charge, Senator PRYOR chaired the hearings. I chaired when Republicans were in charge. Our objective was never lost, and the work moved forward. Our commitment was always to the courageous soldier in the field—the individual dependent on the weapon systems.

Another Senator with whom I've had the pleasure of working closely is SAM NUNN, one of the most honorable, fair and bipartisan leaders I've known. SAM and I have alternated between chairing and serving as ranking minority member on the Permanent Subcommittee on Investigations since 1981. On many occasions, our staffs worked together on joint investigations.

We launched the first congressional investigation identifying crack cocaine as a significant drug problem. We investigated airline safety, and explored the Justice Department's handling of the Jackie Presser ghostworkers issue. Senator NUNN has been a staunch opponent of waste, fraud, and abuse, and he has gained world renown as an expert in matters of defense and foreign affairs.

Most recently, he and I launched the first investigation of Russian organized crime activities in the United States, continuing PSI's longstanding history of being Congress' primary organized crime investigator.

I am also grateful to Senator NANCY KASSEBAUM and her leadership in health care. NANCY is another one of the profoundly thoughtful Senators who serve as the catalyst for important policies and laws. She was certainly a catalyst in the effort to successfully pass the medical savings account demonstration program, as part of our effort to make health care more accessible for Americans.

Another retiring Member of the Senate, after five terms in Senator MARK HATFIELD, a man whose dedication to principle has distinguished his career in the State House as well as on Capitol Hill. Among his many legislative successes, I'm grateful for Senator HATFIELD's work on behalf of Amtrak, as well as his objective analysis and contributions to debates and initiatives through the years.

Likewise, HANK BROWN, and his rugged, no-nonsense approach in promoting a strong foreign policy and fiscal responsibility. HANK and I have served together on the North Atlantic Assembly, and we have joined efforts to strengthen the North Atlantic Treaty Organization. His eloquence and clear logic make him unusually effective and a pleasure to work with—not to mention his love for St. Bernards—another devotion we share.

I appreciate BILL COHEN, our distinguished senior Senator from Maine. Senator COHEN is a noted novelist, a poet. I've found many of his speeches brilliantly enriching, especially a speech he gave a few years ago about the changing culture around us. BILL has been a dogged proponent of cutting waste, fraud, and abuse on the Government Affairs Committee, and he has been active in our efforts to understand and build relationships of trust with the nations of the Pacific. He will be remembered not only for his work with ASEAN, but for his efforts on behalf of NATO, and his chairing of the Munich Conference.

Finally, Mr. President, I want to recognize Senator ALAN SIMPSON, a good friend and revered colleague. There are few men who become legends in their own time, but AL is certainly one of them. His easy-going, affable manner and ready wit were equal to his majestic stature and trademark smile. There hasn't been a time when AL's opened his mouth to speak that I haven't waited in anticipation for some new sparkling gem of wisdom, a witty turn of phrase, or an outright joke.

AL taught us, as his mother taught him, that humor is the irreplaceable solace against the elements of life; hatred corrodes the container it's carried in. With his humor, he could diffuse even the most impassioned and tensely difficult moments.

It was AL who, during one very difficult period—a period of some contention on this floor—told us of the successful marriage philosophy he shares with his wonderful wife, Ann. It was a simple philosophy: ''Never go to bed angry * * *'' he said. ''Always stay up and fight!''

During another heated moment, in the middle of the confirmation hearings on Judge Robert Bork, AL reminded us, with his western charm, the ''Everyone's entitled to their own opinion, but not to their own facts.''

And it was AL who taught us how to deal with the media. Once, when pressed for his church preference, he answered: ''Red brick!''

Indeed, as the liberal commentator, Mark Shields, has recognized, ''AL SIMPSON is a man of uncommon wisdom.'' With his retirement, he not only leaves behind a rich legislative legacy, and dear memories for friends, but a reputation akin to that which attends Will Rogers. I can only imagine that in the years and decades ahead, AL, like Mark Twain, Will Rogers, Winston Churchill, and other great wits, will come to inherit aphorisms and jokes that he never told. But then, those of us who know him, realize that he truly deserves such an honor.

It has been my pleasure to serve with Senators SIMPSON, COHEN, BROWN, HATFIELD, KASSEBAUM, NUNN, PRYOR, and HEFLIN—as well as with Senator SIMON, who we saluted with our bowties last week, Senator BENNETT JOHNSTON—four successful terms from Louisiana, Senator EXON, and Senator BRADLEY, who I've had the pleasure of serving with on the Finance Committee. And I appreciate Senator PELL, another fine leader who leaves a great legacy, both at home and abroad. Mr. President, I salute all those who are retiring this year. Each has lived a life in deeds, not words, and in their actions have written their legacy on tablets of love and memory.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Morning business is closed.

FEDERAL AVIATION ADMINISTRATION—REAUTHORIZATION CONFERENCE REPORT

The PRESIDING OFFICER (Mrs. HUTCHISON). Under the previous order, the Senate will now resume consideration of the conference report accompanying H.R. 3539, which the clerk will report.

The assistant legislative clerk read as follows:

Conference report to accompany H.R. 3539, an act to amend title 49, United States Code, to reauthorize programs for the Federal Aviation Administration, and for other purposes.

The Senate resumed consideration of the conference report.

The PRESIDING OFFICER. Under the previous order, there shall be 3 hours for debate on the conference report, with the time to be equally divided between the two leaders.

Mr. STEVENS addressed the Chair.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. STEVENS. Madam President, the Senate now is going to continue its work on the Federal Aviation Administration reauthorization bill.

TRIBUTE TO ADMINISTRATOR HINSON

As we start that, I want to take a moment to pay tribute to that Agency's leader, David Hinson.

As many Members of the Senate know, Administrator Hinson will be leaving his post later this year, and he will return with his wife, Ursula, to their home in Idaho.

I just called him Administrator Hinson. That is tough for me to say because over the last years, those of us who have worked with him always called him David. He is a very approachable guy and one who we understand. He comes from the West. In my State, where aviation is very critical and more than 75 percent of our communities can be reached only by air, David has become well known. He has been to Alaska several times. He had to cancel a recent visit with our air carriers because of the tragedy of TWA Flight 800.

But he is continuing to work on solutions to our problems, particularly the problems that we are experiencing at the Juneau International Airport. Two critical departures have been revoked, and David is working with safety personnel to try to find a way to make those departures safe for travelers in and out of our capital city.

As Administrator, Mr. Hinson has set the FAA on a good course, working with a very competent assistant and associate administrator, Linda Daschle. He has been able to urge Congress to address the FAA's future funding needs, and he has worked to improve commuter airline safety and,

with the help of Congress, has streamlined procurement rules within the FAA.

He is someone I have found very interesting, because in his younger years, he flew in and out of my State as a commercial airline pilot.

He was flying for the old Pacific Northern Airlines. He knows what it means to be involved in commercial aviation. He knows the people who do the flying. I think that is the most important thing.

The FAA people have a tough job. When a plane crashes, we are all inclined to look for someone to blame. Often the finger pointing begins with the FAA itself. But the FAA's record of ensuring safety for us in our skies is unparalleled by any nation in the world. We move in an enormous number of planes and passengers every day, every week, every month, every year.

While no institution is perfect, and it is very difficult for any administrator to really get much of a hold on an entity that has such a long tradition as the FAA, David Hinson has worked with his team to really promote improvements to safety.

I am one Senator who has urged Administrator Hinson to stay on. But he has had a call that I think very few people can resist and that is from his grandchildren, I understand, and his wife and children. It is unfortunate that we are going to lose David Hinson as the Administrator of the FAA.

Madam President, he is honest, straightforward, clear thinking, and he deserves the thanks of the American people for what he has done.

The FAA, under his leadership, has brought about a great many innovations. One to me as a pilot that I find most interesting is the approach that has been given by the FAA during this period to utilizing new technology. He has moved forward through the terminal Doppler radar weather and Air Force surface detection equipment and brought us into the 21st century with a whole series of new innovations.

But above all, one of the things that has probably been the most startling has been the FAA's augmentation of the GPS system to enhance navigation signals throughout the United States.

The FAA's approach will allow the airlines to use GPS for precision approaches to airports even in bad weather when vision is severely limited by smog and bad conditions. They did the initial design and procurement work on the accelerated timetable, cutting at least a year off the delivery schedule. Early deployment of this system late in this decade will save airlines hundreds of millions of dollars annually due to more precise routings and fuel savings and increased airport efficiency.

I myself took a trip just recently with the GPS on a very small plane, and by virtue of using the GPS, together with our navigation system, we saved fuel, we saved time, and above all, we flew a safer route.

I think that the country ought to really realize what has happened in this period when David Hinson, a man with a background in aviation, has been the Administrator. He has brought us a new FAA, an FAA that is not afraid of competitiveness in the industry, who wants and understands growth in the industry, and it has been a period of time when even general aviation has expanded and the costs to general aviation have decreased.

It is now, I think, a challenge for whoever takes his place to find a way to really ensure that there will be a continued place for general aviation in our aviation programs in the United States. Some people want to sort of squeeze out the private jets, the private aircraft, the small planes and believe that they are inefficient and cause difficulty within the system.

That is not true, Madam President. There is room in our Nation's airline and airways system for every type of plane. I do believe that we will improve on what Administrator David Hinson has done to ensure that we have not only the best and the most active, but we have the safest transportation system in the world.

I do very seriously commend him for his actions. I wish him well. He has had a very great impact on the bill that is before us, Madam President, and has continually visited all of us to assure that we try to put aside differences that we might have and get this bill passed.

This bill, Madam President, contains many vitally important aviation safety and security provisions. No single provision is more important than title VII, which provides long overdue assistance to the families of victims of aviation disasters.

This provision absolutely must be adopted. It is one of the provisions where the survivors of victims of various aircrafts came to those of us on the Commerce Committee and urged us to have a hearing. We did have a hearing. We readily discovered that the families of victims of past air crashes have suffered a great deal.

The most recent tragedies, of course, involved ValuJet's flight 592, TWA's flight 800. Those brought forward the issue of the treatment of victims' families in the wake of aviation accidents. More and more of these accidents involve larger and larger jets, more people and more difficult circumstances.

As I said last week at the Commerce Committee hearing on the treatment of victims' families—I was pleased to be there with the distinguished Senator from South Dakota, Senator PRESSLER; the hearing was held at his request. He urged many of us to come and listen to these people.

