structure which favors debt and is prejudiced toward debt, being institutionalized and solidified over and over again.

Mr. President, I thank you for allowing me the opportunity to speak. I want to say that because I believe this omnibus appropriations bill which is now before the Senate will impair our ability to reach a balanced budget in the year 2002, I intend to vote against it. I intend to vote against it because I want to vote in favor of the next generation and their capacity to allocate their own resources. I want to vote in favor of discipline and against debt. I want us to have not only the ability to put our House in order, I would like to have us enjoy the structure which would require us to keep our House in order.

I hope that other Members of this body will similarly review the evidence as I have and come to a similar conclusion; a conclusion that it is not time for us to additionally burden the next generation, but to exercise the kind of restraint and discipline which will provide for them investment and opportunity, rather than debt.

I thank the Chair.

COMMENDING JEAN SCHRAG LAUVER

Mr. CHAFEE. Mr. President, today I come to the floor in what you might call a bittersweet mood, and that is to announce to my colleagues the retirement of one of our most trusted Senate advisers, Ms. Jean Lauver, who has served on the Environment and Public Works Committee for over 21 years.

Together with Senator BAUCUS, the ranking Democrat, and the entire membership of the committee, I send a resolution to the desk to express the gratitude of the committee and of the Senate to Jean Lauver for her years of service to the U.S. Senate, and will later ask for its immediate consideration.

Mr. President, Jean was born on a farm in Sioux Falls, SD, and graduated from Goshen College in Indiana and later received a master's degree in education from George Washington University. After serving as a school teacher in Puerto Rico, Jean joined the Environment Committee staff in 1974. Jean has been with us ever since.

Anyone who knows her also knows that she is the undisputed expert in the Senate on Federal highway issues. Jean and the committee have been through scores of pieces of legislation over the past many years. There have been some great successes: The Surface Transportation Act of 1987, the so-called ISTEA bill of 1991, just to name two. There have been scores of tough battles, as well, on transportation safety issues, demonstration projects, and billboards on our highways and byways. Over the years, I have no doubt Jean has seen it all.

Yet, after all the hearings and all the bills, the meetings in room 468 Dirksen and S–211 of the Capitol, what we will all remember most about Jean is her unflappable professionalism, her extraordinary knowledge and memory, and her dedication to doing a good job for Republicans and for Democrats alike.

Without question, Jean is one of the most extraordinary staffers that I have had the pleasure to work with. So it is with great admiration that we wish Jean and her husband, Hesston, and their son, Jason, all the best in their future endeavors. I might add that Jean and her family are off to a new challenge, and that is owning and operating a bed and breakfast in Goshen, IN. If Jean's service to the Senate is any indication, you can be sure that the Prairie Manner B&B in Goshen will be top notch. I am tempted to give a telephone number of the new B&B, but that might be considered advertisement. For anybody that is interested, I have her telephone number for the B&B they are establishing called the Prairie Manner in Goshen, IN.

I know all Senators join with me in wishing Jean good luck and thanking her for her dedicated service to the Senate and this Nation of ours. Jean, we say thank you.

I urge the adoption of the resolution, and I ask unanimous consent for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A resolution (S. Res. 232) to commend Jean Schrag Lauver for her long, dedicated, and exemplary service to the United States Senate Committee on Environment and Public Works.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The PRESIDING OFFICER. Without objection, the resolution is agreed to.

The resolution (S. Res. 232) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 232

Whereas Jean Lauver has expertly served the Committee on Environment and Public Works over the past twenty-one years, both as a majority and minority professional staff person;

Whereas Jean Lauver has helped shape federal infrastructure policy for over two decades;

Whereas Jean Lauver has at all times discharged the duties and responsibilities of her office with unparalleled efficiency, diligence and patience;

Whereas her dedication, good humor, low key style and ability to get along with others are a model for all of us in the Senate; and

Whereas Jean Lauver's exceptional service has earned her the respect and affection of Republican and Democratic Senators and their staffs alike: Now, therefore, be it

Resolved, That the United States Senate—expresses its appreciation to Jean Schrag Lauver and commends her for twenty-one years of outstanding service to the Senate and the country.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with consideration of the bill.

Mr. HATFIELD. Mr. President, what is the parliamentary situation?

The PRESIDING OFFICER. The pending question is amendment No. 3533.

Mr. HATFIELD. Mr. President, I ask unanimous consent to temporarily lay aside the pending amendment in order to offer an amendment.

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

AMENDMENT NO. 3551 TO AMENDMENT NO. 3466

(Purpose: To amend title 28, United States Code, to divide the ninth judicial circuit of the United States into two circuits, and for other purposes)

Mr. HATFIELD. Mr. President, I send to the desk an amendment on behalf of Senator BURNS and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Oregon [Mr. HATFIELD], for Mr. BURNS, proposes an amendment numbered 3551 to amendment No. 3466.

