices (as determined by the Secretary).

"(4) EXPANSION TO OTHER AREAS OR SINGLE PRODUCERS.—

"(A) AREA EXPANSION.—The Corporation may offer plans of insurance or reinsurance for production of agricultural commodities in the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau in the same manner as provided in this section for production of agricultural commodities in the United States.

"(B) PRODUCER EXPANSION.—In an area in the United States or specified in subparagraph (A) where crop insurance is not available for a particular agricultural commodity, the Corporation may offer to enter into a written agreement with an individual producer operating in the area for insurance coverage under this title if the producer has actuarially sound data relating to the production by the producer of the commodity and the data is acceptable to the Corporation.

"(5) DISSEMINATION OF CROP INSURANCE INFORMATION.—The Corporation shall make available to producers through local offices of the Department—

"(A) current and complete information on all aspects of Federal crop insurance; and

"(B) a listing of insurance agents and companies offering to sell crop insurance in the area of the producers.

"(6) ADDITION OF NEW AND SPECIALTY CROPS.—

"(A) DATA COLLECTION.—Not later than 180 days after the date of enactment of this paragraph, the Secretary shall issue guidelines for publication in the Federal Register for data collection to assist the Corporation in formulating crop insurance policies for new and specialty crops.

"(B) ADDITION OF NEW CROPS.—Not later than 1 year after the date of enactment of this paragraph, and annually thereafter, the Corporation shall report to Congress on the progress and expected timetable for expanding crop insurance coverage under this title to new and specialty crops.

"(C) ADDITION OF DIRECT SALE PERISHABLE CROPS.—Not later than 1 year after the date of enactment of this paragraph, the Corporation shall report to Congress on the feasibility of offering a crop insurance program designed to meet the needs of specialized producers of vegetables and other perishable crops who market through direct marketing channels.

"(b) CATASTROPHIC RISK PROTECTION.—

"(1) IN GENERAL.—The Corporation shall offer a catastrophic risk protection plan to indemnify producers for crop loss due to loss of yield or prevented planting, if provided by the Corporation, when the producer is unable, because of drought, flood, or other natural disaster (as determined by the Secretary), to plant other crops for harvest on the acreage for the crop year.

"(2) AMOUNT OF COVERAGE.—

"(A) IN GENERAL.—Subject to subparagraph (B)—

"(i) in the case of each of the 1995 through 1998 crop years, catastrophic risk protection shall offer a producer coverage for a 50 percent loss in yield, on an individual yield or area yield basis, indemnified at 60 percent of

the expected market price, or a comparable coverage (as determined by the Corporation); and

"(ii) in the case of each of the 1999 and subsequent crop years, catastrophic risk protection shall offer a producer coverage for a 50 percent loss in yield, on an individual yield or area yield basis, indemnified at 55 percent of the expected market price, or a comparable coverage (as determined by the Corporation).

"(B) REDUCTION IN ACTUAL PAYMENT.—The amount paid to a producer on a claim under catastrophic risk protection may reflect a reduction that is proportional to the out-of-pocket expenses that are not incurred by the producer as a result of not planting, growing, or harvesting the crop for which the claim is made, as determined by the Corporation.

"(3) YIELD AND LOSS BASIS.—A producer shall have the option of basing the catastrophic coverage of the producer on an individual yield and loss basis or on an area yield and loss basis, if both options are offered by the Corporation.

"(4) SALE OF CATASTROPHIC RISK COVERAGE.—

"(A) IN GENERAL.—Catastrophic risk coverage may be offered by—

"(i) approved insurance providers, if available in an area; and

"(ii) at the option of the Secretary that is based on considerations of need, local offices of the Department.

"(B) NEED.—For purposes of considering need under subparagraph (A)(ii), the Secretary may take into account the most efficient and cost-effective use of resources, the availability of personnel, fairness to local producers, the needs and convenience of local producers, and the availability of private insurance carriers.

"(5) ADMINISTRATIVE FEE.—

"(A) FEE REQUIRED.—Producers shall pay an administrative fee for catastrophic risk protection. The administrative fee for each producer shall be $50 per crop per county, but not to exceed $200 per producer per county up to a maximum of $600 per producer for all counties in which a producer has insured crops. The administrative fee shall be paid by the producer at the time the producer applies for catastrophic risk protection.

"(B) USE OF FEES.—

"(i) FEES UP TO $100.—

"(I) FEES COLLECTED BY USDA OFFICES.—Not more than $100 of the administrative fees paid by a producer for catastrophic risk coverage that are collected by an office of the Department shall be credited to the appropriations account providing funds for the payment of operating and administrative expenses incurred for the delivery of catastrophic risk protection under this section. The fees shall be collected in accordance with appropriation Acts and shall be available until expended without fiscal year limitation for the payment of the expenses.

"(II) FEES COLLECTED BY APPROVED INSURANCE PROVIDERS.—Not more than $100 of the administrative fees paid by a producer for catastrophic risk coverage that are collected by an approved insurance provider shall be retained by the provider as payment for operating and administrative expenses incurred for the delivery of catastrophic risk protection.

"(ii) FEES IN EXCESS OF $100.—Notwithstanding the authority granted to the Secretary under the Federal Crop Insurance Corporation account provisions of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995, all fees collected under this subsection in excess of $100 per producer per county shall be deposited in the crop insurance fund established under section 516(c), to be available for the programs and activities of the Corporation.

"(C) WAIVER OF FEE.—The Corporation shall waive the administrative fee for limited resource farmers, as defined by the Corporation.

"(6) PARTICIPATION REQUIREMENT.—A producer may obtain catastrophic risk coverage for a crop of the producer on land in the county only if the producer obtains the coverage for the crop on all insurable land of the producer in the county.

"(7) ELIGIBILITY FOR DEPARTMENT PROGRAMS.—

"(A) IN GENERAL.—To be eligible for any price support or production adjustment program, the conservation reserve program, or any benefit described in section 371 of the Consolidated Farm and Rural Development Act, the producer must obtain at least the catastrophic level of insurance for each crop of economic significance grown on each farm in the county in which the producer has an interest, if insurance is available in the county for the crop.

"(B) DEFINITION OF CROP OF ECONOMIC SIGNIFICANCE.—As used in this paragraph, the term 'crop of economic significance' means a crop that has contributed, or is expected to contribute, 10 percent or more of the total expected value of all crops grown by the producer.

"(8) LIMITATION DUE TO RISK.—The Corporation may limit catastrophic risk coverage in any county or area, or on any farm, on the basis of the insurance risk concerned.

"(9) TRANSITIONAL COVERAGE FOR 1995 CROPS.—Effective only for a 1995 crop planted or for which insurance attached prior to January 1, 1995, the Corporation shall allow producers of the crops until not later than the end of the 180-day period beginning on the date of enactment of the Federal Crop Insurance Reform Act of 1994 to obtain catastrophic risk protection for the crop. On enactment of such Act, a producer who made timely purchases of a crop insurance policy before the date of enactment of such Act, under the provisions of this title then in effect, shall be eligible for the same benefits to which a producer would be entitled under comparable additional coverage under subsection (c).

"(10) SIMPLIFICATION.—

"(A) CATASTROPHIC RISK PROTECTION PLANS.—In developing and carrying out the policies and procedures for a catastrophic risk protection plan under this title, the Corporation shall, to the maximum extent practicable, minimize the paperwork required and the complexity and costs of procedures governing applications for, processing, and servicing of the plan for all parties involved.

"(B) OTHER PLANS.—To the extent that the policies and procedures developed under subparagraph (A) may be applied to other plans of insurance offered under this title without jeopardizing the actuarial soundness or integrity of the crop insurance program, the Corporation shall apply the policies and procedures to the other plans of insurance within a reasonable period of time (as determined by the Corporation) after the effective date of this paragraph.

"(c) GENERAL COVERAGE LEVELS.—

"(1) ADDITIONAL COVERAGE GENERALLY.—

"(A) IN GENERAL.—The Corporation shall offer to producers of agricultural commodities grown in the United States plans of crop insurance that provide additional coverage.

"(B) PURCHASE.—To be eligible for additional coverage, a producer must apply to an approved insurance provider for purchase of additional coverage if the coverage is available from an approved insurance provider. If additional coverage is unavailable privately, the Corporation may offer additional coverage plans of insurance directly to producers.

"(2) TRANSFER OF RELEVANT INFORMATION.—If a producer has already applied for catastrophic risk protection at the local office of the Department and elects to purchase additional coverage, the relevant information for the crop of the producer shall be transferred to the approved insurance provider servicing the additional coverage crop policy.

"(3) YIELD AND LOSS BASIS.—A producer shall have the option of purchasing additional coverage based on an individual yield and loss basis or on an area yield and loss basis, if both options are offered by the Corporation.

"(4) LEVEL OF COVERAGE.—The level of coverage shall be dollar denominated and may be purchased at any level not to exceed 85 percent of the individual yield or 95 percent of the area yield (as determined by the Corporation). Not later than the beginning of the 1996 crop year, the Corporation shall provide producers with information on catastrophic risk and additional coverage in terms of dollar coverage (within the allowable limits of coverage provided in this paragraph).

"(5) PRICE LEVEL.—The Corporation shall establish a price level for each commodity on which insurance is offered that—

"(A) shall not be less than the projected market price for the commodity (as determined by the Corporation); or

"(B) at the discretion of the Corporation, may be based on the actual market price at the time of harvest (as determined by the Corporation).

"(6) PRICE ELECTIONS.—

"(A) IN GENERAL.—Subject to subparagraph (B), insurance coverage shall be made available to a producer on the basis of any price election that equals or is less than the price election established by the Corporation. The coverage shall be quoted in terms of dollars per acre.

"(B) MINIMUM PRICE ELECTIONS.—The Corporation may establish minimum price elections below which levels of insurance shall not be offered.

"(C) WHEAT CLASSES AND MALTING BARLEY.—The Corporation shall, as the Corporation determines practicable, offer producers different price elections for classes of wheat and malting barley (including contract prices in the case of malting barley), in addition to the standard price election, that reflect different market prices, as determined by the Corporation. The Corporation shall, as the Corporation determines practicable, offer additional coverage for each class determined under this subparagraph and charge a premium for each class that is actuarially sound.

"(7) FIRE AND HAIL COVERAGE.—For levels of additional coverage equal to 65 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, a producer may elect to delete from the additional coverage any coverage against damage caused by fire and hail if the producer obtains an equivalent or greater dollar amount of coverage for damage caused by fire and hail from an approved insurance provider. On written notice of the election to the company issuing the policy providing additional coverage and submission of evidence

of substitute coverage on the commodity insured, the premium of the producer shall be reduced by an amount determined by the Corporation to be actuarially appropriate, taking into account the actuarial value of the remaining coverage provided by the Corporation. In no event shall the producer be given credit for an amount of premium determined to be greater than the actuarial value of the protection against losses caused by fire and hail that is included in the additional coverage for the crop.

"(8) STATE PREMIUM SUBSIDIES.—The Corporation may enter into an agreement with any State or agency of a State under which the State or agency may pay to the approved insurance provider an additional premium subsidy to further reduce the portion of the premium paid by producers in the State.

"(9) LIMITATIONS ON ADDITIONAL COVERAGE.—The Board may limit the availability of additional coverage under this subsection in any county or area, or on any farm, on the basis of the insurance risk involved. The Board shall not offer additional coverage equal to less than 50 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage.

"(10) ADMINISTRATIVE FEE.—

"(A) FEE REQUIRED.—Except as otherwise provided in this paragraph, if a producer elects to purchase additional coverage for a crop at a level that is less than 65 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, the producer shall pay an administrative fee for the additional coverage. Subsection (b)(5) shall apply in determining the amount and use of the administrative fee or in determining whether to waive the administrative fee.

"(B) EXCEPTION.—If a producer elects to purchase additional coverage for a crop equal to 65 percent or more of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, the producer shall not be subject to the administrative fee required by this paragraph or subsection (b)(5). If the producer has already paid the administrative fee for a lower level of coverage for the crop, the administrative fee shall be refunded to the producer unless the refund would reduce to less than $200 the total amount of the administrative fees paid by the producer for 2 or more crops in the same county for which a lower level of coverage is obtained.

"(C) ADDITIONAL FEE.—If a producer elects to purchase additional coverage for a crop equal to or exceeding 65 percent of the recorded or appraised average yield and 100 percent of the expected market price or an equivalent coverage, the producer shall pay an administrative fee of $10 for the coverage. If a producer has already paid an administrative fee for lesser coverage for the crop, the fee for lesser coverage shall be refunded to the producer unless the producer has paid the maximum fee for lesser coverage and refund of the fee will not reduce the amount to be paid below the maximum amount.

"(D) DEPOSIT OF FEES.—Notwithstanding the authority granted to the Secretary under the Federal Crop Insurance Corporation account provisions of the Agricultural, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1995, administrative fees collected under subparagraph (B) in excess of $100 per producer per county and under subparagraph (C) shall be deposited in the insurance fund established under section 516(c) to be available for the programs and activities of the Corporation.

"(d) PREMIUMS.—

"(1) PREMIUMS REQUIRED.—The Corporation shall fix adequate premiums for all the plans of insurance of the Corporation at such rates as the Board determines are actuarially sufficient to attain an expected loss ratio of not greater than 1.1 through September 30, 1998, and not greater than 1.075 after October 1, 1998.

"(2) PREMIUM AMOUNTS.—The premium amounts for catastrophic risk protection under subsection (b) and additional coverage under subsection (c) shall be fixed as follows:

"(A) In the case of catastrophic risk protection, the amount of the premium shall be sufficient to cover anticipated losses and a reasonable reserve.

"(B) In the case of additional coverage below 65 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, but greater than 50 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, the amount of the premium shall—

"(i) be sufficient to cover anticipated losses and a reasonable reserve; and

"(ii) include an amount for operating and administrative expenses, as determined by the Corporation.

"(C) In the case of additional coverage equal to or greater than 65 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, the amount of the premium shall—

"(i) be sufficient to cover anticipated losses and a reasonable reserve; and

"(ii) include an amount for operating and administrative expenses, as determined by the Corporation, on an industry-wide basis as a percentage of the amount of the premium used to define loss ratio.

"(e) PAYMENT OF PORTION OF PREMIUM BY CORPORATION.—

"(1) IN GENERAL.—For the purpose of encouraging the broadest possible participation of producers in the catastrophic risk protection provided under subsection (b) and the additional coverage provided under subsection (c), the Corporation shall pay a part of the premium in the amounts provided in accordance with this subsection.

"(2) AMOUNT OF PAYMENT.—The amount of the premium to be paid by the Corporation shall be as follows:

"(A) In the case of catastrophic risk protection, the amount shall be equivalent to the premium established for catastrophic risk protection under subsection (d)(2)(A).

"(B) In the case of coverage below 65 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, but greater than 50 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, the amount shall be equivalent to the amount of premium established for catastrophic risk protection coverage and the amount of operating and administrative expenses established under subsection (d)(2)(B).

"(C) In the case of coverage equal to or greater than 65 percent of the recorded or appraised average yield indemnified at 100 percent of the expected market price, or an equivalent coverage, on an individual or area basis, the amount shall be equivalent to an amount equal to the premium established for 50 percent loss in yield indemnified at 75 percent of the expected market price and the amount of operating and administrative expenses established under subsection (d)(2)(C).

"(3) PREMIUM REDUCTION.—If an approved insurance provider determines that the provider may provide insurance more efficiently than the expense reimbursement amount established by the Corporation, the approved insurance provider may reduce, subject to the approval of the Corporation, the premium charged the insured by an amount corresponding to the efficiency. The approved insurance provider shall apply to the Corporation for authority to reduce the premium before making such a reduction, and the reduction shall be subject to the rules, limitations, and procedures established by the Corporation.

"(4) INDIVIDUAL AND AREA CROP INSURANCE COVERAGE.—The Corporation shall allow approved insurance providers to offer a plan of insurance to producers that combines both individual yield coverage and area yield coverage at a premium rate determined by the provider under the following conditions:

"(A) The individual yield coverage shall be equal to or greater than catastrophic risk protection as described in subsection (b).

"(B) The combined policy shall include area yield coverage that is offered by the Corporation or similar area coverage, as determined by the Corporation.

"(C) The Corporation shall provide reinsurance on the area yield portion of the combined policy at the request of the provider, except that the provider shall agree to pay to the producer any portion of the area yield and loss indemnity payment received from the Corporation or a commercial reinsurer that exceeds the individual indemnity payment made by the provider to the producer.

"(D) The Corporation shall pay a part of the premium equivalent to—

"(i) the amount authorized under paragraph (2) (except provisions regarding operating and administrative expenses); and

"(ii) the amount of operating and administrative expenses authorized by the Corporation for the area yield coverage portion of the combined policy.

"(E) The provider shall provide all underwriting services for the combined policy, including the determination of individual yield coverage premium rates, the terms and conditions of the policy, and the acceptance and classification of applicants into risk categories, subject to subparagraph (F).

"(F) The Corporation shall approve the combined policy unless the Corporation determines that the policy is not actuarially sound or that the interests of producers are not adequately protected.

"(f) ELIGIBILITY.—

"(1) IN GENERAL.—To participate in catastrophic risk protection coverage under this section, a producer shall submit an application at the local office of the Department or to an approved insurance provider.

"(2) SALES CLOSING DATE.—For coverage under this title, each producer shall purchase crop insurance on or before the sales closing date for the crop by providing the required information and executing the required documents. Subject to the goal of ensuring actuarial soundness for the crop insurance program, the sales closing date shall be established by the Corporation to maximize convenience to producers in obtaining benefits under price and production adjustment programs of the Department. Beginning with the 1995 crop year, the Corporation shall establish, for an insurance policy for each insurable crop that is planted in the spring, a sales closing date that is 30 days earlier than the corresponding sales closing date that was established for the 1994 crop year.

"(3) RECORDS AND REPORTING.—To obtain catastrophic risk protection under subsection (b) or additional coverage under subsection (c), a producer shall—

"(A) provide, to the extent required by the Corporation, records acceptable to the Corporation of historical acreage and production of the crops for which the insurance is sought or accept a yield determined by the Corporation; and

"(B) report acreage planted and prevented from planting by the designated acreage reporting date for the crop and location as established by the Corporation.

"(g) YIELD DETERMINATIONS.—

"(1) IN GENERAL.—Subject to paragraph (2), the Corporation shall establish crop insurance underwriting rules that ensure that yield coverage, as specified in this subsection, is provided to eligible producers obtaining catastrophic risk protection under subsection (b) or additional coverage under subsection (c).

"(2) YIELD COVERAGE PLANS.—

"(A) ACTUAL PRODUCTION HISTORY.—Subject to subparagraph (B), the yield for a crop shall be based on the actual production history for the crop, if the crop was produced on the farm without penalty during each of the 4 crop years immediately preceding the crop year for which actual production history is being established, building up to a production data base for each of the 10 consecutive crop years preceding the crop year for which actual production history is being established.

"(B) ASSIGNED YIELD.—If the producer does not provide satisfactory evidence of the yield of a commodity under subparagraph (A), the producer shall be assigned a yield that is not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual production reflected in the records acceptable to the Corporation for continuous years), as specified in regulations issued by the Corporation based on production history requirements.

"(C) AREA YIELD.—The Corporation may offer a crop insurance plan based on an area yield that allows an insured producer to qualify for an indemnity if a loss has occurred in an area (as specified by the Corporation) in which the farm of the producer is located. Under an area yield plan, an insured producer shall be allowed to select the level of area production at which an indemnity will be paid consistent with such terms and conditions as are established by the Corporation.

"(D) COMMODITY-BY-COMMODITY BASIS.—A producer may choose between individual yield or area yield coverage or combined coverage (as provided in subsection (e)(4)), if available, on a commodity-by-commodity basis.

"(3) TRANSITIONAL YIELDS FOR PRODUCERS OF FEED OR FORAGE.—

"(A) IN GENERAL.—If a producer does not provide satisfactory evidence of a yield under paragraph (2)(A), the producer shall be assigned a yield that is at least 80 percent of the transitional yield established by the Corporation (adjusted to reflect the actual production history of the producer) if the Secretary determines that—

"(i) the producer grows feed or forage primarily for on-farm use in a livestock, dairy, or poultry operation; and

"(ii) over 50 percent of the net farm income of the producer is derived from the operation.

"(B) YIELD CALCULATION.—The Corporation shall—

"(i) for the first year of participation of a producer, provide the assigned yield under this paragraph to the producer of feed or forage; and

"(ii) for the second year of participation of the producer, apply the actual production history or assigned yield requirement, as provided in this subsection.

"(C) TERMINATION OF AUTHORITY.—The authority provided by this paragraph shall terminate on the date that is 3 years after the effective date of this paragraph.

"(h) SUBMISSION OF POLICIES AND MATERIALS TO BOARD.—

"(1) IN GENERAL.—In addition to any standard forms or policies that the Board may require be made available to producers under subsection (c), a person may prepare for submission or propose to the Board—

"(A) other crop insurance policies and provisions of policies; and

"(B) rates of premiums for multiple peril crop insurance pertaining to wheat, soybeans, field corn, and any other crops determined by the Secretary.

"(2) SUBMISSION OF POLICIES.—A policy or other material submitted to the Board under this subsection may be prepared without regard to the limitations contained in this title, including the requirements concerning the levels of coverage and rates and the requirement that a price level for each commodity insured must equal the expected market price for the commodity as established by the Board. In the case of such a policy, the payment by the Corporation of a portion of the premium of the policy may not exceed the amount that would otherwise be authorized under subsection (e).

"(3) REVIEW AND APPROVAL BY THE BOARD.—A policy or other material submitted to the Board under this subsection shall be reviewed by the Board and, if the Board finds that the interests of producers are adequately protected and that any premiums charged to the producers are actuarially appropriate, shall be approved by the Board for reinsurance and for sale to producers as an additional choice at actuarially appropriate rates and under appropriate terms and conditions. The Corporation may enter into more than 1 reinsurance agreement with the approved insurance provider simultaneously to facilitate the offering of the new policies.

"(4) GUIDELINES FOR SUBMISSION AND REVIEW.—The Corporation shall issue regulations to establish guidelines for the submission, and Board review, of policies or other material submitted to the Board under this subsection. At a minimum, the guidelines shall ensure the following:

"(A) A proposal submitted to the Board under this subsection shall be considered as confidential commercial or financial information for purposes of section 552(b)(4) of title 5, United States Code, until approved by the Board. A proposal disapproved by the Board shall remain confidential commercial or financial information.

"(B) The Board shall provide an applicant with the opportunity to present the proposal to the Board in person if the applicant so desires.

"(C) The Board shall provide an applicant with notification of intent to disapprove a proposal not later than 30 days prior to making the disapproval. An applicant that receives the notification may modify the application of the applicant. Any modification shall be considered an original application for purposes of this paragraph.

"(D) Specific guidelines shall prescribe the timing of submission of proposals under this subsection and timely consideration by the Board so that any approved proposal may be made available to all persons reinsured by the Corporation in a manner permitting the persons to participate, if the persons so desire, in offering such a proposal in the first crop year in which the proposal is approved by the Board for reinsurance, premium subsidy, or other support offered by this title.

"(5) REQUIRED PUBLICATION.—Any policy, provision of a policy, or rate approved under this subsection shall be published as a notice in the Federal Register and made available to all persons contracting with or reinsured by the Corporation under the terms and conditions of the contract between the Corporation and the person originally submitting the policy or other material.

"(6) PILOT COST OF PRODUCTION RISK PROTECTION PLAN.—

"(A) IN GENERAL.—The Corporation shall offer, to the extent practicable, a cost of production risk protection plan of insurance that indemnifies producers (including new producers) for insurable losses as provided in this paragraph.

"(B) PILOT BASIS.—The cost of production risk protection plan shall—

"(i) be established as a pilot project for each of the 1996 and 1997 crop years; and

"(ii) be carried out in a number of counties that is determined by the Corporation to be adequate to provide a comprehensive evaluation of the feasibility, effectiveness, and demand among producers for the plan.

"(C) INSURABLE LOSS.—An insurable loss shall be incurred by a producer if the gross income of the producer (as determined by the Corporation) is less than an amount determined by the Corporation, as a result of a reduction in yield or price resulting from an insured cause.

"(D) DEFINITION OF NEW PRODUCER.—As used in this paragraph, the term 'new producer' means a person that has not been actively engaged in farming for a share of the production of the insured crop for more than 2 crop years, as determined by the Secretary.

"(7) ADDITIONAL PREVENTED PLANTING POLICY COVERAGE.—

"(A) IN GENERAL.—Beginning with the 1995 crop year, the Corporation shall offer to producers additional prevented planting coverage that insures producers against losses in accordance with this paragraph.

"(B) APPROVED INSURANCE PROVIDERS.—Additional prevented planting coverage shall be offered by the Corporation through approved insurance providers.

"(C) TIMING OF LOSS.—A crop loss shall be covered by the additional prevented planting coverage if—

"(i) crop insurance policies were obtained for—

"(I) the crop year the loss was experienced; and

"(II) the crop year immediately preceding the year of the prevented planting loss; and

"(ii) the cause of the loss occurred—

"(I) after the sales closing date for the crop in the crop year immediately preceding the loss; and

"(II) before the sales closing date for the crop in the year in which the loss is experienced.

"(8) PILOT PROGRAM OF ASSIGNED YIELDS FOR NEW PRODUCERS.—

"(A) PROGRAM REQUIRED.—For each of the 1995 and 1996 crop years, the Corporation shall carry out a pilot program to assign to eligible new producers higher assigned yields than would otherwise be assigned to the producers under subsection (g). The Corporation shall include in the pilot program 30 counties that are determined by the Corporation to be

adequate to provide a comprehensive evaluation of the feasibility, effectiveness, and demand among new producers for increased assigned yields.

"(B) INCREASED ASSIGNED YIELDS.—In the case of an eligible new producer participating in the pilot program, the Corporation shall assign to the new producer a yield that is equal to not less than 110 percent of the transitional yield otherwise established by the Corporation.

"(C) ELIGIBLE NEW PRODUCER.—The Secretary shall establish a definition of new producer for purposes of determining eligibility to participate in the pilot program.

"(i) ADOPTION OF RATES AND COVERAGES.—The Corporation shall adopt, as soon as practicable, rates and coverages that will improve the actuarial soundness of the insurance operations of the Corporation for those crops that are determined to be insured at rates that are not actuarially sound, except that no rate may be increased by an amount of more than 20 percent over the comparable rate of the preceding crop year.

"(j) CLAIMS FOR LOSSES.—

"(1) IN GENERAL.—Under rules prescribed by the Corporation, the Corporation may provide for adjustment and payment of claims for losses. The rules prescribed by the Corporation shall establish standards to ensure that all claims for losses are adjusted, to the extent practicable, in a uniform and timely manner.

"(2) DENIAL OF CLAIMS.—

"(A) IN GENERAL.—Subject to subparagraph (B), if a claim for indemnity is denied by the Corporation or an approved provider, an action on the claim may be brought against the Corporation or Secretary only in the United States district court for the district in which the insured farm is located.

"(B) STATUTE OF LIMITATIONS.—A suit on the claim may be brought not later than 1 year after the date on which final notice of denial of the claim is provided to the claimant.

"(3) INDEMNIFICATION.—The Corporation shall provide approved insurance providers with indemnification, including costs and reasonable attorney fees incurred by the approved insurance provider, due to errors or omissions on the part of the Corporation.

"(k) REINSURANCE.—

"(1) IN GENERAL.—Notwithstanding any other provision of this title, the Corporation shall, to the maximum extent practicable, provide reinsurance to insurers approved by the Corporation that insure producers of any agricultural commodity under 1 or more plans acceptable to the Corporation.

"(2) TERMS AND CONDITIONS.—The reinsurance shall be provided on such terms and conditions as the Board may determine to be consistent with subsections (b) and (c) and sound reinsurance principles.

"(3) SHARE OF RISK.—The reinsurance agreements of the Corporation with the reinsured companies shall require the reinsured companies to bear a sufficient share of any potential loss under the agreement so as to ensure that the reinsured company will sell and service policies of insurance in a sound and prudent manner, taking into consideration the financial condition of the reinsured companies and the availability of private reinsurance.

"(4) RATE.—The rate established by the Board to reimburse approved insurance providers and agents for the administrative and operating costs of the providers and agents shall not exceed—

"(A) for the 1997 reinsurance year, 29 percent of the premium used to define loss ratio;

"(B) for the 1998 reinsurance year, 28 percent of the premium used to define loss ratio; and

"(C) for the 1999 reinsurance year, 27.5 percent of the premium used to define loss ratio.

"(5) COST AND REGULATORY REDUCTION.—Consistent with section 118 of the Federal Crop Insurance Reform Act of 1994, and consistent with maintenance of program integrity, prevention of fraud and abuse, the need for program expansion, and improvement of quality of service to customers, the Board shall alter program procedures and administrative requirements in order to reduce the administrative and operating costs of approved insurance providers and agents in an amount that corresponds to any reduction in the reimbursement rate required under paragraph (4) during the 5-year period beginning on the date of enactment of this paragraph.

"(6) AGENCY DISCRETION.—The determination of whether the Corporation is achieving, or has achieved, corresponding administrative cost savings shall not be subject to administrative review, and is wholly committed to agency discretion within the meaning of section 701(a)(2) of title 5, United States Code.

"(7) PLAN.—The Corporation shall submit to Congress a plan outlining the measures that will be used to achieve the reduction required under paragraph (5). If the Corporation can identify additional cost reduction measures, the Corporation shall describe the measures in the plan.

"(l) OPTIONAL COVERAGES.—The Corporation may offer specific risk protection programs, including protection against prevented planting, wildlife depredation, tree damage and disease, and insect infestation, under such terms and conditions as the Board may determine, except that no program may be undertaken if insurance for the specific risk involved is generally available from private companies.

"(m) RESEARCH.—

"(1) IN GENERAL.—Except as provided in paragraph (2), the Corporation may conduct research, surveys, pilot programs, and investigations relating to crop insurance and agriculture-related risks and losses including insurance on losses involving reduced forage on rangeland caused by drought and by insect infestation, livestock poisoning and disease, destruction of bees due to the use of pesticides, and other unique special risks related to fruits, nuts, vegetables, aquacultural species, forest industry needs (including appreciation), and other agricultural products as determined by the Board.

"(2) EXCEPTION.—No action may be undertaken with respect to a risk under paragraph (1) if insurance protection against the risk is generally available from private companies.

"(3) EVALUATION.—After the completion of any pilot program under this subsection, the Corporation shall evaluate the pilot program and submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, a report of the operations of the pilot program, including the evaluation by the Corporation of the pilot program and the recommendations of the Corporation with respect to implementing the program on a national basis.".

**SEC. 107. CROP INSURANCE YIELD COVERAGE.**

Section 508A (7 U.S.C. 1508a) is repealed.

**SEC. 108. PREEMPTION.**

Section 511 (7 U.S.C. 1511) is amended by adding at the end the following sentence: "A contract of insurance of the Corporation, and a contract of insurance reinsured by the Corporation, shall be exempt from taxation imposed by any State, municipality, or local taxing authority.".

**SEC. 109. ADVISORY COMMITTEE.**

The Act is amended by inserting after section 514 (7 U.S.C. 1514) the following new section:

**"SEC. 515. ADVISORY COMMITTEE FOR FEDERAL CROP INSURANCE.**

"(a) ESTABLISHMENT.—The Secretary may establish within the Department an advisory committee to be known as the 'Advisory Committee for Federal Crop Insurance'.

"(b) PRIMARY RESPONSIBILITY.—The primary responsibility of the Advisory Committee shall be to advise the Secretary on the implementation of this title and on other issues related to crop insurance, as determined by the Manager of the Corporation.

"(c) MEMBERSHIP.—The Advisory Committee shall be composed of the Manager of the Corporation, the Secretary (or a designee of the Secretary), and not fewer than 12 members representing organizations and agencies involved in the provision of crop insurance under this title. Not fewer than 3 of the members of the Advisory Committee shall be representatives of the specialty crops industry. The organizations or agencies represented by members on the Advisory Committee may include insurance companies, insurance agents, farm producer organizations, experts on agronomic practices, and banking and lending institutions.

"(d) ADMINISTRATIVE PROVISIONS.—

"(1) TERMS.—Members of the Advisory Committee (other than the Manager of the Corporation and the Secretary) shall be appointed by the Secretary for a term of up to 2 years from nominations made by the organizations and agencies specified in subsection (c). The terms of the members (other than the Manager of the Corporation and the Secretary) shall be staggered.

"(2) CHAIRPERSON.—The Advisory Committee shall be chaired by the Manager of the Corporation.

"(3) MEETINGS.—The Advisory Committee shall meet at least annually. The meetings of the Advisory Committee shall be publicly announced in advance and shall be open to the public. Appropriate records of the activities of the Advisory Committee shall be kept and made available to the public on request.

"(e) REPORTS.—Not later than June 30 of each year, the Advisory Committee shall submit to the Secretary a report specifying the conclusions and recommendations of the Advisory Committee regarding—

"(1) the progress toward implementation of this title;

"(2) the actuarial soundness of the Federal crop insurance program;

"(3) the rate of producer participation in both catastrophic risk protection under section 508(b) and additional coverage under section 508(c); and

"(4) the progress toward improved crop insurance coverage for new and specialty crops.

"(f) TERMINATION OF AUTHORITY.—The authority provided by this section shall terminate on September 30, 1998.".

**SEC. 110. FUNDING.**

Section 516 (7 U.S.C. 1516) is amended to read as follows:

**"SEC. 516. FUNDING.**

"(a) AUTHORIZATION OF APPROPRIATIONS.—

"(1) DISCRETIONARY EXPENSES.—There are authorized to be appropriated for each of fiscal years 1995 through 2001 such sums as are necessary to cover—

"(A) the salaries and expenses of the Corporation; and

"(B) the administrative and operating expenses of the Corporation for the sales commissions of agents.

"(2) MANDATORY EXPENSES.—There are authorized to be appropriated such sums as are necessary to cover—

"(A) in the case of each of the 1995 through 1997 reinsurance years, the administrative and operating expenses of the Corporation for the sales commissions of agents, consistent with subsection (b)(1);

"(B) premium subsidies, including the administrative and operating expenses of an approved insurance provider for the delivery of policies with additional coverage; and

"(C) payments for noninsured assistance losses under section 519.

"(b) PAYMENT OF EXPENSES.—

"(1) ADMINISTRATIVE AND OPERATING EXPENSES.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), in the case of each of the 1995 through 1997 reinsurance years, the Corporation is authorized to pay from the insurance fund established under subsection (c), the administrative and operating expenses of an approved insurance provider, including expenses covered by subsection (a)(1)(B).

"(B) SALES COMMISSIONS FOR 1997 REINSURANCE YEAR.—In the case of the 1997 reinsurance year, the amount of the payments from the insurance fund established under subsection (c) for the expenses of the Corporation for the sales commissions of agents may not exceed 8.5 percent of the total amount of premiums paid for additional coverage for the 1997 reinsurance year.

"(2) OTHER EXPENSES.—The Corporation is authorized to pay from the insurance fund established under subsection (c)—

"(A) all other expenses of the Corporation (other than expenses covered by subsection (a)(1)), including all premium subsidies, noninsured assistance benefits, and indemnities;

"(B) subject to paragraph (1)(B), in the case of each of the 1995 through 1997 reinsurance years, all administrative and expense reimbursements due under a reinsurance agreement with an approved insurance provider; and

"(C) to the extent necessary, expenses incurred by the Corporation to carry out research and development.

"(c) INSURANCE FUND.—

"(1) IN GENERAL.—There is established an insurance fund, for the deposit of premium income and amounts made available under subsection (a)(2), to be available without fiscal year limitation.

"(2) COMMODITY CREDIT CORPORATION FUNDS.—If at any time the amounts in the insurance fund are insufficient to enable the Corporation to carry out subsection (b), to the extent the funds of the Commodity Credit Corporation are available—

"(A) the Corporation may request the Secretary to use the funds of the Commodity Credit Corporation to carry out subsection (b); and

"(B) the Secretary may use the funds of the Commodity Credit Corporation to carry out subsection (b).".

**SEC. 111. NONINSURED CROP DISASTER ASSISTANCE.**

Section 519 (7 U.S.C. 1519) is amended to read as follows:

**"SEC. 519. NONINSURED CROP DISASTER ASSISTANCE PROGRAM.**

"(a) ESTABLISHMENT OF PROGRAM.—

"(1) ESTABLISHMENT.—In the case of an eligible crop described in paragraph (2), the Corporation shall establish a noninsured crop disaster assistance program to provide coverage equivalent to the catastrophic risk protection otherwise available under section 508(b).

"(2) ELIGIBLE CROPS.—

"(A) IN GENERAL.—As used in this section, the term 'eligible crop' means each commercial crop or other agricultural commodity (except livestock)—

"(i) for which catastrophic risk protection under section 508(b) is not available; and

"(ii) that is produced for food or fiber.

