SENATE—*Thursday, February 5, 1998*

The Senate met at 10:30 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:

Dear God, our Father, we thank You for the blessings You release when Your people pray. The President and Vice President and their families, the Justices of the Supreme Court, the Members of the House of Representatives and the men and women of this Senate, along with those of us privileged to work with them, are recipients of the impact of the prayers of intercession prayed by millions of Americans around the clock. Help us to remember that You are seeking to answer those prayers as we receive Your wisdom and guidance. May we never feel alone or only dependent on our own strength. Your mighty power is impinging on us here as a result of people's prayers. An unlimited supply of supernatural strength, wisdom and vision from You is ready to be released.

But, Lord, also, remind us that our ability to receive is dependent on our willingness to pray for each other here as we work together. We recommit ourselves to be channels of prayer power not only to our friends and those with whom we agree, but also for those with whom we disagree, those we consider our political adversaries, and especially those who test our patience, or those we need to forgive. So, lift our life together from a battle zone of combative words to a caring community of leaders who pray for and communicate esteem for one another. Thank You for giving us unity in spirit as we deal with diversity of ideas. Through our Lord and Saviour. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader, Senator GORTON of Washington State, is recognized.

SCHEDULE

Mr. GORTON. Mr. President, on behalf of the majority leader, I announce that this morning the Senate will be in a period for the transaction of morning business until 11 a.m. At 11 a.m. the majority leader hopes that the Senate will be able to begin consideration of S. 1601, the cloning bill. We hope that the Senate will be able to make good progress on this legislation throughout today's session of the Senate.

As a reminder to all Members, the Senate will not be in session on Friday.

I thank my colleagues for their attention.

MEASURE PLACED ON THE CALENDAR—S. 1611

Mr. GORTON. Mr. President, I understand there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER (Mr. INHOFE). The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 1611) to amend the Public Health Service Act to prohibit any attempt to clone a human being using somatic cell nuclear transfer and to prohibit the use of Federal funds for such purposes, to provide for further review of the ethical and scientific issues associated with the use of somatic cell nuclear transfer in human beings, and for other purposes.

Mr. GORTON. I object to further proceedings on this matter at this time.

The PRESIDING OFFICER. Objection having been heard, the bill will be placed on the Calendar of General Orders.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business.

Mr. GORTON. Mr. President, I now ask unanimous consent that I may be allowed to proceed for 15 minutes in morning business and that, if the Senator from Nevada, Mr. REID, is on the floor when I complete my remarks, he be recognized.

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

MICROSOFT

Mr. GORTON. Mr. President, while the Senate is conducting its morning business, a conference is being held in Georgetown by the Progress & Freedom Foundation (PFF) on an issue that has gotten a great deal of attention over the past few weeks. From the conference title—Competition, Convergence and the Microsoft Monopoly—one might be deceived into believing these are frightening times for American consumers.

Any fears about the success of Microsoft isn't coming from those who buy Microsoft products, but from frustrated competitors. While I don't dismiss the concerns expressed by anti-Microsoft factions, their arguments certainly lack force when consumers appear to be so completely uninterested in this tale.

In fact, that's the untold story in the drama of the past several months—what does the consumer think of all this? How are American consumers being impacted? These questions are appropriate when you consider that the anti-trust laws of this country came into being to encourage competition and to protect consumers, not to settle bickering among business competitors.

Unfortunately, a lot of words have been printed and broadcast on this subject, but we've hardly heard a peep from the people who matter most—the consumers. This concerns me precisely because it appears that so many people participating in this dispute have already decided who gets to wear the black hat, and who the white.

At this morning's event my colleague from Utah, Senator HATCH, who chairs the very committee that exercises jurisdiction over the antitrust laws, spoke to the PFF conference about the Microsoft dispute. Normally, I don't keep track of where my colleagues make speeches and what they speak about, but because Senator HATCH has been quoted in the news media as taking a very hard anti-Microsoft line, I feel compelled to share some of his statements with my colleagues and rebut some of the criticism that he, and other Microsoft critics, have tossed out in the past several weeks about one of America's most visible, and successful, companies.

On Jan. 25th, Senator HATCH spoke at length to the San Jose Mercury News about Microsoft and his competitors, and I was surprised by the tone of his remarks. The newspaper quotes Senator HATCH as saying, "if Microsoft has engaged in driving out competition, and I think it has—most everybody who's looked at it carefully believes it has—and takes control of (Internet standards), they're going to exercise a tremendous amount of control over Internet content and commerce." Senator HATCH goes on to say, "if they're using anticompetitive practices to achieve that, it's wrong—and we have to do something about it."

In light of Senator HATCH's comments, I am concerned about how Microsoft is treated on Capitol Hill. Fortunately, Senator HATCH has promised that the Judiciary Committee has no intention of interfering with [the Microsoft litigation] and as our examination goes forward, we will work in a bipartisan manner to ensure that it continues to be fair and balanced. (Feb. 3 letter to GORTON/MURRAY)

I appreciate this statement, but I must admit it concerns me when he

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

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speaks at a conference that refers to Microsoft as a "monopoly."

Having said that, I would like to begin my comments on the Microsoft investigation by making a couple of points:

First, the question of whether the company has violated antitrust laws is something of an abstract question that has been posed, not by American consumers, but by Microsoft's competitors. I believe that to be the key of this entire discussion, and why I feel so strongly that Microsoft is being treated unfairly. This isn't an effort led by those who purchase software products . . . if it were, you can be sure that my attitude would be much different . . . this fight was started by those who must compete with Microsoft, which, in my opinion, makes it very hard for those individuals and companies to make an argument that is not completely driven by their self-interest.

Let's remember why we have antitrust laws in this country—these laws weren't written to preserve unsuccessful competitors; they were written to encourage competition, and thereby protect consumers. And to date, I haven't seen one bit of evidence to support the theory that consumers are being hurt by Microsoft's success, or the success of any other company in the software industry.

Second, as a former state attorney general, I support government enforcement of antitrust laws, but I cannot support the DOJ's attempts to restrict Microsoft's ability to produce and market the full-featured products its customers demand. Product design decisions should be made by software developers responding to consumer demand in the marketplace, not by governmental agencies.

And so on behalf of the American consumer, indeed the American economy, I'd like to review a few facts that we simply should not overlook today.

From 1990 to 1996, the number of software companies in the United States grew 81 percent, from 24,000 to 44,000 companies.

During the same period, employment in the American software industry grew 70 percent, to more than 600,000 jobs today.

The industry generated direct wages of more than $36 billion in 1996, and another $83 billion in related sectors of the economy.

It generated $7.2 billion in taxes paid to federal and state governments, and another $7.9 billion through the "ripple" effect.

Venture capital investment in new technology companies is at an all time high—$2.4 billion invested last year alone.

Prices for personal computer hardware and software are constantly falling. Where a single Microsoft application such as Microsoft Word cost $399 in 1990, today consumers can acquire all of Microsoft Office (which includes word processing, spreadsheet, presentations, scheduling and other functionality) for just $499 at retail.

If Microsoft's competitors are right, how could all of that success taken place? Wouldn't logic tell us that if a "Microsoft Monopoly" actually existed, prices would be higher, job growth would be lower, and venture capital investment would be next to nothing? Yet, the facts show the opposite course.

Also, I think it's important to remind ourselves that all of these accomplishments took place without government regulation or interference.

Let's review that again: Competition in the American software industry is not only healthy but vigorous. America leads the world. Innovation is at an all-time high. Employment is flourishing. Prices continue to fall for consumers and businesses alike. Productivity is skyrocketing. And barriers to entry for any company or individual that wants to compete in this industry are low.

The principal assets required to create software are human intelligence, creativity and a willingness to assume entrepreneurial risk. All of the hallmarks of a thriving, healthy industry are in place in America's software industry.

Let's return now to this question—what is the basic goal of antitrust law in America?

I believe that the basic goal of our anti-trust laws is to promote competition, thereby insuring that consumers benefit from the widespread availability of goods and services at fair prices. Often competition is vigorous, but the fact that certain companies perform better than others is no reason to doubt that consumers benefit greatly from their success. As many courts have recognized, all companies should strive to do as much business as they can, even if that means taking business away from rivals, because it is that quest that causes the creation of new and better products offered to consumers at attractive prices.

So, why are a handful of Microsoft's competitors so successful at scaring up government investigations, public policy debates and media scrutiny? One might argue that all of these incredible statistics that I've just reviewed are somehow skewed because Microsoft is really the only beneficiary. In other words, all of the benefits accrue to Microsoft. Well, that's just wrong. Once again, the facts tell another story:

The top 20 companies in the industry account for only 42% of the total revenues from packaged software sales—demonstrating that the software industry is highly competitive and decentralized.

Microsoft represents less than 4% of total worldwide software industry revenues. In 1996, total software industry revenues were $250 billion; Microsoft's portion was less than $10 billion. How can there be a "Microsoft Monopoly" if Microsoft accounts for less than 4% of industry revenues? If such a monopoly existed, shouldn't that percentage be more like 60%, 70%, 80% or higher?

But what about Microsoft's dominance in the PC software space? Well, a few more facts:

In online services, Microsoft represents only 9.8 percent of the online services sector. America Online has 75 percent.

Database software: Microsoft represents only 6 percent of the database software sector, compared to Oracle's 30 percent share.

E-mail software: Microsoft represents only 14 percent of e-mail software revenues, compared to 43 percent for IBM/Lotus.

Server operating systems: Microsoft represents only 27 percent of server software revenues, compared to 41 percent for Novell.

Again, where is the monopoly? Percentages of 9.8, 6, 14 and 27 hardly sound like monolopies to me.

So we're still left to ponder, why the fuss over Microsoft, given all of this good news? This is the question so many in the media are striving to answer. The New Republic recently attributed it to techno-angst—society's anxiety about the Information Age and its desire to focus that angst on someone or some company.

I think a more plausible answer is a coordinated PR and lobbying campaign by a handful of Microsoft's competitors. Two weeks ago, the author and management guru James Moore wrote in The New York Times:

> The courtroom drama played out in Washington in recent weeks concealed what was happening backstage: a small number of companies that compete with Microsoft have managed to make the Federal Government an unwitting tool of their narrow competitive objectives.
>
> These sorts of unholy alliances almost always lead to bad policy. If users are better served, if the cost of software is reduced and if new layers of information-industry innovation are built, a strong argument can be made that the public good is being achieved without Government intervention.

The public good is being achieved without Government intervention. This cannot be overemphasized. The Progress and Freedom Foundation has played an important role in developing intelligent public policy with an eye toward limiting the role of government in markets. In 1995, PFF published a major study on the need to replace the FCC and substantially deregulate the telecommunications marketplace. Today, PFF is conducting a major project designed to limit government interference in the market for digital broadband networks. I applaud PFF's efforts on behalf of the free market in those industries, and am somewhat mystified by the organization's apparent inconsistency with regard to

Microsoft and the software industry. Based on the organization's past, I simply want to encourage the Progress and Freedom Foundation to remain steadfast in its belief in the American marketplace.

Now, I'd like to turn for a moment to addressing some of what I will call the myths out there about Microsoft. I think it's important that we deal with some of the less scholarly thinking and ideas up front.

Myth #1: Microsoft is somehow going to control access and commerce on the Internet.

I was amused to see a press release earlier this week from the New York Attorney General's Office making this claim. It's almost as though the PR campaign being championed by several Microsoft competitors who have decided these buzzwords have the most media appeal. Anyone who goes out onto the Internet to find the world of knowledge and information available there knows that no one will ever control access and commerce on the Internet. Such a thought is as laughable as suggesting one company will control all commerce and information in the world. The Internet is a vast information source that will continue to grow and expand. No company will ever represent more than a tiny fraction of all the commerce and all the content available on the Internet.

Myth #2: Some companies are afraid to come forward with complaints about Microsoft because they are afraid that Microsoft will use its dominance in the marketplace to punish them.

My colleague, the chairman of the Judiciary Committee, Senator HATCH, has made this charge himself in interviews with the news media. This is a serious accusation but one that is also baseless. Microsoft has gone so far as to give the Justice Department a letter that it can present to anyone and everyone doing business with the company encouraging them to cooperate with the DOJ on its investigation. Microsoft has been extremely cooperative for years with the DOJ. And it would be out of character for Microsoft—a company that values its partners—to make this an issue with them.

Myth #3: Microsoft's license agreements with Internet Service Providers unfairly force ISPs to promote only Internet Explorer, and prohibit ISPs from even mentioning the existence of Netscape Navigator.

Like PC manufacturers, ISPs know and understand their customers. They provide their customers with choice—whether it's Internet Explorer, Navigator or some other product. Microsoft has no exclusive arrangements with ISPs. This is a non-issue.

Myth #4: Microsoft is entering into proprietary agreements with Content Providers to create popular websites that can only be viewed using Microsoft's browser.

Let me be absolutely clear. A consumer can use any browser he or she wants to view any material on the Internet. A content provider may choose to take advantage of technology available in either Internet Explorer or Navigator to make their content even more compelling.

Content providers like Warner Brothers want to reach the most customers. They aren't looking for exclusionary technology. They are looking for the best technology to serve their customers. Right now Warner Brothers believes that Microsoft has the best technology. There are other content providers that believe Netscape has the best technology. That's what competition is all about. This is similar to saying that manufacturers of VHS videocassette players entered into proprietary deals with Hollywood studios to force their movies on VHS tapes rather than Beta tapes. Just as VHS and Beta were competing standards, so too are Internet Explorer and Netscape Navigator. May the best technology win.

Myth #5: The Justice Department is working to restore choice for consumers.

This is disingenuous at best. Consumers have always had choice. Netscape and thousands of other software programs run wonderfully on Microsoft Windows. In fact, the great untold story is how Microsoft spends more than $65 million and 1,000 Microsoft employees to work with its competitors to build great software applications that run on Windows.

It's important to understand these myths. Sound public policy must be based in fact, not competitive rhetoric.

These are exciting times for American consumers and for American business. Microsoft's business model, which is focused on rapid product development, broad distribution at low prices and close collaboration with hardware and software vendors, is helping to drive demand through the high technology sector. We are seeing upgrades to telecommunications networks—telephone, cable, satellite and wireless—the introduction of new types of devices such as hand held computers and automobile PCS—and the creation of innovative new software to make these networks and devices improve the lives of all consumers.

New technologies and new ideas are being introduced at a dizzying pace—led largely by innovative and highly competitive American companies.

I've spoken today about the American consumer and the American software industry. I'd like to conclude by talking a little about Microsoft. You can hardly talk about innovation and competition without focusing on Microsoft. It's founder, Bill Gates, is one of the true visionaries of the Information Age and his company has produced technology that will forever change the way we work, play and think.

I have enjoyed watching this phenomenal man and his company for many years. And over those years, I have seen Microsoft remain committed to four very important business principles that have guided the company since its founding:

1. Microsoft builds software that improves the quality of people's lives. Bill Gates' vision of Information at Your Fingertips brings businesses closer to their customers, voters closer to their elected officials, doctors closer to their patients and teachers closer to their students.

2. Microsoft listens closely to its customers and focuses on how it can do a better job. If you want to know the true secret to Microsoft's success, look at its intense focus on incorporating customer feedback into its products.

3. Microsoft believes that innovation is at the heart of its future. Microsoft will spend more than $2 billion this year on research and development. More than 16 percent of its revenues are dedicated to R&D. Its competitors, Sun and Oracle will spend about 8 percent of revenues on R&D.

4. Microsoft partners with many companies, large and small, who share these principles. Microsoft's thousands of partners are in every state in America—independent software vendors who build great software products for the Windows operating system, PC manufacturers, solution providers who support and implement Microsoft technology solutions and many other partners.

In conclusion, I believe that a review of the facts shows that the American software industry is healthy, vigorous, innovative and continually improving the lives of American consumers. Microsoft is one of many aggressive and innovative companies in this industry. Its leadership is an asset for the nation. Its leadership is also not guaranteed. In any dynamic, innovative industry such as software, your position in the market is only as strong as your last product release. The competitive threats to Microsoft are real.

As PFF, the participants at its conference, and many of my colleagues know all too well, it is the marketplace, not government regulation that will ensure continued innovation and consumer benefits.

Mr. HATCH. Mr. President, I ask unanimous consent that an address I gave to the Progress and Freedom Foundation be printed in the RECORD.

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

ADDRESS OF SEN. ORRIN G. HATCH BEFORE THE PROGRESS AND FREEDOM FOUNDATION FEBRUARY 5, 1998

ANTITRUST IN THE DIGITAL AGE

Good morning. It is a true pleasure to be with you this morning and to be included in such a distinguished group of leading economic and antitrust thinkers. I know that,

given the early hour, some of you no doubt are looking for some eye-opening comments. Well, I hate to disappoint, but, let's not kid ourselves folks, this is antitrust we're talking about, so I hope you've had your coffee.

Seriously, though, I would like to applaud the Progress and Freedom Foundation for convening this symposium, as well as those who have focused their intellectual energies on the topics to be discussed today.

It is, I believe, no overstatement to say that the so-called Digital Revolution is one of the most important economic developments of our age, one which promises to fundamentally change our economy, our business, and our daily lives.

Just when I have finally mastered how to set the clock on my VCR, I discover that it won't be long before I'll be watching movies off the Internet, not my VCR. Now I'm really beginning to understand that "virtual reality" means something more than simply getting up in the morning.

These rapid changes present numerous challenges to policymakers who are seeking to understand what, if any, role the government should play both in the transition to our new digital economy and in the new economy itself. These changes present challenges to policymakers who are seeking to ensure that, where there truly is a productive role for government, this role is both limited and effective.

While of course the Digital Revolution impacts numerous policy areas, I believe that, ranking high among those is the task of understanding the proper role of antitrust in high-technology markets. I promise to keep my comments brief this morning, but thought I would spend a few minutes discussing why I believe it is important for antitrust policymakers, law enforcers, and intellectuals to engage in a serious examination of market power and structure, and the proper role for antitrust enforcement, in the Digital Age.

Make no mistake about it—these are difficult issues. Anyone who suggests that the answers are easy cannot be taking the issues very seriously. But anyone who suggests that these are not serious policy issues, worthy of debate and study, has, for one reason or another, chosen to ignore reality.

But, the difficulty of the questions should not deter us from seeking answers. And, especially given the breathtaking pace by which technology is advancing, it is imperative that we search all the more diligently and assertively.

I. ANTITRUST AND FREE MARKETS

While there has always been, and probably will always be, considerable debate about the proper role of antitrust enforcement, it is important to note here something that just about everybody agrees with: some degree of antitrust enforcement is important to protecting our free market system and the consumers that system is meant to benefit.

Thus, most who, like myself, trumpet the free enterprise system, also recognize that proper antitrust enforcement plays an important role in protecting free markets. Let me repeat that. Proper antitrust enforcement plays an important role in protecting free markets.

From Adam Smith to Robert Bork, free market, free-enterprise proponents have long recognized as much. So let me debunk the myth that economic conservatives do not believe in antitrust. To the contrary, we believe strongly in antitrust—so long as the role of antitrust is understood properly and not overextended.

Properly conceived, the role of our antitrust laws is to maximize consumer welfare—allowing the marketplace to work its will so that the products consumers want can be produced in an efficient fashion and offered at competitive prices. The basic premise is that antitrust protects "competition" in the marketplace, and that a competitive marketplace enhances consumer welfare. In a properly functioning competitive market, consumer choice dictates which products will be produced and sold, and competition among firms determines who will make them and at what price. Consumer welfare is maximized, and society's "pie" is larger.

At the same time, though, our society and our antitrust laws recognize that markets will not always operate freely and achieve their objective of maximizing consumer welfare. The reality is that, in some circumstances, private market power can distort the workings of the marketplace and, as a consequence, can hurt consumer welfare by raising prices, restricting consumer choice, or stifling innovation. This is where antitrust steps in.

As Judge Bork has written, proper antitrust enforcement actually "increase[s] collective wealth by requiring that any lawful products . . . be produced and sold under conditions most favorable to consumers. . . . The law's mission is to preserve, improve, and reinforce the powerful economic mechanisms that compel businesses to respond to consumers." That's an important point—preserving "economic mechanisms that compel businesses to respond to consumers." [*The Antitrust Paradox* at 91 (1993).]

The $64,000 question, though—or, perhaps in today's context I should say the $300 billion question—lies in defining what actually injures consumer welfare, calling for antitrust enforcement. For it is not enough to say that any reduction in the amount of rivalry in a particular industry reduces competition, injures consumers, and should be stopped by antitrust laws. The very nature of competition and capitalism is for firms to beat each other in the marketplace. While this process—competition—certainly benefits consumers, its natural outcome is that the firms who succeed do so at the expense of other firms. [*See id.* at 49.]

Antitrust law certainly cannot be about punishing winners or protecting losers. The goal is not simply to identify practices that reduce competition or rivalry. Rather, it is to identify when the exercise of market power impedes markets from operating freely and, as a consequence, hurts consumers.

Where such situations can be identified, antitrust has the additional burden of identifying effective remedies that actually benefit consumers and are not more costly than the so-called anticompetitive practices identified in the first place. This sounds pretty simple, but it is not, especially when you are dealing with highly complex, fast-moving marketplaces such as high technology.

But it is my hope that those participating in this symposium today will help those of us in policymaking or enforcement positions arrive at the right answers. For getting the answers right is, I would argue, more important now than ever, especially with respect to these markets which will be the key to our economy for years to come.

II. THE IMPORTANCE OF ANTITRUST TO THE DIGITAL REVOLUTION

The stakes are high, because ill advised antitrust policy, whether it is overly aggressive or overly timid, could have drastic consequences for the future of our economy. I would like to spend the rest of my time this morning explaining why I think understanding and implementing appropriate antitrust policy for the digital marketplace is a singularly important policy issue.

1. *First* is the very simple fact that high technology represents the most important sector of our economy. High technology is the single largest industry in the United States, leading all other sectors in terms of sales, employment, exports, and research and development. [American Electronics Association. "Cybernation," 1997.]

Perhaps more importantly, high technology is the key to the development of our future economy. Not only will technology continue to be one of the driving forces behind our economy's growth, but it also will drive the development of the Internet, the "Information Highway," which, by all accounts, will fundamentally alter the way we do business.

Even Congress, which has traditionally been an institution of Luddites, is getting into the swing of things. Communication and accountability to our constituents is much improved by web sites and e-mail. Although, come to think of it . . . we may want to rethink this e-mail thing. Now we get feedback instantly—not even a grace period.

The future direction of the Internet will be shaped in no small part by events occurring in today's marketplace. A handful of developments in today's marketplace could, I believe, have tremendous impact on the Internet, electronic commerce, and information technology as a whole, for years to come.

2. Which brings me to my second, somewhat related reason for suggesting that antitrust enforcement in high technology is a vitally important policy issue. We are currently in the midst of important structural shifts in the computing world.

Given the unique nature of high technology markets, it is with respect to precisely such technological paradigm shifts that healthy competition and effective antitrust policy is most important. Allow me a moment to elaborate on this point, which I believe is a fundamental and important one.

As many economists and capitalists alike have come to recognize—including, I might note, many of today's participants, and software industry leaders such as Bill Gates—the economic dynamics in so-called "network" markets such as the software industry often allow individual firms to garner unusually large market shares in particular segments.

Most who have studied such markets closely, agree that the cyclical effects of network effects or increasing returns can translate early market leads into rather large market dominance, if not de facto monopolies, as well as a significant degree of installed base lock-in. This in itself is not anti-competitive when it results from proper market behavior.

While lock-in effects and single firm dominance of particular sectors certainly render a market less than competitive, and consequently has costs in terms of consumer welfare, it also produces an important positive effect.

When one firm dominates the market for a product which serves as a platform—a product to which other software developers will write their programs—that firm creates a de facto standard, a uniform platform. Software developers thus are not faced with the cost, in terms of time and resources, to develop applications that run across a variety of platforms. This can lead to significant boosts in productivity and innovation.

Indeed, this is precisely what we have seen with respect to Microsoft's successful establishment of the Windows monopoly, which, by creating a uniform platform for software

developers, has had a tremendous effect in the recent boom in software applications and the software industry generally. Even those who are concerned about Microsoft's exercise of its vast market power must enter this efficiency gain in the "plus" column of their consumer welfare calculation. The fact of the matter is that Microsoft and the success of Windows has been an important ingredient in the innovation and wealth creation our software industry has produced over the past decade or so.

So, if a single firm's domination of a particular sector at a particular point in time might be the result of perfectly rational market behavior, and indeed may have some economic benefits, where do we go from here? Does this mean that antitrust is useless, irrelevant, or even counterproductive in high technology markets? To some extent, perhaps. On balance, the antitrust machinery in Washington, D.C. probably shouldn't concern itself with every technology market which, at a particular point in time, is dominated by a particular firm to an unusual, even unhealthy extent.

Where antitrust policy should focus, I would propose (with a large footnote to the Judiciary Committee testimony of Professor Joseph Farrell, and other economists who have studied these markets), is on the transition from one technology to the next—on so-called paradigm or structural shifts in computing.

While it may be likely and even, to a degree, useful, to have a particular firm dominate a particular segment at any point in time, it is dangerous, unhealthy, and harmful to innovation and consumer welfare where that firm can exploit its existing monopoly to prevent new competitors with innovative, paradigm shifting technologies, from ever having a fair shot at winning and becoming the new market leader or de facto standard.

This is especially the case where a single firm exercises predatory market power to prevent healthy competition over a series of structural computing shifts. Where this is so, one would imagine that investors and innovators would find other things to do with their time and money than to try to compete with the entrenched firm to establish an important new technology. Innovation is chilled, and the consumer suffers.

The critical question, then, is how a dominant or monopoly firm exercises its market power, even if fairly and naturally obtained, with respect to the new guy that comes down the pike offering an innovative, potentially paradigm shifting technology. Does this new firm, offering a new technology that may compete with, replace or otherwise threaten the old firm's entrenched monopoly, have a legitimate opportunity to compete in the marketplace?

To borrow a phrase recently attributed to Professor Carl Shapiro, do innovative start-ups get a "market test," or are they "killed in the crib before they get a chance to become a core threat?" [Steve Lohr with John Markoff, "Why Microsoft is Taking a Hard Line with the Government?" The New York Times, January 12, 1998 at D1.]

In high-technology markets displaying a high degree of single-firm dominance, this is perhaps the most important question for antitrust policymakers and enforcers:

To what extent are innovators who offer potentially fundamental changes to the nature of computing given a fair "market test," and just what practices by the entrenched firm should be considered anticompetitive or predatory efforts to foreclose the opportunity for such a genuine market test?

I believe this is precisely the question—or one of the questions—presented by Microsoft today and is one of the reasons why Microsoft in particular inescapably invites scrutiny in the course of assessing competition policy in this digital age.

Of course, while antitrust policy in the Digital Age encompasses more than scrutiny of a particular firm, the fact remains that Microsoft in particular does raise a handful of questions, given its dominance of the desktop, together with its admitted effort to coopt important paradigm shifts and, in the process, extend its dominance to a number of new markets.

The Internet generally and, more specifically, the potential promise of browser software, and object-oriented, "write once, run anywhere" software, represent important and possibly critical developments for the computer industry. Both the possibility of a new, browser-based platform and interface, and the possibility of a programming language that is genuinely platform independent, able to interoperate with any type of operating system, could fundamentally change the nature of computing.

Among other things, both of these developments, likely representing the next generation in computing, introduced a serious threat to Microsoft's desktop dominance. As we all now know, Microsoft has clearly come to recognize as much.

Thus, with respect to both the so-called "browser wars" and the battle between Java (Sun's essentially open programming language) and ActiveX (Microsoft's proprietary alternative to Java), we see Microsoft in a fever pitched battle to control two potentially fundamental technological developments and to prevent new technologies, developed by other firms, from undercutting the current desktop monopoly Windows enjoys.

I am confident that nobody from Microsoft would dispute this assertion. Nor should they. Microsoft has all the right in the world not to be asleep at the switch and allow a fundamental, structural technology shift from undermining its current dominance of the software market. Its shareholders no doubt would demand as much.

At the same time, this is precisely where the practices of a currently dominant firm, such as Microsoft, must be scrutinized, and where the appropriate rules of the road must be clarified and enforced. Tying arrangements, free product offerings, licensing or marketing practices that are effectively exclusionary—these and other practices may be entirely appropriate in most instances.

But the question that, in my view, must be addressed is whether such practices, when engaged in by an entrenched monopolist with respect to paradigm shifting innovations, have the predatory effect of foreclosing innovators from getting a fair market test. Where they do, I would suggest that we have a significant market imperfection which impedes innovation, and in the process hurts both the industry and the consumer.

The questions that I believe law enforcers and policymakers must address are first, how to identify when particular practices have such an effect; and, second, whether our current antitrust regime adequately guides industry as well as the courts and the enforcers to reach the right answer in a timely fashion. These are some of the questions I plan to give close scrutiny in the coming months, and which I hope to learn more about from today's presenters and panelists.

Answering these questions, and coming up with the proper policy and/or enforcement solutions, is more important now than ever. The market battles being waged today are likely to have significant consequences for the Digital Age tomorrow.

3. Which brings me to my third and final reason why I believe sound antitrust policy is so critically important to the Digital Age: because it could prove critical to the growth of a free and open Internet.

Interfaces. In the proper hands, software interfaces are everything. To oversimplify somewhat grossly, software interfaces refer to certain critical external links or hooks in a software program that permit other programs to communicate, and therefore interoperate, with the first program. Because interfaces are the key to interoperability, and interoperability is the key to software markets, relentlessly aggressive, savvy companies with vast resources can be quite successful at translating the control of a critical interface into control of the markets on either side of the interface.

And the ultimate interfaces are the interfaces to Internet access and content.

Microsoft has made no secret of the fact that it has made dominating the Internet space a corporate priority. And I credit them for it. Any genuine free-marketeer, any genuine capitalist, must admire the efforts the company has recently taken to go after what Microsoft itself has called the huge "pot of gold" the Internet represents.

Like many, I cannot help but admire and applaud Microsoft's drive to pursue this vision. Whether it be a no-holds barred approach to competing with alternative browser vendors, seeking to control Web software programming and tools markets with proprietary products, buying the intellectual property of WebTV, making large investments in the cable industry while vying to control the operating systems of cable set-top boxes, linking Internet content to the Windows desktop, or any other of a handful of aggressive steps to control the groundwells, plumbing and spigots of the Internet, one can hardly question Microsoft's ambition to dominate the Internet space, or their business savvy in getting there.

Just how much control over the Internet Microsoft will exercise is anyone's guess, and I certainly do not pretend that I know the answer. But many certainly do believe that this is what Microsoft is out to achieve, in effect a proprietary Internet, and that the answer lies in the outcome of market battles which are being waged right now. For controlling the key Internet interfaces is a critical step to controlling much of the Internet itself.

This, then, is my third reason for why properly calibrated, vigilant antitrust enforcement is all the more imperative today. In the end, the marketplace should be permitted to choose whether it wants a proprietary Internet. I think I know what the answer would be. But I can assure you that, if one company does exert such proprietary control over the Internet, and the Internet does in fact become a critical underlying medium for commerce and the dissemination of news and information, rest assured that we will be hearing calls from all corners for the heavy hand of government regulation—for a new "Internet Commerce Commission."

It seems far better to have antitrust enforcement today than heavy-handed regulation of the Internet tomorrow.

So, let me suggest to those of you who abhor the regulatory state that you give this some thought. Vigilant and effective antitrust enforcement today is far preferable

than the heavy hand of government regulation of the Internet tomorrow.

III. CONCLUSION

In closing, I would like to come back to what I said at the outset. These are difficult, but very important, policy issues. Because of what is at stake, effective and appropriate antitrust policy is critical to our digital future. Antitrust policy that errs on either side—be it too aggressive or too meek, could have serious consequences. But because of the uniqueness, and the complexity of high technology markets, discerning the proper role for antitrust requires some fairly hard-headed analysis.

Those who dismissively say that technology is complicated stuff that changes like quicksand are in a sense correct. But, is the answer, as has been suggested by some politicians and other new-found friends of Microsoft here in Washington, simply to throw up our hands and move on to other, easier, and less sensitive issues? Hardly.

Rather, let me suggest that the answer is to make sure that the rules of the road are the right ones, and that the referees do a good job enforcing them, when and where it is appropriate. Antitrust policymakers and enforcers should not shirk their duties just because the task is a hard one.

I have a great degree of confidence that the current head of the Antitrust Department is up to the task, and, as Chairman of the Committee with antitrust and intellectual property jurisdiction, I plan to do what I can to ensure that the rules are being applied both fairly and effectively. We in Congress not only can, but in my view must, ask the questions and help ensure the right answers.

Toward this end, I would like again to thank the Progress and Freedom Foundation, and those who have dedicated the time and intellectual effort to these difficult questions, for taking a very productive step in this process of understanding and implementing a sound, effective role for antitrust policy in the Digital Age. I expect that we all will learn a great deal from what I trust will be a vibrant and energetic discourse throughout the remainder of the day.

Mr. GORTON. Mr. President, I want particularly to thank my friend from Nevada for agreeing to let me proceed.

The PRESIDING OFFICER. Under a unanimous consent request, the Senator from Nevada is recognized for up to 15 minutes.

Mr. REID. I say to my friend from Washington, it was a pleasure to yield that time and to listen to his statement, which was typically much like the Senator from Washington; it was very thorough and educational for me.

Mr. President, I ask unanimous consent that following my statement, the Senator from California be recognized for 10 minutes.

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

NEED FOR THE HIGHWAY BILL NOW

Mr. REID. Mr. President, the State of Nevada is a large State, one of the largest in the Union, 74 million acres. Nevada is also the most mountainous State in the Union except for Alaska. We have 314 separate mountain ranges. We have 32 mountains over 11,000 feet high. We also have vast extremes in weather. In the southern part of the State it is not unusual for places such as Laughlin, NV, in the southern tip of the State to reach temperatures of 120 degrees. In the northern part of the State we at times have the coldest place in the Nation, temperatures far below zero that remain for days at a time.

The State of Nevada is also the fastest growing State in the Nation; we also have the fastest growing city and the fastest growing county: the city of Las Vegas city and Clark County. Every month, 7,800 new residents move into Clark County. So we have an unusual State.

The reason I lay this on the RECORD today is that the State of Nevada desperately needs a highway bill. We desperately need a surface transportation bill brought before this body and debated and resolved. The ISTEA legislation, as we call it, was a good piece of legislation when it passed in 1991. I was fortunate to be on the subcommittee that drafted that legislation. I was fortunate to be able to work on that committee with the chairman of the committee, Senator MOYNIHAN, and the ranking member, now the chairman of the committee, Senator CHAFEE.

We did some unique things with that ISTEA legislation. We allowed more spending but more of that spending power went to the individual States. That was the main goal of the ISTEA legislation that passed in 1991: turning more spending power and authority over to the States and localities while maintaining a strong national transportation system. And during the 6 years this legislation has been in effect it has worked well.

We have made progress in returning more authority to local jurisdictions. I believe, when we are able to take up the bill that came out of the committee, the bill which is now before this body, we will continue along the same lines.

I rise today to say that I think we are breaking faith with the American people by not having this legislation in the Chamber today. I have outlined the problems we have in the State of Nevada. Because of the mountains we have around the State, because of the extremes we have in weather around the State of Nevada, we badly need these highway funds. All of this is compounded by the tremendous growth we are having in the State of Nevada.

The President came to Lake Tahoe last summer with the Vice President and five Cabinet officers. A commitment was made by the States of California and Nevada to do something about Lake Tahoe because it is being degraded environmentally. Everyone agrees—Republicans, Democrats, conservatives, liberals, environmentalists, nonenvironmentalists—that the lake needs to be saved, and a commitment was made at that time to save that lake. Part of the salvation of the lake comes in the form of transportation improvements in the ISTEA bill that should be before this body.

Mr. President, the money that we are talking about spending is not new tax dollars. We are not spending money that does not exist. Every time an individual goes to a service station to buy gas, they put gas in their car and automatically, because of legislation that has been passed here, the money that comes from that purchase goes into a trust fund. That money is set aside for highway construction and surface transportation. And so we are not here today demanding that we spend new taxes for these roads that are badly needed in Nevada and around the country. What we are saying is let's spend the money that is in the trust fund. That is all we are asking. Let's spend the money. There has been a commitment made that those moneys that have been collected should be spent on our surface transportation. The first step is to get the highway bill done (and the sooner the better).

Mr. President, when I practiced law, we would set up trust funds for our clients, and it could be as a result of a contract that you were dealing with for your client, trying to resolve contractual differences; it could be for the sale of a piece of real estate; it could be for a personal injury case. This money was put into a trust fund for the client. If in fact we used those trust fund moneys for anything else, to pay rent, to purchase a car, or to do something that wasn't in keeping with our client's wishes, we could be disbarred and in fact criminally prosecuted.

I cannot imagine that we are using these trust fund moneys for these highways for some other purpose. If we did that in the private sector, we would be subject, if we were a lawyer, to disbarment; if you were not a lawyer, maybe to criminal prosecution and, in fact, if you were a lawyer to criminal prosecution.

So these highway trust fund moneys should be spent for the purpose for which they were collected and no other purpose. Not for offsetting the deficit, not for a fancy new spending program in some other place. This money should be used for surface transportation. I cannot understand why we are not bringing this bill before this body immediately.

When Congress was unable last year to complete its work on the long-term reauthorization program, I was a strong proponent of the notion that we needed to pass a short-term extension. The Presiding Officer at this moment serves on the Environment and Public Works Committee with this Senator. He, too, helped move the bill out of the committee, and we agreed that there should be a short-term extension to ensure continuity in State programs and

to live up to our obligation to the American people to provide a world-class—in fact, the best—transportation system.

That is what these trust fund moneys are all about. I supported this short-term approach as a last resort. But I was under the assumption that leadership here would allow us to move the surface transportation bill to the floor so that we could begin working on it as soon as we returned from the recess. This has to happen. It was supposed to be one of the first things we brought up when we got back here.

The surface transportation bill made the States partners with the Federal Government. With this highway bill, we had more of a partnership than we had ever had before. The partnership was to build a stronger transportation system and to maintain a stronger transportation system. We are leaving the departments of transportation in all States in the lurch by putting off work for months now. This is no way to treat a partner. If we are truly partners with the States, their departments of transportation, then certainly we should be moving this legislation.

State transportation programs are continuing for the moment, but let's not kid ourselves. These programs are dying. They are on life support, but they are dying. We designed the short-term extension in a way that we would, in effect, force ourselves to work on this legislation after we came back after the first of the year. We are not following through on that. Our goal was to allow the States to spend unallocated balances for a couple of months to prevent a lapse in the programs. We didn't build an extra quarter or 6 months into that idle time.

I congratulate and I applaud Senator BYRD, the ranking member of the Appropriations Committee, who has been on this floor and steadfastly and continually and very effectively has brought to the attention of this body and the people of this country the need that we move to (and pass) the surface transportation bill. The closer we get to the election the harder it is going to be to do the right thing in regard to this legislation. If we wait until April, April is going to become July, and then July will become October. We should do this now. We should move this bill as quickly as possible.

There are some States, including the State of Nevada, where we are limited in terms of the amount of funds we can allocate because of bid-letting procedures. There are only certain times that we can let these contracts—sometimes because of weather in parts of the State of Nevada. As I have already described, because of the weather extremes, you cannot do work all year round in the State of Nevada. So we need to let these bids take place. As I have indicated, there are many parts of Nevada, in the high Sierras and other parts of the State of Nevada, where the construction season is extremely short. Delays in reauthorization are going to lead to delays in roadbuilding and maintenance soon. A delay of several months can easily lead to a delay of a year or more in the colder climates of our State.

This applies all over the country. Nevada is currently the fastest growing State in the Nation. As I indicated, about 8,000 people moved to Clark County last month—that's the Las Vegas area. In order to address our long-term growth-related infrastructure needs, we need a 6-year bill; not a 3-month bill, not a 6-month bill. Six-month bills do not allow us to adequately plan for the future. It is unfair of this body, this Congress, to arbitrarily wreck the planning processes of 50 States and tens of thousands of highway construction workers and contractors whose livelihood depends on the timely and consistent flow of these highway funds. We must move forward. To not do so is simply unfair. It is unfair for the Congress of this country to hold up the gas taxes that the people pay every time they fill up their tanks at a service station while we continue collecting these huge sums of money every day to go into this trust fund. We are not being fair to the American public by not spending these trust funds.

We spend a lot of time in this body talking about States rights. Let's demonstrate our commitment to States by passing this highway bill. It is important we do it. It is important we do it tomorrow, not next month or the month after that. Let's get to work on reauthorization today.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mr. KENNEDY. Will the Senator yield for a unanimous consent request?

Mrs. FEINSTEIN. I will.

PRIVILEGE OF THE FLOOR—S. 1601

Mr. KENNEDY. Mr. President, I ask unanimous consent that two fellows in my office, Ellen Gadbois and Diane Robertson, be granted the privilege of the floor during Senate consideration of the cloning legislation.

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

Mr. BYRD. Will the distinguished Senator yield for a question?

