was found in the car parked at Dulles Airport by one of the hijackers of American Airlines Flight 77. Photos of his better-known namesake—Osama bin Laden—were found in Mr. Awadallah's apartment. Under the law, a material witness may be detained if he has relevant information and is a flight risk.

Federal prosecutors thought that Osama Awadallah easily met both parts of that test and therefore detained him. While detained Mr. Awadallah was indicted for perjury. But Judge Scheindlin dismissed the perjury charges and released Mr. Awadallah. She reasoned that the convening of a federal grand jury investigating a crime was not a ''criminal proceeding'' and therefore it was unconstitutional to detain Mr. Awadallah. This was quite a surprise to federal prosecutors who for decades had used the material witness law in the context of grand jury proceedings for everyone from mobsters to mass murderer Timothy McVeigh.

Or that label might apply to Clinton appointees Tashima, Hawkins, Paez, and Berzon, all of whom discovered in the Constitution the right of prisoners serving life sentences to procreate via artificial insemination. Fortunately, there were enough judges on the Ninth Circuit to conclude that the Constitution does not include a ''right to procreate from prison via FedEx.''

There are other Clinton nominees to whom one could apply the label ''judicial activist.'' That label cannot, however, fairly be applied to Professor Rogers.

The Chairman also implies that Professor Rogers is an activist because of his views on the Supreme Court's opinion in Roe v. Wade. But Professor Rogers has never ruled on that subject. In fact, he has never even written on it, except for his one assignment as a line attorney in the Justice Department in helping draft an amicus brief. If daring to note some of the flawed analytical underpinnings of Roe makes one a judicial activist, then Justice Ruth Bader Ginsburg must be one. In a 1985 article, she noted that ''Roe sparked public opposition and academic criticism, in part, I believe, because the Court ventured too far in the change it ordered and presented an incomplete justification for its action.'' She also recognized that in Roe ''heavy-handed judicial intervention was difficult to justify and appears to have provoked, not resolved, conflict.'' Other liberal scholars have also recognized serious flaws in Roe's analysis.

In conclusion, Professor Rogers possesses the intellect, integrity, and commitment to public service that will make him a fine addition to the Sixth Circuit. His confirmation will provide some badly-needed relief to my constituents and other citizens in the Sixth Circuit, and I am confident that he will make Kentucky and his country proud. And while I believe my friend from Vermont misapprehends the cause of the vacancy crisis on the Sixth Circuit and Professor Rogers' judicial philosophy and record, I appreciate him moving the Rogers' nomination and other Kentucky nominees through the process. He correctly notes that there are now no judicial vacancies in Kentucky, and I thank him again for helping the Commonwealth in that respect.

EXHIBIT 1

[From the Wall Street Journal, Dec. 4, 2001]

JUDGES AND GRUDGES

MICHIGAN'S DEMOCRATIC SENATORS SEEK PAYBACK

(By Thomas J. Bray)

On Thursday, the Sixth U.S. Circuit Court of Appeals, which handles federal appeals from Kentucky, Michigan, Ohio and Tennessee, will meet en banc to hear oral arguments on whether the University of Michigan's use of racial preferences in administrations is constitutional. Such a hearing, in which all of the court's active judges, rather than the usual three-judge panel, hear the case, is highly unusual.

But then the number of judges on the Sixth Circuit is bit unusual, too. Though there are normally 16 active judges assigned to the appeals court, only nine of the seats are currently filled. Moreover, the number will fall to eight at the end of the year when one judge retires.

Nominations to fill seats in the Sixth Circuit have are being stymied by bitter partisan wangling in the Senate. And there appears to be little prospect of breaking the deadlock. Michigan's two Democratic senators, Carl Levin and Deborah Stabenow, have put a hold on three of President Bush's nominees from that state. (Mr. Bush hasn't yet named a candidate for a fourth seat traditionally held by a Michiganian.) Judiciary Committee Chairman Patrick Leahy has refused even to hold hearings on the nominations.

Echoing their party's rationale for foot-dragging on judicial nominations from all across the country, Sens. Levin and Stabenow complain that when Republicans controlled the Judiciary Committee in the warning days of the Clinton administration, they arbitrarily refused to act on the nominations of state appellate judge Helen White and Detroit lawyer Kathleen McCree Lewis. ''This was despite the fact that no concerns were raised about either woman's qualifications,'' the two senators wrote in a letter last weekend to the Detroit News.

That leaves the implication that the White and Lewis nominations were stalled because of sheer partisanship, thus justifying retaliation now that the Senate is in Democratic hands. But the story is a bit more complicated.