"(B) CROPS SPECIFICALLY INCLUDED.—The term 'eligible crop' shall include floricultural, ornamental nursery, and Christmas tree crops, turfgrass sod, and industrial crops.

"(3) CAUSE OF LOSS.—To qualify for assistance under this section, the losses of the noninsured commodity shall be due to drought, flood, or other natural disaster, as determined by the Secretary.

"(b) APPLICATION FOR NONINSURED CROP DISASTER ASSISTANCE.—

"(1) TIMELY APPLICATION.—To be eligible for assistance under this section, a producer shall submit an application for noninsured crop disaster assistance at a local office of the Department. The application shall be in such form, contain such information, and be submitted at such time as the Corporation may require.

"(2) RECORDS.—A producer shall annually provide records, as required by the Corporation, of previous crop acreage, acreage yields, and production, or the producer shall accept a yield under subsection (e)(3) determined by the Corporation.

"(3) ACREAGE REPORTS.—A producer shall provide reports on acreage planted or prevented from being planted, as required by the Corporation, by the designated acreage reporting date for the crop and location as established by the Corporation.

"(c) LOSS REQUIREMENTS.—

"(1) REQUIRED AREA LOSS.—A producer of an eligible crop shall not receive noninsured crop disaster assistance unless the average yield for that crop, or an equivalent measure in the event yield data are not available, in an area falls below 65 percent of the expected area yield, as established by the Corporation.

"(2) PREVENTED PLANTING.—Subject to paragraph (1), the Corporation shall make a prevented planting noninsured crop disaster assistance payment if the producer is prevented from planting more than 35 percent of the acreage intended for the eligible crop because of drought, flood, or other natural disaster, as determined by the Secretary.

"(3) REDUCED YIELDS.—Subject to paragraph (1), the Corporation shall make a reduced yield noninsured crop disaster assistance payment to a producer if the total quantity of the eligible crop that the producer is able to harvest on any farm is, because of drought, flood, or other natural disaster as determined by the Secretary, less than 50 percent of the expected individual yield for the crop, as determined by the Corporation, factored for the interest of the producer for the crop.

"(d) PAYMENT.—The Corporation shall make available to a producer eligible for noninsured assistance under this section a payment computed by multiplying—

"(1) the quantity that is less than 50 percent of the established yield for the crop; by

"(2)(A) in the case of each of the 1995 through 1998 crop years, 60 percent of the average market price for the crop (or any comparable coverage determined by the Corporation); or

"(B) in the case of each of the 1999 and subsequent crop years, 55 percent of the average market price for the crop (or any comparable coverage determined by the Corporation); by

"(3) a payment rate for the type of crop (as determined by the Corporation) that—

"(A) in the case of a crop that is produced with a significant and variable harvesting expense, reflects the decreasing cost incurred in the production cycle for the crop that is—

"(i) harvested;

"(ii) planted but not harvested; and

"(iii) prevented from being planted because of drought, flood, or other natural disaster (as determined by the Secretary); and

"(B) in the case of a crop that is not produced with a significant and variable harvesting expense, is determined by the Corporation.

"(e) YIELD DETERMINATIONS.—

"(1) ESTABLISHMENT.—The Corporation shall establish farm yields for purposes of providing noninsured crop disaster assistance under this section.

"(2) ACTUAL PRODUCTION HISTORY.—The Corporation shall determine yield coverage using the actual production history of the producer over a period of not less than the 4 previous consecutive crop years and not more than 10 consecutive crop years. Subject to paragraph (3), the yield for the year in which noninsured crop disaster assistance is sought shall be equal to the average of the actual production history of the producer during the period considered.

"(3) ASSIGNMENT OF YIELD.—If a producer does not submit adequate documentation of production history to determine a crop yield under paragraph (2), the Corporation shall assign to the producer a yield equal to not less than 65 percent of the transitional yield of the producer (adjusted to reflect actual production reflected in the records acceptable to the Corporation for continuous years), as specified in regulations issued by the Corporation based on production history requirements.

"(4) PROHIBITION ON ASSIGNED YIELDS IN CERTAIN COUNTIES.—

"(A) IN GENERAL.—

"(i) DOCUMENTATION.—If sufficient data are available to demonstrate that the acreage of a crop in a county for the crop year has increased by more than 100 percent over any year in the preceding 7 crop years or, if data are not available, if the acreage of the crop in the county has increased significantly from the previous crop years, a producer must provide such detailed documentation of production costs, acres planted, and yield for the crop year for which benefits are being claimed as is required by the Corporation. If the Corporation determines that the documentation provided is not sufficient, the Corporation may require documenting proof that the crop, had the crop been harvested, could have been marketed at a reasonable price.

"(ii) PROHIBITION.—Except as provided in subparagraph (B), a producer who produces a crop on a farm located in a county described in clause (i) may not obtain an assigned yield.

"(B) EXCEPTION.—A crop or a producer shall not be subject to this subsection if—

"(i) the planted acreage of the producer for the crop has been inspected by a third party acceptable to the Secretary; or

"(ii)(I) the County Executive Director and the State Executive Director recommend an exemption from the requirement to the Deputy Administrator for State and County Operations of the Agricultural Stabilization and Conservation Service; and

"(II) the Deputy Administrator approves the recommendation.

"(5) LIMITATION ON RECEIPT OF SUBSEQUENT ASSIGNED YIELD.—A producer who receives an

assigned yield for the current year of a natural disaster because required production records were not submitted to the local office of the Department shall not be eligible for an assigned yield for the year of the next natural disaster unless the required production records of the previous 1 or more years (as applicable) are provided to the local office.

"(6) YIELD VARIATIONS DUE TO DIFFERENT FARMING PRACTICES.—The Corporation shall ensure that noninsured crop disaster assistance accurately reflects significant yield variations due to different farming practices, such as between irrigated and nonirrigated acreage.

"(f) CONTRACT PAYMENTS.—A producer who has received a guaranteed payment for production, as opposed to delivery, of a crop pursuant to a contract shall have the production of the producer adjusted upward by the amount of the production equal to the amount of the contract payment received.

"(g) PAYMENT OF LOSSES.—Payments for noninsured crop disaster assistance losses under this section shall be made from the insurance fund established under section 516. The losses shall not be included in calculating the premiums charged to producers for insurance under section 508.".

"(h) EXCLUSIONS.—Noninsured crop disaster assistance under this section shall not cover losses due to—

"(A) the neglect or malfeasance of the producer;

"(B) the failure of the producer to reseed to the same crop in those areas and under such circumstances where it is customary to reseed; or

"(C) the failure of the producer to follow good farming practices, as determined by the Corporation.".

**SEC. 112. PAYMENT AND INCOME LIMITATIONS.**

Section 519 (7 U.S.C. 1519) (as amended by section 111) is further amended by adding at the end the following new subsection:

"(h) PAYMENT AND INCOME LIMITATIONS.—

"(1) DEFINITIONS.—As used in this subsection:

"(A) PERSON.—The term 'person' has the meaning provided the term in regulations issued by the Secretary. The regulations shall conform, to the extent practicable, to the regulations defining the term 'person' issued under section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308).

"(B) QUALIFYING GROSS REVENUES.—The term 'qualifying gross revenues' means—

"(i) if a majority of the gross revenue of the person is received from farming, ranching, and forestry operations, the gross revenue from the farming, ranching, and forestry operations of the person; and

"(ii) if less than a majority of the gross revenue of the person is received from farming, ranching, and forestry operations, the gross revenue of the person from all sources.

"(2) PAYMENT LIMITATION.—The total amount of payments that a person shall be entitled to receive annually under this title may not exceed $100,000.

"(3) LIMITATION ON MULTIPLE BENEFITS FOR SAME LOSS.—If a producer who is eligible to receive benefits under catastrophic risk protection under section 508(b) or noninsured crop disaster assistance under this section is also eligible to receive assistance for the same loss under any other program administered by the Secretary, the producer shall be required to elect whether to receive benefits under this title or under the other program, but not both. A producer who purchases additional coverage under section 508(c) may also receive assistance for the same loss under other programs administered by the Secretary, except that the amount received for the loss under the additional coverage together with the amount received under the other programs may not exceed the amount of the actual loss of the producer.

"(4) INCOME LIMITATION.—A person who has qualifying gross revenues in excess of the amount specified in section 2266(a) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) (as in effect on November 28, 1990) during the taxable year (as determined by the Secretary) shall not be eligible to receive any noninsured assistance payment under this section.

"(5) REGULATIONS.—The Secretary shall issue regulations prescribing such rules as the Secretary determines necessary to ensure a fair and equitable application of section 1001 of the Food Security Act of 1985 (7 U.S.C. 1308), the general payment limitation regulations of the Secretary, and the limitations established under this subsection.".

**SEC. 113. PRODUCER ELIGIBILITY.**

Section 520 (7 U.S.C. 1520) is amended to read as follows:

**"SEC. 520. PRODUCER ELIGIBILITY.**

"Except as otherwise provided in this title, a producer shall not be denied insurance under this title if—

"(1) for purposes of catastrophic risk protection coverage, the producer is a 'person' (as defined by the Secretary); and

"(2) for purposes of any other plan of insurance, the producer is 18 years of age and has a bona fide insurable interest in a crop as an owner-operator, landlord, tenant, or sharecropper.".

**SEC. 114. INELIGIBILITY FOR CATASTROPHIC RISK AND NONINSURED ASSISTANCE PAYMENTS.**

The Act (7 U.S.C. 1501 et seq.) is amended by adding at the end the following new section:

**"SEC. 521. INELIGIBILITY FOR CATASTROPHIC RISK AND NONINSURED ASSISTANCE PAYMENTS.**

"If the Secretary determines that a person has knowingly adopted a material scheme or device to obtain catastrophic risk, additional coverage, or noninsured assistance benefits under this title to which the person is not entitled, has evaded this title, or has acted with the purposes of evading this title, the person shall be ineligible to receive all benefits applicable to the crop year for which the scheme or device was adopted. The authority provided by this section shall be in addition to, and shall not supplant, the authority provided by section 506(n).".

**SEC. 115. ELIMINATION OF GENDER REFERENCES.**

(a) MANAGEMENT OF CORPORATION.—Section 505 (7 U.S.C. 1505) is amended—

(1) in subsection (a), by striking the third sentence and inserting "The Board shall be appointed by, and hold office at the pleasure of, the Secretary. The Secretary shall not be a member of the Board."; and

(2) in subsection (d)—

(A) by striking "upon him"; and

(B) by striking "He shall be appointed by," and inserting "The manager shall be appointed by,".

(b) PERSONNEL.—Section 507 (7 U.S.C. 1507) is amended—

(1) in subsection (a), by striking "as he may determine: *Provided*, That" and inserting "as the Secretary may determine appropriate. However,"; and

(2) in subsection (d), by striking "as he may request" and inserting "that the Secretary requests".

(c) INDEMNITIES EXEMPT FROM LEVY.—Section 509 (7 U.S.C. 1509) is amended by striking "or his estate" and inserting "or the estate of the insured".

**SEC. 116. PREVENTED PLANTING.**

(a) IN GENERAL.—Effective for the 1994 crop year, a producer described in subsection (b) shall receive compensation under the prevented planting coverage policy provision described in subsection (b)(1) by—

(1) obtaining from the Secretary of Agriculture the applicable amount that is payable under the conserving use program described in subsection (b)(4); and

(2) obtaining from the Federal Crop Insurance Corporation the amount that is equal to the difference between—

(A) the amount that is payable under the conserving use program; and

(B) the amount that is payable under the prevented planting coverage policy.

(b) ELIGIBLE PRODUCERS.—Subsection (a) shall apply to a producer who—

(1) purchased a prevented planting policy for the 1994 crop year from the Federal Crop Insurance Corporation prior to the spring sales closing date for the 1994 crop year;

(2) is unable to plant a crop due to major, widespread flooding in the Midwest, or excessive ground moisture, that occurred prior to the spring sales closing date for the 1994 crop year;

(3) had a reasonable expectation of planting a crop on the prevented planting acreage for the 1994 crop year; and

(4) participates in a conserving use program established for the 1994 crop of wheat, feed grains, upland cotton, or rice established under section 107B(c)(1)(E), 105B(c)(1)(E), 103B(c)(1)(D), or 101B(c)(1)(D), respectively, of the Agricultural Act of 1949 (7 U.S.C. 1445b–3a(c)(1)(E), 1444f(c)(1)(E), 1444–2(c)(1)(D), or 1441–2(c)(1)(D)).

(c) OILSEED PREVENTED PLANTING PAYMENTS.—

(1) IN GENERAL.—Effective for the 1994 crop year, a producer of a crop of oilseeds (as defined in section 205(a) of the Agricultural Act of 1949 (7 U.S.C. 1446f(a))) shall receive a prevented planting payment for the crop if the requirements of paragraphs (1), (2), and (3) of subsection (b) are satisfied.

(2) SOURCE OF PAYMENT.—The total amount of payments required under this subsection shall be made by the Federal Crop Insurance Corporation.

(d) PAYMENT.—A payment under this section may not be made before October 1, 1994.

**SEC. 117. REPORT ON IMPROVING DISSEMINATION OF CROP INSURANCE INFORMATION.**

Not later than 180 days after the date of enactment of this Act and at the end of each of the 2 1-year periods thereafter, the Federal Crop Insurance Corporation shall submit a report to Congress containing a plan to implement a sound program for producer education regarding the crop insurance program and for the dissemination of crop insurance information to producers, as required by section 508(a)(5) of the Federal Crop Insurance Act (as amended by section 106).

**SEC. 118. CROP INSURANCE PROVIDER EVALUATION.**

(a) IN GENERAL.—The Comptroller General of the United States and the Federal Crop Insurance Corporation (referred to in this section as the "Corporation") shall jointly evaluate the financial arrangement between the Corporation and approved insurance providers to determine the quality, costs, and efficiencies of providing the benefits of multiple peril crop insurance to producers of agricultural commodities covered under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.).

(b) COLLECTION OF INFORMATION AND PROPOSALS.—The Corporation shall require private insurance providers and agents to supply, and the private insurance providers and agents shall supply, records and information necessary to make the determinations and evaluations required under this section. The Corporation shall solicit from the approved insurance providers and agents proposals for modifying or altering the requirements, regulations, procedures, and processes related to implementing the Federal Crop Insurance Act to reduce the operating and administrative costs of the providers and agents.

(c) INITIAL REPORT.—Not later than 180 days after receipt of information and cost-reduction proposals under subsection (b), the Corporation shall evaluate the information and proposals obtained and report the results of the evaluation to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(d) FINAL REPORT.—Not later than 2 years after the date of enactment of this Act, the Comptroller General and the Corporation shall submit a final report that provides the evaluation required under subsection (a) to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate. In making the evaluation, the Comptroller General and the Corporation shall—

(1) consider the changes made by the Corporation in response to increased program participation resulting from the enactment of this Act;

(2) include an evaluation and opinion of the accuracy and reasonableness of—

(A) the average actual costs for approved insurance providers to deliver multiple peril crop insurance;

(B) the cost per policy of complying with the requirements, regulations, procedures, and processes of the Federal Crop Insurance Act;

(C) the cost differences for various provider firm sizes and any business delivered by the Federal Government;

(D) the adequacy of the standard reimbursement for potential new providers; and

(E) the identification of any new costs related to the enactment of this Act not previously identified in the information reported by the providers;

(3) compare delivery costs of multiple peril crop insurance to other insurance coverages that the provider may sell and determine the extent if any, to which any funds provided to carry out the Federal Crop Insurance Act are being used to fund any other business enterprise operated by the provider;

(4)(A) assess alternative methods for reimbursing providers for reasonable and necessary expenses associated with delivery of multiple peril crop insurance;

(B) recommend changes under this paragraph that reasonably demonstrate the need to achieve the greatest operating efficiencies on the part of the provider and the Corporation has been recognized; and

(C) identify areas for improved operating efficiencies, if any, in the requirements made by the Corporation for compliance and program integrity;

(5) assess the potential for alternative forms of reinsurance arrangements for providers of different firm sizes, taking into consideration—

(A) the need to achieve a reasonable return on the capital of the provider compared to other lines of insurance;

(B) the relative risk borne by the provider for the different lines of insurance;

(C) the availability and price of commercial reinsurance; and

(D) any additional costs that may be incurred by the Federal Government in carrying out the Federal Crop Insurance Act; and

(6) include an analysis of the effect of the current or proposed reinsurance arrangements on providers having different business levels.

(e) INFORMATION.—

(1) PRIVACY.—In conducting the evaluation required by this section, the Comptroller General and the Corporation shall maintain the privacy of proprietary information.

(2) SUBPOENAS.—The Comptroller General shall have the power to subpoena information relevant to the evaluation required by this section from any private insurance provider. The Comptroller General shall allow the Corporation access to the information subpoenaed taking into consideration the necessity of preserving the privacy of proprietary information.

**SEC. 119. CONFORMING AMENDMENTS.**

(a) PRICE SUPPORT PROGRAMS.—

(1) IN GENERAL.—Title IV of the Agricultural Act of 1949 (7 U.S.C. 1421 et seq.) is amended by adding at the end the following new section:

**"SEC. 427. CROP INSURANCE REQUIREMENT.**

"As a condition of receiving any benefit (including payments) under title I or II for each of the 1995 and subsequent crops of tobacco, rice, extra long staple cotton, upland cotton, feed grains, wheat, peanuts, oilseeds, and sugar, a producer must obtain at least catastrophic risk protection insurance coverage under section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) for the crop and crop year for which the benefit is sought, if the coverage is offered by the Corporation.".

(2) RICE.—Section 101B(c) of such Act (7 U.S.C. 1441-2(c)) is amended—

(A) in paragraph (1), by striking subparagraph (F); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427.".

(3) UPLAND COTTON.—Section 103B(c) of such Act (7 U.S.C. 1444-2(c)) is amended—

(A) in paragraph (1), by striking subparagraph (F); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427.".

(4) FEED GRAINS.—Section 105B(c) of such Act (7 U.S.C. 1444f(c)) is amended—

(A) in paragraph (1), by striking subparagraph (G); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427.".

(5) WHEAT.—Section 107B(c) of such Act (7 U.S.C. 1445b-3a(c)) is amended—

(A) in paragraph (1), by striking subparagraph (G); and

(B) by striking paragraph (2) and inserting the following new paragraph:

"(2) CROP INSURANCE REQUIREMENT.—A producer shall obtain catastrophic risk protection insurance coverage in accordance with section 427.".

(6) DISASTER PAYMENTS.—Section 208 of such Act (7 U.S.C. 14461) is repealed.

(b) FARMERS HOME ADMINISTRATION PROGRAMS.—The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended by adding at the end the following new section:

**"SEC. 371. CROP INSURANCE REQUIREMENT.**

"(a) IN GENERAL.—As a condition of obtaining any benefit (including a direct loan, loan guarantee, or payment) described in subsection (b), a borrower must obtain at least catastrophic risk protection insurance coverage under section 508 of the Federal Crop Insurance Act (7 U.S.C. 1508) for the crop and crop year for which the benefit is sought, if the coverage is offered by the Corporation.

"(b) APPLICABLE BENEFITS.—Subsection (a) shall apply to—

"(1) a farm ownership loan (FO) under section 303;

"(2) an operating loan (OL) under section 312; and

"(3) an emergency loan (EM) under section 321.".

(c) DISASTER ASSISTANCE.—Subtitle B of title XXII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1421 note) is amended by striking chapter 3.

(d) EMERGENCY APPROPRIATIONS.—

(1) IN GENERAL.—Effective January 1, 1995, section 251(b)(2)(D)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(D)(i)) is amended by adding at the end the following new sentence: "This subparagraph shall not apply to appropriations to cover agricultural crop disaster assistance.".

(2) EMERGENCY LEGISLATION.—Effective January 1, 1995, section 252(e) of such Act (2 U.S.C. 902(e)) is amended by adding at the end the following new sentence: "This subsection shall not apply to direct spending provisions to cover agricultural crop disaster assistance.".

(e) FALSE STATEMENTS.—Section 1014 of title 18, United States Code, is amended by inserting "or a company the Corporation reinsures" after "Federal Crop Insurance Corporation".

(f) TECHNICAL AMENDMENTS.—

(1) The first sentence of section 506(d) (7 U.S.C. 1506(d)) is amended by striking "508(f)" and inserting "508(j)".

(2) The last sentence of section 507(c) (7 U.S.C. 1507(c)) is amended by striking "508(b)" and inserting "508(h)".

(3) Section 518 (7 U.S.C. 1518) is amended by striking "(k)" and inserting "(m)".

**SEC. 120. EFFECTIVE DATE.**

Except as otherwise provided in this title, this title and the amendments made by this title shall become effective on the date of enactment of this Act and shall apply to the provision of crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) beginning with the 1995 crop year. With respect to the 1994 crop year, the Federal Crop Insurance Act (as in effect on the day before the date of enactment of this Act) shall continue to apply.

## TITLE II—DEPARTMENT OF AGRICULTURE REORGANIZATION

**SEC. 201. SHORT TITLE.**

(a) SHORT TITLE.—This title may be cited as the "Department of Agriculture Reorganization Act of 1994".

**SEC. 202. PURPOSE.**

The purpose of this title is to provide the Secretary of Agriculture with the necessary authority to streamline and reorganize the Department of Agriculture to achieve greater efficiency, effectiveness, and economies in the organization and management of the programs and activities carried out by the Department.

**SEC. 203. DEFINITIONS.**

Except where the context requires otherwise, for purposes of this title:

(1) DEPARTMENT.—The term "Department" means the Department of Agriculture.

(2) NATIONAL APPEALS DIVISION.—The term "National Appeals Division" means the National Appeals Division of the Department established under section 272.

(3) SECRETARY.—The term "Secretary" means the Secretary of Agriculture.

(4) FUNCTION.—The term "function" means an administrative, financial, or regulatory activity of an agency, office, officer, or employee of the Department.

**Subtitle A—General Reorganization Authorities**

**SEC. 211. TRANSFER OF DEPARTMENT FUNCTIONS TO SECRETARY OF AGRICULTURE.**

(a) TRANSFER OF FUNCTIONS.—Except as provided in subsection (b), there are transferred to the Secretary of Agriculture all functions of all agencies, offices, officers, and employees of the Department that are not already vested in the Secretary on the date of the enactment of this Act.

(b) EXCEPTIONS.—Subsection (a) shall not apply to the following functions:

(1) Functions vested by subchapter II of chapter 5 of title 5, United States Code, in administrative law judges employed by the Department.

(2) Functions vested by the Inspector General Act of 1978 (5 U.S.C. App.) in the Inspector General of the Department.

(3) Functions vested by chapter 9 of title 31, United States Code, in the Chief Financial Officer of the Department.

(4) Functions vested in the corporations of the Department or the boards of directors and officers of such corporations.

(5) Functions vested in the Alternative Agricultural Research and Commercialization Board by the Alternative Agricultural Research and Commercialization Act of 1990 (7 U.S.C. 5901 et seq.).

**SEC. 212. AUTHORITY OF SECRETARY TO DELEGATE TRANSFERRED FUNCTIONS.**

(a) DELEGATION OF AUTHORITY.—

(1) DELEGATION AUTHORIZED.—Subject to paragraph (2), the Secretary may delegate to any agency, office, officer, or employee of the Department the authority to perform any function transferred to the Secretary under section 211(a) or any other function vested in the Secretary as of the date of the enactment of this Act. The authority provided in the preceding sentence includes the authority to establish, consolidate, alter, or discontinue any agency, office, or other administrative unit of the Department.

(2) CONDITION ON AUTHORITY.—The delegation authority provided by paragraph (1) shall be subject to—

(A) sections 232, 251(d), 273, and 304 and subsections (a) and (b)(1) of section 261;

(B) sections 502 and 503 of the Agricultural Trade Act of 1978 (7 U.S.C. 5692 and 5693); and

(C) section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)).

(b) COST-BENEFIT ANALYSIS REQUIRED FOR NAME CHANGE.—

(1) ANALYSIS REQUIRED.—Except as provided in paragraph (2), the Secretary shall conduct a cost-benefit analysis before changing the name of any agency, office, division, or other unit of the Department to ensure that the benefits to be derived from changing the name of the agency, office, division, or other unit outweigh the expense of executing the name change.

(2) EXCEPTION.—Paragraph (1) shall not apply with respect to any name change required or authorized by this title.

(c) PUBLIC COMMENT ON PROPOSED REORGANIZATION.—To the extent that the implementation of the authority provided to the Secretary by this title to reorganize the Department involves the creation of new agencies or offices within the Department or the delegation of major functions or major groups of functions to any agency or office of the Department (or the officers or employees of such agency or office), the Secretary shall, to the extent considered practicable by the Secretary—

(1) give appropriate advance public notice of the proposed reorganization action or delegation; and

(2) afford appropriate opportunity for interested parties to comment on the proposed reorganization action or delegation.

(d) INTERAGENCY TRANSFER OF RECORDS, PROPERTY, PERSONNEL, AND FUNDS.—

(1) RELATED TRANSFERS.—Subject to paragraph (2), as part of the transfer or delegation of a function of the Department made or authorized by this title, the Secretary may transfer within the Department—

(A) any of the records, property, or personnel affected by the transfer or delegation of the function; and

(B) unexpended balances (available or to be made available for use in connection with the transferred or delegated function) of appropriations, allocations, or other funds of the Department.

(2) APPLICABLE LAW RELATING TO FUNDS TRANSFER.—Section 1531 of title 31, United States Code, shall apply to any transfer of funds under paragraph (1).

(e) EXHAUSTION OF ADMINISTRATIVE APPEALS.—Notwithstanding any other provision of law, a person shall exhaust all administrative appeal procedures established by the Secretary or required by law before the person may bring an action in a court of competent jurisdiction against—

(1) the Secretary;

(2) the Department; or

(3) an agency, office, officer, or employee of the Department.

**SEC. 213. REDUCTIONS IN NUMBER OF DEPARTMENT PERSONNEL.**

(a) DEFINITIONS.—For purposes of this section:

(1) HEADQUARTERS OFFICES.—The term "headquarters offices", with respect to agencies, offices, or other administrative units of the Department, means the offices, functions, and employee positions that are located or performed—

(A) in Washington, District of Columbia; or

(B) in such other locations as are identified by the Secretary for purposes of this section.

(2) FIELD STRUCTURE.—The term "field structure" means the offices, functions, and employee positions of all agencies, offices, or other administrative units of the Department, other than the headquarters offices, except that the term does not include State, county, or area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)). The term includes the physical and geographic locations of such agencies, offices, or other administrative units.

(b) NUMBER OF REDUCTIONS REQUIRED.—The Secretary shall achieve Federal employee reductions of at least 7,500 staff years within the Department by the end of fiscal year 1999. Reductions in the number of full-time equivalent positions within the Department achieved under section 5 of the Federal Workforce Restructuring Act of 1994 (Public Law 103-226; 108 Stat. 115; 5 U.S.C. 3101 note) shall be counted toward the employee reductions required under this section.

(c) EMPHASIS ON HEADQUARTERS OFFICES REDUCTIONS.—In achieving the employee reductions required by subsection (b), the Secretary shall pursue a goal so that the percentage of the total number of employee staff years reduced in headquarters offices is at least twice the percentage of the total number of employee staff years reduced in the field structure.

(d) SCHEDULE.—The personnel reductions in headquarters offices and in the field structure should be accomplished concurrently in a manner determined by the Secretary.

**SEC. 214. CONSOLIDATION OF HEADQUARTERS OFFICES.**

Subject to the availability of appropriated funds for this purpose, the Secretary shall develop and carry out a plan to consolidate offices located in Washington, District of Columbia, of agencies, offices, and other administrative units of the Department.

**SEC. 215. COMBINATION OF FIELD OFFICES.**

(a) COMBINATION OF OFFICES REQUIRED.—Where practicable and to the extent consistent with efficient, effective, and improved service, the Secretary shall combine field offices of agencies within the Department to reduce personnel and duplicative overhead expenses.

(b) JOINT USE OF RESOURCES AND OFFICES REQUIRED.—When two or more agencies of the Department share a common field office, the Secretary shall require the agencies to jointly use office space, equipment, office supplies, administrative personnel, and clerical personnel associated with that field office.

**SEC. 216. IMPROVEMENT OF INFORMATION SHARING.**

Whenever the Secretary procures or uses computer systems, as may be provided for in advance in appropriations Acts, the Secretary shall do so in a manner that enhances efficiency, productivity, and client services and is consistent with the goal of promoting computer information sharing among agencies of the Department.

**SEC. 217. REPORTS BY THE SECRETARY.**

(a) IN GENERAL.—Subject to subsection (b), notwithstanding any other provision of law, the Secretary may, but shall not be required to, prepare and submit any report solely to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(b) LIMITATION.—For each fiscal year, the Secretary may not prepare and submit more than 30 reports referred to in subsection (a).

(c) SELECTION OF REPORTS.—In consultation with the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate, the Secretary shall determine which reports, if any, the Secretary will prepare and submit in accordance with subsection (b).

**SEC. 218. ASSISTANT SECRETARIES OF AGRICULTURE.**

(a) AUTHORIZATION.—The Secretary is authorized to establish in the Department the positions of—

(1) Assistant Secretary of Agriculture for Congressional Relations;

(2) Assistant Secretary of Agriculture for Administration; and

(3) Assistant Secretary of Agriculture for Marketing and Regulatory Programs.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes any position of Assistant Secretary authorized under subsection (a), the Assistant Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) SUCCESSION.—Any official who is serving as Assistant Secretary of Agriculture for

Administration or Assistant Secretary of Agriculture for Congressional Relations on the date of the enactment of this Act and who was appointed as such Assistant Secretary by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (b) to the successor position authorized under subsection (a) if the Secretary establishes the position, and the official occupies the new position, within 180 days after the date of the enactment of this Act (or such later date set by the Secretary if litigation delays rapid succession).

(d) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by striking "Assistant Secretaries of Agriculture (7)." and inserting "Assistant Secretaries of Agriculture (3).".

(e) REPEAL OF SUPERSEDED PROVISIONS REGARDING ASSISTANT SECRETARIES.—The following provisions of law are repealed:

(1) Section 2 of Reorganization Plan No. 2 of 1953 (5 U.S.C. App; 7 U.S.C. 2201 note).

(2) Section 2 of the Act entitled "An Act to enlarge the powers and duties of the Department of Agriculture and to create an Executive Department to be known as the Department of Agriculture.", approved February 9, 1889 (7 U.S.C. 2212).

(3) The first paragraph designated "OFFICE OF THE SECRETARY:" under the heading "DEPARTMENT OF AGRICULTURE" of the Act entitled "An Act making appropriations for the Department of Agriculture for the fiscal year ending June thirtieth, nineteen hundred and seven.", approved June 30, 1906 (34 Stat. 670; 7 U.S.C. 2212).

(4) Section 604(a) of the Rural Development Act of 1972 (7 U.S.C. 2212a).

(5) Section 2 of Public Law 94-561 (7 U.S.C. 2212b).

(6) Section 8(a) of Public Law 97-325 (7 U.S.C. 2212c).

(7) Section 1413(d) of the National Agricultural Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3128(d)).

**SEC. 219. PAY INCREASES PROHIBITED.**

The compensation of any officer or employee of the Department on the date of the enactment of this Act shall not be increased as a result of the enactment of this title.

**Subtitle B—Farm and Foreign Agricultural Services**

**SEC. 225. UNDER SECRETARY OF AGRICULTURE FOR FARM AND FOREIGN AGRICULTURAL SERVICES.**

(a)AUTHORIZATION.—The Secretary is authorized to establish in the Department the position of Under Secretary of Agriculture for Farm and Foreign Agricultural Services.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes the position of Under Secretary of Agriculture for Farm and Foreign Agricultural Services authorized under subsection (a), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—Upon establishment, the Secretary shall delegate to the Under Secretary of Agriculture for Farm and Foreign Agricultural Services those functions under the jurisdiction of the Department that are related to farm and foreign agricultural services.

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Farm and Foreign Agricultural Services shall perform such other functions as may be required by law or prescribed by the Secretary.

(d) SUCCESSION.—Any official who is serving as Under Secretary of Agriculture for International Affairs and Commodity Programs on the date of the enactment of this Act and who was appointed by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (b) to the successor position authorized under subsection (a) if the Secretary establishes the position, and the official occupies the new position, within 180 days after the date of the enactment of this Act (or such later date set by the Secretary if litigation delays rapid succession).

(e) CONFORMING AMENDMENTS.—

(1) EXISTING POSITION.—Section 501 of the Agricultural Trade Act of 1978 (7 U.S.C. 5691), relating to the Under Secretary of Agriculture for International Affairs and Commodity Programs, is repealed.

(2) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by striking "Under Secretary of Agriculture for International Affairs and Commodity Programs." and inserting "Under Secretary of Agriculture for Farm and Foreign Agricultural Services.".

**SEC. 226. CONSOLIDATED FARM SERVICE AGENCY.**

(a) ESTABLISHMENT.—The Secretary is authorized to establish and maintain in the Department a Consolidated Farm Service Agency.

(b) FUNCTIONS OF CONSOLIDATED FARM SERVICE AGENCY.—If the Secretary establishes the Consolidated Farm Service Agency under subsection (a), the Secretary is authorized to assign to the Agency jurisdiction over the following functions:

(1) Agricultural price and income support programs, production adjustment programs, and related programs.

(2) General supervision of the Federal Crop Insurance Corporation.

(3) Agricultural credit programs assigned before the date of the enactment of this Act by law to the Farmers Home Administration (including farm ownership and operating, emergency, and disaster loan programs) and other lending programs for agricultural producers and others engaged in the production of agricultural commodities.

(4) Subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831-3836) and the agricultural conservation program under the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590g et seq.).

(5) Such other functions as the Secretary considers appropriate, except for those programs assigned by the Secretary to the Natural Resources Conservation Service or another agency of the Department under section 246(b).

(c) SPECIAL CONCURRENCE REQUIREMENTS FOR CERTAIN FUNCTIONS.—In carrying out the programs specified in subsection (b)(4), the Secretary shall—

(1) acting on the recommendations of the Consolidated Farm Service Agency, with the concurrence of the Natural Resources Conservation Service, issue regulations to carry out such programs;

(2) ensure that the Consolidated Farm Service Agency, in establishing policies, priorities, and guidelines for such programs, does so with the concurrence of the Natural Resources Conservation Service at national, State, and local levels;

(3) ensure that, in reaching such concurrence at the local level, the Natural Resources Conservation Service works in cooperation with Soil and Water Conservation Districts or similar organizations established under State law;

(4) ensure that officials of county and area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) meet annually with officials of such Districts or similar organizations to consider local conservation priorities and guidelines; and

(5) take steps to ensure that the concurrence process does not interfere with the effective delivery of such programs.

(d) JURISDICTION OVER CONSERVATION PROGRAM APPEALS.—

(1) IN GENERAL.—Until such time as an adverse decision described in this paragraph is referred to the National Appeals Division for consideration, the Consolidated Farm Service Agency shall have initial jurisdiction over any administrative appeal resulting from an adverse decision made under title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), including an adverse decision involving technical determinations made by the Natural Resources Conservation Service.

(2) TREATMENT OF TECHNICAL DETERMINATION.—With respect to administrative appeals involving a technical determination made by the Natural Resources Conservation Service, the Consolidated Farm Service Agency, by rule with the concurrence of the Natural Resources Conservation Service, shall establish procedures for obtaining review by the Natural Resources Conservation Service of the technical determinations involved. Such rules shall ensure that technical criteria established by the Natural Resources Conservation Service shall be used by the Consolidated Farm Service Agency as the basis for any decisions regarding technical determinations. If no review is requested, the technical determination of the Natural Resources Conservation Service shall be the technical basis for any decision rendered by a county or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)). If the committee requests a review by the Natural Resources Conservation Service of a wetlands determination of the Service, the Consolidated Farm Service Agency shall consult with other Federal agencies whenever required by law or under a memorandum of agreement in existence on the date of the enactment of this Act.

(3) REINSTATEMENT OF PROGRAM BENEFITS.—Rules issued to carry out this subsection shall provide for the prompt reinstatement of benefits to a producer who is determined in an administrative appeal to meet the requirements of title XII of the Food Security Act of 1985 applicable to the producer.

(e) USE OF FEDERAL AND NON-FEDERAL EMPLOYEES.—

(1) USE AUTHORIZED.—In the implementation of programs and activities assigned to the Consolidated Farm Service Agency, the Secretary may use interchangeably in local offices of the Agency both Federal employees of the Department and non-Federal employees of county and area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)).

(2) EXCEPTION.—Notwithstanding paragraph (1), no personnel action (as defined in section 2302(a)(2)(A) of title 5, United States Code) may be taken with respect to a Federal employee unless such action is taken by another Federal employee.