The PRESIDING OFFICER. Mr. President, I ask unanimous consent that reading of the amendment be dispensed with.

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

The amendment is as follows:

At the appropriate place, insert:

TITLE IX—RESTRUCTURING OF THE CIRCUITS OF THE UNITED STATES COURTS OF APPEALS

Subtitle A—Ninth Circuit Court of Appeals Reorganization

SEC. 901. SHORT TITLE.

This subtitle may be cited as the ''Ninth Circuit Court of Appeals Reorganization Act of 1996''.

SEC. 902. NUMBER AND COMPOSITION OF CIRCUITS.

Section 41 of title 28, United States Code, is amended—

(1) in the matter before the table, by striking out ''thirteen'' and inserting in lieu thereof ''fourteen'';

(2) in the table, by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth	California, Hawaii, Guam, Northern Mariana Islands.'';

and

(3) between the last 2 items of the table, by inserting the following new item:

''Twelfth	Alaska, Arizona, Idaho, Montana, Nevada, Oregon, Washington.''.

SEC. 903. NUMBER OF CIRCUIT JUDGES.

The table in section 44(a) of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... 15'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... 13''.

SEC. 904. PLACES OF CIRCUIT COURT.

The table in section 48 of title 28, United States Code, is amended—

(1) by striking out the item relating to the ninth circuit and inserting in lieu thereof the following new item:

''Ninth ..... San Francisco, Los Angeles.'';

and

(2) by inserting between the last 2 items at the end thereof the following new item:

''Twelfth ..... Portland, Seattle, Phoenix.''.

SEC. 905. ASSIGNMENT OF CIRCUIT JUDGES AND CLERK OF THE COURT.

(a) CIRCUIT JUDGES.—(1) Subject to paragraph (2), each circuit judge in regular active service of the former ninth circuit whose official duty station on March 1, 1996—

(A) was in California, Hawaii, Guam, or the Northern Mariana Islands is assigned as a circuit judge of the new ninth circuit; and

(B) was in Alaska, Arizona, Idaho, Montana, Nevada, Oregon, or Washington is assigned as a circuit judge of the twelfth circuit.

(2)(A) No more than 2 circuit judges in each of the new ninth circuit and the twelfth circuit as assigned under paragraph (1), may elect to be assigned to a circuit other than the circuit so assigned.

(B) An election under this paragraph—

(i) may be only for assignment to the new ninth circuit or the twelfth circuit; and

(ii) shall be made on the basis of seniority.

(C)(i) If the elections of circuit judges under subparagraph (A) result in a greater number of judges for a circuit than is provided under the amendments made under section 903, the number of vacancies described under clause (ii) in the office of circuit judge for such circuit shall not be filled.

(ii) The number of vacancies referred to under clause (i) are the number of vacancies that—

(I) first occur after the date on which such elections become effective; and

(II) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(D) The judicial council of the former ninth circuit shall administer this paragraph.

(3) If no election is made by a circuit judge under paragraph (2), and as a result of assignments under paragraph (1) the number of judges assigned to a circuit is not in conformity with the amendments made under section 903, such conformity shall be achieved by not filling the number of vacancies in the office of circuit judge for such circuit that—

(A) first occur after the effective date of this subtitle; and

(B) are necessary for the number of judges in such circuit to conform with the amendments made under section 903.

(b) CLERK OF THE COURT.—The Clerk of the Court for the Twelfth Circuit United States Court of Appeals shall be located in Phoenix, Arizona.

SEC. 906. ELECTION OF ASSIGNMENT BY SENIOR JUDGES.

Each judge who is a senior judge of the former ninth circuit on the day before the effective date of this subtitle may elect to be assigned to the new ninth circuit or to the twelfth circuit and shall notify the Director of the Administrative Office of the United States Courts of such election.

SEC. 907. SENIORITY OF JUDGES.

The seniority of each judge—

(1) who is assigned under section 905 of this subtitle; or

(2) who elects to be assigned under section 906 of this subtitle;

shall run from the date of commission of such judge as a judge of the former ninth circuit.

SEC. 908. APPLICATION TO CASES.

The provisions of the following paragraphs of this section apply to any case in which, on the day before the effective date of this subtitle, an appeal or other proceeding has been filed with the former ninth circuit:

(1) If the matter has been submitted for decision, further proceedings in respect of the matter shall be had in the same manner and with the same effect as if this subtitle had not been enacted.

(2) If the matter has not been submitted for decision, the appeal or proceeding, together with the original papers, printed records, and record entries duly certified, shall, by appropriate orders, be transferred to the court to which it would have gone had this subtitle been in full force and effect at the time such appeal was taken or other proceeding commenced, and further proceedings in respect of the case shall be had in the same manner and with the same effect as if the appeal or other proceeding had been filed in such court.