Helene White happens to be the wife of Carl Legion's cousin Charles Levin, a former member of the Michigan Supreme Court. In 1996, Judge White was threatening to run as an independent for the state Supreme Court. This horrified Michigan Democrats, who feared that she might draw off a big chunk of the liberal vote. The White House, according to state political sources, was persuaded to forestall that possibility by nominating her for a seat on the Sixth Circuit. (The Democratic candidate went on the lose anyway.)

But her nomination outraged then-Sen. Spencer Abraham, a Michigan Republican who is now secretary of energy. Mr. Abraham traded his help for getting three Michigan nominees to the federal courts approved by the GOP Senate in exchange for Clinton-judge pickers holding off on further nominations.

When the White House was ahead with the White nomination anyway, sen. Abraham made no secret of his feeling that he had been double-crossed. He then placed his hold on the White nomination and later the Lewis nomination.

All of this came well into the Clinton tenure. Newly elected presidents, including Mr. Clinton, have generally received speedy accommodation for their initial nominees. Blocking nominees so early makes it appear the Democrats are motivated by little more than partisanship stemming from disappointment at the outcome of the 2000 election and the desire to impose an ideological litmus test on judicial nominees.

Sen. Charles Schumer of New York, a member of the Judiciary Committee, let the cat out of the bag shortly after the Democrats took over the Senate. The committee, he announced, would be justified in opposing nominees ''whose views fall outside the mainstream''—in other words, anybody with whom he and his Democratic colleagues disagreed.

The three blocked Bush nominees to the Sixth Circuit include a highly qualified federal district judged from western Michigan, a female state trial judge and a state appeals-court judge of Arab descent. At a time when Democrats are loudly complaining about insensitivity toward Arab and Muslim visa-holders, the last nomination might seem particularly timely. A federal district judge in Detroit is now hearing charges against three Arab aliens charged with visa violations who authorities say may have connections to al Qaeda.

There currently are 110 vacancies among the nation's 862 district and appeals courts judgeships. The gap has so far been filled by semiretired senior judges, through they aren't allowed to join in en banc court proceedings.

An indignant Sen. Leahy is hauling Attorney General John Ashcroft before his committee this week to answer questions about the constitutionality of his investigative techniques as well as the use of military commissions to conduct speedy trials of captured foreign terrorists. If Mr. Leahy and his colleagues are so keen on having the regular courts do this job, maybe they should be asked why they are still sitting on so many of the president's nominations.

OPPOSING THE LONG-TERM CONTINUING RESOLUTION

Mrs. LINCOLN. Mr. President, I rise in opposition to the continuing resolution because I believe it is irresponsible for Congress to adjourn without fulfilling our constitutional obligations. I have in the past allowed short-term continuing resolutions to fund our Government in order to give my colleagues time to complete the appropriations process. But I cannot support the long-term continuing resolution which will simply allow Congress to go home for the rest of the year before our job is complete.

As our Nation stands on the verge of going to war, it is beyond me how we can simply pass a bill to keep government spending at last year's levels. Yesterday's Washington Post reports that fire crews, police officers, emergency workers and others who would be the first on the scene in the event of a new terrorist attack haven't received any of the money that the President's budget promised them. I ask unanimous consent that this article be printed in the RECORD.

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

[From the Washington Post, Nov. 19, 2002]

SPENDING BILL DELAYS CRIMP WAR ON TERROR

CONGRESS'S INACTION SLOWS DOMESTIC PLANS

(By Jonathan Weisman)

With their political attention focused on establishing a Department of Homeland Security, Congress and the White House have given up funding many of the department's proposed functions, at least in the short run. As a result, programs such as trucking security, bioterrorism defense and customs operations are strapped for cash, perhaps well into next year.

Congress's decision to fund the government at 2002 levels until Jan. 11 could mean federal, state and local agencies expecting large increases for emergency response, new equipment and other needs will not see additional money until spring, halfway through the fiscal year that began Oct. 1. Budget experts say Congress is unlikely to pass any 2003 nondefense spending bills until February at the earliest.

''After the attacks of September 11, many of us anticipated with urgency what should have been recognized by Congress—that all this money would have been passed by October 1,'' said Matthew R. Bettenhausen, director of homeland security for Illinois. ''Now, it's not going to be until calendar year '03 that they even consider the president's proposals.''

Spokesmen for various Federal agencies say their departments are functioning fine under the temporary funding measures, known as continuing resolutions. White House budget officials say they can shore up programs as needed by shifting funds from where they are not needed, or tapping unspent money from the last fiscal year.