(f) COLLOCATION.—To the maximum extent practicable, the Secretary shall collocate county offices of the Consolidated Farm Service Agency with county offices of the Natural Resources Conservation Service in order to—

(1) maximize savings from shared equipment, office space, and administrative support;

(2) simplify paperwork and regulatory requirements;

(3) provide improved services to agricultural producers and landowners affected by programs administered by the Agency and the Service; and

(4) achieve computer compatibility between the Agency and the Service to maximize efficiency and savings.

(g) SAVINGS PROVISION.—For purposes of subsections (c) through (f) of this section:

(1) A reference to the "Consolidated Farm Service Agency" includes any other office, agency, or administrative unit of the Department assigned the functions authorized for the Consolidated Farm Service Agency under this section.

(2) A reference to the "Natural Resources Conservation Service" includes any other office, agency, or administrative unit of the Department assigned the functions authorized for the Natural Resources Conservation Service under section 246(b).

(h) CONFORMING AMENDMENT.—Section 331(a) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1981(a)) is amended by striking "assets to the Farmers Home Administration" and all that follows through the period at the end of the subsection and inserting "assets to such officers or agencies of the Department of Agriculture as the Secretary considers appropriate.".

**SEC. 227. STATE, COUNTY, AND AREA COMMITTEES.**

(a) COMMITTEES UNDER THE SOIL CONSERVATION AND DOMESTIC ALLOTMENT ACT.—Section 8(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)) is amended—

(1) by inserting "(1)" after "(b)";

(2) by designating the second through eighth undesignated paragraphs as paragraphs (2) through (8), respectively; and

(3) by striking paragraph (5) (as so designated) and inserting the following new paragraph:

"(5) STATE, COUNTY, AND AREA COMMITTEES.—

"(A) APPOINTMENT OF STATE COMMITTEES.—The Secretary shall appoint in each State a State committee composed of not fewer than 3 nor more than 5 members who are fairly representative of the farmers in the State. The members of a State committee shall serve at the pleasure of the Secretary for such term as the Secretary may establish.

"(B) ESTABLISHMENT OF COUNTY, AREA, OR LOCAL COMMITTEES.—(i) In each county or area in which activities are carried out under this section, the Secretary shall establish a county or area committee.

"(ii) Any such committee shall consist of not fewer than 3 nor more than 5 members who are fairly representative of the agricultural producers in the county or area and who shall be elected by the agricultural producers in such county or area under such procedures as the Secretary may prescribe.

"(iii) The Secretary may designate local administrative areas within the county or larger area covered by a committee established under clause (i). Only agricultural producers within a local administrative area who participate or cooperate in programs administered within their area shall be eligible for nomination and election to the local committee for that area, under such regulations as the Secretary may prescribe.

"(iv) The Secretary shall solicit and accept nominations from organizations representing the interests of socially disadvantaged groups (as defined in section 355(e)(1) of the Consolidated Farm and Rural Development Act (7 U.S.C. 2003(e)(1)).

"(v) Members of each county, area, or local committee shall serve for terms not to exceed 3 years.

"(C) TERMINATION OR COMBINATION OF COMMITTEES.—The Secretary may not terminate a county or area committee or combine or consolidate two or more county or area committees unless—

"(i) the Secretary first notifies the committee or committees involved of the proposed action; and

"(ii) the State committee of the State in which the affected counties are located approves of such action in a vote taken after the end of the 60-day period beginning on the date the notification is received.

"(D) USE OF COMMITTEES.—The Secretary shall use the services of such committees in carrying out programs under this section and the agricultural credit programs under the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) and in considering administrative appeals as provided by section 226(d) of the Department of Agriculture Reorganization Act of 1994. The Secretary may use the services of such committees in carrying out programs under other authorities administered by the Secretary .

"(E) REGULATIONS.—The Secretary shall issue such regulations as the Secretary considers necessary relating to the selection and exercise of the functions of the respective committees, and to the administration through such committees of the programs described in subparagraph (D). Pursuant to such regulations, each county and area committee shall select an executive director for the area or county. Such selection shall be made in the same manner as provided for the selection of the county executive director under section 7.21(b)(2) of title 7, Code of Federal Regulations, as in effect on January 1, 1994. Regulations governing payments or grants under this subsection shall be as simple and direct as possible, and, whenever practicable, they shall be classified on the following two bases:

"(i) Soil-depleting practices.

"(ii) Soil-building practices.

"(F) MANDATORY DUTIES OF SECRETARY.—In carrying out this section, the Secretary shall—

"(i) insofar as practicable, protect the interests of tenants and sharecroppers;

"(ii) accord such encouragement to producer-owned and producer-controlled cooperative associations as will be in harmony with the policy toward cooperative associations set forth in Federal laws and as will tend to promote efficient methods of marketing and distribution;

"(iii) in every practicable manner, protect the interests of small producers; and

"(iv) in every practical way, encourage and provide for soil-conserving and soil-rebuilding practices.

"(G) DISCRETIONARY AUTHORITIES OF SECRETARY.—In carrying out this section, the Secretary may use other approved agencies.

"(H) LIMITATIONS.—In carrying out this section, the Secretary shall not have the authority to acquire any land or any right or interest in land.".

(b) ELIMINATION OF FMHA COUNTY COMMITTEES.—The Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) is amended—

(1) by striking section 332 (7 U.S.C. 1982); and

(2) in section 333 (7 U.S.C. 1983)—

(A) by striking paragraph (2); and

(B) redesignating paragraphs (3), (4), and (5) as paragraphs (2), (3), and (4), respectively.

**Subtitle C—Rural Economic and Community Development**

**SEC. 231. UNDER SECRETARY OF AGRICULTURE FOR RURAL ECONOMIC AND COMMUNITY DEVELOPMENT.**

(a) AUTHORIZATION.—The Secretary is authorized to establish in the Department the position of Under Secretary of Agriculture for Rural Economic and Community Development.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes the position of Under Secretary of Agriculture for Rural Economic and Community Development authorized under subsection (a), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—Upon establishment, the Secretary shall delegate to the Under Secretary of Agriculture for Rural Economic and Community Development those functions under the jurisdiction of the Department that are related to rural economic and community development.

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Rural Economic and Community Development shall perform such other functions as may be required by law or prescribed by the Secretary.

(d) SUCCESSION.—Any official who is serving as Under Secretary of Agriculture for Small Community and Rural Development on the date of the enactment of this Act and who was appointed by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (b) to the successor position authorized under subsection (a) if the Secretary establishes the position, and the official occupies the new position, within 180 days after the date of the enactment of this Act (or such later date set by the Secretary if litigation delays rapid succession).

(e) LOAN APPROVAL AUTHORITY.—Approval authority for loans and loan guarantees in connection with the electric and telephone loan and loan guarantee programs authorized by the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) shall not be transferred to, or conditioned on review of, a State director or other employee whose primary duty is not the review and approval of such loans or the provision of assistance to such borrowers.

(f) CONFORMING AMENDMENTS.—

(1) EXISTING POSITION.—Section 3 of the Rural Development Policy Act of 1980 (7 U.S.C. 2211b) is amended by striking subsection (a).

(2) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by striking "Under Secretary of Agriculture for Small Community and Rural Development." and inserting "Under Secretary of Agriculture for Rural Economic and Community Development.".

(3) REPEAL OF RURAL DEVELOPMENT ADMINISTRATION.—Section 364 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006f) is repealed.

**SEC. 232. RURAL UTILITIES SERVICE.**

(a) ESTABLISHMENT REQUIRED.—The Secretary shall establish and maintain within the Department the Rural Utilities Service and assign to the Service such functions as the Secretary considers appropriate.

(b) ADMINISTRATOR.—

(1) APPOINTMENT.—The Rural Utilities Service shall be headed by an Administrator who shall be appointed by the President, by

and with the advice and consent of the Senate.

(2) SUCCESSION.—Any official who is serving as Administrator of the Rural Electrification Administration on the date of the enactment of this Act and who was appointed by the President, by and with the advice and consent of the Senate—

(A) may be considered to be serving in the successor position established under paragraph (1); and

(B) shall not be required to be reappointed to that position by reason of the enactment of this Act.

(3) EXECUTIVE SCHEDULE.—Section 5315 of title 5, United States Code, is amended by adding at the end the following:

"Administrator, Rural Utilities Service, Department of Agriculture.".

(c) FUNCTIONS.—The Secretary shall carry out through the Rural Utilities Service the following functions that are under the jurisdiction of the Department:

(1) Electric and telephone loan programs and water and waste facility activities authorized by law, including—

(A) the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.); and

(B) section 2322 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926–1); and

(2) Water and waste facility programs and activities authorized by law, including—

(A) sections 306, 306A, 306B, and 306C, the provisions of sections 309 and 309A relating to assets, terms, and conditions of water and sewer programs, section 310B(b)(2), and the amendment made by section 342 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926, 1926a, 1926b, 1926c, 1929, 1929a, 1932(b)(2), and 1013a); and

(B) section 2324 of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926 note).

**SEC. 233. RURAL HOUSING AND COMMUNITY DEVELOPMENT SERVICE.**

(a) ESTABLISHMENT AUTHORIZED.—Notwithstanding any other provision of law, the Secretary is authorized to establish and maintain within the Department the Rural Housing and Community Development Service and to assign to the Service such functions as the Secretary considers appropriate.

(b) FUNCTIONS.—If the Secretary establishes the Rural Housing and Community Development Service under subsection (a), the Secretary is authorized to assign to the Service jurisdiction over the following:

(1) Programs and activities under title V of the Housing Act of 1949 (42 U.S.C. 1471 et seq.).

(2) Programs and activities authorized under section 310B(i) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(i)) and related provisions of law.

(3) Programs and activities that relate to rural community lending programs, including programs authorized by sections 365 through 369 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008–2008d).

**SEC. 234. RURAL BUSINESS AND COOPERATIVE DEVELOPMENT SERVICE.**

(a) ESTABLISHMENT AUTHORIZED.—Notwithstanding any other provision of law, the Secretary is authorized to establish and maintain within the Department the Rural Business and Cooperative Development Service and to assign to the Service such functions as the Secretary considers appropriate.

(b) FUNCTIONS.—If the Secretary establishes the Rural Business and Cooperative Development Service under subsection (a), the Secretary is authorized to assign to the Service jurisdiction over the following:

(1) Section 313 and title V of the Rural Electrification Act of 1936 (7 U.S.C. 940c and 950aa et seq.).

(2) subtitle G of title XVI of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 5901 et seq.).

(3) Sections 306(a)(1) and 310B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(1) and 1932).

(4) Section 1323 of the Food Security Act of 1985 (Public Law 99–198; 7 U.S.C. 1932 note).

(5) The Act of July 2, 1926 (44 Stat. 802, chapter 725; 7 U.S.C. 451 et seq.).

**SEC. 235. CONFORMING AMENDMENTS REGARDING RURAL ELECTRIFICATION ADMINISTRATION.**

(a) AMENDMENTS TO RURAL ELECTRIFICATION ACT OF 1936.—The Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.) is amended—

(1) by striking the first section (7 U.S.C. 901) and inserting the following:

**"SECTION 1. SHORT TITLE.**

"This Act may be cited as the 'Rural Electrification Act of 1936'.";

(2) in section 2(a) (7 U.S.C. 902(a)), by striking "Administrator" and inserting "Secretary of Agriculture";

(3) in section 3(a) (7 U.S.C. 903(a))—

(A) by striking "Administrator, upon the request and approval of the Secretary of Agriculture," and inserting "Secretary"; and

(B) by striking "Administrator appointed pursuant to the provisions of this Act or from the Administrator of the Rural Electrification Administration established by Executive Order Numbered 7037" and inserting "Secretary";

(4) in section 8 (7 U.S.C. 908)—

(A) by striking "Administrator authorized to be appointed by this Act" and inserting "Secretary"; and

(B) by striking "Rural Electrification Administration created by this Act" and inserting "Secretary";

(5) by striking section 11A (7 U.S.C. 911a);

(6) in section 13 (7 U.S.C. 913), by inserting before the period at the end the following: "; and the term 'Secretary' shall be deemed to mean the Secretary of Agriculture";

(7) in sections 206(b)(2), 306A(b), 311, and 405(b)(1)(A) (7 U.S.C. 927(b)(2), 936a(b), 940a, and 945(b)(1)(A)), by striking "Rural Electrification Administration" each place it appears and inserting "Secretary";

(8) in sections 305(c)(2)(C)(ii)(II) and 306E(d) (7 U.S.C. 935(c)(2)(C)(ii)(II) and 936e(d)), by striking "ADMINISTRATOR" and inserting "SECRETARY";

(9) in section 403(b) (7 U.S.C. 943(b)), by striking "Rural Electrification Administration or of any other agency of the Department of Agriculture," and inserting "Secretary,";

(10) in section 404 (7 U.S.C. 944), by striking "the Administrator of the Rural Electrification Administration" and inserting "the Secretary shall designate an official of the Department of Agriculture who";

(11) in sections 406(c) and 410 (7 U.S.C. 946(c) and 950), by striking "Administrator of the Rural Electrification Administration" each place it appears and inserting "Secretary";

(12) in the heading of section 501 (7 U.S.C. 950aa), by striking "**of rea administrator**"; and

(13) except as otherwise provided in this subsection, by striking "Administrator" each place it appears in such Act and inserting "Secretary".

(b) MISCELLANEOUS AMENDMENTS.—(1) Section 236(a) of the Disaster Relief Act of 1970 (7 U.S.C. 912a) is amended by striking "Rural Electrification Administration" and inserting "Secretary under the Rural Electrification Act of 1936 (7 U.S.C. 901 et seq.)".

(2) Section 505 of the Department of Agriculture Organic Act of 1944 (7 U.S.C. 915) is amended—

(A) by striking "Rural Electrification Administration" and inserting "Secretary of Agriculture"; and

(B) by striking "its" and inserting "the Secretary's".

(3) Section 401 of the Rural Electrification Act of 1938 (7 U.S.C. 903 note) is amended in the second paragraph by striking "Administrator of the Rural Electrification Administration" and inserting "Secretary of Agriculture".

(4) Chapter 1 of subtitle D of title XXIII of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 950aaa et seq.), relating to Distance Learning and Medical Link Programs, is amended—

(A) in section 2333—

(i) by striking paragraph (1); and

(ii) by redesignating paragraphs (2) through (11) as paragraphs (1) through (10), respectively;

(B) in section 2334(h)(2), by striking "section 2333(3)(F)" and inserting "section 2333(2)(F)"; and

(C) by striking "Administrator" each place it appears and inserting "Secretary".

(5) Section 306(a)(15) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926(a)(15)) is amended—

(A) by striking subparagraph (C); and

(B) by redesignating subparagraph (D) as subparagraph (C).

(6) Section 2322(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 (7 U.S.C. 1926–1(d)) is amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

**Subtitle D—Food, Nutrition, and Consumer Services**

**SEC. 241. UNDER SECRETARY OF AGRICULTURE FOR FOOD, NUTRITION, AND CONSUMER SERVICES.**

(a) AUTHORIZATION.—The Secretary is authorized to establish in the Department the position of Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes the position of Under Secretary of Agriculture for Food, Nutrition, and Consumer Services authorized under subsection (a), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—Upon establishment, the Secretary shall delegate to the Under Secretary of Agriculture for Food, Nutrition, and Consumer Services those functions under the jurisdiction of the Department that are related to food, nutrition, and consumer services (except as provided in section 261(b)(1)).

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Food, Nutrition, and Consumer Services shall perform such other functions as may be required by law or prescribed by the Secretary.

(d) SUCCESSION.—Any official who is serving as Assistant Secretary of Agriculture for Food and Consumer Services on the date of the enactment of this Act and who was appointed by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (b) to the successor position authorized under subsection (a) if the Secretary establishes the position, and the official occupies the new position, within 180 days after the

date of the enactment of this Act (or such later date set by the Secretary if litigation delays rapid succession).

(e) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by inserting after the item relating to the Under Secretary of Agriculture for Farm and Foreign Agricultural Services (as added by section 225(e)(2)) the following:

"Under Secretary of Agriculture for Food, Nutrition, and Consumer Services.".

**Subtitle E—Natural Resources and Environment**

**SEC. 245. UNDER SECRETARY OF AGRICULTURE FOR NATURAL RESOURCES AND ENVIRONMENT.**

(a) AUTHORIZATION.—The Secretary is authorized to establish in the Department the position of Under Secretary of Agriculture for Natural Resources and Environment.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes the position of Under Secretary of Agriculture for Natural Resources and Environment authorized under subsection (a), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—Upon establishment, the Secretary shall delegate to the Under Secretary of Agriculture for Natural Resources and Environment those functions under the jurisdiction of the Department that are related to natural resources and environment (except to the extent those functions are delegated under section 226).

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Natural Resources and Environment shall perform such other functions and duties as may be required by law or prescribed by the Secretary.

(d) SUCCESSION.—Any official who is serving as Assistant Secretary of Agriculture for Natural Resources and Environment on the date of the enactment of this Act and who was appointed by the President, by and with the advice and consent of the Senate, shall not be required to be reappointed under subsection (b) to the successor position authorized under subsection (a) if the Secretary establishes the position, and the official occupies the new position, within 180 days after the date of the enactment of this Act (or such later date set by the Secretary if litigation delays rapid succession).

(e) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by inserting after the item relating to the Under Secretary of Agriculture for Food, Nutrition, and Consumer Services (as added by section 241(e)) the following:

"Under Secretary of Agriculture for Natural Resources and Environment.".

**SEC. 246. NATURAL RESOURCES CONSERVATION SERVICE.**

(a) ESTABLISHMENT.—The Secretary is authorized to establish and maintain within the Department a Natural Resources Conservation Service.

(b) FUNCTIONS.—If the Secretary establishes the Natural Resources Conservation Service under subsection (a), the Secretary is authorized to assign to the Service jurisdiction over the following:

(1) The rural environmental conservation program under title X of the Agricultural Act of 1970 (16 U.S.C. 1501 et seq.).

(2) The Great Plains Conservation Program under section 16(b) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590p(b)).

(3) The Water Bank Act (16 U.S.C. 1301 et seq.);

(4) The forestry incentive program under section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103).

(5) Title XII of the Food Security Act of 1985 (16 U.S.C. 3801 et seq.), except subchapter B of chapter 1 of subtitle D of such title.

(6) Salinity control program under section 202(c) of the Colorado River Basin Salinity Control Act (43 U.S.C. 1592(c)).

(7) The Farms for the Future Act of 1990 (7 U.S.C. 4201 note).

(8) Such other functions as the Secretary considers appropriate, except functions under subchapter B of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3831–3836) and the agricultural conservation program under the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590g et seq.).

(c) SPECIAL CONCURRENCE REQUIREMENTS FOR CERTAIN FUNCTIONS.—In carrying out the programs specified in paragraphs (2), (3), (4), and (6) of subsection (b) and the program under subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985 (16 U.S.C. 3837–3837f), the Secretary shall—

(1) acting on the recommendations of the Natural Resources Conservation Service, with the concurrence of the Consolidated Farm Service Agency, issue regulations to carry out such programs;

(2) ensure that the Natural Resources Conservation Service, in establishing policies, priorities, and guidelines for each such program, does so with the concurrence of the Consolidated Farm Service Agency at national, State, and local levels;

(3) ensure that, in reaching such concurrence at the local level, the Natural Resources Conservation Service works in cooperation with Soil and Water Conservation Districts or similar organizations established under State law;

(4) ensure that officials of county and area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) meet annually with officials of such Districts or similar organizations to consider local conservation priorities and guidelines; and

(5) take steps to ensure that the concurrence process does not interfere with the effective delivery of such programs.

(d) USE OF FEDERAL AND NON-FEDERAL EMPLOYEES.—

(1) USE AUTHORIZED.—In the implementation of functions assigned to the Natural Resources Conservation Service, the Secretary may use interchangeably in local offices of the Service both Federal employees of the Department and non-Federal employees of county and area committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)).

(2) EXCEPTION.—Notwithstanding paragraph (1), no personnel action (as defined in section 2302(a)(2)(A) of title 5, United States Code) may be taken with respect to a Federal employee unless such action is taken by another Federal employee.

(e) SAVINGS PROVISION.—For purposes of subsections (c) and (d) of this section:

(1) A reference to the "Natural Resources Conservation Service" includes any other office, agency, or administrative unit of the Department assigned the functions authorized for the Natural Resources Conservation Service under this section.

(2) A reference to the "Consolidated Farm Service Agency" includes any other office, agency, or administrative unit of the Department assigned the functions authorized for the Consolidated Farm Service Agency under section 226.

(f) CONFORMING AMENDMENTS.—

(1) SOIL CONSERVATION SERVICE.—Section 5 of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590e) is repealed.

(2) SOIL AND WATER RESOURCES CONSERVATION.—The Soil and Water Resources Conservation Act of 1977 (16 U.S.C. 2001) is amended—

(A) in section 2(2) (16 U.S.C. 2001(2))—

(i) by striking "created the Soil Conservation Service"; and

(ii) by striking "Department of Agriculture which" and inserting ", has ensured that the Department of Agriculture";

(B) in section 3(2) (16 U.S.C. 2002(2)), by striking "through the Soil Conservation Service"; and

(C) in section 6(a) (16 U.S.C. 2005(a)), by striking "Soil Conservation Service" and inserting "Secretary".

(3) STATE TECHNICAL COMMITTEES.—Section 1262 of the Food Security Act of 1985 (16 U.S.C. 3862) is amended by adding at the end the following new subsection:

"(e) FACA REQUIREMENTS.—The committees established under section 1261 shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).".

**SEC. 247. REORGANIZATION OF FOREST SERVICE.**

(a) REQUIRED ELEMENTS OF REORGANIZATION PROPOSALS.—Reorganization proposals that are developed by the Secretary to carry out the designation by the President of the Forest Service as a Reinvention Lab pursuant to the National Performance Review, dated September 1993, shall include proposals for—

(1) reorganizing the Service in a manner that is consistent with the principles of interdisciplinary planning;

(2) redefining and consolidating the mission and roles of, and research conducted by, employees of the Service in connection with the National Forest System and State and private forestry to facilitate interdisciplinary planning and to eliminate functionalism;

(3) reforming the budget structure of the Service to support interdisciplinary planning, including reducing the number of budget line items;

(4) defining new measures of accountability so that Congress may meet the constitutional obligation of Congress to oversee the Service;

(5) achieving structural and organizational consolidations;

(6) to the extent practicable, sharing office space, equipment, vehicles, and electronic systems with other administrative units of the Department and other Federal field offices, including proposals for using an on-line system by all administrative units of the Department to maximize administrative efficiency; and

(7) reorganizing the Service in a manner that will result in a larger percentage of employees of the Service being retained at organizational levels below regional offices, research stations, and the area office of the Service.

(b) REPORT.—Not later than March 31, 1995, the Secretary shall submit a report to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate that describes actions taken to carry out subsection (a), identifies any disparities in regional funding patterns, and contains the rationale behind the disparities.

**Subtitle F—Research, Education, and Economics**

**SEC. 251. UNDER SECRETARY OF AGRICULTURE FOR RESEARCH, EDUCATION, AND ECONOMICS.**

(a) AUTHORIZATION.—The Secretary is authorized to establish in the Department the

position of Under Secretary of Agriculture for Research, Education, and Economics.

(b) CONFIRMATION REQUIRED.—If the Secretary establishes the position of Under Secretary of Agriculture for Research, Education, and Economics authorized under subsection (a), the Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate.

(c) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—Upon establishment, the Secretary shall delegate to the Under Secretary of Agriculture for Research, Education, and Economics those functions and duties under the jurisdiction of the Department that are related to research, education, and economics.

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Research, Education, and Economics shall perform such other functions and duties as may be required by law or prescribed by the Secretary.

(d) COOPERATIVE STATE RESEARCH, EDUCATION, AND EXTENSION SERVICE.—

(1) ESTABLISHMENT.—There is established in the Department a Cooperative State Research, Education, and Extension Service.

(2) FUNCTIONS.—The Secretary shall delegate to the Cooperative State Research, Education, and Extension Service functions related to cooperative State research programs and cooperative extension and education programs that are under the jurisdiction of the Department.

(3) OFFICER-IN-CHARGE.—If the Secretary establishes the position of Under Secretary of Agriculture for Research, Education, and Economics, the officer in charge of the Cooperative State Research, Education, and Extension Service shall report directly to the Under Secretary.

(e) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by inserting after the item relating to the Under Secretary of Agriculture for Natural Resources and Environment (as added by section 245(e)) the following:

"Under Secretary of Agriculture for Research, Education, and Economics.".

**SEC. 252. PROGRAM STAFF.**

In making the personnel reductions required under section 213, the Secretary shall reduce the number of Federal research and education personnel of the Department by a percentage equal to at least the percentage of overall Department personnel reductions. The Secretary shall achieve such reduction in research and education personnel in a manner that minimizes duplication and maximizes coordination between Federal and State research and extension activities.

**Subtitle G—Food Safety**

**SEC. 261. UNDER SECRETARY OF AGRICULTURE FOR FOOD SAFETY.**

(a) ESTABLISHMENT.—There is established in the Department of Agriculture the position of Under Secretary of Agriculture for Food Safety. The Under Secretary shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals with specialized training or significant experience in food safety or public health programs.

(b) FUNCTIONS OF UNDER SECRETARY.—

(1) PRINCIPAL FUNCTIONS.—The Secretary shall delegate to the Under Secretary of Agriculture for Food Safety those functions and duties under the jurisdiction of the Department that are primarily related to food safety.

(2) ADDITIONAL FUNCTIONS.—The Under Secretary of Agriculture for Food Safety shall perform such other functions and duties as may be required by law or prescribed by the Secretary.

(c) EXECUTIVE SCHEDULE.—Section 5314 of title 5, United States Code, is amended by inserting after the item relating to the Under Secretary of Agriculture for Research, Education, and Economics (as added by section 251(e)) the following:

"Under Secretary of Agriculture for Food Safety.".

(d) TECHNICAL AND SCIENTIFIC REVIEW GROUPS.—The Secretary, acting through the Under Secretary for Research, Education, and Economics, may, without regard to the provisions of title 5, United States Code, governing appointment in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification and General Schedule pay rates—

(1) establish such technical and scientific review groups as are needed to carry out the functions of the Department; and

(2) appoint and pay the members of the groups, except that officers and employees of the United States shall not receive additional compensation for service as a member of a group.

**SEC. 262. CONDITIONS FOR IMPLEMENTATION OF ALTERATIONS IN THE LEVEL OF ADDITIVES ALLOWED IN ANIMAL DIETS.**

(a) CONDITIONS.—The Food and Drug Administration shall not implement or enforce the final rule described in subsection (b) to alter the level of selenium allowed to be used as a supplement in animal diets unless the Commissioner of the Food and Drug Administration makes a determination that—

(1) selenium additives are not essential, at levels authorized in the absence of such final rule, to maintain animal nutrition and protect animal health;

(2) selenium at such levels is not safe to the animals consuming the additive;

(3) selenium at such levels is not safe to individuals consuming edible portions of animals that receive the additive;

(4) selenium at such levels does not achieve its intended effect of promoting normal growth and reproduction of livestock and poultry; and

(5) the manufacture and use of selenium at such levels cannot reasonably be controlled by adherence to current good manufacturing practice requirements.

(b) FINAL RULE DESCRIBED.—The final rule referred to in subsection (a) is the final rule issued by the Food and Drug Administration and published in the Federal Register on September 13, 1993 (58 Fed. Reg. 47962), in which the Administration stayed 1987 amendments to the selenium food additive regulations, and any modification of such rule issued after the date of the enactment of this Act.

**Subtitle H—National Appeals Division**

**SEC. 271. DEFINITIONS.**

For purposes of this subtitle:

(1) ADVERSE DECISION.—The term "adverse decision" means an administrative decision made by an officer, employee, or committee of an agency that is adverse to a participant. The term includes a denial of equitable relief by an agency or the failure of an agency to issue a decision or otherwise act on the request or right of the participant. The term does not include a decision over which the Board of Contract Appeals has jurisdiction.

(2) AGENCY.—The term "agency" means any agency of the Department designated by the Secretary or a successor agency of the Department, except that the term shall include the following (and any successor to the following):

(A) The Consolidated Farm Service Agency (or other office, agency, or administrative unit of the Department assigned the functions authorized for the Consolidated Farm Service Agency under section 226).

(B) The Commodity Credit Corporation, with respect to domestic programs.

(C) The Farmers Home Administration.

(D) The Federal Crop Insurance Corporation.

(E) The Rural Development Administration.

(F) The Natural Resources Conservation Service (or other office, agency, or administrative unit of the Department assigned the functions authorized for the Natural Resources Conservation Service under section 246(b)).

(G) A State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)).

(3) APPELLANT.—The term "appellant" means a participant who appeals an adverse decision in accordance with this subtitle.

(4) CASE RECORD.—The term "case record" means all the materials maintained by the Secretary related to an adverse decision.

(5) DIRECTOR.—The term "Director" means the Director of the Division.

(6) DIVISION.—The term "Division" means the National Appeals Division established by this title.

(7) HEARING OFFICER.—The term "hearing officer" means an individual employed by the Division who hears and determines appeals of adverse decisions by any agency.

(8) IMPLEMENT.—The term "implement" refers to those actions necessary to effectuate fully and promptly a final determination of the Division not later than 30 calendar days after the effective date of the final determination.

(9) PARTICIPANT.—The term "participant" shall have the meaning given that term by the Secretary by regulation.

**SEC. 272. NATIONAL APPEALS DIVISION AND DIRECTOR.**

(a) ESTABLISHMENT OF DIVISION.—The Secretary shall establish and maintain an independent National Appeals Division within the Department to carry out this subtitle.

(b) DIRECTOR.—

(1) APPOINTMENT.—The Division shall be headed by a Director, appointed by the Secretary from among persons who have substantial experience in practicing administrative law. In considering applicants for the position of Director, the Secretary shall consider persons currently employed outside Government as well as Government employees.

(2) TERM AND REMOVAL.—The Director shall serve for a 6-year term of office, and shall be eligible for reappointment. The Director shall not be subject to removal during the term of office, except for cause established in accordance with law.

(3) POSITION CLASSIFICATION.—The position of the Director may not be a position in the excepted service or filled by a noncareer appointee.

(c) DIRECTION, CONTROL, AND SUPPORT.—The Director shall be free from the direction and control of any person other than the Secretary. The Division shall not receive administrative support (except on a reimbursable basis) from any agency other than the Office of the Secretary. The Secretary may not delegate to any other officer or employee of the Department, other than the Director, the authority of the Secretary with respect to the Division.

(d) DETERMINATION OF APPEALABILITY OF AGENCY DECISIONS.—If an officer, employee, or committee of an agency determines that a

decision is not appealable and a participant appeals the decision to the Director, the Director shall determine whether the decision is adverse to the individual participant and thus appealable or is a matter of general applicability and thus not subject to appeal. The determination of the Director as to whether a decision is appealable shall be administratively final.

(e) DIVISION PERSONNEL.—The Director shall appoint such hearing officers and other employees as are necessary for the administration of the Division. A hearing officer or other employee of the Division shall have no duties other than those that are necessary to carry out this subtitle.

**SEC. 273. TRANSFER OF FUNCTIONS.**

There are transferred to the Division all functions exercised and all administrative appeals pending before the effective date of this subtitle (including all related functions of any officer or employee) of or relating to—

(1) the National Appeals Division established by section 426(c) of the Agricultural Act of 1949 (7 U.S.C. 1433e(c)) (as in effect on the day before the date of the enactment of this Act);

(2) the National Appeals Division established by subsections (d) through (g) of section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) (as in effect on the day before the date of the enactment of this Act);

(3) appeals of decisions made by the Federal Crop Insurance Corporation; and

(4) appeals of decisions made by the Soil Conservation Service (as in effect on the day before the date of the enactment of this Act).

**SEC. 274. NOTICE AND OPPORTUNITY FOR HEARING.**

Not later than 10 working days after an adverse decision is made that affects the participant, the Secretary shall provide the participant with written notice of such adverse decision and the rights available to the participant under this subtitle or other law for the review of such adverse decision.

**SEC. 275. INFORMAL HEARINGS.**

If an officer, employee, or committee of an agency makes an adverse decision, the agency shall hold, at the request of the participant, an informal hearing on the decision. With respect to programs carried out through the Consolidated Farm Service Agency (or other office, agency, or administrative unit of the Department assigned to carry out the programs authorized for the Consolidated Farm Service Agency under section 226), the Secretary shall maintain the informal appeals process applicable to such programs, as in effect on the date of the enactment of the subtitle. If a mediation program is available under title V of the Agricultural Credit Act of 1987 (7 U.S.C. 5101 et seq.) as a part of the informal hearing process, the participant shall be offered the right to choose such mediation.

**SEC. 276. RIGHT OF PARTICIPANTS TO DIVISION HEARING.**

(a) APPEAL TO DIVISION FOR HEARING.—Subject to subsection (b), a participant shall have the right to appeal an adverse decision to the Division for an evidentiary hearing by a hearing officer consistent with section 277.

(b) TIME FOR APPEAL.—To be entitled to a hearing under section 277, a participant shall request the hearing not later than 30 days after the date on which the participant first received notice of the adverse decision.

**SEC. 277. DIVISION HEARINGS.**

(a) GENERAL POWERS OF DIRECTOR AND HEARING OFFICERS.—

(1) ACCESS TO CASE RECORD.—The Director and hearing officer shall have access to the case record of any adverse decision appealed to the Division for a hearing.

(2) ADMINISTRATIVE PROCEDURES.—The Director and hearing officer shall have the authority to require the attendance of witnesses, and the production of evidence, by subpoena and to administer oaths and affirmations. Except to the extent required for the disposition of ex parte matters as authorized by law—

(A) an interested person outside the Division shall not make or knowingly cause to be made to the Director or a hearing officer who is or may reasonably be expected to be involved in the evidentiary hearing or review of an adverse decision, an ex parte communication (as defined in section 551(14) of title 5, United States Code) relevant to the merits of the proceeding;

(B) the Director and such hearing officer shall not make or knowingly cause to be made to any interested person outside the Division an ex parte communication relevant to the merits of the proceeding.

(b) TIME FOR HEARING.—Upon a timely request for a hearing under section 276(b), an appellant shall have the right to have a hearing by the Division on the adverse decision within 45 days after the date of the receipt of the request for the hearing.

(c) LOCATION AND ELEMENTS OF HEARING.—

(1) LOCATION.—A hearing on an adverse decision shall be held in the State of residence of the appellant or at a location that is otherwise convenient to the appellant and the Division.

(2) EVIDENTIARY HEARING.—The evidentiary hearing before a hearing officer shall be in person, unless the appellant agrees to a hearing by telephone or by a review of the case record. The hearing officer shall not be bound by previous findings of fact by the agency in making a determination.

(3) INFORMATION AT HEARING.—The hearing officer shall consider information presented at the hearing without regard to whether the evidence was known to the agency officer, employee, or committee making the adverse decision at the time the adverse decision was made. The hearing officer shall leave the record open after the hearing for a reasonable period of time to allow the submission of information by the appellant or the agency after the hearing to the extent necessary to respond to new facts, information, arguments, or evidence presented or raised by the agency or appellant.

(4) BURDEN OF PROOF.—The appellant shall bear the burden of proving that the adverse decision of the agency was erroneous.

(d) DETERMINATION NOTICE.—The hearing officer shall issue a notice of the determination on the appeal not later than 30 days after a hearing or after receipt of the request of the appellant to waive a hearing, except that the Director may establish an earlier or later deadline. If the determination is not appealed to the Director for review under section 278, the notice provided by the hearing officer shall be considered to be a notice of an administratively final determination.

(e) EFFECTIVE DATE.—The final determination shall be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable.

**SEC. 278. DIRECTOR REVIEW OF DETERMINATIONS OF HEARING OFFICERS.**

(a) REQUESTS FOR DIRECTOR REVIEW.—

(1) TIME FOR REQUEST BY APPELLANT.—Not later than 30 days after the date on which an appellant receives the determination of a hearing officer under section 277, the appellant shall submit a written request to the Director for review of the determination in order to be entitled to a review by the Director of the determination.

(2) TIME FOR REQUEST BY AGENCY HEAD.—Not later than 15 business days after the date on which an agency receives the determination of a hearing officer under section 277, the head of the agency may make a written request that the Director review the determination.

(b) DETERMINATION OF DIRECTOR.—The Director shall conduct a review of the determination of the hearing officer using the case record, the record from the evidentiary hearing under section 277, the request for review, and such other arguments or information as may be accepted by the Director. Based on such review, the Director shall issue a final determination notice that upholds, reverses, or modifies the determination of the hearing officer. However, if the Director determines that the hearing record is inadequate, the Director may remand all or a portion of the determination for further proceedings to complete the hearing record or, at the option of the Director, to hold a new hearing. The Director shall complete the review and either issue a final determination or remand the determination not later than—

(1) 10 business days after receipt of the request for review, in the case of a request by the head of an agency for review; or

(2) 30 business days after receipt of the request for review, in the case of a request by an appellant for review.