(3) A petition for rehearing or a petition for rehearing en banc in a matter decided before the effective date of this subtitle, or submitted before the effective date of this subtitle and decided on or after the effective date as provided in paragraph (1) of this section, shall be treated in the same manner and with the same effect as though this subtitle had not been enacted. If a petition for rehearing en banc is granted, the matter shall be reheard by a court comprised as though this subtitle had not been enacted.

SEC. 909. DEFINITIONS.

For purposes of this subtitle, the term—

(1) ''former ninth circuit'' means the ninth judicial circuit of the United States as in existence on the day before the effective date of this subtitle;

(2) ''new ninth circuit'' means the ninth judicial circuit of the United States established by the amendment made by section 902(2) of this subtitle; and

(3) ''twelfth circuit'' means the twelfth judicial circuit of the United States established by the amendment made by section 902(3) of this subtitle.

SEC. 910. ADMINISTRATION.

The court of appeals for the ninth circuit as constituted on the day before the effective date of this subtitle may take such administrative action as may be required to carry out this subtitle. Such court shall cease to exist for administrative purposes on July 1, 1998.

SEC. 911. APPROPRIATIONS.

Of the $2,433,141,000 appropriated under the subheading ''SALARIES AND EXPENSES'' under the heading ''COURTS OF APPEALS, DISTRICT COURTS, AND OTHER JUDICIAL SERVICES'' under the heading ''TITLE III—THE JUDICIARY'' of this Act, $3,000,000 shall remain available until expended for the Twelfth Circuit Court of Appeals.

SEC. 912. EFFECTIVE DATE.

This subtitle and the amendments made by this subtitle shall take effect 60 days after the date of the enactment of this subtitle.

Mr. REID. Mr. President, parliamentary inquiry.

Mr. BURNS. Mr. President, I ask unanimous consent——

Mr. REID. Parliamentary inquiry.

The PRESIDING OFFICER. Does the Senator from Montana yield for a parliamentary inquiry?

AMENDMENT NO. 3552 TO AMENDMENT NO. 3551

(Purpose: To establish a Commission on restructuring the circuits of the United States Courts of Appeals)

Mr. BURNS. Mr. President, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Montana [Mr. BURNS] proposes an amendment numbered 3552 to amendment No. 3551.

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

Mr. REID. Mr. President, I object.

The PRESIDING OFFICER. The objection is heard. The clerk will read the amendment.

The assistant legislative clerk continued with the reading of the amendment.

Mr. REID. Mr. President, I join with my friend from Montana and ask the formal reading be dispensed with.

The PRESIDING OFFICER. The only request in order is to discontinue the reading of the amendment.

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

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

The amendment is as follows:

At the end of the amendment add the following:

Subtitle B—Commission on Restructuring the Circuits of the United States Courts of Appeals

SEC. 921. ESTABLISHMENT AND FUNCTIONS OF COMMISSION.

(a) ESTABLISHMENT.—There is established a Commission on restructuring for the circuits of the United States Courts of Appeals which shall be known as the ''Heflin Commission'' (hereinafter referred to as the ''Commission'').

(b) FUNCTIONS.—The function of the Commission shall be to—

(1) study the restructuring of the circuits of the United States Courts of Appeals; and

(2) report to the President and the Congress on its findings.

SEC. 922. MEMBERSHIP.

(a) COMPOSITION.—The Commission shall be composed of twelve members appointed as follows:

(1) Three members appointed by the President of the United States.

(2) Three members appointed by the President pro tempore of the Senate.

(3) Three members appointed by the Speaker of the House of Representatives.

(4) Three members appointed by the Chief Justice of the United States.

(b) CHAIR.—The Commission shall elect a Chair and Vice Chair from among its members.

(c) QUORUM.—Seven members of the Commission shall constitute a quorum, but three may conduct hearings.

(d) PERIOD OF APPOINTMENT; VACANCIES.—Members shall be appointed for the life of the Commission. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(e) INITIAL MEETING.—No later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting.

(f) MEETINGS.—The Commission shall meet at the call of the Chairman.

SEC. 923. POWERS OF THE COMMISSION.

(a) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subtitle.

(b) INFORMATION FROM FEDERAL AGENCIES.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subtitle. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission.

(c) POSTAL SERVICES.—The Commission may use the United States mails in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(d) GIFTS.—The Commission may accept, use, and dispose of gifts or donations of services or property.

SEC 924. COMMISSION PERSONNEL MATTERS.

(a) COMPENSATION OF MEMBERS.—Each member of the Commission who is not an officer or employee of the Federal Government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for the services as officers or employees of the United States.

(b) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(c) STAFF.—

(1) IN GENERAL.—The Chairman of the Commission may, without regard to the civil service laws and regulations, appoint and terminate an executive director and such other additional personnel as may be necessary to enable the Commission to perform its duties. The employment of an executive director shall be subject to confirmation by the Commission.