Mrs. FEINSTEIN. Yes, I certainly will.

Mr. BYRD. Will the Senator object to my asking consent that I be recognized, after the distinguished Senator from California speaks, for not to exceed 20 minutes?

The PRESIDING OFFICER. Is there objection? Hearing none, it is so ordered.

Mr. BYRD. I thank the distinguished Senator and I thank the Chair.

Mrs. FEINSTEIN. Mr. President, I rise to speak in morning business. I understand I have 10 minutes by the unanimous consent agreement of Senator REID.

The PRESIDING OFFICER. That is correct.

DROP IN COCAINE SEIZURES ON THE SOUTHWEST BORDER

Mrs. FEINSTEIN. Mr. President, Congress has increased the priority of the war on drugs in recent years. We've allocated nearly $300 million in additional funds to the U.S. Customs Service since 1996.

And I think all of us know that the Southwest Border is still, without question, ground zero in U.S. drug interdiction efforts, with more than 70% of the cocaine and other narcotics entering this country across the 2,000 mile stretch of border between our country and Mexico.

To meet this threat Congress authorized more than $100 million over the last two years to add 650 inspectors and employ state of the art technologies along the Southwest border. The President's budget in fiscal year 1999 calls for an additional $104 million for Southwest Border narcotics efforts.

So you can imagine my surprise when I opened yesterday's edition of the Los Angeles Times to read the following:

> The amount of cocaine seized at the commercial ports of entry along the U.S./Mexico border plummeted 84% in 1997, forcing U.S. Customs Service officials to develop a new drug fighting strategy and leaving them concerned about a backlash in Congress.

Well, Mr. President there is a backlash from this United States Senator because for five and a half years now I have sounded a constant drumbeat on Treasury and on Customs to stop the mixed missions of the Customs Department and understand that there is a major problem with cocaine coming across the Southwest Border. Frankly an 84% drop in seizures last year indicates that all of the money and all of the personnel we have been pumping in has simply not done the job. 84% at the Southwest border, and cocaine seizures are down 15% across the nation.

If someone could tell me the reason for the drop is because, overall, there is less cocaine coming into the country—I'd say, congratulations, our efforts have been successful.

But that doesn't appear to be the case. Narcotics intelligence officials continue to warn that an estimated 5 to 7 tons of cocaine enters this country every single day of the year. We are just not getting it.

If someone could tell me that the drop along the Southwest Border is because our efforts have been so successful, that the drug smugglers are going elsewhere—I'd say bravo, the taxpayers' money has been well spent.

But, again, that does not appear to be the case. Customs officials are widely quoted in news reports saying the problem is that the drug traffickers continue to stay two steps ahead of our interdiction efforts. And in fact, that is the case.

Let me again quote from this article:

Customs officials received a warning in June 1997 that portions of the agency's enforcement strategy at the ports had been compromised. A June 20, 1997 memo from Assistant Commissioner Robert S. Trotter to all Southwest border port directors warned that "traffickers have developed detailed knowledge and profiles of our port operations".

More than once, Customs officials have come into my office to tell me that—not only is it not possible to increase inspection of trucks and cars entering our border, obviously because there are so many of them—it is not really necessary, because today we are applying sophisticated technology, including electronic technology, random searches, and Customs' vast intelligence operations and all of that combined is enough to do the job.

Four years ago I went and spent a day at the Otay Mesa port at the Southwest border. I observed, directly adjacent to our Customs facilities, "spotters" who are individuals standing out on the street with radios and cellular telephones. I then went up to a hill overlooking the Customs facility and I watched the spotters work. They get on their phones and they talk to the trucks waiting to cross the border and they direct the trucks as to which lines they should be in to get through the border.

I mentioned this at the highest levels of the Treasury, both verbally and in writing. I said that we must do something about the spotters. Four years later, the spotters are still there, they are still operational. I am told that there is no law under which we can do anything about it. Unfortunately, at no time has Customs come forward in this four year period with any recommendations for any laws to be passed to deter this activity which is almost certainly an illegal conspiracy to bring cocaine into this country across the Southwest border.

The "random" searches that I have heard so much about are supposed to keep traffickers trembling in their bigrigs. But they have become so predictable that, by Customs' own admission, "traffickers know what cargo, conveyances, or passengers we inspect, how many of those conveyances are checked on an average day, what lanes we work harder, and what lanes are more accessible for smuggling."

Now, Mr. President, I am not insensitive to how difficult this task is, and I want to commend the extremely hard working men and women of the United States Customs Service. I know many of them personally. I know they work hard. I know they try to do their job. They put on those uniforms every day, they inhale all of these exhaust fumes, and they try to keep up with what has been a massive increase in traffic coming across the border.

But, Mr. President, I do not like to be told how effective our intelligence is, and how sophisticated our technology is, and how tough our enforcement efforts are—and then read reports in the newspaper from Customs' officials about how easily the traffickers are walking all over us.

I do appreciate the candor from Acting Commissioner Sam Banks on the weaknesses in our efforts. And I understand that Customs is moving very rapidly to counter this 84% drop in seizures with a new operation entitled "Operation Brass Ring". They clearly know that what they are doing is insufficient.

For some time, I have believed that the mixed mission given by the Administration to the United States Customs Service creates a situation whereby the law enforcement functions of the United States Customs Service cannot be carried out properly.

You cannot run an agency with a mixed mission, especially a mission that has the kind of a diametrically different goals that Customs faces. Move the trucks by the millions, just do random searches, depend only on technology, and avoid statistics like the one that just appeared in the Los Angeles Times with an 84% drop in seizures in cocaine coming across the Southwest border.

I have urged the Administration to appoint a law enforcement person as the new Commissioner of Customs. I am heartened to understand that the Administration has just signed off on the appointment of Ray Kelly as the new Commissioner of the U.S. Customs Service.

I have worked with Mr. Kelly over the past few years as he has been the Secretary for Enforcement in the Treasury Department. I believe he is a straight shooter. He is a law enforcement person. He has an exemplary background. I hope that he will be able to redirect the Customs Service to understand that they do have a law enforcement mission. And, in fact, that that mission is to deter contraband from coming across the border of the United States.

We also know, Mr. President, that guns in large supply are moving from this country down to Mexico. These guns are used for two purposes. One is to give them to the cartels for their use and the second is for revolutionary insurrection against the government of Mexico.

I believe that the work of the United States Customs is really cut out for them. In the best of all worlds, trade will continue to increase across the Southwest Border, providing jobs and income for those on both sides of the border.

But if we are serious about the drug threat—as we say we are—we must demand that the law enforcement functions of deterring contraband be made the highest mission of the United States Customs Service.

Mr. President, I ask unanimous consent that an article entitled "Drop in Drug Seizures Worries U.S. Customs" be printed in the RECORD.

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

[From the Los Angeles Times, Feb. 4, 1998]

DROP IN DRUG SEIZURES WORRIES U.S. CUSTOMS

(By H.G. Reza)

SAN DIEGO—The amount of cocaine seized at the commercial ports of entry along the U.S.-Mexico border plummeted 84% in 1997, forcing U.S. Customs Service officials to develop a new drug-fighting strategy and leaving them concerned about a backlash in Congress.

Bill Heffelsinger, assistant to acting customs Commissioner Samuel H. Banks, said Tuesday that inspectors working at the high-risk commercial ports on the Southwest border confiscated 2,383 pounds of cocaine last year, compared to 15,114 pounds in 1996.

Nationwide, the quantity of cocaine seized by the agency dropped 15% last year to 159,475 pounds, compared to 187,947 pounds in 1996, Heffelsinger added. The total number of seizures by customs agents and inspectors of all kinds of drugs was a record 26,240 nationwide last year, authorities said.

Acting Commissioner Banks, in an interview Tuesday, said the drop in cocaine seizures is worrisome. "You look at those numbers and you want to be your own worst critic," Banks said. "You're going to be asked questions on [Capitol] Hill, and we have to provide answers [for how to stop the flow of drugs]."

Rep. Ron Packard (R–Oceanside) said Tuesday he was disappointed by customs' failure to seize more cocaine at the commercial ports.

"Congress has directed almost every possible resource toward drug interdiction efforts, including more agents, better technology and several hundred million dollars in additional funding," said Packard. "These are not the results we expected. If interdiction is down, the American people deserve some answers."

Customs officials hope to find answers through Operation Brass Ring, a new nationwide drug interdiction strategy launched by the agency this week. Officials said the operation is part of a broader five-year program by the Office of National Drug Control Policy to reduce by 50% the amount of illegal drugs entering the country and, according to a news release, "was designed almost entirely in the field by . . . inspectors, investigators and union representatives."

Memos obtained by The Times show that the new strategy comes at a time of concern among customs union officials over possible political repercussions resulting from the drop in the amount of cocaine caught at the commercial ports.

A Nov. 28, 1997, National Treasury Employees Union memo noted that Congress had authorized $64 million in funding in 1997 for 657 new enforcement positions along the Southwest border as part of Operation Hard Line, the drug interdiction plan in effect at the time.

Hard Line was launched in 1995 after The Times reported that there had been virtually no cocaine seizures at the biggest commercial ports on the U.S.-Mexico border, where thousands of trucks cross daily.

The union memo predicted that "no doubt Congress will be highly upset with these [1997] figures . . . border drug interdiction is becoming a major political issue in Washington."

Another union memo on Dec. 22 said new "enforcement operations" were needed and urged inspectors to be flexible and imaginative in their approach to drug interdiction.

"The objective being to increase our seizures so customs and [the union] don't get their heads handed to them by the politicians in Washington when the budget meetings start in March," the memo said.

Robert Tobias, president of the employees union, said he would not apologize for the blunt talk in the memos.

"This was me doing my job as president to inform [members] what the stakes are," said Tobias. "There's nothing wrong with telling people that if you don't get off your duff you're in danger of losing your job. Brass Ring is a wake-up call to all of us involved in fighting drugs."

On Tuesday, Banks said he was pleased that the president's proposed customs operating budget for 1999, publicly announced Tuesday, was $1.8 billion, up from $1.7 billion in 1998. That budget must still be approved by Congress.

Banks said he was willing to publicly admit some of the agency's enforcement problems "so we can get the issue out there, even if it's critical to us."

"I'm willing to take it on the chin if necessary to get the message out, so we can focus on the drug problem," said Banks. "I want to get the message out to the American public so they can deal with it in the community and in schools."

Banks said Brass Ring will "dramatically increase drug seizures" at the 24 points of entry on the U.S.-Mexico border.

"The push for Brass Ring is to turn up the heat internally and get people focused. We're trying to get people focused. We're trying to put the heat on ourselves," Banks said.

A Nov. 28, 1997, report by the union said that "intelligence sources are reporting that 5 to 7 tons of illegal drugs are being smuggled from Mexico to the U.S. every day."

In the interview Tuesday, Banks said he does not dispute the union's figures.

Concern over the declining cocaine interdiction figures arose in September, when Banks reported in a memo to customs employees that he had met with Gen. Barry McCaffrey, head of the Office of National Drug Control Policy. The Sept. 18, 1997, memo said that "we were asked some tough questions about the effectiveness of our various operations, and we did not always have convincing answers."

Heffelsinger said the biggest problem in customs' interdiction plan had been its predictability.

In 1997, 3.5 million trucks and rail cars crossed into the United States from Mexico at the commercial ports along the border from Texas to California and about 30% were inspected for narcotics, customs officials said. An equal number of trucks and rail cars crossed in 1996, and 25% were inspected for drugs that year, they added.

However, "we aren't as unpredictable as we would like to be. The goal of Brass Ring is to get back to being unpredictable," Heffelsinger said.

Customs officials received a warning in June 1997 that portions of the agency's enforcement strategy at the ports had been compromised. A June 20, 1997, memo from Assistant Commissioner Robert S. Trotter to all Southwest border port directors warned that "traffickers have developed detailed knowledge and profiles of our port operations."

Trotter said that spotters, commonly used by drug rings to warn of enforcement activity at the ports, "have determined what cargo, conveyance or passengers we inspect, how many of those conveyances are checked on an average day, what lanes we work harder and what lanes are more accessible for smuggling."

Banks acknowledged that customs has still not learned how to defeat the spotters, who work in the open on the U.S. side at the gates to the commercial ports.

"There's no question that people are sitting at the ports, shepherding loads and acting as guides," said Banks. "We're trying to turn the tables on them and use them against themselves. Counter surveillance is part of [the Brass Ring strategy], but I can't say more."

Mrs. FEINSTEIN. I thank the President, and I yield the floor.

The PRESIDING OFFICER (Mr. BROWNBACK). The Senator's time has expired. Under a previous unanimous consent agreement, the Senator from West Virginia is recognized.

Mr. BYRD. Mr. President, I thank the Chair, and I, again, thank the distinguished senior Senator from California for her usual characteristic courtesy.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT OF 1997

Mr. BYRD. Mr. President, it is imperative that the Senate turn immediately to the consideration of the Intermodal Surface Transportation Efficiency Act of 1997. We now have less than 45 days remaining in which the Senate will be in session between today and May 1, 1998.

On May 1 of this year, our State highway departments throughout the land and our transit providers across the Nation will be forbidden by law from obligating any new Federal highway or transit funds. That is the drop-dead date. That is the deadline.

What will it mean to individual States when they no longer can move forward on a comprehensive highway construction program? What will it mean to your State? What will it mean to mine? What will it mean for our Nation's highway construction workers when they are thrown out of work, when that paycheck stops and when they have to struggle to put a meal on their family table?

What will it mean for our urban transit systems when they must cease progress on projects, projects that are needed to minimize congestion and to move our constituents to work, to schools, to places of worship, to child care centers, and back home?

It will mean disruption, deprivation, and, in cases where some construction projects need to go forward for the sake of safety, it will mean that accidents, injuries, and perhaps even death may be the result because of our delay—our inexcusable delay. There is no excuse for the delay.

On Monday of this week, the President sent his formal budget request for fiscal year 1999 to the Congress. That budget calls for the overall obligation ceiling for our Federal aid highway programs to be frozen. Now hear that! This is the President's budget, calling for the Federal aid highway program to be frozen for each of the next 6 years at the level enacted for FY 1998, namely, $21.5 billion.

The President ran for office the first time on a strong platform recommending more infrastructure in this country, more highways, safer bridges, but the President now is proposing an absolute freeze on highway spending for the next 5 years; never mind the tremendous unmet needs that exist across this Nation for bridge and highway construction, and for safety improvements; never mind a critical provision in the Taxpayer Relief Act of 1997, which is there by virtue of an amendment that was offered by my friend and colleague from Texas, Senator PHIL GRAMM; never mind that critical provision in the Taxpayer Relief Act of 1997, a bill that the President signed into law with much fanfare, and rightly so, last year.

That bill included a provision transferring the 4.3 cent gas tax—that had been used for deficit reduction since 1993—into the highway trust fund, so that it could not be used for other programs, instead of the highway program, but could be used to address these serious highway deficiencies. But even with this new source of revenue to the trust fund—roughly $7 billion per year—the President's budget now calls for the overall Federal obligation ceiling for highways to increase by how much? Not one copper cent! Not one penny; not one penny! Over the next 5 years, it is to be frozen.

Under the President's budget, the uncommitted balance of the highway trust fund will grow and grow and grow, like topsy. Based on estimates that I have received from the Congressional Budget Office, under the committee-reported bill, the unspent balance of the highway trust fund will grow from $25.7 billion at the end of this fiscal year to more than $71.8 billion at the close of the authorization period covered by the next ISTEA legislation.

At that time, therefore, there will be almost $72 billion that would just sit unspent in the highway trust fund; $72 billion paid by you out there, paid by you, the buyers of gasoline; $72 billion paid by our constituents—yours, I say to the distinguished Senator from California, and mine—paid by our constituents at the gas pump—money that will

be deposited into the highway trust fund but not used. Not used.

Under the President's budget, the trust fund balance would grow even larger, since his 5-year highway freeze is some $9.6 billion less than would even be authorized in the committee-reported bill which we debated on this Senate floor for about 21 days last fall.

I do not believe that a majority of this body supports the notion that highway spending should be frozen for the next 5 years, while the unspent balance in the highway trust fund rises by roughly 300 percent over the next 6 years. I am confident that a majority of this body does not support that idea.

I do believe, however, that it is incumbent for this Senate to take up the highway bill, to take it up immediately and to make it clear that we do not support the President's proposal for a 5-year freeze on highway spending.

Let the President hear that message, loud and clear. We do not support a 5-year freeze on highway spending, nor do the American people support that. I am confident they don't.

The financial needs of our national highway network vastly exceed our current levels of expenditure. If we freeze highway spending for the next 5 years, the gap between what will be needed just to maintain the present inadequate conditions of our Nation's highways, on the one hand, and what we will be able to spend, that gap is going to grow wider and wider and wider, and we will fall farther and farther behind.

Yet, Mr. President, the Department of Transportation has stated that our Nation would be required to spend an extra $15 billion each year above current spending levels just to maintain the current conditions of our Nation's highways. We would have to boost spending on highways by more than $15 billion a year to make the least bit of improvement overall in the condition of our Nation's highways. Now, that is what the U.S. Department of Transportation is telling us.

And what are the current conditions of our Nation's highways? At present, only 39 percent of our National Highway System is rated in good condition. That is not what Senator BYRD is saying, that is what Senator BYRD says that the U.S. Department of Transportation says. Fully 61 percent of our Nation's highways are rated in either fair or poor condition.

For our 42,794 mile interstate system, the crown jewel of our National Highway System, one-half of the mileage is rated in fair or poor condition. These figures only worsen when one looks at our other major and Federal State highways. In our urban areas, 65 percent of our noninterstate highway mileage is rated in fair or poor condition.

There are over a quarter of a billion miles of pavement in the United States that is in poor or mediocre condition. This is what the U.S. Department of Transportation tells us. There are almost 95,000 bridges in our country that have been classified as deficient, and within that total, roughly 44,000 bridges have been deemed to be structurally deficient, meaning that they need significant maintenance, rehabilitation or replacement.

Many of these bridges require load posting, requiring heavier trucks to take longer alternate routes. That affects our efficiency, our productivity and our overall economy. And an additional 51,000 bridges have been deemed to be functionally deficient, meaning that they do not have the lane width, shoulder width or vertical clearances sufficient to serve the traffic demand. The condition of our highway system is fast becoming a national disgrace.

As I said, Mr. President, to make any improvements at all in these conditions, to keep these conditions from worsening further, we would have to boost spending in our highways, according to the U.S. Department of Transportation, by more than $15 billion annually.

With that backdrop, it defies sanity that the administration wants to freeze highway spending over the next 5 years. Every driving American pays gas taxes. We have told them that that money would go toward increased highway investments. What will we tell them now? Mr. President, this Senate needs to take an immediate step to call up the highway bill and to tell the traveling public that we do not support freezing highway spending for the next 6 years.

Why wait until May 1, when our States will be prohibited from obligating any Federal funds on highway or transit projects? We should call up the highway bill and make it clear to America that we meant what we said when we voted to transfer the 4.3 cents gas tax from deficit reduction to the highway trust fund. An overwhelming majority of the Senate supported that transfer. The administration may have frozen the transportation budget, but this Senate does not have to freeze in a stupor of suspended animation while we watch our States careen toward a certain brick wall. There are only 45 days left. Now is the time—now is the time—to take the next step by moving to the highway bill.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator from West Virginia controls 6 minutes.

Mr. BYRD. I ask unanimous consent that I may reserve that time.

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

Mr. CHAFEE addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

Mr. CHAFEE. Mr. President, I ask unanimous consent that I have 20 minutes, and then at the conclusion, following the time reserved for the Senator from West Virginia, that Senator BOND be recognized to proceed with the measure that was originally planned.

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

Mr. CHAFEE. Mr. President, last Monday several Senators came to the floor to express their concern because the Senate has failed to pass a reauthorization of the Nation's surface transportation programs. Senator BYRD was on the floor again Tuesday and indeed has been on the floor today, Thursday, on this same subject. As Senators and the American people listen to these expressions of concern, I hope they will keep the bigger picture in mind.

First, why hasn't the Senate passed an ISTEA II bill that would reauthorize our highway and transit programs? Well, it isn't for lack of trying, Mr. President. That bill was before the Senate for a period of more than 2 weeks at the close of the session last year. But Senate consideration of the bill was blocked by a filibuster, a filibuster that was supported by some of the very Senators who now complain about lack of action.

The majority leader filed four—not one, not two, not three, but four—cloture petitions to force action on the bill. I voted for cloture each and every time. Almost all the Members on this side of the aisle voted for cloture each and every time. But on the other side of the aisle we did not get much support for acting on ISTEA; in fact, we did not get any support. Considering that, Senators who now come to the floor demanding action on this bill used the procedural rules of the Senate to block action just a few short weeks ago. They voted to block ISTEA four times, as I say. Not once, not twice, not three, but four times they blocked action on proceeding to ISTEA.

On four separate occasions, when these Senators could have used their power as voting Members of this body to help the majority leader move this vital legislation forward, they voted no. They would not help. If they believe ISTEA is a vital bill, why didn't they help? With their help we could have completed Senate action last year.

Last Monday, one Senator even said that Congress is "derelict in its duty" because it has not acted on the ISTEA reauthorization. Now, "derelict in its duty" is a pretty strong statement. Well, who is it that has been derelict? It has not been the majority leader. He forced four cloture votes on this bill. I did everything I could to move the bill forward. I was ready then. I am ready now.

If dereliction of duty is a fair charge, I suppose it is a charge most appropriately aimed at those Senators who voted against cloture on this bill four

separate times. There is a record. Anyone can look up and see who those Senators were.

Now, my second point goes to the schedule for completing action on ISTEA. The Senators who spoke Monday and Tuesday were talking as if Senate action is all that is needed to wrap this matter up now. They went on at great length about how the States need early Senate action so the States can plan for the coming construction season. These Senators expressed great frustration on behalf of the States because any further delay will greatly complicate the work of the States.

Well, I am sympathetic to the plight of our State transportation departments because this bill has been delayed. I wish we were at the end of the day and the States had the bottom-line allotments they need for their planning, but as everybody knows, Senate action on this bill is only a very small step in a long traveling process.

The House has to do a bill. That bill is likely to be very different from the Senate bill so, therefore, we have to resolve the differences in conference and then bring the bill back for passage in the respective bodies. Any State that did any planning based solely on a Senate-passed bill would be making a great mistake. Frankly, they cannot make any plans until the entire process is completed.

Now, everyone knows that the House has made a very firm decision to postpone action on this transportation legislation, so-called ISTEA reauthorization, until the budget resolution for fiscal year 1999 is completed. That is a fact. The House has said that. Even if we passed ISTEA II in the Senate this afternoon, we would not speed up the process one iota. Even if we passed it last year when some of us were here on the floor ready to take action we would still be forced to wait for the House to complete its work.

As I look at the calendar, the House is making the task facing the States more difficult. But we cannot change the calendar by voting on this bill today on the floor of the Senate.

So what is really going on here, Mr. President? Why would Senators who voted to block action on this bill just a few weeks ago now come to the floor demanding action today? Why would Senators who know that we have to wait for the budget resolution to be completed before the House will act speak as if the Senate is "dithering and dallying and delaying" on this bill?

The real issue, Mr. President, is how much money are we going to spend on the highway program. That is the real question. The Senators who are clamoring for action now are the sponsors of a big amendment to dramatically increase Federal highway spending. They want the bill to come up now because they want their amendment for highway spending to be considered now in a budgetary vacuum with no other priorities competing for the dollars they would like to spend on highways.

A week ago, the President of the United States delivered his State of the Union Address. Perhaps the most memorable line in that speech was his call to use any future budget surpluses for "Social Security First."

If there is a surplus—and at this point everybody should keep in mind it is a projected surplus; the dollars have not actually come in yet—the President said Congress should not spend the money and Congress should not cut taxes; rather, we should use the surplus to shore up the Social Security system so that it can go on meeting the retirement needs of all Americans well into the next century.

Those Senators who are calling for action on the highway bill now are not exactly in the President's camp when it comes to Social Security first. They might be called the "Highway First" crowd. They want the Senate to take up the highway bill so that they can put a big proportion of the potential surplus into more highway spending before anybody else, including Social Security, can lay claim to that projected budget surplus.

"Highways First," that is their motto. I must say, I find their arguments astonishing, especially when they are expressed by the Senator from Texas. It comes down to this. "The Government has a surplus. We must spend the surplus. To do otherwise would break a solemn oath we made to the American people."

Now, the surplus that the Senator from Texas most frequently mentions in the context of the highway bill is one that will result because of action taken last year to put the revenue from the 4.3-cent gasoline tax imposed in 1993, that was passed to reduce the deficit—and the vote, as has been pointed out today, was to transfer that—into the highway trust fund.

In 1993, when the Democratic Party still controlled the Congress, gasoline taxes were increased by 4.3 cents per gallon with the revenue going to the general fund to reduce the deficit. The Senate Republicans all voted against that tax increase in 1993. But last year, with the Republicans in charge, the revenue from that tax increase was transferred into the highway trust fund from the deficit reduction area where it was before. And now we are asked to spend it.

Now, the notion—this is something I really want to stress —the notion that anybody promised the American people to spend that 4.3 cents on highway construction is preposterous. It is just the opposite. The American people were promised that that 4.3-cent increase would be used to bring down the deficit, not to increase spending programs.

Now that the deficit is under control, the Senator from Texas has led the charge to transfer the revenue from that tax to the highway trust fund. As a result, the highway trust fund is projected to run a big surplus in the future. And without even a blush, the Senator from Texas says we are bound by a solemn commitment to prevent that surplus. Pour it into highway spending whether it is needed or not—tax and spend. Never was there a more open and shut case of the "tax and spend" fever.

The clamor we have heard over the past few days to do ISTEA now is all about spending the surplus. And who is going to be first at the trough? It is not about dereliction of duty. Senators who voted four times to block the bill just a few weeks ago are in no position now to suggest that the Senate is shirking its duty.

And it is not about when this bill will ultimately be concluded. I wish it were done already. It is a burden, as anybody knows. No one knows better than some of the Senators on the floor today what it is like to manage a complicated, contentious piece of legislation such as the surface transportation legislation.

I wish that we could have accelerated the schedule by acting here in the Senate today. Unfortunately, we are not in control of the calendar. The House has decided, as I said before, to wait until the budget resolution has been completed.

What these Senators really want for the Senate is to vote on their amendment to spend more on highways before any other priorities can make a claim on this potential surplus. "Highways First," as I say, is their motto.

I know there are many Members of this body who believe we should spend more on highways, maybe not "Highways First," not take it all, but some more. For those Senators, I would make three quick points.

First, the bill reported by the committee—the committee I am chairman of that brought the bill to the floor—dramatically increases highway spending. It is up over 20 percent over ISTEA I. It is up $25 billion over the 6-year period. In the context of the balanced budget amendment reached last year, that essentially freezes discretionary spending over the next 5 years. And here is a program that gets a 20 percent increase. Thus, no one can argue that we did not do very well in connection with this piece of legislation.

As a second point, if Senators believe that even more is needed, they will have the opportunity to make that case when the Senate considers the budget resolution in March. The committee-reported bill tracks the spending levels given to us in the budget resolution last year. We have followed our instructions in and abided by the budget that this Senate adopted, and the ink is hardly dry on it. It was only signed by the President I believe in

July. If the Senate changes course and wants to increase spending in the budget resolution for next year, then I would assume an amendment to ISTEA II to carry out that instruction would be adopted.

Third, Senators should be careful about the sequence of these decisions. I believe that many Senators have signed on to the so-called Byrd-Gramm amendment without fully understanding all the subtleties. It does authorize massive amounts of additional spending, but it also restructures who has first claim to the funds that are actually appropriated.

The Byrd-Gramm amendment increases the share of the pie going to 13 Appalachian Regional Commission States and to a trade corridor program that would benefit a few States, such as Texas. Their portion of the pie gets bigger. But if the pie itself does not grow because there is no room in the budget for larger appropriations, the net effect will be that all the other States will go down. In other words, they are locked in at this increased amount for the Appalachian Regional Commission States and this corridor dealing with the so-called NAFTA demands. That is locked in under the proposal that they have. And if we do not increase the overall spending, then theirs stays up there and it comes out of the portion allocated to all the other States.

A Senator voting for Byrd-Gramm now because he or she wants to increase highway spending authorization could actually cause his or her State to lose highway dollars if subsequent budget decisions do not provide for increased highway appropriations. So I urge everyone to be cautious on this matter.

All these considerations have persuaded me that the wisest course is the one that Senator DOMENICI, chairman of the Budget Committee, has urged. Let's make the spending decisions in the context of the entire budget. I'm ready to go with ISTEA II now. I am more committed to getting ISTEA done than any other Member of this body. I want it completed, but I am willing to stand down for the time being because I believe the Senate will make better public policy if it considers highway spending in the context of the entire budget rather than in the vacuum of these early days of the session, as the highways first group has been urging.

I thank the Chair.

Mr. BYRD. Well, Mr. President, at last we have smoked him out. I have been speaking on this floor urging that the leadership bring up the highway bill. So we are having a good debate today. That is what we have been needing all along. The debate is just starting.

I'm glad that my friend has come out of the bushes. Let's debate this matter, but let's debate it with the bill before the Senate.

Mr. CHAFEE. Could I ask the Senator a question?

Mr. BYRD. Without it being charged as my time.

Mr. CHAFEE. How did the Senator vote on the cloture motion when we tried to move to this bill in October, late September, October?

Mr. BYRD. Mr. President, the Senator thinks he has me over a barrel. I voted against cloture. I make no bones about that.

But why finger point at that bill? Finger pointing isn't going to resolve the problems that are going to confront our highway departments and our Governors and our mayors throughout this country. That is not going to do any good, Senator.

Yes, I voted against cloture. I would like to see a campaign finance reform bill, but I would also like to see a highway bill. So forget what happened back there on cloture.

Lot's wife looked back and she turned to salt. Let's don't look back. Let's keep our promise, the promise that was made to bring up this highway bill. I didn't make that promise. The leadership of the Senate made that promise.

This is not a partisan matter, Mr. President. Republicans and Democrats buy gas at the gas station. Republicans and Democrats pay a gas tax. Republicans and Democrats use the highways of this country and the transit systems. Republicans and Democrats are injured and die when safety conditions get to the point where accidents occur. So this is not a partisan matter.

I know that the Senator from Rhode Island is against that amendment. He has been all along. He was against it when the bill was up last fall. That is a given. There is no surprise in that. But, Mr. President, the promise was made to bring up the highway bill.

Now, I have been around this Senate a long time, and this is the first time I have heard that the House controls the Senate calendar. I don't believe that, and I have reason to believe that if the Senate will act, the House might change its mind. Why should the House control the calendar here? The highway needs are out there. The Senator knows that. They exist in his own State. They exist in my State. They exist in every State in this country.

The highway departments and the Governors and the mayors don't know how to plan their budgets for this year because they don't know what Federal resources they can count on and they can't do long-term planning. When we talk about highways, those plans have to be long term.

I say to the Senator, why not have a bill up now? Let's debate it, but let's debate while we are on the bill. That is the promise that was made. I didn't make that promise. I'm not attacking any Senator personally. I am urging the Senate leadership to take up the bill. Why not have the bill before the Senate? Now, if we take up the bill, the House will surely move, I would think. The pressure will be on them. We can't base our actions on what the House might do.

The House schedule doesn't change the May 1 deadline, Senator. The May 1 deadline is only 45 days away, and the House schedule won't change that. That is approaching. Every day that we waste here, sitting on our hands talking about other matters, some of which are important, some of which are not—I pointed out just the other day that we wasted over 3 hours in one day in recesses and in quorum calls. We could be debating this bill, my friend. I hope that the Senator will join us in urging the leadership to bring this bill up. I would like to hear the Senator on the floor every day. I would like to hear his voice rising, up sometimes, up and down. I hope he will join us because I would like to be here with him. I would like to be debating the highway bill.

We have had a series of broken promises. Congress acted to shift the 4.3-cent gas tax to the highway trust funds. The people have been told, regardless of what the Senator says, the people have the understanding that that money is going to be spent on surface transportation programs. So we promised that, and then we promised to take up the highway bill. What about the highway needs? How can we ignore those needs when we have huge, unspent balances in the trust fund?

Mr. President, I just called my highway department this morning, and according to the West Virginia State Highway Commissioner, if ISTEA is postponed beyond the May 1 date, 75 highway projects, including about 20 bridges in West Virginia, will have to be delayed. This story can be told all over this country. Senator, you will hear it. You will hear it. I say that with the utmost respect. The Senator from Rhode Island is going to hear it.

Mr. President, do I have any time left?

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. BYRD. I thank the distinguished Senator.

The PRESIDING OFFICER. The Senator from Rhode Island has 5 minutes.

Mr. BYRD. He is my friend and I respect him highly, always have and will continue to do so.

Mr. CHAFEE. Mr. President, I want to say there is nobody I enjoy dueling with more on this floor than the Senator from West Virginia. We have been against each other on some rare issues. We have been together on many issues.

Mr. BYRD. I like it much better when we are together.

Mr. CHAFEE. As I listened to what he said, Mr. President, it brought to mind that old song, "Will you love me

in November as you did in June?" And I say to the Senator, why didn't he love this bill in October as he does in February?

Mr. BYRD. Mr. President, I loved it. I loved it then.

Mr. CHAFEE. We had not one, we had not two, we had not three, we had four votes, Mr. President——

Mr. BYRD. Mr. President, I loved it.

Mr. CHAFEE. To try to move this bill that the Senator from West Virginia is embracing now.

His arms are around ISTEA II——

Mr. BYRD. Tell me now.

Mr. CHAFEE. With affection. Where was he when we needed him?

Mr. BYRD. I wanted to offer my amendment, but the amendment tree was filled.

Mr. CHAFEE. And we have those votes, and I looked; where is a vote—we are voting aye.

Mr. BYRD. I didn't see the Senator looking for me.

Mr. CHAFEE. I sought him, but I couldn't find him——

The PRESIDING OFFICER. We will have order.

Mr. CHAFEE. And I went away distressed.

So now we will have an opportunity in this bill, as the majority leader has made it clear the way we will proceed, and I look forward, as we get into this, that he will support a bill that will accomplish the goals of the Nation in the context of all the other demands that are placed upon the budget of the United States.

I will conclude by stressing once again that we have an increase in this bill this year, ISTEA II, over the past, of 20 percent when the other discretionary accounts are frozen. In other words, the nondefense items and the nonentitlement items are all frozen—whether you are talking Head Start, school lunches, the school programs, the health programs; they are frozen—and we get a 20 percent increase, which is pretty good, for this program.

I thank the Chair.

Mr. BOND addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BYRD. Will the Senator from Missouri yield?

Mr. BOND. For a brief comment?

Mr. BYRD. For a brief comment.

Mr. BOND. I am happy to yield.

Mr. BYRD. I want to thank the distinguished Senator from Missouri for his patience in listening to this discussion that has been going on. He is going to manage a bill, but he has been very patient, and I think we imposed on him. I just wanted to apologize and thank him.

Mr. CHAFEE. I also thank the distinguished Senator from Missouri because he let us proceed. He was to go at 11:30. We thank him very much for his time.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. BOND. Mr. President, I have to say that it is very enlightening to listen to my two distinguished colleagues debate this very important matter. Were it not for the schedule of the Senate, I far prefer to be enlightened and edified by these two great leaders of our time. Unfortunately, I believe the time has come for us to move on with other business.

HUMAN CLONING PROHIBITION ACT—MOTION TO PROCEED

Mr. BOND. Mr. President, I ask unanimous consent that the Senate now turn to the consideration of Calendar No. 304, S. 1601, regarding human cloning.

The PRESIDING OFFICER. Is there objection?

Mrs. FEINSTEIN. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. BOND. In light of the objection from the other side of the aisle, I now move to proceed to S. 1601.

The PRESIDING OFFICER. Is there debate on the motion?

Mrs. FEINSTEIN. Mr. President, I wish to debate the motion.

The PRESIDING OFFICER. The Senator from California may proceed.

Mrs. FEINSTEIN. Mr. President, this is a rush to judgment on one of the most fundamental issues of the 20th century. Mr. President, this is not renaming National Airport Ronald Reagan Airport.

Mr. President, I submit respectfully to the distinguished Senators on the other side of the aisle that this is a major debate that has scientific implications, moral implications and ethical implications. It is a debate, also, that involves one of the most difficult areas of science involving human genetics, with a vocabulary and a lexicon that is not understood by the great bulk of the American people and certainly not by many of us in the U.S. Senate.

Both the Bond-Frist bill and the Feinstein-Kennedy bill dealing with the subject of human cloning were introduced less than 48 hours ago—48 hours. No hearings have been held on either bill, no floor debate has been held on either bill. The medical community, the research community, patients with currently incurable diseases whose cure we might affect by both of these bills have barely read the bills, much less analyzed them.

As a matter of fact, the letters are now beginning to pour in. I ask unanimous consent to have printed in the RECORD a 9-page statement of the Biotechnology Industry Organization regarding legislation introduced to ban human cloning and a letter to Senator MACK from the American Association for Cancer Research.

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

STATEMENT OF THE BIOTECHNOLOGY INDUSTRY ORGANIZATION REGARDING LEGISLATION INTRODUCED TO BAN HUMAN CLONING

The Biotechnology Industry Organization (BIO) believes that it is both unsafe and unethical to even attempt to clone a human being. BIO strongly supported the review of this issue by the National Bioethics Advisory Commission (NBAC) and the moratorium on cloning imposed by President Clinton. We believe that the FDA has clear authority and jurisdiction and will, as they have stated, prohibit any attempt to clone a human being.

BIO is concerned about the scope and impact of legislation introduced to make it a crime with a ten year prison sentence to conduct biomedical research which may or may not have any relevance to the cloning of a human being. We are very concerned about the rushed process to pass legislation on this complex subject and the possibilities for unintended consequences. The scientific and legal issues with respect to any legislation regarding biomedical research are exceedingly technical, and a hastily drafted bill could advertently and inadvertently damage biomedical research on deadly and disabling diseases.

The Senate needs to adhere to the standard for doctors, "first, do no harm." Biomedical research into deadly and disabling diseases is far too important to rush to enact legislation which would unequivocally undermine promising research and therapies. The Senate should be extremely cautious before it starts sending scientists to jail when the purpose of their research meets the highest moral and ethical standards and holds such promise for relieving human suffering.

ANALYSIS OF PENDING BILLS AND THE SCIENCE AT RISK

Several bills have been introduced in the Senate regarding human cloning. They vary widely in focus and precision. The three principal bills are S. 368, S. 1599, and S. 1602 and we have analyzed each of them here.

The first bill introduced by Senator Bond last year, S. 368, is one of the better drafted bills introduced in either body. It uses reasonably accurate terms to describe the applicable science and limits Federal funding for the cloning of a human being.

The new bill introduced by Senator Bond, S. 1599, would impose a ten year prison sentence for any individual for the act of "producing an embryo (including a preimplantation embryo)" through the use of a specified technology, "somatic cell nuclear transfer," even if the production of such an embryo is for purposes unrelated to the cloning of a human being and even if the embryo does not contain nuclear DNA which is identical to that of an existing or previously existing human being (cloning). The bill goes beyond the issue of cloning to make it a crime to use somatic cell nuclear transfer of a nucleus derived from normal sexual union of an egg and sperm, which is obviously not cloning. It would also make it a crime to conduct some research seeking to generate stem cells to treat a wide range of deadly and disabling diseases, treatments which have nothing whatever to do with human cloning.[1]

The third bill, introduced by Senator Feinstein, S. 1602, would impose heavy civil fines for any entity that would "implant or attempt to implant the product of somatic cell nuclear transfer into a woman's uterus . . ."

[1] An identical bill has been introduced by Senator Lott as S. 1601 and this may be the bill which is called up for the Senate debate.

This sharply focuses the bill on an attempt to clone a human being and would not imperil biomedical research.

IMPACT OF BILLS ON STEM CELL RESEARCH

The current bill introduced by Senator Bond would, because it goes well beyond the issue of human cloning, imperil promising biomedical research, including research to generate stem cells. Instead of focusing on cloning, it makes it a crime to zygote or embryo through the use of a new technology, somatic cell nuclear transfer, even if the use of this technology is essential for the generation of stem cells to treat disease and where there is no intention or attempts through use of this technology to clone a human being. Basically the current bill would make it a crime to conduct research if it could possibly be related to the cloning of a human being even if it is not, in fact, conducted for that purpose.

