U.S. Department of Justice as the executive director of the Attorneys General Association. She would be, incidentally, the first Latino ever to be confirmed for the U.S. district court from the State of Arizona.

Jim Teilborg is a lifelong trial attorney with enormous experience in courts and would—I think everyone recognizes—make a tremendous Federal judge.

Judge Susan Bolton is one of the most respected members of the Arizona Superior Court, the trial court at the State court level, one of the most respected judges in the entire State. In fact, I have received comments from many lawyers who have said: We think your three nominees from Arizona are fantastic. We just wish Judge Bolton didn't have to leave because she is so important to the judiciary at the State level.

Judge Michael Regan from Illinois, likewise, has very high qualifications. The point is this: These are Clinton administration nominees. They are needed to fill important vacancies in the Federal district court. Members of the minority have complained incessantly all year long that we need more judges and that the Senate needs to confirm the President's nominees, and they complain when the Senate has taken more time than they thought was warranted to confirm these judges. So the Senate Judiciary Committee acts to put these judges before the full Senate, and what happens? Members of the minority object. They won't let the Senate even vote on these four nominees. That is what I call cutting off your nose to spite your face.

It is obstruction tactics; it is dealmaking at its worst. This is what people object to when they look at the Federal Government. It doesn't treat these individuals as human beings whose lives and careers are on hold. Incidentally, it has happened before. This is not the first time members of the minority have held up the nomination of a Democratic nominee by the Democratic President. In 1997, Democrats blocked the nomination of Barry Silverman to the Ninth Circuit Court of Appeals. He had to wait until the following year to be confirmed. Again, there was a dustup over a nominee from Illinois, as I recall, and the point was: If we can't get everything we want, you are not going to get anything you want.

It is not only me and not only the people of Arizona; it is also the will of the President of the United States that is being thwarted. It is not as if partisan politics were involved with respect to the people being nominated because they are Republicans, Democrats, or Independents. In fact, obviously, the majority are Democrats. So you have a Democratic President nominating mostly Democratic candidates for the court, and the Democratic minority is holding them up.

One of our distinguished colleagues on the Judiciary Committee, the distinguished ranking member, Senator LEAHY, recently said on the floor, ''We cannot afford to stop or slow down judicial nominations.'' I agree with Senator LEAHY on this point. I hope that he and Senator DASCHLE and the other Senators who have an interest in this important subject will continue to support the confirmations of judges as long as we can and at least support the confirmations of those who the Senate can act on because they are the only ones who have been cleared to this point and, in any event, will recognize the irony in their criticism on the Senate floor for not confirming judges, when it is their action and their action alone that is preventing the confirmations of these four nominations to the Federal district bench. It is time for action. I hope my colleagues will quickly clear these four nominees for confirmation.

The PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. MURKOWSKI. Mr. President, my understanding is that we have 10 minutes in morning business.

The PRESIDING OFFICER. Morning business is scheduled to conclude at 2 p.m.

Mr. MURKOWSKI. I ask unanimous consent that I might be allowed 15 minutes as in morning business.

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

COURT OF APPEALS DECISION ON NUCLEAR WASTE

Mr. MURKOWSKI. Mr. President, let me draw your attention to a very significant event that occurred last week which involved the nuclear utilities companies in this country prevailing in the spent fuel claims case. Now, to many, this might not seem to have great significance. Those of us on the Energy Committee have gone through a long and somewhat tedious process to try to address the federal government's obligation to encourage the Congress, specifically the Senate, to reach a decision on how we are going to dispose of our high-level nuclear waste, with a recognition that almost 20 percent of the power generated in this country comes from nuclear power. As a consequence of that, and the inability of the Government to fulfill its contractual commitment to take the waste in 1998, the industry in itself is, you might say, choking on the pileup of nuclear waste that is in temporary sites around reactors throughout the country.

Evidently, the administration does not value the sanctity of a contractual relationship very highly, because the ratepayers, over an extended period of years—several decades—have paid over 17 billion dollars into a fund which the Federal Government has managed, and that fund was specifically designed to permanently take the waste from the utility companies that generate power from nuclear energy.

