SENATE—*Tuesday, October 1, 1996*

The Senate met at 9:30 a.m., and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

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

Oh God, our help in ages past,
Our hope for years to come
Be our guide while this day shall pass
And our eternal home!

Almighty God, above time and yet with us in the passage of time, You give us enough time in each day to do what You want accomplished. Thank You for the minutes and hours of the day ahead. Help us to think of them as Your investment in this day's account, there for us to draw on to do what You want us to do on Your timing. May we neither feel rushed nor restless. Make us good stewards of the gift of time we have today. May we not squander it or sequester it. Free us from the manipulation of time. Our mutual goal is to do Your will in the order of Your priorities for the good, as well as the safety, of our Nation.

We commit ourselves to be sensitive to the guidance of Your spirit in the convictions we express and how we express them. Give us generosity in our attitudes and frugality in our verbiage. Remind us of our accountability to You. So fill this Chamber with Your glory and the mind and heart of each Senator with Your wisdom. And this morning, gracious God, we thank You for the service of Kelly Johnston as Secretary of the Senate and welcome Gary Sisco to this important and crucial position. We ask Your blessing and power on this Senate. Through our Lord and Saviour. Amen.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The able majority leader, Senator LOTT of Mississippi, is recognized.

Mr. LOTT. Good morning, Mr. President.

SCHEDULE

Mr. LOTT. Mr. President, for the information of all Senators, this morning the Senate will be swearing in the new Secretary of the Senate. Following the oath of office, the Senate will conduct a period for morning business until the hour of 12:30 p.m. And at 12:30 today, the Senate will recess until 2:15 p.m. for the Republican policy luncheon.

Under the previous order, during today's session, there will be 3 hours reserved for debate on the FAA conference report for Senators to utilize throughout the day. As a reminder, there will be an additional 3 hours for debate tomorrow on that conference report, with a cloture vote occurring on the conference report on Thursday at 10 a.m. I expect that the Senate will invoke cloture on Thursday, and it is my hope that we will be able to complete action on the FAA conference report shortly following that vote, certainly sometime during the day. It conceivably could go into the late afternoon, but we believe we can get that done at a reasonable hour. Senators should be aware that votes are possible today with respect to any other legislative items that are in the clearance process.

The distinguished Democratic leader and I will be talking about, hopefully, no longer controversial items that we can move by unanimous consent. Of course, we will advise all our colleagues.

ELECTING GARY LEE SISCO AS SECRETARY OF THE SENATE

Mr. LOTT. Mr. President, I send a resolution to the desk electing Gary Lee Sisco as Secretary of the Senate.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 307) electing Gary Lee Sisco of Tennessee as Secretary of the Senate.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be considered, agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 307) was considered and agreed to, as follows:

S. RES. 307

Resolved, That Gary Lee Sisco of Tennessee be and he is hereby elected Secretary of the Senate.

NOTIFYING THE PRESIDENT OF THE UNITED STATES OF THE ELECTION OF GARY LEE SISCO AS SECRETARY OF THE SENATE

Mr. LOTT. Mr. President, I send a resolution to the desk notifying the President of the election of Gary Sisco as Secretary of the Senate.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 308) notifying the President of the United States of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be considered, agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 308) was considered and agreed to, as follows:

S. RES. 308

Resolved, That the President of the United States be notified of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

NOTIFYING THE HOUSE OF REPRESENTATIVES OF THE ELECTION OF GARY LEE SISCO AS SECRETARY OF THE SENATE

Mr. LOTT. Mr. President, I send a resolution to the desk notifying the House of Representatives of the election of Gary Sisco as Secretary of the Senate.

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 309) notifying the House of Representatives of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be considered, agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 309) was considered and agreed to, as follows:

S. RES. 309

Resolved, That the House of Representatives be notified of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

ADMINISTRATION OF OATH TO THE SECRETARY OF THE SENATE

The PRESIDENT pro tempore. The new Secretary of the Senate, escorted by the Senators from Tennessee, will present himself at the desk to take the oath of office.

The Honorable Gary Lee Sisco, escorted by the Senators from Tennessee, Mr. THOMPSON and Mr. FRIST, advanced to the desk of the President pro tempore; the oath prescribed by law was administered to him by the President pro tempore.

[Applause, Senators rising.]

Mr. LOTT. Thank you, Mr. President.

COMMENDING KELLY D. JOHNSTON FOR HIS SERVICE TO THE U.S. SENATE

Mr. LOTT. Mr. President, I send a resolution to the desk commending Kelly Johnston for his service to the Senate.

● 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

The PRESIDENT pro tempore. The clerk will report.

The legislative clerk read as follows:

A resolution (S. Res. 310) commending Kelly D. Johnston for his service to the U.S. Senate.

Mr. LOTT. Mr. President, I ask unanimous consent that the resolution be considered and agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 310) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 310

Whereas, Kelly D. Johnston faithfully served the Senate of the United States as Secretary of the Senate during the 104th Congress, and discharged the duties and responsibilities of that office with unfailing dedication and a high degree of efficiency; and

Whereas, as an elected officer of the Senate and as an employee of the Senate and the House of Representatives, Kelly D. Johnston has upheld the high standards and traditions of the United States Congress, from his service on the staff of the House of Representatives from the 96th through the 101st Congress and then on the staff of the Senate from the 102d through the 104th Congress; and

Whereas, through his exceptional service and professional integrity as an officer and employee of the Senate of the United States, Kelly D. Johnston has earned the high esteem, confidence and trust of his associates and the Members of the Senate: Now, therefore, be it

Resolved, That the Senate recognizes the notable contributions of Kelly D. Johnston to the Senate and to his country and expresses to him its appreciation and gratitude for faithful and outstanding service.

OUR NEW SECRETARY OF THE SENATE

Mr. LOTT. Mr. President, I appreciate the cooperation of the leadership for getting this confirmation in place. I think the Senators are aware the name of KELLY JOHNSTON has been officially received by the Senate to be appointed to the Federal Election Commission, and we hope in the next couple of days final action will be taken on that nomination.

I am very pleased and honored today that we have confirmed Gary Lee Sisco to be our new Secretary of the Senate. I have known Gary for over 30 years. We were in college together. Even though he is a Tennessean, he had the very great wisdom of attending the University of Mississippi at Oxford. The Senators from Tennessee, FRED THOMPSON and BILL FRIST, I know, are very proud of this new Secretary of the Senate, but he did go to Ole Miss, and keep that in mind Thursday night.

But Gary has been a close personal friend. I have admired him for his attitude about Government, his family and his relationships with his friends and his work and his businesses. He is an outstanding human being.

He was born in Belvidere, TN. He is married to the former Mary Sue Baylis Sisco of Pascagoula, MS, once again, showing his great wisdom. As a matter of fact, my wife made the arrangements for the first blind date that Gary had with Mary Sue. She is a beautiful lady. They have three children: Stephen, 23; John, 21; and Mary Katherine, 13. I know they are very proud of their father this morning, and they are honored that he would be recognized in this way.

If I can take just a few moments to give you some more information about Gary. After he attended the University of Mississippi and received his bachelor of science in civil engineering in 1967, he also received a master of science in administration in September 1970 from George Washington University, and he attended law school at night at the University of Memphis. Gary is a captain in the U.S. Army Reserves.

For the past several years, in Nashville, Gary has been involved in real estate management and sales. And before that, he had a very distinguished record in Government. After he graduated first, though, from college, he worked for IBM. He was on active duty in the Army, and then he started working in political campaigns, including, I am sure, Howard Baker's campaigns. He was the campaign State chairman for Lamar Alexander when he ran for Governor and was elected. He served as administrative assistant to Congressman Robin Beard in the 1975–77 period. So he will understand and have a good relationship with the House.

Then he also worked for the Senate in a position I think that is critical and will be very helpful to him in this new position. He was the executive assistant to former Senator Howard Baker, giving him direct involvement and very and very active participation in the administration of a Senate office and understanding the way that that works.

So I am really pleased with this election. I know that Gary Sisco will make us all proud as the Secretary of the Senate. So I congratulate him and wish him well. And all I have to say is, "Go to work."

Gary, good luck to you.

Mr. President, I ask unanimous consent that the résumé of Gary Sisco be printed in the RECORD.

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

Résumé

GARY SISCO

June 1, 1994

Address: 3833 Cleghorn Avenue, Suite 401, Nashville, TN 37215.

Telephone: (615) 385-4384.

Fax: (615) 385-4752.

Date of birth: October 1, 1945.

Height: 5'10".

Weight: 175 lbs.

State of residence: Tennessee.

Spouse: Mary Sue Baylis Sisco of Pascagoula.

Children: Stephen Knox Sisco, 23; John Cartee Sisco, 21; and Mary Katherine Sisco, 13.

EXPERIENCE

January 1993 to Present: Apartment Management Corporation, 3833 Cleghorn Avenue Suite 401, Nashville, TN 37215—President/CEO.

Firm specializing in the brokerage and management of apartment communities.

Dixon Springs Investment Company, 3833 Cleghorn Avenue, Suite 401, Nashville, TN 37215—Shareholder.

Firm specializing in the investments of apartment communities.

January 1978 to January 1993: Town & Country Real Estate Companies, 3815 Cleghorn Avenue, Nashville, TN 37215—Chairman/CEO.

Diversified Nashville based Real Estate firm with management, sales, development, insurance, and investment divisions.

April 1977 to January 1978: Elkington, Keltner & Sisco, One Park Plaza, Nashville, TN 37209—Partner.

Partner in charge of the Nashville office of this firm specializing in condominium and association management with offices in Nashville, Memphis and Knoxville.

January 1975 to April 1977: Congressman Robin Beard, U.S. House of Representatives, Washington, D.C. 20515—Administrative Assistant.

Responsible for all staff operations of Congressman Beard in Washington and the Sixth Congressional District of Tennessee.

December 1973 to January 1975: Lamar Alexander for Governor, Box 1974, Nashville, TN 37202—State Campaign Manager.

Responsible for all of the gubernatorial campaign activities of the campaign of Governor Lamar Alexander for Governor in 1974 state-wide.

October 1971 to December 1973: United States Senator Howard Baker (R-Tenn), 2107 Dirksen Building, Washington, D.C. 20510—Executive Assistant.

Federal Building, Memphis, Tennessee—West Tennessee Field Director.

Responsible initially of the Memphis Senate Office and subsequently for all staff operations of Senator Baker in Washington and the five offices in the State of Tennessee.

September 1970 to October 1971: IBM Corporation, 1256 Union Avenue, Memphis, TN 38104—Marketing Representative.

Marketing Representative and System Engineer—Data Processing Division. Responsible for the installation of computers for IBM in a variety of businesses in the Memphis area.

October 1968 to September 1970: United States Army USAPERSINSCOM, The Pentagon Room, 1A885, Washington, D.C. 20510—Automatic Data Processing Project Officer.

First Lieutenant, Adjutant Generals Corps, Automatic Data Processing Project Officer, USA Personnel Information Systems Command, The Pentagon.

June 1967 to October 1968: IBM Corporation, 1256 Union Street, Memphis, TN 38104—Systems Engineer Data Processing Division.

EDUCATION

Central High School, Bolivar, Tennessee—Diploma, May 1963.

University of Mississippi, Oxford, Mississippi—Bachelor of Science in Civil Engineering, June 1967.

George Washington University, Washington, D.C.—Master of Science in Administration, September 1970.

The University of Memphis—Attended Night Law School.

MILITARY STATUS

Captain, U.S. Army Reserves, Classified IV-A.

PAST AND PRESENT MEMBERSHIPS AND AFFILIATIONS

Bank of Germantown—Board of Directors.

Baptist Health Care System—Board of Trustees and Executive Committee Member.

Baptist Hospital—Board of Trustees and Executive Committee Member.

Baptist Properties, Inc.—Board of Trustees.

Belmont College: An Agenda for Greatness Campaign—Chairman of Major Gifts Division.

Boy Scouts of America—Chairman of Large Gifts Division.

Education Corporation of America, Inc.—Chairman of Executive Committee—Board Member.

Governors Trade Mission to Shan Xi Province—People's Republic of China—Delegation Member.

Health Net—Employer Advisory Committee.

Immanuel Baptist Church.

Institute of Real Estate Management—Member.

Japan-Southeast U.S. Trade Association—Member.

Japan-Tennessee Society—Charter Member.

Leadership Nashville—Participant.

Nashville Area Chamber of Commerce—Member.

Nashville Board of Realtors—Member.

Nashville City Bank—Young Executives' Council.

Nashville Entertainment Association—Charter Member.

Nashville Exchange Club—Member.

Nashville Youth for Christ—Board Chairman and Advisory Board Member.

Tennessee Council of Private Colleges—Blue Ribbon Commission.

Tennessee Real Estate Commission—Member.

TRIBUTE TO KELLY JOHNSTON

Mr. LOTT. Mr. President, I also want to take a moment to thank again Kelly Johnston for his work over many years for a lot of different Congressmen and Senators. I did not realize that he had worked for so many different present Members of the Senate, I think probably at least three over the years. He has done a great job for Senators, like JON KYL. And, of course, he worked with DON NICKLES. He has done an excellent job as the Secretary of the Senate.

There are some vacancies at the Federal Election Commission, very important positions. Kelly has cleared the process you have to go through in being investigated. We need to get him there because there are two vacancies at the present time, and at least one or two more that will be coming up in April, and at a time when obviously the FEC is going to be the busiest that they perhaps have ever been.

But Kelly will put his great experience in the Congress and the Government and as the Secretary of the Senate to use for all Senators and Congressmen, and will work very hard, I know, to make sure that we have clean and honest and appropriate campaigns.

So, Kelly, we thank you very much, and we have been honored by your presence.

Would the Senator from Oklahoma like to add anything? We have done a resolution commending him already, in case the Senator did not see it. Would the Senator from Oklahoma like to add anything?

Mr. NICKLES addressed the Chair.

The PRESIDING OFFICER (Mr. BROWN). The Senator from Oklahoma.

Mr. NICKLES. Mr. President, one, I want to compliment my colleague, the majority leader, and join him in congratulating Kelly Johnston for doing an outstanding job as Secretary of the Senate. Secretary of the Senate is one of the highest positions that we have, maybe the highest nonelected position that we have serving Congress.

I have had the pleasure of knowing Kelly Johnston from Chickasha, OK, for a long time. He was my executive director when I was the chairman of the policy committee, the Republican Policy Committee. He did an outstanding job in that capacity. And I had the pleasure of working with him on the Senate Campaign Committee, and watching him do very able leadership as the Secretary of the Senate.

On behalf of all Senators, I just want to congratulate him for his service, thank him for his service, and send him best wishes, as he would assume new responsibilities at the Federal Election Commission.

Mr. THURMOND addressed the Chair.

The PRESIDING OFFICER. The distinguished senior Senator from South Carolina.

Mr. THURMOND. I am sure I speak on behalf of all Senators when I commend Kelly Johnston for the fine job he has done. He has worked here for a number of years in many capacities. He has proven himself to be diligent, efficient, capable. And we are all pleased with the way he has handled matters. We wish him a bright future in the years ahead.

Mr. LOTT. Mr. President, I yield the floor.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

TRIBUTE TO GARY SISCO

Mr. DASCHLE. Mr. President, I had another engagement. I apologize for not being here a couple minutes earlier, but I also want to join with our colleagues in saluting Gary Sisco as our new Secretary of the Senate. We are delighted with his appointment, and we look forward to working with him.

I have had the opportunity to talk to the majority leader on a number of occasions about his qualifications, and the great respect and admiration that is held for him. I must say, it is with great enthusiasm that I welcome him to the Senate, and look forward to working with him.

We will have many opportunities to work together, and I look forward to those. I know that all of my colleagues share in our welcome and our enthusiasm for him this morning, and our congratulations. I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The absence of a quorum has been suggested. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, is the Senate in morning business?

The PRESIDING OFFICER. The Senate is in morning business until 12:30.

TRIBUTE TO SENATOR NANCY KASSEBAUM

Mr. GORTON. Mr. President, this gives me an opportunity to speak briefly at least about those of my colleagues, particularly my colleagues on this side of the aisle, who are voluntarily retiring from the U.S. Senate this year. I know of no such occasion during my career here in which so many Members whom I regard as my close friends and whom I regard as wonderful contributors to the deliberations in this body, have chosen to move on to another phase in their lives at exactly the same time.

In one sense, of course, first among those must be my seatmate in the very next desk to me on my left here, the wonderful, charming and distinguished Senator from Kansas [Mrs. KASSEBAUM]. Senator KASSEBAUM, to the best of my knowledge, during my time with her here has never once raised her voice, but at the same time I have often been able to describe her as having a will of iron. I cannot tell you, Mr. President, how often, even though we are closely allied philosophically, I have had a particular matter on which some other Senator has told me Mrs. KASSEBAUM has made a decision and I have attempted to talk to her about, perhaps, reconsidering that decision. I

cannot count the number of occasions on which that has happened, but I can easily count the number of occasions on which I have been successful, because it is none.

When the Senator from Kansas has thought out an issue and has determined a course of action, that is the course of action she is going to take. It didn't matter whether it was her seatmate here or the Republican leadership or the President of the United States who attempted to change that course of action. It would not change.

For that reason, I found it particularly flattering to have at least a few occasions on which she has asked me for my own views on a subject before she has made up her mind. On occasion, at least, it seems to have given my arguments or my position some weight. But it is that strength of character coming from her family and the place in which she lives, and her unerring sense of right and wrong, what is proper and improper, that has caused her to make such a profound contribution to this body. She has made better each of the Senators with whom she has come in contact. I believe I can say that she has influenced us all and influenced us all toward our better natures.

During these final 2 years of her career here in the U.S. Senate, she has, of course, been the chairman on the Committee on Labor and Human Resources, and I have had the privilege of serving on that third major committee as a junior member. I have observed her patience in dealing with a large number of members on that committee who are quite willing to speak out on almost every issue, and to do so at length, and I have seen, almost without exception, how the patience of Senator KASSEBAUM has ultimately triumphed, together with her willingness to listen to the views of others and to accommodate them in building a majority for important pieces of legislation originating in that committee.

Her success in the Kassebaum-Kennedy health care bill is perhaps the single finest example of that form of cooperation and will remain a very real tribute to a person such as the Senator, but is only one of a legion of such accomplishments during the period of her three terms in this body.

TRIBUTE TO SENATOR WILLIAM COHEN

Mr. GORTON. Mr. President, another close friend who is retiring is the wonderful, talented, thoughtful, and intellectual senior Senator from Maine, BILL COHEN, whose career in the two Houses of Congress began in 1973. One level climaxed during his first term in the House of Representatives when, as a member on the Committee on the Judiciary, he sat through the impeachment hearings relating to President Nixon. I was not a Member of this body, or indeed in Washington, DC, during that vitally important and profound national debate. But I can remember, from afar I gained admiration for that very junior minority member of the House Judiciary Committee in connection with his public agonizing over an appropriate answer, the way in which he asked questions, and the way in which he justified his ultimately extremely difficult but, I think, correct decision on that matter.

He has, of course, been a Member of this body during my entire career here, as a thoughtful, highly independent mind, with a brilliant tongue and ability to state his position that is almost entirely unmatched. But, Mr. President, I think I will remember Senator COHEN most for his relationship with another former colleague of ours, Senator Warren Rudman of New Hampshire. The Presiding Officer remembers Senator Rudman very well. I often describe him as the only person I have known in my life who was always right, was never shy about sharing his absolutely correct views with everyone else, and who, even in a crowd of eight Senators, could occupy 75 percent of the talking time. Yet, with all of those qualities, he was greatly beloved by all who came in contact with him and was a wonderfully effective Senator.

The only Member of this body, however, who could ever prick Senator Rudman's balloon was Senator COHEN. He did so constantly, occasionally on the floor of the Senate, but literally every day in private relationships. To listen to the conversations between the two of them and the way in which Senator COHEN could deal with Senator Rudman was a wonderful privilege. While I know Senator COHEN looks forward to another wonderful career, I cannot but suspect that at least one of the reasons for his retirement now is the absence of any other person in this body with whom he could deal and interact in the way in which he did with our friend from New Hampshire, Warren Rudman. But Senator COHEN's wisdom and independence and thoughtfulness will be greatly and profoundly missed in this body.

TRIBUTE TO SENATOR HANK BROWN

Mr. GORTON. Mr. President, you, Senator BROWN, happen to be the Presiding Officer as I come to the floor to make these remarks. You are the one Member whose decision not to return I can least understand. Senator BROWN has been a friend, recommended to me by one of his closest friends in the House of Representatives as his closest friend, during the course of this last 6 years. You, perhaps above all of us on this side of the aisle, have been absolutely unafraid to take a position which would gain you only a tiny handful of votes. I know how many times I have come back to you during a rollcall to inquire whether or not one of your amendments could reach double digits during the course of a rollcall. But it has been one of your great features—a willingness to say, "no," the conventional wisdom is not correct, the easy way out is not the right way to go; there is a different way, a way that is better for the American people, better for all of us, albeit more difficult.

I know there have been occasions—a few occasions at least—in which those views have been expressed with such eloquence that they have actually prevailed in this body, and there are a number of times in which you can say, with I hope most of us, that, "But for me, the final result would have been different, and we are better off for me having been here."

Your cheerfulness and happiness and your willingness to deal with adversity has, I think, been an inspiration to every single one of us in this body. I do have every hope that you will be successful in whatever lies ahead in your career. I do know that not just by this Senator, but I believe by all of your colleagues, you will be greatly and wonderfully missed.

One last point in that connection which I found, about a year and a half ago, to be particularly profound was your role in the very difficult decision made by my other seatmate, the junior Senator from Colorado, to change parties, and to come over to this side. I don't know whether he would have been able to bring himself to do that at the same time or in the same way had it not been for the constant encouragement, friendship, thoughtfulness, and guidance that you provided for him. That itself will be a part of your heritage, which will live in this body long after you have left it yourself.

I must say this will be a lesser place without you. I note that the majority leader is now on the floor. I have several other talks like this to make about other Members, but for the time being, I yield the floor.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The distinguished Republican leader.

Mr. LOTT. Mr. President, I thank the Senator from Washington for yielding, and also for his very kind remarks.

DEPARTING SENATORS

Mr. LOTT. Mr. President, 14 of our colleagues will be retiring from the Senate at the end of this year. That is almost one-seventh of this body. Their departure represents a major turnover in the membership of the Senate, an institution which prizes itself on its continuity and its gradual pace of change.

With these 14 leaving, surely the Senate will be a different place next year. We have been enriched by these 14 Senators each in their own way, and in many ways over the years.

In the last 2 weeks it has been very hectic here, and I would have taken the floor earlier to comment about these distinguished Senators except for that very busy schedule. But I am glad now that I have the time to talk with a little leisure, and maybe even tell some special stories that I remember about some of these Senators. Each of them deserve special recognition.

I am glad so many Senators have spoken at length about those who will soon leave us. I went back and read several of the statements that were made Friday and Saturday, including some of the statements by Senators that will be leaving—particularly Senator COHEN of Maine. I found his remarks very interesting and enlightening, and typical of the Senator from Maine.

As everyone knows, the last few weeks have been an extraordinarily busy time. We have managed to deal with many items that have been stalled but most importantly we successfully pulled together the omnibus appropriations bill that will fund most of the Federal Government and direct many of its policies for years ahead. It wasn't easy for some Members and staff. It took literally weeks, and many of the Senators and staff members stayed up literally all night for 2 nights in a row. They did great work, and we are very proud of their work.

We are proud that we were able to complete our work last night in a bipartisan fashion. There was an overwhelming vote for that work product. I believe the vote was 84 to 15.

So now in the little time we have left in this 104th Congress I can finally get around to paying proper respects, although in an abbreviated form, to these distinguished Senators.

Senator BILL BRADLEY of New Jersey, for example, is widely expected to remain a force in our national politics. That is a tactful way of saying he is too impressive to ignore and too young to be relegated to the political hall of fame. He spent 18 years in the Senate proving that a Rhodes scholar can play hardball when he has to—and disproving the old adage that Senators can't jump. We wish him well and know that, in more ways than one, we will be hearing from him over and over again.

As we are preparing to leave, one of the bills that is left is the so-called "parks bill." I found myself last night here in the well talking to the Senator from New Jersey. He was involved working with the Senator from Alaska, Senator MURKOWSKI, to find a way to get that one last bill done. He last left his mark on this institution, and his mark on some outstanding legislation. And we look forward to working with him in a different role in the future.

Of course, my good friend sitting in the Chair this morning, Senator HANK BROWN of Colorado, leaves us far too soon after only one term in the Senate.

I remember very well receiving his call—I believe it was 2 years ago right after we had the election. In fact, I was running for a position myself at the time. And he was giving me suggestions. But he also wanted me to know. "And, by the way, I am leaving." I almost passed out. I could not believe it. I cannot envision serving in the Congress without HANK BROWN. He is just one of the most insightful Members I have ever known—brilliant in a very modest way.

I really do wish we had time to get him on the Finance Committee because his hand on the tax policy of this country would have been a wonderful sight to behold.

I remember that several of the things I have done over the years, that probably have gotten me into more trouble than I wanted, had been suggested by HANK BROWN. I will not forget my friend from Colorado. We surely will miss HANK, and we know that, again like the others, we will be hearing from him, and that his insightful intellectual integrity and his unfailing courtesy will continue to serve him well as he goes back to his beloved Colorado.

Senator BILL COHEN seems also far too young, both in years and in spirit, to have served in Congress for 24 years. Senator COHEN of Maine, Senator COCHRAN of Mississippi, and I were sworn in together as Members of the House of Representatives in 1973. We all have been together really ever since, even though the two of them came over to the Senate in 1978 and I didn't come over. I trailed along 10 years later. We have been through some incredible experiences together.

I have grown over the years to just come to admire and respect BILL COHEN so much. On the Armed Services Committee we are not just colleagues but comrades. We worked together to advance our Nation's security. We have a common interests in the magnificent cruisers and destroyers that defend our shores so well.

BILL COHEN turned out to be a novelist and a poet. He even published a book of poems. I mean, can you imagine? Most people would do well to write one poem. He has written a book of poems, as well as being an expert on matters as diverse as weapons systems and the problems of the elderly—and always as an independent thinker for the people of his State and for our country.

There are many issues on which we disagree, and we didn't always vote together, obviously. But none of them could diminish our mutual respect or my admiration for his dedication to his State and to his country.

We all certainly wish he and Janet Godspeed in the years ahead.

Senator JIM EXON from Nebraska has served with distinction as ranking member of the Senate Budget Committee. As a junior member of that committee, I far preferred him in the latter role in the minority. But I respected his commitment and appreciated his fairness no matter what party was in the majority.

There may be no more thankless task in the Senate than trying to steer the budget process, from either side of the aisle. And it takes a lot of teamwork and cooperation between the chairmen. In the last couple of years Senator DOMENICI and Senator EXON—I watched them work together many times standing shoulder to shoulder in the same position. I know I speak for all of us in expressing our appreciation for JIM's leadership, for his friendship, and for all the times his prairie personality has taken the edge off the sharp issues, and helped us to see the other side.

In fact, I have enjoyed this very year. He would come over on to the floor and say, "You know, Dole is trying to get me to be his running mate, and I am giving it a lot of thought."

He always had something to say that just loosened you up a little bit.

I have enjoyed working with him.

Senator SHEILA FRAHM of Kansas has been with us for only a matter of months. Coming to the Senate in the aftermath of Senator Dole's departure, she immediately faced extraordinary circumstances which she met with admirable effort and ability.

She has dealt with both her official duties and her political position with a heartfelt commitment to the people of Kansas.

Someone once defined courage as grace under pressure. SHEILA FRAHM has exceeded that standard. To grace she has added an unfailing cordiality, a no-nonsense devotion to her work that really defines what it means to be a Senator of the United States.

In the Senate, it is not how long you are a member of the team. It is how you handle the plays for the time that you are on the field. I know I am not alone in looking forward to her next appearance in whatever arena of public service that she chooses.

I referred earlier to the hard work, the long hours, and the positive way in which we reached a bipartisan conclusion to our omnibus appropriations bill just last night. A lot of the credit has to go to the gentle nature, the intelligence, the modesty, and the persistence of Senator MARK HATFIELD of Oregon. He has been working here for 30 years as a central figure in the progress and the dramas of the American Republic. He is now an institution within this institution. He has been more than a witness to great events of the last 30 years. He has been a key participant in many of them.

I remember when I first came to Washington in 1968 as a 26-year-old young staffer. MARK HATFIELD was already here and making a mark, and making waves sometimes. But because of MARK's work over these three decades, American education has been

transformed, American health care and medical research are revolutionized, and public policy is more humane, more just, and more compassionate. That is his memorial, and it is far larger a monument than the many statues that line the corridors of this Capitol.

Senator HOWELL HEFLIN of Alabama is often called the Judge, and for good reason. It is more than a reference to his previous position in the State of Alabama. It is a tribute to his temperament and his fairness, a special knowledge of the way he deals with issues and with people.

Some people say he talks a little funny. I never noticed it. I think he has no accent whatsoever. But I do get a little chuckle out of the fact sometimes that people come over and say, "Intrepret that for me." But whatever he is saying, it is worth listening to.

The Judiciary Committee will be poorer for his absence. We will all miss the way his self-effacing approach to a contentious matter could reinforce the comity that should always prevail in this body. While we share his happiness at the prospect of spending more time with his family, he and Mrs. Heflin will be missed from our Senate family.

They truly have been a family. Anytime there was an event off this floor, Mrs. Heflin was there. They were always a team. They were great representatives for our country in foreign affairs.

So I hasten to add, speaking as a neighbor, that they will be warmly welcomed across the border, and I know we are going to see a lot more of them here in Washington also.

Senator J. BENNETT JOHNSTON, of Louisiana, is another neighbor, and we have often worked together on regional matters.

While no one has ever doubted his loyalty to his party, he has often helped us bridge our differences to reach consensus. That has been especially true in his role, first as chairman, then as ranking minority member, on the Energy and Natural Resources Committee.

He now ends 24 years of service in the Senate and the Nation. It is hard to believe it has actually been that long. His departure will not end the friendship on both sides of the aisle, the best tribute to his standing among us. In fact, just last night there was a tremendous dinner held in his honor. Unfortunately, we were having a couple of votes, and it was interrupted a little bit, but a tremendous outpouring of affection from his constituents and from his colleagues in the Congress showed him just how much we do appreciate him.

Senator NANCY KASSEBAUM, of Kansas, came to Washington many years ago as a staff member to then Senator James Pearson, of Kansas. So I guess I should say she worked her way up the ladder.

Six years ago, when she was contemplating retirement, her colleagues sported buttons saying "Run, Nancy, Run." I wore one. We wanted her to stay. She ran, and, to no one's surprise she won overwhelmingly. If we had prevailed upon her to run again, she would win again.

Now it is time, she says, to go to—I think she calls it a farm. I had occasion to be in Topeka, and I landed at the airport, and there was NANCY KASSEBAUM, casually dressed and looking awfully relaxed and making me jealous that she was already in that frame of mind that she was enjoying retirement in her beloved land of Topeka, KS.

I could pay her tribute, as other Senators have, in appropriate flowery language, but in the final analysis I need only say this: When NANCY first came to the Congress, she was referred to as Alf Landon's daughter, but henceforth the identification will be reversed. From here on out, Alf Landon will be known as NANCY KASSEBAUM's father.

Senator SAM NUNN, of Georgia, also has spent 24 years in the Senate, during which time our country and all mankind have gone through tremendous changes. One thing that has not changed is SAM NUNN's single-minded devotion to his country's security in a dangerous world. Let me say something indelicate but something every one of his colleagues know. The Senate did not have to be the highest post to which SAM NUNN aspired. But he made his choices, and we are thankful for them.

His independent judgment has steadied the Senate in rocky times. I know that from personal experience. As a member of the Armed Services Committee, I worked with SAM in a bipartisan way across the aisle on many issues, many times very controversial issues. Even now on the Sunday morning talk shows, when most of the guests are on, I am flipping over to a football game or reading the paper or going out in the backyard to water the flowers. When SAM NUNN is on, I stop and listen because what he has to say is always very important and very impressive. His solid character has given weight to our deliberations. He has been a Senator's Senator, and I thank him for the gift of his example.

Senator CLAIBORNE PELL now closes out 36 years—36 years—six terms in the Senate. That is longer than many Members, particularly in the House, have been alive. As a young diplomat in postwar Europe, he saw the imposition of Soviet communism upon Eastern Europe. But he was here to greet the leaders of those same nations when, two generations later, they reclaimed their independence and their liberty. Among us here he has always retained the skills of the diplomat. No one can recall an angry word or destructive gesture on his part.

I wonder how many college students, present and past, realize that he is the "Pell" in their Pell grants. It is no matter, for his satisfaction has been in doing, not in the credit. We give it to him nonetheless with appreciation for what he has meant to the Senate and to the Nation.

I was very much impressed with the comments of the Senator from North Carolina [Mr. HELMS], just recently. He was emotional, and he said, "I admit it because we all love this man." And it is typical.

I was going down the hall on the first floor one day when I had the whip office adjoining his little office. He stopped me, and he said, "Have you ever seen my little room in here where I do most of my work?" I had not, and I walked in. It is an incredible room. I encourage my colleagues, if you haven't been in it, go. First of all, it is not real tidy. It has a smell of history, and it has a look of history—pictures that go back 50 years, 100 years, documents. It is a museum, and it is one room of one Senator in this building down on the first floor. I have enjoyed getting to know Senator PELL.

Senator DAVID PRYOR, of Arkansas, is a holder of the triple crown of American politics. He has served as Governor, Congressman, and Senator. I guess you could consider that the ultimate in recycling. They say you never know who your friends are until you run into real trouble. Well, when DAVID ran into trouble a few years ago with some rather serious heart problems, a heart attack while at home alone in his bed, the extent and the depth of his friendships in the Senate became clear. There is no greater tribute than having colleagues worry about your absence.

No one could say that Senator PRYOR is flashy in the traditional sense. That is why his quiet work on the Finance Committee and on the Aging Committee, which he formerly chaired, has made a difference and has rightly been his proudest accomplishment. Even now he is having some difficulty with a family member who has had to have some surgery and is going, I believe, to Houston for further evaluation this very week, and I have watched here in the Chamber as Senator after Senator go up to DAVID—Republican, Democrat, conservative, liberal, North, South, it makes no difference. They genuinely are interested and concerned because DAVID is interested and concerned. We salute him for all he has done.

PAUL SIMON, he of the bow tie. I thought it was a great tribute to him last week when we all wore bow ties. We just thought it was an expression of our affection for him. I think he enjoyed it, and we certainly all enjoyed it. He has received so many tributes that day and since from Senators it has left me very little I can say in addition, but he certainly has also left a mark here, not just his trademark bow

ties, as they do not represent the important things about him—a thoughtfulness about issues, a civility about disagreements, a coolness about crises. The Senate's loss in his leaving is tempered by our certainty that it is hardly the end of his presence in public life in our country. We will be hearing his voice. We will be reading his insights for many years to come.

Last and not least is the tall cowboy from Wyoming, ALAN SIMPSON, probably one of the better known Members of the Senate. Once you have seen him, it is hard to forget him. Of course, among all his other achievements over the years—he has been in leadership, he has been highly involved in many issues—he has done radio shows, I think almost daily, in which he and his friend from Massachusetts, Senator KENNEDY, exchange pleasantries. It is great to listen to them. It is always hard hitting, insightful and funny. They genuinely like each other; you can tell it in the radio show.

The news media relish his keen and sometimes acerbic comments. He is always good for a laugh with those western stories that he seems to embellish more and more every time he tells them. I have heard some of them many times, and they are funny every time. Yet we should not miss the point of his famous humor. He uses it as a tool to deflate pomposity, to replace tension with camaraderie, to replace argument with communication.

The 104th Congress is closing with a landmark victory for Senator SIMPSON, enactment of an illegal immigration bill on which he has long labored. I know in many respects he will consider it his crown jewel, his greatest accomplishment legislatively over the years.

It really frustrated me a week or so ago when it looked like we might actually lose it or lose major portions of it, but he was determined, he was relentless, he was aggressive, and again he employed his best weapon of all, humor. But just this past Saturday, at 2:30 in the morning, ALAN SIMPSON was ramming around these corridors looking for where the meetings were on illegal immigration. He was not going to let them escape his grasp. Every place the negotiations settled for a meeting to talk about various subjects that always led to illegal immigration, lo and behold the door filled up with the image of AL SIMPSON once again.

We all know that there is much more he wanted to accomplish, but the times, and perhaps the tempers, were not right. So we have much to come back to next year, including those hot wires that Senator SIMPSON had the courage to grasp barehanded. Sometimes we would all stand back and say, "AL, don't touch that. But if you do, don't mention my name."

No one knows better than I how difficult it is to be his opponent. By the same token, I know firsthand how devoted he is to the Senate, how loyal he is to his conscience, and how, many times, come next year we will wish we were there, having him stand tall—very tall—among us all.

I yield the floor.

Mr. BURNS addressed the Chair.

The PRESIDING OFFICER. The Senator from Montana is recognized.

TRIBUTE TO THE LATE JUDGE JAMES FRANKLIN BATTIN

Mr. BURNS. Mr. President, I rise today to pay tribute to one of Montana's favorite citizens, who died last Friday. Some will remember his name and some will remember his presence in these halls of Congress. Judge James Franklin Battin left a legacy of service to this Nation and to our State of Montana, and to everyone who came in contact with him. He was 71 years old. He died of cancer at his home in Billings, MT. He is survived by his wife Barbara, two daughters, and a son who is now serving as a member of the California State legislature.

The judge was born February 13, 1925, in Wichita, KS, and was a personal friend to former Senator and now Presidential candidate Bob Dole, of Kansas. Both of them being born in Kansas, we can see why. But he moved with his family to Billings in 1929.

The life story of "Big" Jim Battin reads like the life story of this great United States. There are stories like this one all over America, but they are not told or given their proper space in American lore. When this Nation called during its great time of need and peril in World War II, he answered. He served in the U.S. Navy, earned two battle stars at Saipan and Okinawa.

He also answered the call to serve the people of eastern Montana, and represented them and America in the House of Representatives from 1961 until President Nixon appointed him Federal district judge in 1970.

Everyone who knew him here as a Congressman had great respect for him. He was known for his vision, his wisdom, and a quick wit. More important, he was known for his integrity: His word was his bond. All these great characteristics he carried over in his work on the bench and the important decisions he made every day that affected peoples' lives.

To Jim Battin, all people had faces. I know of no one who ever met or dealt with Big Jim who had the feeling that he did not care, this tall Congressman from Montana, who had a heart as big as the sky and as big as the State he represented.

From a personal standpoint, I feel a great loss. He was one that I went to when I was confronted with problems arising out of Washington. Who better to go to, than a man who was held in high esteem here? No matter how busy his schedule, he always took the time, and we would visit. So, I have lost a great friend, adviser, and teacher.

There is one other thing, though, I will not miss—his great negotiating ability on the first tee. He loved the game of golf, and he played it with great passion.

We do not say goodbye very often in our country; we just say, "So long." Even though our trails will part now, they will cross again someday.

Mr. President, I yield the floor, and 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. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

TRIBUTE TO ALAN SIMPSON AND MARK HATFIELD

Mr. GORTON. Mr. President, there are two others of my colleagues on this side of the aisle about whom I would like to speak briefly this morning. The first, of course, is one who has been the subject of innumerable tributes already, the wonderfully delightful and witty senior Senator from Wyoming, ALAN SIMPSON.

There is almost nothing I can say that can add to the tributes that have already been made. ALAN SIMPSON is unique. The single wittiest Member of the Senate, whose legion of stories is so great that you can hear one 3 years after you first heard it, without having listened to it in the interim, and it is as funny the second time as it was the first. I must confess there were a number that I tried to memorize so I could tell them myself. To be in a place of informality with ALAN and to listen to what he has to say is an extraordinary privilege.

But, of course, that does not make him a U.S. Senator. Commitment and hard work and dedication to principle are what make an outstanding Member of this or of any other legislative body. And the degree of thoughtfulness and attention that Senator SIMPSON has focused on a wide range of issues, those representing his own quintessential rural Western State, but even more significantly those that affect the future of the United States, its place in the world, its society and its culture, all have fallen within the ambit of ALAN SIMPSON's interest.

Whether it has been the almost constant support of a strong and successful foreign policy for the United States, whether it has been his thoughtful examination of questions relating to the budget and the tax relief of the American people, his dedication to seeing to it that this Congress and administration actually seriously begin the attempt of balancing the budget, whether

it is on his latest crusade for more thoughtful, balanced and strong immigration policy or a myriad of other issues, ALAN SIMPSON's views are sought out by his companions and given great weight by them.

Perhaps the finest symbol of the reach and scope of ALAN SIMPSON's interest and influence is his years of short radio debates with Senator KENNEDY, the leading Member of the other party. While I heard only a few dozen of them, each one shows Senator SIMPSON's patented wit, as well as his ability to get to the absolute heart of the particular issue.

Those are sets of qualities that are not likely soon to be duplicated here in the U.S. Senate, and as a consequence, every Member will miss ALAN SIMPSON as a U.S. Senator, and I believe I can say that every Member of the U.S. Senate will miss ALAN SIMPSON as a friend whom they see on each and every day.

Last in this series, but far from least, Mr. President, is my friend and neighbor, MARK HATFIELD, the senior Senator from Oregon. We are brought together, of course, by geography, by the fact that so many of the regional challenges that affect one of our States affects the other as well. By the very real geographic fact that rivers join together rather than separate and the boundary between our two States, through most of its length, is the Columbia River.

So, in any event, we would have been pushed together for the solution or for answers to these regional questions, but our association is far greater than that. I can say, Mr. President, that when I arrived in this body in 1981 and viewed my 99 colleagues, the single individual who most closely fit the best possible academic or idealistic profile of a U.S. Senator was MARK HATFIELD, in bearing, in demeanor, in dress, in voice, in mind and in ideas.

MARK HATFIELD is an individual who, as much as any other I ever met, is able to combine a great loyalty toward a set of ideas and directions which make and preserve a political party, with an independence of judgment and an unwillingness to delegate his final decisionmaking authority to anyone else. That is a very difficult balance, Mr. President, but MARK HATFIELD, I am certain from the beginning of his career, certainly during the 14 years that we have been here together, has perhaps best exemplified that wonderful balance: a chairman of an Appropriations Committee, tolerant, willing to listen to the views of others within his own party and in the other party, a firm and fine negotiator with whatever administration is in power, but at the same time, someone who never has lost sight of his goal of a more thoughtful, more peaceful, more generous America.

MARK HATFIELD's influence on this body will live for many years, perhaps for generations, after he has left. Others, beside myself, will look back and say that MARK HATFIELD was their ideal of what a U.S. Senator ought to be.

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

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

FAREWELL TO SENATOR KASSEBAUM

Mr. DASCHLE. Mr. President, for much of her life and political career, NANCY KASSEBAUM has been in the company of political giants. There was her father, Alf Landon, who had served as Governor of Kansas and was the Republican nominee for President in 1936. And there is that other Senator from Kansas, Bob Dole, who happens to be this year's Republican nominee for President.

Entering the U.S. Senate is intimidating enough—but to be following a path forged by two such powerful figures must have been truly overwhelming.

NANCY LANDON KASSEBAUM was more than equal to the challenge. She quickly emerged as a thoughtful, powerful, and highly respected force in this Chamber.

In fact, she was elected to the Senate by defeating her opponent by a larger margin than had Senator Dole when he squared off against the same person.

In office, she established herself as a moderate, centrist force in her party and in the Senate, which she is. But Senator KASSEBAUM's moderation was never mistaken for lack of fortitude. No one can be more determined or more tenacious in pursuit of a cause or a principle.

Again, her service as chair of the Senate Labor and Human Resources Committee has been characterized by fairness, tolerance, and moderation. It has been characterized by her efforts to make America a better place to live and work, as witnessed by her recent cooperation with Senator KENNEDY in securing passage of the Kennedy-Kassebaum legislation to improve access to decent health care for millions of Americans.

Indeed, Senator KASSEBAUM has worked to make life better for all people in all lands. As chair and ranking member of the Subcommittee on African Affairs of the Foreign Relations Committee, she has worked to improve the lives of the young and the impoverished on that continent.

There is an infectious optimism about her, as she has always found the glass half-full, and she has that wonderful ability to make others feel the same way. There is a basic decency about her as she always seeks the high road.

In announcing her retirement from the Senate, she did not disparage politics or politicians. There were no cheap jokes or cheap shots. Instead, she announced her retirement by encouraging young Americans to choose politics as a future endeavor.

"Politics is the lifeblood of democracy," she explained. "We have become a great nation because so many Americans before us chose to be involved in shaping our public life, focusing our national priorities, and forging consensus to move forward."

Now, as NANCY KASSEBAUM moves forward to the next phase in her life—as she says, "to pursue other challenges, including the challenge of being a grandmother"—I, and every Member of this Chamber, wish her the best.

FAREWELL TO SENATOR BROWN

Mr. DASCHLE. Mr. President, I have had the good fortune to know Senator HANK BROWN for some time.

Since being elected to the Senate in 1990, he has been a tenacious advocate for the principles he holds, especially on matters of fiscal restraint. His service on the Senate Judiciary, Veterans' Affairs, and Budget committees were all marked by his consistent support of conservative-Republican causes.

But, I point out, Mr. President, that while few people can be as vigorously partisan in pursuit of the causes in which they believe, even fewer people could be more respectful or more polite in their opposition.

Senator BROWN is genuinely liked and admired by Members on this side of the aisle, many of whom he has worked with during his service on the Senate Budget, Judiciary, Foreign Relations, and Veterans' Affairs committees. This also includes those he worked with under difficult, strenuous circumstances like the Clarence Thomas hearings and the BCCI scandal. Furthermore, he has worked with Democrats to help preserve our precious, but limited environment, through efforts like getting the Rocky Mountain Arsenal declared a national wildlife refuge. Working with HANK BROWN has been a pleasure.

Although he is leaving us after only one term, this worthy adversary, and the qualities he brought with him to the Senate, will be missed by Democrats and Republicans alike.

In announcing his retirement, Senator BROWN said that he was looking "forward to being full time in Colorado." I can understand and appreciate that. Colorado is a beautiful State filled with wonderful people. I wish him the best.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

FOOD AND DRUG ADMINISTRATION REFORM LEGISLATION IN THE 104TH CONGRESS

Mr. HATCH. Mr. President, as the 104th Congress winds to a close, I wanted to take this opportunity to comment on the demise of the Food and Drug Administration reform legislation.

It has been extremely disappointing to me that efforts to prod the FDA into meaningful reform have not been fruitful. It is doubly disappointing because, our colleague, Senator KASSEBAUM, and her staff have spent countless hours crafting a solid reform bill, a bill that won overwhelming, bipartisan support from the Labor and Human Resources Committee.

In remarks before this body earlier this year, I outlined my views on the need for FDA reform and the principles which should be embodied in any reform legislation. I continue to believe that reform of this tiny, but important, agency is sorely needed, reform that will both streamline its operations and preserve its commitment to ensuring the public health.

I know that many who have worked on the FDA issues are discouraged, but we can be proud of three significant reforms to food and drug law this year: the first being the drug and device export amendments I authored with Representative FRED UPTON; the Delaney clause reform embodied in the pesticide legislation the President recently signed; and the animal drug amendments so long championed by Senator KASSEBAUM. It seems, therefore, that the revolutionary course we charted for FDA reform at the beginning of the 104th Congress, evolved into a path evolutionary in nature, but still productive nonetheless.

Much more remains to be done, and I will continue to work with my colleagues next year to advance the work we started this year. There are many priorities for further action, among them—speeding up generic drug approvals, clarifying how tissue should be regulated, expediting medical device approvals, deficiencies in the foreign inspections program, and rigorous oversight of the Dietary Supplement Health and Education Act's implementation.

Another issue that I would like to see addressed next year is one that has been periodically on the FDA radar screen: the issue of national uniformity in regulation of products that fall within the FDA's purview.

In 1987, FDA Commissioner Frank Young, in response to California's Proposition 65, was on the verge of issuing an FDA regulation that would have acted to preempt certain warning statements required by the State of California. In fact, in August of that year, Commissioner Young wrote the Governor of California to underscore his concerns about the potential negative effect of Proposition 65 on "the interstate marketing of foods, drugs, cosmetics and other products regulated by the FDA."

Further, Commissioner Young pointed out that "the agency has adequate procedures for determining their safety and taking necessary regulatory action if problems arise."

Although ultimately this regulation was not issued, the 1991 Advisory Committee on the Food and Drug Administration, chaired by former FDA Commissioner and Assistant Secretary for Health, Dr. Charles Edwards, examined this issue. The panel recommended that Congress enact legislation, "that preempts additional and conflicting State requirements for all products subject to FDA regulation."

The issue of Federal preemption is extremely important for several industries, especially over-the-counter drugs, cosmetics, and foods. I was heartened when the Labor and Human Resources Committee approved Senator GREGG's amendment on national uniformity for over-the-counter drugs during consideration of the FDA reform legislation, S. 1477, but was disappointed that Senator GREGG did not extend the concept further in his amendment.

Let us take the cosmetics industry as a case in point.

In the United States, the cosmetics sector of the economy represents an estimated $21 billion in annual sales, a significant amount by almost any measure. It consists of over 10 billion individual packages that move through the stream of interstate commerce annually. These include soap, shampoo, mouthwash, and other products that Americans use daily. These hundreds and hundreds of product lines, and thousands and thousands of products are each subject to differing regulation in the various States—even though all must meet the rigorous safety, purity and labeling requirements of Federal law.

Given this volume of economic activity, it is imperative that manufacturers be able to react quickly to trends in the marketplace; they must have the ability to move into new product lines and move in to and out of new geographic areas with a minimum—but adequate—level of regulation to ensure the products are not adulterated and are made according to good manufacturing practices.

Today, cosmetics manufacturers are competing more and more in a global economy, and are making products consistent with the international harmonization of standards in such large marketing areas as the European Union. A single nationwide system for regulating the safety and labeling of cosmetic products would be a great step in helping that industry move toward the international trends in marketing. At the same time, it would be a more efficient system, since allowing individual States to impose varying labeling requirements inevitably leads to higher prices.

In other words, the time has more than come for enactment of a national uniformity law for cosmetic regulation. It is my hope that this issue will be high on our congressional agenda next year.

In closing, Mr. President, I want to offer my great respects to Chairman KASSEBAUM for the hours, weeks and months of time she has devoted to the FDA reform issue. Although I have paid tribute to Senator KASSEBAUM in separate remarks here, I must reiterate again how much her reputation for equilibrium and fairness have lent to development of an FDA reform proposal which cleared the committee in such a bipartisan fashion.

Finally, I must also pay tribute to the lead staffer on FDA issues, Jane Williams, who has worked virtually round-the-clock to try to fashion a good, fair, bipartisan reform bill. Jane more than exceeded that goal, and I think this body should give her some much-deserved recognition.

I yield the floor.

PRESIDENT CLINTON'S CODDLE A CONVICTED CRIMINAL CAMPAIGN, PART II

Mr. HATCH. Mr. President, an administration's crime policies are a web of many factors. They include, for example, the kind of judges a President will appoint. They include an administration's prosecutorial policies and its outlook on the drug problem and how to combat it. And they include the scope and nature of prisoners' rights an administration asserts against State and local government prisons and jails.

I have spoken several times about soft on crime Clinton administration judges. President Clinton has been soft on drugs. After years of declining use, the drug problem is on the rise—on President Clinton's watch. And there is no way that he can avoid the criticism.

Today, I wish to speak again about the Clinton administration's coddle a convict program. The President is responsible for protecting the constitutional rights of convicted criminals and arrestees incarcerated in State and local prisons and jails. This is pursuant to the Civil Rights of Institutionalized Persons Act [CRIPA].

I might add that I was the deciding vote on that act, and was the prime cosponsor, along with Senator Bayh, of that act many years ago.

Convicted criminals do have some constitutional rights and we provided for them in that act; but, understandably, those rights are very sharply circumscribed. And, to my mind, the Clinton administration takes a very liberal view of these rights and reads the rights of the accused and of convicted

criminals more favorably than the Constitution requires or even permits.

On June 4, 1996, I drew the Senate's attention to some of the constitutional violations the Clinton administration claimed the State of Maryland was committing at its Supermax facility. This facility holds the worst of the most vicious criminals in the Maryland State prison system—murderers, rapists, and other hardened criminals.

Now, is the Clinton administration citing the State of Maryland because it beats the convicts at Supermax? No. Is the Clinton administration citing Maryland because it tortures or starves these vicious criminals? No.

Mr. President, the Clinton administration is citing the State of Maryland, in part, because "food is served lukewarm or cold" to these murderers and rapists.

This is not all. The Clinton administration insists that Maryland provide these killers and rapists "one hour of out-of-cell time daily. At least five times per week, this out of cell activity should occur outdoors, weather permitting." [Letter of Mr. Patrick, May 1, 1996, to Governor Parris N. Glendening, page 12]. That is right Mr. President, the hardened criminals who are the worst of the worst, who require special supervision, have a constitutional right to fresh air, to go outdoors. This does not represent law and order. This is the coddling of vicious criminals.

Mr. President, this coddling campaign does not end at Maryland's Supermax facility. While time does not permit a full airing of this little known Clinton administration campaign, let me share with my colleagues just some of its more egregious outrages.

Bear in mind, Mr. President, that certain penal policies may be desirable. But, the Constitution permits criminal prisoners to be afforded much less than the ideal. The Constitution certainly does not require States and localities to adopt model policies, as the Clinton administration seems to be trying to cram down the throats of State and local governments.

The Clinton administration sent a June 1, 1995, letter to the Lee County jail in Georgia, a jail which had 27 inmates at the time. Here is one of the unconstitutional conditions the Clinton administration found at this jail:

"Inmates receive only two meals a day, and crackers and soda for 'lunch.' They do not receive juice or milk * * *" [June 1, 1995 letter from Assistant Attorney General for Civil Rights Deval L. Patrick to John L. Leach, III; page 3].

Mr. President, doesn't your heart just bleed? The inmates of this county jail do not get juice or milk. So, let us make a Federal case out of it, at least according to the Clinton administration. Let us threaten to sue this Georgia county, let us use the vast power of the Federal Government to ensure that the 27 inmates at this county jail get their juice or milk.

I am confident of one thing, though: these crooks must get their cookies during the day. How do I know? Because if they didn't, the Clinton administration would be claiming a violation of their constitutional rights.

Moreover, Mr. President, according to the Clinton administration, those arrested and detained for crimes have a constitutional right to wear underwear. You don't believe me, Mr. President? Am I satirizing the Clinton administration policies?

Let me quote from the Clinton administration's April 16, 1996 letter to the Virginia Beach, VA city jail. Here is one of the "conditions [which] violate the constitutional rights of prisoners housed at the jail." Let me go into it again.

"* * * [the jail] fails to provide underwear to newly arrested people who are wearing 'unacceptable' underwear at the time of their arrest. Unacceptable underwear is defined by [the jail] as any underwear other than all white underwear devoid of any ornamentation or decoration * * *. As a practical matter, this practice results in inmates having no underwear for extended periods of time * * *." [April 16, 1996 letter from Mr. Patrick to Mayor Meyera E. Oberndorf, pages 2, 5.]

This is ridiculous. Can you imagine it, Mr. President? The Federal Government, led by the Clinton administration, is fighting for the alleged right of inmates to wear underwear, and in the name of the Constitution, no less. Some of these inmates include accused murderers and rapists. James Madison has got to be rolling over in his grave.

On October 18, 1993, the Clinton administration listed "conditions at the [Grenada City, MS] jail [which] violate the constitutional rights of the prisoners confined therein." [October 18, 1993 letter from Acting Assistant General Attorney General James P. Turner to Mayor L.D. Boone, page 2]. The Clinton administration noted that its inspection "revealed that inmates are not provided an exchange of clean linen, such as sheets, blankets, pillows, and pillow cases on a scheduled weekly basis." [page 4]. On July 21, 1994, the city signed a consent decree at the Clinton administration's behest, which codifies in a court decree this requirement of weekly linen service.

Just weeks later, however, the Constitution changed according to the Clinton administration: "Prisoners should have a clean clothes and linen exchange at least three times per week." [August 3, 1994 letter from Mr. Patrick to Sheriff Robert McCabe, Norfolk, VA city jail, page 8.]

Mr. President, I am sure it is sound penal policy to provide clean clothes and linen exchange once or even three times a week. But the Clinton administration has no business imposing its policy preferences as requirements on States and localities under the false guise of enforcing the Constitution. Inmates' clothing and linen have to become awfully wretched before a constitutional violation occurs. This is an extra-constitutional convenience, a Clinton administration coddle, and not the enforcement of the Constitution.

The Clinton administration's coddling of criminals does not stop there. The Clinton administration is compelling jails and prisons to "ensure that no inmate has to sleep on the floor." The Clinton administration told the Tulsa County Jail that it must "[p]rovide all inmates within twenty-four hours of their admission with a bunk and mattress well above the floor." [September 13, 1994 letter from Mr. Patrick to Lewis Harris, page 15.]

It is certainly preferable to give inmates a bunk to sleep in. But, jail and prison space do not always match the number of criminals and detainees requiring incarceration. The Constitution does not require a bunk for every inmate. Sleeping on a mattress on a floor or on the floor itself may not be convenient, but the Constitution does not require prisons and jails to afford comfortable lodging for every criminal.

But just listen to the bleeding heart of the Clinton administration, time and again bringing the full weight of the Federal Government down on the law enforcement systems of our localities and States. On October 26, 1993, the Clinton administration advised the Lee County jail in Mississippi that the jail "is routinely overcrowded. [Its capacity] is 54, but there were 80 inmates on the first day [of the Justice Department's tour]" and occasionally the inmate population is about double the jail's capacity. This means "that some inmates have to sleep on bunks in the day rooms, on mattresses on the floor, and on top of the day room tables * * *." That is unconstitutional, according to the Clinton administration. [October 26, 1993 letter from Mr. Turner to Billy Davis, pages 2, 3.] The Clinton administration demanded that the jail "house[] only an appropriate number of inmates and that none of the inmates sleep on the floor." [page 8].

Indeed, Mr. President, take a look at how the Clinton administration handled the Forrest County, MS, jail. The Clinton administration cited the jail because it "is consistently overcrowded. Although the facility is designed to house 172 inmates * * * [it has] housed up to 242 individuals on a single day. On the day of [the Justice Department's] tour * * * the jail housed 203 inmates. Inmates have slept on mattresses on the floor for the past year." [July 6, 1993 letter from Mr. Turner to Lynn Cartlidge, Attachment, page 4].

The Clinton administration, with the full leverage of its resources, prevailed

upon the county to enter into a consent decree nearly 2 years later. The consent decree provides that, "[t]he jail's population shall not exceed the rated capacity of 172 unless temporary conditions exist beyond the control of [the County]." Even then, the county must do all it can within its control to get the inmate population down to 172 [Consent decree, paragraphs 67–69].

Mr. President, the inmates at Forrest County jail, or any other jail or prison, do not have a constitutional right to be routinely housed at a jail with no overcrowding whatsoever. But the inmates' allies in the Clinton administration have created that right for them.

Mr. President, the Clinton administration has also discovered a constitutional right to fresh air for the inmates. According to the Clinton administration, the Lee County, MS, jail's "installation of individual domestic-type air conditioners did not provide minimum ventilation for the purposes of fresh air supply, air exchange and overall cooling, as indicated by the 91 degrees Fahrenheit temperature and the 75 percent relative humidity in the cell housing areas. * *" [page 5]. Does that sound like cruel and unusual punishment to you, Mr. President?

I know of thousands, hundreds of thousands of Americans who live no better than that. But our prisonors have to be coddled. We have to take good care of them and make sure they all have air conditioning.

The Clinton administration has relentlessly fought for the rights of inmates to outdoor exercise and to exercise equipment. It complained to the Onondaga County jail of Syracuse, NY, that, "'outdoor recreation facilities' consist of only 1 operative basketball hoop and underinflated basketballs [and no other type of equipment.]" My goodness, here is the Clinton administration's demand on that county jail: "Existing outside recreation space must be equipped with sufficient sporting/recreation equipment to afford prisoners the opportunity to participate in large muscular activity. [The Jail] must assure that both indoor and outdoor recreation programs exist for prisoners." [October 18, 1994 letter from Mr. Patrick to Mr. Nicholas J. Perio, page 14.]

I am sure the citizens of New York State and the rest of our States can sleep easier knowing the Nation's jail inmates have this constitutional right to participate in large muscular activity with sufficient sporting and recreation equipment. I am sure we all rest easier knowing that these inmates have a right to indoor and outdoor recreation programs.

Mr. President, while the Constitution may require a minimum opportunity for inmates to exercise, there is no constitutional right to exercise out of doors. And there certainly is no constitutional right to exercise equipment and indoor and outdoor recreation programs.

Some of these programs may make sense as a matter of policy. I have no particular objection, for example, to outside exercise, which inmates can obtain without exercise equipment. But the Clinton administration has no business imposing these programs on States and localities in the name of the Constitution. The Clinton administration is seeking to constitutionalize its notion of enlightened prison policy and cram it down the throats of our State and local prisons and jails.

The Clinton administration cited the Calhoun County, GA, jail for allowing prisoners only 2 hours a week of out of cell exercise, staff availability permitting, and providing no exercise equipment. The Clinton administration demanded that, "Inmates * * * be provided with exercise outdoors when weather permits, one hour per day, five days per week. Reasonable exercise equipment should be provided." [June 1, 1995 letter from Mr. Patrick to Mr. Calvin Schramm, pages 3, 5].

On the same day, the Clinton administration read the Constitution even more expansively when it cited the Lee County jail for exercise violations—the same jail that allegedly violated the Constitution by not providing juice or milk to the inmates. The Lee County jail must provide not 5 days of outdoor exercise, but 7 days a week of outdoor exercise. [page 6].

Let me touch on another Clinton administration coddle. According to the Clinton administration's reading of the Constitution, "loss of meals must never be used as a punitive measure." [April 23, 1996 letter from Mr. Patrick to Mr. John Moore, Coffee County, Commission, GA, page 3.] From time immemorial, parents have sent children to bed without supper as punishment. But, just let a prison or jail try it on a convicted criminal, and they will wind up with the Federal Government on their backs, courtesy of the Clinton administration.

Moreover, the Clinton administration objected to a jail's inmate handbook which "instructs inmates to eat 'quickly'. This is contrary to generally accepted correctional practice," claims the Clinton administration [page]. But the Clinton administration has no authority to impose generally accepted correctional practices on State and local governments. It can only remove unconstitutional conditions at state and local prisons and jails. The Clinton administration is seeking, once again, to constitutionalize what it considers to be sound correctional policy.

Now, let me read, in its entirety, one of the "unconstitutional conditions" found at the Dooly County, GA, jail. This jail has a capacity of 36 inmates:

"Food sanitation is poor. The Jail does not have a kitchen. Food is obtained from a nearby, private establishment. The lunch meal on the day of our tour, tuna fish, was served at approximately 65 degrees Fahrenheit. This is much warmer than food safety standards permit." [June 1, 1995 letter of Mr. Patrick to Mr. Wayne West, page 5.]

That is it. The serving of that warm tuna fish violated the Constitution.

On the same day, the Clinton administration found the following "conditions at the Mitchell County, GA, jail violate the Constitutional rights of prisoners:

"* * * The food is transported by car in styrofoam or polystyrene containers not designed to maintain proper food temperatures. During our tour, the hot food for the evening meal, which should be served at a minimum of 140 degrees fahrenheit, was served at 115 degrees fahrenheit." The Constitution allegedly requires such proper insulation and temperatures for inmates' food. [June 1, 1995 letter from Mr. Patrick to Benjamin Hayward, page 6, 9.]

Mr. President, I could go on and on, about the areas just mentioned, as well as additional areas where the Clinton administration seeks to coddle criminals by demanding extra-constitutional privileges for them.

Scarce Federal law enforcement resources would be better utilized by focusing on putting more criminals behind bars rather than worrying about whether their tuna fish is too warm once they get there; whether their hot food is lukewarm, or heaven forbid, cold; whether they get juice or milk with their meals; whether they have to sleep on a mattress on the floor rather than a bunk a certain number of inches off the floor; whether they get outdoor exercise, exercise equipment, and recreation programs; and whether they get to wear underwear.

And the Clinton administration should stop diverting scarce State and local resources toward defending against, or bowing to, these bleeding-heart concerns.

Mr. President, I was the author, along with Birch Bayh, of the Civil Rights for Institutionalized Persons Act. I was the deciding vote on that vote. I believe it was in 1978 or 1979. It could have been 1980. It was an important bill. I believe in it. I do not think criminals should have their constitutional rights violated any more than anybody else.

But these assertions of the Clinton administration and these demands and these consent decrees and these costs to the taxpayers in those State and local areas are absurd. Frankly, we have to get them out of the pockets and lives of our State and local governments. When they find true constitutional issues, true constitutional wrongs, they ought to right them. But these are not constitutional issues or wrongs that need to be righted, and we have to give the State and local governments some flexibility. We also

have to understand that these murderers and rapists and others have committed these crimes and they should not be coddled in the jails of this country.

Mr. President, I think we ought to quit making a distortion out of the Civil Rights for Institutionalized Persons Act and do what is right. But this is typical of this administration, and I had to make these comments.

I yield the floor.

The PRESIDING OFFICER. The Senator from Virginia.

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION

Mr. WARNER. Mr. President, I rise to urge the Senate, as quickly as possible, to address and pass the current piece of legislation relating to the airports. I do so for a very special reason.

Three airports primarily serve the bulk of the requirements of the Congress and the Federal Government, and the Greater Metropolitan Washington area: National Airport, Dulles Airport, and Baltimore International.

Some almost now, I think, a decade ago, I, together with others in this Chamber, fashioned the statute by which Dulles and National became independent, subject only to the Washington Metropolitan Airports Authority jurisdiction. In that legislation and in subsequent pieces of legislation, it was the wisdom of Congress that we need to constitute a special board to have some oversight responsibilities. It was highly controversial. The thought was that this board could bring to the attention of the metropolitan authority and others the particular needs of the users.

As it turned out, the Federal courts said that was unconstitutional, and we finally, now, had a Supreme Court decision which knocked down the functions of that legal entity. This bill puts into place the legislative corrections to implement the decisions of the Supreme Court and other Federal courts that have addressed this issue.

It is essential that legislation be passed for the very simple reason that as the Members of the U.S. Senate hopefully will begin their journeys home later this week, they will go through the airport and see both airports partially remodeled. Unless this legislation is in place, that remodeling, by necessity, will have to stop. The funds will run out.

I have just talked to the general counsel of the Washington Metropolitan Airports Authority. I ask unanimous consent to have printed in the RECORD certain documentation he will be providing the Senate today.

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

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY,
Alexandria, VA, October 1, 1996.

Hon. JOHN WARNER, U.S. SENATE, WASHINGTON, D.C.

DEAR SENATOR WARNER: We write to advise you of the critical importance to the Airports Authority of the enactment of the Conference Report on H.R. 3539, the Federal Aviation Reauthorization Act of 1996.

In addition to critical measures providing for improved security at all airports, and authorizing expenditures for the continuation of the airport improvement program grants and funding for the FAA, the Conference report contains vitally important provisions to restore the powers of the Airports Authority.

Since an April 1995 court order, the Airports Authority has been without basic powers to award contracts, adopt a budget, change regulations, or issue more revenue bonds. This is a serious matter for any public agency; for us, it goes to the heart of our business.

As you know, the Airports Authority is engaged in a $2 billion program to reconstruct Washington National and expand Washington Dulles International. We are now at the stage where we must raise more funds through the sale of revenue bonds in order to keep the construction work on track.

Enactment of the Conference Report now is essential to our ability to issue bonds next spring, and our overall ability to provide first-class air service to the public.

We therefore strongly urge that the Senate take action on the Conference Report before it adjourns.

Thank you for your steady support on this matter over the past two years. We look forward to working with you in the future.

Sincerely,

ROBERT F. TARDIO,
Chairman.

Mr. WARNER. Mr. President, he said ever so clearly that a bond, which will have to be issued next year to fund the ongoing modernization at both airports, that bond cannot be issued without this legislation in place, and preparations must commence now to go into the financial markets early in 1997 to get that next increment of funding required for this modernization.

That is not an issue that is at contest, but it is an issue that can literally put into semiparalysis the operation of these two airports; indeed, not only the inconvenience of a shutdown of remodeling, but there are some safety ramifications in air travel incorporated in having an ongoing orderly process of modernization and having it completed on schedule.

So, I fervently urge my colleagues to address this legislation as early as possible and to put in place the corrections that are found in this bill that will enable the Washington Metropolitan Airport Authority to continue an orderly modernization process.

I thank the Chair. I yield the floor.

The PRESIDING OFFICER. The Senator from Kansas.

WHY AFRICA MATTERS: TRADE AND INVESTMENT

Mrs. KASSEBAUM. Mr. President, I rise to finish a series of speeches about Africa and why Africa matters to the United States. I am sure many of us, over the recent years, have looked at the Continent of Africa with some despair, seeing one crisis after another occur; and seemingly, as one is resolved, there is only another nation that has a terrible tragedy occur, a coup and civil war ensues.

I have spoken in a series of speeches about, one, our vulnerability in the United States to infectious diseases coming out of Africa, and addressed the many ways in which environmental crises in Africa can touch Americans right here at home. I have also addressed how international crime, terrorism, and narcotics trafficking in Africa affect our own sense of security here at home.

I believe that Africa does matter. But I believe there is also a great deal of hope for the countries of Africa. I believe there are many positive things that we should consider, and should not forget. Today, I want to conclude with a topic that I believe many people have overlooked in relation to Africa: trade and investment.

At the start of this Congress, I began the work of the Subcommittee on African Affairs in the Foreign Relations Committee by chairing a hearing on trade and investment in Africa. I think it is appropriate to conclude the work of this Congress on Africa issues by returning to this underemphasized area.

The focus of our hearing 2 years ago was not only to examine the potential role of private sector development in Africa, but also to bring to life the benefits to the United States of increased trans-Atlantic commercial ties.

Over the past few years, investment and trade flows between the United States and Africa have increased substantially. Many companies, particularly communications, infrastructure and engineering firms, see Africa as a major growth market. In a time of reduced foreign aid, a focus on trade and investment must be a fundamental component of our overall foreign policy toward the continent.

How many people know that there is more trade between the United States and the countries of Africa than between the United States and the states of the former Soviet Union? One of the best-kept secrets, I think, about U.S. relations with Africa is the tremendous amount of trade and potential trade also that occurs between our country and the African Continent.

In 1993, U.S. exports of goods and services to sub-Sahara Africa totaled nearly $4.8 billion. This is 20 percent greater than exports to the Commonwealth of Independent States of the former Soviet Union. By some estimates, every extra $1 billion in American exports to Africa adds some 19,000 new jobs in the United States. Exports to southern Africa alone are responsible for an estimated 60,000 jobs in this country.

Over the past 50 years, the African Continent has undergone tremendous change, as African nations have wrestled with decolonization, independence and, for some, democratization. Africa has many success stories to tell, and the continent's tales of overcome hardships are admirable, indeed. But these stories of progress rarely make headlines. More often, the news tells of the political problems that remain, of political and economic instability, waste, corruption, unsound economic policies. These problems are serious and, in many African countries, they have stifled investment and choked off growth and trade. But the truth is that a remarkable transformation is underway in Africa.

Nearly two-thirds of African countries are now at some stage of democratic transition, compared with only four in 1989. More than 30 elections have taken place in Africa over the past 6 years. Many African nations have taken difficult and courageous steps to keep budget deficits down, maintain realistic exchange rates and increase competition through domestic deregulation, trade reform and privatization of public enterprises, not easy tasks in very weak and struggling economies and countries that are trying to open a stable and free political society as well.

The aim of these reforms has been to create an environment in which the private sector can act as the engine for development. We are beginning to see these efforts pay off. In a time of declining foreign aid, it is more than practical to emphasize the potential role of the private sector in the economic development of Africa. It just makes sense.

Africans themselves want trade, not aid. They recognize that it is foreign trade and investment, not foreign aid, that provides the basis for sustained development, economic growth and new jobs, and trade with Africa does not benefit only Africans. As I pointed out, it helps us as well. New markets for American exports mean new jobs here at home.

In the coming years, we should try to direct more of our foreign assistance toward building the foundations for long-term economic development in Africa. We should work in partnership with international financial institutions, of other donors and, of course, the African leaders to help meet the continent's critical infrastructure needs. I have always believed if the continent of Africa had a transportation system across the continent, whether railroads or roads, it would help immensely the trade between African nations themselves. Without an adequate network of roads, airports and telecommunications to knit the countries of Africa together, economic growth in Africa will face inherent structural limits.

There are, of course, purposes for foreign assistance other than promoting economic growth. American assistance plays an important part in addressing pressing social and humanitarian needs in many African countries. But the reality is that present levels of aid in Africa cannot and will not continue indefinitely.

Increased U.S. trade and investment in Africa making the countries of Africa full partners in the world's unprecedented economic prosperity provides the only real basis for future African economic self-sufficiency. The many changes underway in Africa, though encouraging, are not enough. Countries that have begun economic reforms must do more, and countries that have not, must do so.

Sub-Sahara Africa currently attracts less than 3 percent of the total foreign direct investment flowing to developing countries and economies in transition. Our policies toward Africa should encourage the necessary political and economic changes to provide a stable environment for sustained domestic economic development and foreign direct investment.

Our voice carries far in Africa, and we can make a difference in ending conflicts, promoting open and accountable governments and fostering economic reform. For example, we should encourage the liberalization of land tenure laws that prohibit women from owning land. Women are the primary agricultural laborers in Africa, but they cannot attain the degree of financial control within the sector necessary to spur growth. The World Bank estimates that the value of women's agricultural output would increase by 22 percent if they had the same access as men to major factors of production.

Another example of where we can make a difference is in lowering trade barriers. We should support the removal of barriers to trade among African countries and support efforts aimed at regional economic integration. At the same time, the United States must also lower its own trade barriers that unfairly discriminate against African goods. This means allowing imports, such as textiles, coffee, and sugar, into the United States in a fair and equitable manner. The laws of economics apply in Africa as they do elsewhere, and we should do all that we can to ensure that the established rules of free trade do as well.

Mr. President, to conclude, I am optimistic about the economic potential of Africa. During my almost two decades of work on African issues in the Senate, I have observed firsthand the tremendous and commendable efforts made by the peoples of the many nations of the African Continent.

At the same time, I also am sober about Africa's future and realize that without continued American engagement, Africa will not be joining the rest of us as we enter the next millennium.

Leaving Africa behind would raise important threats to our people and our national interests. Emerging and proliferating infectious diseases do not respect international borders, nor do environmental crises on a large scale.

Let me say, even more important to leaving Africa behind would be to lose a tremendous opportunity for all of us to benefit from the continent's rich heritage and potential. As we approach the beginning of the new millennium, America's future will be brighter if Africa's is as well.

THE SITUATION IN LIBERIA

Mrs. KASSEBAUM. Mr. President, I want to make a few comments about recent events in Liberia.

The 6-year civil war has killed over 150,000 Liberians and displaced 1.2 million people. The country's infrastructure has been laid waste, and its economy is in ruins. Time and again, Liberians have reached tentative peace agreements, only to watch them fall apart.

Last fall, many of us held high hopes for the peace accord reached in Abuja, Nigeria. For once, the faction leaders appeared to set aside their personal agendas for a process of disarmament and elections. Our hopes were shattered again this past spring as the Liberian civil war erupted yet again.

After months of renewed fighting, another peace agreement was reached last month among the warring Liberian factions. It is my fervent hope that the current cease-fire and plan for national elections next spring will succeed and lead at long last to sustained peace for Liberia.

Like its predecessors, this peace is fragile. Restoring and protecting a secure environment for Liberians is the first requirement for lasting peace.

I commend the efforts of the West African peacekeeping force, ECOMOG, for its vital role in bringing peace to this war-torn land. It is in America's interest that ECOMOG succeed and that we broaden the number of African states participating in the regional effort. In April, President Clinton committed $30 million in aid to the ECOMOG forces, and I am pleased that the full amount has been authorized to be transmitted. I urge that the funds be disbursed as quickly as possible to provide assistance in the vital areas of need identified by ECOMOG, such as communications and transportation.

Long-term security will require more than a regional peace force—it will require a reestablishment of order in Liberian society itself. Short-term relief requires local order as well. Although the UNDP is currently rehabilitating the airport in Monrovia, and the World Food Program is meeting urgent humanitarian needs in areas severely affected by the fighting, most NGO's and

private volunteer organizations are still reluctant to return until the security and political situation in Liberia is stabilized. The reestablishment of law and order in Liberia is a critical requirement for these organizations to function and meet pressing economic and humanitarian needs. Sooner or later, we will need to support efforts to reconstitute Liberian security and judicial institutions.

The second requirement for a lasting peace is the existence of basic economic opportunity. If peace is to endure, America's role cannot end with a cease-fire and an election. Faction fighters will not permanently lay down their arms unless they have something else to do and other means of sustenance.

In this area, Liberia's tragedy may provide its own opportunity. For example, Liberia desperately needs the reconstitution of its roads, bridges, airport, and water and electrical power systems. These are vital areas in which former belligerents can be employed, exchanging swords for plowshares, and contributing to the rebuilding of their country. Schools also must be reconstituted so the youngest fighters of ages 9 and 10 can replace their guns with books and return from the battlefields to the classrooms.

Mr. President, there are compelling reasons for America to remain engaged in Liberia. We share a special history. We also have an interest in eliminating the type of instability that can be a haven for threats that cut across national boundaries—environmental degradation, infectious diseases, and international crime, terrorism, and drug trafficking.

Elections alone cannot save Liberia. I trust the administration's diplomacy, with the oversight of Congress, will continue to take that fact into account as we try to make peace work in Liberia.

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

MEASURE PLACED ON THE CALENDAR—S. 2161

The PRESIDING OFFICER (Mr. GREGG). The clerk will read S. 2161 for a second time.

The assistant legislative clerk read as follows:

A bill (S. 2161) reauthorizing programs of the Federal Aviation Administration, and for other purposes.

Mrs. KASSEBAUM. Mr. President, on behalf of the majority leader, I object.

The PRESIDING OFFICER. S. 2161 will be placed on the Calendar.

The Senator from California.

Mrs. BOXER. Thank you very much, Mr. President.

PRESIDIO OMNIBUS PARKS BILL

Mrs. BOXER. Mr. President, I come to the Senate floor this afternoon to update my colleagues and those who are following this issue, to update you all on our efforts to pass an omnibus parks bill for this Nation. My report has both disappointment and hope. I want to explain why.

We have been working nonstop to try to get an agreement from every single Member of this U.S. Senate to accept the House-passed omnibus parks bill called the Presidio parks bill, so that we can quickly act and send this bill to the President's desk.

It is important to note that the omnibus parks bill in the House, Presidio bill, passed with only four dissenting votes. So there was near unanimity over on the House side for this bill, which is very far-reaching, very important for American people, very bipartisan and has been agreed to by the administration.

So here we have an extraordinary opportunity, Mr. President, to end this session on a high note, to pass the bill that passed in the House in a bipartisan way, to pass a bill here that has bipartisan support, send it to the President, and all of us can go home feeling very good that we did something for this country's environment and that we did it in a bipartisan fashion.

So why is my report filled with some disappointment? First of all, I was very disappointed that the majority leader, who is working hard to build a consensus for this bill—there is no question Senator DASCHLE and Senator LOTT are working hard to build a consensus for this bill—but the majority leader, Senator LOTT, has the ability to bring this bill up before this body right now. He could have done it yesterday. Had he made that decision to bring this bill to the floor, we could have started the process, just as we have on the FAA bill, to vote on this bill.

The rules of the Senate can sometimes be confusing. I have had many people call and say, "Well, don't you have 60 votes in favor of the parks bill?" I said, probably more like 85 votes, maybe 90 votes, but we cannot get a cloture motion filed until the majority leader decides to call the bill up. He has not done so to date.

He says he prefers to have every single Senator agree. Of course, Mr. President, that would be a wonderful thing if every single Senator would agree with this bill. Then we could get it done without a recorded vote, without the necessity of filing cloture. But surely it seems to me we would have a better way to make this bill the law of the land if that bill was to be pending and a cloture motion pending. I think that would bring people to the table in a faster manner, and if we were not able to achieve unanimity, we could then go to the cloture route.

So I am very disappointed that to date the majority leader has not chosen to bring the parks bill before the U.S. Senate. I urge him to do that right now. We are going to be here. We should be here doing our work. We all want to resolve the FAA dispute, and we will. We surely ought to want to work on this parks bill. I hope that the majority leader will bring that bill before us.

Every single Democrat has told me that he or she is very much for this bill. The vast majority of Republicans have said the same. So all we need to do is have the bill brought before us, and if someone did filibuster it, we could bring the debate to a close with 60 votes and get on with it, and, as I say, I believe the vote would be overwhelmingly in favor of this bill.

Mr. President, I want to explain why this bill is so important.

No. 1, it includes parks for 41 States. Forty-one States in the Nation will benefit from this parks bill, which has required 2 years of effort, Mr. President, to put together, 2 years of effort to put together this Presidio omnibus parks bill. We could see this chance evaporate. I hope we do not. I hope everyone will agree. I surely will be on my feet until the waning hours of this session, if need be, proposing that we pass this House bill unanimously.

What States are covered? Alabama, Alaska, Arizona, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Idaho, Illinois, Kansas, Louisiana, Massachusetts, Maryland, Michigan, Mississippi, Missouri, Montana, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

As you go into the bill and you read the various titles, you see, Mr. President, that in many States there is more than one important parks project.

Mr. President, every one of these States is counting on us. I am very, very hopeful—very hopeful—that we can resolve our differences. I for one have been doing whatever I could do to talk to individual Senators.

There are some Senators who have disappointments that they did not get everything they wanted in this bill. I understand that. You know, the Presidio, for example, which is so important to us; we had to compromise on that legislation, Congresswoman PELOSI and I and Senator FEINSTEIN and Congressman MILLER. I want to thank all of them for everything they are continuing to do as we speak to make this work. I had a conversation with Congressman MILLER. I have been talking to Senator MURKOWSKI and his staff. We are trying to make this happen.