This approach in S. 1599 goes beyond the issue of human cloning and would outlaw some research to create stem cells, including stem cells for the following types of treatments: cardiac muscle cells to treat heart attack victims and degenerative heart disease; skin cells to treat burn victims; spinal cord neuron cells for treatment of spinal cord trauma and paralysis; neural cells for treating those suffering from neurodegenerative diseases; pancreas cells to treat diabetes; blood cells to treat cancer anemia, and immunodeficiencies; neural cells to treat Parkinson's, Huntington's and Amyotrophic Lateral Sclerosis (ALS); cells for use in genetic therapy to treat 5,000 genetic diseases, including Cystic Fibrosis, Tay-Sachs Disease, schizophrenia, depression, and other diseases; blood vessel endothelial cells for treating atherosclerosis; liver cells for liver diseases including hepatitis and cirrhosis; cartilage cells for treating of osteoarthritis; bone cells for treatment of osteoporosis; myoblast cells for the treatment of Muscular Dystrophy; respiratory epithelial cells for the treatment of Cystic Fibrosis and lung cancer; adrenal cortex cells for the treatment of Addison's disease; retinal pigment epithelial cells for age-related macular degeneration; modified cells for treatment of various genetic diseases; and other cells for use in the diagnosis, treatment and prevention of other deadly or disabling diseases or other medical conditions.

To be precise, the current bill introduced by Senator Bond, S. 1599, would make it a crime to generate stem cells, for the above uses, where somatic cell nuclear transfer technology is used. It would not ban stem cell research where the stem cell is generated without the use of somatic cell nuclear transfer. It is not possible to say how much of this promising research will or might involve the use of somatic cell nuclear transfer. As described below, the bill would clearly ban the generation of any stem cells "customized" to an individual where somatic cell nuclear transfer must be used.

This stem cell technology is exciting and potentially revolutionary. Scientists are developing a new approach for treating human diseases that doesn't depend on drugs like antibiotics, but on living cells that can differentiate into blood, skin, heart, or brain cells and can potentially treat various cancers, spinal cord injuries, and heart disease. For example, this stem cell research has the potential to develop and improve cancer treatments by gaining a more complete understanding of cell division and growth and the process of metastasis. This could also lead to a variety of cancer treatment advances.

The type of cells that make up most of the human body are differentiated, meaning that they have already achieved some sort of specialized function such as blood, skin, heart or brain cells. The precursor cells that led to differentiated cells come from an embryo. The cells are called stem cells because functions stem from them like the growth of a plant. Stem cells have the capacity for self-renewal, meaning that they can reproduce more of themselves, and differentiation, meaning that they can specialize into a variety of cell types with different functions. In the last decade, scientists studying mice and other laboratory animals have discovered new powerful approaches involving cultured stem cells. Studies of these cells obtained from a mouse's stem cells show they are capable of differentiating, in vitro or in vivo into a wide variety of specialized cell types. Stem cells have been derived by culturing cells of non-human primates. Promising efforts to obtain human stem cells have also recently been reported.

Stem cell research has been hailed as the "[most] tantalizing of all" research in this field, because adults do not have many stem cells. Most adult cells are fully differentiated into their proper functions. When differentiated cells are damaged, such as damage to cardiac muscle from a heart attack, the adult cells do not have the ability to regenerate. If stem cells could be derived from human sources and induced to differentiate in vitro, they could potentially be used for transplantation and tissue repair.

Using heart attacks as an example, we might be able to replace damaged cardiac cells, with healthy stem cells, that could differentiate into cardiac muscle. Research using these stem cells could lead to the development of "universal donor cells," and could be an invaluable benefit to patients. Stem cell therapy could also make it possible to store tissue reserves that would give health care providers a new and virtually endless supply of the cells listed above. The use of stem cells to create these therapies would lead to great medical advances. We have to be sure that this legislation concerning human cloning would not in any way obstruct this vital research.

BOND BILL APPLICATION TO NON-IDENTICAL NUCLEUS

The purpose of a bill to ban human cloning is supposedly to ban the cloning of an individual and the essence of this is the duplication of the DNA of one individual in another. The term "somatic cell," however, is not limited in the current Bond bill to somatic cells with DNA which is the same as that of an existing or previously existing human being. If it is not limited to cases where the DNA is identical, human cloning is—by definition—not involved.

The current Bond bill goes beyond cloning because it does not define the term "somatic cell" or limit to cases where the DNA is identical. It only defines the term "somatic cell nuclear transfer," but it does not define the term "somatic cell." We need a brief glossary of terms to define what constitutes a "somatic cell."

"Zygote" means a single celled egg with two sets (a diploid set) of chromosomes as normally derived by fertilization;

"Egg" and "oocyte" mean the female gamete;

"Gamete" means a mature male or female reproductive cell with one set (a haploid) set of chromosomes;

"Sperm" means the male gamete;

"Somatic cell" means a cell of the body, other than a cell that is a gamete, having two sets (a diploid set) of chromosomes.

So a "somatic cell" is any cell of the body other than a gamete, and it includes a fertilized egg. This means that the current Bond bill would make it a crime to use somatic cell nuclear transfer even in cases where the somatic cell contains a nucleus derived from sexual reproduction, which is obviously not cloning. This means that even though the nucleus is not a clone, the current Bond bill makes it a Federal crime to create it. This means that the current Bond bill goes beyond the issue of cloning.

Because of this coverage of all "somatic cells" the current Bond bill would make it a crime for doctors to use a currently effective treatment for mitochondrial disease. In this treatment women who have the disease have an extreme and tragic form of infertility. The disease is a disease of the mitochondria, which is an essential element of any egg. The treatment for this disease involves the use of a fertilized nucleus which is transferred through the use of somatic cell nuclear transfer to an egg from which the nucleus has been removed. The new egg is a fresh, undiseased egg. The current Bond bill would make a crime to provide this treatment even though the nucleus which is transferred is the product of fertilization, no cloning.

CUSTOMIZED STEM CELLS

If the current Bond bill was limited to sometic cells with nuclear DNA identical to that of an existing or previously existing human being, i.e., to a cloned nucleus, it would make it a Federal crime to conduct one especially promising type of stem cell research, into generating "customized" stem cells.

A researcher or doctor might want to create a human zygote with DNA identical to that of an existing or previously existing person through the use of somatic cell nuclear transfer, the act prohibited in the bill, in order to create a customized stem cell line to treat the individual from whom the DNA was extracted. By using the same DNA, the stem cell therapy would more likely to compatible with, and not be rejected by, the person for whom the therapy is created. By starting with the patient's own nuclear DNA, the therapy is, in effect, custom made for that person. It is like taking the patients blood prior to surgery so that it can be infused into the patient during surgery (avoiding the possibility of contamination by the use of blood of another person).

Because the current Bond bill makes it a crime to use the technology—somatic cell nuclear transfer—it would make it a crime to develop a therapy with the equivalent of the patient's personal monogram on it a customized treatment based on their own nuclear DNA.

Because the bill introduced by Senator Feinstein requires the implantation of an embryo, it does not curtail stem cell research, and the bill provides that the transfer nucleus must be that of an "existing or previously existing human child or adult," precisely the limitation not present in the current Bond bill. None of the issues we have raised regarding the current Bond bill apply to the Feinstein bill, which is narrowly focuses on the act of cloning, or attempting to clone an individual.

PROTECTING BIOMEDICAL RESEARCH

The current Bond bill and the Feinstein bill both contain clauses for the protection of biomedical research. There is a critical difference between them.

At the press conference announcing introduction of his bill Senator Bond distributed

a document entitled "Current Research Untouched by the Bond/Frist/Gregg Legislation." The title of this document was followed by a list of such research, including "In Vitro Fertilization," "Stem Cell Research," "Gene Therapy," "Cloning of Cells, Tissues, Animals and Plants," "Cancer," "Diabetes," "Birth Defects," "Arthritis," "Organ Failure," "Genetic Disease," "Severe Skin Burns," "Multiple Sclerosis," "Muscular Dystrophy," "Spinal Cord Injuries," "Alzheimer's Disease," "Parkinson's Disease, and "Lou Gehrig's Disease". Unfortunately, the title is followed by a critical qualification, an asterisk. The asterisk qualification states, "The current Bond bill would not prohibit any of this research, even embryo research, as long as it did not involve the use of a very specific technique (somatic cell nuclear transfer) to create a live cloned human embryo."

In the ways described above this asterisk qualification acknowledges that the bill would, in fact, make it a crime to conduct some types of stem cell research and other research. Given the importance of the asterisk, the document's title the list of supposedly protected research could be considered misleading. The document should more accurately have been entitled "Only Some Research Regarding the Following Diseases is Outlawed."

The current Bond bill contains a Section 5 entitled "Unrestricted Scientific Research." This section provides that "Nothing in this Act (or an amendment made by this Act shall be construed to restrict areas of scientific research that are not specifically prohibited by this Act (or amendments)." This provision is circular. It states that the bill does what it does and does not do what it does not do. The provision does nothing to modify the prohibitions on research and does nothing to protect "scientific research."

In contrast the Feinstein bill includes a provision regarding "Protected Research and Practices" which provides that "Nothing in this section shall be construed to restrict areas of biomedical and agriculture research or practices not expressly prohibited in this section, including research or practices that involve the use of—(1) somatic cell nuclear transfer or other cloning technologies to clone molecules, DNA, cells, and tissues; (2) mitochondrial, cytoplasmic or gene therapy; or (3) somatic cell nuclear transfer techniques to create nonhuman animals." This is a "savings" clause with meaning and content. Its reference to the cloning of "cells" and to "mitrochondrial" therapy are laudatory and meaningful.

NBAC RECOMMENDATION AND CLINTON ADMINISTRATION BILL

The National Bioethics Advisory Commission (NBAC) cautioned that poorly crafted legislation to ban human cloning may put at risk biomedical research on the following types of diseases and conditions: "Regeneration and repair of diseased or damaged human tissues and organs" (NBAC report at 29); "assisted reproduction" (NBAC report at 29); "leukemia, liver failure, heart and kidney disease" (NBAC report at 30); and "bone marrow stem cells, liver cells, or pancreatic beta-cells (which product insulin) for transplantation" (NBAC report at 30). The Clinton Administration proposed law, like the Feinstein bill, avoids the peril identified by NBAC and focuses only on the issue of human cloning and does not imperil biomedical research.

SUNSET AND PREEMPTION

NBAC proposed that any law include both sunset review and preemption provisions.

Regarding a sunset review provision, NBAC stated in its report: "It is notoriously difficult to draft legislation at any particular moment that can serve to both exploit and govern the rapid and unpredictable advances of science. Some mechanism, therefore, such as a sunset provision, is absolutely needed to ensure an opportunity to re-examine any judgment made today about the implications of somatic cell nuclear transfer cloning of human beings. As scientific information accumulates and public discussion continues, a new judgment may develop and we, as a society, need to retain the flexibility to adjust our course in this manner. A sunset provision . . . ensures that the question of cloning will be revisited by the legislature in the future, when scientific and medical questions have been clarified, possible uses have been identified, and public discussion of the deeper moral concerns about this practice have matured." NBAC report at 101.

President Clinton has proposed a five year sunset in his bill. The Feinstein bill includes a ten year sunset and the current Bond bill includes no sunset review.

BIO supports inclusion of a sunset review provision, but the most important issue is whether the terms of the prohibition in any law focuses only on the issue of human cloning. A sunset review provision will not undo the damaged which a poorly crafted, over broad law would do to biomedical research prior to the sunset date.

The Feinstein bill, but not the current Bond bill, includes a clause which preempts inconsistent state laws. NBAC strongly supported a preemption of state laws: "The advantage to federal legislation—as opposed to state-by-state laws—lies primarily in its comprehensive coverage and clarity. . . . Besides ensuring interstate uniformity, a federal law would relieve the need to rely on the cooperation of diverse medical and scientific societies, or the actions of diverse IRBs, to achieve the policy objective. As an additional benefit, federal legislation could displace the varied state legislative efforts now ongoing, some of which suffer from ambiguous drafting that could inadvertently prohibit the important cellular and molecular cloning research described . . . in this report." NBAC report at 100.

Numerous bills introduced in state legislatures, some of which are very poorly crafted and over broad.

BIO supports inclusion of a preemption clause. Again, the key issue is whether the prohibition in any law focuses only on the issue of human cloning and does not imperil biomedical research. A poorly drafted, over broad Federal law which preempts state laws might do even more damage.

NBAC ROLE AND COMMISSION

NBAC performed a public service with its quick and thoughtful analysis of the human cloning issue. The current Bond bill would set up an entirely new body to review the human cloning issue rather than rerefer the issue back to NBAC for further review. NBAC is well qualified and positioned to perform this function and it may be wasteful and expensive to establish another body to perform this ongoing review. The Feinstein bill calls on NBAC to conduct the reviews.

AMERICAN ASSOCIATION FOR CANCER RESEARCH, INC.,
Philadelphia, PA, February 4, 1998.

Hon. CONNIE MACK,
U.S. Senate, Washington, DC.

DEAR SENATOR MACK: Medical research, conducted in the United States over the last 20 years, has opened up tremendous opportunities to make progress against many devastating diseases. The scientific community does not desire to make human beings, or modify or genetically mark any portion of our population. However, to deny the application of molecular biology, made possible through the use of cloning technologies, to patients who could be benefited would be a great injustice.

A litany of beneficial applications of cloning technology was enumerated in this weeks TIME Magazine. Several of these applications are at the core of cutting-edge cancer research, and there are many more potential benefits that are unknown at this time. These applications, as well as any future progress, would be eliminated by broad legislation setting back progress and potential in our conquest to develop effective approaches to the prevention, detection, and treatment of cancer.

The American Association for Cancer Research (AACR), with over 14,000 members, is the largest professional organization of basic and clinical cancer researchers in the world. Founded in 1907, its mission is to prevent, treat, and cure cancer through research, scientific programs, and education. To accomplish these important goals it is essential that scientists vigorously pursue all promising lines of investigations against cancer.

The AACR feels strongly that an ethical and just compromise can be reached that will protect the public and the scientific community from the irresponsible application of cloning technology while permitting meaningful and ethical research to move forward. The medical and cancer research community feels that the present rush to enact legislation without proper consideration or deliberation is a serious mistake, and the unfortunate result would be irresponsible legislation.

As scientists we clearly see the tremendous advantages of cloning technology as well as its potential problems, which we, also, have reason to fear if it is applied in an unreasonable manner.

The AACR, therefore, appeals to all Members of Congress to establish and honor a moratorium of at least 45 days on enacting any legislation until definitions and implications of legislation can be determined in a more reasonable and thoughtful manner, and in an open and public process. This would be a service to humanity, science, and millions of individuals who are now suffering, or will suffer in the future, from catastrophic and crippling diseases such as cancer. We appeal to all members of Congress to give this important moral and scientific issue very careful consideration and deliberation. Clearly a rush to judgment on this complex issue could be a major setback for cancer and medical research.

Sincerely,

DONALD S. COFFEY,
President.

Mrs. FEINSTEIN. Mr. President, the Biotechnology Industry Association analyzes both the Bond-Frist bill and the Feinstein-Kennedy bill, which is a second bill that addresses cloning. This interesting analysis, representing the entire biotechnology industry of the United States, makes a very important point, that whatever we do here impacts on human research in a multitude of different areas, and most particularly it affects cancer research. Mr. President, I will comment on this paper and also comment on a number of other items.

The American Association for Cancer Research's letter to Senator CONNIE MACK urges that there be a 45-day delay in enacting any legislation until definitions and implications of legislation can be determined in a more reasonable and thoughtful manner and in an open and public process. They are calling for reason, they are calling for thoughtful deliberation, they are calling for a public process. Who can deny that on a very complicated subject?

The Whitehead Institute—and specifically Gerald R. Fink, a Director of the American Cancer Society, Professor of Genetics—in his letter talks about the limited ability to develop cell-based strategies, which will take place if the Bond-Frist bill is ramrodded through this body.

The American Society for Reproductive Medicine has written a letter urging this body to vote no on the Bond-Frist legislation.

The American Psychological Association has written to us urging that we delay, that there be discussion and debate, and they point out that we need to protect research efforts in this area.

The American Association for the Advancement of Science has said that they are deeply concerned about the ethical and scientific issues. They warn us: "Use great caution in moving with this legislation."

Even the College of Veterinary Medicine from the University of Missouri, Colombia, has written to this body urging caution.

The University of California at San Francisco, Roger A. Pederson, Professor and Research Director of the Reproductive Unit of the Department of OB/GYN and Reproductive Science, has written to this body urging caution and restraint as well.

I ask unanimous consent that these letters be printed in the RECORD.

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

AMERICAN SOCIETY FOR REPRODUCTIVE MEDICINE,
Birmingham, AL, February 5, 1998.

DEAR SENATOR KENNEDY: The American Society for Reproductive Medicine (ASRM) urges you not to allow the Bond Human Cloning Prohibition Act (S. 1601) to be brought to the floor for a vote today, and if it is, to vote against it.

ASRM is very concerned that in the rush to make human cloning illegal, Congress will inadvertently outlaw very serious and promising medical research that may uncover cures to some of the most deadly diseases. Cloning is a highly technical area that cannot easily be understood and should not be hastily legislated.

Scientists engaged in legitimate medical research are not interested in cloning a human being. Since October, professional organizations representing more than 64,000 scientists have announced their participation in a voluntary five year moratorium on human cloning. Efforts led by the scientific community, rather than legislative prohibitions, have worked before, and will work this time.

When we first discovered how to duplicate DNA at any level, there were cries to outlaw it. Luckily your predecessors did not take that step, instead allowing the scientific community's voluntary moratorium to slow research while we explored its implications. Today millions of Americans are alive thanks to drugs made using recombinant DNA.

This bill prohibits not just the creation of a human clone, but any attempt to understand how somatic cell nuclear transfer could be used to improve our understanding and treatment of disease.

We urge you and your colleagues to carefully consider any human cloning legislation and to proceed through the proper legislative channels so that a hastily drafted bill does not get passed, sentencing millions of Americans to needless suffering.

Sincerely,

J. BENJAMIN YOUNGER, M.D.,
Executive Director.

AMERICAN PSYCHOLOGICAL ASSOCIATION,
February 2, 1998.

Senator DIANNE FEINSTEIN and
Senator EDWARD KENNEDY,
Committee on Labor and Human Resources,
U.S. Senate, Washington, DC.

DEAR SENATORS FEINSTEIN AND KENNEDY, I write to support the proposed "Prohibition on Cloning of Human Beings Act of 1998" introduced by both of you. There appears to be considerable confusion on this topic which apparently has resulted in an effort by some to restrict various areas of biomedical and agricultural research dealing with reproduction and embryo research. It is important to differentiate between human cloning and other types of research. My understanding also is that the FDA has indicated that they are the federal agency responsible for monitoring any possible attempts at cloning research.

I do want to emphasize again that we need to protect researchers efforts at research which does not include "the production of a precise genetic copy of a molecule (including DNA), cell, tissue, organ, plant, animal or human".

Let me also add that the American Psychological Association took the stand that it is human behavior, in all its aspects which should ultimately serve as the focus of scientific and bioethical inquiry, not simply the techniques which initiate the process. After all, just think if nature had not beaten us to the development of twins. Wouldn't there be a huge cry about how we ought not to have identical twins because it would be unnatural to have two people so similar to each other?

Thank you for permitting me to express my viewpoints. I am sure they are shared by many scientists in this country.

Sincerely,

NORMAN ABELES, Ph.D,
Professor and Immediate Past President.

AMERICAN ASSOCIATION FOR THE ADVANCEMENT OF SCIENCE,
February 2, 1998.

Hon. CHRISTOPHER S. BOND,
U.S. Senate, Senate Russell Office Building, Washington, DC.

DEAR SENATOR BOND: The American Association for the Advancement of Science (AAAS) has followed with interest the developments of the past year related to cloning, including current and proposed legislation regarding the possible use of somatic cell nuclear transfer to clone a human being.

Throughout its 150-year history, AAAS has been a pioneer among American scientific organizations in addressing the moral and ethical issues related to scientific developments. We are deeply concerned about the scientific and ethical issues raised by the possibility of cloning human beings and believe that a much more complete understanding of these issues is essential before such experiments are even considered. At the same time, however, we are also concerned that well-intentioned legislation in the area of human cloning may inadvertently impede vital research in agriculture, biotechnology, pharmaceuticals, and genetics.

We urge that congressional leaders use great caution in drafting legislation to ban human cloning. Congress should consult with leading researchers in genetics and other areas of the life sciences in crafting language so that definitions of scientific and technical terms are well understood and the resulting laws do not impede important research that may use similar techniques but do not raise the same kinds of moral and ethical concerns. Such related research can yield great benefits, for example, in increasing agricultural production, generating new products through biotechnology, finding cures for genetic disorders, and reducing the costs of pharmaceuticals. It is essential that these legitimate and socially-important areas of research not be adversely affected by legislation aimed at restricting human cloning.

AAAS, founded in 1848, is the world's largest multidisciplinary scientific association, with 145,000 individual members and nearly 300 affiliated scientific and engineering societies. Our Committee on Scientific Freedom and Responsibility has been a powerful voice for ethics in science and, in collaboration with our Program of Dialogue Between Science and Religion, held a major public forum in Washington last June that explored scientific, moral, ethical, and religious implications of human cloning. We are eager to assist in promoting a responsible and constructive dialogue between scientists, policymakers, and the public in this area, and stand ready to assist you in any manner that would be useful.

Sincerely,

RICHARD S. NICHOLSON.

COLLEGE OF VETERINARY MEDICINE,
UNIVERSITY OF MISSOURI-COLUMBIA,
Columbia, MO, February 4, 1998.

To: Ms. Adira Simon, Senator Kennedy's Office.

From: R. Michael Roberts, Curators' Professor and Chair, Veterinary Pathobiology.

Subject: Feinstein/Kennedy (S1602) *versus* Bond (S1599).

I am sending you a copy of my letter to Senator Bond, which addresses some of the same scientific issues raised in your comparison.

I have read S1602 and believe that it would be well accepted by scientists, including members of the Society for the Study of Reproduction, and the Developmental Biologists. What is important is criminalization of any intent to produce a baby and not to ban a possibly desirable outcome of the technology, which is the generation of replacement cells and tissues for an individual. The Feinstein/Kennedy Bill also creates a moratorium rather than a difficult-to-reverse ban on cloning of human beings. Again, most scientists would find this comforting.

I should point out that the term "somatic cell nuclear transfer technology" has much broader meaning than the way it is defined in either bill. Nuclear transfer between somatic cells is a common technique and has

been used for decades. I would be happier if the wording of both bills made it clear that it is the transfer of a somatic cell nucleus to an oocyte to create a human baby that is the issue.

What I found contradictory about S1601 is that it creates an elaborate commission to report on cloning (and other issues), yet the very technique that could allow future discourse will have been criminalized.

In summary, I judge the Feinstein/Kennedy Bill likely to accomplish what most scientists and the lay public support, a ban on cloning human beings. It will not prohibit the legitimate use of somatic nuclear transfer to oocytes to create replacement tissues, and it places a time limit on the ban, which can be extended as public and scientific sentiment dictates.

UNIVERSITY OF CALIFORNIA,
SAN FRANCISCO,
January 30, 1998.

Hon. Senator KENNEDY,
U.S. Senate, Washington, DC.

DEAR SENATOR KENNEDY, I am writing to express my profound appreciation and support for your efforts to preserve the opportunities for continuing research in the United States on the earliest stages of human development. I can provide you with the names and histories of several patients in our experience who have benefited directly from prior research and diagnostic procedures leading to healthy pregnancies and births. In addition, I can provide you with one or more names of families whose health misfortunes could have been or could be avoided through research on early products of human conception.

Please tell me if this additional information will be of value to you. I applaud your efforts to achieve a responsible bill on the subject of human cloning prohibition that does not impede the benefits of basic and clinical research for the American people.

Sincerely yours,

ROGER A. PEDERSEN, PH.D.,
Professor and Research Director, Reproductive Genetics Unit, Department of Obstetrics, Gynecology and Reproductive Sciences.

Mr. BOND. Mr. President, may I inquire of the distinguished Senator from California how long she will be? We have not had an opportunity for an opening statement. I would like to know how long she proposes to proceed in opposition.

Mrs. FEINSTEIN. I would like to respond to the distinguished Senator from Missouri. I think the Senator is right. I do have a very lengthy presentation to make, and it is going to be quite involved. I would be very happy to yield to him to make his opening statement if he would see that I have the floor regained directly following his statement.

Mr. BOND. Mr. President, I would be happy to ask unanimous consent that when my remarks are finished, the Senator from California be recognized.

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

The Senator from Missouri is recognized.

Mr. BOND. Mr. President, I thought before we got into a full-fledged debate saying this is bad, perhaps my colleagues would like to know what it is that we propose to do, speaking for the sponsors of this measure. It is obviously one that is going to take some discussion and debate, and it's very helpful to know some of the objections that are raised to it. Again, for the sake of the RECORD, let me say what this is.

This measure is a very carefully and narrowly targeted provision that places an outright ban on the use of somatic cell nuclear transfer for human cloning purposes. It defines one technique, the technique that was used to create, by cloning, the sheep Dolly and says that you shall not do that for human beings —quite simply.

Why is this necessary? Why is it necessary that we move forward on this? Well, frankly, recent reports show that a Chicago-based scientist is prepared to move forward with human cloning experimentation. I think this forces an immediate debate on how far out on a moral cliff we are willing to let science proceed before we as a nation insist on some meaningful constraints. We no longer have the luxury of waiting around for this morally reprehensible act to occur.

That scientist is proposing to raise huge sums of money and promise infertile couples that he can clone human beings for them. The time for the debate and action is now. If creating test tube babies by cloning a human embryo is morally, ethically, and practically wrong, as I strongly believe it is, we need to stop it now. To delay it, to filibuster it, to postpone it means that not only this scientist and others who, perhaps, are not holding news conferences, can go forward with a process that I believe the overwhelming majority of American people believe is wrong, as I believe it is. To those who say we have not studied this or debated this, I only say that since we had this story about the cloning of Dolly the sheep, and stories of organizations and individuals pursuing human cloning, they have kept the debate alive. The American public is asking if similar techniques can be used to clone human beings, and they are concerned very deeply whether something which was thought only to be science fiction is now closer to reality.

Now, there are some distinguished books that oppose a prohibition on human cloning. They suggest that we cannot put the genie back in the bottle and we cannot stop progress. I suggest that we have come to the point where our technological capability may be outrunning our moral sense. We have, in this body, carried a prohibition against Federal funding of cloning human embryos. We have prohibited the research and experimentation with Federal funding because we thought it was way down the line. We didn't want to see money used. Last year, after the cloning of Dolly the sheep, we held hearings; tremendous amounts of testimony were presented. I personally testified before Senator FRIST's subcommittee. This is not a new debate. The reason this debate is important, and the reason that action is important is that now we are faced with scientists of, I believe, questionable judgment, who would go forward with something that is morally reprehensible.

This measure is targeted narrowly to one specific process that was used to clone the sheep Dolly. It is the somatic cell nuclear transfer to create a human embryo. In addition to prohibiting that, we have, at the urging of my distinguished cosponsor, Senator FRIST, provided for a commission to study the ethical implications of related technologies. And I believe we have made it clear that ongoing legitimate activity, short of this one specific process, cleaning out a human embryo and putting in a nuclear cell transfer, and starting the process of differentiation of the cell toward creating a test tube baby is unacceptable.

The ethical implications of human cloning are staggering. I believe that we would have the overwhelming understanding and support of the American people that we should never create human life for spare parts, as a replacement for a child who has died, or for unnatural or selfish purposes. How many embryos or babies would we tolerate being created with abnormalities before we perfect human cloning? It took Dr. Wilmut, the Scottish scientist, 276 tries before creating Dolly, and we still do not even know if Dolly is the perfect sheep. For humans, those results are unacceptable—creating tremendously deformed human embryos or human beings. Dr. Ian Wilmut, the lead Scottish scientist who created Dolly, himself stated that he can see no scenario under which it would be ethical to clone human life. And he is right.

In September of 1994, a Federal human embryo research panel noted that, "Allowing society to create genetically identical persons would devalue human life by undermining the individuality of human beings." Further, the panel concluded that there are moral concerns about the deliberate duplication of an individual genome, and that making carbon copies of a human being is repugnant to members of the public. "Many members of the panel share this view and see no justification for Federal funding of such research."

I emphatically argue that those statements apply to private sector research as well. That is what we are trying to reach. It is important to note that the legislation is narrowly drafted, and its sole objective is to ban the use of somatic cell nuclear transfer for human cloning purposes. We worked overtime to ensure that this language was specific so that it would ban only the technique used to create Dolly.

This technique has also been criticized by a representative of the pharmaceutical industry, who in a prepared statement for Members of Congress, dated January 13, 1998, stated:

While conventional cloning technology has been used extensively worldwide to meet global medical needs, nuclear transfer technology is fraught with untold failures for each partial success and has major scientific and significant ethical issues associated with it. Furthermore, it has no strong therapeutic or economic-based need driving it at this time. The concept that it is a viable alternative to infertile parents is cruel and completely unjustified. I would challenge you not to confuse the two as the Congress considers its options here.

Well, Mr. President, myself, Senator FRIST, Senator GREGG, and others, have met with and consulted with representatives of the pharmaceutical industry, researchers, representatives of patient groups, and we have told them what we are proposing to do, and we have listened to them discuss all of the implications. We know that in vitro fertilization, plant and animal cloning, cloning of DNA cells and tissues, stem cell research, gene therapy research, and other activities taking place at the Human Genome Center offer great hope in addressing how to prevent, diagnose, and treat many devastating diseases. These types of research will continue to thrive, that is clear, because we have targeted our ban so narrowly, and we intend only to prohibit, by cloning, the creation of the human embryo.

This is a technique characterized by industry, researchers, theologians, ethicists, and others, as fraught with failures and lacking therapeutic value. This bill, however, does allow the important and promising research to continue. I have long been a supporter of biotechnology. I have supported biotechnology efforts. I continue to support everything from human genome mapping to all of the other human research efforts. We have no problems with and support cloning of animals. But there is a bright line between those activities and human cloning, and we must draw that line. There is a line, Mr. President, and that line is clear.

You can do all the research you want. You can create organs, you can do all kinds of experimentation. But you should not be able to create a human embryo by cloning, starting a test tube baby. Now, there are some who say that it is all right so long as you don't implant that cloned human embryo, so long as you destroy it. Once you start the process of creating this test tube baby, it is OK to destroy it. As a matter of fact, they would have us believe that we would start all these human embryos, start the cell differentiation, and then wipe them out. Well, I think that raises serious questions with many people, and I am included in that. But it also raise also the prospect that once you start cloning these human embryos—they are very small—they can be transported very easily, picked up and taken from this country to someplace else in the world in large numbers, where there may be no ban on implementation. The difficult science is creating the human embryo. Once you do that, you have opened a whole area. And to say we are just going to prevent them from being implanted so a baby is brought to term, that won't get it because that is too late. I have heard the arguments of those who oppose this bill. And, quite frankly, let me tell you what those arguments are.

They are that some scientists would like to be able to create human embryos, play with them, and experiment with them, experiment with a human embryo that is differentiating and starting to grow, and say, "OK. Time is up. We will toss this one away and we will start playing with another one." Once you get into that process, Mr. President, you have stepped over the moral and ethical line. There is a clear line. There is a very clear line.

We are ready to have the argument because I believe a significant majority of the Members of this body reflect a significant, overwhelming view of the American people that that is unacceptable. There may be well-intentioned scientists who say we need to play with human embryos and start these embryos growing and let us play with them. They may get something. They may develop some scientific knowledge. But the statements I have already presented show that there is no really legitimate, scientific need, and, in fact, there are grave moral and ethical reasons not to. I strongly hold the belief that all human beings are unique and created by God. And I think billions of people around the world share it. Human cloning, a man's attempt to play God, will change the very meaning of life, of human dignity, and what it is to be human. Are we ready for that? I don't think so.

Mr. President, the Washington Post in October of 1994 in an editorial said:

The creation of human embryos specifically for research that will destroy them is unconscionable. Viewed from one angle this issue can be made to yield endless complexities. What about the suffering of individuals and infertile couples who might be helped by embryo research? What about the status of a brand new embryo? But before you get to these questions, there is a simpler one. "Is there a line that should not be crossed even for scientific, or other gain, and, if so, why is it?"

That is the quotation from the Washington Post. In case you missed it, let me give you the first sentence again. "The creation of human embryos specifically for research that will destroy them is unconscionable."

That is a simple, straightforward statement with which I agree, and I believe when the Members before the body have an opportunity to reflect on it and consider it, they will agree that is right.

Let me quote President Bill Clinton, 1994.

The subject raises profound ethical and moral questions as well as issues concerning the appropriate allocation of Federal funds. I appreciate the work of the committees that have considered this complex issue, and I understand that advances in in vitro fertilization research and other areas could be derived from such work. However, I do not believe that Federal funds should be used to support the creation of human embryos for research purposes.

That is the President. He said don't create human embryos by cloning for research.

That is the question. Those who would delay and filibuster want to avoid that question and delay it. I know they are well-intentioned. I know they may have great reservations. They may not agree with that simple moral standard. But there are people out there who want to start that process, who may as we speak be engaged in that process.

We have debated whether cloning of human embryos is a good idea. I think there is a clear consensus. We have drafted a narrow bill, a targeted one that I hope we can move forward to enact. There is a lot of smoke and mirrors, and there are a lot of discussions about a whole range of other options. These are very technical. That is why we set up a commission to review all of these things. What we are targeting right now is the one procedure that has been used with sheep, and could be used, if it is not stopped, to start creating human embryos. For those people who want to create human embryos for research purposes and destroy them or implant them, I say you are going across the line. I don't care what your motives are. I don't care whether it is profitable. I don't care what you think might come out of it. At this point we are saying, "No, you cannot cross the line."

Mr. President, that is what this debate is all about. I believe that we may have an opportunity, if discussion continues, to bring this debate to a close. At such time I will be back on this floor to say, if you want to allow the scientific community and some people with different sets of standards and different sets of judgments to go ahead and attempt to create human embryos by cloning by a somatic cell nuclear transfer, go ahead and support the extended discussion. Vote no against cloture. But, by doing so, you are providing a green light. You are saying, go ahead and use this technique that I believe is unacceptable and should be made illegal in this country as it is in the United Kingdom, Germany, Canada, and many of the other developed and leading countries in the world.

Mr. President, I appreciate very much the Senator from California allowing me to explain what the bill is and what it is not. I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from Missouri. I appreciate his comments. And I must tell him that in the main I agree with him.

We have submitted an alternative bill to Bond-Frist. It is Feinstein-Kennedy.

I am opposed to human cloning. I believe human cloning is scientifically dangerous, it is morally unacceptable, it is ethically flawed, and we should outlaw it. That is not the issue.

The issue is we are dealing with a complex subject. The bill at hand is a bill that uses words and does not define those words. There is the rub.

So the issue here today is whether we go ahead and ramrod through legislation with virtually no consideration by this body, legislation that would impose a permanent ban forever with prison terms of up to 10 years, and we will not understand fully what that bill will do. That is why the medical and the scientific research community have asked us to proceed with caution.

Let's say that you don't believe me. Would you believe the Biotechnology Industry Association representing the entire biotechnology community? Let me quote from page 4 of their 9-page statement to us.

The current Bond bill goes beyond cloning because it does not define the term "somatic cell" or limit to cases where the DNA is identical. It only defines the term "somatic cell nuclear transfer," but it does not define the term "somatic cell." We need a brief glossary of terms to define what constitutes a "somatic cell."

"Zygote" means a single celled egg with two sets (a diploid set) of chromosomes as normally derived by fertilization;

"Egg" and "oocyte" mean the female gaméte;

"Gamete" means a mature male or female reproductive cell with one set (a haploid) set of chromosomes;

"Sperm" means the male gaméte;

"Somatic cell" means a cell of the body, other than a cell that is a gaméte, having two sets (a diploid set) of chromosomes;

Here is the point.

So a "somatic cell" is any cell of the body other than a gaméte, and it includes a fertilized egg. This means that the current Bond bill would make it a crime to use somatic cell nuclear transfer even in cases where the somatic cell contains a nucleus derived from sexual reproduction, which is obviously not cloning. This means that even though the nucleus is not a clone, the current Bond bill makes it a Federal crime to create it. This means that the current Bond bill goes beyond the issue of cloning.

Because of this coverage of all "somatic cells" the current Bond bill would make it a crime for doctors to use a currently effective treatment for mitochondrial disease. In this treatment women who have the disease have an extreme and tragic form of infertility. The disease is a disease of the mitochondria, which is an essential element of any egg. The treatment for this disease involves the use of a fertilized nucleus which is transferred through the use of somatic cell nuclear transfer to an egg from which the nucleus has been removed. The new egg is a fresh, undiseased egg. The current Bond bill would make it a crime to provide this treatment even though the nucleus which is transferred is the product of fertilization, not cloning.

This is the Biotechnology Industry Association's statement.

It goes on into other areas that would be prohibited. But let me say what I think the major problem here is.

The key terms in this bill are undefined, and the full scope of the bill is unknown by anyone in this body. It is just 48 hours old. We don't understand the impact of it. The bill is not ready for rushing to the full Senate for immediate consideration.

The Bond-Frist bill fails to define the following terms: somatic cell, oocyte, embryo, and preimplantation embryo.

These are all technical, scientific, state-of-the-art terms that need definition. The bill actually drops the definitions that were in earlier versions of it.

Undefined key terms will chill vital medical research and treatment. The medical and scientific community has overwhelmingly stated that this bill would chill important scientific and health research. The bill criminalizes that research. Scientists will refuse to do that research. Venture capitalists will refuse to fund it when faced with possible prison terms.

The Bond bill bans somatic cell nuclear transfer technology, and, as a result, the Bond bill may ban production of genetically identical tissues for treatment of disease and transplantation, including blood cell therapies for diseases, such as leukemia and sickle cell anemia; nerve cell therapy for neurodegenerative diseases such as Alzheimer's, Parkinson's and Lou Gehrig's; multiple sclerosis; nerve cell therapy for spinal cord injury; insulin transplants for diabetes; skin cell transplants for severe burns; liver cell transplants for liver damage; muscle cell therapy for muscular dystrophy and heart disease; and cartilage-forming cells for reconstruction of joints damaged by arthritis or injury.

Let me say what I think the problem is.

Senator KENNEDY and I have another bill. We approach this differently. Rather than banning all somatic cell nuclear transfer, period, the end, we say you can't use this technology if you are going to implanting it in a human uterus. You cannot grow a baby by implanting it in a human uterus.

Let me restate that.

You cannot grow a baby using this technology unless it is implanted in a human uterus. I have confirmed that, to my knowledge, scientifically at this stage, there is no way of doing it. However, you can use this somatic nuclear cell transfer for the tissue research, the other areas of research that I am talking about. Once you ban the technology, you cannot use it for these other areas of research.

That is why we feel that the place to ban it is with implantation in the female uterus or womb. That stops the production of a baby. It is dangerous. It took 277 implants in Dolly before they got it to work. And there is a lot we do not know about the procedure. It is terribly dangerous because you are taking a cell at a certain degree of maturity, not an infant cell. You are taking a mature cell, and you don't know what the impact of that cell is going to be on developmental disabilities and the rest of human development.

So scientifically it is dangerous to clone a human. Morally, we say it is unacceptable, and there are a lot of reasons for this: Who would clone? What rules do you set up in cloning? Do you permit the cloning of Adolf Hitlers and the other less favorable characters of history, history past and history future.

So there are many, many questions to discuss. I think everyone in this body believes that human cloning should be made illegal, but we should not attack the technology from which so much good can come. For example, using this technology scientists believe that it will be possible to treat third-degree burns, to provide skin grafts because the DNA would be the same. We may that be able to clone their skin, grow that skin and transfer that skin without rejection. The same thing may be true of diabetes, and particularly in juvenile diabetes which is so recalcitrant and so difficult to handle.

This technology may offer a cure. And with respect to cancer, this technology is what is used in the mass production of anticancer drugs. It would stop all of this particular technology.

So the key is not to stop the technology. The key is to stop the implantation of the embryo produced by this technology in a human uterus. That is what we do in our bill. And that is why I can say virtually all of the scientific community supports Feinstein-Kennedy and opposes Bond-Frist.

Now, I am aware of the fact our staffs met earlier this morning. We all want the same thing. Let me beg this body, do not do something in a rush that is going to mean one day someone is not going to have a cure for cancer or diabetes or somebody lying in a burn unit at St. Francis Hospital in San Francisco or anywhere else is not going to make use of this technology to produce tissue that the body will not reject.

That is really the issue. Why does this have to be done in 48 hours? The FDA says it will prevent human cloning. Why are we rushing to do something and use terms like somatic cell and we do not define in the legislation what a somatic cell is. How many people do we condemn to death because we shut off research because anybody

that does any research will have a 10-year Federal prison sentence, a 10-year Federal prison sentence if you do research on somatic nuclear cell transfer to try to develop a skin graft for a third-degree burn that will not be rejected?

That is essentially what we are talking about here today, Members of the Senate. The Bond bill additionally could ban noncloning treatments for diseases carried in the cytoplasm. The cytoplasm is the nonnuclear material in a cell. So parents whose children inherit cytoplasmic diseases can have healthy children by using a variation on somatic cell nuclear transfer. This isn't cloning. It is curing a disease. And I am as sure as I am standing here the Bond-Frist bill bans this kind of therapy.