(2) COMPENSATION.—The Chairman of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates, except that the rate of pay of the executive director and other personnel may not exceed the rate payable for level V of the Executive Schedule under section 5316 of such title.

(d) DETAIL OF GOVERNMENT EMPLOYEES.—Any Federal Government employee may be detailed to the Commission without reimbursement, and such detail shall be without interruption or loss of civil service status or privilege.

(e) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairman of the Commission may procure temporary and intermittent services under section 3109(b) of title 5, United States Code, at rates for individuals which do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of such title.

SEC 925. TERMINATION OF THE COMMISSION.

The Commission shall terminate 90 days after the date on which the Commission submits its final report.

SEC 926. REPORT.

No later than 2 years after the date of the enactment of this subtitle, the Commission shall submit a report to the President and the Congress which shall contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions as it considers appropriate.

SEC 927. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated, beginning in fiscal year 1997, such sums as necessary to carry out the purposes of this subtitle.

Mr. BURNS. Mr. President, we have already debated the merits of the second-degree amendment, which establishes the commission to study the reorganization or the probable reorganization of the courts of appeals across this Nation. But the real emphasis should be placed upon the first-degree amendment, which actually has something to do with the restructuring of the ninth judicial circuit. We have already debated the issue. Those who are opposed to the issue made their points, and made them very well. But I think the most compelling reasons why we should do this is that it is just a big, big circuit.

Under this proposal—that is, the first degree—to split the ninth circuit, California, Hawaii, Guam, and the Northern Mariana Islands would form one 15-judge unit. That would be the ninth circuit. Alaska, Arizona, Idaho, Montana, Nevada, Oregon, and Washington would form the new twelfth circuit of 13 judges. The caseload would be split, and the heavy end of it would still be with the California, Hawaii, or the old ninth. They would still, under today's procedures, have 60 percent of the caseload, while 40 percent would go into the new twelfth circuit.

The reasons are as compelling for those States that would remain in the ninth after the newly formed twelfth went into full operation.

The circuit is just too big—9 States, 1.4 million square miles, 45 million people. It is, by far, the largest circuit of all of the 11. By comparison, the sixth serves less than 29 million people, and every other circuit serves less than 24 million people. So, basically, this is the right thing to do.

The commission, too, should move forward and get their work done, as far as the rest of the country. We have had studies and we have had recommendations, and now it is time to start the wheels in motion.

Mr. President, we have already debated this. I have already made the points. I think they are very convincing on why we should do it.

I yield the floor.

Mr. REID. Mr. President, I make a point of order that the first-degree amendment is not relevant and should not be in order in the unanimous-consent agreement that is now on the Senate's calendar.

The PRESIDING OFFICER. The point of order is well taken.

Mr. BURNS. Mr. President, I appeal the ruling of the Chair and call for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. Under the order, the vote will be put off until tomorrow.

Mr. REID. Mr. President, we have debated this issue at some length and because of a parliamentary situation that occurred earlier, the vote was not taken.

Mr. President, we are on very dangerous ground procedurally here. I say to my colleagues, the reason we enter into unanimous-consent agreements—we, the minority—is so that we can proceed with business in the Senate. Virtually everything that is done in the U.S. Senate is done by a unanimous-consent agreement.

This very important legislation that we are going to complete tomorrow, with its many amendments, is going to be completed by virtue of the fact that a unanimous-consent agreement was arrived at between the minority and majority.

Always in unanimous-consent agreements—I should say with rare exception—there are amendments that are saved. The Senator from Minnesota, or the Senator from Montana, or the Senator from Rhode Island, or the Senator from Nevada may feel that it is a complicated issue, and we might want to reserve an amendment. In order to get the unanimous-consent agreement adopted, we save what is called a relevant amendment. That says it all—a relevant amendment.

The Parliamentarian of the U.S. Senate has ruled in this instance that the amendment offered by my friend from Montana is not relevant. Therefore, it would set an extremely dangerous precedent if the Senate would overrule the Parliamentarian of the Senate. The Parliamentarian has a tremendous obligation to be fair and impartial and to rule by virtue of the Senate precedence and traditions in the Senate. I believe the Parliamentarian has clearly ruled in the right manner in this instance.

Now, the reason I lay this foundation is that, if tomorrow, by virtue of partisan vote, the Parliamentarian is overruled, we would never, ever—the minority would never enter into another unanimous-consent request. Why? Because we would be put on notice that any unanimous-consent agreement would not be subject to relevancy. Why would we enter into an agreement to that effect? Any amendment, no matter what the subject, could be brought and be in order. I think that is wrong.

I advise my colleagues, both in the majority and in the minority—especially the majority party—that they should vote to sustain the Parliamentarian. Why? Because if we do not, it is going to be a long time before there is another unanimous-consent agreement adopted because we could not enter into one. How could we? It would mean that no matter what we agreed to, it could be changed by a simple majority. That is not the way it should be. We lose our rights under the

Senate to protect ourselves with a filibuster, where it would take 60 votes, or in a number of other parliamentary points that we reserve to ourselves when there is not a unanimous-consent agreement that is pending.