We heard from family members who have lost loved ones in five aviation disasters. These witnesses eloquently shared their harrowing experiences. Each witness urged us the same thing, Madam President. That is my point for speaking about this. They urged that we include House bill 3923, the Aviation Disaster Family Assistance Act of 1996, in the reauthorization conference report.

After several hours of hearing, the FAA reauthorization conferees met and unanimously agreed to include H.R. 3923 in the compromise reauthorization bill as the families have requested.

This provision will improve the notification of families, protect the privacies of grieving families, improve the overall treatment of family members, and ensure family members have better access to accident-related information.

The family assistance title of this FAA bill, which is being blocked here now temporarily—I hope just temporarily—will require the National Transportation Safety Board to designate an NTSB, one of their own Board employees, as the family advocate for each commercial aviation disaster—they will designate an independent organization, such as the Red Cross, to coordinate care and support of the families—and to coordinate the recovery and identification of accident victims, to brief families before press briefings, and to—let me emphasize that—to brief the families before they brief the press. All of them said they have a right to know before they hear it on the television or over the radio or read in a newspaper what has happened.

This is one of the key provisions of this bill. It is one of the reasons the bill must be passed this year. We cannot wait until next year for that basic change. It tells people involved, in assembling information about these disasters, to brief the families involved first and inform the families of public hearings on the accident and allow those families to attend any public hearings.

The family advocate created by this legislation will assist grieving families by acting as the point of contact within the Federal Government for the families, acting as liaison between the families and the airlines and obtaining passenger manifests and providing manifest information to families who have requested it.

Madam President, I spoke to members of the airline industry. They welcome this concept. They welcome having someone who is known to be the person in charge of information for family information.

This family assistance provision in this legislation will also require the National Transportation Safety Board to designate an agency, such as the Red Cross, to assist grieving families, as I said. That agency would coordinate the care and support of families, meet with families who come to the scene and contact other families who cannot, provide counseling for the families, ensure privacy of the families from anyone, whether it is media or lawyers, whomever it might be, communicate with families about the role of Government and the agencies and

airlines involved, and arrange for suitable memorial services when possible, obtain the passenger list, and use it to provide information to the families, and use the airlines' resources and personnel to the extent practical.

Now, this family assistance provision, Madam President, would require airlines to take a number of steps to compassionately work with families of aviation tragedies. Airlines would be required to publicize a reliable toll-free number and provide staff to handle calls from families, to notify families as soon as possible of the fate of their loved ones, in person if practical, using suitably trained individuals to give out that information, provide the passenger list to the NTSB family advocate and to the Red Cross immediately. Even if the names on the list have not been verified, they must start immediately working with the NTSB and the Red Cross.

Further, they must consult with families before disposing of the remains and personal effects of the passengers, and return the passengers' possessions to the family, retaining all unclaimed possessions for 2 years. In other words, they must keep them 2 years in order that family members who may finally get information about their loved one could reclaim possession for up to 2 years.

They must consult with the families about any monument for the accident and treat the families of nonrevenue passengers and victims on the ground the same as any other people involved. Finally, they are directed to work with the Red Cross to improve the treatment of families.

Madam President, these compassionate and comprehensive measures to assist families of aviation disaster victims are now in this bill. If the bill is changed in any way, and fails, it will be at least another year before we get back to this point. The pleas of families who very much want to ensure that families of victims of future aviation disasters are treated better than they were will be ignored if this bill is not approved at this session.

I think it is absolutely necessary for us to approve this conference report.

Madam President, I ask unanimous consent to have printed in the RECORD excerpts of statements and testimony of victims and their families that really moved the committee.

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

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

TESTIMONY OF RICHARD P. KESSLER, JR., HUSBAND OF KATHLEEN PARKER KESSLER, A PASSENGER ON VALUJET FLIGHT 592

My name is Richard P. Kessler, Jr., a citizen of the United States and the husband of Kathleen Parker Kessler, a passenger on ValuJet Flight 592, who was killed on May 11, 1996, when Flight 592 crashed into the Everglades near Miami. I am also a practicing attorney in Atlanta. As I stated, I am a citizen of the United States, but the laws of the United States did not protect me, my daughter or the families of the other passenger victims.

It has been over four months since the crash, it doesn't seem that long. During the first two months following the crash, I witnessed the best and the worst of human behavior. The best of human behavior was demonstrated by the people of Miami; the federal, state and city agencies who assisted the families of the victims and conducted the search for the remains of the victims; the volunteers; the counselors; and especially one volunteer, Victoria Cummock, a victim's advocate and President of Families of PAN–AM 103 Lockerbie. The worst of human behavior was demonstrated by members of the press, the electronic media, and the members of my legal profession.

* * * * *

I urge the Senate to introduce and pass a Bill exactly like HR 3932 that has passed the House and attach amendments that provide for pilot vision equipment, passenger smoke protection and smoke detectors and fire extinguishers. I am told that pilot vision cost per ticket is less than one cent; passenger smoke protection is less than five cents per ticket and penny or two for smoke detectors. Given this cost which is recouped from the flying public, how can ValuJet or any other airline be allowed to fly citizens of the United States without outfitting their planes with such equipment that is available in the marketplace?

I am dedicating the next two years of my life to help bring about better treatment of families of victims and the change of the paradigm that is used in these personal injury disasters. My wife died on Flight 592, but she is in Heaven, I know, because she had God give me two signs that were witnessed by other people. As a trial lawyer she would want the paradigm that we now employ in these disasters to be changed to protect the interests of all parties.

I do not want the families of the victims of the next airline crash to endure the emotional rape that we had to endure following the crash of Flight 592. The next victim could be your wife, daughter, son or parents.

TESTIMONY OF KENDRA ST. CHARLES, OF USAIR #405

Chairman Pressler, it is with great pleasure that I appear before you and your fellow colleagues today. Hopefully, we can change the way families are treated after an airline disaster by enabling the NTSB to designate an independent nonprofit organization (like the Red Cross with professionally trained grief and disaster counselors) to give care and support during this horrific time. A key provision in the House Bill.

On March 22, 1992, I was a passenger aboard USAir #405. We had been delayed at New York's LaGuardia Airport as a snowstorm had begun. As we sat on the runway, I looked out the window watching the snow continue to fall and assured myself that ''they'' would never let us attempt to take off if it were not safe.

After a thirty-five minute delay, we were finally cleared for take off. Moments after we were in the air, the plane went violently out of control, cart wheeling down the runway crashing upside down with part of it in Flushing Bay. I survived the impact and subsequent explosion, I survived being projected through a fireball and landing in Flushing Bay. I survived nearly drowning, as my seat belt held me under the water. I unbuckled it and was able to wade through the fiery waters, not unlike the scene from TWA 800, to make my way to shore. I was one of the lucky ones. I had survived a living hell, but it did not prepare me for the treatment I was about to experience from the airline and insurance company.

Unconscious and barely clothed (my clothes had been ripped off during impact) I was taken to a hospital with no means of identification. As I was fighting for my life, my sixteen year old daughter was at home watching television waiting for me to return home. Suddenly the Sunday night movie was interrupted by a report of an airplane crash. Her worst fear was about to come true. She immediately called the 800 number that was flashed on the screen. It was busy. All alone she sat motionless in disbelief watching the media coverage of the crash she feared I was on. Rescue workers were shown pulling body bags from the wreckage. Still she was not able to get through to receive any kind of information. As my family arrived at my home to support my daughter, they too met with the frustration of not being able to receive any confirmation by either the 800 number or USAir directly. Finally, out of desperation, my brother drove to the airport in a blizzard to confirm that I was aboard the doomed flight.

In the hospital the doctors were unsure if I would live. I was hooked up to a respirator that forced oxygen into my punctured and burnt lungs for three days. I spent three weeks in the burn unit until I able to return home. During my hospital stay the person that I was to rely on for assistance and to help coordinate my needs as well as my family's needs was an untrained USAir ticket agent whose main concern was to find any pre-existing conditions that I might have for the purpose of future litigation. To expect that the same people who had almost killed me were now going to be my caretakers was very confusing. Not only were they not trained for any kind of crisis intervention, but there was a direct conflict of interest. They were more interested in what kind of disability insurance I might have—to know how long I could afford to live without an income. In other words, how desperate I was to settle any damage claim.

My physical and emotional recovery continued for several years. During that time I was under the care of doctors and physical therapists whose services were to be paid for by the insurance carrier. Several months would pass without any kind of payment. Clearly the airline was attempting to put pressure on me in any way that they could. I soon realized that once the media stopped filming the ''sympathetic airline officials'' that they were actually more like a brand of angry pit bulls waiting to attack the victim for a second time.

Unfortunately, I have witnessed this same inhumane treatment of families by the airline in other aviation disasters. USAir 427-American Eagle 4184-Valu Jet 59—and now TWA 800. The need for change is long overdue. There will be another snowstorm. There will be another delay—whether it be at LaGuardia or another airport. Regretfully, there will be another crash. I implore you to act now before another family suffers the horror that mine did. Our children deserve better, we the people deserve better.

Thank you for your consideration.

TESTIMONY OF VICTORIA CUMMOCK, PRESIDENT, FAMILIES OF PAN AM 103/LOCKERBIE

My name is Victoria Cummock. Today, I have come to present testimony as the widow of John Cummock, a 38 yr. old passenger who died along with 269 people, during the terrorist bombing of Pan Am 103 over Lockerbie, Scotland. I have also come here to present testimony as President of Families of Pan Am 103/Lockerbie and as ''a long time observer'' and victims advocate having been involved in disaster response work over the past 8 years and most recently with the families of TWA 800, Valujet 592 and the

Oklahoma City bombing. Although, I am a Commissioner on the White House Commission on Aviation Safety & Security, which was formed on July 25 by President Clinton and is Chaired by Vice President Gore, please note that my testimony here today does not reflect the views of the White House Commission.

* * * * *

Over the past year the House Aviation Sub-Committee has worked very closely with families of numerous air disasters. After holding various hearings, legislation was drafted to specifically address these issues. HR 3923 embodies what air disaster victims families have cried out for, time and time again . . . for years. It provides families of air disaster victims, the same quality of professional disaster care, currently given to all Americans during all other types of disasters, whether natural or man made. This legislation expands the role of the NTSB by placing the NTSB in the lead coordinating role, to manage all aspects air-disaster response and victims' family care.