The August 31, 2000 decision was highlighted in The Energy Daily. The U.S. Court of Appeals for the Federal Circuit ruled that the power companies are free to seek damages against the Energy Department for its failure to take responsibility for spent nuclear fuel. Undoubtedly, this will ''prompt dozens of new lawsuits seeking billions of dollars in claims against the Government,'' industry attorneys indicated last Friday.

Who is the Government? The Government is the taxpayers, Mr. President. As a consequence, the inability of the administration to meet its obligation under a commitment—a binding contract—results in the taxpayers being exposed to billions of dollars in damages.

The article says:

The U.S. Court of Appeals for the Federal Circuit handed the nuclear industry a sweeping victory Thursday when it rejected a government motion to dismiss a suit brought by utility owners of three nuclear power plants. The government claimed the utilities must first exhaust all administrative remedies available through the DOE before seeking monetary damages in the U.S. Court of Federal Claims.

The decision means that nuclear utilities can return to court and will get a chance to prove their damages—to ask the court to determine the amount of damages the government must pay for DOE's failure to begin storing the spent fuel on Jan. 1, 1998.

Congress set that date for the federal government to take responsibility for spent nuclear fuel in the Nuclear Waste Policy Act of 1982, which requires DOE to store the roughly 40,000 metric tons of waste generated and now stored at more than 100 U.S. nuclear plants.

Some of those plants, I might add, are no longer active. They weren't designed for long-term, indefinite storage.

Estimates of the potential damages faced by the government as the result of last week's decision vary widely.

An analysis performed this year for the Nuclear Energy Institute showed the figure could be as high as $50 billion—costs that will be borne by the taxpayers—but that number is based on a worst-case assumption that the government will never fulfill its obligation, and the utilities' spent fuel will never be stored in a proposed federal level-high waste depository at Yucca Mountain, Nev. [where the Government has already expended over $6 billion.]

The idea of the facility at Yucca Mountain in Nevada was to act as a permanent repository for the high-level waste.

NEI General Counsel Robert Bishop told The Energy Daily Friday that the dozen or so utilities already having filed lawsuits against DOE allege some $5.4 billion in damages resulting from the government's failure to take the spent fuel.

So we are seeing the suits filed at this early time.

Bishop acknowledged, however, that the figure could be much higher if, as expected, utilities that thus far have been reluctant to sue the government take advantage of the Thursday decision and pursue their claims in court.

''You are going to see a lot of utilities deciding to do whatever they believe is in their and their customers' best interest.''

''Some may choose to work with DOE as PECO did. Others may decide that it is in

their best interest to seek relief in federal claims court.''

Jerry Stouck, an attorney in the Washington office of Spriggs & Hollingsworth and the lead attorney in the case, represents Maine Yankee Atomic Power Co., Connecticut Yankee Atomic Power Co. and Yankee Atomic Electric Co. He said the government has an easier way to avoid facing dozens of lawsuits from aggrieved utilities.

''The government can mitigate its damages by moving the [spent] fuel,'' Stouck said. ''The government already has indicated it is not going to honor its contract and move the fuel as it is required to do under the law, but they can avoid damages by moving the fuel. They won't avoid all of the damages, but they will mitigate a lot of the damages simply by moving the fuel.''

In its ruling, the court concluded that DOE's failure to begin taking used nuclear fuel did not constitute a ''delay,'' as the government had argued, that was resolvable under a standard contract that each utility signed with the department.

It said that utilities are not obligated to seek resolution under the contract for damages caused by DOE's failure to perform its contractual obligation. It also stated unequivocally that DOE has breached its obligations under the contracts. And in a telling rebuke of the government's argument, the court made it clear that its decision extended beyond the specific suits brought by the Yankee plants.

''The breach involved all the utilities that had signed the contract—the entire nuclear industry,'' the court said in its 14-page order.

The case now returns to the claims court to determine the level of damages DOE must pay.

