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velop the Viceroy Gold property for almost 20 years. They went all over, trying to find an investor. They finally found somebody in Vancouver who was willing to come in and before there was a single ounce of gold taken out of that property, that man spent $100 million.

Now, there was no guarantee that they would have an ability to pay back the $100 million. The fact of the matter is, it is true there is no industry in the world more than the American mining industry that represents the free enterprise system. That is all we want to be able to go forward on, with a fixed set of rules that are meaningful and eomething that the mining industry can still proceed on.

I would close by saying—I repeat—I hope the Interior Department does not try to make up for its shortcomings in grazing, in logging, and in water problems with what they are trying to do on mining. Because the fact of the matter is that mining is extremely important and the profit margins are very slim no matter how many times the distinguished Senator from Arkansas talks about ripoffs and travesties. The fact of the matter is that the profits are very marginal and what will happen, as has happened, is theee companies will be forced to go offshore.

There is gold in other places. It is easier to mine it here in the United States because there is a market for it. But, remember, this is one of the few industries that helps us with a favorable balance of trade.

I again appreciate very much my friend from Arkansas allowing me to leave the floor——

Mr. BUMPERS. Will the Senator stay and answer one question before he leaves? This land we are talking about, Barrick did not even file a claim for that land. Somebody else did.

You know, people go out there and they put up stakes and they just lay claim to it.

Do you know what Barrick did? They found this site. The claimant said, "Yeah, go explore, see what you can find." They came back. And they said, "You have a lot of gold here." They paid him $62 million for his claim. What do the American people get out of that? How many jobs do they get out of that $62 million they paid a guy who did nothing but put up four stakes?

Mr. REID. I will be happy to respond. We have done something about that. We have solved that problem so people cannot go out and file miles and miles of claims anymore. In fact, prior to our changing the law with the holding fee, we had in Nevada over a million mining claims. That now, at last report, is down to about 300,000—something like that. So it is not as if we have not done anything here.

The Senator has not responded—and I am sure he will when I leave—but the reversionary interest we had in the legislation last year, I think it is important that we recognize the patent issue. I hope, again, in the reform we have that if a patent is issued, there will be a reversionary issue.

If the Senator has a problem, as he indicated he has, that having a fair market value is improper for a land, that there should be some way of determining what the subsurface rights are, that is really hard to do. I am not sure we can do it. I would be happy to meet with the Senator. I am not in the conference. The Senator is in the conference. I am sure that he will do his best to make sure that this is fair.

In responding to the Senator's question, I ask the Senator this: I hope that you being—you are one person from being chairman of that full committee. I hope that with your experience being chairman of the Small Business Committee and someone who has a tremendous amount of integrity and respect in this body and around the country, that during the time that conference is held, I hope you will call upon your experience and come up with something that is fair and reasonable to the people of this country and, of course, the people of the Western United States.

Mr. BUMPERS. I appreciate the Senator's statement. My arguments are not punitive. I am not trying to punish the mining companies, and I am not trying to punish the people who work for the mining companies. Certainly the Senators who stand on the floor year after year and defend these practices are good friends of mine. I understand exactly what is going on. Maybe we will be able to come up with something to reform the law this year.

Mr. REID. Let me close by saying, I said this publicly in the last 5 years, and I say it this year. If the conference committee comes up with a reasonable reform, the companies that do business in Nevada have asked me if I will support reasonable reforms.

So I look forward to the conference committee coming back with something that is fair and reasonable and is a real compromise. Hopefully, we do not have to have this battle year after year.

Mr. BUMPERS. I know the Senator from Nevada does not take instruction, and I hope that the Senator—and I know he would—hopes that we come out with something that is good for the American people and not just the mining companies.

Mr. REID. Absolutely.

Mr. BUMPERS. Mr. President, the Senator mentioned reclamation a while ago, and I do not want to prolong this. Do my colleagues realize that of the 1,200 sites on the Superfund list that 59 of the sites on the Superfund list are directly related to hardrock mining? We are spending millions of dollars a year right now of the taxpayers' money to clean up site after site after site where they walked off and left an unmitigated environmental disaster, after paying no royalty. The American taxpayers are left to pick up the tab.

Mr. REID. I will respond to the Senator from Arkansas that I hope one of the things the conference comes back with is a means of taking care of that.

Mr. BUMPERS. We are going to. I promise the Senator we are going to.

Mr. REID. I also will say, if you look at those 59 claims, 56 or 57 of them—leaving 1 or 2 of modern mines—all the rest of mines that are very, very old. That does not mean the mining industry should not be involved in cleaning those up. I think they should be, and I think they want to be. I think that is appropriate.

Mr. BUMPERS. The Mineral Policy Center says there are 557,000 abandoned hardrock mining sites to be cleaned up in this country, and it is going to cost eomewhere between $30 and $70 billion. Think about that. And today we just gave away an additional 11 billion dollars' worth of gold while the taxpayers are being asked to pick up the tab for $30 to $70 billion just to clean up the mine sites of the past.

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

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

Mr. SPECTER. Mr. President, I ask unanimous consent that I may proceed for up to 10 minutes as if in morning business.

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

Mr. SPECTER. I thank the Chair.

SUPREME COURT NOMINATIONS

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the nomination, by President Clinton, of Judge Stephen Breyer to the Supreme Court of the United States.

At first appearance, Judge Breyer looks to be qualified for appointment to the Court. But I have been somewhat concerned as I have seen so many of our colleagues state at this early stage that they intend to vote for him, in advance of the nomination hearings and deliberation by the Senate and ultimately the vote of the Senate.

Judge Breyer's nomination was submitted, announced by President Clinton at a news conference Friday at 6 o'clock, some 72 hours ago. There is a great deal yet to be done concerning the nomination. The Senate will consider him carefully under our advice and consent function, put him under a microscope and make a determination as to his fitness for the Supreme Court.

The position of Justice of the Supreme Court is enormously important in our society, with so many decisions being handed down by a 5 to 4 vote which have impact on the lives of virtually every American and sometimes worldwide. With a 5 to 4 decision, that fifth vote by a Supreme Court Justice has greater power than most acts of the President of the United States. And, unlike the President, who is elected for 4 years or perhaps 8 years, a Justice on the Supreme Court may sit for two or three decades, and has enormous power over a very long period of time.

A concern which I have is that when there is virtually a coronation in advance, the nominees are apt to answer relatively few questions. Since I was elected to the Senats in 1980, I have had occasion to serve on the Judiciary Committee for eight confirmation proceedings, and have noted a very definite pattern that nominees to the Supreme Court answer only as many questions as they really have to answer. And when there is general approval given in advance, and the nominee runs only risks by answering questions, there is an inclination not to answer very many questions.