HR 3923 enables the NTSB to designate an independent nonprofit disaster organization (like the Red Cross, with certified grief counselors and disaster professionals to care for the families). This will insure humane and uniform treatment, by providing a professional disaster response thus avoiding future mis-handling, conflicts of interest or abuse of authority by airlines. We strongly support this change and respectfully ask the Senate to adopt the House language and pass this legislation on to the President desk to sign. More planes will go down for different reasons. Let's not wait for another disaster before we implement this change.

* * * * *

STATEMENT OF DARIO J. CREMADES, FLIGHT 800

Good morning Mr. Chairman and Members of the Committee. I wish to thank you for allowing me to present my views on S.R. 253 and H.R. 3923, the Aviation Disaster Family Assistance Act of 1996. Although the testimony I am presenting are my personal views, they are shared by many other families of victims of flight 800.

In spite of all the ink that has flown since TWA flight 800 exploded and fell into the Atlantic, these are things that have remained unsaid and which deserve to be told. Because the wounds that this disaster has left in its victims will only heal if adequate measures are taken to prevent it from ever happening again.

Our story really started on the eve of July 17th, 1996 when, after having supper, we sat to watch television in our apartment's living room in Manhattan. The scheduled programs were interrupted by news briefs, informing us that an accident had occurred at about 8 pm, off the coast of Long Island shortly after the plane departed from JFK. Our mood was somber and concerned about the tragedy, keeping in the back of our minds the departure of our nephew Daniel, 15 years of age, bound for Paris that same evening.

* * * * *

In light of the prior statement, our family feels H.R. 3923 and S.R. 253 combined and expanded reflect the needs of the families of TWA flight 800 and tries to correct some of the issues presented in this testimony and we support its implementation into law. But we also propose the following specific recommendations to consider.

HANS EPHRAIMSON, FAMILIES OF KOREAN AIRLINES 007

Mr. Chairman: Your initiative to hold a Hearing on air crash passenger issues at short notice is welcomed. We thank your Committee and its hard working staff.

We endorse H.R. 3923 as passed by the House of Representatives and regret not to have had the opportunity to participate in the legislation contemplated by the Senate, hoping that the issues, that have to be urgently addressed in the wake of the TWA 800 tragedy be incorporated in the forthcoming legislation.

Mr. STEVENS. For instance, Kendra St. Charles, who was a passenger aboard the USAir flight 405 appeared before us, just an incredible statement concerning her personal survival from that crash. She was taken unconscious and barely clothed to a hospital, and had no means of identification. She found her 16-year-old daughter was at home watching television and had the Sunday night movie interrupted with a report of the airplane crash. When she called the 800 number that flashed on the screen, she had no way to find out what was going on.

She said, ''Hopefully, we can change the way families are treated after an airline disaster by enabling the NTSB to designate an independent nonprofit organization—like the Red Cross, with professionally trained grief and disaster counselors—to give care and support during this horrific time.''

I commend to all the testimony of Kendra St. Charles.

We heard from Victoria Cummock, a dedicated woman whose husband was a survivor of the Pan Am 103 Lockerbie disaster. She has been responsible for working with various people throughout the country to try and urge a different way of dealing with the survivors of victims of air disasters. She specifically came to our committee and urged we look at H.R. 3923. She said, this ''embodies what air disaster victims have cried out for time and time again * * * for years. It provides families of air disaster victims the same quality of professional disaster care currently given to all Americans during other types of disasters, whether natural or manmade.''

She made a great impression on me. We should all thank her for the work she has done to bring about the Coalition of Families of Aircraft Disasters.

We also heard from Richard Kessler, Jr., who was the husband of Kathleen Parker Kessler who was a passenger on ValuJet flight 592. He came to us on the Commerce Committee and made this statement:

I urge the Senate to introduce and pass a bill exactly like H.R. 3932 that has passed the House, and attach amendments that provide for pilot vision equipment, passenger smoke protection and smoke detectors, and fire extinguishers.

We did not have the time to do that because of the situation that existed at the end of Congress, but we have adopted that bill, H.R. 3932, as an amendment to this conference report. It is in this bill.

We also heard from Dario Cremades. He appeared with regard to the treatment of families of aviation disaster victims. He particularly referred to the TWA flight 800. He had some very difficult problems. I commend his statement, likewise. He said:

In light of the prior statements, our family feels H.R. 3923 combined and expanded reflects the needs of families of TWA Flight 800 and tries to correct some of the issues presented in his testimony.

He urged us to support that House bill.

Lastly, Hans Ephraimson-Abt is one of the members of the families of the Korean Airline 007 disaster, an aircraft that took off from my home city, and we all know was shot down as it went westward from Alaska. He told us that his group supported the passage of House bill 3923, and he very much wanted to have us enact as quickly as possible that and other matters. The other matters, unfortunately, will have to wait until next year.

The point, Madam President, is that this bill contains the whole bill H.R. 3923, which is very much sought by all of those who have come before the Congress who represent families of those who have already suffered so much as a result of airline disasters. I think it would be a travesty if we have to go back and start all over next year and have it be more than a year before we get this legislation passed. Aviation welcomes it, the Red Cross welcomes it, the people who have been involved in these instances in the past welcome this legislation, and it is absolutely a must that we pass this bill this week without amendment and get it to the President.

I yield the floor.

Mr. FEINGOLD. Madam President, I thank the Senator from Massachusetts for his tremendous leadership on the issue before the Senate today, and of course for his leadership on all issues relating to working people.

I come to the floor today to speak about the issue that is holding up the passage of the FAA reauthorization bill. As the Senator from Alaska was just indicating, that is the problem we have, the bill is held up and it does need to go forward. The problem that some of us have is with the item that has been added to the conference report. What I am talking about is an effort to give special treatment to one company—the Federal Express Co.—by subverting standard labor law requirements in order for this company to be able to avoid unionization.

Maybe this is just part of a larger agenda. I think it is part of a larger agenda, symbolized by aspects of the Contract With America, which represented an assault on the working people of this country. In a sense, this is one more kick from that contract at working people.

Like all of my colleagues and all of us on this side of the issue have said, we understand the importance of reauthorizing the FAA. No one, absolutely no one, wants to jeopardize in any way the safety of our Nation's air travelers and personnel. I, like all of my colleagues, supported this critical bill when the Senate passed it earlier this year. But as we have heard repeatedly now, the bill that passed the Senate did

not contain —did not contain—the controversial antiunion provision that has now been inserted into the conference report.

The other side of this debate has conveniently mentioned over and over again the unanimous vote in the Senate, but has also conveniently failed to mention the fact that this controversial provision was not part of the bill when that unanimous consent vote was held in the Senate. Also, Madam President, this provision was nowhere to be found in the House version of the bill, either. So it truly has no place in the conference report that is before the Senate today.

Now, I realize, having been here for nearly 4 years now, that inserting material into a conference report which has not been considered by either body has become almost commonplace in the Congress.

Madam President, that doesn't make it right, and it doesn't make it the right place for the sponsors of the Contract With America to administer one more blow to the working people of this country.

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

Mr. FEINGOLD. I yield to the Senator from Massachusetts.

Mr. KENNEDY. As a matter of fact, the House Parliamentarian said it was outside the scope of the conference, and it was the only item that required an independent vote in the House of Representatives, other than the conference report, just to point out the validity of the Senator's statement. The Parliamentarian, who does not have a special interest in this particular matter, who neither favors it being in or out, but who is just ruling on the basis of an objective standard, said this is outside of the conference and, therefore, it is the only item beyond the conference report to require a special vote.

I just wanted to ask the Senator, does that not help sustain the point he is making that this particular item was nowhere, either in the House or Senate bill, and just came at the very last moment?

Mr. FEINGOLD. I thank the Senator from Massachusetts. It does that and more, because it ties in with other facts that the other side can't deny. Not only was this item treated in the way the Senator indicated, not only was it not part of the Senate bill, or the House bill, but we have also had analysis by the CRS, an independent agency that we rely on, saying that the deletion of the term ''express carrier'' in the ICC Termination Act of 1995 does not appear to be a technical error. I will say more about that in a moment.

These are the slender reeds that the other side are resting on—that everybody voted for this bill originally, even though this provision was not in it, and it was somehow a technical error. This is not much to rely on. When you have a special interest provision of this magnitude, maybe that is what you do.

Madam President, this provision would help Federal Express resist the efforts of its workers to unionize. That is the purpose of it, whether you call it technical, or whether you call it a drafting error. The fact is that the purpose of it is to stop possible unionization. It has already been rejected by the Senate Appropriations Committee. Let me repeat, the Appropriations Committee rejected the amendment. Yet, somehow it reappeared on the table during the bill's conference, and it was inserted into the conference report, where proponents felt it was well protected from attack. I want to repeat that phrase: Where it was well protected from attack.

Again, I have been here almost 4 years. I know about the idea of trying to put the stuff that you want through on what is called a must-pass bill. People back home are catching on to it, too. I watched it when we had the legislation to help out the folks in California after the earthquake. That wasn't one of the bills we weren't sure was going to become a law. We knew we had to help the people in California. So money was tacked on for Pennsylvania Station, the space station, and so on. It is a vehicle you use to try to avoid having items have to stand on their own weight in front of the Congress. When this item was placed before separate votes in the Congress, it didn't make it. So the American people are catching on to this kind of abuse of the legislative process.

Madam President, this is another similar vehicle, another must-pass bill. It wasn't chosen by chance. You will notice that a separate bill to correct this so-called technical error wasn't going anywhere. No chance. Proponents put it on the FAA authorization bill and said, ''We are sorry it was snuck in there, but we have to pass the bill.'' That is the game. It is an insider game. But people are catching on.

This one was just a little too much, and to have it thrown on such a very, very important bill for our airports across the country seems like just a bit too much to me. Some may say, well, as of January, we have a line-item veto. The President can line out something like this. Of course, the new line-item veto authority does not extend to this kind of provision, but though I have never advocated extending the line-item veto authority beyond removing excess spending items, if the President had a broader authority, this is certainly one situation where it would be a good policy to take this piece of special interest legislation out of this bill.

So the practice will continue, unless we here and people across the country say, wait a minute, we don't want laws made this way. We don't want one company to be able to push its weight around and shove this provision into a bill and say it absolutely has to pass, regardless of the merits of the provision, because otherwise we won't be able to help our airports.

Madam President, this is one of the most clear examples of special interest treatment I have ever seen. You know it, and I know it, and every Member of this body knows it. It's offensive and it doesn't belong on this bill. To accuse Members of the Senate of not caring about airport safety and the welfare of air passengers just because we object to this subversion of the rules is just disingenuous. We know what is going on here, and nobody can say this particular provision has anything at all to do with airline safety.