So let's have hearings. These bills should go to committee and be considered thoroughly. Let's have the biotechnology community testify. Let's have the scientific community testify. Let's have a glossary of terms that we all agree upon. And let's put those definitions into a bill. Yes, let's ban human cloning. Let's say you cannot implant a uterus with somatic cell nuclear transfer. Then there are no babies. Then there is no human cloning. But the rest of the research, research to cure diseases, can move ahead.

I am aware of the fact that the distinguished Senator from Florida is in the Chamber and may wish to make a statement. If I could regain the floor, I would be happy to yield to him for the purpose of that statement.

Mr. BOND. Mr. President, I think there are others in the Chamber as well. I do not believe that we have any agreement at this time to go back and forth with proponents and opponents. The Senator from California has the floor, and if she wishes to yield I suggest the Senator from New Hampshire has been here for some time.

Several Senators addressed the Chair.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from California has the floor.

The Senator from California.

Mrs. FEINSTEIN. Yes, I would like to continue if I can then, and if there is any message that I might be able to deliver on behalf of the distinguished Senator from Florida, who probably knows more about research into areas involving cancer than many of us in this body, I would be happy to deliver it for him.

I say to the distinguished Senator, I do not want to yield the floor and lose the floor because it is my intention to slow down Senate consideration today in this rushed manner in hopes that we will be able to send it to committee, have a hearing and follow the normal deliberative process, including sending it back to the Senate soon for thoughtful consideration.

Mr. MACK. I wonder if I might——

Mrs. FEINSTEIN. I am afraid to yield the floor because I may well lose the floor and not get it back again. So I will continue, if I may.

Mr. President, just yesterday, Dr. J. Benjamin Younger, the Executive Director of the American Society For Reproductive Medicine, wrote:

> I urge you and your colleagues to carefully consider any human cloning legislation and to proceed through the proper legislative channels so that a sloppily drafted bill does not get passed and sentence millions of Americans to needless suffering.

Mr. President, once again, I say we should not charge ahead at full throttle on a bill that legislates issues as profound as those surrounding human cloning. There is simply too much at stake.

I would like to give you just a quick side-by-side comparison of the two bills under consideration that ban cloning, Bond-Frist and Feinstein-Kennedy.

Feinstein-Kennedy, as I have said, bans the implantation of the product of somatic cell nuclear transfer into a woman's uterus. It makes unlawful the shipping of the product of somatic cell nuclear transfer in interstate or foreign commerce for the purpose of implanting into a woman's uterus. And it prohibits the use of Federal funds for implanting the product of somatic cell nuclear transfer into a woman's uterus. I recognize that is current in the fiscal year 1998 appropriations law, but we reinforce it in our bill.

The Bond bill, as I understand it, bans human somatic cell nuclear transfer period. It is defined as taking the nuclear material of a human somatic cell and incorporating it into an oocyte from which the nucleus has been removed or rendered inert and producing an embryo, including a preimplantation embryo. Again, it defines none of these terms. And it makes unlawful the importation of an embryo produced through human somatic cell nuclear transfer technology. It is silent on the use of Federal funds, probably because the authors know that a prohibition on human embryo research is already in place.

The length of the ban in our bill is 10 years. It is a permanent ban in the Bond bill.

The reason it is a temporary ban or a moratorium of 10 years is largely because a voluntary moratorium has been put in place by the entire American scientific community, and to the best of my knowledge, what they were requesting was a 5-year moratorium which the President's bill contained. We felt the 5-year moratorium was too short. We prefer the longer period so that it can be reviewed at the end of 10 years.

The Feinstein-Kennedy bill protects and allows biomedical and agricultural research on practices which are not expressly prohibited. That would include research or practices involving somatic cell nuclear transfer or cloning technologies, mitochondrial, cytoplasmic or gene therapy or somatic cell nuclear transfer to create animals. We do not interfere with that. The Bond bill protects or allows areas of scientific research not specifically prohibited. It is silent on mitochondrial, cytoplasmic or gene therapy. And that is part of our problem here, and that is one of the reasons why we think it needs to go to committee and we need to know at the end of the hearing exactly what it is we are doing.

On the issue of a national commission, Feinstein-Kennedy authorizes the current National Bioethics Advisory Commission for 10 years, from the date of enactment. The current commission terminates in 1999. Our bill would continue it and we require reports and recommendations from the commission in 4½ years and in 9½ years. The Bond bill would establish a new national commission to promote a national dialogue on bioethics of 25 members appointed by the Senate and House majority and minority leadership by December 1, 1998, to conduct a discourse on bioethical issues, including cloning, and to report to Congress by December 31, 1999 and annually thereafter.

On the issue of penalties, the Feinstein-Kennedy bill has a civil penalty of $1 million or three times the gross pecuniary gain or loss resulting from the violation, in other words, a very stringent civil penalty. If an individual uses somatic cell nuclear transfer and implants the product into a woman's uterus, we subject that individual to forfeiture of any property derived from or used to commit a violation or attempted violation. This would get at the lab or hospital where an implantation into a human uterus would take place. Obviously, it has to be done somewhere, and I think this is in a sense a fail-safe major penalty because that entire lab could be forfeited.

The Bond bill has 10 years in prison or a civil penalty if pecuniary gain is derived of not more than twice the gross gain or both. We think 10 years in prison, when definitions are not included to clearly show what we are talking about, 10 years in prison for someone who might use somatic cell nuclear transfer to create the DNA in a cell that could produce a skin graft or another tissue culture, a skin graft that would heal a burn patient, that that individual should not be subject to 10 years in prison.

On the issue of preemption, there is a difference between the two bills as well. Feinstein-Kennedy preempts any State or local law that prohibits or restricts research or practices constituting somatic cell nuclear transfer, mitochondrial or cytoplasmic therapy or the cloning of molecules, DNA cells, tissues, organs, plants, animals or humans. So, we would set a national

standard so that the States could not pass legislation and say it's OK to insert a somatic cell in a woman's uterus. We preempt the area.

Internationally, there are some differences in the two bills, too. Feinstein-Kennedy has a sense of the Congress that the President should cooperate with foreign countries to enforce mutually supported restrictions. The Bond bill has a sense of the Congress that the Federal Government should advocate for and join an international effort to prohibit the use of human somatic cell nuclear transfer technology to produce a human embryo.

I think we could easily come to agreement on many of these, particularly this last one. I think we want the same thing.

The major difference is that the Feinstein-Kennedy bill would allow the technology to proceed in medical research as long as it does not involve human cloning.

Mr. President, the successful cloning of a sheep——

Mr. GREGG. Will the Senator from California yield for a question?

Mrs. FEINSTEIN. I will be happy to yield.

Mr. GREGG. Will the Senator entertain a unanimous consent request that I be allowed to speak without taking the floor from the Senator, so the Senator can regain the floor after I finish speaking? I will not offer any amendments.

Mrs. FEINSTEIN. I will be happy to, again, if I can regain the floor.

Mr. GREGG. I ask unanimous consent I be allowed to speak for 5 minutes and at the end of the statement the floor return to the Senator from California.

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

The Senator from New Hampshire.

Mr. GREGG. Mr. President, I thank the Senator from California because I wish to address this issue, also. I, unfortunately, have a meeting that starts at 1 o'clock.

Mr. President, I think we are all actually concerned about the issue of human cloning, and certainly the representations by the doctor from Chicago who stated he intends to pursue a course of commercializing human cloning has caused us to need to accelerate addressing this as a public policy matter. It is appropriately an issue that should be addressed at the level of the Congress of the United States. It should be spoken to by the people's representatives and not left to a regulatory environment such as the FDA for a determination, because it is a matter of dramatic import to our culture and to our scientific community.

There is no question but that the concept of cloning a human is unethical, inappropriate and wrong. We don't have to delve very far into the history of this century to see the horror that can result from a society which allows itself to pursue a course of creating humans or designing a human race not based on God's will but based on the determination of a political decision or a scientific community. Obviously, the Nazi government, in its seeking of a master race, represents one of the true horrors of the history of mankind.

So, the need to debate the issue of whether or not humans should be cloned I think is not necessary. There should be and I believe there is almost unanimity on the need not to allow human cloning to go forward in our society or any other civilized society. I think it is interesting to note that the European Community has also banned human cloning. The question becomes how should we proceed and whether we should proceed with a bill that has been designed by Senator BOND, Senator FRIST and to some part myself, or whether we should proceed in some other manner. I for one strongly support the initiative that is put forward by the bill which we are presently considering because it addresses the core issue of human cloning, which is the creation of an embryo through the process of somatic cell nuclear transfer. That is really the question here.

In order to clone a human, you produce an embryo and as a result you get a human if you follow the next scientific steps. What we have done is limited dramatically and really focused the question specifically on the necessary scientific acts to produce a cloned human and then said, "No, you cannot proceed in that direction." That is the way it should be addressed.

This bill was structured in order to respond to the very legitimate concerns of the scientific community for further research in all the areas the Senator from California has outlined. This bill does not, in my opinion, in any way limit the research into those areas because this bill is purely directed at the embryo issue and the creation of a cloned human being as a result of taking that step. The scientific issues are further protected by the commission which is in this bill, which says essentially that we have in place, or will have in place, a bioethical commission which will be able to evaluate science as it evolves and make a determination as to when science needs to have more leverage or needs to have more flexibility and then can come to the Congress and say what changes should occur in order to allow for that flexibility. So there is in place a commission which is not only scientifically based but is theologically based and which is politically based, in the sense that it represents, not politicians, but the community at large and which will have the capacity to review what is happening in the area of cloning technology so that we can stay ahead of the curve and be sure we are not limiting the scientific experience and expansion in this very critical area.

So this bill allows for cloning in the area of agriculture and it allows for cloning in the area of animal husbandry. It also allows for cloning for the production of organs. It allows for cloning in stem cell research technology. It allows for cloning in a whole variety of places. Where it does not allow cloning is in the production of a human being, and that is what we should be saying. As a matter of ethics, as a matter of policy, as a matter of a nation which must stand up and define its purposes and ideas, we should be saying humans shall not be cloned.

I yield my time.

The PRESIDING OFFICER. Under the previous order, the Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I know there are others on the floor. The distinguished Senator from Texas and my friend and colleague from Massachusetts wished to speak on this issue. I would just like to wrap up very rapidly.

This whole issue was really galvanized with the cloning of the sheep Dolly. Let me reinforce the fact that it took 277 attempts before this cloning was successful. The impact of the cloning is not yet known.

The second point is that the science is such that huge disabilities, real problems can result from human cloning. It is unsafe.

And my third point is, the circumstances to not require us to rush. Chicago physicist Dr. Richard Seed propelled the debate into full force last month when he told the media that he intended to clone human beings. And he said that there were 10 clinics in the United States interested in offering cloning services and that he believed the demand would be for 200,000 cases per year. That's according to the American Medical News.

Since that time, as you know, the scientific community itself has exercised a self-imposed moratorium on human cloning. I know of no legitimate lab, hospital, or facility that will permit human cloning today. I also would like to add that the FDA has said that they are asserting jurisdiction in this area and will not permit human cloning. So I respectfully submit to those who feel there is time pressure that forces us to proceed to the Senate today, that is not correct. There is time for us to take time to consider this issue, to hear the testimony, to go over the scientific terms, to really debate whether the Feinstein-Kennedy approach or the Bond-Frist approach or perhaps a third or fourth approach is the right way to go.

So I would like to end my comments today, Mr. President, by thanking you for your discretion and by appealing to the majority side of this body. You have an opportunity to do some good. But you also have an opportunity to do enormous harm that could cost tens of

thousands of lives needlessly if we do not legislate carefully. So let's do it right.

I thank the Chair and I yield the floor.

The PRESIDING OFFICER. The Senator from Texas.

Mr. GRAMM. Mr. President, I ask unanimous consent that I might speak for 10 minutes as in morning business.

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

THE HIGHWAY TRUST FUND

Mr. GRAMM. Mr. President, I wanted to talk today on the same subject Senator BYRD spoke on earlier and that Senator CHAFEE also spoke on earlier. Without getting into a debate with Senator CHAFEE, I want to respond to a couple of things he said.

I want to remind my colleagues that in the American system of Government, we have a series of dedicated revenues where we collect specific taxes and fees and we tell the American people that those taxes or those fees are dedicated to a specific purpose. When you go to a filling station, if you live in a State that has banned the little clip that holds the nozzle in the "on" position so you have to stand there while it's pumping gas into your car or your truck, I am sure that you have read the sign on the gasoline pump. It basically says, if you wanted to reduce it down to good news and bad news, that the bad news is that a third of the price that Americans are paying for gasoline is taxes. But the good news is every American is assured on every gasoline pump in America that those taxes are going to build highways. Virtually every American in this era of self-service has read that sign on the gasoline pump, the bad news and the good news.

The problem is, the good news is not true. The bad news is sure enough honest to God true. But the good news is not true. Today, on average, somewhere between 25 cents and 30 cents out of every dollar of gasoline taxes is not spent on roads. So that when we tell the American people that the gasoline tax is a user fee for roads, as is often the case in Government, we are not totally leveling with the American people.

Senator BYRD and I would like to partially change that. I want to explain exactly what we are doing. As my colleagues will remember, in 1993, for the first time in American history, the President pushed through Congress a permanent gasoline tax, 4.3 cents per gallon, that was not dedicated to the highway trust fund, and every penny of it was spent by Government on a broad array of projects and programs, none of which had anything to do with highways. You will remember that I offered an amendment in the Finance Committee that was adopted by the Senate, ultimately adopted by the conference, voted on in the House and Senate, signed into law by the President, that took that 4.3-cent-a-gallon tax on gasoline away from the general revenue and put it in the highway trust fund, where it belongs.

We now are looking at a situation where, if we don't take action to allow a competition where those of us who believe that, relatively speaking, we are spending too much on many programs and not spending enough on highways, we are going to have a situation where the trust fund could rise to almost $80 billion, where we have collected $80 billion between now and the end of the highway bill that should be before the Senate today. We will have collected $80 billion, telling people the money was going to highways, and, yet, every penny of it will have been spent on something else.

Senator BYRD and I have said that that is not honest. Senator BYRD and I have said that our amendment, basically, has to do in part with honesty in Government.

Our dear colleague from Rhode Island has said that this has something to do with the budget surplus, or at least has talked about surpluses in the trust fund and the budget in such a way that people might get confused between the two. So I want to make it very clear what the Byrd-Gramm amendment does and what it does not do. In fact, anybody who wants to read the amendment can understand exactly what it does, because it is a very simple amendment.

Basically, what the amendment says is this: We have put the 4.3 cent a gallon tax on gasoline into the trust fund. We had a surplus of $23 billion that had already been collected to build roads but has been spent on something else. What Senator BYRD and I are saying, in essence, is, all right, we ought to get that money back. Fairness would dictate it goes to roads. It was collected for that purpose.

An analogy I have used is that it is like a rustler has come out and has been stealing your cattle and you catch him. Senator BYRD and I called the sheriff and the sheriff has come out and arrested this rustler. Being benevolent, we have said two remarkable things. No. 1, we are not going to hang you, and, No. 2, we are not going to make you give any of the cattle back that you have already rustled. All we are saying is stop rustling our cattle. What you have already taken from the highway trust fund and spent on other things, go and sin no more.

Their response is, "Well, it's great to spend money on highways, but where"—going back to my rustling analogy—"where are we going to get our beef? If we can't raid the highway trust fund to fund other programs of Government, just where are we going to get our money?"

That's not my problem. We have Members of the Senate who were looking at that $80 billion and saying, "Great, if we can prevent that from being spent on highways, we could spend it to pay arrears of the U.N. dues, we could spend it on social programs, we could give it to the Legal Services Corporation, we could do all kinds of things with it." So they are not happy that Senator BYRD and I want to allow the money to be spent on highways.

After, basically, raising the concern that they are going to be disadvantaged because they wanted to spend the money in inappropriate ways, now they are trying to say that Senator BYRD's amendment and my amendment would bust the budget. It is not so. Our amendment does not raise the spending caps in the budget. Our amendment does not provide any authority or mandate or excuse for violating the budget agreement we reached last year. All our amendment says is this: You are collecting this money in gasoline taxes. You are telling people that you are spending the taxes to build roads. At least allow those who want to deliver on what you are promising the American people the right to compete in the appropriations process with every other program of the Federal Government.

The answer for those who don't want the money spent on roads is, don't bring up the highway bill; wait and vote on this as part of the budget. Now here is what they hope to do. They hope to convince some of our Democratic colleagues that if they let the highway trust fund be spent on highways, that there is strong support for building new roads, which the country desperately needs and, after all, we said the money was being spent for it when we collected the gasoline taxes. So they are worried that we will build roads or they are going to argue that we will build roads and that will take money away from other programs, so if you want other programs, you don't want to build roads.

They are going to try by getting this all involved in the budget so it can be commingled with President Clinton's proposal to increase spending by $130 billion and bust the caps. They are hoping to convince Republicans that our proposal is no different than the President's proposal.

The truth is, all we are asking is that money collected in gasoline taxes for highways be authorized to be spent on highways, and then we have to have competition for available money. And under the budget, if we spend the money on roads, obviously, we are going to have to set priorities, and every Member of the Senate will have to make those decisions.

But this is not a budget issue. We are not talking about breaking the spending caps. This is an issue about highways. Let me tell you why it is critically important.

The current highway bill ends on May 1. It is highly unlikely that we will get another extension of the highway bill. Construction projects on roads and highways all over America are going to come to a screeching halt on May 1. In my part of the country, which is more blessed by God than others, we have long building periods where people can construct through a long spring and summer and fall and actually, for all practical purposes, build year round. But in many States of the Union, they have a 3- or 4-month window when they have to build highways.

So if we follow the prescription of the people who don't support building more roads, who want to spend the highway trust fund on other things, we are going to delay, and by delaying, we may get no highway bill, the States in the northern part of the country may lose their whole building window within this year and, finally, people need to make plans. They need to hire workers. They need to buy capital equipment. We have major highway projects that are partially completed, so we have tied up all this money in building new interstates and new bypasses, and the States, if we are forced to stop construction, will get no use out of those projects.

So I want to urge the majority leader to bring up the highway bill and bring it up next week. I want to make it clear to my colleagues, I will not support breaking the spending cap. I would not author an amendment that broke the spending cap. Our amendment does not raise the spending cap, and that is not what the Senator from Rhode Island is worried about. He is worried that we won't break the spending cap and that highways will compete money away from other programs. Well, I am not worried about that. That is exactly what I want to do, and I think it is the right thing to do. We have 51 cosponsors. We would love to have more.

I thank the Chair for the Chair's indulgence, and I yield the floor.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

HUMAN CLONING PROHIBITION ACT—MOTION TO PROCEED

The Senate continued with the consideration of the motion to proceed.

Mr. KENNEDY. Mr. President, earlier today, a request was made to consider the cloning legislation that had been introduced by my friend and colleague, Senator BOND. Objection was made to the consideration of that legislation by the Senator from California.

I want to just indicate to our Members that I think Senator FEINSTEIN was quite right to file that objection. Many of us who are on the Labor Committee believed we would be debating the Satcher nomination this afternoon. It is an enormously important matter that has been delayed too long. We have an outstanding nominee. In fairness, we should be continuing that debate today. The leadership has decided to move on to this cloning legislation.

I believe that this legislation that is being proposed is one of the most important scientific and ethical issues of the 21st century. The legislation itself was introduced 2 days ago. It was put on the calendar 1 day ago. It has not received 1 day of committee hearings. It has not received 1 minute of committee markup. This legislation is a matter of enormous significance and importance to the research communities all across this country and they understand that this legislation does not only impact human cloning.

As the research community has pointed out, technologies that would be banned under Senator BOND's bill offer the key for reaching resolution of a number of very important diseases: Cancer, diabetes, birth defects, arthritis, organ failure, genetic diseases, severe skin burns, multiple sclerosis, muscular dystrophy, and spinal cord injuries. Stem cells may be the key to reproducing nerve cells, which is not possible today, and other cells that may be used to treat Alzheimer's disease, Parkinson's disease, Lou Gehrig's disease. The major researchers in every one of these areas oppose strenuously the Bond legislation because they believe that it will provide a significant barrier to meaningful progress in a number of promising research areas.

I will be delighted to discuss these issues, as Senator FEINSTEIN believes we should, in a timely way so that we can at least have an opportunity to consider these measures in the committee and report those out.

Therefore, I join Senator FEINSTEIN in objecting to the consideration of cloning legislation at this time. We have introduced legislation of our own on this subject. We hope that the Senate will consider it in due course, and that we can work out an acceptable compromise on this issue to give it the careful action it deserves. A rush to enact bad legislation on this subject would be far worse than passing no legislation at all. Every scientist in America understands that, and the American people should understand it, too.

Several months ago, the world learned of one of the most astounding developments in modern biology—the cloning of a sheep named Dolly. This incredible scientific achievement awakened widespread concern about the possibility of a brave new world, in which human beings would be made to order and where individuals would seek to achieve a kind of immortality by reproducing themselves. There is widespread agreement among scientists, ethicists, and average Americans that production of human beings by cloning should be prohibited.

The President reacted rapidly and responsibly to this scientific advance and the unprecedented issues it raised by asking the National Bioethics Advisory Commission to study the issue and make recommendations. The Commission recommended that creation of human beings by cloning should be banned for at least five years, and the Administration has submitted legislation to implement this recommendation.

The legislation that Senator FEINSTEIN and I have introduced will assure the American public that reproducing human beings by cloning will be prohibited. It follows the President's legislation and the recommendations of the Commission. It makes it illegal to produce human beings by cloning, and establishes strict penalties for those who try to do so.

If the legislation the Majority Leader is seeking to call up achieved this objective, I believe that it would be passed unanimously by the Senate. Unfortunately, it goes much farther. It does not just ban cloning of human beings, it bans vital medical research related to cloning—research which has the potential to find new cures for cancer, diabetes, birth defects and genetic diseases of all kinds, blindness, Parkinson's disease, Alzheimer's disease, paralysis due to spinal cord injury, arthritis, liver disease, life-threatening burns, and many other illnesses and injuries.

All of these various kinds of research have broad support in Congress and the country. A blunderbuss ban on cloning research would seriously interfere with this important and life-saving research, or even halt it altogether. Scientists, physicians and other health professionals, biotechnology companies, pharmaceutical companies, and citizens and patients working with organizations such as the Cystic Fibrosis Foundation, the Parkinson's Action Network, the AIDS Action Council, the American Diabetes Association, and the Candlelighter's Childhood Cancer Foundation understand this. The Senate should understand it, too.

Let me read from a letter signed by the organizations I have just cited and many others as well and sent to members of Congress on January 26, 1998. The participating organizations said, "We oppose the cloning of a human being. We see no ethical or medical justification for the cloning of a human being and agree . . . that it is unacceptable at this time for anyone in the public or private sector, whether in a research or clinical setting, to create a human child using somatic cell nuclear transfer technology."

But they go on to say, "Poorly crafted legislation to ban the cloning of

human beings may put at risk biomedical research."

They point to a long list of diseases where cloning research could be critical, including cancer, diabetes, allergies, asthma, HIV/AIDS, eye diseases, spinal cord injuries, Guillain-Barre syndrome, Gaucher disease, stroke, cystic fibrosis, kidney cancer, Alzheimer's disease"—the list goes on and on.

They conclude: "We urge the Congress to proceed with extreme caution and adhere to the ethical standard for physicians, 'first do no harm.' We believe that there are two distinct issues here, cloning of a human being and the healing that comes from biomedical research. Congress must be sure that any legislation which it considers does no harm to biomedical research which can heal those with deadly and debilitating diseases."

These are reasonable tests for legislation in this important area. First, do no harm. Proceed with extreme caution. No one can pretend that the legislation the Majority Leader is seeking to call up meets these tests?

Proceed with extreme caution! The Majority Leader's legislation was introduced on Tuesday of this week. There has not been a single day of hearings held on it. Not one single day. I doubt that more than a few members of this body have even had the opportunity to read the legislation.

Many of our offices have been deluged with calls from health organizations, scientific bodies, and individual scientists and physicians who are seriously concerned about the damage this bill may do to fundamental research and to possible discovery of long-sought cures for dread diseases. Within a few days, we will have dozens if not hundreds of distinguished scientific bodies and disease societies expressing their opposition to this bill in its current form. As far as I know, there is not a single major scientific body of any stature that has endorsed this legislation.

What is the rush? What is the rush? It is not as if, despite the absurd publicity given to Richard Seed, a baby will be cloned tomorrow. To quote again from the letter I cited earlier, "The American Society for Reproductive Medicine, the Biotechnology Industry Organization, and the Federation of American Societies of Experimental Biology have all stated that their members will not seek to clone a human being. These three associations include essentially every researcher or practitioner in the United States who has the scientific capability to clone a human being."

It is also important to recognize that the Food and Drug Administration already has broad jurisdiction over human cloning, and would act vigorously to shut down any clinic that operates without FDA approval. Such approval depends on a finding that human cloning is safe and effective. But given the current state of science, no human cloning procedure could possibly be called safe at this time. The FDA approval process is not a permanent ban on human cloning, but it effectively bans the procedure for the near future.

So we have a situation where the procedure is not yet perfected, where the scientists who are competent to clone a human being say that they will not do it, and where the FDA already has the legal tools and responsibility to prevent it. We do not need to act today—and we should not act today—because this bill goes far beyond the simple prohibition of the creation of a human being by cloning.

The sponsors of this legislation state that all they want to do is ban cloning of a human being and that they do not want to interrupt important research. But their bill goes far beyond that, and it does not deserve to pass.

This bill would clearly interfere with medical research that offers hope for a cure of many deadly diseases. A letter I received two days ago from leaders of the Society for Developmental Biology states: "As active researchers in developmental biology, we understand the implications of the Dolly cloning results for basic science and human health." These techniques are essential for basic research because, as the letter goes on to say, "Many diseases, including heart disease, diabetes, and neurodegenerative diseases (such as Parkinson's Disease) involve the depletion or destruction of a particular cell type. One of the great hopes in medicine is to learn ways to replace the lost or damaged cells, for example by stimulating the body to regenerate its own missing cells or by growing the cells in culture and providing them to patients. The main obstacle is that most of the needed cell types cannot be grown in culture, nor can their growth be stimulated in any known way. Dolly was grown from the nucleus of an adult cell, proving that the genetic material of an adult body cell can be reprogrammed by the egg to restore the genetic potential for specializing into all possible cell types. Basic research on genetic programming will likely lead to novel transplantation therapies for numerous human diseases. In essence, we all carry in our cells a library of all the information needed to build a healthy human, and Dolly proves that the information can be reactivated and used again. What are the implications? For example, instead of diabetes meaning a lifetime of insulin injections accompanied by serious side effects, perhaps we can learn how to cause the reactivation of pancreas development genes and the regeneration of the missing cell types. Such exciting ideas are no longer far-fetched."

The key ingredients of this research offer great hope. DNA from an adult cell is placed in an egg cell that has had its own DNA removed. The egg cell then begins to grow and divide under the instructions of the adult cell DNA. The procedure involves what is called "somatic cell nuclear transfer technology." In the case of Dolly, the technology was used to create a sheep embryo from an adult sheep cell. The embryo was implanted in the womb of the female sheep and ultimately resulted in the birth of a baby sheep named Dolly.

The legislation that Senator FEINSTEIN and I have introduced makes it illegal to implant a human embryo using this technique in a woman's womb. Without that, no baby, no human being can be created by current cloning technology. This is what Dr. Seed says he is going to do. This is what most ethicists oppose. This is what the American people want banned—and our legislation will do it.

But the bill proposed by the Majority Leader will go much farther. It will block this new technology in all other cases as well. It will make it impossible to carry out the research that the overwhelming majority of scientists and researchers say is so important. It will make it impossible to use this new technology to grow cells that can be used to cure diabetes or cancer or Alzheimer's disease or spinal cord injury.

The Majority Leader's bill—page 2, line 13, paragraph 301 is entitled, "Prohibition on cloning." It is the heart of the bill. It states, "It shall be unlawful for any person or entity, public or private, in or affecting interstate commerce, to use human somatic cell nuclear transfer technology." That is the end of the statement. It does not just ban the technology for use in human cloning. It bans it for any purpose at all.

That means scientists can't use the technology to try to grow cells to aid men and women dying of leukemia. They can't use it to grow new eye tissue to help those going blind from certain types of cell degeneration. They can't use it to grow new pancreas cells to cure diabetes. They can't use it to regenerate brain tissue to help those with Parkinson's disease or Alzheimer's disease. They can't use it to regrow spinal cord tissue to cure those who have been paralyzed in accidents or by war wounds.

Congress should ban the production of human beings by cloning. We should not slam on the brakes and halt scientific research that has so much potential to bring help and hope to millions of citizens. As J. Benjamin Younger, Executive Director of the American Society for Reproductive Medicine, has said:

"We must work together to ensure that in our effort to make human cloning illegal, we do not sentence millions of people to needless suffering because research and progress into their illness cannot proceed."

Let us work together. Let us stop this know-nothing and unnecessarily destructive bill. Together, we can develop legislation that will ban the cloning of human beings, without banning needed medical research that can bring the blessings of good health to so many millions of our fellow citizens.

I bet you could take the legislation that we are talking about here, and I bet there aren't three Members of this Senate who have read this legislation. They could not. It was just out yesterday. And most of the Members have been involved in the various other measures. And we are being asked to vote on it. No committee, no explanation, absolutely none that is going to affect very, very important research.

That is not the way that we are going to try and move on into the next millennium, which is really the millennium of the life sciences. As science, as chemistry and physics have been in our past history, life sciences are going to be the key to the next millennium. And we want to make sure that we are going to meet our responsibilities and our opportunities in a way that is going to bring credit to the kind of research and can help make an enormous difference to families all over this country and really all over the world.

Mr. President, I yield the floor.

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Mr. President, I rise to speak, hopefully in part at least, to clarify where we are today in terms of a bill which is enormously important to all of us, to our families, to our children, to health care, to medical science. It is a bill that has been talked about in the context of cloning, of human cloning. For the past year—not on the specifics of the bill—no, but there has been debate in the past year about whether or not today, in 1998, our society is ready to clone, or have mass production, of cloned human individuals.

My distinguished colleague from Massachusetts just spoke to the importance of science, and of protecting scientific discoveries that will contribute to health care for the next generation. As a scientist, let me say at the outset that I could not agree more wholeheartedly with the commitment to not slowing down science in its efforts to improve health care.

I say this, and I will qualify my statement by saying that we have to today consider the ethical implications that surround scientific discovery. We must consider the ethical ramifications that might—in certain very narrowly defined and specific arenas—tell us to stop, tell us to slow down before we jump or really leap ahead—into the unknown. This would have huge moral and ethical implications, not just in how we deal with each other as individuals, but also in terms of how we deal with each other globally. This is because we are talking about affecting the overall genetic pool as well as the psychosocial implications of how we are defined as individuals.

This does need to be addressed. It is going to take an ongoing dialogue. We cannot—cannot—answer all the questions here in this Senate Chamber or in the U.S. Congress. It does take the overall debate of "What are the ethical limitations to various aspects of science today?" into the public square—where we can meet with scientists, lay people, bioethicists, people from the business community, theologians, and ethicists broadly.

We need to face that. And I mention that because this bill has not been brought to the floor formally. We have the objection. But I think it is important to understand what this particular bill does. It does two important things. No. 1, it establishes a commission, a bioethical commission which is composed of 25 people, a permanent commission that will look at the bioethical issues of new innovations, new science, new technology so that we do not have to debate every new breakthrough, every new technology which is coming with increasing frequency here in this Chamber.

This commission is to be comprised of 24 individuals. Subcommittees are set up in terms of ethics, medicine, theology, science and social sciences. It is broadly representative, not with politicians on it. In fact, there is an exclusion in there for putting politicians on it, but it will be appointed in a bicameral way by both sides of the aisle, broadly representative, with each member serving for 3 years, rotating members, with ongoing discussion.

There is no forum today for the American people to have the ethical, theological, scientific, social implications of this new technology discussed. And that is why this is striking such a strong chord here today. So some people say, "Why don't we run away from this? Why don't we just say," based on what I have just implied, "let's don't address it now. Let's wait until the future?"

Well, in truth, that is what has happened over the last year. We had a breakthrough. And it is a breakthrough using a specific technology which in a sheep—Dolly—really captured the attention of the world because it demonstrated for the first time that we are on the edge or on a precipice looking out to a type of science which we have never had to face before realistically, and that is the replication, the duplication of the human being.

How have we handled it? It is not like we have not talked about human cloning. Yet a lot of people will come forward and say we have not addressed this in this body or as a Nation.

As chairman of a subcommittee which is focused on issues of public health and safety, I can tell you that the subcommittee actually held two hearings. The first hearing was entitled "Examining Scientific Discoveries In Cloning, Focusing On Challenges For Public Policy." And that particular hearing was in March of last year. We had a number of people come forward. Again, this is for the benefit of my colleagues so they can go back and look at the testimony that was presented really aimed directly at the Wilmut experiment on Dolly, somatic cell nuclear transfer and its implications.

That discussion was begun back in March. Harold Varmus, who is Director of the National Institutes of Health, Public Health Service, U.S. Department of Health and Human Services, came and testified. His testimony is available, talking about this specific technique. Dr. Ian Wilmut talked before our committee in a public hearing. He is an embryologist at Roslin Institute in Edinburgh, Scotland. I had an opportunity to visit the institute there and view the type of research that is going on personally.

Dr. Wilmut's testimony has been presented to this body. I would encourage my colleagues to go back and look at that public hearing. We looked principally, at that particular hearing, at the scientific discoveries. But we wanted to hear from members of the National Bioethics Advisory Committee, or NBAC. The NBAC committee was eventually charged, over a 90-day period, to look at this issue of human cloning and to make recommendations. And we had Dr. Alta Charo, professor of law, University of Wisconsin, on behalf of the National Bioethics Advisory Commission testifying.

We also had John Wallwork, director of the transplant unit—transplantation, my field, has been mentioned on the floor today. And I hope to have a few comments on that shortly because I think we have to be very careful not to overstate what the bill, which has not yet even been discussed, does because it is easy to frighten people and say that this bill is going to shut down science in a field like transplantation. It does not do that. This bill is very, very narrowly defined and only in an arena which results in human cloning.

We held another hearing. And that hearing was entitled, "Ethics And Theology: A Continuation Of The National Discussion On Human Cloning." I mention this because, as a scientist, as a physician, as someone who has taken care of patients, and now as a U.S. Senator, I am going to come back to again and again that we do have the responsibility to look at the ethical implications of new innovations. That is what we are, trustees of the American people.

This hearing on "Ethics And Theology: A Continuation Of The National

Discussion On Human Cloning'' had witnesses, such as James Childress, again a member of the National Bioethics Advisory Commission, and also Edwin Kyle, professor of religious studies at the University of Virginia. We had Dr. Ezekiel Emanuel, a member of the National Bioethics Advisory Commission. We had a number of people testifying from the theological community as well.

I mentioned both of these hearings and the testimony therein for two reasons: No. 1, to help my colleagues and the American people know where they can reference certain material, and, No. 2, to demonstrate that the dialogue has been ongoing both in Washington, DC, in the U.S. Senate, in Congress broadly, but also on the public square.

We have heard some call for a private moratorium among the scientific communities. All of that seems pretty good until we recognize that it is not working. Just several weeks ago, we had a proposal by an individual, in essence, to set up an industry. The purpose of that industry is stated, not in these exact words, but that industry which is proposed is to clone human individuals.

I'm of course, referring to Dr. Seed. Can it be done? We don't know. We know that there is a certain technology that worked in an animal that, if a lot of people focused on that and there were a lot of experiments, could result in a human being. But the pronouncement that in spite of the moratorium, in spite of the discussions today, that we have an individual proposing the creation of an industry that is going to go charging ahead when we don't know the implications to society, to this country, to the world, is something that we must react to.

Tough issue. Ethics. We are talking about a procedure which has never been applied in the human arena. It has only been performed in animals. A lot of hypothetical examples will come to the floor. This bill addresses the problem that I just stated. We don't have a national forum now in which to intelligently, with broad input, discuss these ethical implications of new technology and new innovations and science. This bill, once it is allowed to be brought to the floor, very specifically sets up a mechanism outside of the U.S. Congress but broadly representative to be able to discuss these issues in a sophisticated, intelligent, ethical way. We need that mechanism. This bill creates that mechanism permanently.

The second thing that this bill does, it attempts to—and it is tough; I can tell you it is tough in terms of doing it just right, but the bill does it just right—it narrowly focuses on a particular procedure in the big world of science and research. It takes a very specific procedure that has never been even used in human cells in terms of creating embryos and says let's ban that procedure. Let's allow that procedure, even in animals, in the research arena, in cells. Let's learn more about that procedure so we will know what those implications are. But let's ban that narrow procedure when it is used to create a human being, another person.

Now, the advantage is by banning just that specific technique as it applies to human cloning, you can still continue experimenting with Dollys, bovine models, pigs, cows, baboons—animal research. There will be a lot of people who will say maybe we shouldn't use it there, but that is not what this bill does. It only bans the somatic cell nuclear transfer, so-called Dolly technique, as it applies to human cloning. In vitro research continues, other embryo research continues. This does not stop embryo research, or research on diabetes or sickle cell or cancer. It does not do that. It takes a very narrow procedure which is not commonly even applied to human cloning and says, stop, we will ban that. All other research continues.

No. 1, we do not ban all somatic cell nuclear transfer, only somatic cell nuclear transfer which is a specific technique as it applies to human cloning. Somatic cell nuclear transfer technology can continue in other fields. It can continue in animals. It can continue in cells. It is important for people to understand that we only ban this very specific procedure when used to produce a cloned human embryo.

Second, a little while ago a concern was expressed about the definition of ''embryo''; the definitions are imprecise. We don't need to get into a debate about how to define an embryo this morning or today or on the floor of the U.S. Senate because we already know what an embryo is. I will just cite two references. The National Institutes of Health Embryo Panel, which had a formal report in 1994, basically said, ''In humans, the developing organism from the time of fertilization.'' That is their definition of embryo.

If we look at the very good, although admittedly I will say incomplete, report by the NBAC, the National Bioethics Advisory Committee appointed by the President, which had a very short time line, their report I should say had recommendations based on the safety of the procedure. They admitted they did not have the time or the process to look at all the ethical and social and theological implications. They held hearings on it, but their conclusions were not based on those ethical considerations. In their report in 1997, several months ago, they said the embryo is ''the developing organism from the time of fertilization.''

The NIH Embryo Panel—I was not in this body at that point in time, but I have had the opportunity to go back and read their findings and their report—was very clear in their statement that the embryo does have some moral significance. The embryo as just defined by these two definitions does have moral significance today.

There is a huge debate, a debate which I think we should avoid on this narrow, narrow bill, that can go into abortion, pro-choice and pro-life, when do you define a life. I don't think we need at this point in time to get into that discussion. We do need to recognize that people such as previous panels like the NIH Embryo Panel did give moral significance to that embryo.

Now, third, in essence, the statement was made the application of nuclear transfer cloning to humans could provide a potential source of organs or tissues of a predetermined genetic background. That statement refers to my own field of transplantation where the concept is that rejection of a heart or of a lung or of a kidney is determined in large part by how different the recipient organism looks at that transplanted organ, genetically how different are they, which explains this whole process we called rejection. That is an inflammatory-like process which says the recipient body will reject that heart, either more often or totally. The genetically closer you get, the less that process of rejection occurs, free of other types of immunosuppression. This whole idea of having lots of copies of an organ, of a DNA, is one line of research in terms of eliminating rejection.

References were made to spinal cord injuries, Alzheimer's, Parkinson's, cancer, with the whole premise being that research will be shut down in these fields. I want to assure my colleagues it will not. Again, it is a very specific, narrow procedure as it applies to human cloning. Animal research will continue, plant research will continue, other cellular research will continue.

Now, NBAC also in their report in 1997 looked at this issue about transplantation, since that was brought up on the floor. Let me refer to their finding, and this is from their Chapter 2, Science and Applications of Cloning, in their report. ''Because of ethical and moral concerns raised by the use of embryos for research purposes, it would be far more desirable to explore the direct use of human cells of adult origin to produce specialized cells or tissues for transplantation into patients.''

I think it pretty much speaks for itself based on their ethical and moral concerns with this type of research that you don't necessarily have to rely on somatic cell nuclear transfer to produce an embryo as being the technique in order to create this likeness to prevent rejection.

No. 2, they say it deals with transplantation and research. ''Given current uncertainties about the feasibility of this, however, much research would be needed in animal systems before it would be scientifically sound and

therefore potentially morally acceptable to go forward with this approach." That is, the approach of somatic cell nuclear transfer. So what NBAC concluded, "Given these uncertainties . . . much research would be needed in animal systems. . . ."

Our bill allows that research to continue and then make a decision, possibly 5 years from now, 10 years from now, 3 years from now, in terms of what we learn from those animal systems. Our bill says, "Don't use this technique to clone humans." There are a lot of other strategies. I don't want my colleagues to think that somatic cell nuclear transfer technique is one of the more important techniques today. There are all sorts of strategies in terms of the transplantation arena.