(c) BASIS FOR DETERMINATION.—The determination of the hearing officer and the Director shall be based on information from the case record, laws applicable to the matter at issue, and applicable regulations published in the Federal Register and in effect on the date of the adverse decision or the date on which the acts that gave rise to the adverse decision occurred, whichever date is appropriate.

(d) EQUITABLE RELIEF.—Subject to regulations issued by the Secretary, the Director shall have the authority to grant equitable relief under this section in the same manner and to the same extent as such authority is provided to the Secretary under section 326 of the Food and Agriculture Act of 1962 (7 U.S.C. 1339a) and other laws. Notwithstanding the administrative finality of a final determination of an appeal by the Division, the Secretary shall have the authority to grant equitable or other types of relief to the appellant after an administratively final determination is issued by the Division.

(e) EFFECTIVE DATE.—A final determination issued by the Director shall be effective as of the date of filing of an application, the date of the transaction or event in question, or the date of the original adverse decision, whichever is applicable.

**SEC. 279. JUDICIAL REVIEW.**

A final determination of the Division shall be reviewable and enforceable by any United States district court of competent jurisdiction in accordance with chapter 7 of title 5, United States Code.

**SEC. 280. IMPLEMENTATION OF FINAL DETERMINATIONS OF DIVISION.**

On the return of a case to an agency pursuant to the final determination of the Division, the head of the agency shall implement the final determination not later than 30 days after the effective date of the notice of the final determination.

**SEC. 281. CONFORMING AMENDMENTS RELATING TO NATIONAL APPEALS DIVISION.**

(a) DECISIONS OF STATE, COUNTY, AND AREA COMMITTEES.—

(1) APPLICATION OF SUBSECTION.—This subsection shall apply only with respect to functions of the Consolidated Farm Service Agency or the Commodity Credit Corporation that are under the jurisdiction of a State, county, or area committee established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) or an employee of such a committee.

(2) FINALITY.—Each decision of a State, county, or area committee (or an employee of such a committee) covered by paragraph (1) that is made in good faith in the absence of misrepresentation, false statement, fraud, or willful misconduct shall be final not later than 90 days after the date of filing of the application for benefits, unless the decision is—

(A) appealed under this subtitle; or

(B) modified by the Administrator of the Consolidated Farm Service Agency or the Executive Vice President of the Commodity Credit Corporation.

(3) RECOVERY OF AMOUNTS.—If the decision of the State, county, or area committee has become final under paragraph (2), no action may be taken by the Consolidated Farm Service Agency, the Commodity Credit Corporation, or a State, county, or area committee to recover amounts found to have been disbursed as a result of a decision in error unless the participant had reason to believe that the decision was erroneous.

(4) SAVINGS PROVISION.—For purposes of this subsection, a reference to the "Consolidated Farm Service Agency" includes any other office, agency, or administrative unit of the Department assigned the functions authorized for the Consolidated Farm Service Agency under section 226.

(b) AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE.—Section 426 of the Agricultural Act of 1949 (7 U.S.C. 1433e) is repealed.

(c) FARMERS HOME ADMINISTRATION.—Section 333B of the Consolidated Farm and Rural Development Act (7 U.S.C. 1983b) is repealed.

**SEC. 282. EXPANSION OF ISSUES COVERED BY STATE MEDIATION PROGRAMS.**

(a) EXPANSION OF MEDIATION PROGRAMS.—Section 501 of the Agricultural Credit Act of 1987 (7 U.S.C. 5101) is amended—

(1) in subsection (a), by striking "an agricultural loan mediation program" and inserting "a mediation program";

(2) in subsection (b), by striking "agricultural loan"; and

(3) by striking subsection (c) and inserting the following new subsection:

"(c) REQUIREMENTS OF STATE MEDIATION PROGRAMS.—

"(1) ISSUES COVERED.—To be certified as a qualifying State, the mediation program of the State must provide mediation services for the persons described in paragraph (2) who are involved in agricultural loans or agricultural loans and one or more of the following issues under the jurisdiction of the Department of Agriculture:

"(A) Wetlands determinations.

"(B) Compliance with farm programs, including conservation programs.

"(C) Agricultural credit.

"(D) Rural water loan programs.

"(E) Grazing on National Forest System lands.

"(F) Pesticides.

"(G) Such other issues as the Secretary considers appropriate.

"(2) PERSONS ELIGIBLE FOR MEDIATION.—The persons referred to in paragraph (1) are producers, their creditors (if applicable), and other persons directly affected by actions of the Department of Agriculture.

"(3) CERTIFICATION CONDITIONS.—The Secretary shall certify a State as a qualifying State with respect to the issues proposed to be covered by the mediation program of the State if the mediation program—

"(A) provides for mediation services that, if decisions are reached, result in mediated, mutually agreeable decisions between the parties to the mediation;

"(B) is authorized or administered by an agency of the State government or by the Governor of the State;

"(C) provides for the training of mediators;

"(D) provides that the mediation sessions shall be confidential;

"(E) ensures, in the case of agricultural loans, that all lenders and borrowers of agricultural loans receive adequate notification of the mediation program; and

"(F) ensures, in the case of other issues covered by the mediation program, that persons directly affected by actions of the Department of Agriculture receive adequate notification of the mediation program.".

(b) PARTICIPATION OF DEPARTMENT.—Section 503 of such Act (7 U.S.C. 5103) is amended—

(1) by striking "agricultural loan" each place it appears;

(2) in the matter preceding subparagraph (A) of subsection (a)(1)—

(A) by inserting "or agency" after "program"; and

(B) by striking "that makes, guarantees, or insures agricultural loans";

(3) in subsection (a)(1)(A)—

(A) by inserting "or agency" after "such program"; and

(B) by inserting "certified under section 501" after "mediation program";

(4) in subsection (a)(1)(B)—

(A) by striking ", effective beginning on the date of the enactment of this Act,"; and

(B) by inserting "certified under section 501" after "mediation programs"; and

(5) in subsection (a)(1)(C)—

(A) in clause (i), by striking "described in" and inserting "certified under"; and

(B) in clause (ii), by inserting "if applicable," before "present".

(c) REGULATIONS.—Section 504 of such Act (7 U.S.C. 5104) is amended—

(1) by striking "Within 150 days after the date of the enactment of this Act, the" and inserting "The"; and

(2) by adding at the end the following new sentence: "The regulations prescribed by the Secretary shall require qualifying States to adequately train mediators to address all of the issues covered by the mediation program of the State.".

(d) REPORT.—Section 505 of such Act (7 U.S.C. 5105) is amended by striking "1990" and inserting "1998".

(e) AUTHORIZATION OF APPROPRIATIONS.—Section 506 of such Act (7 U.S.C. 5106) is amended by striking "1995" and inserting "2000".

(f) CONFORMING AMENDMENTS.—

(1) REFERENCES TO AGRICULTURAL LOANS.—Subtitle A of title V of such Act is amended—

(A) in sections 502 and 505(1) (7 U.S.C. 5102, 5105(1)), by striking "agricultural loan" each place it appears; and

(B) in section 505(3) (7 U.S.C. 5105(3)), by striking "an agricultural loan mediation" and inserting "a mediation".

(2) WAIVER OF FARM CREDIT SYSTEM MEDIATION RIGHTS BY BORROWERS.—Section 4.14E of the Farm Credit Act of 1971 (12 U.S.C. 2202e) is amended by striking "agricultural loan".

(3) WAIVER OF FMHA MEDIATION RIGHTS BY BORROWERS.—Section 358 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2006) is amended by striking "agricultural loan".

**SEC. 283. AUTHORIZATION OF APPROPRIATIONS.**

There are authorized to be appropriated such sums as may be necessary to carry out the activities of the Division.

**Subtitle I—Miscellaneous Reorganization Provisions**

**SEC. 291. SUCCESSORSHIP PROVISIONS RELATING TO BARGAINING UNITS AND EXCLUSIVE REPRESENTATIVES.**

(a) VOLUNTARY AGREEMENT.—

(1) IN GENERAL.—If the exercise of the Secretary's authority under this title results in changes to an existing bargaining unit that has been certified under chapter 71 of title 5, United States Code, the affected parties shall attempt to reach a voluntary agreement on a new bargaining unit and an exclusive representative for such unit.

(2) CRITERIA.—In carrying out the requirements of this subsection, the affected parties shall use criteria set forth in—

(A) sections 7103(a)(4), 7111(e), 7111(f)(1), and 7120 of title 5, United States Code, relating to determining an exclusive representative; and

(B) section 7112 of title 5, United States Code (disregarding subsections (b)(5) and (d) thereof), relating to determining appropriate units.

(b) EFFECT OF AN AGREEMENT.—

(1) IN GENERAL.—If the affected parties reach agreement on the appropriate unit and the exclusive representative for such unit under subsection (a), the Federal Labor Relations Authority shall certify the terms of such agreement, subject to paragraph (2)(A). Nothing in this subsection shall be considered to require the holding of any hearing or election as a condition for certification.

(2) RESTRICTIONS.—

(A) CONDITIONS REQUIRING NONCERTIFICATION.—The Federal Labor Relations Authority may not certify the terms of an agreement under paragraph (1) if—

(i) it determines that any of the criteria referred to in subsection (a)(2) (disregarding section 7112(a) of title 5, United States Code) have not been met; or

(ii) after the Secretary's exercise of authority and before certification under this section, a valid election under section 7111(b) of title 5, United States Code, is held covering any employees who would be included in the unit proposed for certification.

(B) TEMPORARY WAIVER OF PROVISION THAT WOULD BAR AN ELECTION AFTER A COLLECTIVE BARGAINING AGREEMENT IS REACHED.—Nothing in section 7111(f)(3) of title 5, United States Code, shall prevent the holding of an election under section 7111(b) of such title that covers employees within a unit certified under paragraph (1), or giving effect to the results of such an election (including a decision not to be represented by any labor organization), if the election is held before the end of the 12-month period beginning on the date such unit is so certified.

(C) CLARIFICATION.—The certification of a unit under paragraph (1) shall not, for purposes of the last sentence of section 7111(b) of title 5, United States Code, or section 7111(f)(4) of such title, be treated as if it had occurred pursuant to an election.

(3) DELEGATION.—

(A) IN GENERAL.—The Federal Labor Relations Authority may delegate to any regional director (as referred to in section

7105(e) of title 5, United States Code) its authority under the preceding provisions of this subsection.

(B) REVIEW.—Any action taken by a regional director under subparagraph (A) shall be subject to review under the provisions of section 7105(f) of title 5, United States Code, in the same manner as if such action had been taken under section 7105(e) of such title, except that in the case of a decision not to certify, such review shall be required if application therefor is filed by an affected party within the time specified in such provisions.

(c) DEFINITION.—For purposes of this section, the term "affected party" means—

(1) with respect to an exercise of authority by the Secretary under this title, any labor organization affected thereby; and

(2) the Department of Agriculture.

**SEC. 292. PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS.**

(a) SENSE OF CONGRESS.—It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased using funds made available pursuant to this title should be American-made.

(b) NOTICE REQUIREMENT.—In providing financial assistance to, or entering into any contract with, any entity using funds made available pursuant to this title, the Secretary, to the greatest extent practicable, shall provide to such entity a notice describing the statement made in subsection (a) by the Congress.

**SEC. 293. MISCELLANEOUS CONFORMING AMENDMENTS.**

(a) UNITED STATES GRAIN STANDARDS ACT.—The United States Grain Standards Act (7 U.S.C. 71 et seq.) is amended—

(1) in section 3 (7 U.S.C. 75)—

(A) by inserting "and" at the end of subsection (y);

(B) by striking subsections (z) and (aa); and

(C) by redesignating subsection (bb) as subsection (z);

(2) by striking section 3A (7 U.S.C. 75a);

(3) in section 5(b) (7 U.S.C. 77(b)), by striking "Service employees" and inserting "employees of the Secretary";

(4) in sections 7(j)(2) and 7A(*l*)(2) (7 U.S.C. 79(j)(2) and 79a(*l*)(2)), by striking "supervision by Service personnel of its field office personnel" in the first sentence of both sections and inserting "supervision by the Secretary of the Secretary's field office personnel";

(5) in section 12(c) (7 U.S.C. 87a(c)), by striking "or Administrator";

(6) in section 12(d) (7 U.S.C. 87a(d)), by striking "or the Administrator";

(7) except as otherwise provided in this subsection, by striking "Administrator" each place it appears and inserting "Secretary"; and

(8) except as otherwise provided in this subsection, by striking "Service" each place it appears and inserting "Secretary".

(b) PACKERS AND STOCKYARDS ACT, 1921.—Section 407 of the Packers and Stockyards Act, 1921 (7 U.S.C. 228), is amended—

(1) by striking subsection (b);

(2) by redesignating subsections (c), (d), (e), and (f), as subsections (b), (c), (d), and (e), respectively; and

(3) in subsection (e) (as so redesignated), by striking "subsection (e)" and inserting "subsection (d)".

**SEC. 294. REMOVAL OF OBSOLETE ADMINISTRATIVE PROVISIONS.**

Section 5316 of title 5, United States Code, is amended—

(1) by striking "Administrator, Agricultural Marketing Service, Department of Agriculture.";

(2) by striking "Administrator, Agricultural Research Service, Department of Agriculture.";

(3) by striking "Administrator, Agricultural Stabilization and Conservation Service, Department of Agriculture.";

(4) by striking "Administrator, Farmers Home Administration.";

(5) by striking "Administrator, Foreign Agricultural Service, Department of Agriculture.";

(6) by striking "Administrator, Rural Electrification Administration, Department of Agriculture.";

(7) by striking "Administrator, Soil Conservation Service, Department of Agriculture.";

(8) by striking "Chief Forester of the Forest Service, Department of Agriculture.";

(9) by striking "Director of Science and Education, Department of Agriculture.";

(10) by striking "Administrator, Animal and Plant Health Inspection Service, Department of Agriculture."; and

(11) by striking "Administrator, Federal Grain Inspection Service, Department of Agriculture.".

**SEC. 295. PROPOSED CONFORMING AMENDMENTS.**

Not later than 180 days after the date of the enactment of this Act, the Secretary shall submit to Congress recommended legislation containing additional technical and conforming amendments to Federal laws that are required as a result of the enactment of this title.

**SEC. 296. TERMINATION OF AUTHORITY.**

(a) IN GENERAL.—Subject to subsection (b), the authority delegated to the Secretary by this title to reorganize the Department shall terminate on the date that is 2 years after the date of enactment of this Act.

(b) FUNCTIONS.—Subsection (a) shall not affect—

(1) the authority of the Secretary to continue to carry out a function that the Secretary performs on the date that is 2 years after the date of enactment of this Act;

(2) the authority delegated to the Secretary under Reorganization Plan No. 2 of 1953 (5 U.S.C. App; 7 U.S.C. 2201 note); or

(3) the authority of an agency, office, officer, or employee of the Department to continue to perform all functions delegated or assigned to the entity or person as of that termination date.

## TITLE III—MISCELLANEOUS

**SEC. 301. POULTRY LABELING.**

It is the sense of Congress that—

(1) the United States Department of Agriculture should—

(A) carry out the plans of the Department to hold public hearings for the purpose of receiving public input on issues related to the conditions under which poultry sold in the United States may be labeled "fresh"; and

(B) finalize and publish a decision on the issues as expeditiously as possible after holding the hearings; and

(2) no person serving on the expert advisory committee established to advise the Secretary of Agriculture on the issues should stand to profit, or represent any interest that would stand to profit, from the decision of the Department on the issues.

**SEC. 302. FIRST AMENDMENT RIGHTS OF EMPLOYEES OF THE UNITED STATES DEPARTMENT OF AGRICULTURE.**

Notwithstanding any other provision of law, no employee of the United States Department of Agriculture shall be peremptorily removed, on or after February 15, 1994, from the position of the employee without an opportunity for a public or nonpublic hearing, at the option of the employee, because of remarks made during personal time in opposition to policies, or proposed policies, of the Department, including policies or proposed policies regarding homosexuals. Any employee removed on or after February 15, 1994, without the opportunity for such a hearing shall be reinstated to the position of the employee pending such a hearing.

**SEC. 303. ADJUSTED COST OF THRIFTY FOOD PLAN.**

(a) IN GENERAL.—Section 3(o)(11) of the Food Stamp Act of 1977 (7 U.S.C. 2012(o)(11)) is amended by inserting "and (in the case of households residing in Alaska) on October 1, 1994," after "1992,".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall be effective beginning on September 30, 1994.

**SEC. 304. OFFICE OF RISK ASSESSMENT AND COST-BENEFIT ANALYSIS.**

(a) OFFICE OF RISK ASSESSMENT AND COST-BENEFIT ANALYSIS.—The Secretary of Agriculture shall establish in the Department of Agriculture an Office of Risk Assessment and Cost-Benefit Analysis, which shall be under the direction of a Director appointed by the Secretary.

(b) FUNCTIONS.—The Director shall ensure that any regulatory analysis that is conducted under this section includes a risk assessment and cost-benefit analysis that is performed consistently and uses reasonably obtainable and sound scientific, technical, economic, and other data.

(1) IN GENERAL.—Effective six months after the date of enactment of this Act, the Secretary of Agriculture shall publish in the Federal Register, for each proposed major regulation the primary purpose of which is to regulate issues of human health, human safety, or the environment that is promulgated by the Department after the enactment of this Act, an analysis with as much specificity as practicable, of—

(A) the risk, including the effect of the risk, to human health, human safety, or the environment, and any combination thereof, addressed by the regulation, including, where applicable and practicable, the health and safety risks to persons who are disproportionately exposed or particularly sensitive;

(B) the costs associated with the implementation of, and compliance with, the regulation;

(C) where appropriate and meaningful, a comparison of that risk relative to other similar risks regulated by the Department or other Federal Agency, resulting from comparable activities and exposure pathways (such comparisons should consider relevant distinctions among risks, such as the voluntary or involuntary nature of risks and the preventability or nonpreventability of risks); and

(D) the quantitative and qualitative benefits of the regulation, including the reduction or prevention of risk expected from the regulation.

Where such a regulatory analysis is not practicable because of compelling circumstances, the Director shall provide an explanation in lieu of conducting an analysis under this section.

(2) EVALUATION.—The regulatory analysis referred to in paragraph (1) should also contain a statement that the Secretary of Agriculture evaluated—

(A) whether the regulation will advance the purpose of protecting against the risk referred to in paragraph (1)(A); and

(B) whether the regulation will produce benefits and reduce risks to human health,

human safety, or the environment, and any combination thereof, in a cost-effective manner as a result of the implementation of and compliance with the regulation, by local, State, and Federal Government and other public and private entities, as estimated in paragraph (1)(B).

(3) This section shall not be construed to amend, modify, or alter any statute and shall not be subject to judicial review. This section shall not be construed to grant a cause of action to any person. The Secretary of Agriculture shall perform the analyses required in this section in such a manner that does not delay the promulgation or implementation of regulations mandated by statute or judicial order.

(c) DEFINITION.—As used in this section, the term "major regulation" means any regulation that the Secretary of Agriculture estimates is likely to have an annual impact on the economy of the United States of $100,000,000 in 1994 dollars.

**SEC. 305. FAIR AND EQUITABLE TREATMENT OF SOCIALLY DISADVANTAGED PRODUCERS.**

(a) FAIR CROP ACREAGE BASES AND FARM PROGRAM PAYMENT YIELDS.—If the Secretary of Agriculture determines that crop acreage bases or farm program payment yields established for farms owned or operated by socially disadvantaged producers are not established in accordance with title V of the Agricultural Act of 1949 (7 U.S.C. 1461 et seq.), the Secretary shall adjust the bases and yields to conform to the requirements of such title and make available any appropriate commodity program benefits.

(b) FAIR APPLICATION OF CONSOLIDATED FARM AND RURAL DEVELOPMENT ACT.—If the Secretary of Agriculture determines that application of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) with respect to socially disadvantaged producers is not consistent with the requirements of such Act, the Secretary shall make such changes in the administration of such Act as the Secretary considers necessary to provide for the fair and equitable treatment of socially disadvantaged producers under such Act.

(c) REPORT ON TREATMENT OF SOCIALLY DISADVANTAGED PRODUCERS.—

(1) REPORT REQUIRED.—The Comptroller General of the United States shall prepare a report to determine—

(A) whether socially disadvantaged producers are underrepresented on State, county, area, or local committees established under section 8(b)(5) of the Soil Conservation and Domestic Allotment Act (16 U.S.C. 590h(b)(5)) or local review committees established under section 363 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1363) because of racial, ethnic, or gender prejudice; and

(B) if such underrepresentation exists, whether it inhibits or interferes with the participation of socially disadvantaged producers in programs of the Department of Agriculture.

(2) SUBMISSION OF REPORT.—Not later than February 1, 1995, the Comptroller General shall submit the report required by this subsection to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate.

(d) DEFINITION.—For purposes of this section, the term "socially disadvantaged producer" means a producer who is a member of a group whose members have been subjected to racial, ethnic, or gender prejudice because of their identity as members of a group without regard to their individual qualities.

**SEC. 306. AVIATION INSPECTIONS.**

(a) STUDY OF AIRCRAFT INSPECTIONS.—

(1) INTENT OF STUDY.—The intent of the study required by this subsection is to examine the cost efficiencies of conducting inspections of aircraft and pilots by one Federal agency without reducing aircraft, passenger, or pilot safety standards or lowering mission preparedness.

(2) STUDY REQUIRED.—The Secretary of Agriculture and the Secretary of Transportation shall jointly conduct a study of the inspection specifications and procedures by which aircraft and pilots contracted by the Department are certified to determine the cost efficiencies of eliminating duplicative Department inspection requirements and transferring some or all inspection requirements to the Federal Aviation Administration, while ensuring that neither aircraft, passenger, nor pilot safety is reduced and that mission preparedness is maintained.

(3) SPECIAL CONSIDERATIONS.—In conducting the study, the Secretaries shall evaluate current inspection specifications and procedures mandated by the Department and the Forest Service, taking into consideration the unique requirements and risks of particular Department and Forest Service missions that may require special inspection specifications and procedures to ensure the safety of Department and Forest Service personnel and their contractees.

(4) MAINTENANCE OF STANDARDS AND PREPAREDNESS.—In making recommendations to transfer inspection authority or otherwise change Department inspection specifications and procedures, the Secretaries shall ensure that the implementation of any such recommendations does not lower aircraft or pilot standards or preparedness for Department or Forest Service missions.

(5) SUBMISSION OF RESULTS.—Not later than 180 days after the date of the enactment of this Act, the Secretaries shall submit to Congress the results of the study, including any recommendations to transfer inspection authority or otherwise change Department inspection specifications and procedures and a cost-benefit analysis of such recommendations.

(b) REVIEW OF RECENTLY ADOPTED AIRCRAFT POLICY.—

(1) REVIEW REQUIRED.—The Secretaries shall review the policy initiated by the Secretary of Agriculture on July 1, 1994, to accept Federal Aviation Administration inspections on aircraft and pilots that provide "airport to airport" service for the Forest Service. The policy is currently being cooperatively developed by the Department and the Federal Aviation Administration and is intended to reduce duplicative inspections and to reduce Government costs, while maintaining aircraft, passenger, and pilot safety standards, specifications and procedures currently required by the Department and the Forest Service.

(2) EXPANSION OF POLICY.—As part of the review, the Secretary of Agriculture shall examine the feasibility and desirability of applying this policy on a Government-wide basis.

(3) SUBMISSION OF RESULTS.—Not later than one year after the date of the implementation of the policy, the Secretary of Agriculture shall submit to Congress the results of the review, including any recommendations that the Secretary considers appropriate.

Mr. DOLE. First, I want to congratulate the work of the Chairman and ranking member for their diligence in putting together a crop insurance reform package. I have said for years that most farmers would prefer workable crop insurance over disaster payments if the Government could provide coverage at a reasonable price. The Agriculture committee has worked very hard to meet that goal, and I commend those efforts.

Mr. President, we are faced with a dilemma. For too long, farmers have faced the uncertainty of disaster payments. Although the Government has provided disaster assistance eight out of the last nine years, farmers could not be sure that assistance would be available until the last minute. In addition, there have been increased efforts to put disaster bills on budget. While the Government must have the ability to respond in an emergency, we have a fiscal responsibility to pay for these losses. This juggling act convinces me that the future of additional disaster bills is uncertain at best.

The bill before us today is an effort to respond to the years of frustration farmers have faced with crop insurance. Too little coverage for too much money is a theme I have heard time and again from farmers. Crop insurance is an important risk management tool for farmers, and we must make every effort to provide producers with a workable plan which lowers premiums and increases coverage.

It is also important to note that through this legislation, we are saying no more disaster bills. Instead, this bill requires every producer participating in farm programs to take out catastrophic coverage. This coverage level is not as good as that provided in disaster bills, but it is close.

Mr. President, in spite of our efforts, I remain skeptical. This reform bill is based on projections and is at the mercy of the weather. If this reform package does not work and in fact this plan is business as usual, I believe Congress should revisit this issue. I will watch closely as FCIC works to implement this legislation.

Mr. DOMENICI. Mr. President, I am supportive of the overall objectives of the crop insurance reform bill but skeptical if the reform will work.

I agree that we should reform crop insurance and agree with the overall policy objectives.

We should remove the uncertainty associated with ad hoc disaster bills and replace it with a program that will adequately protect farmers in a disaster, remove the demand for ad hoc disaster bills, and must be financially sound.

I am happy to see that the conferees adopted an amendment which I cosponsored with the chairman of the Budget Committee, Mr. SASSER, which would create a hurdle for Congress to provide emergency disaster assistance.

As I stated this is only a hurdle and does not prevent Congress from providing disaster assistance in the future.

The amendment would not allow the emergency designation for both discretionary and mandatory agriculture disaster spending.

This means that all future agriculture disaster spending would fall under the pay as you go system. If the disaster spending does not include an offset it would require 60 votes to waive the Budget Act.

Eliminating the emergency designation for both mandatory and discretionary spending is necessary if this new crop insurance program is supposed to replace ad hoc agriculture disaster bills.

The conference agreement will also reduce outlays by $154 million in fiscal year 1995 and $151 million over the 5-year period based on the CBO preliminary assessment.

This estimate is relative to the fiscal year 1995 budget resolution which assumed new mandatory spending for future spending of $1 billion per year.

This bill will actually cost $5 billion over 5 years relative to the CBO Commodity Credit Corporation 1994 March baseline.

This bill will also have scoring implications for the GATT implementing bill.

The implementing bill includes language which would use pay-go savings from crop insurance to pay for export programs.

Since the crop insurance bill will be enacted first, the savings associated with it will be scored against the implementing language when enacted.

I urge the adoption of the bill.

Mr. LEAHY. Mr. President, I am proud to present a comprehensive USDA reform package to the Senate. I have worked for 15 years to reach this day. For the past 2 years from day to day, hearing to markup, floor action to final passage I have worked to reform USDA as a whole, and its vital disaster and crop insurance programs in particular.

First, this bill mandates the first comprehensive reorganization of the Department of Agriculture since the 1930's.

It is a $2 billion downpayment on reinventing Government—it is a real victory for the American taxpayers. I doubt that there is anyone in this body who hasn't heard from his or her constituents about cutting the Federal deficit. This bill is a chance to demonstrate our commitment to cutting back the Federal Government.

But this bill is not just about saving money—it will also improve USDA's ability to serve its diverse clientele. The world is changing, and the Department of Agriculture must change with it.

The Department of Agriculture has a proud past, but we need a USDA that is looking to the future. By streamlining USDA's operations and eliminating levels of bureaucracy, this bill will result in a USDA that is more focused on the critical challenges facing American agriculture, and that is better able to respond to a changing world.

The new USDA created by the bill is organized around six basic missions. With this bill, we have given the Secretary of Agriculture the tools needed to bring USDA into the 21st century.

This is landmark legislation that: Saves an estimated $2 billion in the next 3 years by streamlining Federal employment and departmental administration; cuts the size of the USDA bureaucracy by reducing the number of Federal employees by 7,500; streamlines USDA operations, reducing the number of independent agencies by one-third—from 43 to 30; cuts the bureaucracy in Washington by requiring a higher percentage cut in USDA headquarters than in the field and by requiring consolidation of USDA's Washington, DC offices; creates a new consolidated Farm Services Agency which will bring together all farm programs and makes way for an entirely new field structure based on field service centers—this will lead to closing and consolidating over 1,100 county offices; authorizes a Natural Resources Conservation Service which will combine all modern farm conservation programs, except the Conservation Reserve Program. This new conservation service will bring a clearer focus to USDA efforts to help farmers address their conservation and environmental needs; places a greater emphasis on food safety by establishing an Under Secretary for Food Safety who will oversee all of USDA's food safety programs; establishes a consolidated Cooperative State Research, Education and Economics Service and provides for coordination of all USDA research and extension programs.

Reinventing Government means more than just changing outdated bureaucratic structures. It also means redesigning Government programs to eliminate duplication and provide better Government services at lower costs to the taxpayer.

Oversight hearings conducted by the Senate Committee on Agriculture, Nutrition, and Forestry found that millions of dollars have been wasted in annual, ad hoc disaster programs as a result of insufficient production records, inappropriate payment rates, and mismanagement. Eliminating ad hoc disaster programs and improving the Federal crop insurance program will provide major benefits to both farmers and taxpayers. This bill stops that fraud and abuse.

Farmers will benefit because the reformed crop insurance program will provide needed predictability and better risk management options. Ad hoc disaster bills are inherently unpredictable, and as a result, farmers do not know what type of help they can expect in times of need.

Rather than relying on the uncertain benefits of annual ad hoc disaster bills, farmers will be able to obtain catastrophic crop insurance coverage for a nominal processing fee. In addition, the bill provides targeted incentives for farmers to purchase higher levels of coverage.

Taxpayers will benefit because the reform bill eliminates the senseless duplication of operating separate crop insurance and disaster assistance programs that cover the same losses on the same crops. In addition, a number of new safeguards will help guard against some of the abuses that have plagued the disaster and crop insurance programs in the past.

The crop insurance reform bill: Will save $151 million over the next 5 years; require increased reporting requirements for all producers who have received payments, but who have been allowed in the past to provide inadequate documentation to support their claims; mandates that payment rates be reduced for producers who do not incur production costs because they either did not hire farm labor to harvest a crop, did not harvest the crop, or were prevented from planting the crop; requires that the payment be adjusted to reflect yield variations due to differing farming practices; requires that the payment to a producer who receives a guaranteed payment for production reflect the amount of the guaranteed production; requires detailed documentation of production costs, acres planted, and yields in areas where reported acreage has increased dramatically in recent years, unless the acreage is inspected or exempted by officials of the USDA; and, establishes credible penalties for farmers who misrepresent essential information to USDA.

CBO may underestimate the true savings likely to be achieved by this bill. For one thing, CBO's estimates compare the expected costs of the reformed program to a baseline where ad hoc disaster programs cost just $1 billion per year. In reality, disaster program spending has averaged more than $1.5 billion per year over the last 6 years. The bill's savings would be even larger against a more realistic baseline.

I would like to thank Secretary Espy for his leadership in developing the reform proposal that served as our starting point, the budget conferees for their help in eliminating procedural roadblocks, and Senator LUGAR and other members of the Agriculture Committee for all their help in putting together a solid, bipartisan reform package.

This reform package is good for taxpayers, good for farmers and good for the Department of Agriculture. Passage of this bill will prove to the American people that we can cut costs and improve services at the same time. In doing so, we will save over $2 billion and set the standard for the rest of the Federal Government to follow.

I also ask unanimous consent that a joint statement by myself and Senator

LUGAR, the ranking member, which provides a legislative history of this bill be inserted in the RECORD. I also ask that other related information be included in the RECORD following my statement.

Finally, I must mention how much I appreciate the committee's ranking member leadership on the matter. If it had been a partisan battle, it never would have happened. His leadership on this bill has been outstanding.

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

JOINT STATEMENT BY SENATOR PATRICK J. LEAHY AND SENATOR RICHARD G. LUGAR REGARDING H.R. 4217

The Committee on Agriculture, Nutrition, and Forestry is proud to bring to the floor for final passage H.R. 4217, the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994.

The bill before the Senate today is similar in most respects to the bill that passed the Senate in August. It provides authority to reduce the size and increase the efficiency of the Department of Agriculture. It also eliminates the need for annual ad hoc crop disaster programs by expanding and improving the federal crop insurance program.

The following comments are intended to clarify provisions in the bill.

ADMINISTRATIVE AND OPERATING COSTS

Section 508(k)(5)–(7) of the Federal Crop Insurance Act, as amended, requires the FCIC to alter program procedures and administrative requirements to reduce administrative and operating costs of participating reinsured companies and agents commensurate with reductions in administrative expense reimbursements over the next five years to the extent consistent with consideration of program integrity, prevention of fraud or abuse, the need for program expansion, or the maintenance of quality of service to customers.

New regulatory or paperwork requirements stemming from this Act or from expansion or improvement of the crop insurance of noninsured assistance programs, whether statutory, administrative, or otherwise, and which occur after the date of enactment of this Act, shall be instituted in accordance with the spirit of this section but shall not be included in any determination of the reduction of such requirements under this provision. While being mindful of the need to minimize administrative burden, this provision does not create new formal requirements of the FCIC to address paperwork or regulatory considerations in its adoption of individual rules, regulations, or administrative policies.

Judgements as to the FCIC's achievement of this requirement will be made by Congress and its oversight Committees, not the Federal courts or any administrative forum. For this reason, determinations by the FCIC as to whether it is achieving or has achieved the cost reduction goals of the subsection are exempted from judicial review or from administrative appeals processes.

RESEARCH AND DEVELOPMENT

Payments from the insurance fund for research and development under section 516(b)(2)(C) of the Federal Crop Insurance Act, as amended, may cover, among other things, program-related research and development, start-up costs for implementing this legislation such as studies. Pilot projects, data processing improvements, public outreach, and related tasks and functions. The Committee encourages the Corporation to research and develop programs to provide risk management tools for producers making the transition to the new farm practices that better protect natural resources and the environment.

PROGRAM INTEGRITY

In implementing section 508(e)(3) of the Federal Corp Insurance Act, as amended, the Committee expects the Corporation to ensure that those companies and agents who pass on savings in expense reimbursements do not obtain those savings by reducing the services for which the Corporation has contracted. The Corporation is directed to conduct such financial and program audits to ensure that "savings" do not come at the expense of program integrity.

AQUACULTURE

The term "aquaculture" as the term is used in section 11, noninsured crop disaster assistance, is intended to mean production from a commercial operation conducted on private land or private waters. The word "food" as used in the section on non-insured assistance includes fish raised as feed for fish that are consumed as food.

DEFINITION OF LIMITED RESOURCES FARMER

Section 508(b)(5(C) of the Federal Corp Insurance Act, as amended, allows the administrative fee for catastrophic risk coverage to be waived for limited resource farmers who, because of economic hardship, are unable to afford the cost of the administrative fee. A limited income from the farm operation (as defined by the Corporation). As applied to this definition, a farm with less than 25 acres aggregated for all corps from which a majority of the producer's income is earned may be considered to a be a "small or family farm."

APPEALS

The Committee expects the Corporation to allow producers to appeal any adverse decision which may deny benefits or program eligibility for the crop insurance program or the noninsured assistance program. The process should be consistent with existing appeals procedures for programs administered by the Department of Agriculture.

PRIVATE SECTOR CROP INSURANCE ALTERNATIVE

Historically, many farmers have not purchased federal crop insurance because they consider premiums for FCIC insurance to be too high for the level of coverage offered. These "low risk" farmers usually have a large crop loss only when their local area does. Section 508(e)(4) of the Federal Crop Insurance Reform Act is designed to foster the growth of private sector insurance alternatives by allowing companies to sell their own individual insurance policies backed by FCIC area policies. Such "combined policies" can potentially raise crop insurance purchases by reducing premiums faced by low risk producers. The Committee urges the Corporation to encourage the growth of these private policies by approving their use and by improving the contract design and actuarial soundness of Corporation area policies over time.

DISSEMINATION OF INFORMATION

In order to insure that all producers are fully aware of the availability of the crop insurance program and the noninsured assistance program, the Corporation is expected to make every practical effort to contact all eligible producers. The Corporation is responsible for providing adequate information as to the availability and requirements for these programs. The Corporation should use direct mail or any other practical means of communication to notify all eligible producers.

PRODUCER APPLICATIONS

To avoid a potential hardship on producers, the Committee expects the Corporation to allow all producers to apply for the catastrophic crop insurance program and the noninsured assistance program by mail to the appropriate county or area office. The Committee also strongly encourages the Corporation to give all producers the option to submit any required records or reports by mail.

CONSOLIDATING UNDERUSED FARM SERVICE FIELD OFFICES

H.R. 4217 includes all the authority needed by the Secretary of Agriculture to reorganize the Department of Agriculture's Washington, D.C. headquarters. Upon enactment of this bill, the Committee strongly urges the Secretary to proceed not only with headquarters reorganization but with the shutdown and consolidation of at least 1,100 underused USDA field offices.