In Alabama we have the Selma to Montgomery Historic Trail designation.

In Alaska there are many, many important provisions, ranging from Alaska Peninsula land exchange to Federal

borough recognition, regulation of Alaska fishing, and University of Alaska.

In my State of California, Senator FEINSTEIN and I are so strongly in favor of this bill, not only because of what it will do for the rest of the country, but surely for our State. It includes setting up a trust, a nonprofit trust at the Presidio to make sure that, as this magnificent park takes shape from a historic military base that started so many years ago before California was a State—we need this trust to make the important decisions about the reuse of the various buildings and doing it in the right way and doing it in the environmentally sound way.

We have in that bill San Francisco Bay enhancement, Butte County conveyance, Modoc Forest boundary adjustment, Cleveland National Forest, Lagomarsino Visitor Center, Merced irrigation district land exchange, the Manzanar historic site exchange.

I see my friend from Illinois is here. The Manzanar Historic Site, we know this is where, during a very dark period of our country, Japanese Americans were held literally as prisoners in their own country. Manzanar is a historic site. In this bill it will be preserved. Very important.

The AIDS memorial grove, timber sale exchange, Santa Cruz Poland acquisition, Stanislaus Forest management, Del Norte School conveyance.

It goes on in Colorado, in Florida, in Georgia, in Hawaii.

I just want to mention one other very important—very important—issue. I see my friend from Alaska has come to the floor. How many times he has been to San Francisco to pledge to work to make this happen.

I know that the Sterling Forest in New Jersey is so very important to both Senators from New Jersey and to the entire bipartisan congressional delegation over in the House. We have Senator BRADLEY leaving after a distinguished career. I know he is working with Senator MURKOWSKI to try to resolve all of our problems that we have. Sterling Forest is the largest unbroken, undeveloped track of forest land still remaining along the New York-New Jersey border. The bill will allow an appropriation of up to $17.5 million for land acquisition. It designates the Palisades Interstate Park Commission, a Federal commission to manage this land. It goes on.

Most importantly for New Jersey are the billions of gallons of fresh clean drinking water that flow from the boundaries here.

When you look at the development that is possible for Sterling Forest, 14,000 homes, 8 million square feet of commercial space, even if the development were concentrated in the least environmentally critical and successful tracks, the construction will, according to Republicans and Democrats who support this acquisition, will irrevocably alter this land.

As I said when I took to the floor, I am mixed with disappointment and optimism. Clearly, I reiterate, not every single thing is in here that Senators feel ought to be in here. I so well understand it. I am working to see if there are ways to get those things done. I am looking forward to the remarks of my colleague from Nebraska who may be here on this topic. I hope that we are moving closer.

I can assure the Senator that if we can get this done, I will work with him do everything I can in the next Congress to move forward to address some of the concerns that he has raised. I have tried to do that, talking with the administration, as late as very late last night.

I hope when I come back to the floor I can speak more with hope and speak with more belief that we will, in fact, get this done.

I yield the floor.

GRATITUDE TO SENATE STAFF

Mr. SIMON. Mr. President, I am grateful to my colleagues who have been so good to me in my years in Congress, but let me also express my gratitude to a lot of others who are not as visible: The pages who serve us so effectively; the people in front, including Bill Lackey, Bob Dove, Scott Bates, all the people who work with us at the front desk; the court reporters, including the distinguished reporter from Menard County, IL; the people in the cloakroom, and the officers.

I rise today specifically because I just learned yesterday that Ed Litton, who has been an officer in the Dirksen Building through the years and has been marvelous to me and to the other Senators, but, equally important, and this is true for all the people around here, they are good to the public, and I think make a great impression for American Government.

Ed Litton is going to retire October 30. He is going to beat me into retirement. He has just been superb. He is good to people, and I think typifies the police officers in the Capitol area. They have really contributed immensely.

I just wish Ed Litton and his family the very best on his retirement. He can look back on his years of service with a great deal of satisfaction.

As I leave the Senate, I leave with a great sense of gratitude to all the people who have served us so well, most of whom I regret to say I probably have not thanked as I should.

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. MURKOWSKI. 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. MURKOWSKI. I thank the Chair.

ALASKA SUBSISTENCE HUNTING AND FISHING ACT

Mr. MURKOWSKI. Mr. President, I rise this morning for the purpose of speaking on legislation I introduced yesterday. This legislation is very important to my State of Alaska. The intention of the legislation is to try and address some of the issues regarding subsistence hunting and fishing in Alaska. I am under no false hope that at this late date this legislation will move through the Senate this year, but I want it to appear in the RECORD for the purposes of starting a dialog in our State and starting a dialog with the various Federal agencies involved.

Mr. President, the issue of subsistence hunting and fishing in Alaska has caused a great deal of divisiveness in our State and has led to the State of Alaska becoming the only State in the Union which no longer retains the sole control of its fish and game resources on public lands. This is an extraordinary departure from the norm, but nevertheless it is a reality. The influence of the Federal Government over fish and wildlife resources in Alaska continues to grow and expand with each passing month.

This legislation calls for the Presidential appointment of a special master to come up with nonbinding recommendations to the Secretary of Agriculture, the Secretary of the Interior, the Governor of the State of Alaska, the State of Alaska legislature and to the Congress, as well. The recommendation will be on how to return management of fish and game resources to the State and how best to provide for the continuation of a subsistence lifestyle for Alaska's residence.

I hope to have significant discussions with the people of Alaska on this issue in the coming months during the recess and be prepared to move forward with the 105th Congress when we return in January. It would be my intention to introduce more definitive legislation on the subsistence issue at that time.

What we are attempting to do is set, if you will, a skeleton schedule in place so we can build on it by generating public input.

Mr. President, I ask unanimous consent that the text of the bill, S. 2172, be printed in the RECORD.

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

S. 2172

SECTION 1. FINDINGS.

The Congress finds that—

(a) The State of Alaska received management authority and responsibility for fish and game resources in the State at the time of statehood.

(b) The Alaska Constitution requires equal access for all the citizens of the state to these fish and game resources.

(c) The State of Alaska developed statutes to implement a rural subsistence priority.

(d) In 1980 Congress passed the Alaska National Interest Lands Conservation Act providing that the "taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes."

(e) In 1989 the Alaska Supreme Court ruled in *McDowell* v. *Alaska* that the rural preference contained in the State's subsistence statute violated the equal provision of the Alaska Constitution putting the State's subsistence program out of compliance with Title VIII of ANILCA resulting in the Secretaries of Agriculture and the Interior assuming subsistence management on the public lands in Alaska.

(f) The Governor and the Lieutenant Governor of Alaska are to be complimented on their several attempts to resolve the issue and return management responsibilities of fish and game back to the state; however, these efforts have not been successful.

(g) There continues to remain an impasse that is creating a divisive atmosphere in Alaska among sport hunters, sport fishermen, commercial fishermen, Alaska natives, as well as urban and rural residents.

(h) The Congress hereby declares that it is timely and essential to conduct a review of Federal and State policies and programs affecting subsistence in order to identify specific actions that may be taken by the United States and the State of Alaska to help assure that a fair subsistence priority is provided to the citizens of Alaska and that management authority over fish and game resources is maintained by the State of Alaska.

SEC. 2. APPOINTMENT OF SPECIAL MASTER.

(a)(1) The President shall hereby appoint a Special Master to mediate the issues involved in this impasse, and

(2) In making the appointment of the Special Master, the President shall give careful consideration to recommendations submitted by the Governor of the State of Alaska and the president of the Alaska State Senate, and the Speaker of the Alaska State House.

(b)(1) The principal office of the Special Master shall be in the State of Alaska.

(2) The Special Master shall—

(A) review existing state and federal laws regarding subsistence use in Alaska, and

(B) after consultation with all interested parties, including, but not limited to, Alaska natives, sport and commercial fishing interests, sport hunting groups recreation groups, the Governor of Alaska, the Alaska legislature, The Secretaries of Agriculture and the Interior, and the members of the Alaska Congressional delegation, recommend specific actions to the Congress and to the State of Alaska including state statutory amendments, changes in existing management structures, constitutional amendments, and changes to Title VIII of the ANILCA, that—

(i) assure the State of Alaska recovers and retains management authority and responsibility for fish and game on all lands in Alaska, and

(ii) provide for the continuation of the opportunity for subsistence uses by residents of Alaska, including both Natives and non-natives, on the public lands and by Alaska Natives on Native lands which is essential for Native physical, economic, traditional, and cultural existence and to non-native physical, economic, traditional, and social existence,

(c) submit, by no later than the date that is six months after appointment, a report on the recommendations developed under paragraph (2), to the Secretary, the Congress, the Governor of the State of Alaska, and the legislature of the State of Alaska, and make such report available to the public.

(d) The Special Master shall have the power to—

(1) procure, as authorized by section 3109 of title 5, United States Code, temporary and intermittent services to the same extent as is authorized by law for agencies in the executive branch, but at rates not to exceed the daily equivalent of the maximum annual rate of basic pay in effect for grade GS–18 of such General Schedule.

(e) service as a Special Master shall not be considered as service or employment bringing such individual within the provisions of any Federal law relating to conflicts of interest or otherwise imposing restrictions, requirements, or penalties in relation to the employment of persons, the performance of services, or the payment or receipt of compensation in connection with claims, proceedings, or matters involving the United States. Service as a Special Master, shall not be considered service in an appointive or elective position in the Government for purposes of section 8344 of title 5, United States Code, or comparable provisions of Federal law.

(f)(1) The Special Master is authorized to—

(A) hold such hearings and sit and act at such times,

(B) take such testimony,

(C) have such printing and binding done,

(D) enter into such contracts and other arrangements,

(E) make such expenditures, and

(F) take such other actions, as the Special Master may seem advisable.

(2) The Special Master is authorized to establish task forces which include individuals appointed for the purpose of gathering information on specific subjects identified by the Special Master as requiring the knowledge and expertise of such individuals. No compensation may be paid to members of a task force solely for their service on the task force, but the Special Master may authorize the reimbursement of members of a task force for travel and per diem in lieu of subsistence expenses during the performance of duties while away from the home, or regular place of business, of the member, in accordance with subchapter I of chapter 57 of title 5, United States Code. The Special Master shall not authorize the appointment of personnel to act as staff for the task force.

(3) The Special Master is authorized to accepts gifts of services, or funds and to expend funds derived from sources other than the Federal Government, including the State of Alaska, private nonprofit organizations, corporations, or foundations which are determined appropriate and necessary to carry out the provisions of this section.

(4) The Special Master is authorized to secure directly from any officer, department, agency, establishment, or instrumentality of the Federal Government such information as the Special Master may require for the purpose of this section, and each such officer, department, agency, establishment, or instrumentality is authorized and directed to furnish, to the extent permitted by law, such information, suggestions, estimates, and statistics directly to the Special Master, upon request

(g) The provisions of the Federal Advisory Committee Act shall not apply to the Special Master established under this section.

(h) Upon the request of the Special Master, the head of any Federal department, agency, or instrumentality is authorized to make any of the facilities and services of such department, agency, or instrumentality available to the Special Master and detail any of the personnel of such department, agency, or instrumentality to the commission, on a nonreimbursable basis, to assist the Special Master in carrying out its duties under this section.

(i) The Special Master may use the United States mails in the same manner and under the same conditions as other departments and agencies of the United States.

(j) The Special Master shall cease to exist on the date that is one hundred eighty days after the date on which the Special Master submits the report required under subsection (c)(5). All records, documents, and materials of the Special Master shall be transferred to the National Archives and Records Administration on the date on which the Special Master ceases to exist.

(k) There is authorized to be appropriated to the Special Master $250,000 to provide for the salaries and expenses to carry out the provisions of this section. Such sum shall remain available, without fiscal year limitation, until expended.

ASIAN DEVELOPMENT BANK

Mr. PRESSLER. Mr. President, I would like to take a moment to commend the Asian Development Bank [ADB] for its role in the growth and continuing prosperity in Asian and Pacific developing countries. Further, I urge the ADB to involve our Nation's small business community in efforts to further prosperity in this part of the world. The economic and social evolution underway in Asia has taken place at an incredible rate over the past decade. The ADB is playing an important role in this development, providing funds to improve and strengthen Asia's infrastructure.

As my colleagues know, the Asian Development Bank was founded in 1966 to function as an international development finance institution for the Asian and Pacific region. Headquartered in Manila, in the Philippines, the ADB had 56 member countries—40 within the Asian and Pacific region and 16 from outside the region—as of March 31, 1996. The ADB is engaged in promoting the economic and social progress of the Asian and Pacific region. Development banks in the world today with similar roles include the Inter-American Development Bank, the World Bank, and the African Development Bank.

Specifically, the ADB extends low interest loans to fund special projects in Asian and Pacific developing countries. The ADB finances infrastructure projects such as power plants, roads, bridges, and other ventures which have a strong impact on the designated area. This kind of financial support is critical to further the dynamic growth of Asian economies—growth that presents tremendous opportunities for U.S. businesses. Established businesses in the

United States, such as AT&T and Price Waterhouse, as well as smaller agricultural firms, such as Seminole Fertilizer Corp., benefit greatly from the exponential growth and progress of Asia. I encourage the ADB to seek opportunities for greater participation by U.S. small businesses as part of its future projects. The ADB assists private enterprises in undertaking financially viable projects which also have significant economic development merit and catalyzing the flow of domestic and external resources to such projects. For example, the bank allocated over $3.3 billion to develop telecommunications services in Asia's poorest areas and will invest almost $1 billion on telecommunications networks in India alone.

The ADB also provides loans, equity investments, and technical assistance, and also cofinances projects with bilateral and multilateral agencies as well as export credit and commercial sources. As of June 30, 1995, the bank had approved $51.9 billion in loans for 1,236 projects in 34 countries and $3.9 billion for 3,539 technical assistance grants.

As a donor member, the United States has contributed to the Asian Development Fund [ADF], which is the ADB's window for concessional lending to its borrowing member countries. Each year, ADB extends loans to fund projects and activities in Asian and Pacific developing countries, and provides several billion U.S. dollars worth of contracts to procure goods and consulting services. In 1995, the United States ranked first among donor member countries in total procurement, with a donor amount of $333 million dollars. The ADF, which is crucial to the bank's ability to grant loans, is the ADB's main soft-loan program. This soft-loan program lets donor countries apply for grants at a generous interest-free level, which makes it feasible for many poor countries to apply and receive loans to improve their environment, transportation, infrastructure, and communications.

A country that requests an interest-free loan from the ADF must fulfill requirements set by the ADB. The ADB stresses that the member countries have good governance which will permit a successful management of the development process, which encourages economic and political stability in the region. As a development partner, the ADB has a clear and direct interest in the capacity of borrowing governments to fulfill their economic role by implementing the associated policies. The success of the ADB's project investments depends on the efficacy of the institutional framework in development member countries [DMC]. In addition, governments are expected to perform certain key functions, including maintaining macroeconomic stability; developing infrastructure; providing public goods; preventing market failures; and promoting equity. Without macroeconomic stability, business prospects are uncertain and investment risks are high.

Further, the bank advises the developing countries regarding human rights, social and environmental policies, and other areas before accepting the country for a grant.

Mr. President, the replenishment of the ADF has been a ongoing problem. At present, ADF is expected to run out of money by year-end. In that respect, the ADB, along with other development banks, have been trying to arrange financing through private financial institutions. Multilateral agencies, such as ADB, likely will shift more funding to socially-oriented projects in the future, and have vast projects financed by private financial institutions.

The ADB has confronted and overcome many challenges, thanks to the efforts of its leadership. I would like to commend the diligent efforts of Ambassador Yang of the Asian Development Bank. Former California Savings and Loan Commissioner Linda Tsao Yang of Davis, CA, is the U.S. ambassador on the 12 member board of executive directors of the ADB. Ms. Yang has operated her own financial consulting firm since stepping down from the State S&L post in 1982. Her expertise during these challenging times is certainly welcome at the ADB.

I may not always agree with the bank's direction on a specific issue, but the overall direction of the ADB has been positive. Ambassador Yang is aggressively pursuing creative roles for the ADB to play in a manner which advances our Nation's commercial interests in that part of the world. Thanks in part to these creative efforts, the Asian continent is an exciting and promising region of the world for the residents and for those playing a part in its development.

TRIBUTE TO SENATOR AL SIMPSON

Mr. PRESSLER. Mr. President, we near the close of the 104th Congress will adjourn. Adjournment also will bring to a close the distinguished Senate career of Wyoming's senior Senator, the honorable AL SIMPSON. I am confident that Senate historians will see AL SIMPSON the way his colleagues already see him: as one of the truly great Senators of his era. I will miss AL SIMPSON—his leadership, his guidance, his wit, and most of all, his friendship.

AL SIMPSON and I entered the Senate at the same time—in 1979. At that time, he already had accumulated some Senate experience as the son of another legendary Wyoming Senator, Milward Simpson.

A story is told that Abraham Lincoln once began a meeting of his closest advisors by reading to them a piece from the humorist Artemus Ward. Lincoln seemed to be the only one who enjoyed the piece and found himself the only one laughing. Lincoln was said to have chastised his colleagues: "Why don't you laugh? With the fearful strain that is upon me night and day, if I did not laugh I should die, and you need this medicine as much as I do."

All of my colleagues would agree that the medicine of humor is best dispensed by our senior colleague from Wyoming. Perhaps not since Abraham Lincoln has Washington had a better practitioner in the art of medicinal humor. It has become a fond and regular experience to come to the floor for a vote, or visit the cloakrooms and see a small group of Senators listening delightfully to the yarns spun by our friend from Wyoming. When Senator SIMPSON formally addresses the Senate, we can count on his statements to be both informative and entertaining. I will miss AL SIMPSON's good nature and quick wit.

The full measure of AL SIMPSON is more than good humor. He is a man of enormous intellect and profound leadership. AL SIMPSON is sharp—as sharp as a tack, and as tough as a good piece of saddle leather, as he would probably say. But to see how tough AL SIMPSON is, and to understand his deep belief in the cause of public service, one need only take a look at the issues he has championed. Senator SIMPSON's extraordinary career no doubt will be remembered for his efforts on three very challenging issues—immigration, veterans affairs and entitlement reform. Each of those issues is vitally important, but frankly each can be thankless tasks.

It is appropriate that the 104th Congress will conclude with the passage of a comprehensive bill to address the serious problem of illegal immigration. This is the third major immigration bill shepherded in large measure by our friend from Wyoming. That is quite a record of legislative achievement given the volatile emotions that underlie this issue and the diverse interests involved. It's even more amazing when one considers that Senator SIMPSON hails from a great State not known for being a magnet for illegal immigrants. The tremendous leadership he has demonstrated on this issue is a testament to Senator SIMPSON's commitment to pursue what's in our Nation's interest, and to pursue such issues vigorously.

The same vigor is shown in Senator SIMPSON's commitment to our Nation's veterans. The Senator from Wyoming, like myself, is a veteran of the U.S. Army. Few have the level of understanding, the strong sense of compassion and fairness, that AL SIMPSON has displayed toward our veterans. As chairman of the Veterans Affairs Committee during a time of tremendous budgetary constraints, AL SIMPSON has

made sure that this Nation maintains its commitment to the brave veterans who answered the call and made sacrifices for their country. All men and women who once adorned a military uniform to defend our country, as well as this Senate, and this Nation will miss this true friend of the American veteran.

Finally, Senator AL SIMPSON is a man of great vision—a man who believes that Congress has a duty to anticipate and prevent future problems. He's right. No example demonstrates this belief more than his almost lonely effort to address the lurking problem of Federal entitlements, from Social Security to Medicare. Along with our friend from Nebraska, Senator KERREY, Senator SIMPSON chaired the Bipartisan Commission on Entitlement and Tax Reform. This commission found ominous signs that indicate now is the time to begin the process of reforming our Social Security and Medicare systems. It's no secret that both systems are incredibly important to our senior citizens. No doubt, this Nation owes a great debt of gratitude to AL SIMPSON for embarking this Senate, this Congress, and this Nation on what we all hope is the road toward true reform of Federal entitlements.

Now our dear friend from Wyoming soon will be speaking not from the Senate floor but from a Harvard lecture hall. The Senate's loss is certainly Harvard's gain. No doubt the fortunate young people who attend Professor SIMPSON's class will be entertained and informed. I hope the academic world will appreciate one basic fact: AL SIMPSON tells it like it is. For that, he has my admiration.

I will miss my Senate classmate. My wife Harriet and I always have enjoyed Senator SIMPSON and his wife Ann. They are great friends, and we look forward to seeing them should our travels take us to Cambridge or their's to Washington or South Dakota. I hope my friend from Wyoming doesn't mind if I drop in on his class on occasion, not just to gain the benefit of his thoughtful insights, but to hear again his homespun stories and receive yet another dose of his tremendous good humor. I wish AL and Ann Simpson the very, very best.

NOTICE OF ISSUANCE OF FINAL REGULATIONS

Mr. THURMOND. Mr. President, pursuant to section 304(d) of the Congressional Accountability Act of 1995 (2 U.S.C. sec. 1384(d)), a notice of issuance of final regulations was submitted by the Office of Compliance, U.S. Congress. The notice contains final regulations related to Federal Service Labor-Management Relations (Regulations under section 220(d) of the Congressional Accountability Act.)

The Congressional Accountability Act requires this notice be printed in the CONGRESSIONAL RECORD, therefore I ask unanimous consent that the notice be printed in the RECORD.

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

OFFICE OF COMPLIANCE—THE CONGRESSIONAL ACCOUNTABILITY ACT OF 1995: EXTENSION OF RIGHTS, PROTECTIONS AND RESPONSIBILITIES UNDER CHAPTER 71 OF TITLE 5, UNITED STATES CODE, RELATING TO FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS (REGULATIONS UNDER SECTION 220(d) OF THE CONGRESSIONAL ACCOUNTABILITY ACT)

NOTICE OF ISSUANCE OF FINAL REGULATIONS

On July 9, 1996, the Board of Directors of the Office of Compliance adopted and submitted for publication in the Congressional Record final regulations implementing section 220(d) of the Congressional Accountability Act of 1995 (CAA), which extends to the Congress certain rights, protections, and responsibilities under chapter 71 of title 5, United States Code, relating to Federal service labor-management relations. On August 2, 1996, the House agreed both to H. Res. 504, to provide for the approval of final regulations that are applicable to the employing offices and covered employees of the House, and to H. Con. Res. 207, to provide for approval of final regulations that are applicable to the instrumentalities of the Congress, i.e., the employing offices and employees other than those offices and employees of the House and the Senate. On September 28, 1996, the Senate agreed to H. Con. Res. 207, covering the instrumentalities, and in addition approved S. Res. 304, to provide for the approval of the final regulations that are applicable to employing offices and covered employees of the Senate,

Together with the House's prior approval of H. Res. 504 and H. Con. Res. 207, the Senate's concurrence in H. Con. Res. 207 and its approval of S. Res. 304 constitute approval under section 304(c) of the CAA of the Board's section 220(d) regulations as applicable both to employing offices and covered employees of the House and of the Senate (other than those House and Senate offices expressly listed in section 220(e)(2)) and to the instrumentalities of the Congress. Accordingly, pursuant to section 304(d) of the CAA, the Board submits these regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for issuance by publication in the Congressional Record.

Pursuant to paragraph (3) of section 304(d) of the CAA, the Board finds good cause for advancing the effective date of the House regulations from 60 days after their issuance to October 1, 1996. That date corresponds with the effective date of application of CAA section 220 to the Congress. The Board finds that the effective implementation of the CAA is furthered by making these regulations effective for the House, the Senate, and the instrumentalities on that effective date rather than allowing the provisions of the CAA contained in section 411 and the derivative regulations of the executive branch to control the administration of the statute during the sixty day period otherwise required by section 304(d)(3) of the CAA.

Signed at Washington, D.C. on this 30th day of September, 1996.

GLEN D. NAGER,
Chair of the Board, Office of Compliance.

Accordingly, the Board of Directors of the Office of Compliance hereby issues the following final regulations:

[Final Regulations]

Subchapter C

2420 Purpose and scope
2421 Meaning of terms as used in this subchapter
2422 Representation proceedings
2423 Unfair labor practice proceedings
2424 Expedited review of negotiability issues
2425 Review of arbitration awards
2426 National consultation rights and consultation rights on Government-wide rules or regulations
2427 General statements of policy or guidance
2428 Enforcement of Assistant Secretary standards of conduct decisions and orders
2429 Miscellaneous and general requirements

Subchapter D

2470 General
2471 Procedures of the Board in impasse proceedings

SUBCHAPTER C

Part 2420—Purpose and Scope

§ 2420.1 Purpose and scope.

The regulations contained in this subchapter are designed to implement the provisions of chapter 71 of title 5 of the United States Code, as applied by section 220 of the Congressional Accountability Act (CAA). They prescribe the procedures, basic principles or criteria under which the Board and the General Counsel, as applicable, will:

(a) Determine the appropriateness of units for labor organization representation under 5 U.S.C. 7112, as applied by the CAA;

(b) Supervise or conduct elections to determine whether a labor organization has been selected as an exclusive representative by a majority of the employees in an appropriate unit and otherwise administer the provisions of 5 U.S.C. 7111, as applied by the CAA, relating to the according of exclusive recognition to labor organizations;

(c) Resolve issues relating to the granting of national consultation rights under 5 U.S.C. 7113, as applied by the CAA;

(d) Resolve issues relating to determining compelling need for employing office rules and regulations under 5 U.S.C. 7117(b), as applied by the CAA;

(e) Resolve issues relating to the duty to bargain in good faith under 5 U.S.C. 7117(c), as applied by the CAA;

(f) Resolve issues relating to the granting of consultation rights with respect to conditions of employment under 5 U.S.C. 7117(d), as applied by the CAA;

(g) Conduct hearings and resolve complaints of unfair labor practices under 5 U.S.C. 7118, as applied by the CAA;

(h) Resolve exceptions to arbitrators' awards under 5 U.S.C. 7122, as applied by the CAA; and

(i) Take such other actions as are necessary and appropriate effectively to administer the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

§ 2420.2

Notwithstanding any other provisions of these regulations, the Board may, in deciding an issue, add to, delete from or modify otherwise applicable requirements as the Board deems necessary to avoid a conflict of interest or the appearance of a conflict of interest.

Part 2421—Meaning of Terms as Used in This Subchapter

Sec.
2421.1 Act; CAA.
2421.2 Chapter 71.
2421.3 General Definitions.
2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.
2421.5 Activity.
2421.6 Primary national subdivision.
2421.7 Executive Director.
2421.8 Hearing Officer.
2421.9 Party.
2421.10 Intervenor.
2421.11 Certification.
2421.12 Appropriate unit.
2421.13 Secret ballot.
2421.14 Showing of interest.
2421.15 Regular and substantially equivalent employment.
2421.16 Petitioner.
2421.17 Eligibility Period.
2421.18 Election Agreement.
2421.19 Affected by Issues raised.
2421.20 Determinative challenged ballots.

§ 2421.1—Act; CAA.

The terms "Act" and "CAA" mean the Congressional Accountability Act of 1995 (P.L. 104-1, 109 Stat. 3, 2 U.S.C. §§1301-1438).

§ 2421.2—Chapter 71.

The term "chapter 71" means chapter 71 of title 5 of the United States Code.

§ 2421.3—General definitions.

(a) The term "person" means an individual, labor organization or employing office.

(b) Except as noted in subparagraph (3) of this subsection, the term "employee" means an individual—

(1) Who is a current employee, applicant for employment, or former employee of: the House of Representatives; the Senate; the Capitol Guide Service; the Capitol Police; the Congressional Budget Office; the Office of the Architect of the Capitol; the Office of the Attending Physician; the Office of Compliance; or the Office of Technology Assessment; or

(2) Whose employment in an employing office has ceased because of any unfair labor practice under section 7116 of title 5 of the United States Code, as applied by the CAA, and who has not obtained any other regular and substantially equivalent employment as determined under regulations prescribed by the Board, but does not include—

(i) An alien or noncitizen of the United States who occupies a position outside of the United States;

(ii) A member of the uniformed services;

(iii) A supervisor or a management official or;

(iv) Any person who participates in a strike in violation of section 7311 of title 5 of the United States Code, as applied the CAA.

(3) For the purpose of determining the adequacy of a showing of interest or eligibility for consultation rights, except as required by law, applicants for employment and former employees are not considered employees.

(c) The term "employing office" means—

(1) The personal office of a Member of the House of Representatives or of a Senator;

(2) A committee of the House of Representatives or the Senate or a joint committee;

(3) Any other office headed by a person with the final authority to appoint, hire, discharge, and set the terms, conditions, or privileges of the employment of an employee of the House of Representatives or the Senate; or

(4) The Capitol Guide Board, the Capitol Police Board, the Congressional Budget Office, the Office of the Architect of the Capitol, the Office of the Attending Physician, the Office of Compliance, and the Office of Technology Assessment.

(d) The term "labor organization" means an organization composed in whole or in part of employees, in which employees participate and pay dues, and which has as a purpose the dealing with an employing office concerning grievances and conditions of employment, but does not include—

(1) An organization which, by its constitution, bylaws, tacit agreement among its members, or otherwise, denies membership because of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;

(2) An organization which advocates the overthrow of the constitutional form of government of the United States;

(3) An organization sponsored by an employing office; or

(4) An organization which participates in the conduct or a strike against the Government or any agency thereof or imposes a duty or obligation to conduct, assist, or participate in such a strike.

(e) The term "dues" means dues, fees, and assessments.

(f) The term "Board" means the Board of Directors of the Office of Compliance.

(g) The term "collective bargaining agreement" means an agreement entered into as a result of collective bargaining pursuant to the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

(h) The term "grievance" means any complaint—

(1) By any employee concerning any matter relating to the employment of the employee;

(2) By any labor organization concerning any matter relating to the employment of any employee; or

(3) By any employee, labor organization, or employing office concerning—

(i) The effect or interpretation, or a claim of breach, of a collective bargaining agreement; or

(ii) Any claimed violation, misinterpretation, or misapplication of any law, rule, or regulation affecting conditions of employment.

(i) The term "supervisor" means an individual employed by an employing office having authority in the interest of the employing office to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action, if the exercise of the authority is not merely routine or clerical in nature, but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term "supervisor" includes only those individuals who devote a preponderance of their employment time to exercising such authority.

(j) The term "management official" means an individual employed by an employing office in a position the duties and responsibilities of which require or authorize the individual to formulate, determine, or influence the policies of the employing office.

(k) The term "collective bargaining" means the performance of the mutual obligation of the representative of an employing office and the exclusive representative of employees in an appropriate unit in the employing office to meet at reasonable times and to consult and bargain in a good-faith effort to reach agreement with respect to the conditions of employment affecting such employees and to execute, if requested by either party, a written document incorporating any collective bargaining agreement reached, but the obligation referred to in this paragraph does not compel either party to agree to a proposal or to make a concession.

(l) The term "confidential employee" means an employee who acts in a confidential capacity with respect to an individual who formulates or effectuates management policies in the field of labor-management relations.

(m) The term "conditions of employment" means personnel policies, practices, and matters, whether established by rule, regulation, or otherwise, affecting working conditions, except that such term does not include policies, practices, and matters—

(1) Relating to political activities prohibited under subchapter III of chapter 73 of title 5 of the United States Code, as applied by the CAA;

(2) Relating to the classification of any position; or

(3) To the extent such matters are specifically provided for by Federal statute.

(n) The term "professional employee" means—

(1) An employee engaged in the performance of work—

(i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital (as distinguished from knowledge acquired by a general academic education, or from an apprenticeship, or from training in the performance of routine mental, manual, mechanical, or physical activities);

(ii) Requiring the consistent exercise of discretion and judgment in its performance;

(iii) Which is predominantly intellectual and varied in character (as distinguished from routine mental, manual, mechanical, or physical work); and

(iv) Which is of such character that the output produced or the result accomplished by such work cannot be standardized in relation to a given period of time; or

(2) An employee who has completed the courses of specialized intellectual instruction and study described in subparagraph (1)(i) of this paragraph and is performing related work under appropriate direction and guidance to qualify the employee as a professional employee described in subparagraph (1) of this paragraph.

(o) The term "exclusive representative" means any labor organization which is certified as the exclusive representative of employees in an appropriate unit pursuant to section 7111 of title 5 of the United States Code, as applied by the CAA.

(p) The term "firefighter" means any employee engaged in the performance of work directly connected with the control and extinguishment of fires or the maintenance and use of firefighting apparatus and equipment.

(q) The term "United States" means the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and any territory or possession of the United States.

(r) The term "General Counsel" means the General Counsel of the Office of Compliance.

(s) The term "Assistant Secretary" means the Assistant Secretary of Labor for Labor-Management Relations.

§ 2421.4 National consultation rights; consultation rights on Government-wide rules or regulations; exclusive recognition; unfair labor practices.

(a)(1) The term "national consultation rights" means that a labor organization that

is the exclusive representative of a substantial number of the employees of the employing office, as determined in accordance with criteria prescribed by the Board, shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) Be permitted reasonable time to present its views and recommendations regarding the changes.

(2) National consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to any labor organization s eligibility for, or continuation of, national consultation rights shall be subject to determination by the Board.

(b)(1) The term "consultation rights on Government-wide rules or regulations" means that a labor organization which is the exclusive representative of a substantial number of employees of an employing office determined in accordance with criteria prescribed by the Board, shall be granted consultation rights by the employing office with respect to any Government-wide rule or regulation issued by the employing office effecting any substantive change in any condition of employment. Such consultation rights shall terminate when the labor organization no longer meets the criteria prescribed by the Board. Any issue relating to a labor organization's eligibility for, or continuation of, such consultation rights shall be subject to determination by the Board.

(2) A labor organization having consultation rights under paragraph (1) of this subsection shall—

(i) Be informed of any substantive change in conditions of employment proposed by the employing office; and

(ii) shall be permitted reasonable time to present its views and recommendations regarding the changes.

(3) If any views or recommendations are presented under paragraph (2) of this subsection to an employing office by any labor organization—

(i) The employing office shall consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(ii) The employing office shall provide the labor organization a written statement of the reasons for taking the final action.

(c) The term "exclusive recognition" means that a labor organization has been selected as the sole representative, in a secret ballot election, by a majority of the employees in an appropriate unit who cast valid ballots in an election.

(d) The term "unfair labor practices" means—

(1) Any of the following actions taken by an employing office—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under chapter 71, as applied by the CAA;

(ii) Encouraging or discouraging membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other condition of employment;

(iii) Sponsoring, controlling, or otherwise assisting any labor organization, other than to furnish, upon request, customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status;

(iv) Disciplining or otherwise discriminating against an employee because the employee has filed a complaint, affidavit, or petition, or has given any information or testimony under chapter 71, as applied by the CAA;

(v) Refusing to consult or negotiate in good faith with a labor organization as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii) Enforcing any rule or regulation (other than a rule or regulation implementing section 2302 of this title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(2) Any of the following actions taken by a labor organization—

(i) Interfering with, restraining, or coercing any employee in the exercise by the employee of any right under this chapter;

(ii) Causing or attempting to cause an employing office to discriminate against any employee in the exercise by the employee of any right under this chapter;

(iii) Coercing, disciplining, fining, or attempting to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee;

(iv) Discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or disability;

(v) Refusing to consult or negotiate in good faith with an employing office as required by chapter 71, as applied by the CAA;

(vi) Failing or refusing to cooperate in impasse procedures and impasse decisions as required by chapter 71, as applied by the CAA;

(vii)(A) Calling, or participating in, a strike, work stoppage, or slowdown, or picketing of an employing office in a labor-management dispute if such picketing interferes with an employing office s operations; or

(B) Condoning any activity described in subparagraph (A) of this paragraph by failing to take action to prevent or stop such activity; or

(viii) Otherwise failing or refusing to comply with any provision of chapter 71, as applied by the CAA;

(3) Denial of membership by an exclusive representative to any employee in the appropriate unit represented by such exclusive representative except for failure—

(i) To meet reasonable occupational standards uniformly required for admission, or

(ii) To tender dues uniformly required as a condition of acquiring and retaining membership.

§ 2421.5 Activity.

The term "activity" means any facility, organizational entity, or geographical subdivision or combination thereof, of any employing office.

§ 2421.6 Primary national subdivision.

"Primary national subdivision" of an employing office means a first-level organizational segment which has functions national in scope that are implemented in field activities.

§ 2421.7 Executive director.

"Executive Director" means the Executive Director of the Office of Compliance.

§ 2421.8 Hearing officer.

The term "Hearing Officer" means any individual designated by the Executive Director to preside over a hearing conducted pursuant to section 405 of the CAA on matters within the Office's jurisdiction, including a hearing arising in cases under 5 U.S.C. 7116, as applied by the CAA, and any other such matters as may be assigned.

§ 2421.9 Party.

The term "party" means:

(a) Any labor organization, employing office or employing activity or individual filing a charge, petition, or request;

(b) Any labor organization or employing office or activity

(1) Named as

(i) A charged party in a charge,

(ii) A respondent in a complaint, or

(iii) An employing office or activity or an incumbent labor organization in a petition;

(2) Whose intervention in a proceeding has been permitted or directed by the Board; or

(3) Who participated as a party

(i) In a matter that was decided by an employing office head under 5 U.S.C. 7117, as applied by the CAA, or

(ii) In a matter where the award of an arbitrator was issued; and

(c) The General Counsel, or the General Counsel's designated representative, in appropriate proceedings.

§ 2421.10 Intervenor.

The term "intervenor" means a party in a proceeding whose intervention has been permitted or directed by the Board, its agents or representatives.

§ 2421.11 Certification.

The term "certification" means the determination by the Board, its agents or representatives, of the results of an election, or the results of a petition to consolidate existing exclusively recognized units.

2421.12 Appropriate unit.

The term "appropriate unit" means that grouping of employees found to be appropriate for purposes of exclusive recognition under 5 U.S.C. 7111, as applied by the CAA, and for purposes of allotments to representatives under 5 U.S.C. 7115(c), as applied by the CAA, and consistent with the provisions of 5 U.S.C. 7112, as applied by the CAA.

§ 2421.13 Secret ballot.

The term "secret ballot" means the expression by ballot, voting machine or otherwise, but in no event by proxy, of a choice with respect to any election or vote taken upon any matter, which is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed, except in that instance in which any determinative challenged ballot is opened.

§ 2421.14 Showing of interest.

The term "showing of interest" means evidence of membership in a labor organization; employees' signed and dated authorization cards or petitions authorizing a labor organization to represent them for purposes of exclusive recognition; allotment of dues forms executed by an employee and the labor organization's authorized official; current dues records; an existing or recently expired agreement; current certification; employees' signed and dated petitions or cards indicating that they no longer desire to be represented for the purposes of exclusive recognition by the currently certified labor organization; employees' signed and dated petitions or cards indicating a desire that an election be held on a proposed consolidation

of units; or other evidence approved by the Board.

§ 2421.15 Regular and substantially equivalent employment.

The term "regular and substantially equivalent employment" means employment that entails substantially the same amount of work, rate of pay, hours, working conditions, location of work, kind of work, and seniority rights, if any, of an employee prior to the cessation of employment in an employing office because of any unfair labor practice under 5 U.S.C. 7116, as applied by the CAA.

§ 2421.16 Petitioner.

Petitioner means the party filing a petition under Part 2422 of this Subchapter.

§ 2421.17 Eligibility period.

The term "eligibility period" means the payroll period during which an employee must be in an employment status with an employing office or activity in order to be eligible to vote in a representation election under Part 2422 of this Subchapter.

§ 2421.18 Election agreement.

The term "election agreement" means an agreement under Part 2422 of this Subchapter signed by all the parties, and approved by the Board, the Executive Director, or any other individual designated by the Board, concerning the details and procedures of a representation election in an appropriate unit.

§ 2421.19 Affected by issues raised.

The phrase "affected by issues raised", as used in Part 2422, should be construed broadly to include parties and other labor organizations, or employing offices or activities that have a connection to employees affected by, or questions presented in, a proceeding.

§ 2421.20 Determinative challenged ballots.

"Determinative challenged ballots" are challenges that are unresolved prior to the tally and sufficient in number after the tally to affect the results of the election.

Part 2422—Representation Proceedings

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§ 2422.1 Purposes of a petition.

A petition may be filed for the following purposes:

(a) *Elections or Eligibility for dues allotment.* To request:

(1)(i) An election to determine if employees in an appropriate unit wish to be represented for the purpose of collective bargaining by an exclusive representative; and/or

(ii) A determination of eligibility for dues allotment in an appropriate unit without an exclusive representative; or

(2) An election to determine if employees in a unit no longer wish to be represented for the purpose of collective bargaining by an exclusive representative.

(3) Petitions under this subsection must be accompanied by an appropriate showing of interest.

(b) *Clarification or Amendment.* To clarify, and/or amend:

(1) A certification then in effect; and/or

(2) Any other matter relating to representation.

(c) *Consolidation.* To consolidate two or more units, with or without an election, in an employing office and for which a labor organization is the exclusive representative.

§ 2422.2 Standing to file a petition.

A representation petition may be filed by: an individual; a labor organization; two or more labor organizations acting as a joint-petitioner; an individual acting on behalf of any employee(s); an employing office or activity; or a combination of the above: *provided, however*, that (a) only a labor organization has standing to file a petition pursuant to section 2422.1(a)(1); (b) only an individual has standing to file a petition pursuant to section 2422.1(a)(2); and (c) only an employing office or a labor organization may file a petition pursuant to section 2422.1 (b) or (c).

§ 2422.3 Contents of a petition.

(a) *What to file.* A petition must be filed on a form prescribed by the Board and contain the following information:

(1) The name and mailing address for each employing office or activity affected by issues raised in the petition, including street number, city, state and zip code.

(2) The name, mailing address and work telephone number of the contact person for each employing office or activity affected by issues raised in the petition.

(3) The name and mailing address for each labor organization affected by issues raised in the petition, including street number, city, state and zip code. If a labor organization is affiliated with a national organization, the local designation and the national affiliation should both be included. If a labor organization is an exclusive representative of any of the employees affected by issues raised in the petition, the date of the certification and the date any collective bargaining agreement covering the unit will expire or when the most recent agreement did expire should be included, if known.

(4) The name, mailing address and work telephone number of the contact person for each labor organization affected by issues raised in the petition.

(5) The name and mailing address for the petitioner, including street number, city, state and zip code. If a labor organization petitioner is affiliated with a national organization, the local designation and the national affiliation should both be included.

(6) A description of the unit(s) affected by issues raised in the petition. The description should generally indicate the geographic locations and the classifications of the employees included (or sought to be included) in, and excluded (or sought to be excluded) from, the unit.

(7) The approximate number of employees in the unit(s) affected by issues raised in the petition.

(8) A clear and concise statement of the issues raised by the petition and the results the petitioner seeks.

(9) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that the contents of the petition are true and correct to the best of the person's knowledge and belief.

(10) The signature, title, mailing address and telephone number of the person filing the petition.

(b) *Compliance with 5 U.S.C. 7111(e), as applied by the CAA.* A labor organization/petitioner complies with 5 U.S.C. 7111(e), as applied by the CAA, by submitting to the employing office or activity and to the Department of Labor a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives. By signing the petition form, the labor organization/petitioner certifies that it has submitted these documents to the employing activity or office and to the Department of Labor.

(c) *Showing of interest supporting a representation petition.* When filing a petition requiring a showing of interest, the petitioner must:

(1) So indicate on the petition form;

(2) Submit with the petition a showing of interest of not less than thirty percent (30%) of the employees in the unit involved in the petition; and

(3) Include an alphabetical list of the names constituting the showing of interest.

(d) *Petition seeking dues allotment.* When there is no exclusive representative, a petition seeking certification for dues allotment shall be accompanied by a showing of membership in the petitioner of not less than ten percent (10%) of the employees in the unit claimed to be appropriate. An alphabetical list of names constituting the showing of membership must be submitted.

§ 2422.4 Service requirements.

Every petition, motion, brief, request, challenge, written objection, or application for review shall be served on all parties affected by issues raised in the filing. The service shall include all documentation in support thereof, with the exception of a showing of interest, evidence supporting challenges to the validity of a showing of interest, and evidence supporting objections to an election. The filer must submit a written statement of service to the Executive Director.

§ 2422.5 Filing petitions.

(a) *Where to file.* Petitions must be filed with the Executive Director.

(b) *Number of copies.* An original and two (2) copies of the petition and the accompanying material must be filed with the Executive Director.

(c) *Date of filing.* A petition is filed when it is received by the Executive Director.

§ 2422.6 Notification of filing.

(a) *Notification to parties.* After a petition is filed, the Executive Director, on behalf of the Board, will notify any labor organization, employing office or employing activity that the parties have identified as being affected by issues raised by the petition, that a petition has been filed with the Office. The Executive Director, on behalf of the Board, will also make reasonable efforts to identify and notify any other party affected by the issues raised by the petition.

(b) *Contents of the notification.* The notification will inform the labor organization, employing office or employing activity of:

(1) The name of the petitioner;

(2) The description of the unit(s) or employees affected by issues raised in the petition; and,

(3) A statement that all affected parties should advise the Executive Director in writing of their interest in the issues raised in the petition.

§ 2422.7 Posting notice of filing of a petition.

(a) *Posting notice of petition.* When appropriate, the Executive Director, on behalf of the Board, after the filing of a representation petition, will direct the employing office or activity to post copies of a notice to all employees in places where notices are normally posted for the employees affected by issues raised in the petition and/or distribute copies of a notice in a manner by which notices are normally distributed.

(b) *Contents of notice.* The notice shall advise affected employees about the petition.

(c) *Duration of notice.* The notice should be conspicuously posted for a period of ten (10) days and not be altered, defaced, or covered by other material.

§ 2422.8 Intervention and cross-petitions.

(a) *Cross-petitions.* A cross-petition is a petition which involves any employees in a unit covered by a pending representation petition. Cross-petitions must be filed in accordance with this subpart.

(b) *Intervention requests and cross-petitions.* A request to intervene and a cross-petition, accompanied by any necessary showing of interest, must be submitted in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, a request to intervene and a cross-petition must be filed prior to action being taken pursuant to § 2422.30.

(c) *Labor organization intervention requests.* Except for incumbent intervenors, a labor organization seeking to intervene shall submit a statement that it has complied with 5 U.S.C. 7111(e), as applied by the CAA, and one of the following:

(1) A showing of interest of ten percent (10%) or more of the employees in the unit covered by a petition seeking an election, with an alphabetical list of the names of the employees constituting the showing of interest; or

(2) A current or recently expired collective bargaining agreement covering any of the employees in the unit affected by issues raised in the petition; or

(3) Evidence that it is or was, prior to a reorganization, the certified exclusive representative of any of the employees affected by issues raised in the petition.

(d) *Incumbent.* An incumbent exclusive representative, without regard to the requirements of paragraph (c) of this section, will be considered a party in any representation proceeding raising issues that affect employees the incumbent represents, unless it serves the Board, through the Executive Director, with a written disclaimer of any representation interest in the claimed unit.

(e) *Employing office.* An employing office or activity will be considered a party if any of its employees are affected by issues raised in the petition.

(f) *Employing office or activity intervention.* An employing office or activity seeking to intervene in any representation proceeding must submit evidence that one or more employees of the employing office or activity may be affected by issues raised in the petition.

§ 2422.9 Adequacy of showing of interest.

(a) *Adequacy.* Adequacy of a showing of interest refers to the percentage of employees in the unit involved as required by §§ 2422.3(c) and (d) and 2422.8(c)(1).

(b) *Executive Director investigation and action.* The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that the showing of interest is adequate is final and binding and not subject to collateral attack at a representation hearing or on appeal to the Board. If the Executive Director determines, on behalf of the Board, that a showing of interest is inadequate, the Executive Director will dismiss the petition, or deny a request for intervention.

§ 2422.10 Validity of showing of interest.

(a) *Validity.* Validity questions are raised by challenges to a showing of interest on grounds other than adequacy.

(b) *Validity challenge.* The Executive Director or any party may challenge the validity of a showing of interest.

(c) *When and where validity challenges may be filed.* Party challenges to the validity of a showing of interest must be in writing and filed with the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no pre-election investigatory hearing is held, challenges to the validity of a showing of interest must be filed prior to action being taken pursuant to § 2422.30.

(d) *Contents of validity challenges.* Challenges to the validity of a showing of interest must be supported with evidence.

(e) *Executive Director investigation and action.* The Executive Director, on behalf of the Board, will conduct such investigation as deemed appropriate. The Executive Director's determination, on behalf of the Board, that a showing of interest is valid is final and binding and is not subject to collateral attack or appeal to the Board. If the Executive Director finds, on behalf of the Board, that the showing of interest is not valid, the Executive Director will dismiss the petition or deny the request to intervene.

§ 2422.11 Challenge to the status of a labor organization.

(a) *Basis of challenge to labor organization status.* The only basis on which a challenge to the status of a labor organization may be made is compliance with 5 U.S.C. 7103(a)(4), as applied by the CAA.

(b) *Format and time for filing a challenge.* Any party filing a challenge to the status of a labor organization involved in the processing of a petition must do so in writing to the Executive Director before the pre-election investigatory hearing opens, unless good cause is shown for granting an extension. If no hearing is held, challenges must be filed prior to action being taken pursuant to § 2422.30.

§ 2422.12 Timeliness of petitions seeking an election.

(a) *Election bar.* Where there is no certified exclusive representative, a petition seeking an election will not be considered timely if filed within twelve (12) months of a valid election involving the same unit or a subdivision of the same unit.

(b) *Certification bar.* Where there is a certified exclusive representative of employees, a petition seeking an election will not be considered timely if filed within twelve (12) months after the certification of the exclusive representative of the employees in an appropriate unit. If a collective bargaining agreement covering the claimed unit is pending employing office head review under 5 U.S.C. 7114(c), as applied by the CAA, or is in effect, paragraphs (c), (d), or (e) of this section apply.

(c) *Bar during employing office head review.* A petition seeking an election will not be considered timely if filed during the period of employing office head review under 5 U.S.C. 7114(c), as applied by the CAA. This bar expires upon either the passage of thirty (30) days absent employing office head action, or upon the date of any timely employing office head action.

(d) *Contract bar where the contract is for three (3) years or less.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of three (3) years or less from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the agreement.

(e) *Contract bar where the contract is for more than three (3) years.* Where a collective bargaining agreement is in effect covering the claimed unit and has a term of more than three (3) years from the date it became effective, a petition seeking an election will be considered timely if filed not more than one hundred and five (105) and not less than sixty (60) days prior to the expiration of the initial three (3) year period, and any time after the expiration of the initial three (3) year period.

(f) *Unusual circumstances.* A petition seeking an election or a determination relating to representation matters may be filed at any time when unusual circumstances exist that substantially affect the unit or majority representation.

(g) *Premature extension.* Where a collective bargaining agreement with a term of three (3) years or less has been extended prior to sixty (60) days before its expiration date, the extension will not serve as a basis for dismissal of a petition seeking an election filed in accordance with this section.

(h) *Contract requirements.* Collective bargaining agreements, including agreements that go into effect under 5 U.S.C. 7114(c), as applied by the CAA, and those that automatically renew without further action by the parties, do not constitute a bar to a petition seeking an election under this section unless a clear and unambiguous effective date, renewal date where applicable, duration, and termination date are ascertainable from the agreement and relevant accompanying documentation.

§ 2422.13 Resolution of issues raised by a petition.

(a) *Meetings prior to filing a representation petition.* All parties affected by the representation issues that may be raised in a petition are encouraged to meet prior to the filing of the petition to discuss their interests and narrow and resolve the issues. If requested by all parties a representative of the Office will participate in these meetings.

(b) *Meetings to narrow and resolve the issues after the petition is filed.* After a petition is

filed, the Executive Director may require all affected parties to meet to narrow and resolve the issues raised in the petition.

§ 2422.14 Effect of withdrawal/dismissal.

(a) *Withdrawal/dismissal less than sixty (60) days before contract expiration.* When a petition seeking an election that has been timely filed is withdrawn by the petitioner or dismissed by the Executive Director or the Board less than sixty (60) days prior to the expiration of an existing agreement between the incumbent exclusive representative and the employing office or activity or any time after the expiration of the agreement, another petition seeking an election will not be considered timely if filed within a ninety (90) day period from either:

(1) The date the withdrawal is approved; or

(2) The date the petition is dismissed by the Executive Director when no application for review is filed with the Board; or

(3) The date the Board rules on an application for review; or

(4) The date the Board issues a Decision and Order dismissing the petition.

Other pending petitions that have been timely filed under this Part will continue to be processed.

(b) *Withdrawal by petitioner.* A petitioner who submits a withdrawal request for a petition seeking an election that is received by the Executive Director after the notice of pre-election investigatory hearing issues or after approval of an election agreement, whichever occurs first, will be barred from filing another petition seeking an election for the same unit or any subdivision of the unit for six (6) months from the date of the approval of the withdrawal by the Executive Director.

(c) *Withdrawal by incumbent.* When an election is not held because the incumbent disclaims any representation interest in a unit, a petition by the incumbent seeking an election involving the same unit or a subdivision of the same unit will not be considered timely if filed within six (6) months of cancellation of the election.

§ 2422.15 Duty to furnish information and cooperate.

(a) *Relevant information.* After a petition is filed, all parties must, upon request of the Executive Director, furnish the Executive Director and serve all parties affected by issues raised in the petition with information concerning parties, issues, and agreements raised in or affected by the petition.

(b) *Inclusions and exclusions.* After a petition seeking an election is filed, the Executive Director, on behalf of the Board, may direct the employing office or activity to furnish the Executive Director and all parties affected by issues raised in the petition with a current alphabetized list of employees and job classifications included in and/or excluded from the existing or claimed unit affected by issues raised in the petition.

(c) *Cooperation.* All parties are required to cooperate in every aspect of the representation process. This obligation includes cooperating fully with the Executive Director, submitting all required and requested information, and participating in prehearing conferences and pre-election investigatory hearings. The failure to cooperate in the representation process may result in the Executive Director or the Board taking appropriate action, including dismissal of the petition or denial of intervention.

§ 2422.16 Election agreements or directed elections.

(a) *Election agreements.* Parties are encouraged to enter into election agreements.

(b) *Executive Director directed election.* If the parties are unable to agree on procedural matters, specifically, the eligibility period, method of election, dates, hours, or locations of the election, the Executive Director, on behalf of the Board, will decide election procedures and issue a Direction of Election, without prejudice to the rights of a party to file objections to the procedural conduct of the election.

(c) *Opportunity for an investigatory hearing.* Before directing an election, the Executive Director shall provide affected parties an opportunity for a pre-election investigatory hearing on other than procedural matters.

(d) *Challenges or objections to a directed election.* A Direction of Election issued under this section will be issued without prejudice to the right of a party to file a challenge to the eligibility of any person participating in the election and/or objections to the election.

§ 2422.17 Notice of pre-election investigatory hearing and prehearing conference.

(a) *Purpose of notice of an investigatory hearing.* The Executive Director, on behalf of the Board, may issue a notice of pre-election investigatory hearing involving any issues raised in the petition.

(b) *Contents.* The notice of hearing will advise affected parties about the pre-election investigatory hearing. The Executive Director will also notify affected parties of the issues raised in the petition and establish a date for the prehearing conference.

(c) *Prehearing conference.* A prehearing conference will be conducted by the Executive Director or her designee, either by meeting or teleconference. All parties must participate in a prehearing conference and be prepared to fully discuss, narrow and resolve the issues set forth in the notification of the prehearing conference.

(d) *No interlocutory appeal of investigatory hearing determination.* The Executive Director's determination of whether to issue a notice of pre-election investigatory hearing is not appealable to the Board.

§ 2422.18 Pre-election investigatory hearing procedures.

(a) *Purpose of a pre-election investigatory hearing.* Representation hearings are considered investigatory and not adversarial. The purpose of the hearing is to develop a full and complete record of relevant and material facts.

(b) *Conduct of hearing.* Pre-election investigatory hearings will be open to the public unless otherwise ordered by the Executive Director or her designee. There is no burden of proof, with the exception of proceedings on objections to elections as provided for in § 2422.27(b). Formal rules of evidence do not apply.

(c) *Pre-election investigatory hearing.* Pre-election investigatory hearings will be conducted by the Executive Director or her designee.

(d) *Production of evidence.* Parties have the obligation to produce existing documents and witnesses for the investigatory hearing in accordance with the instructions of the Executive Director or her designee. If a party willfully fails to comply with such instructions, the Board may draw an inference adverse to that party on the issue related to the evidence sought.

(e) *Transcript.* An official reporter will make the official transcript of the pre-election investigatory hearing. Copies of the official transcript may be examined in the Office during normal working hours. Requests by parties to purchase copies of the official transcript should be made to the official hearing reporter.

§ 2422.19 Motions.

(a) *Purpose of a motion.* Subsequent to the issuance of a notice of pre-election investigatory hearing in a representation proceeding, a party seeking a ruling, an order, or relief must do so by filing or raising a motion stating the order or relief sought and the grounds therefor. Challenges and other filings referenced in other sections of this subpart may, in the discretion of the Executive Director or her designee, be treated as a motion.

(b) *Prehearing motions.* Prehearing motions must be filed in writing with the Executive Director. Any response must be filed with the Executive Director within five (5) days after service of the motion. The Executive Director shall rule on the motion.

(c) *Motions made at the investigatory hearing.* During the pre-election investigatory hearing, motions will be made to the Executive Director or her designee, and may be oral on the record, unless otherwise required in this subpart to be in writing. Responses may be oral on the record or in writing, but, absent permission of the Executive Director or her designee, must be provided before the hearing closes. The Executive Director or her designee will rule on motions made at the hearing.

(d) *Posthearing motions.* Motions made after the hearing closes must be filed in writing with the Board. Any response to a posthearing motion must be filed with the Board within five (5) days after service of the motion.

§ 2422.20 Rights of parties at a pre-election investigatory hearing.

(a) *Rights.* A party at a pre-election investigatory hearing will have the right:

(1) To appear in person or by a representative;

(2) To examine and cross-examine witnesses; and

(3) To introduce into the record relevant evidence.

(b) *Documentary evidence and stipulations.* Parties must submit two (2) copies of documentary evidence to the Executive Director or her designee and copies to all other parties. Stipulations of fact between/among the parties may be introduced into evidence.

(c) *Oral argument.* Parties will be entitled to a reasonable period prior to the close of the hearing for oral argument. Presentation of a closing oral argument does not preclude a party from filing a brief under paragraph (d) of this section.

(d) *Briefs.* A party will be afforded an opportunity to file a brief with the Board.

(1) An original and two (2) copies of a brief must be filed with the Board within thirty (30) days from the close of the hearing.

(2) A written request for an extension of time to file a brief must be filed with and received by the Board no later than five (5) days before the date the brief is due.

(3) No reply brief may be filed without permission of the Board.

§ 2422.21 Duties and powers of the Executive Director in the conduct of the pre-election investigatory hearing.

(a) *Duties.* The Executive Director or her designee, on behalf of the Board, will receive evidence and inquire fully into the relevant and material facts concerning the matters that are the subject of the investigatory hearing, and may make recommendations on the record to the Board.

(b) *Powers.* During the period a case is assigned to the Executive Director or her designee for pre-election investigatory hearing

and prior to the close of the hearing, the Executive Director or her designee may take any action necessary to schedule, conduct, continue, control, and regulate the pre-election investigatory hearing, including ruling on motions when appropriate.

§ 2422.22 Objections to the conduct of the pre-election investigatory hearing.

(a) *Objections.* Objections are oral or written complaints concerning the conduct of a pre-election investigatory hearing.

(b) *Exceptions to rulings.* There are automatic exceptions to all adverse rulings.

§ 2422.23 Election procedures.

(a) *Executive Director conducts or supervises election.* The Executive Director, on behalf of the Board, will decide to conduct or supervise the election. In supervised elections, employing offices or activities will perform all acts as specified in the Election Agreement or Direction of Election.

(b) *Notice of election.* Prior to the election a notice of election, prepared by the Executive Director, will be posted by the employing office or activity in places where notices to employees are customarily posted and/or distributed in a manner by which notices are normally distributed. The notice of election will contain the details and procedures of the election, including the appropriate unit, the eligibility period, the date(s), hour(s) and location(s) of the election, a sample ballot, and the effect of the vote.

(c) *Sample ballot.* The reproduction of any document purporting to be a copy of the official ballot that suggests either directly or indirectly to employees that the Board endorses a particular choice in the election may constitute grounds for setting aside an election if objections are filed under § 2422.26.

(d) *Secret ballot.* All elections will be by secret ballot.

(e) *Intervenor withdrawal from ballot.* When two or more labor organizations are included as choices in an election, an intervening labor organization may, prior to the approval of an election agreement or before the direction of an election, file a written request with the Executive Director to remove its name from the ballot. If the request is not received prior to the approval of an election agreement or before the direction of an election, unless the parties and the Executive Director, on behalf of the Board, agree otherwise, the intervening labor organization will remain on the ballot. The Executive Director's decision on the request is final and not subject to the filing of an application for review with the Board.

(f) *Incumbent withdrawal from ballot in an election to decertify an incumbent representative.* When there is no intervening labor organization, an election to decertify an incumbent exclusive representative will not be held if the incumbent provides the Executive Director with a written disclaimer of any representation interest in the unit. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(g) *Petitioner withdraws from ballot in an election.* When there is no intervening labor organization, an election will not be held if the petitioner provides the Executive Director with a written request to withdraw the petition. When there is an intervenor, an election will be held if the intervening labor organization proffers a thirty percent (30%) showing of interest within the time period established by the Executive Director.

(h) *Observers.* All parties are entitled to representation at the polling location(s) by observers of their own selection subject to the Executive Director's approval.

(1) Parties desiring to name observers must file in writing with the Executive Director a request for specifically named observers at least fifteen (15) days prior to an election. The Executive Director may grant an extension of time for filing a request for specifically named observers for good cause where a party requests such an extension or on the Executive Director's own motion. The request must name and identify the observers requested.

(2) An employing office or activity may use as its observers any employees who are not eligible to vote in the election, except:

(i) Supervisors or management officials;

(ii) Employees who have any official connection with any of the labor organizations involved; or

(iii) Non-employees of the legislative branch.

(3) A labor organization may use as its observers any employees eligible to vote in the election, except:

(i) Employees on leave without pay status who are working for the labor organization involved; or

(ii) Employees who hold an elected office in the union.

(4) Objections to a request for specific observers must be filed with the Executive Director stating the reasons in support within five (5) days after service of the request.

(5) The Executive Director's ruling on requests for and objections to observers is final and binding and is not subject to the filing of an application for review with the Board.

§ 2422.24 Challenged ballots.

(a) *Filing challenges.* A party or the Executive Director may, for good cause, challenge the eligibility of any person to participate in the election prior to the employee voting.

(b) *Challenged ballot procedure.* An individual whose eligibility to vote is in dispute will be given the opportunity to vote a challenged ballot. If the parties and the Region are unable to resolve the challenged ballot(s) prior to the tally of ballots, the unresolved challenged ballot(s) will be impounded and preserved until a determination can be made, if necessary, by the Executive Director or the Board.

§ 2422.25 Tally of ballots.

(a) *Tallying the ballots.* When the election is concluded, the Executive Director or her designee will tally the ballots.

(b) *Service of the tally.* When the tally is completed, the Executive Director will serve the tally of ballots on the parties in accordance with the election agreement or direction of election.

(c) *Valid ballots cast.* Representation will be determined by the majority of the valid ballots cast.

§ 2422.26 Objections to the election.

(a) *Filing objections to the election.* Objections to the procedural conduct of the election or to conduct that may have improperly affected the results of the election may be filed by any party. Objections must be filed and received by the Executive Director within five (5) days after the tally of ballots has been served. Any objections must be timely regardless of whether the challenged ballots are sufficient in number to affect the results of the election. The objections must be supported by clear and concise reasons. An original and two (2) copies of the objections must be received by the Executive Director.

(b) *Supporting evidence.* The objecting party must file with the Executive Director evidence, including signed statements, documents and other materials supporting the objections within ten (10) days after the objections are filed.

§ 2422.27 Determinative challenged ballots and objections.

(a) *Investigation.* The Executive Director, on behalf of the Board, will investigate objections and/or determinative challenged ballots that are sufficient in number to affect the results of the election.

(b) *Burden of proof.* A party filing objections to the election bears the burden of proof by a preponderance of the evidence concerning those objections. However, no party bears the burden of proof on challenged ballots.

(c) *Executive Director action.* After investigation, the Executive Director will take appropriate action consistent with § 2422.30.

(d) *Consolidated hearing on objections and/or determinative challenged ballots and an unfair labor practice hearing.* When appropriate, and in accordance with § 2422.33, objections and/or determinative challenged ballots may be consolidated with an unfair labor practice hearing. Such consolidated hearings will be conducted by a Hearing Officer. Exceptions and related submissions must be filed with the Board and the Board will issue a decision in accordance with Part 2423 of this chapter and section 406 of the CAA, except for the following:

(1) Section 2423.18 of this Subchapter concerning the burden of proof is not applicable;

(2) The Hearing Officer may not recommend remedial action to be taken or notices to be posted; and,

(3) References to "charge" and "complaint" in Part 2423 of this chapter will be omitted.

§ 2422.28 Runoff elections.

(a) *When a runoff may be held.* A runoff election is required in an election involving at least three (3) choices, one of which is "no union" or "neither," when no choice receives a majority of the valid ballots cast. However, a runoff may not be held until the objections to the election and determinative challenged ballots have been resolved.

(b) *Eligibility.* Employees who were eligible to vote in the original election and who are also eligible on the date of the runoff election may vote in the runoff election.

(c) *Ballot.* The ballot in the runoff election will provide for a selection between the two choices receiving the largest and second largest number of votes in the election.

§ 2422.29 Inconclusive elections.

(a) *Inconclusive elections.* An inconclusive election is one where challenged ballots are not sufficient to affect the outcome of the election and one of the following occurs:

(1) The ballot provides for at least three (3) choices, one of which is "no union" or "neither" and the votes are equally divided; or

(2) The ballot provides for at least three (3) choices, the choice receiving the highest number of votes does not receive a majority, and at least two other choices receive the next highest and same number of votes; or

(3) When a runoff ballot provides for a choice between two labor organizations and results in the votes being equally divided; or

(4) When the Board determines that there have been significant procedural irregularities.

(b) *Eligibility to vote in a rerun election.* A current payroll period will be used to determine eligibility to vote in a rerun election.

(c) *Ballot.* If a determination is made that the election is inconclusive, the election will be rerun with all the choices that appeared on the original ballot.

(d) *Number of reruns.* There will be only one rerun of an inconclusive election. If the rerun results in another inconclusive election, the tally of ballots will indicate a majority of valid ballots has not been cast for any choice and a certification of results will be issued. If necessary, a runoff may be held when an original election is rerun.

§2422.30 Executive Director investigations, notices of pre-election investigatory hearings, and actions; Board Decisions and Orders.

(a) *Executive Director investigation.* The Executive Director, on behalf of the Board, will make such investigation of the petition and any other matter as the Executive Director deems necessary.

(b) *Executive Director notice of pre-election investigatory hearing.* On behalf of the Board, the Executive Director will issue a notice of pre-election investigatory hearing to inquire into any matter about which a material issue of fact exists, where there is an issue as to whether a question concerning representation exists, and any time there is reasonable cause to believe a question exists regarding unit appropriateness.

(c) *Executive Director action.* After investigation and/or hearing, when a pre-election investigatory hearing has been ordered, the Executive Director may, on behalf of the Board, approve an election agreement, dismiss a petition or deny intervention where there is an inadequate or invalid showing of interest, or dismiss a petition where there is an undisputed bar to further processing of the petition under law, rule or regulation.

(d) *Appeal of Executive Director action.* A party may file with the Board an application for review of an Executive Director action taken pursuant to section (c) above.

(e) *Contents of the Record.* When no pre-election investigatory hearing has been conducted all material submitted to and considered by the Executive Director during the investigation becomes a part of the record. When a pre-election investigatory hearing has been conducted, the transcript and all material entered into evidence, including any posthearing briefs, become a part of the record.

(f) *Transfer of record to Board; Board Decisions and Orders.* In cases that are submitted to the Board for decision in the first instance, the Board shall decide the issues presented based upon the record developed by the Executive Director, including the transcript of the pre-election investigatory hearing, if any, documents admitted into the record and briefs and other approved submissions from the parties. The Board may direct that a secret ballot election be held, issue an order dismissing the petition, or make such other disposition of the matter as it deems appropriate.

§2422.31 Application for review of an Executive Director action.

(a) *Filing an application for review.* A party must file an application for review with the Board within sixty (60) days of the Executive Director's action. The sixty (60) day time limit provided for in 5 U.S.C. 7105(f), as applied by the CAA, may not be extended or waived.

(b) *Contents.* An application for review must be sufficient to enable the Board to rule on the application without recourse to the record; however, the Board may, in its discretion, examine the record in evaluating the application. An application must specify the matters and rulings to which exception(s) is taken, include a summary of evidence relating to any issue raised in the application, and make specific reference to page citations in the transcript if a hearing was held. An application may not raise any issue or rely on any facts not timely presented to the Executive Director.

(c) *Review.* The Board may, in its discretion, grant an application for review when the application demonstrates that review is warranted on one or more of the following grounds:

(1) The decision raises an issue for which there is an absence of precedent;

(2) Established law or policy warrants reconsideration; or,

(3) There is a genuine issue over whether the Executive Director has:

(i) Failed to apply established law;

(ii) Committed a prejudicial procedural error;

(iii) Committed a clear and prejudicial error concerning a substantial factual matter.

(d) *Opposition.* A party may file with the Board an opposition to an application for review within ten (10) days after the party is served with the application. A copy must be served on the Executive Director and all other parties and a statement of service must be filed with the Board.

(e) *Executive Director action becomes the Board's action.* An action of the Executive Director becomes the action of the Board when:

(1) No application for review is filed with the Board within sixty (60) days after the date of the Executive Director's action; or

(2) A timely application for review is filed with the Board and the Board does not undertake to grant review of the Executive Director's action within sixty (60) days of the filing of the application; or

(3) The Board denies an application for review of the Executive Director's action.

(f) *Board grant of review and stay.* The Board may rule on the issue(s) in an application for review in its order granting the application for review. Neither filing nor granting an application for review shall stay any action ordered by the Executive Director unless specifically ordered by the Board.

(g) *Briefs if review is granted.* If the Board does not rule on the issue(s) in the application for review in its order granting review, the Board may, in its discretion, afford the parties an opportunity to file briefs. The briefs will be limited to the issue(s) referenced in the Board's order granting review.

§2422.32 Certifications and revocations.

(a) *Certifications.* The Executive Director, on behalf of the Board, will issue an appropriate certification when:

(1) After an election, runoff, or rerun,

(i) No objections are filed or challenged ballots are not determinative, or

(ii) Objections and determinative challenged ballots are decided and resolved; or

(2) The Executive Director takes an action requiring a certification and that action becomes the action of the Board under §2422.31(e) or the Board otherwise directs the issuance of a certification.

(b) *Revocations.* Without prejudice to any rights and obligations which may exist under the CAA, the Executive Director, on behalf of the Board, will revoke a recognition or certification, as appropriate, and provide a written statement of reasons when an incumbent exclusive representative files, during a representation proceeding, a disclaimer of any representational interest in the unit.

§2422.33 Relief obtainable under Part 2423.

Remedial relief that was or could have been obtained as a result of a motion, objection, or challenge filed or raised under this subpart, may not be the basis for similar relief if filed or raised as an unfair labor practice under Part 2423 of this Chapter: *provided, however,* that related matters may be consolidated for hearing as noted in §2422.27(d) of this subpart.

§2422.34 Rights and obligations during the pendency of representation proceedings.

(a) *Existing recognitions, agreements, and obligations under the CAA.* During the pendency of any representation proceeding, parties are obligated to maintain existing recognitions, adhere to the terms and conditions of existing collective bargaining agreements, and fulfill all other representational and bargaining responsibilities under the CAA.

(b) *Unit status of individual employees.* Notwithstanding paragraph (a) of this section and except as otherwise prohibited by law, a party may take action based on its position regarding the bargaining unit status of individual employees, pursuant to 5 U.S.C. 7103(a)(2), 7112 (b) and (c), as applied by the CAA: *provided, however,* that its actions may be challenged, reviewed, and remedied where appropriate.

Part 2423—Unfair Labor Practice Proceedings

Sec.
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§2423.1 Applicability of this part.

This part is applicable to any charge of alleged unfair labor practices occurring on or after October 1, 1996.

§2423.2 Informal proceedings.

(a) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the cooperative efforts of all persons covered by the program. To this end, it shall be the policy of the Board and the General Counsel to encourage all persons alleging unfair labor practices and persons against whom such allegations are made to meet and, in good faith, attempt to resolve such matters prior to the filing of unfair labor practice charges.

(b) In furtherance of the policy referred to in paragraph (a) of this section, and noting the 180 day period of limitation set forth in section 220(c)(2) of the CAA, it shall be the policy of the Board and the General Counsel to encourage the informal resolution of unfair labor practice allegations subsequent to the filing of a charge and prior to the filing of a complaint by the General Counsel.

(c) In order to afford the parties an opportunity to implement the policy referred to in paragraphs (a) and (b) of this section, the investigation of an unfair labor practice charge by the General Counsel will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, during which period the parties are urged to attempt to informally resolve the unfair labor practice allegation.

§ 2423.3 Who may file charges.

An employing office, employing activity, or labor organization may be charged by any person with having engaged in or engaging in any unfair labor practice prohibited under 5 U.S.C. 7116, as applied by the CAA.

§ 2423.4 Contents of the charge; supporting evidence and documents.

(a) A charge alleging a violation of 5 U.S.C. 7116, as applied by the CAA, shall be submitted on forms prescribed by the General Counsel and shall contain the following:

(1) The name, address and telephone number of the person(s) making the charge;

(2) The name, address and telephone number of the employing office or activity, or labor organization against whom the charge is made;

(3) A clear and concise statement of the facts constituting the alleged unfair labor practice, a statement of the section(s) and subsection(s) of chapter 71 of title 5 of the United States Code made applicable by the CAA alleged to have been violated, and the date and place of occurrence of the particular acts; and

(4) A statement of any other procedure invoked involving the subject matter of the charge and the results, if any, including whether the subject matter raised in the charge (i) has been raised previously in a grievance procedure; (ii) has been referred to the Board under Part 2471 of these regulations, or the Federal Mediation and Conciliation Service, or (iii) involves a negotiability issue raised by the charging party in a petition pending before the Board pursuant to Part 2424 of this subchapter.

(b) Such charge shall be in writing and signed and shall contain a declaration by the person signing the charge, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of that person's knowledge and belief.

(c) When filing a charge, the charging party shall submit to the General Counsel any supporting evidence and documents.

§ 2423.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to this part which involves a negotiability issue, and the labor organization also files pursuant to part 2424 of this subchapter a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under part 2424 of this subchapter.

§ 2423.6 Filing and service of copies.

(a) An original and four (4) copies of the charge together with one copy for each additional charged party named shall be filed with the General Counsel.

(b) Upon the filing of a charge, the charging party shall be responsible for the service of a copy of the charge (without the supporting evidence and documents) upon the person(s) against whom the charge is made, and for filing a written statement of such service with the General Counsel. The General Counsel will, as a matter of course, cause a copy of such charge to be served on the person(s) against whom the charge is made, but shall not be deemed to assume responsibility for such service.

(c) A charge will be deemed to be filed when it is received by the General Counsel in accordance with the requirements in paragraph (a) of this section.

§ 2423.7 Investigation of charges.

(a) The General Counsel shall conduct such investigation of the charge as the General Counsel deems necessary. Consistent with the policy set forth in § 2423.2, the investigation will normally not commence until the parties have been afforded a reasonable amount of time, not to exceed fifteen (15) days from the filing of the charge, to informally resolve the unfair labor practice allegation.

(b) During the course of the investigation all parties involved will have an opportunity to present their evidence and views to the General Counsel.

(c) In connection with the investigation of charges, all persons are expected to cooperate fully with the General Counsel.

(d) The purposes and policies of chapter 71, as applied by the CAA, can best be achieved by the full cooperation of all parties involved and the voluntary submission of all potentially relevant information from all potential sources during the course of the investigation. To this end, it shall be the policy of the Board and the General Counsel to protect the identity of individuals and the substance of the statements and information they submit or which is obtained during the investigation as a means of assuring the Board's and the General Counsel's continuing ability to obtain all relevant information.

§ 2423.8 Amendment of charges.

Prior to the issuance of a complaint, the charging party may amend the charge in accordance with the requirements set forth in § 2423.6.

§ 2423.9 Action by the General Counsel.

(a) The General Counsel shall take action which may consist of the following, as appropriate:

(1) Approve a request to withdraw a charge;

(2) Refuse to file a complaint;

(3) Approve a written settlement and recommend that the Executive Director approve a written settlement agreement in accordance with the provisions of section 414 of the CAA;

(4) File a complaint;

(5) Upon agreement of all parties, transfer to the Board for decision, after filing of a complaint, a stipulation of facts in accordance with the provisions of § 2429.1(a) of this subchapter; or

(6) Withdraw a complaint.

§ 2423.10 Determination not to file complaint.

(a) If the General Counsel determines that the charge has not been timely filed, that the charge fails to state an unfair labor practice, or for other appropriate reasons, the General Counsel may request the charging party to withdraw the charge, and in the absence of such withdrawal within a reasonable time, decline to file a complaint.

(b) The charging party may not obtain a review of the General Counsel's decision not to file a complaint.

§ 2423.11 Settlement or adjustment of issues.

(a) At any stage of a proceeding prior to hearing, where time, the nature of the proceeding, and the public interest permit, all interested parties shall have the opportunity to submit to the Executive Director or General Counsel, as appropriate, for consideration, all facts and arguments concerning offers of settlement, or proposals of adjustment.

Precomplaint settlements

(b)(1) Prior to the filing of any complaint or the taking of other formal action, the General Counsel will afford the charging party and the respondent a reasonable period of time in which to enter into a settlement agreement to be submitted to and approved by the General Counsel and the Executive Director. Upon approval by the General Counsel and Executive Director and compliance with the terms of the settlement agreement, no further action shall be taken in the case. If the respondent fails to perform its obligations under the settlement agreement, the General Counsel may determine to institute further proceedings.

(2) In the event that the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, if the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel and the latter shall decline to file a complaint.

Post complaint settlement policy

(c) Consistent with the policy reflected in paragraph (a) of this section, even after the filing of a complaint, the Board favors the settlement of issues. Such settlements may be accomplished as provided in paragraph (b) of this section. The parties may, as part of the settlement, agree to waive their right to a hearing and agree further that the Board may issue an order requiring the respondent to take action appropriate to the terms of the settlement. Ordinarily such a settlement agreement will also contain the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order.

Post complaint prehearing settlements

(d)(1) If, after the filing of a complaint, the charging party and the respondent enter into a settlement agreement, and such agreement is accepted by the General Counsel, the settlement agreement shall be submitted to the Executive Director for approval.

(2) If, after the filing of a complaint, the charging party fails or refuses to become a party to a settlement agreement offered by the respondent, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied by the CAA, the agreement shall be between the respondent and the General Counsel. The charging party will be so informed and provided a brief written statement by the General Counsel of the reasons therefor. The settlement agreement together with the charging party's objections, if any, and the General Counsel's written statements, shall be submitted to the Executive Director for approval. The Executive Director may approve or disapprove any settlement agreement.

(3) After the filing of a complaint, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may withdraw the complaint.

Settlements after the opening of the hearing

(e)(1) After filing of a complaint and after opening of the hearing, if the General Counsel concludes that it will effectuate the policies of chapter 71, as applied by the CAA, the General Counsel may request the Hearing Officer for permission to withdraw the complaint and, having been granted such permission to withdraw the complaint, may approve a settlement and recommend that the Executive Director approve the settlement pursuant to paragraph (b) of this section.

(2) If, after filing of a complaint and after opening of the hearing, the parties enter into a settlement agreement that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval.

(3) If the charging party fails or refuses to become a party to a settlement agreement, offered by the respondent, that contains the respondent's consent to the Board's application for the entry of a decree by the United States Court of Appeals for the Federal Circuit enforcing the Board's order, and the General Counsel concludes that the offered settlement will effectuate the policies of chapter 71, as applied to the CAA, the agreement shall be between the respondent and the General Counsel. After the charging party is given an opportunity to state on the record or in writing the reasons for opposing the settlement, the General Counsel may request the Hearing Officer and the Executive Director to approve such settlement agreement, and upon such approval, to transmit the agreement to the Board for approval. The Board may approve or disapprove any such settlement agreement or return the case to the Hearing Officer for other appropriate action.

§ 2423.12 Filing and contents of the complaint.

(a) After a charge is filed, if it appears to the General Counsel that formal proceedings in respect thereto should be instituted, the General Counsel shall file a formal complaint: *Provided, however*, that a determination by the General Counsel to file a complaint shall not be subject to review.

(b) The complaint shall include:

(1) Notice of the charge;

(2) Any information required pursuant to the Procedural Rules of the Office.

(c) Any such complaint may be withdrawn before the hearing by the General Counsel.

§ 2423.13 Answer to the complaint.

A respondent shall file an answer to a complaint in accordance with the requirements of the Procedural Rules of the Office.

§ 2423.14 Prehearing disclosure; conduct of hearing.

The procedures for prehearing discovery and the conduct of the hearing are set forth in the Procedural Rules of the Office.

§ 2423.15 Intervention.

Any person involved and desiring to intervene in any proceeding pursuant to this part shall file a motion in accordance with the procedures set forth in the Procedural Rules of the Office. The motion shall state the grounds upon which such person claims involvement.

§ 2423.16 [Reserved]

§ 2423.17 [Reserved]

§ 2423.18 Burden of proof before the hearing officer.

The General Counsel shall have the responsibility of presenting the evidence in support of the complaint and shall have the burden of proving the allegations of the complaint by a preponderance of the evidence.

2423.19 Duties and powers of the Hearing Officer.

It shall be the duty of the Hearing Officer to inquire fully into the facts as they relate to the matter before such Hearing Officer, subject to the rules and regulations of the Office and the Board.