It is my hope that the majority leader, Senator LOTT, will have an opportunity to bring this matter to the floor again for a vote. I advise my colleagues that we are one vote short of a veto override. With the recent ruling by the court, clearly the Federal Government and the taxpayer bear the responsibility of not taking the nuclear waste as indicated by the court order.

According to the Department of Justice statement:

> We remain persuaded that the quickest and most efficient way to get relief to those utilities that are incurring costs as a result in our delay in accepting nuclear fuel is direct negotiation between individual utilities and the department. This is evidenced by the settlement agreement that we entered into last month with PECO.

There you have it. The Department of Justice hopes they can reach some kind of a settlement. But in any event, that settlement is going to cost the taxpayers a substantial sum as a consequence of the Federal Government's unwillingness to honor the terms of a contract made to take that waste in 1998.

It is my hope, as chairman of the Energy Committee, to hold a hearing on this matter because now we have a definitive decision made by the court and that puts the liability on the taxpayer and the Government. As a consequence, I think it is appropriate that we in this body come together and recognize our obligation. Our obligation is to override the President's veto and honor the contractual commitments to take the waste.

This very important environmental issue affects almost every state in this Nation. On August 31, 2000, the U.S. Court of Appeals for the Federal Circuit decided two cases and held that nuclear utilities could seek millions of dollars in damages for DOE's failure to accept high-level waste by January 1998. The court's decision only confirms what I have said on this floor over and over again—the Federal Government has breached it's contract with utilities as a result, the taxpayer is going to pay. Conservative estimates from the utilities with claims pending are upwards of $5 billion.

In the first case, the U.S. challenged the lower court's finding that Maine Yankee, Connecticut Yankee, and Yankee Rowe (all shutdown reactors with tons of fuel remaining on-site) were entitled to damages. On appeal the court ruled that the utilities have the authority to seek civil damages from the Court of Federal Claims and rejected the government's argument that relief was available through the administrative process.

In the second case, the court found that Northern States Power, now known as Xcel Energy, could also seek damages through the Court of Federal Claims.

Utilities view both decisions as major victories. Not only do they not have to go through the administrative process first, (1) the court rejected the distinction between operating and shut down utilities, and (2) characterized DOE's failure to accept waste as a breach of contract, thus entitling the utilities to proceed directly to the Court of Federal Claims to prove their damages. About a dozen utilities have claims pending that are affected by these ruling.

Before this ruling, DOE had been attempting out-of-court settlements with utilities. Only one, PECO, has made such a statement.

This court ruling only underscores what I have been saying for years—the Federal Government has breached it's contract and that will cost tax payers billions. Since 1982, the Federal government has collected over $17 billion from America's ratepayers in return for a commitment to take nuclear waste from storage sites scattered in 40 states around the country and store it in one, safe central government-run facility, beginning in 1998. Several years ago, the U.S. Court of Appeals ruled that this is a legal, as well as moral, obligation. Now the court has ruled that failure to do so is a breach of contract and the utilities may seek damages.

I have tried to help the Federal Government out of this situation. For several Congresses, I have worked on various pieces of legislation designed to keep our nuclear waste repository program on track. This Congress we took that legislation, S. 1287, further than we ever have before. In February, the Senate passed it by an overwhelming majroity—64 to 34. And then in March, the House took up the bill and passed it 253 to 167. From there, this legislation made it up Pennsylvania Avenue, to the President's desk, where he vetoed it. Why he did that, I don't know. In light of this recent court decision, maybe that doesn't look like such a good decision after all. Unless of course, the President is thinking of politics, and not tax payer liability. In any event, the President sent it back to Congress, where, on May 2, 2000, the Senate failed to override that veto. But we didn't fail by much. The actual vote count of 64–35 doesn't tell the whole story. Two Members, who have always been in the ''yes'' camp were necessarily absent. And the majority leader, in a procedural maneuver, switched his vote so that if we needed to revisit the issue, that opportunity would be available. So perhaps, we should now avail ourselves of that opportunity.