Supporters of the provision claim that it is simply a technical correction, to correct the accidental deletion of the term ''express carrier'' from the Railway Labor Act, which was amended in the Interstate Commerce Termination Act of 1995—a technical error. My colleagues, does this look technical to you? Does all the controversy and anger on this issue look technical to you? It is not technical. The term was intentionally removed by the Congress last year, and has now been intentionally inserted into the FAA conference report by the Members of the conference committee. In fact, researchers in the bipartisan American Law Division of the Congressional Research Service say that the deletion of that term ''express company'' does not appear to have been inadvertent or mistaken. To the contrary, the deletion appeared to be consistent with the statutory structure and the intent of Congress. Moreover, it appears unlikely that Federal Express would constitute an express company, as that term is used in the proposed amendment.

That is the CRS analysis, Madam President, not a labor union. CRS is the Congress' own nonpartisan research service. Although the report and its author have been maligned here on the floor, I think those accusations have been unfair. We all rely on CRS for unbiased analyses of the facts. They say that this provision does not merely make a technical correction. It is a significant, substantive change. If there is one thing it is not, it is technical. This is a significant policy change, Madam President. It does not belong on this bill.

Moreover, it is interesting to note that Linda Morgan, Chair of the Surface Transportation Board, formerly the ICC, confirmed CRS's opinion that Federal Express would not qualify as an express carrier. In a recent letter to Congressman JAMES OBERSTAR, Ms. Morgan stated that when the term ''express carrier'' was in use, the ICC considered Federal Express to be a motor carrier, not an express carrier, as the company claims it was and would like to be considered in the future.

Let me just read briefly from that letter:

> The ICC considered FedEx to be a motor carrier.

She continued later:

> In a decision in 1934, the ICC concluded that express company operations wholly by

rail, or partly by rail and partly by water, were subject to ICC regulation, but that an express company's motor carrier operations were not.

So this is a special interest provision, designed to protect the interest of one company. Now, we see these kinds of provisions often in tax bills, where one single company is given a tax preference like a special depreciation break or a tax credit. This provision, however, in my mind, is way out in front of the pack in terms of special interest benefits.

This provision, I want to reiterate, is designed exclusively for this single company, Federal Express, to allow it to impose special barriers to block unionization efforts among employees who transport cargo by truck. Other motor carriers, including FedEx's major competitor, UPS, are, in contrast, subject to the National Labor Relations Act and organize at specific localities. If FedEx truckers in Pennsylvania want to form a union, they should have that right, under the NLRA. But if this provision goes through, FedEx truck drivers across the Nation would all have to agree to a single nationwide bargaining unit or forfeit the right to organize. They would have to forfeit the right to organize. It is an awfully big hurdle. It is a hurdle intended to prevent unionization. That is not what the NRLA provides for millions of workers across the Nation. But under this provision FedEx would have the more stringent rules of the National Railway Labor Act applied to its truck drivers.

Supporters of the FedEx provision also claim that if we do not pass this bill this week, without amendment, that the safety of air travel will be significantly threatened. Again, this is a kind of blackmail attempt to stick a special interest provision in a bill and say that it can't be removed without jeopardizing the underlying vital legislation and then shift the burden to those who want to get the special interest provision out.

It is a good trick. But we are here today to say that it is unfair and that we have been willing and will continue to be willing to come out here on the floor of the Senate to indicate that it is not justified.

Let me just refer to a similar occurrence not too long ago on another item for which the distinguished Senator from Massachusetts was taking the lead on a bipartisan basis with the Senator from Kansas to try to get some semblance of health care reform in this country. Another provision like this got stuck in the Kennedy-Kassebaum bill. It was not until Members of the Senate objected loudly, strenuously, and publicly to that special interest provision that the proponents, with some embarrassment, suddenly agreed to have it dropped through a correcting resolution. That is what should happen right here. It should happen right now. This provision should be dropped so that we can get the FAA bill passed and signed into law in the next few hours.

Let me stress once again—because this is the whole heart of the opposition's argument—that they want to pretend inaccurately and unfairly that we oppose the underlying bill. We do not oppose the underlying bill. I would like to see the FAA be reauthorized before this Congress adjourns.

My colleagues, the Senators from Massachusetts and Illinois, have a bill ready—it is at the desk—that I support wholeheartedly. That is the bill we should be considering. It is the conference version of the FAA bill minus just this one offensive FedEx provision. But the other side will not agree to bring up that bill. It is they, not we, who are holding up the reauthorization of these important aviation programs.

So again, let us ask: Why is it so important to supporters of this provision that it remain in the bill? How can it be so important? After all, they keep saying over and over and over again that this is a minor technical amendment. Well, then why does Federal Express care so much that it be considered an express carrier? The reason is clear: They want to avoid unionization. That is the benefit to this so-called technical correction. Federal Express, and my colleagues who support their provision, understand how much more difficult it would be for Federal Express' truck drivers to unionize if they have to organize all of their employees nationwide as opposed to being able to form local unions.

In fact, Madam President, Federal Express' antiunion sentiment is, unfortunately, well documented. Federal Express Co. produces a manual called the Manager's Labor Law Book, which states that its corporate goal is to remain union-free. Of course, we all know that if Federal Express is able to maintain its union-free status, it will be easier for it to remain competitive with UPS. Like Federal Express, UPS' airline operations are covered under the Railway Labor Act. However, UPS' truck drivers are covered by the National Labor Relations Act, and they have been members of local Teamsters unions for decades.

Interestingly, Federal Express' trucking operations expanded in recent years. Some of their drivers have been attempting to organize, but they have, not surprisingly, met resistance from the company's management. The issue of whether the company's trucking operation is most appropriately covered under the NLRA or the RLA is currently in litigation.

So what is this? What is this provision today? This is a backdoor effort to win that dispute. This amendment has no business in this bill.

Mr. KENNEDY. Will the Senator yield on that point, because I think it is a very, very important one; that is, as the Senator is pointing out, this is a matter that is in litigation at the present time. This is a matter that is in litigation at the present time. What we are being asked to do is superimpose a legislative resolution on what is basically a judicial determination and thereby deny the rights of workers to make a judgment and decision under the existing law.

Does the Senator not agree with me that most people would understand that that is sort of changing the rules of the game, changing the goalposts in the third quarter, and that this is basically saying that for people who are trying to play by the rules of the game, ''Well, it is just too bad, you tried to play by the rules of the game, and we are not going to take a chance that you may reach a positive result. We are going to shortchange you and really stick it to you by undermining your legitimate interests by legislative solution''?

Is the Senator's opposition to this also based on his belief that we should not, at a time when there are matters in litigation, impose a legislative solution that would directly affect the outcome of that litigation?

Mr. FEINGOLD. Madam President, I thank the Senator from Massachusetts for his question.

Let me say, first of all, that I have the great honor and pleasure of serving with him not only on the Senate floor but particularly on the Senate Judiciary Committee. For one concerned with the independence of our judiciary and the relationship between the Congress and judiciary, this is a threatening prospect. I suppose incidents like that have occurred in the past in this great country. When the power of one single company cannot only move a Congress like this to jeopardize the reauthorization of a bill but do it in such a specific and targeted way as to try to undo the process in the courts is even more frightening.

It is not only a question for working people; it is a question for anyone. They should have the opportunity to go to court and have a matter resolved without some company being able to flex its muscles in the waning days of the Congress to undo their right to their day in court.

So I do think that this is an extremely important aspect of my opposition. I am opposed to it anyway, but it seems particularly inflammatory when this matter is being litigated at this time, as the Senator from Massachusetts has indicated.

It makes me want to just sort of add on to something that he has said to me earlier. This is part of a broader agenda. This isn't just an isolated moment where somebody decided to insert a provision to help a company. This is part of a broader agenda to shove back working people in this country so they can't get as organized as they need to be in order to protect themselves and their families. It is a broader agenda. It is a broader agenda that was very clearly articulated in that Contract With America about which we will have a referendum in a few weeks. So let us not just view it in isolation.

It is inappropriate. It does not belong here. It is a special interest item but part of a broader agenda that is willing not only to push its weight around in the Congress but to also try to override the procedure in our courts.

What we are faced with here today is a situation in which many Members of this body have worked very, very hard to craft a good bill. I praise all of them. I think they have succeeded. But, unfortunately, the conferees allowed a corporate special-interest provision to be attached to this good bill, and now we are being pressured to pass the bill and its offensive add-on quickly because the end of the fiscal year has come and because, as we all know, it is an election year and everyone wants to go back to their home States.

But to conclude, I think we would be making a larger mistake than usual if we do not remove this provision.

I urge my colleagues to support the Simon-Kennedy substitute, which will provide a clean FAA reauthorization. If the proponents of this provision would let us pass a clean bill, this measure not only could but I imagine would be signed within a few hours. It is the proponents of this special interest treatment for one big company, not the opponents, who, I am afraid, have subverted the legislative process.

So let us drop this provision, let us drop it now, and let us get a clean FAA bill passed.

Madam President, I yield the floor.

Mr. DOMENICI. Madam President, I ask unanimous consent that Peter Folger and Jessica Korn, fellows in my office the past year, be granted floor privileges for the remainder of the discussion today on this bill.

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

Mr. DOMENICI. I thank the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, under the crunch of time, particularly during yesterday, we did not get an opportunity to recognize the comments of the distinguished Presiding Officer. I had the distinct privilege of serving with Wallace Bennett, of Utah. There is certainly no finer gentleman, certainly no finer Senator.

We lived in the same neighborhood and exchanged greetings over the weekends, and those kinds of things. I was powerfully interested, because I do remember the FAA bill at that particular time, as the distinguished Senator from Alaska recalls, when we worked on this with Senator Magnuson and others. This is a good bill. I acknowledge the contribution that the now-Senator BENNETT of Utah, the Presiding Officer, made to that legislation in its formative days. Hopefully, after tomorrow's vote, we can make gains in continuing to beef up air service, particularly in the area of safety.

I also did not get an opportunity to thank the distinguished Senator from Alaska. He and I have worked on this over the years. And I particularly am thankful for the leadership of the Senator from Arizona, JOHN MCCAIN. Senator MCCAIN has been like a tiger for a couple of years, trying to bring some changes to the Federal Aviation Administration.