CONSERVATION PROGRAMS

The authorization of the office of the Under Secretary of Agriculture for Natural Resources and Environment is intended as confirmation that the conservation of natural resources is one of the six fundamental missions of the U.S. Department of Agriculture. We expect the creation of the Natural Resources Conservation Service to result in a strong, independent natural resource management agency in the Department that can assist farmers in meeting the increasingly complex challenge of protecting soil, water, and related resources while sustaining the profitable production of food and fiber.

Implementation of the special concurrence requirements in Section 246(c) are intended to result in coordination, consultation, and cooperation between the Natural Resources Conservation Service and the Consolidated Farm Services Agency at the national, State, and local levels. We expect the special concurrence requirements to result in integrated and coordinated resource management priorities and program direction at all levels of program implementation. The fundamental goal of the special concurrence requirements is to produce natural resource management policies and programs that address the most important resource problems in ways that make sense for farmers.

We expect the implementation of special concurrence requirements to simplify the process of developing conservation plans and applying for technical and financial assistance. Concurrence should reduce the number of steps the farmer must take and the number of approvals the farmer must secure to participate in conservation programs. We expect the Department to make every effort to insure that the implementation of the special concurrence requirements increases the effectiveness and efficiency of conservation programs.

Concurrence and coordination at the local level is critically important. We expect the county Agricultural Service Committees and the Soil and Water conservation Districts to meet annually to develop joint priorities and direction for conservation programs in the county, whether those programs are administered by the Consolidated Farm Services Agency or the Natural Resources Conservation Service. We expect concurrence at the local level to recognize the critical role

played by Soil and Water Conservation Districts in achieving the mission of the Natural Resources Conservation Service.

The consolidation of conservation programs within the Natural Resources Conservation Service coupled with the special concurrence requirement are an important first step toward integration of conservation programs in a single agency that provides farmers the tools to address the increasingly complex resource management agenda that agriculture faces.

RESEARCH AND EDUCATION

Section 251 gives the Secretary broad authority to reorganize and streamline the Department's research and education programs.

In recognition of the important role that State research and Extension programs play, Section 251(d) establishes a new Cooperative State Research, Education and Extension Service to consolidate and better coordinate management of State research and Extension programs.

Section 252 allows the Secretary to downsize the Department's research program staff, so as to reduce unnecessary duplication and ensure consistent policies in all of the Department's research, education and Extension programs.

Mr. LEAHY. I ask unanimous consent that the USDA reorganization summary of key elements be printed in the RECORD.

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

USDA REORGANIZATION—SUMMARY OF KEY ELEMENTS

Budget Savings: Streamlining federal employment and departmental administration will save over $2 billion through 1998.

Streamlining Employment: Requires a reduction in federal employees of at least 7,500; requires a higher percentage cut in USDA headquarters than in the field.

Streamlining Management: Reduces the number of independent agencies by one third.

Streamlining Headquarters Offices: Requires a consolidation of USDA's Washington, D.C. offices.

Consolidated Farm Services Agencies: Merges all farm related programs into a single consolidated Farm Service Agency; makes way for an entirely new field structure based on field service centers; and will lead to closing and consolidating over 1,100 county offices.

Conservation Programs: Authorizes a consolidated Natural Resources Conservation Service; combines all modern farm conservation programs (except CRP) in the NRCS, in order to focus USDA's efforts to help farmers address their conservation and environmental needs.

Food Safety: Ensures an enhanced emphasis on food safety by establishing a new Under Secretary for Food Safety to oversee all USDA food safety and inspection programs.

Research and Education: Establishes a consolidated Cooperative State Research, Education and Economics Service and provides for coordination of all USDA research and extension programs.

H.R. 4217, FEDERAL CROP INSURANCE REFORM ACT OF 1994—SUMMARY OF KEY ELEMENTS

Effective Date: H.R. 4217 will become effective with the 1995 crop year.

Repeal of Ad Hoc Disaster Authority: Current legal authorities for ad hoc crop loss disaster relief are repealed. In the future, the reformed crop insurance program is expected to eliminate the need for crop disaster bills; the Congressional Budget Act is amended to make it very unlikely that Congress will be able to pass ad hoc disaster bills on an budget emergency basis in the future. In other words, Congress is disciplining itself to actually pay for disaster legislation in the future.

Catastrophic Crop Insurance Coverage: The Federal crop insurance program is supplemented with a new catastrophic coverage level available to farmers for a nominal processing fee of $50 per crop per county, up to $200 per farmer per county. The catastrophic protection will cover individual farm losses larger than 50 percent of normal yield at a payment rate of 60 percent of the expected market price (50/60) until 1999 and subsequent years, when the coverage will be (50/55).

Linkage to Farm Programs: To ensure wide participation, crop insurance coverage at the catastrophic level or above is linked to participation in Federal commodity programs, Farmers Home Administration loan programs, and the Conservation Reserve Program. This step is expected to result in crop insurance participation rising from 33 percent to about 80 percent of insurable acres.

Increased Premium Subsidies for Buy-Up Coverage: The bill authorizes the Federal Crop Insurance Corporation to offer individual yield coverage up to 85 percent of normal yield, an increase from the current 75 percent. Federal premium subsidies for buy-up coverage are permanently increased to reduce premiums farmers must pay; FCIC estimates that the cost to a farmer of coverage such as a typical 65 percent yield with 100 percent price will fall by 17 percent. Farmer premiums for coverage of 75/100 or higher will fall by 8 percent.

Combining Individual and Area Coverage: The bill authorizes insurance companies to offer individual coverage to farmers with reinsurance through FCIC area policies. These combined policies will receive a premium subsidy comparable to traditional FCIC individual policies.

Delivery: Farmers will be able to choose catastrophic coverage from a private reinsured company or from a local USDA office at the option of the Secretary of Agriculture. Buy-up coverage will be available only through private insurers.

Noninsurable Crops: A standing disaster program will exist for crops not covered by crop insurance. Commercial crops produced for food or fiber, floricultural, ornamental nursery, Christmas tree crops, turfgrass sod, and industrial crops will be eligible for noninsured assistance. Payments for individual farm losses will be triggered when the area average yield for a crop falls below 65 percent of the expected area yield. In that event, disaster payments for that crop will be available to producers for individual farm losses at levels similar to those under the catastrophic insurance plan.

Fiscal Soundness: The loss ratio target—projected indemnity payments divided by total premiums—is reduced from the current 1.1 to 1.075 beginning October 1, 1998. Also, effective for the 1995 crops, the bill requires that the sales closing date for spring-planted crops be 30 days earlier than the corresponding 1994 sales closing date.

Expense Reimbursements to Insurance Companies: The bill provides full funding for insurance companies expense reimbursements for fiscal year 1995. As a result, enactment of this bill will ensure that federal crop insurance will be available for the 1995 and future crops. The reimbursement rate for fiscal years 1997–1999 will be 29%, 28%, and 27.5%, respectively. After 1997, the bill pays for company expense reimbursements other than agent sales commissions, when agent sales commissions will continue to be subject to funding available from future Agriculture Appropriations bills.

Budget Impact: The Congressional Budget Office estimates that H.R. 4217 will reduce outlays by $151 million over the 1995–1999 fiscal year period. CBO's cost estimate is relative to the FY 1995 budget resolution baseline, which assumes future spending of $1.0 billion per year associated with future ad hoc farm disaster assistance payments.

Mr. FORD. Mr. President, I move that the Senate concur in the amendment of the House.

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

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## SATELLITE HOME VIEWER ACT—MESSAGE FROM THE HOUSE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on a bill (S. 2406) to amend title 17, United States Code, relating to the definition of a local service area of a primary transmitter, and for other purposes.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

*Resolved*, That the bill from the Senate (S. 2406) entitled "An Act to amend title 17, United States Code, relating to the definition of a local service area of a primary transmitter, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

***SECTION 1. SHORT TITLE.***

*This Act may be cited as the "Satellite Home Viewer Act of 1994".*

***SEC. 2. STATUTORY LICENSE FOR SATELLITE CARRIERS.***

*Section 119 of title 17, United States Code, is amended as follows:*

*(1) Subsection (a)(2)(C) is amended—*

*(A) by striking "90 days after the effective date of the Satellite Home Viewer Act of 1988, or";*

*(B) by striking "whichever is later,";*

*(C) by inserting "name and" after "identifying (by" each place it appears; and*

*(D) by striking ", on or after the effective date of the Satellite Home Viewer Act of 1988,".*

*(2) Subsection (a)(5) is amended by adding at the end the following:*

*"(D) BURDEN OF PROOF.—In any action brought under this paragraph, the satellite carrier shall have the burden of proving that its secondary transmission of a primary transmission by a network station is for private home viewing to an unserved household.".*

*(3) Subsection (b)(1)(B) is amended—*

*(A) in clause (i) by striking "12 cents" and inserting "17.5 cents per subscriber in the case of*

*superstations not subject to syndicated exclusivity under the regulations of the Federal Communications Commission, and 14 cents per subscriber in the case of superstations subject to such syndicated exclusivity"; and*

*(B) in clause (ii) by striking "3" and inserting "6".*

*(4) Subsection (c) is amended—*

*(A) in paragraph (1) by striking "December 31, 1992,";*

*(B) in paragraph (2)—*

*(i) in subparagraph (A) by striking "July 1, 1991" and inserting "July 1, 1996"; and*

*(ii) in subparagraph (D) by striking "December 31, 1994" and inserting "December 31, 1999, or in accordance with the terms of the agreement, whichever is later"; and*

*(C) in paragraph (3)—*

*(i) in subparagraph (A) by striking "December 31, 1991" and inserting "January 1, 1997";*

*(ii) by amending subparagraph (D) to read as follows:*

*"(D) ESTABLISHMENT OF ROYALTY FEES.—In determining royalty fees under this paragraph, the Copyright Arbitration Panel shall establish fees for the retransmission of network stations and superstations that most clearly represent the fair market value of secondary transmissions. In determining the fair market value, the Panel shall base its decision on economic, competitive, and programming information presented by the parties, including—*

*"(i) the competitive environment in which such programming is distributed, the cost for similar signals in similar private and compulsory license marketplaces, and any special features and conditions of the retransmission marketplace;*

*"(ii) the economic impact of such fees on copyright owners and satellite carriers; and*

*"(iii) the impact on the continued availability of secondary transmissions to the public.";*

*(iii) in subparagraph (E) by striking "60" and inserting "180"; and*

*(iv) in subparagraph (G)—*

*(I) by striking ", or until December 31, 1994"; and*

*(II) by inserting "or July 1, 1997, whichever is later" after "section 802(g)".*

*(5) Subsection (a) is amended—*

*(A) in paragraph (5)(C) by striking "the Satellite Home Viewer Act of 1988" and inserting "this section"; and*

*(B) by adding at the end the following:*

*"(8) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—*

*"(A) IN GENERAL.—Subject to subparagraph (C), upon a challenge by a network station regarding whether a subscriber is an unserved household within the predicted Grade B Contour of the station, the satellite carrier shall, within 60 days after the receipt of the challenge—*

*"(i) terminate service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or*

*"(ii) conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the network station of the satellite carrier's intent to conduct the measurement.*

*"(B) EFFECT OF MEASUREMENT.—If the satellite carrier conducts a signal intensity measurement under subparagraph (A) and the measurement indicates that—*

*"(i) the household is not an unserved household, the satellite carrier shall, within 60 days after the measurement is conducted, terminate the service to that household of the signal that is the subject of the challenge, and within 30 days thereafter notify the network station that made the challenge that service to that household has been terminated; or*

*"(ii) the household is an unserved household, the station challenging the service shall reimburse the satellite carrier for the costs of the signal measurement within 60 days after receipt of the measurement results and a statement of the costs of the measurement.*

*"(C) LIMITATION ON MEASUREMENTS.—(i) Notwithstanding subparagraph (A), a satellite carrier may not be required to conduct signal intensity measurements during any calendar year in excess of 5 percent of the number of subscribers within the network station's local market that have subscribed to the service as of the effective date of the Satellite Home Viewer Act of 1994.*

*"(ii) If a network station challenges whether a subscriber is an unserved household in excess of 5 percent of the subscribers within the network's station local market within a calendar year, subparagraph (A) shall not apply to challenges in excess of such 5 percent, but the station may conduct its own signal intensity measurement of the subscriber's household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement. If such measurement indicates that the household is not an unserved household, the carrier shall, within 60 days after receipt of the measurement, terminate service to the household of the signal that is the subject of the challenge and within 30 days thereafter notify the network station that made the challenge that service has been terminated. The carrier shall also, within 60 days after receipt of the measurement and a statement of the costs of the measurement, reimburse the network station for the cost it incurred in conducting the measurement.*

*"(D) OUTSIDE THE PREDICTED GRADE B CONTOUR.—(i) If a network station challenges whether a subscriber is an unserved household outside the predicted Grade B Contour of the station, the station may conduct a measurement of the signal intensity of the subscriber's household to determine whether the household is an unserved household after giving reasonable notice to the satellite carrier of the network station's intent to conduct the measurement.*

*"(ii) If the network station conducts a signal intensity measurement under clause (i) and the measurement indicates that—*

*"(I) the household is not an unserved household, the station shall forward the results to the satellite carrier who shall, within 60 days after receipt of the measurement, terminate the service to the household of the signal that is the subject of the challenge, and shall reimburse the station for the costs of the measurement within 60 days after receipt of the measurement results and a statement of such costs; or*

*"(II) the household is an unserved household, the station shall pay the costs of the measurement.*

*"(9) LOSER PAYS FOR SIGNAL INTENSITY MEASUREMENT; RECOVERY OF MEASUREMENT COSTS IN A CIVIL ACTION.—In any civil action filed relating to the eligibility of subscribing households as unserved households—*

*"(A) a network station challenging such eligibility shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the satellite carrier for any signal intensity measurement that is conducted by that carrier in response to a challenge by the network station and that establishes the household is an unserved household; and*

*"(B) a satellite carrier shall, within 60 days after receipt of the measurement results and a statement of such costs, reimburse the network station challenging such eligibility for any signal intensity measurement that is conducted by that station and that establishes the household is not an unserved household.*

*"(10) INABILITY TO CONDUCT MEASUREMENT.—If a network station makes a reasonable attempt to conduct a site measurement of its signal at a subscriber's household and is denied access for the purpose of conducting the measurement, and is otherwise unable to conduct a measurement, the satellite carrier shall within 60 days notice thereof, terminate service of the station's network to that household.".*

*(6) Subsection (d) is amended—*

*(A) by amending paragraph (2) to read as follows:*

*"(2) NETWORK STATION.—The term 'network station' means—*

*"(A) a television broadcast station, including any translator station or terrestrial satellite station that rebroadcasts all or substantially all of the programming broadcast by a network station, that is owned or operated by, or affiliated with, one or more of the television networks in the United States which offer an interconnected program service on a regular basis for 15 or more hours per week to at least 25 of its affiliated television licensees in 10 or more States; or*

*"(B) a noncommercial educational broadcast station (as defined in section 397 of the Communications Act of 1934).";*

*(B) in paragraph (6) by inserting "and operates in the Fixed-Satellite Service under part 25 of title 47 of the Code of Federal Regulations or the Direct Broadcast Satellite Service under part 100 of title 47 of the Code of Federal Regulations" after "Commission"; and*

*(C) by adding at the end the following:*

*"(11) LOCAL MARKET.—The term 'local market' means the area encompassed within a network station's predicted Grade B contour as that contour is defined by the Federal Communications Commission.".*

***SEC. 3. DEFINITIONS.***

*(a) CABLE SYSTEM.—Section 111(f) of title 17, United States Code, is amended in the paragraph relating to the definition of "cable system" by inserting "microwave," after "wires, cables,".*

*(b) LOCAL SERVICE AREA.—Section 111(f) of title 17, United States Code, is amended in the paragraph relating to the definition of "local service area of a primary transmitter" by inserting after "April 15, 1976," the following: "or such station's television market as defined in section 76.55(e) of title 47, Code of Federal Regulations (as in effect on September 18, 1993), or any modifications to such television market made, on or after September 18, 1993, pursuant to section 76.55(e) or 76.59 of title 47 of the Code of Federal Regulations,".*

***SEC. 4. TERMINATION.***

*(a) EXPIRATION OF AMENDMENTS.—Section 119 of title 17, United States Code, as amended by section 2 of this Act, ceases to be effective on December 31, 1999.*

*(b) CONFORMING AMENDMENT.—Section 207 of the Satellite Home Viewer Act of 1988 (17 U.S.C. 119 note) is repealed.*

***SEC. 5. LIMITATION.***

*The amendments made by this section apply only to section 119 of title 17, United States Code.*

***SEC. 6. EFFECTIVE DATE.***

*(a) IN GENERAL.—Except as provided in subsections (b) and (d), this Act and the amendments made by this Act take effect on the date of the enactment of this Act.*

*(b) BURDEN OF PROOF PROVISIONS.—The provisions of section 119(a)(5)(D) of title 17, United States Code (as added by section 2(2) of this Act) relating to the burden of proof of satellite carriers, shall take effect on January 1, 1997, with respect to civil actions relating to the eligibility of subscribers who subscribed to service as an unserved household before the date of the enactment of this Act.*

*(c) TRANSITIONAL SIGNAL INTENSITY MEASUREMENT PROCEDURES.—The provisions of section 119(a)(8) of title 17, United States Code (as added by section 2(5) of this Act), relating to transitional signal intensity measurements, shall cease to be effective on December 31, 1996.*

*(d) LOCAL SERVICE AREA OF A PRIMARY TRANSMITTER.—The amendment made by section 3(b), relating to the definition of the local service area of a primary transmitter, shall take effect on July 1, 1994.*

Mr. LEAHY. Mr. President, when I spoke on March 3, 1994, I announced my cosponsorship of the Satellite Home Viewer Act extension legislation and urged timely action on this important legislation. I have returned to the floor since then to mark the progress of this bill and upon Senate passage in May, to urge our House colleagues to take prompt action, as well.

After some delay and difficult negotiations, I am delighted that today we can take the last step on the legislative road to enactment of the provisions needed to continue home viewer access to satellite reception of television. Thousands of families in Vermont and millions of households nationwide can now rest assured that their home satellite dishes are not about to go dark.

Mountains and long distances can interfere with over-the-air reception of television broadcast and cable television is not a viable alternative in many settings. Fortunately, satellite technology has helped extend access to information and entertainment to those living in rural areas. I am proud to have played a role in developing and passing the Satellite Home Viewer Act in 1988 that made possible the emergence of home satellite viewing.

The extension of the Satellite Home Viewer Act is necessary because there still exists no effective method to clear rights and reach agreements between satellite carriers and copyright holders. I encourage the relevant industries to proceed without delay to develop rights clearance mechanisms.

By means of the bill we pass into law today, we are extending the statutory copyright license for home satellite viewers without interruption and without an increase in copyright royalty rates for 2½ years. By means of this legislation we also make possible the accelerated development of microwave and other technologies. It is my purpose to encourage increased accessibility for viewers, greater variety of programming for them, continuing development of alternative technologies, and to create competitive situations, such as between cable and satellite, to better serve the public.

As we begin our journey to an information superhighway, we should be careful to extend to those in unserved and underserved areas, in remote locations and rural communities, the greatest possible opportunity to participate in the harvest of new services and features that are now nurturing.

I thank my friend, the senior Senator from Arizona [Mr. DECONCINI], for the diligence and persistence he demonstrated in working to ensure that this legislation would be enacted timely and commend all those in the satellite industry and competing concerns who worked so assiduously and constructively to reconcile their positions. In this way we allow satellite home viewing to continue without interruption of service and avoid congressional gridlock being responsible for pulling the plug on home satellite viewers.

Mr. BROWN. Mr. President, I rise today in support of S. 2406 as amended. This important piece of legislation will guarantee satellite dish owners who cannot receive network signals from a local station the ability to continue to receive them through satellite delivery.

I also want to take this opportunity to commend my colleagues in the House on their amendment limiting the mandatory arbitration law, as amended by the fair market value language of this bill, to section 119 of title 17, the Statutory License for Satellite Carriers. By limiting this mandatory arbitration/fair market value language to the satellite industry, this limitation amendment recognizes the ability broadcasters already have to negotiate for fair market value compensation under other provisions of Federal law with the cable industry. Broadcasters now have the opportunity to negotiate with the satellite industry for fair market value as defined in this section of law and to also negotiate with the cable industry for retransmission consent as defined in other statutory law.

This bill resolves the issues surrounding compensation for broadcasters in the cable and satellite marketplaces and creates balance. I want to thank the Chairman of the subcommittee, Senator DECONCINI, and the ranking member, Senator HATCH, for their hard work on this bill. I urge my colleagues to support this measure.

Mr. DECONCINI. Mr. President, I rise today in support of S. 2406. S. 2406 contains a compromise between the House and Senate on the Satellite Home Viewer Act of 1994, S. 1485 and H.R. 1103. I introduced S. 1485 on September 22, 1993 along with my colleague Senator HATCH. S. 1485 was cosponsored by Senators LEAHY, HEFLIN, JEFFORDS, GREGG, MOSELEY-BRAUN, THURMOND, CRAIG, PRESSLER, KERREY, and BURNS.

This legislation extends the compulsory copyright license under section 119 of the copyright until December 31, 1999. I am pleased that because of the compromise reached on this bill, satellite carriers may continue to serve their viewers with no disruption of service.

In passing S. 1485, the Senate rejected the inclusion of "fair market value" as the goal to be met, by the arbitrators, with respect to rate making for the satellite carriers. The fact that the Senate agrees with the House on this compromise legislation is due to the criteria that defines fair market value in the bill. I have long opposed the imposition of royalty fees based simply on the mechanical application of some conceptual fair market value formula.

I am delighted that the House and Senate have agreed to clarify the concept of fair market value so that the arbitration panel will consider the cost of similar signals in similar private and compulsory marketplaces, for example, the cable market. Copyright license parity with cable is the central feature of the fair market standard articulated in this legislation. The inclusion of specific guidance to the arbitration panel to take into consideration the competitive environment in which satellite programming is distributed is essential to ensure that satellite carriers are not required to pay higher royalty fees than cable operators.

Satellite carriers today already are required to pay royalty fees that are in excess of the fees that cable operators are required to pay for the same signals.

Therefore, it is appropriate that when the arbitration panel considers the fair market value of the fees, it will take into account the impact of those fees on satellite carriers and on the continued availability of secondary transmissions to the public. Satellite carries must be afforded the opportunity to continue delivering diverse, affordable video programming to satellite consumers.

The compulsory license mechanism has facilitated the clearance of thousands of copyrights related to the distribution of television programming by the cable and satellite broadcasting industries. This approach has enabled consumers to obtain broad access to programming they otherwise may be unable to receive.

I am confident that the arbitration panel will take steps to ensure that the royalty fees paid by satellite carriers are on par with those paid by cable operators. The guiding criteria for the arbitration panel to establish fair market value in this legislation will accomplish that objective.

Mr. FORD. Mr. President, I ask unanimous consent that the Senate concur in the House amendment and that the motion to reconsider be laid upon the table.

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

So the Senate concurred in the House amendment.

## SHEEP PROMOTION, RESEARCH AND INFORMATION ACT OF 1994

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of S.

2500, the Sheep Promotion, Research and Information Act of 1994, introduced earlier today by Senators LEAHY, WALLOP, CRAIG and others; that the bill be deemed read three times, passed and the motion to reconsider be laid upon the table; and that any statements appear in the RECORD as if read.

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

So the bill (S. 2500) was deemed read three times and passed, as follows:

(The text of the bill will be printed in a future edition of the RECORD.)

## THE SHEEP PROMOTION, RESEARCH, AND INFORMATION ACT OF 1994

Mr. LEAHY. Mr. President, I rise today to introduce and ask for passage of the Sheep Promotion, Research, and Information Act of 1994. This legislation will provide a much needed market development and promotion program for the sheep producers, and the sheep products industry in the United States.

This bill will create an industry funded market development and promotion program that will be administered by a board made up of producers, feeders and importers. This legislation is critical to the sheep industry which, as a result of the elimination of the National Wool Act last year, will soon lose its current promotion program.

This bill is a product of a cooperative effort of all elements of the sheep, sheep product and textile industry.

Mr. President, I support the sheep industry's efforts to establish this self-help measure and I urge quick passage of this legislation.

Mr. FEINGOLD. I first want to express my appreciation to Senator LEAHY and his staff for working with me to address some of the issues that arise each time the Congress creates a generic commodity promotion board. We have resolved a number of concerns which I had with respect to the establishment of the Sheep Promotion, Research and Information Act. The chairman and the sponsors of this bill have graciously agreed to a number of amendments I have proposed to ensure the integrity of the board's activities as well as to provide for the utmost representation of all segments of the sheep industry on the board.

There were several amendments which I wished to include but have withdrawn in the interest of seeing this legislation proceed through the legislative process. Those amendments addressed issues relating to the contracting ability of the board and the resulting impact on the prohibition in this bill that the board's funds not ultimately be used to influence government activity or public policy. Specifically, I am concerned about the growing practice of commodity boards entering into contractual relationships with the related trade association representing the lobbying arm of the industry. This raises the issue of the fungibility of checkoff dollars as well as the question of whether checkoff dollars ultimately subsidize the lobbying association. Additionally, I had an interest in more specifically defining the prohibition on influencing legislation or government action or policy in order to provide more guidance to the board with respect to allowable activities.

These issues have been of growing concern to a number of producers in my State as well as national farm organizations such as the National Farmers Union. Unless we can assure the integrity of the promotion programs, they will continue to be subject to criticism. These programs are extremely important to farmers and I believe we must do our utmost to ensure that the programs are meeting their original intent as established by Congress. However, because this is a matter which is not exclusive to the sheep board, but rather is an issue that needs to be examined in the context of all of the existing 16 commodity promotion and research boards we have created, I have withdrawn the amendments addressing these concerns. It would be my hope, however, that the Senate Agriculture Committee be able to pursue these broader issues relating to all the promotion boards during consideration of the upcoming 1995 farm bill.

Mr. LEAHY. I thank the Senator for his interest in this area and agree that many of the issues of interest to him are also of great interest to the Agriculture Committee and to the farmers paying for the promotion programs. I would like to work with him to pursue these matters, in particular the issues relating to the prohibition on use of the checkoff funds and fungibility of checkoff dollars, as part of the Agriculture Committee hearings on the 1995 farm bill next year. That process will allow us to determine what types of reforms might be necessary for the various promotion boards in the 1995 farm bill.

Mr. FEINGOLD. I thank Senator LEAHY. I look forward to working with him to address these very important issues next year and appreciate his willingness to examine this area of concern.

Mr. SIMPSON. Mr. President, I rise in support of the Sheep Promotion, Research, and Information Act of 1994. This most important piece of legislation offers the sheep industry the same opportunity afforded to all other commodity groups—the ability to promote their industry to the consumer.

When the National Wool Act was so swiftly eliminated last year, the authority for the sheep industry's 40-year-old self-help program for lamb and wool promotion was also unintentionally terminated. With the elimination of the Wool Act still so very fresh in the minds of Members of Congress and based on the erroneous belief that the program was an antiquated World War II program, Congress, at a minimum, should be agreeable to helping the sheep industry compete with foreign producers and "leveling the playing field" with a program that costs the Federal Government nothing. The check-off program is paid for entirely by the lamb and wool industries.

That said, I must point out that the industry must prepare for some major changes. I believe all of American agriculture would benefit greatly by throwing away its "government crutches" of subsidies and tariffs on foreign products. I know that it will be hard to even fathom that possibility.

But, without reasonable alternatives to the old programs and phase-down periods that are fair and equitable, American agriculture will continue to crusade for farm programs that are not market driven—programs that have coddled them into an unhealthy reliance on government support. The sheep industry wants the authority to compete with foreign producers—they are not asking for a handout.

We can all agree that this industry must promote itself! That message was clear last year when at the rap of the gavel only 36 Members supported the National Wool Act. Almost $1 billion is currently spent annually on advertisements and research efforts to expand or at least maintain the demand for U.S. agricultural commodities. Through mandatory assessments on producers—or check-offs—promotion activities are devised to provide consumers with specific information about the product.

Most studies indicate positive rates of return for check-off programs. Check-off programs are a benefical self-help marketing tool that the Senate should support. I urge my colleagues to support this important legislation, and I am very pleased to be a cosponsor.

Mr. BURNS. Mr. President, I rise today in support of the Sheep Promotion, Research, and Information Act of 1994, and the future of the American sheep and wool industry.

A year ago, the majority of Congress voted to abolish the wool support system for our Nation's wool producers during the next 2 years. However, I did not vote in favor of that particular provision, as I knew the impact this action would have on the producers of the wool on ranches in Montana. Congress left our wool ranchers high and dry when it comes to funding to promote their commodity.

After much discussion between Members of the Senate and the American Sheep and Wool Industry, an accord has finally been reached, one that addresses the concerns of all the parties involved. An accord that through a referendum vote will now allow the producers in the industry to decide for

themselves on the future of this program. This measure will allow these producers a means to collect funds from their own pockets to promote the sheep and wool industry. This act will provide a small, but meaningful step towards leveling the playing field that our American producers must compete on.

In Montana, we have 2,900 farms and ranches that are in the sheep and wool producing business. These are hard-working men and women, people who fight the elements, predators and ultimately the world market. They provide the American public with some of the safest and finest products in the world, yet due to their inability to compete evenly with the rest of the world many are second guessing their decision to raise sheep. Sheep producers are not asking us to provide them with anything other than a chance to compete.

I stand here before you today and ask for your support for these families, and for the opportunity for them to provide and develop a future for their children. Let these Americans compete on the world market by providing them the tools, establishing this fund as a means to market and promote their product. The sheep industry in Montana joins with me in thanking you all for your support.

## THE INDIAN LEGISLATION TECHNICAL CORRECTIONS ACT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 711, H.R. 4709, an Indian affairs technical amendments bill.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A bill (H.R. 4709) to make certain technical corrections, and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Indian Affairs, with an amendment to strike all after the enacting clause and inserting in lieu thereof the following:

***SECTION 1. LEASING AUTHORITY OF THE INDIAN PUEBLO FEDERAL DEVELOPMENT CORPORATION.***

*Notwithstanding the provisions of section 17 of the Act of June 18, 1934 (48 Stat. 988, chapter 576; 25 U.S.C. 477), the Indian Pueblo Federal Development Corporation, whose charter was issued pursuant to such section by the Secretary of the Interior on January 15, 1993, shall have the authority to lease or sublease trust or restricted Indian lands for up to 50 years.*

***SEC. 2. GRAND RONDE RESERVATION ACT.***

*(a) LANDS DESCRIBED.—Section 1 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of the Grand Ronde Community of Oregon, and for other purposes", approved September 9, 1988 (102 Stat. 1594), is amended—*

*(1) in subsection (c)—*

*(A) by striking "9,879.65" and inserting "10,120.68"; and*

*(B) by striking all after*

| | | | | |
|---|---|---|---|---|
| "6 | 8 | 1 | SW¼SW¼,W½SE¼SW¼ | 53.78" |

*and inserting the following:*

| | | | | |
|---|---|---|---|---|
| "6 | 8 | 1 | S½E½SE¼SW¼ | 10.03 |
| 6 | 7 | 8 | Tax lot 800 | 5.55 |
| 4 | 7 | 30 | Lots 3, 4, SW¼NE¼, SE¼NW¼,E½SW¼ | 240 |
| | | | Total ..... | 120.68."; |

*and*

*(2) by adding at the end the following new subsection:*

*"(d) CLAIMS EXTINGUISHED; LIABILITY.—*

*"(1) CLAIMS EXTINGUISHED.—All claims to lands within the State of Oregon based upon recognized title to the Grand Ronde Indian Reservation established by the Executive order of June 30, 1857, pursuant to treaties with the Kalapuya, Molalla, and other tribes, or any part thereof by the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor in interest, are hereby extinguished, and any transfers pursuant to the Act of April 28, 1904 (Chap. 1820; 33 Stat. 567) or other statute of the United States, by, from, or on behalf of the Confederated Tribes of the Grand Ronde Community of Oregon, or any predecessor or successor interest, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of lands or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe of Indians (including, but not limited to, the Act of July 22, 1790, commonly known as the 'Trade and Intercourse Act of 1790' (1 Stat. 137, chapter 33, section 4)).*

*"(2) LIABILITY.—The Tribe shall assume responsibility for lost revenues, if any, to any county because of the transfer of revested Oregon and California Railroad grant lands in section 30, Township 4 South, Range 7 West.".*

*(b) CIVIL AND CRIMINAL JURISDICTION.—Section 3 of such Act (102 Stat. 1595) is amended by adding at the end the following: "Such exercise shall not affect the Tribe's concurrent jurisdiction over such matters.".*

***SEC. 3. CONFEDERATED TRIBES OF THE SILETZ INDIANS OF OREGON.***

*Section 2 of the Act entitled "An Act to establish a reservation for the Confederated Tribes of Siletz Indians of Oregon, approved September 4, 1980 (Public Law 96–340; 94 Stat. 1072) is amended—*

*(1) by inserting "(a)" after "SEC. 2."; and*

*(2) by adding at the end the following:*

*"(b)(1) The Secretary of the Interior, acting at the request of the Confederated Tribes of the Siletz Indians of Oregon, shall accept (subject to all valid rights-of-way and easements existing on the date of such request) any appropriate warranty deed conveying to the United States in trust for the Confederated Tribes of the Siletz Indians of Oregon, contingent upon payment of all accrued and unpaid taxes, the following parcels of land located in Lincoln County, State of Oregon:*

*"(A) In Township 10 South, Range 8 West, Willamette Meridian—*

*"(i) a tract of land in the northwest and the northeast quarters of section 7 consisting of 208.50 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990; and*

*"(ii) 3 tracts of land in section 7 consisting of 18.07 acres, more or less, conveyed to the Tribe by warranty deed from John J. Jantzi and Erma M. Jantzi on March 30, 1990.*

*"(B) In Township 10 South, Range 10 West, Willamette Meridian—*

*"(i) a tract of land in section 4, including a portion of United States Government Lot 31 lying west and south of the Siletz River, consisting of 15.29 acres, more or less, conveyed to the Tribe by warranty deed from Patrick J. Collson and Patricia Ann Collson on February 27, 1991;*

*"(ii) a tract of land in section 9, located in Tract 60, consisting of 4.00 acres, more or less, conveyed to the Tribe by contract of sale from Gladys M. Faulkner on December 9, 1987;*

*"(iii) a tract of land in section 9, including portions of the north one-half of United States Government Lot 15, consisting of 7.34 acres, more or less, conveyed to the Tribe by contract of sale from Clayton E. Hursh and Anna L. Hursh on December 9, 1987;*

*"(iv) a tract of land in section 9, including a portion of the north one-half of United States Government Lot 16, consisting of 5.62 acres, more or less, conveyed to the Tribe by warranty deed from Steve Jebert and Elizabeth Jebert on December 1, 1987;*

*"(v) a tract of land in the southwest quarter of the northwest quarter of section 9, consisting of 3.45 acres, more or less, conveyed to the Tribe by warranty deed from Eugenie Nashif on July 11, 1988; and*

*"(vi) a tract of land in section 10, including United States Government Lot 8 and portions of United States Government Lot 7, consisting of 29.93 acres, more or less, conveyed to the Tribe by warranty deed from Doyle Grooms on August 6, 1992.*

*"(C) In the northwest quarter of section 2 and the northeast quarter of section 3, Township 7 South, Range 11 West, Willamette Meridian, a tract of land comprising United States Government Lots 58, 59, 63, and 64, Lincoln Shore Star Resort, Lincoln City, Oregon.*

*"(2) The parcels of land described in paragraph (1), together with the following tracts of lands which have been conveyed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon—*

*"(A) a tract of land in section 3, Township 10 South, Range 10 West, Willamette Meridian, including portions of United States Government Lots 25, 26, 27, and 28, consisting of 49.35 acres, more or less, conveyed by the Siletz Tribe to the United States in trust for the Tribe on March 15, 1986; and*

*"(B) a tract of land in section 9, Township 10 South, Range 10 West, Willamette Meridian, including United States Government Lot 33, consisting of 2.27 acres, more or less, conveyed by warranty deed to the United States in trust for the Confederated Tribes of Siletz Indians of Oregon from Harold D. Alldridge and Sylvia C. Alldridge on June 30, 1981;*

*shall be subject to the limitations and provisions of sections 3, 4, and 5 of this Act and shall be deemed to be a restoration of land pursuant to section 7 of the Siletz Indian Tribe Restoration Act (25 U.S.C. 711(e)).*

*"(3) Notwithstanding any other provision of law, the United States should not incur any liability for conditions on any parcels of land taken into trust under this section.*

*"(4) As soon as practicable after the transfer of the parcels provided in paragraphs (1) and (2), the Secretary of the Interior shall convey such parcels and publish a description of such lands in the Federal Register.".*