This amendment offered by my friend from Montana, which has been ruled not relevant, would clearly be one of those measures. Here is a matter that has had part of a day in a hearing, and we have had no studies of the very complicated circuit since 1973. When that Hruska Commission reported, they said the State of California should be cut in the middle. This amendment maintains the State of California as an isle unto itself. Everyone else that lives in the Western United States, except the State of Hawaii, is thrown into the so-called twelfth circuit. California is left alone. That is wrong.

So what I say, Mr. President, is that the majority is the majority, and we well understand that. They have three more Senators than we have. By virtue of that, we enter into unanimous-consent requests and agreements all the time, recognizing that you will be fair and impartial as it relates to relevancy, because, otherwise, there would be no reason when a unanimous-consent agreement is entered into, as we have here.

On H.R. 3019, the matter now before the Senate, we have here a number of Senators who have reserved relevant amendments. That is what it says, ''relevant.'' If it is not relevant, it has to fall. It would certainly be wrong and set a very, very bad precedent, not only in this Senate, but in future Senates, if somebody could come in and say, sure, it is not relevant, but we are the majority and we will do whatever we want.

It is wrong, by any connotation, to have the majority in effect ride roughshod over the rules of this Senate.

Mr. President, I am part of the Senate leadership, and we meet every Tuesday prior to our party conferences. We talk about what is going to go on in the coming week, the best that we can. I know one of the subjects of discussion tomorrow will be the terribly damaging precedent that would be set if this relevancy point of order is overruled. I think it will make for a very, very long congressional session, because the Senate would not be what it is supposed to be.

It would mean that unanimous-consent requests, where the issue of relevancy comes out, would mean absolutely nothing. Instead of having, as we have in the calendar here, Senator SIMON having a relevant amendment, we would just say ''Senator Simon amendment.'' You know that we would never get any unanimous-consent request if Senator MCCAIN has two relevant amendments, if it just said, ''Senator McCain amendment.'' We know when we enter into unanimous-consent requests that we can expect there to be relevancy. And, if it is not relevant, the Parliamentarian, the bipartisan person who has to be in this body, will rule that it is not relevant. It is not only a protection for the minority. It is also a protection for the majority.

I would guarantee with all of the amendments here that to allow this unanimous-consent request to be offered—it would not have been approved if some of the Democrats on this—WELLSTONE, SIMON, LAUTENBERG—just said, ''We want to offer these amendments,'' the unanimous-consent request would never be approved. But that is where we would be if this point of order is not upheld.

I suggest and recommend respectfully that this should be something discussed in some detail rather than it being something that would be a victory for a short period of time. It would be a terrible defeat for the procedures in this body.

The merits of the amendment we discussed at great length today. There has been discussion that has gone on for some period of time—a matter of hours a day. The debate started around 3 o'clock. Here it is now approaching 6 o'clock, and most of the debate this afternoon has been related to this amendment.

So I think it is quite clear that to sustain the point of order is in the best interest of the Senate. To overrule the point of order is not in the best interests of the Senate nor this country because with this election year approaching—not approaching, it is here—it is difficult enough to get work done. It is difficult enough to get unanimous-consent requests agreed to. I can tell you this does not mean there will not be one agreed to someday or during the next 8 months. But they will be few and far between. Because why would anyone want to enter into a unanimous-consent request when it can be changed at the whim of any Senator?

As I indicated, Mr. President, we have talked about the merits of whether or not the ninth circuit should be split. And there are arguments for and against why the amendment should be split. To show how this amendment is headed in the wrong direction, what this underlying legislation does is split the ninth circuit without a hearing, without any commission, and then in the same breath says we are going to go ahead and split the ninth circuit but we are also going to order a commission that costs $3 million to study restructuring the courts. This really seems somewhat unusual especially when the Federal Government has just spent $100 million refurbishing and restructuring the ninth circuit court building because of the earthquake that occurred there. They did it keeping in mind the fact that the ninth circuit administrative offices would be there.

We have another problem, of course—that this legislatively gerrymandered new twelfth circuit starts in Alaska and goes to the coast of Mexico with the headquarters being in Phoenix, AZ, even though the major cities in the area, of course, are Portland and Seattle.

I respectfully say that appealing the point of order violates the spirit of what we are trying to do here. By no stretch of the imagination can you consider this relevant. And by no stretch of the Parliamentarian's imagination could he rule it irrelevant. He has ruled it not relevant, not once today but twice today. And now to even think that the majority could come back and overrule the Parliamentarian would leave a very bad taste in the mouths of many people.

I do not know how my colleague from California feels. But I think she would agree with me there would never be for the remainder of this year another unanimous-consent request that would be agreed to.