Again, looking at NBAC, they recognize that, "Another strategy for cell-based therapies would be to identify methods by which somatic cells could be de-differentiated and redifferentiated along a particular path. This would eliminate the need to use cells obtained from embryos."

Again, now is not the time to go into these details, but I do want to show in part the richness of science to demonstrate that this one particular technique as applied to a human, as applied to human cloning, is the only thing that is being banned, and all this other research continues right along.

The issue has come up and will likely come up, should we create embryos purely for research purposes? Our bill does not. Let me say at the outset, our bill, as I said, allows embryo research to continue as it is today under the requirements and the regulations that are out there today. What our bill does, it looks at a particular technique with other research and embryos allowed to continue. You can step back and say, should someone be out creating all these mass-produced human embryos just to do research on them and then destroy those embryos? It is an issue which is very likely to come up before this body.

Let me introduce it and just say that our bill does not allow creation of these embryos using somatic cell nuclear transfer—human embryos. Again, animal research can continue. The Washington Post really captured, I think, what this debate will evolve to as we look at ethics and theology and science, careful not to slow down the progress of science which we want to encourage in all the fields that have been mentioned this morning. The Washington Post editorial in 1994 basically says, "The creation of human embryos specifically for research that will destroy them is unconscionable. Viewed from one angle, this issue can be made to yield endless complexity. What about the suffering of individuals and infertile couples who might be helped by embryo research? What about the status of the brand new embryo? But before you get to these questions, there is a simpler one: Is there a line that should not be crossed even for scientific or other gain, and if so, where is it?"

This is not a one-side-of-the-aisle issue. In fact, both sides of the aisle have put forth bans on human cloning. President Clinton doesn't believe the Federal Government should be funding embryo-type research. Basically he has said, "The subject raises profound ethical and moral questions as well as issues concerning the appropriate allocation of Federal funds. I appreciate the work of the committees that have considered this complex issue and I understand that advances in in vitro fertilization research and other areas could be derived from sufficient work. However, I do not believe that Federal funds should be used to support the creation of human embryos for research purposes."

Well, let me step back and then I will close. The bill, which we had hoped would come to the floor today does two things. No. 1, it creates a bioethics commission, permanent, 24 members, broadly representative of society today, with the disciplines of ethics, bioethics, theology, the social sciences, all well represented, a forum that I think is most appropriate to discuss these very difficult issues of technology that will be coming through even more rapidly in the future. The answer to the question is, why don't we just appoint this commission and pass that part of your bill and not worry? Well, that is what we have sort of been doing for the last several months—sitting back as the national dialog continues. Yet, we have a proposal coming from the private sector at this juncture and that proposal is to go out with the single objective of cloning human beings. If we as trustees of the American people want to step back and say, no, that is too hot an issue for us, that is one approach. My approach is that we go in, we address that specific problem, that cloning of the human individual with the very best legislation that we can do, set up a commission so that in the future both that issue and other issues can be discussed, look at the science, look at the ethics, look at the philosophical and social implications of this research. So that is No. 1, a bioethics commission.

No. 2 is to target the Dr. Seeds of the world—people who don't have the problem, who don't fully see the ethical potential for harm to society and to the world and, therefore, have basically publicly stated what their objective is—to create human beings, and be appealing for resources to do just that. That is why the American people expect us to come forward and debate and talk about the implications, make sure that we do exactly what I have said, which there will be debate on and that is in a very focused way, target a particular technique which has never been used to clone a human individual. We just want to prevent that and allow that science to continue.

The editor of the New England Journal of Medicine basically has said in the past: "Knowledge, although important, may be less important to a decent society than the way it is obtained."

I hope as we go forward and look at the final disposition of this bill that we come back to that statement.

I yield the floor.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I listened to my colleague's excellent statement and, of course, since he is the only physician in the Senate, I think we should all pay strict attention to him.

Let me just say that I am very concerned about debating this bill today, a bill which falls within the jurisdiction of the Judiciary Committee, without our having any hearings or other discussion, because there are a lot of complicated issues involved here.

I want to let the distinguished Senator from Tennessee know that I support his statements in many respects. I, too, am opposed to cloning of human beings.

But at the same time, we have to move very carefully in this area so that we do not preclude a lot of very promising medical technologies and very valuable biomedical research. It may be that amendments are need to clarify that.

I maintain an interest in this issue both as Chairman of the Committee under whose jurisdiction this criminal code amendment would fall, and as a Senator with a long-standing interest in biomedical research and ethics.

The questions raised by this legislation are both novel and difficult and it behooves us to move carefully.

Mr. FRIST. I thank the Senator.

Mr. HATCH. Mr. President, I ask unanimous consent that the remarks I am about to give be considered as if in morning business.

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

NOMINATION OF DAVID SATCHER TO BE SURGEON GENERAL

Mr. HATCH. Mr. President, I have listened with great care to our debate about the nomination of Dr. David Satcher over the past few days. It has been a constructive discussion, one which has raised a number of important issues.

I have the greatest respect for the Offices of the Surgeon General and Assistant Secretary for Health. The individual who occupies this position will become the Nation's No. 1 public health official, our top doctor, if you will. For this reason, this nomination deserves the utmost scrutiny.

I have the greatest respect for our colleague, the Senator from Missouri. I think he has made some arguments that raise very valid concerns, and it behooves this body to examine them.

That being said, after a great deal of analysis, I have concluded that Dr. Satcher is eminently qualified for the position, and that there is a more than adequate explanation for his position on two key issues—partial-birth abortion and HIV testing in Third World countries. Accordingly, I intend to support his nomination.

From a humble rural background, David Satcher has risen to become a leading public health expert—the director of the prestigious Centers for Disease Control and Prevention, a doctor who is widely respected for his ability to communicate scientific information in a credible manner. He has done a great job at the Centers for Disease Control and Prevention.

I have spoken at length with Dr. Satcher and became convinced that he has an agenda that Americans of both parties should support. Tobacco control is at the top of that agenda. On the issues of teen pregnancy and sexually transmitted disease, Dr. Satcher intends to promote abstinence and assures me that he believes health and sex education are a parental responsibility, in which the Government should play only a supportive role. Moreover, Dr. Satcher believes science should determine health policy, attendant upon which we have based virtually all of the public health legislation that has passed this body.

Let me note for the Record that Dr. Satcher has experience with three of the four historically black medical schools. He learned firsthand of the problems that Americans face in seeking care, and he does not advocate for a Federal solution.

During Dr. Satcher's tenure at CDC, the Centers for Disease Control, he worked to increase childhood immunization rates, to develop better ways to protect Americans from new infections, and decrease teenage pregnancy rates. He has also demonstrated U.S. leadership in attacking the world AIDS problem.

Critics of the nomination have raised concern that he supports the President's position on partial-birth abortion. It is no secret that I disagree vehemently with that position and will continue to work until a prohibition on partial-birth abortion is the law of the land.

Yes, it is true that Dr. Satcher supports the President's position, which is not surprising given that Dr. Satcher is the President's nominee. I certainly understand the motivation of some in saying that he should be opposed for that reason.

But in reviewing the hearing record on this nomination, I am impressed by Dr. Satcher's assurances to the committee on this issue. He said, "Let me unequivocally state that I have no intention of using the positions of Assistant Secretary for Health and Surgeon General to promote issues relating to abortion. I share no one's political agenda, and I want to use the power of these positions to focus on issues that unite Americans, not divide them. If confirmed by the Senate, I will strongly promote a message of abstinence and responsibility to our youth, which I believe can help to reduce the number of abortions in our country." I believe that nothing in Dr. Satcher's background, including his work as CDC Director, suggests that he would try to make the Surgeon General's post into a pro-abortion bully pulpit. Indeed, he has personally given me his assurances to the contrary.

I remember when Dr. C. Everett Koop was nominated by a Republican President and his nomination was held up for some 8 or 9 months on the issue of abortion, even though Dr. Koop asserted he would not use the Surgeon General's Office as a public forum for advocacy for abortion. As things worked out, we finally were able to get him confirmed, and I won't go into all the details on how that happened. He proved to be one of the great Surgeons General of the United States. I believe Dr. Satcher will likewise prove to be a very successful Surgeon General of the United States. I urge my colleagues to vote for him.

In addition, I am aware that another series of questions has been raised regarding joint CDC/NIH-sponsored clinical trials conducted in Thailand and the Ivory Coast to determine the effectiveness of AZT to prevent pregnant mothers from transmitting the HIV virus to their children.

In a nutshell, concern has been raised because the foreign trials were placebo-controlled against a "short course" regimen, whereas, in the United States a "long course" AZT regimen would have been the baseline for care. While it is clear that an argument can be made that the U.S. standard of care could have been used, this would not have resolved a more difficult problem of lack of access to expensive medications.

While opinion is hardly unanimous on this issue, the better view is that these grounds were appropriate to the nations and the populations studied. These trials were done in complete partnership with the local patients, health officials, and the World Health Organization.

As our debate on the Hatch-Gregg FDA export bill in 1995 made abundantly clear, we need not and should not second-guess the choice of patients and officials in other countries who, for a myriad of reasons, seek not to use the American standard of care. I believe it is critical for those in Congress to respect differences of the health and wealth characteristics of other countries. What is appropriate policy in the United States is not necessarily appropriate in the Third World.

Mr. President, I want to emphasize the importance of the position Dr. Satcher seeks to assume. The Surgeon General is the head of the United States Public Health Service Commission Corps. And, formerly, the position of Assistant Secretary for Health was the top public health slot in the government. Unfortunately, the position of Assistant Secretary for Health was downgraded in the Clinton administration and has become less important since the "ASH" no longer has line authority over the public health agencies such as CDC, NIH and FDA.

I hope that Dr. Satcher will undertake a review of that decision because I think it was a mistake, and I hope to discuss that with him in the future.

In closing, I want to point out that Dr. Satcher has a distinguished record that will be an asset to those important public health positions.

Doctor Satcher is a recognized public health leader and a member of the Institute of Medicine of the National Academy of Sciences, the recipient of numerous awards, such as the 1996 awardee of the AMA's prestigious Dr. Nathan B. Davis award.

In short, Dr. Satcher is a well-credentialed, highly effective public health leader. If confirmed, he will be the highest-ranking physician within HHS and could be counted on to be an articulate national spokesperson on a wide range of public health issues that we all agree are important.

I think we can all learn by the example set almost 20 years ago when this body, as I mentioned earlier, confirmed C. Everett Koop to be Surgeon General over the objections of many in the other party.

The fears about Dr. Koop's partisanship were unfounded. Today, he is widely respected by Senators on both sides of the aisle, and it is my hope that this is a legacy Dr. Satcher will leave as well.

THE TOBACCO SETTLEMENT

Mr. HATCH. Mr. President, I also want to take this opportunity to announce what I consider to be an important development on the tobacco legislative front.

This morning, a senior official in the administration, David Ogden, counselor to Attorney General Reno, delivered testimony on the tobacco settlement at the House Judiciary Committee hearing.

Mr. Ogden testified that:

> If there is agreement on a comprehensive bill that advances the public health, then reasonable provisions modifying the civil liability of the tobacco industry would not be a deal breaker.

Since announcement of the June 20 proposed tobacco settlement last year,

I have maintained that a legislative measure which incorporates strong public health provisions in conjunction with certain defined civil liability reforms could do more to stop the next generation of our children from getting hooked on tobacco than any bill we have ever considered.

The administration's announcement today will do much to make passage of that landmark legislation possible. I call upon the President to send us his language on a priority basis. In fact, I have invited the Department of Justice to testify at the Judiciary Committee hearing next Tuesday on the tobacco settlement, and we will be greatly interested in the details of the President's position on liability.

Mr. President, this is a stunning breakthrough, one which I believe greatly increases the probability that a broad, bipartisan consensus can be reached on the tobacco settlement.

PRIVILEGE OF THE FLOOR

Finally, Mr. President, let me just conclude by asking unanimous consent that Bruce Artim and Marlon Priest be granted privileges of the floor during the pendency of the Satcher nomination and during consideration of S. 1601, the anti-cloning bill.

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

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

Mr. FRIST addressed the Chair.

The PRESIDING OFFICER. The Senator from Tennessee.

Mr. FRIST. Would the Senator like me to yield?

Mr. LEAHY. Mr. President, will the distinguished Senator from Tennessee be willing to yield me 3 minutes?

Mr. FRIST. Absolutely.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

(The remarks of Mr. LEAHY pertaining to the introduction of S. 1612 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. LEAHY. I thank my good friend from Tennessee for yielding me this time.

The PRESIDING OFFICER (Mr. ALLARD). The Senator from Tennessee.

Mr. FRIST. Mr. President, Thank you.

COMMISSION TO PROMOTE A NATIONAL DIALOGUE ON BIOETHICS

Mr. FRIST. Mr. President, I want to take a moment to speak to the Bioethics Commission which will be proposed. It is part of a bill which I am not sure is going to make it to the floor today. I would like to comment on that Commission.

Mr. President, I want to comment briefly on this concept which is in the bill that will be considered sometime in the future. I am not sure it will be this afternoon, or next week, or sometime in the future. And the aspect that I want to comment on is this Bioethics Commission. I think it is critical that at the end of this century and on into the next century we have somewhere in the United States a forum where we can carry on intelligent discussions on the ethical, the theological, the scientific, and the medical issues that are inevitable as science progresses with breakthrough discoveries that have the potential both for very good—very good—but also evil. Where do we digest those in the society when they are coming through not every week nor every month but even more frequently? In response to that, I proposed the National Bioethics Commission.

We have the National Bioethics Advisory Commission, so-called NBAC. And I think over the next few days the country will become familiar with that NBAC designation. The NBAC, the National Bioethics Advisory Commission was appointed entirely by the President of the United States. They did a very good job this past year in assimilating data, information, reports, and testimony from experts and the lay public broadly over a 90-day period addressing human cloning. That was a good start. But they very openly said that they were unable to substantively address the ethical issues surrounding human cloning.

As I have said earlier today, as a scientist, and a public servant now, I want to make the case that we can no longer separate science from the ethical consideration in that we as a body must address how to establish a forum in which such discussions can be carried out.

The Commission cited inadequate time to tackle the ethical issues in the context of our pluralistic, complex, intricate society in that they chose primarily to focus on scientific concerns as well as the less abstract concept of safety. What is safe or not safe? Is this procedure safe, or is it not safe? They then appealed to each American citizen to step up to the plate and exercise their leadership and their moral leadership in formulating a national policy on human cloning. We need that forum.

Time has shown that neither the Presidential Commission nor the U.S. Congress is probably the forum, or at least is an inadequate forum, for addressing these bioethical issues which are of tremendous intricacy and important to society.

I, therefore, proposed this National Bioethics Commission in our legislation. It is representative of the public at large. It has the combined participation of experts in law, experts in science, experts in theology, experts in medicine, experts in social science, experts in philosophy, and the interest of members of the public. It is my hope that this Commission will forge a new path for our country in the field of bioethics that will enable us to have an informed, a thoughtful, a sophisticated, and scientific debate in the public square without fear on behalf of the public, or politicians, or politics driving our decisions.

In this proposal, the majority and minority leaders of Congress would appoint the members of the panel. No current Member of Congress or the administration would serve on this panel. We simply must depoliticize these discussions which will simultaneously broaden input from the general public. Each and every citizen of this country should have the opportunity to contribute to these debates.

This Commission would be established within the Institute of Medicine, and would be known as a Commission to promote a national dialogue on bioethics.

Very briefly, it would have 25 members, 6 appointed by the majority leader of the Senate, 6 by the minority leader of the Senate, 6 appointed by the Speaker of the House, and 6 appointed by the minority leader of the House of Representatives. There would be a chairman. In addition, representatives stated in the legislation would be from the fields of law, theology, philosophy, ethics, medicine, science, and social science. The Commission would be appointed no later than December 1 of this year. We have to move ahead quickly. They would serve for a length of 3 years. And the duties of the Commission, as spelled out in the legislation, would be to provide an independent forum for broad public participation and discourse concerning important bioethical issues, including cloning, and provide for a report to Congress concerning the findings, conclusions, and recommendations of the Commission concerning Federal policy and possible congressional action.

Subcommittees are established on that Commission for legal issues, for theological issues, for philosophical and ethical issues, medical issues, and scientific issues, and for social issues.

I will not belabor the Commission, but want to come back to the concept and the concept is to have an appropriate forum to discuss the types of issues we are discussing today, which I have made the case that we have to act on today in response to proposals that have been made from the private sector and to have a better, a more appropriate, a more responsive, and a more representative forum to address such issues in the future.

Mr. President, I yield the floor.

Mr. KERREY addressed the Chair.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KERREY. Mr. President, I ask unanimous consent that I may speak as if in morning business.

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

THE PRESIDENT'S BUDGET

Mr. KERREY. Mr. President, there has been a lot of commentary before about the President's budget, and I would like to offer a little comment prior to talking about the proposals that I heard the distinguished Senator from West Virginia, Senator BYRD, make the other day having to do with the importance of ISTEA legislation.

My own view is that there is an awful lot that Congress needs to be proud of at the moment. We sometimes make it worse with our actions. And when we help make things better, it seems to be important for us to take stock of what we have done and to acknowledge our accomplishments.

I believe the last 7 years in the United States we have seen a dramatic transformation in the United States Congress from one of an expectation almost that the Japanese and other Asian nationals are going to overwhelm us.

I remember very well in 1991 the debate was: Will the U.S. currency be devalued in the end? Could our automobile manufacturers survive? Could our computer manufacturers survive? There were a lot of people who reached the conclusion that we would not be able to do that, and what we ought to do is adopt the Japanese model, to have the Government much more involved in the decisionmaking businesses, with a much closer relationship, and industrial policy was quite popular at the time.

We chose a different direction. We enacted in 1990, and in 1993 and again enacted in 1997, legislation that imposed fiscal discipline on the Federal Government. And as a consequence of that we are now finding ourselves debating what are we going to do about the surplus? We have reduced Government borrowing, and reduced Government borrowing just from the 1993 legislation by almost $800 billion; and that coupled with tremendous accomplishments in the private sector, businesses and employees working harder, producing more, being more competitive and especially paying attention to price and quality which is what the consumer increasingly is looking at before they will make a purchase.

Our goods are selling. Our cars and computers are selling. Our software and food is selling. Our products are selling. People throughout the world, where they have an opportunity to buy our products are saying that "Made in the U.S.A" is good again. It wasn't that long ago when people were saying maybe it is not so good.

So we need to congratulate ourselves. We have a surplus. The cost of the Federal Government is down to the lowest as a percentage of GDP than it has been in a long time. Crime is down in most major cities. There is a lot that we need to feel good about—not just as Members of Congress but as Americans for how it is that we have gotten to where we are today.

Mr. President, I think, as is always the case in any competitive operation, that it must be pointed out that there is a need to take advantage—not to say it is terrific and we are on the top of the heap and become complacent. That is when you get in trouble. I understand that there is uncertainty when you are having to compete. But in part that uncertainty means we are doing a good job because we are not asking anybody to provide us with an absolute guarantee of success. We are saying that we are prepared to get in the market and do what we have to do to be successful.

So I believe it is not the time in 1998 to say that it is terrific, and let's figure out how to spend the surplus, or let's figure out how to take an easy course of action. I think the President has outlined for us a tough course in setting Social Security as a top priority saying we have to have a discussion in 1998 about it besides in 1999 what we are going to do with the most expensive program that we have in Washington, DC, today. I applaud that.

All of us need, as we look at the Congressional Budget Office numbers, to be alert. And the distinguished Senator from Tennessee and I are both on the Medicare commission, and I presume that Medicare commission, which I think is going to have our first meeting sometime in March relatively quickly, I hope. Our big concern should be the year 2010, the year 2030, and the CBO numbers that we are given. All of us need to understand that it only extends out 10 years. The next 10 years looks pretty good. Over the next 10 years not a single baby boomer will retire. They start to retire; 77 million of them start to retire in the year 2010. And from 2010 to 2030, the number of retirees will increase almost 25 million while the number of workers only goes up 5 million. That is a demographic problem—not caused by liberalism or conservatism. It is a demographic problem, and my guess is that this year it will impose some sort of children's health fee on tobacco. My guess is that the increased funding in NIH will go through. And my guess is that as a consequence of that and what other sorts of things there will be that the baby-boom generation is going to live even longer than what we are currently forecasting. And their demand for collective transfer payments both from Social Security and Medicare are apt to be larger than what we are currently estimating, not likely to be smaller.

During that period of time—2010–2030—the percent of our budget that is allocated to mandatory spending, presuming that we allow net interest to go down, which is by no means certain, if we allow the debt to be paid down so the net interest can go down, even with that scenario, at the end of the baby boom generation 80 percent of the budget will go to mandatory spending. All one has to do is take today's budget of $1.7 trillion, subtract 80 percent, and ask yourself how you are going to defend the Nation with 20 percent, how you are going to build our roads, how you are going to maintain a law enforcement system, how you are going to do all the things that everyone wants to do with only 20 percent left.

That is the dilemma, it seems to me, we are going to face. So I hope in this moment of exuberation and exhilaration we understand now is not the time to become complacent. Now is not the time for us to just come to the floor and try to tee up things that are relatively easy. We have to get the tough things done.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT

Mr. KERREY. Mr. President, I was very disappointed, many of my colleagues down here, a lot of us were disappointed that we were not able to get the ISTEA legislation passed last year. For me the ISTEA legislation is one of the most important things with which this Congress deals. It creates immediate jobs, employs people in my State, but much more importantly, it adds to the productive capacity out in the future. It contributes to our capacity to be competitive. It enables our families to do what they want to do when they take their leisure time.

Our transportation system is enormously important, and it is one of the things we in America have to be proud of. It enables us to maintain our competitive edge and to be able to celebrate.

I was encouraged earlier last year when the majority leader indicated that he was going to make this a priority and bring it up right away. I have great respect for Senator DOMENICI, the chairman of the Budget Committee, who is asking that this legislation be taken up after we get a budget resolution, but that means we will have to get another 6-month extension. That means there will be contract uncertainty out there in the country. That means we may not get this thing done until next year.

All of us know there are bitter divisions about formulas, bitter divisions about how we are going to allocate our money: should it go out to the West, to the Northeast? All of these battles that typically do not break down by party line but by geographic line, all of those battles will have to be waged here in the Senate Chamber when the bill is brought up. If you delay it, not only do we risk not getting a 6-month extension, we risk not getting ISTEA passed until very late in the session, creating contract uncertainty, creating, it seems to me, problems none of us ought to be courting.

So I hope that the distinguished chairman of the Budget Committee and the majority leader will bring this legislation up before this budget resolution, will schedule it for debate as quickly as possible.

We need, on behalf of the American workers, on behalf of American businesses, to pass what arguably I think both Republicans and Democrats would say is apt to have the most immediate, positive impact in terms of our economy and in terms of jobs and productivity.

I have a letter from one of Nebraska's significant engineering companies pointing out, quite correctly, that there is an urgency to this legislation. There are jobs hanging in the balance, there is productivity hanging in the balance, there is safety hanging in the balance. There are lot of things that need to be done that we are not going to be able to do if this piece of legislation is delayed.

I voted yesterday to rename the National Airport in favor of Ronald Reagan. I am a Democrat. There were many of us who said, oh, my gosh, do we have to put a Republican name up on our airport? Ronald Reagan was one of the most important Presidents of this century. It was an important piece of legislation. But relative to ISTEA, it is not as important. When you size and scale these things in terms of the contribution they are going to make to keep our people safe, to give our kids a good education, to give Americans a shot at the American dream, ISTEA gives them that opportunity. ISTEA gives us jobs; it gives us a chance to maintain our competitive edge.

I hope there is some reconsideration given. I hope that the advice that was offered earlier by the distinguished senior Senator from West Virginia, Mr. BYRD, that this legislation be brought up sooner rather than later will be taken by the majority leader.

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. GRASSLEY. 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. GRASSLEY. I ask unanimous consent to speak for 10 minutes as in morning business.

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

INTERNATIONAL TRADE INITIATIVES

Mr. GRASSLEY. Mr. President, as we start the second session of the 105th Congress I want to outline my priorities on international trade issues from my vantage point of chairman of the Finance Committee's International Trade Subcommittee. Some of these are legislative initiatives that began in the 1st session and others are things that we should be doing everyday.

The first thing we need to do is restore the United States to its rightful position of leading the world in liberalizing global trade. We can do this by granting the President new trade negotiating authority. The failure to pass fast track last year was harmful to American workers, American farmers and American consumers.

Why? Free trade not only creates new, high-paying jobs/it helps preserve existing jobs. When high trade barriers prohibit U.S. companies from exporting to a foreign market, the company will choose to relocate in that other country in order to sell its product.

The United States has one of the most open economies in the world. Our average tariff is about 2.8 percent. The world average is 12 percent. Fifty years ago it was 48 percent. Many other countries have virtually closed markets. According to the World Bank, for instance, China's average tariff is 23 percent. Thailand's is 26 percent, the Philippines 19 percent, Peru almost 15 percent, and Chile has a flat 11 percent tariff.

It can be difficult for American companies to export to a country like China, that places a 23 percent tariff on our goods. The tariff prices our goods out of the market. So these companies move their plant to China and avoid paying the tariff.

The preferred alternative—for American workers—is negotiating with China to lower its tariffs. Bring their tariffs down to our level. Then the companies can stay here—employ American workers—and export their goods to China. It's a "no-brainer."

But we can not negotiate these tariffs down without fast track authority. That is why fast track is so important. It leads to lower tariffs in foreign countries and the preservation of American jobs.

Fast track also leads to the creation of new jobs. Exports already support 11 million jobs in the U.S. Each additional $1 billion in exports creates between 15,000 and 20,000 new jobs. These jobs pay 15 to 20 percent higher than non-export related jobs. And, in Iowa, companies that export provide their employees 32 percent greater benefits than non-exporters.

All of this is in jeopardy without fast track. And it is the American worker who will suffer.

Mr. President, what I am most concerned about is the vacuum of leadership on international issues that is left by the United States relinquishing this traditional role. Ever since the first Reciprocal Trade Agreements Act of 1934, the United States has led the world in reducing barriers to trade. And we have benefitted greatly from this leadership.

American workers are the most productive, highest-paid workers in the world. American companies produce the highest quality products. And American consumers have more choices of goods and pay less of their income on necessities, such as food, than consumers of any other country. These are the benefits that we have enjoyed because we've been willing to lead on trade.

This leadership is now being questioned by our trading partners. They are moving on without us. They're forming regional and bilateral trading arrangements that don't include the United States.

What are the consequences for the United States? The European Union, Japan and developing countries will have a greater influence in shaping world trade policies. Should we trust Japan and the European Union to advance our interests? How hard will they push for opening markets?

I ask my colleagues who voted against fast track because of labor and environmental concerns, how hard do you think other nations will push for raising these standards? I ask my colleagues from rural states, do you trust the European Union and Japan to push for open markets at the 1999 WTO agriculture talks?

Only our President can advance our interests. Only the United States can influence other countries to improve their environment and labor standards, to improve human rights, and to embrace democracy through international trade. That is why the President should renew his effort for fast track authority and Congress should pass it this year.

Congress also included a reauthorization of the Trade Adjustment Assistance program in the Senate's fast track bill. This program assures that every American who loses their job due to a free trade agreement receives the job training and assistance they deserve. No American will be left behind by our participation in the global economy. My second initiative is to secure passage of the TAA this year.

MY third priority is to keep markets open the troubled Southeast Asian countries. I support IMF assistance of the nations in crisis. But as part of the economic reforms that the IMF requires, we must insist that the Asian countries open their markets to our exports.

Countries have a natural inclination to close their markets in time of crisis. But this only accelerates the downward spiral they find themselves in. For their own good, they should resist the temptation to raise trade barriers.

Also, some of these countries will attempt to increase their exports to our market in order to help their economies. If that's the case, they have a moral obligation to open their markets to our exports. And I will work to make sure that happens.

Last week I joined with 19 of my fellow senators on a letter led by Senators ROBERTS and BAUCUS requesting a meeting with Treasury Secretary Rubin to discuss the pervasive trade barriers that remain in the Asian countries. Hopefully, that meeting will lead to a cooperative effort between Congress and the administration to remove these barriers.

The fourth area I will be focusing on in 1998 persuading our trading partners to live up to the commitments they have made in prior trade agreements. Getting a good agreement is one thing. But we must demand compliance with our agreements on a daily basis. Many markets we thought we had opened are still closed.

I will monitor our existing agreements and strongly urge the administration to bring enforcement actions when necessary. Trade agreements aren't worth the paper they are written on unless we put some force behind them.

The last two initiatives I will pursue in 1998 involve agriculture trade, which is so important to my state and many others. Exports now account for over 30% of farm income in this country. Take away foreign markets, and we'd have to idle one-third of America's productive cropland.

In recognition of the importance of foreign trade to the agriculture economy, last year Senator DASCHLE and I introduced S. 219 a bill creating a "Special 301" process for agriculture. This new 301 procedure requires the U.S. Trade Representative to identify and remove the most onerous barriers to U.S. ag exports. It will put other countries on notice that we are serious about gaining access to their markets.

This bill was made part of the fast track legislation that was on the floor of the Senate at the end of last year. It is my intent to move this bill again as a part of fast track legislation or independently, if necessary.

Finally, agriculture is preparing for another round of market access negotiations at the World Trade Organization beginning in 1999. These talks will lay down the rules on agriculture trade for the next century. I pledge to work with the administration to ensure the United States sets the agenda for these talks.

Our trading partners do not necessarily want to remove their barriers to our ag exports. Because our farmers produce the highest quality products at the lowest cost. So American farmers will gain access to new markets only if the United States leads these negotiations and persuades other countries to open their markets.

Mr. President, free and fair trade creates good, high-paying jobs. It raised the income of our farmers and the standard of living for our workers and consumers. Trade has contributed significantly to our strong economic growth and record low unemployment. I will continue to pursue an agenda of free and fair trade through this Second Session of the 105th Congress.

The PRESIDING OFFICER. The Senator from North Carolina.

Mr. FAIRCLOTH. Mr. President, the majority leader had programmed a short talk but I don't see him, so I will go ahead with mine, if I may.

Mrs. BOXER. Reserving the right to object, may I ask my friend if he, in his request to speak, would add that I may speak for no more than 5 minutes following his remarks?

Mr. FAIRCLOTH. Is the request you may speak following my remarks? It's absolutely fine with me, but as I said, the majority leader was supposed to speak for 5 minutes. But if he's not here, that's fine.

Mrs. BOXER. If you want to amend it so he can, if he does arrive, speak before I speak, that's not a problem at all. I will then withhold until he completes and take my 5 minutes at that time.

Mr. FAIRCLOTH. Thank you.

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

ATTORNEY FEES AND THE TOBACCO SETTLEMENT

Mr. FAIRCLOTH. Mr. President, I rise to say a few words about attorney fees and the proposed Senate bill, S. 1570. The Public Health Funds Preservation Act, which is better known as the Tobacco Settlement Act, limits attorney's fees, and only if there is a tobacco settlement. It limits their fees, the bill that I have introduced, to $125 per hour plus court-approved expenses. This is not something that we came upon. This is the same rate that Congress set for lawyer fees in suits filed against the Federal Government. So this is an accepted and nationally known attorney fee, $125 an hour.

For trial lawyers, this debate is not about public health, it is about private greed. It is about creating instant billionaires. It is about using the public funds to create instant billionaire trial lawyers. It's a huge pot of money, billions of dollars, and it is wanted to fund frivolous lawsuits far into the 21st century. As long as you pay lawyers, you will have lawsuits. At the rate these are being paid, we will have lawsuits into infinity.

Let me mention a few cases that reveal the real motive of the trial lawyers. This is a typical example of how this group works. The trial lawyers negotiated a $349 million settlement with the tobacco companies in the so-called "flight attendants case."

These were flight attendants who said they had been affected by secondary smoke. They won the $349 million: $300 million went to a new research foundation, and the lawyers took $49 million. Not one dime did a single flight attendant get because of the lawyers in the suit—not a dime. The entire amount went to lawyers and the research foundation. It is clear what happened—lawyers, $49 million; clients, $0, and that is the way the score usually turns out.

The litigation machine grinds on and on, long after settlements. More lawsuits, more billable hours and more attorney's fees. It goes on into infinity.

The flight attendants' own lawyers sold them out for a quick buck—$49 million to be exact.

This is not an isolated case. The Texas Attorney General agreed to pay lawyers close to $2.2 billion, 15 percent of the settlement that Texas was able to negotiate with the tobacco companies—$2.2 billion to the lawyers.

The lawyers involved in the settlement of the Florida suit claimed $2.8 billion, 25 percent of the entire settlement. The settlement was $11.3 billion, the lawyers want $2.8 billion.

The judge in the Florida case said that their demands were "unconscionable." Certainly they are. They are unreasonable. But that didn't stop the trial lawyers. They were not going to let a judge stand between them and $2.8 billion. They could see the red meat. That didn't stop the trial lawyers. They filed a lien to prevent the State from collecting its first $750 million payment until they were paid. If they couldn't get the big money for themselves, neither did they want the children of the State of Florida to have it.

One Mississippi lawyer is busy lining up a $1.39 billion payment. He admits that he spent at most $10 million on the case. This lawyer says that the fee might seem a little obscene. These fees have simply gotten out of control.

Mr. President, this is a pillaging spree and nothing more. These trial lawyers rival Genghis Khan or any other raider that ever went after a pile of money.

The trial lawyers are intent on plundering. They are now stealing from the public health trust. That is exactly what they are doing if this Tobacco Settlement Act comes about. They are simply stealing from the trust that we will be putting up for the public health and for the children. After all, some of them have already filed liens to prevent the public health payments until they have been paid.

Mr. President, I say it is time to stop. This bill will do that. The tobacco settlement is a settlement to ensure medical care and future help of people who might have been affected by tobacco. It is not a lottery for trial lawyers. My bill makes sure the focus stays on children and not on lawyers. The trial lawyers want to play "Wheel of Fortune" with our money. Well, I say, no, it is not their money. Let's stop the scrambling for dollars and the greed. Public health versus private greed—let's get on with the public

health part of it and put some restraints on the private greed. That is where we should draw the line.

Mr. President, I thank you, and I yield the floor.

Mrs. BOXER addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized for 5 minutes.

Mrs. BOXER. Thank you very much, Mr. President. I want to take 5 minutes out of the debate on this very important bill. I commend my colleague, Senator FEINSTEIN, for her leadership in explaining why it is important, when we legislate, particularly on a matter of science, that we know exactly what we are doing and that we don't pass a bill that will have unintended consequences which could lead to setting back help to people who need it who are ill. I just wanted to mention that.

CONDEMNING CLINIC BOMBING

Mrs. BOXER. Mr. President, earlier today, I submitted a resolution, Senate Resolution 173. It is very straightforward. It condemns last week's tragic bombing of a reproductive health services clinic in Birmingham, AL. As most of us know, this vicious and unprovoked attack killed a police officer and critically injured a clinic worker. We already know that clinic worker lost one eye, and I watched her anguished husband talk about the possibility that she might have an operation on the other eye as well.

I am very proud that this resolution that I have submitted is bipartisan. I submitted it on behalf of myself and Senator CHAFEE, Senator SNOWE, Senator MIKULSKI, Senator JEFFORDS, Senator LAUTENBERG, Senator MURRAY, Senator BOB KERREY, Senator COLLINS and Senator MOSELEY-BRAUN.

Last week's attack was the first clinic bombing in the United States to cause a death, but, unfortunately, it was far from the first bombing. In recent years, reproductive health services clinics have been the targets of an unprecedented reign of terror. Last year alone, clinics in Atlanta, GA, and in Tulsa, OK, were bombed, resulting in many, many serious injuries.

The reign of terror began with the murder of Dr. David Gunn in Pensacola, FL, in 1993. A second abortion provider and his security guard were shot and killed the following year in Florida, and on the bloodiest day of the antichoice terror campaign, two clinic workers were killed and five injured in vicious cold-blooded shootings in Brookline, MA.

All told—all told—over 1,800 violent attacks have been reported at reproductive health services clinics in recent years. If I succeed in doing anything with this resolution, it is to make my colleagues aware that the attacks and the level of violence in those attacks are increasing every year.

I know that reproductive choice is a contentious issue. It was decided by the Supreme Court in Roe v. Wade in 1973. There are people who agree with the decision; there are people who disagree with the decision. And believe me, Mr. President, I have the deepest respect for people who hold a view other than mine. Mine is a pro-choice view. Mine is a view that holds that Roe v. Wade was a balanced, moderate decision that weighed the rights of everyone involved and basically says that previability, a woman has this right to choose, it is a personal decision and Government isn't involved, but postviability, indeed, the Government can come in and regulate as long as her life and her health are protected at all times.

But I think what is key here is that when someone explodes a bomb in a clinic, this is a violent act. This is not about philosophy, because violence is not a form of speech. Violence is not a form of speech. Violence is criminal. Violence maims, violence kills, and violence hurts the very people who are trying to carry out that cause in a peaceful manner.

I respect those with a different view, but I have no respect for anyone in this country, regardless of their view, who ever resort to violence as a form of speech. This resolution is not about choice, it is about violence.

I know that there is not a single one of my colleagues who believes that murder, bombing and terror and acts of intimidation are appropriate ways to express political views. I know that, Mr. President. This Congress stands firm on saying if you commit one of these acts, it is a Federal crime. These bombings are part of a terrorist campaign, a campaign designed to destroy a woman's right to choose through violence, making her afraid to go to a clinic maybe just to get a Pap smear. Maybe it is her only line of health care. Maybe she wants to find out how she can conceive, so she goes to a clinic. Or maybe she is exercising her right to choose, which is the law of the land.

The U.S. Senate must condemn these attacks as strongly and unequivocally as we condemn other acts of terrorism. When we hear about other acts of terrorism, whether in America or around the world, we are down here with a resolution of condemnation. Well, we should be down here now.

I am proud of the number of cosponsors I have. I invite my colleagues who may be listening to please join in. You need to be on the side of protecting the people whom you represent as they exercise their constitutionally given rights.

In addition to condemning this attack, this resolution expresses the sense of the Senate that the Attorney General should fully enforce existing laws to protect the rights of American women seeking care at these reproductive health care clinics. Again, we passed a law. It is a Federal crime to do violence at these clinics. We need to enforce that law. We need to protect these clinics. We need to devote more resources.

Here is a policeman, alone, unsuspecting, getting caught up in a bombing of a clinic, dying, leaving his family, all alone, watching a clinic, and being the victim of an explosive device, a bomb. It may well be that the people who perpetrated this, perpetrated other attacks. We don't know that for sure, but we do know one thing. There was a written message that this isn't where they are going to stop. There can be no quarter for these people in this country. It is cowardly to do what they did.

We have a law that says it is a Federal crime to do what they did. We need to prevent these things from happening by devoting more resources, and I call on the Attorney General to do that. We can't leave policemen alone facing these terrorists. We can't leave clinic workers alone facing these terrorists. We can't leave patients alone facing these terrorists. We need the help of the Federal Government. We pay taxes for that. This is an explosive device. This is not only breaking one Federal law, but more than one Federal law.

So I am proud, again, to be joined by my distinguished colleagues in offering this resolution. I plan to speak with both leaders, Leader LOTT and Leader DASCHLE, about setting aside some time to condemn this violence, to stand up for the people of this country and say, whatever your view, we respect it; however, violence will not be tolerated in this country.

I think if we did this in a bipartisan way, it would send a clear signal to anyone in our country who would even consider making violence a form of speech.

I thank the Presiding Officer, and I yield the floor.

The Senator from Florida.

The PRESIDING OFFICER. The Senator from Florida.

HUMAN CLONING PROHIBITION ACT—MOTION TO PROCEED

Mr. MACK. What is the pending business before the Senate?

The PRESIDING OFFICER. The motion to proceed to S. 1601.

Mr. MACK. Thank you, Mr. President.

I want to begin my comments by making it clear, like I suspect everyone in the U.S. Senate, that I am against human cloning. I have not really found too many people who have come forward with a statement saying that they are for human cloning. I am opposed to human cloning. So, let me make that clear at the beginning of the discussion. But, there is much more to

this debate than as to whether one is for or against human cloning, and I think it is important that we get beyond that.

I agree with those who have indicated earlier in the day that, frankly, we need to delay this debate, we need to delay this legislation. You might say, "Well, why?" Certainly the individuals who engaged in producing the legislation are thoughtful, serious people. I do not question that, nor do I question their intentions. But what they have proposed I think has tremendous risks.

I will read from just a couple of letters that I have received from Nobel laureates. One of the letters indicates—and this is from Dr. Paul Berg, Stanford professor, Nobel laureate, chemistry, 1980. In his letter he says:

> The bill sponsored by Senators BOND, FRIST, GREGG and others, if passed, would be the first to ban a specific line of research.

A specific line of research. Not the end result, but the specific line of research would not be permitted.

And he goes on to say:

> I believe this is a serious mistake, one that we could regret because of its unintended implications for otherwise valuable biomedical research.

He goes on in the letter to say:

> At the same time, any legislation should not impede or interfere with existing or potential critical research fundamental to the prevention or cure of human disease.