§ 2423.20 [Reserved]

§ 2423.21 [Reserved]

§ 2423.22 [Reserved]

§ 2423.23 [Reserved]

§ 2423.24 [Reserved]

§ 2423.25 [Reserved]

§ 2423.26 Hearing officer decisions; entry in records of the office.

In accordance with the Procedural Rules of the Office, the Hearing Officer shall issue a written decision and that decision will be entered into the records of the Office.

§ 2423.27 Appeal to the Board.

An aggrieved party may seek review of a decision and order of the Hearing Officer in accordance with the Procedural Rules of the Office.

§ 2423.28 [Reserved]

§2423.29 Action by the Board.

(a) If an appeal is filed, the Board shall review the decision of the Hearing Officer in accordance with section 406 of the CAA, and the Procedural Rules of the Office.

(b) Upon finding a violation, the Board shall issue an order:

(1) To cease and desist from any such unfair labor practice in which the employing office or labor organization is engaged;

(2) Requiring the parties to renegotiate a collective bargaining agreement in accordance with the order of the Board and requiring that the agreement, as amended, be given retroactive effect;

(3) Requiring reinstatement of an employee with backpay in accordance with 5 U.S.C. 5596; or

(4) Including any combination of the actions described in paragraphs (1) through (3) of this paragraph (b), or such other action as will carry out the purpose of the chapter 71, as applied by the CAA.

(c) Upon finding no violation, the Board shall dismiss the complaint.

§ 2423.30 Compliance with decisions and orders of the Board.

When remedial action is ordered, the respondent shall report to the Office within a specified period that the required remedial action has been effected. When the General Counsel or the Executive Director finds that the required remedial action has not been effected, the General Counsel or the Executive Director shall take such action as may be appropriate, including referral to the Board for enforcement.

§ 2423.31 Backpay proceedings.

After the entry of a Board order directing payment of backpay, or the entry of a court decree enforcing such order, if it appears to the General Counsel that a controversy exists which cannot be resolved without a formal proceeding, the General Counsel may issue and serve on all parties a backpay specification accompanied by a request for hearing or a request for hearing without a specification. Upon receipt of the request for hearing, the Executive Director will appoint an independent Hearing Officer. The respondent shall, within twenty (20) days after the service of a backpay specification, file an answer thereto in accordance with the Office's Procedural Rules. No answer need be filed by the respondent to a notice of hearing issued without a specification. After the issuance of a notice of hearing, with or without a backpay specification, the hearing procedures provided in the Procedural Rules of the Office shall be followed insofar as applicable.

Part 2424—Expedited Review of Negotiability Issues

Subpart A—Instituting an Appeal

Sec.
2424.1 Conditions governing review.
2424.2 Who may file a petition.
2424.3 Time limits for filing.
2424.4 Content of petition; service.
2424.5 Selection of the unfair labor practice procedure or the negotiability procedure.
2424.6 Position of the employing office; time limits for filing; service.
2424.7 Response of the exclusive representative; time limits for filing; service.
2424.8 Additional submissions to the Board.
2424.9 Hearing.
2424.10 Board decision and order; compliance.

Subpart B—Criteria for Determining Compelling Need for Employing Office Rules and Regulations

2424.11 Illustrative criteria.

SUBPART A—INSTITUTING AN APPEAL

§ 2424.1 Conditions governing review.

The Board will consider a negotiability issue under the conditions prescribed by 5 U.S.C. 7117 (b) and (c), as applied by the CAA, namely: If an employing office involved in collective bargaining with an exclusive representative alleges that the duty to bargain in good faith does not extend to any matter proposed to be bargained because, as proposed, the matter is inconsistent with law, rule or regulation, the exclusive representative may appeal the allegation to the Board when—

(a) It disagrees with the employing office's allegation that the matter as proposed to be bargained is inconsistent with any Federal law or any Government-wide rule or regulation; or

(b) It alleges, with regard to any employing office rule or regulation asserted by the employing office as a bar to negotiations on the matter, as proposed, that:

(1) The rule or regulation violates applicable law, or rule or regulation of appropriate authority outside the employing office;

(2) The rule or regulation was not issued by the employing office or by any primary national subdivision of the employing office, or

otherwise is not applicable to bar negotiations with the exclusive representative, under 5 U.S.C. 7117(a)(3), as applied by the CAA; or

(3) No compelling need exists for the rule or regulation to bar negotiations on the matter, as proposed, because the rule or regulation does not meet the criteria established in subpart B of this part.

§ 2424.2 Who may file a petition.

A petition for review of a negotiability issue may be filed by an exclusive representative which is a party to the negotiations.

§ 2424.3 Time limits for filing.

The time limit for filing a petition for review is fifteen (15) days after the date the employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained is served on the exclusive representative. The exclusive representative shall request such allegation in writing and the employing office shall make the allegation in writing and serve a copy on the exclusive representative: *provided, however,* that review of a negotiability issue may be requested by an exclusive representative under this subpart without a prior written allegation by the employing office if the employing office has not served such allegation upon the exclusive representative within ten (10) days after the date of the receipt by any employing office bargaining representative at the negotiations of a written request for such allegation.

§ 2424.4 Content of petition; service.

(a) A petition for review shall be dated and shall contain the following:

(1) A statement setting forth the express language of the proposal sought to be negotiated as submitted to the employing office

(2) An explicit statement of the meaning attributed to the proposal by the exclusive representative including:

(i) Explanation of terms of art, acronyms, technical language, or any other aspect of the language of the proposal which is not in common usage; and

(ii) Where the proposal is concerned with a particular work situation, or other particular circumstances, a description of the situation or circumstances which will enable the Board to understand the context in which the proposal is intended to apply;

(3) A copy of all pertinent material, including the employing office's allegation in writing that the matter, as proposed, is not within the duty to bargain in good faith, and other relevant documentary material; and

(4) Notification by the petitioning labor organization whether the negotiability issue is also involved in an unfair labor practice charge filed by such labor organization under part 2423 of this subchapter and pending before the General Counsel.

(b) A copy of the petition including all attachments thereto shall be served on the employing office head and on the principal employing office bargaining representative at the negotiations.

(c)(1) Filing an incomplete petition for review will result in the exclusive representative being asked to provide the missing or incomplete information. Noncompliance with a request to complete the record may result in dismissal of the petition.

(2) The processing priority accorded to an incomplete petition, relative to other pending negotiability appeals, will be based upon the date when the petition is completed—not the date it was originally filed.

§ 2424.5 Selection of the unfair labor practice procedure or the negotiability procedure.

Where a labor organization files an unfair labor practice charge pursuant to part 2423 of this subchapter which involves a negotiability issue, and the labor organization also files pursuant to this part a petition for review of the same negotiability issue, the Board and the General Counsel ordinarily will not process the unfair labor practice charge and the petition for review simultaneously. Under such circumstances, the labor organization must select under which procedure to proceed. Upon selection of one procedure, further action under the other procedure will ordinarily be suspended. Such selection must be made regardless of whether the unfair labor practice charge or the petition for review of a negotiability issue is filed first. Notification of this selection must be made in writing at the time that both procedures have been invoked, and must be served on the Board, the General Counsel and all parties to both the unfair labor practice case and the negotiability case. Cases which solely involve an employing office's allegation that the duty to bargain in good faith does not extend to the matter proposed to be bargained and which do not involve actual or contemplated changes in conditions of employment may only be filed under this part.

§ 2424.6 Position of the employing office; time limits for filing; service.

(a) Within thirty (30) days after the date of the receipt by the head of an employing office of a copy of a petition for review of a negotiability issue the employing office shall file a statement—

(1) Withdrawing the allegation that the duty to bargain in good faith does not extend to the matter proposed to be negotiated; or

(2) Setting forth in full its position on any matters relevant to the petition which it wishes the Board to consider in reaching its decision, including a full and detailed statement of its reasons supporting the allegation. The statement shall cite the section of any law, rule or regulation relied upon as a basis for the allegation and shall contain a copy of any internal employing office rule or regulation so relied upon. The statement shall include:

(i) Explanation of the meaning the employing office attributes to the proposal as a whole, including any terms of art, acronyms, technical language or any other aspect of the language of the proposal which is not in common usage; and

(ii) Description of a particular work situation, or other particular circumstance the employing office views the proposal to concern, which will enable the Board to understand the context in which the proposal is considered to apply by the employing office.

(b) A copy of the employing office's statement of position, including all attachments thereto shall be served on the exclusive representative.

§ 2424.7 Response of the exclusive representative; time limits for filing; service.

(a) Within fifteen (15) days after the date of the receipt by an exclusive representative of a copy of an employing office's statement of position the exclusive representative shall file a full and detailed response stating its position and reasons for:

(1) Disagreeing with the employing office's allegation that the matter, as proposed to be negotiated, is inconsistent with any Federal law or Government-wide rule or regulation; or

(2) Alleging that the employing office's rules or regulations violate applicable law, or rule or regulation or appropriate authority outside the employing office; that the rules or regulations were not issued by the employing office or by any primary national subdivision of the employing office, or otherwise are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA; or that no compelling need exists for the rules or regulations to bar negotiations.

(b) The response shall cite the particular section of any law, rule or regulation alleged to be violated by the employing office's rules or regulations; or shall explain the grounds for contending the employing office rules or regulations are not applicable to bar negotiations under 5 U.S.C. 7117(a)(3), as applied by the CAA, or fail to meet the criteria established in subpart B of this part, or were not issued at the employing office headquarters level or at the level of a primary national subdivision.

(c) A copy of the response of the exclusive representative including all attachments thereto shall be served on the employing office head and on the employing office's representative of record in the proceeding before the Board.

§ 2424.8 Additional submissions to the board.

The Board will not consider any submission filed by any party, whether supplemental or responsive in nature, other than those authorized under § 2424.2 through 2424.7 unless such submission is requested by the Board; or unless, upon written request by any party, a copy of which is served on all other parties, the Board in its discretion grants permission to file such submission.

§ 2424.9 Hearing.

A hearing may be held, in the discretion of the Board, before a determination is made under 5 U.S.C. 7117(b) or (c), as applied by the CAA. If a hearing is held, it shall be expedited to the extent practicable and shall not include the General Counsel as a party.

§ 2424.10 Board decision and order; compliance.

(a) Subject to the requirements of this subpart the Board shall expedite proceedings under this part to the extent practicable and shall issue to the exclusive representative and to the employing office a written decision on the allegation and specific reasons therefor at the earliest practicable date.

(b) If the Board finds that the duty to bargain extends to the matter proposed to be bargained, the decision of the Board shall include an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning such matter. If the Board finds that the duty to bargain does not extend to the matter proposed to be negotiated, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue. If the Board finds that the duty to bargain extends to the matter proposed to be bargained only at the election of the employing office, the Board shall so state and issue an order dismissing the petition for review of the negotiability issue.

(c) When an order is issued as provided in paragraph (b) of this section, the employing office or exclusive representative shall report to the Executive Director within a specified period failure to comply with an order that the employing office shall upon request (or as otherwise agreed to by the parties) bargain concerning the disputed matter.

SUBPART B CRITERIA FOR DETERMINING COMPELLING NEED FOR EMPLOYING OFFICE RULES AND REGULATIONS

§ 2424.11—Illustrative criteria.

A compelling need exists for an employing office rule or regulation concerning any condition of employment when the employing office demonstrates that the rule or regulation meets one or more of the following illustrative criteria:

(a) The rule or regulation is essential, as distinguished from helpful or desirable, to the accomplishment of the mission or the execution of functions of the employing office or primary national subdivision in a manner which is consistent with the requirements of an effective and efficient government.

(b) The rule or regulation is necessary to insure the maintenance of basic merit principles.

(c) The rule or regulation implements a mandate to the employing office or primary national subdivision under law or other outside authority, which implementation is essentially nondiscretionary in nature.

Part 2425—Review of Arbitration Awards

Sec.
2425.1 Who may file an exception; time limits for filing; opposition; service.
2425.2 Content of exception.
2425.3 Grounds for review.
2425.4 Board decision.

§ 2425.1 Who may file an exception; time limits for filing; opposition; service.

(a) Either party to arbitration under the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA, may file an exception to an arbitrator's award rendered pursuant to the arbitration.

(b) The time limit for filing an exception to an arbitration award is thirty (30) days beginning on the date the award is served on the filing party.

(c) An opposition to the exception may be filed by a party within thirty (30) days after the date of service of the exception.

(d) A copy of the exception and any opposition shall be served on the other party.

§ 2425.2 Content of exception.

An exception must be a dated, self-contained document which sets forth in full:

(a) A statement of the grounds on which review is requested;

(b) Evidence or rulings bearing on the issues before the Board;

(c) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities; and

(d) A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and

(e) The name and address of the arbitrator.

§ 2425.3 Grounds for review.

The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(a) Because it is contrary to any law, rule or regulation; or

(b) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

§ 2425.4 Board decision.

The Board shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

Part 2426—National Consultation Rights and Consultation Rights on Government-Wide Rules or Regulations

Subpart A—National Consultation Rights

Sec.
2426.1 Requesting; granting; criteria.
2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.
2426.3 Obligation to consult.

Subpart B—Consultation Rights on Government-wide Rules or Regulations

2426.11 Requesting; granting; criteria.
2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.
2426.13 Obligation to consult.

SUBPART A—NATIONAL CONSULTATION RIGHTS

§ 2426.1 Requesting; granting; criteria.

(a) An employing office shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the employing office level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the employing office.

(b) An employing office's primary national subdivision which has authority to formulate conditions of employment shall accord national consultation rights to a labor organization that:

(1) Requests national consultation rights at the primary national subdivision level; and

(2) Holds exclusive recognition for ten percent (10%) or more of the total number of personnel employed by the primary national subdivision.

(c) In determining whether a labor organization meets the requirements as prescribed in paragraphs (a)(2) and (b)(2) of this section, the following will not be counted:

(1) At the employing office level, employees represented by the labor organization under national exclusive recognition granted at the employing office level.

(2) At the primary national subdivision level, employees represented by the labor organization under national exclusive recognition granted at the agency level or at that primary national subdivision level.

(d) An employing office or a primary national subdivision of an employing office shall not grant national consultation rights to any labor organization that does not meet the criteria prescribed in paragraphs (a), (b) and (c) of this section.

§ 2426.2 Requests; petition and procedures for determination of eligibility for national consultation rights.

(a) Requests by labor organizations for national consultation rights shall be submitted in writing to the headquarters of the employing office or the employing office's primary national subdivision, as appropriate, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, national consultation rights shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for national consultation rights under criteria set forth in § 2426.1 may be filed by a labor organization.

(2) A petition for determination of eligibility for national consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office or the primary national subdivision and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office or primary national subdivision in which the petitioner seeks to obtain or retain national consultation rights, and the persons to contact and their titles, if known;

(vi) A showing that petitioner holds adequate exclusive recognition as required by § 2426.1; and

(vii) A statement as appropriate:

(A) That such showing has been made to and rejected by the employing office or primary national subdivision, together with a statement of the reasons for rejection, if any, offered by that employing office or primary national subdivision;

(B) That the employing office or primary national subdivision has served notice of its intent to terminate existing national consultation rights, together with a statement of the reasons for termination; or

(C) That the employing office or primary national subdivision has failed to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the employing office or primary national subdivision.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for national consultation rights shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on all known interested parties, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office or primary national subdivision of its refusal to accord national consultation rights pursuant to a request under § 2426.2(a) or its intention to terminate existing national consultation rights. If an employing office or primary national subdivision fails to respond in writing to a request for national consultation rights made under § 2426.2(a) within fifteen (15) days after the date the request is served on the employing office or primary national subdivision, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office or primary national subdivision wishes to terminate national consultation rights, notice of its intention to do so shall include a statement of its reasons and shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office or primary national subdivision pending disposition of the petition. If no petition has been filed within the provided time period, an employing office or primary national subdivision may terminate national consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office or primary national subdivision shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigations as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for national consultation rights which shall be final: *provided, however*, that an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of hearing shall not be subject to the filing of an application for review. On behalf of the Board, the Executive Director, if appropriate, may cause a notice of hearing to be issued to all interested parties where substantial factual issues exist warranting an investigatory hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §2422.17 through 2422.22 of this subchapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

§2426.3 Obligation to consult.

(a) When a labor organization has been accorded national consultation rights, the employing office or the primary national subdivision which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed substantive change in conditions of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in conditions of employment to an employing office or a primary national subdivision, that employing office or primary national subdivision shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

(c) Nothing in this subpart shall be construed to limit the right of any employing office or exclusive representative to engage in collective bargaining.

SUBPART B—CONSULTATION RIGHTS ON GOVERNMENT-WIDE RULES OR REGULATIONS

§2426.11 Requesting; granting; criteria.

(a) An employing office shall accord consultation rights on Government-wide rules or regulations to a labor organization that:

(1) Requests consultation rights on Government-wide rules or regulations from an employing office; and

(2) Holds exclusive recognition for 350 or more covered employees within the legislative branch.

(b) An employing office shall not grant consultation rights on Government-wide rules or regulations to any labor organization that does not meet the criteria prescribed in paragraph (a) of this section.

§2426.12 Requests; petition and procedures for determination of eligibility for consultation rights on Government-wide rules or regulations.

(a) Requests by labor organizations for consultation rights on Government-wide rules or regulations shall be submitted in writing to the headquarters of the employing office, which headquarters shall have fifteen (15) days from the date of service of such request to respond thereto in writing.

(b) Issues relating to a labor organization's eligibility for, or continuation of, consultation rights on Government-wide rules or regulations shall be referred to the Board for determination as follows:

(1) A petition for determination of the eligibility of a labor organization for consultation rights under criteria set forth in §2426.11 may be filed by a labor organization.

(2) A petition for determination of eligibility for consultation rights shall be submitted on a form prescribed by the Board and shall set forth the following information:

(i) Name and affiliation, if any, of the petitioner and its address and telephone number;

(ii) A statement that the petitioner has submitted to the employing office and to the Assistant Secretary a roster of its officers and representatives, a copy of its constitution and bylaws, and a statement of its objectives;

(iii) A declaration by the person signing the petition, under the penalties of the Criminal Code (18 U.S.C. 1001), that its contents are true and correct to the best of such person's knowledge and belief;

(iv) The signature of the petitioner's representative, including such person's title and telephone number;

(v) The name, address, and telephone number of the employing office in which the petitioner seeks to obtain or retain consultation rights on Government-wide rules or regulations, and the persons to contact and their titles, if known;

(vi) A showing that petitioner meets the criteria as required by §2426.11; and

(vii) A statement, as appropriate:

(A) That such showing has been made to and rejected by the employing office, together with a statement of the reasons for rejection, if any, offered by that employing office;

(B) That the employing office has served notice of its intent to terminate existing consultation rights on Government-wide rules or regulations, together with a statement of the reasons for termination; or

(C) That the employing office has failed to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office.

(3) The following regulations govern petitions filed under this section:

(i) A petition for determination of eligibility for consultation rights on Government-wide rules or regulations shall be filed with the Executive Director.

(ii) An original and four (4) copies of a petition shall be filed, together with a statement of any other relevant facts and of all correspondence.

(iii) Copies of the petition together with the attachments referred to in paragraph (b)(3)(ii) of this section shall be served by the petitioner on the employing office, and a written statement of such service shall be filed with the Executive Director.

(iv) A petition shall be filed within thirty (30) days after the service of written notice by the employing office of its refusal to accord consultation rights on Government-wide rules or regulations pursuant to a request under §2426.12(a) or its intention to terminate such existing consultation rights. If an employing office fails to respond in writing to a request for consultation rights on Government-wide rules or regulations made under §2426.12(a) within fifteen (15) days after the date the request is served on the employing office, a petition shall be filed within thirty (30) days after the expiration of such fifteen (15) day period.

(v) If an employing office wishes to terminate consultation rights on Government-wide rules or regulations, notice of its intention to do so shall be served not less than thirty (30) days prior to the intended termination date. A labor organization, after receiving such notice, may file a petition within the time period prescribed herein, and thereby cause to be stayed further action by the employing office pending disposition of the petition. If no petition has been filed within the provided time period, an employing office may terminate such consultation rights.

(vi) Within fifteen (15) days after the receipt of a copy of the petition, the employing office shall file a response thereto with the Executive Director raising any matter which is relevant to the petition.

(vii) The Executive Director, on behalf of the Board, shall make such investigation as the Executive Director deems necessary and thereafter shall issue and serve on the parties a determination with respect to the eligibility for consultation rights which shall be final: *Provided, however*, That an application for review of the Executive Director's determination may be filed with the Board in accordance with the procedure set forth in §2422.31 of this subchapter. A determination by the Executive Director to issue a notice of investigatory hearing shall not be subject to the filing of an application for review. On behalf of the Board, the Executive Director, if appropriate, may cause a notice of investigatory hearing to be issued where substantial factual issues exist warranting a hearing. Investigatory hearings shall be conducted by the Executive Director or her designee in accordance with §2422.17 through 2422.22 of this chapter and after the close of the investigatory hearing a Decision and Order shall be issued by the Board in accordance with §2422.30 of this subchapter.

§2426.13 Obligation to consult.

(a) When a labor organization has been accorded consultation rights on Government-wide rules or regulations, the employing office which has granted those rights shall, through appropriate officials, furnish designated representatives of the labor organization:

(1) Reasonable notice of any proposed Government-wide rule or regulation issued by the employing office affecting any substantive change in any condition of employment; and

(2) Reasonable time to present its views and recommendations regarding the change.

(b) If a labor organization presents any views or recommendations regarding any proposed substantive change in any condition of employment to an employing office, that employing office shall:

(1) Consider the views or recommendations before taking final action on any matter with respect to which the views or recommendations are presented; and

(2) Provide the labor organization a written statement of the reasons for taking the final action.

Part 2427—General Statements of Policy or Guidance

Sec.
2427.1 Scope.
2427.2 Requests for general statements of policy or guidance.
2427.3 Content of request.
2427.4 Submissions from interested parties.
2427.5 Standards governing issuance of general statements of policy or guidance.

§ 2427.1 Scope.

This part sets forth procedures under which requests may be submitted to the Board seeking the issuance of general statements of policy or guidance under 5 U.S.C. 7105(a)(1), as applied by the CAA.

§ 2427.2 Requests for general statements of policy or guidance.

(a) The head of an employing office (or designee), the national president of a labor organization (or designee), or the president of a labor organization not affiliated with a national organization (or designee) may separately or jointly ask the Board for a general statement of policy or guidance. The head of any lawful association not qualified as a labor organization may also ask the Board for such a statement provided the request is not in conflict with the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA, or other law.

(b) The Board ordinarily will not consider a request related to any matter pending before the Board or General Counsel.

§ 2427.3 Content of request.

(a) A request for a general statement of policy or guidance shall be in writing and must contain:

(1) A concise statement of the question with respect to which a general statement of policy or guidance is requested together with background information necessary to an understanding of the question;

(2) A statement of the standards under § 2427.5 upon which the request is based;

(3) A full and detailed statement of the position or positions of the requesting party or parties;

(4) Identification of any cases or other proceedings known to bear on the question which are pending under the CAA; and

(5) Identification of other known interested parties.

(b) A copy of each document also shall be served on all known interested parties, including the General Counsel, where appropriate.

§ 2427.4 Submissions from interested parties.

Prior to issuance of a general statement of policy or guidance the Board, as it deems appropriate, will afford an opportunity to interested parties to express their views orally or in writing.

§ 2427.5 Standards governing issuance of general statements of policy or guidance.

In deciding whether to issue a general statement of policy or guidance, the Board shall consider:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether a Board statement would prevent the proliferation of cases involving the same or similar question;

(c) Whether the resolution of the question presented would have general applicability under chapter 71, as applied by the CAA;

(d) Whether the question currently confronts parties in the context of a labor-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Board of a general statement of policy or guidance on the question would promote constructive and cooperative labor-management relationships in the legislative branch and would otherwise promote the purposes of chapter 71, as applied by the CAA.

Part 2428—Enforcement of Assistant Secretary Standards of Conduct Decisions and Orders

Sec.

2428.1 Scope.
2428.2 Petitions for enforcement.
2428.3 Board decision.

§ 2428.1 Scope.

This part sets forth procedures under which the Board, pursuant to 5 U.S.C. 7105(a)(2)(I), as applied by the CAA, will enforce decisions and orders of the Assistant Secretary in standards of conduct matters arising under 5 U.S.C. 7120, as applied by the CAA.

§ 2428.2 Petitions for enforcement.

(a) The Assistant Secretary may petition the Board to enforce any Assistant Secretary decision and order in a standards of conduct case arising under 5 U.S.C. 7120, as applied by the CAA. The Assistant Secretary shall transfer to the Board the record in the case, including a copy of the transcript if any, exhibits, briefs, and other documents filed with the Assistant Secretary. A copy of the petition for enforcement shall be served on the labor organization against which such order applies.

(b) An opposition to Board enforcement of any such Assistant Secretary decision and order may be filed by the labor organization against which such order applies twenty (20) days from the date of service of the petition, unless the Board, upon good cause shown by the Assistant Secretary, sets a shorter time for filing such opposition. A copy of the opposition to enforcement shall be served on the Assistant Secretary.

§ 2428.3 Board decision.

The Board shall issue its decision on the case enforcing, enforcing as modified, or refusing to enforce, the decision and order of the Assistant Secretary.

Part 2429—Miscellaneous and General Requirements

Subpart A—Miscellaneous

Sec.

2429.1 Transfer of cases to the Board.
2429.2 [Reserved]
2429.3 Transfer of record.
2429.4 Referral of policy questions to the Board.
2429.5 Matters not previously presented; official notice.
2429.6 Oral argument.
2429.7 [Reserved]
2429.8 [Reserved]
2429.9 [Reserved]
2429.10 Advisory opinions.
2429.11 [Reserved]
2429.12 [Reserved]
2429.13 Official time.
2429.14 Witness fees.
2429.15 Board requests for advisory opinions.
2429.16 General remedial authority.
2429.17 [Reserved]
2429.18 [Reserved]

Subpart B—General Requirements

2429.21 [Reserved]
2429.22 [Reserved]
2429.23 Extension; waiver.
2429.24 [Reserved]
2429.25 [Reserved]
2429.26 [Reserved]
2429.27 [Reserved]
2429.28 Petitions for amendment of regulations.

SUBPART A—MISCELLANEOUS

§ 2429.1 Transfer of cases to the board.

In any unfair labor practice case under part 2423 of this subchapter in which, after the filing of a complaint, the parties stipulate that no material issue of fact exists, the Executive Director may, upon agreement of all parties, transfer the case to the Board; and the Board may decide the case on the basis of the formal documents alone. Briefs in the case must be filed with the Board within thirty (30) days from the date of the Executive Director's order transferring the case to the Board. The Board may also remand any such case to the Executive Director for further processing. Orders of transfer and remand shall be served on all parties.

§ 2429.2 [Reserved]

§ 2429.3 Transfer of record.

In any case under part 2425 of this subchapter, upon request by the Board, the parties jointly shall transfer the record in the case, including a copy of the transcript, if any, exhibits, briefs and other documents filed with the arbitrator, to the Board.

§ 2429.4 Referral of policy questions to the board.

Notwithstanding the procedures set forth in this subchapter, the General Counsel, or the Assistant Secretary, may refer for review and decision or general ruling by the Board any case involving a major policy issue that arises in a proceeding before any of them. Any such referral shall be in writing and a copy of such referral shall be served on all parties to the proceeding. Before decision or general ruling, the Board shall obtain the views of the parties and other interested persons, orally or in writing, as it deems necessary and appropriate. The Board may decline a referral.

§ 2429.5 Matters not previously presented; official notice.

The Board will not consider evidence offered by a party, or any issue, which was not presented in the proceedings before the Executive Director, Hearing Officer, or arbitrator. The Board may, however, take official notice of such matters as would be proper.

§ 2429.6 Oral argument.

The Board or the General Counsel, in their discretion, may request or permit oral argument in any matter arising under this subchapter under such circumstances and conditions as they deem appropriate.

§ 2429.7 [Reserved]

§ 2429.8 [Reserved]

§2429.9 [Reserved]

§ 2429.10 Advisory opinions.

The Board and the General Counsel will not issue advisory opinions.

§ 2429.11 [Reserved]

§ 2429.12 [Reserved]

§ 2429.13 Official time.

If the participation of any employee in any phase of any proceeding before the Board under section 220 of the CAA, including the investigation of unfair labor practice charges and representation petitions and the participation in hearings and representation elections, is deemed necessary by the Board, the Executive Director, the General Counsel, any Hearing Officer, or other agent of the Board designated by the Board, such employee shall be granted official time for such participation, including necessary travel time, as occurs during the employee's regular work hours and when the employee would otherwise be in a work or paid leave status.

§ 2429.14 Witness fees.

(a) Witnesses (whether appearing voluntarily, or under a subpena) shall be paid the fee and mileage allowances which are paid subpenaed witnesses in the courts of the United States: *Provided*, that any witness who is employed by the Federal Government shall not be entitled to receive witness fees in addition to compensation received pursuant to § 2429.13.

(b) Witness fees and mileage allowances shall be paid by the party at whose instance the witnesses appear, except when the witness receives compensation pursuant to §2429.13.

§2429.15 Board requests for advisory opinions.

(a) Whenever the Board, pursuant to 5 U.S.C. 7105(i), as applied by the CAA, requests an advisory opinion from the Director of the Office of Personnel Management concerning the proper interpretation of rules, regulations, or policy directives issued by that Office in connection with any matter before the Board, a copy of such request, and any response thereto, shall be served upon the parties in the matter.

(b) The parties shall have fifteen (15) days from the date of service of a copy of the response of the Office of Personnel Management to file with the Board comments on that response which the parties wish the Board to consider before reaching a decision in the matter. Such comments shall be in writing and copies shall be served upon the other parties in the matter and upon the Office of Personnel Management.

§2429.16 General remedial authority.

The Board shall take any actions which are necessary and appropriate to administer effectively the provisions of chapter 71 of title 5 of the United States Code, as applied by the CAA.

§2429.17 [Reserved]

§2429.18 [Reserved]

SUBPART B—GENERAL REQUIREMENTS

§2429.21 [Reserved]

§2429.22 [Reserved]

§2429.23 Extension; waiver.

(a) Except as provided in paragraph (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may extend any time limit provided in this subchapter for good cause shown, and shall notify the parties of any such extension. Requests for extensions of time shall be in writing and received by the appropriate official not later than five (5) days before the established time limit for filing, shall state the position of the other parties on the request for extension, and shall be served on the other parties.

(b) Except as provided in paragraph (d) of this section, the Board or General Counsel, or their designated representatives, as appropriate, may waive any expired time limit in this subchapter in extraordinary circumstances. Request for a waiver of time limits shall state the position of the other parties and shall be served on the other parties.

(c) The time limits established in this subchapter may not be extended or waived in any manner other than that described in this subchapter.

(d) Time limits established in 5 U.S.C. 7105(f), 7117(c)(2) and 7122(b), as applied by the CAA, may not be extended or waived under this section.

§2429.24 [Reserved]

§2429.25 [Reserved]

§2429.26 [Reserved]

§2429.27 [Reserved]

§2429.28 Petitions for amendment of regulations.

Any interested person may petition the Board in writing for amendments to any portion of these regulations. Such petition shall identify the portion of the regulations involved and provide the specific language of the proposed amendment together with a statement of grounds in support of such petition.

SUBCHAPTER D—IMPASSES

Part 2470—General

Subpart A—Purpose

Sec.
2470.1 Purpose.

Subpart B—Definitions

2470.2 Definitions.

SUBPART A—PURPOSE

§2470.1 Purpose.

The regulations contained in this subchapter are intended to implement the provisions of section 7119 of title 5 of the United States Code, as applied by the CAA. They prescribe procedures and methods which the Board may utilize in the resolution of negotiation impasses when voluntary arrangements, including the services of the Federal Mediation and Conciliation Service or any other third-party mediation, fail to resolve the disputes.

SUBPART B—DEFINITIONS

§2470.2 Definitions.

(a) The terms *Executive Director, employing office, labor organization,* and *conditions of employment* as used herein shall have the meaning set forth in Part 2421 of these rules.

(b) The terms *designated representative* or *designee* of the Board means a Board member, a staff member, or other individual designated by the Board to act on its behalf.

(c) The term *hearing* means a factfinding hearing, arbitration hearing, or any other hearing procedure deemed necessary to accomplish the purposes of 5 U.S.C. 7119, as applied by the CAA.

(d) The term *impasse* means that point in the negotiation of conditions of employment at which the parties are unable to reach agreement, notwithstanding their efforts to do so by direct negotiations and by the use of mediation or other voluntary arrangements for settlement.

(e) The term *Board* means the Board of Directors of the Office of Compliance.

(f) The term *party* means the agency or the labor organization participating in the negotiation of conditions of employment.

(g) The term *voluntary arrangements* means any method adopted by the parties for the purpose of assisting them in their resolution of a negotiation dispute which is not inconsistent with the provisions of 5 U.S.C. 7119, as applied by the CAA.

Part 2471—Procedures of the Board in Impasse Proceedings

Sec.
2471.1 Request for Board consideration; request for Board approval of binding arbitration.
2471.2 Request form.
2471.3 Content of request.
2471.4 Where to file.
2471.5 Copies and service.
2471.6 Investigation of request; Board recommendation and assistance; approval of binding arbitration.
2471.7 Preliminary hearing procedures.
2471.8 Conduct of hearing and prehearing conference.
2471.9 Report and recommendations.
2471.10 Duties of each party following receipt of recommendations.
2471.11 Final action by the Board.
2471.12 Inconsistent labor agreement provisions.

§2471.1 Request for board consideration; request for board approval of binding arbitration.

If voluntary arrangements, including the services of the Federal Mediation and Conciliation Services or any other third-party mediation, fail to resolve a negotiation impasse:

(a) Either party, or the parties jointly, may request the Board to consider the matter by filing a request as hereinafter provided; or the Board may, pursuant to 5 U.S.C. 7119(c)(1), as applied by the CAA, undertake consideration of the matter upon request of (i) the Federal Mediation and Conciliation Service, or (ii) the Executive Director; or

(b) The parties may jointly request the Board to approve any procedure, which they have agreed to adopt, for binding arbitration of the negotiation impasse by filing a request as hereinafter provided.

§2471.2 Request form.

A form has been prepared for use by the parties in filing a request with the Board for consideration of an impasse or approval of a binding arbitration procedure. Copies are available from the Executive Director, Office of Compliance.

§2471.3 Content of request.

(a) A request from a party or parties to the Board for consideration of an impasse must be in writing and include the following information:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Statement of issues at impasse and the summary positions of the initiating party or parties with respect to those issues; and

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized.

(b) A request for approval of a binding arbitration procedure must be in writing, jointly filed by the parties, and include the following information about the pending impasse:

(1) Identification of the parties and individuals authorized to act on their behalf;

(2) Brief description of the impasse including the issues to be submitted to the arbitrator;

(3) Number, length, and dates of negotiation and mediation sessions held, including the nature and extent of all other voluntary arrangements utilized;

(4) Statement that the proposals to be submitted to the arbitrator contain no questions concerning the duty to bargain; and

(5) Statement of the arbitration procedures to be used, including the type of arbitration, the method of selecting the arbitrator, and the arrangement for paying for the proceedings or, in the alternative, those provisions of the parties' labor agreement which contain this information.

§2471.4 Where to file.

Requests to the Board provided for in this part, and inquiries or correspondence on the status of impasses or other related matters, should be addressed to the Executive Director, Office of Compliance.

§2471.5 Copies and service.

(a) Any party submitting a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of such request upon all counsel of record or other designated representative(s) of parties, upon parties not so represented, and upon any mediation service which may have been utilized. When the Board acts on a request from the Federal Mediation and Conciliation Service or acts on a request from the Executive Director, it will notify the parties to the dispute, their counsel of record or designated representatives, if any, and any mediation service which may have been utilized. A clean copy capable of being used as an original for purposes such as further reproduction

may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(b) Any party submitting a response to or other document in connection with a request for Board consideration of an impasse or a request for approval of a binding arbitration procedure shall file an original and one copy with the Board and shall serve a copy of the document upon all counsel of record or other designated representative(s) of parties, or upon parties not so represented. A clean copy capable of being used as an original for purposes such as further reproduction may be submitted for the original. Service upon such counsel or representative shall constitute service upon the party, but a copy also shall be transmitted to the party.

(c) A signed and dated statement of service shall accompany each document submitted to the Board. The statement of service shall include the names of the parties and persons served, their addresses, the date of service, the nature of the document served, and the manner in which service was made.

(d) The date of service or date served shall be the day when the matter served is deposited in the U.S. mail or is delivered in person.

(e) Unless otherwise provided by the Board or its designated representatives, any document or paper filed with the Board under these rules, together with any enclosure filed therewith, shall be submitted on 8½" 11 inch size paper.

§2471.6 Investigation of request; board recommendation and assistance; approval of binding arbitration.

(a) Upon receipt of a request for consideration of an impasse, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either:

(1) Decline to assert jurisdiction in the event that it finds that no impasse exists or that there is other good cause for not asserting jurisdiction, in whole or in part, and so advise the parties in writing, stating its reasons; or

(2) Recommend to the parties procedures, including but not limited to arbitration, for the resolution of the impasse and/or assist them in resolving the impasse through whatever methods and procedures the Board considers appropriate.

(b) Upon receipt of a request for approval of a binding arbitration procedure, the Board or its designee will promptly conduct an investigation, consulting when necessary with the parties and with any mediation service utilized. After due consideration, the Board shall either approve or disapprove the request; *provided, however*, that when the request is made pursuant to an agreed-upon procedure for arbitration contained in an applicable, previously negotiated agreement, the Board may use an expedited procedure and promptly approve or disapprove the request, normally within five (5) workdays.

§2471.7 Preliminary hearing procedures.

When the Board determines that a hearing is necessary under §2471.6, it will:

(a) Appoint one or more of its designees to conduct such hearing; and

(b) Issue and serve upon each of the parties a notice of hearing and a notice of prehearing conference, if any. The notice will state: (1) The names of the parties to the dispute; (2) the date, time, place, type, and purpose of the hearing; (3) the date, time, place, and purpose of the prehearing conference, if any; (4) the name of the designated representatives appointed by the Board; (5) the issues to be resolved; and (6) the method, if any, by which the hearing shall be recorded.

§2471.8 Conduct of hearing and prehearing conference.

(a) A designated representative of the Board, when so appointed to conduct a hearing, shall have the authority on behalf of the Board to:

(1) Administer oaths, take the testimony or deposition of any person under oath, receive other evidence, and issue subpoenas;

(2) Conduct the hearing in open, or in closed session at the discretion of the designated representative for good cause shown;

(3) Rule on motions and requests for appearance of witnesses and the production of records;

(4) Designate the date on which posthearing briefs, if any, shall be submitted;

(5) Determine all procedural matters concerning the hearing, including the length of sessions, conduct of persons in attendance, recesses, continuances, and adjournments; and take any other appropriate procedural action which, in the judgment of the designated representative, will promote the purpose and objectives of the hearing.

(b) A prehearing conference may be conducted by the designated representative of the Board in order to:

(1) Inform the parties of the purpose of the hearing and the procedures under which it will take place;

(2) Explore the possibilities of obtaining stipulations of fact;

(3) Clarify the positions of the parties with respect to the issues to be heard; and

(4) Discuss any other relevant matters which will assist the parties in the resolution of the dispute.

§2471.9 Report and recommendations.

(a) When a report is issued after a hearing conducted pursuant to §2471.7 and 2471.8, it normally shall be in writing and, when authorized by the Board, shall contain recommendations.

(b) A report of the designated representative containing recommendations shall be submitted to the parties, with two (2) copies to the Executive Director, within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any.

(c) A report of the designated representative not containing recommendations shall be submitted to the Board with a copy to each party within a period normally not to exceed thirty (30) calendar days after receipt of the transcript or briefs, if any. The Board shall then take whatever action it may consider appropriate or necessary to resolve the impasse.

§2471.10 Duties of each party following receipt of recommendations.

(a) Within thirty (30) calendar days after receipt of a report containing recommendations of the Board or its designated representative, each party shall, after conferring with the other, either:

(1) Accept the recommendations and so notify the Executive Director; or

(2) Reach a settlement of all unresolved issues and submit a written settlement statement to the Executive Director; or

(3) Submit a written statement to the Executive Director setting forth the reasons for not accepting the recommendations and for not reaching a settlement of all unresolved issues.

(b) A reasonable extension of time may be authorized by the Executive Director for good cause shown when requested in writing by either party prior to the expiration of the time limits.

§2471.11 Final action by the board.

(a) If the parties do not arrive at a settlement as a result of or during actions taken under §2471.6(a)(2), 2471.7, 2471.8, 2471.9, and 2471.10, the Board may take whatever action is necessary and not inconsistent with 5 U.S.C. chapter 71, as applied by the CAA, to resolve the impasse, including but not limited to, methods and procedures which the Board considers appropriate, such as directing the parties to accept a factfinder's recommendations, ordering binding arbitration conducted according to whatever procedure the Board deems suitable, and rendering a binding decision.

(b) In preparation for taking such final action, the Board may hold hearings, administer oaths, and take the testimony or deposition of any person under oath, or it may appoint or designate one or more individuals pursuant to 5 U.S.C. 7119(c)(4), as applied by the CAA, to exercise such authority on its behalf.

(c) When the exercise of authority under this section requires the holding of a hearing, the procedure contained in §2471.8 shall apply.

(d) Notice of any final action of the Board shall be promptly served upon the parties, and the action shall be binding on such parties during the term of the agreement, unless they agree otherwise.

§2471.12 Inconsistent labor agreement provisions.

Any provisions of the parties' labor agreements relating to impasse resolution which are inconsistent with the provisions of either 5 U.S.C. 7119, as applied by the CAA, or the procedures of the Board shall be deemed to be superseded.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Monday, September 30, the Federal debt stood at $5,224,810,939,135.73.

Five years ago, September 30, 1991, the Federal debt stood at $3,665,303,000,000.

Ten years ago, September 30, 1986, the Federal debt stood at $2,125,303,000,000.

Fifteen years ago, September 30, 1981, the Federal debt stood at $997,855,000,000.

Twenty-five years ago, September 30, 1971, the Federal debt stood at $412,268,000,000. This reflects an increase of more than $4 trillion—$4,812,542,939,135.73—during the 25 years from 1971 to 1996.

ADM. LEIGHTON W. SMITH, JR., USN

Mr. HEFLIN. Mr. President, I rise today to pay tribute to an exceptional American hero and one of Alabama's favored sons, Adm. Leighton W. Smith, Jr. Recently concluding his 34 years of service in the U.S. Navy, Admiral Smith has served this Nation as a man of honor, integrity, and great courage.

It is this leadership which has led our forces through many challenges, most recently in Bosnia.

On April 4, 1994, Admiral Smith assumed command of Allied Forces Southern Europe, Commander Joint Task Force Provide Promise, and Commander U.S. Naval Forces Europe. Twenty eight hours later, under his command, NATO conducted its first ever air-to-ground combat operations near Gorazde, Bosnia. On numerous occasions between that April and August, 1995, NATO air forces supported the U.N. forces in Bosnia with close air support and air strikes. Simultaneously, as Commander Joint Task Force Provide Promise, he continued to oversee airland and airdrop support to the U.N. refugee program in Bosnia, saving thousands of lives.

As tensions continued to rise in the fall of 1995, Admiral Smith directed Operation Deliberate Force, NATO air operations against Bosnian Serb targets. These successful operations brought the warring parties to the peace accords in Dayton that November.

In December 1995, Admiral Smith assumed a fourth command hat—Commander Peace Implementation Forces, NATO's first ever ground operation entrusted with implementing the Dayton Peace Agreement. The JFOR became nearly 60,000 strong from 34 different countries. The mission was to create a militarily secure environment in order to build peace in a country which had been devastated from three and a half years of war.

Prior to Admiral Smith's most recent outstanding service, his record speaks to the numerous challenging situations he has faced and overcome. He was directly involved in operations in support of our men and women in Desert Shield/Desert Storm. This included directing combat operations into Iraq, the evacuation of civilians from Liberia and humanitarian support for the Kurdish refugees in northern Iraq. As the Deputy Chief of Naval Operations for Plans, Policy and Operations, Admiral Smith was a major contributor to Navy staff reorganization and the development of the naval strategy for the 21st century.

Throughout his Naval career, Admiral Smith has received numerous awards including two Defense Distinguished Service Medals, the Navy Distinguished Service Medals and three Legion of Merits, among others.

Whether you know him as Leighton, Smitty, Snuffy or Snoofoir, the Admiral is a down-home man of grit and tenacity who has committed himself fully to the duties associated with service. While his easy-going humor may be disarming, Admiral Smith has the tenacity of a pit bull. He will tell you pig-farming stories from his youth and how he made the upper 95 percent of his class at the Naval Academy look good, while simultaneously going toe to toe with our adversaries in order to protect, defend and support our men and women in uniform. His honor and integrity have anchored those who have had the privilege of serving with him through both internal turmoil and international instability.

On his retirement, my wife and I extend our personal wishes to Admiral Smith, his wife Dottie and their three children, Leighton III, Page, and Dee Dee.

SOME DEPARTING THOUGHTS ON OUR NATIONAL DEFENSE AND FOREIGN POLICY

Mr. HEFLIN. Mr. President, this is one of a series of general policy speeches I am delivering as my tenure in the Senate draws to a close. I will focus here on national defense and foreign policy issues—what my priorities have been as a Senator, where we stand in terms of our preparedness, and what the future might bring. It is not my intent here to be entirely comprehensive, for that would necessitate far more time than we realistically have. Instead, what I want to do here is simply to look back over my 18 years in the Senate and draw upon specific debates, crises, decisions, programs, and legislative efforts to reflect upon where we were when I came here, where we are now, and where we might go tomorrow, after I am again a private citizen.

First, I wish to emphasize that we as a nation should be grateful that we face no immediate threat to our borders from foreign military powers. I am particularly proud that I have played some role in rebuilding our Armed Forces and military strength during the aftermath of the Vietnam war. This commitment on the part of our Nation contributed substantially to the collapse of the old Soviet Union and its Communist philosophy. In my opinion, it was probably the major reason. This commitment proved itself again during the Persian Gulf war.

With my own experiences in World War II and observations since that time, I have felt compelled that we must at all times endeavor to obtain lasting peace, and that the primary road to achieving this goal is through military strength.

It is often stated on this floor of the U.S. Senate that for the first time in decades there is no Soviet missile targeted at the United States. In general, we are fortunate that our national security and defense policy are no longer focused on a single massive Soviet adversary. But, in other ways, our decisions are now far more complex, for they must take into account far more players, some of whom may not be clearly identifiable. Moreover, I believe the United States needs to continue the development of certain initiatives originally intended to respond to the Soviet military threat. Although we no longer need to fear a nuclear superpower, other countries now have access to Soviet weapons. Many countries also have achieved the technological capability to produce nuclear weapons and other weapons of mass destruction. We still face the threat of an accidental launched missile with no reliable means of defending the continental United States.

Former President Reagan deserves a great deal of credit for pursuing his Strategic Defense Initiative in 1983. SDI has faced tough opposition from its inception. I have fought with many of my colleagues to fund the program in the Senate. In 1984, we managed to save the program and, in fact, the American Security Council, then-majority leader Howard Baker, and the President credited me with swaying the critical votes to save funding for that year. I will always remember the President phoning me and saying "Bless you. Bless you." It has remained a difficult task to continue to provide research and development funds for this program. In 1989, changing relations with the former Soviet Union continued to fuel the opponents of the program and debate has continued into the post-cold-war era.

I feel that we must continue our efforts here in Congress to deploy an antiballistic missile system. And in my opinion, we should do it in evolutionary stages. The space-based laser incarnation of the antiballistic missile program must have continued research technology for the future. Today, we have the technology to develop and deploy a missile system to defend against an attack or accidental launches. We should develop and utilize that technology.

Actually, I advocated this position some time before President Reagan called for the development of the SDI program. In fact, in a meeting with him, I urged him to call for such a program. When the President established an inter-agency panel to recommend the best way to proceed with the strategic defense initiative, I lobbied for this approach, and was quite pleased to learn that the panel reached the same conclusion. In later years, I introduced amendments that would require the focus of the strategic defense initiative to the deployment of ground-based systems first. Then, as now, we need a ground-based technology rather than a space-based system, like Brilliant Pebbles. The ground-based system proved itself in a theater concept during the Persian Gulf war.

The Anti-Ballistic Missile Treaty has been both a consideration and a limitation in the deployment of this technology. I called for reconsideration of the ABM Treaty with the Soviets before it came up for review in 1982 while the nuclear arms race was ongoing. It seems to me a wiser approach to develop weapons that will be used only in

a defensive nature. More recently, I urged the immediate deployment of a single antiballistic missile site that would be considered treaty compliant, and I have strongly advocated negotiations to allow the deployment of multiple ABM sites. Ultimately, the Congress hammered out a compromise the President could accept and which complied with the treaty to allow an unspecified number of sites to be deployed in the year 2003.

Since the very early days, when critics labeled the strategic defense initiative as an absurdly futuristic plan, public opinion of ABM technology has changed. A poll last year indicated that 90 percent of the American people believe that the United States should develop a missile defense system. The Congress and the President of the United States have the support of the people, the technology to accomplish this and the means to deploy these systems. I strongly urge my colleagues in this Congress and future Congresses to not let this initiative die.

Mr. President, in order to continue the preeminence of the U.S. military strength, I believe we need to continue with the development of smart weapons technology connected directly or indirectly to strategic defense. A few examples of programs I have supported over the years include the ASAT [Anti-Satellite Missiles], THAAD and other ABM technology.

Even though the United States is preeminent in military technology, we must maintain a large and well-prepared conventional military force. Throughout my Senate tenure, I have always been a proponent of the American arms buildup. President Carter called for NATO nations to increase its military spending by 3 percent, which I supported. This was the first step toward rebuilding our military. In 1980, I pushed for increased defense spending because I feared that the Soviets had surpassed us in many ways, including conventional weaponry, chemical warfare, and most importantly, trained manpower. In the following years of President Reagan's two terms, I consistently supported his efforts to increase national security.

More recently, I have urged a slowing to our military cutbacks. I supported President Clinton's decision to seek higher defense spending levels to deal with increasing need for the U.S. involvement in world affairs, including Haiti, Somalia, Rwanda and Kuwait.

The conventional forces of the United States have assumed an additional role during my time in the Senate. In order to cope with the number of small-scale threats around the world, our Nation desperately needs to maintain its quick-strike capabilities. I first advocated this type of force during the Iranian hostage crisis. At that time, it became obvious to everyone that the United States could no longer rely on its nuclear arsenal to combat the increasing number of brush fires around the world. We in Congress must make a commitment to see that the men and women in the Armed Forces have the training, the support, and technology that is deserving of the commitment these young people have made to protect our interests all around the world.

Manpower remains a significant element of our national defense posture. After the Soviet invasion of Afghanistan in late 1979, I supported the reinstatement of draft registration. I have also advocated increased compensation for the men and women in the military. The quality of our forces is essential to our security. Although I opposed including women in the draft and in combat, I have fought to ensure the military uses all of its personnel to the best of their abilities. I joined in introducing a bill in 1979 to end sexual discrimination in promotions, particularly in the Navy and Marine Corps.

The Navy may well be the most important element of our conventional forces. When I first came to the Senate, the United States had two ocean naval fleets. The Iranian Hostage Crisis, however, led me to believe that the United States needed to maintain a presence in the Indian Ocean and the Persian Gulf. I advocated this position at the time, but of course, it is even more important now. This region will continue to be a focal point in defense and foreign policy for years to come. We must be prepared to address unforseen developments in other regions as well.

In 1981, I was alarmed to learn that our Navy had halved its strength since 1969. President Reagan and Secretary John Lehman's leadership called for the creation of a 600-ship Navy. This buildup turned out to be an effective tool in the cold war and we cannot allow too large a reduction in our current naval force. We need to maintain the ability to convey our Forces around the world and provide the strike potential of our carrier groups. For these reasons, I was particularly proud to support naming a carrier after President Reagan.

I also believe that the United States must continue to focus on continuing to improve air forces. Air superiority on the battle field often times determines the outcome before the ground forces are ever deployed. The United States must continue to upgrade its fleet of B–52 bombers. In fact, this was an issue in my first campaign. I have been a supporter of the B–1 bomber since 1979, because even then, the 30-year old B–52's needed replacement. Stealth technology was still on the design table and this aircraft in my opinion was the most reasonable alternative. Opponents argued that the United States did not need a manned bomber; however, I think the need was proven in the Persian Gulf war. We must continue to embrace the stealth technology and improve upon it to maintain our air superiority.

In this post Communist world, weapons proliferation still poses serious threat to our national security. For this reason, I would like to commend my colleagues, Senator NUNN and Senator LUGAR, for their hard work to prevent the distribution of the weapon stockpile of the former Soviet Union. We must also not lose focus and emphasis on the United States need to keep control over its own technology. I have opposed certain nuclear sales in the past, such as President Carter's uranium fuel deal with India. India was, in my opinion, a blatant violator of the 1978 Nuclear Nonproliferation Act and I believe India also violated the 1963 act by using United States supplied nuclear fuel to build a bomb. I tried to prevent similar sales by joining in offering an amendment to the Export Administration Act of 1984 to require nuclear regulatory commission guidelines in fuel sales.

Chemical warfare is another increasing threat to American security. In 1980, I attended a briefing in Fort McClellan, Alabama and learned that the Soviets greatly outmatched our defensive chemical capabilities. The Soviets had significantly more trained specialists and their regular troops were much better equipped and informed. Furthermore, reports indicated that the Soviets were willing to use offensive chemical weapons, and in fact, they had delivered chemical attacks in Afghanistan, Cambodia, Laos, and Yemen. I was pleased that Secretary Haig called attention to this threat in 1981.

To respond to this threat, I supported the construction of a binary chemical weapons facility at Fort Smith, AR. My recollection is that then-Vice President Bush voted to break the tie vote on this issue after I cast the tie vote. The existing U.S. chemical weapons dated back 30 years; I felt they were obsolete and relatively ineffective. The threat of chemical warfare has not lessened. In fact, the potential danger is probably even greater now, as we learned in the gulf war. Increasing terrorism, like the Tokyo subway bombing, also underscores the need for chemical weapon response readiness. In order to address this problem, the Senate passed a number of chemical weapons provisions in its antiterrorism bill last year, including an amendment I offered to criminalize the possession of toxic nerve gas, which I was shocked to learn was not illegal to possess.

With this in mind, I have fought since 1990 to keep Fort McClellan and its chemical school open. Senator SHELBY, Congressman BROWDER, and officials from Calhoun County and the Federal Affairs committee at the Calhoun County Chamber of Commerce headed by Gerald Powell deserve a tremendous amount of credit for their efforts to advocate our position before

the Base Closure Realignment Commission.

Even though the Defense Department last year recommended the closure of this facility, the BRAC Commission twice recognized the need to keep this facility open and viable. General Schwartzkoff offered a ringing endorsement to the U.S. Senate of the live agent training and the continued operation of Fort McClellen. The General noted that chemical training had bolstered the morale of troops serving in the gulf armed with the knowledge of dealing effectively with these deadly weapons. The commander of British chemical training also argued that live agent training greatly increased confidence and morale. Even though the third BRAC Commission voted to close Fort McClellen—mistakenly, in my view—I still hold the conviction that the United States must continue vital chemical warfare defensive training and it must keep the live agent training in the chemical school at the same facility.

In order to maintain America's conventional forces at the highest level during a time of continued fiscal austerity and national debt, I want to emphasize the necessity of keeping the Pentagon at its most cost effective. In 1981, I sponsored a measure to establish an inspector general for the Department of Defense. At that time, estimates indicated that the simple elimination of waste might cut defense spending by nearly one-third. In 1983, Congress created the office, but I thought it was a mistake to make the inspector general accountable to the Secretary of Defense rather than being an independent official. I argued that an independent solution would have been more effective.

I have also been an advocate of consolidated development efforts within the Pentagon, as well as revolving door and contract guidelines to increase competition. I also fought for the establishment of a central procurement office at the Pentagon. My efforts were driven to some degree by revelations made during judiciary subcommittee hearings held in 1985. At these hearings, we learned that the Pentagon had lost control of its spending, pouring hundreds, and sometimes thousands, of dollars into a single hammer or other simple item.

Another way of increasing the cost-effectiveness of our Armed Forces is maximizing efficiency through consolidation. I worked throughout my time here to enact such a plan at Fort Rucker, AL. Beginning in 1979, I advocated a plan to merge helicopter training from all four branches at the fort, and continued my efforts during President Reagan's first years in office. I urged the Defense Secretary and the OMB Director to adopt the plan, and solicited studies to examine its feasibility. Senator SHELBY and I renewed this effort under President Clinton, but again, we were unable to get the Department of Defense to carry out the implementation. However, I remain firmly convinced that such consolidation plans, if put into place across the country, are obvious, commonsense ways to address wasteful duplication of effort.

Increased profit through defense conversion will also be a helpful means of saving money. To this end, I supported President Clinton's technical reinvestment project to provide grants for small firms to convert from defense production to the development of technology with a dual-use, both civilian and military.

With regard to antiterrorism efforts, I believe the United States needs to maintain training to cope with attacks now more than ever in its history. One facility which has served our antiterrorism goals well is the bomb school at Redstone Arsenal, AL. When I came to the Senate, this school was the only facility of its type in the country. It was run by the Army and funded by the Law Enforcement Assistance Administration. Later, when the LEAA was eliminated, Congress decided to fund the school through the FBI. There was a gap in the funding for fiscal year 1981, and we succeeded in including a line-item appropriation for the school.

The importance of these programs only continues to increase. After the Oklahoma City bombing in 1995, the Judiciary Committee held hearings to consider ways to prevent and combat terrorism in the future. We listened to testimony from the FBI director and officials from the Southern Poverty Law Center, among others. In fact, the bombing hit close to home for me personally, since just a little over 5 years before, a terrorist mailed pipe bombs to four locations in the South. My close friend, Judge Bob Vance, died in one of these attacks. Of course, I strongly believe in the individual rights provided in the Constitution, but we must work to strike a balance which preserves these rights, yet also prevents individual terrorist acts.

Espionage has also taken on a different form in today's world. We are now faced with spies who embrace a new motivation—greed. They do not act out of ideology or beliefs, and have no goals but their own gain. I introduced legislation in 1985 to address this new motivation. It would have stripped any convicted spy of anything acquired through espionage, and it would have denied movie or book rights about treason.

Since then, the Aldridge Ames case has demonstrated that this problem is only growing. We cannot allow ourselves to think that espionage is a thing of the past, nor that it exists only as a remnant of the Cold War. Instead, it will continue to increase, and we have as much or more to lose in the future if we cannot combat it effectively.

We need to keep a close eye on our intelligence community. When Ames was finally caught, I learned that the FBI and CIA did not have access to his personal financial records. I introduced a bill to require financial disclosures from key intelligence officers at the CIA. I believe such a requirement would protect intelligence officers while also preserving our security.

I also want to stress the importance of increasing our self-sufficiency in terms of energy consumption. In the past, events such as the oil crisis in 1979–1980 have taught us that the United States is too heavily dependent on foreign countries for its defense materials. Those same countries which provide us with vital raw materials could become our adversaries. At that time, I called for contingency plans and investigation of the possibilities of utilizing our domestic resources, including the Alaska oil reserves. Since then, we have faced other energy scares, such as that which contributed to the Persian Gulf war. There is no reason to believe that such crises will not recur, and I urge Congress to continue exploring alternatives to dependence on foreign energy sources.

Military alignments among nations will be a major consideration in the future. One reason I supported the defense buildup in the 1980's was to reassert the U.S. position among our allies, which needs to be sustained. The expansion of NATO into the former Eastern bloc remains a key question of alignment. In 1993, NATO began to consider the admission of new members, including Poland, Hungary, and the Czech Republic, but Russia's position was unclear. The fall of communism did not bring a conflict-free Europe, but instead brought back some of the old alignments and hostilities that had existed before the two world wars. As chairman of the Senate delegation on the North Atlantic Assembly, I introduced a plan to provide specific guidelines for getting nations ready for NATO membership pursuant to the Partnership for Peace plan. Congressman DOUG BEREUTER of Nebraska, a vice chairman of the Assembly, joined me in this effort. Our plan calls for NATO applicants to demonstrate civilian control of the military and police, free and open elections, policies against international terrorism and crime, and other commitments desirable of NATO members. The plan also required the NAA's permanent committees to consider and report on any reform these countries might need to implement before NATO admission. I believe we need to be very cautious in the future about not treating NATO as a type of European United Nations, and remember that it is first and foremost a military alliance.

In my role as chairman and cochairman of the NAA Senate delegation, I have also gained direct input from European parliamentarians on such matters as lifting the arms embargo on Bosnia. Many of these leaders feared that a unilateral lifting of the embargo would cause a spillover. I argued that given the complexities of the war in Bosnia, there was simply no good way to know what effect it might have. With great reservation, I ultimately supported an amendment in the Senate to lift the embargo only under the auspices of the U.N. and NATO.

While I firmly believe in keeping our military strong—the best in the world—I also believe that reducing nuclear weapons and other weapons of mass destruction should remain a top priority. In so doing, we must again look at recent history as a guide. When President Carter signed the SALT II Treaty in 1979, I had serious reservations about its provisions. Could we rely on the Soviets to be honest about compliance? More importantly, could we confirm their compliance? These questions and others weighed heavily on my mind, as they undoubtedly did on those of all involved. There were methods available to verify Soviet missile tests and other related activities, including telemetry, satellites, and radar. But, if our then-adversary violated the treaty, the problem of dealing with noncompliance remained.

At that time, I advocated tough diplomacy backed up by definitive intelligence information. I felt this was the only realistic way to proceed. Of course, that was easier to say than do. What would the Soviet reaction have been? Would we have been able to rely on our own technology and intelligence for confirmation? Would they view such a stand as provocative or threatening?

Another problem was the fall of the Shah of Iran. A number of our primary detection stations were in Iran, and the CIA estimated that it would take at least 5 years to recover what we had lost, due to the instability there. Ultimately, the treaty died when the Soviet Union invaded Afghanistan.

To make the point even more clear, look at the situation in 1991, when Presidents Bush and Gorbechev signed the START agreement. I was very hesitant about ratifying that treaty. Its signing came shortly after the attempted coup in August of that year. This kind of instability would almost certainly come into play with other unpredictable nations who are becoming nuclear powers. In 1991, the outcome was favorable, but we cannot always bank on such an outcome.

When we do have to defend our vital national interests, economic sanctions and embargoes will continue to be an effective tool. I have usually supported sanctions over force, at least initially. I first called for the use of sanctions against Iran, after the hostage crisis began. I also introduced legislation to compensate the hostages from frozen Iranian assets in the United States. Similarly, I would have preferred the use of sanctions against Haiti rather than the threat of force.

But, we must be careful with the sanctions strategy, because it is not always effective, and sometimes it hurts Americans as much as the country we are trying to influence. I felt this was the case with the grain embargoes against the Soviet Union, which hurt United States farmers more than the Government of the U.S.S.R. Generally speaking, we should ensure the effectiveness of embargoes through a cooperative international effort.

Generally, I have been proud of the Senate for rallying behind the American President whenever he has determined the necessity of using our Armed Forces. The finest example of this resolve came during the Persian Gulf deployment in the fall and winter of 1990–91. I was 1 of 11 Democratic Senators to vote in favor of authorizing the use of force before the bombing began, although the entire Senate formally back President Bush after the hostilities began.

I have been consistent in embracing the philosophy of supporting the Commander in Chief, regardless of the party or what I might have felt personally could have been done differently or better. I supported President Carter throughout the Iranian hostage crisis. There was nothing to be gained by second-guessing his decisions—even after the failed rescue mission of April 1980. I felt this support was especially important given the Ayatollah's strategy of portraying a weak resolve on our part. Along these lines, I was particularly horrified by Ramsey Clark's kangaroo-court style probe of United States policy toward Iran, and pressed for a criminal investigation. I also supported the invasion of Grenada to protect American citizens and the removal of the corrupt Manuel Noriega to protect our vital interests in the Panama Canal region.

There have been other instances where I have been opposed to military action itself, but felt the President had the constitutional authority to initiate such action. Haiti was one example of this. I voted against a resolution requiring the President to adhere to a waiting period, although I did not want to see United States troops sent to Haiti. Another example was the deployment of ground troops in Bosnia, which I did not view as serving our vital national interests. However, I did argue that it was important to unite behind the President once his decision had been made and the troops had been deployed.

In conclusion, Mr. President, I want to urge the Congress to be extremely careful about cutting back our Armed Forces in the years to come. Despite what we think of as a relatively stable world, the future, in reality, is very uncertain and unclear. The nature of threats to our security is unfocused at this time. Tensions in Iraq have again flared, and instability may return to other areas of the world as well. Although world peace is our ultimate goal, it would be a serious mistake to allow ourselves to think we have reached that goal. The tensions that remain all around the world dictate that we continue our military preparedness in a manner that will allow America to be victors in any conflict that may arise with the fewest casualties possible.

REFLECTIONS ON PROGRESS IN CIVIL RIGHTS

Mr. HEFLIN. Mr. President, during my 18 years as a U.S. Senator, legislation of all sorts and in all issue areas has come before this body. Of course there were some issues I came to know best, sometimes because of the nature of my constituency, as was the case with agriculture and technology issues. But there are other topics the Senate addressed during this time which stand out in my mind for different reasons, such as judiciary and legal issues and national defense policy. Naturally, since I have a background in the law, I have a greater personal interest here than I do some other areas. But, of all the judicial work the Senate has tackled during my 18 years, its accomplishments in the area of general civil rights strike me as among its most commendable.

Since 1979, congressional action in the field of civil rights has been enormously significant. I think it would be appropriate to highlight some of these issues and events.

Of all the bills relating to civil rights, perhaps first in my mind is the extension of the Voting Rights Act of 1965, which passed during my first term. The fair housing bill, which enforced the provisions of the Fair Housing Act of 1968, also stands out. Another was the Civil Rights Restoration Act of 1991, which ensured that discrimination would not be tolerated in the workplace. But there were others, including the Dr. Martin Luther King, Jr., Holiday and Holiday Commission bills, the Civil Rights Restoration Act of 1987, the reauthorization of the Civil Rights Commission, and the Congress' efforts to save the Legal Services Corporation from the Reagan administration's cuts.

When the Congress considered each of these bills, Members on both sides took positions reflecting very different philosophies. But I believe that the need to reconcile various points of view is the essence of progress in civil rights. For this reason, I am extremely proud of the Senate for working out the necessary accords to pass these bills.

In addition to these specific bills, I am also very proud of the Senate for its advice and consent role in nominations for the Federal Judiciary and executive positions that affected the civil rights movement. During the time since my election, the Senate ensured the continued transition of the South from the 1950's into the next century. Many ills had yet to be addressed, and the Senate confirmed a number of individuals who will fight to resolve these ills and voted down some who might have furthered them.

In 1980, the Senate confirmed the first black district judges in Alabama. The Congress also worked to preserve the legacy of several judges from Alabama who had accomplished much in the area of civil rights, including Justice Hugo Black, Judge Frank Johnson, and Judge Robert Vance. All of these men furthered the cause of racial progress.

When it came to nominations, I would also like to note that the Senate occasionally felt it had to oppose some nominees, because it feared that these individuals might impinge on the enforcement of laws to protect individual rights. These nominees included some Federal judicial nominees as well as executive officials. But in each case, I did my best to remain open-minded until all of the facts were available and the arguments had been made. I might best compare my view of a Senator's role in the confirmation process to that of a judge rather than an advocate.

When it came to some of these bills and nominations, it happened that my own personal perspective and conscience compelled me to vote differently than some of my constituents might have liked. This was particularly true in some instances, including my very painful decision to oppose the special treatment extension of the insignia patent for the Daughters of the American Confederacy, which I will discuss later.

My goal here is to reflect upon some of the major legislation, nominations, and issues which have dominated the Senate's civil rights debate since I have been here.

GROVE CITY COLLEGE CIVIL RIGHTS RESTORATION BILL

In 1984, I supported the passage of a bill known as Grove City. Formally known as the Civil Rights Restoration Act of 1987, it did not pass until 1988. With this bill, the Congress essentially sought to restore civil rights guaranteed under several major laws restricted by the Supreme Court. It had a number of opponents among the religious community, especially, since abortion became a major controversy surrounding the bill. In fact, the Congress ultimately needed to override a veto to pass the bill.

Grove City took its name from a February 28, 1984, Supreme Court decision, Grove City College versus Bell. With this ruling, the Court altered the interpretation of title IX of the Education Amendments of 1972. It found that this law, which prohibited sex discrimination in federally funded institutions, applied only to the particular program or activity directly receiving the funds. Therefore, the entire school was not bound by the antidiscrimination language.

Perhaps the reason the Grove City case was so significant was its potential impact on three other civil rights laws. These laws were the Civil Rights Act, the Age Discrimination Act, and the Rehabilitation Act, all of which used practically the same language. The Court had clearly abridged the Government's rights and abilities to fight discrimination.

According to its stated purpose, the Civil Rights Restoration Act of 1987 sought to restore the "broad, institution-wide application" of Federal antidiscrimination laws. It pertained to each of the four civil rights laws, and like its previous incarnations, it sought to redefine "program or activity."

In 1988, Grove City became Public Law 100-259. But I wasn't necessarily pleased that the fight had been so hard. I had tremendous political pressure on me to oppose it. Immediately after I voted for the override, the vote was referred to as "another nail in my coffin." To put these thoughts in context, I received over 6,000 contacts, including phone calls or letters from constituents who criticized me for supporting the bill.

But I think that it was worth the fight. After its passage, the National Black Law Journal characterized the bill in these terms:

> The passage of S. 557 sends a clear signal: discrimination is illegal and will be prohibited through broad enforcement of the Civil Rights Restoration Act of 1987. Consequently, the enactment of S. 557 closes a major loophole in our civil rights laws and preserves two decades of hard-won civil rights for all Americans.

THE FAIR HOUSING BILL

Since my first year as a Senator in 1979, civil rights activists had been pushing the Congress for legislation to amend the 1968 Fair Housing Act, and I supported their efforts. However, a broad bill intended to enforce the provisions of the Fair Housing Act of 1968 did not pass the Congress until 1988.

My efforts in that first Congress included attaching a provision to the bill to allow discrimination complaints to be heard by HUD administrative law judges. A compromise version of this idea appeared in the final 1988 law.

In 1979, several national surveys spurred a House subcommittee to pass a fair housing bill. HUD Secretary Harris testified that it was necessary to improve the 1968 act. The act, she said, ". . . defined and prohibited discriminatory housing practices but failed to include the enforcement tools necessary to prevent such practices and provide relief to victims of discrimination."

A companion bill appeared before the Senate Judiciary Committee in the summer of the next year, 1980. During its markups, the committee adopted several of my amendments. One would allow HUD discrimination suits to be heard by administrative law judges. These judges would be appointed by a Fair Housing Review Commission authorized by the bill, and the President would appoint the commissioners. The Fair Housing Review Commission would have the authority to review and modify cases. The second of my amendments would limit suits to individuals who actually sought fair housing and who felt they had been victims of discrimination.

By this time, the House had passed its version. Its supporters included the NAACP, the AFL-CIO, the UAW, the League of Women Voters, and the ACLU. President Carter was also among this group, calling the bill "the most critical civil rights legislation before the Congress in years."

It was the House bill which ultimately came to the Senate floor. It had less luck in the Senate than the House, though; certain Senators led a filibuster which killed the bill.

Disagreement on the bill focused on two controversies, whether discrimination should be proven by results or intent, and whether cases should be heard by administrative law judges or Federal judges and juries. Civil rights groups supported provisions requiring the results standard of proof; Senate opponents wanted proof of intent. But there did not seem to be any middle ground. With regard to the administrative law judge provisions, Senator DECONCINI, offered a compromise to allow jury trials in some cases, but opponents were not receptive. This compromise just raised too many questions.

Unfortunately, we could not compromise that year, and the bill ultimately died in a filibuster.

In 1988, we finally passed a broad bill, H.R. 1158, to address the problem of racial and other discrimination in housing. This bill became Public Law 100-430, to amend the 1968 Fair Housing Act.

The new law authorized HUD to penalize those who discriminated in housing sales and rentals. In addition to prohibitions on discrimination according to race, color, religion, sex, or national origin specified by the 1968 act, the new law included protections for the handicapped and families with young children. According to Congressional Quarterly, this was the first time the Congress protected these latter categories under its laws.

Before the passage of this new law, HUD only possessed the authority to

mediate battles. The Justice Department could file suits in the case of discriminatory patterns, and individuals could bring their own suits. But this bill authorized HUD to pursue suits on a victim's behalf.

The final law included a compromise version of my administrative law judge scheme of the 96th Congress. It provided for cases filed by HUD to be heard in front of administrative law judges, if the parties involved chose to do so. Where compromise failed in 1980, however, the 1988 law also provided a second option: if just one of the parties chose it, the case would be heard in a jury trial. The law required the parties to choose within 20 days.

VOTING RIGHTS EXTENSION

In 1982, the Congress passed a law to extend the Voting Rights Act of 1965—H.R. 3112, Public Law 97-205. This new law contained four essential parts. First, it extended section 5 of the act, the major enforcement provision, for 25 years. This section, called the preclearance provision, required 9 States, including my own Alabama, and parts of 13 others to receive approval from the Department of Justice before they could change their election laws. Second, it allowed States that could prove a good voting rights record for the previous 10 years to bail out of the preclearance section after 1984. Beginning that year, States desiring to bail out would have to prove their case before a Federal panel of three judges in Washington, DC. Third, the extension amended the permanent provisions of the 1965 act under section 2 to make it easier to prove violations. Previously, intent to discriminate had to be proven, but under the new law, it would only be necessary to prove that laws had resulted in discrimination. Last, the new law also extended bilingual requirements under the act for 10 years.

But passing this bill was not easy. It had opponents in the Senate and in the administration. In fact, the chairman of the Senate Judiciary Committee was not friendly to its passage. Compromise was required to save the bill, and I worked behind the scenes, especially with Senator Dole, to find a proposal which would be acceptable to the committee.

Congressional Quarterly has since noted that Senator Dole and I played deciding roles on the Senate Judiciary Committee. As the bill came out of subcommittee, the publication noted that divisions on the full committee left us "* * * holding the balance of power." Seven members were publicly against the bill, and nine were for it. The committee had 18 members at the time, and a tie of nine to nine would have resulted in a failure to report the bill to the full Senate.

I had an agreement with Senator Dole to work together to forge a compromise which would get committee approval, but not to publicize my behind-the-scenes activity. The reason for my reluctance to receive any credit was due to the fact that this was an unpopular bill with white voters in Alabama, particularly in Mobile.

Notably, Senator Denton, from Alabama, was also a member of the Judiciary Committee, but he opposed the bill. On June 22, the Talladega Daily Home printed an editorial contrasting our positions. "The next time he comes before Alabama voters to be re-elected or retired," it read, "U.S. Senator HOWELL HEFLIN may have a problem explaining satisfactorily his vote to extend the so-called voting rights act for another 25 years." About Denton, who opposed the bill, the editorial wrote he "won't have the same problem."

And on May 6, the Mobile Register printed an editorial which condemned the compromise, writing that it was no compromise at all; instead, the Register called it "probably the most discriminatory legal garbage to ever hit Congress." This editorial called on me to lead a filibuster of the bill for Alabama and particularly Mobile. The Register wrote that, in light of Mobile versus Bolden, the Voting Rights Extension would allow any Federal judge to change local governments' election laws at a whim.

As I mentioned earlier, section 2 of the 1982 extension made it easier to prove violations by requiring proof of results rather than intent. This revision would effectively overturn a 1980 Supreme Court decision, Mobile versus Bolden, upholding the intent requirements.

It was this provision, known as the results test, which first snagged the bill in the Senate committee; the constitution subcommittee refused to incorporate the provision in its March markup. President Reagan's Attorney General told the panel that the administration was opposed to the new provisions.

During this markup, the Senate subcommittee extended section 5, the enforcement provisions, for 10 years. But by contrast, the House version of the bill extended section 5 indefinitely. Again, the Attorney General supported the Senate subcommittee's move, testifying that the administration opposed a longer extension.

Notably, in the month following this subcommittee vote, U.S. District Judge Virgil Pittman of Alabama issued an revised opinion on Mobile versus Bolden declaring that Mobile had discriminated against blacks based on the results test. This decision, based on results, bolstered the case of civil rights groups who supported the bill provisions under section 2.

With these revisions, the bill then came to the full Senate committee, whose members began to align for or against the extension. As I mentioned above, nine members supported the House version and seven opposed it; leaving Dole and me in the middle to work out something the whole committee could accept.

On May 4, the committee passed our compromise version of the bill, with only four Senators voting against it. This compromise included changes to section 2's results language to specify its meaning. Taken from a 1973 Supreme Court case, White versus Register, the final version declared that a violation could be proved:

> * * * "if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation.

The compromise also extended section 5 for 25 years, rather than 10, as the administration and some Senators wanted, or permanently, as the House wanted.

Still in the way, however, was a filibuster to stop the bill. But the Senate voted it down. In the end, the Senate amended the House bill to align it with its own compromise. The House accepted the Senate amendments on June 23, by unanimous consent.

THE MARTIN LUTHER KING FEDERAL HOLIDAY

In my first month as a Senator, I became a joint sponsor of a bill to establish a Federal holiday in honor of Dr. Martin Luther King, Jr. That bill, however, did not become law, and it was not until 1983 that we were able to establish the holiday. In 1983, I fully supported its passage—H.R. 3706, Public Law 98-144.

During the 1983 debate, the measure became the victim of a filibuster led by Senator JESSE HELMS. According to Congressional Quarterly, Senator HELMS objected to King's "action-oriented Marxism," and alleged that King had connections to the Communist Party. These claims seemed to me to be without merit.

When the Senate began consideration of the holiday measure, I voted to end the filibuster, and I opposed amendments which would effectively have killed the bill. However, there were two amendments I found to be in line with my own thinking. They were offered by Senators Randolph and Boren to require that the King, Washington, and Columbus holidays be held on the actual dates of the events. In fact, I cosponsored Boren's amendment, and after that amendment failed, I signed onto a bill to serve the same purpose. My reasons for supporting this condition were the cost of a new holiday—the holidays would occasionally fall on Saturdays and Sundays, saving a great deal of expense—and I also wanted to ensure the proper observance of significant historical events. Dr. King's birthday is a significant date in the history of civil rights in this country, and it is most fitting to remember its actual date.

The following year, Congress passed a bill establishing a Martin Luther King

Holiday Commission to encourage ceremonies for the first celebration of the holiday—H.R. 5890; Public Law 98–399. The bill mandated a 3-member panel to be funded by donations.

Five years later, I cosponsored a bill to make the Martin Luther King commission permanent. The bill became law—(H.R. 1385, Public Law 101–30,—and it expanded the commission's role to include the promotion of racial equality and nonviolent social change. Again, when this bill came to the Senate floor, a number of amendments effectively to kill it were offered, and I opposed them all. However, I did support an amendment to bar the Commission from encouraging civil disobedience.

I joined Senator SARBANES as a sponsor in support of four different bills, S. 322 in the 100th Congress, S. 619 in the 101st Congress, S. 239 in the 102d Congress, and S. 27 in the 103d Congress, to set aside a piece of Federal land in the District of Columbia for the Alpha Phi Alpha Fraternity to build a memorial to Dr. Martin Luther King, Jr. However, these bills did not pass.

FUNDING FOR HISTORICALLY BLACK COLLEGES

I am especially proud of my efforts to authorize funding for the 1890 land grant colleges, including the Tuskegee Institute—now Tuskegee University—and Alabama A&M in my home State of Alabama. Even though these land grant colleges date to the 19th century, they had been largely ignored until the late 1970's. I consider that this fact represents a great waste; certainly these institutions deserve equal treatment, and I believe they are, properly funded, a valuable asset to the Nation in the field of agricultural research.

First, I would like to give a brief history of the African-American, 1890 land-grant colleges. In 1862, the U.S. Congress passed the first Morrill Act, which established the basis for land-grant colleges. These would be established by the States to educate their citizens in agriculture, home economics, and other practical subjects.

However, the Southern States did not provide funding for black colleges under this law, so the Congress passed a second Morrill Act in 1890 specifically to support the African-American institutions. From this history comes the term "1890 Land-Grant Institutions," specifically applied to these historically African-American colleges. However, the agriculture department did not begin earnestly to fund the 1890 land-grant colleges until 1966. That year, Assistant Secretary Dr. George Mehren asked the National Academy of Sciences to suggest an allocation of $283,000 for research at these colleges—under Public Law 89–106.

In 1866, Lincoln University in Missouri became the first such historically black land-grant college." By 1976, there were 16 such universities. Of these 16, there are 2 in Alabama, the Tuskegee University and Alabama A&M University.

The Alabama State Legislature created the Tuskegee Institute in 1881; it was then called The Tuskegee State Normal School for the Training of Negro Teachers. Booker T. Washington became Tuskegee's first President and served until he died in 1915.

During these first years, the State legislature appropriated $3,000 for the institution and authorized it a single teacher. The school remained public until the State legislature granted its board the power of governance in 1893, but Tuskegee Institute continued to receive State funds even though they obtained private status.

In 1897, the legislature also established "The Tuskegee State Experiment Station." George Washington Carver became its director and served until his death in 1943.

In 1899, the U.S. Congress granted the school 25,000 acres, and in 1906, it established the formal extension program. In 1933, Tuskegee became a regionally accredited 4-year college, and in 1943 it opened its graduate schools. Accredited graduate programs now include architecture, chemistry, dietetics, engineering, nursing, and veterinary science. Tuskegee's funding from grants remained nominal until 1972.

Alabama A&M University was founded in 1875 by an ex-slave named William Hooper Councill. Originally, the Huntsville Normal School was on West Clinton Street in Huntsville, the school moved to Normal in 1890. After a decrease in enrollment, the institution was renamed in 1919 the State Agricultural and Mechanical Institute for Negroes and reduced to junior-level training.

