the Senate was considering the Treasury-Postal Service-general Government appropriations bill. I was concerned about initial reports that the Postal Service would have technical problems raising the projected funds. However, passage of today's legislation both solves those problems and properly authorizes the program. As a supporter of the war on cancer 26 years ago and the author of the pilot program which grew into the Centers for Disease Control's breast and cervical cancer screening program, I am very pleased to see this legislation enacted. The bottom line is that we need public awareness and research funds, and this legislation provides both. Again, I commend my friend Senator FEINSTEIN for her energetic efforts on this front and am pleased to support this bill.

Mr. D'AMATO. Mr. President, I ask unanimous consent the bill be considered read a third time, passed, the motion to reconsider be laid upon the table, and that any statements relating to the bill be placed in the RECORD at the appropriate place in the RECORD.

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

The bill (H.R. 1585) was passed.

Mr. D'AMATO. Mr. President, I want to thank the Senator from California for yielding. I think it is just gratitude at this time because there is no one who has worked harder than Senator FEINSTEIN in terms of the attempts to bring forward this passage.

This will permit the Postal Service to go forward with a program that will pay for it itself and dedicate 70 percent of the net proceeds to cancer research at NIH and give the other 30 percent to the Department of Defense.

We worked together on this with the House, and I think it is a great testimony to the dedication of bringing people together for a sole purpose.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California is recognized.

Mrs. FEINSTEIN. Mr. President, I also want to thank the Senator from New York for his help on this matter.

We have had a true bipartisan effort with Ms. MOLINARI and Mr. FAZIO in the House and Senators D'AMATO, FAIRCLOTH and FEINSTEIN in the Senate. This bill passed the House on suspension. I believe it is an excellent bill. I think it will get the job done in a way in which we can all be proud.

The bill is slightly different than the bill that we introduced as an amendment on the fiscal year 1998 Treasury-Postal appropriations bill last week. This bill provides for up to 25 percent of the cost of a first-class stamp to be attached, the extra amount added to be used for breast cancer research. Of the amount of funds raised, 75 percent would go to the NIH, and the remainder to DOD.

It is something that is widely supported by virtually every medical and cancer association in the United States.

Let me say one thing. Breast cancer is the No. 1 killer for women between the ages of 35 and 52 in this Nation today. It used to be 1 out of 20 women. Today it is one out of every eight women in the United States will come down with breast cancer. It is extraordinarily serious. This is a unique public/private partnership, the first time it has been tried, a pilot, if you will. I know it has been hotlined. I am grateful for the results. I thank the Senator from New York so very much for his work and support and the pink ribbon he is wearing on his lapel, and I believe the women of America, all of us, also thank every Member of this body.

The PRESIDING OFFICER. The bill has been passed.

Mr. BUMPERS. Will the Senator yield for a question?

Mrs. FEINSTEIN. I certainly will.

Mr. BUMPERS. We debated this in the Appropriations Committee, as we know, for a short time. We voted on it the other day—a different proposition. I am not clear on the difference between the amendment the Senator is offering now and the one that was overwhelmingly passed in the Senate the other day. That was carried—a 1-cent increase in the 32-cent stamp, with the extra penny going to breast cancer research. This one, as I understand it—does this amendment take part of the 32 cents or does it also carry an increase in the 32 cents?

Mrs. FEINSTEIN. The amendment we are to be on is a Commerce, State, Justice amendment that I have sent to the desk involving the ninth circuit split. But before we start that, it is my understanding the bill has passed on the breast cancer stamp, and I would be very happy to discuss it.

Mr. BUMPERS. I did not realize the parliamentary situation. Could the Senator just take a minute to explain?

Mrs. FEINSTEIN. I will be very happy to.

One of the problems with the 1-cent stamp is the uncertainty of the post office that the administrative costs will be fully covered by the additional 1 cent. The legislation which passed the House, authored by SUSAN MOLINARI and DICK FAZIO, on suspension, essentially provides that it can be up to 25 percent —that would be about 8 cents, determined by the Board of Governors—so that the full cost of administering it is covered. The Board of Governors within a short period of time will set the actual amount, whether it is 1 cent, 2 cents, 3 cents or 4 cents, and I actually feel is a much better way of doing it. I think it will end up producing more money. I think it will give the post office fewer ulcers. I think it will be carried out forthwith. This has passed the House, and with the passage here today we can get the show underway.

The Board of Governors must, within 1 year of the enactment of the bill, issue the stamp.

Mr. BUMPERS. The Senator mentioned 25 percent. Is that 25 percent of 32 cents or is that 25 percent of something else?

Mrs. FEINSTEIN. It is 25 percent of a first-class stamp which right now is 32 cents.

Mr. BUMPERS. So 25 percent of that goes to the Postal Service to administer this program?

Mrs. FEINSTEIN. No. No. It allows an optional first-class stamp, up to 25 percent of the cost of a first-class stamp. In other words, it could add 8 cents onto it, on an optional basis. There would still be a 32-cent stamp. Then there would be this breast cancer stamp. All right. The Board of Governors in their deliberation would make a decision of administrative cost and then out of the 8 cents or 4 cents or 6 cents or 2 cents, whatever they decide, those administrative costs would come out of that additional amount.

Mr. BUMPERS. I follow you. And the rest of it then would go to the Department of Defense and the National Institutes of Health?

Mrs. FEINSTEIN. That is correct.

Mr. BUMPERS. I thank the Senator.

Mrs. BOXER. Will the Senator yield for a moment?

Mrs. FEINSTEIN. I would be happy to.

Mrs. BOXER. I thank the Senator for her leadership on the breast cancer stamp. I was proud to be one of the cosponsors of the stamp. I know how hard she worked. I know it took many, many hours of work. I was sitting in the Appropriations Committee when the committee chose to await action on the floor. I know that a couple of the senior members of the committee were not that enthusiastic. But I do feel that what the Senator says is right. This bill, this freestanding bill that we have now passed, takes the best of both worlds. I am very excited about it. I congratulate my friend. I can't wait to go to the post office and buy that stamp. If all the American people just think about buying a few of those stamps during the year, we will be able to put so much more into research. It is just a great concept. I thank my colleague for her leadership.

Mrs. FEINSTEIN. I thank the Senator from California for her comments. I thank the Senator for her help, and I think all of us can be very proud if we just await Presidential signature. It is a fine thing.

## DEPARTMENTS OF COMMERCE, JUSTICE, AND STATE, THE JUDICIARY, AND RELATED AGENCIES APPROPRIATIONS ACT, 1998

The Senate continued with the consideration of the bill.

AMENDMENT NO. 986

The PRESIDING OFFICER. The Senate will now proceed to consider the amendment of the Senator from California, which is to be considered under a pending time agreement.

Mrs. FEINSTEIN. I thank the Chair.

Now, if we may turn to something which is of very deep concern. The

amendment that I have sent to the desk is on behalf of the ranking member of the Judiciary Committee, Senator LEAHY; the Senator from Washington, Mrs. MURRAY; my colleague from California, Senator BOXER; and the two Senators from Nevada, Senators REID and BRYAN. The amendment is an amendment to strike and substitute language. The section we would strike from the bill is section 305, which splits the Ninth Circuit Court of Appeals on an appropriations bill.

Mr. President, this legislation which I am presenting serves as a substitute to a nongermane provision of the fiscal year 1998 appropriations bill for Commerce, State, Justice.

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

Mrs. FEINSTEIN. Yes, I will.

Mr. GREGG. I am sorry to break in. I was wondering if the Senator would agree to reducing the time of this amendment down to 3 hours equally divided?

Mrs. FEINSTEIN. I would be happy to.

Mr. GREGG. I ask unanimous consent that, under the prior order on this amendment, the time be reduced to 3 hours.

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

Mr. GREGG. I thank the Senator from California.

Mrs. FEINSTEIN. Mr. President, this bill, with no hearing, no due diligence, no consultation with the ninth circuit—any of its judges, attorneys, bar associations within the circuit—splits the circuit, and I would like to show you how it splits the circuit. It creates a twelfth circuit which would comprise Washington, Arizona, Alaska, Oregon, Hawaii, Idaho, and Montana. If you look at the map—separate and distinct, alone—separated from the rest, would be the State of Arizona. The proposal would leave in the ninth circuit only two States—the States of California and Nevada—along with the territories of Guam and the Marianas.

Now, what is wrong with that? First of all, the way in which it is done, which I will address in detail. But second, it creates two unequal circuits. The ninth circuit and Nevada would have close to 35 million people and the twelfth circuit would have 16 million people. But look at the proposed distribution of the judges. It would distribute 15 judges to the ninth circuit and 13 judges to the remainder—an unequal, unfair distribution of judges.

Here is what the effect would be. In the ninth circuit, you would have 363 cases per judge. In the new twelfth circuit, each judge would have just 239 cases. So the judges of the ninth circuit would immediately have caseloads 52 percent higher than the judges of the twelfth circuit.

Mr. President, the real point is that there is already a resolution to this issue. It was passed by the Senate last session, and it has already passed the House. The resolution is legislation that calls for a study of all of the circuits, with special emphasis on the ninth circuit.

The substitute amendment that I am offering today to form a study commission passed the House of Representatives unanimously in June. This bill is identical to the House-passed bill. The study commission represents, I believe, the only principled approach to dealing with an issue as important and far-reaching as the structure of the U.S. courts of appeals.

If I may, Mr. President, there has never been a division of a circuit court without careful study and without the support of the judges and the lawyers within the circuit who represent the public they serve. There has never been a division of any circuit in this manner—arbitrary, political, and gerrymandered. As a member of the Senate Judiciary Committee, I am deeply concerned that the legislation to split the ninth circuit has been included in this appropriations bill with no hearing, no study, no due diligence as to its impact. Section 305 of the bill contains language for this split. It is a misuse, in my view, of the appropriations process.

Yesterday, Representative HENRY HYDE, the chairman of the House Judiciary Committee, wrote a strongly worded letter, which was circulated broadly. I would like to quote from it.

> I understand that this week the Senate is expected to consider S. 1022, the Commerce-Justice-State-Judiciary appropriations bill. Included in the bill is a major piece of substantive legislation, the ''Ninth Circuit Court of Appeals Reorganization Act of 1997.'' This provision of the bill (section 305) would amend Title 28 of the United States Code by dividing the existing Ninth Circuit into two circuits. As you well know, altering the structure of the federal judicial system is a serious matter. It is something that Congress does rarely, and only after careful consideration.
>
> It is anticipated that an amendment will be offered to replace the circuit division rider with legislation to create a commission—

That is what I am trying to do at this time—

> to study the courts of appeals and report recommendations on possible change. This legislation, H.R. 908, has already passed the House unanimously on a voice vote on June 3, 1997. A similar bill, S. 956, was passed unanimously by the Senate in the 104th Congress. This is a far superior way of dealing with the problems of caseload growth in the Ninth Circuit and other courts of appeals. I urge your support for the amendment.
>
> Sincerely, Henry Hyde, Chairman.

So the House is on record supporting a study. The chairman of the Judiciary Committee of the House writes this letter, and yet this split is in the bill. The administration has issued a strong statement to the Senate Appropriations Committee indicating its support for a study commission and its opposition to the inclusion of such far-reaching legislation in an appropriations bill.

Mr. President, I hope the President will veto this bill if it should contain an arbitrary split of the Ninth Circuit Court of Appeals—a split done politically, as a form of gerrymandering.

In a letter dated July 11, Gov. Pete Wilson reiterated his support for the commission study and stated that the present effort to split the circuit involves judicial gerrymandering, apparently designed, and I quote, ''to cordon off some judges in one circuit while keeping others in another because of concerns, whether perceived or real, over particular judges' perspectives or judicial philosophy.''

Less than 2 weeks ago, when Governor Wilson wrote this letter, there was a proposal that would have divided the ninth circuit into three circuits and split California in half. Then there was another proposal that would have left California and Hawaii in a two-State circuit, the first time in history that a Federal judicial circuit would have consisted of fewer than three States.

In a matter of hours, an amendment was made to the bill, and we have the latest proposal which keeps California whole, teams it with Nevada, isolating a geographical neighbor, Arizona, and placing Arizona with Oregon, Washington, Hawaii, Idaho, Alaska, and Montana. Mr. President, I respectfully submit this is not the way to do the people's legal business. This is not the way to restructure the Ninth Circuit Court of Appeals.

Let me offer some history. I authored the first proposal to create a commission on structural alternatives for the Federal courts of appeal in the 104th Congress during a markup session in the Senate Judiciary Committee on December 8, 1985. If that had been passed, the job would have been done by now. The Senate ultimately passed legislation to create a study commission during that Congress on March 20.

As noted above, in the present Congress, a commission bill identical to the one I am offering today unanimously passed the House. So both Houses of Congress have spoken on this issue and both Houses of Congress have said if the Ninth Circuit Court of Appeals should be split, no due diligence, consult the judges, consult the attorneys who practice before it, look at the precedents, see that there is study, thought and consideration to what would be the best split. None of this has been done. In a matter of a week, four separate proposals have been put forward and changed with no opportunity for anyone who practices law in the ninth circuit, the huge ninth circuit, to indicate what the impact of those proposals might be.

The House-passed bill was modeled on a proposal I introduced with Senator REID on January 30, 1997. The House Judiciary Subcommittee Chairman COBLE and Chairman HYDE moved the bill with the support and cosponsorship of Representative BERMAN. The current H.R. 908 represents a compromise that was worked out in the House and endorsed by every House Republican and Democrat.

I should note that the House-passed bill is very similar to a compromise on a study commission that Senator BURNS and I reached together just a few months ago. This all began with Senator BURNS. I understand his concerns. He has legitimate interests, legitimate thoughts, and I appreciate them. The last I had heard was Senator BURNS signed off on the study commission. So you can imagine the surprise when I heard. My goodness, this is on an appropriations bill. And Members of this body have taken it on themselves to arbitrarily just decide, willy-nilly, how the ninth circuit should be split.

The House-passed commission study is fully bipartisan, a 10-member commission. The commission would operate for 18 months, at which time it would make recommendations to Congress for any changes in circuit structure or alignment.

I don't think we should subject something as important as the structure of our courts to political gamesmanship, and that is just what this is. The study called for in H.R. 908 is a responsible method of evaluating the current situation and making recommendations that can provide a sound foundation for Congressional action in the future.

A study is needed to determine whether this or any proposed circuit division would be likely to improve the administration of justice in the region. That is the fundamental question: Would a split improve the administration of justice, and, if so, what should that split be? Even among those who believe that some kind of split should occur, there is no consensus as to where any circuit boundary lines might be redrawn.

During the 105th Congress, proponents of a circuit split put forward these four proposals. One would have split the north from the southernmost States of the circuit. The second would have chopped the existing circuit into three separate circuits and split California in half. The third would have created a narrow stringbean circuit. That was the same proposal that failed to pass the Senate during the 104th Congress.

The current proposal, which represents at least the fourth proposal in the 105th Congress, is a modification of the stringbean circuit. Again, no due diligence, no hearings, no study, no testimony—nothing.

As I noted before, the proposal isolates Arizona. It combines Nevada. It separates coastal States that have common maritime law. And that is why I say it is gerrymandering. I say if it looks like a gerrymander, talks like a gerrymander, it probably is a gerrymander.

Let's talk about the costs inherent in what is happening here today. If this bill passes and should go into law, splitting the circuit will require duplicative offices of clerk of the court, circuit executive, staff attorneys, settlement attorneys and library as well as courtrooms, mail and computer facilities. According to the ninth circuit executive office, neither Phoenix nor Seattle currently have facilities capable of housing a court of appeals headquarters operation.

As part of the review of last year's similar proposal to split the circuit, the GSA estimated that it would cost a minimum of $23 million to construct new facilities for a headquarters in Phoenix, and I would be very surprised if it was as little as $23 million. Based on GSA costs, the ninth circuit executive has estimated that building and renovation costs for creating or upgrading new headquarters in Seattle and Phoenix would amount to at least $56 million. Additional combined outlay of another $6 million in startup costs would be needed to outfit both Phoenix and Seattle.

The CBO last year estimated the cost of duplicative staff positions at $1 million annually. The new proposal calls for two coequal clerks of the court in the twelfth circuit. Assuming each clerk would have the customary deputy clerk and staff attorney, an additional $300,000 in salaries would be added to the total. So the new twelfth circuit would cost an additional $1.3 million annually for duplicate salaries, and minimum of $25 million in Phoenix and an additional amount for Seattle. It is estimated the cost would run in the neighborhood of $60 million.

This wouldn't be so bad if there just hadn't been approved and spent $140 million to rehabilitate and seismically equip the Ninth Circuit Court of Appeals in the city of San Francisco and Pasadena—$140 million has just been spent. I just visited the San Francisco ninth circuit. It compares with the U.S. Capitol. There is a brand-new library already built in, magnificent chambers, one library that is solid redwood, marble that is incredible, lighting fixtures that go back well over 100 years. It is an amazing and beautiful building.

Under the configuration of States proposed for the new twelfth circuit, the circuit executive estimates that upward of 50 percent of the space recently renovated in San Francisco and Pasadena at a cost of $140 million would no longer be needed. The space was specifically designed to meet the business needs of the court of appeals. The executive office estimates, ''It would cost many tens of millions of dollars to modify the space to make it usable by tenants other than the court of appeals.''

Let me talk for a minute about the real risk of an impetuous political and gerrymandered split of the ninth circuit.

Forum shopping: Organizations and entities whose activities cut across State lines, and those who sue them, would be able to forum shop to take advantage of favorable precedents or to avoid those that are unfavorable. And I suspect, frankly speaking, that this is just what is behind this split. Thus, an additional burden would be placed on the U.S. Supreme Court to resolve conflicts that are now handled internally within the circuit.

Here are some examples provided by the ninth circuit of how dividing it could invite forum shopping: water disputes concerning the Colorado River, which affect California, Nevada, and Arizona; commercial disputes between large contractors like Boeing and McDonald—perhaps that is resolved now—or Microsoft and Intel; different legal precedents affecting the shipping industry along the coastline of the continental United States and Hawaii.

Think of the complications created if different commercial and maritime rules governed the Port of Los Angeles and the Port of Tacoma and Hawaii. The ninth circuit includes a vast expanse of coastal area, all subject to the same Federal law on cargo loading, on seaman's wages, on personal injury, and maritime employment. Vessels plying the coast stop frequently at ports in California, Washington, Alaska, Hawaii and the Pacific territories. If the circuit were to be divided, seamen would have an incentive to forum shop among port districts in order to predetermine the most sympathetic court of appeals to hear the case.

In the commercial law area, all of the States in the circuit have considerable economic relations with California because of its large and diverse population. In a recent case, Vizcaino v. Microsoft, the ninth circuit decided to hear a case en banc concerning whether Microsoft contractors were entitled to the same ERISA benefits and stock options as were regular employees. Microsoft is a large corporation with primary offices in Washington but significant business operations in California. If the ninth circuit were split, Microsoft or its employees might choose to bring a lawsuit in either the ninth or twelfth circuit, in hopes of finding a more sympathetic court.

The judges and lawyers of the ninth circuit overwhelmingly oppose what is happening in this bill. Let me repeat that. The lawyers and judges in all of the ninth circuit States overwhelmingly oppose what is happening in this State, Justice, Commerce appropriations bill.

On four occasions, the Federal judges in the ninth circuit and the practicing lawyers in the ninth circuit judicial conference have voted their opposition to splitting the circuit. The official bar organizations of Arizona, California, Hawaii, Idaho, Montana and Nevada, and the National Federal Bar Association, all have taken positions against circuit division. No State bar organization in the circuit has taken a position in favor of circuit division or what is happening in this bill.

Candidly speaking, this is a political decision of Senators of the Appropriations Committee to affect the legal business of 50 million people in the United States with an arbitrary split, gerrymandered, of the Ninth Circuit Court of Appeals. Candidly speaking,

also, the ninth circuit is large. California alone is predicted to be 50 million people by the year 2025.

Whether the circuit should be split or not, I can't say. I strongly believe it is a decision that should not be made, however, either politically or in a cavalier fashion. The decision should not be made without study, without hearing, without comment from those lawyers and judges whose clients are affected by it.

If—and I say if—the circuit is eventually split, it should be the product of diligence, of study, of hearing, of commentary. It should be part of an analysis of how the circuit courts are functioning in the United States. There may well be a better split involving other States. I don't know, and I would hazard a guess that no one in this Chamber knows that either.

But this does mean a careful study of population should be undertaken. It means an even distribution of caseload by judge, not a rammed-through circuit split that has a 52 percent higher caseload for judges in this new ninth circuit than in the twelfth circuit. On its face, it is patently unfair. Anybody who looks at any split that says you split it so that one set of judges has double the number of cases than the other—that doesn't meet a simple test of fairness.

There should be a careful study of precedents, of commercial law, of maritime law, of the other aspects of precedents. California now has the largest consumer market in the United States in Los Angeles; the third largest in the San Francisco Bay area. It is a huge consumer market, and it is going to be bigger with all kinds of intercommunication among these States.

There should be a study of costs. I pointed out the duplication of staff, I pointed out the need for two new courthouses when two already have been refurbished at a cost of $140 million for the taxpayers. All of this is being done without any study, any hearing, any commentary. It is not something of which this great body can be proud.

I notice that the distinguished Senator from Nevada is here, and if I might ask him, I believe he would like 10 minutes? I will be happy to yield to him.

Mr. GREGG. Mr. President, if the Senator from California wouldn't mind, I would like to go from side to side.

Mrs. FEINSTEIN. I will be happy to do that.

Mr. GREGG. I yield to the Senator from Washington 20 minutes.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, there can be no serious argument posed to Members in body that it is not appropriate, maybe beyond appropriate, for all practical purposes necessary, for the proper administration of justice that the U.S. Court of Appeals—almost twice as large as the next largest court of appeals and almost three times as large in population and in caseload as the average circuit—should not be divided.

Twenty-three years ago, a commission, the Hruska Commission, said the Ninth Circuit Court of Appeals was too large and should be divided; that no circuit court of appeals should have more than 15 judges. The reasons, of course, is collegiality, the prompt and effective administration of justice. Any other argument is simply a matter of delay, simply a matter of a maintenance of the status quo.

The Ninth Circuit Court of Appeals should be divided. There have been bills on this subject and hearings on this subject in most of the Congresses from 1975, 22 years ago, to date. The very proposal that is before us right now, with minor changes, was recommended by the Judiciary Committee in the last Congress and did not come to a vote because it was clear that it would be filibustered as an independent vote. That is at least one of the reasons that when he comes to the floor, the chairman of the Judiciary Committee will recommend the rejection of this amendment and supports the division that is included in this bill.

But, Mr. President, before I get back to the merits of the proposal, I want to express my deep concern over some portions of the opposition that come to this bill from California and perhaps elsewhere. One of the reasons that the Senator from California can describe this bill as a gerrymander, one of the reasons that she can call for delay is because the proponents of the division have acceded to the requests of the Senators from the various States that are affected by this division.

Should we have another study commission? That study commission, if it is remotely objective, will recommend the division of the ninth circuit not into two, but into three new circuits, a proposition that this Senator feels to be highly appropriate. The only way to create three new circuits out of the present ninth circuit is to divide the State of California and to place it into two circuits: one centered in San Francisco, the other centered in Los Angeles.

That recommendation has been with us for many years. That recommendation was incorporated into the first version of this bill. The two Senators from California are vehemently opposed to that recommendation, and I strongly suspect that if we go 2 years and have another study commission and it comes up with dividing California, they will find a reason to object to it again and to filibuster the proposal.

So what did the sponsors of the division do? The sponsors of the division said, ''Fine, we will accede to the wishes of the Senators from California. We will make this a two-new-circuit bill.'' California will be left united.

The Senators from Nevada, with some real justice with respect to the bill reported by the Judiciary Committee 2 years ago, stated that they didn't like the division; that Nevada felt more drawn to California than it did to the Pacific Northwest and Arizona. And so in this bill, we have acceded to the wishes of the Senators from Nevada and have left that State in the ninth circuit with the State of California.

That is the reason that the circuit, as it appears in the bill, is not contiguous. But in the days of the Internet, of e-mail, of faxes, of air transportation, there is nothing but history to require that circuits be made up of contiguous States. And, of course, Alaska and Hawaii have never been contiguous to the States in the ninth circuit. Nor has Puerto Rico and the Virgin Islands to the circuits to which they are attached.

Finally, the State of Hawaii, through its Senators, when it was determined there was to be a bill, elected, to my delight, Mr. President, that it would rather be in the smaller, the more intimate, the more collegial circuit, the new twelfth, and that appears in the bill. Then when we asked the representatives of Guam and the trust territories of the Pacific, they said, while they really don't want to change that, of course, they prefer to stay with Hawaii.

If the great majority of the Senators from the Northwest and from Arizona wish a new circuit that is so logical, and if they have deferred to the wishes of the Senators from Colorado and Nevada as to their desires, why should we say no on the floor of the Senate to those who wish the division? What business is it of the Governor of California to tell us how the ninth circuit should be constituted? I am deeply troubled that Senators whose own wishes, reflecting what they think is best for their States, have been respected, refuse so arbitrarily as they and their predecessors have for more than two decades to accede to ours.

Mr. President, there are 28 positions authorized for the Ninth Circuit Court of Appeals. There are 10 more requested by those judges and approved by the Judicial Council. That is a collegial circuit? At the number 28, three-judge panels that are chosen by lot have 3,276 possible combinations of those three judges. You, Mr. President, one of the youngest of our Members, could be appointed to the ninth circuit, could serve on it for 30 years, and the chances are you would never serve on the same panel of three twice in that entire period of time. That is collegiality?

The ninth circuit is slow from the time appeals are filed until they are decided. It is notoriously reversed more frequently than in the case of any other circuit. When I was attorney general of the State of Washington, we figured that if we could get the Supreme Court of the United States to take certiorari from the ninth circuit, we had at least a 75-percent chance of winning in the U.S. Supreme Court, of causing it to repeal the circuit.

At one level, that is not a totally relevant argument, because the two new

circuits would start with exactly the same judges they have now, and I can't note any difference in philosophy from those who come from the States in the old ninth circuit under this proposal and the new twelfth circuit, and, of course, they are nominated by the same Presidents and confirmed by the same Members of the U.S. Senate. But I suspect that if the judges who work together knew one another a little bit better than they do now, there would at least be a marginal improvement in the number of times during which they are reversed.

Mr. President, there is simply no justification whatsoever for the maintenance of this huge and unwieldy circuit. The Senator from California said in 20 years, California itself will have 50 million people. We have a wonderful First Circuit Court of Appeals, much smaller than the twelfth we propose in this legislation. New York and Pennsylvania, that don't have the population of California combined, have always been in separate circuits, and they are both on the Atlantic Ocean, and they both have to deal with the same kind of admiralty law.

No, Mr. President. The time has come. There have been hearings galore. Those hearings have occupied a quarter of a century. There have been bills reported. Another study, another delay, only to be followed by another attempt to delay after that when a three-circuit division is proposed.

No, Mr. President. The time is now. The division is appropriate. It will not be the last in the history of the U.S. courts. But it seems to me we should go ahead. From a personal point of view, I am somewhat unhappy that while we have done all we can to accommodate California, California refuses to accommodate us.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. How much time is remaining on our side, Mr. President?

The PRESIDING OFFICER. Fifty-eight minutes.

Mrs. FEINSTEIN. I thank the Chair.

Mr. President, I yield 10 minutes of the time to the ranking member of the Judiciary Committee, Senator LEAHY.

Mr. LEAHY. Mr. President, I have been on the Appropriations Committee for 20-some odd years, on the Judiciary Committee about the same amount of time, and I understand that periodically, out of necessity, we have some items of legislation on the appropriations. But this is about as amazing a step as we could take to determine the fate of the ninth circuit on an appropriations bill.

It is not the way to do it. We say we are going to split the Nation's largest court of appeals on this appropriations bill. We have had no hearings, no testimony, no public deliberations on the proposed split before us.

Well, the 45 million people that live in these nine Western States deserve a more considered approach. What we ought to do is have the Senate Judiciary Committee hold hearings, conduct an independent study to determine whether this or any other proposed circuit division is necessary, find out what is the best way to do it, and not just do it basically based on one vote with very little debate in a committee, then on the floor in an appropriations bill.

Last year, the Senate unanimously passed a bill to create a bipartisan commission to study if and how the ninth circuit should be restructured. And that is what the House has done this year. The amendment of the distinguished Senator from California [Mrs. FEINSTEIN], is the same language as H.R. 908, the House-passed bill.

What the Senator from California has done is a principled approach. It is also the approach supported by the majority of the judges and lawyers in the areas served.

Are there problems in the ninth circuit? Of course there are. Let me point out to you, it is a problem not caused by the circuit, but by the U.S. Senate; 9 of the 28 judgeships in the ninth circuit are vacant. There are nominees up here before the Senate.

As a result, the national average is 315 days to get a decision, but for the ninth circuit, it is 429 days. We have people in the ninth circuit who pay taxes like everybody else but who have to wait an extra 114 days. In fact, the ninth circuit canceled 600 hearings this year because we cannot get judges confirmed to sit there.

And what does that mean? It means that a multimillion-dollar settlement of a nationwide consumer class action against a maker of alleged defective minivans is not heard; a $71.7 million antitrust case involving the monopolizing of photocopy markets is not there; an arsenic and lead poisoning class action case with a $68 million settlement agreement is not being heard.

What is happening, Mr. President, is that we go on and try to do little quick fixes because somebody wants to at the moment on an appropriations bill.

What we ought to do, if we want to really do something to help justice in this country, is for the leadership of the Senate, that is, those who schedule debate, in this case, the majority leader, to take some of these judges and allow us to confirm them.

The distinguished senior Senator from Utah, the chairman of the Senate Judiciary Committee, is on the floor. He has been working hard to get judges heard. But no matter how many we hear in the Judiciary Committee, unless they are confirmed on the floor of the Senate, it does not do any good.

At this point, incidentally, we have confirmed—and we are down to the seventh month of this session—we have confirmed six judges. We are about to take another vacation. No more judges will be confirmed. That is less than one a month.

There are over 100 vacancies. We have about 40 or so nominees up here waiting to be confirmed. We cannot even get them confirmed. Here is one, William Fletcher, nominated in 1995; still waiting. Richard Paez, the first month of 1996; still waiting. Margaret McKeown, March 1996; still waiting. This goes on and on and on.

Here is what we have in vacancies—102 vacancies. This Senate has confirmed six.

We all give speeches of needing judicial reform and needing law and order. You have a whole lot of courts where, because the U.S. Senate, because the leadership of the U.S. Senate will not let us confirm judges, we have courts where prosecutors have to kick cases out, that they have to plea bargain and everything else because there are not enough judges to hear them.

Now, when you have proponents of the split of the ninth circuit say it is because justice is being denied, the reason justice is being denied is not geography; the real reason justice is being denied is because judges are being delayed.

These are four well-qualified in the ninth circuit, four well-qualified people. In fact, they have the highest ratings there are. One nominee has actually been favorably reported by the Judiciary Committee, but no—no—action here.

What is happening, Mr. President, is not something that is going to get fixed by the Judiciary Committee, but is going to get fixed if the U.S. Senate does the duty it is supposed to. If we have judges here people do not like, vote them down. We held up the Deputy Attorney General of the United States, Eric Holder, week after week. ''Oh, we've got Senators, we cannot tell you their names, of course, but we have Senators who have real problems, real problems with this man. We can't bring him to a vote. We've got real problems.''

We brought it to a vote. I asked for a rollcall vote. I thought, well, at least let all those Senators, unnamed Senators, who had an excuse for holding the No. 2 law enforcement officer of this country—I said, now we will know who they are, because, obviously, they have problems that they would hold up this man all these months, so they will vote against him. And the clerk called the roll.

And do you know what it was? You know how many voted against him? You say, maybe 30? Probably 20, 10, I ask my good friend, the ranking member? You know how many it was?

Mr. HOLLINGS. How many?

Mr. LEAHY. Zero. I cannot quite say it—I cannot quite say it like my good friend from South Carolina. He is the only person I know who can get five syllables in the word ''zero,'' but zero. It was 100 to nothing; 100 to nothing.

But what we have is, while the Judicial Conference, Chief Justice Rehnquist was asking for more justices, we have 27 vacancies in the court of appeals. We have all kinds of problems. And the ninth circuit is not

going to be helped by politicizing it on an appropriations bill.

The ninth circuit can at least be helped by doing what the Senator from California said, have a nonpartisan professional panel look, make a recommendation, go to the Senate Judiciary Committee, vote it up or down, which is exactly what we should be doing on these judges. If we do not want them, vote them down.

But what we have is always some mysterious person who has a problem. But when we have to vote in the light of day, there is no mysterious person at all because they vote for them. So, Mr. President, I know there are others who wish to speak.

Mr. President, I ask unanimous consent that a letter be printed in the RECORD addressed to Majority Leader LOTT from all the leaders of seven national legal groups, asking him to finally move these judges that are being held hostage.

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

AMERICAN BAR ASSOCIATION,
*July 14, 1997.*

Hon. WILLIAM J. CLINTON,
*The President, The White House, Washington, DC.*
Hon. TRENT LOTT,
*The Majority Leader, U.S. Senate, Washington, DC.*

DEAR MR. PRESIDENT AND MR. MAJORITY LEADER: Among the constitutional responsibilities entrusted to the President and the Senate, none is more essential to the foundation upon which our democracy rests than the appointment of justices and judges to serve at all levels of the federal bench. Notwithstanding the intensely political nature of the process, historically this critical duty has been carried out with bipartisan cooperation to ensure a highly qualified and effective federal judiciary.

There is a looming crisis in the Nation brought on by the extraordinary number of vacant federal judicial positions and the resulting problems that are associated with delayed judicial appointments. There are 102 pending judicial vacancies, or 11% of the number of authorized judicial positions. A record 24 of these Article III positions have been vacant for more than 18 months. Those courts hardest hit are among the nation's busiest; for example, the Ninth Circuit Court of Appeals has 9 of its 28 positions vacant. At the district court level, six states have unusually high vacancy rates: 10 in California, 8 in Pennsylvania, 6 in New York, 5 in Illinois, and 4 each in Texas and Louisiana.

The injustice of this situation for all of society cannot be overstated. Dangerously crowded dockets, suspended civil case dockets, burgeoning criminal caseloads, overburdened judges, and chronically undermanned courts undermine our democracy and respect for the supremacy of law.

We, the undersigned representatives of national legal organizations, call upon the President and the Senate to devote the time and resources necessary to expedite the selection and confirmation process for federal judicial nominees. We respectfully urge all participants in the process to move quickly to resolve the issues that have resulted in these numerous and longstanding vacancies in order to preserve the integrity of our justice system.

N. Lee Cooper, President, American Bar Association; U. Lawrence Boze, President, National Bar Association; Hugo Chavaino, President, Hispanic National Bar Association; Paul Chan, President, National Asian Pacific American Bar Association; Howard Twiggs, President, Association of Trial Lawyers of America; Sally Lee Foley, President, National Association of Women Lawyers; Juliet Gee, President, National Conference of Women's Bar Association.

Mr. LEAHY. Mr. President, let us also not add to the partisanship we have had with stopping judges from being confirmed by now showing even more of a capricious nature on the part of the U.S. Senate by splitting the ninth circuit with no hearings, no debate, no thoughtful consideration.

I yield the floor.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, I just mention briefly there have been considerable hearings on this issue, testimony before our committee on this issue, and the matter has been around and been discussed at length in a variety of forums.

Mr. President, how much time do we have?

The PRESIDING OFFICER. Seventy-seven minutes and eighteen seconds.

Mr. GREGG. And the Senator from California has?

The PRESIDING OFFICER. Forty-nine minutes.

Mr. GREGG. We have 77 minutes?

The PRESIDING OFFICER. Yes.

Mr. GREGG. I yield, in sequence, 5 minutes to the Senator from Utah and 20 minutes to the Senator from Montana, if that is acceptable.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to speak in support of the appropriations provision effecting a split of the Ninth U.S. Circuit Court of Appeals, and to respectively oppose the amendment offered by my colleague from California. Splitting the ninth circuit is appropriate at this time for three principal reasons: First, its size. The ninth circuit is the largest of the 13 federal circuits. Indeed, the ninth circuit is larger than the 1st, 2d, 3d, 4th, 5th, 6th, 7th and 11th circuits combined. The population of the States comprising the ninth circuit is 49,358,941, almost one-fifth of the Nation's population. The size of the circuit also has an effect on the caseloads of the judges of the circuit. The ninth circuit's caseload in recent years has been in excess of 7,000 cases a year, far and away more than in any other circuit.

The second reason to support this proposal is a function of the first. The ninth circuit's size also negatively impacts the internal consistency of law within the circuit. There are currently 28 seats on the ninth circuit, and many who are claiming that Congress should significantly add to that number at least 10 more seats—so, 38 seats. A circuit comprised of so many judges is entirely unmanageable and undermines important considerations of judicial economy, efficiency and collegiality. Because the circuit is so large its judges cannot sit together to hear cases en banc as do other circuits, and accordingly the court has lost the necessary sense of judicial collegiality, and coherence of its circuit-wide case law. I would venture that there are as many contradictory rules of law within the ninth circuit as there are within all the other circuits combined. This has, I believe, contributed to a trend by which some ninth circuit judges feel totally free to disregard precedent, be it circuit precedent or even the Supreme Court's rulings. Just this past term, the ninth circuit had an astounding reversal rate of 95 percent before the Supreme Court. Twenty-eight of 29 cases were reversed. And the usual rate is no less than 75 percent of their cases are reversed. One ninth circuit judge has expressed chagrin at this regrettable situation, explaining that ''the circuit is too large and has too many cases—making it impossible to keep abreast of ninth circuit decisions.''

The third cost of having such a large circuit is the resulting delay in having cases decided. The ninth circuit is, in fact, one of the slowest in turning around case decisions from the time of filing. And, because of its size, some cases, especially high-profile ones, appear to be subject to manipulation.

These important considerations have persuaded me that the ninth circuit should be split. And, I am happy to report that I believe some of my colleagues on the other side of the aisle, from States within the ninth circuit, will vote against the present amendment, and support the split provided for in the present bill.

And finally, I would like to say a word about the way in which this proposed split has come to the floor. Some argue that a significant development like splitting a judicial circuit should not arise in the context of an appropriations bill—that the committee of jurisdiction, in this case the Judiciary Committee, should have the opportunity to review and comment about this proposal. I could not agree more with the proposition that this is a serious matter, deserving serious consideration. I point out, however, that the Judiciary Committee has indeed examined the advisability of splitting the ninth circuit. In just the last Congress, the Judiciary Committee held hearings on the subject, hearing from judges of the circuit and others knowledgeable about the implications of a split. After that hearing, the committee reported out a bill that, in many regards, is similar to the one before the Senate today.