I am not suggesting, Mr. President, that in the confirmation hearings we ought to ask a nominee how he or she will decide a cutting edge question which is likely to come before the Court, but really to get an idea of judicial philosophy and approach to problems. I submit, Mr. President, that this is especially important in an era where the Court has become in many ways a super legislature, and really passes on questions of public policy, and frequently in apparent disagreement with congressional enactments, although the Judges would disagree with that statement.

But I would refer to just a couple of cases. One is the interpretation of the Civil Rights Act where the Supreme Court of the United States, in 1971, in the Griggs case, handed down a unanimous opinion. This case was in effect reversed by the Supreme Court of the United States, in a 5-to-4 decision, in 1989 in Wards Cove as to the definition of employment under the Civil Rights Act.

The Congress then had to go to work and pass an amendment to reinstate the rule of Griggs which the Supreme Court of the United States had, in effect, overruled in Wards Cove, where you had an interpretation by the Court which had been in effect for 18 years, untouched by the Congress, really a conclusive presumption that the Griggs interpretation coincided with congressional intent. Then the Supreme Court overrules that, not on constitutional grounds but on grounds of statutory interpretation. And that Supreme Court decision was changed, as I say, by the congressional enactment of the Civil Rights Act of 1991.

Similarly, there had been a rule in effect for some 18 years—from, again, 1971 until 1989—on counseling of women under provisions of planned parenthood. There a regulation with obvious congressional approval, unchanged in some 18 years, was reversed in a Supreme Court decision in Rust versus Sullivan.

So there are those strong indicators—and many, many others could be cited—where the Court acts as a super legislature, which is not quite the same as someone running for the Senate or House of Representatives or President to answer questions about public policy.

But it seems to me that there is a substantial appropriate leeway for Senators on the Judiciary Committee to ask questions on a variety of important subjects. We have the question of the death penalty, where more than 70 percent of the American people favor the death penalty, where more than 70 Senators in this body—again more than 70 percent—have supported the death penalty. Yet there are restrictive decisions coming from the Supreme Court, and sometimes a change of heart as to whether the death penalty is barred by the cruel and unusual punishment provision of the Constitution.

There are important questions on freedom of religion, freedom of speech, and on Executive powers. I have tried, and will try again, to get an answer to the question delineating the President's power to deploy U.S. military forces, a subject of tremendous importance, especially considering what is now occurring in Haiti and what has occurred in Somalia.

I have asked the question as to whether the Korean war was a war. And I prejudged the question in a sense by calling it a war. But that is not a question which is going to come up in the precise context of Korea, but as yet I have been unable to get an answer to that question because nominees are virtually assured confirmation by declaration of Senators in advance, and the nature and tsnor of the nomination proceedings that they are virtually certain to be confirmed.

Mr. President, there is also a concern that I would like to express briefly, and that relates to what appears to be a limited rule of prospective nominees to the Supreme Court with the same names which we heard about last year, hearing about again this year. I do not say that in any criticism or in derogation of the names which we heard, but it seems to me that there must be many of the best of the brightest in America who would qualify for the Supreme Court.

This year we heard the name Judge Breyer, who was nominated, and came very close to being submitted last year; Judge Arnold of the 8th circuit, again this year; we heard very much about him last year; Brucs Babbitt, Secretary of the Interior. This brings the question to my mind as to why there are not more prospective nominees that we hear about.

The Senate, as it is well known, has both the obligation and responsibility to consent to nominations, but also under the advice and consent function we have a rule to advise. And I have been giving thought, in discussion with some of my colleagues, to the possibility of the Senate creating a pool of possible nominees for consideration by the President.

Obviously, it is the President's decision, and he can take them or leave them. But one possible scenario—and I have not fixed on any precise course—would be to canvas the bar associations of the 50 States, write to the chief justices of the 50 State supreme courts, the chief judges of the circuit courts of appeal, the chief judges of the U.S. district courts, and perhaps to law schools to find a list of those who might be uniquely well qualified to be on the Supreme Court by virtue of judicial experience, but not necessarily exclusively judicial experience.

We have on the Supreme Court at the present time, of ths nine Justices, eight of them came from other courts. Justice O'Connor came from the Arizona Superior Court, Chief Justice Rehnquist came from the Justice Department. The other seven Justices all came from Federal courts of appeals.

And there is a sense that we might well have some greater diversity. Such a pool might lead to inquiries about scholarly writing, trial practice, appellate practice of the kind of consideration which were given greater breadth to the possibility of Presidential nominations.

In considering this matter, the situation of Learned Hand comes to mind, a great jurist who was never considered for the Supreme Court. A historical event that was widely reported comes to mind about Senator Borah, the chairman of the Judiciary Committse, conferring with President Hoover in 1930 and President Hoover showing Senator Borah a list of 10 prospects and him saying, "I like number 10," who turned out to be Justice Cardoza, who had an extraordinary record on the appellate court of the State of New York, New York Court of Appeals. Also, the career of Justice Oliver Wendell Holmes, having had 20 years of experience on the Supreme Judicial Council of Massachusetts. I think such a pool might be really very advisable, providing some very substantial diversity.

I personally was disappointed that the President did not move forward with the suggested name of Bruce Babbitt, the Secretary of the Interior. Bruce Babbitt would have brought diversity, as he had experience as a Governor, a State attorney general, a Cabinet officer, and a Presidential candidate. When the President had pub-

licly disclosed his interest in having our distinguished majority leader, Senator MITCHELL, that would have been a line of diversity, as was the suggestion of New York Gov. Mario Cuomo at some time in the past. It seems to me that that kind of diversity would strengthen the Court.

I believe, Mr. President, that the actions of the U.S. Senate in examining Supreme Court nominees is one of our highest callings, and perhaps our highest calling. It is certainly true that the Supreme Court of the United States is the guardian of the U.S. Constitution and, in a sense, the Senate has a constitutional guardianship of the Supreme Court, because it is we who pass on their qualifications.

I urge my colleagues not to commit in advance to Judge Breyer, or to anyone, in order to leave the full range of questioning available so that we may make an appropriate inquiry into Judge Breyer, as we have made inquiries into other nominees, to do the best job, and see to it that we have the very strongest Supreme Court that we can have and, hopefully, perhaps rethink some of our procedures to have as much guarantee as possible that the Supreme Court of the United States will be occupied by the best and the brightest.

I yield the floor.

MORNING BUSINESS

Mr. PELL. Mr. President, I ask unanimous consent that there now be a period for morning business, with Senators permitted to speak therein for up to 3 minutes each.

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

ART LAKE: HALF A CENTURY OF RHODE ISLAND BROADCAST HISTORY

Mr. PELL. Mr. President, I would like to share with my colleagues the news of a remarkable anniversary. Art Lake this year celebrates 50 years of news and weather reporting in the broadcast industry, including about 45 years in television.