During the subsequent years, the school lost its financial support and nearly fell apart, but in 1927 Dr. J.F. Drake became its new president and oversaw expansion of the grounds and the return to 4-year status. It was not until 1962, during the tenure of President Dr. Richard D. Morrison, that the school became a university, with its own graduate school.

With this history of great difficulty as well as great leadership in mind, I hold myself honored to have worked with these institutions. I am particularly proud of efforts to create the Chappie James Preventive Health Center at the Tuskegee Institute, and to pass perhaps the first serious funding authorization for the 1890 black land grant colleges.

During the first summer I was a Senator, I introduced a resolution to authorize the construction of the General Daniel "Chappie" James Memorial Center for Preventive Health at the Tuskegee Institute. When I introduced the bill on the Senate floor, I noted that it was the first preventative health center in the south, maybe the country. I also stated, proudly, that it would become a museum of the general's memorabilia.

Furthermore, I argued that the dedication was especially fitting because General James, the first African-American to rise to a four-star rank in the U.S. Air Force, had been a beneficiary of Tuskegee's programs years before. Tuskegee established the first training program for black pilots, and it was here that General James learned the skills which furthered his career.

Ultimately, we succeeded in passing the Chappie James Center bill as a rider to the 1980 reauthorization of the Higher Education Act of 1965. My amendment authorized $6 million for the center, and required that it be constructed at the Tuskegee Institute.

In May 1981, I introduced a bill to help all of the 1890 land grant colleges. Its language specified that the 1890 land grant colleges receive money for the purchase of equipment and land, and the planning, construction, alteration, or renovation of buildings to strengthen their capacity for research in the sciences of food and agriculture. That year, the House passed an identical companion bill unanimously.

As I have said many times, the 1890 schools had not, to that point, had the authorization to receive the benefit of the equipment and facilities they needed to be competitive. They had nothing from Congress to rely on, even though the Congress gave these historically black institutions the same mission as the 1862 schools mandated under the Morrill Act. Therefore, we owed them the means to fulfill that mission, research and development in the field of agriculture for the benefit of the whole country.

As with the Chappie James measure, this authorization passed as a rider, this time to the 1981 farm bill, Public Law 97–98). This amendment authorized $10 million annually to each of the historically black land-grant colleges through 1986—a total of $50 million for each.

BLACK ALABAMIANS BECOME FEDERAL JUDGES

In the spring of 1979, then-Senator Donald Stewart and I set out to find five U.S. district judges to fill vacancies in the State of Alabama. In order to do this, we formed two committees and clarified our intentions in charters for each. We called the first the Federal Judicial Nominating Commission of Alabama, and we called the second the Alabama Women and Minority Group Search Committee.

First, we intended to seek out the most qualified individuals in the State. This was the charge of the first committee. But we also sought to find qualified minorities to fill the slots. This task was the charge of the second panel, which would advise the first.

Through these efforts, two blacks were selected, and President Carter formally nominated them both. These men were U.W. Clemon, for Alabama's

northern Federal district, headquartered in Birmingham, and Fred Gray, for the State's middle Federal district, headquartered in Montgomery. U.W. Clemon had become a prominent Alabama State senator, and Fred Gray was a prominent lawyer who had served in many posts. He was perhaps most widely known as Rosa Parks' lawyer.

Although the hearings were not easy, the Senate confirmed U.W. Clemon the next year, and he became the first African-American Federal judge in Alabama. Fred Gray's nomination, however, did not survive the confirmation process. In his place, I recommended Myron Thompson, another black, who was confirmed.

As I said many times during this process, I believe that it is absolutely essential for blacks to serve in Federal courts. In the committee hearings on our recommended nominees, and on the floor after their confirmation, I stated that I believe we must make up for years of injustice in this country. For many long years, blacks were excluded from the Federal judicial nominating process. True equality under the law cannot be achieved under such a system. All Americans must feel they will be treated fairly by the Federal courts, but if certain citizens are precluded from serving on the bench, the courts cannot give the perception of fairness.

CIVIL RIGHTS COMMISSION EXTENSION

In 1983, authorization of the Commission on Civil Rights expired, and the Congress set about passing a reauthorization. However, President Reagan intruded, and he tried to restructure the commission for his own purposes.

In late May, Reagan announced he would replace three commissioners on the panel—Mary Frances Berry, Bladina Cardenas Ramirez, and Rabbi Murray Saltzman. According to Congressional Quarterly, the President sought to remove these commissioners because they had criticized his administration's policies. To replace them, the President announced that he would appoint Morris Abram, John Bunzel, and Robert Destro. Some alleged that Reagan selected these replacements because they opposed affirmative action and busing.

President Reagan had clearly challenged the independence of the commission. And the Senate Judiciary Committee responded by putting off the votes on his new nominees. Ralph G. Neas, executive director of the Leadership Conference on Civil Rights, deserves much credit for lobbying against Reagan's position.

In response, Reagan summarily fired the three commissioners he sought to replace. CQ wrote that a White House lobbyist admitted that Reagan fired these individuals because he could not get the votes for his own nominees. Both Houses of the Congress responded with concurrent resolutions declaring their intent to create a new commission whose members would be appointed by the Senate as well as the President. Dr. Berry and Ms. Ramierez went on to win a suit in the D.C. District Court which granted an injunction against Reagan's firings.

For my own part, I worked to save Mary Berry's seat through a compromise which restructured the commission. During final action, the Senate accepted this compromise amendment, offered by Senator Specter, Public Law 98–183. Under this compromise, Reagan would have four appointees, and the Congress would have four, two for each house. The Commission would therefore have two additional members. The compromise, among other things, also established that the President had to show cause for firings, and authorized funding for the Commission. In response to this last, the House restored funds it had cut from the appropriations bill.

But in the end, civil rights groups were angry to learn that Reagan had backed off on an informal part of the compromise. He had promised, they said, to reappoint two commissioners he had previously opposed, Louise Smith and Jill Ruckelshaus. Reagan, House Majority Leader Michel, and Senate Majority Leader Baker, ultimately refused to put these commissioners on the panel.

Much to my own pleasure, though, the Congress saved Mary Berry's seat. She is now the chairman of the Commission.

OPPOSITION TO VARIOUS NOMINEES AFFECTING CIVIL RIGHTS

As I stated before, I feel that the Senate's opposition to a number of nominees was as important as any of its other accomplishments. In the South, some changes for the good occurred, and the Senate's work helped achieve successes in the area of civil rights. It voted down some individuals because of reasonable doubts concerning their impartiality in carrying out the duties of the office for which they were being nominated. These men included William Bradford Reynolds, Judge Robert Bork, Clarence Thomas, Kenneth L. Ryskamp, William C. Lucas, and Jefferson Sessions.

With regard to these nominations, my opposition was based on doubts—doubts about qualifications and about their impartiality as to racial and civil rights matters. However, I always tried to maintain my sense of objectivity. I always tried to keep an open mind until the end of hearings, because I believe hearings are meaningless if Senators do not examine the facts impartially, if they enter into the proceedings with prejudice. In fact, I have consistently articulated this view in my opening statements: We, as Senators, need to act as judges in the confirmation process. I was often criticized as being indecisive because I withheld my decision until the end of committee consideration. But, if I was to be fair to the nominee, then I had to assume a judge's role.

WILLIAM BRADFORD REYNOLDS' NOMINATION

In 1985, President Reagan nominated William Bradford Reynolds to become Associate Attorney General. This position, No. 3 in the Justice Department's hierarchy, carried with it the responsibility for all Federal civil matters.

Previously, Reynolds had been the Assistant Attorney General for the Civil Rights Division, and his record there earned him opponents among the civil rights community. In fact, I based my own decision to oppose Reynolds on what I knew of his record.

Examples of Reynolds' opponents included Benjamin Hooks, executive director of the NAACP; W. Gordon Graham, of the Birmingham city government, who spoke for himself and Mayor Richard Arrington; William L. Taylor, director of the National Center for Policy Review; Judy Goldsmith, president of the National Organization for Women; and Marie Foster from Selma, who was involved in the civil rights movement in that city during the 1960's. These individuals all testified very critically on Reynolds' record, and they all told the committee that he had worked to set back civil rights.

On June 27, 1985, we voted the nomination down in the judiciary committee, and it did not go to the floor. My vote decided the outcome.

On June 30, the Huntsville Times reported that this final meeting and these votes involved "plenty of gavel-banging and shouting as red-faced senators fought bitterly over President Reagan's nomination for a top Justice Department post." I waited until that time to cast my vote, but when I did, I said that I wasn't even certain I felt comfortable with Reynolds in the position in which he was serving at the time. I also said I would find out if the Senate could remove him. In my view, he was deceptive, lacking in forthrightness, evasive, and misleading during his testimony.

ROBERT BORK'S NOMINATION

Another individual I ultimately decided to vote against was Judge Robert Bork, nominated to become an Associate Justice on the Supreme Court. I was somewhat disconcerted by comments he had made, particularly with regard to rights guaranteed by the constitution—rights he said he did not see, but which had been seen by the courts and Congress on numerous occasions. Most important, though, in the end, I did not feel confident I knew what Judge Bork would do on the Supreme Court. Since the nomination was for life, I just could not vote for Judge Bork.

President Reagan nominated Judge Bork, who was, at the time, serving on the D.C. Circuit Court of Appeals, in

1987. Bork's advocates argued that he was a conservative judge who tended to defer to legislatures on political matters. But his opponents said that he was an activist, seeking to implement his own agenda. From this dispute, and others, the Senate entered into one of the most contentious confirmation debates of my tenure.

Controversy developed because Bork had, in earlier statements and writings, criticized the constitutionality of a number of Supreme Court decisions affecting individual rights. He had argued for a restrictive interpretation of the 14th amendment with regard to sex. Bork had also criticized decisions which struck down laws because they impinged on individual privacy, a right Bork had argued was neither explicitly nor implicitly provided by the Constitution. The decisions he had cited included the striking of a Connecticut law which banned contraceptives, as well as the Roe versus Wade decision. Regardless of whether or not I agree with Roe versus Wade, I do believe in the right to privacy, and unlike Judge Bork, I do see it in the Constitution.

Notably, Bork had also written that the first amendment applied only to political speech in a 1971 law review article. He followed this with a television statement in 1987 in which he said "other kinds of speech, speech about moral issues, speech about moral values, religion and so forth—all of those things feed into the way we govern ourselves."

During his testimony before the Judiciary Committee, we questioned Bork on his earlier statements and decisions. Several of us argued that Bork was trying to relax his image during these hearings. In fact, Senator LEAHY called Bork's seemingly changing beliefs "confirmation conversion." Uncertain of Bork's actual position, I cited Bork's "confirmation protestations" when I stated my final decision.

I voted against the nominee in the Judiciary Committee, and I also voted against him in the full Senate. I gave statements before that committee and on the floor reciting many of the reasons for my opposition to his confirmation. The bottom line was that I just did not known how Bork would treat essential, fundamental rights in his rulings.

The debate over Judge Bork, I might note, was a particularly unpleasant one. The media became so involved and the attempts to politicize the debate from both sides became so acidic, that I felt a particular need to speak on the floor about the potentially damaging effects on the judiciary. But, of course, this type of public intensity has surrounded other nominations since.

A number of mailing and telephone campaigns increased this political nature of the debate. I was even told that my own voice, or an imitation, was used in a telephone solicitation I certainly did not authorize. The spill-over from the Bork nomination lingers to this day, and has affected other nominations since.

CLARENCE THOMAS' NOMINATION

In October 1991, I voted against confirmation of Supreme Court Justice Clarence Thomas' nomination. Although I reserved my judgment, as always, until the nominee had been given a chance to be heard, I came out against Clarence Thomas well before I knew of Anita Hill's allegations. I just did not feel that Clarence Thomas was qualified, at that time, to assume a lifetime seat on the Supreme Court.

I do support a moderately conservative court. But I oppose a right-wing court which would embrace a regressive philosophy, which would attempt to rewrite or strike laws written to overcome years of racism in America. I strongly feared that Clarence Thomas would advocate such right-wing positions.

I also had reservations based on the contradictory nature of Thomas' statements on his fundamental view of the law. He had made a number of statements and written a number of articles before the hearings which the committee called on him to explain. His answers, however, did not satisfy me; they showed a man who had seemingly changed his essential perspective.

At the time, I did not know what the real Clarence Thomas was like or what role he would play on the Supreme Court, if confirmed. In fact, I was very much concerned that Thomas' inconsistencies suggested either intentional deception or a lack of scholarly, considered thought.

One example of my specific reservations was the nominee's apparent shift in his view of natural law. Thomas had criticized the "nihilism of [Oliver Wendell] Holmes," who rejected natural law. However, before the committee, he rejected these earlier statements. He said he made them "in the context of political theory," and described himself as a "part-time political theorist."

Thomas had also criticized the Brown versus Board of Education of Topeka, KS, decision. And when questioned, Thomas said that he had never even discussed Roe versus Wade. I would not have opposed the nominee based on his position on this single case, whatever it may have been, but I found it extremely unlikely that Thomas had never discussed Roe versus Wade, a defining point in the laws of this country. In fact, I was not certain that he was being completely forthcoming, especially considering the polarizing nature of this particular case in Supreme Court confirmations.

I was also deeply concerned about Thomas' advocacy for an activist Supreme Court which would strike down laws because they restrict property rights. Thomas advocated this position in a 1987 speech before the Pacific Research Institute, citing the libertarian Stephen Macedo. I believe, though, that modern constitutional jurisprudence has moved beyond the Lochner era which relied on natural law, and that individual rights are just as important as property rights, perhaps even more so. The Supreme Court has long recognized congressional authority to regulate commerce. As I stated, according to the libertarian view, we would have no laws to guarantee occupational safety and health, to preserve the environment, to protect consumers from unsafe food, to require airline safety, or to establish a minimum wage.

All of these concerns led me to doubts. I simply could not justify voting for a nominee whose positions remained so enigmatic, particularly when he had been nominated to the Supreme Court for life.

The peculiarities surrounding the nomination only increased after that time. In early October, the public became aware that Anita Hill, a former Thomas employee, had alleged that the nominee had made unwanted sexual advances and comments toward her over a number of years. I did not know if Thomas, or Hill, were telling the truth, or if neither was telling the complete truth.

I had not known about these allegations until after I made my initial statement opposing Thomas. The afternoon after my speech, Chairman BIDEN informed me of the an FBI file which included the charges. I did vote against the committee motion to report the nomination favorably to the floor, which failed in a tie, although I supported sending it to the full Senate without a recommendation. But I had no reason, whatsoever, to change my position; Thomas' record, testimony, and lack of qualifications were reason enough to oppose his confirmation.

JEFFERSON SESSIONS' NOMINATION

On June 5, 1986, the Senate Judiciary Committee rejected President Reagan's nomination of Jefferson Sessions to become a Federal district judge in Alabama. There were ten Republicans and eight Democrats on the committee. The vote for disapproval of his nomination was 10 to 8, with two Republicans voting against him.

Sessions was, at the time, a U.S. attorney in Alabama. Certain of my colleagues on the committee criticized comments Sessions allegedly made against various civil rights organizations as well as favorable comments made about the Ku Klux Klan. These comments, they argued, showed a "gross insensitivity" to racial matters.

My decision to oppose Sessions was very difficult. Of course, he was from my home State of Alabama. Frankly, I just did not know whether he would be a fair and impartial judge. My statement before the committee recited

that since this was a lifetime appointment, we should be very cautious about his fairness and impartiality.

WILLIAM C. LUCAS' NOMINATION

In 1989, I voted against William C. Lucas' nomination to become the Assistant Attorney General in charge of the Civil Rights Division. Mr. Lucas happened to be an African-American, and I do not believe I can state strongly enough my belief in the substantive and symbolic importance of nominating blacks to these positions. However, when I weighed the evidence, I found that Mr. Lucas simply was not qualified to head the Civil Rights Division.

Lucas had worked in the Civil Rights Division in 1963, had been in the FBI, and he had been the Wayne County, MI—which includes Detroit—sheriff and county executive before President Bush nominated him to this post. But he had only just begun to practice law, and he had never represented a client in court.

Lucas' lack of legal experience showed during the hearings. Lucas downplayed the importance of recent Supreme Court decisions on civil rights laws, commenting "I'm new to the law." And when the Chairman asked Lucas about his view on the recent trend in the Supreme Courts decisions on civil rights laws he said, "I have to answer as a politician because I have not thought about the answer." Further, during the hearings, a number of civil rights activists testified or submitted statements to the effect that Lucas was not qualified to fill the position.

While he emphasized that he did not object to Lucas' views, Ralph G. Neas, executive director of the Leadership Conference on Civil Rights opposed Lucas on his "lack of civil rights and legal experience." Elaine Jones, deputy director counsel of the NAACP Legal Defense and Education Fund, testified that, although her group initially wished to support Lucas, it found that he did "not have the training and the background to litigate and understand the litigation process." Citing the need for experience in Federal litigation, Drew Days, a professor at Yale Law School and a former holder of the position Lucas would fill, said Lucas' confirmation would "be a frustration of the mission that Congress envisioned when it created that office in 1957." William L. Taylor of the Citizens' Commission on Civil Rights testified for his group, noting his personal belief that Lucas did not meet the standards set by his organization. Arthur L. Johnson, president of the Detroit branch of the NAACP said, "We do not believe that he [Lucas] is suitable for this highly specialized and important assignment where the public interest is so sharply focused, and where the trust of black Americans, and civil rights advocates in particular, should be sought and even enhanced." John H. Buchanan, Jr., of the People for the American Way also argued that Lucas was "inadequately qualified."

On the other hand, some civil rights leaders supported Lucas. Dr. Joe Reed of the Alabama Democratic Conference was one; Reed urged confirmation because, at the time, there had been only one African-American in the post. Another supporter was Alvin Holmes, the senior black member of the Alabama House of Representatives. These men both noted their belief that Lucas' opponents had based their views solely on qualifications. A final example of Lucas' supporters was Father William Cunningham, director of Focus HOPE of Detroit.

Congressional Quarterly reported on certain questions surrounded Lucas' record, including brutality in the Wayne County sheriff's department, a customs dispute, and exaggerations on his resume.

After hearing all of this information, I finally decided to vote against Mr. Lucas. I based my decision in large part on the importance of the position. The head of the Civil Rights Division perhaps has more responsibility than any other single individual for ensuring the security of our civil rights. The individual who assumes this role should be well qualified to deal with the intricacies of the law.

Mr. Lucas, I believed, did not possess sufficient legal experience to undertake the task, and I cast the deciding vote against him. I argued that, although his supporters and Mr. Lucas himself cited his accomplishments in Wayne County, the controversy surrounding them, including brutality in the sheriff's department, indicated to me that his managerial abilities were also questionable. After the committee vote, Ralph Neas who had testified against Lucas, announced a success for civil rights.

KENNETH L. RYSKAMP'S NOMINATION

I cast the deciding vote against Kenneth L. Ryskamp of Florida, whom President Bush had nominated to the 11th Circuit Court of Appeals. This circuit covers Florida, Georgia, and my home State of Alabama. President Bush actually nominated Ryskamp twice. The first time was in 1990, and the Judiciary Committee tabled the nomination that year.

Ryskamp had been criticized by People for the American Way, a civil liberties group which found that he had ruled against more civil rights plaintiffs than any other judge nationwide. He had also belonged to a country club which had an implicit policy of discrimination against African-Americans and Jews.

Also haunting Ryskamp was a specific case in which a number of African-Americans in West Palm Beach, including those who had not been found guilty of any crime, filed a complaint because they had been attacked by city police dogs. Although the jury had found the city, individual police participants, and the former police chief guilty of civil rights violations, Ryskamp threw out the conviction against the city and the police chief. He said: "It might not be inappropriate to carry around a few scars to remind you of your wrongdoing in the past, assuming the person has done wrong."

Nine Latin American members of the Florida State Legislature wrote a letter to express their belief that Ryskamp had "* * * demonstrated insufficient sensitivity to ethnic minorities and other groups who have traditionally been the objects of discrimination." In my opposition to Ryskamp, I weighed this information, and I concluded that, if the representatives of such a large population felt they would not receive justice, Ryskamp could not dispense it. With regard to this last point, I believe it is important to note that these lawmakers were Republicans, and they had no partisan motivation.

CREATION OF THE 11TH CIRCUIT

As a past chairman and now ranking member of the Judiciary subcommittee which oversees court reform and judicial administration, one of my great interests as a Senator has been that of improving and streamlining judicial procedure and process. In June of 1980, I introduced a bill to divide the Fifth Circuit Court of Appeals into two courts. On October 1, the Congress passed, by voice vote in both chambers, the House version of the bill to divide the circuit. This bill became Public Law 96–452.

At the time, this circuit included Texas, Louisiana, Mississippi, Georgia, Florida, and Alabama; this legislation broke off Georgia, Florida and Alabama to create the new 11th Circuit, and the others remained as the new fifth circuit.

The split had been considered several times before, but that year, I introduced the legislation in response to a request made by the court's judges. This request came to me as a formal petition, signed by all twenty-four judges sitting on the court. Among these were Frank Johnson, Joseph Hatchett, the first African-American on the court, and Bob Vance. Judge Johnson became the court's spokesman for the split during hearings on the matter in the House of Representatives.

The main purpose of the bill would be to promote judicial efficiency. Individual judges in the circuit were burdened by an excessively large caseload. Further, the entire court had accrued the largest "en banc" caseload in U.S. judicial history.

In the past, civil rights groups had opposed the split because, given the location of the circuit, it heard the most important civil rights cases in the country. Therefore, these groups did

not want to see a more conservative court created.

In fact, during the House subcommittee hearings, Judge Johnson testified that he had been opposed to earlier incarnations of the proposal. He said, "* * * the basis for my opposition was a firm belief that the proposal would have a substantial adverse effect on the disposition of cases in the fifth circuit that involved civil and constitutional rights." After a careful evaluation of the judges who would go to the different circuits, Judge Johnson changed his position to become the spokesman for the split.

According to the circuit judges' proposal, this split was to be dissimilar to the earlier suggestions in two ways. It would not reduce the cases filed, nor would it create courts whose views differed from the present court's. With respect to these modifications, the petition read that the division could be accomplished "* * * without any significant philosophical consequences within either of the proposed circuits."

As a Congressman from Mississippi, Jon Hinson, pointed out during the hearings, the new courts would reflect a balance in their philosophy, at least as measured by the President who appointed the judges. Nine of the 14 judges on the fifth circuit were to be Carter's appointees, as were 7 of 12 on the 11th circuit.

Other former opponents, including Judge Hatchett and U.W. Clemon, submitted letters to the subcommittee explaining why they had changed their views. Judge Hatchett noted that the new Fifth Circuit Court would have no African-American judges, a matter which had caused many objections. However, he wrote that this matter could be addressed later. "While I understand the apprehension caused some persons by two 'new courts,' I do not believe their fears are well founded," he wrote. "The two courts that will emerge from this division will probably be no different from the existing fifth circuit." Judge U.W. Clemon wrote that, although he had opposed the 4 to 2 split, this new proposal "will not adversely impact on civil rights." Clemon added that it would, in fact, speed the 2-year lag time in the filing of civil rights cases.

THE FRANK JOHNSON COURTHOUSE

During my first year as a Senator, I strongly supported the nomination of Judge Frank M. Johnson, Jr., to become a U.S. circuit judge in what was then the Fifth U.S. Circuit Court of Appeals. Judge Johnson stands out as one of the most outstanding jurists of our times.

I believe that Judge Johnson has done more in the field of civil rights than almost any other single judge. He wrote or took part in numerous historical decisions including those in matters of desegregation, voter registration, and reapportionment. He was also variously involved in cases which established new standards in mental health programs and prisoners' rights. Notably, in 1978, Johnson became the first Federal district judge to find that an African-American educational institution discriminated against whites in its hiring practices.

At the time, I predicted that the Senate would not have the pleasure of confirming a better candidate for circuit judge in many years. To Judge Johnson's credit, I believe that my prediction has come true.

To further honor this man, whose fairness and judicial temperament I deeply respect, at the suggestion of Dr. Joe Reed, I introduced a bill in the summer of 1991 to name the Federal courthouse in Montgomery the Frank M. Johnson U.S. Courthouse. This bill became Public Law 102–261.

I felt that it was most appropriate to name this particular courthouse after Judge Johnson because it was there he began his career as a Federal judge. Judge Johnson's courtroom truly reflected the terms rule of law and equal protection of the law. And despite threats on his life, Judge Johnson at all times courageously upheld equal justice under the law.

I can only hope that this courthouse will continue to symbolize Judge Johnson's work, and to be a temple of justice.

THE HUGO BLACK COURTHOUSE

In 1983, I introduced a resolution to designate February 27, 1986, Hugo LaFayette Black Day. This day marked the 100th anniversary of the late Supreme Court Justice's birth. The resolution became public law 98–69.

Justice Black was born in Clay County, Alabama, and he was graduated with honors from the University of AL Law School. He was a practicing lawyer, a prosecuting attorney, and a police court judge in Birmingham, and he distinguished himself in all of these positions. He went on to become a Senator from Alabama, where, among other things, he sponsored the first minimum wage bill. In 1937, Hugo Black became Franklin D. Roosevelt's first nominee to the Supreme Court. Justice Black served there through six Presidents and five Chief Justices.

I know that Justice Black was a great champion of civil rights who saw the law as a tool to improve everyone's condition. He had a strong work ethic and a delightful sense of humor, and he had a great sympathy for victims of injustice. Chief Justice Burger once said, "He loved this Court as an institution, and contributed mightily to its work, to its strength, and to its future. He revered the Constitution: * * * But above all he believed in the people."

In 1987, I also worked to pass a bill to name the new Federal courthouse in Birmingham for Hugo Black. This bill became Public Law 100–160. Former Congressman Ben Erdreich from my State of Alabama sponsored the bill in the House.

THE BOB VANCE COURTHOUSE

In January 1990, I was deeply saddened by the murder of my very close friend, Bob Vance, who served on the 11th Circuit Court of Appeals. Judge Vance was murdered by a mail bomb which also seriously injured his wife, Helen Rainey Vance.

I spoke on the floor to honor his memory, and his great accomplishments in civil rights; sadly, it seemed clear that his efforts to further the rights of all citizens motivated his murderer. I wanted, as best I could, to state, unequivocally, that he did not die in vain, that his work to ensure racial equality did not die with him.

I wanted, very much, for everyone to know that Bob Vance was responsible, as much as any individual, for stopping racially motivated bombings like the one which killed him. We need more men like Judge Vance—men who have the courage to follow the moral imperatives of their conscience.

A few months later, I worked to pass a bill which renamed the courthouse at 1800 5th Avenue in Birmingham the "Robert S. Vance Federal Building and United States Courthouse"—Public Law 101–304. I hope that this stands as a testament to this great man's work to fight racism, and as a symbol of the work we have done as well as what we have yet to do.

THE DAUGHTERS OF THE AMERICAN CONFEDERACY INSIGNIA PATENT

Earlier, I alluded to the United Daughters of the Confederacy insignia debate. Although I firmly believe that it was the right thing to do, I made one of my most difficult and unpopular decisions as a Senator in 1993 when I voted against the special treatment extension of the design patent for this group. My personal family history is profoundly connected to the Confederacy. My maternal grandfather was a signer of the Ordinance of Secession by which Alabama seceded from the Union, and my paternal grandfather was a surgeon in the Confederate Army. I also had several close relatives who were killed while serving in the Confederate Army. All of these family members were convinced that their cause was right. Honor was their chief motivation at the time, and these men believed that their honorable course was to defend their cause and homeland. I felt a tremendous amount of conflict as I thought about the issue.

Senator CAROL MOSELEY-BRAUN, our only black Senator, eloquently argued against extending the patent. Her words made me consider, carefully, whether we in the Congress truly needed to extend a special recognition for this symbol of the past. After some considerable thought, I decided that honor is still a chief motivation. However, although I revered my ancestors, honor had taken a different meaning

after one hundred and twenty-eight years, and I believe I did the right thing just as they did.

In May 1993, Senator MOSELEY-BRAUN had convinced the Judiciary Committee to delete provisions of a bill which extended the design patent concerning the Daughters of the American Confederacy. She argued that she did not oppose the group's freedom to use whatever symbol it should chose, but instead she questioned the need for the Congress to endorse a Confederate symbol with the special protection when an extension could be obtained through the Office of Patents and Trademarks in the normal routine manner.

However, the matter came before the full Senate two months later as a Helms amendment to a bill we were considering at the time.

Senator MOSELEY-BRAUN again opposed the amendment, and she made some compelling arguments on the floor. She objected to a special Congressional honor since it would, she said, conversely dishonor her own ancestors. She explained:

* * * the United Daughters of the Confederacy have every right to honor their ancestors and to choose the Confederate flag as their symbol if they like. However, those of us whose ancestors fought on a different side in the Civil War, or who were held, frankly, as human chattel under the Confederate flag, are duty bound to honor our ancestors as well by asking whether such recognition by the U.S. Senate is appropriate.

I listened to this argument and considered it carefully. With a divided mind, I ultimately agreed with Senator MOSELEY-BRAUN. In its later report, Congressional Quarterly called my decision "Perhaps the turning point in the debate," which, until that time, had gone against Senator MOSELEY-BRAUN.

Our colleague from New Jersey, Senator BRADLEY referred to my decision in his engaging memoir "Time Present, Time Past". He wrote, "HEFLIN, who through his actions as a lawyer and judge had long championed racial justice, rose and said, 'I have many connections through my family to the Daughters of the Confederacy organization and the Children of the Confederacy, but the Senator from Illinois * * * is a descendant of those that suffered the ills of slavery.' I have a legislative director whose great-great grandfather was a slave. I said to my legislative director, 'Well if I vote with Senator MOSELEY-BRAUN, my mother, grandmother, and other ancestors will turn over in their graves.' He said, 'Well, likewise, my ancestors will turn over in their graves [if you vote against it].'"

I do not believe, nor did I believe then, that the Daughters of the American Confederacy is inherently racist nor that it takes part in racist activities. But I do believe that the U.S. Congress should not provide a special honor, as Senator MOSELEY-BRAUN argued, for a symbol that offends a large part of its constituency. In America, we have a long history of racial inequality to correct, and I believe much remains to be done. I also believe that, for substantive efforts to succeed, we must work symbolically as well.

On July 23, the Huntsville News, the Selma Times-Journal, the Dothan Eagle, the Mobile Register, the Birmingham Post-Herald, the Opelika-Auburn News, the Montgomery Advertiser, and the Gadsden Times wrote that I had "turned [my] back on [my] Confederate forefathers."

On July 24, the Gadsden Times, the Dothan Eagle, the Decatur Daily, the Talladega Daily Home, and the Columbus Ledger-Enquirer reported that "Southern preservationalists portrayed Sen. HOWELL HEFLIN as a Yankee-sympathizing turncoat Friday for his dramatic floor speech and vote against an insignia bearing a Confederate flag." The Tuscaloosa News also reported these objections, and it wrote that Frances Logan, president of the Tuscaloosa UDC, called RICHARD SHELBY a traitor because he also joined Senator MOSELEY-BRAUN. The Montgomery Advertiser also reported objections from members of the UDC and the Sons of Confederate Veterans.

The UDC in my own home town of Tuscumbia was notably upset with the Senate. The President of this chapter expressed her disappointment with me for not stating that the war, and the symbol, were not over slavery. A former president of the Alabama United Sons of the Confederacy, said: "What is going to be interesting is when (HEFLIN) tries to run for re-election". * * * "He's got about as much chance as the proverbial snowball when he's got these women mad at him."

On July 24, the Mobile Register editorialized that Senator SHELBY and I were "swept into political correctness along with * * * other colleagues * * * to reject a patent for an insignia of the United Daughters of the Confederacy." The editorial further asserted that rejection of the patent extension would do nothing to prevent racism.

But some articles and editorials were more favorable. On July 23, the Mobile Press printed an article in which it chose to quote a number of my colleagues who supported my decision, and the Anniston Star printed an editorial supporting my decision. This editorial denied that I did my ancestors a dishonor; in fact, the editorial was so complimentary as to call my decision courageous. On the 24th, the Andalusia Star-News gave me the same compliment.

The same day, the Birmingham News/Post Herald editorialized that the patent issue would be resolved only "To the satisfaction of neither side." The editorial noted that Senator SHELBY's and my votes "didn't help them with the average white voter." But it added a great compliment to us both by suggesting that integrity played a part.

THE CIVIL RIGHTS RESTORATION ACT

In 1990, the Congress passed a bill to restore interpretations of employment civil rights laws recently limited by the Supreme Court. But President Bush vetoed the bill in the fall, and we failed to override the veto in the Senate.

This bill was generally called a civil rights restoration bill because its sponsors sought to overturn a number of Supreme Court decisions issued in the late 1980's. Congress felt the Court had become too conservative, depending too heavily on the exact wording of the law and sacrificing some of its meaning. With respect to the civil rights cases, particularly, I think the bill's authors felt that the Court had restricted the laws too much, and I agreed with them.

A filibuster met this bill when it came to the floor in July. At this time, a number of Senators offered amendments to the bill. I co-sponsored one offered by Senator FORD to apply the provisions of the bill to the Senate. The Senate passed this rider, and it voted down another to allow for special procedures for itself. Among all of the amendments, however, I think the most important was Senator KENNEDY's amendment to eliminate the requirement of quotas as a remedy in the bill.

However, despite the Kennedy amendment, President Bush vetoed the bill based on an objection to quotas. "It is neither fair nor sensible to give the employers of our country a difficult choice between using quotas and seeking a clarification of the law through costly and very risky litigation," he argued in his veto message.

I was disappointed by the veto and puzzled by the President's reasoning. The bill, I said, included language explicitly stating that "nothing in the amendments made by this Act shall be construed to require or encourage an employer to adopt hiring or promotion quotas on the basis of race, color, religion, sex or national origin." I judged that the bill would only have restored employment practices to the standard before the Supreme Court restrictions.

The next year, the Congress and President Bush compromised on a new version of the bill, which the President declared free of quotas. This bill became Public Law 102–166.

Congressional Quarterly suggested that Bush moved, in large part, because his civil rights record had earned him enemies in the African-American community. This publication also wrote that the President had other political reasons to support the bill. Not least among these were the Thomas hearings and the GOP candidacy of former Klansman David Duke for Governor of Louisiana. But to suppose that he was motivated only by his own gain

strikes me as cynical; I believe that the President deserves credit for supporting and signing this Act.

Ultimately, we worked out a compromise which passed as the Senate bill. It modified title VII of the 1964 Civil Rights Act to establish specific compensatory and punitive damages capped according to the size of the business in cases of intentional bias, and it allowed for complainants to seek jury trials under this section. The compromise also rewrote statutes to overturn, effectively, nine Supreme Court rulings. In answer to Wards Cove, the new law returned the burden of proof in discrimination cases to the employer, although it left the definition of business necessity to the courts. It prohibited racial harassment after hiring, contrary to Patterson versus McLean Credit Union. It overturned Martin versus Wilks by setting specific statutory guidelines for third party challenges to consent decrees in affirmative action cases. Against Price Waterhouse versus Hopkins, it specifically disallowed consideration of race, color, religion, sex or national origin no matter what circumstances otherwise surrounded the hiring. The new law also allowed a period of time to pass after seniority systems are implemented in order to examine their effects before discrimination suits need to be filed. This statute was a response to Lorance v. AT&T. It further amended Title VII to allow for those winning suits against the U.S. Government to recover interest on delays, contrary to Library of Congress v. Shaw. In order to reverse Crawford Fitting Company versus J.T. Gibbons Inc. and West Virginia University Hospitals v. Casey, it also modified this section to allow for recovery of the costs in hiring experts. Last, it allowed American workers abroad to sue U.S. companies for discrimination, against the Supreme Court's EEOC versus Arabian American Oil Co. decision.

Congressional Quarterly wrote that the language to reverse the Wards Cove decision—with reference to indirect discrimination, called disparate impact—was vague, and left much undecided. This vagueness was a function of the compromise we reached with President Bush.

I was disappointed with the law's failure to apply the same statutes to Senate employment as in the private sector. The bill, however, did include measures to prevent employment discrimination which held Senators personally liable.

This measure represented a key step in the elimination of discrimination, an end I believe the people of America and Alabama were—and are—working very hard to attain.

THE LEGAL SERVICES CORPORATION

During the 1980's, Congress saved the Legal Services Corporation, which provided legal assistance to the poor in civil litigation. This action followed a series of attacks leveled by President Reagan; each year he tried to abolish the corporation, and during that time, he also tried to restrict its activities and reconstitute its board. Since the Senate would not support his nominations, he made many of them in recess. Ultimately, after the Congress pushed funding through each year, Reagan gave in and requested money for the LSC in his last budget request.

I fought very hard to continue the Legals Services Corporation because I believe it is essential to true equality of justice. Given increasing fees and costs, the American system of justice continues to become more difficult for the poor to access. And this unfortunate reality has had a disproportionate impact on minorities. Its continuation represented a great victory for the Congress and the people.

CHURCH ARSON

In June 1996, I strongly supported S. 1890, a bill to increase Federal protection against arson and other destruction of places of religious worship. For the past couple of years, black churches had been burned under suspicious circumstances and with alarming frequency, and a national response was strongly needed.

To those of us who remember the violence and fires of the early civil rights movement and who applaud the progress which has been made in terms of race relations, these latest images in the early hours before dawn were profoundly disturbing.

I supported this bill and other efforts to stop these kinds of hate crimes, bring their perpetrators to justice, and encourage compliance with the law. I also saw this as an opportunity to ask ourselves if we can do more to advance the causes of equal rights and racial harmony. I also called for the authorization of a transfer of funds to be used to implement the provisions of this act at the State and local levels of government.

DESIGNATION OF THE ROUTE OF THE FREEDOM MARCH FROM SELMA TO MONTGOMERY AS A NATIONAL TRAIL

In 1990, I worked with Senator KERRY to introduce a bill to require a study to include the Route of Freedom, from Selma to Montgomery, in the national trails system. I introduced another in 1995 to officially include the Route of Freedom in the system.

Although a conference report is still pending, the provisions to designate the Route of Freedom a national trail passed the Congress in the House's Presidio bill, a larger parks bill.

SANCTIONS AGAINST SOUTH AFRICA

Beginning in the summer of 1985, I voted for the imposition of sanctions on South Africa, and I supported them until the end of apartheid. Although these sanctions remained somewhat unpopular in my home State, I believed that they were the right thing to do. Events since then have shown that sanctions did help bring about an end to apartheid and create a more stable society.

AFRICAN-AMERICAN STAFF MEMBERS

Over the years, I have had many black staff members. In fact, I believe that I have had more African-Americans working for me than other Senators. My legislative director, office manager, mobile field coordinator, and others are black.

As I have said, I believe that inclusion of blacks in government helps overcome symbolic and substantive obstacles to equality. However, it just happened that these staffers applied, and they were best qualified to do the job. This is the way it should be in all cases.

BLACK FEDERAL MARSHALS IN BIRMINGHAM

In 1993, I worked with black political leaders in Alabama to recommend two African-American U.S. Marshals in my home State. These men, Robert Moore and Bill Edwards, were very well qualified for the positions—perhaps even overqualified when compared with the usual candidates for this position.

Robert Moore had recently retired from the Secret Service, where he had served as a special agent for 8 years—the last four in senior status.

On July 15, 1993, Senator SHELBY and I recommended Bill Edwards for the northern district of Alabama. Mr. Edwards had been with the U.S. Marshal's office in Birmingham since 1970, and at the time of our letter, he was a senior criminal investigator. He was also in his last year of law school at the Birmingham School of Law.

That year, Senator SHELBY and I also recommended Florence Mangum Cauthen to the middle district on August 6, and she became the first female U.S. Marshal in Alabama. Among her other accomplishments, Ms. Cauthen had taught law at Jones Law School.

TITLE III OF THE HIGHER EDUCATION ACT

I sought to have a number of Alabama colleges funded through title III of the Higher Education Act. I supported a proposal to separate the general college at Tuskegee University from its renowned School of Veterinary Medicine so that both institutions could receive the benefit of title III. Normally, schools such as Tuskegee, which are considered developing institutions, receive only one grant under this law.

Additionally, I saw that junior colleges were included in the title III developing institutions programs. Over the years, I have worked closely with the Department of Education to see that junior colleges and historically black institutions receive title III funds. These resources have been extremely beneficial.

In the early 1980's Alabama Christian College—now Faulkner University—was turned down for a title III Developing Institutions Grant by the Education Department. Fortunately, we

were able to prevail upon the Department and the White House. On a late Sunday afternoon, officials of the department reassembled outside readers and determined that Alabama Christian College's title III application should be granted. A few years later, this school received a challenge grant in the amount of $1,000,000 to assist in its development efforts.

CONCLUSION

As I reflect upon my Senate activities in connection with civil rights, a number of thoughts come to mind, including those surrounding my decision to run for the U.S. Senate.

Senator John Sparkman was in his late seventies, and many of his friends did not think he would be a candidate for reelection in 1978. Then-Governor George Wallace had announced his intention to run for the Senate and was already conducting a tough campaign against Senator Sparkman. I had always been a strong supporter of Senator Sparkman. I was told by friends of his to look at the possibility of running in the event that Senator Sparkman decided to retire.

I had polls conducted pitting my candidacy against that of George Wallace. The initial polls showed that if I were to run, Wallace would be far ahead of me. As I recall, the numbers first polled showed that Wallace would get about 45 percent and that I would get only about 17 percent. But my pollster, Peter Hart, indicated that there was a large amount of negative feeling in the State toward Wallace at that time and expressed his opinion that I could win such a race. One of the motivating reasons that caused me to give serious consideration to the race was that I felt that Alabama should be represented by a senator who believed in the improvement of race relations and progress in the area of civil rights.

I met with Senator Sparkman in Washington, and he told me about how he had entered his first race for Congress. Archie Carmichael was then the Congressman from Senator Sparkman's district, and Sparkman had been his campaign manager when he was elected. Congressman Carmichael did not enjoy being a Congressman, only serving two terms. He called John Sparkman to Washington and told him that he ought to get ready to run for his congressional seat; that he had not made up his mind yet, but that there was a strong possibility that he would not offer himself for reelection and that Mr. Sparkman should get ready to run in the event he did not seek his congressional seat again. He said to me, "I am telling you that story because I think you ought to get ready to run for the Senate against Wallace." I thanked him and told him I would follow his advice. I also relayed to him that Congressman Archie Carmichael was my wife's grandfather. Sparkman said he knew that and that was one of the reasons he wanted to tell me the story.

A few weeks later, Senator Sparkman announced that he would not be a candidate for reelection, and I announced the next day that I would be a candidate for John Sparkman's seat in the U.S. Senate.

My race against George Wallace was heated for several months. And then, while speaking to the Alabama League of Municipalities Convention in Mobile, he announced his withdrawal from the Senate race, giving no reason for his decision. In advance of his announcement, I was told of several polls that showed I had pulled ahead of Wallace, including a poll conducted by the Wallace campaign itself.

I attracted other opponents, but won in a run-off race against Congressman Walter Flowers by a 2-to-1 margin.

As I think back over the reasons I entered the race for the U.S. Senate, certainly the issue of racial progress in Alabama was a motivating factor, and I was fearful that if George Wallace was in the Senate, it could deter needed changes in the civil rights laws.

In 1982, he ran again successfully for Governor. His last administration was one in which race relations were far more harmonious than they had been in his previous terms in office, with Wallace appointing a number of blacks to key positions in his administration. He publicly stated that his segregation stand had been wrong. At a recent meeting of southern black Democratic leaders in Atlanta, Dr. Joe Reed, head of the Alabama Democratic Conference, said I was the first U.S. Senator from Alabama who believed in civil rights and who took positive steps to advance the individual rights of all persons.

Mr. President, despite all the progress in race relations and civil rights over the years, there is still much to be done. Our work remains unfinished, as the church burnings illustrate. When I reflect on these horrifying arsons and the death of Judge Bob Vance just a few years ago, I am again reminded of just how much remains to be done.

Perhaps it is unrealistic to believe that we can ever have a truly colorblind society. As long as fear, ignorance, and emotion guide some peoples' thinking, there will be prejudice and bigotry. But we can look at the great progress we have made—just in the 18 years since I came to the Senate—and say that we are doing better.

Members might differ on their approaches to civil rights issues. These approaches will take on different forms based on the region of the country we come from, our personal philosophical beliefs, and our political parties. My approach has been to do as much as possible in the public arena to advance opportunity and justice. At times, this has meant working behind the scenes to secure progressive judicial nominations, to craft compromise legislation that could pass and be signed into law, and working with both sides of an issue to cool passions and promote harmony. At other times, it has meant taking strong symbolic stands aimed at education and putting the past behind us, such as the case with the United Daughters of the Confederacy issue.

Regardless of what approach we take as leaders, it is our duty to work in every way we possibly can to see that each and every American citizen enjoys the same liberty, freedom, and equality of opportunity as all others. The fulfillment of the promise of the Constitution demands that we always remain diligent in fulfilling this responsibility.

THE PARTIAL BIRTH ABORTION BAN ACT, H.R. 1833

Mr. DORGAN. Mr. President, I supported passage of the bill to ban partial birth abortions when it was approved by the Senate on December 7 and I voted last week to override the President's veto of this measure.

My position on abortion issues is clear. I have consistently stated that I would not support overturning the Supreme Court's decision in Roe versus Wade. I support a woman's right to have an abortion. I do not think we should turn back the clock 25 years and make abortion illegal, but we should work in every way to reduce the number of abortions that are performed. I have also cast votes here in Congress to oppose using Federal funds to pay for abortions except in cases of life endangerment, rape, or incest.

The Senate's vote last week was on whether to override the President's veto of legislation which would prohibit a physician from performing a partial-birth abortion, a procedure in which a fetus is delivered into the birth canal before its skull is collapsed and delivery is completed. This legislation contains a provision which would make an exception for partial-birth abortions that are necessary to save the life of the mother in cases in which no other medical procedure would suffice.

I simply cannot justify the use of this procedure to terminate pregnancies in which the mother's life is not at stake. For this reason, I voted to override the President's veto and to support the ban on partial-birth abortions.

OMNIBUS APPROPRIATIONS BILL

Mr. FEINGOLD. Mr. President, yesterday I was one of a handful of Members of the Senate to vote against the FY97 omnibus appropriations bill.

This was a difficult vote and I have mixed feeling about passage of this bill.

While I am pleased a Government shutdown was avoided, I am disappointed in the way the process was handled.

Various measures that warranted separate consideration, ranging from the immigration bill, to amendments to the age discrimination law to banking legislation, were wrapped into this massive bill. The measure was hundreds of pages long, and few Members of either body were fully aware of the wide range of items shoved into this must-pass bill at the 11th hour. It has been pointed out by a Member of the other body that you could get a double hernia just trying to lift this omnibus spending bill.

I predict that over the course of the next several weeks, there will be many surprises discovered in the package. Some of the special interest pork provisions are buried deep within the various titles, as well as policy changes that should have been debated in public and voted on without the pressure to keep the Government running.

Moreover, although we succeeded in avoiding a massive new tax cut that would have set us backward on the road to deficit reduction, this omnibus spending bill represents a missed opportunity to cut Government waste and stop the unnecessary spending. The fact that this bill was loaded up with special spending provisions for individual Members indicates that it is business as usual in Congress when it comes to spending Federal dollars. While we have made significant progress in reducing the Federal deficit, much of that work was done in the last Congress and we missed the opportunity in the 104th Congress to finish the job and truly get the Federal budget into balance.

This bill adds a whopping $9 billion in deficit spending for defense systems above what Department of Defense requested. When all of the fiscal year 1997 appropriations bills are lined up together, excessive spending on things like sending Russian monkeys into space and massive out-dated water projects out West continues to drain the Treasury. I voted against this bill because I think we could have done a much better job at curbing unnecessary spending, government waste, and reducing the Federal deficit.

SENATOR BILL BRADLEY

Mr. MOYNIHAN. Mr. President, nothing is typical about BILL BRADLEY, but some things are characteristic. As, for example, his article on the front page of the Washington Post's Outlook section this past Sunday. Just before the scheduled adjournment of the 104th Congress, bringing to an end for now his brilliant 18-year career as a U.S. Senator. The article is characteristically bipartisan: "It's Government by Tax Break Again: Clinton and Dole Should Be Talking About Fairness and Loopholes, Not Cuts and Credits." It is our pleasant custom to ask that such articles be reprinted in the RECORD, and I make that request, with the text to be placed at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. MOYNIHAN. Mr. President, the Senate will take the meaning from the title. BILL BRADLEY harkens back to the great 1986 tax reform bill, of which he, above all his colleagues, conceived, inspired, and helped to enactment. The principles were simple. First of all, above all, simplify. Two low rates. In that sense, cutting taxes. But paying for the lower rates by closing loopholes in the existing code which had acreted like a coral reef as Congress after Congress responded to the tiny this and the tiny that special interest, until a vast barrier separated the privileged from the people. I happened to be one of the core group that put together this legislation. We would meet early each morning in the office of Senator Bob Packwood, who was then chairman of the Finance Committee. My informal task was to provide a brief inspirational reading as the meeting commenced. It was then a simple task. I would simply glance through the previous day's Wall Street Journal looking for the best advertisement.

Typically, it would have a headline: "Guaranteed Losses" In finer print one would learn that a sheep ranch in Idaho, an alligator ranch in Florida, an ostrich ranch in Kansas would assure investors immediate losses that could be offset against other income, which losses would be recouped at some future date. And that was where entrepreneurial energy was flowing. To guaranteed losses that the Internal Revenue Code would turn into profits. BILL BRADLEY changed that. But the work is never done, and so he leaves us still talking the responsibilities of citizenship and legislation.

I will miss him as perhaps few others. We have served 18 years together on the Finance Committee. He has taught me; I have learned from him and followed him. And will continue to do so. Just last week, the Finance Committee convened for its last meeting of this Congress. BILL was asked to say a few words; which was all he ever will do. He recalled that in 1978 I came down to Princeton, NJ to campaign with him in that first campaign for the Senate. In the course of our stumping about, I urged him to try to get onto the Finance Committee, where so very much of the critical issues of American life are decided. He did and he showed why. I then recalled a passage from Woodrow Wilson at the time he was president of Princeton University. A student of the Presidency, Wilson was watching the growing intensity of Presidential campaigns. Candidates did not, of course, did not then go to the conventions that nominated them, but after nomination were getting into the business of making speeches from the rear of railroad trains and all manner of stressful campaigning. Wilson wrote that if this should continue, we would be reduced to choosing our Chief Executives from "among wise and prudent athletes: a small class." I thought that then; I think it now, as we say farewell to BILL BRADLEY—for now.

EXHIBIT 1

[From the Washington Post, Sept. 29, 1996]

IT'S GOVERNMENT BY TAX BREAK AGAIN

(By Bill Bradley)

All the candidates for president are talking about taxes, but none of them are really talking about tax reform. Just a few months ago, when dueling flat-tax plans were the rage, it looked certain that the fall campaign would bring a long overdue, serious debate about how to make the tax code simpler and fairer. How long ago that seems.

Both President Clinton and former Senator Dole have put taxes at the center of their campaigns (and Ross Perot has put an emblem with the letters IRS with a red slash through them at the center of his) but we have yet to see a complete and credible proposal for tax reform. American voters weren't joking earlier this year when public opinion polls showed voters expressing a strong desire for a simpler, fairer tax system. But neither Dole's far-fetched 15 percent cut in federal income tax rates nor the president's well-intentioned tax breaks lives up to that desire.

A 15 percent cut would be a wonderful gift to any middle-class family, who could use it to ease the pressures of education, child-care or housing costs. Unfortunately, the Dole plan is an insult to the intelligence of voters. The $500 billion in budget cuts that would be required to pay for the tax cut is unspecified, and Dole answers the question only with discredited Reagan-era theories about increasing revenues from lower taxes. Is this tax reform? It's not simpler, and if it leads to an explosion in the deficit, further burdening our children, it's certainly not fairer.

Dole would also cut capital gains taxes and add several new tax breaks, such as for large estates. His proposal would amount to a small tax cut for some middle-class families, a large tax cut for many rich individuals and investors, and a huge loss of revenue for the government. The effect would be similar to the chaos and unfairness of supply-side economics in the early 1980's. In the 1986 Tax Reform Act, we demonstrated that the way to lower rates while not increasing deficits is by eliminating loopholes simultaneously. We should not have to learn this painful lesson twice.

The president has come closer to tax reform by targeting some tax relief where it is most needed, and doing so within the constraints of a balanced budget. His child tax credit and higher education tax credit will reach families where they most need help to get ahead, and will adjust the tax system where it is most burdensome and least fair. I am proud to have initiated some of these proposals, including the child tax credit in 1991, and I support all of them. But I have no illusions: This kind of tinkering around the edges, granting temporary relief for some families, does not address the real need for a thorough restructuring of the American tax system.

The tax unfairness and tax complexities candidates should be talking about are the following: A family in which both parents work, earning $80,000 in salaries, can pay

more in taxes than an individual getting $80,000 from various investments. Thousands of narrow exceptions, exclusions, deductions and credits—for businesses ranging from oil rigs to convenience stores—reward powerful interests and their skilled lobbyists. These loopholes and anomalies are clearly unfair. The things a tax code should encourage, like work and family, are penalized. Not only do the loopholes make the code and the tax process more complicated than they need to be, they also drag down the efficiency of our economy as investors waste their time looking for tax dodges instead of seeking the kind of profitable investments that will create jobs and security.

If the candidates were really talking about tax reform, they would be saying things like: Citizens with equal incomes should pay roughly the same tax. Taxes should impede the capital allocation role of the market as little as possible. The system should be simple enough that most people and small business owners can fill out the forms easily. Taxpayers should be free to make their own decisions about spending and saving without worrying constantly about the tax implications.

These concepts can be translated into three simple ideas that must underlie any restructuring of the tax system: fairness, simplicity and efficiency. A decade ago, these principles made possible the 1986 Tax Reform Act, which cut rates for everyone, closed countless loopholes, eliminated the phenomenon of profitable corporations paying no tax at all and maintained a fair, progressive structure while reducing the number of tax brackets to just two. Democrats and Republicans supported these ideas. Bob Dole voted for it, and President Reagan signed it into law.

A decade later, Bob Dole and most Republicans seem to have abandoned these principles altogether, and many Democrats shy away from the issue. Once again, special interests have chewed through the tax code, leaving it riddled with confusing and unfair loopholes.

A simpler structure can be achieved, if candidates and legislators are willing to talk about it. It's not a flat tax, which benefits primarily the wealthy and treats income from labor differently from income from investments—and it's not a 15 percent across-the-board tax cut. I have in mind a plan which would have fewer rates (not one, but perhaps three). Almost everyone would pay at a lower rate. All tax preferences would be eliminated except those that benefit a clear majority of Americans and make sense economically—deductions for home mortgage interest, retirement savings, state and local taxes, and charitable contributions, for example. Loopholes that benefit only a narrow segment of the public would be closed. The resulting broader tax base would raise the revenue to pay for the rate cut—thus ensuring that the plan would not increase the deficit.

What are the prospects of such a tax reform plan becoming law? Slim to none without serious attention from a president. The debate over true reform has been sidelined. The candidates and the nation are missing a tremendous opportunity.

TRIBUTE TO DIANE BALAMOTI AND TERESA BRELAND

Mr. JOHNSTON. Mr. President, on several occasions over the past few days, I have taken the floor to express my appreciation to my fine staff for their loyal service to me and the committee over the years. Today, I want to say thank you to two staff members of the Energy and Natural Resources Committee.

Diane Balamoti has been with the committee since 1987. During this period she has served as the staff assistant to the Park and Public Lands Subcommittee. As many of my colleagues know, this subcommittee has always been one of the most active and prolific subcommittees in the Senate. During her 10 years with the committee, Diane has staffed countless hearings and business meetings and assisted in the preparation of bills, statements, and the drafting of committee reports. She has kept the subcommittee's voluminous bills files and tracked the work of the subcommittee through the Senate and House. Diane possesses truly outstanding clerical skills which are often tested, especially at the end of a Congress when the pace of the committee's business always quickens. Ms. Balamoti has been a dependable, productive, and important member of our committee staff for many years and I want her to know how much I appreciate her service to me and the country.

In addition, Mr. President, I want to thank Teresa Breland, the newest full time staff member on the Energy Committee minority staff. Terri, who has been with us slightly over a year, has served as our receptionist in the minority office and has more recently been the assistant to our staff director for the minority, Ben Cooper. Mr. President, Terri is one of those dedicated public servants who puts in a full day's work on the Hill and then goes to school at night. She is just about to finish her master's degree in psychology and I commend her for a job well done.

BIF/SAIF

Mrs. FEINSTEIN. Mr. President, would the chairman yield for the purposes of a brief colloquy to clarify a provision of the banking title to H.R. 3610, the omnibus appropriations bill, addressing the Bank Insurance Fund and the Savings Association Insurance Fund?

Mr. D'AMATO. I would be happy to yield to the Senator from California.

Mrs. FEINSTEIN. Am I correct that the new prohibition on deposit shifting set forth in section 2703(d) of the bill, if not carefully applied by the Federal bank regulators, could raise serious issues of interference with first amendment rights of free speech?

Mr. D'AMATO. We share the Senator's concern. In response, let me say that it is not our intent that the regulators implement the deposit shifting provision in a way that would raise constitutional free speech issues. The Supreme Court has made it clear that the first amendment protections do indeed extend to lawful and accurate business communications and we expect the regulators to abide by these decisions.

PARKS OMNIBUS LEGISLATION UPDATE

Mr. MURKOWSKI. I want to assure my colleagues that we are continuing to have discussions with the administration relative to the disposition of the parks omnibus bill, and I hope that those bear some meaningful resolve before the day is out. Those discussions are going on now, and, I might say, Mr. President, I am somewhat encouraged, but I have been at that stage before, as well.

I know there is a lot of interest in it, and I want to at least advise my colleagues of the current status. It has been somewhat like how I would envision a Chinese torture chamber might be, had I ever been exposed to one—and perhaps I have been exposed to one and just do not know it.

In any event, the ultimate outcome of this still depends on the administration recognizing that we need some assurance on timber supply to supply our three existing operating sawmills in our State, and hopefully provide enough for the fourth one that has been shut down for 2 years. That is where we are on the issue of resolving our differences.

There are other differences. In fact, the State of Colorado, particularly, and the State of Virginia, we appear to be working some of those issues out, as well. Of course, it would require a process of amending the House bill which is pending but subject to an objection under a unanimous-consent request. But that would be the vehicle. Then we would send it back to the House, and the House would either accept or reject it. So that is where we are, Mr. President.

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

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

PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of Senate bill 2183 introduced earlier today by Senator DOMENICI.

The PRESIDING OFFICER. The clerk will report.

The legislation clerk read as follows:

A bill (S. 2183) to make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

WELFARE AMENDMENT DESCRIPTION

Mr. DOMENICI. Mr. President, this bill would clarify congressional intent and allow all States, regardless of when the State opts to start the new block grant program, access to contingency funds if they qualify. The welfare bill limits funds available to a State in 1997 to the State's block grant amount, but requires a State of have an approved welfare reform plan before being eligible for a contingency fund payment.

Prior to opting into the new Temporary Assistance for Needy Families [TANF] Program, the State must operate under the current law Aid to Families with Dependent Children [AFDC] entitlement program. There are a handful of States that have rising caseloads and rising unemployment that normally would be eligible for the contingency fund. The authorizing committees, in a letter to HHS Secretary Shalala, indicated that congressional intent was that all States should be eligible for the contingency fund regardless of when they opt into the new TANF program. HHS has stated that legally they cannot give payments out of the contingency fund without a legislative change.

Many States will not be able to opt into the block grant until the legislation's effective date of July 1, 1997. For example, New Mexico's State Legislature will not convene until January 1997 and the legislative process will take time to develop a welfare reform plan.

Since CBO had assumed States would receive payments from the fund, the welfare bill was scored with costs (outlays from the fund.) Since this legislation clarifies intent, CBO scored no cost.

CBO identified a number of States that may have a problem because of rising unemployment or rising caseloads. These States include Nevada, New Mexico, Alaska, Hawaii, Idaho, and Minnesota. So far it is unclear which States will actually have a problem.

AMENDMENT NO. 5424

Mr. MURKOWSKI. Mr. President, there is an amendment at the desk by Senator DASCHLE. I ask for its consideration.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Alaska [Mr. MURKOWSKI], for Mr. DASCHLE, proposes an amendment numbered 5424.

At the appropriate place, insert the following:

SEC. . EXTENSION OF NORTHERN GREAT PLAINS RURAL DEVELOPMENT COMMISSION.

Section 11 of the Northern Great Plains Rural Development Act (Public Law 103–318; 7 U.S.C. 2661 note) is amended by striking "the earlier" and all that follows through the period at the end and inserting "September 30, 1997.".

Mr. DOMENICI. Mr. President, this amendment is very simple. The amendment clarifies congressional intent and allows all States, regardless of when they opt into the block grant, access to the contingency fund.

The welfare bill restricts States funds in fiscal year 1997 to the block grant amount, even though the effective date for the new program is July 1, 1997. States may operate under current AFDC rules until then.

Congress never intended that States have financial difficulties prior to starting the new program.

In fact, most States make money under the block grant because caseloads have dropped, so the funding limitation never comes into question.

There are handful of States, including my home State, that have had caseload increases since the establishment of the block grant. These States could experience a funding shortfall during the transition period—a situation not foreseen in the original legislation.

Congress created the contingency fund for just this problem.

However, the contingency fund is available only to eligible States and HHS' interpretation is that an "eligible State" is a State that has opted into the block grant.

Most States do not have full-time legislatures that can convene and develop a new welfare plan. For example, New Mexico's Legislature does not convene until January 1997. Therefore, it will take time for New Mexico's welfare plan to be implemented.

Both the Finance Committee and Ways and Means wrote a letter to HHS advising the agency of congressional intent, but HHS responded by saying there must be a legislative change.

This amendment has no cost attached to it. CBO assumed that all States could have access to the funds and as such scored outlays in the welfare bill.

This amendment does not change the way States qualify for the fund—it is not limited to any particular State—any State that qualifies can access the funds as well.

This amendment has the support of the authorizing committees and the administration.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the amendment be agreed to, the bill be advanced to third reading and passed, and the motion to reconsider be laid upon the table, all without further action, or debate.

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

The amendment (No. 5424) was agreed to.

The bill (S. 2183), as amended, was passed, as follows:

S. 2183

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TECHNICAL CORRECTIONS TO THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996.

(a) CLARIFICATION OF LIMITATION ON CERTAIN FEDERAL OBLIGATIONS FOR 1997.—Section 116(b)(1)(B)(ii)(II) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended—

(1) in item (aa), by striking "the State family assistance grant" and inserting "the sum of the State family assistance grant and the amount, if any, that the State would have been eligible to be paid under the Contigency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act under subsection (a)(1) were August 22, 1996,"; and

(2) in item (bb)—

(A) by inserting "sum of the" before "State family assistance grant"; and

(B) by striking the period and inserting ", and the amount, if any, that the State would have been eligible to be paid under the Contingency Fund for State Welfare Programs established under section 403(b) of the Social Security Act (as amended by section 103(a)(1) of this Act), during the period beginning on October 1, 1996, and ending on the date the Secretary of Health and Human Services first receives from the State a plan described in section 402(a) of the Social Security Act (as so amended) if, with respect to such State, the effective date of this Act under subsection (a)(1) were August 22, 1996.".

(b) CORRECTIONS RELATED TO THE CONTINGENCY FUND FOR STATE WELFARE PROGRAMS.—Section 403(b)(4)(A) of the Social Security Act, as amended by section 103(a)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, is amended—

(1) in clause (i)(II), by striking "minus any Federal payment with respect to such child care expenditures"; and

(2) in clause (ii)(I)—

(A) by inserting "the sum of" before "the expenditures"; and

(B) by inserting ", and any additional qualified State expenditures, as defined in section 409(a)(7)(B)(i), for child care assistance made under the Child Care and Development Block Grant Act of 1990" before the semicolon.

(c) CLARIFICATION OF HEADING.—The heading of section 116(b)(1) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 is amended by inserting "; LIMITATION ON FISCAL YEARS 1996 AND 1997 PAYMENTS" after "DATE".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the provisions of and the amendments made by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

SEC. 2. EXTENSION OF NORTHERN GREAT PLAINS RURAL DEVELOPMENT COMMISSION.

Section 11 of the Northern Great Plains Rural Development Act (Public Law 103–318;

7 U.S.C. 2661 note) is amended by striking "the earlier" and all that follows through the period at the end and inserting "September 30, 1997.".

PROVIDING FOR THE CONVENING OF THE 105TH CONGRESS AND COUNTING ELECTORAL VOTES

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Senate proceed to the consideration of House Joint Resolution 198 regarding the convening of the 105th Congress and the counting of electoral votes which was received from the House.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

A joint resolution (H.J. Res. 198) appointing the day for the convening of the first session of the One Hundred Fifth Congress and the day for the counting in Congress of the electoral votes for President and Vice President cast in December of 1996.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the joint resolution?

There being no objection, the Senate proceeded to consider the joint resolution.

Mr. MURKOWSKI. Mr. President, it is my understanding from the clerk that the Senate will come back on the 7th and count the electoral votes on the 9th.

The PRESIDING OFFICER. That is the understanding of the Chair.

Mr. MURKOWSKI. I thank the Chair.

I ask unanimous consent that the resolution be deemed read a third time, passed, and the motion to reconsider be laid upon the table.

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

The joint resolution (H.J. Res. 198) was deemed read a third time, and passed.

THE NATIONAL SECURITIES MARKETS IMPROVEMENT ACT OF 1996—CONFERENCE REPORT

Mr. MURKOWSKI. Mr. President, I submit a report of the committee of conference on (H.R. 3005) and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 3005) to amend the Federal securities laws in order to promote efficiency and capital formation in the financial markets, and to amend the Investment Company Act of 1940 to promote more efficient management of mutual funds, protect investors, and provide more effective and less burdensome regulation, 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, 1996.)

Mr. D'AMATO. Mr. President, today I speak in support of H.R. 3005, the National Securities Markets Improvement Act of 1996. This bill is a critical piece of securities legislation that will vastly improve our securities markets and provide important investor and consumer protections.

As most of my colleagues already know, an earlier version of this bill, S. 1815, passed the Senate unanimously in late June. That bill enjoyed strong bipartisan support. As testament to that support, we were able to introduce the bill, mark it up in committee, and pass it through the Senate within 2 months.

Through hard work on both sides of the Capitol, the House and Senate conference on H.R. 3005 produced a sound bill that thoughtfully and carefully tightens the securities laws. I thank my distinguished colleagues and conferees whose tenacity and dedication have made it possible to produce this legislation. I thank the chairman and ranking member of the Securities Subcommittee, Senators GRAMM and DODD, along with the ranking member of the full committee, Senator SARBANES. I also thank my esteemed colleague, Senator BENNETT, who has been very helpful to the committee on securities legislation this Congress. I thank the staffs: Howard Mennell, Steve Harris, Laura Unger, Wayne Abernathy, Mitchell Feuer, Andrew Lowenthal, and Robert Cresanti, as well as the legislative counsel, Laura Ayud, who literally made this bill possible.

Mr. President, I urge the Senate to act expeditiously on this conference report so that we may then forward it to the White House for the President's signature.

The National Securities Markets Improvement Act of 1996 is a significant piece of legislation that will ensure that the U.S. securities market remains the pre-eminent securities market in the world. The U.S. securities market has the most capital and the most investors. Over 50 million Americans own stocks, not counting more than 10,000 institutional investors. Last year, the U.S. stock market had $7.98 trillion in capital—close to half the amount of capital in the entire world market.

This legislation will make it easier to raise capital in the securities market. The bill will create a new category of unregistered private investment companies that will help venture capitalists tap the capital markets to fund business endeavors. It will also bring more funding and investment to small business by making it easier for economic, business, and industrial development companies to raise money without having to register with the SEC and by providing liquidity and investment opportunities to business development companies.

The bill will promote capital formation by eliminating many overlapping State and Federal requirements for registering securities. It eases the restrictions on borrowing that currently restricts U.S. broker-dealers' sources of funding their business. The bill will make U.S. broker-dealers more competitive in the global markets. It will also allow U.S. firms to pass on substantial savings to their customers.

This bill will make the securities laws reflect the reality of today's marketplace. It will simplify procedures for paying fees and making disclosures. It will give the Securities and Exchange Commission flexibility to adapt to the changing financial market by letting the SEC say the securities laws don't apply where they don't make sense.

This legislation will tighten up regulation by giving the States and the SEC distinctly separate regulatory roles. It will divide between the SEC and the States regulation of the 22,000 registered investment advisers who are entrusted with $10.6 trillion in customer funds—much of which represents savings and retirement money. As a result, investment advisers will be better regulated and consumers and investors better protected.

The bill will make the mutual fund market a national market, that will be comprehensively regulated by the SEC. Mutual funds have become a household commodity in the last several years with almost one-third of U.S. households—that's 30 million households—owning a total of $2.7 trillion in mutual funds. This bill recognizes that the growth in the mutual fund industry means that it is no longer practicable for all 50 States to have a hand in what goes into a mutual fund prospectus.

This legislation also makes sure investors and consumers are not confused about what's in a mutual fund by giving the SEC authority to set standards on mutual fund names.

This is not a controversial bill, it enjoys support on both sides of the aisle. It thoughtfully and carefully tightens the laws governing the securities market. I commend my colleagues and their staff for their excellent work in drafting this legislation and urge my colleagues to support passage of the bill.

Mr. DODD. Mr. President, I rise today to join my colleagues in supporting the passage of the conference report on H.R. 3005, the National Securities Markets Improvement Act of 1996. Allow me to begin by offering my heartfelt congratulations to my fellow conferees: Senators D'AMATO, SARBANES, GRAMM, and BENNETT, with whom I worked very closely in first

creating and now passing this thoughtful and strongly bipartisan bill. I believe that the high quality of this legislation is demonstrable proof of what can be accomplished when we set aside our partisan differences to work for the good of the Nation.

As I've said many times, the U.S. capital markets are vitally important for the good economic health not only of virtually every American company but for millions and millions of individual investors who have placed some of their assets either directly in securities or, as has become more and more common, into mutual funds.

Sustained economic growth is heavily dependent upon the continuing ability of our capital markets and financial services industry to function efficiently and with integrity. If companies find impediments to obtaining capital, they will not grow. If individuals find impediments to their access to securities and other investments, they will not save.

Taking steps to enhance the access of both corporations and individuals to the securities markets is a prudent means by which Congress can help sustain or even increase the Nation's rate of economic growth.

Furthermore, the American capital markets are the envy of the world. No other Nation enjoys the international reputation of our capital markets and it is necessary for Congress periodically to review and modernize, where necessary, the laws that make our markets and our financial services industry the world's leader.

I will acknowledge that it took us a little longer to get to this point than I had anticipated when the Senate passed S. 1815 at the end of June. Despite the other body's initially leisurely attitude toward conference negotiations, we have collectively achieved an excellent product.

This conference report, which I hope that the Senate will adopt today, is the culmination of a lengthy bipartisan effort to reform those aspects of the securities laws that are an outdated impediment to the efficient functioning of the securities industry.

The legislation will also provide clearer statutory directives to both State and Federal regulators so that the integrity of—and confidence in—our capital markets and financial services industry is enhanced.

Without going into excruciating detail, let me just highlight the main areas that this legislation covers: it improves the regulation of investment advisors by clarifying the proper roles of the SEC and the State regulators; it modernizes and streamlines the regulation of mutual funds on the one hand, and provides badly needed modernization of the statutes covering hedge funds and venture capital funds on the other hand; it provides for clarification on a host of technical matters ranging from treatment of church pension plans to the access by U.S. journalists to foreign issuer press conferences. And, significantly, the bill creates the mechanism for increased regulatory flexibility so that the SEC will have the ability to keep pace with needed regulatory changes as the needs and demands both of investors and the financial industry develop over time.

As I mentioned earlier, the legislation will allow the creation of a new kind of private investment company that is exempt from the restrictions of the Investment Company Act of 1940. Because this is a new mechanism for fund managers to use, we provide safeguards for participants in existing private investment companies. Any fund manager seeking to convert their existing fund to a new fund—called 3(c)[7] funds in the bill—must offer all their participants the option to first "cash out." It is further the intent of the conferees that these dissenter's rights not be evaded by fund managers who might seek to either invest their existing fund solely in the new fund or to simply have the old fund exactly mirror the investment decisions of the new fund. The conferees expect the commission to be particularly vigilant in this matter. It is also the expectation of the conferees that the commission act swiftly to define the term "Beneficial owners." It is the intent of the conferees that when such notices are given to institutional investors, the notice be given only to the controlling entity of that institution, not directly to all of the investing institution's underlying investors or participants.

I am also pleased that the conference report will require the Commission to study the impact of recent judicial and regulatory rulings that have limited the ability of shareholders to offer proposals at shareholder meetings regarding a company's employment practices. The abilities of shareholders to offer such kinds of resolutions such as the "Sullivan principles" for South Africa and the "MacBride principles" for Northern Ireland have had a direct impact on ensuring that U.S. corporations do not participate in the loathsome discriminatory practices that occurred—or still occur—in those Nations. I look forward to the results of the Commission's study in a year's time.

I would also note a few important provisions from the House bill that were included in this conference report. First, the conference report contains a 10-year authorization for the Securities and Exchange Commission that will reduce registration fees that were a drag on capital formation and will provide a level playing field for transaction fees on the New York Stock Exchange, the American Stock Exchange, and the NASDAQ stock market. This provision is a huge improvement over the House's original plan, since the plan first adopted by the House would have caused a negative impact upon programs in the Commerce Department, Justice Department and the State Department.

The Senate played a critical role in forcing the other body to reach agreement with the administration and Senate appropriators so that the goal of fee reduction could be achieved without harming other important Federal programs.

The conference report also contains a requirement for the establishment of uniform State laws on books and records for broker-dealers. While this uniformity has long been sought by State regulators, the SEC and industry, I remain concerned that some States will have to adjust their laws regarding books and records kept at branch offices. It is the intent of the conferees that the SEC work closely with the States to determine what records should be maintained at branch offices and to establish a mechanism so that States could require such records be kept in the branch office, rather than at a back office halfway across the Nation.

At this time, it is also appropriate to thank the Senate staffers who have worked so hard on turning ideas and goals into concrete legislation. I extend my congratulations and appreciation to Andrew Lowenthal from my staff; Laura Unger, the majority counsel; Mitchell Feuer, the minority counsel; and, Wayne Abernathy, the majority staff director of the Securities Subcommittee. I would also like to extend my thanks to someone who frequently, though unjustly, goes unmentioned when accolades are given on the floor—Laura Syoud of the Senate legislative counsel's office whose expertise was invaluable in solving some of the most difficult problems we confronted in drafting not only this conference report, but in the original Senate legislation.

Mr. President, this is a carefully balanced bill that, upon enactment by President Clinton, will improve our Nation's securities laws to allow the markets to function more efficiently, while balancing those reforms by maintaining, and in some cases enhancing, The full strength of investor protections that have made our markets the best in the world.

I urge my colleagues to support adoption of this important legislation.

Mr. SARBANES. Mr. President, I am pleased that the Congress has today enacted H.R. 3005, the National Securities Markets Improvement Act of 1996. Both the Senate and the House of Representatives passed legislation intended to promote efficiency in the regulation of mutual funds, better allocation of responsibility between Federal and State securities regulators, and elimination of outdated provisions. While the two bills had much in common, they also

differed in certain respects. I commend Senator D'AMATO for his leadership of the Conference Committee, which has successfully bridged the differences between the two bills. Credit also goes to Senator GRAMM, Senator DODD, Senator BENNETT, and the House Conferees. The final product is a reasonable bill that deserves support.

This bill has two major themes: first, improvement of mutual fund regulation, and second, reallocation of responsibility between Federal and State securities regulators. It is appropriate to review the regulation of mutual funds, given the tremendous growth in this segment of the financial services industry. Mutual fund assets now equal insured bank deposits in size. The legislation contains a number of provisions supported by the SEC that are intended to allow mutual funds to operate more flexibly. These provisions include allowing the SEC to require mutual funds to provide shareholders with more current information and to maintain additional records that will be available to the SEC. Given the importance that mutual funds now have as an investment vehicle for millions of American households, it is crucial that information be available for mutual fund shareholders, and these provisions address that need. Both the Senate and House bills contained provisions creating a new exemption for funds open solely to sophisticated investors know as qualified purchasers. In the conference report, the House and Senate reached a compromise on the definition of qualified purchaser.

With respect to the role of the States in securities regulation, let me say that State securities regulators play a crucial role in policing our markets. Still, dual regulation need not mean duplicative regulation. The State regulators themselves have convened a task force to recommend how securities regulation can be made more efficient and effective by dividing authority between the Federal and State level. This conference report retains the provision of the Senate bill, that the SEC may preempt State laws only with respect to securities traded on the New York Stock Exchange, the American Stock Exchange, the NASDAQ, or other exchanges with substantially similar listing standards. The provision in the House bill would have preempted State law for securities not traded on an exchange. The conference report does contain preemption provisions from the House bill that were not present in the Senate bill, addressing secondary trading and regulation of brokerage firms.

The House and Senate compromised on the investment adviser provisions of the Senate bill. These would have removed investment advisory firms with $25 million or more under management from State regulation. The conference report provides that investment adviser representatives of such firms will continue to be licensed by the States in which they have places of business. The bill does not prohibit a State from requiring that investment adviser representatives doing business in that State designate a place of business in the State, such as an address for service of process, for purposes of maintaining State licensing authority over such individuals.

This is a moderate bill, and appropriately so, for the Federal and State laws governing our securities markets and the participants in those markets are not in need of wholesale changes. All the evidence suggests that the U.S. securities markets are functioning well. Companies continue to raise capital in the U.S. markets in record amounts. In addition to established businesses, new companies have been raising capital in record amounts. Individual investor confidence in the securities markets, measured by direct investment in securities and investment through mutual funds and pension plans, remains high. The U.S. securities markets retain their preeminent position in the world.

As passed by the conference, this bill strikes a reasonable balance. It should improve efficiency in the regulation of our securities markets without unduly limiting the authority of the State regulators, thereby exposing investors to sharp practices. The bill received support from Democratic and Republican House and Senate conferees, and was passed by the House unanimously 2 days ago. I am pleased that the House and Senate, Democrats and Republicans alike, were able to reach consensus on this legislation.

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the conference report be considered as adopted, the motion to reconsider be laid upon the table, and statements relating to the report appear at the appropriate place in the RECORD.

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

The conference report was agreed to.

RECESS

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, and passed, the Senate will stand in recess until 2:15.

Thereupon, the Senate, at 12:35 p.m., recessed until 2:13 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. SMITH).

FEDERAL AVIATION REAUTHORIZATION—CONFERENCE REPORT

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. Under the previous order, there will be 3 hours of debate on the conference report equally divided.

Mr. MCCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona is recognized.

Mr. MCCAIN. Mr. President, I designate myself as being in charge of the time for this side of the aisle.

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

Mr. MCCAIN. Mr. President, I will be brief.

We have decided and the reality is that we will pass this bill. Under the unanimous-consent agreement we entered into yesterday, we will have a cloture vote on Thursday, it is obvious that there are well in excess of 60 votes for passage of this conference report. Unfortunately, for reasons that are not clear to me, the other side has chosen to delay until Thursday that cloture vote. Then, of course, there is the possibility of utilizing time after that.

Meanwhile, funding for much-needed projects is being held up. Funding for projects that are vital, in the view of many States throughout the country, which I will be describing at a later time, is being held up. I do not know why it is being held up. I do not know if it is at the behest of the Teamsters Union. I do not know if it is at the behest of some other labor unions. I do not know why. This provision was inserted by the Senator of South Carolina in conference and voted and carried nearly unanimously. It was the correction of a technical error. Now, the Senator from Massachusetts has tied up the Senate, going through the arcane obstruction and delay such as having the bill read for nearly 5 hours last evening. All but two pages of it were required to be read last night. I do not know why that happened, but the fact is we should be taking up this conference report and passing it right now. There are plenty of Senators who are still in town. We could do it now.

Why the Senator from Massachusetts insists on delaying these programs and projects—do you know what these programs and projects are? These are jobs. These are real jobs for working men and women around America who want to move forward to take their jobs and are now precluded from doing so until this conference report is signed.

The fiscal year ended last night at midnight. We are now a little more than 14 hours into the new fiscal year and thousands, literally thousands of men and women who are not working on these critically needed airport projects. We are now 14 hours into the new fiscal year where much needed improvements having to do with aviation safety and airport security are not being accomplished. We will go into Thursday at minimum, which is 2 more days away. Then the conference report is signed. Then it has to go to the President's desk for signature. We could be talking about several days, all because the Senator from Massachusetts objects to us moving ahead and

voting on the conference report which has the overwhelming support of the Members of the Senate. Let me be clear, the provision in question was proposed on his side of the aisle in the conference, which was a technical correction to a drafting error and we all know it was a technical correction—that is all.

I say to the men and women who want to go to work, who want to help build their communities, who want to improve aviation safety and airport security, who want to do the things that this Congress and the American people want them to do, I am sorry; I am sorry this bill is being held up for no good reason. People can draw their own conclusions as to why this legislation is being held up.

There is no excuse for it. There is no reason for it. I know that people who are members of airport authorities, people who are involved in small businesses around the airports that supply the equipment and all the materials that go into the various airport construction and modernization projects around this country are asking the same question.

Now, perhaps the Senator from Massachusetts does not care about these small business people. Most of them are not union people. They do not give $35 million to defeat incumbent Republican Congressmen and Senators. No, they do not. They are just small business men and women around America who are trying to do their job and have been told these construction projects would move forward at the beginning of the fiscal year.

Now they are not. Now they are not. They are being held up.

It is interesting that we should have the deep concern and abiding concern about raising the minimum wage to help men and women around America. I wonder how many months at the current minimum wage increase these people are going to have to work in order to make up for the days and possibly weeks that are involved in the delay that is being orchestrated by the Senator from Massachusetts and a handful of other Senators on the other side of the aisle. I am going to try to get those calculations done between now and Thursday.