Accordingly, I am confident that the Senate has before it today a well-considered and desperately needed proposal to divide the ninth circuit. This is a proposal that serves the interests of judicial efficiency, stable case law,

and equal justice for Americans within the ninth circuit.

With all due respect, therefore, I must take exception to the proposed commission my colleague from California is now offering by way of an amendment. I think the time for a split of the ninth circuit is now. I believe we have studied the matter thoroughly, and that there is no need for further hearings or a commission.

Frankly, I would expect that, were we in fact to proceed with another commission, it would simply make a recommendation similar to the Hruska report of nearly 25 years ago—namely, to divide the State of California. I don't have any doubt in my mind that that is what a future commission will decide, because if you want to get population equality, you are going to have to divide California. This does not do that, in deference to the Governor of California and, I might add, the two Senators from California, and to the various Congresspeople from California. And I might add, should this amendment succeed—the amendment of the distinguished Senator from California—and a commission be created that ultimately recommends splitting California, I may well be compelled, as will others in this body, to support that split and finally put this matter to rest. So this is dangerous stuff to be playing around with because I believe that there will be a split of California if you go the commission route.

Now, while I recognize that many are greatly concerned about the prospect of dividing the State of California, I have to tell everybody today that this is pretty certain to result if this amendment is enacted.

I urge my colleagues to vote against the amendment offered by my colleague from California. I believe, in the best interests of all concerned, this is an adequate and reasonable response. And, frankly, we have given States within the total area to be divided their right to choose which circuit they will belong to. I think that is an appropriate, reasonable, decent way to proceed. Otherwise, we are just delaying this another 2, 3 years, and we will come up with another split of California, which will be vigorously fought against by Members of the California delegation in both the House and Senate, and we will wind up right back where we are, or California will be split. If it is split, I think it would be to the disadvantage of California, as I view it.

I hope our colleagues will vote down this amendment, as well-intentioned as it is, and will vote for this split, because it would be a split that would, I think, bring about collegiality, and it will bring about a better functioning two circuits, and it will give the States who want the split a chance to have their own circuit, where they can work together in the best interests of their States.

If California continues to be the most reversible set of judges in the Nation, then they will have to live with that. Then everybody will know exactly who are the people that are doing this, who are the judicial activists, the ones undermining the judicial system, and are really causing California the pain, struggles, and difficulties that come from an out-of-control, judicially activist Ninth Circuit Court of Appeals.

I yield the floor.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I do not see the Senator from Nevada at the moment. How much time do I have remaining?

The PRESIDING OFFICER. The Senator has 48 minutes 40 seconds.

Mrs. FEINSTEIN. I yield 5 minutes to the Senator from Washington [Mrs. MURRAY].

The PRESIDING OFFICER. The Senator from Washington [Mrs. MURRAY] is recognized.

Mrs. MURRAY. Mr. President, I rise in strong support of the Feinstein amendment. We simply should not—must not—divide the Ninth Circuit Court of Appeals on an appropriations bill. It is an irresponsible way to proceed with such a fundamentally important question about how we best administer justice in the West.

I want to remind my colleagues that this body, the Senate, in the 104th Congress twice approved a study commission bill. In June, the House of Representatives sent us a bill, H.R. 908, establishing a similar commission. That bill is waiting at the desk for our action. House Judiciary Chairman HENRY HYDE has voiced his dismay at this end run around his authorizing committee. Tuesday he wrote to Chairman HATCH, saying: ''As you well know, altering the structure of the Federal judicial system is a serious matter. It is something that Congress does rarely, and only after careful consideration.''

Mr. President, I am not necessarily opposed to a split of the ninth circuit, but I am adamantly opposed to an appropriation's rider mandating such a gerrymandered split. As Chairman HYDE suggested, we need judicial experts thoroughly analyzing the courts and advising us on what makes sense from a national perspective.

With so many of those who work directly in the ninth circuit opposed to this split, it seems clear we need guidance before we act. The White House opposes this split, the majority of judges on the ninth circuit oppose this split, and the majority of bar associations of the affected States oppose this split. Simply put, this is not the right way to proceed.

We need answers to some important questions first. How much will this cost? Should we create a virtual one-state court? Should Arizona become a part of the tenth circuit? Where should we place a new circuit's courthouse? How many judges should serve in each circuit and from which States should they come? Should we break the ninth circuit into three circuits? How will our Pacific maritime law be affected? Before I participate in breaking up an institution that is more than 100 years old, I want those—and many more questions—answered.

Mr. President, I also have another concern. I find it interesting that supporters of this rider so often refer to the pace at which the ninth circuit does its business. Yet, these same Senators have done little or nothing to fill the many vacancies plaguing the ninth circuit. An outstanding member of the Washington State legal community, Margaret McKeown, has been languishing for nearly 2 years in this body. She has yet to receive a hearing. This is unconscionable and this has real impact on the administration of justice. To make the ninth circuit—or any circuit—work, we must have judges. Let's get the confirmation process moving, and that will stop the glacial pace that people are concerned about.

Finally, I want to remind my colleagues that we have passed almost every fiscal year 1998 appropriations bill without contentious riders. We should have learned from the disaster relief bill what can happen when these riders dominate the process. I believe we should maintain the bipartisan approach we've used so far and avoid letting this important bill get bogged down with riders.

Let's do our appropriations job right and let's do the very serious job of reconfiguring the judiciary right. I urge my colleagues to support the Feinstein amendment establishing a commission to guide the Congress on how best to resolve any real or perceived difficulties in the administration of justice in the ninth circuit.

I yield my time back to the Senator from California.

Mr. BURNS. Mr. President, I rise to oppose the amendment that would strike the provision from the Commerce, State, Justice appropriations bill to divide the Ninth Circuit Court of Appeals. We have heard so much said today about how the bar associations oppose it, the judges oppose it, and nobody has said anything about the people. Are they secondary in our justice system? We are supposed to be serving the people, and I think the bar associations do, too. I happen to believe that they believe very strongly in the kind of service that they deliver to their clientele. But we haven't heard that today.

If there were a judicial equivalent of baseball's famous ''Mendoza line,'' marking the mediocre batting average of .200 below which players dread dropping, then the Ninth U.S. Circuit Court of Appeals would be laboring in the farm leagues.

In terms of the rate at which its decisions are reversed by the U.S. Supreme Court, the ninth circuit's record for failure is practically unblemished. In recent years, on average, more than 80 percent of rulings by the ninth have

been overturned. This past term, the Supreme Court reviewed 29 cases from the ninth circuit—it reversed, in part or in whole, an astonishing 28 of them.

The ninth circuit in 1996–97 alone was reversed, often 9 to 0, on decisions asserting the right to die, requiring sheriffs to conduct federally required but unfunded background checks on people who buy guns, and denying the right of groups who were economically harmed by the Endangered Species Act to sue even though the law gives legal standing to any person.

While the high court undoubtedly chooses many cases with the express intent of reversing them, the ninth circuit this past year has wrecked the curve. For instance, the eighth circuit, which had the second-most cases reviewed, had a reversal-and-affirmance record of only 4 to 4.

But ''this isn't baseball,'' says Judge Stephen S. Trott of Boise, ID, according to a recent Los Angeles Times article.

Agreed. The jurisprudence of our Federal appellate court system is far more serious than a game. In my view, the fact that the ninth circuit is undeniably out of step with the rest of the Nation is perhaps the least of the multitude of reasons to consider splitting this giant court.

First, the ninth circuit outstrips the other circuits in all measures of size, both physically and legally. The ninth circuit encompasses a land mass the size of Western Europe. Its nine States and two territories—Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, Guam, and the Northern Mariana Islands—stretch from the Arctic Circle south to the United States-Mexico border and west across the international dateline. It has a population of nearly 50 million people, about 1 in 5 Americans, and is expected to grow by 43 percent over just the next 13 years.

Second, the ninth's caseload is the largest. More than 8,500 appeals were filed last year, and that number is expected to jump by nearly 700 percent in the next 25 years, making the ninth less than a model of fair and speedy justice. In fact, of the 11 regional circuits and the District of Columbia circuit, it ranks next-to-worst in the duration of pending appeals—an average of 429 days, usually more for criminal cases, compared to the national average of 315 days.

These delays are costly. Appeals take time and money, and they're putting the squeeze on my State. Litigants and attorneys who must make frequent and expensive trips to San Francisco are pleading for reform.

Third, the problems of geography and population are two factors that contribute to judicial inconsistency on the ninth. Because the 28 judgeships of the ninth—nearly twice the maximum number recommended by the U.S. Judicial Conference—are scattered so far and wide, the court has experimented with limited en banc proceedings in which a panel of 11 judges decides the most important cases. By relaying on this approach, conflicting court decisions are common. The right hand doesn't know what the left hand is doing. As a result, decisions by the ninth are often narrow and set few precedents for use by judges in other cases.

In fact, several of the Supreme Court Justices criticized the Ninth Circuit's en banc decision in Washington versus Glucksberg that the due process clause of the 14th amendment guarantees critically ill individuals a limited right to assisted suicide. Even some liberal members of the Court, such as Justice Ginsburg, expressed concern that the Ninth Circuit opinion seemed to give Federal courts a ''dangerous power.''

Size was a factor leading a congressional commission in 1973 to urge splitting the fifth and ninth circuits. Congress chose to split the fifth, while the ninth has become bogged down in political squabbles and has had to make due with its enormous size.

One cannot make the argument this has not been heard, or that it has not been studied when in actuality it has.

Some press accounts have portrayed the debate as a clash of party ideologies, of conservatives who favor the split versus liberals who do not. But such a view is short-sighted. These press accounts overlook the bipartisan support behind dividing the ninth. For many of us, it is just as simple as wanting a court that is closer in every sense to the people it serves.

Supreme Court Justice Anthony Kennedy has publicly noted the merit of division. The U.S. Department of Justice has recently said ''the sheer size of the Ninth Circuit, even without its attendant management difficulties, argues for its division.'' Montana Governor Marc Racicot, a former State attorney general, favors the idea. And I would now like to submit a letter from Governor Racicot supporting this split.

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

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

OFFICE OF THE GOVERNOR,
STATE OF MONTANA,
*Helena, MT, July 22, 1997.*

Senator CONRAD BURNS,
*U.S. Senate, Washington DC.*

DEAR SENATOR BURNS: I would like to submit this letter in support of an amendment to the appropriations bill for the Departments of Commerce, Justice and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1998. The amendment would divide the Ninth Circuit Court of Appeals and create a Twelfth Circuit Court of Appeals made up of the states of Alaska, Arizona, Hawaii, Idaho, Montana, Oregon, and Washington. As you know, I have been supportive of this effort for a long time and I continue to support the proposal for the reasons stated below.

The Ninth Circuit, of which Montana is currently a part, is simply too large to effectively respond to the needs of those it serves. That Court has 28 judges making decisions for 9 states and 2 territories, with a population of between 40 and 50 million people in an area that encompasses about fourteen million square miles. The next largest circuit has a population of under 30 million. California cases alone represent over half of the Ninth Circuit's caseload and the number of judges exceeds by twelve the next largest appellate court, the Fifth Circuit, and is sixteen more than the average appellate bench. I cannot imagine anyone making a compelling argument that a judicial unit of government this size can be administratively efficient.

As you know, our system of jurisprudence relies upon the principle of ''stare decisis'' or precedent. With a circuit and court so large, most cases must be heard by smaller panels of judges, with increased reliance upon staff and summary procedures. With 28 judges, there are over 3,276 combinations of panels that may decide cases that involve similar issues. This leads to conflicting and unpublished opinions, reduced communications among judges and little consistency in the court's determinations. The lack of consistency in a court's decisions, in turn, makes our system of justice unpredictable and unreliable. As a result, the body of established precedent in the circuit can be rendered meaningless. There is, in essence, a diminution of precedent, which undermines the stability and predictability of the law, and actually leads to increased litigation.

I have questioned whether the operational costs of such a large system are comparatively higher. Travel expenses and efficiency of judges and staff should be examined to determine if significant efficiencies could be produced in a smaller circuit. It is not true that a new circuit would result in attorneys traveling to the same cities for argument as before. Montana attorneys often are ordered to San Francisco for argument.

The size of the Ninth Circuit also seems to bear upon the length of time it takes to make decisions. The median time to dispose of a case—from the time of filing a notice of appeal to the final decision on the merits—is 14.6 months. Arguments will be made that much of this time is consumed by counsel rather than the Court; however, I can recall as Montana's Attorney General waiting a long time for the Court to decide cases for which the record had been submitted months or years before.

Habeas corpus matters have taken up to 14 years in one Montana case. It appears that the legitimate interest of the public in reaching final resolution in these cases is not given equal and appropriate consideration when balancing the rights of petitioners. The resulting delays invite the kinds of ''recreational'' use of the court system by inmates that we have seen in recent years.

Opponents of splitting the Ninth Circuit argue that the larger the circuit the more consistency in federal law and mention that judges and attorneys have testified to a sense of community which they enjoy with the existing appellate courts. As I noted in the beginning of my letter, the size of the Ninth Circuit bench has led to decision-making by panel, the differing combinations of which leads inescapably to a lack of consistency in precedential authority. And to argue that judges and attorneys are comfortable with the status quo is a position that, with all due respect, I would imagine falls deaf on the ears of those who have been awaiting a decision from the Court for many months or years.

I do not take the position that Montanans can only find justice before a bench made up of Montana judges or judges from neighboring states. And I am not moved to my position by the political arguments of interest groups whose position on S. 956 is based upon

whether they wish their particular body of substantive law to change or remain the same. However, I do not believe that the original intent of the appellate court system, which was to establish circuits which reflected a regional identity by designating a manageable set of contiguous states that shared a common background, is consistent with a circuit that serves twenty million more people than most of the other circuits and covers fourteen million square miles.

Suggestions to divide the Ninth Circuit Court of Appeals have apparently been proposed since before World War II. The Hruska Commission (Commission on Revision of the Federal Court Appellate System) in 1973 recommended dividing the Fifth and the Ninth Circuits (the Fifth was subsequently divided, but not the Ninth). Opponents of dividing circuits recommend a variety of alternatives: consolidation of all circuits into one large national court, dividing California into two different circuits, and finally the familiar solution of studying the problem further. I hope Congress does not delay further correcting a situation that penalizes those states in the Ninth Circuit for the incredible population growth that has occurred in California and is occurring in Nevada.

I strongly support the proposed amendment, because I think it will solve some of the problems mentioned above and end many of the frustrations we feel with the Ninth Circuit Court of Appeals. If I can be of further assistance in your effort to pass this proposal, please let me know.

Sincerely,

MARC RACICOT,
*Governor.*

Mr. BURNS. Mr. President, I would like to read one part of the Governor's letter. He states ''the Ninth Circuit is simply too large to effectively respond to the needs of those it serves.'' State legislatures of the Northwest consistently and overwhelmingly call on Congress to split the ninth circuit.

On the other hand, the bill is opposed by judges and lawyers in the ninth circuit who would lose control over their fiefdoms. It is also opposed by special-interest groups that apparently care little about the troubles that are caused by the ninth circuit.

Mr. President, as you may know, since I came to the Senate in 1989, I have sponsored numerous bills and amendments that would achieve a split of the ninth circuit and I commend the Commerce, State Justice, Subcommittee on their willingness to again take up the fight in the 105th Congress. It's an old axiom that justice delayed is justice denied. For too long the people of the ninth circuit have been caught in the cogs of the wheels of justice. I want to put a stop to this inequity by dividing this court before its growth overwhelms us all.

Mr. President, in looking at what has been said by some, that it has not been heard, that it has not been studied, let's just take a look and see what has been done since.

In 1974, the Senate Judiciary Committee held hearings on S. 729 to realign the fifth and ninth. It was reported out of committee. Nothing happened.

On March 7, 1984, the Judiciary Subcommittee on Courts held hearings on S. 1156, the Ninth Court of Appeals Reorganization Act of 1983. No action was taken.

On March 6, 1990, the Senate Judiciary Subcommittee on Courts and Administrative Practices held hearings on S. 948, the Ninth Circuit Court of Appeals Reorganization Act of 1989. And there was no action taken.

In 1990, the Intellectual Property and Administration of Justice Committee held hearings on H.R. 4900, the Ninth Circuit Court of Appeals Reorganization Act of 1990. Still no action was taken.

H.R. 3654 died in committee without hearings.

In 1995, the full Senate Judiciary Committee held hearings on S. 956, the Court of Appeals Reorganization Act of 1995. An amended version passed the Senate by voice vote, but it died in the House Judiciary Committee.

So it is not that this has not been looked at and studied. It has always gotten bogged down.

Basically that is what we are talking about here. We continue to talk about the bar association doesn't want it, the judges of the ninth don't want it. When do we start listening to the people who have to use it?

Mr. President, I yield the floor.

I reserve the remainder of my time.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER [Mr. BENNETT]. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield 10 minutes of my time to the distinguished Senator from Nevada [Mr. REID].

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. Mr. President, if a litigant in the ninth circuit, which covers the areas that have already been spoken of, has a case heard before a Federal district judge or a bankruptcy court and they are displeased with how the case turns out, they have a right to appeal that case. Under the framework of the courts that we have now in this country, that is appealed to the Ninth Circuit Court of Appeals in San Francisco.

That is what we are talking about here today—what happens when a case is appealed from a lower Federal court to the ninth circuit, which is an intermediary step before it goes to the U.S. Supreme Court. That is what we are talking about. It is extremely important if you are involved in the judicial process. There isn't a court that is more important than a circuit court, a Federal circuit court of appeals.

We are very fortunate in the ninth circuit to have the chief judge of the ninth circuit, not only one of the distinguished jurists of this country but also a graduate of Stanford Law School with a great academic record, but, most important for this Senator, is a Nevadan, born in Nevada, went to school in Nevada until he got into law school. We didn't have a law school.

I have spent a lot of time with Judge Hug learning about the ninth circuit. I would ask the Members of this body to reflect upon what the ranking member of the Judiciary Committee said. The ninth circuit is doing an excellent job. They are reducing caseload. In fact, even with nine vacancies, which the distinguished ranking member, the senior Senator from Vermont, established, the ninth circuit caseload is decreasing—not increasing, decreasing. They have increased their termination of cases by almost 1,000 from March 1996 to March 1997. They are doing a good job even though they are handicapped because the Senate won't confirm the vacancies that they now have.

I, first of all, want to thank the distinguished Senator on the subcommittee, Senator GREGG, for taking into account my concerns about the split. I very much want this study to go forward, the amendment that is now before this body. But if it doesn't go forward, it is important that the State of Nevada recognize people—recognize, as the chairman of the subcommittee recognized, that the State of Nevada is now the most urban State in America. Ninety percent of the people live in the metropolitan areas of Reno and Las Vegas. We have tremendously difficult judicial problems. Frankly, the way the State has changed populationwise is we have a great deal in common with the more populated areas of America.

We feel that it would be unfair to have the split any other way than it now is. There may be other and better ways to split this court. That is why this study is so important. That is why the U.S. Senate last year passed a study saying let's take a look at all the circuit courts before a decision is made as to how you are going to split the ninth circuit. We all have a feeling that the ninth circuit is large. It is larger than most all of the other circuits. But the fact of the matter is, how can we determine how it should be split under the terms that it is now being done; that is, before the Appropriations Committee? It is being done for reasons that are not legal in nature. They are political in nature.

Judge Hug said, ''By adding a circuit-split provision as a rider to an appropriations bill, it would completely bypass the Judiciary Committee and would seek to impose a new judicial structure on nine Western States and the Pacific territories without appropriate hearings, public comment, or independent research subsequent of such action.''

Let's, in effect, have the experts take a look at what we should do. The House passed a compromise very comparable to what we did last year. The House passed a bill that says let's have the Chief Justice, the President of the United States, and the minority and majority leaders of the House and Senate pick people to serve on this 10-member commission and to report back to us in 18 months as to what should be done.

I think it would even be better, while all of this is going on, to fill the nine vacancies in the ninth circuit. People

are really concerned about the administration of justice. Let's have the majority move those people through this body as quickly as possible.

The fifth circuit, the most recently split circuit, has only 1,000 fewer cases than the ninth circuit, and the eleventh circuit, the other half of the most recently split circuit, is the slowest circuit for filing the disposition. It is not the ninth circuit, even though we are hamstrung and are short a significant number of judges. If you look at the eleventh circuit, which has 1,000 fewer cases than the ninth circuit, it takes them longer to dispose of a case than the ninth circuit.

So the ninth circuit should be commended for the good work they are doing with the limited resources they have.

Mr. President, there are some who say, ''Well, it is important that we do this because California takes up so much of the ninth circuit.''

Another misstatement of fact: California doesn't do as much work in the ninth circuit as, for example, the second circuit. The second circuit, New York, has 86 percent of the filings; the ninth circuit, only has 55 percent. The fifth circuit takes up 72 percent of the filings; and the eleventh circuit, Florida, takes up 55 percent of the cases.

So, Mr. President, California is not the glutton that people have alleged it to be. They don't take up as many of the case filings as other circuits.

I would compare the qualifications of the ninth circuit judges—those appointed by Republican Presidents and those appointed by Democratic Presidents—with any other circuit. From the finest law schools in America are the judges who serve on the ninth circuit. Five of the senior judges in the ninth circuit were appointed by Republican Presidents; four by Democratic Presidents.

There has been a lot of talk in this body about the Hruska Commission. The Hruska Commission said, in 1974, you should split the circuits. But let's listen to what the experts said about that. I have a letter here dated July 17, 1997, from Arthur Helman, Professor of Law at the University of Pittsburgh. I will read parts of this letter. This is written to the president of the California State Bar Association.

Again, as the Deputy Executive Director of the Hruska Commission, and as a scholar who has studied the ninth circuit extensively during the intervening period, I am in as good a position as anyone to shed light on this matter. My conclusion is unequivocal. Such speculation is baseless.

Mr. President, this isn't some lawyer from California or some professor from California or anyone in the ninth circuit. This is the professor in the School of Law at the University of Pittsburgh.

My conclusion is unequivocal. Such speculation is baseless. The circumstances that led to the Hruska Commission are no longer present, and there is absolutely no reason to think that a new commission would endorse such a proposal. Let me be more specific. The Hruska Commission recommendation was driven primarily by a single factor. The commission believes that ''no circuit should be created which would immediately require more than nine active judges.'' That was a realistic possibility 25 years ago. Today it is not. In fact, of existing circuits, all but one have more than nine active judges. With the nine-judge circuit a relic of the past, a new commission would have no reason to recommend a division of California. A second consideration is also relevant. The Hruska Commission held hearings in the ninth circuit, and, although there was no consensus, several prominent California judges expressed support for the idea of dividing California between Federal judicial circuits.

I know that sounds implausible, but that only underscores how much things have changed since the Hruska Commission carried out its work 25 years ago. Plainly, no such support would be forthcoming today without a record such as the one of the Hruska Commission and with overwhelming opposition from the California bar, no commission would recommend a division of California. For all these reasons the speculation you referred to is totally without foundation. Whatever recommendations the new commission might make, I am confident that dividing California into circuits will not be among them.

Mr. President, in short, we should do the right thing. The right thing calls for having experts report back to us in a reasonable period of time. If they want to do it in a year, even though it would put a tremendous amount of work on them, I would accept that so that next year at this time we could take appropriate action. But to go forward the way we have done in the Appropriations Committee is bad. It is bad legislation and makes this body look bad, and it is bad legislation because it makes our judicial system look real bad. It has never ever happened before that we have divided a circuit court the way we are about to do it now. The lives of people depend on what we do today. Cases that are appealed to the U.S. Supreme Court come from these circuits. I suggest we follow the recommendation of the amendment that is now before this body.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. I yield 15 minutes to the Senator from Idaho.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. CRAIG. Mr. President, I thank the chairman for yielding in opposition to the Feinstein amendment and hope that the Senate would concur with the findings of the committee. Commerce, State, Justice appropriations has dealt in what I believe is an appropriate way with the issue of the ninth circuit court. There should be no surprises. This is simply not a new issue. I have always felt, and I think many concur, that if you want to not resolve an issue, you create a commission and study something once again, and we know that this has been studied and recommendations have been made.

In 1973, the Hruska Commission suggested that the ninth and the fifth circuits be split, and the fifth circuit was split, the ninth was not. There was simply too much political controversy around it. My guess is today it is a lot more about politics than it is about justice, justice to the citizens of our country who deserve a timely process in the courts, and certainly with the ninth circuit court being as large as it is, as other Senators have spoken to this afternoon, justice appropriately and timely rendered is the question.

It has been mentioned—I believe the Senator from Montana mentioned that the ninth circuit averages 429 days and that the medium national time average is 315 days. When you are in the midst of a lawsuit, do you set it aside? Do you quit spending money? Do you stop the retainer of the attorneys representing you? I doubt it. And that clock ticks on and the money accumulates, and the cost is high and justice goes unrendered.

Then the question in this very extended court is to whether the justice is appropriate. The Senator from Utah referenced the number of times the Supreme Court this year has overruled the ninth circuit. Those are all part of the issues that brought the citizens of Idaho to me and to my colleague, Senator KEMPTHORNE, to suggest that it was time we dealt with this issue, that it had been since 1973 that the issue was found to be one of division, one of the appropriate allocation of States, money, and judges, and that simply has not occurred.

I hope that we would deal with this.

The bill before us today would put California, Nevada, Guam, and the Northern Marianas in the ninth circuit. It would also create a new twelfth circuit including Alaska, Idaho, Montana, Hawaii, Oregon, and Washington. I am currently a cosponsor of Senator MURKOSWKI's bill, S. 431, which splits the ninth circuit a little differently. However, I find the division in the Gregg-Stevens amendment to be very well though out and fair. I think either split of the ninth circuit would work much better than the current organization of the ninth circuit.

The subject of dividing the ninth circuit split has been discussed now for many years. In fact, as long as 1973, the Hruska Commission suggested the ninth and fifth circuits should be split. Although the fifth circuit was divided, the ninth was not. Ever since then, the debate about splitting the ninth circuit has roared on.

Frankly, Mr. President, I am perplexed why there is any question about this proposal. The ninth circuit is by the largest circuit in the United States. It currently employs 28 judges—11 more than any other circuit. The U.S. Judicial Conference has called any circuit with more than 15 judges unworkable. I guess that means, in the opinion of the Judicial Conference, we have an unworkable situation.

The ninth circuit currently serves 45 million people. This is 60 percent more than the next largest district. The Census Bureau has estimated that by 2010, the population in the ninth circuit will top 63 million people, an increase of 40

percent. The situation has worsened since the Hruska Commission suggested a split of the ninth circuit—a trend certain to continue with further delay.

Over the years of debate on this issue, there has been much discussion of inconsistency and unmanageable caseloads. I would like to change the focus of the argument for just a moment and instead look at the impact on the people of the ninth circuit, which includes the people of Idaho. The size of the ninth circuit also has quite an effect on these individuals.

The ninth circuit averages 429 days from filing to concluding an appeal. This is much longer than the national median time of 315 days. This affects the individuals who resort to the judicial system to resolve a dispute in their lives. It's been said that people in this country want and expect swift, efficient justice and I think they deserve it.

It is not fair for the people in the ninth circuit to be subjected to this inefficiency. People want their disputes to be solved quickly so they can go on with their lives. A lawsuit has the ability to consume everything else in one's life. In the ninth circuit, it consumes their lives for a longer period of time. Also, during this extended process, these individuals are forced to continue paying legal fees. Mr. President, I ask you if 100 extra days in litigation sounds like swift justice.

The huge backlog that develops can lead to different sorts of problems in the Northwest. The economic stability of the Northwest is threatened when suits involving, for example, the timber industry are forced into the backlog of inefficiency.

It is unquestioned that the ninth circuit covers a huge area. However, when that is combined with the 7,000 new filings the circuit had last year, it becomes almost impossible to keep abreast of legal developments in the circuit. The result is everchanging judicial patterns that inevitably make conflicting rulings. This leads to judicial inconsistency, which is not good for the system, or the people who seek relief through the system. This might help to explain the fact that the ninth circuit has an 82 percent rate of reversal by the Supreme Court of the United States. Mr. President, I ask you if this sounds like efficient justice.

Opponents of this legislation argue that the extreme size and population of the ninth circuit is not enough of a reason to support a split. However, that was the exact reason for the split of the former eighth circuit, which created the tenth circuit. It was also the exact reason for dividing the fifth circuit and creating the eleventh circuit. In fact, as I said before, when the fifth circuit was split, it was suggested that the ninth circuit be split as well.

Opponents also argue for the need of a new commission to determine the need for a split of the ninth circuit. Twenty-five years ago the suggestion of just such a commission was to split the ninth circuit. It has grown since then, and is continuing to grow. The proposed split has been discussed for many years now, including Senate Judiciary hearings. There is more than enough data currently in the record to make an informed decision, and that decision should be to split the ninth circuit.

Mr. President, this situation has been a long time in coming. It is now time for us to act. The split of the fifth circuit worked 25 years ago, so there is no reason we should not expect similar success with the ninth circuit. It is time that we recognize the competing interests of the differing regions in the ninth circuit and split them up. I ask that my colleagues support the split of the ninth circuit in the interest of returning swift, efficient justice to the people of the ninth circuit.

The PRESIDING OFFICER. Who yields time?

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. I yield 5 minutes to the distinguished Senator from California, my colleague, Senator BOXER.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. I thank the Chair. I thank my colleague. I stand in favor of the pending Feinstein amendment calling for a study to decide whether the people would be better served by splitting the ninth circuit and, if so, how to split the ninth circuit.

Mr. President, I am very fortunate at this time to be sitting on the Appropriations Committee, and I knew when I took a seat on that committee it was very powerful. Mr. President, I know you sit on that committee as well, and we are proud to be there. But, in my opinion, I never believed the Appropriations Committee would take it upon itself to determine how to split the ninth circuit. It seems to me if we are going to undertake this, it ought to be a study. The study ought to go to the Judiciary Committee, of which my distinguished colleague, Senator FEINSTEIN, is a member. That is the proper way to serve the people we represent.

Congress has redrawn circuit boundaries only twice since creating the modern appellate system in 1891. So only twice has Congress stepped in. Congress has never divided a circuit without the support of the circuit judges and the organized bar. The judges and lawyers of the ninth circuit overwhelmingly oppose the split without first studying it. The Federal Bar Association and the bar associations of California, Arizona, Nevada, Montana, Idaho, and Hawaii have all passed resolutions expressing their opposition to splitting the circuit. The Ninth Circuit Judicial Council, the governing body for all the courts in the ninth circuit, is unanimous in their opposition to splitting the circuit.

The last time splitting up the ninth circuit was studied was during the Hruska Commission in 1973, and the principal authors of that report, Judge Charles Wiggins of Nevada and former Deputy Executive Director of the Hruska Commission, Professor Arthur Hellman, agree that its recommendation to split the ninth circuit is outdated and they oppose a split without first conducting a study. And that, of course, is what the pending amendment is about, to have a study first.

Now, we hear many comments in this Chamber, and I heard them in committee, about the delay at the ninth circuit. Any delay in total case processing time is clearly due to unfilled vacancies. I have heard this over and over. There are 28 judicial seats on the ninth circuit. Of these 28, there are only 19 active judges. So clearly we have not done our job here, and it seems to me justice delayed is justice denied, and we better get busy.

We have some excellent nominees pending before the Senate and before the Committee on the Judiciary. And I tell you, I have been quite frustrated that we cannot seem to get these nominations up before the body but yet we can seem to bring a split of the ninth circuit with all its ramifications here in lickety-split time without much study. I find it very, very ironic when we have the most qualified candidates who have been selected by Republicans and Democrats alike sitting and waiting here in excess of a year and a half, 2 years.

We hear about the high reversal rate at the ninth circuit, and clearly there is a high reversal, if you look at it this way —28 of 29 cases. However, the Supreme Court elects to hear only a tiny fraction of the more than 4,000 final dispositions issued annually by the circuit. So thousands of cases stand and then 28 of 29 that they chose to hear they reversed.

But, Mr. President, it is interesting. Four other circuits have higher reversal rates than the ninth circuit. The first, second, seventh, and D.C. circuits are all reversed 100 percent of the time.

We also hear that California judicial philosophy dominates the ninth circuit. Ten of the circuits' nineteen active judges actually sit outside California: Arizona, Nevada, and Idaho each have two judges; Montana, Washington, Oregon, and Alaska each have one. And the circuit judges are evenly split between Republicans and Democrats. Of the court's 19 active judges, Mr. President, 10 were nominated by Republican Presidents and 9 by Democratic Presidents. So many of the arguments that we hear today seem to me to be rather specious.

Then we hear the argument that this is very cost efficient, but no one talks about costs of the splitting up of the ninth circuit, and those would be substantial. Creation of a new twelfth circuit would require duplicate offices of clerk of court, circuit executive, staff attorneys, settlement attorneys, libraries, courtrooms, and mail and computer facilities, at an annual cost of $1.3 million.

Now, it may be that this money would be well spent. I certainly am very, very open to splitting this court. That is not a problem for me. The problem for me is how we go about it. Before we invest this money every year plus the $3 million startup costs, and an additional $2 million for leasing space, it seems to me we ought to have a study.

So I strongly support the Feinstein amendment. I am proud to be a cosponsor of it. I hope that wisdom will prevail.

I thank the Chair for its patience. I thank my colleague.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield 5 minutes to the Senator from Oregon.

Mr. SMITH of Oregon. Mr. President, I have a prepared statement, but I am going to divert from it and frankly just speak from my heart, from my experience. My experience is not long in this Chamber. But my experience among the people of Oregon is very recent. And my experience there with people causes me to rise in opposition to the amendment of the Senator from California. I am reluctant to do that for a personal reason. I am one of Senator FEINSTEIN's great admirers. She may not know that, but I think she is a terrific human being. But I have an obligation to speak as best I can for the people who elected me.

I believe this may be an imperfect process. Maybe it should not be a rider to a bill. But I am very aware that for 25 years this issue has been debated in this Chamber, and we have had study after study after study, and what we are beginning to develop is a feeling among the electorate that when going for justice in the ninth circuit, that justice will be denied. So I think there is a lot of frustration on the part of many of us here that we have to do whatever we can and stop studying and stop delaying and start doing. So I feel very strongly about this.

I have heard many arguments today that have merit on a procedural basis. Yes, maybe many of the legal profession oppose this. But many people support this.

We have heard charges of gerrymandering. I have a map of the United States and the circuit courts of this country. They are saying we are gerrymandering on the west coast of the United States, but I notice that nearly every State on the east coast of the United States is in a different circuit. There are five circuits that cover the Eastern United States, and those circuits have the lowest reversal rates, taken together, of any region in the country. I think we need to change it.

So I rise to support what Senator GREGG is doing. I thank him for that. I thank him for his leadership. He doesn't have a dog in the fight of the ninth circuit, but a lot of us do. So I thank him for that.

I join my colleagues in opposition to this amendment to strike the provision in this bill to divide the Ninth Circuit of the U.S. Court of Appeals. This may not be the most perfect solution to a difficult problem, but I believe that it provides a platform from which to relieve the caseload and reversal rate of the Ninth Circuit Court of Appeals. Serving more than 45 million people and spanning 1.4 million square miles, the Ninth Circuit Court of Appeals handles more than 8,500 filings a year—with a reversal rate of 96 percent. By the year 2010, the ninth circuit population will increase in size by 43 percent.

While my colleague from California may argue that this is an issue for further study, I would like to remind my colleagues that the Senate has studied this issue for almost a quarter century and has reported legislation to split the ninth circuit on three separate occasions. Clearly, the time has come to act.

I want to conclude by reading the comments of some judges who support what is happening here, because some have been read to the reverse.

Mr. President, we are not simply legislating without just cause. The judges that serve in the ninth circuit have given us cause to act without further delay. Judge Diarmuid O'Scannlain from my state of Oregon has stated:

> We (the ninth circuit) cannot grow without limit. As the number of opinions increases, we judges risk losing the ability to know what our circuit's law is. In short, bigger is not necessarily better. The ninth circuit will ultimately need to be split.

I replaced a great senator, Senator Mark O. Hatfield who served in this Chamber for 30 years. He said:

> The ninth circuit's size has created serious problems: too many judges spending more time and money traveling than hearing cases, a growing backlog of cases which threaten to bury each judge, a dangerous inability to keep up with current case law, a breakdown in judicial collegiality and, most importantly, a failure to provide uniformity, stability and predictability in the development of federal law throughout the Western region. It is increasingly clear that these problems cannot be solved by the reforms already implemented by the Court. These arguments adequately state the case for the division of the circuit. We delay at our peril.

Mr. President, justice delayed is justice denied. I ask my colleagues to join me in opposing this amendment.

I yield the remainder of my time.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Mr. President, how much time is left on both sides?

The PRESIDING OFFICER. The Senator from New Hampshire controls 46 minutes. The Senator from California controls 27 minutes.

Mr. GREGG. Does the Senator from California mind if we take another speaker?

Mrs. FEINSTEIN. Not at all.

Mr. GREGG. I yield to the Senator from Idaho for 10 minutes.

Mr. KEMPTHORNE. Mr. President, may I commend the Senator from New Hampshire for his efforts on this issue. I applaud him on that. It is long overdue. Therefore, I must rise in opposition to the Senator from California, for whom I have the utmost respect. She and I happen to have served as mayors in this country at the same time. I prefer it when we are on the same side of an issue. I look forward to that day again.

The time to alleviate the problems being faced by the ninth circuit has long been passed. It is time for us to deal with this. The proposal to realign the ninth circuit was first considered by the Senate nearly 25 years ago. For 25 years we have known that we should be at this point, that we should have made the decision long ago. Yet, the option presented by this amendment would only serve to further delay this long overdue realignment. And further delay serves only to deny access to justice to the people who fall under the jurisdiction of the ninth circuit.

The immense size of the ninth circuit is one of the problems. The next closest circuit in size is the sixth. The sixth circuit has a population of just under 30 million people. The ninth circuit has nearly 50 million people—70 percent more people than does the sixth. And the problem will only get worse because, over the next 12 years, the States which make up the current ninth circuit are expected to grow by 43 percent.

So here we have a problem that is 25 years in the making and getting worse, and now we can see the projections that it is just simply going to be driven to the point that access to justice is absolutely impossible. As a result of the tremendous caseloads, adjudication by the ninth circuit is unnecessarily and unfortunately slow. Recent figures indicate the time to complete an appeal in the ninth circuit is 40 percent longer than the national median.