I have come all the way around in my own mind to thinking in terms of a separate Federal Aviation Administration, a separate board, outside the department, because I am sure it would receive better attention and I am sure it would receive better performance.

The Presiding Officer was talking about John Volpe. I remember when John Volpe came on as the Secretary of Transportation. He and I had both served as Governors together. A lot of people have been working on this for a long time.

Let me get right to the point here with the distinguished Senator from Wisconsin, who gets really far afield talking about blackmail, sticking it to them, power grab and all of that. He asked, why is it important? It is very important to this Senator. None other than Mark Twain said, years ago, that the truth was such an important item, it should be used very sparingly.

The truth is that we made a mistake. Why is it important? It is a matter of honor. I am trying my dead level best to correct the mistake. It was on our watch last December. I was the ranking member, and the facts should be stated and the truth given accurately.

The Senator from Wisconsin said when it was voted for, the provision was in it—absolutely false. The language ''express company'' was in the Interstate Commerce Act when we voted for the termination act, and thereafter, the staff was writing it up and those kinds of things, they thought the term ''express company'' was not necessary and deleted that phrase. So it was a drafting error made.

So, when they say it was dropped out and that this amendment is part of a broader agenda, this Senator says: part of the contract with America? Come on. Everybody back home would break out laughing if they heard. I have been talking against that contract for 4 years now. I did not think much of it as politics. It was all applesauce: Get rid of the Department of Education, the Department of Commerce, get rid of the Department of Energy, repeal—get rid of public television, get rid of the Park Service—just get rid of it all? Come on. This is not any part of the contract. It is part of my particular watch, and I am going to get it corrected. Do not give me this stuff about procedure now.

They said, back in my law school days, if you have the law you argue the law as strongly as you can. If you have the facts with you, you argue the facts. And if you do not have the facts or the law, you beat on the desk, and yell about procedure. And that is what we are listening to. ''It was in the House bill, it was not in the Senate bill''—heavens above, we passed an omnibus appropriations and continuing resolution earlier this week with hardly a dissenting vote. I would think one-third of it was not in there before or had ever been seen or whatever else. I know the new things that were put in, we were glad to get them in. That is the nature of the process. Any of that, ''sneaking around, pulling the rug out, sticking it to them, blackmail''—that is tommyrot and they know it. They are the ones trying to pull the rug out because they continually falsely report the situation.

I read again the statement of the Senator from Massachusetts, talking about that Philadelphia case: ''Federal Express challenged the petition, arguing the entire company, including its truck drivers, is covered by the Railway Labor Act and not the Labor Relations Act, and therefore the bargaining unit for its truck drivers must be nationwide. The board has not yet decided the issue.''

Absolutely false. The board decided the issue on November 22 of last year. In Re: Federal Express, 23 NMB, No. 13. And I quote what they decided unanimously:

> The board is of the opinion that Federal Express Corporation and all its employees sought by the UAW's petition are subject to the Railway Labor Act.

But the Senator from Massachusetts says—''a man convinced against his will is of the same opinion still''—and I quote yesterday again, ''The Senator from South Carolina still cannot show where Federal Express is an express company under the Railway Labor Act.''

I just did. That is one of the most recent decisions. I laid it in the RECORD and enumerated some 31 decisions. Maybe we ought to ask it in reverse. Find me a single decision since 1973, when Federal Express went in business, in which it was not held to be an express company under the RLA. It has always been held that it is under the Railway Labor Act.

Mr. President, let me move on. Right here they say you are not playing fair, that they are playing by the rules of the game. We are trying a new case here that we have not had a hearing on or anything, they say—it makes me go to the RECORD.

They say the United Parcel Service has so many planes and trucks, Federal Express has so many planes and trucks, United Parcel Service plays by the rules and Federal Express ought to play by the rules.

Oh, boy, that has been raised by the best of the best lawyers. There is not any question that the Teamsters and the United Auto Workers both have the best of the best lawyers.

In the Board case: United Parcel Service, Timothy J. Gallagher and the International Brotherhood of Teamsters, National Committee intervenor, decision and order of August 25 of last year by Chairman Gould and members Stephens, Browning, Cohen and Truesdale, and I quote:

Approximately 92 percent of the packages picked up, processed and delivered by the respondent travel exclusively by ground.

Ninety-two percent; 85 percent of Federal Express travels by air, and that case, interestingly, appeared in an argument made by the teamster attorney on May 9, 1996, in the United States Circuit Court of Appeals for the District of Columbia Circuit. United Parcel Service petition, National Labor Relations Board. Mr. Muldolf, the lawyer, was answering a question.

Mr. Muldolf: Well, the case now pending before the NLRB is a FedEx case which has been referred back. There has not been a decision there, but if you take the NLRB's decision in UPS and you take the NMB's advisory opinion in Federal Express, you see—and I can't tell you what the NLRB is going to do—these companies are like night and day. Ninety-two percent on the ground, 15 percent on the ground—

That is the language of their own lawyer. But you get the politician lawyers who appear on the floor of the Senate and they want to try a different case. I don't know if they have ever been in the courtroom before. This Senator has made a living at it. We are not going to let them get by with this bum's rush, because exactly what they accuse me of—inserting this language, of pulling the rug and sticking it to them—is exactly what they are trying. They know when they say ''litigation pending'' that there is none. The NLRB has been sitting on the finding of the National Mediation Board since last November. I have searched the record, and in the last 50 years of 100 cases where the National Mediation Board has given its opinion, the NLRB has yet to reverse it.

So they know it is a given. If they tried to rule otherwise, it would be appealed and reversed right away. So there is nothing pending. But what they are trying to do is come in after the rules of the game, after November 22, after the full hearing over a 5-year period. It wasn't started until the end of 1990, the first part of 1991. After 5 years and with all the lawyers, they were unanimously ruled against, and they try now to change the rule by saying, ''Oh, they made that error. We can get this organized, and we can get the votes, we can control it.''

They have been blocking correcting this mistake every way they can. Yes, they blocked it in the Appropriations Committee because I wasn't prepared. I thought an honest error would be respected by Senators as gentlemen. I went in, explained exactly what happened. We called the roll, and it was 10 to 10. I hadn't even bothered to get the proxies. However, later on, we did include it in the conference report. It has been debated, affirmed in the House by a rollcall vote. We are ready to vote now, and they are claiming we are filibustering.

It reminds me, I say to the Senator, of a young lad who went to the psychiatrist, and she drew a line on the board and said, ''What do you think of?''

The young lad said, ''Sex.''

She drew some crosses.

He said, ''Sex.''

She drew circles.

He said, ''Sex.''

She said, ''Young man, you're the most oversexed, depraved person I've ever seen.''

''Doctor, me depraved?'' he said. ''You're the one drawing the dirty pictures.''

Come on. Are we doing the filibustering? We are ready to vote, have been ready to vote. They are the ones who moved to postpone. I haven't heard that motion in the 30 years I have been here; never heard it. But I heard it from the Senator from Massachusetts for the first time. Then they wanted to read the bill. And they say we are the ones filibustering?

Why is it important? Because the truth is important. It was not part of the bill when it left the Senate. It was not a part of the bill when it left the House. We know it wasn't in there. Look at what we voted on on Monday. I can give you ad nauseam a list of things that were never in the House, never in the Senate that appeared there.

They say this is ''one more blow to the working people.'' It is not any blow to the working people. I am not engaged in that kind of work. I am not forestalling the entire Congress for a broader agenda. I could comment further but in the interest of time let me go down to a couple of other things.

The intent. Oh, yes, the Congressional Research Service. The comment was made he was demeaned, the lawyer. If I could get him, I would wring his neck. I couldn't demean him enough. Why? Because he was asked about this provision and said it was put in intentionally, when he knows otherwise. He failed and refused to quote the intent of the Congress.

This is in the conference report, Mr. SHUSTER, of the committee of conference, submitted the following report:

The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employees and employers by the Railway Labor Act.

With the deleted language, that is the ambiguity we are trying to clarify. But when you look for intent, and we told them about it, the CRS letter continually disregards the intent with this letter to the Members. I can't get to all the Members and explain this. They have labor reps running all around. They say, ''Stay home, they have to get the 60 votes.''

It is so hard, as Twain says, to use the truth. It's so hard to develop it around this particular issue.

There has been an onslaught, Mr. President, against the company. I saw a part of the distinguished Senator from Massachusetts' press conference on TV. By the time I saw it, it was cut, but it was partially on C-SPAN that ''it was a horrible company; they hadn't given a pay raise in 7 years,'' the FedEx employee was saying. I called, and we will get it in the RECORD. They have had, I was told, over the last 8 years, each year an average of 6.5 percent, for a total of a 50 percent wage increase. I said that very carefully because that is exactly what I was told, and I am going to get a copy of it.

Mr. President, we have in this book: ''The 100 Best Companies to Work for in America'' with special recognition in the following categories: One of the best 10 overall companies; one of the 10 best for job security; one of the 10 best for women; one of the 10 best for minorities; one of the 12 best with significant employee ownership; one of the 10 best training programs. We have the Minority Business Council; the Hispanic Council; the Good Housekeeping magazine's 69 top companies for working mothers, and on and on and on.

This book—we wouldn't want to put the book in the RECORD —is ''The 100 Best Companies to Work for in America,'' by Robert Levering and Milton Moskowitz.

But when you get an outstanding company, and they are playing by the rules, and you get the bum's rush as a result of a drafting error, after the conference, that we have been trying to correct, and then they give you all this procedure and everything else like we are doing the sneaking—we have done nothing here in this particular provision in the FAA Reauthorization Act but put the parties back exactly where they were, which was the intent. None of the rights or responsibilities were either contracted or expanded for employees or employers.

We have not had hearings. When they talk about hearings, there was not any hearing when this was deleted, there was not any statement made. I cannot find—I said, ''Where is the Senator, where is the Congressman who said, 'I wanted this. I put it in. I discussed it. I talked about it.'?'' They cannot find one of 535; yet we get accused of blackmail.

I never heard of such outrageous fraud going on here trying to change the entire picture of what really is the case with respect to this particular matter.

Mr. President, one more time I ask unanimous consent to have printed in the RECORD excerpts of the National Mediation Board's opinion in re Federal Express case No. 4–RC–17698.

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

NATIONAL MEDIATION BOARD,
Washington, DC, November 22, 1995.

Re NMB File No. CJ–6463 (NLRB Case 4–RC–17698) Federal Express Corp.