I think it is unconscionable. I think it is outrageous. I strongly recommend that the Senator from Massachusetts, for the sake of his own State, for the sake of the programs in his own State, would want to move forward so these people can go to work, so these airports can be improved, so we can get these much needed airport projects done.

Mr. President, let me tell you what is in Massachusetts. General Edward Lawrence Logan Airport in Boston, MA, $3,691,173; Nantucket Memorial Airport, Nantucket, MA, $949,962; the Barnstable Municipal Airport in Hyannis, $797,690; Martha's Vineyard Airport, $500,000; Worcester Municipal Airport, $500,000; New Bedford Regional Airport, $500,000; Provincetown Municipal Airport, $500,000—a total of $7,438,826 in Federal dollar entitlements, matched by $3,539,692 in Federal dollar State apportionments—a total of $10,978,518 the people of Massachusetts right now are being deprived of.

I do not understand it. I do not understand it, especially since this fight is over. This fight is over because we all know what is going to happen on Thursday.

"General Edward Lawrence Logan Airport, Federal Aviation Grants, $2 million, Noise Grant Program, Funding Crisis Alert."

This is from the mayor, Mayor Thomas M. Menino, City of Boston.

General Edward Lawrence Logan Airport, Federal Aviation Grants, $2 million, Noise Grant Program, Funding Crisis Alert.

A crisis exists which threatens future grants for airports.

Excise taxes, including the airline ticket tax, which funds federal airport grant programs, have expired.

Congress must pass a short-term extension of these taxes in order to make the aviation trust fund solvent again.

Please urge Boston's representatives in Congress to save the airport program.

Save the airport program? Mr. President, I want to tell the mayor of Boston I will do everything I can, but I suggest that he contact Senator KENNEDY.

This is harsh language. These are harsh things I am saying in the Senate Chamber. I realize that. It is late in the season. We are in a political campaign. But I want to repeat, there is no rationale or excuse. I see the Senator from Massachusetts on the floor, so I directly ask the Senator from Massachusetts—I directly beg him to let us move forward and have a vote immediately, an immediate vote on the conference report. He has already lost. Let us have a vote on the conference report now and let us get this over with, get the bill to the President of the United States and have him sign it so we can move forward with these critical airport projects and let the working men and women all over America who want to begin work on $9 billion worth of projects, let them get to work. Let these airport related improvements be made. Let the aviation safety and airport security programs be implemented.

I will read in just a minute the safety and security provisions that are in this bill which are being held up because of the Senator from Massachusetts' reluctance to allow us to move forward. Mr. President, there are various airport security and aviation safety projects which are in this bill, which I will not read at this time, but I can tell you that there are at least 100 or more all over the United States.

Let me tell you about some of the aviation safety and airport security provisions. This bill requires the FAA to study and report to Congress on whether some security responsibilities should be transferred from airlines to airports and/or the Federal Government. The FAA is directed to certify companies providing airport security screening. This legislation, as soon as the President signs it, bolsters weapons and explosive detecting technology by encouraging research and development. It requires that background and criminal history records checks be conducted on airport security screeners and their supervisors. It requires the FAA to facilitate the interim deployment of currently available explosive detection equipment. It requires the FAA to audit effectiveness of criminal history records checks. It encourages the FAA to assist in the development of passenger profiling systems. It permits the Airport Improvement Program and Passenger Facility Charge funds to be used for safety and security projects at airports.

Mr. President, the Airport Improvement Program funds cannot be used for such safety and security projects at airports unless the Senator from Massachusetts lets us move forward with this bill.

The FAA and FBI must develop a security liaison agreement. We cannot begin on that. The FAA and FBI must carry out joint threat assessments of high-risk airports. We cannot begin on that.

It requires the periodic assessments of all passenger and air carrier security systems. It requires a report to Congress on recommendations to enhance and supplement screening of air cargo.

Mr. President, on aviation safety, it eliminates the dual mandate and reiterates safety be the highest priority for the FAA. It facilitates the flow of the FAA operational and safety information. The FAA may withhold voluntarily submitted information.

It authorizes the FAA to establish standards for the certification of small airports to improve safety of such airports. It directs the NTSB and FAA should work together to improve safety data classification so as to make it more accessible and consumer friendly and then publishes it.

It requires the sharing of pilot's employment records between former and prospective employers to ensure marginally qualified pilots are not hired. It discourages attempts by child pilots to set records or perform other aeronautical feats.

It also requires the FAA and NTSB to work together to develop a system so that the notification of the next of kin can be done in the most humane and compassionate fashion.

I do not know why the Senator from Massachusetts will not let us move forward. I ask at this time unanimous consent that we move immediately to the conference report and vote on it.

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

Mr. KENNEDY. Mr. President, I object.

The PRESIDING OFFICER. Objection it heard.

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

The PRESIDING OFFICER. Who yields time?

Mr. KENNEDY. Mr. President, I ask unanimous consent that we go immediately to the bill on the calendar on the FAA authorization that is without the labor provisions.

Mr. McCAIN. Reserving the right to object, the Senator from Massachusetts knows full well the House of Representatives, the other body, is out and is not coming back. The Senator from Massachusetts also knows——

Mr. KENNEDY. Regular order, Mr. President. Is there objection?

Mr. McCAIN. I was stating my reservation.

The PRESIDING OFFICER. There is objection?

Mr. McCAIN. I object.

The PRESIDING OFFICER. Objection is heard. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, the House of Representatives is subject to the call of the Chair by the Speaker. As time-honored practice and procedures, they have followed that on countless occasions. I am glad we were able to clear the air of some of the comments that were made earlier by the Senator from Arizona.

Mr. President, I wish very much that we had been able to have passage of the FAA conference report. My friends and colleagues have talked about the urgency of these various programs. I do not know what delayed the members of the committee itself, or the conference, from bringing it to the Senate in these last hours. With all the points that were raised by the Senator from Arizona, I would have thought we would have had an opportunity to have this matter earlier in the consideration of the Senate Calendar. I do not know what happened during the course of those discussions or debate, but clearly the Republicans chaired those conferences and they bear a direct responsibility as to when those conferences are going to report back.

I heard the Senator from Arizona saying that, now that we have this in these final moments of the Congress, now we have to act. We ask: Where was this conference earlier in the course of this session? Why did we not act on it at an earlier period of time? Why is it one of the last pieces of legislation that we have before the Senate?

Clearly, it is because those who support this provision, which is the subject of our debate and discussion here this afternoon, felt they could jam the Senate in terms of this particular provision.

That is an old technique. The Senator from Arizona is familiar with it, as I am familiar with it. We ought to put it in some kind of a context.

The fact remains, Mr. President, when we had the continuing resolution before us yesterday, I was prepared to offer the FAA conference report without this special provision that benefits only one company and that will give it particular advantages, which it does not have at the present time, over the ability of their workers to organize into a union. But that was objected to by the Republicans.

Now they are saying, "Well, why didn't we pass this?" And they try to put the blame on the Senator from Massachusetts. We could have passed this overwhelmingly. I don't think there would have been a vote against it, if we had done it yesterday with a 10-minute time consideration. But, no, there was objection to that.

Now we say, "All right, let's get into why now our Republican friends and some Democrats want to have this longer, drawn-out process and procedure."

Mr. President, I want to address a few issues here this afternoon. We have other colleagues who will come to the floor who I hope will enter into this.

First of all, I want to point out that I wish that those who are saying that somehow we are delaying this and somehow there are safety considerations, I wish they had acted on those concerns yesterday. We could have done this. We could have passed it. Effectively, they said, "No, we're not going to do that, we're not going to pass the FAA conference report without that special interest provision. We refuse to do it, even though the conference report has all those safety mechanisms."

And now after they refuse to do it, they come over here on the floor and say, "We should pass it right away. I ask consent we pass it right away because of these safety provisions."

I think it is important to understand, and I know there are members of the committee who have a great deal more knowledge and experience about what is in this bill, but as I understand it, the operation account, which funds air traffic controllers, safety inspectors, security personnel, airport noise personnel, maintenance personnel, as well as everything and everyone that runs air traffic in the United States, not one of those operations is affected by the FAA reauthorization bill.

Also, security personnel who operate the metal detectors to screen baggage are employees of the airlines who use the terminal, and, therefore, are unaffected by this legislation.

Second, the facilities and equipment account pays for the display terminals, air traffic controllers, look-out radar equipment and other equipment used in the aviation industry. None of this is affected by the FAA reauthorization bill.

Third, the research account funds all sorts of aviation research. For example, FAA has funded research on the best x-ray machines for checking bags. All of this research is totally unaffected by the pending FAA authorization bill.

The Airport Improvement Program is the only FAA program that is affected by the pending FAA reauthorization bill, as I understand. AIP awards grants for airway improvements, and the contract authority for these programs depends upon the passing of the FAA reauthorization bill. While the AIP programs may be highly desirable, they do not affect the safety of the aviation industry, and those are the facts.

I think when we are taking a look at these scare comments, we ought to try and put this into some kind of perspective. We are going to have an opportunity to vote on this measure in 2 days, in any event, but safety is simply not affected by this bill. We know this is true because in 1994, the FAA reauthorization bill was not passed for almost 11 months. There was no question at that time with regard to safety. As I say, if there was such the urgency at the time, I suspect the Republicans who bore the responsibility of moving that process would have brought it forward at the time.

Mr. President, what is really at issue here, and why are we at this juncture? I refer, if I can, to some of the House debate. The House debated this issue. As a matter of fact, with all due respect for those who talk about a technical amendment, this was outside of the conference. We have a rule that is generally not enforced, historically, in this body, but the House does recognize that when matters are outside of the conference, that they have to get a special rule. That happened with regard to this particular measure. When all of those people say, "Well, this was just a technical matter," the fact is, they needed a separate vote in the House of Representatives.

I quote the chairman, the Republican chairman, of the Aviation Committee over in the House of Representatives, Mr. SHUSTER, when he was questioned about why this new provision was added to the FAA reauthorization. Mr. SHUSTER, in response to Mr. MOAKLEY says:

> I would be happy to respond. Absolutely.
>
> It is outrageous, it is outrageous that we even have to deal with this issue this way, because it is nothing more than a technical correction. We think it is fundamentally wrong . . . because this is nothing more than a technical fix.

That is Mr. SHUSTER. But even the Parliamentarian understood that was not the case, because they did require separate debate and a separate vote.

I found reading the House debate very instructive, especially remarks by

those who have the special responsibility, the members, of the Aviation Committee.

Mr. LIPINSKI—and I think this really points out quite well in a brief way what this issue is all about when Mr. LIPINSKI was recognized. He said:

Let us focus on what this debate is really about. This provision for FedEx is another assault on the American middle class. The American middle class has been attacked for over 15 years by our Nation's terrible trade policies, technology, profit driven downsizing, profit-driven deregulation and systematic sinister weakening of unions. How, you ask? Let me explain.

During the debate on the rule, I outlined the history of this dubious Federal Express provision. Let us take a closer look at what my colleagues are calling a technical correction.

During the debate, the House Members were talking about the different attempts, the five or six different attempts by Federal Express to have this provision included in other legislation.

House Republicans tried to attach it to the 1996 omnibus appropriations bill, and it failed. House Republicans tried to attach it to the NTSB reauthorization, and it failed. House Republicans tried to attach it to the Railroad Unemployment Act Amendments, and it failed. Senate Republicans supported to attaching it to the Labor-HHS appropriations bill in committee, and that failed.

So the rider was not on the FAA reauthorization bill when it passed the House, it was not on the reauthorization bill that passed the Senate, but it was added in the conference.

So this is not, Mr. President, just a little technical change. This is a long-committed, dedicated effort to, in a very significant and important way, at the outset, override the litigation which is currently taking place on this very issue.

That is interesting, isn't it? A legislative fix for something that is effectively in litigation at the present time in the NLRB. Federal Express wasn't taking a chance that the NLRB might rule in one particular way, and they wanted a legislative fix. They tried and tried and tried and tried again.

This is not a technical fix, Mr. President. This is a very purposeful, directed, well-organized effort to change the rules of the game right in the middle of the game. Change the rules. Why do I say "change the rules in the middle"? Because it is, at the present time, in litigation. And what one side, Federal Express, is trying to do, is change the rules in the middle of that litigation.

Let me just continue with what Mr. LIPINSKI said:

During the debate on the rule, I outlined the history of this dubious Federal Express provision. Let us take a closer look at what my colleagues are calling a technical correction.

The last express carrier, as defined by the ICC, went out of existence 20 years ago, so at the ICC's suggestion the classification was removed from the statute because it was obsolete.

But suddenly, after the ICC bill is signed into law, one company and its countless consultants decided that it might want to be an express carrier some day and started knocking on doors up here.

I have already outlined the five other times FedEx has tried to get this provision into law. Judging by the consistent effort and expense they have gone to, it must really be important for them to remove this dead classification.

But why? Federal Express would not go through all this trouble if they were not going to get something out of it. The fact is that it is much more difficult for a union to organize under the Railway Labor Act than under the National Labor Relations Act.

Mr. President, I explained that earlier. Under the Railway Labor Act, you have to have a national bargaining unit. Under the NLRB, you have local bargaining units. And each law applies to those relevant bargaining units.

What the purpose of this legislation is is to short-circuit the NLRB's making a judgment to put the trucking aspects of Federal Express under the Railway Labor Act, which will make it much more difficult for them to ever obtain union representation.

I continue:

Under the RLA a unit of the company would have to be organized company-wide, while under the NLRA it can be done facility by facility.

Why is this relevant for a company like Federal Express, which is currently classified as an air carrier and already subject to the RLA? Federal Express' operations have changed. No longer does every package get on a plane. Often it just goes on a truck to its destination.

I understand that Federal Express' long-term plan is to truck in packages less than 400 miles away from their hubs around the country. Why would an airline like Federal Express rely so much upon trucks? Because it is cheaper. To their credit, Federal Express is planning for the future to remain competitive. It sure seems to be working.

They know where they are going, Federal Express. They are going into the trucks to deal with these issues. And they are trying to be characterized as an air carrier so that they will have different rules for the road in order to be able to halt the ability of the organizers to be able to go forward.

Mr. President, that position was stated just as accurately—and I would refer my colleagues and friends to Mr. OBERSTAR's statement which effectively says the same; and Mr. NADLER from New York, who effectively says the same. These are members of the House Transportation and Infrastructure Committee. These are not just Members of the U.S. House of Representatives, these are members of the committee of knowledge.

What they refer to, Mr. President, about this change is the ICC Termination Act of 1995 and the conference report. And if you look in the conference report, the general jurisdiction issues—first of all, if you look at page 154, you will see the Railway Labor Act amendments. In the first paragraph, the amendment strikes the term "express company"—that is the term of art.

Then under the amendment to the Interstate Commerce Act's general jurisdiction provisions, it states, "outdated references to express and sleeping car carriers which no longer exist, would be removed."

And then you go on to the back and look and see who signed it. You find out that the signatories were all the members of the conference committee, Republican and Democratic alike. They all signed it. This idea that this suddenly slipped in the drafting of the measure, that somehow people did not quite understand, that it really is technical, it runs completely to the contrary.

It runs contrary to what the Congressional Research Service has found. It runs contrary to the explicit words in the legislation. It runs contrary to the conference report, which bears the signatories of the Democratic and Republican members of this conference committee here in the U.S. Senate.

That happens to be the bottom line, Mr. President. We understand that what FedEx has tried to do over a long period of time was rejected. And it was rejected because it was such an outrageous grab for preferential consideration by one company, and the history of it that demonstrates quite clearly that the effect of this particular change would dramatically alter and change the current litigation in which Federal Express is very much involved.

Mr. President, I come back now to what really this issue is all about, as far as I am concerned. It is not just so much all of these kinds of references, which I am sure during the course of the debate in the afternoon we will come back to, but I want to just get back to how Federal Express treats its employees. That is what we are basically talking about, how these changes are going to affect the welfare and the well-being of these various employees.

In 1991, Federal Express employees had gone 7 years without a pay increase. Today, we celebrated the increase in the minimum wage. We went 5 years without an increase in the minimum wage. In 1980, the minimum wage provided a livable wage for a family of three. Now, this year, prior to this day, a family of three would be $3,000 below the poverty wage.

We had a commitment in this country, Republicans and Democrats, to say that we are for men and women who are going to work for a living, that they be provided a living wage so they honor work. That is a fair and just position. We had difficulty in getting that measure even voted on here in the U.S. Senate. Republican leaders in the House and Senate refused to even be willing to give us a vote on it. Then,

when we got an agreement to vote on it, they wanted to reduce it; and then after we passed it, they wanted to delay its implementation.

But today it went into effect for 4.6 million Americans—4.6 million, and $1,000 a year, $20 a week. And that went into effect.

But here, Mr. President, we have the Federal Express employees for 7 years without a pay increase. And the company planned to reduce the drivers' work hours and substitute temporary employees. That is what ignited the initial organizing drive in 1991. Federal Express responded by giving the workers a pay increase in 1992 and 1993.

But during the last 3 years, despite the booming business, Federal Express employees have not received any raise, and the company recently announced there would be no further across-the-board increases.

So the Federal Express employees are in the process of organizing a union. They want a better deal. And what are the kind of grievances they have?

Well, there is Al Ferrier. He has been a tractor-trailer driver for Federal Express for 17 years. He wants a better deal. He has had three knee surgeries, a shoulder surgery, following on-the-job injury. Mr. Ferrier was recently diagnosed with cancer. Federal Express responded to Mr. Ferrier's misfortune by giving him 90 days to find a new job.

Joe Coleman wants a better deal, too. He was Federal Express' longest service employee when the company fired him. With no union, there was no grievance procedure to protect him or to even give him a chance to prove that his dismissal was unjust.

I could take literally hours to go through this. I do not know whether Al Ferrier or Joe Coleman are going to have the support of their colleagues to be able to say that "we want to be organized to pursue those," or not. I do not know that. We do not know in this particular forum whether they do or they do not. But they ought to at least be given a chance. We should not have the rug pulled out from under them. We should not change the rules of the road at a time when that issue is before the NLRB, and that is what this language does.

It is saying to the Al Ferriers and the Joe Colemans, and the countless other workers who feel they have not been treated fairly, we are going to take your opportunities away because we are going to change the rules of the game and put you under the Railway Labor Act, which means you are not going to try and just convince all of these in your local community or in your town; you are going to have to effectively convince everyone in this country because of the outreach of Federal Express.

These are real grievances. These are real families. These are real working men and women that are trying to do this. And all we are just saying is that we are not going to just stand by, by the sleight of the hand, and take away the legitimate interests of these working families. That is the issue.

We will hear later on about what we were really intending to do, and that this is really not going to change things. That is what the issue is: Whether these men and women have a right under the existing laws, existing laws here in the United States, to be able to make a judgment and a determination by convincing some, "Come with us and let us form a union;" or maybe they will be defeated.

We are not making a judgment on that. All we are saying to those who support our position is let them play by the rules that exist today—not in this legislation, not in this legislation that is being enacted here that was changed, which was never in the bill that passed the House or in the bill that passed the Senate and was basically discarded on a half a dozen different occasions and needed a special rule in the House of Representatives, even with people saying this is just a technical change, a technical change.

Well, the House Republican Parliamentarian understood this is certainly more than a technical change when he studied it and ruled on it. He understood it was more than a technical change. That is the only provision, the only provision of the conference report they had an independent vote on, because it was outside the scope and added at the final hour.

Mr. President, that is what we are looking at. Now we can say, well, is this really an isolated kind of circumstance in regard to Federal Express? I was absolutely startled reading through their pamphlets on the questions of what they were going to do about workers and how they would consider those that might want to get into a union. It is clear in reading through that book—and I see other colleagues that want to speak, so I will just touch on this point briefly. There is no question that the Federal Express is antiworker and the Federal Express Co. is not shy about its antiunion attitude. They distribute to managers a labor law book with specific instructions on how to prevent unionization efforts. On page 2 of the handbook Federal Express tells the managers, "Our corporate goal is to remain union-free. We all have the responsibility of making unions unnecessary at Federal Express." Federal Express devotes a whole chapter to what are indications of union activity, and in one chapter they advise supervisors to be on the lookout for these signs and report problems by calling your local personnel representative, the Employee Relations Department in Memphis. What are these sinister signs? Employees begin leaving the premises for lunch in unusual numbers; employees show unusual interest in compensation, personnel, and other company policies.

Mr. President, maybe they are in the union, maybe they are not. I am not saying one way or the other, but we ought not to say we are going to change the rules of the road. If Federal Express has that attitude, so be it. But we ought to understand it and it makes it much clearer in understanding what this proposal is about, what this proposal is about and what their intention is about.

It is just a measure we wanted to make sure conformed with the previous legislation. You put this evidence together about what the activities of Federal Express have been, the efforts they have gone to change this, what their own corporate attitude is, what their conditions are in terms of their employees, and you find out and see very clearly what has been happening with regard to Federal Express employees.

Mr. President, there are others here that want to address the Senate but I will conclude with these brief remarks. There is no question that this provision was put in here purposely to affect Federal Express' clear interests. That has been demonstrated during the course of the debate not just in the U.S. Senate, but the House of Representatives and the actions by Federal Express. They are entitled, as a company, to pursue whatever interests they might have—I recognize that—but not to change the rules in the middle of the game. That is what they are doing—changing the ground rules.

Americans understood fair play. They see it every day. They saw it last night in the Dallas-Philadelphia game. They understand fair play. They understand you have a set of rules, you play by them. Not Federal Express. They want the rules changed, and not changed just for the future—in order to be able to carry forward their company policy to maintain themselves really free from pursuit of grievances by workers, and by undermining litigation that is currently in place.

We do not do that around here very often. We do not take legislative action to pull the ground out from families and workers in our country that are playing by the rules and thought they would play by this set of rules, and then to be in litigation and find out the Congress in the last hour is playing by a different set of rules. We do not act around here just to benefit one company. We take action clearly in a general way. There will be particular companies that are going to, for one reason or another, be adversely affected and impacted in an unfair and unjust way. We address those. We try to. We never do it as effectively as I think the public thinks we should. That is always complicated and difficult.

That is not what this is about. That is not what this is about. That is not

this circumstance. This is a clear power grab by Federal Express to carry forward its antiworker philosophy, and it is changing the rules in the middle of the game. It is basically unworthy for the Senate to favor that particular position. All we are trying to do is to get that provision removed. We could have tried yesterday but we were prevented from doing that by the Republican leadership—to say OK, we will pass the FAA without this provision, send it over to the House, and as all of us know, everyone in this body knows, the House of Representatives is subject to the call of the Chair. This would fly through the House of Representatives. We heard the same arguments when we had the minimum wage that we could not pass, just before the August recess, because the House was going to be out. We had it on Lodine. If Members will remember, there was a special tax provision for one particular company that was added to an agricultural appropriation in the last hours and here on the floor of the Senate there was such a row by Members—Republican and Democrat alike—that this was a special provision for a special company. We heard at that time, "We cannot do that now because the House of Representatives is not there." We know the House of Representatives at the call of the Chair passes those measures.

Given the vote in the House of Representatives, given the vote in the House of Representatives which was so incredibly close, a 20-vote difference, with 30 Republicans in the House of Representatives voting with the Democrats. Mr. President, 30 Republicans voted with the Democrats because they felt this kind of procedure was unworthy, 30 Republicans, and 15 Democrats went the other way. It was decided in the House by 20 votes.

Mr. President, they had the full debate. They understand this is a great deal more than just a technical amendment. It is a substance amendment. We ought to free this legislation from it and pass this legislation and get on with the rest of the country's business.

Could I ask how much time remains?

The PRESIDING OFFICER. The Senator from Massachusetts has 58 minutes remaining.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume. I will be very brief because the Senator from South Carolina is waiting to speak.

Mr. President, the Senator from Massachusetts keeps alleging that somehow we could pass this bill by removing this legislative provision and then getting it passed. And clearly, the Senator from Massachusetts is entitled to that opinion.

Unfortunately, it is not shared by the Democratic leader, Mr. DASCHLE, who had a press briefing this morning which I will quote from:

Question. Isn't the bottom line on this FedEx business, that if you don't pass the bill, and you do pass some sort of a continuing funding resolution or mechanism, that FedEx does not get its way and that the Teamsters do?

DASCHLE. Well, it's more complicated than that. At this point, we can't send a bill back to the House because I don't anticipate that they'll come back.

And because they won't come back, and there's no desire to. Any change we'd have to make would require unanimous consent. We're told any change to this bill would not acquire the necessary unanimous consent agreement there.

And as a result, we are really left with the conference agreement that has now been written. So our options are very, very limited. So it's not even a question of who wins or who loses with regard to that specific provision, the question is, are we going to pass a conference report that really needed to be passed yesterday?

Question. You've passed it, you've got a funding problem.

DASCHLE. Exactly.

Question. And you can't resolve that either.

DASCHLE. We can't resolve that. I mean, we have—short of bringing the House of Representatives back into session, we can't find another way, another vehicle, another funding mechanism.

And as I indicated, that the leadership in the House have already made it known that they don't plan to come back.

Question: So you've got to pass this bill?

DASCHLE. We've got to pass this bill.

I am sorry that the Senator from Massachusetts does not agree with his elected leader here in his party, who clearly says we have to pass this bill, which he also says we should have passed yesterday.

Why should we have passed it yesterday, Mr. President? Because there are thousands of men and women who are workers who are not working, who would be working if the Senator from Massachusetts had allowed this bill to pass, rather than have the bill read last night for 5 hours, as he did, and keeping this body tied up.

Mr. President, let me also point out that everybody is entitled to their opinion, but not everybody is entitled to their facts. The facts are that the Senator from Massachusetts stated that only Airport Improvement Program moneys, aviation improvement fund moneys, would be affected by the lack of passage of this bill. Mr. President, that is not correct. The aviation trust fund is unique. The Finance Committee and the Joint Committee on Taxation have studied this issue, and their staff state that the language in the code regarding "meeting obligations of the United States," which, I repeat, is unique to this one section of the code, effectively means that all spending out of the trust funds bill will be stopped.

This means countless aviation safety programs, jobs, and airport construction programs will be affected, and are affected as we speak, but will be more affected as we wait until Thursday and will be more affected between the time the bill is passed and goes to the President's desk. Furthermore, if this bill is not passed, we cannot have criminal history background checks and the FAA will not be able to deploy $175 million for explosive detection technologies—many which are made in Massachusetts. I repeat, this information comes from the Finance Committee and the Joint Committee on Taxation both.

So the Senator from Massachusetts does not have his facts correct on what is stopping being funded. Let me give a brief comment on some of the projects that we have already heard from—some of the programs that are stopped: Providence, RI, debt service for a new terminal, letter of intent; Philadelphia, PA, site preparation for new commuter runway; Ithaca, NY, entitlement for runway project, phase 2; Albany County, NY, new terminal project; Parkersburg, WV, mud slide; Parkersburg, WV, finish a new airport; Buckhannon, WV, site preparation for runway extension; Buffalo, NY, terminal project, letter of intent; Portland, OR, runway reconstruction; Denver, CO, debt service for new airport, letter of intent; Seattle, WA, ongoing noise program; Memphis, TN, cash-flow problem.

The list goes on and on, Mr. President. We are already hearing from the airport managers who are not able to move forward on these critical airport projects. They are not able to move forward.

Mr. President, look, I am not familiar with FedEx. I certainly have known many of their employees. There are 125,000 of them. Allegation: Joe Coleman was fired and received no grievance. Joe Coleman was fired and received no grievance procedure. Truth: FedEx has an internal grievance procedure, and Mr. Coleman appealed his discharge and was reinstated in 1991. He subsequently quit. Allegation: Al Ferrier received injuries and was told to find a new job in 90 days. Truth: Mr. Ferrier was offered a full-time job, which he turned down, a month ago.

Mr. President, I don't know the facts of these cases. These are other responses to them. What the Senator from Massachusetts says may be true, but I have different information.

But what cannot be disputed here, Mr. President, is that thousands of workers are not working today or tomorrow or Thursday because the Senator from Massachusetts refuses to allow this bill to move forward and the conference report to be voted on, and that includes aviation safety and airport security.

Mr. President, let me finally say that this legislation does not prevent Federal Express from being subject to union organization. Federal Express will be treated as every other major corporation in America, which I hope the Senator from South Carolina will elaborate on, and will be subject to all of the laws that apply to all companies

and corporations in the United States. If the workers of Federal Express want to become unionized, they will be allowed to do so under existing law.

I yield to the Senator from South Carolina such time as he may consume.

Mr. HOLLINGS. I thank the Senator from Arizona. Mr. President, the distinguished Senator from Massachusetts has just spewed out such a bunch of nonsense that it is hard to know where to begin. One is with respect to Federal Express. Like the Senator from Arizona, I am learning about Federal Express. I refer, Mr. President, to "The 100 Best Companies to Work for in America," by Robert Levrig and Milton Moskowitz, of last year. On page 121:

The Federal Express invented overnight parcel delivery. U.S. employees: 77,700.

It is now over 105,000 domestic, and a total of 125,000, growing at 15 percent per year. But this particular edition has the top-top rating of five stars, and really about the highest rating is four stars. Thumbing through this when I was given it, I could not find any other company with the five stars. Let me show you immediately under that particular provision. On pay and benefits, Federal Express is rated four stars; under opportunities, four stars; under job security, five stars; in pride in work and company, four stars; openness and fairness, five stars; camaraderie and friendliness, four stars. The biggest plus, "you probably won't get zapped." Biggest minus, "you may not be an overnight success."

Now, since the distinguished Senator has raised the point that the Senator from South Carolina is zapping the employees, I thought I would have to read that. At least Federal Express hasn't raised that point, or zapped anyone, according to that best-of-the-best edition. So I more or less have to clear the record to defend my record, because we are not about zapping employees. We are not about end-running. We are not about changing the rules in the middle of the game.

The truth is, Mr. President, that if we had known last December 22 that the little phrase "express company" was being dropped from the ICC Termination Act, and they would have said, "Senator, we are going to have to drop this provision," I would have said, "Wait a minute," if I would have known it, and I would have made that exact charge: You can't change the rules in the middle of the game.

Why do I say that? Because those same employees he talks about over in Philadelphia have had 5 years with their lawyer, and unlike what the Senator from Massachusetts has said about the board—I will read his statement from the CONGRESSIONAL RECORD. I refer to yesterday's RECORD at page S11854:

Federal Express challenged the petition, arguing that the entire company, including its truck drivers, is covered by the Railway Labor Act, not the National Labor Relations Act, and that therefore the bargaining unit for its truck drivers must be nationwide. The board has not yet decided the issue.

Absolutely false.

I ask unanimous consent to have printed in the RECORD excerpts of the decision of the board.

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

NATIONAL MEDIATION BOARD,
Washington, DC, November 22, 1995.

JEFFREY D. WEDEKIND,
Acting Solicitor, National Labor Relations Board, Washington, DC.

Re NMB File No. CJ-6463 (NLRB Case 41-RC-17698).

DEAR MR. WEDEKIND: This responds to your request dated July 17, 1995, for the National Mediation Board's (Board's) opinion as to whether Federal Express Corporation (Federal Express or FedEx) and certain of its employees is subject to the Railway Labor Act, as amended, 45 U.S.C. §151, et seq. The Board's opinion, based upon the materials provided by your office and the Board's investigation is that Federal Express and all of its employees are subject to the Railway Labor Act.

I.

This case arose as the result of a representation petition filed with the National Labor Relations Board (NLRB) by the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW). The UAW initially sought to represent a unit of Federal Express's employees including "all regular full and part-time hourly ground service employees in the Liberty District." On December 9, 1991, the UAW amended its petition to exclude "ramp agents, ramp agent/feeders, handlers, senior handlers, heavyweight handlers, senior heavy weight handlers, checker sorters, senior checker/sorters, shuttle drivers, shuttle driver/handlers, office clerical employees, engineers, guards and supervisors as defined in the Act [NLRB]." The titles remaining in the UAW's petition include: service agents, senior service agents, international document agents, couriers, courier/handlers, tractor-trailer drivers, dispatchers, courier/non-drivers and operations agents.

The UAW argues that the employees it seeks to represent in Federal Express' Liberty District are employees subject to the National Labor Relations Act (NLRA). The UAW acknowledges that pilots and aircraft mechanics employed by Federal Express are subject to the Railway Labor Act. However, the UAW contends that the two-part test traditionally employed by the Board to determine whether an entity is a carrier should be applied to the unit of employees it seeks to represent in Federal Express' Liberty District. According to the UAW, the employees it seeks to represent in the Liberty District do not perform airline work and are not "integral to Federal Express' air transportation functions."

Federal Express asserts that it is a carrier subject to the Railway Labor Act and, as a carrier, all of its employees are subject to the Railway Labor Act. Federal Express notes that the Board and the courts have repeatedly found it to be a carrier subject to the Railway Labor Act. According to Federal Express, the job classifications remaining in the petition are integrally related to Federal Express' air transportation activities. Federal Express contends that it is a "unified operation with fully integrated air and ground services." According to Federal Express, allowing some employees to be covered by the National Labor Relations Act and others to be subject to the Railway Labor Act would result in employees being covered by different labor relations statutes as they are promoted up the career ladder.

Federal Express contends that the two-part test suggested by the UAW is not appropriate in this case. According to Federal Express, the Board uses the two-part test to determine whether a company is a carrier, not to determine whether specific employees of a carrier perform duties that are covered by the Railway Labor Act. Federal Express cautions that adoption of the test suggested by the UAW "would drastically alter labor relations at every airline in the country." According to Federal Express, under the UAW's test, most categories of employees except pilots, flight attendants and aircraft mechanics would be subject to the NLRA.

The Board repeatedly has exercised jurisdiction over Federal Express. Federal Express Corp., 22 NMB 279 (1995); Federal Express Corp., 22 NMB 257 (1995); Federal Express Corp., 22 NMB 215 (1995); Federal Express Corp., 20 NMB 404 (1993); Federal Express Corp., 20 NMB 394 (1993); Federal Express Corp., 20 NMB 360 (1993); Federal Express Corp., 20 NMB 126 (1993); Federal Express Corp., 20 NMB 91 (1992); Federal Express Corp., 20 NMB 7 (1992); Federal Express Corp., 19 NMB 297 (1992); Federal Express Corp., 17 NMB 24 (1989); Federal Express/Flying Tiger, 16 NMB 433 (1989); Federal Express, 6 NMB 442 (1978). There is no dispute that Federal Express is a carrier subject to the Railway Labor Act with respect to certain Federal Express employees (i.e. Pilots; Flight Attendants, Global Operations Control Specialists; and Mechanics and Related Employees; Stock Clerks; and Fleet Service Employees). However, the Board has not addressed the issue raised by the UAW: whether or not certain Federal Express employees are subject to the Railway Labor Act.

The NLRB initially requested the NMB's opinion as to whether FedEx is subject to the RLA on July 1, 1992. However, on that date, the NLRB granted the UAW's request to reopen the record and the file was returned to the NLRB. The NLRB renewed its request on July 17, 1995 and the NMB received the record on July 31, 1995. The NMB received additional evidence and argument from FedEx and the UAW on August 17, 1995 and September 5, 1995.

II.

Federal Express, a Delaware corporation, is an air express delivery service which provides worldwide express package delivery. According to Chairman of the Board and Chief Executive Officer Frederick Smith, Federal Express flies the sixth largest jet aircraft fleet in the world.

Federal Express' jet aircraft fleet currently includes Boeing 727-100's, Boeing 727-200's, Boeing 737's, Boeing 747-100's, Boeing 747-200's, DC 10-10's, DC-10-30's and McDonnell-Douglass MD-11's. Federal Express also operates approximately 250 feeder aircraft, including Cessna 208's and Fokker 27's. It has over 50 jet aircraft on order.

Federal Express currently serves the United States and several countries in the Middle East, Europe, South America and Asia, including Japan, Saudi Arabia and Russia. According to Managing Director of Operations Research Joseph Hinson, Federal Express does not transport freight that moves exclusively by ground to or from the United States.

* * * * *

III. DISCUSSION

The National Mediation Board has exercised jurisdiction over Federal Express as a common carrier by air in numerous published determinations. Federal Express Corp., 22 NMB 279 (1995); Federal Express Corp., 22 NMB 257 (1995); Federal Express Corp., 22 NMB 215 (1995); Federal Express Corp., 20 NMB 666 (1993); Federal Express Corp., 20 NMB 404 (1993); Federal Express Corp., 20 NMB 394 (1993); Federal Express Corp., 20 NMB 360 (1993); Federal Express Corp., 20 NMB 126 (1993); Federal Express Corp., 20 NMB 91 (1992); Federal Express Corp., 20 NMB 7 (1992); Federal Express Corp., 19 NMB 297 (1992); Federal Express Corp., 17 NMB 24 (1989); Federal Express/Flying Tiger, 16 NMB 433 (1989); Federal Express, 6 NMB 442 (1978). In eight of those determinations, the Board exercised jurisdiction over ground service employees of Federal Express, 6 NMB 442 (1978). In eight of those determinations, the Board exercised jurisdiction over ground service employees of Federal Express. The substantial record developed in this proceeding provides no clear and convincing evidence to support a different result.

A.

Section 181, which extended the Railway Labor Act's coverage to air carriers, provides:

"All of the provisions of subchapter 1 of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and *every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service.* 45 U.S.C. §181. (Emphasis added).

Federal Express is an air express delivery service which holds itself out for hire to transport packages, both domestically and internationally. Federal Express and the UAW agree that Federal Express and its air operations employees, such as pilots and aircraft mechanics, are subject to the Railway Labor Act. The disagreement arises over whether Federal Express' remaining employees are subject to the Railway Labor Act. The UAW argues that the employees it seeks to represent do not perform airline work and are not "integral to Federal Express' air transportation functions." Federal Express asserts that all of the employees sought by the UAW are integrally relate to its air express delivery service and are subject to the Railway Labor Act.

Since there is no dispute over whether Federal Express is a common carrier by air, the Board focuses on whether the employees sought by the UAW's petition before the NLRB are subject to the Railway Labor Act. The Act's definition of an employee of an air carrier includes, "every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service". The Railway Labor Act does not limit its coverage to air carrier employees who fly or maintain aircraft. Rather, its coverage extends to virtually all employees engaged in performing a service for the carrier so that the carrier may transport passengers or freight.

In REA Express, Inc., 4 NMB 253, 269 (1965), the Board found "over-the-road" drivers employed by REA subject to the Act stating:

"It has been the Board's consistent position that the fact of employment by a "carrier" under the Act is determinative of the status of *all* that carrier's employees as subject to the Act. The effort to carve out or to separate the so-called over-the-road drivers would be contrary to and do violence to a long line of decisions by this Board which would embrace the policy of refraining from setting up a multiplicity of crafts or classes. As stated above, there is no question that this particular group are *employees* of the carrier." (Emphasis in original).

The limit on Section 181's coverage is that the carrier must have "continuing authority to supervise and direct the manner of rendition of . . . [an employee's] service. The couriers, tractor-trailer drivers, operations agents and other employees sought by the UAW are employed by Federal Express directly. As the record amply demonstrates, these employees, as part of Federal Express' air express delivery system, are supervised by Federal Express employees. The Board need not look further to find that all of Federal Express' employees are subject to the Railway Labor Act.

B.

In the Board's judgment, the analysis of the jurisdictional question could end here. However, Federal Express and the UAW have directed substantial portions of their arguments the "integrally related" test. Specifically, the participants discuss whether the employees the UAW seeks to represent are "integrally related" to Federal Express' air carrier functions. The Board does not find consideration of the "integrally related" test necessary to resolve the jurisdictional issue, however, review of the relevance of this test is appropriate.

The UAW argues that the employees it seeks to represent are not integrally related to Federal Express' air carrier functions and therefore are not subject to the Railway Labor Act. Federal Express asserts that the NLRB and federal courts have found its trucking operations integrally related to its air operations.

However, the Board does not apply the "integrally related" test to the Federal Express employees sought by the UAW. Where, as here, the company at issued is a common carrier by air, the Act's jurisdiction does not depend upon whether there is an integral relationship between its air carrier activities and the functions performed by the carrier's employees in question. The Board need not consider the relationship between the work performed by employees of a common carrier and the air carrier's mission, because section 181 encompasses "every pilot or other person who performs any work as the employee or subordinate official of such carrier or carriers. . . . "

Even if the Board were to assume arguendo that the "integrally related" test applies to the facts in this case, the Board would hold in concurrence with the recent decision in Federal Express Corp. v. California PUC, supra, at note 10, that the "trucking operations of Federal Express are integral to its operations as an air carrier." 936 F.2d at 1078. Employees working in the other positions sought by the UAW perform functions equally crucial to Federal Express' mission as an integrated air express delivery service. As the record demonstrates, without the functions performed by the employees at issue, Federal Express could not provide the on-time express delivery required of an air express delivery service.

The Board has employed the "integrally related" test when it has examined whether to apply the trucking exemption under §151 of the Act. O/O Truck Sales, 21 NMB at 269; Florida Express Carrier, Inc., 16 NMB 407 (1989). Specifically, the board has applied the "integrally related" test when it has considered trucking operations conducted by a subsidiary of a carrier or a company in the same corporate family with a carrier. In Florida Express, supra, the Board found Florida Express, a trucking company which is a wholly-owned subsidiary of Florida East Coast Railroad, to be a carrier subject to the Railway Labor Act. In O/O Truck Sales, supra, the Board found O/O Truck Sales, a trucking and fueling company which is a wholly-owned subsidiary of CSXI (which is commonly owned with CSXT), to be a carrier subject to the Railway Labor Act. In contrast, Federal Express directly employs truck drivers, couriers and all other employees sought by the UAW's petition.

C.

The UAW argues that the Board should apply the two-part test used by the Board in other factual settings for determining whether an employer and its employees are subject to the Railway Labor Act. See, for example, Miami Aircraft Support, 21 NMB 78 (1993); AMR Services, Corp., 18 NMB 348 (1991). The Board does not apply the two-part test where the company at issue is engaged in common carriage by air or rail. The Board applies the two-part test where the company in question is a separate corporate entity such as subsidiary or a derivative carrier which provides a service for another carrier. In those situations where the Board applies the two-part test, it determines: (1) whether the company at issue is directly or indirectly owned or controlled by a common carrier or carriers; and (2) whether the functions it performs are traditionally performed by employees of air or rail carriers. Under this test, both elements must be satisfied for a company to be subject to the Railway Labor Act. Federal Express is an admitted carrier and the employees at issue are employed directly by Federal Express. Accordingly, the two-part test does not apply to this proceeding.

Even if the two-part test were applicable, the employees at issue here would be covered by the Railway Labor Act. Federal Express, as a common carrier, has direct control over the positions sought by the UAW. In addition, the Board has found that virtually all of the work performed by employees sought by the UAW's petition is work traditionally performed by employees in the airline industry. For example: couriers, Air Cargo Transport, Inc., 15 NMB 202 (1988); Crew Transit, Inc., 10 NMB 64 (1982); truck drivers; Florida Express, Inc., 16 NMB 407 (1989); customer service agents; Trans World International Airlines, Inc., 6 NMB 703 (1979).

CONCLUSION

Based upon the entire record in this case and for all of the reasons stated above, the Board is of the opinion that Federal Express Corporation and all of its employees sought by the UAW's petition are subject to the Railway Labor Act. This finding may be cited as Federal Express Corporation, 23 NMB 32 (1995). The documents forwarded with your letter will be returned separately.

By direction of the National Mediation Board.

STEPHEN E. CRABLE,
Chief of Staff.

Mr. HOLLINGS. This decision is dated November 22, 1995. You don't have to read the entire decision. It is a very interesting thing, because back in 1991:

. . . UAW amended its petition to exclude "ramp agents, ramp agent/feeders, handlers,

senior handlers, heavyweight handlers, senior heavyweight handlers, checker sorters, senior checker/sorters, shuttle drivers, shuttle driver/handlers, office clerical employees, engineers, guards and supervisors as defined under the act.

So it was not any question about who all was to be covered because they had a chance to amend it. This is 5 years ago when this started. But let me read a couple of other points.

This is the National Mediation Board talking. It was a unanimous decision, never appealed and at the NLRB since last November. And in 50 years with 100 cases under the Railway Labor Act, the NLRB has yet to reverse it. And if he can show me—I was asking for the Senator or a House Member—that actually said, let's knock this express company reference out, I would jump off the Capitol dome. He can't find it.

It was an innocent mistake. It was after this finding of November 22, 1995, done in December 1995. So it was after the rules of the road that are now trying to be changed, and that is why we are trying to correct. That has been the most difficult thing. The Members really have not kept up with this at all.

But the NLRB requested the National Mediation Board's opinion. This is the customary process. I am learning a little bit of labor law. The NLRB initially requested the National Mediation Board's opinion as to whether FedEx is subject to the RLA on July 1, 1992. They held it up. However, on that date, the NLRB granted the UAW's request to reopen the record and to file with the NLRB.

While we hear that the poor workers have been trying to get their day in court, their lawyer is up there saying, "Wait a minute. Hold it up. Return it to the NLRB." The NLRB renewed its request on July 17, 1995—3 years. I said, "How in the world do you hold things up over there in 3 years?" They said, "I will tell you what happened, Senator. They have a wild one over there in this fellow Gould who is the chairman." And he was trying his dead level best to change the process of taking those under the Railway Labor Act to be determined by the National Mediation Board and have it determined by the National Labor Relations Board itself. He finally got outvoted. He tried for 3 years. He tried for whatever time he was there.

But that was the issue. I couldn't understand why they would hold it up, and why we have the Senator from Massachusetts crying about the poor workers are not having any of their rights, and they are trying to play by the rules. Come on.

Here you go. Let me read it to you. The NLRB renewed its request on July 17, 1995. The National Mediation Board received the record on July 31, 1995. The National Mediation Board received additional evidence and argument from FedEx and the UAW on August 17, 1995, and September 5, 1995.

This is the full unanimous decision of the National Mediation Board—November 22, 1995, for those who are over there struggling to get their day in court. Come on. They had 5 years to go after it. They can start again. I think it ought to be made clear because I want to read some of this to make sure that they all understand that we are not coming in here pulling the rug out from under employees. The Senator from Massachusetts says we are "pulling the rug out"—after 5 years with their lawyer and everything else of that kind.

Everyone should understand that labor is very, very virile and strong under the Railway Labor Act. In fact, 65 percent to 70 percent of employees under the Railway Labor Act are organized, whereas in the private sector under the NLRB, the National Labor Relations Board, and the National Labor Relations Act, only 11 percent.

So this isn't trying to get a protective situation. We are not "pulling the legislative rug out".

Let me just read a couple of parts in the conclusion part because it says:

The limit on section 181's coverage is that the carriers must have continuing authority to supervise and direct the manner of rendition and employees' service, the carriers' tractor-trailer drivers, operations agents, and other employees sought by the UAW employed by Federal Express directly. As the record amply demonstrates, these employees, as part of the Federal Express delivery system, are supervised by Federal Express employees. The Board need not look further to find that all of Federal Express employees are subject to the Railway Labor Act.

The contention of the Senator from Massachusetts is that we have to get the language out of this bill because we in conference tried to change the rules of the road; that we tried to pull the rug out so that they wouldn't be covered by the Railway Labor Act. The truth of the matter is, the very case he refers to in Philadelphia after 5 years and a unanimous opinion found just what I have read. We are trying to clear up the inconsistency of the dropping of the designation, which is appropriate and should be done. They know it. Let me read further.

In the Board's judgment, the analysis of the jurisdictional question should end here.

However, I want to read a further paragraph.

The UAW argues that the employees it seeks to represent are not integrally related to Federal Express's air carrier functions and, therefore, are not subject to the Railway Labor Act.

Going further, answering that argument on the next page:

Even if the Board were to assume arguendo that the integrally related test applies to the facts in this case, the Board would hold in concurrence with the recent decision in Federal Express Corporation v. California PUC . . . the trucking operations of Federal Express are integral to its operations as an air carrier. Employees working in the other positions sought by the UAW perform functions equally crucial to Federal Express's mission as an integrated air express delivery service.

Finally.

. . . the Board is of the opinion that Federal Express Corporation and all of its employees sought by UAW's petition are subject to the Railway Labor Act. This finding may be cited as Federal Express Corporation, 23 NMB 32 (1995). The documents forwarded with your letter will be returned separately.

By direction of the National Mediation Board, Stephen E. Crable, Chief of Staff; Rush O'Keefe, Esq.; Paul Jones, Esq.; William Josem, Esq.; Arthur Luby, Esq.

I have been asking for a Senator or a House Member who said that we shouldn't make this change, the mistake that was made. They can't find one. I will ask. Give me that UAW lawyer that has made the motion in the last 11 months before the National Labor Relations Board. The gentleman says here, "This is a matter that is currently in litigation." False—threw it back over there to the NLRB, and they are sitting on it like they sat on it for 3 years after UAW brought it. There is nothing you can do about it. You have the fellow Gould over there. He will squat. I can't get him up off his "whatever." But I can tell you now. It is not in any litigation at all. It is unanimously determined on the merits, after 5 years and 11 months later, with no motion, no appearance, no nothing—just sitting on it over there.

This is a matter that is currently in litigation even while we are here today. It is like Edward R. Morrow down in the South Pacific or something in World War II. The Senator from Massachusetts says: We ought to let the litigation move forward, but the action that is taken on the FAA bill has preempted effectively the litigation which is under consideration even as we meet here today. Come on. Come on. Wait a minute.

There ought to be some test of the truth in the facts here. When the people who wrote the provision, trying to do the honest thing, get accused of pulling rugs out and jamming, I will take that test. I will ask the colleagues to study these facts and to see whether the Senator from Massachusetts is jamming it or the Senator from South Carolina is jamming it and then let them make their vote.

It is crystal clear what is going on here. It is crystal clear. Everybody wanted to correct it. But labor told us, they said, "You are not going to do it. We are going to filibuster. We are going to veto it at the White House." I did remember that the Vice President was from Tennessee. I said, "I don't think that that is going to happen. No." And I said, "I don't think that they are going to filibuster." I think we can get 60 votes for the truth and facts.

Now we hear about the NLRB, referring to all of these cases like you cannot get a case up there. Hundreds and hundreds of cases here have been covered by the Railway Labor Act, and the

technical correction does not change that status. It changes future proceedings, not the one the Senator is talking about that they can make another argument. They can make these arguments.

I ask unanimous consent to print in the RECORD this reference to all these cases.

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

FEDERAL EXPRESS IS COVERED BY THE RAILWAY LABOR ACT. THE TECHNICAL CORRECTION DOES NOT CHANGE THAT STATUS.

Since commencing operations 23 years ago, Federal Express and its employees consistently have been determined by the federal courts, the National Mediation Board and the National Labor Relations Board to be subject to the RLA. *See e.g., Chicago Truck Driver, Helpers and Warehouse Workers Union v. National Mediation Board*, 670 F.2d 665 (7th Cir. 1982), *Chicago Truck Drivers, Helpers and Warehouse Workers Union v. National Labor Relations Board*, 599 F.2d 816 (7th Cir. 1979); *Adams v. Federal Express Corp.*, 547 F.2d 319 (6th Cir. 1976), *cert. denied*, 431 U.S. 915 (1977); *Federal Express Corp.*, 22 N.M.B. 57 (1995); *Federal Express Corp.*, 22 N.M.B. 157 (1995); *Federal Express*, 22 N.M.B. 215 (1995); *Federal Express Corp., 22 N.M.B. 279 (1995); Federal Express*, 20 N.M.B. 666 (1993); *Federal Express*, 20 N.M.B. 486 (1993); *Federal Express*, 20 N.M.B. 404 (1993); *Federal Express*, 20 N.M.B. 394 (1993); *Federal Express*, 20 N.M.B. 360 (1993); *Federal Express*, 20 N.M.B. 7 (1992); *Federal Express*, 20 N.M.B. 91 (1992); Federal Express Corp., 17 N.M.B. 24 (1989); *Federal Express*, 17 N.M.B. 5 (1989); *Federal Express Corp, and Flying Tiger Line, Inc.*, 16 N.M.B. 433 (1989); *Federal Express Corp., 6 N.M.B. 442 (1978); Federal Express*, N.L.R.B. Case No. 22-RC-6032 (1974); *Federal Express*, N.L.R.B. Case No. 1-CA-22,685 (1985); *Federal Express*, N.L.R.B. Case No. 1-CA-25084 (1987); *Federal Express, N.L.R.B. Case No. 10-CCA-17702 (1982); Federal Express Corp., N.L.R.B. Case No. 13-RC-14490 (1977); Federal Express, N.L.R.B. Case No. 13-CA-30194 (1991). The charges filed with Region 13 in Chicago, Case No. 13-CA-3019 and Region 1 in Boston, Case No. 1-CA-22,585 were withdrawn after we presented the above evidence of our jurisdictional status.*

The National Mediation Board (NMET) recently ruled on Federal Express RLA status by stating unequivocally that "Federal Express and all of its employees are subject to the Railway Labor Act." *Federal Express Corporation*, 23 N.M.B. 32 (1995).

The term "employer" under the National Labor Relations Act excludes "...any person subject to the Railway Labor Act:" 29 U.S.C. §152 (2). Excluded from the definition of "employee" under the National Labor Relations Act is"...any individual employed by an employer subject to the Railway Labor Act..." 29 U.S.C.§152 (3). The Railway Labor Act defines "carrier" as "... (including) every common carrier by air engaged in interstate or foreign commerce..."45 U.S.C. §151, First and §181. Federal Express is a common carrier by air engaged in interstate and foreign commerce, and is certificated pursuant to Section 401 of the Federal Aviation Act.

That interpretation of the statute consistently has been applied by the NMB. Section 201 of the RLA, 45 U.S.C. Section 181, provides that the Act "shall cover every common carrier by air engaged in interstate and foreign commerce . . . and every air pilot of *other person who performs any work as an employee or subordinated official of such carrier or carriers*, subject to its or their continuing authority to supervise and direct the manner of rendition of his service." (Emphasis added). In accordance with that legislative directive, anyone employed by an air carrier engaged in interstate or foreign commerce is covered by the RLA. As was explained in *REA Express, Inc.*, 4 N.M.B. 253, 269 (1965):

"It has been the Board's consistent position that the fact of employment by a "carrier" is determinative of the status of *all* that carrier's employees as subject to the Act. The effort to carve out or separate the so-called over-the-road drivers would be contrary to and do violence to a long line of decisions by this Board which embrace the policy of refraining from setting up a multiplicity of crafts or classes. As stated above, there is no question that this particular group are *employees* of the carrier."

The United States Court of Appeals for the District of Columbia Circuit noted in regard to the NMB's *Federal Express* case that "the NLRB had 'never' asserted jurisdiction over" (Federal Express'." *United Parcel Service, Inc.*, v. *National Labor Relations Board*. 92 F.3d 1221 (D.C. Cir. 1996). Federal Express has participated in five union representation elections conducted under the auspices of the National Mediation Board, the most recent in 1995, and presently is participating in a sixth RLA election.

The Ninth Circuit Court of Appeals in *Federal Express Corp.* v. *California Public Utilities Commission*, 936 F.2d 1075, 1978 (9th Cir. 1991), *cert. denied*, _____ U.S. _____, 119 LEd.2d 578 (1992) found:

"The trucking operations of Federal Express are integral to its operation as an air carrier. The trucking operations are not sonic separate business venture; they are part and parcel of the air delivery system. Every truck carries packages that are in interstate commerce by air. The use of the trucks depends on the conditions of air delivery. The timing of the trucks is meshed with the schedules of the planes. Federal Express owes some of its success to its effective use of trucking as part of its air carrier service."

That court also stated:

"Federal Express is exactly the kind of an expedited all-cargo service that Congress specified and the kind of integrated transportation system that was federally desired. Because it is an integrated system, it is a hybrid, an air carrier employing trucks. Those trucks do not destroy its status as an air carrier. They are an essential part of the all-cargo air service that Federal Express innovatively developed to meet the demands of an increasingly interlinked nation."

It clearly has been established that Federal Express is a carrier subject to the Railway Labor Act. Its employees are likewise subject to the Railway Labor Act. No court or agency has ever determined that Federal Express or any of its employees are subject to the National Labor Relations Act.

Mr. HOLLINGS. I thank the distinguished Chair.

Now, Mr. President, there was reference made to the CRS. I am just amazed. I thought they always had a pretty good record. They ought to give the fellow who works over there for the Congressional Research Service weekend leave. And the reason I say that, they have a guy named Vince Treacy, legislative attorney, and he was asked on September 27, just a few days ago, to give an opinion with respect to the coverage, the Railway Labor Act coverage of Federal Express as an express company. And he comes up totally in contradiction to all the laws and all the decisions, but more particularly he knows the request is made because we were trying to determine the intent of Congress: Was it as described by the Senator from Massachusetts, or an innocent mistake by my description?

Everybody agreed that there was a mistake made. We did not even know it was in there. And please, my gracious, instead of coming with the language itself in the act, he runs all around his elbow and refuses to put this in his three-page decision.

I read from the conference report of the ICC Termination Act of 1995 by Mr. SHUSTER on December 15, 1995. "The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of the employees and employers by the Railway Labor Act."

The distinguished chairman on the House side, Mr. SHUSTER, stated in the Chamber when this was debated a couple of days ago, that that was put in at the request of labor. We will show it to you in the RECORD. "The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act."

Now we see who comes in in the middle of the game trying to change the rules of the road. We see now who is trying to pull rugs out from under people. And they are using every gimmick in the book. This fellow will be looking for a job if I have anything to do with it, I can tell you that, because I have an analysis here going down each one of the points in the document.

I did not want to take the time of the distinguished Senator from Arizona, but, for example, Mr. Treacy says: "If, at some future date, the NMB ruled that some Federal Express employees were employed in activities that were not integrally related to its operation as an air carrier, then those employees would count under the coverage of the NLRA as a matter of law."

False. False. They raised precisely that point in the case we are talking about, and we have the National Mediation Board and its decision. Heavens above. We could not be more on target. They never called us or asked us about the history of this particular thing.

From Treacy's legal opinion they are running around now to give some kind of color, or credibility to their position: 'Moreover, it appears unlikely that Federal Express would constitute an express company subject to title 49, as that term is used in the proposed amendment."

Where did you get that? He says later on here it could go either way. No one, including the author of this memo, disputes the fact that the REA was an express company. No one disputes that Federal Express was acquired and operated under certificates from REA. As

the Interstate Commerce Commission stated in its decision transferring the certificates, and I quote, "The evidence establishes a public demand or need for the proposed continuation of express service as previously authorized under the acquired REA certificates." That is the ICC decision No. 66562.

Then he states in here: "The deletion of the term 'express company' from section 1 of the RLA does not appear to have been inadvertent or mistaken."

That is an astonishing conclusion, Mr. President, because it ignores the ICC Termination Act itself, the very sentence I read. The change to the RLA was through a conforming amendment to the ICC Termination Act which included the provision, and I quote, "The enactment of the ICC Termination Act shall neither expand nor contract coverage of employees and employers under the Railway Labor Act."

I could read on and on. I ask unanimous consent, Mr. President, that this review of the CRS paper that was gotten up quickly and certainly very, very, at best, carelessly, if not intentionally, just 4 or 5 days ago for this case, be printed in the RECORD.

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

RESPONSE TO THE MEMO BY THE CONGRESSIONAL RESEARCH SERVICE

The September 27, 1996 memo by the Congressional Research Service [CRS] contains several inaccuracies which call into question the conclusions reached in the memo. For example:

Inaccurate statement: "If, at some future date, the NNB ruled(sic) that some Federal Express employees were employed in activities that were not integrally related to its operations as an air carrier, then those employees would come under the coverage of the NLRA as a matter of law."

Facts: The UAW raised precisely the same argument in the jurisdictional case involving Federal Express that recently was litigated. In response to that argument, the NMB held: ". . . the Board does not apply the 'integrally related' test to that Federal Express employees sought by the UAW. Where, as here, the company at issue is a common carrier by air, the Act's [RLA's] jurisdiction does not depend upon whether there is an integral relationship between its air carrier activities and the functions performed by the carrier's employees in question". *Federal Express Corporation*, 23 N.M.B. 32, 73–74 (Nov. 22, 1995).

Inaccurate statement: "Moreover, it appears unlikely that Federal Express would constitute an express company subject to Title 49, as that term is used in the proposed amendment."

Facts: No one, including the author of the CRS memo, disputes the fact that Railway Express Agency (REA) was an express company. Likewise, no one disputes that Federal Express acquired and has operated under the certificates acquired from REA. As the Interstate Commerce Commission stated in the decision transferring the certificates, "The evidence establishes a public demand or need for the proposed continuation of express service as previously authorized under the acquired REA certificates." *Interstate Commerce Commission Decision*. No. MC–66562 (Sub-No. 2347), June 13, 1983.

Incorrect statement: "* * * it appears logical and necessary to eliminate [coverage for express companies] from the RLA to preclude the ostensible coverage of nonexistent express companies".

Facts: To state that express companies are nonexistent under the RLA, or that it is unlikely that Federal Express constitutes an express company, simply ignores the facts. In a case addressing the jurisdictional status of REA employees, the National Mediation Board defined an express company as: "The express business has always been one of pick-up and consolidation of traffic, turning it over to common carriers by rail or air for transport, and delivery by the express company to consignee at destination. In more recent times, this has been supplemented by over-the-road handling of their own business without an intermediate form of transportation". *Railway Express Agency*, 4 N.M.B. 253, 269 (1965). The NMB defined an express company by describing precisely the service Federal Express provides.

Inaccurate statement: "The deletion of the term 'express company' from [S]ection 1 of the RLA does not appear to have been inadvertent or mistaken".

Facts: This rather astonishing conclusion ignores the ICC Termination Act itself. The change to the RLA was through a conforming amendment to the ICC Termination Act, which included the following provision: "The enactment of the ICC Termination Act of 1995 shall neither expand nor contract the coverage of employees and employers by the Railway Labor Act . . .". Public Law 104–88 (H.R. 2539), Sec. 10501(B).

Inaccurate statement: The memo suggests, consistent with organized labor's lobbying position, that it is more difficult for employees covered by the Railway Labor Act to organize. The memo states: "This [amendment] would require those [express company] employees to organize under the limited craft bargaining units permitted by the RLA, rather that under the wide range of appropriate units afforded by the NLRA.

Facts: About 11% of the private sector workforce covered by the NLRA is represented by labor unions for purposes of collective bargaining. Some 65–70% of employees covered by the RLA are represented by labor unions. Which law is more conducive to union organizing? As with most of the unsupported conclusions in the memo, the memo again ignores the facts.

Mr. HOLLINGS. Now, Mr. President, let me take the full responsibility because there is no trickery in this whatever. It was openly discussed. My colleagues on the House side as well on this side, all agree that it was an innocent mistake. I do not think you could have Members supporting our position against the powerful Senator from Massachusetts and the powerful labor movement which has made this issue if it were not the case.

That is why we included it at my behest, because I wanted to make sure just exactly, in the expression of the Senator from Massachusetts, we were not going to change the rules of the road in the middle of the game. I think that game in Philadelphia is over. But if he thinks it is continuing, then it is in the middle of the game, because this was done in the ICC Termination Act of December 15 after the rule of the road on November 22, 1995.

I am glad the distinguished Senator from Arizona referred to these employees. That saves me time. It saves the Members some time. We could go through the history of this particular company and labor relations and various talking points, and you could be more than persuaded now as I have been because I did not think we were going to have this great rhubarb come up.

But ever since they were organized, back in 1983, I guess it was—no, 1973, because here is a 1979 decision—Federal Express has been an express carrier, first under the decision back in 1979. In 1936 the Railway Labor Act was amended to include air carriers, which very few people realize had included air carriers, including the one who suggested that we drop the language about "express."

Without reading that decision, we move to the 1993 decision of the National Mediation Board and on down the list of the various decisions from time to time. We find out there has been a total consistency for a company that is extremely well operated, is extremely patriotic, it takes care of its employees.

I have been through its facilities. When I went up to Alaska many years ago, we got there early and somebody said you ought to go over here and watch that operation they have over at Anchorage while we wait for our ride, which I did. I never realized the technological advance that had been made by this old Marine—or young Marine, as I look upon him, Fred Smith.

Before they take off in Japan, they have already computerized information and forwarded it to Anchorage. At Anchorage they have various ways for the State Department, Interior Department, Wildlife Service, textiles—Customs, and they have all those things. They know the packages. They know where new shipments are coming through, where there may be some textile fraud, where there may be some drugs; issues involving the Justice Department, the DEA.

As everything is unloaded in a matter of a couple of hours there, this mammoth plane, it goes into all those sockets, runs down these wheels, all those people are at their stations and this is down into the inner part of America.

All I could say to myself, understanding this particular point being raised, that, if you had me running around the countryside trying to argue a different union here and another union over here, with certain little organizers here—I want to emphasize this—that experience, because the distinguished Senator from Massachusetts says they are primarily the little towns. This crowd, UAW, is well represented. They know how to organize folks.

They spent 5 years on this Philadelphia case that has long since been decided unanimously against them. Now

comes, the Senator from Massachusetts depicting: It is an ongoing litigation matter, they have not had their chance, they are playing by the rules and HOLLINGS is pulling the rug out from under them.

Nothing could be further from the truth. I would not engage in such conduct. I take offense even having me referred to in that way. I do not have to get into some company over there in Tennessee. But I certainly do not have to stand by and, just because they have a powerful Senator and a powerful labor movement, see a good crowd get rolled.

I am not going to be rolled.

I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. KYL). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just take a moment or two and then yield to my friend and colleague. The fact is, Mr. President, the Senator from South Carolina is still—still cannot show where the Federal Express is an express company under the Railway Labor Act. He cannot show it. It is not there. No court award has ever held Federal Express is an express company. The Federal Express has argued that time and time and time again.

The fact of the matter is, on the case he talks about, the National Labor Relations Board is still out there, it is still current. It is case 4RC17698—still current. He can say it is not current. It is current.

He can find fault with Mr. Gould. We have had the hearings on Mr. Gould that would show the way the National Labor Relations Board has acted since he has been up as being more expeditious, faster in terms of the considerations of various cases, and speeded up consideration in various regions more than any National Labor Relations Board of recent times. It has also seen a significant reduction in those terms.

I will just conclude at this point and say we can obfuscate this situation in any way that we might try. But the fact of the matter is, the part of Federal Express that flies is an airline. The part that is a truck, is a truck. What they want to do is take the trucking and put it in the airlines to make it more difficult for workers to be able to come together.

The fact of the matter is, UPS has airline designation under the Railroad Act, and has trucking designation under the National Labor Relations Act. The issue that is before the NLRA is exactly the same.

Sure, mediation has found Federal Express is an airline. The question is, whether the trucking should be considered under the National Labor Relations Act. They have found this division on UPS. They are their principal competitors. It does not take a lot of time to have people understand that is what the issue is. What is being attempted here is to say: Oh, no, we are not even going to let the National Labor Relations Board—we are going to effectively close that door down, cut off that case—which is active—and put them under the Railroad Act, which will make it much more difficult for them to be able to express their grievances.

That is common sense. People ought to understand. You have the post office, now, that is competing with air and trucking; you have UPS, air and trucking; and you have Federal Express, air and trucking. And you have the efforts, now, in terms of Federal Express, to vastly expand the trucking division. What their attempt is, now, is to get in with this special provision to effectively exclude themselves from what their other competitors are involved in. Then they will be much more successful in terms of the bottom line. That is what we are talking about and that is what is at issue.

I think it is a commonsense fact because that is what the real world is all about. That is the issue which this legislation is attempting to undermine, that decision by the National Labor Relations Act on that particular issue in question and why it continues to be so insidious.

I yield time as the Senator from Illinois would want.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. SIMON. Mr. President, I have great respect for my colleagues from Arizona and my colleague from South Carolina. Senator HOLLINGS in many ways has contributed significantly. He has talked more candidly about the revenue situation that the Federal Government faces than any other Member of this body and I am grateful to him for that.

He also is the one who educated me on the whole question of gross interest versus net interest. One of the little games that administrations of both parties play is they list net interest rather than gross interest so interest does not look so bad. FRITZ HOLLINGS is the person who educated me on that.

But I think on this issue he is wrong. I think there are three questions that we have to ask ourselves. When you ask those questions, then you have to come to the conclusion that we are making a mistake.

First of all, who benefits? The answer is—no one has questioned this—one corporation, Federal Express, benefits. No one else benefits by this.

Second, there is the question of litigation that is pending. My colleague, the Presiding Officer, sits on the Judiciary Committee. He has not been there too long yet, but he will become, over time, one of the most valued members of the Judiciary Committee and of this body. I have said that, not just in his presence, but to others. I can tell you that, almost always, it is wrong to pass legislation that interferes in litigation. It is just bad policy.

And third, the process is wrong. We are going through this and there is no question it is a major change, without any hearings. When the Congressional Research Service says, "The deletion of 'express company' from section 1 of the RLA does not appear to have been inadvertent or mistaken," my friend from South Carolina says they are wrong. I do not know who is right. But I would think the committee of jurisdiction ought to hold a hearing on this.

I also have great questions of whether we should interfere in a competitive situation.

Senator KENNEDY is correct when he says UPS is designated in two different ways, and Federal Express wants to be designated in only one way. Federal Express, as I understand it, has about 1,000 planes and 35,000 trucks. What they want to do is to be designated as an airline, including the 35,000 trucks.

Maybe that is what we should do. I doubt it, but maybe that is what we should do. I think we ought to at least hold a hearing on it.

I am also concerned, and I say this to my friend, the senior Senator from Arizona, Senator MCCAIN, who has been a leader, I think we have to honestly ask ourselves, why is Federal Express being given preferential treatment in this body now?

I think the honest answer is Federal Express has been very generous in their campaign contributions. I have to say, they have been good to PAUL SIMON. My guess is, if you check this out, you will see they have been good to every Member of this body. I am grateful to people who contribute, but I don't think they ought to set public policy because of those contributions. I think that is what is happening here.

We need to change the way we finance campaigns, and I commend my colleague, the senior Senator from Arizona, for being a leader in this area. The system distorts what happens here, and I think this is an example of that distortion.

They have good people, like George Tagg, who I think most of us know, just a very, very fine person. I think most of us frequently use Federal Express. I am not knocking the company. I say to the company leaders who, I am sure, are monitoring what is going on here right now, I think they are well on the way to winning a pyrrhic victory. I think they may well, as the Senator from South Carolina has suggested, get the 60 votes, but I think you will see that journalists, academicians and others are going to use this as an example of a special interest prevailing and the public interest not prevailing. Not to have a hearing on this fundamental question is simply wrong.

I hope that somehow a compromise might be worked out where a hearing would be agreed to and it would be

agreed that the committee would act, not necessarily favorably, but the committee would act on it shortly after the first of the year.

This process is wrong. There is no question the underlying bill should pass, but I think we are doing a disservice to the Senate and to the Nation as we move ahead in this way.

Mr. President, I yield the floor.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I yield myself such time as I may consume. Let me, again, repeat my respect and affection for the Senator from Illinois, but in all due respect to the Senator from Illinois, if we are talking about campaign contributions here, I say to the Senator from Illinois, organized labor, the ones that are behind trying to kill the FAA reauthorization bill, has given a thousand times more—a thousand times more—in campaign contributions.

I would be glad to examine the campaign contribution reports to the Federal Election Commission as to who has been getting what money and how much has been given and compare this corporation, with what organized labor is doing.

I say to the Senator from Illinois, right now today, there is an unprecedented—without precedent—infusion of funds by organized labor unions into the congressional campaigns and the Senate campaigns, the likes of which I haven't seen in the 14 years I have been a Member of the Senate. I strongly suggest, before the Senator from Illinois suspects—suspects, as he said —that campaign contributions play a role here, that he look very carefully at the contributions by organized labor unions and the significant contributions that have been made by the individuals who are trying to knock out this legislative provision in the bill.

The Senator from Illinois makes a very serious charge about suspecting—about suspecting—campaign contributions. I will tell the Senator from Illinois, it is clear as to who has been making the campaign contributions. It's been organized labor, it's been an intensive effort.

The other Senator from Arizona and I know of over a million dollars—over a million dollars—that has been poured in by organized labor against one Congressman in the State of Arizona, a rural district, something like we have never seen before. We have never seen it in the history of our State.

So, look, I appreciate the efforts by the Senator from Illinois for campaign finance reform. I look forward to joining him and Senator Boren and others who have left the Senate who we need very badly in that effort, but to somehow think that Federal Express' campaign contributions have something to do with this legislation, when it pales in comparison with that of the campaign contributions and the phone banks and the organized labor leaders who show up and demonstrate in front of our colleague's every campaign appearance, I say to the Senator from Illinois, he has his priority skewed very badly.

Mr. SIMON. Will my colleague yield just for 30 seconds?

Mr. McCAIN. I will be glad to yield to the Senator from Illinois.

Mr. SIMON. What you say underscores the point, that the way we finance campaigns today taints the whole process, there is just no question about it. We can exchange charges, but we need to improve the system.

Mr. McCAIN. Mr. President, again, I repeat my great appreciation, my respect, and my affection for the Senator from Illinois. Nothing that I said should be construed as anything but a difference of view as to what role campaign finances and contributions may have played in this legislation, because there is no reason whatsoever for there to be any friction between myself and the Senator from Illinois, as he enters the last few days of a distinguished career of service to the people of Illinois and this body. I hope the Senator took my response in that vein as he leaves the floor.

Mr. President, let me just correct one thing. A drafting error in the Interstate Commerce Commission Termination Act of 1995 created an ambiguity regarding the express companies status under the Railway Labor Act. That is acknowledged by the people who drafted the legislation and the Senator from South Carolina who was involved at the time in the drafting of that legislation. That is what we are doing here, we are correcting a technical error.

One provision states the intent of Congress:

> The enactment of the ICC Termination Act of 1995 shall neither expand nor contract the coverage of employees and employers by the Railway Labor Act.

However, a second provision drops express carriers under the Railway Labor Act. This was clearly inadvertent and a contradiction to the stated intent of Congress.

Those are just facts. Mr. President, I yield 10 minutes to the Senator from Utah.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. BENNETT. Thank you, Mr. President, and I thank the Senator from Arizona.

Mr. President, I am not a member of the Commerce Committee. If we could choose our committees without the restrictions of reality, I would like to be a member of the Commerce Committee. I join in this debate, nonetheless, because of the history with the Commerce Committee.

I don't know how far back some of the current Members go, but I was a very, from my present standpoint, young lobbyist for the U.S. Department of Transportation in the first 2 years of the Nixon administration. We didn't call ourselves lobbyists. They don't call them lobbyists today. They call themselves "congressional liaison people" or, in my case, I was in charge of congressional relations.

But we were lobbyists, and in the spirit of full and fair disclosure, I will use that term. My assignment from then Secretary John Volpe, who had been Governor of the State of Massachusetts, was to convince the Congress to pass the Airport Airways Act and create the Airport Airways Trust Fund.

My predecessors at the Department, who had been Democrats under the Presidency of Lyndon Johnson, had tried to do the same thing and had been unsuccessful, for a variety of reasons. There were some in the administration who said we would be unsuccessful as well. Representing a Republican President to a Democratic Congress, it was not supposed to be the most harmonious kind of circumstance.

So I came up here in the Senate, obviously not on the floor, but up in the gallery, and in Senators' offices and, with my staff, worked with the then-chairman of the Commerce Committee, Senator Magnuson, and ultimately succeeded in getting strong bipartisan support for the Airport-Airways Act and the creation of the aviation trust fund.

We thought, naively it turns out, that by creating the trust fund we would produce stability in funding for the FAA and airport-airways so that there would never be any doubt of the flow of funds for people involved in keeping our national airways safe.

So it comes as a moment of nostalgia to me to come to the Senate now, some 25 years later, and find that the flow of funds out of the aviation trust fund that I had a small hand in creating have been interrupted, cut off, jeopardized by an attempt to filibuster in this body the bill that would provide those funds, and that the intent of Congress, in which I participated to see to it that there would never be any challenge to that funding, has been frustrated here.

I understand the Senator from Massachusetts has every right to do what he is doing. I have participated in filibusters myself when I felt the cause was just and the point was well worth making. But I find this more an attempt to play to the gallery, if I may, than to address the issue, because it has been virtually conceded on both sides that it is simply a matter of time before the process plays itself out. The bill will pass. The money will be available to keep the airport and airways trust fund funding going to the FAA. The arguments have all been repeated again and again and again.

I find that a little sad from that past history. I was hoping to be able to look

back on my career and say that the one thing I did while I was at the Department of Transportation was help remove the airport-airways thing from this kind of disruption. Now I see that that is not possible.

I sit here, not as a member of the committee, and hear the debate going back and forth. "It was an innocent mistake." And, "It is a technical correction." "Oh, no. This is a major policy issue." Back and forth, back and forth, with voices being raised on both sides.

If I may, Mr. President, I am reminded of an experience in my even younger days, before I served in the Nixon administration, all the way back to my teenage years, the first experience I ever had listening to a debate in the Supreme Court.

This was a debate over the sentences that were given to the Rosenbergs back in the days when President Eisenhower was President. You say, what does that have to do with this? Absolutely nothing, except this one phrase sticks in my head.

In the course of that debate, one of the Supreme Court Justices asked one of the lawyers, "Who are you?" The lawyer was taken aback by this question, and gave his name. The Justice said, "No. I know what your name is. What is your standing? Who are you with respect to this case?" The man then said, "Well, I represent somebody who is next friend of the Rosenbergs, a man named Edelman. I am the lawyer for Mr. Edelman."

The Justice called for a law book. The debate went on for a bit, and the Justice interrupted the lawyer again and said, "Is that the same Edelman as in the case of California v. Edelman?" The lawyer was stunned that the Supreme Court Justice would have this in his mind, and he stumbled around and he said, "Yes, it is." At which point the Justice closed the law book with a look of some disgust and said, "A vagrancy case." "Oh, no," said the lawyer. "That was not a vagrancy case. That was a free speech case."

It was the wrong thing to say to a Supreme Court Justice, who reopened the book and said, reading, "California v. Edelman, a vagrancy case," at which point the lawyer compounded his mistake by saying, "Well, it may say that on the heading, but if you'll read the case, you'll see that it was a free speech case." Whereupon, the Justice leaned forward and said, "Let's ask Mr. Justice Clark. He wrote the opinion." And Mr. Justice Clark said, "It was a vagrancy case."

I remember that very clearly as a young teenager in my first experience with the Supreme Court. The reason I bring it up now is, I sit here as a Member of the Senate, not a member of the Commerce Committee, and hear this argument. "It is a technical fix." "No. It's not. It's a major policy question." And like the Justice, I would say, let us ask the man who wrote the opinion what it is.

The man who wrote the opinion, as I understand, in this case is the ranking member of the Commerce Committee, who says it is a technical fix. I heard him say so on the floor here. He says it is a technical correction. He is the ranking member of the committee from the minority party. The chairman agrees with him, the chairman from the majority party. I find that convincing, having heard the people who wrote the legislative words we are arguing about saying this is what it is.

I do not want to be in the position of that lawyer before the Supreme Court trying to say, "The man who wrote the opinion doesn't know what the opinion really says." "The man who wrote the provision doesn't really know what the provision really is."

So, Mr. President, I hope we can move forward quickly. I hope, having made the statements, having discharged our political responsibilities to the various people on both sides who have urged us to do this, we can move quickly. I hope we can move this afternoon to say, all right, we have made our position clear. We have said what it is we have to say. We have satisfied the constituents that come to us and plead for support here.

Now we have at stake the safety, the continuance, the future of the Nation's air system. Let us get on with it. Let us see to it that there is no challenge to the airport and airways safety and progress in this tremendously important area.

In my home State, we are trying to get ready for the Olympics in 2002. When the world comes to Utah in 2002, they are not going to come by ox cart the way they came the first time in the 1840's. They are going to come by air. When they come, the facilities have to be in place. The opportunity to get those facilities in place is being held up by our failure to provide this funding. I think that is a shame. I think we ought to move ahead.

Finally, I keep hearing all these things about how terrible Federal Express is. The most—I ask unanimous consent that I might be allowed the proceed for 3 additional minutes.

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

Mr. BENNETT. I hear how terrible Federal Express is. The only concrete statement really that I have heard is that Federal Express employees have gone for years without a pay increase. I realize that is a terrible thing. I have gone for years without a pay increase. Indeed, the whole time I have been in the Senate I have been denied a pay increase. I wish I had the salary I had before I came to the Senate when I took at least a 50 percent pay cut in basic pay, and more than that in bonus pay, in order to become a Senator.

I do not think that is a demonstration of prima facie that this company is antiworker, because if we accept that, then the Senate is clearly antiworker and we probably ought to do something about that, too.

So, Mr. President, I hope we could proceed with this and we could recognize that the positions have been staked out. The votes are where they are. I hope we will get on with it. I yield the floor.

The PRESIDING OFFICER (Mr. GORTON). The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take just a few moments. Mr. President, I am really somewhat startled by the fact that those of us in this body making about $130,000 a year are comparing ourselves with men and women making $30,000 a year and who have not gotten a pay raise for the last 7 years. We can make light of that fact, but it is not made light of for hard-working families that are trying to make ends meet and provide for their children and to meet responsibilities and pay a mortgage. I do not see how that kind of comparison really advances the argument. I do not believe it does.

Mr. President, I think it is a fair question and the Senator from Utah has raised it about this language. Is it, as I have suggested, Senator SIMON, Senator FEINGOLD, Senator HARKIN, Senator WELLSTONE, and others stated, that this was a carefully-crafted project in order to effectively diminish in a significant way the legitimate rights of men and women that are in this particular company, as Senator SIMON has pointed out; or was the Federal Express Co. deletion a matter that was decided by the conference committee—and the conference committee report actually bears the name of my friend and colleague from South Carolina.

I listened with interest to the Senator from Utah talking about going to the individuals that are the most familiar with this particular legislation. I have JIM OBERSTAR, the ranking Democrat on the House Transportation Infrastructure Committee and BILL LIPINSKI, the ranking Democrat on the House of Representatives Aviation Committee. This is what Mr. OBERSTAR says:

> The ICR staff itself recommended the elimination of the express carrier status. It was not an oversight. It is not something that someone forgot to do. It is not something that was neglected and drafted. It was not a drafting error, but it was done for good reason. The last express carrier went out of business in the mid-1970's. Federal Express purchased that carrier's operating certificates. The Surface Transportation Board, successor to the ICC, advises in writing Federal Express apparently never engaged in the operations authorized by these certificates. Subsequently, Federal Express obtained and operated new certificates.