The people of the ninth circuit are simply not served by the unneeded delay experienced within the circuit. The question before us, therefore, is not a question of politics. It is a question of fairness. The judges in the ninth circuit simply cannot keep up with the number of cases which are being decided. It is nearly impossible logistically for judges within the circuit to know the law as it is being decided within the circuit, and therefore you see inconsistencies, you see problems with not staying up with decisions that have been made elsewhere within the jurisdiction, and therefore we see the cases being overturned.

So, should the people of the ninth circuit have to continue to face the unnecessary delays and judicial uncertainty which is becoming commonplace within the circuit? Should the judges of the ninth circuit continue to be burdened with a system which prevents the kind of collegiality which is necessary for effective decisionmaking? Any objective analysis of these questions reveals that the answer must be no. And, if the answer is no, then we must act now to split the ninth circuit

and provide the people within this jurisdiction the access to justice which all Americans expect and are entitled to. Speaking for the people I represent, I say that it is fundamentally unfair to deny the people of Idaho justice. Yet, the amendment of the Senator from California would continue the kind of injustice that was exposed nearly a quarter of a century ago.

In reviewing a proposal of this magnitude, I believe it is important to speak with those who are most familiar with the situation. With this in mind, I asked Idaho's attorney general, Al Lance, to share his views with me. I believe his words are worth repeating at this time. He said:

> My concerns regarding the ninth circuit include its unwieldy size, inconsistency in decisions issued by its various panels, excessive delay in the issuance of those decisions, as well as the circuit's very high reversal rate when its decisions are reviewed by the U.S. Supreme Court. Furthermore, it is my firm belief that in view of the unwieldy nature of the circuit as it is presently configured, that the true significance of regional and local issues is neither fully appreciated by the court nor reflected in the court's decisions. Establishing a new Twelfth Circuit Court of Appeals will resolve these concerns and, at the same time, reduce the average case processing time by over 400 days to a time period consistent with most other circuits.

In closing, I would like to quote another friend of mine who is the Governor of the State of Idaho, Phil Batt. With regard to the ninth circuit, he stated:

> The court has been overloaded for a long time, and it is in the interest of everyone, especially justice, to split it.

That is what this debate is truly about: justice. I urge my colleagues to vote for justice and to vote against the amendment which is before us. Americans are entitled to justice and they are entitled to access to the justice system, and it is being denied currently in the ninth circuit. The remedy, as proposed by the Senator from New Hampshire, is before us. It is a quarter of a century overdue. It is time for us to take the right action and provide that access to justice for all Americans.

Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I yield 10 minutes to the distinguished Senator from Nevada, [Mr. BRYAN].

The PRESIDING OFFICER. The Senator from Nevada.

Mr. BRYAN. I thank the senior Senator from California.

Mr. President, I rise to support the amendment offered by the senior Senator from California. In my view, and I speak as one who has appeared before the ninth circuit as an attorney, the provision included in this appropriation bill to divide the ninth circuit and create a new 12th circuit is inappropriate, ill-conceived and ill-advised. I must express my dismay that my colleagues on the Appropriations Committee have seen fit to usurp the jurisdiction of the Judiciary Committee on this matter. If there was ever an issue that deserved to be considered in a thoughtful and careful manner by the Judiciary Committee, it is the issue of reforming our Federal court system.

The Commerce, Justice, State appropriation bill is clearly not an appropriate venue to debate an issue of this magnitude, one that will have far-reaching policy implications, not only for those of us in the West but for the entire Nation.

The Ninth Circuit Court of Appeals Reorganization Act of 1997 would reformulate the ninth circuit to include California, Nevada and the Pacific territories, and create a new twelfth circuit consisting of Alaska, Arizona, Hawaii, Idaho, Montana, Oregon and Washington.

In the 104th Congress, the distinguished senior Senator from Washington introduced legislation that would have placed California, Nevada, Arizona, Hawaii and the Pacific territories in the ninth circuit. That legislation was later modified by the Judiciary Committee to establish a new ninth circuit consisting of California, Hawaii and the Pacific territories, and I have been further advised that at one time a proposal was floating around that would divide northern and southern California into separate circuits.

I mention these various iterations of dividing the ninth circuit to make the point that there is a variety of views as to how best to address the ninth circuit and whether or not it should be divided, and, if so, how it should be divided. But in my view, it is clear the proposal to divide the ninth circuit is more reflective of an act of political expediency than the prudential concerns related to the administration of justice. The sponsors of this provision claim that the ninth circuit is unable to effectively manage its caseload because it has grown too big and that the solution to this perceived problem is to divide the circuit. But this, I fear, is only a smokescreen, for the real reason splitting the ninth circuit being proposed at this time is simply that many do not like the decisions rendered by the circuit.

While they will not admit that one purpose of dividing the ninth circuit is to change the substantive outcomes of decisions, the sponsors have made clear their displeasure with many decisions issued by the court, particularly in the area of natural resource protection. Surely not all of the decisions in the ninth circuit, or for that matter any circuit, come down the way that all of us would like. I, myself, have cosponsored legislation that would reverse the effect of some of the ninth circuit decisions. But I do not believe that differences over the decisions rendered by the ninth circuit are an adequate basis to split the circuit.

What kind of precedent would the Congress then be setting? Would a circuit court of appeals face possible reconfiguration whenever Congress does not like the decisions being rendered? Does this Congress really want to support what is essentially judicial gerrymandering? I hope not. The ninth circuit serves nine Western States and has been one circuit for more than 100 years. Whenever the issue of splitting the circuit is put to a vote of the judges and lawyers in the circuit, the vote has been overwhelmingly to retain the circuit as it is currently constituted.

Who better than those judges who comprise the circuit and those lawyers who represent litigants before the ninth circuit to determine whether or not the ninth circuit is working effectively or not?

It has been my experience that neither judges nor lawyers have been shy about stating an opinion when they think something needs to be changed.

The last study of the Federal Circuit Court of Appeals was by the 1973 Hruska Commission. A fellow Nevadan, the Honorable Charles Wiggins, a ninth circuit court judge, served as a member of that commission. Parenthetically, Judge Wiggins first served as a Republican Member of the House before serving on the ninth circuit. In a letter to California's senior Senator, he stated:

> My understanding of the role of the circuit courts in our system of Federal justice has changed over the years from that which I held when the Hruska Commission issued its final report in 1973. At that time, I endorsed the recommendations of the Commission calling for a division of the fifth and ninth circuits. I have grown wiser in the succeeding 22 years.

We should heed Judge Wiggins' experience—act wisely and not precipitously in dividing this circuit.

The last time a circuit court of appeals split was in 1980 when the fifth circuit was divided and the eleventh created. It should be noted that the judges of the fifth circuit unanimously requested the split, a situation we clearly do not have with the ninth circuit.

In a recent letter, Judge Wiggins wrote me:

> Circuit division is not the answer. It has not proved effective in reducing delays. The former fifth circuit ranked sixth in case processing times just prior to its division into the fifth and eleventh circuits. Since the division, the new fifth circuit is still ranked fifth or seventh, while the new eleventh circuit now ranks 12th, the slowest of all circuits. The Ninth Circuit Court of Appeals judges are the fastest in the Nation in disposing of cases once the panel has received the case.

So the ninth circuit would appear to take the appropriate administrative steps to manage its caseloads through innovative ways that other circuits use as models.

The ninth circuit disposes of cases in 1.9 months from oral argument to rendering a decision. That is less than the national average by 2 weeks. This currently makes the ninth circuit the second most efficient circuit in the country.

So it is obvious the circuit has recognized caseload management is an area

that needs improving and is successfully addressing it.

I find it particularly ironic that in this political environment in which budget decisions are hotly debated and new expenditures are closely watched that a new circuit would be proposed, because it is estimated that a courthouse alone would cost some $60 million and there would be additional costs that would be involved in the transition period. So, therefore, we would face the continuing cost of operating an additional circuit court when, at this point, no determination has been made in a fair and objective way that dividing the circuit is necessary.

In my view, the ninth circuit has worked well for the nine Western States it serves and will continue to do so into the future. For those who believe the ninth circuit must be split, I urge the support of the Feinstein amendment to establish a commission to review the structure and the alignment of the Federal courts of appeals. This is a thoughtful and prudent way to address this issue.

When the information necessary to determine whether any circuits need their geographical jurisdiction changed is available, we can then debate this issue more intelligently, having been thoroughly informed as to the facts. But let us not split the ninth circuit at this time.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. GREGG. Mr. President, I yield the Senator from Alaska 10 minutes.

The PRESIDING OFFICER. The Senator from Alaska.

Mr. MURKOWSKI. I thank the Chair.

Mr. President, I rise to oppose the amendment offered by my good friend, the Senator from California, the amendment which would strike the provisions of the bill to divide the ninth circuit into two separate circuits of more manageable size and certainly more manageable responsibility.

The division of the ninth circuit is warranted for three very important reasons: its size and population; its caseload; and its astounding reversal rate by the U.S. Supreme Court. Who holds the ninth circuit court accountable? It is the U.S. Supreme Court.

Let's talk about size and population. I have a chart here which shows the magnitude of the area covered by the ninth circuit. The ninth circuit is, by far, the largest of the 13 judicial circuits, encompassing nine States and stretching from the Arctic Circle in my State to the border of Mexico and across the international date line. That is how big it is.

We are not against California or Nevada. What we want is a recognition of timely judicial action.

Population: The second chart I have shows the number of people served by the ninth circuit. Over 49 million people are served by the ninth circuit, almost 60 percent more than are served by the next largest circuit. By the year 2010, not very far away, the Census Bureau estimates that the ninth circuit's population will be more than 63 million, a 43-percent increase in just 13 years. Talk about not doing anything rash. This population is increasing out of control. We better start doing something now.

On the issue of accountability, Mr. President, and that is most important, the only factor more disturbing than the geographic magnitude of the circuit is the magnitude of its ever-expanding docket. The ninth circuit has more cases than any other circuit. Last year alone, the ninth circuit had an astounding 8,502 new filings. It is because of its caseload that the entire appellate process in the ninth circuit is the second slowest in the Nation. How do they explain that? As a former chief judge, Judge Wallace of the ninth circuit, stated:

> It takes about 4 months longer to complete an appeal in our court as compared to the national median time.

Former Chief Justice Warren E. Burger put it more succinctly when he called the ninth circuit an ''unmanageable administrative monstrosity.''

Let's look at this reversal rate which I want to talk to you about, because there is the issue of accountability. Our responsibility of judicial oversight demands action now. Unfortunately, this massive size often results in the decrease in the ability of the judges to keep abreast of legal developments within this jurisdiction. The large number of judges scattered over a large area inevitably results in difficulty in reaching consistent circuit decisions. This judicial inconsistency has led to continual increases in the reversal rate of the ninth circuit decisions by the U.S. Supreme Court.

During the last Supreme Court session, the Court reversed 19 of the 20 cases that it heard from the ninth circuit. That is an astounding 95 percent reversal rate. How do they explain that? They don't. It is embarrassing, I would think, for the judges. The Supreme Court holds the circuit accountable to the tune of a 95 percent reversal rate. It's about accountability, Mr. President.

Here is the relative ninth circuit reversal rate: 95 percent in 1996; 83 percent in 1995; 82 percent in 1994; 73 percent in 1993; 63 percent in 1992.

Why does this reversal rate continue to increase? Because the circuit is simply too big. Intracircuit conflicts are the result. Ninth circuit Judge Diramuid O'Scannlain, a sitting judge on the ninth circuit, described the problem as follows:

> An appellate court must function as a unified body, and it must speak with a unified voice. It must maintain and shape a coherent body of law. A circuit judge must feel as though he or she speaks for the whole court and not merely an individual. As more and more judges are added, it becomes harder for the court to remain accountable to lawyers, other judges, and the public at large.

Listen to that, ''the public at large.''

> As the number of opinions increase, we judges risk losing the ability to keep track of precedents and the ability to know what our circuit's law is. In short, bigger is not better.

Another sitting judge on the ninth circuit, Judge Andrew Kleinfeld, agrees:

> With so many judges on the ninth circuit and so many cases, there is no way a judge can read all the other judges' opinions. . . It's an impossibility.

Now there you have it, Mr. President. Two statements from two sitting judges about what the problem is.

Some today argue that the Senate is acting in haste. This is entirely untrue. The concept of dividing the ninth circuit is not new. Numerous proposals to divide the ninth circuit were debated in Congress since before World War II. More recent congressional history includes:

A 1973 congressional commission to study realignment with the circuit court, chaired by Senator Hruska, which strongly called for division of the ninth circuit.

Congressional hearings have been held in 1974, 1975, 1983, 1989, 1990 and 1995.

A split of the ninth circuit has been reported from a Senate committee on three occasions, Mr. President.

How long do we have to wait? Dividing the ninth has been studied, debated and analyzed to death. It is time for action.

I have one final chart. This is a statement from retired U.S. Supreme Court Justice Warren Burger:

> I strongly believe that the ninth circuit is far too cumbersome and it should be divided.

U.S. Supreme Court Justice Anthony M. Kennedy who reviews, if you will, the appeals, has this opinion:

> I have increasing doubts and increasing reservations about the wisdom of retaining the ninth in its historic size, and with its historic jurisdiction.

Honorable Diarmuid O'Scannlain, ninth circuit:

> We (the ninth circuit) cannot grow without limit. . . As the number of opinions increases, we judges risk losing the ability to know what our circuit's law is. . .

Judge Kleinfeld currently sitting on the court:

> The ninth circuit is too large and has too many cases—making it impossible to keep abreast of ninth circuit decisions.

Our own former Member, a Senator from Alabama, former Alabama Supreme Court Chief Justice Howell Heflin, who we have the greatest respect for:

> Congress recognized that a point is reached where the addition of judges decreases the effectiveness of the court, complicates the administration of uniform law, and potentially diminishes the quality of justice within a circuit.

That is our own former Senator.

Finally, recently retired Senator Mark Hatfield:

> The increased likelihood of intracircuit conflicts is an important justification for splitting the court.

There you have some of the most respected people we know relative to this subject. The Commerce, State, Justice bill splits the circuit in a rational way. The States of California and Nevada, due to their large population, particularly of California, and the rapid population growth of Nevada, will comprise the new ninth circuit. The balance of the States of the circuit will form the new twelfth circuit. The 49 million residents of the ninth circuit are the persons who suffer. Many wait years before cases are heard and decided, prompting many to forgo the entire appellate process.

In brief, the ninth circuit has become a circuit where justice is not swift and justice is not always served. We have known of the problem of the ninth circuit for a long time. It is time to solve the problem. It is time for action now, and it is time for timely justice.

I urge my colleagues to reflect on this reality and the responsibility that this Senate has to address it. Let's not forget that reversal rate relative to the chart on my right. I am going to leave that up as I yield the remainder of my time, because this is the real story, Mr. President. Here is the accountability of the court, the Supreme Court of the United States, and the number of cases that they have reversed. It is absolutely embarrassing and, as a consequence, action should be taken by this body now.

This is nothing against my good friends from California or the State of California. This just happens to be the reality of the court that we are forced to operate under. To suggest that somehow we don't like the decisions is absolutely silly and unrealistic. These decisions are made on legal merits, as they should be. They have nothing to do relative to the location of the court. This court is simply overworked and is unresponsive to the public, as indicated by the Supreme Court's reversal rate.

Mr. President, I thank the floor manager. I yield the floor.

Mr. HOLLINGS. Mr. President, in the bill before us, we have in there something called the Ninth Circuit Court of Appeals Reorganization Act of 1997. It is hidden in the back of the bill within the general provisions, but boy, does it have great import. This language asks us to split the ninth circuit court into two circuits—the ninth circuit would include California, Guam, Nevada, and the Northern Mariana Islands while the twelfth circuit would include Alaska, Arizona, Hawaii, Idaho, Montana, Oregon, and Washington. Needless to say, I am certain my friends from these States will have something to say about this matter.

While there will be Senators here to talk about the pros and cons of splitting this ninth circuit court, I would like to say to my colleagues that this is neither the time nor place to be talking about this issue at all. As far as I can tell, this is a matter that belongs in the most able hands of our Judiciary Committee. This is not a money matter. This is true and true new authorization language that has no place being on our appropriations bill.

In our full committee mark of the bill, Senators REID and BOXER asked the committee to create a commission to study the state of all the circuits and make recommendations according to the big picture. The rationale behind this is to let the experts who know and understand our circuit courts tell us what they think before we do anything drastic. Expanding Federal caseloads is a nationwide problem requiring a nationwide solution. We can't sit here on our appropriations bill and pretend to be experts as to what's best for the ninth circuit or all the circuit courts, especially without ever having any hearings on the topic, and especially not knowing how much our decision will cost us. Believe me, splitting the ninth circuit court will without a doubt incur upon us additional costs that we haven't even begun to predict.

So I urge my chairman and my colleagues to listen when I say that this issue must go. We need to give this to the Judiciary Committee where I have confidence they will make an informed and thorough decision in a field that is theirs and theirs alone.

Mr. GREGG. Mr. President, can the Chair advise us of the present time status?

The PRESIDING OFFICER. The Senator from New Hampshire controls 30 minutes; the Senator from California controls 19 minutes.

Mr. GREGG. Mr. President, I suggest to the Senator from California, if it is agreeable, that we move to the Senator from Arizona for 5 minutes while we work on a possible unanimous consent agreement for a vote.

Mrs. FEINSTEIN. That is acceptable.

Mr. GREGG. I yield 5 minutes to the Senator from Arizona.

Mr. KYL. Mr. President, I thank my colleague for yielding. This proposal to divide the ninth circuit is especially important to my State.

Mr. GREGG. May I ask the Senator from Arizona to suspend for a second while I propound a unanimous consent request?

Mr. KYL. Sure.

Mr. GREGG. Mr. President, I ask unanimous consent that the vote occur on or in relation to the pending Feinstein amendment at 7:45 p.m. this evening; and further, that the time between now and then be equally divided in the usual form, and that there be no amendments in the second degree.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The Senator from Arizona.

Mr. KYL. Thank you, Mr. President.

As I said, this provision in the bill to divide the ninth circuit is very important to the State of Arizona because Arizona is the second largest State in the existing ninth circuit, both in terms of population and caseload. It, California, and Nevada are all three very fast growing. And there is no question that the caseload will continue to grow at least in proportion to the population.

Phoenix, AZ, is now the sixth largest city in the country. Arizona is, I believe, the fastest growing State in the country. So not only do we have a situation in which we are growing very rapidly, along with Nevada and California, but the proposed amendment would result in a division of the circuit which would affect my own State of Arizona. So I speak to that issue.

Now, it is not my suggestion, Mr. President, that the circuit be divided. There is a division of opinion in Arizona on that that suggests that the bench and bar are split. I do not think there is a clear consensus in my State as to whether the circuit should be divided, but I think there is a pretty clear recognition that it will be. It will happen sooner or later. It is inevitable, as several of my colleagues have already pointed out here. There is no question, because of its size and other factors, the circuit is going to be divided one way or another.

The question is how will it be divided? On that question I think we have to look at this question of size, population, growth, caseload growth, and so on. Because if, for example, you divided the circuit the way it calls for in the bill, the caseload division would be as follows: The circuit comprised of California and Nevada would have 63 percent of the cases, and the remainder of the circuit would have 37 percent of the cases. That is about a 2-to-1 division, showing just how big California is. Probably in terms of caseload, the sounder way to do it would be just to have California. It would still be about 60–40 in favor of California versus all of the rest of the States in the circuit.

But I gather that the proponents of this have decided to accommodate States who have expressed a willingness, through their Senators, to be added to California or to remain with California, and that Nevada has done that, as a result of which, to accommodate Nevada, it has been put with California.

Now, if Arizona were to be added to that circuit, as some people suggest—again, there is division of view on this—the caseload would be 73 percent for the Arizona, Nevada, California circuit; 27 percent for the rest of the circuit. Obviously, that is not a good division for the circuits. So I have had to consider it from both a perspective of my State and what makes sense how to approach this issue. It clearly does not make sense, from a caseload division, to divide the circuit in a way that would add the three fastest growing States—Arizona, Nevada and California—together. I think it is bad enough to add Nevada and California together, though I do not deny that Nevada has a right to be with California if they desire. But it will soon be unbalanced and soon be the largest circuit in the country.

Mr. President, in the end, I conclude I will not oppose this proposal. I would like to add two comments to those that have been made by my colleagues. First, there has been a suggestion that this circuit would be gerrymandered. I do want to suggest that that is not true. It is not true politically. The division of Democrat and Republican nominees would be exactly the same with the new division as it would be under the existing circuit. So I do not think that anybody believes this is about gerrymandering in a political sense. The percentage of Democrats and Republicans would be the same. Moreover, it is not a geographical gerrymandering. It simply takes two of the States of the circuit and leaves the remaining circuit as it is.

Again, I would prefer that Nevada remain with the rest of the circuit to have a more evenly balanced caseload. Nevada wants to go with California—fine. That creates the anomaly that Arizona is divided from the rest of the circuit. But in the day of air travel, I do not think that is a particularly difficult problem for us, particularly since the committee has seen fit to designate both Seattle and Phoenix administrative sites of the circuit. So you have both a northern and southern administrative site. I know in the existing ninth circuit, cases are argued in Phoenix, Seattle, Los Angeles, San Francisco, and so on. Because of its size, you have to accommodate the travel needs of the parties, the litigants. So there is an accommodation to that. And it would exist in this new circuit as well.

But at least the people in the new circuit would not have to travel to California. So it seems to me that, on balance, maybe the best of a difficult situation has been made. I should say, the best has been made of a difficult situation. That is how to make a division that results in a fairly even distribution of cases, No. 1, and that does not divide the State of California, which I objected to along with Senator FEINSTEIN. So in the end, Mr. President, conceding that division is ultimately going to occur, it seems to me that this is a division that makes sense. Therefore I will not oppose it.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER (Mr. SESSIONS). The Senator from California.

Mrs. FEINSTEIN. I think the distinguished Senator from Arizona knows I greatly respect him, from working together on other issues. I think we work very well together.

I want to directly address something that he has said about the fairness of this split, particularly with respect to the size. I say to him, that isn't the issue. The issue is how the judges are split. I say to the Senator, this legislation splits the judges. The way in which it splits the judges is 15 judges for the ninth circuit, and 13 judges for the newly formed twelfth circuit. Now, the caseload means that the ninth circuit court judges have a 50 percent greater caseload per judge than do the twelfth circuit court judges.

The Senator and I discussed these kinds of issues a year or so ago. I hope you will recall when we were discussing this in the Judiciary Committee.

There is a letter dated July 18 of this year to Senator REID from Chief Judge Procter Hug. What Judge Hug points out is:

> Under the bill, the Ninth Circuit is to have 15 judges and the Twelfth Circuit is to have 13 judges. The Ninth Circuit would have a 50% greater caseload per judge than the Twelfth.

He goes on and shows the total for California, Nevada, Guam, Northern Marianas, with a total caseload of 5,448.

> With 15 judges, the caseload per judge—363 cases, then the caseload for Alaska, 204; Arizona, 891; Hawaii, 204; Idaho, 141; Montana, 175; Oregon, 626; Washington, 871, with a total of 3,112.
>
> With 13 judges, the caseload per judge—239 cases. That is one of my big objections. One thing I would just bet my life on is, as a product of a study, there will be a fairer distribution of judges.

Mr. KYL. Will the Senator yield?

Mrs. FEINSTEIN. If it is on your time, I would be happy to yield.

Mr. KYL. That would be up to Senator GREGG. I am going to agree with you, so perhaps——

Mr. GREGG. I have no problem with that. This colloquy can be on our time.

Mr. KYL. I want to say, we discussed the allocation of judges before. The Senator is exactly correct. I totally agree with you there should be a fair allocation, meaning that it should be in rough proportion to the caseload, and the projected caseload, not just the existing caseload. Therefore, if that means that there should be a different division of the judges vis-a-vis the States in the new circuit, I would not only have no objection to that, but I would join the Senator from California in assuring that that is the case.

This was not my proposal, as the Senator from California knows. But I would suspect that the proponents of this amendment would be very happy to ensure that that distribution of judges is made a part of the legislation. At least, I would work with the Senator from California to assure that that would be the case.

Mrs. FEINSTEIN. I very much appreciate that, and I take you at your word. However, what this legislation does will be the law if it is accepted by the House.

Mr. MURKOWSKI. Could I ask my friend from California a question?

Mrs. FEINSTEIN. Of course.

Mr. GREGG. At this time I would have to reclaim my time because we do have some additional speakers. So any additional colloquy should come off the time of the Senator from California.

Mrs. FEINSTEIN. If I may just make my quick statement here.

On four occasions, the Federal judges of the ninth circuit and the practicing lawyers of the Ninth Circuit Judicial Conference have voted in opposition to splitting the circuits. The official bar organization of Arizona—as recently as July 14, a few days ago—and the bars of California, Hawaii, Idaho, Montana, and Nevada, and the National Federal Bar Association, all have taken positions against the circuit division. No State bar organization to this day has taken a position in favor of circuit division, let alone this division.

Now, let me try to begin to summarize here.

I believe strongly—and I think the other side knows I do not throw these comments around loosely—that this is really being done for the wrong reasons and in the wrong way. I think some people did not like some of the decisions, specifically in mining and grazing. For some it is being done because they think they will get more judges for their State. I have had Senators tell me that directly. For some, a new courthouse is attractive.

The point is, the House of Representatives has passed the very bill, the amendment of which I am carrying here in the Senate. This proposal, notwithstanding anything anyone has said, as a member of the Judiciary Committee for the last 4½ years—there has never, Mr. President, in the time you've been there, there has never been a hearing on this split. There has never been a discussion of the ramifications of this split on legal precedent or forum shopping. There has never been input from the judicial council, from the judges, from the bar associations on this split. That is fact, Mr. President. That is fact.

Yet, an appropriations committee has stolen the jurisdiction of the Judiciary Committee and moved ahead and proposed a split a few weeks ago—2 days later they had a split which split California in half—the next day that was gone and there was the split we are faced with today. That is why I say it is a gerrymander.

If this were a map before a court on an electoral district with Arizona floating out here alone, they would say, aha, it is a gerrymander. Yet it can be done by a committee that does not even have authorizing oversight jurisdiction, and, bingo, it is before the full body. I really have a problem with that. I do not think that is right.

I happen to agree with my chairman, California is going to have 50 million people by the year 2025. We should take a look at whether or not the interests of justice would be carried out by splitting the largest circuit in the Union. I do not have a problem with that.

What I do have a problem with is worrying, aha, is this being done because Montana does not like a mining decision? Is it being done because Washington does not like a timber decision? Is it being done because someone else doesn't like another decision? Is it being done because a state wants an additional judge?

I mean, this is a very real and pertinent consideration because never before in the history of the Union has a

circuit been split in this manner. So it is indeed very, very important.

No consideration of costs. I pointed out the Pasadena and San Francisco courthouses; $140 million has just been spent on them. My goodness, I can see the spot done now on television. ''They spend all this money.'' I believe there is no way you can build new courthouses, and staff them with duplicate positions, and not have it cost at least $100 million in 1997 dollars. And do you know what? This goes into place, Mr. President, in October of this year.

This is almost the end of July, and then there's August, September, and October 1 this goes into effect. No hearing; no study; no talk; no what do you think, bar of Arizona; what do you think, bar of Nevada; what do you think, bar of Alaska; or what do you think, bar of Idaho? It doesn't meet the smell test. That is the problem for me.

Now, let me talk——

Mr. MURKOWSKI. Will the Senator yield for a question?

Mrs. FEINSTEIN. If I may finish my thought, the point has been made—and the distinguished Senator from Alaska made this point very well—that 28 out of 29 cases of this session were reversed by the United States Supreme Court. Bingo, it is a terrible circuit. Well, let me say that that is only 28 cases out of over 4,480 cases. It is the largest circuit. That is a very small percentage of the cases it successfully adjudicated.

Let me just go back to Judge Hug's letter because I believe there is something important here. The caseload per judge in the ninth circuit would be 124 cases per judge higher than the twelfth circuit, or 52 percent greater, as I have said, than the twelfth.

Then he raises this:

The provision in the bill for coequal clerks in the twelfth Circuit is completely unworkable. How can it be efficiently administered in this way? Is the administration of the circuit to be done in two separate, coequal headquarters? Where would the circuit executive be located?

These are all questions that need to be answered. This thing would go into effect on October 1. No question is answered.

Then Judge Hug says in his letter:

Consider the travel time and expense of the judges. Presumably, the judges from Alaska and Montana will need to travel half of the time to Phoenix, and the Arizona judges will need to travel half the time to Seattle. Presently, the circuit headquarters in San Francisco is equal distance, and the air routes convenient. This would not be the case in the new twelfth circuit. I don't know whether that's good or bad. My point is that it ought to be looked at. If we had been able to move ahead, and the House and the Senate agreed on the study, it would have been done by now. The study would have been done by now. It is a year and a half ago. It would have been done by now. Instead, we are faced with another arbitrary proposal for a split. We are rushing it through. It is an arbitrary split. No one has looked at costs, or at fair distribution of judges; no one has heard from a judge or from a bar association on this split; and no members of any of the bars of any of the States have indicated their support for this—none, zero, zilch, none. October 1, it goes into play. It does not make sense.

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

The PRESIDING OFFICER. The Senator has 11 minutes.

Mrs. FEINSTEIN. I yield the floor and reserve the balance of my time.

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

The PRESIDING OFFICER. Who yields time to the Senator?

Mr. MURKOWSKI. I ask for 1 minute.

Mr. GREGG. Mr. President, I yield the Senator from Alaska a minute.

Mr. MURKOWSKI. I believe the Senator from California indicated, Mr. President, that new California judges would have a 50 percent increase in caseload, and the Senator from California indicated that would not be enough judges. I wonder if she meant to say that, in the new ninth circuit, there would be 63 percent new cases and 53 percent judges, and in the twelfth circuit, there would be 37 percent new cases and 42 percent judges, which are the figures that we have from the committee, which hardly reflect a 50 percent increase in the caseload.

Mrs. FEINSTEIN. Mr. President, I would be happy to respond. I am reading from a letter dated July 18, signed by Procter Hug, Chief Judge, U.S. Court of Appeals for the Ninth Circuit. What he points out is—he is using what I believe is current caseload. I would be happy to share this with the Senator. I read this accurately:

The total caseload filings in California, Nevada, Guam and the Northern Marianas would be 5,448. The filings in Alaska, Arizona, Hawaii, Idaho, Montana, Oregon, and Washington would be 3,012.

The point is, with 13 judges, the twelfth circuit would have 239 cases per judge. The ninth circuit would have 363 cases per judge. That is an unfair allocation of cases per judge.

Mr. MURKOWSKI. I will not further comment, other than to point out that I don't think it is a fair statement to suggest that California judges would have a 50 percent increase in caseload, because that is not reflected.

Mrs. FEINSTEIN. The Senator misunderstood me. If I might respectfully get this straight——

Mr. MURKOWSKI. I have no further questions.

Mrs. FEINSTEIN. Mr. President, I will reclaim a moment of my time to say this. Let me quote the chief judge:

The ninth circuit would have a 50 percent greater caseload per judge than the twelfth circuit.

That letter is here. Anyone can see it.

I yield the floor and reserve the remainder of my time.

Mr. GREGG. Could the Chair advise us of the time status?

The PRESIDING OFFICER. The Senator from New Hampshire has 14 minutes and 48 seconds.

Mr. GREGG. And the Senator from California?

The PRESIDING OFFICER. She has 9 minutes 2 seconds.

Mr. GREGG. I yield to the Senator from Alaska, the chairman of the committee, 9 minutes.

Mr. STEVENS. Mr. President, I shall not use that much time. I do appreciate the courtesy of the manager of the bill.

Mr. President, we have studied this matter to death. The issue, in 1973, was recommended by Senator Hruska and the Hruska Commission was created. It recommended then, in 1973, that the ninth circuit court be split. Every Congress we hear the same thing from the large delegation in the House and the two Senators in the Senate from California: we need more study. I think that is what we are hearing again now—have another study.

It has only been 24 years now that we have been studying since the first commission reported. But, of course, we do need the advice of another commission.

Mr. President, I am a California lawyer. I was raised in California, and I am pleased to have that background. But I tell you, in all sincerity, I cannot believe that we can continue this situation. This chart—I am not sure it can be seen, Mr. President. This chart shows the population and caseload of the circuits. Clearly, the population is almost 50 million people in the ninth circuit, and it requires some change when, clearly, the average of all of the others is somewhere around 20 million people.

I want to address the concern spoken to, I think, by my good friend from Hawaii, Senator INOUYE. It has been 13 years now since a Hawaii resident was appointed to the ninth circuit. Fourteen judges have been seated on the circuit since that time, but Hawaii was never recognized. Senator INOUYE has included an amendment in this provision that guarantees that at least one judge will be appointed to the circuit court of appeals from the new circuit, when it is created, from each State. Now, I think the Senate should listen to that kind of frustration and should listen to the frustration of those who see how long it takes for a case to be decided by the Ninth Circuit Court of Appeals.

Mr. President, I said the other day that the Ninth Circuit Court of Appeals judges come to our State. They come during the summer, and they have a delightful time visiting our State. In the wintertime, all our people fly south and some of our lawyers like that. But the litigants don't like it because the average time that an appeal is pending before the ninth circuit is so long, it puts a great burden upon our States, the smaller States in this circuit.

Now, in 1995, the Senate Judiciary Committee report showed that New York accounted for approximately 87 percent of the second circuit docket; Texas cases were approximately 70 percent of the fifth circuit docket. We have considered splitting the ninth circuit before several times since I have been in the Senate. Mr. President, the overload of the ninth circuit is now such a serious problem, and it is only going to get worse if we continue to

talk about another commission to discuss whether this split should take place.

The appellate process, for almost one-fifth of the citizens of the United States, will continue to be inadequate. I believe we are doing California a favor by splitting this court. They are the only State that has one circuit all to itself, all to itself—well, Nevada could make the decision to join if they wish. But the establishment of tribunals is a responsibility of the Congress, not of a commission. It is one of our most important responsibilities under the Constitution. I believe the Senate will shirk its responsibility if we do not act to correct this problem of the ninth circuit, and I urge the Senate to do what this amendment would do: create a new twelfth circuit and allocate to it the States that are suffering greatly by the current crowded situation and long delays in the Ninth Circuit Court of Appeals.

I thank the Chair and yield back the balance of my time.

Mr. GREGG. Mr. President, does the Senator from California have any additional speakers?

Mrs. FEINSTEIN. I would like to know how much time I have remaining, if I might.

The PRESIDING OFFICER. Nine minutes.

Mrs. FEINSTEIN. I reserve the balance of my time.

Mr. GREGG. Does the Senator plan to close? We have one additional speaker. I will have that speaker go if the Senator is planning to close as the final speaker.

Mrs. FEINSTEIN. I will speak after the Senator from Washington.

Mr. GREGG. I yield the balance of our time to the Senator from Washington.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, the Senator from California makes a serious argument: we should not split the circuits because we will waste the $140 million investment in a courthouse in San Francisco, except that we can split the circuits if this so-called study commission says we should do so, and she would then have no objection.

Well, either the courthouse is an important consideration, or it is not an important consideration. Obviously, Mr. President, it is not an important consideration. I presume—I hope—that the Senator from California is not arguing that, even if there is a split, all of the staff and all of the people who are now in that courthouse in San Francisco would still be there and everything has to be added onto that. That is often a way in which the Federal bureaucracy operates. But there is no reason in the world for us to allow it to operate in that fashion under this set of circumstances.

This can be done efficiently and effectively. But that is the fundamental argument against this amendment and in favor of the bill as it stands. The ranking minority member of the Judiciary Committee said that this is the wrong way to act. The Senator from California says this is the wrong way to act because it is on an appropriations bill.

Yet, 2 years ago when a bill practically identical to this was reported by the Judiciary Committee, after full hearings and a full debate, they objected to it even being debated on the floor of the U.S. Senate. Now for the first time we have an opportunity to do so.

This Senator has favored this flip since the early 1980's. And this is the first time we have ever been able so much as to debate it on the floor of the U.S. Senate.

The arguments against the proposal for split are essentially procedural. ''Oh, no, we have not had enough hearings. We have not talked about it for a long enough time. There have not been enough study commissions.''

There have been hearings for decades. There has been a debate for decades. It simply cannot be argued in any kind of rationale manner that a circuit with this number of States, with 14 million square miles of land and water, with almost 50 million people growing more rapidly than any other part of the country, with 28 authorized judges at the present time, 10 more requested on top of that, can be a collegial body, a court that can understand the cases that come in front of it, a court in which the members can even learn the names of the other members of the court.

Of course a division is appropriate, and the division that is being discussed here today is the division, if there is to be one, that the Senators in opposition asked for.

We are criticized because the bill changed in form as it got in front of us. Well, California is not divided because the Senators from California ask that it not be divided. And we went along.

Nevada remains a part of the ninth circuit because the Senators from Nevada asked that that be the case as against the bill that was reported 2 years ago.

Hawaii and the trust territories are with the new twelfth circuit because, assuming a division, that is where they wanted to be.

Yes, there have been changes, but they have been changes requested by the very Senators who are here on the floor arguing against the result of their requests. Justice in these circuit courts will be done better in circuits that are roughly similar to the other circuits—all of the other circuits in the United States. Each of these circuits will still have more square miles than any other, except for, I believe it is the tenth in the Mountain States, and more when you include Alaska. The ninth circuit will still be the largest of any and all of them.

I don't believe this is going to be the last such division. But it is a division whose time came almost a quarter of a century ago. And that has been resisted by lawyers and judges who are comfortable with the present situation, with the wonderful travel opportunities they have, and rank that convenience ahead of the convenience of individuals seeking justice before those courts who can be served far better, far closer to home, with far more understanding, if this division becomes law, than if we simply say, ''Oh, let's wait. Let's have another study. And let's let that study come up with the same results we did before. And then we will have another excuse to oppose the division.''

That is what we got when we heard, on the one hand, ''Fine, let's have the study, and we will agree with it. But, no, we can't divide the circuit because we have a brandnew $140 million courthouse in San Francisco.''

No, Mr. President, it is time for the Senate of the United States to deal with this question as a matter of substance today. It is time to do justice. It is time to reject this amendment and pass this bill.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I believe I have 9 minutes remaining on my time. I would like to yield 7 of them to the distinguished Senator from Delaware, the former chairman of the Judiciary Committee.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Thank you very much.

Mr. President, this is not the right way to do this. Let me repeat that again. This is not the right way to do this. If the circuit were to be split, we should do it in a way we have done it in the past.