In another letter, from J.M. Bishop, Nobel laureate, university professor, University of California, San Francisco:

> The fundamental flaw in this legislation is the prohibition of a technology irrespective of its application. Such prohibition forecloses on any benefit from the technology, even if that benefit were in no way objectionable. Many well-intentioned people fail to understand that somatic cell nuclear transfer is not limited to cloning an organism. There are many examples of possible future applications of this technology to produce healthy tissue for therapeutic purposes, such as skin grafts for burn patients, or even to create insulin-producing cells for diabetics. There may also be applications for cancer patients who need a bone marrow transplant for whom a match cannot be found.

Mr. President, I suggest that if time had permitted and if there had been greater warning that this legislation was going to come to the floor, I could virtually fill up the CONGRESSIONAL RECORD with those individuals who have serious concerns about what this legislation would do. And the same group of people would make the statement they are opposed to human cloning.

I must admit that I have more than just a casual interest in this legislation. I have been deeply involved in trying to understand basic research as it relates most specifically to finding cures and better treatments for cancer. I am terrified at the thought that this legislation could move forward without the opportunity for there to be in-depth scientific debate before committees of the Congress of the United States about what this legislation would do.

I just say to people that, if you go back into the early 1970s, 1971, I believe, regarding the issue of recombinant DNA, there were horror stories that were told about recombinant DNA research. There were all kinds of fears that were created. And there were places in the country where bans were actually put into place.

Well, fortunately, the Congress never passed a ban like they are talking about here, because if they had, just to use one disease—cystic fibrosis—think about what it would be like if you were the parent of a child with cystic fibrosis that had been denied a treatment that was developed as a result of going forward with recombinant DNA.

What was developed enhanced the ability of the lung to function as a result of the discovery. Back in 1971, no one had even an idea where that research might have taken us. But in retrospect we can see that the foundation has been built for the future research that may in fact find better treatments, whether that is cancer, whether that is diabetes, whether that is Parkinson's disease, whether that is AIDS, whether that is sickle-cell anemia. And I could go on and on and on.

So, Mr. President, all I am saying here today, and to my colleagues, is that if there is not a change in this legislation, then I am going to have to oppose the legislation. I understand that the majority leader will be coming to the floor shortly to file a cloture motion. I would have to vote against cloture if this legislation is not changed. I frankly believe that the most significant thing we could do would be to delay so that in fact we could hear from both sides on this issue.

Again, the debate really isn't whether there should be human cloning. I think most people in this country clearly have said we should not do that, that it should be banned. But what we are debating is the potential outcome of the language that is put into legislative form that would limit the scientists of our country, limit them in their ability again to find cures, possibly, and certainly better treatments for the diseases that face our families, our children and our grandchildren.

So, Mr. President, I sincerely hope that either we find some way to correct the legislation before us or that we delay this so that not only the scientific community can have an opportunity for input but also for patient groups. I think they ought to have an opportunity to come before the Congress at our hearings and let them raise their concerns about what might be done to maybe one area of hope that they have about better treatment or a cure.

Mr. ABRAHAM. Mr. President, I rise in support of legislation to place a permanent ban on the unethical, immoral pursuit of human cloning.

I do not believe, Mr. President, that the fact that a thing is possible makes it desirable. The study of ethics is filled with things we can do, but should not do. The subject of cloning presents an obvious example along these lines. And I believe it is necessary for us to face the problem head-on.

Genetic research has been crucial to saving thousands upon thousands of lives all over the world. It continues to be an important part of medical research as we look for cures and treatments for cancer and other dreaded diseases. But there are certain things we cannot do, even as we seek, in the long run, to save lives. As shown by recent scandals concerning studies at Tuskegee Institute and elsewhere, in which people were denied treatment for serious ailments in the name of science, most people, most of the time, recognize the moral limits to scientific and medical research.

But we cannot always trust in the good judgment of the scientist. In some extreme cases we, the people's legislature, must see to it that certain practices are not undertaken. Human cloning is one of those practices. No man or woman, not even a scientist, has the capacity to manipulate the very nature and existence of human life in a moral manner. Plants, animals and even discrete human cells may be the proper subjects of research, but to attempt to create a human being, as the product of scientific experiment, risking that that product may be seen as something other than a living, sentient human being, is simply not acceptable.

Mr. President, we are not now, nor will we ever be, morally capable of manufacturing life, or of making experiments on the human soul.

It is because I value life, each and every human life that comes into this world, that I have joined with my colleague from Missouri in sponsoring this legislation to ban, now and for the future, any attempt at human cloning.

Now is not the time, Mr. President, for our Nation to create, or rather add to, an atmosphere in which human life is valued for anything other than itself. Each of us is unique and uniquely valuable. Our laws recognize this, providing as they do for due process and equal protection of every one of us. Our religions are based on this understanding of the individual as the creature of God. We must see to it that our science also recognizes the intrinsic value of every human life.

Science has been of great service to mankind. It will continue to improve, protect and save lives, so long as we recognize our duty to see that scientists abide by their duty to serve,

and not manipulate, each and every human being.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. HAGEL). The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. LOTT. I ask unanimous consent that the order for the quorum call be rescinded.

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

Mr. LOTT. Mr. President, I believe the Senate has already had a healthy debate on the cloning legislation and I thank Senators BOND, FRIST, GREGG and others for their leadership on this issue. I find it unfortunate that our democratic colleagues have chosen to block consideration of legislation at this time, even a motion to proceed.

Clearly, this is an issue that has America's attention. The idea that so much progress has been made in the cloning area, and that we have doctors or scientists already threatening to clone human beings, is a very serious matter from a scientific, medical, moral and ethical standpoint. I don't think we can afford to set this issue aside without some immediate consideration and some immediate attention.

I am very pleased that the Senators that are involved on both sides of the aisle are obviously very concerned, very thoughtful, and would like to get an agreement.

I am particularly pleased that one of the leaders on our side of the aisle is Dr. BILL FRIST of Tennessee, one of the Senators who knows the most about questions of science. He would never want us to sacrifice appropriate advancements in science and medical achievement in any way. The difference is he really knows what he's talking about. So, while there are some disagreements about how far to go, what would be appropriate, what would not be appropriate, a lot of good work has been done.

It seems to me that the thing to do is to go forward. Let's have a continued debate in addition to what we have already heard from a half dozen or seven Senators or so. Let's have other Senators become informed, read the debate we have already had, think about this issue, study the bills, and make recommendations. If there are amendments by the Senator from California, I think they should be offered. Let's debate them and let's think about them.

This is an issue whose time has come—maybe sooner than we would have ever dreamed, and maybe in a lot of ways we had not anticipated this. But if we don't act, what could be the result? Do we want to allow the possibility of human cloning to go forward? I don't think so. Leaders in the scientific and medical communities, and others, have already indicated their concerns about that. The President of the United States has made it very clear in an early statement that he wanted to make sure that this human cloning did not occur. So I urge the Senate—we can go forward with deliberate speed, which is always the case, but we should go forward and not have this pigeon-holed somewhere in the bowels of the building for weeks or months while time and events pass us by.

CLOTURE MOTION

Mr. LOTT. Mr. President, I send a cloture motion to the desk so that we can proceed to the very serious legislation on the issue of cloning.

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

The bill clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 1601 regarding human cloning.

Trent Lott, Christopher S. Bond, Bill Frist, Spencer Abraham, Michael B. Enzi, James Inhofe, Slade Gorton, Sam Brownback, Don Nickles, Chuck Hagel, Rick Santorum, Judd Gregg, Rod Grams, Larry E. Craig, Jesse Helms, and Jon Kyl.

Mr. LOTT. Mr. President, I emphasize once again that this is only to end debate on the motion to proceed. Could we at least go to the substance of the bill, and then we can make a judgment about whether we have had enough discussion, whether we know enough, or whether we have amended it appropriately. We have no option at this point other than to file cloture.

For the information of all Senators, the vote will occur on Tuesday, February 10, at a time to be determined by the majority leader after discussion with Senators on both sides of the issue and with the minority leader.

Mr. President, I ask unanimous consent that the mandatory quorum under rule XXII be waived.

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

Mr. LOTT. I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion to proceed will be withdrawn.

CLOTURE MOTION

NOMINATION OF DAVID SATCHER, OF TENNESSEE, TO BE AN ASSISTANT SECRETARY OF HEALTH AND HUMAN SERVICES, MEDICAL DIRECTOR OF THE PUBLIC HEALTH SERVICE, AND SURGEON GENERAL OF THE PUBLIC HEALTH SERVICE

Mr. LOTT. Mr. President, as in executive session, I ask unanimous consent that the Senate now resume the nomination of David Satcher in order for me to file a cloture motion on the nomination.

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

The clerk will report the nomination.

The bill clerk read the nomination of David Satcher, of Tennessee, to be an Assistant Secretary of Health and Human Services, Medical Director of the Public Health Service, and Surgeon General of the Public Health Service.

The PRESIDING OFFICER. The clerk will report the cloture motion.

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on Executive Calendar Nos. 338 and 339, the nomination of David Satcher to be Assistant Secretary of HHS and to be Surgeon General.

Trent Lott, James Jeffords, Richard Lugar, Conrad Burns, Arlen Specter, Frank H. Murkowski, Ted Stevens, Ted Kennedy, Olympia J. Snowe, Susan Collins, Tom Daschle, Paul Wellstone, Herb Kohl, Christopher Dodd, Chuck Robb, Tim Johnson, and Tom Harkin.

Mr. LOTT. Mr. President, I ask unanimous consent that the cloture vote occur at 11 a.m. on Thursday, February 10, with the mandatory quorum being waived and, further, that if cloture is invoked, the Senate proceed to an immediate vote on the confirmation of David Satcher to be Assistant Secretary of HHS and Surgeon General, all without any intervening action or debate. I further ask that following the vote, the President be immediately notified of the Senate's action, and the Senate resume legislative session.

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

Mr. LOTT. Mr. President, I further ask that there be up to 6 hours for debate on the nomination on Monday, February 9, to be equally divided between Senators JEFFORDS and ASHCROFT, and that there be 1 hour, equally divided in the same fashion, on Tuesday morning.

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

Mr. LOTT. Once again, Mr. President, regarding this matter, I want to make it clear that there is no intent to rush to judgment here. This nomination has been pending for quite some time. There is strong support for this nomination on both sides of the aisle, and there are legitimate concerns about this nominee. I had indicated yesterday that we would not go forward to a vote until requested information from the Centers for Disease Control had been received, as requested by the Senator from Missouri, Senator ASHCROFT. I had FAXed that list to the Secretary of HHS, Secretary Shalala, and talked to her subsequently on the telephone. I had been told that there were seven items listed. One of them had already been provided, one was on the way, and the other five were being pursued. I believe that most of that information now has been obtained. If not, there is time for it to be received

Saturday, Sunday, or Monday before we get to vote on Tuesday.

I urge the White House, the Centers for Disease Control, and everybody involved, to make that information available. It was inferred that, well, it might be used against him. I don't know what the information is. It may be used against him. If it is out there and in the public record or should be in the public record, we need to know that, and we will make a decision.

We have had time given to this nomination in that it has been pending a long time, and now we have had debate pointing out where the problems are and pointing out the assets of this nominee. I think we should not delay it any further. It would be my intent to vote for cloture, which I don't always do, but I think once you have had adequate time—in fact, I rarely do it, but I think this nominee should have a vote on his nomination. So if we in fact do come to a final vote on cloture, I will vote for cloture. That does not indicate how I would vote on final passage. I will make that final decision based on all the information made available before the vote occurs. But I think we should bring it to a conclusion.

ORDER OF PROCEDURE

Mr. LOTT. Mr. President, I would like to announce, for the information of all Senators, that at 3:45 the Senate will receive, on a bipartisan basis, the Secretary of State in S. 407 for a briefing on her recent visit to Europe and the Middle East. Then, also, a number of Senators and House Members will be meeting with Prime Minister Blair in the Rayburn Room on the House side at 4:30. So we would like to make sure that all Senators can attend the briefing at 3:45, and since we have such a large number of Senators that are going to be meeting with Prime Minister Blair, it would not be our intent to have recorded votes or further substantive business this afternoon.

Obviously, we still have time for morning business speeches, if Senators would like to do that. That is why we are not scheduling anything else this afternoon legislatively, because these are very important meetings we have pending.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations:

Four nominations reported by the Armed Services Committee today.

I further ask unanimous consent that the nominations be confirmed, the motions to reconsider be laid upon the table, any statements relating to the nominations appear at this point in the RECORD, the President be immediately notified of the Senate's action, and then the Senate return to legislative session.

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

The nominations were considered and confirmed, en bloc, as follows:

IN THE AIR FORCE

The following-named United States Air Force officer for appointment as the Vice Chairman of the Joint Chiefs of Staff and for appointment to the grade indicated under title 10, U.S.C., section 154:

To be general

Gen. Joseph W. Ralston, 9172.

The following-named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Thomas R. Case, 2013.

IN THE ARMY

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under Title 10, U.S.C. Section 12203:

To be brigadier general

Col. Michael J. Squier, 8084.

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Robert L. Echols, 6631.

LEGISLATIVE SESSION

The PRESIDING OFFICER. The Senate will now return to legislative session.

SENATOR KENNEDY'S ELOQUENT ADDRESS IN NORTHERN IRELAND

Mr. DASCHLE. Mr. President, earlier this month, our colleague Senator KENNEDY made his first ever visit to Northern Ireland.

On Friday, January 9, in the Guildhall, in the City of Derry, Senator KENNEDY delivered the first Tip O'Neill Memorial Lecture, sponsored by the University of Ulster, the City Council of Derry, and the U.S. Consulate in Belfast.

Senator KENNEDY's leadership on this issue and his longstanding efforts to reach out to both Protestants and Catholics in Northern Ireland were evident in his remarks and in the warm reception he received from both sides of the community during his visit.

For many years, Senator KENNEDY has been at the forefront of this country's commitment to do all it can to end the violence in Northern Ireland and achieve a lasting peace for that troubled land. I believe all of us in Congress share that commitment.

I commend Senator KENNEDY for his contribution to the current peace initiative. I believe that his eloquent address will be of interest to all of us in Congress and I ask unanimous consent that it be printed in the RECORD.

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

ADDRESS OF SENATOR EDWARD KENNEDY—"NORTHERN IRELAND—A VIEW FROM AMERICA"

TIP O'NEILL MEMORIAL LECTURE, UNIVERSITY OF ULSTER, MAGEE COLLEGE, INCORE, GUILDHALL—DERRY, NORTHERN IRELAND—JANUARY 9, 1998

I want to thank Professor Lord Smith and the University of Ulster's Initiative on Conflict Resolution and Ethnicity, the home of the Tip O'Neill Chair in Peace Studies and the Tip O'Neill Fellowship, for inviting me here today. Let me also thank the Deputy Mayor, Joe Miller and everyone at Derry City Council for welcoming me to this beautiful city. I'm grateful to Dr. Maurice Hayes for his generous introduction, and I commend him and the Ireland Funds for establishing this living memorial to a great man, a great friend of mine, and a great friend of Ireland.

I'm especially honored that Mr. and Mrs. Restorick and Mr. and Mrs. McGoldrick have traveled from Peterborough in England and from Craigavon to take part in this occasion. In the face of great personal tragedy, these two families refuse to hate. They honor their sons Stephen and Michael most by their resolve that no other family shall have to suffer what they endure. Their lives every day are as eloquent as their words here today.

I'm honored as well that the U.S. Ambassador to the U.K., Philip Lader, is with us today. Ambassador Lader has close personal and professional ties to President Clinton, and I have great respect for his skill and judgment. He is perhaps best known in America for his ability to bring people together, and he's an excellent choice to represent President Clinton here at this auspicious and hopeful time.

And I'm delighted that my sister Jean is here. My family has a great love for this island from which we come and which for us will always be a home. Jean visited Ireland in 1963 with President Kennedy and I know he would be proud—as all the Kennedys are—of the extraordinary work she has done as our Ambassador to Ireland.

A President of Harvard is reported to have said that the reason universities are such great storehouses of learning is that every entering student brings a little knowledge in—and no graduating student ever takes any knowledge out.

But I'm sure that's not true at the University of Ulster.

This institution teaches, in many different ways, the most important lesson of all—that all knowledge is universal and all men and women are brothers and sisters.

It was here, in the Guildhall, in November 1995 that President Clinton inaugurated the Tip O'Neill Chair in Peace Studies. As he said on that occasion, "peace is really the work of a lifetime."

In that spirit, I come here to give the Tip O'Neill Memorial Lecture. And it is fitting that I do so in this place, because Tip's ancestral home on his grandfather O'Neill's side was just down the road in Buncrana.

Throughout Tip's life, Ireland was one of his greatest loves. His Irish smile could light up a living room, the whole chamber of the U.S. House of Representatives, and the whole State of Massachusetts.

One of Tip's most famous stories was about a gift by Henry Ford to help build a new hospital in Ireland. His gift was $5,000, but a local newspaper the next day reported that it was $50,000. The editor apologized profusely for the mistake, and said he'd run a correction right away, explaining that the actual gift was only $5,000. It took Henry Ford about one second to realize what was happening, and he said, "No, no, don't run the correction. I'll give the $50,000, but on one condition—that you install a plaque over the entrance to the hospital with this inscription—"I came unto you, and you took me in."

Tip was scrupulously neutral in the American presidential campaign of 1980, when I was running for President against Jimmy Carter. But Tip told me that every night, before he went to sleep, he was secretly praying that we would have another Irish President of the United States. The prayer was a little ambiguous—but Tip's Irish friend Ronald Reagan, who eventually won that election, was very grateful.

This doesn't quite feel like my first visit to Derry, since I've known John Hume for so long, and I've heard him sing "The Town I Love So Well" so many times.

I first met him a quarter century ago, in the fall of 1972. I was troubled by what had been taking place here, and people I knew well in Massachusetts told me to get in touch with him. I was traveling to Germany for a NATO conference in November of that year. So I called John and he agreed to meet me in Bonn. We had dinner at the home of Ireland's Ambassador there, Sean Ronan. When I signed the Ambassador's guest book, I wrote that I hoped to see him again when there was peace in Ireland. I see Ambassador Ronan here today, so I'm more hopeful than ever that lasting peace is finally very close.

In the following years, John Hume came to Washington often, and we would sit together and talk about the Troubles. He has been a constant voice of reason, an often lonely champion of non-violence, a stalwart advocate of peace.

In 1977, because of John, four Irish-American elected officials—Tip O'Neill, Senator Daniel Patrick Moynihan of New York, Governor Hugh Carey of New York, and I—joined forces to condemn the support for violence that was coming from the United States, and to insist that dollars from America must never be used to kill innocent men and women and children in Northern Ireland. And so the Four Horsemen were born, and over the years, we acted together on many occasions to do what we could to advance a peaceful resolution of the conflict.

Forty-four million Americans are of Irish descent. It is no accident that America has an abiding interest in the island of Ireland—and in the current generation, an abiding commitment to peace and justice in Northern Ireland. Over the years, we have welcomed many leaders of Northern Ireland—from politics, business, churches and communities. We have listened to all and tried to be a friend to all.

When President Clinton took office in 1993, it was clear that America had a President who would go the extra mile for peace—and an opportunity soon arose. In December 1993, the Irish and British Governments issued their Downing Street Declaration, which gave birth to the current peace initiative. Soon thereafter, President Clinton was faced with a critical decision—whether the goal of ending the violence would be enhanced by granting a visa for Gerry Adams to visit the United States. I had been receiving reports for several months from a delegation led by journalist Niall O'Dowd that the IRA was serious about silencing the guns. My sister Jean had heard the same reports.

John Hume and Jean both said that a visit by Gerry Adams to the United States could be very important in achieving a ceasefire by the IRA. So I and others in Congress urged President Clinton to act favorably. He made the bold and courageous decision to grant the visa, despite advice from some quarters in Congress and the Administration that he should deny it. The visa was given, the ceasefire followed, and a new and hopeful period in the history of Northern Ireland was born.

Since then, there have been setbacks along the way. But America's interest has not faltered, and President Clinton has provided continuing encouragement. His visit to this island in November and December of 1995 was a powerful demonstration that America cares about peace—and the outpouring of affection that greeted him from Protestants and Catholics alike was an unmistakable sign to political leaders on both sides that peace was the people's priority.

Today, we stand at a defining moment in the modern epic of this land. The talks that are about to resume offer both a challenge and an opportunity. In the coming crucial weeks, the parties will determine whether this is a genuine way forward, or just another failed station on the way of sorrows.

To Nationalists who have suffered decades of injustice and discrimination, I say "Look how far you've come". One need only look around to see the success of the Nationalist community—what John Hume has done for the peace process and for new investment in Derry—what Seamus Heaney, Seamus Deane, Brian Friel, Frank McGuinness, and Phil Coulter have done for the spirit of Ireland—North and South. Ireland has its first ever President from Northern Ireland. Gerry Adams and other Sinn Fein leaders have been to Downing Street. You have come so far. Have faith in yourselves and in the future.

And to Unionists who often feel afraid of what the future may bring, I recall that you are descendants of the pioneers who helped build America, and now you can be the pioneers who build a better future for this island.

Everyone is well aware of the numerous contributions of Irish immigrants—mostly Catholic—who came to America in the 19th century, fleeing famine. Many of those famine ships left from Derry. But it is often forgotten that more than half of the 44 million Americans of Irish descent today are Protestants.

Most of that Protestant immigration came in the 1700's and early 1800's. As far back as the late 1600's, persecution of Scottish Presbyterians led many to leave Ulster and seek religious freedom in the American colonies. The father of American Presbyterianism was born only a few miles from here. Magee College, our host today, was in fact a training college for Irish Presbyterianism. Historically, the very hallmark of that faith is respect for differences. The Presbyterian tradition helped endow America with that respect. It is one of our greatest strengths. That same basic value—respect for differences—is now the key to a better future here as well.

The impact on America of Scotch-Irish settlers from what is today Northern Ireland was profound. Large numbers joined our fight for independence. Five signed the Declaration of Independence. John Dunlap of Strabane printed the Declaration, and also established the first daily newspaper in America.

In the years that followed America's independence, these settlers were instrumental in founding the Democratic Party in the United States. They helped assure the election of two of our greatest Presidents, Thomas Jefferson and Andrew Jackson.

Jackson himself was of Ulster Presbyterian stock and proud of it. As he said on a visit to Boston in 1833, "I have always been proud of my ancestry and of being descended from that noble race. Would to God, Sir, that Irishmen on the other side of the great water enjoyed the comforts, happiness, contentment and liberty that they enjoy here."

Eleven other Presidents of the United States were of Scotch-Irish heritage, including President Clinton.

In ways such as these, Protestants of Irish descent have made indispensable contributions to America as a land of freedom and opportunity for all. You are part of our heritage and history. We are brothers and sisters, not enemies. The vast—vast—majority of Irish Catholics in America bear you no ill will. Our hope is that as your ancestors did for America, you will lead the way to peace and justice for Northern Ireland.

It is an apt coincidence that the goal for the peace talks is to reach a successful conclusion in this year that marks the two hundredth anniversary of the United Irishmen Rebellion of 1798. As 1998 begins, we can all salute the idealism and courage of those leaders two centuries ago—Catholics, Presbyterians, and Anglicans as one. Their brave doomed uprising took its immediate inspiration from the French Revolution and its call for liberty, equality, and fraternity. But Wolfe Tone, Samuel Neilson, Thomas Russell, William Drennan and other members of the United Irishmen were also well aware of the Irish role in the American Revolution.

For some, the United Irishmen will be remembered primarily as courageous and independent-minded ancestors. Others will celebrate the political philosophy they created. The point is that all traditions can draw current inspiration from the vision that guided their struggle. They believed that the different traditions in Ireland were not destined to be enemies, but had a profound shared interest in championing and guarding each others' rights.

So I hope that the participants in the current all-important talks can draw inspiration from all these streams of our common heritage, and succeed in devising new arrangements for this land that will at last give true effect to our shared ideals.

Many people have already taken risks for peace. John Hume laid the groundwork over many years for the current progress, and is one of the shining apostles of non-violence in our century. Gerry Adams and Martin McGuinness impressively led the way to the IRA cease-fire of 1994 and its restoration last summer. David Trimble demonstrated genuine leadership in bringing the Ulster Unionist Party to the peace table. John Alderdice deserves credit for his efforts to bridge the gap between the two communities. The representatives of the Loyalist paramilitaries—David Ervine, Gary McMichael and others—helped achieve the Loyalist cease-fire and have made ceaseless efforts to maintain it. The Women's Coalition deserves admiration and support for participating and persevering—and for demonstrating anew the rightful place of women at the highest level of politics.

The Governments of Bertie Ahern and Tony Blair have carried the process forward

with skill and wisdom. Mo Mowlam is tireless in her commitment. George Mitchell's transatlantic shuttle diplomacy is America's special gift to the peace process —living daily proof that the United States not only cares, but can be scrupulously even-handed too. John de Chastelain and Harri Holkeri deserve credit for their leadership and patience. And numerous others—church leaders such as Father Alex Reid and Reverend Roy Magee—community workers such as Geraldine McAteer and Jackie Redpath—have worked hard and well at building bridges.

Above all, the people of Northern Ireland deserve credit for never giving up their dreams of peace, and for constantly reminding political leaders of their responsibility to achieve it. As Yeats wrote, "In dreams begins responsibility."

There are some who seek to wreck the peace process. They are blinded by fear of a future they cannot imagine—a future in which respect for differences is a healing and unifying force. They are driven by an anger that holds no respect for life—even for the lives of children.

But a new spirit of hope is gaining momentum. It can banish the fear that blinds. It can conquer the anger that fuels the merchants of violence. We are building an irresistible force that can make the immovable object move.

In 1968, at a time of unconscionable violence in America, my brother Robert Kennedy spoke of the dream of peace and an end to conflict, in words that summon us all to action now:

"It is up to those who are here—fellow citizens and public officials—to carry out that dream, to try to end the divisions that exist so deeply in our country and to remove the stain of bloodshed from our land."

It is not my plan or place to address the details of the talks—that is for the participants. But comments from observers may prove useful as a source of perspective and reflection, as a way to dispel distortions and misunderstandings and to create possibilities for peace—and above all, to demonstrate as powerfully as we can that America truly cares.

Irish Americans are anything but indifferent to what is happening. We have a long-enduring desire to see peace and prosperity take root here. Our commitment embraces the welfare of all the people of Northern Ireland—and when we say "all," we mean all.

Whoever we are, wherever we come from, whatever our differences—there is one self-evident, fundamental, enduring truth. There must be no return to violence. Killing produces only more killing. Endless, escalating cycles of death and devastation have brought unspeakable human tragedy, deeper division between and within the two great traditions, and painful stagnation and failed prosperity for Northern Ireland.

It does not have to be that way. Addressing the Irish Parliament in 1963, President Kennedy quoted the famous words of George Bernard Shaw: "Some people see things as they are and say, 'Why?' But I dream things that never were, and I say, 'Why not?'" May those words inspire the search for peace today.

The present must learn from the past. As the Joint Declaration states: "the lessons of Irish history, and especially of Northern Ireland, show that stability and well-being will not be found under any political system which is refused allegiance or rejected on grounds of identity by a significant minority of those governed by it."

Equality and mutual respect are the twin pillars of peace. It is clear that the Nationalist community will never accept a role of subservience to Unionism. And the Unionist community will never accept a role of subservience to Nationalism.

The obvious and inescapable conclusion is that these two traditions can find a stable relationship only on a basis of equality and mutual respect. A successful outcome must mean no second-class citizens on this island, and no second-class traditions either.

The peace process does not mean asking Unionists or Nationalists to change or discard their identity and aspirations. It means using democratic methods, not bombs and bullets, to resolve the inevitable differences and tensions between them.

However far into the future, whatever the color of the flags, there will be two communities, each with its own character and its own pride, sharing this beautiful piece of earth.

The heritage of America offers a hope and a lesson. The motto of America—to which John Hume has often referred—is the Latin phrase "e pluribus unum"—out of many, one—the whole is greater than the sum of its parts. The diversity of America is America's greatest strength, and the diversity here can be your greatest strength as well.

As you travel the road together, the choice is whether it will be as wary adversaries forever fearful of each other, or as friends and neighbors who agree on fair rules for the journey ahead, willing to meet and master fateful challenges together.

At its core, the conflict is about each side cherishing its noble ideals, and fearing the other may damage or destroy them.

If the true goal for each side is the protection of its rights and aspirations, rather than the denial of the rights and aspirations of the other, then surely there is a high and common ground. Protecting the rights of both sides, based on principles of equality and mutual respect, is the surest path—perhaps the only path—to peace.

I appeal to the talks participants to ask nothing for their own side they are not prepared to grant to the other—and to ask nothing from the other side they would not accept for their own. Let us make that principle the Golden Rule for the road to peace—to do unto others as we would have them do unto us.

I urge everyone involved in the peace process to approach the talks with a view to giving as much as they can, rather than as little as they think they can get away with. In the words of Seamus Heaney, you must "walk on air, against your better judgment."

As we come to a new century, the three basic relationships—within the North, between North and South, and between Britain and Ireland—can be transformed. Hatred and injustice can be replaced with respect and equality.

Taking full advantage of this unique opportunity will bring lasting peace, and a genuine place in history for all those who make it happen. Failure to grasp this opportunity will be devastating. History will harshly judge any who fail the test and waste the decisive moment.

I particularly encourage the young people of this island to become involved in the work for peace. For it is you—even more than your parents and your grandparents—who have the most to gain, and the most to lose.

As you extend yourselves to reach agreement, the United States will exert itself to build more bridges. Personal bridges. Political bridges. Economic bridges. And be assured, I will do all in my power to see that the U.S. assumes a central role in providing economic assistance to implement the agreement that is reached.

In the closing pages of the Iliad, Priam, the elderly king of Troy, goes to Achilles to beg for the return of his son Hector, whom Achilles has slain in the war. Achilles, in an act of simple humanity, gives the old man the body of his son.

The last lines of Michael Longley's eloquent poem "Ceasefire" draw an analogy with Northern Ireland. Priam speaks these words:

"I get down on my knees and do what must be done

And kiss Achilles' hand, the killer of my son."

The two communities in Northern Ireland must reach out and do what must be done—and join hands across centuries and chasms of killing and pain.

And there is great pain in both communities. Families—Protestant and Catholic—have been denied the bodies of loved ones to bury. Families—like those whose loved ones were killed on Bloody Sunday—have been denied the truth. Families—like those whose loved ones died at Enniskillen—have been denied justice. Families—enduring generations of unemployment—have been denied opportunity. Families—harassed by security forces—have been denied dignity. Families—victims of punishment beatings—have been denied justice. Children—Catholic and Protestant—have been denied their future. It is time to say enough is enough is enough is enough. It is time to replace hate with hope.

My prayer today is that individuals, families, and political, religious, business, educational and community leaders across Northern Ireland will show the forgiveness and compassion and humanity that John and Rita Restorick showed—that Gordon Wilson showed—that Joyce McCartan showed—that Michael and Bride McGoldrick showed—that everyone must show.

Like so many of you here, my family has been touched by tragedy. I know that the feelings of grief and loss are immediate—and they are enduring. The best way to ease these feelings is to forgive, and to carry on—not to lash out in fury, but to reach out in trust and hope.

So in closing, let me share with you a letter my father wrote in 1958 to a friend whose son had died. Fourteen years earlier, my oldest brother Joe had been killed in World War II. Ten years earlier, my oldest sister Kathleen had been killed in an airplane crash. My father wrote to his grieving friend:

"There are no words to dispel your feelings at this time and there is no time that will ever dispel them. Nor is it any easier the second time than it was the first. And yet, I cannot share your grief because no one could share mine. When one of your children goes out of your life, you think of what he might have done with a few more years and you wonder what you are going to do with the rest of yours. Then one day, because there is a world to be lived in, you find yourself a part of it again, trying to accomplish something—something that he did not have time enough to do. And, perhaps, that is the reason for it all. I hope so."

Too many lives of too many sons and daughters of this land have been cut short. We must dedicate ourselves to accomplish for them what many "did not have time enough to do"—a lasting peace for Northern Ireland.

Thank you, and may God bless the work ahead.

NOMINATION OF DR. DAVID SATCHER, TO BE U.S. SURGEON GENERAL

Mr. CHAFEE. Mr. President, I am pleased to support the nomination of Dr. David Satcher for U.S. Surgeon General and Assistant Secretary for Health. I have examined his qualifications and achievements, and I believe he has the capacity to serve this country well in the important role of the nation's top physician.

On Tuesday of this week, I, along with Senators GRAHAM and JEFFORDS and Representatives MORAN and LEACH, announced the formation of the Congressional Prevention Coalition. Former Surgeon General C. Everett Koop was kind enough to join us at the press conference.

During the course of his remarks, it struck me how greatly we have missed having a national spokesperson on health issues the past three years. Dr. Koop spoke forcefully about the grave health risks posed by tobacco use, lack of exercise, and poor diet. He didn't pull any punches—he gave a stern lecture to all of those present on the dangers inherent in the so-called couch potato lifestyle.

I have reviewed Dr. Satcher's statements before the Senate Labor Committee, and he clearly is anxious to start in along the same lines. At his confirmation hearing, Dr. Satcher stressed the importance of disease prevention and health promotion. As he put it, "Whether we are talking about smoking or poor diets, I want to send the message of good health to the American people." And I was delighted to learn that one of his top priorities in this role would be to put the health of our children and grandchildren in the national spotlight. To my view, all of these matters fall directly within the job description of a U.S. Surgeon General.

As I said, we have been without a Surgeon General for three years now—a period of time when we have been confronted with a staggering array of public health issues. The need for a Surgeon General has never been greater, as we are seeing an increase in smoking among high school seniors, widespread substance abuse, continuing struggles with AIDS, and a startling rate of obesity among youngsters. And as we consider the potential consequences of human cloning research, I know that I, for one, would benefit from the perspective that a Surgeon General could bring to this issue.

Several of my colleagues have expressed their misgivings about this nomination. Some have raised concerns about Dr. Satcher's views on late term abortions. Others have questioned his role in a series of AZT trials that were conducted in Africa. As Senator JEFFORDS, the Chairman of Labor Committee, and Senator FRIST, the Chairman of the Public Health and Safety Subcommittee, stated during the debate on the nomination yesterday, however, these are not new charges. Indeed, each of these issues was raised by the Committee during Dr. Satcher's confirmation hearing, and it's my understanding that he responded satisfactorily. Indeed, his answers on these and other matters have been available to all Senators and the American people for some months now via the internet.

Dr. Satcher's participation in many aspects of the health care system—provider, scientist, public and private administrator—give him the extensive knowledge and experience necessary to fulfill his role as the U.S. Surgeon General. He has dedicated his career to improving public health.

I urge my colleagues to join me in voting in favor of Dr. Satcher's nomination.

THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, February 4, 1998, the Federal debt stood at $5,475,809,861,023.23 (Five trillion, four hundred seventy-five billion, eight hundred nine million, eight hundred sixty-one thousand, twenty-three dollars and twenty-three cents).

One year ago, February 4, 1997, the Federal debt stood at $5,300,797,000,000 (Five trillion, three hundred billion, seven hundred ninety-seven million).

Five years ago, February 4, 1993, the Federal debt stood at $4,173,289,000,000 (Four trillion, one hundred seventy-three billion, two hundred eighty-nine million).

Ten years ago, February 4, 1988, the Federal debt stood at $2,458,727,000,000 (Two trillion, four hundred fifty-eight billion, seven hundred twenty-seven million).

Fifteen years ago, February 4, 1983, the Federal debt stood at $1,198,779,000,000 (One trillion, one hundred ninety-eight billion, seven hundred seventy-nine million) which reflects a debt increase of more than $4 trillion—$4,277,030,861,023.23 (Four trillion, two hundred seventy-seven billion, thirty million, eight hundred sixty-one thousand, twenty-three dollars and twenty-three cents) during the past 15 years.

MESSAGE FROM THE PRESIDENT

A message from the President of the United States was communicated to the Senate by Mr. Williams, one of his secretaries.

EXECUTIVE MESSAGE REFERRED

As in executive session the Presiding Officer laid before the Senate a message from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 12:02 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following joint resolution, in which it requests the concurrence of the Senate.

H.J. Res. 107. Joint resolution expressing the sense of the Congress that the award of attorney's fees, costs, and sanctions of $285,864.78 ordered by United States District Judge Royce C. Lamberth on December 18, 1997, should not be paid with taxpayer funds.

At 1:59 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill, without amendment:

S. 1575. An act to rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport."

At 3:02 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled bills:

S. 1349. An act to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Prince Nova*, and for other purposes.

S. 1575. An act to rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport."

At 3:31 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bill, in which it requests the concurrence of the Senate:

H.R. 2846. An act to prohibit spending Federal education funds on national testing without explicit and specific legislation.

MEASURES REFERRED

The following joint resolution was read the first and second times by unanimous consent and referred as indicated:

H.J. Res. 107. Joint resolution expressing the sense of the Congress that the award of attorney's fees, costs, and sanctions of $285,864.78 ordered by United States District Judge Royce C. Lamberth on December 18, 1997, should not be paid with taxpayer funds; to the Committee on the Judiciary.

The following bill was read the first and second times by unanimous consent and referred as indicated:

H.R. 2846. An act to prohibit spending Federal education funds on national testing without explicit and specific legislation; to the Committee on Labor and Human Resources.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time and placed on the calender:

S. 1611. A bill to amend the Public Health Service Act to prohibit any attempt to clone a human being using somatic cell nuclear transfer and to prohibit the use of Federal funds for such purposes, to provide for further review of the ethical and scientific issues associated with the use of somatic cell nuclear transfer in human beings, and for other purposes.

ENROLLED BILLS PRESENTED

The Secretary of the Senate reported that on February 5, 1998 he had presented to the President of the United States, the following enrolled bills:

S. 1349. An act to authorize the Secretary of Transportation to issue a certificate of documentation with appropriate endorsement for employment in the coastwise trade for the vessel *Prince Nova*, and for other purposes.

S. 1575. An act to rename the Washington National Airport located in the District of Columbia and Virginia as the "Ronald Reagan Washington National Airport."

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. THURMOND, from the Committee on Armed Services:

The following named United States Air Force officer for appointment as the Vice Chairman of the Joint Chiefs of Staff and for appointment to the grade indicated under title 10, U.S.C., section 154:

To be general

Gen. Joseph W. Ralston, 9172.

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Thomas R. Case, 2013.

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Michael J. Squier, 8084.

The following Army National Guard of the United States officer for appointment in the Reserve of the Army to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. Robert L. Echols, 6631.

(The above nominations were reported with the recommendations 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. LEAHY (for himself and Mr. FEINGOLD):

S. 1612. A bill to provide for taxpayer recovery of costs, fees, and expenses under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, and for other purposes; to the Committee on the Judiciary.

By Mr. FEINGOLD:

S. 1613. A bill to reform the regulatory process, and for other purposes; to the Committee on the Judiciary.

By Mr. CAMPBELL:

S. 1614. A bill to require a permit for the making of motion picture, television program, or other form of commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System; to the Committee on Energy and Natural Resources.

By Mr. CLELAND (for himself, Mr. COVERDELL, Mr. HELMS, and Mr. GLENN):

S. 1615. A bill to present a gold medal to Len "Roy Rogers" Slye and Octavia "Dale Evans" Smith; to the Committee on Banking, Housing, and Urban Affairs.

By Mr. BAUCUS:

S. 1616. A bill to authorize the exchange of existing Federal oil and gas leases in the State of Montana, located in the Lewis and Clark National Forest and the Flathead National Forest, for credits in future Federal oil and gas lease sales in the Gulf of Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mrs. BOXER (for herself, Mr. CHAFEE, Ms. SNOWE, Ms. MIKULSKI, Mr. JEFFORDS, Mr. LAUTENBERG, Mrs. MURRAY, Mr. KERREY, Ms. COLLINS, and Ms. MOSELEY-BRAUN):

S. Res. 173. A resolution expressing the sense of the Senate with respect to the protection of reproductive health services clinics; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LEAHY (for himself and Mr. FEINGOLD):

S. 1612. A bill to provide for taxpayer recovery of costs, fees, and expenses under section 504 of title 5, United States Code, and section 2412 of title 28, United States Code, and for other purposes; to the Committee on the Judiciary.

THE EQUAL ACCESS TO JUSTICE FOR TAXPAYERS ACT OF 1998

Mr. LEAHY. Mr. President, I wish to introduce the Equal Access to Justice for Taxpayers Act of 1998. I am pleased that the Senator from Wisconsin, Senator FEINGOLD, is joining me as an original sponsor of this important legislation.

Like so many Americans, I was disgusted by the evidence that surfaced of so many abuses of the IRS at recent hearings by the Senate Finance Committee. I followed the hearings very closely, and I heard taxpayer after taxpayer come before the Finance Committee recounting horror stories and trying to fight against unjustified action by the IRS that cost them thousands of dollars and countless hours of emotional distress. These average taxpayers told of frustration and despair caused by rogue IRS personnel who used the awesome resources of that agency to punish them.