JEFFREY D. WEDEKIND,
Acting Solicitor, National Labor Relations Board, Washington, DC.

DEAR MR. WEDEKIND: This responds to your request dated July 17, 1995, for the National Mediation Board's (Board's) opinion as to whether Federal Express Corporation (Federal Express or FedEx) and certain of its employees is subject to the Railway Labor Act,

as amended, 45 U.S.C. §151, *et. seq.* The Board's opinion, based upon the materials provided by your office and the Board's investigation is that Federal Express and all of its employees are subject to the Railway Labor Act.

I.

This case arose as the result of a representation petition filed with the National Labor Relations Board (NLRB) by the International Union, United Automobile Aerospace and Agricultural Implement Workers of America (UAW). The UAW initially sought to represent a unit of Federal Express's employees including ''all regular full and part-time hourly ground service employees in the Liberty District.''[1] On December 9, 1991, the UAW amended its petition to exclude ''ramp agents, ramp agent/feeders, handlers, senior handlers, heavyweight handlers, senior heavy weight handlers, checker sorters, senior checker/sorters, shuttle drivers, shuttle driver/handlers, office clerical employees, engineers, guards and supervisors as defined in the Act [NLRA].'' The titles remaining in the UAW's petition include: service agents, senior service agents, international document agents, couriers, courier/handlers, tractor-trailer drivers, dispatchers,[2] courier/non-drivers and operations agents.

The UAW argues that the employees it seeks to represent in Federal Express Liberty District are employees subject to the National Labor Relations Act (NLRA). The UAW acknowledges that pilots and aircraft mechanics employed by Federal Express are subject to the Railway Labor Act. However, the UAW contends that the two-part test traditionally employed by the Board to determine whether an entity is a carrier should be applied to the unit of employees it seeks to represent in Federal Express' Liberty District. According to the UAW, the employees it seeks to represent in the Liberty District do not perform airline work and are not ''integral to Federal Express' air transportation functions.''

Federal Express asserts that it is a carrier subject to the Railway Labor Act and, as a carrier, all of its employees are subject to the Railway Labor Act. Federal Express notes that the Board and the courts have repeatedly found it to be a carrier subject to the Railway Labor Act. According to Federal Express, the job classifications remaining in the petition are integrally related to Federal Express' air transportation activities. Federal Express contends that it is a ''unified operation with fully integrated air and ground services.'' According to Federal Express, allowing some employees to be covered by the National Labor Relations Act and others to be subject to the Railway Labor Act would result in employees being covered by different labor relations statutes as they are promoted up the career ladder.

Federal Express contends that the two-part test suggested by the UAW is not appropriate in this case. According to Federal Express, the Board uses the two-part test to determine whether a company is a carrier, not to determine whether specific employees of a carrier perform duties that are covered by the Railway Labor Act. Federal Express cautions that adoption of the test suggested by the UAW ''would drastically alter labor relations at every airline in the country.'' According to Federal Express, under the UAW's test, most categories of employees except pilots, flight attendants and aircraft mechanics would be subject to the NLRA.

The Board repeatedly has exercised jurisdiction over Federal Express. *Federal Express Corp.*, 22 NMB 279 (1995); *Federal Express Corp.*, 22 NMB 257 (1995); *Federal Express Corp.*, 22 NMB 215 (1995); *Federal Express Corp.*, 20 NMB 404 (1993); *Federal Express Corp.*, 20 NMB 394 (1993); *Federal Express Corp.*, 20 NMB 360 (1993); *Federal Express Corp.*, 20 NMB 126 (1993); *Federal Express Corp.*, 20 NMB 91 (1992); *Federal Express Corp.*, 20 NMB 7 (1992); *Federal Express Corp.*, 19 NMB 297 (1992); *Federal Express Corp.*, 17 NMB 24 (1989); *Federal Express/Flying Tiger*, 16 NMB 433 (1989); *Federal Express*, 6 NMB 442 (1978). There is no dispute that Federal Express is a carrier subject to the Railway Labor Act with respect to certain Federal Express employees (i.e. Pilots; Flight Attendants,[3] Global Operations Control Specialists; and Mechanics and Related Employees; Stock Clerks; and Fleet Service Employees). However, the Board has not addressed the issue raised by the UAW: whether or not certain Federal Express employees are subject to the Railway Labor Act.

The NLRB initially requested the NNB's opinion as to whether FedEx is subject to the RLA on July 1, 1992. However, on that date, the NLRB granted the UAW's request to reopen the record and the file was returned to the NLRB. The NLRB renewed its request on July 17, 1995 and the NMB received the record on July 31, 1995. The NMB received additional evidence and argument from FedEx and the UAW on August 17, 1995 and September 5, 1995.

II.

Federal Express, a Delaware corporation, is an air express delivery service which provides worldwide express package delivery. According to Chairman of the Board and Chief Executive Officer Frederick Smith, Federal Express flies the sixth largest jet aircraft fleet in the world.

Federal Express' jet aircraft fleet, currently includes Boeing 727–100's, Boeing 727–200's, Boeing 737's, Boeing 747–100's, Boeing 747–200's, DC 10–10's, DC–10–30's and McDonnell-Douglas MD–11's. Federal Express also operates approximately 250 feeder aircraft, including Cessna 208's and Fokker 27's. It has over 50 jet aircraft on order.

Federal Express currently serves the United States and several countries in the Middle East, Europe, South America and Asia, including Japan, Saudi Arabia and Russia. According to Managing Director of Operations Research Joseph Hinson, Federal Express does not transport freight that moves exclusively by ground to or from the United States.

* * * * *

III. DISCUSSION

The National Mediation Board has exercised jurisdiction over Federal Express as a common carrier by air in numerous published determinations. *Federal Express Corp.*, 22 NMB 279 (1995); *Federal Express Corp.*, 22 NMB 257 (1995); *Federal Express Corp.*, 22 NMB 215 (1995); *Federal Express Corp.*, 20 NMB 666 (1993); *Federal Express Corp.*, 20 NMB 404 (1993); *Federal Express Corp.*, 20 NMB 394 (1989); *Federal Express Corp.*, 20 NMB 360 (1993); *Federal Express Corp.*, 20 NMB 126 (1993); *Federal Express Corp.*, 20 NMB 91 (1992); *Federal Express Corp.*, 20 NMB 7 (1992); *Federal Express Corp.*, 19 NMB 297 (1992); *Federal Express Corp.*, 17 NMB 24 (1989); *Federal Express/Flying Tiger*, 16 NMB 433 (1989); *Federal Express*, 6 NMB 442 (1978). In eight of those determinations, the Board exercised jurisdiction over ground service employees of Federal Express. The substantial record developed in this proceeding provides no clear and convincing evidence to support a different result.

A.

Section 181, which extended the Railway Labor Act's coverage to air carriers, provides:

''All of the provisions of subchapter 1 of this chapter except section 153 of this title are extended to and shall cover every common carrier by air engaged in interstate or foreign commerce, and every carrier by air transporting mail for or under contract with the United States Government, and *every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service*.'' 45 U.S.C. §181. (Emphasis added).

Federal Express is an air express delivery service which holds itself out for hire to transport packages, both domestically and internationally. Federal Express and the UAW agree that Federal Express and its air operations employees, such as pilots and aircraft mechanics, are subject to the Railway Labor Act. The disagreement arises over whether Federal Express' remaining employees are subject to the Railway Labor Act. The UAW argues that the employees it seeks to represent do not perform airline work and are not ''integral to Federal Express' air transportation functions.'' Federal Express asserts that all of the employees sought by the UAW are integrally related to its air express delivery service and are subject to the Railway Labor Act.

Since there is no dispute over whether Federal Express is a common carrier by air, the Board focuses on whether the employees sought by the UAW's petition before the NLRB are subject to the Railway Labor Act. The Act's definition of an employee of an air carrier includes, ''every air pilot or other person who performs any work as an employee or subordinate official of such carrier or carriers, subject to its or their continuing authority to supervise and direct the manner of rendition of his service''. The Railway Labor Act does not limit its coverage to air carrier employees who fly or maintain aircraft. Rather, its coverage extends to virtually all employees engaged in performing a service for the carrier so that the carrier may transport passengers or freight.[4]

In *REA Express, Inc.*, 4 NMB 253, 269 (1965), the Board found ''over-the-road'' drivers employed by REA subject to the Act stating:

''It has been the Board's consistent position that the fact of employment by a ''carrier'' under the Act is determinative of the status of *all* that carrier's employees as subject to the Act. The effort to carve out or to separate the so-called over-the-road drivers would be contrary to and do violence to a long line of decisions by this Board which would embrace the policy of refraining from setting up a multiplicity of crafts or classes. As stated above, there is no question that this particular group are *employees* of the carrier.'' (Emphasis in original).

The limit on Section 181's coverage is that the carrier must have ''continuing authority to supervise and direct the manner of rendition of . . . [an employee's] service. The couriers, tractor-trailer drivers, operations agents and other employees sought by the UAW are employed by Federal Express directly. As the record amply demonstrates, these employees, as part of Federal Express' air express delivery system, are supervised by Federal Express employees. The Board need not look further to find that all of Federal Express' employees are subject to the Railway Labor Act.

B.

In the Board's judgment, the analysis of the jurisdictional question could end here. However, Federal Express and the UAW have directed substantial portions of their arguments the ''integrally related'' test. Specifically, the participants discuss whether the employees the UAW seeks to represent are

Footnotes at end of article.

''integrally related'' to Federal Express' air carrier functions. The Board does not find consideration of the ''integrally related'' test necessary to resolve the jurisdictional issue, however, review of the relevance of this test is appropriate.

The UAW argues that the employees it seeks to represent are not integrally related to Federal Express' air carrier functions and therefore are not subject to the Railway Labor Act. Federal Express asserts that the NLRB and federal courts have found its trucking operations integrally related to its air operations.[5]

However, the Board does not apply the ''integrally related'' test to the Federal Express employees sought by the UAW. Where, as here, the company at issue is a common carrier by air, the Act's jurisdiction does not depend upon whether there is an integral relationship between its air carrier activities and the functions performed by the carrier's employees in question. The Board need not consider the relationship between the work performed by employees of a common carrier and the air carrier's mission, because section 181 encompasses ''every pilot or other person who performs *any* work as an employee or subordinate official of such carrier or carriers. . . .'' (Emphasis added).