We need to study the circuit courts. Let us do so with hearings and legislation—not through some kind of tricky parliamentary maneuver on an appropriations bill.

I again state that the procedure before this body is the fact that we are here today by virtue of a unanimous-consent request that allows us to go forward with very important legislation. What is that legislation? To fund five appropriations bills so we will not have to have another Government shutdown. But it is clear to me that this should not pass. It is not relevant. But if it does, it is just another basis to cloud up this legislation. No wonder the American people are wondering. ''What are you people doing back there? You spend $60 million in creating a new court because you do not like California? Do you think California is too liberal, that California does not rule right?'' This court is not California's court. It is as much Nevada's court as it is California's. The Ninth Circuit Court of Appeals is not California's. The headquarters of the ninth circuit is in San Francisco. Most of the judges have been appointed by Republican Presidents.

The problem is not the size of the ninth circuit. The problem is we as legislators have not done enough to give the courts tools to move cases.

As I talked about earlier today, in the Federal District of Nevada 40 percent of the cases are filed by prisoners. Why do we not do something here to stop that nonsense? Is it important that we have Federal judges deciding whether they should have chunky or smooth peanut butter? The answer is no. But we as legislators have not been willing to step forward and eliminate that. We do not want to stop prisoners from being able to file lawsuits. We just want them to be able to file lawsuits in a temperate, reasonable manner. We need to do something to speed up the criminal appeals process. That would help free a lot of the court's time. But what do the Federal circuit courts hear? They hear endless appeals from criminals, especially those who have been convicted of murder—appeal

after appeal after appeal. That is not the fault of the court because it sits in San Francisco. They are obligated by law just as the other courts that sit in Denver and wherever else they sit throughout the United States—the various circuits.

I ask the Senate to confirm and affirm what the Parliamentarian has done in this instance; that is, rule that this is not relevant. And in so doing it will speed up the work of this Senate and this Congress. To overrule the Parliamentarian would bring about chaos in this body. People can say, ''Well, you know, the Senators from California and Nevada they just feel this way. It is not important. We can overrule them. It does not set a dangerous precedent.'' It sets a horrible precedent.

I repeat. We simply will not be able to get anything done. Look how hard it was to get this unanimous-consent agreement agreed to initially. It took days. It took lots of different pieces to get this unanimous consent agreement.

No. 9: ''Ordered that during the consideration of H.R. 3019, an act making appropriations for fiscal year 1996 to make a further downpayment toward a balanced budget, and for other purposes, the following amendments be the only remaining first-degree amendments, and that they be subject to the relevant second-degree amendments.'' Here we go, listing all of the amendments, time that the floor staff, the staff of the Senator from Oregon, and the staff of the Senator from West Virginia worked to arrive at this—25 or 30 different amendments were agreed to, all having to be relevant unless mentioned otherwise. So I say, it is important that the position of the Parliamentarian of the Senate, where he said this amendment was not relevant, be upheld. To do otherwise would be to state that unanimous-consent agreements will no longer be part of the Senate's business.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I rise in support of the concerns of the Senator from Nevada and to reiterate those concerns. Obviously, this is an issue which is of predominant interest to my State, a State of 32 million people. In effect, it creates a very unbalanced situation. We have tried to make some of those arguments in the Chamber.

Even more importantly than that, I think it will destroy, certainly for the rest of this session, what has been a measure of consensus on which this body essentially predicates its movement.

Let me tell you why I believe that. As Senator REID pointed out, the notation in the Executive Calendar is that, for everybody who submitted an amendment on the basis that it is relevant to the bill before it—we take their word for it. We take their word for it, that they are not trying to play a trick, they are not trying to put something that is not relevant before this body.

In fact, there is a legitimate vehicle for this bill. Senator BURNS' position prevailed in the Judiciary Committee. There is a bill which was passed out of the Judiciary Committee which is the proper vehicle on which to discuss this. So I think the claim that to get action we have to breach what is the word of a Member—a Member who has agreed that an amendment is going to be relevant—is a bad claim. To proceed with that amendment when it is found by the Chair on two occasions not to be relevant sets a dangerous precedent. To persist with that amendment is something that in toto destroys the opportunity for consensus in this body.

I would say there would be no reason for anyone on this side, after being treated in this manner, to agree to a unanimous-consent agreement for the remainder of this session. We would be very foolish to do so, because clearly the precedent is being set that the rights of the minority are being abrogated right here and now, that it does not really matter what the finding of the Chair is with respect to relevancy, we are going to be overturned.

I find this very difficult, particularly when there is a legitimate vehicle on which to discuss this issue. The Senator from Montana knows that. Every member of the Judiciary Committee knows that. The issue was discussed in committee. A bill was passed out of the committee. The chairman of the committee and the majority leader of the Senate can certainly schedule that bill on this floor. That is, then, an appropriate vehicle on which to debate this.