There is one more fact that makes this remarkable anniversary even more extraordinary. In an industry noted for the temporary nature of its jobs and the transience of its newscasters, Art Lake has remained with the same station for all his years in broadcasting. That station is Rhode Island's WJAR.

In an institution noted for the long service of some Members, we stand in awe of anyone who has put in so many decades at one of the few jobs that draws more daily criticism than politics. You see, Art Lake has worked 30 of those 50 years as weatherman.

The fact that he has not only survived but has become such a constant and reliable figure in our lives, is proof of both his skills and his character. I speak for many Rhode Islanders when I express our appreciation, and wish both Art Lake and WJAR continued success.

Mr. President, I ask unanimous consent that an article from a recent edition of the Woonsocket, RI, Call entitled "Art Lake: 50 Years of TV History," be printed in the CONGRESSIONAL RECORD.

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

ART LAKE: 50 YEARS OF TV HISTORY

(By Kristen Lans)

SMITHFIELD.—Spring will not be overly warm this year.

Art Lake said so, with the confidence of someone who has forecasted weather the past 30 years every winter, spring, summer and fall for Rhode Island audiences.

But Lake's career with WJAR-Channel 10 stretches further back in time than that, with 1994 marking the 50th year he has worked for the same station, first as a radio, then television, news announcer.

"I am not overly happy to be this old, but I loved being a part of the early days of television," said Lake, who requested his age not be printed.

As a teenager from Braintree, Mass., Lake began at WJAR as a radio announcer when it operated out of the Outlet Department store in downtown Providence.

The department store went into the business to increase the sale of records, said Lake, and the men's clothing department was the only department which brought in more revenue each year than the broadcasting department.

In 1949, when the station expanded and began broadcasting over television, Lake stayed as one of 10 television news announcers.

"Art is like the station historian," said Doug White, newscaster for WJAR-Channel 10. "He can talk just as comfortably about 1954 as he can about 1994."

White has worked with Lake at the same station for 16 years, although recently they cross paths infrequently because of conflicting schedules.

White said when he first began at WJAR he was assigned to the noon newscast with Lake and found the weather forecaster prepared for the "curve balls" live television can entail.

Lake got his start on television when it was introduced to the households of Amerioa.

In those days, he said, there were "weather girls" who sang the weather forecast in rhymes or drew the weather on a chart as they described it.

Lake's career in weather grew from a hobby and not a college degree, because his degree from Emerson College in Boston was in radio broadcasting.

The week after Lake moved to Smithfield in 1954, Hurricane Carol followed and its effects peaked his interest in weather.

"I found out there was a lot more to know about weather than reading a box in the upper right corner of the newspaper," said Lake. "I like to show people the movement of the weather so people understand why it is happening."

Lake would go to T.F. Green Airport in Warwick and study the weather charts for hours with National Weather Service workers.

He learned weather from meteorologist John Ghiorse, when Ghiorse was hired by WJAR-10 to replace a "weather girl," in the early 1960s.

In the old days, maps of the United States were painted on the wall and the weather forecaster had to memorize the forecast or refer to material written on cards.

Now, Lake uses a computer to develop the weather maps, and refers to a teleprompter for the weather forecast.

The maps are not painted on walls, but only broadcast on television screens for viewers, while Lake points to a blank wall behind him.

"When I first started, weather people would greet you on the street with "why don't you get it right?," said Lake.

Now they call and say their daughter is getting married tomorrow and ask if she'll need a tent outside," he said.

The veteran media figure remembers falling asleep at a beach in South County one summer, and opening his eyes to a circle of people surrounding him. They knew he was a television figure, but not what he did and wanted Lake to identify himself.

Lake begins his workday at 3:45 a.m. and leaves the WJAR-Channel 10 studio in Cranston at 12:30 p.m.

The best days are those when you were "right" with your weather forecast the day before and it continues, said Lake.

"It's awful when you come in and a massive storm is breathing down your back," he said.

Although Lake received offers in the past to relocate to a different station, doing so would not be feasible, he said, because it would have entailed starting at the bottom salary and working up again and again.

In the early days, experience did not rate salary, according to Lake, and his wife and three boys remained in Smithfield.

Everything in the broadcasting industry has changed, he said, except the call letters of the station WJAR, where he has worked half-a-century.

Lake said he has not made any decisions on retirement.

Although WJAR asked Lake to do a piece on his 50th anniversary with the station, the forecaster has not accepted the offer yet, according to White.

White said television audiences received one impression of television news programs from "The Mary Tyler Moore Show," whose character Ted Knight displayed an arrogant attitude.

"Art Lake couldn't be any further from that character," said White. "I suspect when he decides to retire he will slip out the back door after politely saying goodbye to everyone."

IRRESPONSIBLE CONGRESS? HERE IS TODAY'S BOXSCORE

Mr. HELMS. Mr. President, anyone even remotely familiar with the U.S. Constitution knows that no President can spend a dime of Federal tax money that has not first been authorized and appropriated by Congress—both the House of Representatives and the U.S. Senate.

So when you hear a politician or an editor or a commentator declare that "Reagan ran up the Federal debt" or that "Bush ran it up," bear in mind that it was, and is, the constitutional duty and responsibility of Congress to control Federal spending. Congress has failed miserably in that task for about 5 years.

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Mr. SPECTER addressed the Chair.

The PRESIDING OFFICER. The Senator from Pennsylvania [Mr. SPECTER], is recognized.

THE NOMINATION OF JUDGE STEPHEN BREYER TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT

Mr. SPECTER. Mr. President, I have sought recognition to comment briefly on the nomination of Judge Stephen Breyer for the Supreme Court of the United States. I am advised that we will not have opening statements tomorrow, so I thought it worthwhile to make a few comments this evening on that subject.

I have awaited a quorum call most of the afternoon, and the Senate was virtually in continuous business. I understand the hour is late and I shall be relatively brief, but I think these are important remarks.

In my view, the Senate has no duty which is more important than the confirmation of Supreme Court justices, and that is true because with so many 5 to 4 decisions, that fifth vote has enormous impact on every man, woman, and child in the United States and, very frequently, it has great impact on people around the world.

That fifth swing, deciding justice, for that case has much greater power than the President of the United States, where there are many checks and balances on what the President does. The President serves for 4 years, or perhaps 8, but the Supreme Court justices serve much longer—several decades, in many, many instances. So their confirmation is of great importance.

When the Constitution was drafted, the first article was devoted to the Congress; the second article was devoted to the executive branch, the President; and the third article was devoted to the judiciary. Since Marbury versus Madison was decided by the Supreme Court of the United States in 1803, the judiciary has been supreme. The judiciary has the final word, on a constitutional issue, that is it, in the absence of a constitutional amendment, which is very hard to enact. Even on nonconstitutional issues, the word of the Supreme Court is virtually the last word, although Congress may, but frequently does not, act.