But Federal officials speaking on condition of anonymity say the stalemate will have serious consequences. The director of the National Institutes of Health told Congress in October that if his agency did not receive requested funding increases soon, he would have to scale back bioterrorism research grants scheduled to be awarded in December and January. Biodefense ''is one program that was slated to markedly increase in 2003, so a continuing resolution there for any length of time will greatly impair that program,'' Director Elias A. Zerhouni warned.

Congress has provided the entire Federal Government's bioterrorism program with $1.5 billion, a fraction of the president's $4.3 billion request, said G. William Hoagland, Republican staff director of the Senate Budget Committee.

The Customs Service has reached agreements with nine countries to inspect massive shipping containers heading to the United States from 15 of the world's 20 largest ports, but it will likely have to postpone the deployment of agents that had been scheduled for January.

The Department of Energy's National Nuclear Security Administration has frozen hiring, even as it tries to ramp up security at the nation's nuclear weapons plants and laboratories. In a Nov. 15 memo, the agency's acting administrator, Linton F. Brooks, told agency chiefs that Congress's actions had presented ''a serious management challenge'' that forced him to impose the freeze to avoid large reductions in force later in the fiscal year.

Major computer purchases to bolster the president's border security initiative are on hold. And the newly established Transportation Security Administration, operating on $466 million less than it expected for the next two months, has had to withhold $20 million in truck security grants, a senior Transportation Department official said.

The agency also has deferred reimbursements to the airlines for cockpit door retrofits. TSA employees scattered around 429 airports are without computers or administrative support. And if Congress does not act quickly in January, when TSA employees must receive a mandatory 3.1 percent pay raise, the agency will have to furlough hundreds of its workers.

''There are a lot of agencies that are going to be in the soup on this thing,'' said one administration official, who refused to be identified. ''But the biggest problems are at TSA. They're going to be clobbered.''

Rep. David R. Obey (Wis.), the ranking Democrat on the House Appropriations Committee, called the performance ''a disgrace'' and ''a spectacular abdication of responsibility.'' House Appropriations Committee Chairman C.W. Bill Young (R–Fla.) was less forceful but conceded that Congress's action was ''not the best way to fund the government.''

Homeland security is just one area that fell victim to Congress's failure to pass new appropriations bills. House Republicans were bitterly divided all year between moderates, who wanted to spend more on nondefense domestic programs, and conservatives, who wanted to stick to the president's austere spending limits. In the end, the House passed only two of the 11 annual nondefense appropriations bills.

Democrats on the Senate Appropriations Committee pushed through all 13 of their spending bills at levels well above House levels, but they managed to get only one nondefense spending bill through the full Senate.

To be sure, some homeland defense functions are moving forward. The temporary spending resolution funds the government at 2002 levels, but it also carries forward emergency spending approved shortly after Sept. 11, 2001. For example, the $151 million fund that Congress provided the Food and Drug Administration for an emergency food safety program will remain flush. The stopgap spending resolution, expected to pass the Senate this week, also allows the president to redirect $640 million from other programs to the newly created Homeland Security Department.

And in some cases, more money would do little good for agencies still struggling to come to grips with their new security responsibilities. Congress has failed to provide the U.S. Border Patrol with funds it would need to hire 570 agents that lawmakers have requested. But, said patrol spokesman Mario Villarreal, the agency's recruiting efforts could not reach last year's goal of 10,551 Border Patrol agents, in part because about 750 agents quit to become air marshals for the TSA.

Still, Congress's failures have left bitter feelings, especially with organizations that backed politicians in exchange for promises they fear will be broken.

''It's going to be my members, wherever the next [terrorist] event is, God forbid, that are the first on the scene, and we have a federal government that has been unable to put any money on the ground to help them,'' said Harold A. Schaitberger, president of the International Association of Fire Fighters.

And for state governments facing severe fiscal crises, the failure of Congress to provide federal help has been particularly ill-timed, said Philip G. Cabaud Jr., Delaware's homeland security adviser.

President Bush and Congress can claim great success in establishing the framework for the nation's eventual response to terrorist threats. Before lawmakers officially close the 107th Congress, they will likely have established a Department of Homeland Security and approved port security, border security and bioterrorism measures. But none has been fully funded.

The president's budget promised that $3.5 billion would begin flowing in October to ''first responders,'' but fire crews, police officers and emergency workers are still waiting for even a penny.