So I am very puzzled as to why this has to be done in a precipitous manner, at a time when most of the Members are not here, cannot hear the arguments, and the results of which are going to cast a precedent on the legal system of this Nation which is very large indeed, and shatter consensus making for this body—the kind of honesty, the kind of commitment that is necessary to achieve a unanimous-consent agreement.

There is no incentive, certainly, for me to ever agree to a unanimous-consent agreement for the rest of this session if something as important to the State of California as this is going to be dealt with in this manner. Both Senator REID and I have met with Senator BURNS. We have indicated our agreement to proceed with a study. We have indicated that we would shorten the time of the study from the 2 years proposed.

I have an amendment for a study which is somewhat broader than Senator BURNS' amendment. We have agreed to cut the time in half. We have reached out in trying to solve this in the tradition of the Senate, which I always thought involved a certain conviviality. But now to find out that there is just simply going to be a partisan vote, with no chance to debate it when all the Members are here, I think is a big mistake.

We have tried earlier, Mr. President, to indicate the deficiencies of the amendment. We have argued about its cost. This is cost that does not have to be incurred. A building was rehabilitated in San Francisco with 35 percent more space provided and $100 million spent in earthquake recovery funds to accommodate expansion and new judges for the ninth circuit; $23 to $59 million will need to be spent for new courthouse expansion and construction the Burns bill would require. I indicated earlier that at least $3 million of that is entirely duplicative. It is a duplication. At a time when we are scrambling for every dollar, we are going to duplicate staff for a political proposal.

I pointed out that this is an unfair division. California, Hawaii, Guam, and the North Marianas would have 62 percent of the caseload, and Alaska, Arizona, Nevada, Washington, Oregon, Idaho, and Montana would have only 38 percent of the caseload. The way the allocation of the judges is structured in this, it is an unfair, unbalanced allocation of judges. California, Guam, and the Marianas would not get 62 percent of the judges to handle 62 percent of the caseload. They would get a greatly reduced amount.

It is clearly a political proposal. To ram it through on an irrelevant amendment sticks in the craw. So it is unfair at best. It is a disproportionate allocation of cases and of judges.

Third, there has never been a hearing on this proposal. This proposal would restructure—with no public hearing—the largest circuit in the Nation that hears about 8,000 cases a year. There was a hearing on a former proposal by Senator GORTON. We understood that proposal. Then suddenly a new proposal was made in the Judiciary Committee, and there was no public hearing.

Fourth, we have argued that there is a need for a study. The last comprehensive study was done in 1973, by the Hruska Commission. This was before the ninth circuit instituted many changes in its methodology for doing business and speeding up caseload. I believe, if you really dispassionately look at the facts, you will see that the ninth circuit is processing cases just as fast as the dominant majority of other circuits, certainly faster than the fifth circuit that was split in 1980 based on the Hruska Commission's recommendations.

So, we say take 2 years, have 12 members appointed in a dispassionate way by three different entities, and fund it with $500,000, to look at all the circuits, look at the workload across this Nation, and make some decision.

I would like, if I might, to read from the minority report that was filed by Senator KENNEDY and myself in the Judiciary Committee on a couple of points. One of these points that I would like to make is the impact of having

one State predominate in the proposed new ninth circuit.

The majority acknowledged that California will undoubtedly predominate in the new ninth circuit. But the majority also insisted that this situation is not without precedent in the court of appeals. The fact is that California would predominate in the new Ninth Circuit Court of Appeals to a degree that is without precedent or parallel. According to the majority's own figures on the other circuits dominated by one State, New York contributes 87 percent of the caseload of the second circuit; Texas contributes only 69 percent of the fifth circuit's caseload. In the proposed new ninth circuit, however, 94 percent of the caseload would come from California.

That is an inordinate amount. It has never been done before in the history of this Nation. I would like to read one other section: ''To divide circuits in order to accommodate regional interests''—which is clearly what we are doing here. Let us not pretend. Every press release indicates that this is the reason for the split—regional interests, economic interests, criminal justice interests, the fact that a group of people do not like some decisions. I think that is true for everybody, for every appellate court decision that is made, there are some people who do not like the decision.

Former Chief Justice Warren Burger, rejected such a premise for dividing circuits as completely unacceptable, in testimony about an earlier version of this legislation. Chief Justice Burger stated:

I find it is a very offensive statement to be made, that a U.S. judge, having taken the oath of office, is going to be biased because of the economic conditions of his own jurisdiction.

Judge Charles Wiggins, Reagan appointee and former Republican Member of Congress, recently wrote a letter criticizing the political motivations behind the current proposal:

The majority report . . . contains the misleading statement that the recommended division of the ninth circuit is not in response to ideological differences between judges from California and judges from elsewhere in the circuit. I strongly disagree that such a motive does not, in fact, underlie the proposal for the change. Such a regionalization of the circuits in accordance with State interests is wrong. There is one Federal law. It is enacted by the Congress, signed by the President, and is to be respected in every State in the Union. The law in Montana and Washington is the same law as exists in Maine and Vermont. It is the mission of the Supreme Court to maintain one consistent Federal law. I do hope that you will challenge the supporters of the revision to explain the reasons justifying their proposal.