***SEC. 4. TRANSFER OF PARCEL BY YSLETA DEL SUR PUEBLO.***

*(a) RATIFICATION.—The transfer of the land described in subsection (b), together with fixtures thereon, on July 12, 1991, by the Ysleta Del Sur Pueblo is hereby ratified and shall be deemed to have been made in accordance with*

*the Constitution and all laws of the United States that are specifically applicable to transfers of land from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including section 2116 of the Revised Statutes (25 U.S.C. 177)) as if Congress had given its consent prior to the transfer.*

*(b) LANDS DESCRIBED.—The lands referred to in subsection (a) are more particularly described as follows:*

*Tract 1–B–1 (1.9251 acres) and Tract 1–B–2–A (0.0748 acres), Block 2 San Elizario, El Paso County, Texas.*

***SEC. 5. AUTHORIZATION FOR 99–YEAR LEASES.***

*The second sentence of subsection (a) of the first section of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415(a)) is amended by inserting "the Viejas Indian Reservation," after "Soboba Indian Reservation,".*

***SEC. 6. WIND RIVER INDIAN IRRIGATION PROJECT.***

*Funds appropriated for construction of the Wind River Indian Irrigation Project for fiscal year 1990 (pursuant to Public Law 101–121), fiscal year 1991 (pursuant to the Department of the Interior and Related Agencies Appropriations Act, 1991 (Public Law 101–512)), and fiscal year 1992 (pursuant to the Department of the Interior and Related Agencies Appropriations Act, 1992 (Public Law 102–154)) shall be made available on a nonreimbursable basis.*

***SEC. 7. REIMBURSEMENT OF COSTS INCURRED BY GILA RIVER INDIAN COMMUNITY FOR CERTAIN RECLAMATION CONSTRUCTION.***

*The Secretary of the Interior is authorized to pay $1,842,205 to the Gila River Indian Community as reimbursement for the costs incurred by the Gila River Indian Community for construction allocated to irrigation on the Sacaton Ranch that would have been nonreimbursable if such construction had been performed by the Bureau of Reclamation under section 402 of the Colorado River Basin Project Act (43 U.S.C. 1542).*

***SEC. 8. RECOGNITION OF INDIAN COMMUNITY.***

*Section 10 of the Indian Law Technical Amendments of 1987 (Public Law 100–153) is amended—*

*(1) by striking "The Frank's" and inserting "(a) Subject to subsection (b), the Frank's";*

*(2) by striking "recognized as eligible" and inserting the following:*

*"recognized—*

*"(1) as eligible";*

*(3) by striking the period at the end and inserting "; and"; and*

*(4) by adding at the end the following:*

*"(2) as a self-governing dependent Indian community that is not subject to the jurisdiction of any federally recognized tribe.*

*"(b)(1) Nothing in this section may be construed to alter or affect the jurisdiction of the State of Washington under section 1162 of title 18, United States Code.*

*"(2) Notwithstanding any other provision of law, the Frank's Landing Indian Community shall not engage in any class III gaming activity (as defined in section 3(8) of the Indian Gaming Regulatory Act of 1988 (25 U.S.C. 2703(8)).".*

***SEC. 9. RECONVEYANCE OF CERTAIN EXCESS LANDS.***

*(a) IN GENERAL.—The Congress finds that the Sac and Fox Nation of Oklahoma has determined the lands described in subsection (b) to be excess to their needs and should be returned to the original Indian grantors or their heirs. The Secretary of the Interior is authorized to accept transfer of title from the Sac and Fox Nation of Oklahoma of its interest in the lands described in subsection (b).*

*(b) PERSONS AND LANDS.—The lands and individuals referred to in subsection (a) are as follows:*

*(1) To the United States of America in trust for Sadie Davis, now Tyner, or her heirs or devisees, the Surface and Surface Rights only in and to the SE¼SE¼SE¼SE¼ of section 28, Township 17 North, Range 6 East of the Indian Meridian, Lincoln County, Oklahoma, containing 2.50 acres, more or less.*

*(2) To the United States of America in trust for Mabel Wakole, or her heirs or devisees, the Surface and Surface Rights only in and to the NE¼NE¼ of Lot 6 of NW¼ of section 14, Township 11 North, Range 4 East of the Indian Meridian, Pottawatomie County, Oklahoma, containing 2.50 acres, more or less.*

***SEC. 10. TITLE I OF PUBLIC LAW 97–459, PERTAINING TO THE DEVILS LAKE SIOUX TRIBE.***

*Paragraph (1) of section 108(a) of title I of Public Law 97–459 (96 Stat. 2515) is amended by striking out "of the date of death of the decedent" and inserting in lieu thereof "after the date on which the Secretary's determination of the heirs of the decedent becomes final".*

***SEC. 11. NORTHERN CHEYENNE LAND TRANSFER.***

*(a) IN GENERAL.—Notwithstanding any contrary provision of law, the Secretary of the Interior or an authorized representative of the Secretary (referred to in this section as the "Secretary") is hereby authorized and directed to transfer by deed to Lame Deer High School District No. 6, Rosebud County, Montana (referred to in this section as the "School District"), all right, title, and interest of the United States and the Northern Cheyenne Tribe (referred to in this section as the "Tribe") in and to the lands described in this subsection (referred to in this section as "Subject Lands"), to be held and used by the School District for the exclusive purpose of constructing and operating thereon a public high school and related facilities. The Subject Lands consist of a tract of approximately 40 acres within the Northern Cheyenne Indian Reservation, more particularly described as follows:*

*A tract of land located in the W½ SE¼ and the E½ SW¼ of section 10, Township 3 South, Range 41 East, M.P.M., described as follows: Beginning at the south ¼ corner of said section 10, thence south 89 degrees 56 minutes west 393.31 feet on and along the south line of said section 10 to the true point of beginning, thence south 89 degrees 56 minutes west 500.0 feet on and along said section line, thence north 00 degrees 00 minutes east, 575.0 feet, thence north 54 degrees 9 minutes 22 seconds east 2382.26 feet, thence south 23 degrees 44 minutes 21 seconds east 622.56 feet, thence south 51 degrees 14 minutes 40 seconds west 2177.19 feet to the true point of beginning, containing in all 40.0 acres, more or less.*

*(b) DEED AND LEASE.—*

*(1) IN GENERAL.—The deed issued under this section shall provide that—*

*(A) title to all coal and other minerals, including oil, gas, and other natural deposits, within the Subject Lands shall remain in the Secretary in trust for the Tribe, as provided in Public Law 90–424 (82 Stat. 424);*

*(B) the Subject Lands may be used for the purpose of constructing and operating a public high school and related facilities thereon, and for no other purpose;*

*(C) title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe, and the deed shall be of no further force or effect, if, within 8 years after the date of the deed, classes have not commenced in a permanent public high school facility established on the Subject Lands, or if such classes commence at the facility within such 8-year period, but the facility subsequently permanently ceases operating as a public high school; and*

*(D) at any time after the conclusion of the current litigation (commenced before the date of enactment of this Act and including all trial and, if any, appellate proceedings) challenging the November 9, 1993, decision of the Superintendent of Public Instruction for the State of Montana granting the petition to create the School District, and with the prior approval of the Superintendent of Public Instruction (referred to in this section as the "Superintendent's Approval"), the Tribe shall have the right to replace the deed with a lease covering the Subject Lands issued under section 1(a) of the Act of August 9, 1955 (69 Stat. 539, chapter 615; 25 U.S.C. 415(a)) having a term of 25 years, with a right to renew for an additional 25 years.*

*(2) CONDITIONS OF LEASE.—Under the lease referred to in paragraph (1)(D), the Subject Lands shall be leased rent free to the School District for the exclusive purpose of constructing and operating a public high school and related facilities thereon. The lease shall terminate if, within 8 years after the date of the deed, classes have not commenced in a permanent public high school facility established on the Subject Lands, or if such classes commence at the facility within such 8-year period, but the facility subsequently permanently ceases operating as a public high school. In the event the Tribe seeks and obtains the Superintendent's Approval, the Tribe may tender a lease, signed by the Tribe and approved by the Secretary, which complies with the provisions of this subsection. Upon such tender, the deed shall be of no further force or effect, and, subject to the leasehold interest offered to the School District, title to the Subject Lands, free and clear of all liens and encumbrances, shall automatically revert to the Secretary in trust for the Tribe. The Tribe may at any time irrevocably relinquish the right provided to it under this subsection by resolution of the Northern Cheyenne Tribal Council explicitly so providing.*

*(c) EFFECT OF ACCEPTANCE OF DEED.—Upon the School District's acceptance of a deed delivered under this section, the School District, and any party who may subsequently acquire any right, title, or interest of any kind whatsoever in or to the Subject Lands by or through the School District, shall be subject to, be bound by, and comply with all terms and conditions set forth in subparagraphs (A) through (D) of subsection (b)(1).*

***SEC. 12. INDIAN AGRICULTURE AMENDMENT.***

*(a) LEASING OF INDIAN AGRICULTURAL LANDS.—Section 105 of the American Indian Agriculture Resource Management Act (25 U.S.C. 3715) is amended—*

*(1) in subsection (b)—*

*(A) by striking "and" at the end of paragraph (3);*

*(B) by striking the period at the end of paragraph (4) and inserting "; and"; and*

*(C) by adding at the end the following new paragraph:*

*"(5) shall approve leases and permits of tribally owned agricultural lands at rates determined by the tribal governing body."; and*

*(2) in subsection (c), amending paragraph (1) to read as follows:*

*"(1) Nothing in this section shall be construed as limiting or altering the authority or right of an individual allottee or Indian tribe in the legal or beneficial use of his, her, or its own land or to enter into an agricultural lease of the surface interest of his, her, or its allotment or land under any other provision of law.".*

*(b) TRIBAL IMMUNITY.—The American Indian Agriculture Resource Management Act (25 U.S.C. 3701 et seq.) is amended by adding at the end the following new section:*

***"SEC. 306. TRIBAL IMMUNITY.***

*"Nothing in this Act shall be construed to affect, modify, diminish, or otherwise impair the sovereign immunity from suit enjoyed by Indian tribes.".*

**SEC. 13. SAN CARLOS APACHE WATER RIGHTS SETTLEMENT ACT OF 1992.**

*Section 3711(b)(1) of title XXXVII of the San Carlos Apache Tribe Water Rights Settlement Act of 1992 (106 Stat. 4752) is amended by striking "December 31, 1994" and inserting "December 31, 1995".*

**SEC. 14. RELATIONSHIP BETWEEN BUY INDIAN ACT AND MENTOR-PROTEGE PROGRAM.**

*Section 23 of the Act of June 25, 1910 (36 Stat. 861; 25 U.S.C. 47; commonly referred to as the "Buy Indian Act"), is amended by adding at the end the following: "Participation in the Mentor-Protege Program established under section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note) or receipt of assistance pursuant to any developmental assistance agreement authorized under such program shall not render Indian labor or Indian industry ineligible to receive any assistance authorized under this section. For the purposes of this section—*

*"(1) no determination of affiliation or control (either direct or indirect) may be found between a protege firm and its mentor firm on the basis that the mentor firm has agreed to furnish (or has furnished) to its protege firm pursuant to a mentor-protege agreement any form of developmental assistance described in subsection (f) of section 831 of the National Defense Authorization Act for Fiscal Year 1991 (10 U.S.C. 2301 note); and*

*"(2) the terms 'protege firm' and 'mentor firm' have the meaning given such terms in subsection (c) of such section 831.".*

**SEC. 15. ACQUISITION OF LANDS ON WIND RIVER RESERVATION.**

*(a) AUTHORITY TO HOLD LANDS IN TRUST FOR THE INDIVIDUAL TRIBE.—The Secretary of the Interior is hereby authorized to acquire individually in the name of the United States in trust for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation or the Northern Arapaho Tribe of the Wind River Reservation, as appropriate, lands or other rights when the individual assets of only one of the tribes is used to acquire such lands or other rights.*

*(b) LANDS REMAIN PART OF JOINT RESERVATION SUBJECT TO EXCLUSIVE TRIBAL CONTROL.—Any lands acquired under subsection (a) within the exterior boundaries of the Wind River Reservation shall remain a part of the Reservation and subject to the joint tribal laws of the Reservation, except that the lands so acquired shall be subject to the exclusive use and control of the tribe for which such lands were acquired.*

*(c) INCOME.—The income from lands acquired under subsection (a) shall be credited to the tribe for which such lands were acquired.*

*(d) SAVINGS PROVISION.—Nothing in this section shall be construed to prevent the joint acquisition of lands for the benefit of the Eastern Shoshone Tribe of the Wind River Reservation and the Northern Arapaho Tribe of the Wind River Reservation.*

**SEC. 16. ADVANCED TRAINING AND RESEARCH.**

*Section 111 of the Indian Health Care Improvement Act (25 U.S.C. 1616d) is amended—*

*(1) in subsection (a)—*

*(A) by striking "who have worked in an Indian health program (as defined in section 108(a)(2)) for a substantial period of time"; and*

*(B) by adding at the end the following new sentence: "In selecting participants for a program established under this subsection, the Secretary, acting through the Service, shall give priority to applicants who are employed by the Indian Health Service, Indian tribes, tribal organizations, and urban Indian organizations, at the time of the submission of the applications."; and*

*(2) in subsection (b), by inserting after "Indian health program" the following: "(as defined in section 108(a)(2))".*

*(d) NURSING RESIDENCY PROGRAM.—Section 118(b) of such Act (25 U.S.C. 1616k(b)) is amended by inserting before the period the following: "or a Master's degree".*

**SEC. 17. REDESIGNATION OF YAKIMA INDIAN NATION TO YAKAMA INDIAN NATION.**

*(a) REDESIGNATION.—The Confederated Tribes and Bands of the Yakima Indian Nation shall be known and designated as the "Confederated Tribes and Bands of the Yakama Indian Nation".*

*(b) REFERENCES.—Any reference in a law (including any regulation), map, document, paper, or other record of the United States to Confederated Tribes and Bands of the Yakima Indian Nation referred to in subsection (a) shall be deemed to be a reference to the "Confederated Tribes and Bands of the Yakama Indian Nation".*

**SEC. 18. EXPENDITURE OF JUDGMENT FUNDS.**

*Notwithstanding any other provision of law, or any distribution plan approved pursuant to the Indian Tribal Judgment Funds Use or Distribution Act (25 U.S.C. 1401 et seq.), the Secretary of the Interior may reprogram, in accordance with the letter of Charles Dawes, the Chief of the Ottowa Tribe of Oklahoma, to the Bureau of Indian Affairs, Muskogee Area Office, dated September 21, 1993, and the accompanying Resolution that was approved by the Business Committee of the Ottawa Tribe of Oklahoma August 19, 1993, the specific changes in the Secretarial Plan that became effective on June 14, 1983, for the use of funds that were awarded in satisfaction of judgments in final awards by the Indian Claims Commission for claims with the following docket numbers: 133–A, 133–B, 133–C, 302, and 338.*

**SEC. 19. APPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

*The activities of the Department of the Interior associated with the Department's consultation with Indian organizations related to the management by the United States for Indian tribes shall be exempt from the Federal Advisory Committee Act (5 U.S.C. App.).*

**SEC. 20. POKAGON POTAWATOMI MEMBERSHIP LIST.**

*The Act entitled "An Act to restore Federal services to the Pokagon Band of Potawatomi Indians", approved September 21, 1994 (Public Law 103–323) is amended—*

*(1) by redesignating section 9 as section 10; and*

*(2) by inserting after section 8 the following new section:*

**"SEC. 9. MEMBERSHIP LIST.**

*"(a) LIST OF MEMBERS AS OF SEPTEMBER 1994.—Not later than 120 days after the date of enactment of this Act, the Bands shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the respective Bands.*

*"(b) LIST OF INDIVIDUALS ELIGIBLE FOR MEMBERSHIP.—*

*"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Bands shall submit to the Secretary membership rolls that contain the names of all individuals eligible for membership in such Bands. Each such Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band that determine the qualifications for inclusion in the membership roll of the Band.*

*"(2) PUBLICATION OF NOTICE.—At such time as the rolls have been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such rolls.*

*"(3) MAINTENANCE OF ROLLS.—The Bands shall ensure that the rolls are maintained and kept current.".*

**SEC. 21. ODAWA AND OTTAWA MEMBERSHIP LISTS.**

*The Little Traverse Bay Bands of Odawa and the Little River Band of Ottawa Indians Act (Public Law 103–324) is amended by adding at the end the following new section:*

**"SEC. 9. MEMBERSHIP LIST.**

*"(a) LIST OF PRESENT MEMBERSHIP.—Not later than 120 days after the date of enactment of this Act, the Band shall submit to the Secretary a list of all individuals who, as of September 21, 1994, were members of the Band.*

*"(b) LIST OF INDIVIDUALS ELIGIBLE FOR MEMBERSHIP.—*

*"(1) IN GENERAL.—Not later than 18 months after the date of enactment of this Act, the Band shall submit to the Secretary membership rolls that contain the names of all individuals eligible for membership in such Band. The Band, in consultation with the Secretary, shall determine whether an individual is eligible for membership in the Band on the basis of provisions in the governing documents of the Band that determine the qualifications for inclusion in the membership roll of the Band.*

*"(2) PUBLICATION OF NOTICE.—At such time as the rolls have been submitted to the Secretary, the Secretary shall immediately publish in the Federal Register a notice of such rolls.*

*"(3) MAINTENANCE OF ROLLS.—The Band shall ensure that the rolls are maintained and kept current.".*

**SEC. 22. INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.**

*(a) IN GENERAL.—The Indian Self-Determination Act is amended—*

*(1) in section 107(b)(2) (25 U.S.C. 450k(b)(2)), by striking "Committee on Interior and Insular Affairs" and inserting "Committee on Natural Resources";*

*(2) in section 301 (25 U.S.C. 450f note), by striking "eight" and inserting "18"; and*

*(3) in section 302(a) (25 U.S.C. 450f note), by striking "The Secretaries" and inserting "For each fiscal year, the Secretaries".*

*(b) ADVISORY COMMITTEES.—The Indian Self-Determination and Education Assistance Act Amendments of 1990 (title II of Public Law 101–644) is amended by adding at the end the following new section:*

**"SEC. 204. TRIBAL AND FEDERAL ADVISORY COMMITTEES.**

*"Notwithstanding any other provision of law (including any regulation), the Secretary of the Interior and the Secretary of Health and Human Services are authorized to jointly establish and fund advisory committees or other advisory bodies composed of members of Indian tribes or members of Indian tribes and representatives of the Federal Government to ensure tribal participation in the implementation of the Indian Self-Determination and Education Assistance Act (Public Law 93–638).".*

**SEC. 23. CROW BOUNDARY SETTLEMENT.**

*Section 6(c) of the Crow Boundary Settlement Act of 1994 is amended to read as follows:*

*"(c) INVESTMENT.—At the request of the Secretary, the Secretary of the Treasury shall invest all sums deposited into, accruing to, and remaining in, the Crow Tribal Trust Fund in accordance with the first section of the Act of February 12, 1929 (45 Stat. 1164, chapter 178, 25 U.S.C. 161a).".*

AMENDMENT NO. 2613

(Purpose: To make a technical correction)

AMENDMENT NO. 2614

(Purpose: To clarify statutory construction)

Mr. FORD. Mr. President, on behalf of Senator INOUYE, I send two technical amendments to the desk en bloc and ask for their immediate consideration en bloc.

The PRESIDING OFFICER. The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Kentucky [Mr. FORD] for Mr. INOUYE proposes amendments en bloc numbered 2613 and 2614.

The PRESIDING OFFICER. If there is no objection to the amendments, the amendments are agreed to.

So the amendments (No. 2613 and No. 2614) were agreed to, as follows:

AMENDMENT NO. 2613

In section 19—

(1) by inserting "tribes and" after "Department's consultation with Indian"; and

(2) by inserting "of funds held in trust" after "related to the management".

AMENDMENT NO. 2614

On page 26, between lines 3 and 4, insert the following new paragraph:

"(2) Nothing in this section may be construed to constitute the recognition by the United States that the Frank's Landing Indian Community is a federally recognized Indian tribe.

On page 26, line 4, strike "(2)" and insert "(3)".

The PRESIDING OFFICER. Are there further amendments to be made from the floor?

If not, the committee amendment is agreed to.

So the committee amendment, as amended, was agreed to.

The PRESIDING OFFICER. The bill is deemed read three times and passed.

So the bill (H.R. 4709), as amended, was deemed read three times and passed.

Mr. FORD. Mr. President, I move to reconsider the vote.

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

The motion to lay on the table was agreed to.

## MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

## EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

## MESSAGES FROM THE HOUSE

ENROLLED BILLS SIGNED

At 12:00 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the Speaker, has signed the following enrolled bills:

H.R. 3694. An act to amend title 5, United States Code, to permit the garnishment of an annuity under the Civil Service Retirement System or the Federal Employees' Retirement System, if necessary to satisfy a judgment against an annuitant for physically, sexually, or emotionally abusing a child.

H.R. 4299. An act to authorize appropriations for fiscal year 1995 for intelligence and intelligence-related activities of the United States Government, the Community management account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes.

H.R. 4543. An act to designate the United States courthouse to be constructed at 907 Richland Street in Columbia, South Carolina, as the "Matthew J. Perry, Jr. United States Courthouse".

The enrolled bills were subsequently signed by the President pro tempore (Mr. BYRD).

The message also announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H.Con.Res. 304. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of the bill S. 1312.

The message further announced that the House has passed the following bill, with an amendment, in which it requests the concurrence of the Senate:

S. 1146. An act to provide for the settlement of the water rights claims of the Yavapai-Prescott Indian Tribe in Yavapai County, Arizona, and for other purposes.

The message also announced that the House has passed the following bill, with amendments, in which it requests the concurrence of the Senate:

S. 656. An act to provide for indoor air pollution abatement, including indoor radon abatement, and for other purposes.

The message further announced that the House has passed the following bills, each without amendment:

S. 316. An act to expand the boundaries of the Saguaro National Monument in the State of Arizona, and for other purposes.

S. 1233. An act to resolve the status of certain lands in Arizona that are subject to a claim as a grant of public lands for railroad purposes, and for other purposes.

S. 1312. An act to amend the Employee Retirement Income Security Act of 1974 in order to provide for the availability of remedies for certain former pension plan participants and beneficiaries.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 2129. An act to amend the Trademark Act of 1946 to provide for the registration and protection of trademarks used in commerce in order to carry out provisions of certain international conventions, and for other purposes.

H.R. 2970. An act to reauthorize the Office of Special Counsel, and for other purposes.

H.R. 3612. An act to amend the Alaska Native Claims Settlement Act, and for other purposes.

H.R. 3613. An act entitled "The Kenai Natives Association Equity Act."

H.R. 4462. An act to provide for administrative procedures to extend Federal recognition to certain Indian groups, and for other purposes.

H.R. 4746. An act to provide for the exchange of lands within Gates of the Arctic National Park and Preserve, and for other purposes.

H.R. 4757. An act to provide for the settlement of the claims of the Confederated Tribes of the Colville Reservation concerning their contribution to the production of hydropower by the Grand Coulee Dam, and for other purposes.

H.R. 4777. An act to make technical improvements in the United States Code by amending provisions to reflect the current names of congressional committees.

H.R. 4814. An act to grant the consent of the Congress to amendments to the Central Midwest Interstate Low-Level Radioactive Waste Compact.

H.R. 4833. An act to reform the management of Indian Trust Funds, and for other purposes.

H.R. 4896. An act to grant the consent of the Congress to the Kansas and Missouri Metropolitan Culture District Compact.

H.R. 4944. An act to authorize the Secretary of the Interior to conduct studies regarding the desalination of water and water reuse, and for other purposes.

H.R. 5084. An act to amend title 13, United States Code, to improve the accuracy of census address lists, and for other purposes.

H.R. 5103. An act to amend title 31, United States Code, to provide for an Executive Director of the General Accounting Office Personnel Appeals Board, and for other purposes.

H.R. 5148. An act to authorize certain elements of the Yakima River Basin Water Enhancement Project, and for other purposes.

## ENROLLED BILL AND JOINT RESOLUTIONS SIGNED

At 7:32 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bill and joint resolutions:

H.R. 734. An act to amend the Act entitled "An Act to provide for the extension of certain Federal benefits, services, and assistance to the Pascua Yaqui Indians of Arizona, and for other purposes.".

S.J. Res. 157. Joint resolution to designate 1994 as "The Year of Gospel Music."

S.J. Res. 185. Joint resolution to designate October 1994 as "National breast Cancer Awareness Month."

S.J. Res. 198. Joint resolution designating 1995 as the "Year of the Grandparent."

The message also announced that the House disagrees to the amendment of the Senate to the bill (H.R. 4950) to extend the authorities of the Overseas Private Investment Corporation, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the House:

From the Committee on Foreign Affairs, for consideration of the House bill, and the Senate amendments, and modifications committed to conference: Mr. HAMILTON, Mr. GEJDENSON, Mr. OBERSTAR, Mr. GILMAN, and Mr. ROTH.

As additional conferees from the Committee on Energy and Commerce, for consideration of title IV of the House bill, and modifications committed to conference: Mr. DINGELL, Mrs. COLLINS of Illinois, and Mr. MOORHEAD.

The message further announced that the House insists upon its amendments to the bill (S. 21) to designate certain lands in the California Desert as wilderness, to establish Death Valley, Joshua Tree, and Mojave National Parks, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints the following Members as the managers of the conference on the part of the Houses:

From the Committee on Natural Resources, for consideration of the Senate bill and the House amendments, and modifications committed to conference: Mr. MILLER of California, Mr. VENTO, Mr. LEHMAN, Mr. RICHARDSON, Mr. FARR, Mr. RAHALL, Mr. YOUNG of Alaska, Mr. DOOLITTLE, Mr. CALVERT, and Mr. POMBO.

As additional conferees from the Committee on Armed Services, for consideration of title VIII of the Senate bill, and title VIII of the House amendment, and modifications committed to conference: Mr. DELLUMS, Mr. MCCURDY, and Mr. HUNTER.

As additional conferees from the Committee on Education and Labor, for consideration of section 901–904, 906, and 907 of the Senate bill, and modifications committed to conference: Mr. FORD of Michigan, Mr. CLAY, and Mr. MCKEON.

As additional conferees from the Committee on Merchant Marine and Fisheries, for consideration of title II, sections 103(e), 103(f), and 805(a)(2)(B) of the Senate bill, and sections 111, 113 and 804(a)(2)(B) of the House amendment, and modifications committed to conference: Mr. STUDDS, Ms. SCHENK and Mr. FIELDS of Texas.

As additional conferees from the Committee on Public Works and Transportation, for consideration of sections 901, 905, and 906 of the Senate bill, and modifications committed to conference: Mr. MINETA, Mr. WISE, and Mr. SHUSTER.

## MEASURES REFERRED

The following bills, previously received from the House, were referred as indicated:

H.R. 4460. An act to provide for conservation and development of water and related resources, to authorize the Secretary of the Army to construct various projects for improvements to rivers and harbors of the United States, and for other purposes; to the Committee on Environment and Public Works.

H.R. 4683. An act to amend the Solid Waste Disposal Act to provide congressional authorization of State control over transportation of municipal solid waste, and for other purposes; to the Committee on Environment and Public Works.

## MEASURES PLACED ON THE CALENDAR

The following bill was read the first and second times by unanimous consent, and ordered placed on the Calendar:

H.R. 4944. An act to authorize the Secretary of the Interior to conduct studies regarding the desalination of water and water reuse, and for other purposes.

## ENROLLED BILL PRESENTED

The Secretary of the Senate reported that on October 4, 1994 she had presented to the President of the United States, the following enrolled bill:

S. 1587. An act to revise and streamline the acquisition laws of the Federal Government, and for other purposes.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BAUCUS, from the Committee on Environment and Public Works, with an amendment in the nature of a substitute:

H.R. 4598. A bill to direct the Secretary of the Interior to make technical corrections to maps relating to the Coastal Barrier Resources System (Rept. No. 103–398).

By Mr. INOUYE, from the Committee on Indian Affairs, with an amendment in the nature of a substitute:

H.R. 4709. A bill to make certain technical corrections, and for other purposes.

## EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

Lori Esposito Murray, of Connecticut, to be an Assistant Director of the U.S. Arms Control and Disarmament Agency.

Thomas E. McNamara, of the District of Columbia, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be an Assistant Secretary of State.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

By Mr. LEAHY, from the Committee on Agriculture, Nutrition, and Forestry:

Marsha P. Martin, of Texas, to be a Member of the Farm Credit Administration Board, Farm Credit Administration, for the term expiring October 13, 2000.

(The above nomination was reported with the recommendation that she be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. COCHRAN:

S. 2496. A bill to amend the Federal Power Act to modify an exemption relating to the territory for the sale of electric power of certain electric transmission systems, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. SPECTER:

S. 2497. A bill to extend the deadlines under the Federal Power Act applicable to a hydroelectric project in Pennsylvania, and for other purposes; to the Committee on Energy and Natural Resources.

By Mr. D'AMATO:

S. 2498. A bill to award a congressional gold medal to Rabbi Menachem Mendal Schneerson; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. PELL:

S. 2499. A bill to amend the National Labor Relations Act to permit the establishment of labor-management organizations to carry out certain activities with respect to labor and management relations, and for other purposes; to the Committee on Labor and Human Resources.

By Mr. LEAHY (for himself, Mr. SIMPSON, Mr. WALLOP, Mr. CRAIG, Mr. KEMPTHORNE, Mr. CAMPBELL, Mr. BURNS, Mr. BAUCUS, Mr. BINGAMAN, Mr. CONRAD, Mr. DASCHLE, Mr. DOMENICI, Mr. DORGAN, Mrs. HUTCHISON, Mr. KERREY, Mr. PRESSLER, Mr. WOFFORD, and Mr. HATCH):

S. 2500. A bill to enable producers and feeders of sheep and importers of sheep and sheep products to develop, finance, and carry out a nationally coordinated program for sheep and sheep product promotion, research, and information, and for other purposes; considered and passed.

## SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MCCAIN (for himself and Mr. DECONCINI):

S. Res. 273. A resolution to express the sense of the Senate in commemoration of the 75th anniversary of Grand Canyon National Park; considered and agreed to.

By Mr. LEAHY (for himself, Mr. KERRY, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. METZENBAUM, Mr. JEFFORDS, Mr. BOREN, Mr. INOUYE, Mr. DASCHLE, Mr. AKAKA, Mr. HARKIN, and Mr. PELL):

S. Con. Res. 77. A concurrent resolution expressing the sense of the Congress regarding the United States position on the disinsection of aircraft at the 11th meeting of the Facilitation Division of the International Civil Aviation Organization; considered and agreed to.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. COCHRAN:

S. 2496. A bill to amend the Federal Power Act to modify an exemption relating to the territory for the sale of

electric power of certain electric transmission systems, and for other purposes; to the Committee on Energy and Natural Resources.

THE 4-COUNTY ELECTRIC POWER ASSOCIATION ACT OF 1994

• Mr. COCHRAN. Mr. President at the request of an electric power association in my State, I am introducing a bill which amends the Federal Power Act to modify an exemption that currently exists within the act.

The board of directors of the 4-County Electric Power Association of Mississippi recently passed a resolution urging Congress to amend the Federal Power Act so that an exemption that currently exists within the act would apply to it. The reason this exemption is necessary is very simple: 4-County Power would like to purchase its power from a source other than the Tennessee Valley Authority [TVA].

4-County Power currently has a contract with TVA to purchase power from it. The contract allows 4-County Power to cancel the contract and purchase power from a producer other than TVA, provided that TVA is given 10 years notice of termination. 4-County Power gave this notice in December of 1993, but is eager to purchase power from a source other than TVA sooner than the year 2003.

4-County Power is not going to harm TVA; indeed, TVA has done much to help my region. Rather, 4-County Power is acting because it believes it can purchase power from other producers for less money than it is paying TVA, and for less money than it will likely have to pay TVA in the future. By seeking to provide residents of Mississippi with the least expensive power available, the board of directors of 4-County Power is acting with the best of intentions. This legislation should not be taken as criticism of TVA; instead, it should be viewed as a way to provide people with lower electric bills every month.

The area served by 4-County Power is small, and its absence will not be felt by TVA or noticed when formulating the rate base. But the effect of switching to a less expensive source of power will be great in my State—people will have more to spend, save, and invest, and cheaper power will make it easier to attract new businesses to the region.

I ask unanimous consent that the bill and the resolution of the board of the 4-County Electric Power Association be printed in the RECORD.

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

S. 2496

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. MODIFICATION OF EXEMPTION.**

Section 212(j) of the Federal Power Act (16 U.S.C. 824k(j)) is amended by striking out "October 1, 1991" and inserting in lieu thereof "December 31, 1993".

RESOLUTION OF BOARD OF DIRECTORS OF 4-COUNTY ELECTRIC POWER ASSOCIATION

Whereas, on October 24, 1992, the Congress of the United States of America enacted the "Energy Policy Act of 1992" amending, in part, the "Federal Power Act"; and,

Whereas, the Tennessee Valley Authority, under the provisions of the Energy Policy Act of 1992, is not required to provide open transmission access to any of TVA's 160 wholesale distribution customers, with the exception of Bristol, Virginia; and,

Whereas, Bristol, Virginia, enjoys this unique position by having notified TVA prior to October 1, 1991, of termination under its Power Supply Contract and by prevailing on Congress to include the following specific language in §722 of the Energy Policy Act of 1992, amending §212(j) of the Federal Power Act:

"*Provided, however,* That the foregoing provision shall not apply to any area served at retail by electric transmission system which was such a distributor on the date of enactment of this subsection and which before October 1, 1991, gave its notice of termination under its Power Supply Contract with such electric utility."

and,

Whereas, 4-County Electric Power Association gave its notice of termination under its Power Supply Contract with TVA on December 6, 1993, and is the only TVA distributor, other than Bristol, Virginia, having given TVA notice of termination of its Power Supply Contract; and,

Whereas, 4-County Electric Power Association, desires Congress to amend the Energy Policy Act of 1992, amending the Federal Power Act, to change the date as recited above to December 31, 1993;

*Now, therefore, be it resolved:* That Congress is urged to amend §722 of the Energy Policy Act of 1992, so as to amend the last sentence of Subsection 212(j) of the Federal Power Act (16 U.P.S.C. §824K(j)) as added by §722 of the Energy Policy Act of 1992 (P.L. 102-486, 106 Stat. 2916) to read as follows:

"*Provided, however,* That the foregoing provision shall not apply to any area served at retail by electric transmission system which was such a distributor on the date of enactment of this subsection and which before December 31, 1993, gave its notice of termination under its Power Supply Contract with such electric utility."•

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By Mr. SPECTER:

S. 2497. A bill to extend the deadlines under the Federal Power Act applicable to a hydroelectric project in Pennsylvania, and for other purposes; to the Committee on Energy and Natural Resources.

THE ALLEGHENY RIVER HYDROELECTRIC POWER PROJECT ACT

• Mr. SPECTER. Mr. President, I am pleased to introduce this legislation, which would extend the deadline for construction of a hydroelectric power project on the Allegheny River. This extension is necessary because the Allegheny North Council of Governments and the Borough of Cheswick received a license from the Federal Energy Regulatory Commission and must commence construction prior to April 15, 1995 or face the loss of their license under the Federal Power Act. On many occasions, Congress has granted similar noncontroversial extensions to licensees for projects in other States.

The licensees in this case have been negotiating on power sales agreements, but have not yet been able to finalize these arrangements. This legislation would provide additional time for the municipal licensees to conclude their negotiations with potential power purchasers. If Congress fails to enact this legislation, the hydroelectric potential of the Allegheny River will remain not fully developed.

The Allegheny project is one of several projects licensed for development along the Upper Ohio River Basin. Construction of this licensed power plant would permit Pennsylvania to use previously untapped hydroelectric energy, creating substantial environmental benefits and jobs for local residents.

I urge my colleagues to support this legislation.•

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By Mr. D'AMATO:

S. 2498. A bill to award a congressional gold medal to Rabbi Menachem Mendel Schneerson; to the Committee on Banking, Housing, and Urban Affairs.

CONGRESSIONAL GOLD MEDAL LEGISLATION

Mr. D'AMATO. Mr. President, I introduce a bill to award a Congressional Gold Medal to Lubavitcher Grand Rebbe Menachem Schneerson.

The Grand Rebbe for over 40 years, made generous and lasting contributions to the cause of peace and understanding in the United States and in the world, through his selfless acts of kindness and education. His dedication to enriching the lives of our youth is an enduring part of his legacy.

His generosity, his kindness, and his care for his fellow human beings was what made him such a revered leader. As such, the awarding of a Congressional Gold Medal, would be a just honor to the memory of his good deeds and his good works. I can think of no other man more deserving of such an award. I encourage my colleagues to support this legislation and award the memory of the Rebbe with a Congressional Gold Medal.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2498

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. FINDINGS.**

The Congress hereby finds the following:

(1) Rabbi Menachem Mendel Schneerson, the leader of the Lubavitch movement for 40 years, has made outstanding and lasting contributions toward improvements in world education, morality, and acts of charity.