Probably the saddest part about what we heard was that these good Americans, taxpayers, felt powerless to even question or fight back against their own Government. I believe, as many of my colleagues from both sides of the aisle do, that Congress needs to reform the IRS and stop these abuses from ever happening again.

Unfortunately, current law hamstrings taxpayers who challenge the IRS. Our legislation would change that by giving taxpayers, for the first time ever, a cause of action under the existing Equal Access to Justice Act (EAJA). Under our bill, taxpayers may exercise their rights under the EAJA to win awards of legal fees, expert witness fees and other costs against the IRS when that agency takes substantially unjustified action against them. Thousands of citizens have won vindication against unjust governmental action under the EAJA, and taxpayers should be able to do the same thing.

Today, most taxpayers feel that if the IRS comes after them, even if they think it is unjustified, they don't dare fight it because it will cost more in lawyers, accountant fees, and so on. Under our act, if they prove it was unjustified action, the Government pays them for their lawyer fees and for their accountant's fees. This was done by Congress to help individuals, partnerships, and corporations in other administrative actions involving the Government. We should do the same with the IRS.

In 1981, Congress enacted the EAJA to help individuals, partnerships and corporations seek review of, or to defend against, unjustified governmental action because of the expense involved in securing the vindication of their rights in civil actions and in administrative proceedings. The EAJA permits citizens who prevail in these actions in proceedings against federal agencies to recover their costs when the government acted unjustly. Its purpose is to deter abusive actions and overreaching by the government and to enable individuals to vindicate their rights, regardless of their economic circumstances.

But court decisions have interpreted the EAJA to exempt all civil actions and administrative proceedings in connection with the Internal Revenue Service (IRS) from its protections. Instead, taxpayers must seek review of, or defend against, unjustified actions by the IRS under provisions in the Internal Revenue Code. These Internal Revenue Code provisions make it much

harder for average taxpayers to recover against unjust IRS actions.

The recent report of National Commission on Restructuring the Internal Revenue Service agreed that the Internal Revenue Code fails to provide taxpayers with adequate legal rights to recover attorney's fees and other costs against unjust IRS actions. The Commission recently proposed numerous reforms to make the IRS more effective and responsive to taxpayers. I commend Senators KERREY and GRASSLEY, who served on this bipartisan commission, for introducing legislation to implement many of its recommendations. I am a cosponsor of the IRS reform bill that they have introduced, and I hope the Senate's majority leadership will allow this bill to come to a vote soon to put these taxpayer protections in place as rapidly as possible.

The Commission's report found that: "While the Taxpayer Bill of Rights legislation made great strides to allow taxpayers to recover damages for IRS malfeasance, current provisions do not provide adequate relief. In addition, there are many cases in which taxpayers are not able to obtain review of IRS actions." The Commission concluded that: "Congress must provide taxpayers with adequate and reasonable compensation for actual damages incurred for wrongful actions by the IRS."

What I am saying is this: If the IRS comes after a taxpayer, and if they use draconian methods in an unjustified action, that not only is the taxpayer going to win but the taxpayer is going to get their costs of defending back. So that at least we are going to have the potential of an equal playing field so that we will not have taxpayers who feel that they are being attacked in an unjustified fashion. We will not have them think, "I will either pay the lawyers or I am going to pay the IRS. I might as well surrender, even though I have done no wrong." Now they can defend their rights.

It is time for Congress to heed this advice and give taxpayers the same rights that other citizens now have to seek review of, or to defend against, unjust governmental action. The IRS should be treated like every other federal agency under the law—no better and no worse.

I urge my colleagues to support this legislation to provide taxpayers with the same rights as all other citizens who are subject to unjust governmental action.

Mr. FEINGOLD. Mr. President, I am pleased to join my colleague, Senator LEAHY, the distinguished Ranking Member of the Senate Judiciary Committee, in introducing a bill today that gives American taxpayers greater ability to recover attorneys fees and other costs against the Internal Revenue Service (IRS) for unjustified civil actions and administrative proceedings under the Equal Access To Justice Act (EAJA).

Clearly, there is a need for such legislation in light of recent hearing testimony that average taxpayers have lost thousands of dollars in actual damages defending themselves against unjustified IRS actions. As the National Commission on Restructuring the Internal Revenue Service reported, current Internal Revenue Code provisions do not provide adequate relief for unjust IRS actions, much less enable many taxpayers to obtain review of IRS actions at all. I am pleased to join the Senator from Vermont in this effort to help level the playing field and help the American taxpayer recover when the IRS acts improperly.

Like other citizens who seek review of, or defend against, unjustified governmental action by Federal agencies, taxpayers who successfully defend against the IRS should be able to recover attorneys fees and other costs against when the situation warrants such an award. By providing such relief to taxpayers under the EAJA, not only does this bill help individuals recover the cost of their defense, but also helps deter future abusive actions by the IRS. The Equal Access to Justice Act has helped American citizens and small businesses recover against other federal agencies and this bill makes the IRS accountable under EAJA, just like the rest of the federal government.

My interest in the Equal Access To Justice Act predates my election to this body, dating back to my tenure as a State Senator where I worked on the Wisconsin version of EAJA. In addition to working on the Wisconsin EAJA, I have introduced in a previous Congress, and will do so again today, separate legislation to update and streamline the existing federal EAJA—to make the process of recovery less cumbersome and to help ensure that people are made whole when the government cannot defend their actions.

The federal EAJA was originally enacted in 1980 and made permanent in 1985. The Act was intended to make taking on the Federal Government in court less intimidating and I was specifically aimed at helping average citizens and small businesses that prevail against unjustified governmental actions. In my view, EAJA is an effective and valuable check on the virtually limitless power of the Federal Government.

One would assume that the typical American taxpayer is protected by the EAJA. However, this is not the case as the Act exempts all civil actions and administrative proceedings in connection with the IRS from its protections. In addition, court decisions have consistently interpreted the tax code as providing the only relief for taxpayers treated unjustly. The current system is inadequate and this legislation will help to change that untenable situation.

I want to commend my friend and colleague from Vermont for his leadership on this important issue. The legislation we are introducing today is only one step in reforming the Internal Revenue Service and making that agency more accountable to the American people. However, it is an important and essential step in that process. The American people should not have to squander their hard earned money defending against unjustified actions by federal agencies—including the IRS. I look forward to working with Senator LEAHY and the other concerned Members of this body as this legislation moves forward.

By Mr. FEINGOLD:

S. 1613. A bill to reform the regulatory process, and for other purposes; to the Committee on the Judiciary.

EQUAL ACCESS TO JUSTICE AMENDMENTS OF 1998

Mr. FEINGOLD. Mr. President, I rise today to introduce the Equal Access to Justice Reform Amendments of 1998. This legislation contains necessary improvements to existing law, the Equal Access to Justice Act, which will streamline and improve the current process of awarding attorney's fees to private parties who prevail in litigation against the government of the United States. I am introducing this legislation for the second consecutive Congress because I believe the reforms embodied in this legislation are important steps in reducing the government generated burden under which many individuals and small businesses currently operate.

Over the past few years, certainly since the elections of 1994, many Members of the Senate have taken to the floor and spoken about the importance of "getting government off the backs of the American people." We often hear about the need to reform government in very fundamental ways that effect people all across this nation. I agree and the legislation I propose here today deals directly with some aspects of the concerns we have heard in this Chamber, by assisting everyday Americans who face legal battles with the Federal Government and prevail.

At the outset, it is important to understand what the Equal Access to Justice Act is, and why it exists. The premise is very simple, EAJA places individuals and small businesses who face the United States Government in litigation, on equal footing by establishing guidelines for the award of attorney's fees when the individual or small business prevails. Quite simply, EAJA acknowledges that the resources available to the Federal Government in a legal dispute far outweigh those available to everyday Americans. This disparity is resolved by requiring the government, in certain instances, to pay the attorney's fees of successful private parties. By giving successful parties the right to seek attorney's

fees from the United States, EAJA seeks to prevent small business owners from having to risk their companies in order to seek justice.

My interest in this issue predates my election to the Senate and arises from my experience both as a private attorney and a Member of the Senate in my home state of Wisconsin. While in private practice, I became aware of how the ability to recoup attorney's fees is often the initial inquiry which must be made when deciding whether or not to seek redress in the courts. The significance of this factor should not be underestimated. Upon entering the State Senate, I authored legislation modeled on the federal law. Today, section 814.246 of the Wisconsin statutes contains provisions similar to the federal EAJA statute.

It seemed to me then, as it does now, that we should do what we can to help ease the burdens on parties who need to have their claims reviewed and decided by impartial decision makers. To this end, I have reviewed the existing federal statutes with an eye toward improving them and making them work better. I believe that my legislation does just that. The bill I am introducing today, does a number of things to make EAJA more effective for individuals and small business men and women all across this country.

One provision of my original bill that I introduced previously, raising the hourly attorneys fee cap to $125 from $75, has already been enacted as part of the Small Business Fair Treatment Act signed into law during the 104th Congress. While I am pleased that significant change was adopted, my legislation goes further by eliminating the existing "special factors" language which allowed the fee cap to be increased in certain circumstances. I believe the $125 level is consistent with the going rate and obviates the need for "special factor" language which often serves to slow the recovery process. Further, my legislation explicitly establishes a formula for calculating cost-of-living adjustments for awards and eliminates the often time consuming evaluation that was previously required in the absence of a specific standard. Both of these changes, coupled with the fee increase will work to make EAJA more efficient and effective for Americans.

Another significant factor of my legislation is the elimination of the language which allows the government to escape paying attorneys' fees even if it loses a suit but can provide a substantial justification for its action. I believe that if an individual or small business battles the federal government in an adversarial proceeding and prevails, the government should pay the fees incurred. Imagine the scenario of a person who spends countless time and money dueling with the government and prevails, only to find out that they must now undergo the additional step of litigating the justification of the underlying governmental action. For the government, with its vast resources, this additional step poses no difficulty, but for the citizen it may simply not be financially feasible. A 1992 study prepared by University of Virginia Professor Harold Krent on behalf of the Administrative Conference of the United States found that only a small percentage of EAJA awards were denied because of the substantial justification defense and that while it is impossible to determine the exact cost of litigating the issue of justification, it is his opinion, based upon review of cases in 1989 and 1990, that while the substantial justification defense may save some money awards, it was not enough to justify the cost of the additional litigation. In short, eliminating this often burdensome second step is a cost effective step which will streamline recovery under EAJA.

The final point in regard to streamlining and improving EAJA is language designed to encourage settlement and avoid costly and protracted litigation. Under the bill, the government is provided the ability to make an offer of settlement up to 10 days prior to a hearing on a fees claim. If the government's offer is rejected and the prevailing party seeking recovery ultimately wins a smaller award, that party is not entitled to attorneys' fees and costs they incurred after the date of government's offer. Again, this will speed the process and thereby reduce the time and expense of the litigation.

We all know that the American small business owner has a difficult road to make ends meet and that unnecessary or overly burdensome government regulation can be a formidable obstacle to doing business. It can be the difference between success or failure. The Equal Access to Justice Act was conceived and implemented to help overcome the formidable power of the federal government. In this regard it has helped many Americans do just that. The legislation I am offering today will make EAJA more effective for more Americans while at the same time deterring the government from acting in an indefensible and unwarranted manner.

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

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

S. 1613

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EQUAL ACCESS TO JUSTICE REFORM.

(a) SHORT TITLE.—This Act may be cited as the "Equal Access to Justice Reform Amendments of 1998".

(b) AWARD OF COSTS AND FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(a)(2) of title 5, United States Code, is amended by inserting after "(2)" the following: "At any time after the commencement of an adversary adjudication covered by this section, the adjudicative officer may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.".

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(1)(B) of title 28, United States Code, is amended by inserting after "(B)" the following: "At any time after the commencement of an adversary adjudication covered by this section, the court may ask a party to declare whether such party intends to seek an award of fees and expenses against the agency should such party prevail.".

(c) HOURLY RATE FOR ATTORNEY FEES.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(b)(1)(A)(ii) of title 5, United States Code, is amended by striking all beginning with "$125 per hour" and inserting "$125 per hour unless the agency determines by regulation that an increase in the cost-of-living based on the date of final disposition justifies a higher fee);".

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(2)(A)(ii) of title 28, United States Code, is amended by striking all beginning with "$125 per hour" and inserting "$125 per hour unless the court determines that an increase in the cost-of-living based on the date of final disposition justifies a higher fee);".

(d) PAYMENT FROM AGENCY APPROPRIATIONS.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504(d) of title 5, United States Code, is amended by adding at the end the following: "Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.".

(2) JUDICIAL PROCEEDINGS.—Section 2412(d)(4) of title 28, United States Code, is amended by adding at the end the following: "Fees and expenses awarded under this subsection may not be paid from the claims and judgments account of the Treasury from funds appropriated pursuant to section 1304 of title 31.".

(e) OFFERS OF SETTLEMENT.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

"(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

"(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.".

(2) JUDICIAL PROCEEDINGS.—Section 2412 of title 28, United States Code, is amended—

(A) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(B) by inserting after subsection (d) the following new subsection:

"(e)(1) At any time after the filing of an application for fees and other expenses under this section, an agency of the United States from which a fee award is sought may serve upon the applicant an offer of settlement of the claims made in the application. If within 10 days after service of the offer the applicant serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance together with proof of service thereof.

"(2) An offer not accepted shall be deemed withdrawn. The fact that an offer is made but not accepted shall not preclude a subsequent offer. If any award of fees and expenses for the merits of the proceeding finally obtained by the applicant is not more favorable than the offer, the applicant shall not be entitled to receive an award for attorneys' fees or other expenses incurred in relation to the application for fees and expenses after the date of the offer.".

(f) ELIMINATION OF SUBSTANTIAL JUSTIFICATION STANDARD.—

(1) ADMINISTRATIVE PROCEEDINGS.—Section 504 of title 5, United States Code, is amended—

(A) in subsection (a)(1), by striking all beginning with ", unless the adjudicative officer" through "expenses are sought"; and

(B) in subsection (a)(2), by striking "The party shall also allege that the position of the agency was not substantially justified.".

(2) JUDICIAL PROCEEDINGS.—Section 2412(d) of title 28, United States Code, is amended—

(A) in paragraph (1)(A), by striking ", unless the court finds that the position of the United States was substantially justified or that special circumstances make an award unjust";

(B) in paragraph (1)(B), by striking "The party shall also allege that the position of the United States was not substantially justified. Whether or not the position of the United States was substantially justified shall be determined on the basis of the record (including the record with respect to the action or failure to act by the agency upon which the civil action is based) which is made in the civil action for which fees and other expenses are sought."; and

(C) in paragraph (3), by striking ", unless the court finds that during such adversary adjudication the position of the United States was substantially justified, or that special circumstances make an award unjust".

(g) REPORTS TO CONGRESS.—

(1) ADMINISTRATIVE PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Administrative Conference of the United States shall submit a report to Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal agencies under the provisions of section 504 of title 5, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal agencies and administrative proceedings.

(2) JUDICIAL PROCEEDINGS.—No later than 180 days after the date of the enactment of this Act, the Department of Justice shall submit a report to Congress—

(A) providing an analysis of the variations in the frequency of fee awards paid by specific Federal districts under the provisions of section 2412 of title 28, United States Code; and

(B) including recommendations for extending the application of such sections to other Federal judicial proceedings.

(h) EFFECTIVE DATE.—The provisions of this Act and the amendments made by this Act shall take effect 30 days after the date of the enactment of this Act and shall apply only to an administrative complaint filed with a Federal agency or a civil action filed in a United States court on or after such date.

By Mr. CAMPBELL:

S. 1614. A bill to require a permit for the making of motion picture, television program, or other form of commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System; to the Committee on Energy and Natural Resources.

THE NATIONAL PARK SERVICE IMAGE PERMIT FEE ACT

Mr. CAMPBELL. Mr. President, today I introduce a bill that gives our National Park Service the authority to require fee-based permits for the use of the parks in the making of motion pictures, television programs, advertisements or other commercial purposes.

Our national parks are among our nation's most valuable resources. My "National Park Service Image Fee Permit Act" would help us to protect them and ensure that future generations will be able to enjoy their beauty by making sure the parks are reimbursed for their commercial use.

The Bureau of Land Management and the Forest Service already have a similar permit and fee system for commercial filming on public lands. Rocky Mountain National Park in my home state of Colorado has had twenty-five commercial filming operations take place between 1996–1997. According to park supervisors many individuals in the entertainment business are shocked at the fact that they are not currently charged for the use of our great national parks.

It makes no sense that our national parks' lands, that have been deemed to be even more precious by their designation, should be used commercially for free. This is especially important now when taxpayers are facing increased fees to enter the national parks and more and more people are enjoying our natural wonders every year in record numbers.

As the Vice-Chairman of the Parks, Historic Preservation and Recreation Subcommittee of the Senate Energy and Natural Resources Committee, I am concerned about the maintenance backlog that exists in most of our national parks. It is also no secret that the amount of federal tax dollars available for that maintenance has been dwindling for some time now.

I offer this bill as a funding vehicle for our parks to reimburse them for the administrative costs they incur by allowing the images of our precious national parks to be used in commercial ventures. This bill will not provide all of the funds needed to address the maintenance backlog in our parks, nor do I intend it to, but it will defray the real costs associated with making our parks available for commercial enterprises such as the motion picture industry.

We can all understand why Hollywood or book publishers want to use the spectacular beauty of our national parks as backdrops for their productions. My bill simply allows the National Park Service to recover the real costs of allowing such use and devoting those fees to the parks for their preservation. Common sense directs us to do this, and I believe this bill is fair for the commercial users of our parks and more importantly, for the American taxpayers.

This bill is similar to legislation introduced in the House of Representatives by my friend and colleague from Colorado, Congressman HEFLEY.

Mr. President, I have a letter from the National Parks and Conservation Association that has reviewed and endorsed this legislation. I look forward to working with the Association, other interested parties and, of course, the Committee, to deal with the maintenance backlog at our national parks.

I ask unanimous consent that the National Parks and Conservation Association letter of support and my bill be inserted in the RECORD.

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

S. 1614

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PERMITS FOR MAKING COMMERCIAL VISUAL DEPICTIONS IN UNITS OF THE NATIONAL PARK SYSTEM AND NATIONAL WILDLIFE REFUGE SYSTEM.

(a) DEFINITIONS.—In this section:

(1) COMMERCIAL VISUAL DEPICTION.—

(A) IN GENERAL.—The term "commercial visual depiction" means a visual depiction that a person produces with the intention that the depiction (or reproductions of the depiction) will be disseminated to the public in connection with a for-profit enterprise.

(B) EXCLUSIONS.—The term "commercial visual depiction" does not include—

(i) a visual depiction produced for dissemination to the public as news; or

(ii) a visual depiction produced by an individual in a limited number and intended to be sold by the individual as a work of art.

(2) SECRETARY.—The term "Secretary" means the Secretary of the Interior.

(3) VISUAL DEPICTION.—The term "visual depiction" means a motion picture, television program, videotape, photograph, or other form of visual depiction or any part of such a depiction.

(b) PERMIT REQUIREMENT.—A person shall not produce a commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System without first obtaining a permit from the Secretary and paying a permit fee.

(c) REGULATION.—The Secretary shall by regulation establish criteria and a procedure for determining the conditions under which a person shall be permitted to produce a commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System and the amount of a permit fee.

(d) FEE AMOUNTS.—

(1) BASIS OF IMPOSITION.—A permit fee may be imposed—

(A) in a single amount for use of any part of a unit of the National Park System and National Wildlife Refuge System or in different amounts for use of different areas within a unit;

(B) in different amounts for different forms of visual depiction; or

(C) in a set amount applicable in all cases or in a negotiated amount applicable in a particular case.

(2) AMOUNT.—

(A) MINIMUM AMOUNT.—The amount of a permit fee shall be not less than an amount that is sufficient to compensate the Secretary for all direct and indirect costs to the Secretary in accommodating the production of a commercial visual depiction (including costs of ensuring compliance with any conditions on the use of the area for production of the commercial visual depiction and costs of cleanup and restoration).

(B) OTHER CONSIDERATIONS.—In establishing the amount of a permit fee, the Secretary shall take into consideration—

(i) the extent of any inconvenience to the public that production of the commercial visual depiction may cause; and

(ii) an estimate of the amount that an owner of private property would charge for use of property that is comparable to the area in which the commercial visual depiction is to be produced.

(e) CIVIL PENALTY.—A person that produces a commercial visual depiction in a unit of the National Park System or National Wildlife Refuge System without first obtaining a permit and paying a permit fee or that fails to comply with any condition stated in a permit shall be subject to imposition by the Secretary, after notice and opportunity for a hearing on the record, of a civil penalty in an amount not exceeding 200 percent of the amount of the permit fee.

(f) USE OF PROCEEDS.—Each amount collected by the Secretary as a permit fee or civil penalty under this section shall be retained by the Secretary and shall be available, without further Act of appropriation, for capital improvement and restoration activities in the unit in which the commercial visual depiction was produced.

NATIONAL PARKS
AND CONSERVATION ASSOCIATION,
February 3, 1998.

Hon. BEN NIGHTHORSE CAMPBELL,
U.S. Senate, Washington, DC.

DEAR SENATOR CAMPBELL: I am writing to applaud your efforts to resolve a small but nettlesome issue affecting both the national parks and the American taxpayer.

For years, Hollywood and Madison Avenue production companies have been able to avail themselves of the unique resources of the national parks at well below market prices. In fact, film production companies have been required to cover only the physical cost of monitoring their activities and any remediation necessary after they leave the site. In many cases, this amount has totaled in the hundreds of dollars, compared with production budgets that total in the tens of millions of dollars and more.

At a time when the Congress has directed the National Park Service to do more in collecting entrance and recreation fees from park visitors, the current requirements for film production fees are patently unfair and must be changed. Your legislation represents a step forward in this regard and will contribute substantially to this issue as it is debated in this congress.

Again, I want to thank you for your efforts. With your help, the parks will finally enjoy a more balanced financial relationship with private film production companies.

Sincerely,

THOMAS C. KIERNAN,
President.

By Mr. CLELAND (for himself, Mr. COVERDELL, Mr. HELMS, and Mr. GLENN):

S. 1615. A bill to present a gold medal to Len "Roy Rogers" Slye and Octavia "Dale Evans" Smith; to the Committee on Banking, Housing, and Urban Affairs.

CONGRESSIONAL GOLD MEDAL LEGISLATION

• Mr. CLELAND. Mr. President, today we are introducing legislation which would authorize presentation of a Congressional Gold Medal to Len "Roy Rogers" Slye and Octavia "Dale Evans" Smith. "Heroes are made every little while," Will Rogers once said, "but only one in a million conduct themselves afterwards so that it makes us proud that we honored them at the time." The gold medal we propose would honor two American heroes for the wholesome entertainment they have given the world for six decades and for the shining example they have set as role models for America's youth. I am pleased to be joined by the distinguished cosponsors, Senators COVERDELL, HELMS, and GLENN.

For generations of Americans, Roy Rogers has been the symbol of the Western hero—a man who combines courage with honesty and impeccable integrity—who always righted wrong through straight talk and square-dealing. When asked about the roles he played on-screen, Roy once answered that he did "what I was supposed to do. I played myself. * * * When I talk about my image, there isn't anything that isn't really me. I always try to be the best that I can be." In all that we have seen or heard or read about Roy Rogers, on screen or off, the persona and the man are indeed one and the same—and in Roy Rogers we see what is best about America.

Dale Evans counts among her highest honors the Cardinal Terrence Cook Humanities Award and the California Mother of the Year. Both are tributes to two of her greatest gifts—her generosity of spirit and her strong family values. Together she and Roy have raised nine children, and they have sixteen grandchildren and 30 great-grandchildren. And the fact that most of them live near Roy and Dale's ranch outside of Victorville, California, is a testament to their devotion and strong family ties. Dale is the author of 25 books. Her most famous, "Angel Unaware", chronicles the life and death of Dale and Roy's daughter, Robin, who died from complications of Down's syndrome. The book is about loss, but it is also about the capacity to love—a quality which both Dale and Roy have in abundant measure.

Roy and Dale are an American institution—and their fans span the globe. Together they have achieved the pinnacle of success in the entertainment industry. Their movies were No. 1 at the box office. Their television series was the highest rated of its time. The episodes have been translated into every major language, and they can still be seen here in America and in markets abroad. Between the two of them they have set appearance records in every major arena in the world, including Madison Square Garden, the Los Angeles Coliseum, the Chicago Stadium, the Harringay Arena in London, and Toronto's Canadian National Exhibition. Roy once sold out Madison Square Garden 29 straight nights, and he still holds the record for the largest crowd ever to see an indoor rodeo.

It has been said that we make a living by what we get, but we make a life by what we give. Both Roy and Dale's careers have been an unqualified success, as their world-wide appeal attests. But this tells only half the story. Their appeal—which reaches to all four corners of the globe—is also the result of the values, the ethics, and the uncompromising principles by which they have lived their lives. It is our hope that we honor their worthy contributions with the Congressional Gold Medal. Should we do so, we will have honored in their time true American heroes, and our choice—to use Will Rogers' yardstick—will be validated by the ages to come.

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

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

S. 1615

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONGRESSIONAL GOLD MEDAL.

(a) PRESENTATION AUTHORIZED.—The President is authorized to present, on behalf of the Congress, a gold medal of appropriate design to Len "Roy Rogers" Slye and Octavia "Dale Evans" Smith in recognition of their accomplishments as entertainers and humanitarians, which include—

(1) careers in the entertainment industry that spanned 6 decades and covered such industries as music, film, television, writing, sports, and radio;

(2) acting in and producing more than 100 films, as well as their popular 10-year television show "The Roy Rogers Show", which is still seen in American and foreign markets;

(3) setting appearance records in virtually every major arena in the world, including Madison Square Garden in New York City, the Houston Fat Stock Show, the Los Angeles Coliseum, the Chicago Stadium, the Harringay Arena in London, Toronto's Canadian National Exhibition, and many State fairs and rodeos;

(4) on the part of Len Slye, once selling out Madison Square Garden 29 straight nights, holding the record for the largest crowd to

ever see an indoor rodeo, and twice attracting more than 100,000 people to rodeos in the Los Angeles Coliseum;

(5) selfless service as role models through their strong faith in Christianity as well as their devotion to their 9 children (5 by adoption and 4 by birth), 16 grandchildren, and 30 great-grandchildren;

(6) Octavia Smith's classic book "Angel Unaware", which dealt with the death from complications associated with Down's syndrome of Robin, the one child Len Slye and Octavia Smith had together; and

(7) creating the Roy Rogers-Dale Evans Museum in Victorville, California, that vividly chronicles their lives and the values and ethics that represent the basis of their worldwide appeal.

(b) DESIGN AND STRIKING.—For the purpose of the presentation referred to in subsection (a), the Secretary of the Treasury (hereafter in this Act referred to as the "Secretary") shall strike a gold medal with suitable emblems, devices, and inscriptions, to be determined by the Secretary.

SEC. 2. DUPLICATE MEDALS.

The Secretary may strike and sell duplicates in bronze of the gold medal struck pursuant to section 1 under such regulations as the Secretary may prescribe, and at a price sufficient to cover the costs of the medals, including labor, materials, dies, use of machinery, and overhead expenses.

SEC. 3. NATIONAL MEDALS.

The medals struck pursuant to this Act are national medals for purposes of chapter 51 of title 31, United States Code.

SEC. 4. FUNDING AND PROCEEDS OF SALE.

(a) AUTHORIZATION.—There is hereby authorized to be charged against the United States Mint Public Enterprise Fund an amount not to exceed $30,000 to pay for the cost of the medals authorized by this Act.

(b) PROCEEDS OF SALE.—Amounts received from the sale of duplicate bronze medals under section 3 shall be deposited in the United States Mint Public Enterprise Fund.•

By Mr. BAUCUS:

S. 1616. A bill to authorize the exchange of existing Federal oil and gas leases in the State of Montana, located in the Lewis and Clark National Forest and the Flathead National Forest, for credits in future Federal oil and gas lease sales in the Gulf of Mexico, and for other purposes; to the Committee on Energy and Natural Resources.

EXCHANGE LEGISLATION

Mr. BAUCUS. Mr. President, I am pleased today to introduce a Bill that would provide the Secretary of the Interior with the authority to exchange oil and gas leases in the Badger Two-Medicine area, in the State of Montana, for credits that could be applied toward bidding or royalty payments in Montana and the Gulf of Mexico.

The area involved in this legislation is located along the Rocky Mountain Front, an area whose rich natural beauty I care deeply about. It lies south of one of the "Crown Jewels" of the National Park system, Glacier National Park. Also adjoining this area is the Blackfeet Indian Reservation and the uniquely wild and pristine Bob Marshall Wilderness Area. The Badger Two-Medicine area is undeveloped wilderness and contains many sites sacred to the Blackfeet Nation. The location of this area, its cultural value, and its undeveloped natural condition has been the focus of the decade-long debate over whether or not the oil and gas resources of the area should be developed. I myself believe that we should protect this special place for our children and grandchildren, and I have fought to do just that.

We are no closer today to resolving the question of development of the resources of this area than we were a decade ago and it is time to resolve these conflicts. During this time the ten leaseholders in the area have made investments in anticipation of being able to exercise the option of developing wells under their leases. The time has come to break this stalemate that only costs the leaseholders, the citizens concerned with protecting the area, and the government time and money without resolution. The bill that I am introducing today is fair for the landowners, the citizens of Montana and the Nation, and fair for the leaseholders.

Chevron, the largest leaseholder in the area, stated "While we would have liked to have developed our well in the Badger Two-Medicine area, we understand that the public had concerns about our proposal. Senator BAUCUS' bill breaks the deadlock and allows everyone to get on with their business".

Today I am introducing this legislation, a common sense solution to a long-standing controversy, to allow all the parties to leave this dispute as winners. The Secretary of the Interior would work with leaseholders, who have made investments over the years, to determine credits for their expenses. These credits, allowing for reinvestment in Montana, can be applied to lease bids or royalty payments in other locations where they already have active wells or where development is more likely to occur. The citizens who are concerned about the cultural and resource effects of development would see the integrity of this area maintained. The government would be able to refocus the use of its limited financial resources on management activities that have a more direct positive result than continuation of the current disputes.

This bill focuses on resolving Montana problems while looking out for the economic and natural resource interests of this State. Creating and maintaining jobs in Montana is very important to me. This bill helps save jobs. As Richard Jackson, owner of an outfitting business in the Badger Two-Medicine recently said, "This bill isn't just about saving some of our most precious wildlands; it's about saving our wildlands and Montana jobs". Montana has a unique recreational industry that has sustainable jobs that are dependent on wild untamed lands. We need to care for this wildness. I look forward to continuing work with the Governor and the Montana Delegation on innovative ideas to stimulate appropriate development of the State's rich mineral heritage while protecting its wildness and uncomparable natural beauty.

I encourage my esteemed colleagues to support this bill and look forward to working with them in their consideration.

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

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

S. 1616

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXCHANGE OF OIL AND GAS LEASES IN THE LEWIS AND CLARK NATIONAL FOREST AND THE FLATHEAD NATIONAL FOREST, STATE OF MONTANA.

(a) IN GENERAL.—Notwithstanding any other provision of law, the Secretary of the Interior may exchange Federal oil and gas leases that are in existence and in good standing as of the date of enactment of this Act and are located in the exchange area described in subsection (b) for credits that may be used—

(1) for bids in Federal oil and gas lease sales or for royalty and rentals due under Federal leases in the central and western planning areas of the Gulf of Mexico for leases outside the zone defined and governed by section 8(g)(2) of the Outer Continental Shelf Lands Act (43 U.S.C. 1337(g)(2)); or

(2) for bid, royalty, or rental payments due under Federal oil and gas leases on Federal land within the State of Montana.

(b) EXCHANGE AREA.—The exchange area referred to in subsection (a) consists of—

(1) the portions of the Lewis and Clark National Forest and the Flathead National Forest in Flathead County, Glacier County, and Pondera County, Montana (including the area known as the "Badger-Two Medicine"), as delineated on the map entitled "Exchange Area Map" and located in T. 27 N., R. 11 W., T. 28 N., R. 10–14 W., T. 29 N., R. 10–16 W., T. 30 N., R. 11–13 W., and T. 31 N., R. 12–13 W.; and

(2) the area covered by Federal oil and gas lease no. MTM–53314, in Teton County, Montana.

(c) AMOUNT.—The amount of the credits shall be based on investments made in the acquisition and development of the leases before the date of enactment of this Act and agreed to by the Secretary of the Interior and the leaseholder.

(d) WITHDRAWAL FROM MINERAL LAWS.—Subject to valid existing rights not relinquished, the exchange area described in subsection (b)(1) is withdrawn from location and entry under the mining laws and from leasing under the mineral leasing laws.

(e) EFFECT OF USE OF CREDITS.—If a person that receives a credit under subsection (a) uses the credit to pay any rental or royalty due under any Federal oil and gas lease on Federal land within the State of Montana, the Secretary of the Interior shall pay the State of Montana, from amounts received from oil and gas leases on Federal land that, but for this subsection, would be deposited in the Treasury of the United States under section 35 of the Act of February 25, 1920 (commonly known as the "Mineral Lands Leasing

Act") (41 Stat. 450, chapter 85; 30 U.S.C. 191), the amount that the State would have received under applicable law if the amount of the royalty or rental had been paid in cash.

ADDITIONAL COSPONSORS

S. 260

At the request of Mr. ABRAHAM, the name of the Senator from Wyoming (Mr. ENZI) was added as a cosponsor of S. 260, a bill to amend the Controlled Substances Act with respect to penalties for crimes involving cocaine, and for other purposes.

S. 859

At the request of Mr. KYL, the name of the Senator from Florida (Mr. MACK) was added as a cosponsor of S. 859, a bill to repeal the increase in tax on social security benefits.

S. 990

At the request of Mr. KYL, his name was added as a cosponsor of S. 990, a bill to amend the Public Health Service Act to establish the National Institute of Biomedical Imaging.

S. 1352

At the request of Mr. GRASSLEY, the name of the Senator from Vermont (Mr. LEAHY) was added as a cosponsor of S. 1352, a bill to amend Rule 30 of the Federal Rules of Civil Procedure to restore the stenographic preference for depositions.

S. 1365

At the request of Ms. MIKULSKI, the name of the Senator from Louisiana (Ms. LANDRIEU) was added as a cosponsor of S. 1365, a bill to amend title II of the Social Security Act to provide that the reductions in social security benefits which are required in the case of spouses and surviving spouses who are also receiving certain Government pensions shall be equal to the amount by which two-thirds of the total amount of the combined monthly benefit (before reduction) and monthly pension exceeds $1,200, adjusted for inflation.

S. 1605

At the request of Mr. LEAHY, the name of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1605, a bill to establish a matching grant program to help States, units of local government, and Indian tribes to purchase armor vests for use by law enforcement officers.

SENATE CONCURRENT RESOLUTION 65

At the request of Ms. SNOWE, the name of the Senator from Massachusetts (Mr. KERRY) was added as a cosponsor of Senate Concurrent Resolution 65, a concurrent resolution calling for a United States effort to end restriction on the freedoms and human rights of the enclaved people in the occupied area of Cyprus.

SENATE CONCURRENT RESOLUTION 71

At the request of Mr. LEAHY, his name was withdrawn as a cosponsor of Senate Concurrent Resolution 71, a concurrent resolution condemning Iraq's threat to international peace and security.

SENATE RESOLUTION 155

At the request of Mr. LOTT, the names of the Senator from Virginia (Mr. WARNER) and the Senator from Arkansas (Mr. HUTCHINSON) were added as cosponsors of Senate Resolution 155, a resolution designating April 6 of each year as "National Tartan Day" to recognize the outstanding achievements and contributions made by Scottish Americans to the United States.

SENATE RESOLUTION 170

At the request of Mr. SPECTER, the name of the Senator from Pennsylvania (Mr. SANTORUM) was added as a cosponsor of Senate Resolution 170, a resolution expressing the sense of the Senate that the Federal investment in biomedical research should be increased by $2,000,000,000 in fiscal year 1999.

SENATE RESOLUTION 173—RELATIVE TO THE PROTECTION OF REPRODUCTIVE HEALTH SERVICES CLINICS

Mrs. BOXER (for herself, Mr. CHAFEE, Ms. SNOWE, Ms. MIKULSKI, Mr. JEFFORDS, Mr. LAUTENBERG, Mrs. MURRAY, Mr. KERREY, Ms. COLLINS, and Ms. MOSELEY-BRAUN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 173

Whereas there are approximately 1000 reproductive health services clinics in the United States;

Whereas violence directed at persons seeking to provide reproductive health services continues to increase in the United States, as demonstrated by the January 29, 1998, bombing outside a reproductive health services clinic in Birmingham, Alabama, in which 1 person was killed and 1 person was critically injured;

Whereas the death that occurred at the Birmingham clinic was the first bombing fatality at a reproductive health services clinic in the history of the United States;

Whereas organizations monitoring clinic violence have reported over 1,800 acts of violence at reproductive health services clinics, including bombings, shootings, arson, death threats, kidnapping, and assaults;

Whereas in 1997, reproductive health services clinics reported an increase in the number of acts of violence over 1996;

Whereas in January 1997, reproductive health services clinics in Atlanta, Georgia and Tulsa, Oklahoma were bombed, resulting in several injuries;

Whereas in December 1994, 2 workers at a reproductive health services clinic were murdered and 5 others injured in an assault in Brookline, Massachusetts;

Whereas in July 1994, an abortion provider and his security escort were murdered in Pensacola, Florida;

Whereas in March 1993, a doctor providing abortion services was shot and killed in Pensacola, Florida;

Whereas Congress passed and the President signed the Freedom of Access to Clinic Entrances Act of 1994, a law establishing Federal criminal penalties and civil remedies for certain violent, threatening, obstructive, and destructive conduct that is intended to injure, intimidate, or interfere with persons seeking to obtain or provide reproductive health services, and for intentionally damaging or destroying, or attempting to damage or destroy, the property of a clinic because the clinic provides reproductive health services;

Whereas violence is not a mode of free speech, is not entitled to constitutional protection, and should not be condoned as a method of expressing an opinion; and

Whereas on January 2, 1995, the President instructed the Attorney General to direct—

(1) the United States Attorneys to create task forces of Federal, State, and local law enforcement officials to develop plans to address security for reproductive health services clinics located within their jurisdictions; and

(2) the United States Marshals Service to ensure coordination between reproductive health services clinics and Federal, State, and local law enforcement officials regarding potential threats of violence: Now, therefore, be it

Resolved,

SECTION 1. SENSE OF THE SENATE.

It is the sense of the Senate that the Attorney General should—

(1) fully enforce the law and protect from violent attack persons seeking to provide or obtain, or assist in providing or obtaining, reproductive health services; and

(2) allocate the resources needed to accomplish the mission of the Department of Justice, including the protection of reproductive health services clinics, as described in the instruction of the President on January 2, 1995.

SEC. 2. EXPRESSIVE CONDUCT.

Nothing in this resolution shall be construed to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.

Mrs. BOXER. Mr. President, I rise to submit a resolution condemning last week's tragic bombing of a reproductive health services clinic in Birmingham, Alabama. This vicious and unprovoked attack killed a police officer and critically injured a clinic worker.

Last week's attack was the first clinic bombing in the United States to cause a fatality, but unfortunately, it was far from the first bombing. In recent years, reproductive health services clinics have been the targets of an unprecedented terror campaign. Last year alone, clinics in Atlanta, Georgia and Tulsa, Oklahoma were bombed, resulting in many serious injuries.

This reign of terror began with the murder of Dr. David Gunn in Pensacola, Florida in 1993. A second abortion provider and his security guard were shot and killed the following year in Florida. And on the bloodiest day of the anti-choice terror campaign, two clinic workers were killed and five injured in vicious, cold-blooded shootings in Brookline, Massachusetts.

All told, over 1,800 violent attacks have been reported at reproductive health services clinics in recent years. I hope my colleagues are aware that the attacks and the level of violence in

those attacks are increasing every year.

Reproductive choice is a contentious issue. I know that many of my colleagues feel very strongly that abortion should be outlawed in America, and although I strongly disagree, I respect their views and I hope they respect mine. But this resolution is not about choice; it is about violence. I know that not a single one of my colleagues believes that murder, bombing, terror and acts of intimidation are appropriate ways to express political views.

These bombings are a part of a terrorist campaign—a campaign designed to destroy a woman's right to choose through violence. The United States Senate must condemn these attacks as strongly and unequivocally as we condemn other acts of terrorism—both here and around the world.

In addition to condemning the attack, this resolution expresses the Sense of the Senate that the Attorney General should fully enforce existing laws to protect the rights of American women seeking care at reproductive health services clinics.

I am proud to be joined in this effort by a distinguished, bipartisan group of Senators. I hope the Senate can move quickly on this resolution and pass it as early as today.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. FRIST. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet at 2 p.m. on Thursday, February 5, 1998, in open session, to receive testimony on the defense authorization request for fiscal year 1999 and the future years defense program.