Mr. President, here is Mr. OBERSTAR, who knows something about it. Then

he continues along page 11463, September 27, 1996:

We should not on the thin thread of a nonexistent operation of a dormant authority purchased and never used, lock this carrier into a statutorily established position within the meaning of the Railway Labor Act forever and ever. This is simply wrong.

Mr. President, Mr. OBERSTAR knows, as the ranking member, what he is talking about. This was not an oversight. This is the ranking member. Our friends say, "Look at what people who understood, the men of the committee who spent the time." That is fine, that is a fair enough test. That is Mr. OBERSTAR.

We have other Members in the House. Mr. DEFAZIO points out:

Unfortunately, what we have here, done at the very last moment, is to put an extraneous matter voted on by neither committees of jurisdiction, voted on neither by the House nor the Senate, to benefit one very large multinational corporation who has generously filled many campaign coffers of Members in this House and the other body. This is not a technical correction.

He says it is not a technical correction.

Do trucks run on rails? No. Well, we are going to classify Federal Express, for the purpose of this bill, as a rail carrier.

Mr. President, we could go through the members of the relevant committees. Both Mr. NADLER and Mr. DEFAZIO in the House are members of the Transportation Infrastructure Committee, these are members of the committee saying this, not just myself and Senator SIMON.

Now, the fact of the matter is, Mr. President, it is not just us who are saying this. We are also looking at the Congressional Research Service. I know their report is demeaned out here on the floor of the U.S. Senate but the Congressional Research Service is to guide the Members of the Congress, the American Law Division of the Congressional Research Service.

We asked them, is this just an oversight or was it purposely intended to be done—so that the Members would understand whether they should accept the fact that this is just an oversight, we never would have permitted it, and therefore we are remedying a situation that happened; or whether it was recognition that that language should have been dropped for the reasons that we mentioned earlier and that now suddenly putting this language back in has an entirely different meaning. I think hopefully we understand that now, as the Senator from Illinois and others have pointed out.

This is the CRS report, "The deletion of 'express' company"—those are the words—"does not appear to have been inadvertent or mistaken. To the contrary, the deletion appeared to be consistent with the statutory structure and the intent of Congress. Since the Railway Labor Act coverage has been triggered by Federal regulation of express companies, it appears logical and necessary to eliminate the cross-reference to title 49. Elimination of 'express' from the RLA appears to be a necessary step in harmonizing the Railway Labor Act with the title 49 of the code."

This is an independent judgment. You can say I do not like that particular lawyer, I do not like that individual. You can threaten those individuals, I suppose, and say we will hope that that person does not continue to work at CRS. But the fact of the matter is, that is the independent judgment and decision, one in which I agree.

Now, taking what the conclusion would be from the CRS. If the amendment were enacted "court decisions since that time have upheld NMB discretion in resolving representative disputes. On balance, the proposed amendment would appear to confuse, rather than clarify the question of Railway Labor Act coverage."

On the one hand it can be argued the amendment would have no effect, and it is very interesting for those that are supporting this legislation to say, "Look, it is not really going to have an effect," because they say it will not expand or contract the rights of the workers. Well, it is interesting that they are arguing that at this time. It also points on the other hand, it could be argued since neither Federal Express nor anyone was certified an express company subject to the title, it would follow that no employer would come under the coverage. Nonetheless, courts usually strive to give meaning to all enactments.

That is right. They are understanding and everyone is understanding what this is about. This is Federal Express, their understanding, to be able to read the legislative history and understand. There is one company that will benefit, and proponents have argued the amendment would simply put the term back in the Railway Labor Act and would in no way affect, and proponents argue that the amendment merely corrects an error in order to preserve the proponents saying it will expand the coverage to ground-based employees of a carrier whose jobs are not integral to air freight operations.

There it is, Mr. President, exactly. UPS, the flight aspects are considered to be under the carrier provisions. Those that drive the trucks are considered under UPS under the National Labor Relations Act. Federal Express flies, they ought to be under the Railway Labor Act. The truckers ought to be—a judgment ought to be made. All we are saying by the National Labor Relations Board, all we are saying, let them make the judgment, not preclude them, not preclude them from making a judgment. That decision is before the National Labor Relations Board. And it will certainly be argued, if this becomes law, that this is exactly what is intended, to expand for ground transportation. That is the way the Federal Express is moving and expanding dramatically. It will give them extraordinary advantage. Put this back in and we don't know what the results will be. We do know, I think, what will happen. Federal Express will have another weapon to turn its back on the legitimate rights of workers and workers' rights.

Finally, that is what this is all about—whether these workers and workers' rights are sufficiently legitimate that they are going to appeal to those that are working in a particular community, to be able to make a decision and say, look, we feel that we can protect our rights better by becoming a union, or whether they say we don't want to choose a union. All we are saying is let them make the local choice, let them make the decision. UPS drivers have made that decision. That issue is before the National Labor Relations Board. Why take it away from the National Labor Relations Board and undermine those rights and put it under the Railway Act, which virtually says to all of those workers, we know you had the rights under the National Labor Relations Act, like they did in UPS, to go ahead and see if you can try and form a union. Maybe you will, maybe you won't. But we are letting you make that local choice and decision. But under this legislation, we are effectively saying, no way, not for you in this Federal Express Co. You are not going to be able to do it. That is, in effect, what this is all about.

Finally, Mr. President, I mentioned before that we are all for the extension of the Aviation Act. I don't know whether our colleagues were here earlier. I would have offered the FAA conference report without this provision on the CR and had a 10-minute discussion. We would have voted on that and the House would have accepted it. We would be off on our way to be able to do that. But the decision was made not to do that. So we are at least in the position now where we have to follow this procedure. But we are strongly committed to support that particular provision. We think that it is important.

Mr. President, I yield the floor and withhold the balance of my time.

Mr. MCCAIN. I yield 5 minutes to the Senator from Utah.

Mr. BENNETT. I thank my friend from Arizona. I will not consume much time. The Senator from Massachusetts appropriately corrected me on any suggestion that there is a similarity between the salary of a Senator and the salary of some of these workers, and I accept that correction on his part. I meant not to make that comparison. I didn't think I had made that comparison. But if he felt that was made, it was appropriate for him to raise the issue.

I would like to revisit the issue of the pay increase, because I have now been given some additional information that I did not have when I spoke before. The charge has been made that Federal Express has not given a pay raise to its employees in 7 years. I am now told that the truth is somewhat different, and that all kinds of programs relating to pay have been initiated within the last 3 years. There is now an opportunity for an employee to get professional pay. There is an incentive pay plan. There are programs for merit increases. And there is a program for best-practice pay. So the company has put in place this series of 4 opportunities, making all employees eligible for a pay increase that could be as high as 10 percent annually.

I think it is important, in the spirit of full disclosure, as we go about this debate, that we not leave on the record unanswered the charge that Federal Express has not made any pay increases available to any of its employees for 7 years, and the implication, therefore, it is the duty of the U.S. Senate to somehow punish them for this kind of activity on their part, when in fact they have put in place programs that make pay increases available to their employees up to the level of 10 percent annually.

If I may, again, without suggesting in any way any comparability between the salary of a Senator and the salary of some of the employees we are talking about here, I do wish that Members of the Senate could look forward to any kind of cost-of-living increase and not have had their pay frozen for the entire time I have been here. Maybe my coming caused that. If that is the case, I suppose there are plenty that hope I leave. I would like to think that was coincidental.

Mr. President, I repeat again what I said before. I think everybody has said whatever they want to say on this issue. It is clear that one side wants to take the opportunity to attack Federal Express and, thereby, perhaps tilt things in one direction or another in a time of a union election, to pay off whatever political debts to the unions that are urging them to attack Federal Express. The other side has made it clear that we want to get on with the legislative process of providing funds for the FAA.

I see no reason to repeat all of these arguments. I see no reason to wait until next Thursday to get this resolved. Everybody knows how it comes out, as the Senator from Illinois indicated when he spoke. I hope that people who are in leadership positions, who can deal with these things and deal with the Senator from Massachusetts, can sit down and get this thing resolved so that we can have a vote on it, let the Senate work its will, having heard all of the arguments, and get the money that is so desperately needed into the hands of the people who are so importantly in charge of something as significant as our Nation's airlines and safety.

Mr. MCCAIN. Mr. President, I yield myself such time as I may consume, and I will be brief.

Mr. President, let me remind my colleagues again, in the words of the distinguished Democratic leader, as he stated this just this morning:

> Question. So you've got to pass this bill?
> DASCHLE. We've got to pass this bill.

That is as simple as it is. I don't know exactly why the Senator from Massachusetts wants to drag out this procedure. But I do know this, Mr. President: We are now hearing from airport managers and workers, and even union members all over this country, who are asking why can't we move forward with our airport projects, why can't we begin the much needed repairs. We are even hearing from bureaucrats, who are saying, "We want to work, we want to move forward on aviation safety and security measures that are necessary to safeguard the flying public."

Why is it that we have to wait until Thursday for the bill to be completed and then sent over to the White House for signature? Why do we have to do that? I think that is a legitimate question, Mr. President.

On the subject of Federal Express, I don't know much about Federal Express, except that I see them everywhere. Members of my family, especially my wife, use that service quite a lot, along with a number of other organizations that deliver packages.

But I am not here to argue whether Federal Express is a good or bad corporation. In fact, I think that is a straw man, Mr. President. In fact, I think it is an evasion of what this debate is really all about. What this debate is about is whether there was a mistake or drafting error for which there needed to be made a technical correction in legislation that was passed in 1995, or whether there was not.

Now, the Senator from Massachusetts believes that had no relevance, that was not correct. He is entitled to that opinion, and I respect that opinion. I am not sure I see the point here in attacking a company and accusing them, and having a big poster board up there that says "anti-worker." What does that have to do with anything that we are really debating here?

What it really has to do with is a union agenda to attack a corporation. Again, they are free to do that, and the rules of the Senate, I am sure, certainly allow the Senator from Massachusetts to do that. But that is not really what the debate is about. The debate is about whether an error that was made in drafting and enacting legislation should be corrected or not. It is that simple. Whether Federal Express is the best corporation or company in the world, or the worst, has no bearing on it.

So, again, I am sure that the Senator from Massachusetts seems to be enjoying relating anecdotes about the anti-employee behavior of Federal Express; although, in my experience, most corporations that mistreat their employees are not successful. But maybe this is an exception to my general experience in that area.

I don't claim to be an expert. But I am not sure how we really gain anything by continuing to try to discover whether Federal Express is a good or bad corporation. The question here is: Are we going to allow the airport projects and aviation safety programs—the aviation safety and airport security programs—to move forward, which will happen on Thursday anyway now, or are we going to continue to delay? We have already passed our deadline for completing this matter by some 17 hours.

The Senator from Massachusetts professes and I accept his sincere commitment to the working men and women of America. I do not question that at all. But I do question why he wants to delay the inevitable until Thursday, or Friday, or next week costing these working men and women I don't know how much other income because I don't know what their salary is, but at least a week's worth, if not 10 days worth. In some families, that means a lot. That really does mean a lot. There are only 52 weeks in the year when you can work and we are now costing these families income by not passing this critical legislation.

Now the Senator from Massachusetts is going to deprive those working men and women. I have no idea how many tens of thousands of them would be working on $9 billion worth of airport projects. I don't know how many there are. But I know they are going to be out there suffering as will their families.

The Senator from Massachusetts continues to sort of blame this side that we didn't pass the bill. We passed the bill and finished conference on September 23, in plenty of time, Mr. President. The conference report could have been passed and sent to the White House days ago before October 1, and this critical funding would have continued.

Now we are getting emergency phone calls from all over America. They are calling saying, "What is the matter with you guys? What is the matter with you? You are hung up on some technical point here," and we are being deprived the ability to provide the critical aviation services to our citizens that they deserve. Frankly, I do not understand it.

I again urge the Senator from Massachusetts to allow us to move forward. We could have a vote on the conference this afternoon and pass it with 60

votes, or 51 if he would just let us have an up-or-down vote on the conference report. And we could be done with this. Instead the Senator from Massachusetts is choosing to drag this out for 3 more hours of debate tomorrow. And, very frankly, it is not clear to me what there is to debate more except to keep going over again and plowing over ground that has already been plowed, which by the way would not be a unique activity for this body. But at the same time there is a lot more at stake here than in the normal course of debate.

So again I want to urge the Senator from Massachusetts, take down your antiworker poster and let us talk about whether indeed this was a technical correction to a drafting error that needed to be made or not or whether the argument of the Senator from Massachusetts is correct that this is really a subject for the National Labor Relations Board. It may be. Let us try to convince our colleagues on the basis of whether that is, indeed, the case, or not.

I am willing and eager to engage the Senator from Massachusetts in open and honest debate on that issue. I am not eager to try to find out whether Federal Express is a good or a bad corporation because I do not think that is relevant to the issue and the question here. But I am afraid that is not going to be the case.

Finally, Mr. President, before I yield the floor, again this is an issue that must be resolved. It is going to be resolved. And we are not doing anything except penalizing working men and women all over America. We are jeopardizing the aviation safety of the American flying public. And we are not proceeding with the much needed modernization for our air traffic control system, and we are not moving forward in a myriad of ways that we critically must move forward with immediately.

Mr. President, I say with some self-serving comments that this has a huge bearing, and is an encompassing extremely important piece of legislation; the result of 2 years of work with the Secretary of Transportation, with the Administrator of the FAA, and with the Deputy Administrator of the FAA, Linda Daschle, who did such an outstanding job on this—an incredible job. Hundreds of hours were spent with Senator PRESSLER, the chairman of the full committee, Senator HOLLINGS the ranking member, Senator FORD, and me. I mean we have worked for literally 2 years on this very important legislation. And we had a couple of false starts I might remind my colleague from South Carolina. But we finally came up with legislation which really is important to the future of America.

Instead now we are hung up on what is fundamentally a difference of opinion as to whether a mistake was made in the drafting of legislation—and by the way, in view of those who were drafting the legislation, or whether Senator KENNEDY is correct, that this is a subject for the National Labor Relations Board.

It seems to me that we could pretty well ventilate that difference of opinion today and we could move forward with a vote on the bill today.

I again urge my colleague from Massachusetts to do that for the benefit of, if not the Members of the Senate who want to go home and campaign, the working men and women in America, tens of thousands of whom—if this debate drags out, I will have more specific statistics as to the incredible impact that this is having economically on America, not to mention the critical aviation safety and airport security reasons.

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

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will just speak briefly at this time.

I listened to my friend from Arizona talking about workers that are affected. I am asking what about those workers that are working for Federal Express that are playing by the rules who tried to get together and have their own set of grievances? What about those workers who have their case before in adjudication at the present time? What about those workers? What about their families? They have been waiting for months and months for a decision to see if their rights are going to be protected, and with the passage of this legislation effectively we are undermining those. I don't hear from the Senator from Arizona any concern about those workers. I would have thought that he would have been concerned with them.

Mr. President, we have debated about whether this was a mistake or not. I will not get back into the fact that we have had now the number of Members—Mr. LIPINSKI, ranking member of House Aviation, Mr. OBERSTAR, ranking member of the House Transportation, Mr. DEFAZIO on the Transportation Committee, and others in the House, and the members of the committee, plus CRS, all indicated that it was not just a passing factor, but that it was to give very clearly one company an advantage over others and being a serious disadvantage to workers.

Mr. President, the Senator from Arizona reminds me of that young person who shot his parents and then came before the judge, and said, "I plead, give me mercy. I am an orphan." We said the other day on the continuing resolution that we would pass the conference report without the antiworker provisions, and he said, no, no. Where was all of his concern about the workers then? Where was all of his concern about what is going to happen out in these various airports then? Where was all of his concern about the importance of passing out legislation then?

Well, after that legislation was safely passed, it only took a little bit of time. And then he comes out here and says "Oh, we have to pass this legislation now."

Mr. President, we are quite prepared, if it is agreeable to Senator MCCAIN, to ask that we go to consideration of S. 2161, which is the FAA bill that is on the calendar now without the antiworker special interest Federal Express rider, and we are prepared to move ahead on that.

I get back time and time again from the Senator from Arizona: "We can't do that because we are going to go out. We are going to go out." The fact of the matter is the House adjourned in 1994, and it came back and passed GATT. There are other examples that I will put in the RECORD of where the House came back in, the most recent with the GATT. They came back in and passed virtually immediately on the action that was taken by the Senate. It is done, and it has been done and historically done.

We could do that this afternoon. But no, no, no, no, no. He refused to do that because they want to stick it to these workers; stick it to the workers, pass this provision in there to stick it to the workers. They are the interest. This is my interest in terms of—

Mr. MCCAIN. I ask for a ruling from the Chair——

Mr. KENNEDY. I have the floor, Mr. President. I ask for regular order.

Their interest is my interest. That is basically what this issue is about.

The PRESIDING OFFICER. The Senator will suspend.

The Senator from Arizona.

Mr. MCCAIN. Under the rules of the Senate, I do not believe the words of the Senator from Massachusetts, saying I want to stick it to the workers, is appropriate language for the Senate.

The PRESIDING OFFICER. The Senator will withhold.

The ruling of the Chair is that the language of the Senator from Massachusetts is not in violation of rule 19.

Mr. KENNEDY. I thank the Chair.

Mr. President, the issue of those workers—this is about Federal Express. They have rights. They have their interests. If they are against the workers and workers' rights, so be it. This is a free country. They can go within the context of the law. What we are basically talking about is the grievances that those workers have, who are trying to carry them forward, and we have legislation that would effectively undermine them.

I know the Senator from Utah is not on the floor. I hoped to just be able to clarify this position. As I understand, from 1984 to 1991, which is a period of 7 years, there was no pay increase; that

in 1991, workers began to organize, and Federal Express gave workers a pay increase, and then another in 1993. In 1996, the company announced that there would be no further wage increases. That is my information. If that helps clarify the Senator's understanding of what I was trying to portray, that is fine.

Mr. President, this is an important issue. It is so easy to always find an excuse not to look out after working people. We heard from the Republicans month after month after month where they would not even permit the Senate of the United States to vote on an increase in the minimum wage. Month after month after month they said no. "Over my dead body," was what they said in the House of Representatives. "I will fight it with every sinew in my body"—an increase in the minimum wage to permit those Americans on the lowest rung of the economic ladder the ability to work and be out of poverty. No, they said. No, we have got other measures to consider in this Chamber. We are not going to permit that.

Then, finally, because of the American people's sense of fairness and decency, they had to relent in the Senate of the United States and the House of Representatives. Then they tried to cut it back. Then they tried to delay it in the conference. That is the record of the anti-worker leadership over the period of this last Congress.

The first thing they did was attack the Davis-Bacon Act. The average construction worker makes $27,500 a year, and that is too much for some on the other side; we are going to emasculate that. Second, we have got to cut back on the earned-income tax credit. Who benefits from that? Workers who make up to $28,000, $29,000 and their children. That is too much. We are going to cut back on those individuals.

The next thing we are going to do is make all of you pay more for your parents because we are going to cut back on the Medicare and give $245 billion of tax relief to the wealthiest individuals. We know what the record is of the Republican leadership over there.

I am not surprised at what the Senator from Arizona is saying now. All you have do is look at the record of this last Congress, and it has been anti-worker, anti-worker on a minimum wage, anti-worker on the earned-income tax credit, anti-worker on workers who are trying to get the Davis-Bacon provision so that those who have the skills ought to be able to get decent work, and cutbacks in education where the workers' children are going to school. Cut back on those programs. Cut back on the scholarship programs for those children who are going to college. To do what? Cut back on the Medicare, cut back on the Medicaid to give the tax breaks to the wealthy.

That has been the record. You do not have to listen to this Senator in October to make that out. The record is complete with the battles. So it is not a surprise to me when the Senator says we are concerned about workers, we are concerned about workers over here, and does not even mention those individuals who have very legitimate grievances and are being shortchanged by legislative action—shortchanged—and others who are going to be given some advantage, significant advantage, by statutory language.

This is not a question of oversight. All you have to do is read the record, read the unbiased analysis of those who observed the history of this particular provision. We know that. This is special legislation for a special company that has done what it could to frustrate workers from being able to proceed to pursue their legitimate grievances. That is what this is about.

That is what this is about. It is an issue we are fighting for, and it is an issue we are staying here another day for. For some, workers' rights are important. For some, the grievances of workers are important in this country, maybe not to others. Maybe not to others. But to some Senators, they are. They are worth fighting for. We will have that opportunity for the Senate to make a judgment on this on Thursday next at 10 a.m. We will then follow the rules of the Senate and abide by that decision. But until then, we are going to continue with everything that we can to make our case for justice and fairness for working families.

Mr. McCAIN addressed the Chair.

Mr. KENNEDY. I reserve the remainder of my time.

Mr. McCAIN addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I yield myself 2 minutes.

I enjoy spirited debate in this Chamber. I enjoy an exchange of philosophy and ideas, and I learn from debate, especially with some of the more learned colleagues on the other side of the aisle. But I have to say, with all due respect to the President, I just grow weary, I grow weary when someone on the other side of the aisle says I want to stick it to workers, that I want to abandon old people.

That really has nothing to do with debate. That just has to do—even though the ruling of the Chair just was not in my favor, it is unnecessary, it is unwanted and, very frankly, I say to the Senator from Massachusetts, I am sorry that he has to lower the level of debate to impugning my character and motives for a position that I happen to take on this bill. I do not impugn the integrity, the motives of the Senator from Massachusetts. I believe that he has strongly held views. I believe that what is happening now is bad for workers of America, but I certainly do not blame the Senator from Massachusetts and, very frankly, I do not look forward to further debate with the Senator from Massachusetts because it is obvious that it cannot be debated on a level that I think is in keeping with the tradition of this distinguished body.

Mr. President, I would like to reserve 8 minutes for Senator HUTCHISON when she arrives in the Chamber. In the meantime, I would like to yield time, what time there is between then and 8 minutes left for Senator HUTCHISON, to the Senator from South Carolina.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President. I do not know where to come in. I know we finally have beaten them when they start debating the minimum wage bill, no pay increase, anti-worker, Davis-Bacon, scholarships for students. It reminds me during the war boarding ships in the Navy, they said, "When in danger, when in doubt, run in circles, scream and shout." And so we now have to come to the floor of the Senate and talk about everything else but what is really at hand.

My distinguished colleague from Massachusetts thinks when he repeats something or says something, somehow that makes it true. He continually comes again and again and he says, well, the Senator from South Carolina cannot show that Federal Express is an express company under the Railway Labor Act. We filled the record. We will have go back to it again and again and again.

Since commencing operations 23 years ago, Federal Express and its employees consistently have been determined by the Federal courts, the National Mediation Board, and the National Labor Relations Board to be subject to the RLA. See Chicago Truck Driver, Helpers, Warehouse Workers Union v. National Mediation Board, 1982; Chicago Truck Drivers, Helpers and Warehouse workers v. NLRB in 1979; Adams v. Federal Express Corporation back in 1977; Federal Express Corporation, 22 N.M.B. 57 (1995); Federal Express Corporation, 22 N.M.B. 157, 1995; Federal Express Corporation, 20 N.M.B. 666 in 1993; Federal Express Corporation, 20 N.M.B. 486; Federal Express, 20 N.M.B. 404; Federal Express, 20 N.M.B. 394 in 1993; Federal Express, 20 N.M.B. 360 in 1993; Federal Express, 20 N.M.B. 7, 1992; Federal Express, 20 N.M.B. 91, 1992; Federal Express Corporation, 17 N.M.B. 24, 1989; Federal Express, 17 N.M.B. 5, 1989; Federal Express Corporation and Flying Tiger Line, 16 N.M.B. 433 in 1989; Federal Express Corporation, 6 N.M.B. 442, in 1978; Federal Express, Case No. 22–RC in 1974; Federal Express, NLRB case in 1985; Federal Express, NLRB case No. 1–CA 25084 in 1987; Federal Express, NLRB case in 1982; Federal Express NLRB case in 1982; another one, again, in 1977; 1991.

The National Mediation Board recently ruled—and this is a 1995 case—

on Federal Express' Railway Labor Act status by stating unequivocally that "Federal Express and all of its employees are subject to the Railway Labor Act." Federal Express Corporation, 23 N.M.B. 32 (1995).

I do not know how you make it more clear than that. You have that decision that said, in 1993, and I read, "Federal Express Corporation has been found to be a common carrier as defined by 45 U.S.C. 151."

Then I look at 45 U.S.C. 151, 1st, "The term 'carrier' includes any express company."

You read it to them; they don't want to listen. They just act like there is nobody else, they are here looking out for the workers, trying to make it an emotional thing, who is for the workers. I was around here for the workers when some of these were voting for NAFTA. We lost 400,000 jobs; the Mexicans lost 1 million jobs. We went from a $5 billion balance in trade, a surplus, to over an $18 billion deficit. I lost 10,000. I don't know how many this year. I know more than 10,000 by the middle of the summer. I lost 10,000 jobs down there.

GATT—I voted against GATT. I had to hold up the Senate and everything else of that kind, trying to make sense so we would not repeal 301. They kept on saying it was not repealed. Now they understand. The Japanese laugh at them. They say, "Let's go to the World Trade Organization, WTO." Find out what you get out of that group.

So, do not run around saying, "I am looking out for workers and helping workers, and you are antiworker."

The PRESIDING OFFICER. The time of the Senator from South Carolina has expired.

Mr. WYDEN. Mr. President, I rise in support of the conference report on S. 1994, to reauthorize the programs of the FAA. For the safety and security of every Oregonian who flies and for our smaller airports this legislation is critical.

I want to commend the chairman of the committee, the chairman of the Aviation Subcommittee, and especially the distinguished ranking member of the Aviation Subcommittee, Senator FORD, for their hard work. The conference report includes several provisions I have worked on. In particular, I take pride in those that make safety paramount at the FAA, that require making airline safety information available to the public and that strengthen security at our airports.

I also want to thank the managers for their cooperation in incorporating my amendment on train whistles. This provision will stop the Government from imposing a one-size-fits-all approach on communities with railroad grade crossings. Without this provision, towns across this country, like Pendleton, OR, would have had train whistles blowing night and day. My amendment will assure that the Federal Railroad Administration works with the people in Pendleton and elsewhere to develop appropriate safety measures for their grade crossings.

When we began the process, this was a relatively modest reauthorization bill. No safety or security measures to speak of. Now, these concerns are at the forefront, where they belong.

With this bill, we go beyond all the talk about safety. With this bill, we take the first step ever toward making information on airline safety available to the public. Finally, the traveling public will be able to get basic safety information in plain English.

Everyone who flies should be able to make informed choices about the airlines they fly and the airports they use. This legislation will help consumers do that.

Today, travelers can get plenty of information from the airlines about whether their bags will get crushed or their flights will arrive on time. With this bill, travelers will no longer have to go through the legalistic torture of the Freedom of Information Act to get basic safety information. They'll be able to get it online, from the National Transportation Safety Board.

No one thought this would be easy. I have talked to people in all parts of the aviation community—the FAA, NTSB, airlines, labor, manufacturers, pilots, and consumer groups—about the best way to do this. While there are certainly differences over how to do it, everyone agrees that it should be done. And I agree with those in the industry who say that anything involving safety should not be part of competition. But by having uniform definitions, standards, and public access to this information, I believe we will move safety out of the shadows and into the sunshine.

Also of special interest are the provisions seeking to improve aviation security.

This conference report will require more comprehensive employment investigations, including criminal history records checks, for individuals who will screen airline passengers, baggage, and property. We remove the legislative straitjacket that has hamstrung the FAA's efforts to deploy security equipment in airports.

When we talk about a security system that will cost as much as one B-2 bomber, we can't expect the airlines to shoulder that burden alone.

The conference report puts the administration on top of airport safety and security functions. Right now, this task is undertaken almost exclusively by the air carriers. From now on, the FAA will be firmly in charge.

Another problem is the lax attitude we have toward some of the most critical players: Those who monitor the x-ray machines. What is the point of having $1 million machines if these workers are being paid minimum wage and lack any basic training? Americans should not expect a second-class attitude will produce first-class security.

The amendment will toughen up the attention paid to these critical workers.

There remains, however, one glaringly weak link in the security chain. It is that we don't even have an evaluation of the current status of security at our Nation's airports. We need a basic security baseline in order to establish goals and priorities. We need regular reports on whether the goals are being met. This is not rocket science. It is security 101. Although this is not included in the bill, I intend to work with the FAA on this in the coming months.

Finally, I want to note another very important provision for Oregon: Funding protection for smaller airports. These airports, such as Bandon and John Day and Klamath Falls, serve citizens in the more rural parts of my State. Without the funding formula in this bill, these smaller airports would suffer disproportionate cuts in grant funds when appropriations are tight. Unless I've missed something, there doesn't appear to be any extra airport improvement grant funding lying around.

Mr. President, there are many other important elements in this legislation. I want to conclude by again thanking the leaders of the Commerce Committee for their excellent work on a good aviation safety and security bill.

Mr. HOLLINGS. When does the time terminate? Right just before 5?

The PRESIDING OFFICER. There is 8 minutes remaining to the Senator from Arizona. He yielded those 8 minutes to the junior Senator from Texas, and 24 minutes remain to the Senator from Massachusetts.

Mr. HOLLINGS. I thank the Chair.

The PRESIDING OFFICER. The Chair, acting in his capacity as the Senator from Washington, suggests the absence of a quorum.

The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Texas has 8 minutes yielded by the Senator from Arizona.

Mrs. HUTCHISON. Mr. President, it is hard to imagine that we are really still here, talking about whether we are going to vote on an aviation security bill. We know that we must have this. We are trying to respond in a responsible way to the potential for terrorism in our airports. We are trying to make sure that the FAA has the tools that it needs for safety. Yet, we are being held up on a really technical point, not to mention taking people away from what they need to be doing right now with regard to the rest of this session. I do not understand it.

What we are talking about today is the most bipartisan solution to a real problem that we have in this Government, and that is the reauthorization of the FAA, which thousands of the traveling public depend on for the safety of our airline passengers, as well as the safety of our visitors to this country. We have the reauthorization before us, and it is October 1 and we are not able to move forward.

I would like to talk about a few of the things that are in this bill which we cannot do today because we are in the middle of some kind of filibuster, which really is meaningless because we are going to vote on this bill sometime before the end of this week. But here is what we are not able to do today because this bill has not been passed.

We are trying to get explosive detection devices certified by the FAA. There is $400 million in the continuing resolution that we passed last night, and it is for the technologies which are now available that we are not using in this country but that they are using in foreign countries for the detection of explosive devices that might be taken on an airplane.

These devices that could be certified, right now, today, if we could pass this bill, cannot be deployed without this provision. So we are losing valuable time in getting the best of the technology.

You may ask, "Gosh, we put our bags through screens right now at airports." That is true, we do. But those screens were made to stop hijackers. Those screens were made to detect guns and knives, but not explosive devices, and particularly not the high-level, sophisticated explosive devices that we know are now on the market. But detection devices are available for those devices. We can detect those explosives if we can deploy the equipment and get it certified by the FAA, which we cannot do right now because this bill is being debated on a technicality that was decided by Congresses in the past and which has been decided by this Congress, and it is just a matter of time before we get to what will be an overwhelmingly positive vote that will show that this Congress has decided this issue.

We would require background checks for baggage and passenger screeners. We believe it is prudent to have background checks on the contracted-out employees who are doing this screening. That is in this bill. The FAA would be able to audit the criminal records checks for tarmac-access employees. That is provided in this bill, if we can pass it.

We are going to have a study that will determine if we can have baggage-match reports on domestic flights. One of the things that is done on overseas flights is matching baggage that is checked with the passengers. I believe this is going to be feasible on our domestic flights, because I think the technology is there that will keep us from having the delays that the airlines have been concerned about. So we want to be able to assess that, and that is provided for in this bill. But it is being held up now with this debate over a nonissue so that we are not going to be able to immediately go forward to implement tests on baggage match, which may be one of the most important ways to make our airlines and our airports more safe.

We are also going to ask the FAA in this bill, when it is passed, to look at how we can improve security for mail, for cargo. It is important that the sense of the Senate in this bill which says we believe that cargo security can be enhanced be passed, because if we can enhance cargo security, that is one area that really is pervasive in our aviation system, and it is really the underbelly, to use a pun, of aviation security.

We would require, in this bill, an aviation security/FBI liaison in cities with high-risk airports to coordinate with the FAA. This bill says that we think there needs to be a person in every FBI office where there is a high-risk airport—any airport that has international service—that in every FBI office, there should be a liaison with the FAA and with the airport to make sure that there is coordination, where information is exchanged, where the FBI can look at what the FAA is doing or what the airlines are doing for security, to give their opinion about whether it is sufficient or whether it could be improved.

In fact, we would have a joint threat assessment by the FAA and the FBI, and they want that authorization. Both entities want to work together, and they want the authorization to do that. It makes sense.

So why aren't they doing that? Because we are discussing a labor issue that was decided years ago. The people of America probably don't understand that, and many of us on this floor don't understand that either.

We are talking about taking away the dual mandate of the FAA, which is promotion of the airlines and safety. That has always been a kind of a conflict that has had to be resolved from time to time, and we are taking promotion out, because the airlines do a good job of that.

When the FAA was created back in the old days, airlines were just beginning, and people had to be convinced that airlines were going to be safe. But now we see the safety record of airlines, and it is terrific. You are safer on an airplane than driving to the airport, and that is a fact. So now we are going to make safety the mandate of the FAA, and that is proper, because passengers want to make sure that they are safe.

I think of the families of the passengers on TWA Flight 800 who went to France this week. They are trying to put their lives back together. I think of what those families are thinking about, what their loved ones felt when they were thousands of feet above the ground and, through no fault of their own, their lives were taken from them, and they were helpless.

We want to make it as safe as possible for every traveling American, and this bill will do it. Mr. President, there is no reason to be holding this bill up on matters that have been decided by this Congress. There is no reason to hold this bill up over a technical labor issue that has been decided by this Congress. We have so many important safety issues in this bill that are being addressed. We should be responsible and get this bill out today so that we do not delay for 1 more day the deployment of the explosive detection devices that are ready to go on line and into our airports to provide the level of safety that our passengers require, expect, and are entitled to.

So, Mr. President, I hope that those who are holding up this bill, knowing that they will not succeed, but, nevertheless, imposing on their fellow colleagues to make some sort of point that is not being very well made and putting in jeopardy the safety of the flying public and people who go into airports by the hundreds of thousands in this country every day—we could be doing more, and we could be doing it right now. The FAA is waiting for this authorization. It is at hand. Why would we be delaying for the next 2 days when we could start the deployment today, this minute, of the explosive detection devices which are provided for in the continuing resolution that has already been signed by the President and all we need is the authorization to do it?

It is not responsible, and I call on my colleagues who are holding this bill up and ask them to be responsible and help us address these issues for the safety of Americans and our families and our loved ones.

Mr. PRESSLER. Mr. President, as chairman of the conference on H.R. 3539, the Federal Aviation Authorization Act of 1996, I rise in support of this critically important aviation safety and security legislation. Despite some unwarranted, partisan exchanges in the past few days—unwarranted because this is in no way a partisan issue—this is bipartisan legislation which enjoys strong support on both sides of the aisle. When we vote on final passage later this week, I believe this legislation quite deservedly will enjoy overwhelming support.

There are many Senators from both parties who had a hand in crafting this legislation. Today, I wish to express my personal thanks to some of my colleagues.

My good friend from Arizona, Senator MCCAIN, has been a driving force behind this legislation. As chairman of

the Aviation Subcommittee, Senator MCCAIN set the lofty goal of meaningful reform of the FAA. Through Senator MCCAIN's tireless efforts, this legislation puts in place a mechanism to ensure the FAA is on firm footing to meet our aviation needs well into the new century. Senator MCCAIN's great vision in aviation policy can be seen throughout this conference report.

I also want to commend my good friend from Alaska, Senator STEVENS, who is really the unsung hero of this legislation. When we reached an impasse as to how best to address the question of long-term FAA financing reform, it was Senator STEVENS' thoughtful suggestion of an independent task force study that broke the deadlock. Those who have watched the debate on this conference report over the past week have seen firsthand Senator STEVENS' passion for aviation safety and improving the treatment of families of aviation disaster victims.

Let me also commend and thank my good friend from South Carolina, the ranking member of the Commerce Committee, Senator HOLLINGS, who provided important leadership on this conference report. Also, let me acknowledge the leadership of Senator FORD, the ranking member of the Aviation Subcommittee.

H.R. 3539 is a bipartisan, omnibus aviation safety and security bill. It reauthorizes the airport improvement program [AIP] and thereby ensures airports across the Nation will continue to receive Federal funding for safety-related repairs and other improvements. It reforms the FAA in a way which hopefully will reduce bureaucracy, increase responsiveness, and enhance the efficiency of that agency. The conference report also contains numerous provisions which will improve aviation safety, enhance aviation security and provide long overdue assistance to the families of victims of aviation disasters.

Mr. President, as I have said repeatedly in this body over the past few days, we have a responsibility to the American traveling public to pass this legislation before we adjourn. For instance, this legislation provides statutory authority to deploy explosive detection devices at our Nation's airports as recommended by the White House Commission on Aviation Safety and Security on which I serve. Even though yesterday the Congress approved funding to purchase these explosive detection devices, without passage of this conference report the Federal Government will not have statutory authority to deploy them. Such a scenario is completely unacceptable. The American public expects the level of security at our airports to be improved immediately. We must respond before the Senate adjourns.

Mr. President, I wish to speak for a few minutes about what this legislation means to my home State of South Dakota. In South Dakota, air service is critical to economic development. For example, the decision whether to open a new factory in a small city or where to locate a new business often turns on the availability of good air service. That was never more evident to me than when a company recently visited Rapid City, SD to consider relocating there. This move would create more than 100 new jobs. One of the very first questions they asked my staff concerned air service between Rapid City and a major hub airport. In South Dakota, air service and economic development go hand in hand.

Mr. President, this legislation is a great air service victory for South Dakota.

First, the legislation doubles the size of the Essential Air Service [EAS] program to $50 million. What does that mean? It means the cities of Brookings, Mitchell, and Yankton in my State will be ensured of a continued air service link to our national air service network. In addition to helping to protect existing EAS service in Brookings, Mitchell, and Yankton, I am hopeful that a $50 million EAS program will result in increased air service for these cities. A $50 million EAS Program is great news for the economy of South Dakota.

Second, the legislation ensures small airports such as those in South Dakota finally receive their full and fair share of AIP entitlement funds. Adequately maintained airports are critical to air service. They also are critical to air safety. Under the new AIP formula I helped develop in this conference report, South Dakota airports are big winners. For instance, AIP entitlement funds will increase at least $225,000 annually for the Sioux Falls Regional Airport, $170,000 for the Rapid City Airport, and $100,000 each for the Aberdeen, Regional Airport and the Pierre Regional Airport. Hopefully, improved airport facilities resulting from this formula adjustment will help stimulate increased air service in Sioux Falls, Rapid City, Aberdeen, and Pierre. Again, such a result would be great news for economic development in those cities and our State. The new formula ensures they receive their fair share of Federal dollars.

Mr. President, this conference report should have passed the Senate last week. Regrettably, a few Senators have been using procedural maneuvers to hold up this vitally important aviation safety and security legislation over one provision they find objectionable. During debate, I have listened to those Senators mischaracterize this provision as some type of conspiracy by the Republican leadership. That baseless assertion could not be further from the truth. As the distinguished ranking member of the Commerce Committee, Senator HOLLINGS forcefully pointed out during yesterday's debate, the provision in dispute is a provision that Senator HOLLINGS, a senior Democratic Member of this body, offered. Moreover, there is nothing partisan about the Hollings amendment. In fact, it was supported by all five Senate conferees including Senator HOLLINGS and Senator FORD, two of the most respected Democratic Members of this body.

Yesterday during debate on the Hollings amendment, I heard several Members of the group blocking this legislation make blanket statements that the Hollings amendment is not truly a technical correction. With all due respect to those Members, I authored the ICC Termination Act. I know what we intended to do in that legislation. Therefore, I can unequivocally say they are dead wrong. In the ICC legislation, the Senate never intended to strip Federal Express or any person of rights without the benefit of a hearing, debate or even discussion. That point is made crystal clear by section 10501 which reads "the enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of the employees and employers by the Railway Labor Act."

Mr. President, fairness dictates we correct that inadvertent error. That is precisely what the Hollings amendment does. It is exactly why I supported it in conference. It is why I continue to support it strongly.

This historic piece of aviation legislation reflects the outstanding work Congress does when it proceeds on a bipartisan basis. We should meet our responsibility to the American traveling public by passing it as soon as possible. Lets get the job done for the American public. I urge that the Senate immediately pass the conference report to accompany H.R. 3539.

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

The PRESIDING OFFICER. Time yielded to the Senator from Arizona has expired. The clerk will call the roll and charge the time against the time remaining.

The bill clerk proceeded to call the roll.

Mr. GORTON. 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. GORTON. Mr. President, I ask unanimous consent to speak for 5 minutes or less as in morning business.

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

HONORING THE LIFE OF HOWARD S. WRIGHT

Mr. GORTON. Mr. President, I speak here this evening to express my sadness and deep regret at the death last Saturday of a friend and civic activist

in the city of Seattle, Howard S. Wright. Mr. Wright can appropriately be called one of the great builders of modern Seattle. He was the head of a major construction firm for many years. His company was responsible for the building of the tallest of our structures, among many others, a set of buildings with the vision behind which led to much more beautiful development in downtown Seattle.

After leaving the construction business, he went into the allied profession, development, and there also was not only successful, but successful in a way that will leave a long-term and positive impact on the city he so loved.

While Howard Wright was magnificently successful as a businessman, he also gave at least as much as he received back to his community in the form of his activities in charitable foundations, such as the Seattle Foundation; to the arts, through the Seattle Opera Association and the Arts Commission; through sports, as one of the original owners of the Seattle Seahawks; and in the field of horse racing; to his schools, Lakeside and the University of Washington; and to other enterprises too numerous to mention.

Another great Seattle citizen, a friend of both Howard Wright's and of mine, Herman Sarkowsky, was quoted recently as saying that Howard Wright had "an insatiable appetite to learn everything about his city," to learn, Mr. President, and to do.

But, in addition to these objective statements about Howard Wright, I must add his own personal friendship to me and to all of my undertakings, his constant counsel and advice, and a sunny disposition, which never admitted that there was a task too great to be accomplished, that never admitted that there was not another friend to be made, another goal to be achieved.

Mr. Wright will be missed by his family, by his community, by all of the organizations to which he so unstintingly gave his time and his money, and by this U.S. Senator as a friend.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Parliamentary inquiry, Mr. President. What is the business before the Senate?

The PRESIDING OFFICER. The conference report on FAA.

Mr. DOMENICI. Is it appropriate for the Senator from New Mexico to ask unanimous consent for 5 minutes as in morning business?

The PRESIDING OFFICER. The Senator may seek unanimous consent.

Mr. DOMENICI. I also request unanimous consent that a legislative fellow in my office, a Mr. Larry Richardson be permitted on the floor?

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

ALLOCATION OF THE HIGHWAY TRUST FUND

Mr. DOMENICI. Mr. President, I seek the floor today just to make the record complete before the year ends with reference to what happened to the allocation of the highway trust fund or what is about to happen to it.

First, I want to put in the RECORD all of the States of the Union and the 1996 actual allocation, the percent and the dollar loss or gain from the 1996 allocation to the 1997 allocation. The minimum amount that States lost because of this new allocation is found in the last column of this chart. I ask unanimous consent that this chart be printed in the RECORD at the conclusion of my remarks.

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

(See exhibit 1.)

Mr. DOMENICI. Mr. President, what I understand and what I think happened is that the administration, principally through the Secretary of the Treasury's office, made a major error in calculating the flow of money into the Highway Transportation Trust Fund, and that means that the Federal money for projects in States like mine of New Mexico will drop $20 million—I should say at least $20 million—from last year's $169 million that we received.

Actually, the reason I say "at least" is because we did increase the obligational authority. So actually a State like mine and a State like the one of the Senator presiding here in the Senate should probably have received more in the 1997 allocation than they did in 1996. So this chart is just saying, if we would have received the same overall obligational authority —that is the big pot of money to be distributed—our respective States should have gotten at least what they got in 1996. Instead, they are getting less.

Now, the first point, Congress in that year did not change the formula. The formula was a multiyear operational formula that told the administration, between the Secretary of the Treasury which reports the receipts of the gasoline tax, and the Secretary of Transportation, to allocate pursuant to that multiyear formula.

Now, something happened because, as a matter of fact, more money was taken in, the formula was not changed, and we get less money—substantially less money. Now, it is very interesting.

On the other hand, it is almost incomprehensible to the Senator from New Mexico because some States got huge amounts of new money. For instance, New York gets $111 million less than this minimum I have been describing that they probably should have received. I have told the Senate about New Mexico. Then, if we look down and say, well, what happened to California? Well, California gets $122 million more than they would have received if we would have had a 1996 allocation of the same amount of money in 1996, even though we got more going into this formula now. And, interestingly enough, the State of Texas—I do not know how this all happened, it is almost some kind of phenomenal event—apparently for no real reason, the State of Texas got a $182 million increase. The State of Massachusetts, a $73 million decrease.

Now, frankly, I believe this error should have been corrected by this administration. In fact, ten Senators sent a letter to the Secretary of Transportation well before any drop-dead date with reference to sending the money out, urging that the Secretary of Transportation correct the error. We sent that letter on September 20th.

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

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

U.S. SENATE,
Washington, DC, September 20, 1996.

Hon. FEDERICO PEÑA,
Secretary of Transportation, Department of Transportation, Washington, DC.

DEAR MR. SECRETARY: We are writing regarding the Department of Transportation's decision to use data from the Treasury Department that includes a $1.6 billion accounting error in the calculation of highway apportionments for fiscal years 1996 and 1997.

The Department of Transportation's decision to use the data without first correcting the error unfairly disadvantages our states. Therefore, we are requesting an explanation as to why the Department of Transportation has used this error in its apportionment formulas. At this point in time, it is still not clear why your Department has not been able to address this issue administratively.

Attached to this letter is a short list of questions which we hope will improve our understanding. The answers to these questions will be necessary to respond to inquires from our respective states. We also expect that the answers to these questions will help us to determine how a similar situation could be avoided in the future.

The states affected by this error will receive their apportionments on October 1, 1996. We, therefore, request a response to this letter by Wednesday, September 25. Thank you for your prompt attention to this matter.

Sincerely,

John H. Chafee, Pete V. Domenici, Max Baucus, Jeff Bingaman, Larry Pressler, Joe Biden, Tom Daschle, Alfonse D'Amato, Daniel P. Moynihan.

Mr. DOMENICI. We attached to it the fundamental questions to the Secretary of Transportation regarding this incorrect allocation, this lowering of some States and increasing of some States, without any change in the national formula, which is the law, and with an increase in the total amount we had to spend.

The error in the distribution of the 1997 funds to all States came about through an error of the Treasury Department in calculating the highway trust fund. Then we proceeded to ask several questions.

I also ask unanimous consent the questions be printed in the RECORD.

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

QUESTIONS REGARDING DOT DECISION TO IMPLEMENT HIGHWAY FORMULAS WITH $1.6 BILLION ACCOUNTING ERROR

(1) Given the significant implications of the accounting error, did the Department request an "official" correction that could be used in the apportionment formulas?

(2) To help gain an understanding of why the error could not be addressed administratively, please provide a copy of decision memos, legal opinions and other supporting materials and tables that led to the Department's decision to apportion funds based on incorrect data.

(3) Did the Department consult with the Office of Management and Budget (OMB) in making this decision? Did the 1997 budget baseline for the Department of Transportation assume that the error was corrected? Please describe any OMB policy guidance in this area.

(4) Does the Department have any recommendations to avoid a similar situation in the future?

Mr. DOMENICI. Interestingly enough, we have not heard from the Secretary of Transportation. This is an urgent request. They are in the middle of making final decisions which will cost my State a very big percentage of its highway trust fund, which will cost New York $111 million, which will cost States like New Jersey a very large amount of money.

Now, I am here because all I want is fairness. I cannot understand nor comprehend how the same old formula that is mandatory that they have to use, how it could turn out 1 year later to totally change what each State gets, when it has been applied for 4 consecutive years, and we could look at those averages, and nothing like this has happened.

Now, I have come to the Senate because I urge that the Secretary of Transportation fix this. I do not have any hopes that he will. In fact, I do not believe politically that they can. That does not make it right.

Can you imagine the Secretary of Transportation taking this money that I just described away from California, after they told them that is what they will get—even though it is wrong? Can you imagine the President saying, essentially, through his Transportation Secretary, to Texas that they should get what is the right number, instead of what is the wrong number—when they have already been telling them how much more they get? I could go on State by State.

I believe it should be fixed. I do not think the States which have been adversely effected by this should take this sitting down. We cannot fix this. That is the prerogative of the House of Representatives. They did not want to fix it. That does not mean it is right, nor does that add any strength to the fact that they are wrong. That does not make their numbers right because Congress did not take action in the waning days. That is obvious, as a matter of law that that is not the case.

Frankly, I hope the States that have been denied their fair proportion under errors in calculations by the Secretary of the Treasury, that were then forwarded to Transportation and apparently are about to be acted upon, that does not make those right. I believe States should take a look at it. They ought to look and see what their rights of action are.

This is a very, very, big mistake. For some States, it will never be corrected. I cannot tell New Mexico—we are a small State; $20 million is a small amount of money, big percentage, one of the highest percentage of reductions. The State of Rhode Island got a small amount but a big reduction. The State of Montana, small amount of money, but a big reduction—I cannot tell them come January, February, March, "We will fix this and give you the money you lost by the error."

I do not think I can promise that, for probably by then it will require we put a whole bunch of new money in the trust fund or that we allocate some extra money because, what about the States that think they can rely upon what the Federal Government has told them they will get. I submit they ought not be relying on it. I hope they have people keeping tab up here because I do not think they can rely on that money because I do not think it is theirs. I think it was erroneously allocated through a misapplication of a formula that is clear and precise and applied either the wrong numbers, wrong receipts—and they had plenty of time to fix it in the executive branch of Government.

Mr. President, while we are closing down tonight, I hope the Secretary of the Treasury's people that are watching, as they probably do from time to time, understand this may not be over with. I am urging States to do something about it themselves. I think they might look at whether they have a cause of action against the Federal Government. I am urging they take a look as to whether they can even get an injunction against the U.S. Government for misallocating this money and ask it be held up long enough for them to seek justice within the court system. That is just my thought. That is nobody else's. I do not hold anybody to it.

I tell you, this error is over $1 billion. That means, erroneously, States have been denied over $1 billion, and it has been funneled to other States, of the formula that they should have applied, was voted on up or down, and prevailed with a handsome majority when that formula was put in. I happen to know about that. I was not on the committee but I think I know how the formula came about. In fact, I know how the formula came about 5 years before that. It is very similar.

The point of it is, the formula has not been changed, the dollars to be distributed are higher, and 28 States get less. Now, that just does not jibe. It just does not make for good sense. Something is awry, amiss, gone wrong, and I hope it gets fixed. I hope the Secretary of Transportation takes a look. It has taken them about 10 days to answer the letter. That is pretty unusual. It has taken 5 days to answer a phone call where I asked him about this, and he will get back to me.

We will see tomorrow, 1 day before we go out, if we get something from them.

TECHNICAL ASSISTANCE—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION: COMPARISON OF ESTIMATED FISCAL YEAR 1997 OBLIGATION LIMITATION

[In thousands of dollars]

State	Fiscal year 1996 actual	Conference	Percent	Dollar loss/gain
Alabama	270,610	329,746	22	59,136
Alaska	203,994	182,075	−11	(21,919)
Arizona	196,433	244,013	24	47,580
Arkansas	175,359	205,117	17	29,758
California	1,406,489	1,528,545	9	122,056
Colorado	199,342	198,171	−1	(1,171)
Connecticut	353,689	316,202	−11	(37,487)
Delaware	77,484	69,282	−11	(8,202)
District of Columbia	78,920	73,582	−7	(5,338)
Florida	598,880	711,991	19	113,111
Georgia	403,493	526,148	30	122,655
Hawaii	121,729	108,983	−10	(12,746)
Idaho	105,691	98,510	−7	(7,181)
Illinois	660,503	589,620	−11	(70,883)
Indiana	341,554	390,495	14	48,941
Iowa	197,960	177,316	−10	(20,644)
Kansas	205,052	183,204	−11	(21,848)
Kentucky	225,745	286,319	27	60,574
Louisiana	235,699	265,287	13	29,588
Maine	91,559	84,182	−8	(7,377)

TECHNICAL ASSISTANCE—U.S. DEPARTMENT OF TRANSPORTATION, FEDERAL HIGHWAY ADMINISTRATION: COMPARISON OF ESTIMATED FISCAL YEAR 1997 OBLIGATION LIMITATION—Continued

[In thousands of dollars]

State	Fiscal year 1996 actual	Conference	Percent	Dollar loss/gain
Maryland	265,587	262,322	−1	(3,265)
Massachusetts	690,634	617,531	−11	(73,103)
Michigan	467,061	491,589	5	24,528
Minnesota	252,289	219,855	−13	(32,434)
Mississippi	183,481	203,112	11	19,631
Missouri	356,657	402,267	13	45,610
Montana	154,849	133,659	−14	(21,190)
Nebraska	139,084	124,262	−11	(14,822)
Nevada	104,575	105,029	0	454
New Hampshire	85,554	76,434	−11	(9,120)
New Jersey	478,929	434,884	−9	(44,045)
New Mexico	169,082	149,360	−12	(19,722)
New York	1,044,890	933,790	−11	(111,100)
North Carolina	399,218	446,693	12	47,475
North Dakota	102,064	91,086	−11	(10,978)
Ohio	594,508	575,591	−3	(18,917)
Oklahoma	227,795	258,883	14	31,088
Oregon	202,782	204,437	1	1,655
Pennsylvania	660,889	671,171	2	10,282
Rhode Island	85,850	71,582	−17	(14,268)
South Carolina	211,129	263,985	25	52,856
South Dakota	111,380	99,417	−11	(11,963)
Tennessee	325,654	371,667	14	46,013
Texas	984,970	1,167,763	19	182,793
Utah	125,684	121,489	−3	(4,195)
Vermont	78,511	70,155	−11	(8,356)
Virginia	341,432	393,580	15	52,148
Washington	324,150	291,059	−10	(33,091)
West Virginia	158,810	141,509	−11	(17,301)
Wisconsin	291,760	296,896	2	5,136
Wyoming	111,281	99,388	−11	(11,893)
Puerto Rico	76,122	73,648	−3	(2,474)
Subtotal	15,956,846	16,432,881		
Administration	529,843	521,119		
Federal lands	416,000	426,000		
Reserve	647,311	620,000		
Total	17,550,000	18,000,000		

Estimated apportionments provided by HPP–21.

I yield the floor.

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

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

MORNING BUSINESS

(During today's session of the Senate, the following morning business was transacted.)

THE 1997 OMNIBUS APPROPRIATIONS BILL

Mr. KERREY. Mr. President, although I am thoroughly disappointed in the process we endured to reach agreement on the fiscal year 1997 omnibus appropriations bill, H.R. 4278—I am pleased with the content of the bill. It is a huge package, so I am sure we will not know its full impact until weeks—possibly months—into this fiscal year. It would be difficult to put a package like this together without there being some disappointment in the final product. However, as a member of the Appropriations Committee, I worked hard to see that many programs that are important to Nebraskans and this Nation were addressed.

Let me highlight some of these programs.

COMMERCE-JUSTICE-STATE

I have long supported the National Telecommunication Administration's Telecommunications and Information Infrastructure Assistance Program. Last year I led the effort on the floor to include $21.5 million for TIIAP and I'm pleased to see that amount in fiscal year 1997 funding. This is especially important when considering the Senate Commerce-Justice-State Subcommittee began the process with zero funding for this important program. People sometimes ask why we need this program when there is so much going on in the telecommunications industry. We need it to help our rural areas share fully in the promise of networking and telecommunications. We need it to help our nonprofit sector participate. We need it to encourage the imaginative and sometime high-risk demonstrations of what can be done with the technology.

We have included $174.5 million for the Juvenile Justice and Delinquency Prevention Program and $560 million for the Byrne Memorial Grant Program which is important and insightful. If we can stop juveniles from turning to crime, I believe we have a chance at decreasing the need for courthouses, incarceration, and prison construction. The potential benefit is well worth the investment.

INTERIOR

I am pleased to see that the bill includes funding for one of my top priorities, Back to the River. This project is a collaborative effort to create a recreational, ecological, and cultural corridor along the Missouri River in the Omaha/Council Bluffs region. The project encompasses 64 river miles and has been ongoing for the last 2 years. It has the support of several public and private agencies. The Back to the River project will benefit Nebraska and the Nation by providing habitat restoration, floodplain management, recreation and river access, economic benefits, cultural resources and environmental education. The National Park Service and Fish and Wildlife Service have both been involved in this project.

The omnibus bill funds the National Endowment for the Humanities at the current level, which is higher than either the House or Senate number in the original Interior appropriations bill. NEH programs provide vital support to scholarship, education, and public programs in history, literature, and other aspects of the humanities. Support for our State humanities councils is particularly important because it is these generally small offices in each State that expand access to the humanities and that allows for a focus on local history, local literature, and local culture. They serve the very important function of helping us understand who and what we are.

The bill also funds the National Endowment for the Arts at its current level. NEA programs support our many performing arts' companies throughout the United States and our museums and also help fund the State arts councils.

In both instances I wish we had been able to provide additional funding but there will be an opportunity to revisit these programs next year.

LABOR-HHS

I am pleased about the increase in funding over the House and Senate levels for educational technology. I share some of the conferees' concerns over the educational technology program and believe that increased efforts must be undertaken to insure that technology advances learning and curriculum goals and that we understand how technology contributes to improved student performance. Over the years, we have come to understand that students' learning patterns may vary widely; technology offers us the opportunity to consider and to respond to the various ways in which an individual learns.

Of vital importance to Nebraska is the Impact Aid Program. Our commitment to militarily impacted and Native American districts is a Federal obligation; in fact, by shirking our responsibility to these districts, we create yet another unfunded Federal mandate. For fiscal year 1997, we were able to increase funding by $37 million over fiscal year 1996 to $730 million for Impact Aid districts, including additional funding for our heavily impacted, section F districts, such as Bellevue.

Equally important, this year's appropriations bill includes increased funding for the title I and Safe and Drug-Free Schools programs, both of which have proven to be successful programs here in Nebraska for the benefit of our students. Title I for disadvantaged students receives a $470 million increase over fiscal year 1996 which brings the total for fiscal year 1997 to $7.7 billion. This will enable us to serve nearly a half million more children. Safe and Drug Free Schools—a program for which I have heard many accolades from Nebraska educators and administrators—receives an additional $90 million over 1996 funding, for a total of $556 million.

Increasingly, concern exists among both students and their parents regarding escalating college costs. We are providing increased funding which will allow 3.8 million students to receive aid while also increasing the maximum award level to $2,700, a $230 increase. For fiscal year 1997, a total of $7.6 billion will be available for student financial assistance—$1.3 billion above the previous year's appropriations.

Job training efforts will also benefit from increased funding levels. I am especially pleased to see Summer Youth Employment and Training funded at $871 million. This program provides vital funding for youth summer jobs.

I am also pleased to see that the Health Careers Opportunity Program was funded at $26.8 million—an increase of nearly $3 million over fiscal year 1996. This award goes to medical schools and other medical professional training programs that recruit and train minority and disadvantaged students.

TREASURY-POSTAL

We were able to include funding, which the House had rescinded, for the National Archives for an on-line, interactive data base available via the World Wide Web. It provides unprecedented access to the National Archives' vast holdings. The National Archives holds a rich and priceless resource that, until now, has had limited access for a relatively small number of people. I feel strongly that information held by government at all levels should become more accessible and usable by the average American citizen. The treasures maintained by the National Archives should be accessible to all Americans—not just researchers who reside near College Park, MD, or those individuals who can afford a trip to Washington, DC or those who are fortunate to have a Federal archives facility located in their State.

The increase of methamphetamine use in the Midwest is a serious problem. I am pleased to see that this bill includes $8 million to designate the Midwest States of Nebraska, Iowa, Missouri, South Dakota, and Kansas as a high-intensity drug trafficking area [HIDTA]. This designation will provide added law enforcement resources to these Midwest States and will allow law enforcement officials in these States to conduct a coordinated tracking and enforcement effort.

Mr. President, let me restate my disappointment in the process that accompanied this spending bill. I firmly believe that every program and project that is funded with taxpayer dollars deserves the full scrutiny of all Americans, and should not be conducted in back-room negotiations. Two of the bills included in this package—those funding the Departments of Labor, Health and Human Services and Education and the Departments of Commerce, Justice and State—were never considered on the Senate floor. Further, funding legislation for the Department of the Treasury and the Postal Service as well as the Department of Interior were partially considered, but never finished.

Indeed, Members of this body—from both sides of the aisle—were denied the opportunity to offer pertinent, important amendments to these funding bills or to be heard simply because the process of debate and discussion was brought to an abrupt end and replaced with back-room negotiations. Mr. President, this is not the way policy should be made.

Last year we needed to pass several continuing resolutions—temporary funding measures—before we finally came to an agreement on spending levels for fiscal year 1996. We did not finish our appropriations work until April of this year. And that came after having to shut the Government down three times, which resulted in the additional expenditure of taxpayer dollars.

When faced with explaining why the Government spends hard-earned taxpayer dollars on any program or project, I believe that it must be able to pass the coffee shop test. That is to say, it must be defendable in a coffee shop in Fremont, North Platte, or O'Neill, NE, or any small town in the United States. After all it is their money we are spending. So at the very least, we as elected officials owe it to the people we represent to openly debate the merits of Government spending on the Senate floor.

I thought the Republican leadership had learned the lesson last year that getting our work done as legislators and representatives was the most important matter—not individual or political glory. And while this year we are not in the same situation of having a temporary funding measure—and a Government shutdown has been avoided—things are not that much different. I truly believe the American people have been shortchanged again.

Yes, I am glad the task is complete. And I am pleased, for the most part, with what I know is included in this funding legislation. But, Mr. President, I am concerned that the process—and perhaps this institution—has been slightly diminished. Diminished because the appearance and the reality is that our duty as legislators—and the interests of the American people—took a backseat to the interests of campaigning for reelection. During a time when we face an increasingly skeptical electorate, we can ill afford to continue this trend.

OMNIBUS CONSOLIDATED APPROPRIATIONS BILL

Mrs. FRAHM. Mr. President, I want to take just a moment to explain my vote in opposition to the omnibus consolidated appropriations bill. To me, the title of this bill goes a long way in explaining why I am skeptical about its content. When Congress delivers an omnibus spending bill, taxpayers should grab for their wallet. I wish to commend the tremendous effort of Chairman HATFIELD to bring together a bill that would satisfy the priorities of all of those involved. Indeed the chairman has been extremely generous to my State of Kansas. But I must protest a process and a final product that abdicates Congress' responsibilities to unselected officials who have no constitutional role in the power of the purse; a role relegated by Constitution solely to the Congress. I am speaking of President Clinton's Chief of Staff who sat in, with veto power over the deliberations of the house and Senate conferees.

I am at a loss to explain why those who maintain such an abiding commitment to reforming Congress and to cutting wasteful spending have cast their vote in support for this bill. If nothing else this bill represents business as usual. It is 16 pounds, 2,000 pages, and has no accompanying report, making it impossible to determine exactly where the money is going. Eight billion to jump start the war on drugs is just one example. What does that mean? To what programs will that large sum be directed? It sounds like a positive move, but it has no accountability. We shouldn't be making political statements of that magnitude with the taxpayers' money. As I have noted, this bill represents a total abdication of our constitutional responsibility. In short, it is a cop-out in our responsibility to the taxpayer.

I do not favor another Government shutdown. As Lieutenant Governor and secretary of administration with responsibility for the State employees of my State of Kansas, we were forced to furlough workers from their jobs, through no fault of their own because the President wanted to make political hay. Sadly, it was the Congress that received the blame. It seems that in Washington, if you lose the battle of the spin control, good policy and good Government don't matter. So cowed by the specter of another Government shutdown are Members of Congress that the political courage to get our job done, to make the tough calls and to provide a responsible spending package evaporated with the hint of misdirected public ire. Spin has once again won over responsible policy.

Senator after Senator has come to this Chamber to express their concern over the process that cobbled this bill together. The pork and largess included have been decried. But I don't see much willingness to confront the problem and fix it. That is what troubles me. This is not a good bill and Members know it. They have said so. I am saying so.

When I came to the U.S. Senate I pledged to the people of Kansas that I was prepared to make the tough calls. From my first vote, a vote to balance the budget and get the country's financial house in order, I have been committed to that pledge. So it is in keeping with my pledge that I cast my vote against this bill.

TRIBUTE TO SENATOR KASSEBAUM

Mr. PELL. Mr. President, I have had the honor and privilege of serving with Senator KASSEBAUM on both the Committee on Foreign Relations and the Committee on Labor and Human Resources and, I must say, that service together has always been, for me, a pleasure.

Senator KASSEBAUM has served on the Labor Committee from the 101st through the 104th Congress. In the 101st and the 102d she served as the ranking member of the Subcommittee on Education, Arts, and Humanities. During that period, we worked most closely and successfully together on matters such as the reauthorization of the Carl Perkins Vocational Education Act in 1990, Library Services and Construction in 1990, and the Higher Education Act in 1992. We worked in the strong bipartisan fashion that has traditionally been the hallmark of the subcommittee.

In the 103d Congress Senator KASSEBAUM became the ranking member of the full Labor Committee, and we continued to work closely together on such important matters as Goals 2000 and the reauthorization of the Elementary and Secondary Education Act in 1994.

Most recently, I have been proud to work with her in her present capacity as chairman of the Labor Committee in this, the 104th Congress. Her Workforce Development Act provided a much-needed overhaul and consolidation of our job training programs, and it also contained a series of very strong and positive vocational and adult education provisions. I supported the legislation both in committee and on the Senate floor, and regret very much that the Senate bill did not prevail.

Similarly, Mr. President, we served together since the 97th Congress on the Committee on Foreign Relations. There, to my enormous regret, the tradition of bipartisanship is not quite as well entrenched, but partisan conflicts were never caused by Senator KASSEBAUM. She always conducted herself in the most rational, informed and moderate fashion.

I would add that, in her years on the committee, she developed a remarkable expertise regarding the continent and the countries of Africa and an accompanying—and admirable—dedication to the often neglected peoples of that continent. During those years she traveled often to Africa, came to know its geography, and developed relationships with its political and business leaders. I think it is fair to say that she was unrivaled as the Senate's expert on Africa and African issues.

In the years we have worked together on both committees, I can say without question that Nancy KASSEBAUM has always been thoughtful, considerate, and gracious. I can also say that she is tenacious and determined. But most of all, she brings all of those traits together in the most marvelous way. I know that I am not alone in this assessment. Everyone in this Chamber knows that is the way it is with this gentlewoman from Kansas.

While I also will not be here next year, I know for sure that this body will not be the same without her principled and sensible approach to public policy. She will be sorely missed.

TRIBUTE TO SENATOR PRYOR

Mr. PELL. Mr. President, the departure of our dear friend the junior senator from Arkansas [Mr. PRYOR] from the Senate will leave a void that will be hard to fill. His special qualities of modesty and quiet accomplishment are all too rare. I have always greatly appreciated his decency and courtesy and his true sense of compassion. He epitomizes the sense of comity and civility which to my mind should pervade the body politic.

I wish for the sake of the Senate and the Nation that Senator PRYOR could stay longer. But he leaves now with the fullest possible measure of respect and affection of his colleagues. I wish all the best for DAVID and Barbara Pryor in the years ahead, and want them to know that they will always have my warmest friendship and admiration.

TRIBUTE TO SENATOR NUNN

Mr. PELL. Mr. President, we who have the privilege of serving in this body soon find that we may not always be in agreement with friends and colleagues for whom we have high regard.

The senior Senator from Georgia (Mr. NUNN) is such a colleague. I have always found him to be a man of singular ability, rectitude and decency. He came here as a youthful successor to a legendary predecessor, Senator Richard B. Russell, and quickly established himself as a serious and studious Member who could and did thoroughly master the intricacies of national defense policy.

Senator NUNN's term of service coincided with the last two decades of the cold war, and he leaves his mark as one of the architects of U.S. defense policy during that trying epoch. I sometimes found myself in disagreement with his emphasis on large defense budgets, since I was primarily committed to the cause of arms control and restraint in the nuclear arms race. History seems to have demonstrated that it took a balance of the two views we represented to assure our national survival.

Senator NUNN and I not only shared a common preoccupation with the major international issues of the time, but we brought to the task one very basic common thread of experience which may have colored our responses, and that was the fact that we were among the few members of the Senate who had served in the U.S. Coast Guard. I served as an enlisted man on convoy duty in the North Atlantic in World War II and SAM NUNN enlisted as a seaman some 20 years later when the world faced other stresses.

SAM NUNN leaves the Senate at a relatively early age with a solid record of accomplishment. I wish him well in the years ahead.

TRIBUTE TO SENATOR HATFIELD

Mr. PELL. Mr. President, as my own time in the Senate draws to a close, I find myself reflecting on those people and events that I will remember always.

A man who holds a unique place in my regard and that of many others in the Senate is the senior Senator from Oregon (Mr. HATFIELD). He came to the Senate in 1967, 6 years after I did, and he has become a Senator known for his intelligence, acuity, grace, and for love of his State and country.

The State of Oregon has a fine heritage. Mr. HATFIELD has a number of distinguished predecessors. A fellow Oregonian, Senator Wayne Morse, voted in 1964 against the Gulf of Tonkin Resolution that provided the congressional blessing for what later became the Vietnam War.

MARK HATFIELD was not in the Senate at that time. He was then Governor of Oregon. But in 1965 MARK HATFIELD cast the only vote at the National Governor's Conference in opposition to a resolution supporting President Johnson's Vietnam war policy.

He has taken other principled and unpopular positions over time. In 1981 he joined with my friend, the senior senator from Massachusetts (Mr. KENNEDY) in spearheading the Senate campaign for a nuclear freeze.

He has been a constant advocate of restraint in the nuclear arms race, limits on defense spending, an end to nuclear testing and a code of conduct in international arms transfers.

Some of Senator HATFIELD's efforts such as the Nuclear Freeze in the 1980's or the effort in the last several years to enact the code of conduct on arms transfers have not come to fruition. Other endeavors, such as his effort to bring about a comprehensive test ban have been smashing successes. It was Senator HATFIELD's own initiative in 1992 as ranking minority member of the Committee on Appropriations that led to the U.S. moratorium on nuclear testing and led to the eventual ending of testing by all the nuclear powers and the completion this summer of a Comprehensive Test Ban Treaty.

Like John the Baptist, MARK HATFIELD has often been a voice crying in the wilderness. It is not however a role in life he has regretted. He has felt obligated to speak his convictions and to let his judgments be known throughout his Senate career.

Mr. President, as a naval lieutenant (j.g.) in the Navy, MARK HATFIELD commanded landing craft in some of the bloodiest battles World War II in the Pacific. He was one of the first military officers to enter Hiroshima after the atomic blast destroyed that city in 1945. I was in the North Atlantic in Coast Guard escort duty during World War II, and I know some of the emotions MARK HATFIELD's experiences must have stirred in him and the feelings that remain after. I can tell you that, if you have seen combat, it is quite possible for you to become zealous in your desire to find solutions other than war and other than military buildups to the problems you face. Among other things, having seen combat, you do not want to capriciously subject your children or anyone else's children or loved ones, to the horrors of war.

The needless and pointless sacrifices of some conflicts, such as Vietnam, weighs heavily if you are in the position of participating in important national decisions, as MARK HATFIELD has been.

Senator HATFIELD has spoken to us all on the floor with great eloquence over time about the value of arms control and of the importance of peace to all Americans. In 1990, he told the Senate:

> Peace is not the town in Pennsylvania which last year was forced to cancel its high school graduation because officials believed that a group of students planned to commit suicide at the ceremony. And peace is not here in Washington—where after leading the Nation in murders last year, children are beginning to show the same psychological trauma as children in Belfast, Northern Ireland.
>
> Can we really believe that the decisions we have made—and are making—do not have a direct relationship to the violence which plagues our Nation?
>
> I suggest that we consider changing the motto on our coins. Mr. President, It now reads: In God We Trust—but by blindly pursuing the nuclear arms race, by putting the destruction of life over the preservation of life, we have foresaken our trust in God. We have shaken our fist at God—as E.B. White once put it, we have stolen God's stuff. Our motto ought to be: In Bombs We Trust. That is our national ethic—that is the example we are setting—here, on this floor.

In a time when too many opinions are formed on the basis of the latest polling results, it is good to have among us a Senator like MARK HATFIELD who moves unswervingly ahead toward what he perceives on the basis of his intelligence and experience to be the best course for the Nation and to continue the avid pursuit of what he sees as truly best for all of the people of America.

In his 30 years in the Senate MARK HATFIELD has tried time and again to do what is right. He has been willing to live with defeat, but he has been steadfast in his willingness to try and try again, so long as a chance at victory is in sight.

Mr. President, I am sure that the voters of Oregon, of Rhode Island, and of other States will do their best to make good choices in the next election. We will be replaced by people with different skills and capabilities, and many of them will have distinguished careers here in the Senate. There will not be another MARK HATFIELD, however. The nation should be thankful that it has been blessed with Senator HATFIELD's service.

TRIBUTE TO SENATOR SIMON

Mr. PELL. Mr. President, I first met the senior Senator from Illinois [Mr. SIMON] some 40 years ago in Moscow when we found ourselves sitting next to each other at the Bolshoi Ballet. Little did we ever think that our paths would intertwine so closely in the years that were to follow.

After PAUL came to the House of Representatives in 1974, we found ourselves in close collaboration in advancing the cause of education. We worked together on a myriad of education issues when he was chairman of the House Subcommittee on Postsecondary Education. When he came to the Senate more than a decade ago, he joined me on the Education Subcommittee and we have worked even more closely together on education issues since.

There is no Member of either House whose opinion on education issues I respect more. PAUL SIMON is the person we turn to for guidance on the subjects of literacy and adult education. His is the counsel I have valued most in higher education, on issues such as TRIO, institutional aid, international education, graduate education, foreign language instruction, and student aid. Even when we disagreed, as we did on direct loans, I listened to what PAUL SIMON said, and I have had a deep and abiding respect for his advocacy of that cause. While I have normally deferred to PAUL on library issues, I must candidly admit that the opinion of Jean, PAUL's wonderfully talented wife, carried equal weight on those matters.

During PAUL's first term in the Senate, our paths were to become further intertwined when he became a member of the Foreign Relations Committee. During his 8 years as a member of the committee he brought to its work the energy, creativity, and intellectual capacity which are his hallmarks. Much of that time he was chairman of the Subcommittee on Africa and he was tireless and eloquent in urging the committee's attention to the plight of that often neglected continent.

PAUL SIMON is very much an internationalist and he made important contributions in such areas as human rights, arms control, and foreign assistance. I deeply appreciate having him as an ally in the efforts to reinvigorate the Arms Control and Disarmament Administration and to restrain the proliferation of weapons of mass destruction. He was a true stalwart.

Finally, Mr. President, he brought his passion for the teaching of foreign languages to the field of foreign policy. He consistently pressed the State Department to broaden its foreign language capabilities and every State Department nominee knew that, during a nomination hearing, Senator SIMON was likely to grill him or her on how fluent they were in the language of the country to which they had been assigned. Alas, too often Senator SIMON

learned that the fluency was minimal, but he never ceased to press the Department to improve.

Throughout the period we have worked together, I have never failed to be impressed by the depth of PAUL's knowledge, the quiet deliberation with which he pursued his goals, the strength of his convictions, and perhaps most important, the wisdom of his counsel. I can think of no more decent and dedicated public servant.

OMNIBUS APPROPRIATIONS

Mr. FAIRCLOTH. Mr. President, yesterday, I was 1 of only 15 Senators to vote against the omnibus spending bill.

Mr. President, I deplore the process by which this bill was created.

Mr. President, when the Republicans took over the Congress—the Democrats were spending about $503 billion on domestic programs. Last year, after holding firm on principle we cut that to $488 billion. Now that number is back up to $503 billion.

Because we already have a $5 trillion debt, the billions in new spending represent a new 30-year obligation for our citizens. This is an obligation that we cannot afford.

Next year, we will have to cut $10 billion to get back on track and keep our commitments under the 1997 budget resolution. The budget resolution was the blueprint by which we would achieve a balanced budget in 7 years by the year 2002. We have already changed the plan and this is just year one.

There were supposed to be offsets to this new spending. But they were phony offsets.

The so-called refinancing of the savings insurance fund for the S&L problems is really coming from the banking industry. That money is to be used in a separate fund in case of future S&L failures. But the Congress has decided that we should use it to offset more spending.

We cut the defense budget further. Yet, the defense budget, in real dollars, has been cut in half since 1984.

While the President says on the campaign trail that he is not a liberal his aides were back here in Washington forcing us to spend more money on more liberal programs, cutting defense, and using accounting gimmicks to justify all of this.

This kind of game has gone on for too long, and it has to stop.

If we care so much for the children, why don't we leave them a country that is less in debt, not more in debt.

The wasteful spending that is littered throughout this bill is truly astounding. More foreign aid spending. Over $200 million for the United Nations, a bloated, wasteful bureaucracy. Over $200 million for the Advance Technology Program in the Commerce Department—this program has principally been known as the prince of corporate pork—serving Fortune 500 companies.

This is $40 million more for D.C. schools, even though they spend $9,000 per student, more than any other city in the United States.

And, $196 million for Howard University in the District of Columbia, $4 billion more for the Department of Education, $82 million for the National Endowment of the Arts, $1.6 million for the Kennedy Center, money for a new defense program called Security at International Sporting Events, $9 million for 100 percent guaranteed international housing loans, $1.9 million for supervision of the Teamsters election, $27 million for debt restructuring with Latin America countries, $19 million for the International Fund for Ireland, $5 million for the victims of Chernobyl, and the creation of a new Middle East Development Bank in which we authorize over $1 billion to be spent.

Mr. President, can we really afford this kind of spending. If we can't stop it where is it going to stop. This is the reason why I voted against this bill.

Now, Mr. President, I am grateful for the funding for Hurricane Fran in my State. This money will be helpful to that State, but my concern was that in order to vote for that funding—so much waste was attached to the bill—that on balance North Carolinians would be worse off for it.

Mr. President, finally, I am disappointed with the results of the illegal immigration bill.

Once again, the President campaigns like a moderate, but those are not the policies he advocates in Washington.

How can we stop illegal immigration if we continue to provide benefits to those that come here illegally.

The President has essentially forced ever school district in this country to educate, at taxpayers expense, children of parents who are in this country illegally. What kind of respect for the law does this demonstrate.

Mr. President, this Congress has made great progress on many issues. We fell just one vote short of getting a constitutional amendment to balance the budget. We made great strides in cutting spending. But in the wee hours of the morning this weekend, we had to give the President what he wanted or else he, not us, would have shut the Government down.

This is a shame, but next year the process will start again, and we have to be dedicated to reducing this debt on the American people by reducing the kinds of waste that we approved yesterday.

Thank you Mr. President, I yield the floor.

FAREWELL TO RETIRING COLLEAGUES

JIM EXON

Mr. HATCH. Mr. President, it has been a real pleasure serving with JIM EXON in the Senate. I have always admired his independence, dedication to his fellow Nebraskans, and his sense of humor.

As a small businessman, he brought an important perspective to our consideration of legislation; and as a former Governor, he never forgot about the important role of State governments.

On matters ranging from the budget to agriculture, in the minority or in the majority, he demonstrated amazing technical expertise as well as skillful and fair handling of debate.

I will miss Senator EXON and wish him the best in all his future plans.

NANCY KASSEBAUM

I want to congratulate our colleague from Kansas, NANCY KASSEBAUM, for her adroit and amicable leadership of the Senate Labor and Human Resources Committee.

As one who has "been there, done that," I can say with authority that she has led the committee expertly and fairly; and she surely deserves our commendation for delivering landmark health insurance reform legislation as well as so many other important measures in public health and education. And, no matter what side of a contentious labor issue one happens to be on, every Senator should admire the courage with which Senator KASSEBAUM tackled issues in labor and employment policy.

I know that NANCY is devoted to her family, and I can well appreciate that her future occupation is reported to be that of grandmother. It may be the only calling higher than leading public policy in some of the key and most pressing domestic and foreign policy issues. But, perhaps she will be training the next generation of Landons to follow her example of distinguished public service.

CLAIBORNE PELL

The Senate will indeed be a very different place as we say goodbye to our third most senior Member, the senior Senator from Rhode Island, CLAIBORNE PELL. Senator PELL has served the State of Rhode Island and our country extraordinarily well for over 35 years.

While Senator PELL has put his indelible mark on foreign policy as a long-time chairman and ranking member of the Foreign Relations Committee, it was through our common membership on the Labor and Human Resources Committee that I know him best.

Senator PELL will long be remembered for helping millions of young people achieve success by making a college education more accessible through the grant program which bears his name. He has helped more people gain access to the arts and cultural enrichment programs by sponsoring the law establishing the National Endowments for the Arts and Humanities.

It is hard to name a single education initiative that he has not been instrumental in enacting.

And, I might add, Mr. President, that Senator PELL's unfailing sense of civility and decorum, his insistence on fair debate, and his staunch adherence to agreements honorably entered into were without a doubt a major reason that so many education initiatives were not only enacted into law, but were enacted with strong bipartisan support.

I join my colleagues in expressing all best wishes to Senator PELL and his family.

MARK HATFIELD

The Senator from Oregon has brought a level of service and integrity to the Senate, this country, and his State that can be compared to few.