So, we know that with no public hearing on this proposal, we have an unprecedented, unparalleled proposal to split a court, giving the big weight to one State in that court, over 90 percent, and to do a split in a way that the judges are not fairly allocated. California, Hawaii, Guam, and the Northern Marianas Islands, with 62 percent of the caseload, will have far below the number of judges required to handle that, and seven States with 38 percent of the caseload would have a better allocation of judges.

This is a very serious proposal and it is being done in a way that is of very deep concern to this Senator: In an amendment found twice to be unrelated to the legislation contemplated by this body at that time—in a way that most certainly is going to create a problem in terms of the people of this side ever agreeing to a unanimous consent-request again.

So, Mr. President and Members of the Senate, I hope there would be due consideration given to these arguments. I think this is a very serious situation indeed, and I am hopeful that cooler heads will prevail.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. McCAIN. Mr. President, I thank my colleague from Nevada for his indulgence while a make a brief statement.

CLINTON POLICY FAILURE IN HAITI

Mr. McCAIN. Mr. President, today at Fort Polk, President Clinton welcomed our troops back from Haiti, and commended them for a job well done. It was appropriate for the President to do so. As they always do, U.S. forces exhibited a high degree of professionalism and courage in the performance of their mission.

However, it is quite another matter to suggest that the restoration of the Aristide regime was a worthwhile mission for U.S. forces to undertake in the first place. The Clinton administration has made Haiti a test case for their foreign policy. But what its Haiti policy has clearly revealed is that the administration's foreign policy is based on international social work, not on defending United States' interests.

Dozens of political and extra-judicial killings occurred after Aristide was returned to power, and are continuing under the Preval regime. There is credible information available to the President from the Federal Bureau of Investigation and the Department of State that indicates the involvement of officials in the Aristide and Preval governments in the planning, execution, and coverup of some of these murders.

Last year, an amendment authored by Senator DOLE passed Congress, requiring the President to certify the Haitian Government's progress in investigating political murders before the United States provided Haiti with anymore aid. But President Clinton could not certify that Haiti was investigating political murders allegedly committed by members of the Haitian Government for a very simple reason—the Haitian Government has steadfastly declined to undertake such investigations.

Since he could not certify, President Clinton used his authority to waive the Dole conditions, saying—disingenuously, I believe—that the waiver was ''necessary to assure the safe and timely withdrawal of United States forces from Haiti.''

Earlier this month, at least seven more Haitian citizens were killed apparently by members of the United States-hand picked, United States-trained, and United States-equipped Haiti national police. The victims were shot at point blank range. Witnesses report that they saw policemen do the killings. Mr. President, 24 hours after the shootings, the bodies had not been picked up, and no member of the Haiti judicial system had made an official report. The UN/OAS Mission has opened an inquiry into the killings, but not any member or agency of the Government of Haiti.

It is a sad commentary on the administration's policy that after the United States has spent $2 billion, and the men and women of the U.S. Armed Forces endured hardship and danger, the government they were sent to restore and protect has participated in death squads, and done so with impunity.

As a final act of gratitude, President Aristide recognized the government of the man who recently ordered the murder of American citizens—Fidel Castro.

The Clinton administration's policy in Haiti is a failure. I yield the floor.

Mr. REID addressed the Chair.

The PRESIDING OFFICER. The Senator from Nevada.

BALANCED BUDGET DOWNPAYMENT ACT, II

The Senate continued with the consideration of the bill.

AMENDMENT NO. 3551

Mr. REID. Mr. President, I would like to discuss, again, the ruling of the Chair. The Parliamentarian has ruled that an amendment is not relevant. A unanimous-consent request was entered allowing the calendar item to go forward, as set forth on page 3 of Monday's Calendar of Business.

A number of relevant amendments were allowed to be offered under the confines of the unanimous-consent request. Every Senator here agreed to this. Every Senator said only relevant amendments could be offered.

It seems rather unusual now that in spite of a unanimous-consent agreement—that does not mean 99 percent of the Senators, that does not mean 99 Senators, that means every Senator agreed to this unanimous-consent request—it seems rather unusual now we have some Senators who say that the referee, the Parliamentarian, ruled that this amendment is not relevant, ''But I'm going to do it my way anyway. I really didn't mean it when I agreed to that unanimous-consent request.''

For this body to rule otherwise—that is, to overrule the Parliamentarian—would be putting not only the Senate but certainly the Chair in a very, very awkward position, because it is clear that this amendment is not in order.

Mr. President, if the Parliamentarian is overruled, it would be like playing a