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

COMMITTEE ON FINANCE

Mr. FRIST. Mr. President, the Finance Committee requests unanimous consent to conduct a hearing on Thursday, February 5, 1998 beginning at 10 a.m. in room 215 Dirksen.

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

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

Mr. FRIST. Mr. President, I ask unanimous consent that the full Committee on Environment and Public Works be granted permission to conduct a business meeting to consider the nominations of Donald J. Barry, nominated by the President to be Assistant Secretary for Fish and Wildlife, Department of the Interior, and Sallyanne Harper, nominated by the President to be Chief Financial Officer, Environmental Protection Agency, Thursday, February 5, immediately following the first Senate vote in the President's room (S–216).

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

ADDITIONAL STATEMENTS

WILLIAM T. FRAIN JR., GREATER MANCHESTER CHAMBER OF COMMERCE CITIZEN OF THE YEAR

• Mr. SMITH of New Hampshire. Mr. President, I rise today to congratulate William T. Frain Jr., a distinguished individual, for being named Greater Manchester Chamber of Commerce Citizen of the Year for 1997. I commend his consistent drive and aggressive encouragement to improve the quality of life for his fellow citizens.

William has held many officer roles as well as been a member of many organizations. To name a few, he has been involved in the Board of Directors of the Greater Manchester Chamber of Commerce, New Hampshire Business Committee for the Arts, and New Hampshire Better Business Bureau. He also devotes a great deal of time to civic and charitable endeavors including the Easter Seal Society, Junior Achievement, The Humanities Council and Bishop of Manchester's Summer Reception Fund Committee. These are just a few organizations with which he has spent countless hours and dedicated service. This impressive list goes on and he should be very proud of these contributions.

William has enthusiastically worked with more than twenty organizations, countless residents and employees, and developed a considerable portfolio of citizenship. Four words come to mind that best represent what William is trying to strengthen: community, teamwork, partnership, and development. These are terms that bind all Americans together and strengthen the unity of this great country.

These words best exhibit the tools he employs to bring about positive change and as a leader, encouraging others to rise to the calling of citizenship. Yet, William is not just a great citizen, but a defender of companionship and a visionary of better communities.

William's commitment to each organization he represents is extremely solid and substantial. He gives it his all and inspires others to follow his lead. His actions and beliefs have become a catalyst for significant change resulting in profound achievements. Mr. President, I want to congratulate William for his outstanding work and I am proud to represent him in the U.S. Senate.•

VERMONT OLYMPIANS

• Mr. LEAHY. Mr. President, I would like to take a moment to honor the twenty-two Vermonters who will be representing our country this week at the XVIIIth Winter Olympics in Nagano, Japan. Perhaps Chris Graff of the Associated Press said it best when he noted in an article that appeared in the Rutland Herald that Vermont produces more than its share of Olympians, ". . . a fact that should surprise no one. There is something about Vermonters and the Vermont spirit that is so keenly associated with the Olympic spirit." Maybe it is the mix of severe weather, Yankee stubbornness, and that New England work ethic that instills in Vermonters an appreciation for hard work and perseverance.

Representing Vermont on the U.S. Men's Ice Hockey Team is the now famous John LeClair from St. Albans. LeClair may play professional hockey for the Philadelphia Flyers, but he has never forgotten his roots in the small city of St. Albans. John donates his time and expertise to the people of Franklin County throughout the year. His skill and All-American image have brought civility and a touch of New England neighborliness to the most unlikely of sports. For the first time ever, the National Hockey League is competing in the Olympics. Vermonters are rooting for John LeClair to leave a lasting impression.

If there is one thing Vermonters excel at it is getting through snow, so it makes sense that Vermont is well represented on the U.S. Olympic Cross Country Ski Teams. Four Vermonters will be on the team: Marc Gilbertson and Laura Wilson of Montpelier, Kerrin Petty from Townshend, and Suzanne King of East Warren. This is Marc's first time as a member of a U.S. national team and I admire his grit in going after his Olympic dream. Laura, Kerrin, and Suzanne will bring experience to the women's team and are aiming to show the world what Vermont women are made of.

The Nordic Combined event has Norwich native Tim Tetreault competing. Tim's parents Tom and Anne will be going to Japan this week to watch their son, who has been skiing since he was five, compete in his third Olympic games. The Freestyle U.S. Ski teams also include four skiers and a head coach from Vermont. Ann Battelle from Williston got hooked on skiing during her years at Champlain Valley Union High School and has never looked back. Jim Moran of Stowe and Evan Dybvig of Turnbridge, who have both spent many cold hours conquering the slopes of Stowe, will also be competing. Donna Weinbrecht, another team member, knows well all the steep trails and sharp twists at Killington Mountain. The four will be joined by coach Jeff Good from Williston.

Skiing comes naturally for Vermonters, but add a rifle and you have a sport Vermonters can really get behind! Seven Vermonters will be doing just that on the U.S. Biathlon teams—Dan Westover from Colchester, Robert Rosser of Underhill, Kristina Viljanen-

Sabasteanski of Richmond, Deborah Nordyke from Jericho, Kara Salmela of Bolton Valley, Algis Shalna (head Coach) from Williston, and Timothy Derrick (assistant Coach) of Jericho. Head Coach Shalna brings with him Olympic experience having competed for the Soviet Union's Gold Medal winning team in the 1984 Winter Olympics. The group has been training at a state-of-the-art Vermont National Guard facility in Jericho—which will be hosting the World Junior Biathlon Championships just after the Olympics.

New to the Olympics but familiar to Vermont is snowboarding. As the birthplace of this sport and home to Jake Burton's renowned snowboard company, it is appropriate that Vermont will be sending three talented competitors as part of the first U.S. Snowboarding Team. Ross Powers from South Londonderry, Ron Chiodi of Rochester, and Betsy Shaw of East Dorset will be traveling to Nagano this week. Ross knows all about travel since snowboarding has taken him all over the world. He will celebrate his nineteenth birthday on February 10th and be joined by his mother, Nancy, in Japan. East Dorset will be cheering for their neighbor, Betsy, who has "surfed" mountains all over the globe but knows the ones in southern Vermont best. Ron too will bring his Vermont experience at Stratton Mountain with him to the Olympics.

Also going to Nagano, Japan is Vermonter Kathryn Vigesna Lipke of Belvidere. She will be serving as one of five international jurors who will judge the snow-sculpting competitions. Having lived in the mountains of Belvidere with its snowy peaks and dense woods, Kathryn will make an excellent judge of cold weather beauty.

I am truly proud of the athletes Vermont is sending to the Olympics. I commend them for their hard work and the example they set for Vermonters and for athletes everywhere, and join all Vermonters in wishing them the best in the 1998 Winter Olympics.•

PROTECTION OF THE AMERICAN FLAG FROM PHYSICAL DESECRATION

• Ms. SNOWE. Mr. President, I am proud to join Senators HATCH, CLELAND, and others in cosponsoring the proposed constitutional amendment to grant the States and Congress the power to prohibit the physical desecration of the flag of the United States. Our flag occupies a truly unique place in the hearts of millions of citizens as a cherished symbol of freedom and democracy. As a national emblem of the world's greatest democracy, the American flag should be treated with respect and care. I have long held that our free speech rights do not entitle us to consider the flag as merely personal property, to be treated any way we see fit, including its desecration for the purpose of political protest. I want to commend Senator HATCH for once again leading us in this very worthwhile cause.

Mr. President, with the introduction of this resolution, we resume our effort to protect the greatest symbol of the American experience. There is no more powerful symbol of freedom, democracy, and our commitment to those principles that the American flag, and it is altogether just that we try to ensure that it is publicly displayed with pride, dignity, and honor. Make no mistake, Mr. President, the flag is not merely a visual symbol to us, nor should it be. Too many Americans have contributed too much of their labor, their passion, and in some cases their very being for it to be so simply regarded. For the flag permeates our national history and relays the story of America in its simplest terms. Indeed, knowing how the flag has changed—and in what ways it has remained constant—is to know the history and hopes of this country.

More than 220 years ago, a year after the colonies had made their historic decision to declare independence from Britain, the Second Continental Congress decided that the American flag would consist of 13 red and white alternating stripes and 13 white stars in a field of blue. These stars and blue field were to represent a new constellation in which freedom and government of the people, by the people and for the people would rule. As we all know, the constellation has grown to include 50 stars, but the number of stripes has remained constant. In this way, the flag tells all who view it that no matter how large America may become, it is forever rooted in the bedrock principles of freedom and self-government that led those first 13 colonies to forge a new nation.

Equally important is the fact that the flag also represents our commitment to these ideals. This commitment has exacted a high human toll, for which many of America's best and brightest have given their last full measure of devotion. It is in their memories and for their commitment to America's ideals that I am proud to support the amendment introduced yesterday.

The amendment is necessary because the Supreme Court, in its 1990 U.S. verses Eichman ruling, held that burning the flag in political protest was constitutionally protected free speech. No one holds our right to free speech more dearly than I do, Mr. President, but in my view, the Eichman decision unnecessarily rejects the deeply held reverence in which millions of Americans hold our flag. With all the forums for public opinion available to Americans every day, from television and radio, to newspapers and Internet chat rooms, Americans are afforded ample opportunity to freely and fully exercise their legitimate, constitutional right to free speech, even if what they have to say is overwhelmingly unpopular with a majority of American citizens. Simply put, protecting the flag from desecration poses no serious threat to the exercise of free speech in America.

We must also remember that this constitutional amendment is carefully drafted to simply allow the Congress and individual State legislatures to enact laws prohibiting the physical desecration of the flag, if they so choose. It certainly does not stipulate or require that such laws be enacted, although many States and the Federal Government have already demonstrated widespread support for doing so. In fact, prior to the Supreme Court's rulings on this issue, 48 States, including my own State of Maine, and the Federal Government has anti-flag-burning laws on their books for years. So really what we do with this resolution is give the American flag the protection that almost all the States, the Federal Government, and a large majority of the American people have already endorsed.

Protecting the flag also enjoys widespread support in Congress. During the 104th Congress, the House of Representatives overwhelmingly passed a flag protection resolution, and 63 Senators supported a resolution identical to this one. Just last year, the House or Representatives, to its credit, reaffirmed its commitment to the sanctity of the American flag by once again passing a flag protection resolution with ease. Now it is time for the Senate to show a similar commitment.

Whether our flag is flying over Fenway Park, a military base, a school, or on a flag pole on Main Street, the stars and stripes have always represented the ideals and values that are the foundation of this great Nation. Our flag has come to not only represent the pride we have for our Nation's past glories, but also to stand for the hope we all harbor for our Nation's future. Mr. President, it is with this pride and hope that I urge my colleagues to support this amendment.

PAYMENT OF AN EQUITABLE CLAIM TO DR. BEATRICE BRAUDE

• Mr. MOYNIHAN. Mr. President, I rise today with good news. We have at long last seen a measure of justice in a case which brings back memories of an awful time in our nation's history.

In 1953 Dr. Beatrice Braude, a linguist, was wrongfully dismissed from her position at the United States Information Agency and was subsequently blacklisted by the Federal government as a result of accusations of disloyalty to the United States. The accusations were old. Two years earlier the State Department's Loyalty Security Board had investigated and unanimously

voted to dismiss them. The Board sent a letter to Dr. Braude stating "there is no reasonable doubt as to your loyalty to the United States Government or as to your security risk to the Department of State." Despite this, her name was not cleared.

Dr. Braude was terminated one day after being praised for her work and informed that she would probably be promoted. She was told that her termination was due to budgetary constraints, but the truth was that she was selected for termination because of the old—and answered—charges against her. Because she did not know the real reason for her dismissal, she was denied certain procedural rights, including the right to request a hearing.

Over time she grew suspicious. When she was unable, over the course of several years, to secure employment anywhere else in the Federal government—even in a typing pool despite a perfect score on the typing test—she became convinced that she had been blacklisted. The Privacy Act of 1974 enabled her to obtain her government files and confirm her suspicions. She invested much time and energy fighting to regain Federal employment and restore her reputation. She was partially successful. In 1982, at the age of 69, she was hired as a language instructor in the CIA. Sadly, she still had not been able to clear her name by the time of her death in 1988. The irony of the charges against Dr. Braude is that she was an anti-communist, having witnessed first-hand Communist-sponsored terrorism in Europe while she was an assistant cultural affairs officer in Paris and, for a brief period, an exchange officer in Bonn during the late 1940's and early 1950's.

Mr. President, I have reviewed the charges against Dr. Braude before on the floor of the Senate, but I think that they merit repeating because they are illustrative of that dark era and are instructive to us even today. There were a total of four charges. First, she was briefly a member of the Washington Book Shop on Farragut Square that the Attorney General later labeled subversive. Second, she had been in contact with Mary Jane Keeney, a Communist Party activist employed at the United Nations. Third, she had been a member of the State Department unit of the Communist-dominated Federal Workers' Union. Fourth, she was an acquaintance of Judith Coplon.

With regard to the first charge, Dr. Braude had indeed joined the Book Shop shortly after her arrival in Washington in 1943. She was eager to meet congenial new people and a friend recommended the Book Shop, which hosted music recitals in the evenings. I must express some sensitivity here: my F.B.I. records report that I was observed several times at a "leftist musical review" in suburban Hampstead while I was attending the London School of Economics on a Fulbright Fellowship.

Dr. Braude was aware of the undercurrent of sympathy with the Russian cause at the Book Shop, but her membership paralleled a time of close U.S.-Soviet collaboration. She drifted away from the Book Shop in 1944 because of her distaste for the internal politics of other active members. Her membership at the Book Shop was only discovered when her name appeared on a list of delinquent dues. It appears that her most sinister crime while a member of the book shop was her failure to return a book on time.

Dr. Braude met Mary Jane Keeney on behalf of a third woman who actively aided Nazi victims after the war and was anxious to send clothing to another woman in occupied Germany. Dr. Braude knew nothing of Keeney's political orientation and characterized the meeting as a transitory experience.

With regard to the third charge, Dr. Braude, in response to an interrogatory from the State Department's Loyalty Security Board, argued that she belonged to an anti-Communist faction of the State Department unit of the Federal Workers' Union.

Remember that the Loyalty Security Board investigated these charges and exonerated her.

The fourth charge, which Dr. Braude certainly did not—or could not—deny, was her friendship with Judith Coplon. Braude met Coplon in the summer of 1945 when both women attended a class Herbert Marcuse taught at American University. They saw each other infrequently thereafter. In May 1948, Coplon wrote to Braude, then stationed in Paris and living in a hotel on the Left Bank, to announce that she would be visiting shortly and needed a place to stay. Dr. Braude arranged for Coplon to stay at the hotel. Coplon stayed for 6 weeks, during which time Dr. Braude found her behavior very trying. The two parted on unfriendly terms. The friendship they had prior to parting was purely social.

Mr. President, Judith Coplon was a spy. She worked in the Justice Department's Foreign Agents Registration Division, an office integral to the FBI's counter-intelligence efforts. She was arrested early in 1949 while handing over notes on counterintelligence operations to Soviet citizen Valentine Gubitchev, a United Nations employee. Coplon was tried and convicted—there was no doubt of her guilt—but the conviction was overturned on a technicality. Gubitchev was also convicted but was allowed to return to the U.S.S.R. because of his quasi- diplomatic status.

Judith Coplon was a spy. Beatrice Braude was not. We know that Judith Coplon was not alone as a Soviet spy; though there were not as many as one might have imagined given the American response. In 1956, Edward A. Shils captured the overreaction to Communist activities in the United States in his fine, small study, The Torment of Secrecy: The Background and Consequences of American Security Policy. "The American visage began to cloud over," Shils wrote. "Secrets were to become our chief reliance just when it was becoming more and more evident that the Soviet Union had long maintained an active apparatus for espionage in the United States. For a country which had never previously thought of itself as an object of systematic espionage by foreign powers, it was unsettling."

The larger society, Shils continued, was "facing an unprecedented threat to its continuance." In these circumstances, "The fantasies of apocalyptic visionaries * * * claimed the respectability of being a reasonable interpretation of the real situation." A culture of secrecy took hold within American government, while a hugely divisive debate raged in the Congress and the press.

The public now divided. There were those who perceived of treason on every hand, and so we witnessed the spectacle of Senator Joseph McCarthy making such accusations of George C. Marshall. Charges and counter-charges of Communist conspiracies proliferated.

A balanced history of this period is now beginning to appear, but at the time, the American government and the American public was confronted with possibilities and charges, at once baffling and terrifying. A fault line appeared in American society that contributed to more than one political crisis in the years that followed.

The first fact is that a significant Communist conspiracy was in place in Washington, New York, and Los Angeles, but in the main those involved systematically denied their involvement. This was the mode of Communist conspiracy the world over.

The second fact is that many of those who came to prominence denouncing Communist conspiracy, accusing suspected Communists and "comsymps," clearly knew little or nothing of such matters. And in many instances, just as clearly were not in the least concerned. And so while there were spies like Coplon who were caught, there were also innocent people who, having been accused, were unable to remove the stain. Dr. Braude is one such.

My involvement in Dr. Braude's case dates back to early 1979, when she came to me and my colleague at the time, Senator Javits, and asked us to introduce private relief legislation on her behalf. In 1974, after filing a Freedom of Information Act request and finally learning the true reason for her dismissal, she filed suit in the Court of Claims to clear her name and seek reinstatement and monetary damages for

the time she was prevented from working for the Federal government. The Court, however, dismissed her case on the grounds that the statute of limitations had expired. On March 5, 1979, Senator Javits and I together introduced a bill, S. 546, to waive the statute of limitations on Dr. Braude's case against the U.S. government and to allow the Court of Claims to render judgment on her claim. The bill passed the Senate on January 30, 1980. Unfortunately, the House failed to take action on the bill before the 96th Congress adjourned.

In 1988, and again in 1990, 1991, and 1993, Senator D'AMATO and I re-introduced similar legislation on Dr. Braude's behalf. Our attempts met with repeated failure. Until at last, on September 21, 1993, we secured passage of Senate Resolution 102, which referred S. 840, the bill we introduced for the relief of the estate of Dr. Braude, to the Court of Claims for consideration as a congressional reference action. The measure compelled the Court to determine the facts underlying Dr. Braude's claim and to report back to Congress on its findings.

The Court held a hearing in November 1995 and on March 7, 1996 Judge Roger B. Andewelt issued his verdict that the USIA had wrongfully dismissed Dr. Braude and intentionally concealed the reason for her termination. He concluded that such actions constituted an equitable claim for which compensation was due. Forty-three years after her dismissal from the USIA and 8 years after her death, the Court found in favor of the estate of Dr. Braude.

Justice Department attorneys reached a settlement with lawyers representing Dr. Braude's estate concerning the monetary damages. In due time, $200,000 in damages were appropriated by Congress.

I am happy to report that Beatrice Braude's estate has just received a check from the Department of Justice. Fully forty-five years after her wrongful dismissal and ten years after her death, Beatrice Braude's reputation has been restored and the United States government has paid her estate for the damages it inflicted during a dark period of our history. The money will be donated to Hunter College, the institution from which Dr. Braude received her bachelor's degree. Happily, students at Hunter College are now learning a more balanced history of the Cold War. We are now not in the least concerned about the infiltration of the government by ideological enemies. With the end of the Cold War we are able to learn much more of the facts of the Communist threats we faced. Our response to that threat was certainly mixed and I am pleased that we have been able to set the matter of Beatrice Braude to right.

Senator D'AMATO and I wish to express our profound gratitude to Joan L. Kutcher and Christopher N. Sipes of Covington & Burling, two of the many lawyers who have handled Dr. Braude's case on a pro bono basis over the years. It is thanks to their tireless dedication that history has been made and Dr. Braude's name has been cleared.

I ask that an article appearing in the January 26, 1998 issue of the Washington Post, "45 Years Later, U.S. Pays Up," be printed in the RECORD.

The article follows:

[From the Washington Post, Jan. 26, 1998]

UPDATE ON THE NEWS

(By Cindy Loose)

45 YEARS LATER, U.S. PAYS UP

It has taken awhile for the $200,000 U.S. government check for Beatrice "Bibi" Braude to show up—45 years, reckoned from the time she was fired from the United States Information Agency, where she translated French newspapers.

It has been 23 years since the Freedom of Information Act opened government files and she was able to confirm her suspicions: that the Office of Security recommended that she be fired, citing a report from an FBI informant that Braude was in contact with a communist in November 1946 and that she had visited a leftist book store.

A decade has passed since Braude died at the age of 75. Most of the government officials involved in her firing are also dead.

Braude was among 1,500 federal employees dismissed for similar associations and accusations from 1953 to 1956, and 6,000 others resigned under pressure of security and loyalty inquiries, according to experts. No one, however, fought back as long and as hard as Braude.

A lawsuit she filed bounced around various courts for years until the U.S. Claims Court ruled that the statute of limitations had run out. She then persuaded New York Sens. Daniel Patrick Moynihan (D) and Alfonse D'Amato (R) to sponsor legislation that mandated review of the case by the U.S. Court of Federal Claims.

The Justice Department fought the case, saying that the government should not be judged by today's standards and that perhaps Braude had failed to find employment for years because she was a woman, and over age 40.

However, Judge Roger B. Andewelt ruled about two years ago that Braude was a loyal American who had been unlawfully persecuted and that she had an "equitable claim" based on tort law, which recognizes moral wrongdoing. He ordered the Justice Department to negotiate an award with attorneys from Covington and Burling, a D.C. law firm that continued to fight Braude's case pro bono after her death.

The lawyers settled on $200,000, and in November, Congress approved the funds as part of a spending bill for the Justice Department. Braude's brother, 79-year-old Theodore Braude, said he was told last week that the check to be paid to Braude's estate is in the mail.

"Immediately on receipt it will be copied and framed," Braude said. "The most important thing is that her name was cleared, that the government admitted an injustice. That makes a whole lot of us feel better."•

TRIBUTE TO THE BOY SCOUTS OF AMERICA ON THE OCCASION OF THE 88TH ANNIVERSARY OF ITS FOUNDING

• Mr. GRAMS. Mr. President, I rise today to pay tribute to the Boy Scouts of America (BSA) on the occasion of the 88th Anniversary of its founding on February 8, 1998.

At the turn of the century in England, Robert Baden-Powell, an outdoor enthusiast and a veteran of the British Army's campaigns in Africa, published a nature skills book intended for young people to expose them to the rewards offered by a working knowledge of nature. The book was titled "Scouting for Boys" and was based on survival manuals Baden-Powell authored during his military career. Shortly after the book's publication, Baden-Powell led a group of 22 boys on a scouting exhibition on Brownsea Island, off the coast of England, for the purpose of applying the principles contained in the book.

From that original group of 22 sprang forth a movement which now boasts over 5 million members in this country alone, and continues to grow each year. In my home state of Minnesota, the Viking Council of the Boy Scouts of America serves over 57,000 youths between the ages of 5 and 20, making it the 21st largest of the 335 Boy Scout Councils in this country.

Participation in the Boy Scouts of America gives young people a sense of self-worth and satisfaction that is the product of setting and accomplishing goals, and being a part of a winning team. Such experiences cultivate discipline and a sense of responsibility that are assets for life.

By cooperating with peers to achieve a common end, Scouts learn valuable lessons in leadership. Countless civic, professional, and community leaders throughout our Nation were involved in the Boy Scouts of America as youths, including 302 members of the 104th Congress.

Through programs like the "Urban Scouting Emphasis," which has over 4,300 participants in urban Minneapolis, the Boy Scouts of America is bringing its valuable life lessons to inner city youth who are particularly at risk of falling victim to the entrapments of the streets. The Boy Scouts of America offers a place where young people can gain a sense of belonging and loyalty that they may otherwise seek to find in street gangs. Furthermore, the importance of programs like "Urban Emphasis" is amplified when considering the annual cost per youth served by Viking Council is $58.31, whereas the cost of housing a juvenile offender is $100.00 per day.

Of course all the forementioned would hardly be possible without the adult volunteers who are the foundation of the Boy Scouts of America. Currently there are over 1.3 million men

and women nationwide who, in the spirit of Robert Baden-Powell, graciously give their time and talents to ensure that the youth of society grow into well-adjusted adults. Adult volunteers touch the lives of young people by serving as excellent role models and teachers, as well as caring friends.

The Boy Scouts' objectives are defined in the "Aim of Scouting" as being character development, citizenship training, and personal fitness. On the surface, these aims may seem simplistic, yet many have forgotten the importance of these principles. Thankfully, these principles continue to prosper in the Boy Scouts of America.

Mr. President, for 88 years the Boy Scouts of America has been teaching the value of community, Nation, and Creator to our Nation's youth. This is truly grounds for celebration.•

AMENDING THE CONSTITUTION TO PROHIBIT FLAG DESECRATION

• Mr. HAGEL. Mr. President, I rise today to speak in support of Senate Joint Resolution 40, introduced yesterday by my distinguished colleague from Utah, Senator ORRIN HATCH, proposing an amendment to the Constitution authorizing Congress to prohibit the physical desecration of the American Flag.

From the birth of our nation, the Flag has represented all that is good and decent about our country. Whether it be the battlefields of Bunker Hill and Gettysburg, the trenches of Flanders Field, the shores of Normandy, the rugged terrain of Korea, the jungles of the Mekong, or the desert of Kuwait—the Stars and Stripes led young Americans into battle. Proud young soldiers would carry it high, and if they should fall another would be right there to pick up Old Glory and carry it forward. It may have been tattered by the battle and singed by fire of war, but the American flag burned as a guiding beacon of hope and freedom for our young men and women. For those who paid the ultimate price for our nation, the Flag blanketed their journey and graced their final rest place.

You see, Mr. President, the Flag is not just a piece of cloth. The "broad stripes and bright stars" shining through the "rockets' red glare" inspired Francis Scott Key to write the Star Spangled Banner. It is a symbol so sacred to our nation that we teach our children not to let it touch the ground. It flies over our schools, our churches and synagogues, our courts, our seats of government and homes across America. The Pledge of Allegiance unites all Americans regardless of race, creed or color. The flag is not just a symbol of America, it is America.

Those who oppose this legislation say that it impinges on freedom of speech and violates our Constitution. In my view this is a hollow argument. There are many limits placed on "free speech," including limiting yelling "fire" in a crowded theater. Other freedoms of speech and expression are limited by our slander and libel laws.

In 1989 and 1990 the Supreme Court of this great nation struck down flag protection laws by narrow votes. The Court has an obligation to protect and preserve our fundamental rights as citizens. However the American people understand the difference between freedom of speech and "anything goes."

When our citizens disagree with our national policy, there are a number of options available to them other than destroying the American Flag to make their point. Let them protest, let them write to their newspaper, let them organize, let them march, let them shout to the rooftops—but we should not let them burn the Flag. Too many have died defending the Flag for us to allow it to be used in any way that does not honor their sacrifice.

Mr. President, in a day where too often we lament what has gone wrong with America, it's time to make a stand for decency, for honor and for pride in our nation. Just as the Flag has wrapped itself around the hearts and souls of our nation, let us now wrap the protection of our Constitution around the Flag.•

ORDERS FOR MONDAY, FEBRUARY 9, 1998

Mr. LOTT. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 11 a.m. on Monday, February 9, and immediately following the prayer the routine requests through the morning hour be granted, and that there then be a period for morning business until 12 noon, with Senators permitted to speak therein for up to 5 minutes each, with the following exceptions: Senator KYL for 10 minutes, Senator BYRD for 20 minutes, and Senator HAGEL for 20 minutes.

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

Mr. LOTT. Mr. President, I ask unanimous consent that, at noon, the Senate resume consideration of the Satcher nomination for up to 6 hours of debate, as under the previous order.

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

PROGRAM

Mr. LOTT. Mr. President, the Senate will not be in session tomorrow, but will convene on Monday, as I have just indicated, February 9—although no rollcall votes will occur on Monday—so that the debate can go forward on the Satcher nomination for the position of Assistant Secretary of HHS and Surgeon General.

As a reminder to all Members, the next rollcall vote will occur then on invoking cloture on the Satcher nomination, if necessary, and I presume it will be at 11 a.m. on Tuesday, February 10. If cloture is invoked on that nomination, a second vote would occur immediately on the confirmation of the nomination. Also, a cloture motion was filed on the motion to proceed to the cloning legislation; therefore, that vote will occur on Tuesday as well.

RECORD TO REMAIN OPEN UNTIL 4 P.M. TODAY

Mr. LOTT. Mr. President, I ask unanimous consent that the Record remain open until 4 p.m. today for Members to introduce legislation and to submit statements for the RECORD.

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

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT REAUTHORIZATION

Mr. LOTT. Mr. President, in conclusion, before I take the Senate out following the statement of Senator KENNEDY, I want to briefly comment on some statements that have been made today and yesterday here and in other arenas and forums. There are those saying we should immediately bring up the ISTEA highway bill.

First, I want to remind the Senate that I urged the House and the Senate and interested parties to do this bill last year when it should have been done, because it expired last year. That is No. 1. No. 2, because it was not an election year and I knew, if we waited until this year, we would have less time and more pressure as we try to decide how $175 billion or more is fairly distributed across the country.

I remind the Senators of that, and they know now and they knew then that I was right. I stood right here and filed not one, not two, not three, but four cloture motions to try to bring to a conclusion unrelated debate and delays based on pure politics, if I may suggest, but for an unrelated issue. I kept saying we need to deal with this bill, and others kept saying, "Until you agree to what we want on an unrelated issue, we are not going to let you bring up ISTEA."

That was a mistake. The Senate made a mistake. Now some of the same people not voting to bring it up last year are saying, "Where is it? Please bring it up," demanding that it be brought up right away.

Well, the world is different now. A lot has happened. For one thing, we find that we may actually have a little more money than we anticipated last year. There are very few Senators that have a longer history of having voted to spend the highway trust fund for the purpose it was intended—highways. There are very few places where I think the Government should be involved in

spending money. Defense is one and budding infrastructure is the other. This is a place where people can't do it by themselves. The Government has to do its part.

So I want this. I want more money. But I also have a responsibility as majority leader to look at this from the standpoint of how does it relate to the overall budget? How is it going to affect all these other programs? And what we did last year—we stood out here in the rotunda and said that we had reached an agreement with the President of the United States on a balanced budget, on how to control taxes and how to control spending. We entered into an agreement. We entered into an agreement in every category across the board. We said we will spend this much on transportation, this much on education, this much on housing, interior, energy, right across the board.

Now, if we open the year up by raising spending, without looking at how it will affect everything else, we could break the dam and have another avalanche of spending. I am not saying it will happen. I am not saying how it should happen. I am just saying we should take our time and see what's going to happen before we charge forward. Why does the Senate need to do this when the House is not going to act? They are not going to act this month and not until at least the end of next month. I tried to get the Senate to show leadership and to lead and go first. The Senate would not do it. Now, let's act in concert.

Let's work with the House. Let's do this together. Nobody wants to bring this up more than I do. But my responsibility as majority leader is to make sure that we have thought it through and know what the impact will be on a budget agreement that we gave our word to the American people on. I intend for us to keep it, and I will do everything I can to get that result.

ORDER FOR ADJOURNMENT

Mr. LOTT. Mr. President, if there is no further business to come before the Senate, I now ask that the Senate stand in adjournment under the previous order following the remarks of Senator KENNEDY.

Mr. President, the Senator is in the area. He will return shortly I am sure to give his remarks. I observe the absence of a quorum until he can return.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

NOMINATION OF DR. SATCHER

Mr. KENNEDY. Mr. President, first of all, I want to express the appreciation of all of us to the majority leader for scheduling this nomination promptly in this session. I thank the majority leader for scheduling this Satcher nomination, and also for filing the cloture motion.

We had an opportunity to make the presentation, and the excellent presentation by Senator FRIST yesterday, which I thought was just so compelling. There were those who took some issue with the record of Dr. Satcher. But I do believe that at the end of the day yesterday the membership would be convinced of the quality of this extraordinary nominee and the incredible opportunity that all America has for his service when he is confirmed, which I expect will be on Tuesday next.

So we look forward to the opportunity to vote and to hopefully see Dr. Satcher in that important position.

In response to questions raised yesterday, I also am including a copy of a letter from Dr. Harold Varmus, Director of the National Institutes of Health, to Senator ASHCROFT regarding studies of maternal-to-infant transmission of HIV in developing countries.

I ask unanimous consent that these materials be printed in the RECORD.

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

DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTES OF HEALTH,
Bethesda, MD, February 3, 1998.

Hon. JOHN ASHCROFT,
U.S. Senate,
Washington, DC

DEAR SENATOR ASHCROFT: Your "Dear Colleague" letter criticizing Dr. David Satcher's support for studies of maternal-to-infant transmission of HIV in developing countries has been brought to my attention. I am writing to offer a different view of the situation from my perspective as the Director of the National Institutes of Health, a sister agency in the Department of Health and Human Services that also conducts studies to prevent transmission of HIV in the developing world.

Virtually all parties involved in this difficult issue acknowledge that there are many factors to be considered in determining whether to use a placebo-controlled group in a clinical trial; several of these factors are discussed in an attached article from the New England Journal of Medicine, co-authored by Dr. Satcher and me a few months ago. For the trials in question, the general design of the studies was carefully considered by the World Health Organization and the Joint United Nations Program on HIV/AIDS, and the specific studies we support have been reviewed and approved by duly constituted Institutional Review Boards in the United States and in the countries in which the studies are being performed.

The essential point is that the studies are designed to provide information useful to the management of HIV infection in the countries in which the studies are done; to act otherwise and generate knowledge applicable only in wealthier parts of the world would, in my opinion, be exploitative of the subjects of the study. Viewed in this context, it is entirely appropriate that we are supporting studies in the developing world that would not be conducted in the United States.

The article to which you allude in your "Dear Colleague" letter, by Dr. Marcia Angell, the Deputy Editor of the New England Journal of Medicine, presents a view that is not generally accepted in the medical community. Indeed her views have been strongly contested by many knowledgeable physicians, scientists, and ethicists, including some members of the Editorial Board of the Journal who have offered their resignations in protest. (The enclosed essay by Dr. Satcher and me was also written in response to Dr. Angell's article.)

Finally, I must take issue with the contention that the current CDC- and NIH-supported trials are similar to the infamous Tuskegee study. In that study, the course of a disease (syphilis) was observed without attempts to intervene, and informed consent was neither sought nor obtained from the research subjects. In the current studies, the goal is to find useful means to prevent transmission of HIV, the studies are closely supervised by many knowledgeable people, and informed consent has been obtained from each enrolled individual. The analogy to Tuskegee is inappropriate and distracting.

I appreciate that there are legitimate concerns about the ethical conduct of clinical trials in developing countries, but the debates need to be described in a fashion that gives due consideration to the arguments on both sides. Furthermore, Dr. Satcher's position on these trials should not, in my opinion, constitute grounds for opposing his nomination to be Surgeon-General of the United States. Indeed, even Dr. Sidney Wolfe of Public Citizen, one of the strongest critics of the position Dr. Satcher and I have taken, is an ardent supporter of Dr. Satcher's nomination.

I offer these comments on your letter in hopes that they will be useful to you and your colleagues in considering Dr. Satcher's nomination to this important post.

Sincerely,

HAROLD VARMUS, M.D.,
Director, NIH.

INTERMODAL SURFACE TRANSPORTATION EFFICIENCY ACT REAUTHORIZATION

Mr. KENNEDY. Mr. President, I want to join Senator BYRD and others who were speaking today in support of prompt action on an issue of major importance to the country—the ISTEA reauthorization that will set the country's course for the next six years on transportation policy and investments.

I noticed the majority leader had indicated that there were some differences about the consideration of that proposal last year.

But the fact of the matter remains that when I look over what we are involved in outside of the Dr. Satcher nomination, it seems that we certainly would have the opportunity for the consideration of the ISTEA reauthorization. And looking over the anticipated schedule, I would think that we could deal with this, and deal with it appropriately, certainly before the February recess. I don't know what

else has been placed on the schedule prior to that time next week. Certainly we would make time for any kind of consideration or resolution on the issues of Iraq. But barring that, it would seem to me that reauthorization could be dealt with by that particular time.

This debate has major ramifications, not only for the Nation's transportation system, but for the economy and the environment.

What Congress does with this legislation will, in many ways, define the degree to which communities across the country will be able to take full advantage of the possibilities for economic development and growth in the years ahead. Without a modern, safe and efficient transportation network, America's businesses can't compete as efficiently, America's cities can't be revitalized as effectively, and America's families will lose valuable time in the daily struggle to move from home to work, and carry out all the other responsibilities of daily life.

This legislation will also have a major impact on the environment, as we debate what direction the law should take. A major goal is to preserve and strengthen the innovative intermodal approach established under the original ISTEA, including special emphasis on public transit, the Congestion Mitigation and Air Quality Program, bikeways and other initiatives that enhance the quality of life in our communities.

I hope we will be able to build on the original ISTEA law, sustaining its innovative programs and laying the foundation for greater economic growth. To do that, we need to make a substantially larger investment that will address the many urgent transportation needs facing the country, and also facing my own State of Massachusetts that has some very special needs.

I commend Senator BYRD for his extraordinary leadership on all of these vital infrastructure issues. The amendment he proposed last fall will make a significant difference for all States, enabling us to meet all of the new challenges more effectively.

I think he makes a compelling case. Let the Senate make its judgments. Let the Senate decide. It is difficult to justify and say we are not going to let the Senate decide because we might have the votes for a particular position, which is at least partly delaying the opportunity to consider the legislation.

We can't afford to have this important debate drag on into the months ahead. The country's transportation needs are urgent and can't wait. We should take up the ISTEA legislation and complete action on it promptly, to avoid paralysis in critical ongoing work involving transportation construction, public transit operations, traffic safety programs, and other issues that demand attention.

Mr. President, I may have more to say on this subject. I know that the Senate is anxious to recess in order to hear the full report of the Secretary of State.

So I will yield at this time and hope that the Senate will follow the leader's motion for adjournment.

ADJOURNMENT UNTIL 11 A.M., MONDAY, FEBRUARY 9, 1998

The PRESIDING OFFICER. Under the previous order, the Senate will stand in adjournment until 11 a.m. on Monday, February 9.

Thereupon, the Senate, at 3:52 p.m., adjourned until Monday, February 9, 1998, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate February 5, 1998:

DEPARTMENT OF VETERANS AFFAIRS

ELIGAH DANE CLARK, OF ALABAMA, TO BE CHAIRMAN OF THE BOARD OF VETERANS' APPEALS FOR A TERM OF SIX YEARS, VICE CHARLES L. CRAGIN.

DEPARTMENT OF AGRICULTURE

KEITH C. KELLY, OF ARIZONA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE COMMODITY CREDIT CORPORATION, VICE GRANT BUNTROCK.

STATE JUSTICE INSTITUTE

ROBERT A. MILLER, OF SOUTH DAKOTA, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE STATE JUSTICE INSTITUTE FOR A TERM EXPIRING SEPTEMBER 17, 2000, VICE DAVID ALLEN BROCK, TERM EXPIRED.

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIG. GEN. FRED E. ELLIS, [redacted]
BRIG. GEN. EDWARD R. JAYNE II, [redacted]
BRIG. GEN. CARL A. LORENZEN, [redacted]
BRIG. GEN. RICHARD A. PLATT, [redacted]
BRIG. GEN. JOHN H. SMITH, [redacted]
BRIG. GEN. IRENE TROWELL-HARRIS, [redacted]

To be brigadier general

COL. WILLIAM E. BONNELL, [redacted]
COL. EDWARD H. GREENE II, [redacted]
COL. ROBERT H. HARKINS III, [redacted]
COL. JAMES W. HIGGINS, [redacted]
COL. ROBERT F. HOWARTH, JR., [redacted]
COL. THOMAS C. HRUBY, [redacted]
COL. RICHARD S. KENNEY, [redacted]
COL. PHIL P. LEVENTIS, [redacted]
COL. CHARLES A. MORGAN III, [redacted]
COL. JERRY W. RAGSDALE, [redacted]
COL. LAWRENCE D. RUSCONI, [redacted]
COL. RICHARD H. SANTORO, [redacted]
COL. WAYNE L. SCHULTZ, [redacted]
COL. RALPH S. SMITH, JR., [redacted]
COL. RONALD C. SZARLAN, [redacted]
COL. JAMES K. WILSON, [redacted]
COL. RUTH A. WONG, [redacted]

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE UNITED STATES MARINE CORPS TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JOHN W. BERGMAN, [redacted]
COL. JOHN J. MCCARTHY, JR., [redacted]

CONFIRMATIONS

Executive Nominations Confirmed by the Senate February 5, 1998:

IN THE AIR FORCE

THE FOLLOWING NAMED UNITED STATES AIR FORCE OFFICER FOR APPOINTMENT AS THE VICE CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND FOR APPOINTMENT TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 154:

To be general

GEN. JOSEPH W. RALSTON, [redacted]

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. THOMAS R. CASE, [redacted]

IN THE ARMY

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. MICHAEL J. SQUIER, [redacted]

THE FOLLOWING ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE ARMY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. ROBERT L. ECHOLS, [redacted]