When some of my colleagues who have argued for the split in the past have come before the committee, they have said some of the following things. The argument is, ''Well, the reason we want a split is we don't want to have the court, basically a California-dominated court, making judgments for the folks in my State. We are different.''

And I point out to my colleagues who say that, you know, it is a funny thing about the circuit courts. Our Founding Fathers set the circuit courts up for a basic fundamental reason. They didn't want 50 different interpretations of the Federal Constitution. It is kind of strange. The whole purpose of the circuit court of appeals was to make sure there was a uniform view as to how to read the Constitution—not a Montana reading, not a Washington State reading, not a Nevada reading, not a Hawaii reading, and not an Alaska reading. Geography is relevant only in terms of convenience—not ideology.

This is all about ideology at its core. That is what this is about. That is what the attempt to split it is about.

There is no data to sustain that this should be done. Let the Judicial Conference make a judgment, make a recommendation to us. Let them decide as they have in the past.

I say to my friends from the South, before I got here, we split up what used to be a giant circuit from Texas to Florida. The Senator's home State was part of the Presiding Officer's home State, was part of this giant district of the circuit court, and it got split. We did it the right way. We got the facts. We heard from the Judicial Conference. We listened to the court.

This is about politics. It is no way to deal with the court. It isn't how to do this.

Let's look at what we have. We don't have any data on the operation of the circuit as it is presently configured. So, therefore, it seems to me, we should at least give some weight to those folks who are on the court, and those folks who are litigants argue before the court—the bar of those States.

With that in mind, let me point out that the Ninth Circuit Judicial Council, the governing body of all the courts in the ninth circuit, is unanimously opposed to this—Republican appointees to that court, Democratic appointees to that court, liberal appointees, conservative appointees, pointed-head appointees, flat-headed appointees. They are all opposed.

Let's look at the next thing that makes sense to look at—those who litigate before the court.

The California bar is opposed to this. The Arizona bar is opposed to this. The Hawaii State Bar Association is opposed to this. Big Sky Country Bar from Montana is opposed to this. The State of Nevada's bar is opposed to this, and the State of Idaho.

Mr. President, I would also point out that splitting the circuit, as proposed, will not guarantee that certain regional interests will be better represented. Keep in mind that is what this is really about—regional interests.

That is the part that bothers me about how we are going about this.

Look, I am from the third circuit way back East—Pennsylvania, Delaware. So I am not telling anybody in the other part of the country what their business is. But it offends me that we have argued at least—I have not been here for the debate—in the committee based upon regional bias. There is not a Western Federal Constitution. There is not an Eastern Federal Constitution. There is not a Southern Federal Constitution. There is one Constitution—one.

Another problem with this legislation that the court will face is the costs incurred. Dividing this circuit requires trading an infrastructure to support the new twelfth circuit. The Ninth Circuit Executive Office estimates that the initial startup cost for the establishment of the new twelfth circuit would amount to tens of millions of dollars. Operating costs of maintaining two circuits have been estimated to be more than $5 million per year.

Look, I think the Senator from California has been eminently reasonable throughout this whole process. By the way, if anybody wonders whether this is not about regionalism, which is the worst thing we could be talking about when we talk about the Federal Constitution, let me remind my colleagues of a point in fact.

No ninth circuit judge has been appointed to the court for a long time because those who, in fact, are suggesting that this should be split said, ''Unless it is split, we are not letting any judges go on the court.''

Think of that now, Mr. President. Isn't that nice?

''You won't split the court so we can have a regional division. We are not letting any folks get on the court. And then we are going to tell you that the court is overworked. Then we are going to tell you the court has a backlog. Then we are going to tell you the court has a problem.''

The reason, if it does, is because they have arbitrarily held up the appointments.

Republican judges from the circuit have come to my office—Democratic judges from the circuit, Reagan appointees, Bush appointees—and said, ''Can't you do something?'' I said, ''You are talking to the wrong guy. You are preaching to the choir. Go to the guys who are blocking these judges.''

So, Mr. President, you can make an argument that this court is overworked. You can make the argument that this distribution is but part of the argument. The reason is a self-fulfilling prophesy. You don't put judges on the circuit. You create a problem.

I can see my time is up. I thank my colleague for yielding.

This is a bad idea. It is not the right way to go about it.

Mrs. FEINSTEIN addressed the Chair.

The PRESIDING OFFICER. The Senator from California.

Mrs. FEINSTEIN. Mr. President, I thank the Senator from Delaware for his excellent comment. I agree with him 100 percent. This is the wrong way for the wrong reason. The reasons are regional. The reasons are, if we do not like the decision, we don't appoint the judges.

One-third of the ninth circuit today is vacant. I repeat, one-third of the judgeships on the ninth circuit today are vacant. And I do not believe that there is a plan to appoint another judge to the ninth circuit until we bow to this. What we are bowing to is something that has never been heard, never been studied in the 4½ years that I have been on the Judiciary Committee of the Senate.

Mr. President, I ask unanimous consent to include in the RECORD a July 14, 1997 statement of the Arizona bar in opposition to this split, a statement of the California bar in objection to this, a recent letter from the Governor of the State of California in objection to this, a July 22 letter from the chairman of the House Judiciary Committee in objection to this, a letter from the chief judge of the ninth circuit in objection to this, and the chief judge's letter on the unfair allocation of judges. I also have in my files letters objecting to the earlier proposals to split the circuit. These include letters of objection from the State Bar of Nevada, the State Bar of Montana, the State Bar of Hawaii, the Los Angeles County Bar, lawyers' representatives of the ninth circuit, and the Judicial Council.

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

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
*Washington, DC, July 22, 1997.*

Hon. ORRIN G. HATCH,
*Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.*

DEAR ORRIN: I understand that this week the Senate is expected to consider S. 1022, the Commerce-Justice-State-Judiciary appropriations bill. Included in the bill is a major piece of substantive legislation, the ''Ninth Circuit Court of Appeals Reorganization Act of 1997.'' This provision of the bill (section 305) would amend Title 28 of the United States Code by dividing the existing Ninth Circuit into two new circuits. As you well know, altering the structure of the Federal judicial system is a serious matter. It is something that Congress does rarely, and only after careful consideration.

It is anticipated that an amendment will be offered to replace the circuit division rider with legislation to create a commission to study the courts of appeals and report recommendations on possible change. This legislation, H.R. 908, has already passed the House unanimously on a voice vote on June 3, 1997. A similar bill, S. 956, was passed unanimously by the Senate in the 104th Congress. This is a far superior way of dealing with the problems of caseload growth in the Ninth Circuit and other courts of appeals. I urge your support for the amendment.

Sincerely,

HENRY J. HYDE,
*Chairman.*

---

STATE CAPITOL,
*Sacramento, CA, July 11, 1997.*

Hon. ORRIN G. HATCH,
*Chairman, Committee on the Judiciary,*
*U.S. Senate, Washington, DC.*

DEAR ORRIN: I have been closely following the renewed interest in Congress over proposals to split the Ninth Circuit. I understand that a new proposal, under consideration by the Appropriations Committee, would split the Ninth Circuit and divide California in half between the resulting circuits. I am writing to register my strong opposition to the passage of any such measure prior to such time that an objective study is commissioned and issued addressing the many, serious ramifications of such a split.

As you may know, I have been on record in opposition to previous proposals to split the Ninth Circuit on the grounds that they were a form of judicial gerrymandering which sought to cordon off some judges and keep others.

However, the present proposal to split California between two circuits would not only amount to judicial gerrymandering but would invite forum shopping of the rankest kind. California would face the unprecedented prospect of a ''circuit split'' on a question of law within the same state, which would invite lawyers to ''forum shop'' between the two resulting halves of California on the basis of which law is more favorable to their position. This would be particularly frustrating for State government, where

legal challenges to its actions may generally be brought in any venue within the State.

While a split of the Ninth Circuit would generate a number of inconsistent rulings along the West Coast in areas such as commercial law, environmental law (including standing to sue), and admiralty law, a split of California would exacerbate this inconsistency by subjecting Northern California's cities, like San Francisco, to different controlling law than Southern California's cities, like Los Angeles.

Nor would the spectacle of forum shopping between circuits within California be alleviated by a mechanism similar to that proposed in a 1993 House bill (H.R. 3654), which suggested the creation of an ''Intercircuit California En Banc Court.'' As proposed in that bill, the Intercircuit California Court would permit en banc review by judges of different circuits ''whose official duty stations are in the State of California.'' Such an intercircuit en banc panel would necessarily differ from the composition of the en banc panels for each of the participating circuits. This, of course, raises the specter of greater inconsistencies among the circuits arising from overlapping en banc panels. As the proposal would permit the Intercircuit Court to resolve only intercircuit conflicts of federal law, conflicting interpretations of California substantive law arising in diversity cases would presumably remain unresolved. Of course, these additional circuits would impose additional burdens on the U.S. Supreme Court.

Admittedly, the Ninth Circuit handles more cases than any other circuit. However, statistics refute any objection that the Circuit is ''too big.'' The median time for it to decide appeals (14.3 months as of September 30, 1995) is less than that for the Eleventh Circuit (15.1 months), and only slightly higher than that for the Sixth, Seventh and District of Columbia Circuits.

The real issue underlying this debate appears to be one of judicial gerrymandering, which seeks to cordon off some judges in one circuit while keeping others in another because of concerns, whether perceived or real, over particular judges' perspectives or judicial philosophy. If this is the issue, I submit that the proper means to address it is through the appointment of judges who share our judicial philosophy that judges should not make policy judgments, but should interpret the law based on the purposes of the statute as expressed in its language, and who respect the role of the states in our federal system.

I urge you to discourage your colleagues from approving any proposed split of the Ninth Circuit, and particularly one that splits California, until such time as a study is issued that carefully examines the implications of this significant issue. I would be pleased to contribute one or more representatives to assist with such a study.

Sincerely,

PETE WILSON,
*Governor.*

---

THE STATE BAR
OF CALIFORNIA,
*San Francisco, CA, July 14, 1997.*

Re State Bar of California Support for Commission to Study the Federal Courts of Appeals and Opposition to Splitting the Ninth Circuit Court of Appeals.

Hon. DIANNE FEINSTEIN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: The Board of Governors of the State Bar of California strongly opposes the recent proposals to split the Ninth Circuit Court of Appeals. We support the establishment of a non-partisan commission to study the structure and alignment of the federal courts of appeals. A bill to establish such a commission, H.R. 908, unanimously passed the House in June. It has been 24 years since the last major study of the structure and alignment of the federal courts of appeals was conducted. No proposal to restructure the Ninth Circuit should be considered prior to the completion of a thorough study.

Some have argued that the size of the caseload of the Ninth Circuit argues for its division; however, caseload growth is an issue common to courts of appeals nationwide. Splitting the Ninth Circuit, ostensibly because of its caseload, before considering how to respond to growing caseloads nationwide, will complicate rather than advance solutions to caseload growth. Furthermore, repeated division of circuits in response to growth is likely to create a proliferation of balkanized circuits.

We have heard that various proposals to split the Ninth Circuit may be made in the Senate Appropriations Committee, for example, to include California and Nevada in one circuit and to join other states in the Continental United States in another circuit, including non-contiguous Arizona; or to place California in a single circuit with the island territories, with all other states presently in the Ninth Circuit in a separate circuit. The variety of proposals indicates that there is no consensus, even among proponents, as to how any split should be achieved.

We are strongly opposed to all of these proposals to split the Ninth Circuit. They represent a form of judicial gerrymandering and are not based upon any study of the Ninth Circuit or of the overall needs of the federal courts of appeals. They violate the established principles that federal judicial circuits encompass three or more states and be designed to transcend parochial interests. These proposals are likely to increase the problems of the federal courts of appeals and make these problems more costly and difficult to fix. The multiplicity of proposals that have been made, without study, simply emphasize the need for a thorough study of the federal appellate courts as a whole.

For these reasons, we believe that any proposal to split the Ninth Circuit, or to realign any other circuit, needs to be informed by a non-partisan study of the structure and alignment of the federal courts of appeal.

I have written a similar letter to Senator Boxer, who is a member of the Senate Appropriations Committee.

Sincerely,

THOMAS G. STOLPMAN,
*President.*

---

STATE BAR OF ARIZONA,
*Phoenix, AZ, July 14, 1997.*

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

DEAR SENATOR HATCH: This letter is simply to confirm that the State Bar of Arizona has repeatedly opposed any division of the Ninth Circuit Court of Appeals, and supports the House's proposal for a study commission.

Sincerely,

DON BIVENS,
*President-Elect.*

---

UNITED STATES COURTS,
FOR THE NINTH CIRCUIT,
*Reno, NV, July 23, 1997.*

Hon. DIANNE FEINSTEIN,
*U.S. Senator,*
*Washington, DC.*

DEAR SENATOR FEINSTEIN: This afternoon we had a meeting of the active and senior judges of the Ninth Circuit Court of Appeals, for the sole purpose of discussing the current efforts underway by the Senate Appropriations Committee to split the Ninth Circuit. After a thorough discussion, the judges voted overwhelmingly to support the creation of a study commission to study the structure of the circuits.

Altering the structure of the federal judiciary system is an extremely serious matter, something that should be done rarely and only after careful, serious study and consideration.

We strongly urge the members of the Senate to support the creation of a commission to conduct a thoughtful, thorough and complete study of the matter.

Our court asked me to convey to you our appreciation for your continued leadership in this matter.

Yours sincerely,

PROCTER HUG, Jr.,
*Chief Judge.*

---

UNITED STATES COURTS
FOR THE NINTH CIRCUIT,
*Reno, NV, July 18, 1997.*

Hon. HARRY M. REID,
*U.S. Senator,*
*Washington, DC.*

DEAR HARRY: After reviewing this matter yet again, I have some possible arguments for the floor of the Senate, giving examples of why this is a hasty and ill-considered bill and why a Commission should study such an important issue.

1. Under the bill, the Ninth Circuit is to have fifteen judges and the Twelfth Circuit is to have thirteen judges. The Ninth Circuit would have a 50% greater caseload per judge than the Twelfth Circuit.

States:

| | *Filings* |
|---|---|
| California | 4,840 |
| Nevada | 500 |
| Guam | 87 |
| Northern Marianas | 21 |
| Total | 5,448 |
| With 15 judges, the caseload per judge | 363 |
| Alaska | 204 |
| Arizona | 891 |
| Hawaii | 204 |
| Idaho | 141 |
| Montana | 175 |
| Oregon | 626 |
| Washington | 871 |
| Total | 3,112 |
| With 13 judges, the caseload per judge | 239 |

The caseload per judge in the Ninth Circuit would be 124 cases per judge higher than the Twelfth Circuit, or 52% greater than the Twelfth.

2. The provision in the bill for co-equal clerks in the Twelfth Circuit is completely unworkable. How can it be efficiently administered in this way? Is the administration of the circuit to be done in two separate co-equal headquarters? Where would the Circuit Executive be located?

3. Consider the travel time and expense of the judges. Presumably, the judges from Alaska and Montana will half the time travel to Phoenix, and the Arizona judges will half the time travel to Seattle. Presently, the circuit headquarters in San Francisco is equidistant and air routes convenient. This would not be the case in the new Twelfth Circuit.

Harry, I suggest these arguments be saved for the floor to avoid changes or arguments prepared to meet them.

Yours Sincerely,

PROCTER HUG, JR.,
*Chief Judge.*

---

STATEMENT OF ADMINISTRATION POLICY
THE JUDICIARY: NINTH CIRCUIT

The Administration opposes the provision in the Committee bill that would reorganize

the Ninth Circuit by splitting it into two separate circuits. We understand that other substantive amendments to divide the Ninth Circuit may be offered on the Senate Floor. The Administration strongly objects to using the appropriations process to legislate on this important matter. The division of the Ninth Circuit is an important issue not just for the bench and the bar of the affected region, but also for the citizens of the Ninth Circuit. The Administration believes that a much better approach would be passage of legislation, H.R. 908—already passed by the House and currently pending at the desk in the Senate—that would create a bipartisan commission to study this difficult and complex question and make recommendations to the Congress within a date certain. This would allow for substantive resolution of the issue in a deliberative manner, allowing all affected parties to voice their views.

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

Mrs. FEINSTEIN. I thank the Chair. I yield the floor.

Mr. GREGG. Mr. President, I have a couple of minutes left.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. Before getting to a vote on this issue, just let me make this point.

Were this a judicial proceeding, there is something called judicial notice. That is like water runs downhill and the Sun comes up in the East. I think the Court would take judicial notice of the fact the ninth circuit does not work; it is too big; it has too many people for one circuit to manage; it has too many judges to work effectively; it has too large a geographic region. This is an attempt to address that issue. It is a very important issue to address. It is an affordable issue to address. I hope my colleagues will vote down this amendment.

Have the yeas and nays been asked for on this amendment?

The PRESIDING OFFICER. They have not.

Mr. GREGG. Does the Senator from California wish to ask for the yeas and nays?

Mrs. FEINSTEIN. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The yeas and nays have been ordered. The clerk will call the roll.

The result was announced—yeas 45, nays 55, as follows:

[Rollcall Vote No. 204 Leg.]

YEAS—45

| | | |
|---|---|---|
| Akaka | Durbin | Landrieu |
| Baucus | Feingold | Lautenberg |
| Biden | Feinstein | Leahy |
| Bingaman | Ford | Levin |
| Boxer | Glenn | Lieberman |
| Breaux | Graham | Mikulski |
| Bryan | Harkin | Moseley-Braun |
| Bumpers | Hollings | Moynihan |
| Byrd | Inouye | Murray |
| Cleland | Johnson | Reed |
| Conrad | Kennedy | Reid |
| Daschle | Kerrey | |
| Dodd | Kerry | |
| Dorgan | Kohl | |
| Robb | Sarbanes | Wellstone |
| Rockefeller | Torricelli | Wyden |

NAYS—55

| | | |
|---|---|---|
| Abraham | Frist | McConnell |
| Allard | Gorton | Murkowski |
| Ashcroft | Gramm | Nickles |
| Bennett | Grams | Roberts |
| Bond | Grassley | Roth |
| Brownback | Gregg | Santorum |
| Burns | Hagel | Sessions |
| Campbell | Hatch | Shelby |
| Chafee | Helms | Smith (NH) |
| Coats | Hutchinson | Smith (OR) |
| Cochran | Hutchison | Snowe |
| Collins | Inhofe | Specter |
| Coverdell | Jeffords | Stevens |
| Craig | Kempthorne | Thomas |
| D'Amato | Kyl | Thompson |
| DeWine | Lott | Thurmond |
| Domenici | Lugar | Warner |
| Enzi | Mack | |
| Faircloth | McCain | |

The amendment (No. 986) was rejected.

The PRESIDING OFFICER (Mr. HAGEL). The Senator from New Hampshire.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. BURNS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. SARBANES. Mr. President, is it in order to send an amendment to the desk at this point?

The PRESIDING OFFICER. Is there objection to laying aside amendment 979? Without objection, it is so ordered.

AMENDMENT NO. 989

(Purpose: To Strike the Provisions Dealing With the Withdrawal of the United States From Certain International Organizations)

Mr. SARBANES. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Maryland [Mr. SARBANES], proposes an amendment numbered 989.

On page 124, beginning on line 5, strike all through page 125, line 2.

Mr. SARBANES. Mr. President, could we have order in the Senate?

The PRESIDING OFFICER. The Senate will be in order. The Senator from Maryland.

Mr. SARBANES. Mr. President, I want to direct my colleagues' attention to section 408 of this bill, on pages 124 and 125. I am absolutely stunned to find this language in this legislation, because it provides for our withdrawal from the United Nations.

What it says, if I understand it correctly, is that if the appropriation does not come up to the level of the U.N. assessment, then the United States shall withdraw from an international organization, but I assume it is primarily directed at the U.N.

Let me just read a couple of paragraphs to my colleagues.

The United States shall withdraw from an international organization under this section in accordance with the procedures identified for withdrawal in the treaty, pact, agreement, charter, or other instrument of that organization which establishes such procedures.

Unless otherwise provided for in the instrument concerned, a withdrawal under this section shall be completed by the end of the fiscal year in which the withdrawal is required.

This is a small section located in the latter part of this legislation. As you read through this bill, all of a sudden, you come across the provision. If we are going to withdraw from the U.N., we ought to have a full-scale debate. This is not a minor decision. There are some people in the country who would like to do that, but if we are going to undertake to do so we ought to have a full scale debate.

What this section says as it starts off is:

Notwithstanding any other provision of law, the United States shall withdraw from an international organization if the President determines that the amount appropriated or otherwise available for a fiscal year . . . is less than the actual amount of such contributions. . . .

In other words, the assessments. So, if we do not appropriate the full assessment, as I understand this section, the President has to begin withdrawal procedures.

There are many years when we have not met the assessment. In fact, we continue to run arrearages. We just passed legislation here that had certain conditions for paying our U.N. dues, that withheld certain amounts, required certifications, and so forth and so on.

I don't know where this provision came from but it is a backdoor way of compelling our withdrawal from the United Nations.

The amendment that was sent to the desk would strike this section from the bill. I urge my colleagues to support the amendment. We should not be talking about withdrawal from international organizations. We are the world's leading power. We essentially use these international organizations to serve our interests. Now we come to this section, which is sort of hidden away. The upshot of it would be to, in effect, lead us to begin withdrawal procedures from the United Nations.

I don't think we even ought to have any references to withdrawal. Certainly the way this provision is written, the bill is going to force us out of the U.N.

I hope the committee, upon reflection, would agree to drop the section from the bill.

Mr. HATCH. Will my colleague yield for a second?

Mr. SARBANES. Certainly.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. He is just yielding to me. But I absolutely agree with you. I absolutely agree with you. Let me tell you, during this last cold war time, I had a lot to do with the ILO when I was chairman of the Labor Committee and ranking member there, and ever since, when our tripartite organization—Government, labor and business—saved this country and countries all around this world from the tyranny of totalitarianism, right at the ILO.

I can remember one trip I made over there because Irving Brown called me. He was the head of our delegation. He was the International Vice President of the AFL–CIO, and in my opinion the strongest anti-Communist in the world at the time. He stopped the Communists from taking over the French docks. He went into Paris before the end of the Second World War—one of the most heroic figures I ever met in my life. And he led our delegation with the full support of labor, business, and Government, year after year. He died here a few years ago. I went to his memorial service here.

But I know what the ILO has meant to this country and what it has meant to free trade unionism around the world and what it has meant to freedom.

I have to tell you, if we have this provision continue in this bill, since all three of these organizations, the WHO, the ILO, and the agricultural organization, we are behind in payments to them, it would mean it would have to come down to choosing one of them that they would delete. I can tell you right now, the one, probably the weakest that would be deleted, would be the ILO. I have to tell you, that preserves free trade unionism around the world, it protects freedom around the world, and, I have to tell you, quells disruptions and problems all over the world. It helps us all over the world to spread democracy.

I don't want to see that happen, and I think the distinguished Senator from Maryland has brought up a very, very good point here. I call my colleagues' attention to it. I am grateful he has yielded to me for these few remarks. I hope they have been helpful to my colleagues on both sides, but I have been there, I know how important this is. I believe this is not the thing to do, to have that particular language left in there as it is. So I support my colleague from Maryland.

Mr. BIDEN. Will the Senator from Maryland yield for a brief comment?

Mr. President, this is the second time we have addressed this issue in the last several weeks. A similar provision was in the State Department authorization bill that we dealt with. We raised the issue then, and the Senator moved to strike a similar provision, a withdrawal provision. It was accepted by a voice vote. This bill went on to pass the Senate 90 to 5, I believe.

I am surprised this issue has surfaced again. Not only does section 408 depart from the State Department authorization bill, but it is bad policy; it is just simply bad policy.

I hope my friends, the managers of this bill, will consider the fact that we have been through this once already and maybe allow us just to have a voice vote and move on. We have enough to fight over in this bill.

I have much more to say on this, but, as the old joke goes, everybody has already said it, so I am not going to repeat it. The Senator from Maryland is absolutely right; it is a repeat of what we did.

I thank the Senator for yielding to me, and I yield the floor.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

Mr. GREGG. I object.

The PRESIDING OFFICER. Objection is heard. The clerk will continue calling the roll.

The legislative clerk continued to call the roll.

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

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

Mr. LOTT. Mr. President, I seek recognition so we can announce there will be no further rollcall votes tonight. There will be at least one vote tomorrow. And I believe that we can say there will be one vote tomorrow. It will be an important vote. We expect that that vote will be either on the tuna-dolphin issue or, more than likely, under the agreement we are going to propound, it would be on the global warming issue.

So there would be a vote tomorrow. A time would have to yet be determined exactly what time that would be, but probably not before 10 o'clock in the morning. And then we hope to work out some understandings with regard to State, Justice, Commerce. And then we would probably not have final votes on that until next Tuesday, I believe it would be.

So that is the point I wanted to announce. There will be at least one vote tomorrow, and no further rollcall votes tonight. We will make an announcement with regard to Monday later on, in a few minutes, or tomorrow, about the situation on Monday.

Mr. MCCAIN. Is the leader's intention, if there is no agreement on tuna-dolphin, that there will be a cloture vote tomorrow morning on tuna-dolphin that he had previously anticipated?

Mr. LOTT. Unless there is an agreement, there will be a cloture vote on tuna-dolphin, but we are working on an agreement where it may not be in the morning. But we will have one in short order. We are trying to work through all the different players and make sure everybody has been consulted. That is why we are not asking for the UC right now.

I think I should go ahead and say to the chairman of the Appropriations Committee, it would be our intent, because of requests of a number of Senators, and because of the cooperation we have received, that we would not have any recorded votes on Monday. But we are trying to also clear an agreement that the Democratic leader indicated he would like to approve with us to take up the Transportation appropriations bill some time during the day on Monday, but it would not lead to recorded votes. The next recorded vote would be tomorrow, and then Tuesday morning and Wednesday morning under the agreements we are working. But we have not cleared them with everybody at this point.

With that, at this time, Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. KERRY. Mr. President, I ask unanimous consent to proceed as in morning business.

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

(The remarks of Mr. KERRY pertaining to the introduction of S. 1067 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

Ms. COLLINS. Mr. President, I ask unanimous consent that the pending amendment be set aside so that I can engage in a brief colloquy with the chairman of the subcommittee.

The PRESIDING OFFICER (Mr. BROWNBACK). Is there objection?

Mr. SARBANES. Reserving the right to object, I don't think it is necessary to set the amendment aside in order to have a colloquy.

The PRESIDING OFFICER. The Senator is correct. It is not necessary.

Ms. COLLINS. I stand corrected.

Mr. SARBANES. Mr. President, I object to the request, but it doesn't preclude the distinguished Senator from having her colloquy.

The PRESIDING OFFICER. The objection is heard. The Senator from Maine is recognized.

Ms. COLLINS. Mr. President, I ask unanimous consent to be recognized for such time as I may consume for a brief colloquy.

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

NWS REORGANIZATION

Ms. COLLINS. Mr. President, I rise today to engage in a colloquy with the distinguished chairman of the subcommittee, Senator GREGG, regarding the National Weather Service's ongoing top-to-bottom review of its operations and structure.

I am taking this opportunity today to express my hope and belief that this review process will conclude that the Weather Service Office in Caribou, ME, should be fully upgraded to a Weather Forecasting Office. I just want to comment very briefly, Mr. President, on a few of the reasons why the Caribou Weather Service Office should be upgraded.

In general, it is the Weather Service's policy that weather forecasting

offices should cover roughly 17,000 square miles. Right now, the Weather Forecasting Office in Gray, ME—which is more than 230 miles from Caribou—is attempting to provide services for roughly 63,000 square miles, an area more than three times larger than the norm. Given the huge area involved, it is extremely difficult for the small staff of a Weather Service Office to provide the services necessary to ensure public safety.

For example, the Weather Service Office currently has only one electrical technician who must service equipment in Frenchville, Caribou, Houlton, and as far south as Millinocket, in Penobscot County. This is an enormous workload for just one employee, particularly in light of the possibility that repairs may be needed at the same time at different locations far away from each other.

Accurate and timely weather reports are essential to Aroostook County, the largest county in Maine, for two reasons: one involving public safety, the other an economic concern.

Mr. President, northern Maine experiences more than its fair share of severe weather, including blizzards in the winter months. Many of my colleagues have probably heard weather reports in which my hometown of Caribou has recorded the lowest temperature in the Continental United States. Accurate and timely weather reports are essential for public safety.

The second reason for upgrading the Weather Service Office centers on the nature of the economy in the county. Natural resource-based industries such as agriculture, logging, and tourism are the mainstay of the county's economy. Our potato farmers, for example, must have quality weather forecasts and reports in order to know best when to plant and harvest their crops.

For these public safety and economic reasons, I am convinced that upgrading the Weather Service Office in Caribou is a necessary action for the National Weather Service to undertake, and I hope that the Appropriations Committee will act favorably on upcoming funding requests.

Mr. President, I yield the floor so that my distinguished New England neighbor and colleague, Senator GREGG, may respond to my concerns.

Ms. SNOWE. Mr. President, I am pleased to join my colleague from Maine, Senator COLLINS, and the distinguished chairman of the subcommittee, Senator GREGG, today to discuss an issue of utmost importance to Aroostook County, the Caribou Weather Service Office.

The bill before us requires the National Weather Service [NWS] to consult with the subcommittee before making any reprogramming requests in relation to the top-to-bottom review that is currently underway. As part of their review, NWS will consider whether the Caribou Weather Service Office should be upgraded to a weather forecasting office.

Under the National Weather Service's modernization plan, a weather forecasting office will have Doppler radar. The Doppler radar would give Caribou the ability to forecast warnings for sudden and severe changing weather patterns so that the communities the weather station serves will be able to respond quickly. At the present time, the nearest Doppler radar is in Gray, ME, more than 200 miles away. This is too far away to be of immediate help to Aroostook County.

Aroostook County is one of the largest counties in the United States—the size of Connecticut and Rhode Island combined—and its economy is dominated by agriculture, trucking, and forest products industries, all of which rely heavily on timely and accurate weather information. The Caribou station provides vital information on a daily basis to northern Maine communities that must deal with a wide range of weather patterns from bitter cold and snow to severe thunderstorms and flooding. An upgrade from a weather service office to a weather forecasting office would improve the weather forecasting abilities of the Caribou station, thereby improving the ability of the affected towns to react to sudden and severe weather changes.

Once the NWS has completed its review, I look forward to working with Chairman GREGG and the subcommittee to ensure that the recommended changes are funded in an expeditious manner.

Mr. GREGG. Mr. President, I appreciate the Senator from Maine raising this very significant issue to the folks of Northeastern Maine. Those of us who have been to Caribou understand that it is the coldest place in America, consistently, and recognize that the issue of weather and predictability of weather is very important. Also, I know how important upgrading the Caribou Weather Service Office into a Weather Forecasting Office is for the people of Aroostook County. It is a major issue, and I can understand how strongly my friend and colleague from Maine feels about this matter.

The Senator from Maine, Senator COLLINS, has made a very persuasive case for why the Weather Service Office in Caribou, ME, should be upgraded into a Weather Forecasting Office. We must always work to ensure public safety, and given the enormous land area, a Weather Forecasting Office would be a tremendous benefit for the people of northern Maine.

You have my assurance, Senator COLLINS, that when the subcommittee receives the National Weather Service report and recommendations on a reorganization plan, the subcommittee will work closely with you regarding the Caribou, ME, Weather Service Office.

Ms. COLLINS. I thank the Senator very much for his assistance.

Mr. REED addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

SLAMMING

Mr. REED. Mr. President, I would like to take a moment to discuss a sense-of-the-Senate resolution which is included, I believe, in the managers' amendment, with the concurrence of the Senator from New Hampshire and the Senator from South Carolina.

The thrust of my amendment is to confront an issue which is growing—the issue of slamming—where individuals who have signed up for long distance telephone service have their service changed illegally. This is a growing problem, a problem that we must confront. It is a problem that—in fact, as I considered it, I also contemplated the construction of an amendment to this appropriations bill that would have dealt with the problem by mandating better proof that a customer has actually changed service, including criminal penalties for slamming, and other deterrences.

As I spoke with my colleagues and law enforcement officials, I came to realize, through many different viewpoints, that an amendment at this time would delay the appropriations process. So rather than introducing an amendment, I have proposed a sense-of-the-Senate resolution which, again, I believe has been accepted and will be maintained within the managers' agreement.

Before going forward, I commend and thank the chairman, Senator GREGG, and the ranking member, Mr. HOLLINGS, and also Chairman MCCAIN and Chairman BURNS for their generous assistance in this endeavor.

Mr. HOLLINGS. Mr. President, if the distinguished Senator will yield. The Senator from Rhode Island has done a valuable service to the Senate in bringing this to our attention. The FCC has just promulgated a rule relative to slamming just this past week. This sense-of-the-Senate resolution is consistent with it, in the sense that it would require the mandating of the evidence itself, civil fines, and a civil right of action. I think it really emphasizes the concern that all of us have had in the communications field of this particular malpractice. I hope we can help, with this sense-of-the-Senate resolution, emphasize the need to expedite the rulemaking on the part of the FCC. I thank the distinguished Senator from Rhode Island and I join in his resolution.

Mr. REED. Mr. President, I yield to the Senator from New Hampshire, without losing my right to the floor.

Mr. GREGG. Mr. President, I support the efforts of the Senator from Rhode Island to put a sense-of-the-Senate resolution in this bill relative to this very important issue. His sense of the Senate tracks the FEC regulation. I think it is very appropriate that he has raised the visibility of this issue, and the sense of the Senate will be included in the managers' amendment.

Mr. REED. Mr. President, reclaiming my time, I thank the Senator from New Hampshire for his support. I would

like to just briefly describe the problem and also the ongoing discussion with the FCC and also here within Congress.

First, as both my colleagues have indicated, this is an alarming and growing problem. The Federal Communications Commission is dealing with the problem now. They will shortly propose a rule that will take away the financial incentive for some of these renegade companies who essentially illegally change service. Surprisingly, today under FCC rules, a renegade company can, in fact, illegally switch a customer and still get the benefits of that month or of several months of charges. The FCC has proposed to change this.

This sense-of-the-Senate resolution supports that proposed rule change and the other activities the FCC is contemplating. One of the reasons we are here today is that, under the present rules of the FCC, telephone companies must get either a verbal or written response in terms of a formal request to change. The problem with respect to a written consent is that, many times, they are hidden in sweepstakes promotions, giveaways and, in fact, the nature of the written response is unknown to the consumer. Once again, the FCC is proposing to change this new rule. I support that change and encourage them to go forward.

The phone company can also rely upon the verbal assent of a consumer, but there are problems with this verbal assent, also. Some of the problems we have seen with telemarketers are the fact that they will deceive the consumer about identity or the nature of the service, or they will obtain the consent of a child, or stranger in the household, or disregard the consumer's decline to switch the service, or flatout not even bother to get the verbal assent and claim that they do in retrospect. The problem with this verbal authorization is proof. Again, the FCC has taken some steps in this regard. They are proposing to eliminate what is an option today, where someone presumably could consent over the phone and then receive a package later from the company requiring that consumer to send a card in to deny the service change. The FCC once again is trying to eliminate that procedure, also.

These are all positive steps. I encourage, and this resolution encourages, the FCC to pursue those steps.

This is a major problem for consumers in the United States. Fifty million people each year switch their phone service. One million of those switches are likely to be fraudulent. One regional carrier now estimates that 1 in 20 of the switches in their system are fraudulent switches. This problem has tripled since 1994. It is now the FCC's No. 1 consumer complaint. Therefore, this problem is something that we should deal with, and deal with decisively.

In my own home State of Rhode Island, there are abundant examples of consumers who have been disadvantaged by this illegal switching. Indeed, the Rhode Island Public Utilities Commission has noted this complaint as the No. 1 complaint they receive with respect to telephone services. For example, a small businessperson in Newport, RI, had his 800 number switched, and rather than an 800 number, the only people who could call the business were residents of Alaska.

In Smithfield, RI, a family had their phone service illegally switched. They protested, but before they could rectify the problem, their phone service was terminated because they refused to pay the bill for the illegal company that switched them.

These are problems that have to be addressed, and I hope are being addressed today by the FCC, and perhaps ultimately our legislation in this body.

What I hope we could do would be to focus more resources of the FCC on this problem. In 1996, the FCC received 16,000 complaints about slamming, but they only were able to successfully prosecute and induce judgment against 15 companies. They don't have the resources. They need those resources. Indeed, I worry that law enforcement agencies around the country not only lack resources but lack, ultimately, the proof that a switch has been made illegally. Law enforcement officials in certain States, such as Connecticut, Wisconsin, California, Texas, and Illinois, have been successful, but they need additional support.

Indeed, one of the major elements of the legislation I was contemplating was the requirement not only of written proof but, also, in the case that an oral or verbal consent was given, some type of recording of assent so that law enforcement authorities could verify decisively whether or not the appropriate assent had been made. It is necessary for us to balance the needs for a flexible system by which consumers can make choices and change their service to one that protects their right to ensure that it is their choice and not the result of fraudulent or manipulative practices by unscrupulous companies. I believe we can do that.

I believe we have taken a step forward today with this sense-of-the-Senate resolution to start on that path. I look forward to offering independent legislation which I think will assist the current effort of the FCC to resolve this grave problem that is growing each day.

Once again, I thank my colleagues, Senator GREGG, Senator HOLLINGS, Senator MCCAIN, and Senator BURNS, for their work and for their effort on this. Others are interested. I know Senator CAMPBELL and Senator DURBIN are also interested in this problem.

We have an opportunity today to send a strong message to the FCC to move forward and also to continue to contemplate and deliberate about legislation which will assist in their efforts and end this scandalous problem, the No. 1 consumer complaint today with respect to telecommunications slamming.

I thank my colleagues. I yield the remainder of my time.

Mr. KERRY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KERRY. Mr. President, I had a discussion with the Senator from North Dakota. I am going to be very, very brief, with his indulgence.

The PRESIDING OFFICER. Is there objection to laying aside the pending amendment?

Mr. KERRY. Mr. President, I ask unanimous consent that we temporarily lay aside the amendment for the purpose of introducing my amendment, and the moment my introduction is completed that the pending amendment will return and be the pending amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 992

(Purpose: To provide funding for the Community Policing to Combat Domestic Violence Program)

Mr. KERRY. I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Massachusetts (Mr. KERRY), for himself, Mr. DODD, Mrs. MURRAY, Mr. LAUTENBERG, and Mr. JOHNSON, proposes an amendment numbered 992.

Mr. KERRY. 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:

On page 29, line 18, insert ''That of the amount made available for Local Law Enforcement Block Grants under this heading, $47,000,000 shall be for the Community Policing to Combat Domestic Violence Program established pursuant to section 1701(d) of part Q of the Omnibus Crime Control and Safe Streets Act of 1968: *Provided further*,'' after ''*Provided*,''.