Senate bill S. 1287 would help to limit the taxpayers liability for DOE's failure to accept waste by permitting the early acceptance of waste at the Yucca Mountain site, once construction is authorized. S. 1287 provides the tools that will allow the Federal government to meet its obligation to provide a safe place to store spent nuclear fuel and nuclear waste as soon as possible, while reaffirming our Nation's commitment to development of a permanent repository for our Nation's nuclear waste.

At the beginning of this session, interim storage legislation, in the form of S. 608, the Nuclear Waste Policy Act of 1999, was introduced. Although the legislation had sufficient support to be favorably reported by the Committee on Energy and Natural Resources, I proposed that the committee consider a new approach to resolving the nuclear waste dilemma that might gain a full consensus and avoid the procedural difficulties encountered by the bill in the past. This approach was supported by the committee, and an original bill, which became S. 1287, was approved by the committee by a bipartisan, 14–6 vote.

During committee consideration of S. 1287, we received many constructive comments on how to improve the bill, and a manager's amendment that reflects many of these were eventually considered and passed on the Senate floor. S. 1287, as passed the House and Senate contained the following major changes:

Adds a savings clause clarifying that nothing in the bill diminishes the authority of any State under other Federal or State laws;

Alters one of the milestones and the acceptance schedule for nuclear waste to make them consistent with the schedules contained in the Department of Energy's Viability Assessment for Yucca Mountain;

Clarifies that the Secretary and a plaintiff may enter into voluntary settlements that are contingent upon new obligations being met, including acceptance of spent fuel under the schedules provided for in S. 1287;

Adds benefits for local governments in Nevada that adjoin the Nevada test site; and

Permits EPA to proceed with the radiation standard setting rule. If NRC, after consulting with the National Academy of Sciences, agrees that the standard will protect public health and safety and the environment and is reasonable and attainable, they may do so prior to June 1, 2001.

I believe that the issues to be addressed by nuclear waste legislation have evolved and this evolution is reflected in S. 1287. This legislation gives DOE the tools it needs to complete the Yucca Mountain program, while providing a mechanism to rectify DOE's failure to perform its obligations under the Nuclear Waste Policy Act of 1982.

Because DOE has failed to find a way to meet its obligation, our citizens will be left with what remedies the court can devise. After the August decision in the Court of Appeals, it is clear that the utilities can now go ahead and prove their damages. What the eventual damages are remains to be seen. This much I can say with some certainty: This remedy is bound to be expensive to the American taxpayer and is unlikely to result in used nuclear fuel being removed from the over 80 sites where it is stored around the country, in facilities that were not intended for long-term storage. If DOE is unable to open the Yucca Mountain repository on schedule, it is estimated that total damages from the Department's failure to meet its obligation will range from $40 billion to $80 billion. Clearly, such stop-gap compensation measures would drain money away from this and other Department of Energy programs, stopping all progress on the permanent repository. The American taxpayers would lose tens of billions of dollars, and we would still have no idea how we are going to get the nuclear waste out of 80 sites in 40 States.

I have said it before, and I will say it again. S. 1287 is the most important environmental bill we have considered this Congress. The alternative is to leave waste at 80 sites in 40 States. S. 1287 also gives the Secretary of Energy the ability to settle lawsuits and save the taxpayers from an estimated $40–$80 billion liability. The bill would allow early receipt of fuel once the construction is authorized—as early as 2006—assuming DOE can keep the program on schedule. Such early receipt would help mitigate a liability the courts have clearly said the government has.

We have struggled with this problem for many years. The time is now. S. 1287 is the solution. Years of litigation to prove damages will cost money and waste valuable time. Utility consumers have paid over $17 billion into the Nuclear Waste Fund. We must solve this problem. We cannot continue to jeopardize the health and safety of citizens across this country by leaving spent nuclear fuel in 80 sites in 40 States. We should move it to one remote site in the desert. If we don't, we risk losing nuclear generation altogether—that's 20 percent of our clean generation. We cannot afford to do that. Our clean air is too important. This issue is too important. Let's not ignore reality. It's dangerous and it's expensive.