One executive of the American College of Emergency Physicians recalled an invitation to the White House in June to watch Bush sign the Bioterrorism Preparedness Act, which authorized Congress to send $520 million to hospital emergency rooms. So far, though, only about $135 million has been made available, and the official said her organization has seen none of it.

Two years ago, Congress began providing $360 million for federal grants to local firehouses. The House promised to increase that number to $400 million this year. The Senate promised $900 million. So far, firefighters have gotten nothing.

''There has been a tremendous amount of rhetoric and a tremendous amount of utilization [by politicians] of fire services whose new status was purchased at such a high cost,'' said Garry L. Briese, executive director of the International Association of Fire Chiefs. ''But their actions do not reflect the words.'' End of story

Mr. President, it's not just our counter terrorism operations that need to be funded. Our domestic priorities are also hurting. For example, the Administration has boasted about the education bill, the No Child Left Behind Act, which the president signed in 2002. Yet we haven't come close to funding the programs authorized in the bill. Leaving town without funding these and other priorities is irresponsible.

We have also failed to act on the Medicare give-back bill (S. 3018), leaving physicians, rural hospitals, nursing homes, ambulance providers and pathologists without adequate reimbursements from the federal government. Adjourning without ensuring proper Medicare reimbursements to these providers means they will have to choose between helping patients while operating at a financial loss or discontinuing services. What an unfair choice to leave those who help our senior citizens!

Adjourning now will also leave states like Arkansas in the lurch. The Senate Finance Committee passed a three-year reauthorization of welfare, but we didn't complete this bill on the Senate floor. Arkansas has one of the six state legislatures that meet biennially and is one of the 19 states that must pass two-year budgets. Our legislature meets early next year. How will they be able to plan their budget if they don't know what federal money they will be getting for their TANF (Temporary Assistance for Needy Families) program? TANF is one of the major federal programs designed to help needy families with children. An estimated 5.5 million parents and children depend on welfare benefits for a monthly cash check. An additional 1 million families do not receive a cash payment, but depend on TANF for child care and/or transportation subsidies which are essential to enable parents to work and move toward self-sufficiency. How can we leave 6.5 million people in the lurch?

Lastly Mr. President, it took headlines and plummeting stock shares to alert the nation to the vast fraud and greed which had inflated the Wall-Street stock bubble. The government and the Congress had no clue what was going on and the public suffered. In order to remedy this problem the Congress overwhelmingly approved the Sarbanes-Oxley Act. This new law authorized a 77 percent increase in SEC funding to $776 million.

The increase was included in both the Sarbanes bill here in the Senate and in the House-passed H.R. 3764. But now we are learning that the White House doesn't want to fund the full authorization and is ready to propose nearly a third less than that. That is outrageous and I think the public should pay attention to this issue. Unless the authorization is funded it is meaningless. Meaningless, Mr. President, a hollow position crafted for an age of thirty second sound bites. The public should not allow this to go on.

Congress should fund the priorities we have authorized. That is why I oppose the long-term continuing resolution.

CYPRUS' MEMBERSHIP TO THE EUROPEAN UNION

Ms. SNOWE. Mr. President, the Senate has recently passed by unanimous consent a resolution, S. Con. Res. 122, that I, along with Senators BIDEN and SARBANES introduced expressing support for Cyprus' membership in the European Union, EU. This is a timely and significant statement of support for the Senate to make on the cusp of Cyprus' membership and I would like to thank Senators BIDEN and SARBANES for their efforts toward achieving the passage of S. Con. Res. 122.

Just this past month, Cyprus moved yet another step closer to its goal of EU membership. At the end of October, the 15 European nations met in Brussels and endorsed the recommendations of the European Commission that Cyprus and nine other countries become EU members in 2004. It was agreed that Cyprus had fulfilled the political criteria for accession and will be able to meet the economic criteria and assume the obligations of membership. It is expected that an official invitation for membership will be expanded this December, with accession in 2004.

The EU countries did reaffirm the call for continuing efforts by President Clerides and Turkish-Cypriots to work toward a solution to the Cyprus problem by the end of the year. However, as was stated at the Helsinki Summit in 1999, such a solution is not a precondition for Cyprus' membership.

After 27 years Cyprus remains a divided nation. However, as an EU member, the entire island of Cyprus will see economic benefits. All Cypriots will have access to new markets, a freer exchange of goods and services, balanced and sustainable development as well as the free movement of persons, goods and services, and capital.

But EU membership is not only about economic prosperity it is also about human rights. The EU guarantees citizens of its members human, legal and civil rights as well as the means and legal recourse necessary to secure the full application of these fundamental individual rights.