STOP DOMESTIC VIOLENCE NOW

Mr. KERRY. Mr. President, this amendment continues the successful COPS ''Community Policing to Combat Domestic Violence'' Program. Police departments currently use these COPS funds for domestic violence training and support. This amendment would allow local law enforcement agencies to renew their grant funding so they can continue to employ innovative community policing strategies to combat domestic violence.

Mr. President, domestic violence is a very serious national problem. Almost four million American women were physically abused by their husbands or boyfriends in the last year alone. A woman is physically abused every 9 seconds in the United States. Women are victims of domestic violence more often than they are victims of burglary, muggings, and all other physical crimes combined. In fact, 42 percent of women who are murdered are killed by their intimate male partners. In Massachusetts, 33 women were killed in domestic related cases in 1995. This

amendment is necessary to fight this epidemic of domestic violence.

Mr. President, this problem of domestic violence affects all classes and all races. More than one in three Americans have witnessed an incident of domestic violence according to a recent nationwide survey released by the Family Violence Prevention Fund. Mr. President, battering accounts for one-fifth of all medical visits by women and one-third of all emergency room visits by women in the U.S. each year. As Dartmouth, MA, Police Chief Stephen Soares said recently, domestic violence ''goes from the lowest economic planes to the highest in terms of professional persons. There isn't a line drawn in terms of profession or money.''

Domestic violence hurts women and hurts our economy. The Bureau of National Affairs estimates that domestic violence costs employers between $3 billion and $5 billion each year in lost work time and decreased productivity. In a recent survey of senior business executives, 49 percent said that domestic violence has a harmful effect on their company's productivity. Forty-seven percent said domestic violence negatively affects attendance and 44 percent said domestic violence increases health care costs.

Mr. President, domestic violence also has tragic effects on children. Children who witness the violence often do poorly in school, repeat the pattern of either victim or abuser as adults, and are more prone to have a variety of emotional problems.

According to Linda Aguiar, the head of ''Our Sisters' Place'' in Fall River, Massachusetts, ''One child that was at the shelter, we found out he had taken knives from the kitchen and hid them in the bedroom. He did this because he was afraid his father would come. He thought his father would come and put a ladder to the window.''

To attempt to deal with these problems, Congress in the 1994 Crime Act provided that up to 15 percent of the funding for the COPS program could be made available for innovative community policing activities. A small part of that money, $47 million, was made available to police departments for domestic violence training and support. I would like to read excerpts from a letter I received from the Chief of Police of Chelmsford, MA, about the COPS Domestic Violence program. He said, ''It has come to my attention that the federal grant entitled 'Community Oriented Policing Services Combating Domestic Violence'' (COPS) has not been approved—As you know, domestic violence is a serious law enforcement and societal problem that we are just beginning to face. Every year, millions of women are abused and hundreds are murdered by members of their own family. It's time that society began viewing these atrocities as a crime. We must put forward the necessary attention and funding to solve this problem. The COPS grant does exactly that. It provides advocacy, training, and research toward ending this problem. Without this funding victims of domestic abuse and police officers will have nowhere to turn for support, education, resources and training.''

Mr. President, the COPS Domestic Violence Program has been a success. In Massachusetts, police departments have used the money to fund many anti-domestic violence activities:

The Gardner Police Department and a local battered women's resource center were able to establish school-based support groups for children affected by violence in their homes. More than 250 children ages 5–10 have benefited from this program.

In Somerville, nearly 100 city police officers and an equal number of representatives of local non-profit service agencies received anti-domestic violence training. As a result, a young woman who appeared in the Emergency Room seeking assistance for domestic violence was referred to a nurse supervisor who helped her get a restraining order, safety planning, and other support.

Officers in the Domestic Violence Unit of the Fall River Police Department, in coordination with a local battered women's and children's shelter, have been able to conduct personal follow-up in more than 1,100 incidents of domestic violence since September of 1996.

Mr. President, before these funds were available, many local law enforcement agencies lacked the resources to provide anti-domestic violence training and support. In 1995 prior to the awarding of the COPS domestic violence grant, police in Gardner, MA were called to intervene in a dispute involving domestic abuse. Due to the lack of cooperation from the victim, officers did not have sufficient evidence to arrest her boyfriend, but instead were only able to escort him off the property. Two hours after the incident, the victim's boyfriend returned to the property and set it afire, and the woman was killed by asphyxiation. Subsequent to this crime the suspect was arrested, convicted of the crime with which he was charged and sentenced to time in prison. This incident demonstrated the need for a victim's advocate employed by the police department who might have been able to convince the woman of her need for help and then intervene on her behalf. Due to the COPS Domestic Violence grants, the Gardner Police Department now has the resources to more successfully combat domestic violence.

When the Department of Justice announced these Community Policing to Combat Domestic Violence grants on June 1, 1996, police departments were promised 1 year of funding with the ability to receive two additional years of funding. Unfortunately, these successful Domestic Violence programs will be denied the additional 2 years of funding because of a little-noticed change, included in the appropriations bill report language, which no longer allows up to 15 percent of COPS funds to be used for innovative community policing activities such as anti-domestic violence training and support for local law enforcement agencies.

Our amendment earmarks $47 million of the $503 million provided by the Commerce/State/Justice Appropriation bill for the Local Law Enforcement Block Grant (LLEBG) to renew funding of grants made under the COPS Domestic Violence Program. It is appropriate that this money be earmarked for this purpose because the Local Law Enforcement Block Grant Program was designed to provide funds to local governments to fund crime reduction and public safety improvements broadly defined. Additionally, the LLEBG already contains several earmarks in the C/S/J Appropriations bill: $2.4 million for discretionary grants for local law enforcement to form specialized cyber units to prevent child sexual exploitation, and $20 million for the Boys and Girls Clubs.

Some will argue that this appropriations bill increases funding for the Violence Against Women Act (VAWA) and that therefore no additional funds are needed to confront domestic violence. However, that is incorrect for three reasons. First, the increase in funding for the Violence Against Women Act is only $15 million, far less than the $47 million needed to renew the COPS Domestic Violence grants. Second, only 25 percent of the VAWA money goes to police departments—most of the rest goes to prosecution and direct victims services. Third, most of the VAWA money for police departments goes to buy equipment, not for training and support.

Mr. President, this funding is necessary to help police departments to deal with the epidemic of domestic violence. I would like to thank Senators DODD, LAUTENBERG, and JOHNSON for joining me in proposing this important amendment and urge all my colleagues to support it.

Mr. DODD. Mr. President, I rise to support the amendment of my colleague, the Senator from Massachusetts [Mr. KERRY]. This amendment will restore the COPS antidomestic violence grants created by the Violence Against Women Act—a program of vital importance that funds local police and community initiatives to combat domestic violence.

Domestic violence is a serious scourge on our society. Once every 9 seconds, a woman is beaten by her husband or boyfriend, according to FBI crime statistics. Four women are killed each day at the hands of their domestic attackers, according to the National Clearinghouse for the Defense of Battered Women. And 16 people were killed by family violence in Connecticut between September 1995 and September 1996. That is totally unacceptable.

Mr. President, for quite some time I have been extremely concerned that

antidomestic violence programs currently funded through domestic violence COPS grants will no longer have a source of funding as the COPS grants for this purpose are eliminated.

For too long before Congress enacted the 1994 crime law and Violence Against Women Act, domestic violence was considered a private matter—something to be dealt with inside the home, and outside of public view and public policy. The Violence Against Women Act represented a consensus that government and our communities should work together to prevent and stop domestic violence, and that it should be one of our highest priorities.

In Connecticut, many communities were able to rise to that challenge when they received anti-domestic violence grants under the COPS program. More than ten Connecticut cites and towns have used these grants to establish law enforcement infrastructures to support a diverse range of anti-domestic violence programs, each specifically tailored to the needs of that local community. I recently had the opportunity to visit with two police chiefs who are using anti-domestic violence COPS grants to run domestic violence prevention and intervention programs in Bridgeport, CT, and Groton, CT. They have developed different programs that make use of a wide range of resources to fight domestic violence, utilizing police officers, involving victims' shelters and services, incorporating counseling for both victims and batterers, and aggressively pursuing prosecution of batterers.

Programs like these send a message from our communities to victims and batterers alike. These programs say that domestic violence has no place in Connecticut or anywhere in our country. These programs say that if you are a batterer, we will stop you, we will catch you, and we will prosecute you to the fullest extent of the law. And I am told by police chiefs throughout Connecticut that that is why these programs, and the funds that make them possible, have truly improved their ability to combat domestic violence. Domestic violence is preventable, if we provide the funding for initiatives to stop it.

Now, however, the elimination of antidomestic violence COPS grants threatens to force an untimely end to successful programs like those in Connecticut. Law enforcement officials would be hindered in their effort to prevent domestic violence and catch and punish perpetrators, and victims of domestic violence would continue to suffer. Let's not abandon police chiefs when they've just begun to win the battle against domestic violence. Let's not turn our backs on the victims who need our help.

I wrote to the Commerce-State-Justice appropriators to ask them to maintain the funding for these important programs, and I am pleased today to cosponsor the amendment that would do just that. Hundreds of police chiefs and countless victims across the country are counting on us to do no less.

I thank the Senator from Massachusetts for his amendment, and I join him in urging my colleagues to adopt it.

Mr. LOTT addressed the Chair.

The PRESIDING OFFICER. The majority leader.

UNANIMOUS-CONSENT AGREEMENT

Mr. LOTT. Mr. President, I thank the Senator from Massachusetts for finishing expeditiously and for his help on a number of issues throughout the day as we try to get an agreement on how we can proceed for the remainder of the day, and when we can get votes tomorrow and next week.

Mr. President, I ask unanimous consent that the following be the only remaining first-degree amendments in order to S. 1022, and they be subject to relevant second-degree amendments.

Mr. President, I will submit the list since there are several of them. But everybody has been consulted on this list. The Democratic leadership is aware of it as well as the Members on this side.

I ask unanimous consent that the list be printed in the RECORD.

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

DEMOCRATIC AMENDMENTS TO COMMERCE-STATE-JUSTICE

Baucus, EDA.
Biden, COPS.
Biden, trust fund.
Bingaman, registration of nonprofits.
Bumpers, OMB.
Byrd, anti-alcohol.
Conrad, relevant.
Daschle, law enforcement.
Dorgan, sense of Senate—Univ. Service Fund.
Dorgan, NII grants.
Graham, public safety officers.
Harkin, funding for globe.
Inouye, Ninth circuit—northern territories.
Kennedy/Leahy, capital murder.
Kerry, COPS.
Lautenberg, PTO.
Reed, SoS telecom slamming.
Robb, public safety grants.
Sarbanes, Sec. 408 pending No. 989.
Wellstone, Legal Services Corp.
Wellstone, Legal Services Corp.
Harkin, private relief.
Hollings, managers.
Hollings, managers.

REPUBLIC AMENDMENTS TO STATE-JUSTICE-COMMERCE

Domenici, court appointed attorney's fees.
Hatch, DOJ LEG. AFFAIRS.
Burns, Mansfield fellowships.
McCain, INS inoculations.
Stevens, Cable laying.
Hatch, Limitation of funds for Under Secretary of Commerce.
DeWine, Visas.
Helms, Technical.
Warner, Terrorism.
Coverdell, DNA testing/sex offenders.
Bond, small business.
Warner, patent trademark.
Kyl, masters.
Abraham, INS fingerprinting.
Stevens, womens World Cup.
Coats, gambling impact.
McCain, relevant.
McCain, relevant.
Burns, EDA.
Hatch, antitrust provisions.
Gregg, relevant.
Hatch, local law enforcement.

Mr. LOTT. Mr. President, I further ask unanimous consent that all amendments must be offered and debated tonight and any votes ordered with respect to S. 1022 be postponed to occur beginning on 9:30 a.m. on Tuesday, July 29, with 2 minutes for debate equally divided before each vote, and following the disposition of amendments, S. 1022 be advanced to third reading and a passage vote occur, all without further action or debate.

I have more to this request, but I want to emphasize what that means. We will complete all of the amendments tonight. The votes on those amendments and final passage will occur next Tuesday beginning the 9:30.

I further ask that if the Senate has not received the House companion bill at the time of passage of S. 1022, the bill remain at the desk; and I further ask unanimous consent that when the Senate receives the House companion bill, the Senate proceed to its immediate consideration and all after the enacting clause be stricken and the text of S. 1022, as amended, be inserted, the House bill then be read a third time and passed and the Senate insist on its amendment, request a conference with the House and that the Chair be authorized to appoint conferees and that S. 1022 be indefinitely postponed.

The PRESIDING OFFICER. Is there objection?

Mr. SARBANES. Mr. President, reserving the right to object, in the discussions with the chairman of the subcommittee, as I understand it, the amendment that is pending at the desk will be adopted this evening.

Mr. LOTT. That is my understanding Mr. President.

Mr. HOLLINGS. That is correct.

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

Mr. LOTT. I further ask that at 8:30 a.m. on Tuesday the Senate resume the State, Justice, Commerce appropriations bill and there be 30 minutes remaining, equally divided, for debate on each of the two amendments to be offered by Senator WELLSTONE.

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

Mr. LOTT. I further ask that it be in order, if necessary, for each leader to offer one relevant amendment on Tuesday prior to the scheduled 9:30 votes.

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

Mr. LOTT. With regard to the tuna-dolphin issue, I ask unanimous consent that, at 9:30 a.m. on Friday, July 25, the Senate resume the motion to proceed to S. 39, the tuna-dolphin bill, and there be 30 minutes equally divided between Senator MCCAIN, or his designee, and Senator BOXER. I further ask unanimous consent that following the use or yielding back of the time, the Senate proceed to the vote on the motion to invoke cloture on the motion to proceed to S. 39.

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

Mr. LOTT. Mr. President, I further ask that if an agreement can be reached with respect to S. 39—and it appears there may be—it be in order for the majority leader to vitiate the cloture vote, the Senate to then immediately proceed to S. 39, that the managers' amendment be in order, and the amendment and bill be limited to a total of 30 minutes equally divided, and following the disposition of the amendment the bill be advanced to third reading, and passage occur, all without further action or debate.

I think I should clarify this and put it in common language.

If an agreement is worked out, we will vitiate the cloture vote. I would like to modify that agreement to say that, if an agreement is reached, we will vitiate; then we will take that issue up next week with 30 minutes of debate and a vote next week, unless a voice vote would be agreed to for tomorrow or next week.

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

Mr. LOTT. With regard to Wednesday of next week, I ask unanimous consent that at 9:30 a.m., Wednesday, July 30, the Senate proceed to the consideration of Senate Resolution 98. I further ask unanimous consent that there be 2 hours of debate on the resolution equally divided between the chairman and the ranking member, or their designees, with the following amendments in order to this bill.

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

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I realize it gets a little confusing on how we are lining these up. But I think it is being helpful to all Senators. I think it is allowing us to complete the debate and get votes and move important legislation forward in the best way possible.

So the way we are getting it racked up, so to speak, I think is good for the Senate, and we are trying to do the right thing.

So I would like to modify that earlier request to this extent:

That we come in in the morning and go immediately at 9:30 to the global-warming bill. That bill is Senate Resolution 98. I ask consent that there be 2 hours of debate on the resolution equally divided between the chairman and the ranking member or their designees with the only amendments in order to be the following: Kerry amendment adding specific negotiating positions; Senator BYRD's amendment, relevant.

I further ask unanimous consent that following the disposition of the above-mentioned amendments and the expiration or yielding back of time for debate, the Senate proceed to a vote on the resolution with no intervening action or debate, and, if the resolution is agreed to, the preamble then be agreed to, which means that the final vote on global warming would occur around 11:30 tomorrow morning.

Mr. KERRY. Mr. President, reserving the right to object—I will not object—I simply ask the majority leader if he would modify that further, per our agreement, that they would be first-degree amendments with no second-degree amendments.

Mr. LOTT. Mr. President, I ask to further modify my unanimous-consent request.

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

Mr. LOTT. Then the modification of what we had earlier agreed to is that after that vote on Senate Resolution 98, we would then have the vote on the cloture motion on tuna-dolphin unless an agreement is worked out, at which point we would vitiate that cloture vote, and we would get a subsequent time agreement of 30 minutes and a voice vote, or a recorded vote, on that issue next week.

Mrs. BOXER. Reserving the right to object, and I shall not object—

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. The leader did not say exactly what time the cloture vote would take place.

Mr. LOTT. The cloture vote would then take place, after the global warming vote, I presume about 11:45, 11:50, something of that nature.

Mrs. BOXER. Could we say by 12 o'clock?

Mr. LOTT. It certainly would be by 12 o'clock.

Mrs. BOXER. That would be very helpful. One more point. If there should be a recorded vote, which many of us do not anticipate, on the dolphin-tuna compromise, if there is one, could we reserve just a couple of minutes on either side just to talk before that vote, on next week, just 2 minutes?

Mr. LOTT. Before the vote next week.

Mrs. BOXER. Yes.

Mr. LOTT. Sure. I would hate to enter into a time agreement on a specific time now but we would have a vote at an agreed to time and we would have some time to explain it. I think it is appropriate.

Mr. KERRY. It is my understanding the majority leader in the prior order already requested 30 minutes.

Mr. LOTT. I had indicated 30 minutes.

Mrs. BOXER. That is very acceptable. Thank you very much. And I wanted to thank the Senator from Arizona as well for helping resolve this procedure.

Mr. LOTT. Mr. President, I thank the Senators for their cooperation. Let us keep going then. I think we are making good progress.

I ask unanimous consent that at 5 o'clock on Monday, July 28, the Senate proceed to the consideration of the Transportation appropriations bill.

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

Mr. LOTT. For the information of all Senators, any votes ordered with respect to the Transportation appropriations bill will be postponed to occur on Wednesday morning immediately following the global warming resolution vote.

We have changed that now. The Transportation appropriations bill would occur on Wednesday morning.

Mr. FORD. I liked the first one better.

Mr. LOTT. Therefore, no votes will occur during the session on Monday, July 28.

Mr. President, I will yield the floor at this point and in a few minutes we will recap everything we agreed to in those unanimous-consent agreements so that they will be clear and understandable. We will do that before we go out tonight.

I yield the floor.

Mr. SARBANES addressed the Chair.

The PRESIDING OFFICER. The Senator from Maryland.

AMENDMENT NO. 989

Mr. SARBANES. Mr. President, is the Sarbanes amendment now the pending business?

The PRESIDING OFFICER. The Sarbanes amendment is now the pending business.

Mr. SARBANES. I ask unanimous consent that Senators MOYNIHAN, HATCH, JEFFORDS, KERRY, BIDEN, and LEAHY be added as cosponsors.

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

Mr. SARBANES. I hope we could move to adoption of the amendment.

Mr. GREGG. I hope the Senator would ask for adoption.

Mr. HOLLINGS. The question is on the adoption of the amendment.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 989) was agreed to.

Mr. SARBANES. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

Mr. GRAHAM addressed the Chair.

The PRESIDING OFFICER. The Senator from Florida.

AMENDMENT NO. 993

(Purpose: To make an Amendment Relating to the Health Insurance Benefits of Certain Public Safety Officers)

Mr. GRAHAM. Mr. President, at the completion of these brief remarks, I will send an amendment to the desk.

Mr. President, last year in consideration of this same appropriations bill, the Senate and the House adopted and the President signed into law what is known as the Alu-O'Hara bill. This is legislation which was the result of a tragic circumstance in which two law enforcement officers called to a hostage-taking scene were seriously

burned when the hostage taker set on fire the structure in which the hostages were being held. These two law enforcement officers were subsequently discharged from the law enforcement agency because of their severe injuries, and in the course of their discharge they lost their insurance coverage. So now they were two heroes out of work, lifetime injuries and without health insurance.

This Alu-O'Hara bill, which we adopted last year, provided that law enforcement agencies would provide to any public service officer ''who retires or is separated from service due to an injury suffered as the direct and proximate result of a personal injury sustained in line of duty while responding to an emergency situation or in hot pursuit with the same or better level of health insurance benefits that are otherwise paid by the entity to a public service officer at the time of retirement or separation.'' The enforcement for this was a reduction in that local law enforcement block grant award.

Mr. President, as I indicate, this has been the law since last year. It is currently in the House appropriations bill. Frankly, we are seeking an opportunity to put this into substantive law so we will not have to continue to rely upon the appropriations bill as the means of continuing this important protection for law enforcement officers which has strong support by all the major law enforcement agencies in America.

So I send this amendment to the desk and will ask my colleagues for its favorable adoption when we consider these matters on Tuesday.

The PRESIDING OFFICER. The clerk will report the amendment. The bill clerk read as follows:

The Senator from Florida [Mr. GRAHAM] proposes an amendment numbered 993.

Mr. GRAHAM. 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 in title I of the bill, insert the following:

SEC. 1. Of the amounts made available under this title under the heading ''OFFICE OF JUSTICE PROGRAMS'' under the subheading ''STATE AND LOCAL LAW ENFORCEMENT ASSISTANCE'', not more than 90 percent of the amount otherwise to be awarded to an entity under the Local Law Enforcement Block Grant Program shall be made available to that entity, if it is made known to the Federal official having authority to obligate or expend such amounts that the entity employs a public safety officer (as that term is defined in section 1204 of title I of the Omnibus Crime Control and Safe Streets Act of 1968) does not provide an employee who is public safety officer and who retires or is separated from service due to injury suffered as the direct and proximate result of a personal injury sustained in the line of duty while responding to an emergency situation or a hot pursuit (as such terms are defined by State law) with the same or better level of health insurance benefits that are otherwise paid by the entity to a public safety officer at the time of retirement or separation.

Mr. GREGG addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. GREGG. We have no objection to this amendment and I ask unanimous consent the amendment be accepted.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 993) was agreed to.

Mr. GRAHAM. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. DORGAN addressed the Chair.

The PRESIDING OFFICER. The Senator from North Dakota.

Mr. DORGAN. Mr. President, I have been working on a sense-of-the-Senate resolution which I hoped to have the agreement of a number of Members of the Senate who have similar interests on the issue of the using universal service funds for the purpose of reaching a balanced budget in the budget reconciliation conference that is now going on. I know that sounds foreign as a subject to those who are not familiar with it, but I want to explain it a little bit and describe why this is important.

I have spoken to a number of Senators in the Chamber this evening—Senator STEVENS, the distinguished chairman of the Senate Appropriations Committee, Senator ROCKEFELLER, Senator HOLLINGS, Senator DASCHLE, Senator SNOWE, and others who are concerned about something that is happening in the reconciliation conference that could have a significant impact on the cost of telephone service in rural areas in this country in the years ahead. Here is what it is.

Our country has been fortunate to enjoy the benefits of a telecommunications system that says it does not matter where you live. If you live in an area where you have very high-cost service, there will be something called a universal service fund that helps drive down that high cost so that everyone in this country can afford telephone service, universally affordable telephone service. That is what the universal service fund is designed to do and has been designed to do for a long, long while. I come from a town of 300 people and telephone service there is affordable because the universal service fund drives down the rate of what would otherwise be high cost. The benefits of a national system is that every telephone in the country makes every other telephone more valuable. A telephone in my hometown in Regent, ND, makes Donald Trump's telephone more valuable in New York City because he can reach that telephone in Regent, ND. That is the whole concept of universally affordable telephone service, and it is why we have a universal service fund.

Now, having said that, the universal service fund was reconstructed some—but not dramatically—during the Telecommunications Act passed by Congress a year and a half ago. We now have a balanced budget proposal that is in conference between the House and the Senate and some are saying in this negotiation that they want to use the revenues from the universal service fund out in the year 2002 in order to help plug a leak on the budget side.

The fact is the universal service fund was never intended to be used for such a purpose. In fact, the universal service fund does not belong to the Government. It does not come into the Federal Treasury and is not expended by the Federal Government. It, therefore, ought not be a part of any discussion on budget negotiations, and yet it is.

This week I have spoken several times to the Office of Management and Budget, and they have explained to me in great detail with no clarity at all why it is now part of this process. I have spoken to people who claim to be experts on this, and none of them have the foggiest idea about what the proposal actually does.

Now, the reason I come to the floor to speak about it is this: We are nearing presumably the end of a conference, and if a conference report comes to the floor of the Senate using the universal service fund as part of a manipulated set of revenues in the year 2002, in order to reach some sort of budget figure, it will be an enormous disservice for the universal service fund. It will deny the purpose of the fund for which we in the Commerce Committee worked so hard to preserve in the Telecommunications Act of 1996. This provision in the reconciliation bill will set a precedent that will be a terrible precedent for the future. The result will be, I guarantee, higher phone bills in rural areas in this country in the years ahead.

I once stopped at a hotel in Minneapolis, MN, and there was a sign at the nearest parking space to the front door, and it said ''Manager's parking space.'' And then below it, it said, ''Don't even think about parking here.'' I don't expect anybody ever parked in that space besides the manager. Don't even think about parking here. I hope that the Senate will pass the sense-of-the-Senate resolution I have proposed that says to the reconciliation conference: ''do not even think about this.'' I say to the budget reconciliation conferees: ''do not try to bring to the floor of the Senate or the House a budget reconciliation conference report that manipulates and misuses the universal service fund.'' It is not right, it is not fair, and it will destroy the underpinnings of what we have done in telecommunications policy to provide affordable telephone service across this country for all Americans. Yes, especially, most especially Americans who live in the rural areas of this country.

I have enormous respect for those people who put these budgets together. It is not easy. But this instance of using the universal service fund as is

now being proposed is, I am afraid, budget juggling at its worst. Juggling I suppose at a carnival or in the backyard is entertaining. Juggling in this circumstance using universal fund support to manipulate the numbers in 2002 is not entertaining to me. It is fundamentally wrong. This money does not belong to the Federal Government. It does not come to the Federal Treasury, and it is not spent by the Federal Government and has no place and no business in any reconciliation conference report.

I was flabbergasted to learn that it was there and it is being discussed. I have spoken to the Director of the Office of Management and Budget about this several times this week, spoken to others who are involved with it. And I must tell you I think that the Congressional Budget Office, the Office of Management and Budget, and any member of the conference that espouses this is making a terrible, terrible mistake. I hope that the Senate will pass the sense-of-the-Senate resolution I have proposed and that we can garner the support of the position I now espouse to say as that parking sign, ''don't even think about this.'' It is wrong, and it will disserve the interests that we have fought so hard to preserve affordable telephone service all across this country.

The Senator from South Carolina has spent a great deal of time on this issue, as has the Senator from Alaska, the Senator from West Virginia, the Senator from Maine, and so many others. As I said, the wording is not yet agreed to on the sense-of-the-Senate resolution. I hope it will be very shortly, and when it is I hope we will pass it and send a message that any conference report that comes back here ought not use universal service support funds because they are not our funds to use.

Mr. President, I yield the floor.

Mr. DOMENICI addressed the Chair.

The PRESIDING OFFICER. The Senator from New Mexico.

AMENDMENT NO. 994

(Purpose: To amend section 3006A of title 18, United States Code, to provide for the public disclosure of court appointed attorneys' fees upon approval of such fees by the court)

Mr. DOMENICI. Mr. President, I have an amendment and I understand it is going to be accepted. I will let the managers do that in their wrap-up if they would like unless the Senator has indicated that it is all right.

Mr. President, I ask, has Senator HOLLINGS cleared it?

Mr. HOLLINGS. It has been cleared.

Mr. DOMENICI. I thank the Senator very much.

I send an amendment to the desk, and since it is acceptable on both sides I ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Mexico [Mr. DOMENICI] proposes an amendment numbered 994.

Mr. DOMENICI. 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 in title I of the bill, insert the following:

**SEC. 1. PUBLIC DISCLOSURE OF COURT APPOINTED ATTORNEYS' FEES.**

Section 3006A(d) of title 18, United States Code, is amended by striking paragraph (4) and inserting the following:

''(4) DISCLOSURE OF FEES.—

''(A) IN GENERAL.—Subject to subparagraphs (B) through (E), the amounts paid under this subsection for services in any case shall be made available to the public by the court upon the court's approval of the payment.

''(B) PRE-TRIAL OR TRIAL IN PROGRESS.—If a trial is in pre-trial status or still in progress and after considering the defendant's interests as set forth in subparagraph (D), the court shall—

''(i) redact any detailed information on the payment voucher provided by defense counsel to justify the expenses to the court; and

''(ii) make public only the amounts approved for payment to defense counsel by dividing those amounts into the following categories:

''(I) Arraignment and or plea.

''(II) Bail and detention hearings.

''(III) Motions.

''(IV) Hearings.

''(V) Interviews and conferences.

''(VI) Obtaining and reviewing records.

''(VII) Legal research and brief writing.

''(VIII) Travel time.

''(IX) Investigative work.

''(X) Experts.

''(XI) Trial and appeals.

''(XII) Other.

''(C) TRIAL COMPLETED.—

''(i) IN GENERAL.—If a request for payment is not submitted until after the completion of the trial and subject to consideration of the defendant's interests as set forth in subparagraph (D), the court shall make available to the public an unredacted copy of the expense voucher.

''(ii) PROTECTION OF THE RIGHTS OF THE DEFENDANT.—If the court determines that defendant's interests as set forth in subparagraph (D) require a limited disclosure, the court shall disclose amounts as provided in subparagraph (B).

''(D) CONSIDERATIONS.—The interests referred to in subparagraphs (B) and (C) are—

''(i) to protect any person's 5th amendment right against self-incrimination;

''(ii) to protect the defendant's 6th amendment rights to effective assistance of counsel;

''(iii) the defendant's attorney-client privilege;

''(iv) the work product privilege of the defendant's counsel;

''(v) the safety of any person; and

''(vi) any other interest that justice may require.

''(E) NOTICE.—The court shall provide reasonable notice of disclosure to the counsel of the defendant prior to the approval of the payments in order to allow the counsel to request redaction based on the considerations set forth in subparagraph (D). Upon completion of the trial, the court shall release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court. If there is an appeal, the court shall not release unredacted copies of the vouchers provided by defense counsel to justify the expenses to the court until such time as the appeals process is completed, unless the court determines that none of the defendant's interests set forth in subparagraph (D) will be compromised.''.

Mr. DOMENICI. Mr. President, I am not sure, if I were to ask every Senator to take a guess, anyone would come anywhere close to answering this question correctly.

I ask, how many dollars do you think we spent last year paying for defense lawyers for criminals in the Federal court who claim they don't have enough money to defend themselves?

We have an obligation. The court has interpreted our Constitution to say they must have counsel, so I am not here complaining. But I don't think anyone—I see my friend from Iowa looking at me—would guess $308 million, and growing tremendously, taxpayers' dollars to defend criminals in the Federal court system.

I am not asking in this amendment that we review that process, although I kind of cry out to any committee that has jurisdiction and ask them to take a look. All I am doing in this amendment is changing the law slightly with reference to letting the taxpayer know how much we are paying criminal defense lawyers. All this amendment does is say when a payment is made to a criminal defense lawyer, a form has to be filed that indicates that payment. There is no violation of the sixth amendment because there are no details. We are not going to, in this statement, reveal the secret strategy of the defense counsel or their latest deposition theory. We are just saying, reveal the dollar amount so the American people know, through public sources, how much we are paying.

Frankly, if I had a little more time, I would state some of the fees that we finally have ascertained, and I think many would say, ''Are you kidding?'' I will just give you three that we know of.

Mr. President, what would you say if I told you that from the beginning of fiscal year 1996 through January 1997, $472,841 was paid to a lawyer to defend a person accused of a crime so heinous that the United States Attorney in the Northern District of New York is pursuing the death penalty? Who paid for this lawyer—the American taxpayer.

What would you say if I told you that $470,968 was paid to a lawyer to defend a person accused of a crime so reprehensible that, there too, the United States Attorney in the Southern District of Florida is also pursuing the death penalty? Who paid for this lawyer—the American taxpayer.

What would you say if I told you that during the same period, for the same purpose, $443,683 was paid to another attorney to defend a person accused of a crime so villainous that the United States Attorney in the Northern District of New York is pursuing the death penalty? Who paid for this lawyer—the American taxpayer.

Now, Mr. President, what would you say if I told you that some of these cases have been ongoing for three or more years and that total fees in some

instances will be more than $1 million in an individual case? That's $1 million to pay criminal lawyers to defend people accused of the most vicious types of murders often which are of the greatest interest to the communities in which they were committed.

At minimum, Mr. President, this Senator would say that we are spending a great deal of money on criminal defense lawyers and the American taxpayer ought to have timely access to the information that will tell them who is spending their money, and how it is being spent. That is why today I am introducing the ''Disclosure of Court Appointed Attorney's Fees and Taxpayer Right to Know Act of 1997''.

Under current law, the maximum amount payable for representation before the United States Magistrate or the District Court, or both, is limited to $3,500 for each lawyer in a case in which one or more felonies are charged and $125 per hour per lawyer in death penalty cases. Many Senators might ask, if that is so, why are these exorbitant amounts being paid in the particular cases you mention? I say to my colleagues the reason this happens is because under current law the maximum amounts established by statute may be waived whenever the judge certifies that the amount of the excess payment is necessary to provide ''fair compensation'' and the payment is approved by the Chief Judge on the circuit. In addition, whatever is considered ''fair compensation'' at the $125 per hour per lawyer rate may also be approved at the Judge's discretion.

Mr. President, the American taxpayer has a legitimate interest in knowing what is being provided as ''fair compensation'' to defend individuals charged with these dastardly crimes in our federal court system. Especially when certain persons the American taxpayer is paying for mock the American Justice System. A recent Nightline episode reported that one of the people the American taxpayer is shelling out their hard earned money to defend urinated in open court, in front of the Judge, to demonstrate his feelings about the judge and the American judicial system.

I want to be very clear about what exactly my bill would accomplish. The question of whether these enormous fees should be paid for these criminal lawyers is not, I repeat, is not a focus of my bill. In keeping with my strongly held belief that the American taxpayer has a legitimate interest in having timely access to this information, my bill simply requires that at the time the court approves the payments for these services, that the payments be publicly disclosed. Many Senators are probably saying right now that this sounds like a very reasonable request, and I think it is, but the problem is that often times these payments are not disclosed until long after the trial has been completed, and in some cases they may not be disclosed at all if the remains are sealed by the Judge. How much criminal defense lawyers are being paid should not be a secret. There is a way in which we can protect the alleged criminal's sixth amendment rights and still honor the American taxpayer's right to know. Mr. President, that is what my bill does.

Current law basically leaves the question of when and whether court appointed attorneys' fees should be disclosed at the discretion of the Judge in which the particular case is being tried. My bill would take some of that discretion away and require that disclosure occur once the payment has been approved.

My bill continues to protect the defendant's sixth amendment right to effective assistance of counsel, the defendant's attorney client privilege, the work product immunity of defendant's counsel, the safety of any witness, and any other interest that justice may require by providing notice to defense counsel that this information will be released, and allowing defense counsel, or the court on its own, to redact any information contained on the payment voucher that might compromise any of the aforementioned interests. That means that the criminal lawyer can ask the Judge to take his big black marker and black-out any information that might compromise these precious Sixth Amendment rights, or the Judge can make this decision on his own. In any case, the Judge will let the criminal lawyer know that this information will be released and the criminal lawyer will have the opportunity to request the Judge black-out any compromising information from the payment voucher.

How would this occur? Under current law, criminal lawyers must fill out Criminal Justice Act payment vouchers in order to receive payment for services rendered. Mr. President, I have brought two charts to the floor to provide Senators with an example of what these payment vouchers look like so that they can get an understanding of what my bill would accomplish. These two payment vouchers are the standard vouchers used in the typical felony and death penalty cases prosecuted in the federal district courts. As you can see Mr. President, the information on these payment vouchers describes in barebones fashion the nature of the work performed and the amount that is paid for each category of service.

My bill says that once the Judge approves these payment vouchers that they be publicly disclosed. That means that anyone can walk down to the federal district court where the case is being tried and ask the clerk of the court for copies of the relevant CJA payment vouchers. It's that simple. Nothing more. Nothing less.

Before the court releases this information it will provide notice to defense counsel that the information will be released, and either the criminal lawyer, or the Judge on his/her own, may black-out any of the barebones information on the payment voucher that might compromise the alleged criminal's precious sixth amendment rights.

Mr. President, I believe that my bill is a modest step toward assuring that the American taxpayer have timely access to this information. In addition to these CJA payment vouchers, criminal lawyers must also supply the court with detailed time sheets that recount with extreme particularity the nature of the work performed. These detailed time sheets break down the work performed by the criminal lawyer to the minute. They name each and every person that was interviewed, each and every phone call that was made, the subjects that were discussed and the days and the times they took place. They go into intimate detail about what was done to prepare briefs, conduct investigations, and prepare for trial.

Mr. President, clearly if this information were subject to public disclosure the alleged criminal's sixth amendment rights might be compromised. My bill does not seek to make this sensitive information subject to public disclosure, but rather continues to leave it to the Judge to determine if and when it should be released. In this way, my bill recognizes and preserves the delicate balance between the American taxpayers' right to know how their money is being spent, and the alleged criminal's right to a fair trial.

I believe we should take every reasonable step to protect any disclosure that might compromise the alleged criminal's sixth amendment rights. My bill does this by providing notice to defense counsel of the release of the information, and providing the Judge with the authority to black-out any of the barebones information contained on the payment voucher if it might compromise any of the aforementioned interests. I believe it is reasonable and fair, and I hope I will have my colleagues' support.

I am very pleased the Senate will accept this. I hope the House does. I believe they will. Because I think the public has a right to know. As a matter of fact, I think we have a right to know, case by case, payment by payment, how much is being paid by the taxpayer to defend criminals in the Federal court.

I yield the floor.

THE PRESIDING OFFICER. If there be no further debate, the question is on agreeing to the amendment.

The amendment (No. 994) was agreed to.

Mr. DOMENICI. Mr. President, I move to reconsider the vote.

Mr. GREGG. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 995

(Purpose: To Provide for the Payment of Special Masters, and for Other Purposes)

Mr. GREGG. Mr. President, on behalf of Senator KYL, I send an amendment to the desk.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. KYL, proposes an amendment numbered 995.