Even if the Board were to assume *arguendo* that the ''integrally related'' test applies to the facts in this case, the Board would hold in concurrence with the recent decision in *Federal Express Corp.* v. *California PUC, supra,* at note 10, that the ''trucking operations of Federal Express are integral to its operations as an air carrier.'' 936 F.2d at 1078. Employees working in the other positions sought by the UAW perform functions equally crucial to Federal Express' mission as an integrated air express delivery service. As the record demonstrates, without the functions performed by the employees at issue, Federal Express could not provide the on-time express delivery required of an air express delivery service.

The Board has employed the ''integrally related'' test when it has examined whether to apply the trucking exemption under §151 of the Act. *O/O Truck Sales,* 21 NMB at 269; *Florida Express Carrier, Inc.*, 16 NMB 407 (1989). Specifically, the Board has applied the ''integrally related'' test when it has considered trucking operations conducted by a subsidiary of a carrier or a company in the same corporate family with a carrier. In *Florida Express, supra,* the Board found Florida Express, a trucking company which is a wholly-owned subsidiary of Florida East Coast Railroad, to be a carrier subject to the Railway Labor Act. In *O/O Truck Sales, supra,* the Board found O/O Truck Sales, a trucking and fueling company which is a wholly-owned subsidiary of CSXI (which is commonly owned with CSXT), to be a carrier subject to the Railway Labor Act. In contrast, Federal Express directly employs truck drivers, couriers and all other employees sought by the UAW's petition.

C.

The UAW argues that the Board should apply the two-part test used by the Board in other factual settings for determining whether an employer and its employees are subject to the Railway Labor Act. See, for example, *Miami Aircraft Support,* 21 NMB 78 (1993); *AMR Services Corp.*, 18 NMB 348 (1991). The Board does not apply the two-part test where the company at issue is engaged in common carriage by air or rail. The Board applies the two-part test where the company in question is a separate corporate entity such as a subsidiary or a derivative carrier which provides a service for another carrier. In those situations where the Board applies the two-part test, it determines: 1) whether the company at issue is directly or indirectly owned or controlled by a common carrier or carriers; and 2) whether the functions it performs are traditionally performed by employees of air or rail carriers. Under this test, both elements must be satisfied for a company to be subject to the Railway Labor Act. Federal Express is an admitted carrier and the employees at issue are employed directly by Federal Express. Accordingly, the two-part test does not apply to this proceeding.

Even if the two-part test were applicable, the employees at issue here would be covered by the Railway Labor Act. Federal Express, as a common carrier, has direct control over the positions sought by the UAW. In addition, the Board has found that virtually all of the work performed by employees sought by the UAW's petition is work traditionally performed by employees in the airline industry. For example: couriers, *Air Cargo Transport, Inc.*, 15 NMB 202 (1988); *Crew Transit, Inc.*, 10 NMB 64 (1982); truck drivers; *Florida Express, Inc.*, 16 NMB 407 (1989); customer service agents; *Trans World International Airlines, Inc.*, 6 NMB 703 (1979).

CONCLUSION

Based upon the entire record in this case and for all of the reasons stated above, the Board is of the opinion that Federal Express Corporation and all of its employees sought by the UAW's petition are subject to the Railway Labor Act. This finding may be cited as *Federal Express Corporation,* 23 NMB 32 (1995). The documents forwarded with your letter will be returned separately.

By direction of the National Mediation Board.

STEPHEN E. CRABLE,
Chief of Staff.

FOOTNOTES

[1] The Liberty District includes portions of southeastern Pennsylvania, southern New Jersey and Delaware.

[2] The dispatchers at issue do not dispatch aircraft.

[3] FedEx no longer employs Flight Attendants.

[4] Two courts have held that certain employees of a carrier who perform work unrelated to the airline industry are not covered by the Railway Labor Act. *Pan American World Airways v. Carpenters,* 324 F.2d 2487, 2488, 54 LRRM 2487, 2488 (9th Cir. 1963); *cert. denied,* 376 U.S. 964 (1964) (RLA does not apply to Pan Am's ''housekeeping'' services at the Atomic Energy Commission's Nuclear Research Development Station); and *Jackson v. Northwest Airlines, Inc.*, 185 F.2d 74, 77 (8th Cir. 1950) (RLA does not apply to Northwest's ''modification center'' where U.S. Army aircraft were reconfigured for military purposes). Work functions described in *Carpenters* as ''substantially identical'' to those before the Ninth Circuit were held by another court to be within the ''compulsive'' jurisdiction of the Railway Labor Act. *Biswanger v. Boyd,* 40 LRRM 2267 (D.D.C. 1957). The Board has not had the occasion to make a final determination regarding the appropriate application of this line of cases.

[5] *Federal Express Corporation v. California Public Utilities Commission,* 936 F.2d 1075, 1078 (9th Cir. 1991). *Chicago Truck Drivers v. NLRB,* 99 LRRM 2967 (N.D. Ill. 1978); aff'd 599 F.2d 816, 101 LRRM 2624 (7th Cir. 1979).

Mr. HOLLINGS. This goes into every detail that was raised. Because when you finally corner them one place, they squirt out like quicksilver in the palm of your hand, talking about integrally related tests and so forth. All of that was considered in this particular decision. TRENT LOTT, NEWT GINGRICH, a letter to the majority leader and the Speaker, where we had to hear from certain Members on yesterday's debate, signed by BUD SHUSTER, chairman; SUSAN MOLINARI; chairman of the Railroad Subcommittee. And it is not you, HOLLINGS, saying it was a mistake. Anybody intimately connected will not say otherwise, and has not said otherwise.

Mr. President, I ask unanimous consent that the letter be printed in the RECORD.

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

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, July 12, 1996.

Hon. TRENT LOTT,
Majority Leader, U.S. Senate, The Capitol, Washington, DC.

Hon. NEWT GINGRICH,
Speaker, U.S. House of Representatives, The Capitol, Washington, DC.

DEAR MR. MAJORITY LEADER AND MR. SPEAKER: We are writing to you to set out the facts regarding a technical error in the ICC Termination Act of 1995, Public Law 104–88. The mistake concerns the context in which the ICC Termination Act addressed the relationship between the economic regulation of transportation under Subtitle IV of Title 49, United States Code, and the Railway Labor Act (45 U.S.C. 151 et. seq.).

The ICC Termination Act abolished the former Interstate Commerce Commission, reduced economic regulation substantially in both rail and motor carrier transportation, and transferred the reduced but retained regulatory functions to a new Surface Transportation Board, part of the Department of Transportation.

One form of ICC regulatory jurisdiction under the former Interstate Commerce Act was exercised over ''express carriers''—as defined in former 49 U.S.C. 10102, a person ''providing express transportation for compensation.'' This was part of the ICC's jurisdiction, since express service originated as an ancillary service connecting with rail freight service.

The Railway Labor Act included in Part I coverage of ''any express company . . . subject to the Interstate Commerce Act.'' [45 U.S.C. 15].

In the ICC Termination Act, economic regulation of express carriers was eliminated from the statutes to be administered by the new Surface Transportation Board, on the ground that this form of regulation was obsolete. (Another category of ICC and Railway Labor Act ''carrier''—the sleeping-car company—was similarly eliminated from STB jurisdiction.)

In light of the abolition of economic regulation, the ICC Termination Act contained a conforming amendment (Section 322, 109 Stat. 950) which also struck the term ''express company'' from the Railway Labor Act definition of a ''carrier.'' Although unaware of any possible effects of this conforming change on the standards applied under the Railway Labor Act, Congress plainly delineated its intent in new Section 10501(c)(3)(B) of Title 49, U.S. Code [109 Stat. 808]: ''The enactment of the ICC Termination Act of 1995 shall neither expand nor contract coverage of employers and employees by the Railway Labor Act.''

The apparent contradiction between the legislative intent stated in Section 10501(c)(3)(B) and the conforming Railway Labor Act in Section 322 could be interpreted to alter the legal standards by which companies are determined to be governed, or not governed, by the Railway Labor Act. Therefore, a technical correction is necessary to restore the former Railway Labor Act terminology and thus avoid any inference that is at odds with the clearly stated legislative intent not to alter coverage of companies or their employees under the Railway Labor Act.

We hope that this brief summary of the facts will provide you with information useful in your future deliberations.

Respectfully,

BUD SHUSTER,
Chairman.
SUSAN MOLINARI,
Railroad Subcommittee Chairwoman.

Mr. HOLLINGS. Mr. President, there are some other things to be touched upon as we move through this. I think one of the important things is the particular charge that they come bringing about something being unfair and not according to the rules, or whatever else.

I reiterate as positively, as affirmatively as I can, ever since 1973, when the Federal Express Co. was organized, it has been under the Railway Labor Act, the Railway Labor Act. All of its matters, I am finding out as a lawyer, are automatically referred by the NLRB to the National Mediation Board. The matter that is now being discussed, what is being ''fair'' and ''unfair'' and those kinds of things, and ''Why can't we change that?'' it could be if we had some hearings, if we had it brought before the Congress.

But the best of the best has just served on what we call the Dunlop Commission. When President Clinton came to town, he got the former Secretary of Labor under Gerald Ford, President Ford, and said, study and see what needs to be done under labor, the labor statutes.

None other than Doug Fraser, the former president of the United Auto Workers, served on that commission. And that commission determined that the Railway Labor Act should not be modified.

We can be ready to argue that and go in length on it. But I think when you find the UAW lawyer, and they know about this decision of the Mediation Board that I already put in the record, when you find a Teamster lawyer, in his arguments before the circuit court, when you find the Dunlop Commission—if we had just started this thing, we would have weighted support by all the particular studies and lawyers who have been in the particular field.

But like the sheep dog that had tasted blood, when they saw this particular mistake, they went to gobble up the entire flock. They said, ''We can do it. All we need to do is have everyone anxious to go home, and we'll just show them, and we'll move to postpone. We'll say, 'Read the conference report. Read it.''' And then after reading it for 2 days—the distinguished Senator said he did not know why we were here for 2 days. The 2 days is so the union crowd can work around the clock.

I cannot do any work when I am on the floor trying to defend the truth. Yet we are getting blamed for blackmail and that kind of thing. I think it is totally out of character with the service here in this particular body. I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

Mr. DOMENICI. Mr. President, parliamentary inquiry. How much time remains on this side?

The PRESIDING OFFICER. The Senator from New Mexico controls 56 minutes 20 seconds. On the other side, it is 37 minutes 54 seconds.