Again, I remind my colleagues that in February, this body passed by an overwhelming majority vote of 64–34 to honor the commitments that were made under the contract to proceed by placing the waste at Yucca Mountain. The House took up the bill and passed it 253–167. It went down to the White House, where the President vetoed it. Why he did I don't know. I don't know whether they just disregard contracts down there. But now the burden is on the taxpayer. Now the burden is on the Senate to rise up and generate a couple more votes and override the President's veto.

Again, we will be holding a hearing on this matter in the very near future. I encourage each Member of the Senate to recognize his and her obligation to honor the terms of the contract, proceed to take the waste, and put it where it belongs, at the site at Yucca Mountain in Nevada where the taxpayer has already expended some $6 billion to put it there.

I see other Senators wishing recognition. As a consequence, I yield the floor.

EXTENSION OF MORNING BUSINESS

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. DOMENICI. Parliamentary inquiry: Is there time now remaining to the Republicans to speak?

The PRESIDING OFFICER. Time has expired for morning business.

Mr. DOMENICI. Mr. President, I ask unanimous consent to be permitted to speak for an additional 10 minutes.

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

THE 90/10 SOLUTION

Mr. DOMENICI. Mr. President, in order to complete our legislative agenda in the 106th Congress, our leadership has put forth a very simple concept.

For the upcoming new fiscal year that begins in about 12 days, lets devote 90 percent of the surplus to debt reduction. And the remaining 10 percent can be used for tax cuts and final spending bills.

This is a very reasonable and straightforward proposal, and I compliment our leadership both in the House and the Senate for making the proposal to the President last week.

I don't quite understand why the White House and some Democrats are so negatively excited about this proposal. For some reason, the White House and congressional leaders are having a great deal of difficulty understanding a very simple proposal.

Indeed, our distinguished minority leader, even said he ''smelled a rat'' in this proposal. Why is it so difficult for the White House and congressional Democrats to understand this simple proposal.

Maybe it is because they are really not serious about their own rhetoric about debt reduction. Maybe this is consistent with their blocking not once, but six times our efforts to pass the Social Security lock box legislation now on the calendar.

I am hopeful we will do that, with their help perhaps, in a way we can all agree upon. But we will do it, and we will do it under this 90–10 formula.

For my friends at the White House and across the aisle let me take just a minute to explain this proposal.

We first start with the current CBO estimate of the budget surplus for next year—that number today is $268 billion. We are even using the Democrats favorite definition of the surplus, a definition that assumes that appropriate accounts grow by inflation between 2000 and 2001—the so-called ''inflated baseline.'' This is not my preferred definition, but it is the most liberal one available from the Congressional Budget Office.

To this $268 billion estimate, we adjust for the net effect of the supplemental that became law after CBO made its summer update. Because the supplemental shifted some spending around, the surplus next year increases slightly to $273 billion.

Now, we set aside the Social Security and Medicare HI trust fund balances—we fully protect Social Security and Medicare as we promised—those two accounts make up about $197 billion of our debt reduction next year.

We also set aside $48 billion of the non-Social Security surplus for debt reduction.

So we set the Social Security and the Medicare surplus aside, and then we set aside $48 billion more—a rather historic event because that is out of the non-Social Security surplus. Forty-eight billion dollars of that will go to debt reduction.

In total, $245 billion of next year's surplus is set aside for debt reduction. This represents 90 percent of the total surplus next year—just do the arithmetic—leaving $28 billion in outlays for the end of the session spending and tax legislation. This $28 billion should allow us to finish our work expeditiously. It would allow us to finish the appropriated bills that are still pending, fund needed priorities for hospital and health providers, for health research, aid to States and localities that have suffered this summer's fires and droughts, and other important and basic needs.

The $28 billion should also allow us to provide minimal tax relief to American small business and families. This will be a smaller package than we have done before. We will ask the President of the United States whether there is any tax bill that we can send him that he will sign. We believe this is a winner, one attached essentially to the amendment that cleared the floor when we did our minimum wage bill. It was