The amendment is as follows:

At the appropriate place, insert the following:

**SEC. . SPECIAL MASTERS FOR CIVIL ACTIONS CONCERNING PRISON CONDITIONS.**

Section 3626(f) of title 18, United States Code, is amended—

(1) by striking the subsection heading and inserting the following:

''(f) SPECIAL MASTERS FOR CIVIL ACTIONS CONCERNING PRISON CONDITIONS.—''; and

(2) in paragraph (4)—

(A) by inserting ''(A)'' after ''(4)'';

(B) in subparagraph (A), as so designated, by adding at the end the following: ''In no event shall a court require a party to a civil action under this subsection to pay the compensation, expenses, or costs of a special master. Notwithstanding any other provision of law (including section 306 of the Act entitled 'An Act making appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and related agencies for the fiscal year ending September 30, 1997,' contained in section 101(a) of title I of division A of the Act entitled 'An Act making omnibus consolidated appropriations for the fiscal year ending September 30, 1997' (110 Stat. 3009–201)) and except as provided in subparagraph (B), the requirement under the preceding sentence shall apply to the compensation and payment of expenses or costs of a special master for any action that is commenced, before, on, or after the date of enactment of the Prison Litigation Reform Act of 1995.''; and

(C) by adding at the end the following:

''(B) The payment requirements under subparagraph (A) shall not apply to the payment to a special master who was appointed before the date of enactment of the Prison Litigation Reform Act of 1995 (110 Stat. 1321–165 et seq.) of compensation, expenses, or costs relating to activities of the special master under this subsection that were carried out during the period beginning on the date of enactment of the Prison Litigation Reform Act of 1995 and ending on the date of enactment of this subparagraph.''.

Mr. GREGG. I move to set aside the amendment by Senator KYL.

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

AMENDMENT NO. 996

(Purpose: To require the Attorney General to submit a report on the feasibility of requiring convicted sex offenders to submit DNA samples for law enforcement purposes)

Mr. GREGG. Mr. President, I send an amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from New Hampshire [Mr. GREGG], for Mr. COVERDELL, proposes an amendment numbered 996.

Mr. GREGG. 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 in title I of the bill, insert the following:

**SEC. . REPORT ON COLLECTING DNA SAMPLES FROM SEX OFFENDERS.**

(a) DEFINITIONS.—In this section—

(1) the terms ''criminal offense against a victim who is a minor'', ''sexually violent offense'', and ''sexually violent predator'' have the meanings given those terms in section 170101(a) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14071(a)));

(2) the term ''DNA'' means deoxyribonucleic acid; and

(3) the term ''sex offender'' means an individual who—

(A) has been convicted in Federal court of—

(i) a criminal offense against a victim who is a minor; or

(ii) a sexually violent offense; or

(B) is a sexually violent predator.

(b) REPORT.—From amounts made available to the Department of Justice under this title, not later than 180 days after the date of enactment of this Act, the Attorney General shall submit to Congress a report, which shall include a plan for the implementation of a requirement that, prior to the release (including probation, parole, or any other supervised release) of any sex offender from Federal custody following a conviction for a criminal offense against a victim who is a minor or a sexually violent offense, the sex offender shall provide a DNA sample to the appropriate law enforcement agency for inclusion in a national law enforcement DNA database.

(c) PLAN REQUIREMENTS.—The plan submitted under subsection (b) shall include recommendations concerning—

(1) a system for—

(A) the collection of blood and saliva specimens from any sex offender;

(B) the analysis of the collected blood and saliva specimens for DNA and other genetic typing analysis; and

(C) making the DNA and other genetic typing information available for law enforcement purposes only;

(2) guidelines for coordination with existing Federal and State DNA and genetic typing information databases and for Federal cooperation with State and local law in sharing this information;

(3) addressing constitutional, privacy, and related concerns in connection with mandatory submission of DNA samples; and

(4) procedures and penalties for the prevention of improper disclosure or dissemination of DNA or other genetic typing information.

Mr. HOLLINGS addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

AMENDMENT NO. 997

(Purpose: To Express the Sense of the Senate That the Federal Government Should not Withhold Universal Service Support Payments)

Mr. HOLLINGS. On behalf of Senator DORGAN and others, I send an amendment to the desk and ask the clerk to report.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for Mr. DORGAN, for himself, Mr. ROCKEFELLER, Mr. HOLLINGS and Mr. DASCHLE, proposes an amendment numbered 997.

Mr. HOLLINGS. 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 the following:

**SEC. . SENSE OF THE SENATE THAT THE FEDERAL GOVERNMENT SHOULD NOT MANIPULATE UNIVERSAL SERVICE SUPPORT PAYMENTS TO BALANCE THE FEDERAL BUDGET.**

Whereas the Congress reaffirmed the importance of universal service support for telecommunications services by passing the Telecommunications Act of 1996;

Whereas the Telecommunications Act of 1996 required the Federal Communications Commission to preserve and advance universal service based on the following principles:

(A) Quality services should be available at just, reasonable, and affordable rates;

(B) Access to advanced telecommunications and information services should be provided in all regions of the Nation;

(C) Consumers in all regions of the Nation, including low-income consumers and those in rural, insular, and high cost areas, should have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services, that are reasonably comparable to those services provided in urban areas and that are available at rates that are reasonably comparable to rates charged for similar services;

(D) All providers of telecommunications services should make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service;

(E) There should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service; and

(F) Elementary and secondary schools and classrooms, health care providers, and libraries should have access to advanced telecommunications services;

Whereas Federal and State universal contributions are administered by an independent, non-Federal entity and are not deposited into the Federal Treasury and therefore not available for Federal appropriations;

Whereas the Conference Committee on H.R. 2015, the Budget Reconciliation Bill, is considering proposals that would withhold Federal and State universal service funds in the year 2002; and

Whereas the withholding of billions of dollars of universal service support payments will mean significant rate increases in rural and high cost areas and will deny qualifying schools, libraries, and rural health facilities discounts directed under the Telecommunications Act of 1996:

Now, therefore, be it

*Resolved*, That it is the sense of the Senate that the Conference Committee on H.R. 2015 should not manipulate, modify, or impair universal service support as a means to achieve a balanced Federal budget or achieve Federal budget savings.

AMENDMENT NO. 998

Mr. HOLLINGS. Mr. President, I also, on behalf of the distinguished Senator from Delaware, Senator BIDEN, send an amendment to the desk and ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from South Carolina [Mr. HOLLINGS], for Mr. BIDEN, proposes an amendment numbered 998.

Mr. HOLLINGS. 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 the following:

**SEC. . EXTENSION OF VIOLENT CRIME REDUCTION TRUST FUND.**

Section 310001(b) of the Violent Crime Control and Law Enforcement Act of 1994 (42 U.S.C. 14211(b)) is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) for fiscal year 2001, $4,355,000,000; and

''(8) for fiscal year 2002, $4,455,000,000.''.

Beginning on the date of enactment of this legislation, the non-defense discretionary spending limits contained in Section 201 of H.Con Res. (105th Congress) are reduced as follows:

for fiscal year 2001, $4,355,000,000 in new budget authority and $5,936,000,000 in outlays;

for fiscal year 2002, $4,455,000,000 in new budget authority and $4,485,000,000 in outlays.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. ROCKEFELLER. Mr. President, the junior Senator from West Virginia wishes to continue, a little bit, the comments that were made by the Senator from North Dakota [Mr. DORGAN]. Needless to say, the Senator from West Virginia not only wholly agrees with him, but would carry the argument even further.

The concept of universal service is literally sacred in our country. For the majority of the people of our land, which is rural land, it is the only lifeline they have potentially to the present day and to their future day. They are able to afford certain kinds of rural rates. But if people start to take the universal service fund and use it for any other purpose other than what it was originally intended, the whole system of equality between rural States and urban States, of user States and using States, disappears. The concept of universal service is ended.

I would like to suggest that this is not a thought which is held by myself alone. I ask at this moment to have printed in the RECORD a letter from the U.S. Telephone Association and a letter from the Rural Telephone Coalition on the subject that the Senator from North Dakota and I were discussing.

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

UNITED STATES
TELEPHONE ASSOCIATION,
*Washington, DC, July 9, 1997.*

Hon. BYRON L. DORGAN,
*U.S. Senate,*
*Washington, DC.*

DEAR SENATOR DORGAN: The United States Telephone Association (''USTA''), representing more than 1,200 companies, is dismayed that Congress has chosen universal telephone service as a vehicle to balance the budget by the year 2002. While USTA recognizes the endeavors of key leaders in rejecting spectrum fees and other inappropriate budget proposals, exploiting the universal telephone service fund to balance the budget is not only bad precedent, it is bad telecommunications policy. Accordingly, USTA strenuously urges you to oppose this proposal in conference.

In its effort to meet the budget accord, the U.S. House of Representatives adopted a reconciliation package that maneuvers universal telephone service support moneys to satisfy current budgetary objectives. To make up for a $2 billion budget shortfall, the House's proposal borrows $2 billion in FY 2001 while artificially reducing universal telephone service support by this same amount in FY 2002. This proposal needlessly jeopardizes a privately run support system that continues to work without federal monetary aid. Moreover, such a ''scoring'' device sets a dangerous precedent that could damage this nation's universal telephone service policy necessary to maintain nationwide, affordable telecommunications service.

USTA has opposed the Office of Management and Budget and the Congressional Budget Office for more than two years over their claims of authority to reflect universal telephone service transactions on the federal budget. The Telecommunications Act clearly establishes the manner in which universal telephone service funds are collected and disbursed. Pursuant to the Act, universal telephone service moneys logically should not be classified as either federal receipts or federal disbursements and thus should not be associated with the federal budget, as the Administration has insisted and Congress has allowed.

USTA appreciates your continued support regarding the elimination of such budget proposals as the imposition of spectrum fees. Similarly, USTA strongly urges you to reject any proposals that would seek to balance the budget at the expense of universal telephone service. We hope we can count on you to help keep such initiatives out of the final conferenced agreement.

Sincerely,

ROY NEEL,
*President and CEO.*

---

NRTA—NTCA—OPASTCO,
RURAL TELEPHONE COALITION,
*Washington, DC, July 10, 1997.*

DEAR SENATOR/REPRESENTATIVE: The undersigned collectively representing approximately 850 of the nation's small rural incumbent local exchange carriers, have been closely following the struggle of the Congress to develop a reconciliation package that meets the targets assigned by the recent budget accord. Although we understand the difficult nature of this task, we applaud the efforts of key leaders who have prevented the adoption of many of the more unrealistic and unjustified concepts for meeting the agreement's targets. These concepts include auctioning electromagnetic radio spectrum at all costs, imposing new electromagnetic radio spectrum fees and auctioning toll-free ''vanity'' numbers.

However, we are alarmed that the U.S. House of Representatives, in its last-minute effort to achieve the budget agreement's targets, adopted a reconciliation package containing language that manipulates universal service support moneys to do so. Universal telecommunications service is a national policy objective, but the moneys that are involved in effectuating this policy are strictly private, not governmental as the House initiative attempts to suggest. The House provision seeks to create the illusion that the U.S. government should somehow have access to these private universal service moneys for the sole purpose of balancing the budget.

Specifically, in attempting to make up for a $2 billion budget shortfall, the U.S. House of Representatives has adopted a reconciliation package that uses universal service support moneys to meet its present budget objectives and even seems to suggest that a totally unnecessary appropriation is involved. This proposal borrows $2 billion in fiscal year (FY) 2001 while artificially reducing universal service support by this same amount in FY 2002—budget gimmickry Congress should reject. This proposal unnecessarily jeopardizes a privately run support system that continues to work without federal monetary aid. Such a misleading ''scoring'' device sets a dangerous precedent that could permanently damage the nation's statutory universal service policy and budget process.

Our organizations have opposed the Office of Management and Budget (OMB) and the Congressional Budget Office (CBO) for more than two years over their claims of authority to reflect universal service transactions on the federal budget. Universal service flow transactions represent the collection and distribution of private moneys, for the sole purpose of recovering private investment and expenses necessary to maintain nationwide universal telecommunications service. Therefore, universal service moneys logically cannot be classified as either federal receipts or federal disbursements and thus legally should not be associated with the federal budget, as the administration has insisted and the Congress has allowed.

We are pleased that Congress rejected spectrum fees and other inappropriate proposals that had the sole intent of meeting budgetary targets. However, manipulation of universal service moneys to look like U.S. government resources is not only bad precedent, but also had telecommunications policy. Any measure embracing such a proposal should be strenuously opposed. We hope we can count on your support to keep such initiatives out of the final conferenced reconciliation package. Please feel free to contact any one of our organizations if you have questions about this critical matter.

Sincerely,

JOHN F. O'NEAL,
*General Counsel, National Rural Telecom Association.*
MICHAEL E. BRUNNER,
*Executive Vice President and Chief Executive Officer, National Telephone Cooperative Association.*
JOHN N. ROSE,
*President, Organization for the Promotion and Advancement of Small Telecommunications Companies.*

Mr. ROCKEFELLER. There is another aspect which worries me greatly. I have heard so many people talk about the importance of technology and the importance of understanding that technology is our future and the fact that so many of the people in our rural areas and in our urban areas are not hooked up to the Internet and hooked up to all of the advantages that technology and the computer brings us. It was with that in mind that during the consideration of the Telecommunications Act, a number of Senators, led

by Senator SNOWE of Maine, put forward an amendment which would allow, for the very first time, money to be used with the full consent of the carriers, to be used to wire up 116,000 schools in this country, endless numbers of public libraries, enormous numbers of rural health clinics so that they could develop in the practice of telemedicine and other new technologies that are now and will be available.

If what is being contemplated by those who are working on the reconciliation process is the use of universal service money to plug up a potential shortfall in the spectrum auction, the entire Snowe amendment, which relates to whether or not we are going to have a first- or second-class citizenry in this country —first-class being those who have the money to have computers in their schools and at home and then the second class, and that being the majority, being those who do not—all of that will go down.

I make the further point that this is not the Government's money. Some may try to argue that it is, but it is money that is paid into a special fund and it is money which is being administered by something called NECA, which is the ''national exchange cable association''—I believe that is what it stands for. They are private. They are private. They are a private entity administering this fund.

This has been through a Senate process where it was agreed to in a bipartisan debate, 98 to 1. It has been through a joint board, FCC process, that is State and FCC together, voting 8 to nothing, and through a further final FCC process, 4 to nothing—unanimous, virtually the entire way through.

If the budget negotiators use this universal service fund for any purpose other than for the purposes that the universal service fund is meant to be used for, I think it begins a tremendous downfall in not only our future in terms of rural rates, but also in terms of learning and technology. The Vice President of the United States, our former colleague, Albert Gore, said that in his view the Snowe amendment, relating to 116,000 schools, more public libraries and more rural health clinics, was the biggest and most important thing that had happened in education policy in the last 30 years. He may have said, in this century.

In any event, all of that is in jeopardy, and the resolution, which is being circulated, I hope will be carried by staff members and others who hear the voice of the Senator from North Dakota and myself, to their Senators to know that something called universal service is in dire jeopardy as of this moment, because the tampering with that universal service is now in the bill that may come before us. There has to be a change made. Change is hard to come by. In other words, we really are at the ramparts on this issue.

I thank the Presiding Officer and I yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. HOLLINGS. Mr. President, NECA is the National Exchange Carriers Association. Mr. President, this association was formed at the breakup of AT&T back in 1984, and it is a private entity, whereby the different carriers, through their trade associations, self-impose, in an intermittent fashion, the amounts due and owing in order to constitute what we call the universal service fund. It is a private entity. There is no Federal law that says you can be a member or shall be a member or you cannot be a member. It is not under the Federal law; it is under this particular entity that it was associated with and together at that particular time of the breakup.

It depends on the volume of business, obviously. If you get a greater volume and more burdens and so forth—for high-cost areas is really what it was for, initially. It is now being extended to rural, being extended for the schools and the hospitals. But the high-cost areas are being taken care of under this universal service fund.

Mr. President, what we are seeing here—and I hope the conferees on reconciliation get the message—this is the epitome of the national loot. In 1994, this Congress passed, President Clinton signed into law the Pension Reform Act. Under that Pension Reform Act, it provided certain penalties, whereby you can't loot the pension funds of the particular corporate America. They wanted to make sure that a person in this particular corporation who had worked over the years and everything else, didn't have a newcomer in a merger or buyout or whatever it is, abscond with all the moneys and all of a sudden your pension was gone.

Now, it so happens that in the news here, about 6 weeks ago, now 8 weeks ago, that a famous American, Denny McLain, the all-time all-star pitcher, I think it was, for the Detroit Tigers, became a president of the corporation and he used the corporate pension fund in violation of law to pay the company's debt, and he was promptly sentenced to an 8-year jail sentence. We do it at the Federal level and get the good Government award.

We loot the Social Security pension fund, the Medicare trust fund, the civil service pension trust fund, the military retirees' trust fund. They even had in the reconciliation bill —and I put in an amendment—the looting of the airport and airways improvement fund, whereby the moneys that are supposed to go to the improvement of the airways instead is going to the deficit.

Now the cabal, the conspiracy that they call a conference committee has the unmitigated gall to provide as follows, and I read:

> The Senate recedes to the House with modifications.
>
> 3006 of this title provides that expenditures from the universal service fund under part 54 of the Commission's rules for the fiscal year 2002 shall not exceed the amount of revenue to be collected for that fiscal year, less [blank] billion dollars.
>
> Section 3006(B) further provides that any outlays not made from the universal service fund in fiscal year 2002 under subsection (A) are immediately available commencing October 1, 2002.
>
> The conferees note that this subsection shall not be construed to require the amount of revenues collected under part 54 of the Commission's rules to be increased.

What in the world, how else is it going to be done? If you take the amount of the funds necessary to keep universal service constant, less X billion dollars or million dollars, whatever, that they want to fit in here for a budget fix, then the companies and the associations through their companies that make the contributions are going to have to immediately either cut out the service under the service fund and the rules and regulations of the entity that controls it or raise the rates, and then the politicians will all run around saying, ''I'm against taxes, I'm against rate increases,'' when they are causing it in a shameful, shameless way in this particular provision and not even put in the amount. They have a blank here, and they are going to fill in the amount, and it is another smoke and another mirror and another loot.

Oh, yes, wonderful. We pass overwhelmingly the Pension Reform Act to make sure that it is a trust and it can be depended upon, and here, in the very same Congress, we come around and we loot all the particular funds, and now we find a private one. Maybe they will get the Brownback fund before they get through, if they can find it, and add that to it, too. They can get anybody's fund and put something down in black and white and they say, ''Oh, what good boys we are. We put in our thumb and pulled out a plum, and we balance the budget.''

Turn to page 4 on the conference report on a so-called balance budget agreement and report for the 5-year period terminating fiscal year 2002, and on page 4, line 15, the word is not ''balance,'' the word is ''deficit,'' $173.9 billion deficit.

Yet, the print media—I am glad this is on C-SPAN so the people within the sound of my voice can at least hear it, because they are not going to print it—the media goes along with the loot, and then they wonder why the budget is not balanced. If we only level with the American people, they would understand you can't cut taxes without increasing taxes.

We have increased the debt with that particular shenanigan to the tune now of $5.4 trillion with interest costs on the national debt of $1 billion a day. So when you cut down more revenues to pay, you increase the debt, you increase the interest costs, so you get reelected next year, because I stood for tax cuts, but they won't tell them that with the child tax cut that they have actually increased the tax for the child. Now that is at least in the Congressional RECORD in black and white.

I yield the floor.

Mr. DOMENICI. Mr. President, I rise in support of S. 1022, the Commerce, Justice, State, and the Judiciary appropriations bill for fiscal year 1998. The Senate bill provides $31.6 billion in budget authority and $21.2 billion in new outlays to operate the programs of the Department of Commerce, Department of Justice, Department of State, the Judiciary and Related Agencies for fiscal year 1998. When outlays from prior-year budget authority and other completed actions are taken into account, the bill totals $31.6 billion in budget authority and $29.4 billion in outlays for fiscal year 1998. The subcommittee is within its revised section 602(b) allocation for budget authority and outlays.

Mr. President, I commend the distinguished subcommittee chairman, Senator GREGG, for bringing this bill to the floor. It is not easy to balance the competing program requirements that are funded in this bill. I thank the chairman for the consideration he gave to issues I brought before the subcommittee, and his extra effort to address the items in the bipartisan balanced budget agreement. It has been a pleasure to serve on the subcommittee.

Mr. President, I ask unanimous consent that a table displaying the Budget Committee scoring of this bill be printed in the RECORD at this point.

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

S. 1022, COMMERCE-JUSTICE APPROPRIATIONS, 1998; SPENDING COMPARISONS—SENATE-REPORTED BILL

[Fiscal year 1998, in millions of dollars]

| | Defense | Non-defense | Crime | Mandatory | Total |
|---|---|---|---|---|---|
| Senate-Reported bill: | | | | | |
| Budget authority | 275 | 25,587 | 5,225 | 522 | 31,609 |
| Outlays | 322 | 25,188 | 3,381 | 532 | 29,423 |
| Senate 602(b) allocation: | | | | | |
| Budget authority | 297 | 25,588 | 5,225 | 522 | 31,632 |
| Outlays | 322 | 25,479 | 3,401 | 532 | 29,734 |
| President's request: | | | | | |
| Budget authority | 257 | 26,114 | 5,238 | 522 | 32,131 |
| Outlays | 286 | 25,907 | 3,423 | 532 | 30,148 |
| House-passed bill: | | | | | |
| Budget authority. | | | | | |
| Outlays. | | | | | |
| SENATE-REPORTED BILL COMPARED TO: | | | | | |
| Senate 602(b) allocation: | | | | | |
| Budget authority | (22) | (1) | ..... | ..... | (23) |
| Outlays | ..... | (291) | (20) | ..... | (311) |
| President's request: | | | | | |
| Budget authority | 18 | (527) | (13) | ..... | (522) |
| Outlays | 36 | (719) | (42) | ..... | (725) |
| House-passed bill: | | | | | |
| Budget authority | 275 | 25,587 | 5,225 | 522 | 31,334 |
| Outlays | 322 | 25,188 | 3,381 | 532 | 29,423 |

Note.—Details may not add to totals due to rounding. Totals adjusted for consistency with current scorekeeping conventions.

CARBON MONOXIDE VIOLATIONS

Mr. MURKOWSKI. Mr. President, as we consider funding for the Environmental Protection Agency, I would like to raise the issue of Clean Air Act carbon monoxide violations in my home town of Fairbanks with the chairman of the Environment and Public Works Committee, Senator CHAFEE.

As the chairman knows, Fairbanks has one of the highest rates of temperature inversions in the world. When such inversions occur, pollutants from any source in the area are trapped at extremely low altitudes. For example, it is not uncommon to see the smoke from house chimneys trapped directly above a house rather than disbursed in the atmosphere as in other cities nationwide.

While I would have preferred that the EPA not go forward with a bump-up on the rating of Fairbanks' air from moderate to serious, I recognize that this bill is not the place to accomplish that goal. I would like to point out that in the past 20 years, Fairbanks has reduced its violation days from 160 to as low as 1 last year. It is these last violations that are causing difficulties for communities nationwide. However, Fairbanks may never be able to prevent several violations per year due to its unique and extreme cold weather. It is my hope that the EPA would work with Fairbanks to develop strategies to mitigate the pollution that is so severely magnified by the extreme cold weather of my hometown.

Mr. STEVENS. I want to reiterate the concerns expressed by my colleague, Senator MURKOWSKI. The reality may be that no matter what Fairbanks does, it may never be able to comply with EPA standards because of its geographic location.

Mr. CHAFEE. I thank the Senators from Alaska for their remarks about carbon monoxide violations in Fairbanks. Their hometown has dramatically reduced the number of exceedences over the past 20 years and should be recognized for this success. It is my hope that the EPA will continue to work with Fairbanks to devise pollution reduction strategies that recognize the unique conditions that exist in Fairbanks.

Mr. MURKOWSKI: I thank my friend from Rhode Island.

OFFICE OF THE U.S. TRADE REPRESENTATIVE

Mr. CHAFEE. Mr. President, I want to take a moment to discuss one provision in the legislation now before the Senate. Under the heading of Related Agencies, the Commerce-State-Justice appropriations bill provides funding for the Office of the U.S. Trade Representative.

As my colleagues know, our Nation's Special Trade Representative, backed by the team of staff at USTR, is responsible for negotiating and administering trade agreements and coordinating overall trade policy for the United States. Those are significant responsibilities, and they are critical to the economic interests of American firms, workers, consumers, and families.

For an agency with such significant duties, USTR does not consume much in the way of taxpayer monies. Annual funding for USTR has hovered at just over $20 million for the past 5 years. In terms of the Federal budget—or for that matter of the several other agencies funded by this bill—$20 million is a mere pittance.

I might say that for what we get in return, the funds spent on USTR represent quite a bargain. Thanks to USTR, we have in place trade agreements and policies that allow our companies to compete successfully worldwide. And where barriers remain, the USTR team works continuously to make further progress. Their work over the years has affected billions of dollars in U.S. trade and contributes enormously to the health of the overall U.S. economy.

Now, USTR does not require much in funding because for the most part, appropriations are spent on two items: salaries and travel. Those basic necessities—the salaries that pay the staff, and the travel that is required for the various ongoing negotiations with our trading partners around the world—make up the bulk of USTR's financial needs. There is not much fat there. Therefore, every dime they get is critical.

I want to commend the chairman of the Commerce-State-Justice Subcommittee for allocating the full budget request for USTR for fiscal year 1998. Under his bill, the Office of the USTR will receive $22,092,000, exactly what the administration sought. I want to thank him for that.

Let me raise one concern, however, that I know is shared by the leadership and most members of the Senate Finance Committee. Since the January 1995 implementation of the Uruguay round agreements and the WTO, USTR has taken on an enormous new docket of cases in which the United States is involved, and all of these cases now come with strict deadlines. As of July 1, there were pending some 47 WTO or NAFTA cases in which the United States is a plaintiff, a defendant, or otherwise a participant. That is quite a workload. Yet despite the increase, USTR has not increased its career legal staff. The number of lawyers and litigators now on staff is virtually the same as in the pre-WTO days. USTR has just 12 lawyers in Washington, with 2 more in Geneva, and only 2 of them are able to devote themselves fulltime to the international litigation. That dearth of staff makes no sense—and only hurts our efforts to win our cases.

I believe USTR must have the resources and personnel that it needs to fulfill its responsibilities. While I am delighted that USTR received its full budget request, I must say that the budget request amount is simply not realistic for an agency facing these new assignments. Even a modest increase of, say, $1 million—which again, in terms of the federal budget is not even visible—would make a significant and positive difference to the ability of USTR to carry out its work. And that in turn would only benefit US workers and families, and the overall US economy.

I want to urge USTR to press the Office of Management and Budget to recognize their new workload. I have mentioned this repeatedly to Ambassador Barshefsky and I hope she will act on it. And I want to exhort OMB in the strongest terms possible to adjust next year's budget request accordingly for

USTR. I am confident that such an adjustment would be met with favor by the members of the authorizing committee, namely the Senate Finance Committee.

If OMB fails to act, then it may fall to Congress to do the right thing, and make the small but necessary increased investment in this agency. Indeed, I seriously considered taking such a step during today's debate. But for now I will wait. Thanks to the good work of the chairman, we do have in this bill $22 million in full funding for USTR, and I intend to do what I can to make sure that that full $22 million becomes law. However, I call upon the administration in no uncertain terms to ensure that in the budget submitted next year, USTR is provided the resources they need.

Mr. McCAIN. Mr. President, I am happy to say that, after reviewing the bill before the Senate, I find relatively few examples of pork-barrel spending. I stress, relatively few, since I can still find a few objectionable provisions in the bill and many in the report. But there are far fewer problems with this bill than the last few appropriations bills we have passed in the Senate.

This bill contains the usual earmarks for centers of excellence. In particular, bill earmarks $22 million for the East-West Center in Hawaii and $3 million for the North/South Center in Florida.

These amounts represent a combined increase of $16.5 million above the administration's request.

Last week, I spoke about the problem of Congress establishing, at taxpayer expense, centers for the study of virtually every subject, irrespective of the availability of research and analysis on those issues already available from existing universities and private research institutions.

This enormous increase in funding for the East-West and North/South Centers is incomprehensible given the dire state of U.S. diplomatic representation in many of the newly independent countries of the post-cold-war world. They are particularly inexplicable in light of the committee's decision to zero out the funding for the National Endowment for Democracy, a decision which the Senate fortunately reversed earlier today.

Mr. President, I would not be at all surprised to see in next year's bill funding for a North-by-Northwest Center, perhaps to include a banquet room honoring the last Alfred Hitchcock.

The bill also contains language that directs the U.S. Marshals Service to provide a magnetometer and not less than one qualified guard at each entrance to the Federal facility located at 625 Silver, S.W., in Albuquerque, NM. I must say that this is perhaps the most specific earmark I have ever seen, even providing an address to ensure the assets are delivered to the proper beneficiaries.

Once again, though, the Appropriations Committee has contributed a few new and innovative ways to earmark port-barrel spending.

The most interesting is language that I will call a reverse earmark. The report earmarks $8 million to begin addressing the backlog in repair and maintenance of FBI-owned facilities, other than those located in and around Washington, DC and Quantico, VA. I wonder whether my colleagues from this area were aware that they had been singled out for exclusion from an earmark.

Other report language earmarks are more typical, such as: Various earmarks for southwest border activities, although I note that my colleagues singled out the New Mexico and Texas borders for special attention to combat illegal border crossing and drug smuggling problems. I was of the impression that these problems were prevalent across the entire border with Mexico, including Arizona and California.

Similarly, the report requires that two-thirds of the additional 1,000 border patrol agents are to be deployed in Texas sectors, with the remaining 300-plus agencies to be scattered across New Mexico, Arizona, or California. The report earmarks $1 million for Nova Southeastern University in Florida for the establishment of a National Coral Reef Institute to conduct research on, what else, coral reefs. And it also earmarks $1 million to the University of Hawaii to conduct similar coral reef studies. I suppose this might be considered a good idea to fund competitive research projects, except these institutions did not have to compete to get these funds, nor will they likely have to compete to continue to receive hand-outs to continue their coral reef research.

The report contains $410,000 for the Alaska Eskimo Whaling Commission, and $200,000 for the Beluga Whale Commission. It contains $2.3 million to reduce tsunami risks to residents and visitors in Oregon, Washington, California, Hawaii, and Alaska. And it earmarks $88 million in NOAA construction funds for specific locations in Alaska, Hawaii, South Carolina, Mississippi, and other States.

And finally, this bill contains earmarks for assistance to the U.S. Olympic Committee to prepare for the 2002 Winter Olympics in Utah. I found $3 million for communications and security infrastructure upgrades, $2 million to formulate a public safety master plan, and language directing that NTIA provide telecommunications support to the Utah Olympics similar to that provided in Atlanta last summer. As my colleagues know, this is just a small portion of the funding we will see channeled to the Utah Olympics. It is in addition to the money included in the supplemental passed earlier this year and in other appropriations bills that have already passed this body.

While the wasteful spending in this bill is less onerous than in other bills I have seen in the past 2 weeks, I still have to object strenuously to the inclusion of these earmarks and add-ons in the bill. We cannot afford pork-barrel spending, even the amount contained in this bill.

I ask unanimous consent that a list of the objectionable provisions in this bill be printed in the RECORD.

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

OBJECTIONABLE PROVISIONS IN S. 1022 FY 1998 COMMERCE/JUSTICE/STATE/JUDICIARY APPROPRIATIONS BILL

BILL LANGUAGE

Earmarks for funding for the National Advocacy Center in Columbia, South Carolina, which was authorized in 1993 as a center for training federal, state, and local prosecutors and litigators in advocacy skills and management of legal operations: $2.5 million for operations, salaries, and expenses of the Center, $2.1 million to support the National District Attorney's Association participation in legal education training at the Center.

U.S. Marshals Service is directed to provide ''a magnetometer and not less than one qualified guard'' at each entrance to a federal facility (including both buildings and related grounds) at 625 Silver, S.W., in Albuquerque, New Mexico

$125,000 of State Department Diplomatic and Consular Programs funding earmarked for the Maui Pacific Center

$22 million of USIA funds earmarked for the Center for Cultural and Technical Interchange between East and West in the State of Hawaii, and $3 million for an educational institution in Florida known as the North/South Center

Section 606 prohibits construction, repair, or overhaul of vessels for the National Oceanic and Atmospheric Administration in shipyards outside the U.S.

REPORT LANGUAGE

Department of Justice:

Various earmarks for Southwest Border activities, including: $281,000 for a Southwest Border initiative; $11.4 million for Southwest Border control; $29.7 million and the direction to allocate additional necessary resources to address border crossing and drug smuggling problems along the New Mexico and Texas borders; $39.3 million in construction and engineering funds for facilities at 29 specific locations along the Southwest Border

Earmark of not less than $468,000 of the U.S. Marshals Service funding for witness security New York metro inspectors

Earmark of $700,000 for acquisition and installation of video conferencing equipment in jails and courthouses in New York, Illinois, Utah, Colorado, Nevada, Washington, and sites to be determined in New Mexico and Texas after consultation with the Appropriations Committee

Language urging the FBI to favorably consider the FBI Center in West Virginia as the location for a new training program on the investigative use of computers, for which $1 million was earmarked

$1.5 million to maintain an independent program office dedicated solely to the relocation of the Criminal Justice Information Services Division and automation of fingerprint identification services

Increase of $8 million to begin addressing the backlog in repair and maintenance of FBI-owned facilities, other than those located in and around Washington, D.C. and Quantico, Virginia

Earmarks of a portion of the increased funding and positions for identification, apprehension, detention, and deportation of illegal aliens, as follows: $48.3 million for additional detention capacity, including 300 beds in New York, 300 bed in Florida, and 400 beds

in California facilities; $5 million for the Law Enforcement Support Center and expanded services of the Center in Utah.

Directive to deploy not less than two-thirds of the 1,000 new border patrol agents in the Mafa, Del Rio, Laredo, and McAllen sectors in Texas

Earmarks of increased funding for inspection activities for: Full-time manning of three in-transit lounges at Miami International Airport; $4 million for dedicated commuter lanes, including equipment and facilities, at Laredo, Hidalgo, and El Paso, Texas, and Nogales, Arizona; $1.7 million to staff three new airports in Oregon, California, and Nova Scotia; $700,000 for automated permit ports in Maine, Vermont, New York, Montana, Washington, Alaska, and New York; $1.5 million for automated I–94 equipment at airports in New York, Newark, Seattle, San Francisco, Los Angeles, Honolulu, Chicago, Philadelphia, Miami, and Boston.

Earmark for activation of new and expanded prison facilities in Texas, California, Mississippi, South Carolina, Arkansas, Texas, West Virginia, Washington, and Ohio

Language urging the Bureau of Prisons to favorably consider development of MDTV at the Beckley Federal prison facility

$1 million equally divided between Mount Pleasant and Charleston, South Carolina police departments for computer enhancements and equipment upgrades

$3 million for the Utah Communications Agency to support security and communications infrastructure upgrades to counter potential terrorism threats at the 2002 Winter Olympic Games, and $2 million to allow the Law Enforcement Coordinating Council for the 2002 Olympics to develop and support a public safety master plan

$2 million as a grant to establish a Public Training Center for First Responders at Fort McClellan, Alabama

$3.85 million for the National White Collar Crime Center in Richmond, Virginia

Earmarks of Violent Crime Reduction Trust Fund dollars for: $190,000 for the Gospel Rescue Ministries of Washington, D.C. to renovate the Fulton Hotel as a drug treatment center; $2 million for the Marshall University Forensic Science Program; $2 million for a rural states management information system demonstration project in Alaska; $500,000 for the Alaska Native Justice Center; $1 million for the Santee-Lynches Regional Council of Governments Local Law Enforcement Program; $10 million for North Carolina Criminal Justice Information Network for automation and security equipment; $1 million for the National Judicial College; Language urging funding for the New Orleans-based Project Return and Chicago-based Family Violence Intervention Program

$2 million for Southwest Surety Institute at New Mexico State University

$1 million for a public-private partnership demonstration project in Las Vegas, Nevada, for a home for victims of domestic abuse

Language directing funding to complete design of the Choctaw Indian tribal detention facility in Mississippi

Language expressing the expectation that the National Center for Forensic Science at the University of Central Florida will be provided a grant for DNA identification work, if warranted

$850,000 of juvenile justice grants for the Vermont Department of Social and Rehabilitation Services to establish a national model for youth justice boards.

$1 million for the New Mexico prevention project.

$200,000 for the State of Alaska for a study on child abuse and criminal behavior linkage.

$1.75 million for the Shelby County, Tennessee, Juvenile Offender Transition Program.

Direction to examine proposals and provide grants, if warranted, to the following entities: Hill Renaissance Partnership, Lincoln Council on Alcoholism and Drugs, Hamilton Fish National Institute on School and Community Violence, Low Country Children's Center, and Comprehensive Juvenile Justice Crime Prevention and Juvenile Assessment Center in Gainesville, Florida.

DEPARTMENT OF COMMERCE

Language urging the Economic Development Administration to consider applications for grants for: Defense conversion project at University of Colorado Health Sciences Center in Aurora, Colorado; Passenger terminal and control tower at Bowling Green/Warren County, Kentucky, regional airport; Jackson Falls Heritage Riverpark in Nashua, New Hampshire; Bristol Bay Native Association; Redevelopment of abandoned property in Newark, New Jersey; Pacific Science Center in Seattle, Washington; Rodale Center at Cedar Crest College in Lehigh Valley, Pennsylvania; Minority labor force initiative in South Carolina; Cumbres and Toltec Scenic Railroad Commission in Arriba County, New Mexico, and Conejos County, Colorado; Fore River Shipyard in Quincy, Massachusetts; Native American manufacturer's network in Montana; National Canal Museum in Easton, Pennsylvania; Cranston Street Armory in Providence, Rhode Island.

Recommendation that Little Rock, Arkansas, Minority Business Development Center remain in operation.

Recommendation that Jonesboro-Paraground, Arkansas, Metropolitan Statistical Area be designated to include both Craighead and Greene Counties.

Language urging the NTIA to consider grants to University of Montana and Marshall University, West Virginia.