The power of the Supreme Court has become even more important in an era of much judicial legislation, far beyond the traditional concept of the judicial role of interpreting the law. In many ways, the Supreme Court of the United States has become a super legislature. This is of enormous importance in an era in which many cases come before the court where new concepts of constitutional law are engrafted that have not been provided for either by the Founding Fathers in intent or on the face of the document. This really constitutes public policymaking by the Supreme Court.

In the United States today, the crime problem is of overwhelming importance. That proposition needs no amplification or embellishment. The death penalty is a very important deterrent to crime. More than 70 percent of the American people favor the death penalty. When the issue comes before this body, characteristically, 70-plus Senators vote in favor of it. But in case after case, there is engrafted by the Supreme Court new constitutional rules which are not found on the face of the document, and are not derived from the Founding Fathers' intentions, but are really matters of public policy.

We have vital interests, vital concerns on war powers. The Constitution vests the sole authority in the Congress of the United States to declare war. Yet, we see where there are conflicts which amount to wars, and it is very hard to get answers from the nominees when their confirmation is virtually assured on the appropriate meaning of the constitutional power to declare war or on any other question put to nominees.

It has been apparent in the 14 years that I have been present—and tomorrow will mark the ninth Supreme Court confirmation since my election in 1980, that nominees for the Supreme Court of the United States answer as many questions as they really feel compelled to in order to be confirmed. When the nomination or confirmation of a nominee is virtually assured, it is very hard to get answers from the nominees. When Judge Scalia, now Justice Scalia, appeared before the Judiciary Committee, he would not answer even basic questions as to whether the decision in Marbury versus Madison was established constitutional law and not subject to challenge. When Justice Rehnquist, now Chief Justice Rehnquist, appeared before the Judiciary Committee, he would not respond to questions as to whether the Congress could take away jurisdiction of the Supreme Court on constitutional issues.

A staff member on the Judiciary Committee acquainted me with an article written by William Rehnquist in the Harvard Law Record in 1958, long before William Rehnquist became a Supreme Court justice, in which he wrote that nominees should answer questions put to them by the Senate. When confronted with that article, he answered a few questions. He finally would answer a question saying that the Congress could not take away the jurisdiction of the Supreme Court on first amendment issues. And then he was asked about the fourth amendment and declined to answer; the fifth amendment, declined to answer; the sixth amendment, declined to answer. Then he was asked why he had answers to the first amendment and none on the fourth, fifth, and sixth. Again, he declined to answer.

Judge Souter, now Justice Souter, appeared before the Judiciary Committee and was asked questions relating to the critical constitutional questions of the authority of Congress to declare war contrasted with the President's authority as Commander in Chief, and I asked whether the Korean conflict was a war within the meaning of the Constitution, and Judge Souter declined to answer. The general rule is that a Senator can ask any question he or she chooses, and the nominee has the standing to decline to answer any question, but the one line which is out of bounds, perhaps, is to ask a question on a case which may come before the Court.

The Korean conflict case could not possibly come before the Court. In order to get some idea as to the thinking of Judge Souter on a very critical question that the Supreme Court of the United States may have to arbitrate between the Congress' authority to declare war versus the President's authority as Commander in Chief, that is a question which this Senator thought ought to be answered. But Judge Souter did not think so.

Last year, when Judge Ginsburg, now Justice Ginsburg, appeared before the Judiciary Committee, a number of Senators commented on how few questions she answered. When I asked her about the death penalty and whether she had any conscientious scruples against it, she in effect told me it was none of my business and none of the Senate's business. The issue of whether a juror has conscientious scruples against the death penalty is traditionally recognized as a very relevant question. In a death penalty case, if the prospective juror answers in the affirmative that he or she has conscientious scruples against the imposition of the death penalty, that is grounds for disqualifying the juror for cause, not a peremptory challenge where the prosecutor and the defendant have substantial latitude on striking jurors without any specific cause.

I make these references because they are illustrative of the difficulties of getting answers from nominees in a context where so many Senators comment in advance that the nominee is fine and the media reports, and accurately reports I think, that the confirmation of Judge Breyer is a foregone conclusion, which very dramatically limits the scope of the meaningfulness of the Judiciary Committee in the first instance and the Senate in the final instance performing this constitutional duty of confirmation, advice and consent, and this is the consent function in the face of a virtual coronation in advance.

We have seen instances, Mr. President, and I shall mention only two instances briefly, of the super-legislature in action.

The Civil Rights Act was enacted in 1964. Seven years later in the Griggs case the issue of business necessity on employment practices was decided by a unanimous Court with the opinion written by Chief Justice Burger. That decision stood for 18 years, ratified by congressional acquiescence without any action made to amend the Civil Rights Act of 1964. Then in 1989 the Wards Cove decision came down, and the Supreme Court of the United States in what really constituted super-legislative action changed the definition of business necessity requiring congressional action with the Civil Rights Act of 1991 to reinstate the law to what Congress had intended.

The Court interpreted that on public policy grounds. The Supreme Court in a matter of superlegislation changed the law.

The family planning provisions were enacted in the 1970 legislation, and a regulation interpreting that law was issued in 1971 by the Federal agency that had helped draft the law the previous year making it clear that doctors could counsel women on planned parenthood on the abortion option. Then in 1988 the regulation was changed and the Supreme Court of the United States in the Rust decision decided that that change was appropriate because there had been a change in public opinion notwithstanding the fact that by 17 years of acquiescence the Congress had in effect given its imprimatur that the earlier regulation was the appropriate interpretation of the law.

There is one other matter I want to comment on very briefly, Mr. President, and that is the trend on the Supreme Court to consist virtually exclusively of ex-judges. Eight of the current nine Supreme Court Justices came from appellate courts, seven from U.S. courts of appeal and one from a State appellate court, and Judge Breyer comes right in the same mold from a U.S. court of appeals.

Many of us were disappointed and said so publicly, and I publicly expressed my disappointment, in not having Secretary of the Interior Babbitt nominated to provide some diversity to the court—someone who had been a Governor, a Secretary of the Interior, and a Presidential candidate, to give some broader diversity of experience.

The need for diversity in experience was brought to the fore again recently when the Judiciary Committee held a confirmation hearing for Mr. Alexander Williams, who was nominated for the U.S. district court for the District of Maryland. He was opposed by the American Bar Association, which found him not qualified. This opposition raises the issue as to whether you have to be from a prominent law school and from a prominent law firm, a silk stocking lawyer, in effect, in order to become a Federal judge. And Charity Wilson, my staffer who wrote me a memo contrasting the pedigree of the Supreme Court justices, including the current nominee, Judge Breyer, made I thought a very telling analogy to the silk-stocking nominees who were characteristically approved by the American Bar Association and sit on the Federal courts with Mr. Alexander Williams who may have woolen socks, as Charity Wilson, my staffer, put it, "woolen socks with a hole in them."