Mr. KENNEDY. Mr. President, are you suggesting we have only 36 minutes on our side? We had one speaker, Senator FEINGOLD. He was our only speaker.

Mr. HOLLINGS. I just got through speaking.

Mr. KENNEDY. Whose time?

Mr. HOLLINGS. Our time on this side.

Mr. KENNEDY. With all respect, I did not yield any time to the—I thought the Senator was opposed to the position. The way it was divided up, we are entitled to at least have time for the Senators in opposition, the position of the Senator from Massachusetts and the others. I did not understand the time agreement was to be between—I am always glad to accommodate, but I mean we have had one speaker against it. Now it is 20 until 4. We have been here since 2 o'clock. We have had 15 minutes on one position.

I ask, how was the time allocated?

The PRESIDING OFFICER. The time was under the control of the respective leaders. Therefore, the time on the part of the Democratic Senators is charged to the Democratic leader, and the time on the part of the Republican Senators charged to the Republican leader.

Mr. KENNEDY. Well, Mr. President, that is a surprise to me. Was that the way it was done yesterday, Mr. President?

As I understand, I had the control of the time yesterday.

The PRESIDING OFFICER. The Senator from Massachusetts is correct, that was the procedure yesterday. There is a different time agreement in place today.

Mr. KENNEDY. Well, parliamentary inquiry. When was that time agreement entered into?

The PRESIDING OFFICER. The Chair is incorrect. It is the same agreement.

Mr. KENNEDY. Well then, could I ask the Chair then to correct the time allocation?

Mr. STEVENS. Mr. President, there is no correction due. This time was divided across the aisle, an even amount of time for the Democrats and an even amount for Republicans. After all, we do have more Senators on this side of the aisle than that side of the aisle, and yet we split the time evenly. Three hours each day is to be split evenly between the two sides.

Mr. KENNEDY. Or their designees, as it was yesterday, Mr. President. I was here all day yesterday.

We talk about a ''jamming.'' We were here yesterday, and we had it divided up evenly between those for it and against it. We have had one speaker who has spoken for 14 or 15 minutes against this provision, and now we are told we have 38 minutes left. That is not the—that is very, very clear. That certainly supports what we have been saying about this particular provision, Mr. President. We did not divide the time yesterday that way. It is unacceptable to say you are to change the rules of the game overnight without anything to demonstrate it.

The PRESIDING OFFICER. The Chair was mistaken in suggesting there was a change in the time agreement. The Chair is advised by the Parliamentarian that the agreement has been followed in this pattern ever since it was entered into.

Mr. STEVENS. Mr. President, I ask the Senator from Massachusetts to look at the order. It is ordered that at 2 p.m., Wednesday, October 2, there is to be 3 hours for debate only, to be equally divided between the two leaders. That is what we are doing.

If the Senator seeks any more time, I am prepared to stay here as long as he wants to have more time.

Mr. KENNEDY. I have every intention to have time to do that, Mr. President.

Mr. STEVENS. This time is to be equally divided between the two leaders.

Mr. KENNEDY. It was my understanding——

Mr. STEVENS. Mr. President, 46 Senators over there have an hour and a half, and 53 Senators over here have an hour and a half. I do not see anything unfair.

Mr. KENNEDY. I will take what time I shall need at the appropriate time, Mr. President. This is the first time that I can remember in the time I have been in the Senate when there has been a division on an issue with those Members that are for a proposal and those that are against, and when there is a time agreement to divide the time equally, and then have it interpreted the way it has been interpreted—this is the first time in my recollection this has happened.

I made it clear, both to our leader, and he indicated to the majority leader as well, as to what we were asking for, and that is to have an hour and a half on each side to make the presentation evenly divided. This is a convoluted interpretation of that understanding.

I will take such time as I might need later on.

Mr. STEVENS. Mr. President, I yield such time as the Senator from New Mexico desires.

The order is specific, to be equally divided between the two leaders. The Senator from Massachusetts has been assuming he has been designated by the leader that he is to assume the time. I have not been advised.

Mr. DOMENICI. How much time, Senator MURRAY, did you want?

Mrs. MURRAY. Less than 10 minutes.

Mr. DOMENICI. She has been waiting longer. I will yield if they take it out of their time, and then ask that the Senator from New Mexico be recognized after Senator MURRAY completes her remarks.

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

The Senator from New Mexico will be recognized at the conclusion of the remarks of the Senator from Washington. The Senator from Washington is recognized.

Mrs. MURRAY. Mr. President, I rise today as a strong proponent of the bill before us H.R. 3539, the Federal Aviation Administration reauthorization bill. This legislation does provide critical aviation safety and reform efforts and it is the principle authority for aviation infrastructure investments.

The importance of this bill only underscores the time and serious attention, Members in this Chamber have given to the legislation's express carrier provision. I have listened closely over the last few days to colleagues whom I deeply respect, on both sides of this issue and both sides of the aisle.

As much as I want to see the FAA bill pass, I believe we must focus on the question of fairness. Did this provision, we are now debating receive enough public comment and undergo hearings necessary to adequately judge the change? Is this provision so insignificant, that it can be quickly addressed in the rush to adjourn? Are we creating a priority system that places specific companies above others?

These questions are serious and far-reaching. This provision raises too many concerns and justifies this Chamber's serious examination of the language. First, one must look at the legislative history of this rider. There has never been a hearing on this provision in a House subcommittee or full committee. Neither have there been any hearings on this provision in a Senate subcommittee or full committee.

There have been previous attempts to attach the rider to omnibus appropriations bills, the National Transportation Safety Board reauthorization and the Railroad Unemployment Act. All of these attempts to insert this controversial language have failed.

The rider was not on this bill as it passed the House and was not included in the Senate's original FAA reauthorization bill until it reached the conference committee. There are even jurisdictional questions to be answered as the House required a special rule just to consider the provision. In the end, 198 Members of Congress opposed the FAA bill with this added rider.

Second, as debate continues on this provision, it becomes clear that this is not simply a technical correction. The term ''express carrier'' has been obsolete for years and was purposely removed from the Railway Labor Act and the Interstate Commerce Act when Congress passed the ICC Termination Act last year. Express carrier was removed, simply because no express carrier existed since the mid-1970's.

Congress is charged with promoting an equal playing field for all. Unfortunately, what appeared to be an innocuous correction has become a dangerous reclassification. We must ensure that employees of one company have the same opportunities as those employees in other similar organizations.

Many will try to boil this issue down into another labor battle. I prefer to look at the provision as one that denies a specific group of employees, basic rights in the workplace. These opportunities are already granted to these employees' colleagues.

All of us are ready for adjournment. Many have felt that they've become hostage to an insignificant technical correction with little impact. Our 4 days of debate will one day, however, appear insignificant. Especially in contrast to the thousands of workers who will forever be held hostage by this language.

Mr. President, let's act reasonably. Let's act rationally and by all means let's adjourn. But let's leave this session with a clear conscience and a bill we can all live with, confident that we did not act in haste or shortsightedness.

In the interest of good Government and good public policy, let's remove the provision and re-examine it through the normal legislative process. In the interest of good Government and good public policy, lets pass the FAA bill without this express provision. This legislation is strong enough on its own merits. I am certain the House will recognize its responsibility to come back and finish a job, so critical to America's workers.

The PRESIDING OFFICER. Under the previous order the Senator from New Mexico is recognized.

TRIBUTE TO RETIRING SENATORS

SENATOR BENNETT JOHNSTON

Mr. DOMENICI. I have not had occasion to speak on the floor with reference to some of my close friends, retiring Senators, other than some remarks I made with reference to BENNETT JOHNSTON. We came to the Senate together, and I addressed my thoughts on BENNETT JOHNSTON. He is my ranking member and I have been his.

Now I will take a few minutes to talk about a number of Members. I do not know that I will be able to comment on all my fellow colleagues that are leaving, but I will briefly state my remarks, and I hope brevity is not taken by any of the departing Senators as an indication of my heartfelt feelings. In a few minutes I will cover a lot of them with some observation that I remember most specifically about each Senator.

SENATOR PAUL SIMON

I start with a Democrat Senator, Senator PAUL SIMON from the State of Illinois. I perceive, as I look at Senator SIMON, that he was a quiet man, who acquired a great deal of respect in this Chamber and became very effective because he has been very forthright in the manner that he does business and carries out his initiatives and efforts.

He has always put all his cards on the table, even in cases where not all the cards were on his side. I think his reputation for integrity and honesty, along with his articulate manner of presenting things in a low-key manner, have gained him a significant reward in this institution by way of his accomplishments. We will miss him.

Obviously, he has done work in mental illness parity, the Genetic Privacy Act, the balanced budget amendment for which he will be known, line-item veto, some work on homelessness, problems of violence on television, and the programming that he has deemed indecent and not worthy of presentation. I commend him for his time in the Senate and wish him and his wonderful wife the very best.

SENATOR HANK BROWN

Second, I take a few moments to talk about Senator BROWN from the State of Colorado. I wanted to say right up front, I have been in this Chamber now for 24 years, 4 terms. I have not seen a Senator make as much of an impact in 6 short years as has the distinguished Senator, Senator BROWN, from the State of Colorado. He is a man with great talent, a marvelous wit, and a great knack for making the complicated simple. He has helped us present very complex issues in ways that the American people understand, and he has done that wherever he chose in whatever committee work or here on the Senate floor.

No one was more effective in defeating the 19 billion dollars' worth of so-called stimulus package proposed by President Clinton which would have been $19 billion more added to the deficit. Senator BROWN provided clear, powerful examples and straightforward and practical reasons as to why we should not do that. His ideas were contagious, and I believe among the many things he can take credit for, it is this example of clarity that he gave to all of us which permitted an issue that clearly, clearly, should not have gone the way the President asked. Because of him, it did not.

SENATOR JIM EXON

Let me take just a moment to talk about another Senator. First of all, I wish I had more time to talk about my cohort on the Budget Committee, Senator EXON, of the State of Nebraska. But as I indicated, I do not have enough time to say all that I would like, and I don't believe I will find enough time; but here are the three things I recall most vividly about the Senator. First and foremost—and only people who work with the budget will appreciate this—I think Senator EXON should be commended because, as he took over the Budget Committee, he was fully aware that you can't do that work without the very best staff. He retained and added to the fine staff, and, as a consequence, the work and combat of budgeting was done in a professional manner, in a manner clearly calculated to present the facts and the truth.

Obviously, he has been a leader in budget matters, a strong Senator in