Language directing NTIA to fund telecommunications support for the Olympic Committee Organization in Utah to ensure that similar telecommunications facilities as were available at the Atlanta Olympics

$500,000 earmarked for South Carolina geodetic survey

$300,000 earmarked for Galveston-Houston operation of physical oceanographic real time system

$1.9 million earmarked for south Florida ecosystem restoration, including $1 million for Nova Southeastern University for establishment of a National Coral Reef Institute to conduct research on coral reefs, and $1 million for the University of Hawaii for similar coral reef studies

$450,000 for a cooperative agreement with the State of South Carolina Department of Health and Environmental Control to work on the Charleston Harbor project

Increase of $6.6 million above the request for the National Estuarine Research Reserve System, which serves 22 sites in 18 states and Puerto Rico

$4.7 million for the Pacific fishery information network, including $1.7 million for the Alaska network

Not less than $850,000, for the marine resources monitoring assessment and prediction program of the South Carolina Division of Marine Resources

$390,000 for the Chesapeake Bay resource collection program

$50,000 for Hawaiian monk seals

$500,000 for the Hawaii stock management plan

$300,000 for Alaska groundfish surveys and $5.5 million for Alaska groundfish monitoring

$410,000 for the Alaska Eskimo Whaling Commission and $200,000 for the Beluga Whale Committee

$1 million for research on Steller seals at the Alaska SeaLife Center, $325,000 for similar work by the state of Alaska, and $330,000 for work by the North Pacific Universities Marine Mammal Consortium

$400,000 for the NMFS in Honolulu for Pacific swordfish research

$250,000 to implementation of the state of Maine's recovery plan for Atlantic salmon

$150,000 to the Alaska Fisheries Development Foundation

$200,000 for the Island Institute to develop multispecies shellfish hatchery and nursery facility to benefit Gulf of Maine communities

$3.8 million to develop a national resources center at Mount Washington, New Hampshire, to demonstrate innovative approaches using weather as the education link among sciences, math, geography, and history

$500,000 for the ballast water demonstration in the Chesapeake Bay

$2.3 million to reduce tsunami risks to residents and visitors in Oregon, Washington, California, Hawaii, and Alaska

$3 million increase, with total earmark of $15 million, for the National Undersea Research Program, equally divided between east and west coast research centers, with the west coast funds equally divided between the Hawaii and Pacific center and the West Coast and Polar Regions center

$1.7 million for the New England open ocean aquaculture program

$1 million for the Susquehanna River basin flood system

$97,000 for the NOAA Cooperative Institute for Regional Prediction at the University of Utah

$150,000 to maintain staff at Fort Smith, Arkansas, to improve the ability of southern Indiana to receive weather warnings

Earmarks of $88 million in NOAA construction funds for specific locations in Alaska, Hawaii, South Carolina, Mississippi, and others

DEPARTMENT OF STATE:

$22 million for East-West Center (increase of $15 million), and $3 million for North/South Center (increase of $1.5 million)

SMALL BUSINESS ADMINISTRATION:

Language stating SBA should consider funding a demonstration in Vermont with the Northern New England Tradeswoman, Inc.

The PRESIDING OFFICER. Who seeks recognition?

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

METHAMPHETAMINE INITIATIVE

Mr. HATCH. Mr. President, I would like to thank the chairman of the subcommittee for taking what I believe is a necessary and meaningful step to turn the tide on a growing epidemic in this country, methamphetamine abuse. Although originally confined principally to the Southwest, including my home State of Utah, this epidemic is now moving East. Congress needs to take action to stop meth abuse.

Mr. GREGG. I could not agree more with the Senator from Utah. In my home State of New Hampshire, we are now experiencing our own influx of methamphetamine. I am seriously concerned about the effect that the proliferation of this drug is going to have

upon the children of this Nation, particularly in New Hampshire.

Mr. HATCH. Meth abuse, unfortunately, is also rapidly becoming one of our top public health threats. According to the latest data released by SAMHSA in its ''Drug Abuse Warning Network'' report released last week the number of children aged 12 to 17 who have had to go to emergency rooms due to meth use increased well over 200 percent between 1993 and 1995 alone. The number of deaths associated with meth has also increased dramatically. From 1989 to 1994, methamphetamine accounted for 80 percent or more of clandestine lab seizures by the DEA. Clandestine lab crackdowns are at an all-time high, and many more are going undetected. Mobile labs in rural areas of Utah, including numerous locations in Ogden, Provo, and the St. George area are making meth with virtual impunity. Local law enforcement does not have the manpower, resources, or technical expertise to cover such vast areas in a truly meaningful fashion. Federal law enforcement, most principally the Drug Enforcement Administration, has agents specially trained in the areas of methamphetamine lab take downs, but the number of such specialists is extremely limited, and certainly is of insufficient numbers to be any sort of meaningful presence in Utah, as well as the rest of the Rocky Mountains.

I am deeply concerned about the Methamphetamine problem in Utah, as well as the rest of the Nation. In my State, distribution by Mexican traffickers has been expanded by using networks established in the cocaine, heroin, and marijuana trades. Wholesale distribution is typically organized into networks in major metropolitan areas, to include Salt Lake City. Utah has 2,500 isolated noncontrolled airstrips which provide a convenient means for drug smugglers to transfer methamphetamine to vehicles for shipment throughout the United States. Also, there are over 65 public airports throughout the State that are not manned on a 24-hour basis, but can be lit from a plane by using the plane's radio tuned to a specific frequency.

Major highway systems such as I–15, I–70, and I–80 serve to interconnect Mexico with Colorado, Utah, and Wyoming which allows Utah to be an ideal transshipment point to major markets on the west coast, as well as Minneapolis, Chicago, Detroit, and other Midwestern areas. It also results in such illegal drugs being readily accessible throughout Utah.

According to the DEA, methamphetamine seizures nationwide in 1996 were the highest in over a decade. Not easily dissuaded, particularly when such large profits can be made, Mexican traffickers have begun obtaining the necessary precursor chemicals for methamphetamine from sources in Europe, China, and India. These precursor chemicals needed to manufacture methamphetamine drugs are available in Utah and have contributed to the increased consumption of the drug. Further, ephedrine tablets are purchased in large quantities and then converted to methamphetamine.

For these reasons I believe that it is imperative that this Congress provide the necessary resources to the DEA to engage in a meaningful methamphetamine initiative. I fully support the Appropriations Committee's report to S. 1022 that recommends that $16,500,000 of the funds appropriated to the DEA be used to fund a methamphetamine initiative, to include an additional 90 agents and 21 support personnel who will be tasked with implementing a broad approach for attacking methamphetamine abuse in this country. I strongly encourage that some of these funds be applied to funding DEA agents with particularized methamphetamine training be stationed in Utah to combat this ever growing threat in my State, and to prevent the methamphetamine lab activities in Utah from continuing to harm other States throughout this Nation.

Mr. GREGG. It is my intention that these new agents be allocated where they are most needed. Many States, such as New Hampshire and Utah are certainly experiencing the level of increased meth abuse this meth initiative is designed to address.

COOPER HOSPITAL'S TRAUMA REDUCTION INITIATIVE

Mr. LAUTENBERG. I would like to express my support for Cooper Hospital's Trauma Reduction Initiative.

Cooper Hospital is located in Camden, NJ, one of the most troubled cities in the Nation. Between 1994 and 1995, the number of violent crimes declined 4 percent nationwide, while in Camden they rose 8.6 percent. Homicides in Camden rose 28.88 percent, while homicides declined 6 percent nationally. With an estimated population of 82,000, Camden ranks as the sixth most violent city in the country when compared to all cities and towns.

Cooper Hospital's Trauma Reduction Initiative links hospital staff, community leaders, and churches throughout Camden as the frontline of crisis intervention. The Trauma Reduction Initiative represents a community-based approach to deal with the types of violence that disrupt our neighborhoods and burden our health care system.

According to Government research, by 2003, firearms will have surpassed auto accidents as the leading cause of injury death in the United States. But unlike victims of car accidents, who are almost always privately insured, four out of five firearm victims are receiving public assistance or are uninsured. Thus, taxpayers bear the brunt of medical costs that have grown to $4.5 billion a year in the past decade. Cooper Hospital's violence prevention program is designed to help stop the spiral of violent crime and retaliation in Camden. This program could serve as a model for other cities to follow.

The Trauma Reduction Initiative has received funding from the Bureau of Justice Assistance. I ask my colleagues, the chairman and ranking member of the Commerce, Justice, State Appropriations Subcommittee, if they agree that the Trauma Reduction Initiative is worthy of BJA's continued support?

Mr. GREGG. I appreciate the concerns of the Senator from New Jersey about the disturbing amount of violent crime in Camden. I agree that, within the available resources, the Trauma Reduction Initiative is worthy of BJA's continued support.

Mr. HOLLINGS. I, too, share the concerns of the Senator from New Jersey about the escalating costs of firearm violence in our country. I agree with the chairman that, within the available resources, BJA should continue to support the Trauma Reduction Initiative.

TECHNICAL CORRECTIONS

Mrs. FEINSTEIN. Mr. President, I would first like to thank the chairman and ranking member of the Commerce, Justice, State, and the Judiciary Appropriations Subcommittee for joining Senator BOXER and myself in this colloquy regarding our amendment to make technical corrections to title I, section 119 of the Commerce-State-Justice appropriations bill. This section, as amended, will allow the Department of Justice and the Federal Emergency Management Agency to transfer surplus real property to State and local governments for law enforcement, fire fighting, and rescue purposes.

Mrs. BOXER. Mr. President, I would like to join my colleague from California in thanking the chairman and ranking member for all their assistance on this issue. I would also like to extend our appreciation to the chairman and ranking member of the Governmental Affairs Committee, without whose suggestions this amendment would not have gone forward. I am very pleased to cosponsor this amendment, which modifies the amendment I offered in the Appropriations Committee to include the Department of Justice Property Transfer Act.

Mr. GREGG. I thank my colleagues from California for their hard work in including this language in the bill. We all know that the police and fire departments are the first to respond to crises, and this change in law will facilitate local agencies in obtaining surplus Federal property for primary and specialized law enforcement and rescue training. I am pleased to support this change in law for the benefit of our communities.

Mr. HOLLINGS. I join my colleagues in recognizing the value of this language. I would like to ask if the Senator from California knows of any situations where this change in law would serve immediate benefit?

Mrs. FEINSTEIN. I would be pleased to answer that question. I was first made aware of the problems that current property transfer laws poses by the sheriff of Riverside County in southern California. The sheriff's office

has obtained, by short-term lease, a portion of March Air Reserve Base. The sheriff's office has been using this land for joint law enforcement and fire and rescue training. This legislation will allow the sheriff's office to apply directly to the General Services Administration, which will coordinate the application and approval process with the Department of Justice and FEMA to transfer the necessary property. Once again, I thank my colleagues for their support of this legislation.

ABUSIVE AND EXPLOITATIVE CHILD LABOR

Mr. HARKIN. Mr. President, I would like to engage the chairman and the ranking member of the Commerce, Justice, State, and the Judiciary Subcommittee in a colloquy regarding abusive and exploitative child labor.

According to the International Labor Organization [ILO], some 250 million children between the ages of 5 and 14 are working in developing countries and the number is on the rise. I strongly believe that access to primary education reduces the incidence of child labor around the world. It is my understanding that the Asia Foundation supports efforts to improve access to primary education.

I would like to see some language in the conference report urging the Asia Foundation to continue its work in Pakistan. I know that our staffs' have conferred, and that you and the ranking member share my concern about abusive and exploitative child labor.

Mr. GREGG. I commend the Senator for his concern, and would welcome any report language he has regarding the matter. Though it is outside the scope of the conference, I will exploit any opportunity that presents itself that would allow language to be inserted in the conference report.

Mr. HOLLINGS. The Senator from Iowa has been working this issue hard, and I agree with the chairman.

KETCHIKAN SHIPYARD

Mr. MURKOWSKI. Mr. President, Ketchikan, AK, just north of the Canadian border in southeast Alaska, has recently suffered an extreme economic blow due to changes in Federal forest management policies. It is a town of just a few thousand people, and the loss of 406 jobs due to the closure of one of the town's major industries, a pulpmill, severely disrupted the community.

The need for economic revitalization in Ketchikan is great, but the available opportunities are limited. One potentially important opportunity is provided by a local shipyard, Ketchikan Ship and Drydock. However, the ability of this yard to contribute to the local economy is limited without a significant upgrade of its ability to handle a variety of vessel sizes.

It is my understanding that the subcommittee report on this appropriation recognizes similar situations in other areas by suggesting that the Economic Development Administration consider proposals which meet its procedures and guidelines.

Would the distinguished managers of the bill, my friends from New Hampshire and South Carolina, agree that if the EDA receives a proposal for the Ketchikan shipyard which meets its procedures and guidelines, the EDA should consider that proposal and provide a grant if the latter is warranted?

Mr. GREGG. Mr. President, the distinguished Senator from Alaska is correct. I would urge the Economic Development Administration to consider such a proposal that met its procedures and guidelines and urge it to provide a grant if it finds the proposal warranted.

Mr. HOLLINGS. Mr. President, I agree with the response by my friend from New Hampshire.

NIST FUNDING FOR TEXAS TECH UNIVERSITY WIND RESEARCH

Mrs. HUTCHISON. Mr. President, I would like to ask the distinguished Subcommittee Chairman, Senator GREGG, to engage in a colloquy on a matter of extreme importance to my State and a number of others, and that is the need for more research into wind and severe storm disasters and ways to protect people and property from catastrophic harm.

Mr. GREGG. Mr. President, I would be happy to yield to the Senator from Texas and engage in a colloquy.

Mrs. HUTCHISON. Mr. President, as you know, there have been a number of severe tornadoes, wind storms, hurricanes and other wind-related disasters in recent months which have killed scores of people and destroyed communities. Earlier this year, the small town of Jarrell, TX, experienced a tornado that killed 29 people, seriously injured many others, and caused millions of dollars in damage to homes and businesses. The President's home State of Arkansas was also hit by a wind disaster that resulted in loss of life. The home State of the Ranking Minority Member of the Subcommittee, Senator HOLLINGS is still rebuilding after the devastation of Hurricane Hugo in 1989.

Mr. President, there is important work being done at Texas Tech University to help improve design construction of buildings to make them more resilient to windstorms. The laboratory building will include space to house a wind tunnel, a structural and building component testing lab and a material testing lab. These laboratory facilities will be used to develop innovative building frames and components that are resilient to extreme winds and windborne debris and yet are economically affordable. The research will also produce results to help cope with the environmental effects of wind erosion and dust and particulate generation.

The Department of Commerce, through the National Institute of Standards and Technology, does wind research. NIST in particular is engaged in research that complements the Texas Tech project.

The Committee has provided $276,852,000 for the scientific and technical research and services (core programs) appropriation of NIST. Part of the increased amount is for continued research, development, application and demonstration of new building products, processes, technologies and methods of construction for energy-efficient and environmentally compatible buildings.

Senator GREGG, do you concur that it is the intent of the committee to direct $3.8 million in funds provided to NIST for scientific and technical research and services for cooperative research between NIST and Texas Tech University to pursue this important wind research?

Mr. GREGG. It is the intent of the Committee to direct $3.8 million of NIST's scientific and technical research and services funding provided in the bill for cooperative research with Texas Tech University. I look forward to working with the Senator from Texas to ensure that the additional funds provided for core programs for continued research, development, application and demonstration of new building products, processes, technologies and methods of construction supports cooperative wind research between NIST and Texas Tech University.

SMALL BUSINESS DEVELOPMENT CENTERS

Mr. CHAFEE. I wonder if I could get the attention of the distinguished manager of the bill, Commerce, Justice, State Appropriations Subcommittee Chairman JUDD GREGG. I have a proposal related to small business development centers, and I'd like to get him to comment on it.

Mr. GREGG. I'd be happy to.

Mr. CHAFEE. I thank the Senator. What I propose to do is give more SBDCs the tools they need to encourage small companies to start exporting. As the Senator knows, the SBDCs are doing a terrific job helping small business owners devise business plans, marketing strategies, and so forth, but many of them simply don't have the capacity to offer advice on how to export.

We ought to try to change that, in my view. Exporting is the name of the game today—even for small businesses. And one way to do that would be to broaden access to a successful small business export promotion program called the International Trade Data Network, or ITDN.

Now, what is the ITDN? The ITDN is a computer-based service that small business owners can use to retrieve a stunning amount of international trade data—compiled both from Federal Government sources and the private sector. With a few quick keystrokes, individuals can read about everything from market demographics to descriptions of upcoming trade missions to explanations of relevant export and import regulations to potential contract leads. Small businesses anxious to export can learn about virtually every industry and virtually every country.

The ITDN was developed in 1988 by the Export Assistance Center at Bryant College in Smithfield, RI, and it's

been a big help to literally hundreds of Rhode Island's small businesses. In fact, 18 companies in Rhode Island use the ITDN every single day.

Listen to some of these endorsements from Rhode Island business owners. One said, ''The information made available through the ITDN is an integral part of our Pre-Entry Level Market Analysis.'' Another reported, ''I find the ITDN to be a state-of-the-art, user friendly software that is a one-stop shop for international information. It is a vital tool for businesses today that need to survive in a global environment.''

But right now, only 30 or so of our 960 Small Business Development Centers have direct access to the ITDN. So what I'd like to do is expand the program, so that SBDCs all across the country are connected to it. Specifically what I have in mind is converting the ITDN to an internet-based website, and establishing an Interactive Video Trade Conferencing Center at each State's lead small business assistance office. My proposal would also make the ITDN technology available to the Approximately 2,500 SBDC sub-centers across the country.

As I understand the situation, SBDCs are already authorized to conduct export promotion activities under Section 21 of the Small Business Act. In fact, representatives of Bryant College met with the SBA's Associate Administrator for the SBDC program earlier this year to discuss this proposal, and received a very positive response. For one reason or another, however, the SBA has been reluctant to dedicate any money to this purpose.

The 1988 Commerce, Justice, State Appropriation bill contains $75.8 million for the SBDC program, an increase of some $2.3 million over the 1997 funding level. In talking with the folks at the Export Assistance Center at Bryant College, it's my understanding that expanding the ITDN could be done over 2 years, with a first year cost of about $925,000. I'd ask the distinguished manager if I could get his endorsement of my proposal.

Mr. GREGG. I appreciate the Senator's interest in this matter, and I agree that we ought to look for ways to increase American small businesses' capacity to export.

Having looked at the Senator from Rhode Island's proposal, and listened to his remarks, I think that the ITDN program could be an excellent tool for opening international markets. I strongly encourage the Small Business Administration to make funds available for the expansion of the ITDN in fiscal year 1998.

Mr. CHAFEE. I want to thank my friend from New Hampshire for his support for this initiative.

''MADE IN THE USA'' ADVERTISING

Mr. KOHL. I understand that the FTC has proposed to weaken the standard for ''Made in the U.S.A.'' advertising from ''all to virtually all'' U.S. content to ''substantially all'' U.S. content. The proposal sets forth two alternative safe harbors for ''Made in the U.S.A.'' claims: 75 percent U.S. content—U.S. manufacturing costs represent 75 percent of the total manufacturing costs for the product and the product was last substantially transformed in the U.S. or; two level substantial transformation—The product was last substantially transformed in the United States and all significant inputs were last substantially transformed in the United States.

I also understand that the new proposed guidelines would have the effect of allowing products made with 25 percent or more foreign labor and foreign materials to be labeled ''Made in the U.S.A.'' In some cases, the FTC's proposed guidelines would allow products made entirely with foreign materials and foreign components to be labeled ''Made in the U.S.A.''

The ''Made in the U.S.A.'' label, a time-honored symbol of American pride and craftsmanship, is an extremely valuable asset to manufacturers. Allowing this label to be applied to goods not wholly made in America will encourage companies to ship U.S. jobs overseas because they can take advantage of the cheaper labor markets while promoting their products as ''Made in the U.S.A.'' For products not wholly made in the U.S.A., companies already can make a truthful claim about whatever U.S. content their products have—e.g., ''Made in the U.S.A. of 75 percent U.S. component parts'' or ''Assembled in the U.S.A. from imported and domestic parts''. However, if manufacturers seek to voluntarily promote their products as ''Made in the U.S.A.'' they must be honest in that promotion and only apply the ''Made in the U.S.A.'' label to products wholly made in the U.S.A.

Mr. GREGG. I am aware of the concerns expressed by my colleague on the Appropriations Committee and share the Senator's concerns on the need to protect American jobs. My subcommittee has jurisdiction over the FTC and you can be assured that we will closely watch any action taken by the FTC regarding the current standard for ''Made in the U.S.A.''

Mr. HOLLINGS. I too want to assure the Senator that our Subcommittee will closely monitor any actions on the FTC's part to change the ''Made in the U.S.A.'' designation. The ''Made in the U.S.A.'' label should continue to assure consumers that they are purchasing a product wholly made by American workers.

Mr. KOHL. I thank Senator GREGG and Senator HOLLINGS for their comments on this important issue. I am reassured by their interest in this matter.

JEFFERSON PARISH COMMUNICATIONS SYSTEM

Mr. BREAUX. Mr. President, I rise to discuss with the distinguished chairman of the subcommittee, Senator GREGG, the distinguished ranking member of the subcommittee, Senator HOLLINGS, and my distinguished colleague from Louisiana, Senator LANDRIEU, an important safety issue facing Jefferson Parish, LA.

As my colleagues know, the Jefferson Parish Sheriff's Office is one of the most progressive and notable law enforcement offices in the country. Unfortunately, they have been forced to use a conventional 450 MHz UHF radio system that is far too small and antiquated to handle current traffic volumes and to provide the secure and varied communications capabilities necessary in today's law enforcement environment. Replacing this old system with a new 800 MHz digital system is necessary to ensure the safety of its residents and guests, and to enhance the operational efficiencies of the sheriff's office.

Hurricane Danny recently demonstrated the dire need for this new communications system. Grand Isle, off the southern-most part of Jefferson Parish, is a barrier island with approximately 2,500 residents. There is, however, only one road leading from Grand Isle to the mainland. When it appeared this road was at risk because of Danny's 70–75 mph winds and high tides, the sheriff's office decided to evacuate the island. Unfortunately, before the island could be safely evacuated, one of the radio towers was damaged and rendered inoperable by the hurricane. The sheriff's office was forced to borrow cellular telephones in order to evacuate the island.

Ms. LANDRIEU. The Senator makes a fine point, and I would like to add that the new communications system would also support inter-operability with most of the adjoining parishes and the city of New Orleans. This would mean expanded emergency capabilities throughout the region which are vital to the entire State of Louisiana.

Mr. BREAUX. Mr. President, as my colleague knows, the sheriff's office of Jefferson Parish has sought assistance in the past and has helped to highlight the need for Federal assistance to help local law enforcement agencies replace outdated communications equipment. In fact, the sheriff's office was influential in getting a discretionary grant program created in 1994 that would provide funds for these types of activities. However, Congress has consistently earmarked these funds, leaving no funds for grant applicants.

Ms. LANDRIEU. Mr. President, the Jefferson Parish Sheriff's Office has demonstrated its commitment to this project by allocating over 50 percent of the cost of this initiative in a dedicated escrow account. In a competition for funds, the sheriff's office, with its well developed procurement strategy and available matching funds, would no doubt prevail as a deserving candidate.

Mr. GREGG. I thank the Senators from Louisiana for bringing this issue to my attention. I understand that the new communication system for the sheriff's office in Jefferson Parish is a priority and I will give this request my attention and consideration in conference.

Mr. HOLLINGS. I too, thank the Senators from Louisiana and believe that this is a project worthy of attention in conference.

Mr. BREAUX. I greatly appreciate the assistance of the distinguished chairman and ranking member of the subcommittee in this matter. I would like to thank them and my colleague from Louisiana, Senator LANDRIEU, for joining me in this colloquy.

ODYSSEY MARITIME DISCOVERY CENTER EXHIBITS AND LECTURE SERIES

Mrs. MURRAY. Mr. President, I would like to urge the chairman and ranking member of the Commerce, State Justice Appropriations Subcommittee to join me in directing the National Marine Fisheries Service, through the Information and Analyses, Resource Information account, to provide $250,000 to the Odyssey Maritime Discovery Center in Seattle, WA.

The Odyssey Center is a new educational learning center opening in July, 1998. This Center will establish an educational link between the everyday maritime, fishing, trade, and environmental activities that occur in the waters of Puget Sound and Alaska, and the lessons students learn in the classroom. Through high-tech and interactive exhibits, over 300,000 children and adults per year will discover that what happens in our waters, on our coast lines, at our ports affects our State's and Nation's economic livelihood, environmental well-being, and international competitiveness. The Center wishes to establish an exhibits and lecture series to link the public, particularly school children, with the maritime, fishing, trade, and environmental industries. Named in honor of the great Senator of Washington, Warren G. Magnuson, this series would begin in 1998 and would serve as an educational resource on the sustainable development, uses, and protection of our seas and coastal waters. This series would provide a fitting tribute to Senator Magnuson, the founder of this Nation's Federal fisheries policies and the namesake of our principal fisheries management law, the Magnuson-Stevens Fishery Conservation and Management Act.

Mr. HOLLINGS. Mr. President, I join the Senator from Washington in supporting this exhibits and lecture series at the Odyssey Maritime Discovery Center and believe the National Marine Fisheries Service should provide $250,000 through the Information and Analyses, Resource Information account. I too feel this series will provide a fitting tribute to the former Senator from Washington and an important learning tool for young people.

Mr. GREGG. Mr. President, I also join the Senator from Washington in supporting this lecture series. I think Senator Magnuson would be honored by this educational effort to teach children about the ways of the sea, and the economic and ecological ways of life that depend on it.

Mrs. MURRAY. I thank the chairman and ranking member of the Subcommittee for their support and interest.

Mr. GORTON. Mr. President, I join in support of this effort on behalf of the Odyssey Maritime Discovery Center and I applaud Senator MURRAY's efforts on the Center's behalf.

WOMEN'S BUSINESS CENTERS

Mr. DOMENICI. Mr. President. On June 12, I introduced in behalf of myself and Senator BOND, along with 24 other cosponsors, a bill to strengthen the Small Business Administration's [SBA] women's business centers program. This bill, S. 888, the ''Women's Business Centers Act of 1997,'' reflects our commitment for a stronger and more dynamic program for women-owned businesses.

I am pleased that the Small Business Committee has included the text of this bill into its 3-year reauthorization of the Small Business Act. It is anticipated that this reauthorization bill will be considered by the Senate within the next few months. The language in the reauthorization bill, as stated in the ''Women's Business Centers Act of 1997,'' increases the annual funding authorization for the women's business centers to $8 million from the present level of $4 million, authorizes the centers to receive funding for 5 years rather than the present 3 years, changes the matching Federal to non-Federal funding formula, and enables organizations receiving funds at the date of enactment to extend their program from 3 to 5 years.

Since the Small Business Committee's reauthorization bill has not yet been considered by the Senate, the additional funds for the women's business centers' program are not included in S. 1022. I do want, however, to thank Senator GREGG, Chairman of the Commerce, State, Justice, and Judiciary Subcommittee of the Senate Appropriations Committee, for providing full funding of the authorized $4 million for 1998. This is most appreciated by all of us who support the women's business centers' activities, and it is especially important since the House has requested $1 million less for this program.

It will be most beneficial if the Small Business reauthorization bill is considered and passed in the Senate and House prior to conference on this appropriations measure. I draw my colleagues' attention to this issue because absent the higher authorized funds of $8 million for the women's centers' program, it means in 1998 we may not be able to achieve the expansion of this program as we intended. There will be insufficient funds to expand the program into States who presently do not have women's centers and existing programs cannot extend their programs from 3 to 5 years. This is a serious problem because we are well aware of the positive benefits of the women's business centers in helping women entrepreneurs, the fastest growing group of new small businesses in the United States. These business centers are able to leverage public and private resources to help their clients develop new businesses or expand existing ones, and their services are absolutely essential for the successful and continued growth of this sector of our economy.

I am also concerned that because there are insufficient funds to expand the women's business centers' program, existing centers will not be able to extend their activities from the present 3-year grant program to a 5-year schedule. These existing centers in approximately 29 States have proven track records of support to women entrepreneurs. The Office of Women's Business Ownership within the SBA will continue its administration of the overall program and will be able to develop a few new sites in States that do not have centers; however, the office is not yet authorized to extend funding an additional 2 years for existing sites. This is most regrettable because these successful existing centers desperately need these small amounts of funds to continue their professional assistance to their women-owned business clients.

Mr. President, I want to once again go on record that I am dissatisfied that the SBA has not given appropriate attention to the women's business program. It has failed to provide sufficient professional personnel to the Office of Women's Business Ownership in order to carry out its important tasks. It has repeatedly requested less funding than authorized for the program despite the fact that this is one of the most successful of all SBA programs. To my knowledge, it has never come to Congress and requested additional monies for the program; instead, it has expected Congress to do SBA's work in trumpeting the successes of this small but vital program. I find it most discouraging that while we in Congress are well aware of the outstanding work of the women's business centers—and the administration's repeatedly publicized the success stories last year—there appears to be minimal support within SBA for expanding the work of this very small program. This is a loss to the agency, and it is most assuredly a loss to countless thousands of women entrepreneurs, let alone a loss to our overall national economy.

We must keep in mind that the funds in this bill for the women's business centers reflect those appropriated in 1997, and, therefore, the expansion of this program as envisioned in S. 888, the ''Women's Business Centers Act of 1997'' and the reauthorization of the Small Business Act, may be delayed. As evidenced by cosponsorship of S. 888, a fourth of the Senate, on a bipartisan basis, supports expansion of the women's business centers' program. We need to be aware of the consequences of this and do everything we possibly can to provide the support this critical and highly successful program needs in the future. Thank you.

THE VERMONT WORLD TRADE OFFICE

Mr. LEAHY. Mr. President, I would like to take a moment to highlight a

program in my State which I believe is a model the Small Business Administration [SBA] should consider investing in. Small businesses are the driving force of Vermont's economy. An important reason for their success in the State has been the development of a healthy export market for the goods they produce. Forty percent of Vermont companies, employing some 70,000 Vermonters, are engaged in some degree of export trade. In 1995, Vermont created and funded the Vermont World Trade Office [WTO] to provide technical assistance to Vermont businesses and information on foreign trade opportunities. The office has been overwhelmed by requests from companies interested in exploring trade opportunities. To meet that demand and make the office more convenient to Vermont businesses, the WTO hopes to open satellite offices in other parts of the State, expand services and offer additional seminars for interested businesses. Funding from the SBA would make this expansion possible. I believe that a modest investment by SBA would yield a valuable demonstration of the importance of export assistance in building and expanding markets for small businesses. Does the Senator from New Hampshire agree that this would be an appropriate use of SBA funding?

Mr. GREGG. Mr. President, I thank the Senator from Vermont for bringing this project to my attention. I agree that many small businesses do not have adequate access to information on building an export market for their goods. A demonstration of the importance of this assistance by the Vermont World Trade Office would benefit other States considering a similar system. I urge the SBA to consider providing the Vermont World Trade Office with $150,000 to conduct such a demonstration.

VIOLENCE INSTITUTE

Mr. LAUTENBERG. I want to express my support for the University of Medicine and Dentistry of New Jersey's [UMDNJ] Violence Institute, which provides valuable assistance to our efforts to curb violent behavior in all aspects of our society. The Violence Institute's programs are not directed solely at violent behavior of a criminal nature, but also focus on issues of domestic violence, and violence against women and children. I want to note that the Violence Institute was one of only a handful of projects recommended for special funding in the conference report accompanying the fiscal year 1997 Commerce, Justice, State appropriations bill.

I ask my colleagues, the chairman and ranking member of the Commerce, Justice, State Appropriations Subcommittee, Senators GREGG and HOLLINGS, if they agree that the Violence Institute's initiatives to curb violent behavior are consistent with the Department of Justice's objectives and that such programs are worthy of the Department's support?

Mr. GREGG. I appreciate the concerns of my colleague from New Jersey about reducing violent behavior in our society, and I agree that the Violence Institute provides valuable assistance in addressing the epidemic of violent crime in the United States. Successful programs that provide research into the basic causes of violence, and that develop initiatives to prevent the spread of violent crime, can be valuable tools in our Nation's fight against crime. I believe that programs such as the ones conducted at the Violence Institute are worthy of the Department's support.

Mr. HOLLINGS. I, too, share the concerns of the Senator from New Jersey about violent crime in our society. The Violence Institute's research in this area makes a significant contribution to the Department of Justice's efforts to address this problem, and I agree with the chairman that programs like the Violence Institute are worthy of the Department's support.

COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Mr. LEAHY. Mr. President, Chairman GREGG and the Appropriations Subcommittee on Commerce, Justice, State and the Judiciary recognize in the Report for S. 1022 that the ''pace of technological change in the telecommunications industry poses enormous challenge'' both to law enforcement and national security agencies in conducting court-authorized wiretaps and ''in the conduct of foreign counterintelligence and terrorism investigations in the United States.'' The Communications Assistance for Law Enforcement Act [CALEA], which I sponsored in the 103d Congress, addressed this public safety and national security problem, after considerable debate and hearings in the Judiciary Committees of both the House and the Senate. I commend the chairman and the subcommittee for recognizing ''that digital telephony is a top law enforcement priority.''

CALEA authorizes $500 million for the Attorney General to pay telecommunications carriers for costs associated with modifying the embedded base of equipment, services, and facilities to comply with CALEA. Nevertheless, S. 1022 does not include any funding for this law, based upon the Committee's finding ''that the Bureau has adequate resources available.''

Moreover, the report recommends that no funds be expended for CALEA until the following requirements are met: First, the Bureau creates a working group with industry officials approved by the House and Senate Appropriations Committees, and second, the working group develops a new ''more rational, reasonable, and cost-effective CALEA implementation plan'' that is satisfactory to the Senate Appropriations Committee.

Would Chairman GREGG agree with me that in addition to the Appropriations Committees, the Judiciary Committees of both the House and Senate, which authorized CALEA, should also be involved in approving the industry officials on the working group and any plan provided by the working group?

Mr. GREGG. Yes. It is appropriate for the Committees on the Judiciary of both the House and the Senate to be involved and that was the intention of the committee when it prepared the report.

Mr. HOLLINGS. Yes. I agree with Senators LEAHY and GREGG.

Mr. LEAHY. This addresses one of the concerns I have with the report's new requirements for expenditures of money for CALEA implementation.

I am also concerned about whether creation of the working group tasked with developing a CALEA implementation plan will delay, rather than facilitate, implementation of this law and compliance by telecommunications carriers with the four law enforcement requirements enumerated in this important law. Indeed, the report places no time constraints on creation of this working group or on when the Bureau-working group implementation plan must be submitted to the specified committees.

Further delay in implementation of CALEA poses risks for the effectiveness of our law enforcement agencies. As the committee acknowledges, they are already encountering problems in executing court-authorized wiretaps. The industry, with the input of law enforcement, has drafted a specifications standard for CALEA. I am concerned that objections from the Bureau over elements in that proposed standard are delaying its adoption. I would like to see the Bureau accept that standard and get on with CALEA implementation.

I am also concerned that the working group proposed by the committee will work behind closed doors, without the accountability that CALEA intended. We should make sure that any meetings of the working group will be open to privacy advocates and other interested parties.

I fully appreciate that questions have been raised about how the implementation of CALEA is proceeding. That is why, over a year ago, Senator SPECTER and I asked the Digital Privacy and Security Working Group, a diverse coalition of industry, privacy and government reform organizations, for its views on implementation of CALEA, and other matters. We circulated to our colleagues on June 20, 1997, a copy of this group's ''Interim Report: Communications Privacy in the Digital Age.'' The report recommends that hearings be held to examine implementation of CALEA, how the Bureau intends to spend CALEA funds, and the viability of CALEA's compliance dates. This recommendation is a good one.

We should air these significant questions at an open hearing before the authorizing Committees. I would rather see the authorizing Committees work in that fashion with the Appropriations Committees to make funds immediately available and insure those

funds are spent to establish a minimum standard that serves law enforcement's pressing needs, without some of the enhancements being proposed by the FBI that industry claims are delaying the process of implementation. The committees should insist on some priorities in terms of geographic need and capability. I think we could resolve this with a little oversight, and return to the spirit of reasonableness that characterize the drafting of CALEA.

TECHNICAL CORRECTIONS

Mr. GREGG. Mr. President, the following are technical corrections to the fiscal year 1998 Departments of Commerce, Justice, and State, the Judiciary and related agencies appropriations report: First, under ''Title I—Department of Justice'', on page 7, line 3, delete $17,251,958,000; and insert $17,278,990,000; on page 7, line 6, delete $826,955,000 and insert $853,987,000; and second, under ''Title V—Related Agencies, Small Business Administration'', on page 126, line 22, delete $8,756,000 and insert $8,756,000,000.

AMENDMENT NO. 979

Mr. GREGG. Mr. President, I ask unanimous consent that we now adopt the managers' amendment, which is the pending amendment No. 979.

The PRESIDING OFFICER. The question is on agreeing to the amendment.

The amendment (No. 979) was agreed to.

Mr. GREGG. Mr. President, I move to reconsider the vote.

Mr. HOLLINGS. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENTS NOS. 999 THROUGH 1021, EN BLOC

Mr. GREGG. Mr. President, I now send a series of amendments to the desk and ask unanimous consent that they be considered read and agreed to, the motion to reconsider be laid upon the table, and that any statements relating to these amendments be inserted at this point in the RECORD, with all of the above occurring, en bloc.

These amendments have been cleared by both sides of the aisle.

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

The amendments (Nos. 999 through 1021) were agreed to, as follows:

AMENDMENT NO. 999

At the appropriate place, insert the following: Notwithstanding any other provision of law, the Economic Development Administration is directed to transfer funds obligated and awarded to the Butte-Silver Bow Consolidated Local Government as Project Number 05–01–02822 to the Butte Local Development Corporation Revolving Loan Fund to be administered by the Butte Local Development Corporation, such funds to remain available until expended.

---

AMENDMENT NO. 1000

(Purpose: To require a non-profit public affairs organization to register with the Attorney General if the organization receives contributions in excess of $10,000 from foreign governments in any 12-month period)

On page 65, between lines 9 and 10, insert the following:

SEC. 120. (a) Section 1(d) of the Foreign Agents Registration Act of 1938, as amended (22 U.S.C. 611(d)) is amended by inserting after ''The term 'agent of a foreign principal' '' the following: ''(1) includes an entity described in section 170(b)(1)(A)(vi) of the Internal Revenue Code of 1986 that receives, directly or indirectly, from a government of a foreign country (or more than one such government) in any 12-month period contributions in a total amount in excess of $10,000, and that conducts public policy research, education, or information dissemination and that is not included in any other subsection of 170(b)(1)(A), and (2)''.

(b) Section 3(d) of such Act (22 U.S.C. 613(d)) is amended by inserting '', other than an entity referred to in section 1(d)(1),'' after ''any person''.

Mr. BINGAMAN. Mr. President, this amendment is basically a sunshine provision that would require nonprofit public affairs organizations to register with the Attorney General if such organizations receive contributions in excess of $10,000 from foreign governments in any 12-month period.

This provision would not affect churches, hospitals, or other nonprofit, 501(c)3 organizations which are not focused on public policy matters. In fact, this amendment only affects those public policy nonprofit organizations that do accept foreign government money.