I think there ought to be emphasis by this body, Mr. President, and that is why I take a moment or two now and will take a few moments during the confirmation hearings to comment about the context of the Court where we do not have Justices who have had experience as trial lawyers, as assistant district attorneys, or as public defenders, people who have litigated extensively or have extensive pro bono work with a real feel for what goes on in America.

It is true that the President has sole discretion in his nominating function, but it was equally true that the Senate has sole discretion in deciding what the confirmation standards should be. There are learned scholars, among them Justice Ginsburg, who commented about the equal standing of the Senate in making evaluations of the qualifications of judicial nominees.

I raise these questions, Mr. President, not thinking that they are likely to have any telling effect on the proceedings as to Judge Breyer tomorrow but to try to at least have one Senator express a view as to the importance of the position of the Supreme Court of the United States where that fifth vote has more power than the President and the practice of coronating in advance so that the nomination proceedings themselves do not have the impact or the meaning they ought to have by virtue of ruling out so many of the questions which nominees ought to answer. When I say ought to answer it is their decision and it is a balance, and the eight nomination proceedings from 1981 through 1993 show I think a pattern that the nominees answered as many questions that they feel they have to answer.

I would hope in the future that we would have some greater diversity on the Court. I would hope in the future that there will be greater diversity on nominations. I would hope in the future that Senators refrain from giving approval in advance or coronating nominees in advance so that we can do our duty, that we can really find out about these nominees and improve the caliber of the Supreme Court of the United States, as our fuunction is a very, very important one because the justices of that court do have the last word on the meaning of the Constitution.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from South Carolina.

MEASURE HELD AT THE DESK—SENATE RESOLUTION 240

Mr. THURMOND. Mr. President, I send a resolution to the desk and ask unanimous consent that the resolution be held at the desk until the close of business tomorrow.

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

COMMENDING PARTICIPATION OF U.S. SOCCER TEAM IN 1994 WORLD CUP SOCCER TOURNAMENT

Mr. THURMOND. Mr. President, I rise today to submit a Senate resolution commending the participation of the U.S. soccer team in the 1994 World Cup soccer tournament.

I ask unanimous consent that Senator GRASSLEY, Senator HELMS, Senator WOFFORD, Senator LAUTENBERG, Senator DECONCINI, Senator JOHNSTON, and Senator MATHEWS be added as cosponsors.

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

The Chair in his capacity as a Senator from Montana asks unanimous consent that he also be added as cosponsor.

Without objection, it is so ordered.

Mr. THURMOND. Mr. President, currently, the United States is hosting the world's most celebrated sports event, the 1994 World Cup. This honor was awarded on July 4, 1988, by the Federation Internationale de Football Association, otherwise known as FIFA, which is headquartered in Zurich, Switzerland. This is the first time in the 64-year history of the World Cup that America has been the host of this prestigious event.

I believe this tournament will stimulate interest in organized soccer in the United States. It is estimated that soccer ranks third in team sport popularity for youngsters under the age of 18, preceded only by basketball and volleyball.

My home State of South Carolina has benefited from the popularity of this sport. According to Fortune magazine, Umbro, a soccer apparel manufacturer, is owned by Stone Manufacturing Co. of Greenville, SC. Umbro's global sales exceed $300 million and are growing at an estimated rate of 70 percent per year. Also, according to Fortune magazine, the 1994 World Cup final series is expected to create approximately $4 billion in revenues from all sources.

Twenty-four teams from around the world have gathered in Boston, Chicago, Washington, Los Angeles, Detroit, Dallas, New York, San Francisco, and Orlando to participate in this 52-game tournament. The final game will be played on July 17 at the Rose Bowl in Pasadena, CA. Thousands of foreign visitors have come to America to support their teams and experience the

be offered in the House have been rejected, while in the Senate S. 55 has remained almost defiantly unchanged even in the face of obvious, and now fatal, opposition.

Perhaps the biggest resolution since the Mackay decision in 1938 has been the shrinking of our world. We were an insular power, one of many, and we emerged from World War II as the greatest economic power on the planet. This was not surprising given that our country was spared from damage during the war. Nor is it surprising that our pre-eminence has eroded in the decades that followed the war as other countries have rebuilt and retooled.

In 1938, we could afford to consider labor-management relations in isolation. In 1994, we no longer have that luxury.

The Dunlop Commission can and should look into all of these issues. Certainly I would support it in doing so. With the preliminary report recently issued by the Commission, it has begun this process. However, I view it as putting the cart before the horse in the extreme to create a commission to study the need for reform of our system of labor laws, but to exclude the issue of striker replacements from consideration by that commission. But that is precisely what was done in this instance in the false belief that S. 55 could be passed and signed into law without the need for further study or debate.

Passage of the present legislation will change the face of labor relations in this country, Clearly that is the intent, but is it in the best interest of the country? That is the question. I have yet to hear sufficiently compelling answers to prompt me to vote for this measure. Maybe those answers will be forthcoming in the next session of Congress when we may have more substantive hearings. Or maybe, as it should have in the first place, the Dunlop Commission will look into the issue as part of its comprehensive recommendations for labor law reform. Only those who control the agenda can decide whether these items will be added.

Accordingly, while I remain open to the possibility of passing meaningful and wise legislation in this area, S. 55 is not such legislation. Thus, I will again vote no on that bill today.

POSITION ON VOTE

Mr. WELLSTONE. Mr. President, I wanted to indicate for the record that I was necessarily absent for rollcall vote 187. Had I been present I would have voted "nay."

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 2:30 p.m. having arrived, under the previous order the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, hereby move to bring to a close the debate on the motion to proceed to Calendar #162, S. 55, a bill to amend the National Labor Relations Act to prevent discrimination based on participation in labor disputes:

Edward Kennedy, Don Riegle, John Glenn, Paul Simon, Barbara Boxer, Daniel K. Akaka, Carl Levin, Bob Graham, Russell D. Feingold, Howard M. Metzenbaum, Paul Wellstone, Claiborne Pell, Ben Nighthorse Campbell, Carol Moseley-Braun, Jay Rockefeller, Pat Leahy.

CALL OF THE ROLL WAIVED

The PRESIDING OFFICER. By unanimous consent, the quorum call has been waived.

VOTE

The PRESIDING OFFICER. The question is, Is it the sense of the Senate that debate on the motion to proceed to the consideration of S. 55, the Workplace Fairness Act, shall be brought to a close? The yeas and nays are mandatory under the rule.

The clerk will call the role.

The legislative clerk called the roll.

The yeas and nays resulted—yeas 53, nays 47, as follows:

[Rollcall Vote No. 188 Leg.]