Moreover, Cyprus' EU membership will be, and has been, a catalyst for the solution to the Cyprus problem as the mere prospect of membership has already yielded progress. That Cypriot President Clerides and Turkish-Cypriot leader Denktash have been meeting since January in direct talks to seek a resolution of the division of Cyprus is seen as evidence of the positive leverage exacted by expected EU accession.

As a result of these continuous meetings, other international efforts have occurred such as the recent submission by the U.N. Secretary General of a comprehensive proposal for the solution of the Cyprus problem. If it were not for Turkey's desire to also be an EU member knowing that other EU members could block this goal it is questionable whether these talks would even be taking place. That, along with improved economic prosperity and guaranteed human rights, is why it was vital that the Senate go on record as supporting Cyprus' EU membership.

INDIAN TRUST FUNDS MANAGEMENT

Mr. MCCAIN. Mr. President, I would like to make a brief statement for the RECORD regarding an issue of significant importance to me, and that is the fiduciary and trust responsibility of the United States toward Native Americans for management of trust assets and trust funds.

Earlier this year, I introduced S. 2212, the Indian Trust Asset and Trust Fund Management and Reform Act of 2002. This legislation would have amended the 1994 American Indian Trust Fund Management Reform Act to initiate further reform of the administration and management of the assets and funds held by the United States in trust for federally recognized Indian tribes and individual Indians. I was pleased to be joined in this effort by my distinguished colleagues, the two Senators from South Dakota, Mr. DASCHLE and Mr. JOHNSON, and I appreciate the time and effort they have expended as we have tried to move the bill toward enactment.

I also thank the chairman of the Committee on Indian Affairs, Senator INOUYE, for holding a hearing on S. 2212 in July. As a result of the testimony received in the hearing and the comments from many of the Indian tribes that would be affected by this legislation, we developed an amendment in the nature of a substitute which significantly improved the original bill. Many tribal leaders shared comments and offered recommendations to us in the process and were grateful for their efforts.

By sponsoring this legislation, Senators DASCHLE, JOHNSON, and I intended to express congressional support and provide direction for reform of the Federal Government's management of Indian trust funds and assets, which has for some time been subject to intense criticism and scrutiny by the Federal courts. High-level Government officials have been held in civil contempt twice by the U.S. District Court here in Washington, DC, for their abject breach of fiduciary duties as well as the continuing failure to comply with statutory mandates and court orders.

S. 2212 focused on two primary changes to the 1994 American Indian Trust Fund Management Reform Act, the underlying law governing Indian trust funds management. First, it would have created a single line of authority in the Interior Department by establishing a Deputy Secretary for Trust Management and Reform; and second, the bill would have strengthened provisions for Indian tribes and beneficiaries to directly manage or comanage with the Interior Secretary trust funds and assets, based on successful self-determination policies.

Based on comments received from tribes, we amended S. 2212 to affirm the fiduciary standards to be applied to the management of Indian trust funds and assets, as well as to abolish the Office of Special Trustee and establish the Office of Trust Reform under the new Deputy Secretary. The Advisory Committee to the Special Trustee would have been replaced with a task force composed of representatives of the tribes and the Department who would work with the new Deputy Secretary to develop recommendations for further necessary changes to the laws governing the management of trust assets and trust funds.

The changes represented in S. 2212 were modest, but important. It could have formed the basis for a stronger partnership between the tribal beneficiaries and the Interior Department, instituting congressional requirements for development of consensus policies governing trust standards and additional management reforms. Such a partnership would have set the Department and the tribes on a course toward resolution of the problems that have plagued the management of the trust funds and assets for more than a century.

Unfortunately, we are at the end of the 107th Congress and no further action will be taken on S. 2212. A sufficient consensus could not be reached among the tribes as well as between the tribes and the Department of the Interior to allow us to move forward to enact the bill. By failing to enact legislation like S. 2212 this year, the Congress is not fulfilling its responsibility to the Indian tribes and individuals who have suffered from decades of Federal mismanagement.

For most of this year, tribal representatives have been working on a range of possible reforms through a special task force established by Secretary Norton after the tribes resoundingly rejected her administrative reform proposal during 2001. Despite the efforts of the tribes, the discussions with the Interior Department culminated in an impasse and an end to the Department's participation in the task force.

The Department's latest action is unfortunate, but it is certainly not the first time the tribes and the Department have been unable to agree. It should not pose an insurmountable hurdle for the Congress to act. In fact,