As chairman and ranking member of the Appropriations Committee, he has at once one of the most powerful positions in Congress and one of the most thankless. On the one hand, he has used his prerogatives to advance public policy, not personal gain; on the other hand, he has tirelessly struggled to fairly and effectively reduce Federal spending. Senator HATFIELD has always been able to rise above the pull and tug of competing interests to craft bipartisan and fair appropriations bills.

I will remember Senator HATFIELD for many things—his intelligence, his spirit, his character, his willingness to put aside partisan politics to achieve essential goals, and, of course, his friendship.

Despite our common objectives on a number of important issues, such as balancing the budget, abortion, and balanced land use policy, we have not agreed on every matter. But, what I will remember is the deep personal conviction that Senator HATFIELD brought to all that he did.

It is a sad day for us to lose his experience, knowledge, and character in this body. He will be sorely missed by me, the Senate, the State of Oregon, and, I believe, the country as a whole.

PAUL SIMON

Mr. President, it was my pleasure to participate in the "bow tie" tribute to the retiring senior senator from Illinois, PAUL SIMON. I want to thank him for his 12 years of contributions to the Labor Committee, which overlapped with my tenure as chairman and ranking member, as well as his decade of service on the Judiciary Committee.

Senator SIMON was, among other things, a champion of literacy programs to assist individuals and families achieve their full potential. PAUL SIMON knew that learning and personal fulfillment comes from walking through open doors—doors that exist in the written word. Without the key to unlock the door, people can become prisoners not just to welfare, but also to an extremely small universe of possibilities. I, for one, will remember Senator SIMON's tireless advocacy of literacy efforts—a passion he held in common with our former First Lady, Barbara Bush.

But, I will also remember the political courage and dedication PAUL SIMON demonstrated in our fight to pass a balanced budget amendment to the Constitution. As a believer in a strong central government, it would have been easy for Senator SIMON to ignore the problem of growing national debt. But he did not. I have rarely seen a Senator work harder on a piece of legislation.

Senator SIMON is going to pursue one of his first loves—teaching—at Southern Illinois University. His students' gain is the Senate's loss.

HANK BROWN

The election of HANK BROWN in 1990 was a great day for Colorado and for the Senate. The West had in HANK BROWN an energetic and diligent voice for balance and common sense.

No Senator was ever able to put anything past him—he was always prepared. He was always an articulate and forceful advocate for his position and always amicable in his approach.

HOWELL HEFLIN

Mr. President, it is hard to imagine the Judiciary Committee convening in the 105th Congress without the Judge. The discerning chairman and ranking member of the Courts Subcommittee, Senator HEFLIN has been a vigilant defender of the third branch of our Government.

As a former jurist, he has approached the committee's work with temperance and a strong respect for the Constitution. His deliberative nature is demonstrated by the fact that often no one on either side of an issue knew how Senator HEFLIN would vote.

Once again, I want to extend my appreciation to him for his hard work toward passage of the flag protection amendment. We could not have come as close as we did without his enthusiastic support.

BILL COHEN

Mr. President, I wish to honor the service of one of this body's most respected members, the senior Senator from Maine, Senator WILLIAM COHEN. I regret that our youthful colleague has decided not to run again. He has served the people of Maine well, and I believe they were prepared to reelect him for his fourth term in November. Our colleague has chosen, instead, to engage his substantial talents in other pursuits, pursuits I am sure will serve his home State and this country.

Those who study the careers of the Members of the Senate will know that Senator COHEN has demonstrated an analytical mind, a determination to the search for solutions, an intolerance for negativity, a commitment to civility in government, and an appreciation for public service in its best sense.

I had the pleasure of working with the senior Senator from Maine on a number of committees, including the Judiciary Committee. As chairman of the Intelligence Committee, it was always very clear that he took his responsibilities extremely seriously. He was a master of detail; and, for his work, the intelligence community owes him a great debt.

We know the Senator has spoken in the past several months about the difficulties of the current political climate, and the challenges of seemingly intractable budget issues. What is admirable about Senator COHEN is that he never became a naysayer of government: Senator COHEN believes that members are elected to government to find solutions, not to denounce the institutions they serve. Senator COHEN believes in good government, because Senator COHEN practiced good government.

This is the type of attitude that serves not only the best interests of government, but presents the most positive aspect of government to an increasingly disillusioned public. Senator COHEN embodies this character, and by doing so upheld the dignity of the U.S. Senate.

Senator COHEN has a long professional life before him. I know he will continue to serve the people of Maine while promoting free trade with that great State and the nations of Asia. By doing so, he will continue to promote the positive-sum solutions that he will be known for finding while serving this body. And, perhaps if we are lucky, there will also be another book or two from the Senate's most celebrated author.

BENNETT JOHNSTON

Mr. President, I rise to pay tribute to my good friend from Louisiana, J. BENNETT JOHNSTON, who will retire once the curtain is drawn on the 104th Congress.

Senator JOHNSTON has proven to be a stabilizing and reasonable voice on the many critical issues that have come before the Senate Energy and Natural Resources Committee, where he has served for 24 years, 16 of them in a leadership capacity as either chairman or ranking member. Every piece of legislation or proposal that has been considered by that committee during this time has reflected his knowledge on energy matters and represented his fine and exemplary legislative skills.

For example, he was a primary factor in the dismantling of the price control structure of petroleum during the 1980's. This case alone shows the commonsense approach he has undertaken over the years to address our Nation's energy policies. In addition, he has shown very progressive leadership and insight on regulatory matters involving the Federal Energy Regulatory Commission.

We Utahns owe Senator JOHNSTON a debt of gratitude for his understanding and attention to energy and natural resource issues critical to our State, including the Central Utah Project, grazing and mining reforms, Payments-In-

Lieu-of-Taxes, and our school trust lands. While BENNETT may not have hailed from the West, we have appreciated his sensitivity to Federal initiatives that particularly affect the West.

Throughout his tenure on the Energy and Natural Resources Committee, he has always said that if a State's two Senators supported a specific proposal that affected their State, he would not stand in the way to its becoming law. Despite his possible differences with these proposals, he has remained true to this principle. This was most apparent during our recent debate on a Utah BLM wilderness proposal, during which he helped craft release language that was more acceptable to many of our colleagues. In the end, he supported our bill when it came to the Senate floor. One of the best things that can be said about a departing Senator is that he was true to his word, and BENNETT JOHNSTON always was.

Mr. President, BENNETT JOHNSTON has been reasonable and diligent; he has been a servant of the environment and a protector of our natural resources. There is no doubt that he will be missed.

ALAN SIMPSON

Mr. President, what can I say about AL SIMPSON, my good friend and colleague from Wyoming? He is a genuine original.

Not only have we worked together over the years on issues pertaining to the West, but we have served together on the Judiciary and Finance Committees. I am pleased that, literally in AL's final hours as a Member of the Senate, the illegal immigration bill was finally passed. AL SIMPSON has many achievements to his credit, but I believe he will be most remembered for his strong commitment to preserving the integrity of America's borders. He worked tirelessly on this legislation, and we are going to miss his expertise on these issues.

On a personal level, we are all going to miss AL's sense of humor. I have often wished I could be as fast with a quip as AL SIMPSON. Since AL is also headed off to academia, I can only imagine the waiting list to get into his classes.

DAVID PRYOR

Mr. President, I would be remiss if I did not stand before the Senate to say a few words of tribute to my good friend and colleague from Arkansas, DAVID PRYOR.

This body has been fortunate to have had the capable wisdom of DAVID PRYOR, and I have had the pleasant experience of working closely with him, particularly since my joining the Finance Committee during the 102d Congress.

As is the usual order of business around here, Senator PRYOR and I sat on different sides of many difficult issues. But, on many other occasions we saw eye to eye and worked together to find the right solutions.

Just this year, it was my privilege to join DAVID in sponsoring three important pieces of tax legislation that I know he is proud of—the Pension Simplification Act of 1995, the S Corporation Act of 1995, and the Taxpayer Bill of Rights II. Through the tireless efforts of DAVID PRYOR, these important measures were finally enacted into law.

In every instance he was a gentleman. In the majority or in the minority, DAVID PRYOR has earned the admiration of every Senator in the Senate.

Mr. President, DAVID PRYOR will be missed. His gentle southern kindness and his honesty have earned him the respect of every member of this body. As he moves on to other pursuits, I wish him and his wife Barbara the very best.

BILL BRADLEY

Mr. President, as the 104th Congress draws to a close, I would like to express my best wishes to Senator BILL BRADLEY of New Jersey.

There are few people who can be all-stars in two professions. BILL BRADLEY is one of them. After an illustrious career in the National Basketball Association, he has spent three terms in the Senate. In both occupations, BILL BRADLEY has touched millions of lives through his great example of leadership, hard work, intelligence, team work, and integrity.

Senator BRADLEY has made an impact on each of the committees on which he served over the past 18 years—but none more so than on the Finance Committee, where we have served together for the past 5 years. Although we have not always agreed on issues of national tax, trade, and health care policy, BILL BRADLEY has earned my respect for his dedication to taxpayer fairness, a better and simpler tax code, and his tireless efforts to reduce the budget deficit.

As BILL BRADLEY moves on to the next phase of his already diversified public life, I wish him all the best.

SAM NUNN

Mr. President, all Americans who value a strong national defense will sorely miss the Senator from Georgia. His encyclopedic knowledge of defense issues has contributed not only to a much more efficient use of defense resources, but also greater accountability among defense contractors.

I also believe that Senator NUNN has the distinction, along with Senator THURMOND, of being the best friend our uniformed men and women ever had. SAM NUNN knows that our Armed Forces are the backbone of our defense. Without them, our technology and armaments are useless.

SAM NUNN has been instrumental in defining U.S. defense policy for the post-cold-war era. He leaves us with a blueprint on which we can build our national security strategy for the next decade and beyond. It is a well-conceived theory with a strong practical dimension. His thinking has the power of reasonable prediction of what lies ahead as well as of a clear grasp of the lessons of history.

Senator NUNN has been a thoughtful, hard-working legislator—a great example of what a Senator should be.

I wish him well in whatever his future plans may include.

SHEILA FRAHM

Mr. President, we have not had a chance to know well the new junior Senator from Kansas, but I would be remiss if I did not say to my colleagues how much I admire the way in which Senator FRAHM has jumped into the whirl of the Senate. She took over the seat of one of the giants of the Senate. She has had to become conversant on myriad topics that were already well in play before she got here. She has had to make some tough voting choices. Yet, she did not shrink from any of this.

I want to wish her well and hope she will continue serving her fellow Kansans in other ways.

ENVIRONMENTAL ACCOMPLISHMENTS OF THE 104TH CONGRESS

Mr. KEMPTHORNE. Mr. President, for the past 2 years, our critics have accused Republicans of rolling back environmental standards. Just suggest that an environmental law can be improved, and the critics quickly label you as "anti-environment." When we look back on this Congress, though, I believe that the newly enacted safe drinking water law stands as the true testament to what we're all about. It's not just empty rhetoric; it's real reform that improves the environment, protects public health and reduces unnecessary costs so that all Americans can enjoy clean, safe, and affordable drinking water.

To our critics, I would like to offer three comments.

First, Republicans are committed to protecting and improving our environment. We demonstrated this commitment throughout the Safe Drinking Water Act. We directed the Environmental Protection Agency to target those contaminants that are actually present in drinking water and are found to present a real health risk to humans. We authorized, for the first time, $1 billion annually for a State revolving loan fund so that local communities can construct and upgrade their treatment systems. We provided, also for the first time, tens of millions of dollars for important research on the health effects of contaminants, like cryptosporidium; and we created a new voluntary source water partnership program to encourage communities and landowners to work together to prevent contamination of drinking water before it occurs.

Second, Republicans are committed to making our environmental laws

work better. Certainly, our current framework of environmental laws has gone a long way toward addressing the major environmental problems of the 1970's and 1980's, but the problems have evolved and our laws need to evolve with them. Our laws must be more flexible to address the multitude of situations that States and communities face every day. We must work with our partners in State and local governments, not against them. And we must provide more incentives to achieve environmental excellence—more carrots and fewer sticks.

The Safe Drinking Water Act proves that these principles can indeed make our laws better for the environment and reduce unnecessary costs. The Congressional Budget Office reviewed our legislation and confirmed that it "would change the Federal drinking water program in ways that would lower the costs to public water systems of complying with existing and future requirements. On balance, CBO estimates that the bill would likely result in significant net savings to State and local governments."

In signing the Safe Drinking Water Act, President Clinton called the new law, "a model for responsible reinvention of regulations," that "will provide the American people with much greater protection for the drinking water on which we all rely every day of our lives." He's right; and it was a Republican initiative.

And, finally, I would like to emphasize that Republicans are committed to working with our colleagues on the other side of the aisle on the responsible reform of our environmental laws. The environment is not a partisan issue. Our environment is our lifeline and, if we are to preserve it for our children and their children, we must work together. The Safe Drinking Water Act was written with the advice of many public health experts, State and local government officials, and water providers. Republicans and Democrats alike were instrumental in the crafting of all of its provisions. And ultimately, it had the support of every Member of the Senate, virtually every Member of the House of Representatives, the administration, the regulated community and the public. To my mind, that's the model for future environmental legislation.

As this Session and this Congress winds to a close over the next few days, we should pause to look back. We have much to be proud of. Among other things, we reauthorized and significantly improved a major environmental law, the Safe Drinking Water Act. But, looking forward, we have much work yet to do.

Many of you know that I have been working hard this past year on legislation to reauthorize the Endangered Species Act. I had hoped to complete our work on that legislation this year as well, but political and practical obstacles got in the way. So, while we were able to make significant progress this year in resolving many of the problems underlying the Endangered Species Act, final resolution will have to wait until next year and the new Congress. I believe, though, that our efforts this year will pave the way for a bill next year.

There is no single environmental law that is in greater need of fundamental reform now than the Endangered Species Act. More than any other law, the Endangered Species Act truly pits humans against their environment. Loggers in the Pacific Northwest fear that they will lose their jobs—and many have—because of the spotted owl; farmers in Idaho fear that they won't be able to water their crops because of the salmon; and communities in Texas fear that they will lose their sole drinking water supply because of a salamander.

And all to no end. Since it was first passed, the Endangered Species Act has failed to recover a single species to the point that it could be removed from the list of threatened or endangered species. The fact is, we're spending millions of dollars now, putting communities at risk all in the name of protecting endangered species, but we have no clear policy, priorities, game plan, or even ability to measure results. We need to do better—both for the species and for our fellow Americans.

So, when we come back next January, I will pick up where we left off and introduce comprehensive legislation to significantly improve the Endangered Species Act.

It's time that the Endangered Species Act actually saved species from extinction. It's time that the Endangered Species Act treated property owners fairly and with consideration. It's time that the Endangered Species Act minimized the social and economic impacts on the lives of citizens. And it's time that the Endangered Species Act provided incentives to conserve rare and unique species. I believe that we can draft legislation that accomplishes those goals.

Over the next few months, I plan to continue negotiations with my colleagues on the Environment and Public Works Committee, Senators CHAFEE, BAUCUS, and REID, other Senators, and the administration. I will work with them, officials of State and local governments, the regulated community, and others to achieve meaningful Endangered Species Act reform. But, let me emphasize that it must be real reform.

We must ensure that decisions made under the Endangered Species Act are based on good science. All too frequently, species are listed and restrictions imposed on landowners as a result of junk science or no science. That must change.

We must streamline the consultation process under section 7. In just one case in Idaho, for example, a simple bridge was held up for over a year while the National Marine Fisheries Service reviewed a proposed construction plan that had already been approved by four State and Federal agencies. The bridge ended up costing over four times as much as the original approved design because of the National Marine and Fisheries Service. That must change.

We must strengthen the recovery planning process so that the emphasis is not just on listing a species, but also on bringing it back from the brink of extinction. We all agree that recovering species is the primary purpose of the Endangered Species Act, but the Fish and Wildlife Service has only developed recovery plans for about half of the species listed under the Endangered Species Act, and many of those plans are inadequate or have never been implemented. We must establish rigorous standards for recovery plans and require that they be implemented.

We must provide incentives for private landowners to help conserve endangered and rare species. Authorizing low effect conservation plans and multiple species conservation plans is just one way that we can encourage small and large landowners to voluntarily preserve habitat and take other measures to protect species.

And finally, we must be willing to commit more public resources to the cause of protecting endangered species and be creative in our search for funding sources. The Endangered Species Act benefits us all; its costs must not be borne only by a few.

Our job over the next few months and next year won't be easy. These are difficult and emotional issues. But the stakes are too high—the survival of our native wildlife—for us not to succeed.

I look forward to working with my colleagues and the administration to making the Endangered Species Act really work.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Williams, 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 a nomination which was referred to the Committee on Environment and Public Works.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT ON THE OPERATION OF THE CARIBBEAN BASIN ECONOMIC RECOVERY ACT—MESSAGE FROM THE PRESIDENT—PM 175

The PRESIDING OFFICER laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Finance.

To the Congress of the United States:

I hereby submit the Second Report to the Congress on the Operation of the Caribbean Basin Economic Recovery Act. This report is prepared pursuant to the requirements of section 214 of the Caribbean Basin Economic Recovery Expansion Act of 1990 (19 U.S.C. 2702(f)).

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 1, 1996.*

MEASURE PLACED ON THE CALENDAR

The following measure was read the second time and placed on the calendar:

S. 2161. A bill reauthorizing programs for the Federal Aviation Administration, and for other purposes.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-4202. A communication from the Acting Administrator of the General Services Administration, transmitting, a draft of proposed legislation entitled "The Pennsylvania Avenue Development Corporation Authorities Correction Act of 1996"; to the Committee on Appropriations.

EC-4203. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, a rule entitled "Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida," (FV96-905-1) received on September 27, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

EC-4204. A communication from the Administrator of the Agricultural Marketing Service, Department of Agriculture, transmitting, pursuant to law, a rule entitled "Technical Amendments to the Soybean Promotion and Research Order and Rules and Regulations," received on September 27, 1996; to the Committee on Agriculture, Nutrition, and Forestry.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-677. A resolution adopted by the Mayor and City Council of North Wildwood, County of Cape May, New Jersey, relative to the Energy and Water Development Appropriations bill; to the Committee on Appropriations.

POM-678. A resolution adopted by the American Bar Association relative to a multilateral agreement on investment; to the Committee on Foreign Relation.

POM-679. A resolution adopted by the American Bar Association relative to implementation of waiting rooms for children in every appropriate courthouse; to the Committee on Foreign Relation.

POM-680. A resolution adopted by the American Bar Association relative to a recommendation for Violence Against Women Act; to the Committee on the Judiciary.

POM-681. A resolution adopted by the American Bar Association relative to the economic exploitation of persons under 18; to the Committee on Foreign Relation.

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. ROTH, from the Committee on Finance:

Report to accompany the bill (H.R. 3815) to make technical corrections and miscellaneous amendments to trade laws (Rept. No. 104-393).

By Mr. HATCH, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 1277. A bill to provide equitable relief for the generic drug industry, and for other purposes (Rept. No. 104-394).

By Mr. MURKOWSKI, from the Committee on Energy and Natural Resources:

Report to accompany the bill (H.R. 3198) to reauthorize and amend the National Geologic Mapping Act of 1992, and for other purposes (Rept. No. 104-395).

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

Mr. PRESSLER. Mr. President, for the Committee on Commerce, Science, and Transportation, I report favorably one nomination list in the Coast Guard, which was printed in full in the CONGRESSIONAL RECORD on September 27, 1996, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar, that this nomination lie at the Secretary's desk for the information of Senators

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

(The nominations ordered to lie on the Secretary's desk were printed in the RECORD of September 27, 1996, at the end of the Senate proceedings.)

The following Regular officers of the United States Coast Guard for promotion to the grade of lieutenant commander:

Brian C. Conroy
Ronald J. Magoon
Arlyn R. Madsen, Jr.
Chris J. Thorton
Keith F. Christensen
Douglas W. Anderson
Timothy J. Custer
Nathalie Dreyfus
Scott A. Kitchen
Kurt A. Clason
Jack W. Niemiec
Gregory W. Martin
Rhonda F. Gadsden
Nona M. Smith
Glen B. Freeman
William H. Rypka
Robert C. Lafean
Gerald F. Shatinsky
Thomas J. Curley III
Steven M. Hadley
Jerome R. Crooks, Jr.
John F. Eaton, Jr.
Charles A. Howard
David H. Dolloff
Mark A. Hernandez
Stephen E. Maxwell
Robert E. Ashton
David W. Lunt
Abraham L. Boughner
William J. Milne
Glenn F. Grahl, Jr.
Gregory W. Blandford
Anne L. Burkhardt
Douglas C. Lowe
Thomas M. Miele
Eddie Jackson III
Anthony T. Furst
Matthew T. Bell, Jr.
Duane R. Smith
Marc D. Stegman
Kevin K. Kleckner
William G. Hishon
James A. Mayors
Larry A. Ramirez
Wyman W. Briggs
Benjamine A. Evans
Gwyn R. Johnson
Tracy L. Slack
Geoffrey L. Rowe
Thomas C. Hasting, Jr.
John M. Shouey
William H. Oliver II
Edward R. Watkins
Talmadge Seaman
William S. Strong
Mark E. Matta
Richard C. Johnson
Janis E. Nagy
James O. Fitton
Salvatore G. Palmeri, Jr.
Terry D. Converse
Mark D. Rizzo
Mark C. Riley
Spencer L. Wood
Eric A. Gustafson
Ricardo Rodriquez
Christopher E. Austin
Randall A. Perkins III
Richard R. Jackson, Jr.
Timothy B. O'Neal
Pete V. Ortiz, Jr.
Robert P. Monarch
Paul D. Lang
Edward J. Hansen, Jr.
Donald J. Marinello
Paul E. Franklin
Charles A. Milhollin
Steven A. Seiberling
Dennis D. Dickson
Scottie R. Womack
Thomothy R. Scoggins
Ronald H. Nelson
Gene W. Adgate
Henry M. Hudson, Jr.
Barry J. West
Frank D. Gardner
Jeffrey W. Jessee
Ralph Malcolm, Jr.
George E. Eldredge
Donald N. Myers
Scott E. Douglass
Richard A. Paglialonga
John K. Little
James E. Hawthorne, Jr.
Samuel Walker VII
Jay A. Allen
Robert R. Dubois
Gordon A. Loebl
Robert J. Hennessy
Gary T. Croot
Thomas E. Crabbs
Samuel L. Hart
Steven D. Stilleke
Webster D. Balding
John S. Kenyon
Christopher N. Hogan
Douglas J. Conde
Thomas D. Combs III
William R. Clark
Beverly A. Havlik
Donna A. Kuebler
Thomas H. Farris, Jr.
Timothy A. Frazier
Timothy E. Karges
Rocky S. Lee
David Self
Randy C. Talley
John D. Gallagher
Robert M. Camillucci
Robert G. Garrott
Christopher B. Adair
Gregory W. Johnson
Eric C. Jones
Scot A. Memmott
John R. Lussier
Gregory P. Hitchen
Melvin W. Bouboulis
Richard W. Sanders
Melissa Bert
Jason B. Johnson
Anita K. Abbott
Raymond W. Pulver
Verne B. Gifford
Stuart M. Merrill
Scott N. Decker
Joseph E. Vorbach
Peter W. Gautier
Kevin E. Lunday
Matthew T. Ruckert
Brian R. Bezio
Christopher M. Smith
Christine L. MacMillian
Anthony J. Vogt
Joanna M. Nunan
James A. Cullinan
Joseph Segalla
Donald R. Scopel
John J. Plunkett
Gwen L. Keenan
Christopher M. Rodriguez
Richare J. Raksnis
Patrick P. O'Shaughnessy
Marc A. Gray
Anthony Popiel
Graham S. Stowe
Matthew L. Murtha
Christopher P. Calhoun
James M. Cash
Kyle G. Anderson
Dwight T. Mathers
Jonathan P. Milkey
Pauline F. Cook
Matthew J. Szigety
Robert J. Tarantino
Russel C. Laboda
John E. Harding
Andew P. Kimos
Craig S. Swirbliss
John T. Davis
John J. Arenstam
Anthony R. Gentilella
John M. Fitzgerald
John G. Turner

Kirk D. Johnson	Leigh A. Archbold
Ramoncito R. Mariano	William B. Brewer
	Dana G. Doherty
David R. Bird	William G. Kelly

The following Reserve officers of the United States Coast Guard for promotion to the grade of Lieutenant Commander:

Monica L. Lombardi	Sloan A. Tyler
Michael E. Tousley	Donald A. LaChance II
Laticia J. Argenti	
Thomas F. Lennon	Karen E. Lloyd

(The above nominations were reported with the recommendation that they be confirmed.)

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. DOMENICI (for himself and Mr. BINGAMAN):

S. 2183. A bill to make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; considered and passed.

By Mr. LAUTENBERG:

S. 2184. A bill to require the Commissioner of the Food and Drug Administration to issue regulations limiting the advertising of cigarettes and smokeless tobacco over the Internet, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. WYDEN:

S. 2185. A bill to improve Federal environmental policy by providing incentives for State and local growth management and land use programs, and for other purposes; to the Committee on Environment and Public Works..

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2186. A bill to provide access to health care insurance coverage for children; to the Committee on Labor and Human Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. LOTT:

S. Res. 307. A resolution electing Gary Lee Sisco of Tennessee as Secretary of the Senate; considered and agreed to.

S. Res. 308. A resolution notifying the President of the United States of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate; considered and agreed to.

S. Res. 309. A resolution notifying the House of Representatives of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate; considered and agreed to.

By Mr. LOTT (for himself, Mr. DASCHLE, and Mr. NICKLES):

S. Res. 310. A resolution commending Kelly D. Johnston for his service to the U.S. Senate; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG:

S. 2184. A bill to require the Commissioner of the Food and Drug Administration to issue regulations limiting the advertising of cigarettes and smokeless tobacco over the Internet, and for other purposes; to the Committee on Commerce, Science, and Transportation.

THE TOBACCO-FREE CHILDREN'S INTERNET ACT OF 1996

• Mr. LAUTENBERG. Mr. President, I introduce the Tobacco-Free Children's Internet Act of 1996, a bill to protect children from the health hazards of tobacco by extending to the Internet existing limitations on tobacco advertisements.

Mr. President, countless studies have demonstrated the persuasive effect that tobacco advertising has on minors. This advertising encourages young people to smoke, which in turn leads to more lung cancer, more heart disease, and more death. As a result, the Food and Drug Administration has now decided to limit tobacco advertising in publications with a significant readership under age 18 to black-and-white text only. This is a significant, positive step, and should substantially reduce the effectiveness of such advertising in appealing to children.

Mr. President, the Internet provides unprecedented access to information to persons of all ages. I believe that the widespread use of the Internet should be encouraged. However, certain material, such as tobacco advertising, is not appropriate for children. In addition to the eye-catching images common in tobacco print advertisements and billboards, cigarette and smokeless tobacco ads on the Internet have one feature exclusive to this medium—they can be interactive.

The indiscriminate bombardment of advertisements on the Internet is also troubling if tobacco ads on this medium are not subject to FDA regulations. To view certain ads, a child need only sign onto an Internet provider. If an online provider decides to use a tobacco advertisement for one of its so-called banner ads, there is no doubt that children will see it. Similarly, a child browsing the World Wide Web for a research project on camels could end up viewing over 300 web pages about or mentioning Joe Camel merely by typing camel on an Internet search program.

I therefore believe restrictions on tobacco advertising should be extended to the Internet. Minors comprise a large percentage of Internet users in our country and this number is increasing. Although this is a welcome indication that our youth has access to information that may not be available at their local library or at their school, I am concerned that minors may be especially affected by interactive tobacco ads.

Mr. President, I understand that the FDA was reluctant to extend their advertising restrictions to the Internet in their last rulemaking because they believed tobacco companies had not yet exploited this medium. It is true that the majority of tobacco ads currently on the Internet are posted by foreigners; however, I am confident that this situation will not last. The Internet is a veritable wild West to the tobacco industry seeking to hook children.

It is my hope that, in addition to applying applicable tobacco regulations to the Internet, the FDA, perhaps in conjunction with the Federal Trade Commission, will develop an effective means of implementing the Surgeon General's warning to Internet advertisements.

Mr. President, I ask unanimous consent that a copy of the bill be placed in the RECORD.

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

S. 2184

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 "Tobacco-Free Children's Internet Act of 1966".

SEC. 2. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) CHILD.—The term "child" means an individual who has not attained the age of 18.

(2) CIGARETTE.—The term "cigarette" means any roll of tobacco wrapped in—

(A) paper or any substance not containing tobacco; or

(B) tobacco if, because of its appearance, type, packaging, or labeling, the roll wrapped in tobacco is likely to be offered to, or purchased by, consumers as a cigarette.

(3) COMMISSIONER.—The term "Commissioner" means the Commissioner of the Food and Drug Administration.

(4) INTERNET; INTERACTIVE COMPUTER SERVICE.—The terms "Internet" and "interactive computer service" have the meaning given those terms in section 230(e) of the communications Act of 1934.

(5) SMOKELESS TOBACCO.—The term "smokeless tobacco" means any cut, ground, powdered, or leaf tobacco that, because of its appearance, type, packaging, or labeling is likely to be offered to, or purchased by, consumers as a tobacco product to be placed in the oral or nasal cavity.

SEC. 2. REGULATIONS.

As soon as practicable after the date of enactment of this Act, the Commissioner shall issue regulations limiting the advertising of cigarettes and smokeless tobacco over the Internet or other interactive computer service within the United States in a manner consistent with the regulations issued by the Commissioner on August 28, 1996, at 61 Fed. Reg. 44396 et seq.•

By Mr. WYDEN:

S. 2185. A bill to improve Federal environmental policy by providing incentives for State and local growth management and land use programs, and for other purposes; to the Committee on Environment and Public Works.

THE LOCAL GROWTH MANAGEMENT INCENTIVES ACT

• Mr. WYDEN. Mr. President, there has been considerable discussion in this Congress about assaults on our environment. But up until now, a serious, stealth assault that threatens our environment, our citizens' health, and quality of life has been essentially ignored.

The threat I am referring to arises not from action that this Congress has taken. Rather, it comes from decades of Federal inaction in the face of haphazard development activities that are slowly degrading the landscape of our states and our communities.

Mr. President, what I am referring to is the wholesale strip malling of America.

If this trend continues unchecked, it will imperil our Nation's productive lands and natural resources, while turning the landscape into an unbroken expanse of suburban sprawl.

This pattern of sprawling, uncontrolled development is in many instances promoted by the Federal Government. Despite the major impacts many Federal programs have on growth and land use, the Federal Government has largely turned a blind eye to the visual blight these programs spawn, let alone the environmental, health and economic impacts of unmanaged growth and development.

Besides turning our landscapes into eyesores, unmanaged growth contributes to traffic congestion that snarls our highways, creating both additional stresses for commuters and additional exhaust emissions that degrade the quality of our air.

Uncontrolled development not only hurts our citizens where they live and breathe, it also hits them in their wallets. Several studies have come out that show the costs of sprawling growth are significantly higher than more compact, managed growth patterns. These studies show that taxpayers can save billions of dollars in public facility capital construction and operation and maintenance costs by opting for growth management.

Time and time again, I'm asked at town meetings what I can do at the Federal level to help manage growth in my home State of Oregon, so our State doesn't get overrun by suburban sprawl.

The answer, Mr. President, is not to create a new Federal program that will embroil the Federal Government in land use decisions that have historically been State and local issues. Rather, what we should do is create incentives to encourage and build on the State and local growth management efforts already underway.

For example, Oregon's pioneering Land Use Act builds environmental and resource protections into the State's growth management and development strategies. But our State gets no credit for this innovative program from the Federal Government.

As a result, Federal development projects in Oregon have to undergo Federal reviews that in many cases duplicate the process under State law. That's bureaucratic overkill.

Oregon and other States that have similar programs should be recognized by the Federal Government both when new Federal development projects are undertaken in these States and when new Federal requirements are imposed.

Today, I am introducing the Local Growth Management Incentives Act. This legislation will give Oregon and other States and localities with good growth management programs the credit they deserve.

Under this legislation, States that have good growth management programs will get several incentives.

First, the legislation directs Federal agencies to take steps to eliminate duplication of studies, environmental assessments, planning and other activities to the extent these actions have already been undertaken under a State or local growth management plan.

Because the State of Oregon and many cities in our State have environmentally protective growth management programs, development projects in our State frequently have to go through layers of duplicative environmental reviews—first at the local level, and then at the State level, and then again at the Federal level. In some cases, virtually identical environmental analyses are required by the different levels of government, each according to different sets of regulations.

Let me cite several examples affecting the Port of Portland in Portland, OR:

The Port of Portland's proposed development of additional marine terminals at Hayden Island in the Columbia River has already undergone extensive reviews and analysis by the city of Portland and by our State agencies. But in order for this project to proceed to the actual development stage, it still must undergo still another round of reviews by two Federal agencies—the Army Corps of Engineers and the National Marine Fisheries Service. The port estimates that if it could just eliminate the duplicative requirements, two or more years of unnecessary delay could be avoided for this project .

The port's efforts to identify better ways of handling materials dredged from around its docks and piers and from the Willamette River navigation channel is subject to two virtually identical, essentially independent environmental analyses, one by the State of Oregon and another by the Corps of Engineers. Avoiding duplication by allowing the Corps of Engineers to rely upon the State analysis could save considerable money for both the port and the Corps and expedite this project.

The port is currently planning further development and expansion at the Portland International Airport, the port's marine terminals, and several port-owned general aviation airports, all of which contain wetland areas. These activities could be facilitated, without diminishing environmental protections, if the State of Oregon's extensive process for addressing the environmental impacts associated with wetlands could be relied upon by the appropriate Federal agencies.

Under my legislation, Federal agencies would have to incorporate, as part of the reviews they require, any relevant reviews and analyses already conducted under State and local programs. This would save the project sponsors considerable time and expense compared to starting the Federal reviews essentially from scratch.

The net effect of this provision is that Federal development projects reviewed and approved under good State and local programs can avoid redundant Federal reviews that increase costs and cause delays with no environmental benefits. If environmental safeguards are already in place under State law, these protections should be recognized when it comes time to develop federally supported projects in the State.

Second, States and localities with good growth management programs will be eligible for extensions of up to 1 year to comply with new Federal requirements, when this additional time is needed to integrate a new Federal requirement with the State or local growth management program. However, additional time would not be provided if an extension of time would adversely affect public health or the environment.

This incentive recognizes that good growth management programs offer a more comprehensive and more long-term approach to protecting our environment than many of the specific requirements imposed by Federal environmental programs. At the same time, coordinating Federal requirements with State and local programs is hard work, as two leading growth management experts point out in their recent book "Land Use in America." For this reason, we should give those States and localities that are undertaking this difficult, but ultimately rewarding effort the extra time they need to do it right.

The same amount of additional time granted to the State or locality would also be provided to any private party in that jurisdiction who is subject to a compliance deadline under the new Federal requirement, unless this would adversely affect public health or the environment. While States and localities are working to meld their programs with Federal requirements, private parties should not be subject to double jeopardy by having to comply

first with a Federal requirement and then subsequently with a different requirement after the State or locality modifies its program to meet the new Federal mandate.

Third, Federal agencies conducting development projects and other activities affecting growth must ensure that their activities are consistent with States' and localities' growth management programs. This provision, which is modeled on a similar consistency requirement in the Coastal Zone Management Act, empowers States and localities by giving them the ability to affect Federal activities that could undermine State and local efforts to manage growth locally.

Fourth, my legislation amends the Intermodal Surface Transportation Efficiency Act [ISTEA] to give priority for discretionary spending under ISTEA to any State or locality that has a growth management program that meets the eligibility criteria set out in the bill. Giving States and localities with good growth management programs priority for ISTEA funding will not only provide a financial incentive to establish these programs, it will also help reduce Federal, State, and local transportation costs and even help reduce air pollution from motor vehicles.

The legislation I am introducing is the beginning and not the end of a process. It is my hope that the Local Growth Management Incentives Act will begin a discussion on what the Federal Government should be doing to address the impacts Federal actions have on growth and land use. In the next Congress, I will be looking for additional incentives to offer States and localities so they will develop their own programs to manage growth.

In summary, I think there is an appropriate role for the Federal Government to help States and localities to manage growth so we have smart growth, instead of either uncontrolled sprawl or NIMBY [Not In My Back Yard] efforts to block any kind of growth. I am introducing my legislation today in an effort to jumpstart a dialog on how the Federal Government can promote well-managed, sustainable growth that will best serve our environment, our citizens' health and, our Nation's economic well-being in the 21st century.●

By Mr. KERRY (for himself and Mr. KENNEDY):

S. 2186. A bill to provide access to health care insurance coverage for children; to the Committee on Labor and Human Resources.

THE HEALTHY CHILDREN FAMILY ASSISTANCE HEALTH INSURANCE ACT

Mr. KERRY. Mr. President, I am proud to introduce legislation today, joined by my friend, colleague, and esteemed senior Senator, TED KENNEDY, to help ensure that the 10 million uninsured children in this country get the health care they need and their parents get the peace of mind they deserve.

Mr. President, the fact is that most of these 10 million uninsured children have parents who work—90 percent of these uninsured children have parents who work, according to the General Accounting Office [GAO]. And three out of five of these children have parents who work fulltime during the entire year.

Unfortunately, the problem of uninsured children is getting worse, not better—each year, more than 1 million additional children lose private insurance. No parent should have to choose between medicine for a sick child and food for the family. The thought of a mother and father, working hard to make ends meet, waking up in the middle of the night with a child in pain, and waiting to see if the pain passes because they cannot afford to go to the hospital, is a stark image of a national tragedy. Mr. President, American children without health care are alone in the world—we are the only Western industrialized nation that does not provide health care for every child.

I am proposing today with Senator KENNEDY a voluntary subsidy program to help working families to purchase private health insurance for their children. Only families with incomes too high to qualify for Medicaid would be eligible to receive these vouchers. Participation in the voucher program would be voluntary. The premium subsidy would be provided on a sliding scale with families earning 185 percent or less of the poverty line receiving the full subsidy; the subsidy would phase down so that families earning more than 300 percent of the poverty line would not receive a subsidy. Cost-sharing would be limited but everyone would pay something. The proposal includes a comprehensive benefits package with a full range of the essential services needed by children. The total cost of the plan is $24 billion over 5 years and is paid for by a combination of cuts in corporate welfare and a tobacco tax increase. Although it is apparent there is no chance the plan will be enacted this year, with Congress now in its final hour before adjourning prior to the election, we are introducing it as a bill today because we want to place this issue prominently on the national agenda during the next few months preceding convening of the 105th Congress.

Mr. President, I want to discuss 2 of the 10 million compelling reasons to provide basic health insurance to children who are not covered now.

One of the first reasons is a 13-year-old student in Lynn, MA, named Costa Billias. He played football at Breed Junior High and loved the game, but said, "For the past 2 years I gave my best to football, but my mom explained that we were not insured and if I got hurt we would lose our house and everything we own to pay the hospital." He quit the team, but he cannot quit life. If he gets hurt doing something else, his family still stands to lose everything. In addition, I think it is wrong that Costa Billias is being denied the opportunity to play football again.

One more of the 10 million reasons we must pass this bill is the Pierce family. Jim and Sylvia Pierce were married in 1980 and live in Everett, MA. Jim was a plumber and they had three children, Leonard, Brianna, and Alyssa. In October 1993, Sylvia was pregnant with her fourth child when Jim was tragically killed on his way home from the store. In that one horrible minute her life changed forever. She not only lost her husband, but, pregnant and alone, she lost her health insurance as well. Her survivor's benefits made her income too high to qualify for long-term Medicaid, and too low to pay the $400 a month it would take to extend her husband's health plan. Sylvia said, "I've always taken good care of my children. I feed them well; I take them to the doctors immediately when they need it. All of a sudden I couldn't do that anymore.

Mr. President, in addition to the moral imperative, the scientific evidence is overwhelming that lack of health coverage is bad for children, delaying medical care or making it impossible to get. A recent study in JAMA [the Journal of the American Medical Association] found that children with health coverage gaps were more likely to lack a continuing and regular source of health care—even when factors such as family income, chronic illness, and family mobility were factored out. Numerous studies by university researchers and by government agencies show that the uninsured are less likely to receive preventive care (such as immunizations for children), more likely to go to emergency rooms for their care, more likely to be hospitalized for conditions that could have been avoided with proper preventive care, and more likely to have longer hospital stays than individuals with health insurance coverage.

Mr. President, every hour we wait to take this step, another 114 children lose private health insurance. Every 30 seconds we wait, another child loses private health insurance. America's children cannot wait any longer. Families without insurance are forced to pay the full cost of medical services—an impossible burden for struggling families, one that often takes a back seat to putting food on the table and a roof over the children's heads.

Mr. President, this plan is an important, incremental step toward guaranteeing health coverage for all Americans. I urge my colleagues to support it.

Mr. KENNEDY. Mr. President, it is an honor to join Senator JOHN KERRY

in introducing this visionary and practical program. Senator KERRY has been a consistent leader in the Senate in fighting for children, for health care, and for working families. This initiative sets a benchmark for the next Congress and the American people. It is a proposal that is a reflection of true family values.

Every American child deserves a healthy start in life, but too many don't receive it. Seventeen industrialized countries do better at preventing infant mortality than we do. A quarter of American children do not receive basic childhood vaccines. Every day, 636 babies are born to mothers who receive inadequate prenatal care, 56 babies die before they are a month old, and 110 babies die before they are a year old.

Access to affordable health care is one of the greatest problems children face. Ten-and-a-half million children under the age of 19 have no health insurance—one in every seven American children. If it were not for the expansions of Medicaid over the past 5 years, the number would be seven million higher. Under Republican proposals to cut Medicaid, four million children would lose their coverage. Employer-based insurance coverage is eroding. Too many pregnant women—more than 400,000 a year—are uninsured, and lack access to critical prenatal care.

Almost all uninsured children are members of working families. Their parents work hard—40 hours a week, 52 weeks a year. But all their hard work does not buy their children the protection they deserve. Every family should have the right to health security for their children. No parents should fear that the loss of a job or their employer's failure to provide coverage will put their children out of reach of the health care they need.

Health insurance coverage for every child is a needed step in the fight to guarantee health care for every family. The cost is affordable. The benefits are great. The opportunities for bipartisanship are substantial.

The legislation we are introducing today is a simple, practical proposal. It imposes no new government mandates on the States or the private sector. It does not substitute for family responsibility. It fosters it, instead, by assuring that every family has the help it needs to purchase affordable health insurance for their children.

Our plan will establish no massive new Federal bureaucracy. Basic guidelines and financing would come from the Federal Government, but the plan would be implemented and administered by States.

The program will make a major difference in the lives of millions of families, but its basic principles are not novel or untested. Fourteen States already have similar programs in place and running. Earlier their year, for example, Massachusetts enacted a program very similar to our proposal.

Under our plan, the Federal Government will assist all families with incomes under 300 percent of poverty to purchase health insurance for their children, if they do not already receive coverage under an existing public program. Families with incomes under 185 percent of poverty will receive a full subsidy. Families with incomes between 185 percent of and 300 percent of poverty will receive assistance on a sliding scale. Between 80 and 90 percent of all uninsured children live in families with incomes below 300 percent of poverty. Even uninsured families with higher incomes might buy coverage for their children if policies designed for children were available. Families with income under 150 percent of poverty will also receive assistance with the cost of copayments and deductibles. Similar assistance will be provided to uninsured pregnant women.

The program will be administered by States under Federal guidelines. In general, States will contract with private insurance companies to offer children's coverage to any family that wants it. Lower income families will receive assistance with the cost of coverage, but coverage will be available to all families at all income levels. Basic rules will guarantee that coverage is adequate and tailored to the special needs of children, especially the need for comprehensive preventive care.

This plan does not guarantee that every child will have insurance coverage, but it gives the opportunity to every family to cover their children at a cost the family can probably afford. It will be a giant step toward the day when every member of every American family has true health security.

The cost of a similar program has been estimated at $24 billion over 5 years. We propose to finance our plan by a combination of tobacco tax increases and closing corporate tax loopholes. The Nation currently spends close to $1 trillion per year on health care. The additional cost of this proposal is substantial, but it is a needed step toward healthier lives for millions of American children and peace of mind for their parents.

In this Congress, we made substantial progress toward improving the health care system. We turned back extreme proposals to slash Medicare and Medicaid. Working together in a bipartisan way, we were able to pass the Kassebaum-Kennedy Health Insurance Reform Act, take a significant first step toward mental health parity, and protect mothers and infants from premature discharge from the hospital. Every Democratic and Republican health plan in the previous Congress endorsed the idea of subsidizing private insurance coverage for children. This proposal should be a bipartisan health priority for the next Congress. I believe it is an idea whose time has finally come.

ADDITIONAL COSPONSORS

S. 1178

At the request of Mr. CHAFEE, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of S. 1178, a bill to amend title XVIII of the Social Security Act to provide for coverage of colorectal screening under part B of the Medicare Program.

S. 1385

At the request of Mr. BREAUX, the name of the Senator from Kansas [Mrs. FRAHM] was added as a cosponsor of S. 1385, a bill to amend title XVIII of the Social Security Act to provide for coverage of periodic colorectal screening services under part B of the Medicare Program.

S. 2030

At the request of Mr. LOTT, the name of the Senator from Nebraska [Mr. KERREY] was added as a cosponsor of S. 2030, a bill to establish nationally uniform requirements regarding the titling and registration of salvage, nonrepairable, and rebuilt vehicles, and for other purposes.

SENATE CONCURRENT RESOLUTION 73

At the request of Mr. D'AMATO, the names of the Senator from Colorado [Mr. CAMPBELL], the Senator from Idaho [Mr. KEMPTHORNE], the Senator from Pennsylvania [Mr. SANTORUM], the Senator from Michigan [Mr. ABRAHAM], the Senator from Nevada [Mr. REID], the Senator from Florida [Mr. GRAHAM], and the Senator from Wisconsin [Mr. FEINGOLD] were added as cosponsors of Senate Concurrent Resolution 73, a concurrent resolution concerning the return of or compensation for wrongly confiscated foreign properties in formerly Communist countries and by certain foreign financial institutions.

SENATE RESOLUTION 307—ELECTING THE SECRETARY OF THE SENATE

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 307

Resolved, That Gary Lee Sisco of Tennessee be and he is hereby elected Secretary of the Senate.

SENATE RESOLUTION 308—A NOTIFICATION TO THE PRESIDENT OF THE UNITED STATES

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 308

Resolved, That the President of the United States be notified of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

SENATE RESOLUTION 309—A NOTIFICATION TO THE HOUSE OF REPRESENTATIVES

Mr. LOTT submitted the following resolution; which was considered and agreed to:

S. RES. 309

Resolved, That the House of Representatives be notified of the election of Gary Lee Sisco of Tennessee as Secretary of the Senate.

SENATE RESOLUTION 310—COMMENDING KELLY D. JOHNSTON FOR HIS SERVICE TO THE UNITED STATES SENATE

Mr. LOTT (for himself, Mr. DASCHLE, and Mr. NICKLES) submitted the following resolution; which was considered and agreed to:

S. RES. 310

Whereas Kelly D. Johnston faithfully served the Senate of the United States as Secretary of the Senate during the 104th Congress, and discharged the duties and responsibilities of that office with unfailing dedication and a high degree of efficiency; and

Whereas, as an elected officer of the Senate and as an employee of the Senate and the House of Representatives, Kelly D. Johnston has upheld the high standards and traditions of the United States Congress, from his service on the staff of the House of Representatives from the 96th through the 101st Congress and then on the staff of the Senate from the 102nd through the 104th Congress; and

Whereas, through his exceptional service and professional integrity as an officer and employee of the Senate of the United States, Kelly D. Johnston has earned the high esteem, confidence and trust of his associates and the Members of the Senate:

Now, therefore, be it

Resolved, That the Senate recognizes the notable contributions of Kelly D. Johnston to the Senate and to his country and expresses to him its appreciation and gratitude for faithful and outstanding service.

AMENDMENTS SUBMITTED

THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 AMENDMENT ACT

DASCHLE AMENDMENT NO. 5424

Mr. MURKOWSKI (for Mr. DASCHLE) proposed an amendment to the bill (S. 2183) to make technical corrections to the Personal Responsibility and Work Opportunity Reconciliation Act of 1996; as follows:

At the appropriate place, insert the following:

SEC. . EXTENSION OF NORTHERN GREAT PLAINS RURAL DEVELOPMENT COMMISSION.

Section 11 of the Northern Great Plains Rural Development Act (Public Law 103-318; 7 U.S.C. 2661 note) is amended by striking "the earlier" and all the follows through the period at the end and inserting "September 30, 1997.".

AUTHORITY FOR COMMITTEE TO MEET

SUBCOMMITTEE ON EUROPEAN AFFAIRS

Mr. MURKOWSKI. Mr. President, I ask unanimous consent that the Subcommittee on European Affairs of the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, October 1, 1996, at 9:30 a.m. to hold a hearing.

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

ADDITIONAL STATEMENTS

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

TRIBUTE TO SENATOR HANK BROWN

• Mr. CAMPBELL. Mr. President, I thank the leadership for submitting this statement for the RECORD on my behalf during my absence from the Senate due to an accident. Were I able to be on the Senate floor today, I would make a few brief comments about the distinguished senior Senator from Colorado, my colleague and friend, Senator HANK BROWN. As he departs this Chamber after the adjournment of the 104th Congress, his service and contributions to this body, both as a person and a legislator, will leave an indelible impression upon us all.

I believe that anyone who knows Senator HANK BROWN shares my belief that he possesses a great passion for public service and has committed a good part of his professional career to providing the people of Colorado with distinguished and honorable service.

As we reflect on his career, it is apparent that HANK BROWN's leadership abilities were evident at a very early age, and he has built on each successive milestone to achieve great acclaim for himself and for the people of Colorado.

HANK was born in Denver, CO, on February 12, 1940. He received his bachelors degree and law degree from the University of Colorado in 1960 and 1969, respectively. His leadership skills were exemplified as he served as student body president while completing his undergraduate studies. Adding to his collegiate achievements was his ability to also compete and earn a letter as a member of the University of Colorado wrestling team.

HANK served our country as a lieutenant in the U.S. Navy during the Vietnam war. His leadership abilities earned him several decorations—an Air Medal with two gold stars, a Vietnam Service medal, a National defense medal, and a Naval Unit Citation. He also served in the Colorado State Senate from 1972 to 1976, where he was the assistant majority leader for 2 years. In 1973, he was named "Outstanding Young Man of Colorado."

HANK came to Washington in 1980 where he served five terms in the House of Representatives. Following his achievements while representing the people of Colorado's Fourth Congressional District, HANK BROWN was elected to the U.S. Senate in 1990.

His service in the Congress has had many memorable highlights—from creating a wild and scenic designation for the Cache LaPoudre River and working to expand the Rocky Mountain National Park, to playing a pivotal role in pushing through a monumental Colorado wilderness bill. In addition, he has been a vocal advocate in the private property rights movement and has been instrumental in efforts to find innovative legislative solutions while working to achieve a balanced budget.

HANK has also been an outstanding leader on military, foreign policy and trade issues. His efforts to resolve the dispute with Pakistan over certain weapons transfers is certainly a notable highlight. His efforts to forge a compromise between Congress and the administration will greatly serve our national interests as well as those of India and Pakistan.

As the 104th Congress adjourns for the year, we will remember the contribution and leadership that HANK has exhibited throughout his career. I believe each of my colleagues shares my sentiments that we will miss HANK.

As the junior Senator from Colorado, I believe HANK has been a true friend to the people of Colorado and an outstanding legislator who consistently strived to do what was best for our Nation. My friendship with HANK has always transcended political affiliation. He and I were friends when I was a member of the Democratic Party, and that friendship has grown since I've been a Republican. Such an enduring friendship is a rare gift, one I value deeply. HANK and I also have shared many experiences. Both of our wives are teachers. We both raised families in Colorado while serving in Congress.

Let me offer one example of the depth of my friendship with HANK BROWN. He and his wife Nan, once let me keep my horse in their yard at their home in Colorado while I was attending the Greeley Independence Stampede celebration.

Mr. President, I won't give you the graphic details, but suffice it to say, there were a few less flowers and a more fertile environment in that back yard the following morning.

Anybody who has seen the Senators' vehicles parked outside of the Capitol can see that HANK has remained fiscally conservative. HANK's old red pickup is just as famous or should I say infamous, among the Colorado delegation. On days that I'm forced to drive

four wheels, both HANK's and my staff debate who drives the worst vehicle between HANK and his old red pickup and me and my old white coupe. With all due respect to my departing colleague, I think you win that contest hands down HANK.

Mr. President, let me close on a serious note. HANK BROWN's presence and wisdom will be sorely missed in this body when the next Congress convenes early next year. I join my colleagues in congratulating and commending him for his public service and wish him and his family well as he moves on.•

SUCCESS OF THE 1996 OLYMPIC AND PARALYMPIC GAMES

• Mr. NUNN. Mr. President, I would like to take this opportunity to recognize the success of the 1996 Centennial Olympic games and the Paralympic games which were held this summer in Atlanta.

The statement made by many that the Centennial games in Atlanta were the greatest ever was right on the mark. The athletes and the spectators who attended the events understand better than anyone the extraordinary success of the 1996 Olympics. In the face of pressures that defy imagination, ACOG staff and volunteers staged an Olympics of breathtaking grandeur and dignity. Our law enforcement and military personnel put together a security force that was unprecedented in its commitment, performance, and cooperation.

I have talked to countless people who attended both the Centennial games and the Paralympic games, and I have talked to numerous individual members of the International Olympic Committee. There was universal praise of the extraordinary job that was done in Atlanta and elsewhere in dealing with events that were unprecedented in their size and scope.

All in all, more than 10,000 athletes and 2 million spectators from around the world participated in the Olympics. In comparison, the Atlanta Olympic games were twice the size of the 1984 Los Angeles Olympics in terms of the number of participants and spectators, and larger than the Los Angeles and Barcelona games combined. More spectators attended women's events at the Centennial games than attended all events in Los Angeles. In addition, Atlanta hosted athletes from 197 countries around the globe. That is an additional 57 countries above the 140 who participated in the 1984 Games. To give my colleagues a point of reference, particularly for the football fans among them, the Atlanta Olympic games were the equivalent of one city hosting six Super Bowl games each day for 17 days straight. So it was a Super Bowl times six, each day for 17 days. That was quite an undertaking.

While much praise should be given to the many workers who contributed to the success of these Games, I would be remiss if I failed to mention some of the athletes who gave it their all in these Games. Who can forget the South African marathon runner, Josiah Thugwane, the first black South African to win a Gold Medal for the unified team of South Africa? Or Naim Suleymanoglu, endeared to all as "Pocket Hercules," who stunned the world by lifting over his head nearly triple his weight?

I will always remember watching Michael Johnson sprint across the finish line. Among America's special heroes was young Kerri Strug, who as you may recall, injured herself on the vault but continued valiantly to make a second leap to help ensure a team gold medal for the U.S. women's gymnastics team. I could spend all day recounting the many heroic and inspirational accomplishments from the Olympic games, but the story from Atlanta did not end there.

Just 12 days after the conclusion of the 1996 summer Olympics, another sporting event of great magnitude occurred in Atlanta. The Paralympic games hosted more than 3,500 athletes from 119 nations, competing in 19 different sports. While not as large as the Centennial games, this was the largest gathering of people with disabilities ever assembled anywhere in the world. Certainly it was every bit as large as the Centennial games in terms of the spirit, heart, and courage of those who competed.

I have been honored to work for a number of years in assisting the Atlanta Paralympic Organizing Committee in preparation for the Paralympics. I consider the opportunity I had to support these games to be one of the highlights of my Senate career. I also had the pleasure of being a spectator at many of the Paralympic events, and I know that the level of skill and achievement shown by these athletes was truly outstanding by any standard.

The opening ceremonies offered a glimpse of what was to come, as a sold-out crowd of over 64,000 spectators watched 36-year-old American mountain-climber Mark Wellman light the Paralympic Torch by pulling himself hand over hand up the 98-foot tower carrying the torch between his legs. Mark was paralyzed from the waist down after a 50-foot fall while mountain climbing 14 years ago. He was soon followed by Hou Bin of China who set a world record in the high jump on the first day of the track and field competition by clearing 1.92 meters, approximately 6 feet, 3 inches. For those of you unfamiliar with Hou Bin, he has only one leg, but that did not stop him from winning the hearts of spectators from around the world as he went on in an attempt to break his own record. While he was ultimately unsuccessful, you would not have known that from the roar of the crowd.

Yet, another stunning performance was that of Troy Sachs who led the Australian men's wheelchair basketball team to victory by scoring a Paralympic record-breaking 42 points. I rank it among the finest basketball performances I have ever seen. Leading the American Paralympic team was Tony Volpentest who set a new world record in the 100 meter dash, running a time of 11.36 seconds—that is 1.52 seconds shy of Donovan Bailey's record in the Olympics.

Mr. President, I also want to take this time to recognize and honor all of the many people who dedicated their time and efforts. This effort brought together literally hundreds of Federal, State, local, and civic leaders, as well as thousands of volunteers. The Atlanta volunteers were certainly the best in history. They were simply amazing, and the games could not have been held without them. Unfortunately, time prohibits me from mentioning all of the people who were truly instrumental in putting on the games, but I would like to recognize a few of them.

ATLANTA COMMITTEE FOR THE OLYMPIC GAMES

When Billy Payne originally submitted his proposal to bring the Olympic games to Atlanta, many people did not take him seriously; but just ask them now. He is perhaps the best example of what Atlanta has to offer in terms of leadership and vision. His partner, former Atlanta mayor, Congressman, and Ambassador Andy Young, provided the key element of diplomacy needed to convince the International Olympic Committee to choose Atlanta. I should also thank A.D. Frazier, who did an outstanding job, as well as the entire team at ACOG.

ATLANTA PARALYMPIC ORGANIZING COMMITTEE

My special thanks go to the Atlanta Paralympic Organizing Committee, led by its president, Andy Fleming. Andy had perhaps the most difficult challenge of all in leading the effort to stage the Paralympic games. Faced with the disadvantage of lesser name recognition and financial resources, the Paralympic Organizing Committee put on a world class event which truly met the high standards set by the Olympic games. Andy was assisted by the able leadership, service, and great dedication of Harald Hansen, chairman of First Union National Bank of Georgia, and David Simmons, chief operating officer for the Paralympic games.

DOD SUPPORT

The 1996 Centennial Olympic and the Paralympic games were successful in large part due to the tremendous support of the Department of Defense. Without the assistance of the Department of Defense, working in concert with State and local public safety officials, the Olympics and Paralympics could not have been held. Not surprisingly, these events were too big for any

single municipal or State government to ensure safety and security without appropriate help from the Federal Government.

Those who won the selection of Atlanta as the Olympic venue understood at the beginning that they would be responsible for providing the cost of putting on the Games, and they raised about $1.5 billion to do so. They could not, however, guarantee the security of all the athletes and the millions of visitors from all over the world. In the era of modern terrorism, safety for an event of this type simply cannot be guaranteed without help from the Federal Government. I hope the Congress will keep this in mind as our friends in Utah prepare for the 2002 winter Olympic games.

Billy Payne expressed his appreciation for the Department of Defense support this way:

Thanks to the support of the Department of Defense and the soldiers, sailors, and airmen who served in Atlanta during the 1996 Summer Olympic Games, the safety of the public and the athletes was assured. DoD and its military forces provided the safety net and back-up law enforcement needed when confronted with securing the largest peacetime event in history.

From the explosive ordnance teams to the military police units to communications specialists, DoD personnel performed critical missions. Working in conjunction with law enforcement, DoD personnel helped secure the village where the athletes of 197 nations were housed. On the night of the tragic bombing in Centennial Olympic Park, DoD personnel in the downtown area remained calm and at their posts, reinforcing the public's perception that security authorities were fully prepared to deal with the situation. The ability of military personnel to increase their shifts and immediately provide more manpower to the streets was a clear signal to the Olympic family and spectators that America was prepared for all contingencies.

All who came to the Games in Atlanta are indebted to the Department of Defense for the professional and dedicated effort of the troops who were part of the Summer Olympics. These men and women showed the world, once again, that the soldiers, sailors, and airmen of the United States military are the finest in the world.

In 1992, Congress first appropriated funds to the Department of Defense for security and logistical support for the 1996 Olympic and Paralympic games. Since that time, a multitude of DoD personnel have aggressively worked to ensure the success and security of this significant public event. The impact of DOD support to the 1996 summer Olympics is difficult to summarize in a short time. More than 13,000 active duty, Reserve, and National Guard personnel were committed in support of the Games in Atlanta and in the other competition cities. These military members came from 45 states and territories and provided support to security operations at 44 Olympic sites.

Of the men and women who came to Atlanta, over 9,000 National Guard personnel provided support in the form of roving and fixed perimeter security, command post support, route security, and vehicular inspection. More than 1,000 active duty soldiers, sailors, airmen, and Marines were entrusted with the important responsibility of transporting athletes and law enforcement personnel to the secured villages and venues. These drivers successfully negotiated the crowded streets of Atlanta more than 650 times each day. DOD provided 33 helicopters, and military aviators flew 300 missions in support of the law enforcement security operations. DOD provided critical equipment to more than 60 Federal, State, and local law enforcement agencies and organizing committees. DOD bomb disposal experts responded to 450 calls on suspect items; and DOD, the FBI, and our health officials prepared for any kind of chemical or biological attack. A force of more than 1,300 personnel, from all services, was required to provide base camp support for the DOD personnel supporting the Olympic games.

When the tragic explosion in Centennial Park occurred, National Guard and uniformed military personnel were on the scene immediately, and their calmness and discipline were absolutely indispensable in the first few critical moments. Within 24 hours, military personnel were able to double their security forces at select critical locations. DOD also provided critical transportation support for almost 500 additional State personnel who were activated in response to the bombing to supplement state law enforcement resources. The Federal law enforcement training center depended on DOD for transportation, housing, meals, and other support for more than 900 personnel they committed to the post-bombing security operations when no other source was available.

Let me pause here for a moment to again express my sympathy for the family of Mrs. Alice Hawthorne, who died during this tragic event. Her death has sent a powerful message throughout our Nation and the world about the horror of acts of senseless violence and terrorism. However, we must never forget that this tragedy in the context of the Olympics pales beside the unspeakable personal loss and grief that have befallen her family.

In addition to supporting the Olympic games, DOD extended assistance to the 1996 Paralympic games. Over 990 active duty and National Guard personnel supplied transportation, medical, linguistic, logistical, and communications support to 17 venues in the Atlanta area. Our soldiers took great pride in participating in a project that assisted athletes of such astounding and great courage. Members of our military sadly are no strangers to the impact of injury or illness that some define as incapacitating. But the Paralympic athletes proved by their own performance and their tremendous courage that the definition of incapacitated needs reexamination by our society.

I want to thank in particular Secretary of Defense Bill Perry, Secretary of the Army Togo West, Assistant Secretary Mike Walker, General John Tilleli, and his assistant General Bob Hicks for their outstanding leadership and support in assisting the Olympics and Paralympics. In addition to DOD personnel, I would like to thank the Attorney General Janet Reno, the Deputy Attorney General Jamie Gorelick, FBI Director Louis Freeh, Atlanta Director of the FBI Woody Johnson, and Gil Childers for all their hard work. Let me also recognize all the administration staff from the DOD and the Federal law enforcement agencies whom I have not named here for all of their hard work.

Finally let me thank President Clinton and Vice President GORE, particularly Vice President GORE, whose direct personal involvement from the beginning was vital in keeping the Federal involvement in the games focused and effective. All of us in Georgia are grateful for their support.

STATE AND LOCAL OFFICIALS

It goes without saying that State and local support was crucial in putting on these games. The State of Georgia spent more than $72 million on Olympic security alone, including the salaries of law officers who were assigned to full-time Olympic security duties. Not counting State prison guards, some 73 percent of all State of Georgia employees who have law enforcement credentials were assigned to the Olympics. These figures obviously do not include fire and emergency medical personnel.

Governor Zell Miller led the effort to ensure that the State of Georgia contributed the appropriate resources to help construct the various venues, roads, and buildings necessary for the games. Gary MCCONNELL, chief of staff of the State Olympic Law Enforcement Command, Georgia Adjutant General William Bland, Director Buddy Nix of the GBI, Colonel Sid Miles of the Georgia State Patrol and Department of Public Safety, and Atlanta chief of police Beverly Harvard led the State and local security effort. Our National Guard units from Georgia and other States under the leadership of General Bland were superb. Special thanks should also go to Atlanta Mayor Bill Campbell, members of the Atlanta city council, and the Fulton County Commissioners whose leadership was instrumental in preparing Atlanta to host the games.

In addition, I want to thank all the Georgia health officials who were involved in preparing for the Olympics and Paralympics and insuring the well being of the spectators and participants. They are often overlooked, but

their contributions are every bit as critical.

I would also like to thank my fellow colleagues in the Congress who helped with the Olympics and Paralympics, especially my fellow colleagues from the Georgia delegation. Most noteworthy, of course, were Congressman LEWIS, Speaker GINGRICH, and Senator COVERDELL. Finally, I would like to thank my staff on the Senate Armed Services Committee and my personal staff for their assistance to me in working on these games.

Mr. President, I wish I could personally thank everyone who was involved in preparing for these great games. This was literally a historic event. I am proud to have been a part of these games, and I am thankful for the opportunity. •

THE CHORUS GETS LARGER AND LOUDER ON THE YEAR 2000 COMPUTER PROBLEM

• Mr. MOYNIHAN. Mr. President, last Wednesday, September 25, I introduced S. 2131, a bill to establish a bipartisan National Commission on the Year 2000 Computer Problem. In a statement as ominous as the problem itself, I summarized the fears of the computer and information technology experts on this problem. Their voices, as yet largely unheard by Congress and the administration, are multiplying. On Monday, September 16, 1996, in the publication New Technology Week, Mark Crawford wrote about the lack of preventive action with regard to the Year 2000 Computer Problem and about new factors concerning the timeliness and costliness of this critical issue.

Previously, I informed my Senate colleagues that the cost of this problem had been estimated in the tens of billions. This article cites a recent industry report that tabulated the cost in the hundreds of billions. Crawford writes: "The magnitude of the problem is reflected in estimates of the repair bill: $300 billion for the United States and $300 billion for the rest of the world."

Until now, I had informed my fellow Senators that we had until December 1999 to address this problem. Mr. Crawford writes that we have even less time. He quotes Mr. Larry Olson, deputy secretary for information technology for the State of Pennsylvania, who argues that businesses and governments will have to fix their computer codes by the end of 1998—not 1999: "Pennsylvania's Olson figures that States, Federal agencies, and companies must fix their problems by the end of 1998 in order to have adequate time to run systems and identify any catastrophic glitches." So, not only are the cost estimates rising, but the date by which we must address this problem has moved up as well.

We must act expeditiously.

I ask that the article which appeared in New Technology Week on September 16, 1996, entitled "The Year 2000 Software Fix Unlikely To Beat Clock" by Mark Crawford, be printed in the RECORD.

The article follows:

[From the New Technology Week, Sept. 16, 1996]

YEAR 2000 SOFTWARE FIX UNLIKELY TO BEAT CLOCK

(By Mark Crawford)

The challenge that business, state and local government, and federal agencies face in changing millions of lines of code by the year 2000—so that computer record systems continue to function accurately in the new millennium—is getting bigger by the day.

According to experts testifying September 10 before a joint hearing held by subcommittees of the House's Science Committee and Government Reform & Oversight Committee, neither industry nor government agencies will be able to make all the required fixes before the clock strikes midnight on December 31, 1999. The magnitude of the problem is reflected in estimates of the repair bill: $300 billion for the United States and $300 billion for rest of the world (NTW, Dec. 12, 1995, p. 1).

At risk is the integrity of many services and functions that are taken for granted—the management of payroll services, retirement programs, medical and health insurance, traffic systems, information databases. The fix: Expand from two digits to four digits the date fields used in computer programs to designate the year. Without this modification, many computer programs, especially older software, will register "00" when 2000 arrives.

Left unchecked, the consequences will range from minor inconvenience to devastation for some record systems and management programs, according to industry and government analysts. The problem is equally daunting for companies, many of which are only now beginning to understand it, according to Larry Olson, deputy secretary for Information Technology for the state of Pennsylvania.

Olson's state has started an aggressive outreach program aimed at prodding companies located there to attack the problem. And large national companies also are moving expeditiously on the matter, particularly in the securities industry, where it's essential to maintain date-critical information on stock trades, retirement accounts, and other financial transactions.

Despite the potential for havoc, industry and government agencies have been moving slowly to address the problem. And now both legislators and computer industry officials fear there could be serious—not to mention costly—problems created.

Why? Daniel Houlihan, first vice president of the National Association of State Information Resource Executives (NASIRE), noted that there has been little direction from Washington on the matter. "There is no leadership on a uniform solution across the states," said Houlihan.

That criticism is not hard for Rep. Stephen Horn (R-Calif.), chairman of the Subcommittee on Government Management, Information, and Technology, to accept. In July he disclosed results of a survey conducted by his panel that showed few federal agencies to be moving aggressively on the issue (see chart, bottom).

Most of the government's large agencies were graded D or F on their level of preparation to address the Year 2000 problem. The Department of Defense got a C and the Nuclear Regulatory Agency a B, while the Social Security Administration was one of four agencies out of a total of 24 surveyed to get an A. Said Horn of the state of readiness in the federal government: "There were very few As, Bs, and Cs. There were a lot of Ds and Fs."

It's not likely that federal agencies, state governments, or businesses will be able to make all the computer program changes needed by 2000, said Houlihan. Government agencies and companies alike, he stressed, should focus on "identifying critical programs that will be affected and get those changes done first."

Indeed, Pennsylvania's Olson figures that states, federal agencies, and companies must fix their problems by the end of 1998 in order to have adequate time to run systems and identify any catastrophic glitches.

Only in the last year or so have industry and government begun to attack the problem with any intensity to understand the full scope of the records that must be modified. "I am afraid that some of the folks don't recognize that they have a problem," said Rep. John Tanner (D-Tenn.).

Harris Miller, president of the Information Technology Association of America (ITAA), said his organization is doing all it can to make industry aware of the Year 2000 problem and to get top management moving on it. But, Miller noted, some executives have been slow to recognize the scope of the problem and make it a top priority in their organization. Said Miller: "They need to wake up, look in the mirror, go to the office, and start asking some questions."

At the state government level, said NASIRE's Houlihan, who also is director of the data processing oversight commission for Indiana, there is now a high level of recognition of the problem. But states are moving at different speeds to address it, he said.

Survey data, he said, show that 75 percent of the states are still in the planning stage, with just 25 percent actually moving to implement system changes. At this point, Houlihan said, state projections for finishing software program modifications range from 1997 to December 1999. The size of the problem varies from state to state—ranging from 300,000 lines of code to 97 million lines.

What states that are moving aggressively to tackle the Year 2000 program, such as Pennsylvania, fear is that the federal government at this late juncture may step in with rules and standards that could slow their efforts—or, worse yet, cause them to modify program changes that have already been made.

NASIRE's Houlihan said that what states do want is a quick determination by federal agencies on the level of funding that might be provided to assist state governments and localities in fixing information systems that support or interact with federal programs.

The costs of modifying date fields in computer programs is daunting at a macro level. The estimate of $600 billion worldwide is based on an estimate of $1 for each line of code that must be changed. Most of that dollar is used not in making the change, but in conducting subsequent tests to make sure that affected programs continue to function properly.

Just what it will cost companies and governments to bring their software programs into compliance is expected to vary widely, depending on how old the programs are and whether all the underlying source code is available. Pennsylvania estimates that repairing the date fields in its payroll system

will involve changing 10,000 lines of code at a cost of $7,500.

While getting a fix on the accuracy of cost estimates is hard at this time, ITAA's Miller warned that there is certain to be upward pressure on costs—because of a shortage of qualified programmers. Miller said that ITAA, in fact, is concerned that industry and government demand will be so great that fly-by-night companies could spring up and create nightmares for unsuspecting firms.

To ward off this problem, ITAA is launching a certification program that will help companies and government agencies select firms that have the required capabilities to make software modifications.

YEAR 2000 AGENCY PREPAREDNESS

	Grades
International Aid	A
Personnel (OPM)	A
Small Business	A
Social Security	A
Education	B
Nuclear Regulatory	B
State	B
Defense	C
Treasury	C
Science Foundation	C
Agriculture	D
Commerce	D
Environmental Protection	D
General Services	D
Health and Human Services	D
Housing (HUD)	D
Interior	D
Justice	D
NASA	D
Veterans Affairs	D
FEMA	F
Labor	F
Energy	F
Transportation	F•

ATOMIC VETERANS

• Mr. WELLSTONE. Mr. President, I rise to announce my intention to introduce in the 105th Congress a companion bill to the provisions of H.R. 4173 which was introduced last week by Congressman Lane Evans, who is an exceptionally dedicated and effective advocate for all veterans, including atomic veterans. This important legislation would grant atomic veterans the presumption of service-connection for eight additional illnesses: Bone cancer; colon cancer; nonmalignant thyroid nodular disease; parathyroid cancer; ovarian cancer; brain and central nervous system tumors; unexplained bone marrow failure; and meningioma. Were this bill to be enacted, it would ensure that atomic veterans receive compensation for six diseases for which Marshall Islanders now automatically receive compensation under the Marshall Islands Nuclear Claims Tribunal Act and two diseases the VA accepts as radiogenic but does not deem to be presumptively service-connected.

I am convinced that enactment of the provisions of H.R. 4173 would help to rectify an injustice or, to put it more accurately, a series of injustices inflicted by our Government over the past 50 years on atomic veterans who served our country bravely, unquestioningly, and with great dedication.

If there's any doubt about the need to expand the list of presumptive diseases, it should have been dispelled by the final report of the President's Advisory Committee on Human Radiation Experiments which was issued almost a year ago. The report's recommendations echoed many of the complaints that atomic veterans have had for years about the almost insuperable obstacles they face when seeking approval of their claims for VA compensation. The report urged an interagency working group to work "in conjunction with Congress"—I repeat in conjunction with Congress—to promptly address the concerns expressed by atomic veterans. Among these concerns cited by the committee are several that I've long believed need to be urgently addressed, including:

The list of presumptive diseases for which atomic veterans automatically receive VA compensation is incomplete and inadequate.

The standard of proof for atomic veterans without a presumptive disease can't be met and are inappropriate given the incompleteness of exposure records retained by the Government.

Time and money spent on contractors and consultants in administering the claims program, particularly the dose reconstructions required for most atomic vets filing claims with the VA, would be better spent on directly aiding veterans.

With regard to the last two concerns, it is important to note that the Advisory Committee found that the Government didn't create or maintain adequate records regarding the exposure, identity, and test locale of all participants. This finding casts serious doubt on the ability of the Government to come up with accurate dose reconstructions on which the approval of claims for VA compensation of many atomic veterans depend.

In sum, there's no doubt that the report of the President's Advisory Committee strongly buttresses the case for expanding the list of radiogenic diseases for which atomic veterans must receive the presumption of service-connection and, therefore, for enacting the provision of H.R. 4173 in the next Congress.

Mr. President, for almost 3 years I've been deeply moved by the plight of our atomic veterans and their families, and frankly dismayed and angered when I have learned of the many injustices they've experienced over the past 50 years. My mentors on this issue have been Minnesota atomic veterans, particularly veterans of the U.S Army's 216th Chemical Service Company who participated in "Operation Tumbler Snapper," a series of eight atmospheric nuclear tests in Nevada in 1952. They are an extraordinary group of Americans who despite their many trials and tribulations have not lost faith in this country and believe and hope they will one day receive the recognition and compensation that is due them.

Mr. President, since January 1994, I have had numerous meetings and contacts with the men of the "Forgotten 216th" and their families. Since their problems typify those of other atomic veterans nationwide, permit me to tell you about veterans of the U.S. Army's 216th Chemical Service Company and about why they now term themselves the "Forgotten 216th."

When the men of "The Forgotten 216th," about 50 percent of whom were Minnesotans, participated in "Operation Tumbler Snapper," they believed their Government's assurances that it would protect them against any harm, but now are convinced they were used as guinea pigs with no concern shown for their safety. Many were sent to measure fallout at or near ground zero immediately after a nuclear bomb blast, encountering radiation so high that their geiger counters literally went off the scale while they inhaled and ingested radioactive particles. They were given little or no protection, sometimes even lacking film badges to measure their exposure to radiation and were not informed of the dangers they faced. Moreover, they were sworn to secrecy about their participation in nuclear tests, sometimes denied access to their own service health records, and provided with no medical follow-up to ensure that they had not suffered adverse health effects as a consequence of their exposure to radiation. Many members of the 216th have already died, often of cancer, some as long as 20 years ago. It should be obvious to all why these men now refer to themselves as "the Forgotten 216th."

For 50 years, atomic veterans have been one of America's most neglected groups of veterans. For almost 40 years there were no provisions in Federal law specifically providing veterans compensation or health care for service-connected radiogenic diseases. Even now, with laws on the books covering radiogenic diseases on both a presumptive and nonpresumptive basis, the rate of VA approval of atomic veterans' claims is abysmally low.

Mr. President, in this connection, permit me to quote from the testimony of Mr. Joseph Violante of the Disabled American Veterans before a House subcommittee on April 30, 1996:

> The DAV believes that a great injustice has been done to America's Atomic veterans and their survivors. . . . Only 10 percent of those atomic veterans who seek compensation for . . . disabilities are granted service connected benefits, although the VA cautions that "it cannot be inferred from this number that service-connection was necessarily granted on the basis of radiation exposure." . . . As of April 1, 1996, VA statistics show that there have been a total of 18,515 radiation [claim] cases. Service connection has been granted, as of April 1, in 1,886 cases. . . . Statistics current as of December 1, 1995, demonstrate that of the total number of cases in which atomic veterans have been granted service-connection, 463 involve the granting of presumptive service connection. . . .

To sum up, if we were to exclude the 463 veterans who were granted presumptive service connection, atomic veterans had an incredibly low claims approval rate of less than 8 percent. And of this low percentage, an indeterminate percentage may have had their claims granted for diseases unrelated to radiation exposure. Moreover, in the roughly 7-year period following the 1988 enactment of a law granting atomic veterans service connection on a presumptive basis for certain radiogenic disease to a degree of 10 percent disability or more, only 463 claims of presumptive diseases have been improved. By any standard, the VA's record of approving veterans' claims based on disabilities linked to radiogenic diseases is a sorry one.

Mr. President, permit me to quote further from the eloquent and persuasive testimony of Mr. Violante:

It cannot be overemphasized that radiation claims are wrongfully denied because of inaccurate reconstructed dose estimates used as the basis for the determination that the estimated minimal level of exposure experienced by the atomic veteran was insufficient to cause the cancer or other disease ravishing the atomic veteran's body. The reality is that atomic veterans are fighting a losing battle, not only with the disease or diseases that have taken away their good health, but with the very government that put them in harm's way. . . . Why are only 15 diseases given a rebuttable presumption of service connection for atomic veterans while Marshall Islanders receive an irrebuttable presumption for 25 medical conditions [now 27 conditions]? Why does our government continue to put the needs of its veterans behind those of other groups, such as the Marshall Islanders? . . . Congress should consider making all the recognized "radiogenic diseases" and any other disease, illness or disability that others, such as the Marshall Islanders are being compensated for, diseases for which presumptive service connection is granted.

I couldn't agree more with the DAV's cogent analysis and this is one of the reasons I'm determined to ensure that atomic veterans are granted service-connected compensation for all radiogenic diseases.

The cover of every copy of the Atomic Veteran's Newsletter, the publication of the National Association of Atomic Veterans, contains the simple but eloquent statement: "the atomic veteran seeks no special favor . . . simply justice."

Mr. President, I urge my colleagues from both sides of the aisle to join me in supporting the valiant and long struggle of atomic veterans for justice by strongly backing the bill that I plan to introduce next year and in fighting for its enactment.

I dedicate this statement to the members and families of "The Forgotten 216th" who have educated me about the plight of atomic veterans and whose courage and perseverance I shall always admire.

I ask that excerpts of the statement of Mr. Joseph Violante of the Disabled American Veterans before the Subcommittee on Compensation, Insurance and Memorial Affairs, House Committee on Veterans' Affairs, April 30, 1996, be printed in the RECORD.

The excerpts follow:

STATEMENT OF JOSEPH A. VIOLANTE

Mister Chairman and Members of the Subcommittee:

On behalf of the more than one million members of the Disabled American Veterans (DAV) and its auxiliary, I wish to thank you for this opportunity to present DAV's views on the controversy surrounding access to Department of Veterans Affairs (VA) medical treatment and VA disability compensation for veterans exposed to ionizing radiation, referred to hereinafter as "atomic veterans."

At the outset, Mr. Chairman, we wish to thank you, Ranking Democratic Member Representative Evans, and the members of this subcommittee for scheduling today's oversight hearing regarding the problems experienced by atomic veterans with respect to access to VA health care and disability compensation. Clearly, action taken by this subcommittee will materially affect the lives of America's citizen/soldiers who were placed in harm's way by our government for the sole purpose of obtaining first-hand evidence about the effects of exposure to ionizing radiation.

As my testimony will show, some atomic veterans have not received adequate health care treatment for the ailments believed to be associated with radiation exposure. Nor have the vast majority of atomic veterans been compensated for their residual disabilities. The remedial legislation passed by Congress over the years has not had the desired effects and must be revisited in order to provide meaningful health care and disability compensation for this group of veterans.

As you know, Mr. Chairman, the issue of ionizing radiation and its potential adverse health effects have been present for more than 50 years. Atomic veterans and their loved one have been patiently waiting for answers from the scientific and medical communities, as well as responses to their concerns from Congress and the VA. Unfortunately, all too often those answers were not forthcoming. Nor does it appear that definitive answers will ever be known. For each study done concluding one point, another study surfaces to discount the findings of the prior report. Thus, the debate rages, with no apparent end in sight.