YEAS—53

Akaka	Feinstein	Mikulski
Baucus	Ford	Mitchell
Biden	Glenn	Moseley-Braun
Bingaman	Graham	Moynihan
Boxer	Harkin	Murray
Bradley	Hatfield	Pell
Breaux	Heflin	Reid
Bryan	Inouye	Riegle
Byrd	Johnston	Robb
Campbell	Kennedy	Rockefeller
Conrad	Kerrey	Sarbanes
D'Amato	Kerry	Sasser
Daschle	Kohl	Shelby
DeConcini	Lautenberg	Simon
Dodd	Leahy	Specter
Dorgan	Levin	Wellstone
Exon	Lieberman	Wofford
Feingold	Metzenbaum	

NAYS—47

Bennett	Faircloth	McCain
Bond	Gorton	McConnell
Boren	Gramm	Murkowski
Brown	Grassley	Nickles
Bumpers	Gregg	Nunn
Burns	Hatch	Packwood
Chafee	Helms	Pressler
Coats	Hollings	Pryor
Cochran	Hutchison	Roth
Cohen	Jeffords	Simpson
Coverdell	Kassebaum	Smith
Craig	Kempthorne	Stevens
Danforth	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Durenberger	Mathews	

The PRESIDING OFFICER. On this vote, the yeas are 53, the nays are 47, three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is not agreed to.

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

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

The Senator from Arizona is recognized.

NOMINATION OF JUDGE BREYER

Mr. McCAIN. Mr. President, I intend to make a very brief statement.

Mr. President, this morning the Senate Judiciary Committee began holding hearings on the nomination of Judge Stephen Breyer to be Associate Justice on the Supreme Court. I am hopeful that those proceedings will shed light on the record of Judge Breyer in the effort to fill this extremely important Supreme Court position with the best possible person.

The position of Associate Justice on our country's highest court is one that requires the complete public trust. The American people must have full faith and confidence in the Judiciary. I hope that Judge Breyer will be able to further the public's trust in these institutions.

Mr. President, there have been very serious charges raised regarding the appropriate use of taxpayer dollars for the construction of the Boston Courthouse. According to published reports, Judge Breyer personally played an active role in the design and site selection processes for this facility.

Mr. President, the cost of this extravagant courthouse continues to skyrocket. The courthouse was originally estimated to cost $163 million. However, due to cost overruns and other costs the taxpayers will now be paying $218 million for this Taj Mahal.

Additionally, architectural fees for the design of this shrine—originally budgeted at $8,633,000—have now exceeded $11 million. And unfortunately, we have no idea when the cost overruns will end.

These reports also have listed the following proposed expenditures: A six story atrium; 63 private bathrooms; 37 different law libraries; 33 private kitchens; custom-designed private staircases; $450,000 for a boat dock; $789,000 for original artwork; and $1.5 million for a floating marina with custom-made park benches, garbage cans, and street lights, and a 2.6-acre park.

I am concerned about how the taxpayers' money is being spent. Those responsible for public expenditures must be held accountable for their actions. Those who spend that money in a fashion that is not appropriate or that is called into question must be forthcoming in explaining their actions. Judge Breyer was the individual—or client—responsible for this project. That is

why we must now ask these questions of Mr. Breyer.

Yesterday, I wrote to Judge Breyer asking him specific questions regarding the Boston Courthouse. Answering these questions in a forthcoming manner is crucial so that the Senate may consider this serious matter in the advise-and-consent process.

Mr. President, I do not in any way raise this issue to impugn Judge Breyer. I am not a member of the Judiciary Committee and therefore cannot ask questions of him directly during his confirmation hearing. But I do believe that the many questions surrounding the Boston Courthouse and Judge Breyer's role in designing that building and selecting this site must be fully and publicly aired. Anything less would be wrong and an abdication of our responsibilities.

Good judgment and discretion are indispensable assets to a Supreme Court Justice. We have an obligation to examine Judge Breyer's record and to determine if he has exercised good judgment not only in his judicial decisions, but in his administrative duties.

Mr. President, I ask unanimous consent that the letter I sent to Judge Breyer be printed in the RECORD. I am hopeful that Judge Breyer will soon clarify the concerns surrounding this subject.

There being no objection, the letter was ordered to be printed in the RECORD.

U.S. SENATE,
July 11, 1994.

Hon. STEPHEN BREYER,
U.S. Federal Courthouse, Boston, MA.

DEAR JUDGE BREYER: As you may know, I have been working to ensure that federal dollars spent on building projects are being used in the most cost efficient manner possible. As such, I have become very concerned about waste and extravagance at the new Boston Courthouse.

I would appreciate it if you would explain to me exactly what has transpired to date regarding the design and site selection of the Boston Courthouse. In your explanation, I would appreciate it is you would please answer the following questions:

1. What specifically was your role in the site selection and procurement of such site for the Boston Courthouse?

2. According to reports, the site chosen by a panel chaired by you originally ranked 11th out of 12 prospective sites, but that by the end of the process it ranked first. Is this accurate? What was your rationale for choosing the Fan Pier site over the other more highly rated sites studied?

3. According to the Washington Times, in 1989 the Boston Redevelopment Authority finished a study saying the city's crowded federal courthouse would be cheaper to relocate than to expand. The study listed four acceptable sites for a new courthouse, and ranked them by feasibility. The Fan Pier site—later selected by you—was rejected. Please comment, in light of other studies, why you selected the Fan Pier site.

4. In many cases when courthouses are built, sites are chosen that are already owned by the Federal government or that are owned by municipalities that are willing to deed the sites to the federal government at no cost. For example, the City of Phoenix recently donated land to the federal government for the proposed new Phoenix Courthouse. Noting the fact that the federal debt is looming near $4 trillion, what was the rationale for choosing a site that cost $34 million?

5. According to documents supplied to me by the General Services Administration, one of the risks of not proceeding with the Boston Courthouse is that GSA has already spent $34 million for the site and $13 million for design. I am very concerned that $47 million has already been spent on this project in a manner which makes it virtually impossible to build a courthouse on a site which would result in savings to the taxpayer. GSA documents reflect the fact that the court, referred to in their documents as the "client," is strongly pushing for the project to move forward as planned. Please comment on your role in this matter noting specifically what purchases or expenditures you may have personally approved or with which you were involved.

6. According to published reports, you have personally interviewed architects and played an active role in the design process for the Boston Courthouse. Accordingly, please comment on the need for and prudency of the following proposed expenditures which have been noted by the media: A six etory atrium; 63 private bathrooms; 37 different law libraries; 33 private kitchens; custom designed private staircase; $450,000 for a boat dock; $789,000 for original artwork; and $1.5 million dollars for a floating marina with custom-made park benches.

7. GSA has stated that there is no leased space available in Boston that meets the client's needs. Why does the court believe that no site other than the one chosen will meet its needs? Please note with specifically the needs that the court believe must be met.

According to reports published in the Washington Times, you would not comment on this matter publicly because "you have not been giving any interviews or commenting while [the] confirmation process is ongoing."