(2) Rabbi Menachem Mendel Schneerson, as a refugee first from Stalinist Russia and then from Nazi Germany, has made the headquarters of the Chabad-Lubavitch movement in New York City a center of over 2,000 educational, social, and rehabilitative institutions touching millions of people from all walks of life in every corner of the globe.

(3) Rabbi Menachem Mendel Schneerson, throughout his 92 years of life, has exemplified the highest ideals of scholarship, teaching, ethics, and charity.

(4) Rabbi Menachem Mendel Schneerson has interpreted with keen insight the miraculous events of our time and has inspired people to a renewal of individual value of spirituality, cooperation, and love of learning.

(5) Rabbi Menachem Mendel Schneerson's extraordinary life and work have long been recognized by the Congress through the enactment of joint resolutions designating his birthday in each of the last 16 years as "Education and Sharing Day, U.S.A.".

**SEC. 2. CONGRESSIONAL GOLD MEDAL.**

(a) PRESENTATION AUTHORIZED.—The President is authorized to present, on behalf of the Congress, to the Lubavitcher rebbe, Rabbi Menachem Mendel Schneerson, a gold medal of appropriate design, in recognition of his outstanding and enduring contributions toward world education, morality, and acts of charity.

(b) DESIGN AND STRIKING.—For purposes of the presentation referred to in subsection (a), the Secretary of the Treasury shall strike a gold medal with suitable emblems, devices, and inscriptions reflecting the theme of education to be determined by the Secretary.

(c) GIFTS OR DONATIONS.—

(1) IN GENERAL.—The Secretary of the Treasury shall accept, use, and disburse gifts or donations of property or money to carry out this section.

(2) NO APPROPRIATION AUTHORIZED.—No amount is authorized to be appropriated to carry out this section.

**SEC. 3. DUPLICATE MEDALS**

The Secretary of the Treasury may strike and sell duplicates in bronze of the gold medal struck pursuant to section 1 under such regulations as the Secretary may prescribe, at a price sufficient to cover the cost thereof, including labor, materials, dies, use of machinery, and overhead expenses, and the cost of the gold medal.

**SEC. 4. NATIONAL MEDALS**

The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

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By Mr. PELL:

S. 2499. A bill to amend the National Labor Relations Act to permit the establishment of labor-management organizations to carry out certain activities with respect to labor and management relations, and for other purposes; to the Committee on Labor and Human Resources.

THE WORKER-MANAGEMENT RELATIONS FOR THE 21ST CENTURY ACT OF 1994

• Mr. PELL. Mr. President, in 1935, Congress created the National Labor Relations Board [NLRB] as part of the National Labor Relations Act. The goal of this legislation was to amend failed labor legislation passed only a few years earlier. Legislative efforts, enacted in 1933, to provide workers with certain bargaining rights had since been co-opted by management with the creation of Employee Representation Plan [ERP's], or, works council's which claimed to offer collective bargaining rights to workers. In practice, however, these employer-dominated committees offered workers very little protection and very few rights. These management-run committees rarely met and generally served as rubber stamps for employer demands.

In response to this situation, what is now known as section 8(a)(2) of the National Labor Relations Act was precisely drafted to provide collective bargaining rights to employees while shielding them from the management-controlled organizations prevalent in years past.

The creation of such an uncompromising wall between labor and management with very explicit avenues of dialog between the two worked very well for a long time.

It is, however, no longer the best method. As a nation, we now find ourselves involved in a global economy competing with other countries, not other companies. In addition, much of our trade is very high technology in nature. We no longer live in a time when, all day, every day, a worker inserts tab A into slot B. Today, workers must be well trained in high-technology skills. It is no longer good enough to produce in quantity, now we must also produce with quality.

In order to meet these new demands, employers and employees must work together. The men and women on the line know, through experience, how to produce better, smarter, faster, and cheaper, vital information for any enlightened, competition-minded manager.

There is plenty of anecdotal evidence that when employers, and employees begin to work together, everyone benefits. Management realizes good news at the bottom of the balance sheet and increased production of better manufactured products. Employees have a greater role in their work and they feel empowered; they're part of the team.

Unfortunately, Federal labor law makes this cooperation difficult at the least and impossible at best. How we change our labor law to allow what works in the shade to flourish in the sunlight is a very important question that must be honestly debated. Before considering this question, however, everyone concerned, labor and management. Democrats and Republicans, must agree to come to the debate with open minds.

By its very nature, worker-management cooperation means a certain loss of control and power. Management and labor must, together, break down the walls, both real and imagined, that have dominated their working relationship for the past 60 years. Management will need to deal with employees as partners and consider its workers as assets to be treasured and conserved.

At the same time, labor will need to reconsider how it views management. They must no longer see them as the enemy to be fought.

The creation of this new mutually beneficial relationship must address some legitimate concerns. For the past 60 years, collective bargaining has been successful only because of the tension created by the collective bargaining process. Labor and management have held a certain amount of power over the other, including labor's right to strike. With the creation of new partnerships, new roles must be determined.

This new relationship of partners will require employers to look on their employees in a different light. Far too often, employees have been viewed by companies as less than an asset. During tough business periods, employees are discharged in an effort to balance the books. That must change. If good labor-management relationships are to succeed, employees must be seen as being important to the company. A good, well-trained employee is as much an asset to a company as is a high technology lathe or an 18-wheel truck; neither of which can work without a good, well-trained employee.

This change in attitude will be long and sometimes difficult. While it will take some time to institutionalize labor-management cooperation, in the short run, we should help those employers and employees who have already agreed to join together. Unfortunately, current law makes such efforts difficult.

In that regard, I am introducing the Worker-Management Relations for the 21st Century Act of 1994 as a first step in this long process. This bill amends the National Labor Relations Act to allow employers and employees to form joint committees for the purposes of discussing workplace related issues. It is important for me to point out that a critical aspect of this bill is that both, let me repeat, both the employer and the employees must agree to form these committees. Anything less would catapult labor relations backward, not move it forward.

As I said, this bill is a first step. Later this year, the Commission on the Future of Worker-Management Relations—which was formed at the request of President Clinton, and was charged by the Secretary of Labor and the Secretary of Commerce to "investigate the current state of worker-management relations in the United States"—will release its final report. Included in that report will be legislative suggestions to address the state of employee-employer relations.

It is my hope my bill will help to clear the way for the Commission's report.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2499

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Worker-Management Relations for the 21st Century Act of 1994".

**SEC. 2. FINDINGS.**

Congress finds that—

(1) ever increasing foreign competition, rapidly changing technology, and shifting consumer demand are radically transforming the way American businesses compete in global markets;

(2) old style mass production and centralized management are increasingly being replaced by individual and flexible methods of doing business;

(3) the new business environment places more demands on the talents, ingenuity, and dedication of American workers;

(4) today, the best managed organizations give real responsibility to production line employees, give workers a real stake in the success of the organization, make training and education a high priority, and offer a safe and stable work environment;

(5) past joint employee-management efforts have been rewarding for both employees and employers; and

(6) current labor relations laws make employee-employer cooperation difficult.

**SEC. 3. PURPOSES.**

It is the purpose of this Act to—

(1) preserve existing labor protections in current labor relations laws;

(2) provide an avenue for workers and management to join together to create a more productive work environment; and

(3) offer an alternative to employees and employers who wish to join together to discuss various issues of concern and interest.

**SEC. 4. LABOR-MANAGEMENT WORKPLACE COMMITTEES.**

(a) IN GENERAL.—Section 8(a)(2) of the National Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by inserting before the semicolon at the end thereof the following: "*Providing further*, That it shall not constitute or be evidence of an unfair labor practice under this paragraph for an employer and the employees of such employer, or the labor organizations representing the employees of such employer, to jointly establish a committee, in which such employer and such employees participate to discuss matters of interest and concern (including but not limited to issues of quality, productivity, improve labor-management relations, job security, organizational efficiency and enhanced economic development);"

(b) COMPOSITION.—Section 8(a) of the National Labor Relations Act (29 U.S.C. 158(a)) is amended by adding at the end the following new flush sentence:

"A committee described in paragraph (2) shall be composed of an equal number of employees (who shall be selected by the employees through an election by popular vote) and management officials. An employer or an employee of such employer may propose the establishment of a committee described in paragraph (2), but such committee may only be established upon the agreement of both the employer and a majority of employees. Such committee shall be subject to an agenda and rules approved by the committee upon establishment, and all decisions of the committee shall become final only upon a vote of the majority of the members of the committee.".●

## ADDITIONAL COSPONSORS

S. 993

At the request of Mr. KEMPTHORNE, the name of the Senator from Maine [Mr. COHEN] was added as a cosponsor of S. 993, a bill to end the practice of imposing unfunded Federal mandates on States and local governments and to ensure that the Federal Government pays the costs incurred by those governments in complying with certain requirements under Federal statutes and regulations.

S. 1063

At the request of Mr. HATCH, the name of the Senator from West Virginia [Mr. ROCKEFELLER] was added as a cosponsor of S. 1063, a bill to amend the Employee Retirement Income Security Act of 1974 to clarify the treatment of a qualified football coaches plan.

S. 1677

At the request of Mr. HATFIELD, the name of the Senator from Ohio [Mr. METZENBAUM] was added as a cosponsor of S. 1677, a bill to prohibit United States military assistance and arms transfers to foreign governments that are undemocratic, do not adequately protect human rights, are engaged in acts of armed aggression, or are not fully participating in the United Nations Register of Conventional Arms.

S. 1770

At the request of Mr. BROWN, his name was withdrawn as a cosponsor of S. 1770, a bill to provide comprehensive reform of the health care system of the United States, and for other purposes.

S. 1772

At the request of Mr. GRAMM, the name of the Senator from Colorado [Mr. BROWN] was added as a cosponsor of S. 1772, a bill to reduce federal employment to the levels proposed in the Vice President's Report of the National Performance Review.

S. 1889

At the request of Mr. CHAFEE, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1889, a bill to amend title XIX of the Social Security Act to make certain technical corrections relating to physicians' services.

S. 2071

At the request of Mr. LIEBERMAN, the name of the Senator from Maryland [Mr. SARBANES] was added as a cosponsor of S. 2071, a bill to provide for the application of certain employment protection and information laws to the Congress and for other purposes.

S. 2183

At the request of Mrs. HUTCHISON, the name of the Senator from Georgia [Mr. COVERDELL] was added as a cosponsor of S. 2183, a bill to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the signing of the World War II peace accords on September 2, 1945.

S. 2330

At the request of Mr. ROCKEFELLER, the name of the Senator from North Dakota [Mr. DORGAN] was added as a cosponsor of S. 2330, a bill to amend title 38, United States Code, to provide that undiagnosed illnesses constitute diseases for purposes of entitlement of veterans to disability compensation for service-connected diseases, and for other purposes.

S. 2411

At the request of Mr. DOLE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 2411, a bill to amend title 10, United States Code, to establish procedures for determining the status of certain missing members of the Armed Forces and certain civilians, and for other purposes.

S. 2489

At the request of Mr. KENNEDY, the names of the Senator from Nebraska [Mr. KERREY], the Senator from Texas [Mrs. HUTCHISON], the Senator from Georgia [Mr. NUNN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from Oklahoma [Mr. BOREN], the Senator from Virginia [Mr. WARNER], the Senator from North Dakota [Mr. DORGAN], and the Senator from North Dakota [Mr. CONRAD] were added as cosponsors of S. 2489, a bill to reauthorize the Ryan White CARE Act of 1990, and for other purposes.

SENATE JOINT RESOLUTION 177

At the request of Mr. SIMON, the name of the Senator from Arizona [Mr. DECONCINI] was added as a cosponsor of Senate Joint Resolution 177, a joint resolution to designate the period of October 2, 1994, through October 8, 1994, as "Mental Illness Awareness Week."

SENATE JOINT RESOLUTION 182

At the request of Mr. JOHNSTON, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of Senate Joint Resolution 182, a joint resolution to designate the year 1995 as "Jazz Centennial Year."

SENATE JOINT RESOLUTION 186

At the request of Mr. PACKWOOD, the names of the Senator from North Carolina [Mr. HELMS] and the Senator from Washington [Mr. GORTON] were added as cosponsors of Senate Joint Resolution 186, a joint resolution to designate February 2, 1995, and February 1, 1996, as "National Women and Girls in Sports Day."

SENATE JOINT RESOLUTION 210

At the request of Mr. INOUYE, the names of the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Vermont [Mr. JEFFORDS], the Senator from Ohio [Mr. GLENN], the Senator from New York [Mr. D'AMATO], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 210, a joint resolution to designate the month of November 1994 as "National Native American Heritage Month."

SENATE JOINT RESOLUTION 219

At the request of Mr. LEAHY, the names of the Senator from North Dakota [Mr. CONRAD], the Senator from

California [Mrs. BOXER], the Senator from Nebraska [Mr. EXON], the Senator from Nevada [Mr. REID], the Senator from Tennessee [Mr. MATHEWS], the Senator from Pennsylvania [Mr. WOFFORD], the Senator from Idaho [Mr. CRAIG], and the Senator from Kansas [Mr. DOLE] were added as cosponsors of Senate Joint Resolution 219, a joint resolution to commend the United States rice industry, and for other purposes.

SENATE JOINT RESOLUTION 225

At the request of Mr. REID, the name of the Senator from Hawaii [Mr. INOUYE] was added as a cosponsor of Senate Joint Resolution 225, a joint resolution to designate February 5, 1995, through February 11, 1995, and February 4, 1996, through February 10, 1996, as "National Burn Awareness Week."

SENATE RESOLUTION 257

At the request of Mrs. KASSEBAUM, the name of the Senator from Mississippi [Mr. LOTT] was added as a cosponsor of Senate Resolution 257, a resolution to express the sense of the Senate regarding the appropriate portrayal of men and women of the Armed Forces in the upcoming National Air and Space Museum's exhibit on the *Enola Gay*.

## SENATE CONCURRENT RESOLUTION 77—RELATING TO THE DISINSECTION OF AIRCRAFT

Mr. LEAHY (for himself, Mr. KERRY, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. METZENBAUM, Mr. JEFFORDS, Mr. BOREN, Mr. INOUYE, Mr. DASCHLE, Mr. AKAKA, Mr. HARKIN, and Mr. PELL) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 77

Whereas the United States has a responsibility to protect the health and safety of United States air travelers in the United States and abroad;

Whereas the United States ended the practice of aircraft cabin disinsection 15 years ago after determining that the process was ineffective and posed a possible health risk to aircraft passengers;

Whereas the 27 countries require disinfection of aircraft cabins by the spraying of an insecticide while passengers are on board the aircraft or by a residual pesticide treatment which is not registered for use in the United States;

Whereas nearly 10,000,000 people fly every year from the United States to countries that require disinsection of aircraft;

Whereas United States pilots and flight attendants on flights to such countries are repeatedly exposed to the chemicals used in disinsection of aircraft;

Whereas approximately 53,000,000 Americans, more than 20 percent of the population, suffer chronic respiratory problems that put them at special risk to aircraft cabin disinsection procedures;

Whereas no tests have been conducted to determine whether insecticides used for aircraft cabin disinsection are safe for use in unventilated aircraft cabins or for people with chemical sensitivities or breathing conditions;

Whereas there has been a decrease in the number of insecticides registered for aircraft cabin disinsection by the Environmental Protection Agency by reason of the health concerns raised with respect to such insecticides, and there is no indication that insecticides produced in foreign countries which might serve to replace such insecticides present any less threat to health;

Whereas Annex 9 to the Convention on International Civil Aviation, done at Chicago, December 7, 1944, states that "Contracting States shall ensure that their procedures for disinsection or any other remedial measure are not injurious to the health of passengers and crew and cause the minimum of discomfort to them";

Whereas the Facilitation Division of the International Civil Aviation Organization is scheduled to meet in the Spring of 1995 to discuss changes to the standards set forth in Annex 9 to the Convention; and

Whereas the United States will be a participant at that meeting: Now, therefore, be it

*Resolved by the Senate (the House of Representatives concurring)*, That it is the sense of Congress that the United States delegation to the Spring 1995 meeting of the Facilitation Division of the International Civil Aviation Organization—

(1) seek to amend the Convention on International Civil Aviation, done at Chicago, December 7, 1944, to end aircraft disinsection practices that threaten the health of aircraft passengers and crew; and

(2) make every effort to gain the support and cosponsorship of other member nations of the organization in that amendment.

## SENATE RESOLUTION 273—RELATING TO THE 75TH ANNIVERSARY OF THE GRAND CANYON

Mr. MCCAIN (for himself and Mr. DECONCINI) submitted the following resolution; which was considered and agreed to:

S. RES. 273

Whereas the Grand Canyon of the Colorado River is a feature of enormous scientific interest and significance, whose unique geological, biological and cultural resources represent a natural laboratory of unparalleled diversity;

Whereas Grand Canyon National Park represents an integral part of the greater Colorado Plateau Ecosystem whose significance to the health of the natural systems of the American West increases with time;

Whereas the Grand Canyon of the Colorado River is one of the most spectacular examples of arid-land erosion anywhere in the world and reveals a geologic record whose significance is unparalleled;

Whereas Grand Canyon is a world Heritage Site and a natural feature of international significance whose aesthetic beauty reflects the aspirations of a free and independent people;

Whereas Grand Canyon National Park has received over 100 million visitors since its establishment in 1919 and continues to serve the people of the United States and the world in their need for a place of outstanding natural beauty and refuge;

Whereas Grand Canyon National Park was established by Act of Congress on February 26, 1919;

*Be it resolved* that the Senate of the United States of America on this date salutes Grand Canyon National Park and its custodians, the employees of the National Park Service, in honor of the park's 75th anniversary year.

## AMENDMENTS SUBMITTED

## FEDERAL FOOD, DRUG, AND COSMETIC ACT AMENDMENTS

### HEFLIN AMENDMENT NO. 2612

Mr. FORD (for Mr. HEFLIN) proposed an amendment to the bill (S. 340) to amend the Federal Food, Drug, and Cosmetic Act to clarify the application of the act with respect to alternate uses of new animal drugs and new drugs intended for human use, and for other purposes; as follows:

Strike all after the enacting clause, and insert in lieu there of the following:

**SECTION 1. SHORT TITLE.**

This Act may be cited as the "Animal Medicinal Drug Use Clarification Act of 1994".

**SEC. 2. UNAPPROVED USES.**

(a) GENERAL RULE.—Section 512(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(a)) is amended by adding the following new paragraphs at the end:

"(4)(A) Except as provided in subparagraph (B), if an approval of an application filed under subsection (b) is in effect with respect to a particular use or intended use of a new animal drug, the drug shall not be deemed unsafe for the purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a different use or intended use of the drug, other than a use in or on animal feed, if such use or intended use—

"(i) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(ii) is in compliance with regulations promulgated by the Secretary that establish the conditions for such different use or intended use.

The regulations promulgated by the Secretary under clause (ii) may prohibit particular uses of an animal drug and shall not permit such different use of an animal drug if the labeling of another animal drug that contains the same active ingredient and which is in the same dosage form and concentration provides for such different use.

"(B) If the Secretary finds that there is a reasonable probability that a use of an animal drug authorized under subparagraph (A) may present a risk to the public health, the Secretary may—

"(i) establish a safe level for a residue of an animal drug when it is used for such different use authorized by subparagraph (A); and

"(ii) require the development of a practical, analytical method for the detection of residues of such drug above the safe level established under clause (i).

The use of an animal drug that results in residues exceeding a safe level established under clause (i) shall be considered an unsafe use of such drug under paragraph (1). Safe levels may be established under clause (i) either by regulation or order.

"(C) The Secretary may by general regulation provide access to the records of veterinarians to ascertain any use or intended use authorized under subparagraph (A) that the

Secretary has determined may present a risk to the public health.

"(D) If the Secretary finds, after affording an opportunity for public comment, that a use of an animal drug authorized under subparagraph (A) presents a risk to the public health or that an analytical method required under subparagraph (B) has not been developed and submitted to the Secretary, the Secretary may, by order, prohibit any such use.

"(5) If the approval of an application filed under section 505 is in effect, the drug under such application shall not be deemed unsafe for purposes of paragraph (1) and shall be exempt from the requirements of section 502(f) with respect to a use or intended use of the drug in animals if such use or intended use—

"(A) is by or on the lawful written or oral order of a licensed veterinarian within the context of a veterinarian-client-patient relationship, as defined by the Secretary; and

"(B) is in compliance with regulations promulgated by the Secretary that establish the conditions for the use or intended use of the drug in animals.".

(b) OTHER AMENDMENTS—

(1) SECTION 301.—Section 301 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331) is amended—

(A) in paragraph (e), by striking "507(d) or (g)," and inserting "507(d) or (g), 512(a)(4)(C),"; and

(B) by adding at the end the following:

"(u) The failure to comply with any requirements of the provisions of, or any regulations or orders of the Secretary, under section 512(a)(4)(A), 512(a)(4)(D), or 512(a)(5).".

(2) SECTION 512(e).—Section 512(e)(1)(A) of the Federal Food, Drug and Cosmetic Act (21 U.S.C. 360b(e)(1)(A)) is amended by inserting before the semicolon the following: "or the condition of use authorized under subsection (a)(4)(A)".

(3) SECTION 512(l).—Section 512(l)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(l)(1)) is amended by striking "relating to experience" and inserting "relating to experience, including experience with uses authorized under subsection (a)(4)(A),".

(c) REGULATIONS.—Not later than 2 years after the date of the enactment of this act, the Secretary of Health and Human Services shall promulgate regulations to implement paragraphs (4)(A) and (5) of section 512(a) of the Federal Food, Drug, and Cosmetic Act (as amended by subsection (a)).

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect upon the adoption of the final regulations under subsection (c).

**SEC. 3. MAPLE SYRUP.**

(a) PREEMPTION.—Section 403A(a) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343-1(a)) is amended—

(1) in paragraph (1), by inserting at the end the following: "except that this paragraph does not apply to a standard of identity of a State or political subdivision of a State for maple syrup that is of the type required by sections 401 and 403(g),";

(2) in paragraph (2), by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(c) and that is applicable to maple syrup,"; and

(3) in paragraph (3) by inserting at the end the following: "except that this paragraph does not apply to a requirement of a State or political subdivision of a State that is of the type required by section 403(h)(1) and that is applicable to maple syrup,".

(b) PROCEDURE.—Section 701(e)(1) (21 U.S.C. 371(e)(1)) is amended by striking "or maple syrup (regulated under section 168.140 of title 21, Code of Federal Regulations).".

## INDIAN LEGISLATION TECHNICAL CORRECTIONS ACT

### INOUYE AMENDMENTS NOS. 2613 AND 2614

Mr. FORD (for Mr. INOUYE) proposed two amendments to the bill (H.R. 4709) to make certain technical corrections, and for other purposes, as follows:

AMENDMENT NO. 2613

In section 19—

(1) by inserting "tribes and" after "Department's consultation with Indian"; and

(2) by inserting "of funds held in trust" after "related to the management".

AMENDMENT NO. 2614

On page 26, between lines 3 and 4, insert the following new paragraph:

"(2) Nothing in this section may be construed to constitute the recognition by the United States that the Frank's Landing Indian Community is a federally recognized Indian tribe.

On page 26, line 4, strike "(2)" and insert "(3)".

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON AGRICULTURE, NUTRITION, AND FORESTRY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry be allowed to meet during the session of the Senate on Tuesday, October 4, 1994 at 2:30 p.m., in SR-332, to markup S. 2467, the Uruguay Round Agreements Act and to also vote on Marsha P. Martin, to be a member of the Farm Credit Administration Board.

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

COMMITTEE ON ARMED SERVICES

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet on Tuesday, October 4, 1994, at 9:30 a.m. in open session, to consider the nominations of Dr. Bernard D. Rostker, to be Assistant Secretary of the Navy for Manpower and Reserve Affairs, and Mr. Gil Coronado, to be Director of Selective Service.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on October 4, 1994, at 10:00 a.m. on S. 2467—Gatt Implementing Legislation.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, October 4, 1994, at 9:30 a.m. to hold a hearing entitled Status Report on U.S. Assistance to the Newly Independent States.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on Foreign Relations, be authorized to meet during the session of the Senate on Tuesday, October 4, 1994, at 11:30 a.m. to hold a business meeting to vote on pending nominations.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. Ford. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Tuesday, October 4, 1994, at 9:30 a.m. on the nomination of Martha F. Riche, to be Director, Bureau of the Census.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Tuesday, October 4, 1994, at 10:30 a.m. on the nominations of James Atkins and Scott Lukins, to be members of the Federal Retirement Thrift Investment Board.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. FORD. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Committee for authority to meet on Tuesday, October 4, 1994, at 2:45 p.m on the nominations of George J. Opfer, Inspector General, Federal Emergency Management Administration and Vanessa Ruiz, Associate Judge, District of Columbia Court of Appeals.

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

COMMITTEE ON THE JUDICIARY

Mr. FORD. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet during the session of the Senate on Tuesday, October 4, 1994, at 4:30 p.m., in room 226 Senate Dirksen Office Building to consider the nominations of Diana E. Murphy to be U.S. Circuit Judge for the Eighth Circuit, Elaine F. Bucklo to be United States District Judge for the Northern District of Illinois, Robert W. Gettleman to be U.S. District Judge for the Northern District of Illinois, Sven E. Holmes to be U.S. District Judge for the Northern District of Oklahoma, Vicki Miles-LaGrange to be U.S. District Judge for the Western District of Oklahoma and William H. Walls to be U.S. District Judge for the District of New Jersey.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. FORD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Tuesday, October 4, 1994 at 4 p.m. to hold a closed briefing on intelligence matters.

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

## ADDITIONAL STATEMENTS

### REGARDING THE DEPARTURE OF REPRESENTATIVE DING AND THE ARRIVAL OF REPRESENTATIVE LU

• Mr. CHAFEE. Mr. President, this week as Chinese people around the world celebrate the anniversary of the founding of the Chinese republic under Dr. Sun Yat-sen, it is also an appropriate moment to note the departure of Ambassador Ding Mou-shis, the Representative of Taiwan in Washington. Ambassador Ding Mou-shis has served with distinction during an important period in United States-Taiwan relations. In the course of his tenure, Taiwan has completed some of the most fundamental political changes achieved by any society in East Asia, including the democratization of its political processes, culminating in changes in law requiring the popular election of every major officeholder in the country. The diversity and vigor of the print media also attests to the health of the democratic process which is now established there.

Mr. Ding is succeeded by Mr. Benjamin C. Lu who is known to several members of this body from his days as the head of the economic section in the representative office here in Washington. Mr. Lu comes to the Capital from his previous post as the representative of Taiwan to the European Community, an assignment with many of the difficulties and complexities that have prepared him for the responsibilities he now takes up in the United States. Over the last two decades, Mr. Lu has served with distinction in a succession of posts: His first assignment in the United States was as auditor at the Foreign Exchange and Trade Commission of the United Nations from 1964 to 1966; he became a consultant to the Economic Commission for Asia and the Far East, also at the United Nations, until 1969; thereafter he was appointed deputy director at the board of foreign trade of the Ministry of Economic Affairs in Taipei in which post he served until 1977, becoming deputy director general of the board until 1982; that year he was selected to be the director of the economic division at the Coordination Council for North American Affairs here in Washington where he served for 6 years; in 1988 he assumed the office of Director of Taiwan's office in London and Belgium, where he was responsible for economic relations; in 1991 he became the representative of the Taipei Economic and Cultural Office in Belgium until his assignment to Washington this fall.

We welcome Representative Lu with the hope that relations between the United States and Taiwan will continue to strengthen.•

### HOMICIDES BY GUNSHOT IN NEW YORK CITY

• Mr. MOYNIHAN. Mr. President, this will be my last statement in the 103d Congress on the gruesome toll taken by gun violence in New York City. Over the past week, there were 16 homicides involving the use of firearms, bringing the city's total to 744 so far this year.

This number is lower than it was at the same time last year. This is encouraging news and an illustration of the progress we are making in the fight against gun violence. But the number is still shocking, and the battle against this public health epidemic is far from won.

Mr. President, too often we think that gun violence occurs only on city streets. Unfortunately, far too many homicides take place right in the home. Yet opponents of gun control continue to assert that the presence of firearms in the home offers the owner greater protection against intrusions and reduces the risk that a death will result in an attempted burglary or assault. This is simply not the case.

According to a recent article by a group of physicians and scholars in the September 21, 1994 issue of the Journal of the American Medical Association, the mere presence of a gun in the home increases the risk that a homicide will result by 1.6 times. According to the same article, between 1988 and 1990, 46.7 percent of the 66,578 homicides in the United States occurred in the home. This averages out to 5.8 homicides in the home each day.

Despite these grim statistics, many still contend that violence in the home bears no relation to the presence of firearms. People without access to guns, the logic goes, would simply find other weapons to achieve their violent ends. Again, this is just not true. According to the findings published in the JAMA article, there is absolutely no evidence to suggest that any increases in homicides involving other weapons in the home result when firearms are not available. Immediate access to firearms simply facilitates spontaneous violence that otherwise might not occur.

Mr. President, we must take steps now to reduce the risk of gun violence in the home. Only by undertaking prudent gun control measures, and by banning or taxing certain rounds of ammunition, can we begin to reduce the threat posed by firearms in the home.•

### INTRODUCTION OF S. 2471

• Mr. COHEN. Mr. President, as ranking member of the Subcommittee on Juvenile Justice, I supported the provision in the Senate-passed version of the crime bill authorizing grants for juvenile detention facilities. I was very disappointed when this grant program was eliminated by the conferees and therefore am pleased to join Senator KOHL in introducing the Juvenile Corrections Act of 1994.

This bill will make $772 million available over 5 years for grants to State and local governments to build and operate secure facilities for violent and chronic juvenile offenders. These funds are sorely needed. Unfortunately, violent crime by juveniles is increasing rapidly. In just 7 years, the number of youths arrested for homicide has almost doubled. Some States and municipalities, however, are often ill-equipped to deal with this explosion in violent juvenile crime.

The juvenile justice system was developed, just after the turn of the century, based on the premise that delinquent youths should be treated differently from adults because, due to their age, they were less able to comprehend the gravity of their criminal actions and were more amenable to treatment and rehabilitation than adult criminals. Consequently, the majority of juvenile crimes were not punished severely. Juveniles who committed more serious crimes were placed in residential, or nonsecure detention facilities.

The system in place today is no longer appropriate for the problems we currently see on the streets. We now have 13-, 14-, and 15-year-olds committing cold-blooded murder. The September 28 edition of U.S.A. Today reports the case of Craig Price who by age 15 was convicted of brutally killing 4 people, including an 8- and a 10-year-old. Robert "Yummy" Sandifer, the 11-year-old who gained notoriety a couple of weeks ago after killing a young girl and then being executed by fellow gang members, had a rap sheet with 28 entries at the time of his death.

Our juvenile justice system is not properly equipped to handle the increasing number of individuals such as these, who have become violent criminals at a young age and must be removed from their communities for an extended period of time. This bill seeks to address this shortcoming.

Not only are secure facilities for violent juvenile offenders necessary to protect communities from these dangerous individuals, but they also serve the important function of separating violent youth from others in the juvenile justice system. One of the primary aims of the Juvenile Justice and Delinquency Prevention Act of 1974 was to segregate juvenile offenders from adult criminals so the youth would not be negatively influenced by adults convicted of, or awaiting trial on, serious

criminal charges. It is also important to separate youth that have committed minor crimes from violent juvenile offenders so that the time spent in the juvenile justice system is dedicated to rehabilitation and treatment rather than learning more about crime. As a Justice Department official has stated, "we are creating monsters" in some of our juvenile detention facilities. The purpose of this bill is to address this problem by helping States to create separate facilities for violent youth offenders.

Our approach to juvenile justice cannot focus on detention alone. Efforts must be made to provide the counseling and services necessary so, upon release, those who entered a juvenile facility will not present a threat to their communities and will become productive citizens. Consequently, the bill requires each facility funded by a Federal grant to provide educational, vocational, and lifeskills training, substance abuse treatment, and intensive post-release supervision and services.

Although this bill concentrates on detention, we must not forget that delinquency prevention and early, meaningful intervention in the lives of troubled youth is the most effective, and least costly method of combating juvenile crime. Experts estimate that less than 10 percent of youthful offenders are responsible for the most serious juvenile crimes. The juvenile justice system must be able to respond effectively to the needs of the remaining 90 percent of this country's delinquent youth and other at-risk children. This involves successfully preventing at-risk children from becoming tomorrow's generation of career felons by intervening early in their lives. Services such as counseling, vocational training and drug treatment must be made available in all parts of the juvenile justice system. A child should not have to become a violent or chronic criminal before society takes action.

The grants to States and localities provided by this bill would be funded by setting aside 10 percent of the money authorized for prison construction in the recently enacted Violent Crime Prevention and Law Enforcement Act. Given the rapid escalation of juvenile crime, and the difficulties the juvenile justice system faces in dealing with violent youthful offenders, use of these funds to support the construction and staffing of secure facilities for juveniles will make a substantial contribution to the battle against crime.

I commend Senator KOHL for introducing this legislation. The Senator realizes, as do I, that serious juvenile crime has become a significant component of this country's overall crime problem and must be addressed. I urge my colleagues to join us in supporting this legislation.●

## GAMBLING IS BAD BET FOR CITY

● Mr. SIMON. Mr. President, a friend of mine from Decatur, IL, Howard Buffett, who at one time chaired the Douglas County Board of Commissioners in Nebraska, has written an article for the Decatur Herald and Review about gambling in Decatur.

I am concerned that the message is going out to Indian reservations, cities, States, and other governmental entities that the only possible way you can balance your budget is move into the area of gambling.

Historically, in our country we have had more than our fair share of abuse in gambling.

I believe we should move carefully in this area and not do harm to the Nation.

I ask to insert the Howard Buffett item from the Decatur Herald and Review into the RECORD at this point.

The article follows:

GAMBLING IS BAD BET FOR CITY

(By Howard G. Buffett)

The last thing Decatur needs is casino gambling. It is a mistake to pursue gambling as part of public policy, and it is a sad day when our government seeks to exploit the weaknesses of its citizens rather than to encourage their strengths.

The claim made by promoters that gambling will support and develop downtown business is a hollow promise. David Hall, Director of Marketing of Hollywood Casino operating in Aurora, was quoted recently as saying, "I don't know if we're really here to increase the business of anyone else."

A professor of economics at the University of Minnesota noted that people spend money on gambling rather than on products or services in the local marketplace. The jobs which are created amount to a management staff for the casino, hardly making up for this loss.

It is the local retailers who lose the day-to-day revenue. Like a vacuum cleaner, the gambling syndicates wire the money out of the community on a daily basis and such communities dry. Take a statement from an Aurora businessman: "The casino is killing the small business in this area, and they claimed it would help us."

The profits from these operations, regardless of the promises made, are not reinvested in the host community. And think about it—riverboat casinos pocket hundreds of millions of dollars. What provides these profits—your savings, your paycheck, your Christmas money? They end up with your cash; you don't.

On top of this lost revenue, the tax incentives, and expenditures of tax money to finance infrastructure needs (such as relocating entire streets) make gambling a bad bet. The extra demand put on other public services is anything but small. Research conducted by former New York Attorney General Robert Abrams revealed that in Atlantic City, the demand for police services rose over 2,000 percent because of the increased crime following legalization of casino gambling.

Gambling also creates the transfer of large sums of cash which can fuel illegal activity. Legal gambling begets illegal gambling; and when gambling debts pile up, so do the problems.

The deck is stacked against Decatur. According to the book, "The Odds on Virtually Anything," the probability of watching a pitcher pitch a perfect game is 260,000 to 1. And the odds against being struck by lightning are 60,944 to 1. But the odds of winning a million dollar jackpot range from 7 million to 14 million to 1. Do you really believe Decatur can win with these odds?

And the idea that gambling is acceptable because those participating are consenting adults is an easy way to deny the responsibility of dealing with the consequences. Consenting adults don't always exercise good judgment. Americans spent more on gambling in 1989 than on shoes, dental care, appliances, travel and health insurance. In addition, gambling is extremely regressive; it is not based on one's ability to pay. The shoes that can't be purchased, the dental care that is put off until another day, and the health insurance which goes unpaid comes from families who sacrifice their basic necessities for an outsider's gain.

Gambling is not just a casual occurrence. A Delaware study reported that as many as 80 percent of compulsive gamblers commit felonies. The American Insurance Institute estimates that as much as 40 percent of the nation's white collar crime is committed by compulsive gamblers. At least seven states that have initiated gambling activities were forced to begin operating treatment programs for compulsive gamblers—funded by gambling proceeds. This is the ultimate hypocrisy.

I've heard that Decatur should pursue a riverboat casino because everyone else is doing it. Apply this same philosophy to raising your children, and take a minute to be honest with yourself. If this argument were presented by your children as justification for involvement in drugs, alcohol, or sex, you know exactly what your reaction would be—"that doesn't make it OK." This decision, because of the negative economic impact and the negative social impact, must be taken as seriously as when you consider your response to your children. They will live with this decision longer than you will.