Before I get into the specifics of VA health care for atomic veterans, let me state that atomic veterans experience the same frustrations as all other veterans who attempt to access the VA health care system—a system inadequate to meet veterans' medical needs and their demand for services. The crisis in VA health care results from years of inadequate funding and a "patchwork" approach to addressing the health care needs of veterans. In addition, atomic veterans believe that their particular medical needs are not being adequately met because the physicians who examine them, for the most part, do not have expertise in the harmful effects produced in body tissue by exposure to ionizing radiation to properly diagnose their illnesses and injuries. In fact, some atomic veterans honestly believe that these physicians are "intent on not encouraging radiation claims and, therefore, play down the medical problems" of atomic veterans.

Generally speaking, receiving disability compensation from the VA is another frustrating aspect of the ionizing radiation debate. All too many radiation claims are denied due to the unanswered questions from the scientific and medical communities, the apparent failure of dose reconstruction methods to adequately reflect the true extent of radiation exposure experienced by atomic veterans, and the inability to obtain meaningful adjudication of radiation claims. All too often, atomic veterans, their dependents and survivors are denied compensation from our government for the residual illness, disease, or death allegedly associated with exposure to ionizing radiation while others, such as the Marshall Islanders, receive compensation from the United States Government for the same disability(ies).

Before getting to the specifics of my testimony regarding access to VA health care and the payment of disability compensation for atomic veterans, I would note for the record that the DAV membership, present at our National Convention in Las Vegas, Nevada in July 1995, adopted a resolution in support of a military medal to recognize and honor the courage, sacrifice and devotion to duty of those veterans exposed to ionizing radiation during military service. This is but a small step towards recognizing the honorable service of these brave men and women, and we call upon the members of this subcommittee to support such legislation.

I also call your attention to another resolution passed by the delegates at our last National Convention in Las Vegas, Nevada, noting the inaccuracy of dose reconstruction estimates provided by the Defense Nuclear Agency (DNA) and calling for the condemnation of this action by DNA as well as urging the VA to undertake a review of the accuracy of dose reconstruction estimates by DNA. Your kind attention to this matter would be greatly appreciated.

At the very least, our government needs to take immediate action on these two items.

CONTROVERSY SURROUNDING POTENTIAL HEALTH EFFECTS OF EXPOSURE TO IONIZING RADIATION

Radiation exposure may be external or internal. External radiation exposure occurs when the radiation source is outside the body. External exposure can come from standing in a cloud of radioactive gas, swimming in water that has radioactive material in it, or x-rays. Internal radiation exposure occurs when radioactive material is taken into the body by such means as eating, breathing, drinking, or through cuts or breaks in the skin. Both external and internal radiation exposure can directly harm internal organs, cells, and tissues.

After radioactive material is taken into the body, some of it may enter the bloodstream. This blood then flows through various organs and tissues in the body, providing them with material necessary for their functioning. The body does not distinguish between radioactive and nonradioactive materials. Sometimes, radioactive substances concentrate primarily in one organ of the body and that organ, therefore, receives a larger dose of radioactive substance than do other organs. Other times, the radiation substance is distributed throughout the body. The dose received by different parts of the body depends on a number of factors, including whether the radiation substance dissolves easily in the blood, the type and energy of the radioactive material, the amount of radioactivity present, and its distribution in the body.

The radioactive substance, once taken into the body, will continue to give off radiation until either it has decayed or is eliminated

from the body through normal metabolism. The rate of decay depends on the radioactive substance's half-life—the time required for a radioactive substance to lose one-half of its activity by radioactive decay. Half-lives for different radioactive substances vary from hours to thousands of years. Plutonium, for example, has a half-life of 24,100 years.

For obvious reasons, researchers know more about the effects of high-dose radiation on the immune system than about low-dose radiation exposure. High-dose radiation is defined as any exposure above fifty rad to the whole body. A rad is the unit of radiation dose used to measure the amount of energy a body absorbs from ionizing radiation. Information on the effects of high-dose radiation exposure comes from studies of Japanese atomic bomb victims, radiation accidents, such as the accident at Chernobyl, and studies of Marshall Islanders exposed to radiation fallout from nuclear tests in the 1950s.

Less is known about low-dose exposure—less than fifty rads to the whole body—and its effect on the immune system because of the delayed period of time between the incident of exposure and the development of the disease. The late effects may show up months, years, or even decades after the exposure. . . .

Many mistrust the agency established to care for them—the VA—because it is part of the government, a government they perceive as covering up the true facts about the extent of their exposure and the adverse health effects associated with the exposure. While Congress has enacted a number of laws to provide atomic veterans with priority access to VA health care and VA disability compensation for their illnesses, diseases, and disabilities due to exposure to ionizing radiation, very few atomic veterans are able to access the VA health care system and receive adequate care and treatment. Even fewer atomic veterans and their survivors are able to establish entitlement to VA disability compensation benefits. . . .

VA DISABILITY COMPENSATION BENEFITS

Prior to the enactment of the Veterans' Dioxin and Radiation Exposure Compensation Standards Act, Pub. L. No. 98–542, 98 stat. 2725 (1984) ("the Act"), the authority for 38 C.F.R. §3.311 (formerly 38 C.F.R. §3.311b), there was no legal limitation to establishing service connection for residuals of ionizing radiation exposure. Service connection for a disability is generally established when a veteran's present condition can be reasonably related to an injury or disease which is shown to be incurred coincident with service. *See* 38 C.F.R. §3.303(a). Determination of service connection is based on a broad and liberal interpretation of the law consistent with the facts in each individual case. *Id.* It has long been the VA's policy that any condition which can be attributed to service shall be granted direct service connection, no matter how long after service the condition first became manifest. *See* 38 C.F.R. §3.303(d). However, because of the difficulty in proving causation in ionizing radiation cases, and the significantly small number of claims which had been allowed. Congress, in 1984, recognized that, statistically, there was enough of an association between some diseases and radiation exposure to establish them as "radiogenic." Congress responded by enacting remedial legislation, the Act, whereby a veteran suffering from a "radiogenic disease," was not required to submit evidence of causation. . . .

The stated purpose of the 1984 Act is "to ensure that [VA] disability compensation is provided to veterans who were exposed during service . . . to ionizing radiation . . . for all disabilities arising after service that are connected, based on sound scientific and medical evidence, to such service. . . ." The Act, §3. Congress's findings included: There is scientific and medical uncertainty regarding the long-term adverse health effects of exposure to ionizing radiation. *Id.* §2(2). Due to the long latency period involved, radiation claims present adjudicatory issues which are significantly different from issues generally presented. *Id.* §2(12). "It has always been the policy of the [VA] and is the policy of the United States, with respect to individual claims for service connection . . . that when, after consideration of all evidence and material of record, there is an approximate balance of positive and negative evidence . . . the benefit of the doubt in resolving each such issue shall be given to the claimant. *Id.* §2(13).

Presently, the VA recognizes 20 diseases as "radiogenic diseases"—a disease that may be induced by ionizing radiation—under §3.311. These "radiogenic diseases" include leukemia, other than chronic lymphocytic leukemia; breast cancer; lung cancer; bone cancer; liver cancer; skin cancer; esophageal cancer; stomach cancer; colon cancer; pancreatic cancer; kidney cancer; urinary bladder cancer; salivary gland cancer; multiple myeloma; posterior subcapsular cataracts; non-malignant thyroid nodular disease; ovarian cancer; parathyroid adenoma; and tumors of the brain and central nervous system.

Pursuant to the provisions of 38 C.F.R. §3.311, an atomic veteran diagnosed with a recognized "radiogenic disease" can have his or her claim for direct service connection for residuals of exposure to ionizing radiation adjudicated by the VA, notwithstanding the fact that the atomic veteran does not have any medical evidence to establish a cause and effect relationship between his exposure to ionizing radiation and his diagnosed "radiogenic disease." Otherwise, (based on a recent court decision discussed *infra*) an atomic veteran who believes that his or her disability, not found on the list of "radiogenic diseases," may have his or her claim for service connection on a direct basis adjudicated by the VA providing the atomic veteran has medical evidence to support the claim. Once the atomic veteran has demonstrated that he or she suffers from a "radiogenic disease" or provides medical evidence of a cause and effect relationship between his or her disability and exposure to ionizing radiation, the VA, pursuant to §3.311 must obtain a dose estimate as to the range of doses to which the atomic veteran may have been exposed. Final review of direct service connection claims based on exposure to ionizing radiation is conducted by the Under Secretary for Benefits, who may obtain and consider any opinion of the Under Secretary for Health in reaching his determination whether the atomic veteran's disease resulted from radiation exposure in service.

Mr. chairman, although §3.311 was passed by Congress in 1984 as remedial legislation, designed to assist atomic veterans and their survivors in obtaining compensation for illnesses, diseases, disabilities, and death due to exposure to ionizing radiation, this legislation has benefited very few atomic veterans or their survivors. Until recently, the VA considered the list of "radiogenic diseases" as an exclusive list thereby refusing to consider any claims for direct service connection for residuals of radiation exposure if the atomic veteran or his or her survivors could not demonstrate that the atomic veteran suffered from a listed "radiogenic disease," regardless of the evidence submitted in support of the claim. The VA's practice of adjudicating only those claims where the atomic veteran suffered from a recognized "radiogenic disease" was overturned by the United States Court of Appeals for the Federal Circuit on September 1, 1994, in *Combee vs. Brown*, 34 F.3d 1039, 1045 (Fed.Cir. 1994).

Once an atomic veteran seeking direct service connection for residuals of exposure to ionizing radiation has established that he or she suffers from a recognized "radiogenic disease" or have provided the VA with medical evidence of a cause and effect relationship, the burden of proof then shifts to the VA for consideration of the case on the merits. It is at this point that atomic veterans face their greatest obstacle in establishing their entitlement to service connection. Dose estimates and dose reconstruction data for the various radiation tests are handled by the Defense Nuclear Agency.

In more cases than not, no actual individual exposure record is available for the atomic veteran, and reconstructed dose estimates routinely fail to provide an accurate estimation of the level of radiation exposure experienced by the atomic veteran. Film badges, not issued to all participants in nuclear tests, did not provide a complete measure of radiation exposure, since they were not capable of recording inhaled, ingested, or neutron doses, or often shielded during the detonation, and were worn for only limited periods during and after each nuclear detonation.

Many atomic veterans who participated in the nuclear tests in the Pacific report visiting these islands a short time after the test detonation and eating locally grown fruits and swimming in the lagoons. Atomic veterans who participated in the Nevada test sites report being covered in fallout dust which was either brushed off of them by hand or with brooms. Many report being transported to mess halls shortly after walking through "ground zero" and not being able to properly clean themselves before eating. These factors are extremely important in determining a proper reconstructed dose estimate; however, it does not appear that the participant's comments are used to further the analysis with regards to the dose reconstruction estimate. Without accurate reconstructed dose estimates, atomic veterans and their survivors find it virtually impossible to obtain the benefits they seek.

All too often, reconstructed dose estimates show that the overwhelming majority of participants were supposedly exposed to one rem or less of external doses of ionizing radiation. It is extremely difficult to believe, based on the statements made by participants, that their total exposure was so minimal. The DAV believes that a great injustice has been done to America's atomic veterans and their survivors. As will be discussed later, only ten percent of those atomic veterans who seek compensation for their residual disabilities are granted service-connected benefits, although the VA cautions that "[i]t cannot be inferred from this number that service connection was necessarily granted on the basis of radiation exposure." In other words, although the atomic veteran claimed residual disability as a result of his exposure to ionizing radiation, the claim could have been allowed under general principles establishing service connection such as the disease or illness was evidenced in the service medical records, etc. . . .

Adjudication of radiation claims pursuant to 38 C.F.R. 3.311 have been a total failure.

With almost 95% of atomic veterans failing to establish service connection for their illness, disease, or disability, the remedial legislation passed in 1984 has not provided atomic veterans with meaningful consideration of their claims. The present statistical data showing an extremely high denial rate has changed very little since 1984 when former Senator Cranston expressed the need for this remedial legislation.

In May 1988, aware that something more was needed, Congress passed Pub. L. No. 100-321, §2(a), 102 Stat. 485, which grants service connection on a presumptive basis for certain diseases becoming manifest in an atomic veteran to a degree of 10% or more. Currently, the list of presumptive diseases, a total of 15 in all, include: leukemia, other than chronic lymphocytic leukemia; thyroid cancer, breast cancer; cancer of the pharynx; esophageal cancer; stomach cancer; cancer of the small intestine; pancreatic cancer; multiple myeloma; lymphomas, except Hodgkin's disease; bile duct cancer; gall bladder cancer, primary liver cancer, except if cirrhosis or hepatitis B is indicated; salivary gland cancer; and urinary tract cancer. While 20 diseases are recognized as "radiogenic diseases" pursuant to 38 C.F.R. §3.311, only 15 diseases are presumed to be service-connected as a result of exposure to ionizing radiation. Yet, pursuant to the Marshall Islands Nuclear Claims Tribunal Act, 25 separate medical conditions are irrebuttably presumed to be the result of radiation exposure and Marshall Islanders are compensated for these disabilities. It is difficult to understand the lack of consistency in these lists. Why are only 15 diseases given a rebuttable presumption of service connection for atomic veterans while Marshall Islanders receive an irrebuttable presumption for 25 medical conditions? Further, at the very least, why are not all 20 "radiogenic diseases" presumed to be service-connected as a result of ionizing radiation exposure pursuant to 38 U.S.C. 1112(c)? Why does our government continue to put the needs of its veterans behind those of other groups, such as the Marshall Islanders? America's veterans should always be considered a special and unique group for having served their nation with honor. . . .

Congress should consider making all the recognized "radiogenic diseases," and any other disease, illness, or disability that others, such as the Marshall Islanders, are being compensated for, with those diseases for which presumptive service connection is granted. The Marshall Islanders have an irrebuttable presumption, at the very least, America's atomic veterans should receive a rebuttable presumption for all diseases, illnesses or disabilities for which others are compensated.

The DAV commends this subcommittee for it's recent, favorable action on adding bronchiolo-alveolar carcinoma, a form of lung cancer, to the list of diseases presumed to be service-connected for veterans exposed to ionizing radiation. As stated above, however, all recognized "radiogenic diseases" including lung cancer should be added to the list of diseases presumed to be service-connected. . . .

In closing, I would like to refer to a phrase which appears on the Atomic Veterans' Newsletter, published by the National Association of Atomic Veterans, Inc. that states: "The atomic veteran seeks no special favor . . . simply justice." This justice is long overdue. DAV encourages this subcommittee to do everything necessary to ensure that this group of forgotten veterans—atomic veterans—receive meaningful justice from our government.

This concludes my statement. I would be happy to answer any questions you may have.•

THE OMNIBUS APPROPRIATIONS BILL

• Mr. KERRY. Mr. President, even in an age of spin control, when it is often difficult to wade through the rhetoric to find the truth, it is possible to determine the true measure of a government. That measure can be found quite revealingly in the budget. For it is in the budget that the priorities become clear. It is in the budget that the rhetorical claims can be separated from the real claims. In Elizabethan England, as the old saw tells us, the proof may have been in the pudding. But in modern day America, the proof of an administration's or a political party's claims is in its budget proposals.

We have just come through two exceptionally challenging years. The Republican Party, led by Speaker of the House NEWT GINGRICH and then-Senate majority leader and now Presidential nominee Bob Dole, sought to upend government—to eliminate or slash service after service upon which Americans depend. The effect of their efforts, had they been successful, would have been to heap on the rich and the powerful in this Nation even greater riches and power. Those additional riches and power would have come at the expense of working Americans, at the expense of the environment which we have been laboring for decades to clean up, at the expense of those who need health care, at the expense of children and young people seeking quality education, at the expense of those who have been victimized by crime, drug abuse, and domestic violence, at the expense of America's future.

The Republican Party correctly identified the importance of gaining control of our Nation's fiscal household, but then threw wisdom and prudence to the wind, and concluded that the only legitimate objective was to slash Federal spending, regardless of how or where, regardless of the harm that would be caused to our Nation and its people as a result of those actions. Paradoxically, the only large category of discretionary spending Republicans excepted from their frenzied assault was that for armies and weapons, despite the fact that the cold war ended over 5 years ago, and that, for the first time in 50 years, we have no superpower adversary.

The budget the Republicans brought forward last year dramatized this extremist philosophy. It portrayed a singular absence of vision, confirming that the Republican party neither understood nor subscribed to the concept of investment in the future by our Government on behalf of this Nation's citizens.

The Democrats in the Senate and the House, led by President Clinton, rejected this extreme agenda. We did not shy from the fierce conflict the Republicans promised if anyone dared challenge their zealous actions to demolish vital services.

After nearly a year of pitched battle over the 1996 budget—that resulted in several Government shutdowns—it became clear even to the Republicans that the American people did not support their objectives or their approach. A budget finally was enacted halfway through the fiscal year that came much closer to reflecting the principles and priorities Democrats had consistently said the American people supported.

But while the Republicans acknowledged tactical defeat, they had not yet learned the lesson. Once again, in the form of the 1997 budget, they showed their true colors. Once again, they launched forth in pursuit of an extremist agenda to cut education funding, cut job training, cut health care, cut law enforcement assistance, cut assistance to small businesses, cut programs to help American companies more effectively compete with foreign firms.

Again, the Clinton administration and congressional Democrats met them head-on. Today we have reached the end of this second budget campaign of the 104th Congress. Once again, because the congressional Democrats more accurately reflected the values and views of the American people, the Republicans' budget has been repudiated in large measure. This time, in fact, the battle has been won with far less bloodshed and in far less time. The Republicans, knowing they did not have the support of the majority of the Nation, and knowing the elections are only weeks away, ran up the white flag almost as soon as the battle was really joined.

Mr. President, the American people are the winners. The future of our Nation is the winner. I am relieved and heartened to see that our democratic process has operated in such a way as to earn our faith and confidence.

With the leadership of President Clinton and his administration, we have taken a devastating Republican budget and transformed it into one that manages to pass the basic test of responsibility. I commend the President and the Vice President for their courage and resolve. I commend White House Chief of Staff Panetta and his staff, the Office of Management and Budget, and others from the Administration who were involved. Also deserving of praise are Senate Democratic Leader TOM DASCHLE and his staff, Appropriations Committee ranking Democrat ROBERT BYRD and his staff, and the subcommittee ranking members and their staffs.

While none of us has ever seen a budget that is identical to the one he

or she would have proposed, the budget that emerged from the negotiations in the wee hours of this past Saturday morning is one that I can support. It is true that the portions that address our Government's domestic services generally are preferable to the portion that addresses defense; the defense portion provides more funding than we need in the post-cold-war era to ensure our national security. We have pressing domestic needs to which this surplus defense funding would be more beneficially targeted. And some of this excess funding beyond the Defense Department's request should be used to further reduce the deficit, a vital objective.

Not only for this reason—but significantly for this reason—this legislation could be better; it could be stronger; it could be fairer. But it passes the threshold test. With many reservations, I voted for it because it is better than anything we've seen in the past 2 years; it is better than we were afraid we would see this year; and it protects and in some cases enhances some vital services for the American people. In some cases the best that can be said for it is that it preserves important services through another year so that we may return to attempt to allocate sufficient resources to them next year. But that was enough to secure my vote.

I would like to mention several of the bill's components that are of particular importance to Massachusetts and the Nation.

PARKS AND INTERIOR

I am proud of the rich historical heritage of my State of Massachusetts and I am pleased to support funding for many of the State's historic sites in the continuing resolution for fiscal year 1997.

The first historic site, established in 1938, the Salem National Historic Site, represents a slice of Massachusetts life from the 17th through the 19th centuries, when Salem traded with the East Indies and throughout the world, opening new markets for exports and importing treasures from far away. The site includes 18th- and 19th-century wharves, the Custom House, the West India Goods Store, and the 17th-century Narbonne-Hale house, where local craftsmen worked. In June 1994, the new regional visitors center opened after a $4.7 million Federal investment. The operational funding increase of $341,000, plus five additional personnel, will ensure that the regional visitors center, which offers information about cultural and natural resources throughout Essex County, remains open year-round. These increased funds will help the site to accommodate the growing number of visitors to the park, which has grown by at least 30 percent since 1990, and exceeded 1 million in 1992.

The site is also completing construction of the sailing vessel *Friendship*, an exhibit dedicated to the master craftsmen shipbuilders of the 18th century. This funding will also go toward operating the Salem site. With its authentic replica of the historic *Friendship* nearly completed, it offers an educational opportunity for children and their families that can be a model for similar parks in the State.

I am also pleased, Mr. President, that funds have been approved for continued maintenance, protection, and development of the Lowell National Historic Site, and to continue the 17-year efforts of the Lowell Historic Preservation Commission. The operating increase of $404,000 is required to continue operations in the park that commemorates the birthplace of the American Industrial Revolution. Located in downtown Lowell, the park includes the Boott Cotton Mills Museum, "mill girl" boarding houses, and the Suffolk Mill turbine, and offers guided tours depicting how the transition was made from farming to industry, the history of immigrants and labor in Lowell, and the development of industrial technology. Although the economy in Lowell has not been strong in the past few years, the tourist industry has been a staple of the city's livelihood. The National Park Service conducts tours that take visitors around the city, via canals, trolleys, and walking tours. With the addition of professional baseball and hockey teams, there are now more reasons than ever to visit Lowell, and its historic preservation efforts will reflect the renewed interest in the city.

To many of us, classic American poetry and Henry Wadsworth Longfellow are synonymous. His home, a national historic site, will justifiably receive an operating increase of $112,000. Longfellow lived in this residence for nearly 50 years while teaching at Harvard. This house was also General George Washington's headquarters during the siege of Boston in 1775. In addition, the Longfellow National Historic Site manages one of the largest and most important fine arts collections in the National Park Service. Unfortunately, recent cutbacks in funding have forced the Park Service to close its door for 6 months a year, thus ending public tours and student programs from November to May. Countless historic books and textile exhibits have deteriorated. Moreover, the vast majority of the archives remain uncatalogued and inaccessible to researchers. This operating increase will enable the Longfellow House to provide critical security and management for the museum collections contained in this monument to America's struggle for independence and rich cultural history.

Mr. President, I am pleased this continuing resolution contains $301,000 for continued maintenance, protection and security of the Cape Cod National Seashore. This increased funding for park operations and maintenance will be used to improve park security, caretaking, and fire protection at the newest section of the Cape Cod Seashore, the decommissioned North Truro Air Force Station that was annexed in 1986. This request was supported by the Cape Cod Commission, many residents, and organizations on the Cape. Over 5 million visitors and vacationers annually visit the Cape Cod National Seashore, a park on the outer beaches of Cape Cod, extending 40 miles from Chatham to Provincetown. The park is made up of oceans, beaches, dunes, woodlands, freshwater ponds and marshes. It is home to a vibrant ecosystem of plants and animals. The area is also home to numerous historical structures, including Marconi's wireless station.

I am also very pleased that this omnibus package includes nearly $1 million for the Blackstone River Valley National Heritage Corridor including $324,000 to support the important ongoing efforts of the Corridor Commission and $460,000 for development and construction projects in the Blackstone River Valley. With the passage last week of legislation to expand the boundaries of the Blackstone Corridor, the corridor size will increase by 60 percent, with approximately 150,000 new acres including two national historic landmarks. These funds are needed to develop resource inventories, interpretive programs, and protection strategies for the five communities newly included in the corridor, including Worcester, MA.

Established in 1986, the Blackstone Valley National Heritage Corridor, encompassing 400,000 acres, is the largest national park in the North Atlantic Region of the National Park Service. It contains over 10,000 historic structures, and is significant for its 18th and 19th century industrial production systems of mill villages, farms, and transportation that illustrate America's transition from an agricultural to an industrial Nation. It also includes acres of farms and pastures and beautiful riverside scenery. The Blackstone Corridor is unique in the National Park Service because it is predominantly funded and maintained with local resources, encouraging a public-private partnership that has become a model for other parks, using Federal seed money to encourage local preservation and revitalize the economy.

I applaud the inclusion of additional funds for land acquisition in the Mashpee National Wildlife Refuge. A transfer of $750,000 from another defunct Fish and Wildlife Service project was recently made to Mashpee. While my request for $1.582 million for the acquisition, which was originally included in the fiscal year 1997 appropriations bill passed by the Senate, was not fully funded in the conference report, I am pleased that two-thirds of our request was included in this legislation to secure this important natural resource.

Mr. President, with regard to one other Parks and Interior component of this legislation that directly impacts my State of Massachusetts, I support the increased funding it contains for the John F. Kennedy National Historic Site. Although the site attracts 15,000 visitors during its brief open season—one-third of which are visiting from abroad and who consider the birthplace their primary destination—recent funding shortages have forced the JFK National Historic Site to eliminate school programs, and significantly reduced the number of tours that can be accommodated. The funding increase of $57,000 will allow the hiring of one permanent park ranger and three seasonal park rangers to give tours, conduct school programs, and provide information services. The additional resources will allow the site to remain open for at least 9 months per year.

Interior Subcommittee and full Appropriations Committee Ranking Democrat ROBERT C. BYRD, Subcommittee Chairman SLADE GORTON, and their staffs have done a commendable job in addressing all the needs for funding within the constraints that have been imposed on them. I thank them for their help.

FISH AND OCEANS

Mr. President, I am pleased to support the Commerce, Justice, State, and Judiciary appropriations provisions in this continuing resolution and I want to especially commend the ranking member of the Commerce, Justice, State and Judiciary subcommittee, Senator HOLLINGS, for his work on this portion of the bill. The Appropriations Committee faced the daunting task of fairly distributing funding to a broad array of important programs, many of which are critical to our economy, our personal security, our marine environment, and international relations within a budget framework of extremely limited resources. While there are always some disappointments about specific programs and projects, I believe this portion of the bill is a balanced measure of significant benefit.

As the ranking member of the Commerce Committee's Subcommittee on Oceans and Fisheries, I am pleased that this measure provides funding increases to some key marine and coastal programs and at least assures the continuation of others.

The importance of a healthy environment to the citizens of this nation and to those living in the Commonwealth of Massachusetts is reflected in the bill's provision of $1.85 billion for NOAA. NOAA is one of the Federal Government's premiere scientific research agencies, with responsibility for the stewardship of our living marine resources, operation of our National Weather Service and its environmental satellite system, management of our National Marine Sanctuaries, the coordination of activities impacting the coastal zone, and the integration of a cooperative research program with universities through the Nation.

Of special interest to many citizens of Massachusetts are programs which help to protect and conserve valuable natural resources along our coastline. Just a few of the programs of national importance which are funded include the Coastal Zone Management Program, the National Marine Sanctuary Program, the National Undersea Research Program, the Coastal Ocean Program, and the National Sea Grant Program. Working in concert with each other, and with other Federal, State and local programs, these NOAA programs constitute part of the front line in defending the natural beauty and biologic diversity of our coastal resources. We all have come to recognize the important cultural and economic benefits of marine-related industries and recreational activities and I believe that strong support for these program will help to ensure that these benefits will be passed along to future generations.

Of great importance to me and to my fishing constituents is the continued funding for the research programs targeted on the New England groundfish disaster. The Gulf of Maine Groundfish Survey, New England Stock Depletion Studies and Management of Georges Bank projects provide funding for scientists in the National Marine Fisheries Service [NMFS] to more carefully examine the causes of the groundfish fishery collapse and to identify ways to rebuild and manage these stocks so they return to healthy levels. This continued support is needed for the scientific and assessment efforts that form the basis for the difficult management decisions necessary to preserve fisheries while considering the needs of those whose livelihoods depend on fishing or on commerce in fish and fish products.

Massachusetts will also benefit from additional resources provided to NMFS. These programs include right whale research, the New England Fishery Management Council, Marine Mammal Protection Act implementation, habitat conservation, and fisheries enforcement. Additionally, the funding provided for Atlantic salmon, the Atlantic Migratory Pelagics Observer Program, and the aquaculture programs will continue valuable programs which provide both direct and indirect benefits to citizens of the Commonwealth. The health of living marine resources along the coast of the Commonwealth continues to be of great concern to my constituents, and I echo their sentiment both personally and as their representative in the U.S. Senate.

Whales are one of the great symbols of the ocean and are closely associated with Massachusetts. Funding for North Atlantic right whale research is of critical importance this year. The North Atlantic right whale is the most endangered of all mammals, with approximately 350 remaining in the world. Unfortunately, this year alone, seven right whales have died as a result of being hit by ships and other unknown causes. The funds provided in this bill will help to advance our knowledge of right whale behavior and habitat requirements and hopefully lead toward measures which will avoid the unacceptable level of mortalities experienced this year.

The Saltonstall-Kennedy fisheries grants programs is another important program for our Nation's coastal regions, providing funding for research to enhance fish stocks, develop new markets for underutilized fish species, and assess new fishing gear technologies. Often, Saltonstall-Kennedy grants are the only source of funds available to assist the fishing industry in its effort to adapt and diversify.

I am also pleased to see continued funding for the Coastal Zone Management [CZM] Program, particularly the funding for State grants. Just this past spring we reauthorized the Coastal Zone Management Act. The CZM program is a highly successful voluntary State-Federal partnership to protect, develop, restore, and enhance our coast for present and future generations. The program has proven to be very effective in enhancing coastal economies while minimizing the impacts of the increasing pressures of growing populations, environmental degradation, and conflicting uses of our fragile and finite coastal area.

NOAA's Coastal Ocean Program [COP] is a Nationwide science program conducting important interdisciplinary research on oceanographic problems, including ecosystem research on Georges Bank. The COP provides one focal point through which NOAA integrates and coordinates its research activities with other Federal, State, and academic programs. Through its comprehensive, proactive approach, the COP offers policy makers the best information available, providing them with the balanced perspective needed to promote economic growth while maintaining a healthy and sustainable environment.

I would like to commend the committee for its continuing support for the Sea Grant Program. This is a Program that builds bridges between Government and academia, as well as between research laboratories and groups in need of reliable information. It serves as a successful model for multidisciplinary research directed at scientific advancement and economic development by funding regional research, promoting technology, and enhancing public education and outreach services for the Nation's coastal resources.

I am also pleased to see continued funding for the Global Climate Change

Program. This Program seeks to develop a clearer picture of the relative roles of various greenhouse gases in causing global warming. The NOAA Program is an important part of the overall U.S. interagency effort to improve the science that is needed to make critical decisions about the future of our planet.

Another ocean Program very important to my State is the National Marine Sanctuary Program. Stellwagen Bank National Marine Sanctuary off the coast of Massachusetts is an excellent example of Federal activity that produces both environmental protection and economic enhancement. This marine mammal feeding area is popular with whale watchers and fishermen, and protection of the bank has received wide support—not only among my constituents but Nationwide. The funding provided in the CR will help to maintain this important national program, especially Stellwagen Bank.

Another program which is receiving well-deserved funding is the National Undersea Research Program [NURP]. This program consists of six centers where regional undersea research activities are conducted. Its funding also will cover the NURP share of the operating expenses for the ALVIN, the deep submersible research vessel based at the Woods Hole Oceanographic Institute.

The Fishing Vessel Obligation Guarantee Program is also administered by NOAA and was established to provide loan guarantees to the commercial fishing industry. The program was recently expanded to include aquaculture facilities, making the program the single most important financing vehicle for this rapidly expanding industry.

On global environmental issues, I have worked actively for an Antarctic Environmental Protocol, including the Convention on the Conservation of Antarctic Marine Living Resources [CCAMLR]. Additionally, the President soon will sign the Antarctic Science, Tourism, and Conservation Act, which I authored, which will implement the International Antarctica Treaty. Data provided by NOAA's Antarctic Marine Living Resources [AMLR] Program are critical to CCAMLR's implementation and I am very pleased that $1.2 million has been provided to ensure the continuation of this critical work.

I compliment my good friend and colleague, Senator HOLLINGS, for his leadership in these oceans issues which he has successfully championed for years. It is my pleasure to serve with him on the Commerce Committee, where he served as chairman until 1995.

BOSTON HARBOR—CLEAN WATER

Mr. President, recently the Congress passed and the President signed into law the VA-HUD and independent agencies appropriations bill for fiscal year 1997. During Senate consideration of that bill, I expressed my deep concern that the Republicans refused to meet the President's requested funding level for a critical environmental protection measure, the project to clean up Boston Harbor. While the President held firm in his support for $100 million for Boston Harbor for 1997 as Senator KENNEDY and I urged him to do, by a party line vote the Republican conferees forced a funding reduction to just $40 million.

However, the story did not end there. I continued to work closely with Senator KENNEDY in supporting the President's efforts to secure more funding for Boston Harbor. I wrote and spoke to the President, his Chief of Staff, Leon Panetta, and others in the administration many times over the past few weeks, urging them to increase funding for this environmental cleanup effort.

Therefore, I am very pleased and very appreciative that the President and congressional Democrats were victorious in their attempts to secure more funding for Boston Harbor in this omnibus budget package. It contains an additional $35 million for Boston Harbor, raising the fiscal year 1995 funding level to $75 million. The residents of Massachusetts and the ratepayers of the Boston metropolitan area are well served by this action.

ECONOMIC DEVELOPMENT

I am extremely pleased to have secured another key provision for Massachusetts in this bill—language that will permit financing to go forward to revitalize the Fore River Shipyard in Quincy, MA. This provision was originally sought by Senator KENNEDY and me in the Commerce/State/Justice appropriation bill for fiscal year 1997, and was later modified by Majority Leader LOTT, who sought, not inappropriately in my view, to toughen up the language. In the case of the Quincy project, this language alteration will place a greater responsibility on the Commonwealth of Massachusetts to help underwrite the necessary financing. I am satisfied that the new language leaves enough discretion to the Maritime Administration so that a suitable arrangement can be reached that is both affordable and acceptable to the Commonwealth. This is a matter on which I, Senator KENNEDY, and Representative STUDDS have been working for over a year.

Specifically, section 1139 establishes the basis for the Secretary of Transportation to assist certain shipyards, including the yard at Quincy, by facilitating the extension of Federal loan guarantees for the reactivation and modernization of those yards and the construction of vessels by the yards. Significantly, this section has been carefully drafted to provide several layers of protection to the Federal taxpayer, and to ensure the State where a yard is located shoulders a degree of the financial burden of revitalizing the yard, and also a portion of the financial risk. For example, subsection (d) requires the State or a State-chartered agency where the yard is located to deposit into the Federal treasury the amount of funds needed to cover the percentage of the risk factor cost required by the Federal Credit Reform Act, and provides for the reversion of the funds to the State if no obligation needs to be paid from the deposited funds. I fully expect that the percentage of the risk factor under this subsection will never exceed 12 percent for the Quincy project. It appears to me that a deposit from the State of 12 percent will be more than adequate to fulfill the requirements associated with the risk of default for a project of this nature.

This provision is significant to my State because the Quincy Shipyard project is the first of its kind. It is the first project to revitalize an inoperative shipyard and put it back into production as a State-of-the-art facility that will employ up to 2,000 workers in good jobs. This makes sense, because the proposal to revitalize the Quincy Shipyard will turn it into a shipyard on the cutting edge of technology and one which will produce vessels that will be in demand in the international marketplace for years—double-hulled oil tankers to carry petroleum safely around the world. The Federal Government's investment in the Quincy Shipyard will be repaid many times over through the jobs that will be created, and through the renewed position of American maritime leadership that the project will help us attain. Now that Congress has done its part, it is incumbent upon the Commonwealth, the city of Quincy, the Massachusetts Heavy Industries Corp., and the Maritime Administration to bring the project to reality.

I must note with disappointment that, despite the stalwart support of administration and Senate Democratic negotiators, House Republicans insisted on cutting the cap on the permissible guarantee for any one project from $100 million to $50 million. This would have constrained the project in Quincy. Fortunately, however, with identical legislation moving on a separate track, which now has been sent to the President for signature, we have overcome that last-minute partial hurdle.

I am pleased that the continuing resolution contains language expressing the support of House and Senate appropriators for Massachusetts Biomedical Research Institute [MBRI] and other biomedical research and innovation centers throughout the country that have received past financial support from the Department of Commerce. This language is specifically intended to continue the Federal Government's support for one institution in particular—MBRI. MBRI is familiar to some of my colleagues from other States because it has been a model for several

biomedical research programs elsewhere in the country. Designed by the business and academic community of Worcester, MA, to nurture the transfer of biomedical technology from the laboratory into new business start-ups and the growth of those start-ups into job-creating businesses offering cutting-edge medical products, since its inception in 1986, MBRI has spawned 20 new firms in the biomedical industries—firms that now employ over 2200 people.

I am proud that Democratic majorities in the Senate wisely chose to fund MBRI. I regret, however, that the new Republican majority again this year, as it did last year, has refused to fund MBRI directly. This year, it chose instead to instruct the Commerce Department to "provide support for * * * initiatives previously supported by [the Department] to * * * increase small business global competitiveness in biotechnology." Nonetheless, using this language, I will continue to work closely with the administration to maintain MBRI's vital services.

I am also pleased that the continuing resolution contains a provision with the effect of making the University of Massachusetts at Dartmouth a full member of the National Textile Center University Consortium, and directing the Department of Commerce to provide financial support to the University of Massachusetts at Dartmouth to sustain its activities as a member of the National Textile Center. This will help to ensure that the University of Massachusetts at Dartmouth can meet the research needs of Massachusetts textile companies and help revitalize textile manufacturing in Massachusetts.

Over 30,000 people living in Massachusetts work in the textile industry. The 1,000 textile companies located within Massachusetts are mostly small-to-midsized companies whose unique research needs have been well served by the University of Massachusetts at Dartmouth. I am confident that the research activities at Dartmouth will be greatly enhanced by the designation of the University as a full member of the National Textile Center University Consortium.

I must, however, express my disappointment that the Republicans who control the Congress chose to provide for the inclusion of the University of Massachusetts at Dartmouth in the National Textile Center through a "direction" to the Department of Commerce, rather than through the express language which Senator KENNEDY and I had asked be included in the Commerce/State/Justice Appropriations Committee report. I am fully confident the Department of Commerce will provide to the University of Massachusetts at Dartmouth the full $500,000 that is contained in the Senate Commerce/State/Justice Appropriations Committee Report.

I am disappointed that, once again, Congress decided to severely underfund the Advanced Technology Program, or ATP, at the Department of Commerce. The continuing resolution funds ATP at a level of $225 million. While this is a welcome increase from the level contained in the Senate Commerce/State/Justice bill, this amount is significantly less than the President's budget request of $350 million.

ATP provides matching funds for high-risk, enabling technologies with commercial potential. To date, ATP has had a significant impact upon the development and successful marketing of new technologies by businesses in Massachusetts and across the Nation. More than 40 Massachusetts organizations have participated in 27 ATP projects. In Massachusetts alone, ATP has produced over $110 million in public-private partnership funding to enhance Massachusetts businesses that are on the cusp of technological innovation. Furthermore, the impact of this program is one in which all Americans can take pride. ATP generates a return to the economy of $6 for every dollar of program funding.

AMTRAK

I am pleased that Congress has decided to increase funding for Amtrak over the amount that was approved in the Transportation appropriations bill recently sent to the President for signature. This will permit the Massachusetts portion of the Lake Shore Limited to continue to operate for an additional 6 months. The Lake Shore Limited crosses Massachusetts from east to west with stops in Pittsfield, Springfield, Worcester, Framingham and Boston. Saving this train is especially important to the residents of the Berkshires and Western Massachusetts who depend on the Lake Shore Limited as their sole source of intercity passenger rail service. I strongly opposed Amtrak's decision to eliminate this service when the cuts were announced in August. We must now confront the more serious challenge of finding a permanent solution to preserve Amtrak service throughout Massachusetts. I intend to work diligently with Amtrak, the State, and congressional appropriators in the next Congress to ensure that the Lake Shore Limited can continue its present level of service.

I am also pleased that the omnibus bill increases funding for Amtrak's Northeast Corridor Improvement Project, or NECIP, by $60 million over the amount that was approved in the transportation appropriations bill. The funds will finance much need track maintenance and upgrades, and the electrification of the Northeast Corridor. This additional funding will greatly facilitate achievement of NECIP's goal to provide reliable, high-speed rail transport service between Washington, DC, and Boston, with the objective of achieving 3-hour service between Boston and New York.

SMALL BUSINESS

I am pleased that the Small Business Programs Improvement Act of 1996, which is included in the omnibus appropriations bill, includes legislation that I introduced earlier this year to end discrimination by the Federal Government against small business and also includes an amendment I sponsored that will provide fishermen access to SBA's disaster assistance program when fishing is prohibited because of a commercial fishery failure or a fishery resource failure.

Last year, Congress passed the Small Business Lending Enhancement Act of 1995 which lowered the maximum guarantee rate for SBA's section 7(a) guaranteed loan program. The legislation also lowered the guarantee rate from 90 percent to either 75 or 80 percent depending on differing circumstances, for SBA's Export Working Capital Program, which guarantees loans made by banks and other lenders who use loans to produce goods and services to export. However, financing for business loans through the Export-Import bank are still guaranteed at 90 percent.

My legislation that is as part of the omnibus bill restores the 90 percent guarantee for the Export Working Capital Program to assure that small businesses do not lose export opportunities just because they cannot get financing from banks. This change will have a minimal impact on SBA's credit subsidy rate and overall lending authority. However, it is crucial to small business exporters who need better access to financing. At a time when exports are a key component of continued economic growth, increasing the SBA guarantee will increase the amount of small business exports—which in turn will create jobs in Massachusetts and across the Nation.

This legislation also includes an amendment which will provide fishermen access to disaster assistance under section 7(b)(2) of the Small Business Act's disaster assistance program if fishing is prohibited because of ocean conditions or a commercial fishery failure. Most fishermen are individual small business owners and consequently are very susceptible to severe economic loss or even economic failure in the event of fishery closures or declines. Fishing is a capital intensive industry composed primarily of individually owned fishing vessels. These small businesses are financially incapable of enduring even a short term fisheries closure.

This amendment allows the Administrator of the SBA, after the Secretary of Commerce has declared a commercial fishery failure or a commercial fishery disaster, to provide fishermen access to disaster assistance. I know how important it will be to helping maintain the commercial fishing heritage in Massachusetts, and it is for that

reason I believed it was essential to include such a provision in this legislation.

The decline in the groundfish stocks off the coast of Massachusetts, and the subsequent Federal restrictions on fishing in Georges Bank, have resulted in significant economic hardship for Massachusetts fishermen. These problems in the fishing industry have driven many fishermen to the brink of economic demise. In many cases, having taken loans to purchase their fishing vessels, fishermen confronting a fishery collapse have lost their homes which they commonly use as collateral for their vessel loans.

I believe that we need to continue to implement fishery conservation and rebuilding measures or the Massachusetts fishing industry will cease to exist. I believe the interim financial support the SBA can offer through disaster assistance will play an important role in keeping commercial fishing alive in Massachusetts and all Coastal States that from time to time experience the economic devastation associated with a fisheries natural disaster.

This bill also improves and expands the Small Business Investment Company Program which is crucial to the growth of small business and our economy. Small businesses need access to capital, and SBIC's have invested $12 billion in over 75,000 small businesses and have helped to create one million new jobs. This bill increases the level of private capital needed to obtain an SBIC license from SBA, requires experienced and qualified management for all SBIC's, requires diversification between investors and the management team and increases fees paid by SBICs which will reduce the credit subsidy rate.

I want to thank Small Business Committee Democratic Ranking Member Senator BUMPERS and his staff, especially John Ball, for their assistance with this portion of the omnibus bill. I also would like to acknowledge the assistance of Chairman KIT BOND and his staff.

LAW ENFORCEMENT

Mr. President, this bill includes funding for a number of important anticrime programs. I am encouraged that it contains language originally offered by Senator LAUTENBERG which will keep anyone who has been convicted of a domestic violence crime from owning a gun. I co-sponsored his legislation because simple common sense dictates that guns absolutely must be forbidden for those who abuse their spouses.

The Local Law Enforcement Block Grants Program provides funds to local communities to use as they deem necessary to reduce crime and enhance public safety. This allows localities to address community-specific crime problems using solutions that they have developed with added resources and flexibility. Due to Democrats' efforts, $523 million is contained in this legislation, $20 million more than provided by the Republicans.

I am proud of the role I was able to play in passing the Community Oriented Policing Services [COPS] Program in the 1994 crime bill. This program was developed to deploy 100,000 new police officers on the streets of our Nation by the year 2000. This bill continues the commitment to that program with funding of $1.4 billion.

Both the block grants and the COPS funding have been widely and effectively used in Massachusetts communities, and crime statistics as well as local observation show that they are working to reduce crime. It is vital that they be continued.

EDUCATION

Mr. President, I am heartened that, despite the best efforts by some of my colleagues on the other side of the aisle, it has been possible to include at least a minimally adequate level of funding in this bill for many key programs designed to aid this Nation's children. Democrats successfully fought to add money to the bills produced by House Republicans and the Senate Appropriations Committee. Unfortunately, the amounts still are not what this Nation ought to be providing for most of these programs and I urge Congress next year to provide sufficient resources to ensure that a floor of decency and hope is provided for all children.

Head Start provides comprehensive development services for low-income children and families, emphasizing cognitive and language development, physical and mental health, and parent involvement to enable each child to develop and function at his or her highest potential. I support full funding for this prevention program because it is cost effective—for the price of a single space in a juvenile detention facility, we can provide a full-day, full-year Head Start experience for five young people. Children that participate in Head Start are more likely to graduate from high school, earn more, and commit fewer juvenile crimes. That is why I supported the President's 1997 request of $3.98 billion and am glad that due to Democrats' efforts, we will approve that amount, which is $381 million more than the amount originally approved by the Republicans.

The Summer Youth Jobs Program offers work experience, supportive services, and academic enrichment to economically disadvantaged youth, ages 14 to 21. This important program addresses the severe problems facing out-of-school youth in communities with high poverty and unemployment. Cities and towns in Massachusetts depend on it, and I am glad it will be funded at $871 million, the President's request—an amount that is $246 million more than provided by the Republicans.

HEALTH/HUMAN SERVICES/EMPLOYMENT

The National Institutes of Health [NIH] is the world's leading biomedical research institution. Our investment in NIH's research saves lives and reduces health care costs while creating jobs and economic growth in a global economy. In recent years, this research has produced major advances in the treatment of cancer, heart disease, diabetes, and mental illness that have helped thousands of American families. NIH supports over 50,000 scientists at 1,700 universities and research institutes across the United States. I am glad that funding for NIH is increased by $819 million over fiscal year 1996, a 6.5-percent increase, bringing fiscal year 1997 funding to $12.7 billion, which is $332.6 million more than provided by the Republicans.

The Maternal and Child Health Block Grant provides funds to States to meet a broad range of enhanced, wrap-around health services, including personal health services; general population-wide health services, such as screening; family support services; and integrated systems of care. About 16 million women, infants, children, adolescents and children with special health care needs will be served in 1997. Due to Democrats' efforts, $681 million is approved, which is $2.9 million more than provided by the Republicans.

The Substance Abuse Block Grant provides funds on a formular basis to States to support alcohol and drug abuse prevention, treatment, and rehabilitation services. Due to Democrats' efforts, this program will receive $1.3 billion, which is $125 million more than provided by the Republicans.

The Low-Income Home Energy Assistance Program [LIHEAP] provides assistance to States to help low-income households meet the costs of home energy. It is crucial to New England States including Massachusetts. States have great flexibility in how they provide assistance, which may include direct payments to individuals and vendors and direct provision of fuel. In this legislation, LIHEAP is funded at the President's request level of $1.3 billion and includes $300 million in fiscal year 1996 advanced emergency funds. Due to Democrats' efforts, we were able to save this program from the House Republicans who eliminated it in their Labor-HHS appropriations bill.

Mr. President, I am disappointed that this legislation does not include any funding for the Homeless Veterans Reintegration Program [HVRP], which has been authorized for fiscal year 1997 by both the Senate and House Veterans Committees at $10 million. HVRP is a successful job placement program that has put 13,000 homeless veterans back to work. A sizeable proportion of homeless people in this country are veterans; this should not be the case. The HVRP Program helps veterans on public assistance become productive, tax-

paying citizens. It is so successful because HVRP provides grants to community-based groups that employ flexible and innovative approaches to help homeless veterans reenter the work force.

Furthermore, HVRP is cost-effective. It is estimated that it only costs $1,200 per person placed in a job, which is equal to the cost of unemployment for 1 month. HVRP succeeds in breaking the cycle of poverty and homelessness by giving people the ability to work their way out. Instead of giving handouts, this program gives veterans the tools, skills, and training they need to be productive members of society. As a veteran of the Vietnam war, I believe that we owe this type of service, among others, to the men and women who so honorably served our country.

In my home State of Massachusetts, the New England Shelter for Homeless Veterans has helped over 6,600 veterans since opening its doors in 1990, and housed within the shelter is the Vietnam Veterans Workshop, which is one of the community-based organizations that provides job training and work placement. The program has trained over 1,600 veterans, 72 percent of which are working citizens today. In the absence of earmarked appropriations for the coming year, I hope that the Departments of Housing and Urban Development and Labor will find some discretionary money to fund this important program.

Mr. President, I am pleased that the Labor-HHS title in the bill continues the Democrats' strong commitment to combat the AIDS epidemic. After 12 years of inaction and ignorance by Republican administrations, this country has moved decisively into a new era in the fight against HIV-disease. Working with President Clinton, Health and Human Services Secretary Donna Shalala, and the director of national AIDS policy, Patsy Fleming, the Democrats in Congress have pushed for increases in the Ryan White CARE Act of more than $200 million over last year's level. We have nearly tripled the money going to States and cities affected by the AIDS epidemic through the previously underfunded Ryan White Program, and we have renewed our pledge to the States that the Federal Government will take seriously the critical AIDS Drug Assistance Program. In calling for these increases, I was pleased to work with the AIDS Action Committee in Boston and other groups across the Commonwealth of Massachusetts who serve on the front lines of the epidemic as care and service providers.

Caring for those already infected with HIV is only one piece of a comprehensive national response to the AIDS epidemic. In this legislation, we are finally providing enough funding to the Centers for Disease Control to undertake a serious campaign to prevent new infections. Democrats on both ends of Pennsylvania Avenue urged the appropriators to increase funding for the CDC's AIDS prevention programs by nearly $33 million over last year's level to bring it to $617 million for fiscal year 97. And we are providing a substantial increase to the National Institutes of Health for our top biomedical researchers to redouble their efforts to find a cure for this dread disease. We cannot set our sights lower than finding a cure to AIDS. To that end, in this bill, we are committing nearly $1.5 billion to NIH research and retaining the Office of AIDS Research.

Mr. President, these funding levels are the clearest signal of the Democrats' commitment to fight a war on AIDS—and not a war on people with AIDS that characterized the Government's response during the 1980's and early 1990's.

FOREIGN RELATIONS AND AID

Turning to the foreign aid components of this bill, I think it is important to note that the overall funding is $500 million less than what the administration requested. This decrease will result in programmatic cuts nearly across the board, resulting ultimately in the decreased ability of the United States to address global issues such as famine, child nutrition, sustainable development and the environment. With respect to the last of those, I am deeply concerned that the bill provides only $35 million for the Global Environment Facility. This is $65 million below the President's request.

I am pleased that the omnibus bill incorporates the Humanitarian Aid Corridor Act which I cosponsored. This provision reaffirms the United States' commitment to the safe arrival of all U.S. humanitarian aid. It also provides $95 million in aid to Armenia, an increase of $10 million from the fiscal year 1996 level.

The bill also retains a provision, which I strongly supported, taken from the Senate-passed foreign aid bill, that would establish a new exchange program focused on legal reform in Vietnam. I would note that the Senate voted to retain funding for this program by a vote of 56 to 43. This program is in our long term interest; it is a means of bringing Vietnam into the larger international community while imparting our own values and norms, particularly in the economic arena.

As one who has cosponsored all of Senator LEAHY's bills on landmines, I am pleased that there is a $10 million earmark for demining in this bill and a $5 million earmark for assistance to the victims of landmines. There are over 100 million active, deadly landmines in 60 different countries around the world, killing and maiming approximately 26,000 people per year. Most victims are innocent children. These earmarks indicate the broad bipartisan support in Congress for devoting resources to clearing landmines, recognizing the integral role that demining plays not only in saving the lives of innocent civilians, but also in the rebuilding of communities.

Mr. President, by far the most egregious part of this bill that pertains to foreign aid is its treatment of international family planning programs. I am saddened and at the same time outraged that the House Republicans, in an undisguised way, tried to do as much damage as possible to population assistance. Their actions are mean spirited, punitive, and short-sighted.

This bill provides that no fiscal year 1997 funds can be used for population assistance until July 1, 1997—a full 9 months after the fiscal year begins. Beginning in July, the program will be funded at a rate of 8 percent of the annual appropriation each month. Mr. President, this is ludicrous. No other program in this entire appropriations bill is crippled in this way, and the unwillingness of the House Republicans to accept the Senate's position on family planning programs is disgraceful.

Mr. President, their tactics are simply illogical. By severing funds for family planning programs the Republicans are taking away the one tool that allows women in impoverished countries to choose not to have an abortion. Family planning does not mean abortion—it means quite the opposite. Those who continue to equate the two should take a minute to look at the facts. Statistics, across the board, show that when women have access to family planning programs, the incidence of abortion decreases. Those who continue to equate the two should also read the laws. Federal law prohibits the United States from funding abortions abroad. The U.S. Agency for International Development has strictly abided by that law. For the House Republicans to slash funding for international family planning programs on the premise that they do not want U.S. tax dollars funding abortions can only be described as illogical and wholly unwarranted.

By denying people access to family planning worldwide by slashing funding for those programs, there will be millions more unintended pregnancies every year, close to a million infant deaths, tens of thousands of deaths among women and—let me emphasize to colleagues who oppose permitting women to choose abortions in the case of unwanted pregnancies—over one million more abortions.

These programs provide 17 million families worldwide the opportunity to responsibly plan their families and space their children. They offer a greater chance for safe childbirth and healthy children, and avoid adding to the population problem that affects all of us.

I am unwavering in my conviction that international family planning programs are in America's best interest.

Funding for these programs is an investment in our future and an investment that will save the lives of thousands of women and infants. I will continue to fight for what is moral. The House majority needs to start acting responsibly on an issue that will affect generations to come.

On matters pertaining to foreign policy, the bill offers mixed news. It provides $892 million for contributions assessed on the United States as a result of its membership obligations to the United Nations and other international organizations. While this figure is an improvement over the levels in the House-passed bill and the Senate-reported bill, it is still $110 million less than the administration's adjusted request. This means that the administration will lack the funds to pay arrearages and that we will fall into greater debt at the United Nations. I strongly believe that we must press the United Nations to make administrative, financial, and management reforms, but continued failure to pay our contributions will only serve to undercut our ability to achieve those reforms. The bill provides a somewhat more reasonable level for peacekeeping, $352.4 million, but, it, too, falls short of the administration's adjusted request of $377 million.

With respect to funding for international exchanges, the bill provides only $185 million. In the last 2 years, the Republican Congress has succeeded in cutting funds dramatically for exchange programs. I believe that this is a mistake. Exchanges, particularly the Fulbright program and other academic exchanges, are one of our most effective instruments of foreign policy.

I am pleased that at the end of the day, House and Senate negotiators agreed to provide the President with his adjusted request of $41.5 million for the Arms Control and Disarmament Agency. The challenges in the area of arms control and nonproliferation are increasing, not decreasing in the more complicated world that pertains after the breakup of the former Soviet Union. To make deep cuts in the ACDA budget, as was contemplated by the Senate appropriators, would have seriously undermined our national security interests.

DEFENSE

Providing a sufficient national defense is one of the bedrock responsibilities of our Government to its people. I stand behind no Member of this institution in my commitment to an adequate defense. But I do not believe a gold-plated defense serves our Nation's interests, and I know without doubt that the tax dollars we spend for weapons and armies beyond those our armed services chiefs believe are necessary result in shortchanging our people in other vital ways, both now and in the future.

Despite a number of component decisions that appear to me to be carefully considered and justified, the defense and national security portion of this omnibus bill demonstrates the inability of this Republican-controlled Congress to make tough choices when it comes to defense. While the budget negotiators used approximately $1 billion in defense spending to offset antiterrorism efforts funded in this bill, the bill still contains $9.3 billion more than the Pentagon's budget request. Illustrative of the flawed decisions that contributed to this distressing overrun is the Ballistic Missile Defense Program. Certainly one is not vulnerable to the charge of failing to prepare for a ballistic missile threat by supporting the Pentagon's and administration's request for $2.9 billion for their BMD effort. Indeed, I strongly support the vigorous research and development effort to enhance our technical capabilities to spot, track, intercept, and destroy intercontinental ballistic missiles and their warheads, and I have been a consistent supporter of programs to develop and field theater ballistic missiles.

Unfortunately, the Republicans cannot recognize when they have had enough of a good thing. They insisted on spending an additional $885 million for ballistic missile defense.

The absence of the spending discipline with respect to defense and national security that the Republicans adamantly insist be directed toward domestic Government services is the cause of this legislation's single greatest flaw—an unsupported and unsupportably high aggregate appropriation for defense.

CONCLUSION

In summary, Mr. President, the negotiators labored mightily. Thanks to the fortitude of President Clinton, his Chief of Staff, and other administration negotiators, and Democratic congressional leaders and appropriators, this product passes the smell test, and manages to pass muster. I voted for it, disappointed that it fails in so many ways to provide what I believe our Nation should be providing, but cognizant that it could have been far worse. That definitely is not the measure to which I believe we should aspire. But in the final days of the 104th Congress, I believe it is the best anyone could have expected. As we look to November, we also look with great hopes to the 105th Congress and the opportunity it will afford to come to terms again with the way in which our budget reflects our national priorities and values. I hope we will do better next time.●

DRS. JOHN AND WINONA VERNBERG

● Mr. HOLLINGS. Mr. President, South Carolina has been dealt a double blow by the retirement of two leaders who have dedicated their professional lives to the public good. Drs. John and Winona Vernberg have been the University of South Carolina's power couple in the areas of public health, science, and the environment.

This beautiful couple has been together for nearly 50 years and has been serving the public just as long. They met in the Navy Hospital Corps at the end of World War II, and embarked on stellar careers in academia afterwards at Duke University and then at the University of South Carolina. John became a Guggenheim Fellow, both won Fulbright-Hayes Fellows, both won the Russell Award for Research in Science and Engineering, both received the William S. Proctor Prize for Scientific Achievement, and Winona was named Woman of the Year in 1980 by the University of South Carolina.

While their academic work has been top notch, they have not confined their activities to the classroom or laboratory. Winona became dean of the School of Public Health at U.S.C. in 1978, and within a year it was accredited. She has made that school an active, leading institution. It has 10 times the staff and 30 times as many students as when she took over. It has taken on the environmental health questions of our times in an interdisciplinary way and with an eye to the future. More recently, the university has recognized her management skills and longstanding contributions to the institution by naming her acting provost.

While Winona has been dean of the School of Public Health, John has been dean of the School of the Environment and head of the Baruch Institute at the University. We in South Carolina have a treasure in the coastal ecosystem, and John and Winona have worked in concert to understand it, to teach others, and to protect it. Diverse research within the Baruch Institute's 17,000-acre coastal preserve has ranged from studies of ocean tides, to tracking sea turtle nesting sites, to collecting data on the effects of Hurricane Hugo on the ecosystem. For John's part in these and other efforts, he has been named South Carolina Conservationist of the Year by South Carolina Wildlife and was honored with the Waddell Lifetime Achievement Award by Friends of the Coast. John and Winona often publish joint research projects, and Winona's environmental leadership was recognized through the Water Conservationist of the Year award by the South Carolina Wildlife Federation.

Mr. President, the Vernbergs are a couple we will continue to admire and cherish in South Carolina, and we will watch for their continued accomplishments as professors emeritus at the university. The institutions they have led and built up will continue to be a force for the good in our State and the Nation. I commend their work to my colleagues interested in public health and the environment, and wish the

Vernberg family my best in the years ahead.•

COAST GUARD AUTHORIZATION ACT FOR 1996

• Mr. WYDEN. Mr. President, passage of a Coast Guard reauthorization bill is a matter of vital importance to Oregon, particularly to smaller communities on the Oregon coast. A strong Coast Guard presence is essential to safeguard the lives of fishermen, recreational boaters, and all others who venture out into the frigid Northwest waters.

Because of the cold temperature of Pacific Northwest waters, a delay in Coast Guard response time by even a few minutes could mean a matter of life and death to capsized boaters. For that reason, I worked with a bipartisan group of coastal State Senators to ensure Coast Guard stations would not be closed unless there are strong safeguards in place to ensure maritime safety will not be diminished.

Specifically, under section 309 of the conference report, the Secretary of Transportation is prohibited from closing any Coast Guard multimission small boat station unless the Secretary determines that closure of a station will not diminish maritime safety in the area of the station, taking into account water temperature and other local conditions.

This section also provides an opportunity for affected communities to have a voice in any decision on a proposed station closure. The Secretary must provide an opportunity for public comment and hold public meetings before closing any small boat station.

The Coast Guard stations in Oregon covered by section 309 are: Coos Bay, Depoe Bay, Siuslaw River, Tillamook Bay, Chetco River, Yaquina Bay, and Umpqua River.

Section 309 also contains a provision I authored to ensure that all small boat stations will have available at least one vessel capable of performing ocean rescues. This provision was included to address a situation that arose last summer when the Rogue River Sardet station near Gold Beach was assigned a 20-foot vessel that was useless for performing ocean rescues. Under my provision, all small boat stations, including seasonally operated facilities like the Rogue River Sardet, will be guaranteed to have at least one vessel capable of performing ocean rescues.

By including these provisions in the conference report, we are giving the Coast Guard the tools needed to protect our citizens' lives and enhancing safety in the waters off Oregon's coast.•

IN RECOGNITION OF MARIAN McPARTLAND'S "PIANO JAZZ"

• Mr. HOLLINGS. Mr. President, I rise today to recognize Marian McPartland's Piano Jazz, produced by the South Carolina Educational Radio Network. This Peabody Award-winning show has earned recognition for its educational value and importance in promoting and preserving a distinctly American art form—jazz.

Piano Jazz is National Public Radio's [NPR] longest running music series and airs on over 250 NPR member stations nationwide. The series was conceived in 1979 by the South Carolina Educational Radio Network. South Carolina Educational Radio took a considerable risk by launching one of the first station-based, locally produced public radio programs to air across America.

The risk paid off. Serving South Carolinians for 17 years, the program is a showcase for many of jazz's greatest performances and artists, including Bobby Short, Mary Lou Williams, Dizzy Gillespie and Wynton Marsalis, and has helped launch the careers of some lesser known musicians as well.

The programs are hosted by Marian McPartland who blends informal but information packed conversation with improvisational performances. McPartland has been honored by special performances of Piano Jazz at the Lincoln Center's Avery Fisher Hall. In 1986, she also was inducted into the International Association of Jazz Educators Hall of Fame.

The program has been recognized with many major awards for broadcasting excellence, including the Peabody, Gabriel, Armstrong, Ohio State and several New York International Radio Festival awards. In fact, the show's recordings are so valuable that both the Library of Congress and the Rogers & Hammerstein Archive of Recorded Sound of the New York Public Library at Lincoln Center are preserving complete collections of the series.

I hope this innovative and award-winning show is able to continue serving its broad and varied audience which includes older, established jazz aficionados, as well as listeners 25 years old and under. From senior citizens to seniors in high school, this program provides the best of South Carolina Educational Radio network. Piano Jazz has been such a success because of the public's longstanding support. I hope the public continues in this support so the show remains strong and prosperous.

In recognition of Piano Jazz, I ask my colleagues to join me in paying tribute to Marian McPartland, Henry Cauthen, president and founder of the South Carolina Educational Radio Network, and Shari Hutchison, the program's producer, for this tremendous and valuable cultural jewel.•

CHEMICAL WEAPONS CONVENTION

• Mr. KYL. Mr. President, on September 12, Secretary of State Warren Christopher personally asked the Senate majority leader to withdraw the Chemical Weapons Convention [CWC] from consideration by the Senate. The majority leader had scheduled a vote on the treaty on that day. Obviously the administration did not believe the Senate would ratify the agreement. As a result, we were not able to have the public debate that, I believe, would have shown why the treaty was in such trouble. Since the treaty could be resubmitted for consideration by the Senate, I believe it is important to submit for the RECORD a sampling of articles, editorials, and opinion editorials which outline the basis for the case against the CWC.

The material follows:

[From the New York Times, Sept. 13, 1996]

A TREATY THAT DESERVED TO DIE

(By Jon Kyl)

An extraordinary thing happened in the Senate yesterday. The proponents of the Chemical Weapons Convention surprisingly pulled the plug on their effort to obtain immediate Senate approval of the treaty's ratification.

Last June, the advocates thought this treaty was all but ratified. They had won a commitment for it to be brought up for a vote in the last few weeks before the November elections. They assumed, not unreasonably, that the treaty would be seen as a motherhood and apple-pie proposition—aiming as it does to ban these horrible weapons worldwide.

By any political analysis, this calculation should have been right. But substantive analysis of the treaty's flaws proved to be more powerful than superficial political considerations.

That such serious deliberation could occur reflects great credit on both the treaty's proponents and its opponents. In particular, its champions largely refrained from portraying themselves as the champions of the abolition of these weapons and casting the other side as "pro-poison gas."

The opponents, however, made clear that they too are in favor of the elimination of chemical weapons, including the American stockpile. By law, the destruction will take place with or without this convention. But they fear that under present circumstances the treaty will not accomplish its purpose and that it will do more harm than good.

First, the convention will not include many dangerous chemical-weapons states, notably Iraq, North Korea, Libya and Syria, which will not become parties. Worse yet, American intelligence could not reliably detect militarily significant cheating in countries like Iran, Cuba, China and Russia that are likely to became parties to the treaty.

Second, the convention would impose significant costs on the American taxpayer and new, substantial burdens on industries. It would, moreover, actually aggravate the current, serious problem of chemical weapons proliferation. This is true for several reasons.

The treaty prohibits restrictions on trade in chemicals among its parties. It even requires them to transfer chemical technologies to other treaty members. In other words, if the United States and Iran were to ratify the convention, Teheran would have a powerful claim, under the treaty's Article XI, against American-led trade restrictions in the chemical field.

This arrangement repeats the mistake made in the Nuclear Nonproliferation Treaty—the so-called Atoms for Peace initiative—under which ostensibly peaceful technology is provided to nations determined to divert it to proscribed military purposes.

The treaty would also create a false sense of security, probably increasing the dangers from these weapons. And it will harm arms control and international law to enter into a convention that everyone knows is going to be unverifiable and ineffective. For all these reasons, the United States is better off having no treaty than a seriously defective one.

This critique was sufficiently compelling that a number of leading proponents acknowledged the serious flaws. Although these advocates nonetheless content that the treaty was still worth having, more than a third of the Senate concluded that the convention was, at best, deeply flawed. At worst, it would exacerbate the problem it was trying to fix.

As a result, the treaty's proponents realized that they were going to lose. Let us hope that the serious discussions we have had leading up to that decision will lead to bipartisan support for constructive, sensible arms control approaches for dealing with this scourge in the future.

[From the Washington Times, Sept. 12, 1996]

REJECT THE CWC

Opposition is mounting to the Chemical Weapons Convention (CWC), which the Senate is expected to vote on today. While most people—terrorists and lunatic dictators excepted—regard chemical weapons with abhorrence and indeed would like to see them banished from the face of the earth, the unfortunate fact is that the CWC will do little to inhibit their production and use by those who are sufficiently unscrupulous. What will happen instead is that law-abiding American businesses, both those who manufacture chemicals and those who merely use them, will be subjected to an intrusive, expensive and possibly unconstitutional international regulatory regime.

For anyone interested in what the reporting procedures will look like for users of chemicals covered under CWC—and that includes companies from Starbucks to Revlon—the chart on the opposite page should give an indication. Some might find that it bears a more than passing resemblance to the chart depicting Hillary Clinton's health care reform plan in all its infinite variety.

An estimated 3,000 to 8,000 U.S. companies will be affected by the CWC. That means they will be subject to warrantless inspections with only 48 hours notice for an international U.N.-style bureaucracy. Those most likely to be affected are users of what the treaty calls Discrete Organic Chemicals (DOCs). That includes not just the members of the Chemical Manufacturers Association, but also companies in such industries as automotive, food processing, biotech, distillers, brewers, electronics, soap and detergents, perfume—even manufacturers of ball point pens! While it may seem a little farfetched that international inspectors might descend on the Bic factory forthwith, the burden of reporting the use of chemicals will be severe. And this from the administration that calls for "smaller, less intrusive government."

And, of course, inspections, when they do occur, will be golden opportunities for countries that engage in industrial espionage against the United States—just as they will be for those eager to learn because they harbor the notion of developing their own chemical weapons industry. (Remember the Iraqi scientist who boasted to representatives of the International Atomic Energy Agency how the Iraqis had gained invaluable information on nuclear technology this way?)

Senators who plan to vote to ratify the treaty must ask themselves whether they are ready to impose this kind of burden on domestic companies for the sake of an elusive and unrealistic goal. The list of distinguished experts in the fields of defense and foreign policy who have denounced the CWC as ineffectual, unverifiable and certainly not global, since numerous outlaw nations like Libya and Iraq will not sigh, ought to give serious pause. A letter dated Sept. 9 to Senate Majority Leader Trent Lott, urging him to "reject ratification of the CWC unless and until it is made genuinely global, effective and verifiable," is signed among many others by former Secretary of Defense Dick Cheney, former National Security Advisor William Clark, former Secretary of State Alexander Haig, former Secretary of Energy James Herrington, former U.N. Ambassador Jeane Kirkpatrick, former Attorney General Edwin Meese III, former Secretary of Defense Donald Rumsfeld and former Secretary of Defense Casper Weinberger. Weigh that list against the Clinton administration, and it really shouldn't be a difficult decision.

[From the Washington Post, Sept. 12, 1996]

CHEMICAL WEAPONS FRAUD

(By Lally Weymouth)

If the Clinton administration succeeds in persuading the Senate to ratify the Chemical Weapons Convention, the mere fact of a new treaty will not help the United States combat the spread of this weapon of mass destruction. Indeed, this particular treaty may do the reverse: Some of the treaty's opponents argue convincingly that it would actually increase the trade in chemical agents with military application. Certainly, it would facilitate the establishment of an unnecessary international regulatory agency with unlimited police powers over thousands of U.S. companies that produce chemicals that could be used to make weapons.

Sen. Jon Kyl (R-Ariz.) agrees with the majority staff of the Senate Committee on Foreign Relations: Of course a verifiable treaty that achieved real reductions in chemical weapons would serve U.S. national security interests. But, argues Kyl, this treaty isn't verifiable. Nor would it reduce the chemical arsenals in countries U.S. officials deem most likely to use such war tools against America and its allies: Libya, Syria, North Korea and Iraq. Not surprisingly, these rogue states have refused to sign on to the regime.

In fact, not one country of concern to the United States on the chemical weapons front has ratified this convention: not the People's Republic of China, Iran, Cuba or even Russia, which has signed but not ratified and is said to possess one of the most sophisticated chemical arsenals in the world.

When President Bush signed the chemical weapons treaty, he did so with the understanding that Moscow would implement a 1990 U.S.-Russian bilateral agreement that called for both countries to destroy their chemical weapons stockpiles. Thus far, however, Moscow has refused to implement this accord, thus undermining the larger international convention.

One of the treaty's most dangerous features is that it undercuts the work of the Australia Group, a collection of Western countries that have an informal agreement banning the transfer of potentially dangerous dual-use chemicals to non-members. If ratified, the convention will end restrictions on trade in deadly chemicals and chemical technology. Treaty-signers, in fact, will have a right to demand both the chemicals and the relevant technical information they need from other signatories, who will have an obligation to fulfill the requests.

This raises the issue of dual-use chemicals—those that, while intended for peaceful use, can be used to make weapons. If Cuba and Iran sign and then ratify the convention, they can break out of the embargoes on chemicals the United States has imposed on them.

Treaty proponents argue that the convention would enable the United States to gather intelligence on other countries' chemical weapons programs. But Sen. Kyl calls such benefits "marginal" and says, "It's not worth the price."

If the treaty is ratified, moreover, the United States will have to pick up a considerable part of the setup costs of a massive new international regulatory body in the Hague. This superagency would be empowered to subject U.S. businesses to routine or "challenge" inspections of sites that allegedly might contain chemical weaponry or its key ingredients.

A challenge inspection would be undertaken merely upon the request of a member. The CWC gives any ratifier the right to ask for an arbitrary inspection of a private facility—anytime, anywhere; the ratifier merely has to allege that deadly chemicals might be on the premises. The treaty requires that "the inspected . . . party shall be under the obligation to allow the greatest degree of access." According to the implementing legislation for CWC, it would be "unlawful for any person to fail or refuse to permit entry or inspection.

The inspection teams that will enter U.S. plants if this convention is ratified could have representatives from states such as France and Japan, for example, that practice industrial espionage. Ironically, Washington also will have to foot some of the bills for these inspections, which experts believe may violate the constitutional rights of U.S. companies and citizens.

Lt. Gen. James A. Williams, a former director of the Defense Intelligence Agency, has written to Majority Leader Trent Lott warning that "the opportunity for unfettered access to virtually every industrial facility in this country, not merely the pharmaceutical and chemical plants, would make most foreign intelligence organizations very happy."

American companies also would have to provide continuing, time consuming reports. While arms control officials told the Senate Foreign Relations Committee that at least 3,000 U.S. firms that use, process or consume chemicals would have to make so-called "data declarations" under CWC, the majority staff of the committee contends that as many as 8,000 companies—firms that manufacture anything from dyes to pigments to insecticides—could be forced to contend with this burdensome load of paperwork.

Negotiations on the treaty began under President Reagan; the accord was seen then as a verifiable, global ban on chemical weapons. As time passed, the purposes changed. Arms control experts concluded that constitutional rights clashed with the need to verify. There would have to be a compromise. The balance that was struck, according to Kyl, adversely affects the United States: While the convention doesn't catch and punish many countries that have secret

chemical weapons programs, it ends up imposing heavy costs and constitutional burdens on the United States.

[From the Washington Post, Sept. 12, 1996]

PEACE THROUGH PAPER

(By Charles Krauthammer)

The Senate is about to vote on ratification of the Chemical Weapons Convention. Senate Democrats maneuvered—by threatening to filibuster the defense authorization bill—to have the vote just before the election. The timing fits the political strategy. And the strategy is emotional black-mail: Who is going to vote against a treaty whose lofty goal is to eradicate chemical weapons from the face of the earth?

Who? Every senator should. The goal is indeed lofty, but the treaty that purports to bring it about is a fraud.

The fatal problem with the chemical weapons treaty is that it is unverifiable. Sure, it has elaborate inspection procedures. And an even more elaborate U.N. bureaucracy to oversee them. No treaty is complete without that nowadays. As a result, the treaty will be perfectly able to detect the development of chemical weapons by free, open governments (like ours) that have never used and have no intention of using chemical weapons. (Indeed, the United States now is actively destroying its Cold War stockpile.)

And the treaty will be perfectly useless at preventing development of chemical weapons by closed societies such as Iran, Iraq (which in 1988 blatantly violated the current treaty banning the *use* of chemical weapons), Libya, Syria and North Korea. These are precisely the places where chemical weapons are being made today for potential use against the United States or its allies.

How can anyone seriously defend this treaty as verifiable when, even as the Senate votes, Iraq—subject to a far more intrusive inspection regime than anything contemplated under the CWC—nonetheless is going ahead with its chemical (and nuclear and biological) weapons programs right under our noses? When North Korea, signatory and subject to all the fancy inspection provisions of the Nuclear Nonproliferation Treaty, went blithely ahead and with impunity made nuclear bombs?

And these are violations by countries that had submitted to intrusive international inspection. Yet we already know that Libya, North Korea and Syria have not agreed to sign the CWC and thus will be subject to no chemical weapons inspection at all! Not to worry. The treaty will definitively banish the threat of chemical attack by Australia.

All arms control treaties have problems with verification. But with chemical weapons, the problem is inherently insoluble. Consider the (nuclear) START treaties with Russia: hard to verify, but at least they involve fixed numbers of large objects—missiles—with no other use and not that hard to find. Chemical weapons, on the other hand, involve small quantities of everyday stuff that is impossible to find.

How small? The sarin nerve gas use for the Tokyo subway attack was manufactured by the Aum Supreme Truth cult in a single room.

How everyday? As Jeane Kirkpatrick and Dick Cheney and many others pointed out in a letter to the Senate majority leader opposing the CWC, the treaty does not even prohibit the two chemical agents that were employed to such catastrophic effect in World War I and that are the backbone of Iran's current chemical arsenal—phosgene and hydrogen cyanide. Why? Because they are too widely used for commercial purposes.

All right, you say (and many senators up for reelection are privately thinking): So the CWC is useless. What harm can it do? The harm it—like all panaceas—does is induce a false sense of security.

Treaties are not feel-good devices. They are not expressions of hope. They are means of advancing peace by putting real constraints on the countries that pose threats.

Syria has put chemical weapons on the tips of its Scud missiles. Iraq is rebuilding its arsenal. Libya is constructing the largest underground chemical weapons plant on the planet. And what are we doing? Passing a treaty that will allow international agents to inspect up to 8,000 American businesses, searching and seizing without warrant.

The logic is more than comical. It is dangerous. The chemical weapons treaty is part of a larger administration scheme to build a new post-Cold War structure of peace through the proliferation of paper. Yesterday, a test ban treaty. Today, chemical weapons. Tomorrow, a biological weapons convention and strengthening the ban on anti-ballistic missiles.

The conceit of this administration is that it is following in the footsteps of Truman and Marshall in the 1940s, building a structure of peace after victory in a great war. In fact, they are following in the footsteps of Harding and Coolidge, who spent the 1920s squandering the gains of World War I on the false assurances of naval disarmament treaties and such exercises in high-mindedness as the Kellogg-Briand Pact.

The Clinton administration calls the chemical weapons treaty "the most ambitious arms control regime ever negotiated." Its ambition is matched only by that of the Kellogg-Briand Pact, also an American brainchild, also promulgated to great international applause. (Frank Kellogg, Coolidge's secretary of state, won the Nobel Peace Prize for it.) All parties to that piece of paper pledged the renunciation of war forever. The year was 1928. Germany and Japan were signatories.●

REMOVAL OF INJUNCTION OF SECRECY—TREATY DOCUMENT NO. 104–36

Mr. DOMENICI. Mr. President, as in executive session, I ask unanimous consent that the injunction of secrecy be removed from the Convention on International Maritime Organization, Treaty Document No. 104–36, transmitted to the Senate by the President on October 1, 1996; and I ask that the treaty be considered as having been read the first time; that it be referred, with accompanying papers, to the Committee on Foreign Relations and ordered to be printed; and that the President's message be printed in the RECORD.

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

The message of the President is as follows:

To the Senate of the United States:

I transmit herewith, for the advice and consent of the Senate to accept, amendments to the Convention on the International Maritime Organization, signed at Geneva, March 6, 1948 (the IMO Convention). The amendments were adopted on November 7, 1991, and November 4, 1993, by the Assembly of the International Maritime Organization (IMO) at its seventeenth and eighteenth sessions. I also transmit, for the information of the Senate, the report of the Department of State describing the amendments, their purpose and effect.

The United States is the world's largest user of international shipping. These amendments strengthen the International Maritime Organization's capability to facilitate international maritime traffic to carry out its activities in developing strong maritime safety and environmental protection standards and regulations. The IMO's policies and maritime standards largely reflect our own. The United States pays less than 5 percent of the assessed contributions to the IMO.

The 1991 amendments institutionalize the Facilitation Committee as one of the IMO's standing committees. The Facilitation Committee was created to streamline the procedures for the arrival, stay and departure of ships, cargo and persons in international ports. This committee effectively contributes to greater efficiencies and profits for the U.S. maritime sector, while assisting U.S. law enforcement agencies' efforts to combat narcotics trafficking and the threat of maritime terrorism.

The 1993 amendments increase the size of the IMO governing Council from 32 to 40 members. The United States has always been a member of the IMO governing Council. Increasing the Council from 32 to 40 Member States will ensure a more adequate representation of the interests of the more than 150 Member States in vital IMO maritime safety and environment protection efforts worldwide.

The 1991 amendments institutionalize the Facilitation Committee as one of the IMO's main committees. The 1993 amendments increase the size of the Council from 32 to 40 members, thereby affording a broader representation of the increased membership in the IMO's continuing administrative body.

Support for these amendments will contribute to the demonstrated interest of the United States in facilitating cooperation among maritime nations. To that end, I urge that the Senate give early and favorable consideration to these amendments and give its advice and consent to their acceptance.

WILLIAM J. CLINTON.

THE WHITE HOUSE, *October 1, 1996.*

ORDERS FOR WEDNESDAY, OCTOBER 2, 1996

Mr. DOMENICI. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until the hour of 12 noon on Wednesday, October 2; further, immediately following the prayer, the Journal of proceedings be deemed approved to date, the morning

hour be deemed to have expired, and the time for the two leaders be reserved for their use later in the day, and that there then be a period for morning business until the hour of 2 p.m., during which Senators may speak up to 10 minutes each.

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

Mr. DOMENICI. Mr. President, following morning business, I ask unanimous consent that the Senate resume consideration of the conference report to accompany H.R. 3539, the FAA authorization bill.

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

PROGRAM

Mr. DOMENICI. Mr. President, under a previous order, there will be 3 hours of debate equally divided on the FAA authorization bill conference report tomorrow. The Senate may also turn to consideration of any other items cleared for action, including the possibility of considering the Presidio parks bill conference report. Therefore, there is a possibility of votes during tomorrow's session. Senators are also reminded that under the previous order, there will be a cloture vote on the FAA authorization conference report at 10 a.m. on Thursday. All Senators are urged to be in attendance for that important vote Thursday morning.

ADJOURNMENT UNTIL 12 NOON TOMORROW

The PRESIDING OFFICER. Mr. President, if there is no further business to come before the Senate, I ask unanimous consent that the Senate now stand in adjournment under the previous order.

There being no objection, the Senate, at 6:01 p.m., adjourned until Wednesday, October 2, 1996, at 12 noon.

NOMINATIONS

Executive nominations received by the Senate October 1, 1996:

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

JUDITH M. ESPINOSA, OF NEW MEXICO, TO BE A MEMBER OF THE BOARD OF TRUSTEES OF THE MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION FOR A TERM OF 4 YEARS. (NEW POSITION)