As I know you can appreciate, the Senate has a Constitutional duty to advise and consent regarding certain nominations made by the President. I believe, therefore, it is crucial for the Senate to receive, as soon as possible, a full and public accounting on this issue and your role in developing the plans for the Boston Courthouse.

In advance, I thank you for your cooperation.

Sincerely,

JOHN MCCAIN,
U.S. Senator.

Mr. MCCAIN. I yield the floor.

NATIONAL LABOR RELATIONS ACT AND RAILWAY LABOR ACT AMENDMENTS

MOTION TO PROCEED

The Senate continued with the consideration of the motion.

Mr. PRESSLER addressed the Chair.

The PRESIDING OFFICER. The Senator from South Dakota.

STRIKER REPLACEMENT BILL

Mr. PRESSLER. Mr. President, I rise today to express my strong opposition to S. 55, the striker replacement bill. I am opposed to this legislation because it would disrupt the careful balance between labor and management as provided for under current law. I am opposed to this bill because, in my view, it is bad for economic policy and growth. Above all, I am opposed to this bill because of the severe impact it could impose on the smallest members of the American business community and their employees, such as those comprising 99 percent of South Dakota's businesses.

As the ranking member of the Senate Small Business Committee, I work with entrepreneurs every day. I have heard their concerns and know their limits. Everything I have learned from business men and women tells me they cannot handle the day-to-day uncertainty this legislative proposal would impose of them.

Under current law, employees have the ultimate collective bargaining tool—the right to strike. In turn, employers have the right to use permanent replacements during strikes as long as they do not violate the unfair labor practices laws administered by the National Labor Relations Board. This has remained a well-established principle of labor law since 1938, when the U.S. Supreme Court recognized management's right to hire replacement workers.

Mr. President, I might at this point insert in the RECORD a progeny of American labor law.

PROGENY OF AMERICAN LABOR LAW

The National Labor Relations Act [NLRA] is the principal law that provides our basic labor policy. The two major components of the NLRA are the Wagner Act of 1935 and the Taft-Hartley Act of 1947.

The Wagner Act of 1935 was the first comprehensive Federal measure protecting union organizing and collective bargaining activities in private industry. The act established broad rights for collective actions by employees.

The Taft-Hartley Act of 1947 limited union power by preventing secondary boycotts. Further, it allows States to adopt right-to-work laws.

The Landrum-Griffin Act of 1959, increased union democracy by imposing financial disclosure requirements on unions.

Mr. President, I thing it is important to note the Wagner Act did not specifically address the issue of whether employees who strike for economic reasons are guaranteed return to their former positions at the end of the strike. This principle of hiring permanent replacement workers was established by the U.S. Supreme Court ruling in 1938 in the case of NLRB versus Mackay Radio and Telegraph Company. That decision established a distinction between two types of strikes—unfair labor practices strikes and economic strikes. The court ruled that employers may hire permanent replacements in cases of economic

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The ACTING PRESIDENT pro tempore. Is there objection to extending morning business by 15 minutes?

There being none, morning business is extended by 15 minutes.

The Senator from Pennsylvania is recognized for the first 10 minutes; the Senator from Illinois for the remaining 5 minutes.

The Senator from Pennsylvania.

Mr. SPECTER. I thank the Chair.

HEALTH CARE

Mr. SPECTER. Madam President, I had started to say that I had sought recognition to speak on the pending nomination of Stephen Breyer to the Supreme Court of the United States, but I want to make a comment or two about the speech just made by the distinguished Senator from Texas [Mr. GRAMM].

I think it is very important, as Senator GRAMM has noted, to focus on the cost of the President's health care program. I think that a significant advance was made yesterday when the President said, in effect, that he was prepared to accommodate to the realities and find a plan which worked toward the goal of comprehensive health coverage but had some flexibility.

I have long shared the President's objective of comprehensive health care for all Americans. I agree with what Senator GRAMM has pointed out, that the complexity of the President's plan and the absence of choice from the essential ingredient of freedom was an underlying weakness. I think it was depicted graphically by the chart which my office prepared, showing at a glance 105 new agencies, boards, and commissions created by the President's plan and new tasks for some 47 other agencies, boards, and commissions, so that the new bureaucracy was absolutely overwhelming.

I think we are now on a track where many of us have been headed for some time on health care, as outlined in the legislation I introduced on the first day of the Congress, January 21, 1993, S. 18: to retain the American health care system as it provides the best coverage in the world for 86.1 percent of the American people and to target the problems of coverage for the 37 million now not covered; portability, that is, coverage on a change of jobs; coverage for preexisting conditions; and cost containment to hold down the spiraling cost.

I believe that all of us in the Congress have a very heavy duty in the course of the next several weeks and we should not—I repeat, not—be rushed to judgment as we will legislate on a subject where none is more important to the American people, health care, virtually a $1 trillion industry, 14 percent of the gross national product.

I do hope we can craft a program which will serve the interests of America, which will retain the essence of our current system, the free enterprise system, and which will target and fix the specific problems of that current system.

NOMINATION OF JUDGE BREYER

Mr. SPECTER. Madam President, the nomination of Stephen Breyer will come to the floor either later this week or early next week. I wanted to make a few comments after the vote in the Judiciary Committee, which unanimously, 18 to 0, forwarded Judge Breyer's nomination to the full Senate.

I believe there had not been much doubt about Judge Breyer's résumé and his qualifications in terms of educational background, professional experience, service as a judge, and his intellect generally. During the course of last week's hearings, I think we got significant insight into Judge Breyer's views to be able to confirm him with confidence.

Regrettably, most of the nominees who come before the Judiciary Committee answer only as many questions as they have to. That is a circumstance caused by the premature agreement or premature statements by so many Senators indicating that the nominee will receive their approval. When that happens, it is understandable that the nominees are not going to take any chances and so many of the nominees have said very, very little in the confirmation process. Justice Scalia, for example, would not even answer questions about the acceptability of Marbury versus Madison, the very pillar of the constitutional jurisdiction of the Supreme Court of the United States.

But in Judge Breyer we have had some significant indications as to where he stands.

The death penalty, I would submit, Madam President, is a very important tool in the arsenal of law enforcement. While I understand the conscientious scruples of many people who oppose the death penalty, more than 70 percent of the American people favor it. When votes are taken in this body, more than 70 Senators stand up and affirm it, and some 37 States have reenacted the death penalty after it had been stricken by the Supreme Court of the United States on procedural grounds.

Judge Breyer was unequivocal in saying that he disagreed with a number of other former Justices that the cruel and unusual punishment clause of the eighth amendment did not bar the death penalty in all cases. Judge Breyer left open the question, as I think it is necessary to do, to evaluate the facts of any case. But, unlike Justice Brennan, Justice Marshall, Justice Blackmun, and the indication from Justice Powell more recently after he left the bench, where those Justices felt the death penalty was ruled out by the Constitution, Judge Breyer said there was a viable place for the death penalty and that its constitutionality was settled.