Finally, don't confuse a gambling establishment with a mall. Unrelated past decisions are irrelevant to this process.

Whether it is keno, lotteries, or riverboat casinos, gambling is gambling; and there is no right way to do what is wrong for this community.●

## THE LOBBYING DISCLOSURE ACT, S. 349—CONFERENCE REPORT

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of the conference report on S. 349, the Lobbying Disclosure Act.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany S. 349, an act to provide for disclosure of lobbying activities.

The Senate resumed the consideration of the conference report.

## CLOTURE MOTION

Mr. FORD. Mr. President, on behalf of the majority leader I send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented

under rule XXII, the Chair directs the clerk to read the motion.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the conference report to accompany S. 349, the Lobbying Disclosure Act:

Carl Levin, Daniel K. Akaka, D. Inouye, Byron L. Dorgan, Harry Reid, J. Lieberman, Patty Murray, Dianne Feinstein, Frank R. Lautenberg, Russell D. Feingold, Tom Harkin, Paul Simon, Paul Wellstone, Howard Metzenbaum, Claiborne Pell, Chris Dodd, Herb Kohl.

## MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

## ORDERS FOR TOMORROW

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today, it stand in recess until 9 a.m., Wednesday, October 5, that following the Prayer, the Journal of proceedings be deemed approved to date and the time for the 2 leaders reserved for their use later in the day; that there then be a period for morning business, not to extend beyond 9:45 a.m., with Senators permitted to speak therein for up to 5 minutes each; with the time until 9:30 a.m., under the control of Senator REID or his designee; and the time from 9:30 a.m. to 9:45 a.m., under the control of Senator WALLOP; that at 9:45 a.m., the Senate resume consideration of the conference report accompanying H.R. 6, that there be 1 hour for debate on the motion to invoke cloture on the conference report accompanying H.R. 6, the elementary and secondary education bill; with the time equally divided and controlled between Senators KENNEDY and COATS or their designees; that at 10:45 a.m., without intervening action, the Senate vote on the motion to invoke cloture.

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

## RECESS UNTIL WEDNESDAY, OCTOBER 5, 1994, AT 9 A.M.

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent the Senate stand in recess as previously ordered.

There being no objection, the Senate, at 8:21 p.m., recessed until Wednesday, October 5, 1994, at 9 a.m.

## NOMINATIONS

Executive nominations received by the Senate October 4, 1994:

### DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION

ALAN J. DIXON, OF ILLINOIS, TO BE A MEMBER OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION FOR A TERM EXPIRING AT THE END OF THE FIRST SESSION OF THE 104TH CONGRESS, VICE JAMES A. COURTER, TERM EXPIRED.

ALAN J. DIXON, OF ILLINOIS, TO BE CHAIRMAN OF THE DEFENSE BASE CLOSURE AND REALIGNMENT COMMISSION, VICE JAMES A. COURTER.

### NATIONAL MEDIATION BOARD

KENNETH BYRON HIPP, OF HAWAII, TO BE A MEMBER OF THE NATIONAL MEDIATION BOARD FOR A TERM EXPIRING JULY 1, 1997, VICE PATRICK J. CLEARY, RESIGNED.

### NUCLEAR REGULATORY COMMISSION

SHIRLEY ANN JACKSON, OF NEW JERSEY, TO BE A MEMBER OF THE NUCLEAR REGULATORY COMMISSION FOR A TERM OF 5 YEARS EXPIRING JUNE 30, 1999, VICE FORREST J. REMICK, TERM EXPIRED.

### SMALL BUSINESS ADMINISTRATION

PHILIP LADER, OF SOUTH CAROLINA, TO BE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, VICE ERSKINE B. BOWLES.

### STATE JUSTICE INSTITUTE

WILLIAM M. PAPARIAN, OF CALIFORNIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 1995, VICE KEITH MCNAMARA, TERM EXPIRED.

### IN THE ARMY

THE FOLLOWING-NAMED OFFICER FOR APPOINTMENT TO THE GRADE OF LIEUTENANT GENERAL WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, UNITED STATES CODE, SECTION 601(A):

*To be lieutenant general*

MAJ. GEN. RONALD V. HITE [redacted]

THE FOLLOWING-NAMED OFFICER TO BE PLACED ON THE RETIRED LIST IN THE GRADE INDICATED UNDER THE PROVISIONS OF TITLE 10, UNITED STATES CODE, SECTION 1370:

*To be lieutenant general*

LT. GEN. WILLIAM H. FORSTER [redacted]

THE FOLLOWING-NAMED OFFICERS, ON THE ACTIVE DUTY LIST, FOR PROMOTION TO THE GRADE INDICATED IN THE U.S. ARMY IN ACCORDANCE WITH SECTION 624, TITLE 10, UNITED STATES CODE. THE OFFICERS INDICATED BY ASTERISK ARE ALSO NOMINATED FOR APPOINTMENT IN THE REGULAR ARMY IN ACCORDANCE WITH SECTION 531, TITLE 10, UNITED STATES CODE:

*To be major*

AARON DANIEL G. [redacted]
*ABRAMS, ROBERT M. [redacted]
ADAMS, JOSEPH F. [redacted]
ADAMS, LYLE N. [redacted]
ADAMS, PHILLIP G. [redacted]
*ADAMSON, WILLIAM G. [redacted]
*ADDISON, ROBERT L. [redacted]
AGEE, EDWARD E. [redacted]
AGENA, CRAIG J. [redacted]
*AKARD, BRUCE E. [redacted]
AKE, LESA M. [redacted]
AKE, ROBERT Q. [redacted]
AKIN, GEORGE G. [redacted]
*ALABRE, DANIEL A. [redacted]
*ALBANEZE, MICHAEL A. [redacted]
ALBERTSON, SIBYLLA [redacted]
*ALLEN, GEORGE A. [redacted]
ALLGROVE, DONALD C. [redacted]
ALONSO, VINCENT E. [redacted]
*ALVARADO, ANNA E. [redacted]
ALVAREZ, JOSEPH H. [redacted]
AMMON, JOSEPH C. [redacted]
AMOS, VINCENT A. [redacted]
ANDERSEN, WILLIAM R. [redacted]
ANDERSON, AMANDA L. [redacted]
*ANDERSON, BRIAN H. [redacted]
*ANDERSON, DEREK L. [redacted]
*ANDERSON, DONALD E. [redacted]
ANDERSON, JOHN P. [redacted]
*ANDERSON, LONNY A. [redacted]
*ANDERSON, MARK A. [redacted]
*ANDERSON, THOMAS R. [redacted]
*ANDERSON, TOLANO D. [redacted]
ANDUJAR, ROBERTO C. [redacted]
*ANGLES, WALTER K. [redacted]
*ANNINOS, DIONYSIOS [redacted]
ANTHONY, HODGES JR. [redacted]
*ARCHER, JOHN M. [redacted]
ARCURI, ANTHONY P. [redacted]
ARIAIL, THOMAS W. [redacted]
ARMITSTEAD, ALAN J. [redacted]
*ARMSTRONG, JOEL R. [redacted]
*ARMSTRONG, NATALIA [redacted]
*ARNOLD, RANDALL T. [redacted]
ARTERBURN, DAVID R. [redacted]
ARTMAN, SPENCER Q. [redacted]
ASHCRAFT, DANIEL L. [redacted]
ASHWORTH, JAMES S. [redacted]
ATKINSON, GEORGE W. [redacted]
AUSTIN, WAYNE D. [redacted]
*AVANTS, JAMES N. [redacted]
*AVEN, KEVIN D. [redacted]
*AYER, RICK E. [redacted]
*BAGNATI, DAVID P. [redacted]
*BAHAM, RONALD E. [redacted]
BAILEY, CHRISTOPHER [redacted]
BAINES, ANTONIO R. [redacted]
BAKER, BRIAN L. [redacted]
*BAKER, CHARLES G. [redacted]
BAKER, DAVID D. [redacted]
*BAKER, MICHAEL J. [redacted]
*BAKER, VERONICA L. [redacted]
BALL, DANIEL L. [redacted]
*BARBER, WILLIAM B. [redacted]
BARLOW, DAVID A. [redacted]
BARNABY, DAVID S. [redacted]
BARR, MATTHEW J. [redacted]
BARRACK, GREGORY V. [redacted]
BARRETTE, DANA P. [redacted]
BARRIAGE, WILLIAM F. [redacted]
*BARROWMAN, RICHARD [redacted]
*BARRY, KERRY M. [redacted]
*BARTHOLF, GORDON H. [redacted]
BASSANI, JOSEPH A. [redacted]
*BATCHELOR, PAUL D. [redacted]
*BATEMAN, DENNIS L. [redacted]
*BATTLE, JEFFREY C. [redacted]
BATTLE, OSCAR C. [redacted]
*BAX, KEITH G. [redacted]
*BAYER, CRAIG S. [redacted]
BAYHA, JAMES M. [redacted]
*BEACH, SCOTT N. [redacted]
BEAM, MARY J. [redacted]
*BEARD, JOANNE L. [redacted]
*BECK, JAMES R. [redacted]
BECKER, JOHN A. [redacted]
BECKINGER, RICHARD [redacted]
*BECKMANN, RANDALL G. [redacted]
*BEERMAN, KEVIN R. [redacted]
BELL, ANTHONY E. [redacted]
BELL, CRAIG A. [redacted]
BELLI, BRIAN R. [redacted]
*BELLIZAN, JOHN L. [redacted]
BELVA, DAVID G. [redacted]
*BENDER, ALBERT A. [redacted]
BENEVIDES, RUI C. [redacted]
*BENOIT, PETER B. [redacted]
BENTLEY, DOUGLAS L. [redacted]
*BENTON, WILLIAM L. [redacted]
*BENYA, CHRISTOPHER [redacted]
BEQUETTE, BRYAN W. [redacted]
*BERDINE, DANIEL M. [redacted]
*BERRIER, SCOTT D. [redacted]
BERTOCCI, JEFFREY D. [redacted]
BESCH, ERIC C. [redacted]
BETHEA, MEAREN C. [redacted]
BETHEL, ANTOINE B. [redacted]
*BICKELL, SCOTT E. [redacted]
BIEVER, JACOB D. [redacted]
BIGELOW, MICHAEL E. [redacted]
BINFORD, RANDOLPH R. [redacted]
BIRD, JOHN J. [redacted]
BIRDWELL, BRIAN D. [redacted]
*BIRKETT, WILLIAM M. [redacted]
BISHOP, DONALD L. [redacted]
BISHOP, KEVIN R. [redacted]
BLACKBURN, JOSEPH W. [redacted]
*BLACKMAN, JOERLE B. [redacted]
*BLACKWELL, RICHARD [redacted]
BLAIN, DAVID L. [redacted]
*BLANCHARD, GREGORY [redacted]
BLAND, DEAN F. [redacted]
BLAND, RANDALL W. [redacted]
BLAS, BENJAMIN A. [redacted]
BLECKLEY, DENNIS R. [redacted]
*BLEEKER, SHAWN C. [redacted]
*BLOOM, DANIEL L., JR. [redacted]
BLOSE, DAVID L. [redacted]
*BLUGIS, ADAM A. [redacted]
BOARMAN, JOSEPH C. [redacted]
BOBECK, MICHAEL E. [redacted]
*BOISSEAU, GREGORY P. [redacted]
*BOLICK, STEVE C. [redacted]
BOLINGER, MICHELE F. [redacted]
BOLLER, MICHAEL L. [redacted]
BONANO, JAIME L. [redacted]

BONE, THOMAS R. [redacted]
*BONNER, CONRAD H. [redacted]
BOOTH, EDWIN R. [redacted]
*BOSWORTH, ROBERT O. [redacted]
BOWES, ANDREW W. [redacted]
*BOXLEY, LLOYD L. [redacted]
BOYD, CURTIS D. [redacted]
BOYD, PETER B. [redacted]
BOYDSTON, STEVE C. [redacted]
BOYKIN, DENNIS B. [redacted]
BOYLAN, STEVEN A. [redacted]
*BRACKETT, JOHN C. [redacted]
BRADDOCK, DAVID M. [redacted]
BRADIN, JAMES W. [redacted]
BRADIN, STUART W. [redacted]
BRADY, CHERYL D. [redacted]
*BRANNOCK, ROBERT H. [redacted]
BRASSEUR, BARRY A. [redacted]
*BRAUN, LARS E. [redacted]
BREIDENSTINE, JOHN [redacted]
BRENDLER, JOSEPH A. [redacted]
BRETTMANN, MICHAEL. [redacted]
BREW, THOMAS R. [redacted]
*BREWER, CHRISTOPHER [redacted]
BREWER, ERWIN D. [redacted]
BRICKER, PAUL W. [redacted]
BRIMMER, DOUGLAS L. [redacted]
*BRINDLE, SAMUEL [redacted]
*BRINKLEY, WILLIAM D. [redacted]
*BROCK, EDWARD J. [redacted]
*BROKKE, MERVIN E. [redacted]
*BROOKE, DARREN G. [redacted]
BROOKS, WILLIAM T. [redacted]
*BROUGHTON, DEBORAH [redacted]
BROWN, BOBBY B. [redacted]
BROWN, CATHLEEN M. [redacted]
*BROWN, DAVID A. [redacted]
BROWN, DAVID A. [redacted]
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BROWN, DEBORAH L. [redacted]
BROWN, JAY P. [redacted]
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BROWN, JEFFREY D. [redacted]
*BROWN, JOEL P. [redacted]
BROWN, JOHN W. [redacted]
BROWN, KENNETH [redacted]
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BROWN, MARK E. [redacted]
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BROWN, RICHARD L. [redacted]
*BROWN, STANLEY M. [redacted]
BROWN, STEVEN K. [redacted]
BRUCH, STEPHEN E. [redacted]
*BRUCKER, DUANE E. [redacted]
*BRUNDAGE, JAMES E. [redacted]
BRUNK, ROBERT E. [redacted]
BUBNICK, WAYNE E. [redacted]
*BUCCIARELLI, SHARON [redacted]
*BUCHALSKI, THOMAS J. [redacted]
BUCHE, CYNTHIA J. [redacted]
BUCHE, JOSEPH P. [redacted]
BUCHHOLZ, HARALD C. [redacted]
*BUCKNER, EDWARD D. [redacted]
*BUDZYNA, THOMAS E. [redacted]
*BUHMANN, SCOTT H. [redacted]
*BULKEN, WENDY S. [redacted]
BULLIMORE, STEVEN L. [redacted]
BURCALOW, JAMES M. [redacted]
*BURCH, MARCUS D. [redacted]
BURDEN, CHARLES E. [redacted]
BURGESS, DESIREE [redacted]
*BURKE, GWYNNE T. [redacted]
BURKE, KYLE T. [redacted]
*BURKE, RODERICK [redacted]
BURKE, THIMOTHY A. [redacted]
BURNS, ROBERT A. [redacted]
BURT, BARBARA L. [redacted]
BUTERA, VICTOR R. [redacted]
BUTLER, BRIAN A. [redacted]
BUTLER, PAMELA L. [redacted]
BYNUM, MARKUS S. [redacted]
*CAHIR, JOHN A. [redacted]
CALHOUN, CARL R. [redacted]
CALLAHAN, SEAN M. [redacted]
CALVERT, MARK E. [redacted]
CAMPBELL, JAMES M. [redacted]
CAMPBELL, JOHN S. [redacted]
CAMPBELL, JON W. [redacted]
CAMPBELL, KELLY N. [redacted]
CAMPBELL, LARRY W. [redacted]
*CAMPBELL, ROBERT J. [redacted]
*CAMPBELL, ROBERT S. [redacted]
*CAMPS, DAVID C. [redacted]
CANTRELL, ROY R. [redacted]
CANTWELL, DENNIS M. [redacted]
CANTWELL, GREGORY L. [redacted]
CAPALBO, STEVEN M. [redacted]
*CAPELO, TRINIDAD F. [redacted]
CARACCILO, DOMINIC [redacted]
*CARANIKAS, JAMES C. [redacted]
CARDWELL, JOHN E. [redacted]
*CAREY, MARK G. [redacted]
*CARINO, ROLAND P. [redacted]
CARL, ROBERT K. [redacted]
*CARLISLE, MATTHEW B. [redacted]
*CARLO, ELIEZER B. [redacted]
*CARLSON, SCOTT M. [redacted]
CARPENTER, ROBERT C. [redacted]
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CARROLL, EDWARD L. [redacted]
*CARSON, CRAIG H. [redacted]
*CARTE, JENNINGS C. [redacted]
CARTER, DONALD K. [redacted]
*CARTER, MARLENE R. [redacted]
*CARTER, VICTOR T. [redacted]
CASCIARO, MICHAEL A. [redacted]
CASMUS, SAMUEL W. [redacted]
CASSIDY, DANIEL L. [redacted]
*CASTLEBERRY, ALAN W. [redacted]
CELESTAN, GREGORY J. [redacted]
CHAMBERLAIN, SCOTT [redacted]
*CHANDLER, GEORGE F. [redacted]
CHAPMAN, THOMAS C. [redacted]
CHAR, CHESTER A. [redacted]
CHARLTON, JOHN W. [redacted]
*CHASE, STEVEN M. [redacted]
*CHASE, VANCE A. [redacted]
CHASTAIN, JERRY S. [redacted]
*CHAVIS, DARYL A. [redacted]
CHEATHAM, ANTOINE [redacted]
CHENEY, DAVID C. [redacted]
CHESNEY, J.K. [redacted]
*CHESS, BARTON D. [redacted]
*CHESTANG, CARLEN J. [redacted]
CHILDERS, WILLIAM A. [redacted]
*CHOPPA, RICHARD C. [redacted]
CHRISTENSEN, JONATH [redacted]
CHRISTIAN, MICHAEL [redacted]
*CHRISTIAN, PATRICK [redacted]
CHRISTIAN, STEPHEN [redacted]
CHRISTIE, KEVIN A. [redacted]
CHRISTINO, ANTHONY [redacted]
CHRISTOPHER, SCOTT [redacted]
CHUBB, DEBORAH M. [redacted]
CIAMPINI, JOSEPH [redacted]
*CINTRON, NORBERTO R. [redacted]
CIVILS, TIMOTHY H. [redacted]
*CLANTON, JOHN C. [redacted]
CLARK, HARVEY E. [redacted]
CLARK, MICHAEL J. [redacted]
CLARKE, RICHARD D. [redacted]
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CLAY, TROY A. [redacted]
*CLEAR, SAMUEL [redacted]
*CLEAVER, MARK K. [redacted]
*CLEAVER, TRACY A. [redacted]
CLEAVES, JON S. [redacted]
CLEGG, JOSEPH F. [redacted]
CLEGHORN, JEFFERY M. [redacted]
*CLOUM, STEPHEN L. [redacted]
COHEN, HARRY L. [redacted]
*COLE, NATALIE M. [redacted]
*COLE, RICHARD J. [redacted]
*COLE, ROBERT D. [redacted]
*COLEMAN, ANTONIO S. [redacted]
COLEMAN, BRIAN F. [redacted]
*COLES, RICHARD S. [redacted]
COLES, STEVEN A. [redacted]
COLLAR, STEPHEN C. [redacted]
*COLLINS, DAVID G. [redacted]
COLLINS, ETHAN [redacted]
COMBS, BARTON G. [redacted]
*COMBS, BRADFORD M. [redacted]
*COMER, CHARLES K. [redacted]
CONCEPCION, JORGE R. [redacted]
CONEY, JACKLYN [redacted]
*CONLON, WILLIAM R. [redacted]
CONNER, CHRISTOPHER [redacted]
CONNORS, LYNN S. [redacted]
CONNORS, THOMAS H. [redacted]
*CONOVER, JEFFREY O. [redacted]
COONEN, STEPHEN J. [redacted]
COOPER, WILLIAMS B. [redacted]
COPLEN, LORELEI E. [redacted]
CORD, REA D. [redacted]
*CORNELL, THOMAS F. [redacted]
COSBY, WILLIAM N. [redacted]
COSTA, CHRISTOPHER [redacted]
COSTELLO, MARK A. [redacted]
*COUGHLIN, ARTHUR C. [redacted]
*COVINGTON, THOMAS R. [redacted]
*COWAN, MICHAEL A. [redacted]
*COWAN, THOMAS M. [redacted]
*COX, JOHN A. [redacted]
COZZENS, DEIRDRE P. [redacted]
*CRAWLEY, GREGORY W. [redacted]
CREWS, FLETCHER A. [redacted]
*CRINER, ERIC R. [redacted]
CROTTS, DERIK W. [redacted]
CROUCH, THOMAS W. [redacted]
CROUSE, NANCY L. [redacted]
CROWE, STEVEN L. [redacted]
CUELLO, VENTURA A. [redacted]
CUERINGTON, ANDRE M. [redacted]
CULBRETH, WILLIAM M. [redacted]
*CUMMINGS, JACKIE D. [redacted]
CUNNANE, LAUREL D. [redacted]
*CUNNINGHAM, ELLIOUT [redacted]
CUNNINGHAM, LOU A. [redacted]
*CURRAN, JOHN P. [redacted]
*CURTIS, ADRIAN B. [redacted]
*CUSACK, KENT T. [redacted]
CUTLER, CHARLES T. [redacted]
CYR, MICHAEL P. [redacted]
*DALLESASSE, SCOTT A. [redacted]
*DALPONTE, JAMES S. [redacted]
DAMBROSIO, JOHN [redacted]
DAMON, STEVEN P. [redacted]
DAMPIER, DAVID A. [redacted]
*DANIELSEN, SUSAN G. [redacted]
DANSBURY, MATTHEW J. [redacted]
*DAOUST, DANIEL C. [redacted]
*DARBY, HARRY B. [redacted]
DARDEN, CHARLES R. [redacted]
DARROW, KEITH R. [redacted]
*DARVILLE, RODNEY T. [redacted]
DAUM, RICHARD S. [redacted]
DAVIE, GERALD S. [redacted]
DAVIS, ALEXANDER D. [redacted]
DAVIS, FORREST L. [redacted]
DAVIS, JOHN H. [redacted]
*DAVIS, JON M. [redacted]
*DAVIS, MICHAEL M. [redacted]
DAVIS, PAUL T. [redacted]
DAVIS, REX A. [redacted]
*DAVIS, ROBERT T. [redacted]
*DEAL, ANTHONY P. [redacted]
DEAL, CHARLES M. [redacted]
DEAS, THEOPIA A. [redacted]
*DEBRULER, DALE E. [redacted]
DECKER, JEFFERY F. [redacted]
DEGROAT, ARTHUR S. [redacted]
*DEJONG, RONALD J. [redacted]
DELUCA, RALPH C. [redacted]
DEMYANOVICH, JAMES [redacted]
*DENEAL, SUZANNE M. [redacted]
DENNEY, DANNY S. [redacted]
DEOLIVEIRA, MARCUS [redacted]
DESROSIER, THOMAS J. [redacted]
DEWEY, JOHN K. [redacted]
*DEYESO, ROBERT L. [redacted]
*DIAS, SCOTT J. [redacted]
DICK, BRADLEY C. [redacted]
DICKENS, CHAILENDRE [redacted]
DICKENS, MARK A. [redacted]
DICKEY, CLIFTON L. [redacted]
*DICKINSON, KELLY J. [redacted]
*DIETZ, JAMES E. [redacted]
*DILLON, JAMES R. [redacted]
DILLOW, DANIEL J. [redacted]
*DINGLE, GWENDOLYN O. [redacted]
DIRIGO, STEPHEN E. [redacted]
DOANE, DAVID B. [redacted]
DODGE, GREGORY D. [redacted]
DODGE, WILLIAM H. [redacted]
DOLAN, TERRANCE J. [redacted]
DOLAN, WILLIAM T. [redacted]
DOLGOFF, SCOTT J. [redacted]
*DOMINIC, CARL [redacted]
DONNELLY, THOMAS G. [redacted]
DONOVAN, KARLA M. [redacted]
DONOVAN, MICHAEL T. [redacted]
*DORMAN, JOHN P. [redacted]
DOUGHERTY, JOHN M. [redacted]
DOUGLAS, JAMES L. [redacted]
DOUVILLE, JEFFREY M. [redacted]
DOWD, JOHN F. [redacted]
*DOWDY, BRUCE P. [redacted]
*DOWDY, JAMES D. [redacted]
DOWDY, MICHAEL P. [redacted]
DRAIN, DEBORAH R. [redacted]
*DREISBACH, GREG W. [redacted]
*DRUMHELLER, MICHAEL [redacted]
*DUARTE, JEFFERY J. [redacted]
DUDDLESTON, WILLIAM [redacted]
DUFF, MURRAY J. [redacted]
DUNAWAY, JOE D. [redacted]
DUNAWAY, ROBERT L. [redacted]
DUNCAN, FRANKLIN D. [redacted]
*DUNNAWAY, RICKY [redacted]
DURTSCHI, MICHAEL S. [redacted]
*DUVAL, CURTIS P. [redacted]
DWORAK, DAVID D. [redacted]
*DYE, ROBERT E. [redacted]
DYEKMAN, GREGORY J. [redacted]
DYER, CHARLES B. [redacted]
DYESS, JACKIE L. [redacted]
EARL, ARTHUR J. [redacted]
EBEY, KURT A. [redacted]
EDGREN, MARK G. [redacted]
EDMONDS, SHARON R. [redacted]
*EDWARDS, DWAYNE A. [redacted]
EDWARDS, KEITH R. [redacted]
EDWARDS, MARK H. [redacted]
*EGGERS, MICHAEL T. [redacted]
*EIDSON, EDWARD H. [redacted]
EISEMANN, ANDREW R. [redacted]
EISIMINGER, THOMAS [redacted]
*ELLINGTON, MARC B. [redacted]
ELLINGTON, MARK T. [redacted]
*ELLIOTT, KENT M. [redacted]
ELLIOTT, KEVIN F. [redacted]
ELLIOTT, ROBERT H. [redacted]
ELLIS, CARL M. [redacted]
ENOCH, DANIEL M. [redacted]
*ENRIGHT, KEVIN W. [redacted]
*ENSOR, JOHN E. [redacted]
ERCKENBRACK, ADRIAN [redacted]
ERICKSON, IAN P. [redacted]
*ERNYEI, MARK A. [redacted]
ERRICKSON, JON A. [redacted]
*EVANS, EARNEST L. [redacted]
EVANS, RICHARD A. [redacted]
EVANS, SAMUEL S. [redacted]
EVANS, THOMAS H. [redacted]
EVARO, VICTORE J. [redacted]
EVERSON, BENJAMIN A. [redacted]
FAGUNDES, DANIEL J. [redacted]
*FAIN, JAMES F. [redacted]
*FAIR, EDWARD L. [redacted]
*FALKENSTEIN, ROBERT [redacted]
FANCHER, DANIEL M. [redacted]
*FARQUHAR, BARRY K. [redacted]
*FARRAR, MARK A. [redacted]
FARRINGTON, JESSIE [redacted]
FASS, THOMAS H. [redacted]

FAULKNER, DAVID J. xxx-xx-x...
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SHADWICK, JAN R. [redacted]
SHALLY, LAURA J. [redacted]
*SHALOSKY, CHRISTOPH [redacted]
SHAMBLIN, DARRYL T. [redacted]
SHANNON, RANDAL S. [redacted]
SHAPPELL, STEVEN R. [redacted]
SHARP, MALCOLM E. [redacted]
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*SHATTUCK, SAMUEL H. [redacted]
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SHERRILL, ERNEST T. [redacted]
SHIFRIN, SCOTT E. [redacted]
*SHINE, WALTER K. [redacted]

SHOEMAKER, STEVEN T. xxx-xx-xxxx
SHORE, RICHARD A. xxx-xx-x...
*SHOWERS, JEFFREY J. xxx-xx-xx...
*SHUBLAK, DAVID M. xxx-xx-x...
SHUSTER, STEPHEN A. xxx-xx-xx...
SICILIA, JOHN D. xxx-xx-x...
*SICILIA, MARIANNE xxx-xx-x...
SIMMONS, ROBERT M. xxx-xx-x...
SIMMONS, HENRY B. xxx-xx-x...
SINCLAIR, KAREN L. xxx-xx-x...
*SINGER, CALVERT T. xxx-xx-xx...
SINGLETON, STEVEN xxx-xx-xx...
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SIZEMORE, DAVID R. xxx-xx-x...
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SLOAN, JOHN F. xxx-xx-x...
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SMITH, JODIE A. xxx-xx-xx...
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SMITH, THOMAS P. xxx-xx-x...
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SOBRATO, RICHARD L. xxx-xx-x...
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SOLLEY, MIRACLE D. xxx-xx-x...
SOLSETH, MARK E. xxx-xx-x...
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SORENSON, NILS C. xxx-xx-x...
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SOUTHARD, WILLIAM C. xxx-xx-x...
SOUTHCOTT, JOSEPH A. xxx-xx-xx...
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*SPANN, TIMOTHY K. xxx-xx-x...
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*STEPHENS, JAY D. xxx-xx-xx...
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STERNHAGEN, WILLIAM xxx-xx-x...
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SWIFT, DAVID E. xxx-xx-x...
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SWISHER, JEFF B. xxx-xx-xx...

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ZIMMER, DARREN B. xxx-xx-x...
ZIMMERMAN, MATTHEW xxx-xx-x...
*ZIZIK, JOHN W. xxx-xx-x...
*ZOOK, AARON M. xxx-xx-x...
*ZUBA, JAMES M. xxx-xx-x...
ZUNDE, AIDIS L. xxx-xx-x...
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## CONFIRMATIONS

Executive nominations confirmed by the Senate October 4, 1994:

### FEDERAL DEPOSIT INSURANCE CORPORATION

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 6 YEARS.

RICKI RHODARMER TIGERT, OF TENNESSEE, TO BE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 5 YEARS.

ANDREW C. HOVE, JR., OF NEBRASKA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION FOR A TERM OF 6 YEARS.

ANDREW C. HOVE, JR., OF NEBRASKA, TO BE VICE CHAIRPERSON OF THE BOARD OF DIRECTORS OF THE FEDERAL DEPOSIT INSURANCE CORPORATION.

### CORPORATION FOR PUBLIC BROADCASTING

ALAN SAGNER, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE CORPORATION FOR PUBLIC BROADCASTING FOR THE REMAINDER OF THE TERM EXPIRING JANUARY 31, 1998.

### FEDERAL AGRICULTURAL MORTGAGE CORPORATION

MARILYN FAE PETERS, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

CLYDE ARLIE WHEELER, JR., OF OKLAHOMA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE FEDERAL AGRICULTURAL MORTGAGE CORPORATION.

### COMMODITY FUTURES TRADING COMMISSION

SHEILA C. BAIR, OF KANSAS, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE REMAINDER OF THE TERM EXPIRING APRIL 13, 1995.

MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE A COMMISSIONER OF THE COMMODITY FUTURES TRADING COMMISSION FOR THE TERM EXPIRING APRIL 13, 1999.

MARY L. SCHAPIRO, OF THE DISTRICT OF COLUMBIA, TO BE CHAIRMAN OF THE COMMODITY FUTURES TRADING COMMISSION.

### FARM CREDIT ADMINISTRATION

DOYLE COOK, OF WASHINGTON, TO BE A MEMBER OF THE FARM CREDIT ADMINISTRATION BOARD, FARM CREDIT ADMINISTRATION, FOR THE TERM EXPIRING MAY 21, 1998.

### NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS

ALAN A. DIAMONSTEIN, OF VIRGINIA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE NATIONAL CORPORATION FOR HOUSING PARTNERSHIPS FOR THE TERM EXPIRING OCTOBER 27, 1995.

### DEPARTMENT OF THE TREASURY

STUART L. BROWN, OF MARYLAND, TO BE AN ASSISTANT GENERAL COUNSEL IN THE DEPARTMENT OF THE TREASURY (CHIEF COUNSEL FOR THE INTERNAL REVENUE SERVICE).

### UNITED STATES INFORMATION AGENCY

ROBERT B. FULTON, OF PENNSYLVANIA, TO BE AN ASSOCIATE DIRECTOR OF THE UNITED STATES INFORMATION AGENCY.

### DEPARTMENT OF AGRICULTURE

ROGER C. VIADERO, OF VIRGINIA, TO BE INSPECTOR GENERAL, DEPARTMENT OF AGRICULTURE.

### DEPARTMENT OF STATE

DAVID GEORGE NEWTON, OF VIRGINIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF YEMEN.

ROBERT EDWARD SERVICE, OF CALIFORNIA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF PARAGUAY.

PETER JON DE VOS, OF FLORIDA, A CAREER MEMBER OF THE SENIOR FOREIGN SERVICE, CLASS OF MINISTER-COUNSELOR, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF COSTA RICA.

GABRIEL GUERRA-MONDRAGON, OF THE DISTRICT OF COLUMBIA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO THE REPUBLIC OF CHILE.

JEROME GARY COOPER, OF ALABAMA, TO BE AMBASSADOR EXTRAORDINARY AND PLENIPOTENTIARY OF THE UNITED STATES OF AMERICA TO JAMAICA.

GERALDINE A. FERRARO, OF NEW YORK, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS THE REPRESENTATIVE OF THE UNITED STATES OF AMERICA ON THE HUMAN RIGHTS COMMISSION OF THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS.

VONYA B. MCCANN, OF MARYLAND, FOR THE RANK OF AMBASSADOR DURING HER TENURE OF SERVICE AS DEPUTY ASSISTANT SECRETARY OF STATE FOR INTERNATIONAL COMMUNICATIONS AND INFORMATION POLICY.

MADELEINE KORBEL ALBRIGHT, OF THE DISTRICT OF COLUMBIA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

EDWARD WILLIAM GNEHM, JR., OF GEORGIA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

DAVID ELIAS BIRENBAUM, OF THE DISTRICT OF COLUMBIA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

KARL FREDERICK INDERFURTH, OF NORTH CAROLINA, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

VICTOR MARRERO, OF NEW YORK, TO BE AN ALTERNATE REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

PATRICK J. LEAHY, OF VERMONT, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

FRANK H. MURKOWSKI, OF ALASKA, TO BE A REPRESENTATIVE OF THE UNITED STATES OF AMERICA TO THE FORTY-NINTH SESSION OF THE GENERAL ASSEMBLY OF THE UNITED NATIONS.

### AFRICAN DEVELOPMENT FOUNDATION

CECIL JAMES BANKS, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE AFRICAN DEVELOPMENT FOUNDATION FOR A TERM EXPIRING NOVEMBER 13, 1995.

### INTER-AMERICAN FOUNDATION

PATRICIA HILL WILLIAMS, OF NEW YORK, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE INTER-AMERICAN FOUNDATION FOR A TERM EXPIRING SEPTEMBER 20, 2000.

### UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY

WILLIAM HYBL, OF COLORADO, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING JULY 1, 1997. (REAPPOINTMENT.)

WALTER R. ROBERTS, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE UNITED STATES ADVISORY COMMISSION ON PUBLIC DIPLOMACY FOR A TERM EXPIRING APRIL 6, 1997.

THE ABOVE NOMINATIONS WERE APPROVED SUBJECT TO THE NOMINEES' COMMITMENT TO RESPOND TO REQUESTS TO APPEAR AND TESTIFY BEFORE ANY DULY CONSTITUTED COMMITTEE OF THE SENATE.

### THE JUDICIARY

H. LEE SAROKIN, OF NEW JERSEY, TO BE U.S. CIRCUIT JUDGE FOR THE THIRD CIRCUIT.

### FEDERAL EMERGENCY MANAGEMENT AGENCY

HARVEY G. RYLAND, OF FLORIDA, TO BE DEPUTY DIRECTOR OF THE FEDERAL EMERGENCY MANAGEMENT AGENCY.

### INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT

BARBARA BLUM, OF THE DISTRICT OF COLUMBIA, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR THE REMAINDER OF THE TERM EXPIRING MAY 19, 1996.

LA DONNA HARRIS, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR A TERM EXPIRING MAY 19, 2000.

LOREN KIEVE, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE INSTITUTE OF AMERICAN INDIAN AND ALASKA NATIVE CULTURE AND ARTS DEVELOPMENT FOR THE REMAINDER OF THE TERM EXPIRING MAY 19, 1996.

### FOREIGN SERVICE

FOREIGN SERVICE NOMINATIONS BEGINNING THEODORE ALLEGRA, AND ENDING MARY ELIZABETH SWOPE, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 22, 1994.

FOREIGN SERVICE NOMINATIONS BEGINNING GEORGE E. MOOSE, AND ENDING EDWARD B. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 22, 1994.

FOREIGN SERVICE NOMINATIONS BEGINNING CHARLES E. COSTELLO, AND ENDING EUGENE MORRIS, JR., WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 22, 1994.

FOREIGN SERVICE NOMINATIONS BEGINNING THOMAS J. QUINN, JR., AND ENDING THOMAS L. RANDALL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 22, 1994.