Furthermore, this amendment does not prohibit or object to such foreign government contributions. It only requires that organizations publicly acknowledge such contributions—when they are over a threshold of $10,000 a year from all foreign government sources—by registering this information with the Attorney General under the Foreign Agents Registration Act.

Mr. President, I'm sure that many of my colleagues may be wondering what triggered the need for this legislation. Let me state that this amendment is not directed at any particular organization or nonprofit entity. This is simply a common-sense provision that will help make the public affairs environment healthier by the disclosure of when foreign government money is supporting a given nonprofit public affairs organization and when not.

These nonprofit organizations are organized for the public good and they are subsidized by the American people. To the degree that these organizations are weighing in on important public policy matters—particularly on our Nation's economic policies and defense strategies, but also in other public policy areas—and are receiving foreign government contributions to support their activities, I believe that the American public has the right to know that such foreign government contributions have been made to that organization.

Members of Congress and their staff meet regularly with representatives of many nonprofit public affairs organizations—which are permitted to engage in public education activities on the Hill. But while some organizations like the Japan Economic Institute and Korea Economic Institute are quite straightforward about their primary funding sources and register with the Attorney General that their sources of funding are foreign governments, some other nonprofit public affairs organizations actually try to keep from public view the fact that they receive substantial foreign government revenue.

When these groups meet with Members of Congress and staff, mail information all around the country, and organize public affairs events without ever disclosing the fact that their funding comes from other countries' national governments, something is wrong.

Mr. President, this amendment has a different target than the discussions going on about campaign finance reform. It is focused on a rather narrow window in the law which allows some nonprofits to be bolstered by foreign government funds while not having to be upfront with the broader public.

I believe that our public policy process can only benefit by the disclosure that this legislation would require. And I trust that my colleagues will agree and hope that they will support this amendment which I am offering today.

AMENDMENT NO. 1001

At the appropriate place, insert the following new section:

SEC. . The Office of Management and Budget shall designate the Jonesboro-Paragould, AR Metropolitan Statistical Area in lieu of the Jonesboro, AR Metropolitan Statistical Area. The Jonesboro-Paragould, AR Metropolitan Statistical Area shall include both Craighead County, AR and Greene County, AR, in their entirety.

---

AMENDMENT NO. 1002

On page 29 of the bill, on line 18, before the ''.'' insert the following: '', of which $25,000,000 shall be for grants to states for programs and activities to enforce state laws prohibiting the sale of alcoholic beverages to minors or the purchase or consumption of alcoholic beverages by minors''.

Mr. BYRD. Mr. President, of the funds appropriated for law enforcement grants in the bill before us, my amendment would ensure that $25 million would be provided for grants to states for programs and activities to enforce state laws regarding youth access to alcohol. This amendment adds no money to the bill and needs no offset.

All states prohibit the sale of alcoholic beverages to minors. In addition, thee are a range of other laws regarding youth access to alcohol that states may have on the books. For instance, some states, in addition to prohibiting the sale of alcoholic beverage to minors, have laws prohibiting the consumption of alcoholic beverages by minors, and still others ban possession of alcoholic beverages by minors.

Mr. President, just today in The Washington Post there is an article regarding a sting operation in Arlington County in establishments that sell alcohol to minors. According to the officer in charge of the operation, minors purchased alcoholic beverages without any kind of I.D. check in 57 percent of the establishments visited. This is a

disgrace, Mr. President, and, I am afraid, a not uncommon occurrence. I concur wholeheartedly with a quote of Eric, who is 19 years old and who participated in the sting operation. According to Eric, ''We've figured out why we have an underage drinking problem.'' With the media and advertisements besieging our nation's youth with unrealistic messages about alcohol consumption combined with insufficient enforcement of laws already on the books, what you wind up with is, indeed, an ''underage drinking problem.'' The article concludes by saying that County officials even warned establishments that they would be using underage people to buy alcohol, and, still, 57 percent of the time the underage participants in the operation were able to purchase alcohol without challenge. What would the percentage have been had the letters not been sent? Mr. President, I ask unanimous consent that the article from The Washington Post be printed into the RECORD.

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

ALCOHOL SALES TO MINORS TARGETED—170 OF 294 BUSINESSES SOLD TO TEEN TESTERS

[From the Washington Post, July 24, 1997]

(By Brooke A. Masters)

When the Arlington County police decided to crack down on restaurants, hotels and stores that sell alcohol to minors, they were shocked by the results.

Since mid-June, they have sent 18- and 19-year-old testers to 294 establishments, and the testers were able to buy booze at 170 of them. Servers and clerks failed to check identification at everything from the Ritz-Carlton Hotel to two out of three restaurants in the Fashion Centre at Pentagon City to dozens of small convenience stores.

''We're making purchases at 57 percent of the places we go to. It's really absurd,'' said Lt. Thomas Hoffman, who is overseeing the sting. ''We figured we'd get 30 percent.''

Eric, a 19-year-old Virginia Tech sophomore who participates in the stings, said, ''We've figured out why we have an underage drinking problem.''

Eric, who is not being fully identified because he's still out trying to buy alcohol, and his fellow student aides wear recording devices when they enter a store or a restaurant. They carry no identification, so stores and restaurants can't claim that the testers provided fake IDs.

In restaurants, the students order drinks, and county police officers take over once the alcohol arrives, Hoffman said. They pour the drinks into evidence bottles, take pictures of the server and hand out arrest warrants.

In stores, the students take beer or wine up to the counter, pay for it and leave. Then an officer goes in and makes an arrest, he said. Often, the employees claim that they usually check ID or that the tester is a regular. The employees all have been charged with serving alcohol to a minor, a misdemeanor.

At Hard Times Cafe in Clarendon, the young female tester came in with an older man, and the server ''looked at the guy and assumed he's her father and he wouldn't let her drink under age,'' said Su Carlson, the general manager. ''We were wrong. But it's slightly entrapment. It's better to put an undercover person in an establishment, and if they see someone underaged drink, ID them.''

The sting also has caught four underage people selling alcohol, which also is illegal, Hoffman said. One of those caught was a 10-year-old working beside her father at a family-run store, he said.

Testers have revisited 12 stores and restaurants after busting employees a first time, and two of them, a Giant pharmacy and a CVS drugstore, failed to card a second time, police records show.

''We are constantly educating our people about selling alcohol to minors with training sessions, booklets and videos,'' Giant Vice President Barry Scher said. ''But we have 5,000 checkers, and we do the best we can.''

The Virginia Department of Alcoholic Beverage Control has started administrative proceedings against 29 establishments where arrests have been made, and that's just the beginning. ''It is our intention to file a charge against each and every establishment,'' said Philip Disharoon, assistant special agent in charge of the Alexandria/Arlington ABC office.

The sting, while it is Arlington's first in recent years, is not unprecedented in the Washington area. In 1994, Montgomery County sent underage drinkers to 25 county hotels and eventually cited 14 businesses for selling alcohol to minors in hotel rooms.

Nor did the operation come out of the blue: Arlington officials sent letters to all licensed stores, restaurants and hotels in April warning that they would be using underage people to buy alcohol.

Mr. BYRD. Mr. President, alcohol is the drug used most by teens with devastating consequences. According to statistics compiled by the National Center on Addiction and Substance Abuse, among children between the ages of 16 and 17, 69.3 percent have at one point in their lifetimes experimented with alcohol. As I consistently remind my colleagues, in the last month, approximately 8 percent of the nation's eighth graders have been drunk. Eighth graders are 13 years old, Mr. President! Junior and senior high school students drink 35 percent of all wine coolers and consume 1.1 billion cans of beer a year. And I will repeat what is common knowledge to us all—every state has a law prohibiting the sale of alcohol to individuals under the age of 21. Knowing this, how is it then that two out of every three teenagers who drink report that they can buy their own alcoholic beverages? As if the dangers of youth alcohol consumption are not bad enough, statistics have shown that alcohol is a gateway to other drugs such as marijuana and cocaine.

Drinking impairs one's judgment and when mixed with teenage driving there are too often lethal results. In 1995, there were 2,206 alcohol-related fatalities of children between the ages of 15 and 20. For many years, I have taken the opportunity when addressing groups of youth West Virginians to warn them about the dangers of alcohol, and I have supported legislative efforts to discourage people, particularly young people, from drinking any alcohol. I am proud to have sponsored an amendment two years ago which requires states to pass zero-tolerance laws that will make it illegal for persons under the age of 21 to drive a motor vehicle if they have a blood alcohol level greater than .02 percent. This legislation helps to save lives and sends a message to our nation's youth that drinking and driving is wrong, that it is a violation of the law, and that it will be appropriately punished.

Our children are besieged with media messages that create the impression that alcohol can help to solve life's problems, lead to popularity, and enhance athletic skills. These messages coupled with insufficient enforcement of laws prohibiting the consumption of alcohol by minors give our nation's youth the impression that it is okay for them to drink. This impression has deadly consequences. In the three leading causes of death for 15 to 24 year olds, accidents, homicides, and suicides, alcohol is a factor. Efforts to curb the sale of alcohol to minors have high payoffs in helping to prevent children from drinking and driving death or injury.

There is a link between alcohol consumption and increased violence and crime, and I believe that directing funding to programs to enforce underage drinking and sale-to-minors laws will have a positive effect on efforts to address juvenile crime. According to the Center on Addiction and Substance Abuse at Columbia University, on college campuses, 95 percent of violent crime is alcohol-related and in 90 percent of campus rapes that are reported, alcohol is a factor. 31.9 percent of youth under the age of 18 in long-term, state operated juvenile institutions were under the influence of alcohol at the time of their arrest. These statistics are frightening and they need to be addressed.

This amendment will send a clear message to states that the federal government recognizes that enforcement of underage drinking laws is an important priority and that we are willing to back that message up with funds to assist states in their efforts. It is not good enough to simply urge better enforcement. We must provide the resources.

In addition, Mr. President, I would like to say to my good friend, the Chairman of the Judiciary Committee, Senator HATCH, that I intend to work with him when S. 10, the Violent and Repeat Juvenile Offender Act of 1997, is being reauthorized and before the Senate in order to authorize funding for this program in the coming fiscal years.

I call on my colleagues to support this amendment which will help states and localities better enforce youth alcohol laws and protect our children.

AMENDMENT NO. 1003

On page 86, line 3 after ''Secretary of Commerce.'' insert the following:

SEC. 211. In addition to funds provided elsewhere in this Act for the National Telecommunications and Information Administration Information Infrastructure Grants program, $10,490,000 is available until expended: *Provided*, That this amount shall be offset proportionately by reductions in appropriations provided for the Department of Commerce in Title II of this Act, provided amounts provided: *Provided further*, That no

reductions shall be made from any appropriations made available in this Act for the National Oceanic and Atmospheric Administration, National Institute of Standards and Technology and National Telecommunications and Information Administration public broadcasting facilities, planning and construction.

---

AMENDMENT NO. 1004

On page 29 of the bill, line 2, after ''Center'' insert the following: '', of which $100,000 shall be available for a grant to Roberts County, South Dakota; and of which $900,000 shall be available for a grant to the South Dakota Division of Criminal Investigation for the procurement of equipment for law enforcement telecommunications, emergency communications, and the state forensic laboratory''.

---

AMENDMENT NO. 1005

Purpose: To improve the bill by amending section 305 to realign Guam and the Northern Mariana Islands with the United States Court of Appeals for the Twelfth Circuit)

On page 93, strike the matter between lines 14 and 15 and insert the following:

''Ninth ..... California, Nevada.'';

On page 93, strike the matter between lines 17 and 18 and insert the following:

''Twelfth ..... Alaska, Arizona, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, Washington.''.

On page 94, strike lines 14 through 19 and insert the following:

''(1) is in California or Nevada is assigned as a circuit judge on the new ninth circuit;

(2) is in Alaska, Arizona, Guam, Hawaii, Idaho, Montana, Northern Mariana Islands, Oregon, Washington is assigned as a circuit judge on the twelfth circuit; and''.

---

AMENDMENT NO. 1006

(Purpose: Sense of the Senate regarding half a century of service to U.S. taxpayer)

At the appropriate place, insert the following new section:

**SEC. . SENSE OF THE SENATE REGARDING THE EXEMPLARY SERVICE OF JOHN J. R. BERG TO THE UNITED STATES.**

Whereas, John H. R. Berg began his service to the United States Government working for the United States Army at the age of fifteen after fleeing Nazi persecution in Germany where his father died in the Auschwitz concentration camp; and,

Whereas, John H. R. Berg's dedication to the United States Government was further exhibited by his desire to become a United States citizen, a goal that was achieved in 1981, 35 years after he began his commendable service to the United States; and,

Whereas, since 1949, John H. R. Berg has been employed by the United States Embassy in Paris where he is currently the Chief of the Visitor's and Travel Unit, And, this year has supported over 10,700 official visitors, 500 conferences, and over 15,000 official and unofficial reservations; and,

Whereas, John H. R. Berg's reputation for ''accomplishing the impossible'' through his dedication, efficiency and knowledge has become legend in the Foreign Service; and,

Whereas, John H. R. Berg has just completed 50 years of outstanding service to the United States Government with the United States Department of State,

Therefore Be It *Resolved*, it is the Sense of the Senate that John H. R. Berg deserves the highest praise from the Congress for his steadfast devotion, caring leadership, and lifetime of service of the United States Government.

Mr. HARKIN. Mr. President it is my great pleasure to offer this sense of the Senate to recognize and commend John H.R. Berg for 50 years of service to the U.S. Government on behalf of myself and Senator WARNER. Mr. Berg's employment with the U.S. Government began at age 15 working for the U.S. Army in 1946. From July 1947 to February 1949 he worked with the American Graves Registration Command in Paris.

In July 1949, Mr. Berg began his employment with the U.S. Embassy in Paris. Currently, he is the chief of the visitors and travel unit in our Embassy in Paris. Currently, he is the chief of the visitors and travel unit in our Embassy in Paris. So far this year, as chief of the Embassy's travel and visitors office, Mr. Berg and his staff of three have supported over 10,700 official visitors, 500 conferences, and over 15,000 official and unofficial reservations. The position entails coordinating all travel, transportation, housing control rooms and airport formalities for visits and conferences. Mr. Berg's dedication, efficiency, and wide range of useful host government and private sector contacts have been invaluable to the Embassy and the U.S. Government. His support efforts, personal interest, and ability to accomplish the impossible have become legend in the Foreign Service and to those of us who know his work personally.

I know I speak for those who have worked with Mr. Berg when I say that he has devoted his life to providing dedicated, faithful, and loyal service to the U.S. Government. He willingly and cheerfully works long hours—evenings, weekends and holidays—to ensure that our visits are handled in the most skillful and efficient manner possible. And he has received five Department of State Meritorious Honor Awards for his outstanding work.

A little known fact about John Berg was that he was a stateless person at the beginning of his service to the U.S. Government. He was born in Germany in 1930, but lost his German citizenship in 1943 due to Nazi Jewish persecution. After his father was deported to Auschwitz, he and his mother with a small group of brave Jews, hid in Berlin from the Gestapo until the end of the war. The heroism they exhibited and the dangers they faced are documented in the book, ''The Last Jews of Berlin,'' by Leonard Gross. His father died in the concentration camp. And after World War II, John Berg moved to France where he began working for the American Government, and has now completed 50 years of service to the U.S. Government. For all his adult life, John Berg's most fervent desire was to become a U.S. citizen. That goal was realized, and he was sworn in as an American citizen in 1981.

Mr. President I cannot think of a better role model for those in the public sector. Therefore, I believe that John Berg deserves the absolute highest praise from the President and the Congress for his 50 years of dedicated service to the U.S. Government.

Mr. WARNER. Mr. President, I am privileged to join my friend from Iowa, Senator HARKIN, in putting in the Senate's recognition of John Berg—an institution himself.

His service to Americans was his life. No task was insurmountable; no task was performed with less than all-out dedication.

My most memorable among many trips to Paris was during the bicentennial of the Treaty of Paris in 1983. President Reagan had appointed me as his representative to the many events the French hosted to honor the first treaty to recognize, in 1783, a new Nation—the 13 colonies as the United States of America. John Berg was my aid-de-camp throughout that visit. I should add to that official visits to the 40th and 50th recognitions of D-day, June 6, 1944.

And so it goes for all of us in Congress as we salute John Berg. Well done, sir.

AMENDMENT NO. 1007

At the appropriate place in the bill, insert the following new section:

''The Administrative Office of the United States Courts, in consultation with the Judicial Conference, shall conduct a study of the average costs incurred in defending and presiding over federal capital cases from the initial appearance of the defendant through the final appeal, and shall submit a written report to the Chairman and Ranking Members of the Senate and House Committees on Appropriations and Judiciary on or before July 1, 1998, containing recommendations on measures to contain costs in such cases, with constitutional requirements.''

'': *Provided Further*, That the Attorney General, shall review the practices of U.S. Attorneys' Offices and relevant investigating agencies in investigating and prosecuting federal capital cases, including before the initial appearance of the defendant through final appeal, and shall submit a written report to the Chairman and Ranking Members of the Senate and House Committees on the Appropriations and Judiciary on or before July 1, 1998, containing recommendations on measures to contain costs in such cases, consistent with constitutional requirements, and outlining a protocol for the effective, fiscally responsible prosecution of federal capital cases''.

---

AMENDMENT NO. 1008

(Purpose: To express the sense of the Senate with respect to slamming)

At the appropriate place insert the following:

**SEC. . SENSE OF THE SENATE WITH RESPECT TO SLAMMING.**

(a) STATEMENT OF PURPOSE.—The purposes of this statement of the sense of the Senate are to—

(1) protect consumers from the fraudulent transfer of their phone service provider;

(2) allow the efficient prosecution of phone service providers who defraud consumers; and

(3) encourage an environment in which consumers can readily select the telephone service provider which best serves them.

(b) FINDINGS.—The Congress finds the following:

(1) As the telecommunications industry has moved toward competition in the long distance market, consumers have increasingly elected to change the company which

provides their long-distance phone service. As many as fifty million consumers now change their long distance provider annually.

(2) The fluid nature of the long distance market has also allowed an increasing number of fraudulent transfers to occur. Such transfers have been termed ''slamming'', which constitutes any practice that changes a consumer's long distance carrier without the consumer's knowledge or consent.

(3) Slamming is now the largest single consumer complaint received by the Common Carrier Bureau of the Federal Communications Commission. As many as one million consumers are fraudulently transferred annually to a telephone consumer which they have not chosen.

(4) The increased costs which consumers face as a result of these fraudulent switches threaten to rob consumers of the financial benefits created by a competitive marketplace.

(5) The Telecommunications Act of 1996 sought to combat this problem by directing that any revenues generated by a fraudulent transfer be payable to the company which the consumer has expressly chosen, not the fraudulent transferor.

(6) While the Federal Communications Commission has proposed and promulgated regulations on this subject, the Commission has not been able to effectively deter the practice of slamming due to a lack of prosecutorial resources as well as the difficulty of proving that a provider failed to obtain the consent of a consumer prior to acquiring that consumer as a new customer. Commission action to date has not adequately protected consumers.

(7) The majority of consumers who have been fraudulently denied the services of their chosen phone service vendor do not turn to the Federal Communications Commission for assistance. Indeed, section 258 of the Communications Act of 1934 directs that State commissions shall be able to enforce regulations mandating that the consent of a consumer be obtained prior to a switch of service.

(8) It is essential that Congress provide the consumer, local carriers, law enforcement, and consumer agencies with the ability to efficiently and effectively persecute those companies which slam consumers, thus providing a deterrent to all other firms which provide phone services.

(c) SENSE OF THE SENATE.—It is the sense of the Senate that—

(1) the Federal Communications Commission should, within 12 months of the date of enactment of this Act, promulgate regulations, consistent with the Communications Act of 1934 which provide law enforcement officials dispositive evidence for use in the prosecution of fraudulent transfers of presubscribed costumers of long distance and local service; and

(2) the Senate should examine the issue of slamming and take appropriate legislative action in the 105th Congress to better protect consumers from unscrupulous practices including, but not limited to, mandating the recording and maintenance of evidence concerning the consent of the consumer to switch phone vendors, establishing higher civil fines for violations, and establishing a civil right of action against fraudulent providers, as well as criminal sanctions for repeated and willful instances of slamming.

---

AMENDMENT NO. 1009

(Purpose: To foster a safer elementary and secondary school environment for the nation's children through the support of community policing efforts)

On page 65, line 10, insert the following: ''Section 120. There shall be no restriction on the use of Public Safety and Community Policing Grants, authorized under title I of the 1994 Act, to support innovative programs to improve the safety of elementary and secondary school children and reduce crime on or near elementary or secondary school grounds.''

---

AMENDMENT NO. 1010

(Purpose: To limit the funds made available for the Office of the Under Secretary of Commerce for Intellectual Property Policy, if such office is established, and for other purposes)

On page 75, line 3, strike all beginning with ''$20,000,000,'' through line 8 and insert the following: ''such funds as are necessary, not to exceed 2 percent of projected annual revenues of the Patent and Trademark Office, shall be made available from the sum appropriated in this paragraph for the staffing, operation, and support of said office once a plan for this office has been submitted to the House and Senate Committees on Appropriations pursuant to section 605 of this Act.''.

AMENDMENT NO. 1011

At the appropriate place, add the following:

''Section 1701(b)(2)(A) of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3796dd) is amended to read as follows:

''(A) may not exceed 20 percent of the funds available for grants pursuant to this subsection in any fiscal year.''.

---

AMENDMENT NO. 1012

At the appropriate place, insert ''*Provided further,* That none of the funds appropriated or otherwise made available to the Immigration and Naturalization Service may be used to accept, process, or forward to the Federal Bureau of Investigation any FD–258 fingerprint card, or any other means used to transmit fingerprints, for the purpose of conducting a criminal background check on any applicant for any benefit under the Immigration and Nationality Act unless the applicant's fingerprints have been taken by an office of the Immigration and Naturalization Service or by a law enforcement agency, which may collect a fee for the service of taking and forwarding the fingerprints.''

---

AMENDMENT NO. 1013

(Purpose: To strike a restriction concerning the transfer of certain personnel to the Office of Legislative Affairs or the Office of Public Affairs of the Department of Justice)

On page 2, lines 17 through 22, strike the colon on line 17 and all that follows through ''basis'' on line 22.

---

AMENDMENT NO. 1014

On page 125, strike lines 3-9.

---

AMENDMENT NO. 1015

(Purpose: To provide a waiver from certain immunization requirements for certain aliens entering the United States)

At the appropriate place, insert the following: WAIVER OF CERTAIN VACCINATION REQUIREMENTS

SEC. . (a) IN GENERAL.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by adding at the end the following:

''(p) The Attorney General should exercise the waiver authority provided for in subsection (g)(2)(B) for any alien orphan applying for an IR3 or IR4 category visa.''.

Mr. MCCAIN. Mr. President, This is intended to resolve a potentially serious problem involving foreign children emigrating to the United States for the purpose of being united with their adoptive parents. Quite simply, the amendment urges the Attorney General to exercise that authority to waive vaccination requirements for certain categories of emigres that is part of current law.

Last year, my colleague from Arizona, Senator KYL, succeeded in getting passed legislation authorizing the Attorney General to waive the immunization requirements for legal aliens entering the country if medical, moral or religious considerations so warrant. Unfortunately, that authority has not been exercised, despite extenuating circumstances that clearly argue for such a waiver from the immunization requirement. No where is this failure to exercise that authority more damaging than in the area of foreign-borne orphans being adopted by U.S. citizens.

Neither Senator KYL nor I would argue that immigrants with serious communicable diseases should be allowed into the United States. What we are saying is that children whose medical conditions cannot be accurately determined without a more thorough examination than can be administered in their home country should not be subjected to vaccinations that may trigger unforeseen reactions, for instance, from allergies to a specific serum. Additionally, other medical conditions may exist that make immunization at a specific time unadvisable, as would be the case with a child suffering from influenza. All this amendment does is tell the Attorney General to do what common sense dictates should be done anyway: not subject children to vaccinations to which their systems may not be immediately adaptable.

Mr. President, I urge my colleagues to support this amendment. It would do nothing that could pose a health risk to the American public; it only eliminates the risk to children, often from countries with far more primitive health care than is available here, of immunizations if their individual medical conditions indicate such treatment would pose a serious risk to the health of the child.

AMENDMENT NO. 1016

SEC. . The second proviso of the second paragraph under the heading ''OFFICE OF THE CHIEF SIGNAL OFFICER.'' in the Act entitled ''An Act Making appropriations for the support of the Regular and Volunteer Army for the fiscal year ending June thirtieth, nineteen hundred and one'', approved May 26, 1900 (31 Stat. 206; chapter 586; 47 U.S.C. 17), is repealed.

---

AMENDMENT NO. 1017

(Purpose: To exclude from the United States aliens who have been involved in extrajudicial and political killings in Haiti)

At the appropriate place, insert the following:

**SEC. . EXCLUSION FROM THE UNITED STATES OF ALIENS WHO HAVE BEEN INVOLVED IN EXTRAJUDICIAL AND POLITICAL KILLINGS IN HAITI.**

(a) GROUNDS FOR EXCLUSION.—None of the funds appropriated or otherwise made available in this Act shall be used to issue visas to any person who—

(1) has been credibly alleged to have ordered, carried out, or materially assisted in the extrajudicial and political killings of Antoine Izmery, Guy Malary, Father Jean-Marie Vincent, Pastor Antoine Leroy, Jacques Fleurival, Mireille Durocher Bertin, Eugene Baillergea, Michelange Hermann, Max Mayard, Romulus Dumarsais, Claude Yves Marie, Mario Beaubrun, Leslie Grimar, Joseph Chilove, Michel Gonzalez, and Jean-Hubert Feuille;

(2) has been included in the list presented to former President Jean-Bertrand Aristide by former National Security Council Advisor Anthony Lake in December 1995, and acted upon by President Rene Preval;

(3) was a member of the Haitian presidential security unit who has been credibly alleged to have ordered, carried out, or materially assisted in the extrajudicial and political killings of Pastor Antoine Leroy and Jacques Fleurival, or who was suspended by President Preval for his involvement in or knowledge of the Leroy and Fleurival killings on August 20, 1996;

(4) was sought for an interview by the Federal Bureau of Investigation as part of its inquiry into the March 28, 1995, murder of Mireille Durocher Bertin and Eugene Baillergea, Jr., and was credibly alleged to have ordered, carried out, or materially assisted in those murders, per a June 28, 1995, letter to the then Minister of Justice of the Government of Haiti, Jean-Joseph Exume;

(5) was a member of the Haitian High Command during the period 1991 through 1994, and has been credibly alleged to have planned, ordered, or participated with members of the Haitian Armed Forces in—

(A) the September 1991 coup against any person who was a duly elected government official of Haiti (or a member of the family of such official), or

(B) the murders of thousands of Haitians during the period 1991 through 1994; or

(6) has been credibly alleged to have been a member of the paramilitary organization known as FRAPH who planned, ordered, or participated in acts of violence against the Haitian people.

(b) EXEMPTION.—Subsection (a) shall not apply if the Secretary of State finds, on a case-by-case basis, that the entry into the United States of a person who would otherwise be excluded under this section is necessary for medical reasons or such person has cooperated fully with the investigation of these political murders. If the Secretary of State exempts any such person, the Secretary shall notify the appropriate congressional committees in writing.

(c) REPORTING REQUIREMENT.—(1) The United States chief of mission in Haiti shall provide the Secretary of State a list of those who have been credibly alleged to have ordered or carried out the extrajudicial and political killings mentioned in paragraph (1) of subsection (a).

(2) The Secretary of State shall submit the list provided under paragraph (1) to the appropriate congressional committees not later than 3 months after the date of enactment of this Act.

(3) The Secretary of State shall submit to the appropriate congressional committees a list of aliens denied visas, and the Attorney General shall submit to the appropriate congressional committees a list of aliens refused entry to the United States as a result of this provision.

(4) The Secretary of State shall submit a report under this subsection not later than 6 months after the date of enactment of this Act and not later than March 1 of each year thereafter as long as the Government of Haiti has not completed the investigation of the extrajudicial and political killings and has not prosecuted those implicated for the killings specified in paragraph (1) of subsection (a).

(d) DEFINITION.—In this section, the term ''appropriate congressional committees'' means the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations of the Senate.

Mr. DEWINE. Mr. President, my amendment excludes Haitians from the U.S. who have been involved in extrajudicial and political killings in Haiti. Specifically, it does this by denying funds for the issuance of visas to these persons.

There have been numerous cases of politically-motivated assassinations in Haiti. Some of these extrajudicial killings occurred while former President Jean-Bertrand Aristide was in exile. Many others took place after he returned to power. Unfortunately, these killings have continued after Mr. Aristide left office and Rene Preval became President.

The Haitian Government has assigned over eighty extrajudicial and political killing cases to the Special Investigative Unit. The Haitian Government claims that they have fired several government employees who are suspects in these killings.

But the sad fact remains that to date, no one has been convicted for any of these assassinations. Simply stated, there has been no substantial progress in these investigations.

We need to encourage the Haitians to bring these killers to justice. We need to let them know that these killings cannot be tolerated.

My amendment denies funding for the issuance of visas to those who have been credibly alleged to have ordered, carried out, materially assisted, or sought to conceal these extrajudicial and political killings. The amendment exempts persons for medical reasons, or if they have cooperated fully with the investigation of these political murders.

The legislation also includes a reporting requirement. The Administration would be directed to submit, to the appropriate congressional committees, (1) a list of those who have been credibly alleged to have ordered or carried out the extrajudicial and political killings; (2) a list of those refused entry to the United States as a result of this provision; and (3) a report on this matter, to be submitted once each year, until such time as the Government of Haiti has completed the investigation of these extrajudicial and political killings and has prosecuted those implicated in these murders.

It is an unfortunate reality that political violence has been a way of life in Haiti. Too many Haitians have died due to acts of political violence. The adoption of this amendment will not solve their problems overnight. But it can help. I believe this legislation sends a strong signal that violence must not be used as a political tool in Haiti. It also sends a message to the Haitians that we will vigorously support those who want to end political violence and create a lasting society of peace and prosperity in Haiti.

Mr. President, I urge the adoption of this amendment.

AMENDMENT NO. 1018

(Purpose: To improve the bill)

On page 114, strike lines 14–23.

AMENDMENT NO. 1019

(Purpose: To delay the effective date of the amendments made by section 233 of the Antiterrorism and Effective Death Penalty Act of 1996)

At the appropriate place in title I of the bill, insert the following:

SEC. 1 . Section 233(d) of the Antiterrorism and Effective Death Penalty Act of 1996 (110 Stat. 1245) is amended by striking ''1 year after the date of enactment of this Act'' and inserting ''October 1, 1999''.

AMENDMENT NO. 1020

On page 139, after line 13 insert the following:

''GAMBLING IMPACT STUDY COMMISSION

SALARIES AND EXPENSES

For necessary expenses of the National Gambling Impact Study Commission, $1,000,000, to remain available until expended: Provided, That funds made available for this purpose shall be taken from funds made available on page 23, line 21.''

AMENDMENT NO. 1021

At the appropriate place in the bill, insert the following: *Provided further*, that not to exceed $2,000,000 may be made available for the 1999 Women's World Cup Organizing Committee cultural exchange and exchange related activities associated with the 1999 Women's World Cup.''

Mr. GREGG. I ask unanimous consent that Senator KERRY of Massachusetts and Senator FEINSTEIN be added as cosponsors to Senator STEVEN's USIA amendment.

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

Mr. GREGG. Mr. President, at this point I wish to thank, obviously, my staff and the minority staff for the extraordinary amount of time and energy they have put into this bill. They have been here all day and have done an incredible amount of work in an extremely complex situation, I would say, on a number of occasions. How they sort it all out, I am not sure. But they have and they have done it beautifully. I thank them for their energies. I thank the ranking member for all his time and patience in this exercise, which has been reasonably complicated but very successful as a result of all this.

Mr. HOLLINGS. Mr. President, I am really grateful to the distinguished chairman, the Senator from New Hampshire, for his leadership. His staff has been very professional and cooperative. It is truly a bipartisan measure. It has been a privilege and pleasure to work with him. Obviously, my staff has

been working around the clock, and I am really indebted to them. I thank the distinguished chairman.

Mr. GREGG. I thank the Senator for all his work.

## MORNING BUSINESS

Mr. GREGG. Mr. President, I ask unanimous consent that there now be a period for the transaction of morning business with Senators permitted to speak therein for up to 5 minutes each.

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

## PRIVILEGE OF THE FLOOR

Mrs. BOXER. Mr. President, in behalf of Mr. BINGAMAN, I ask unanimous consent that privileges of the floor be granted to Dr. Robert Simon on detail from the Department of Energy to his staff, during the pendency of Senate Resolution 98 or any votes occurring thereupon.

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

## THE VERY BAD DEBT BOXSCORE

Mr. HELMS. Mr. President, at the close of business yesterday, Wednesday, July 23, 1997, the Federal debt stood at $5,367,622,941,689.53. (Five trillion, three hundred sixty-seven billion, six hundred twenty-two million, nine hundred forty-one thousand, six hundred eighty-nine dollars and fifty-three cents.)

One year ago, July 23, 1996, the Federal debt stood at $5,171,664,000,000. (Five trillion, one hundred seventy-one billion, six hundred sixty-four million.)

Five years ago, July 23, 1992, the Federal debt stood at $3,988,415,000,000. (Three trillion, nine hundred eighty-eight billion, four hundred fifteen million.)

Ten years ago, July 23, 1987, the Federal debt stood at $2,300,098,000,000. (Two trillion, three hundred billion, ninety-eight million.)

Fifteen years ago, July 23, 1982, the Federal debt stood at $1,086,341,000,000 (One trillion, eighty-six billion, three hundred forty-one million) which reflects a debt increase of more than $4 trillion—$4,281,281,941,689.53 (Four trillion, two hundred eighty-one billion, two hundred eighty-one million, nine hundred forty-one thousand, six hundred eighty-nine dollars and fifty-three cents) during the past 15 years.

## APPROVAL OF GEORGE TENET AS DIRECTOR OF CENTRAL INTELLIGENCE

Mr. BYRD. Mr. President, on Thursday evening, July 10, 1997, the Senate confirmed the nomination of George J. Tenet, of Maryland, to be the Director of Central Intelligence. I am delighted that the Senate has taken this action, based on the unanimous recommendation of the Senate Intelligence Committee.

George Tenet is well known to many members of the Senate, as he served with distinction as a staff member, and then Staff Director of the Senate Intelligence Committee during the service of Senator David Boren, of Oklahoma, when he was Chairman of that Committee. When Senator Boren retired, to take up the post of President of the University of Oklahoma, George became the Assistant to the President for Intelligence matters on the staff of the National Security Council, and served with great distinction in that capacity. As a result of that service, he was asked by Mr. John Deutsch to be the Deputy Director of Central Intelligence when Mr. Deutsch was appointed Director, and he has served as the Acting Director since January of this year when Mr. Deutsch returned to the private sector. Mr. Tenet has been praised on the floor by the current leadership of the Senate Intelligence Committee, by the Chairman, the distinguished Senator from Alabama, Mr. SHELBY, and the Ranking Democrat, the distinguished Senator from Nebraska, Mr. KERREY. They have praised Mr. Tenet's capabilities, judgment and character. I wish to express my own confidence in his leadership and I believe he has the capacity to bring the agency out of the unfortunate period that it has recently experienced which was tarnished by espionage scandals, and too rapid a turnover in the Office of the Director. He faces the challenge of bringing morale up, as well as restoring public and Congressional confidence in the intelligence organization of the nation. It is his responsibility to ensure that the Intelligence Community performs on the basis of the highest standards of integrity, and that the tremendous analytical, technical, and personnel resources that the community possesses, without rival in the world, are brought to bear on the often dangerous and difficult targets and areas of concern that constitute the intelligence agenda of the nation.

Mr. Tenet is already known as a strong leader with clear focus and a broad vision. I do not believe there is any recent Director of Central Intelligence that I have dealt with that brings as strong a knowledge of and constituency in the Senate as he enjoys. Intelligence in the confusing and shifting world of this post-cold war era is vital to both branches of the national government, and to be successful must enjoy the strong support of both of them. George is uniquely qualified to bring about a working consensus on the priorities, activities and budget of the intelligence community. He enjoys an extraordinarily deep reservoir of support here in the Senate, and I believe in the White House and the Intelligence Community as well. He is an outstanding choice, and the President is to be commended on his selection. I look forward to working with him to ensure that the highly dedicated, talented and courageous individuals who serve the nation silently day and night across the globe enjoy the support that they need to carry out their duties. I wish him a long, fruitful and rewarding tenure as our new Director of Central Intelligence.

## CNN'S COVERAGE OF THE SENATE CAMPAIGN FINANCE HEARINGS

Mr. CRAIG. Mr. President, Cable News Network announced this week that it would provide live television coverage of the Senate Governmental Affairs Committee hearings on campaign finance activities. But, Mr. President, their decision was based only on the fact that former Republican National Committee chairman, Haley Barbour, is scheduled to testify.

CNN has been suspiciously absent in its live coverage of the hearings, only allowing its viewers to see the opening statements of the chairman and the ranking member during the past 2 weeks of the hearings.

As I understand it, CNN based its decision to provide live coverage of Mr. Barbour's testimony on the judgment that he has celebrity status. Or, as CNN's own Washington Bureau chief, Frank Sesno, called them yesterday, ''major players''.

That is a decision more fitting of the program ''Entertainment Tonight'', instead of a network which prides itself on being the world's leader of news.

I am certain that I am not the only one disappointed by CNN's decision to forgo live coverage of the hearings. In fact, on CNN's own Internet web page, an overwhelming number of CNN's viewers are distressed over the network's failure to provide live coverage.

One viewer wrote, and I quote:

> Although I am very pleased that you are carrying the campaign finance hearings through your Web site, I must say after all of the interminable O.J. hearings you carried live on CNN, why on God's earth aren't you carrying the hearings as well? I am very disappointed.

It was signed by Jim Merrick on July 16.

Mr. President, there has been such sufficient controversy over the CNN's lack of live coverage of the hearings—and even the lack of regular coverage of the hearings by the other television networks—that CNN devoted a substantial portion of its program ''Inside Politics'' on Tuesday, to discuss the uproar.

In a roundtable discussion, where journalists interview each other about what a great job they're doing, CNN's Judy Woodruff asked ABC's Hal Bruno about the difference of these hearings as compared to the Watergate and Iran-Contra hearings. Hal Bruno replied, and I quote:

> Government was at a standstill in Washington as a result of Watergate and the whole country was immersed in it. And the same was true to a lesser degree with Iran-Contra. These were major stories of revelations of criminal wrongdoing.

Mr. President, Hal Bruno's comment is an outrage.