He also stated that he regarded as settled law that the imposition of the death penalty would not be determined by what happened in other cases for people in a given racial category, where the issue has been raised, that because of what happened in some 2,000 other cases in Georgia or nationally that the death penalty ought to be upset in a specific case where the facts of the case warranted the imposition of the death penalty, on what is the essence of American jurisprudence and that is individualized justice—what that person did and what the background of that person is.

I thought Judge Breyer was also forthcoming in being willing to identify the Korean conflict as a war. That is something Justice Souter would not do. At a time when there is a continuing controversy between the Congress' sole authority to declare war under the Constitution and the President's constitutional authority as Commander in Chief, it is refreshing to find a nominee who will say, "Yes, the obvious is obvious. Korea was a war."

How we present that issue to the Supreme Court to resolve the conflict is yet to be determined, but at least Judge Breyer did step forward on that issue.

On the critical question of taking away the jurisdiction of the Supreme Court to hear constitutional issues, Judge Breyer was unequivocal that the Congress lacked that authority. Justice Rehnquist conceded the Congress could not take away the Court's authority on first amendment issues, but would not answer on the critical questions of the fourth, fifth, and sixth amendment.

On the issue of Judge Breyer's ethics, a matter which has been widely noted in the press, I have no doubt about his solid ethical propriety. I do not think that a man of Judge Breyer's caliber is on the bench for the monetary benefits. Had he chosen another profession, he doubtless would make much more than a Federal judge.

The issue which arose over his holdings as an investor in Lloyd's of London syndicates, I think, ought to be reconsidered by the Congress by reviewing the statutory provision providing for disqualification in cases in which there is some indirect benefit to a judge or Justice. Where you have Lloyd's insuring as many items as they do, it is frankly hard to determine whether there could be any benefit. If you have a Federal judge handing down a decision, as Judge Breyer did, on matters involving Superfund with enormous sums in issue which could affect Lloyd's of London and Judge Breyer's investments, I think the better course is simply to avoid it and not to have that kind of investment. That

is something which I think the Congress should revisit.

Finally, just a comment or two about the pool of candidates who are considered by the President for the Supreme Court. It seems that every year we find the same people talked about for nomination: Steve Breyer, Bruce Babbitt, Richard Arnold. It is like the line out of "Casablanca," "Round up the usual suspects."

I am hopeful that the Senate will take some aotivity on the advice aspect of the advice and consent clause. We do consent by passing on the qualifications of the nominee. But I think the Senate could do much more on advice. I think we ought to create a pool of potential nominees by seeking input from the bar associations of the 50 States, the universities, and the courts to find others who might be well qualified for this position.

I see my time has expired.

I thank the Chair and yield the floor.

The ACTING PRESIDENT pro tempore. Under the prior unanimous-consent agreement the Senator from Illinois is recognized for 5 minutes.

UNIVERSAL COVERAGE

Mr. SIMON. Madam President, I want to comment briefly on the unfortunate statement made yesterday by the President to the Governors. There was an apparent—and I say "apparent" because it is not real clear—an apparent backing off of universal coverage, hinting that 95 percent coverage might be acceptable. That is not acceptable to this Senator and I do not think it is acceptable to the American public.

If the majority leader, who is fashioning a compromise bill right now, comes up with a bill that covers 95 percent of the people—that means 1 out of 20 Americans left out—I am going to have an amendment that, by lottery, will leave out 1 out of 20 Senators and 1 out of 20 White House personnel.

The President ought to be in there, standing up for universal coverage as he did when he spoke to the joint session, I think it was the State of the Union Message. He ought to be standing up fighting for universal coverage, making it clear that he is going to expend every effort. In my opinion he ought to issue a statement today clarifying that he stands for universal coverage, he is going to fight for universal coverage, and he is not going to leave 1 out of 20 Americans out of health coverage in this Nation.

Anything less is just totally unsatisfactory, as far as I am concerned. I know many of my colleagues join in that sentiment. We all have a weakness in politics—excluding the Presiding Officer, of course—of saying what an audience might want to hear. PAUL SIMON has that weakness, Bill Clinton has that weakness, PAUL WELLSTONE has that weakness. And I think the President ought to make clear that he inadvertently said to this audience something that has been taken out of context and he does not mean, and that he is going to continue to fight for universal coverage for all Americans. Anything less is a compromise he should not make, this Senate should not accept, and the American people should not accept.

Madam President, I yield the remainder of my time to the Senator from Minnesota.

The ACTING PRESIDENT pro tempore. There are 2 minutes and 5 seconds remaining. The Senator from Minnesota is recognized.

UNIVERSAL COVERAGE

Mr. WELLSTONE. Madam President, I thank the Senator from Illinois, my very good friend, someone whom I really believe in. I simply want to echo his remarks.

I believe the choice of words yesterday by the President, for whatever reason, was unfortunate. There are people in the country who ars going to get on buses and come to Washington to speak in their own voices about why they need decent health care for themselves and their loved ones. What are they getting on the buses for? Do they not have to know what the President believes in and is willing to fight for; what all of us believe in and are willing to fight for?

I call on the President as well today to clarify his remarks yesterday and to be crystal clear that he is going to live up to the commitment that he made to the people of this country, where he held that pen forward and said, "If it is not universal coverage, each and every person covered, I will yeto this piece of legislation." I think people really respect conviction and they respect someone who is willing to fight for what he believes in. They respect the President for doing that. This is a decisive moment. We cannot have this health care effort hijacked, and I will join my colleague from Illinois, if we have a bill on the floor that does not provide the universal coverage, with the same amendment that we would have 1 out of every 20 Senators by lottery not covered.

I also plan to introduce my amendment that says whatever health plan we pass, Madam President, provides people with as good coverage as what we have. Remember all of us are covered—universal. It is a good package of benefits, good coverage for ourselves and our loved ones. There is no discrimination because of a prior or current health care condition. And our employers contribute to the cost. I think that amendment ought to be out on the floor of the Senate very soon as well.

I thank the Senator from Illinois and am proud to join him in these remarks.

THE 20TH ANNIVERSARY OF THE TURKISH INVASION OF CYPRUS

Mr. KENNEDY. Madam President, in this post-cold-war world, we are confronted with numerous and difficult foreign policy conflicts. While they rightly demand our immediate attention, we must not forget an important and tragic conflict which has remained unresolved for 20 years and which has caused great pain and suffering.

I am speaking of the island of Cyprus. Today marks the 20th anniversary of the Turkish invasion of Cyprus. As a result of that invasion, an estimated 35,000 Turkish troops continue to occupy Cyprus illegally. Thousands of people, including 5 Americans, remain missing and unaccounted for, and nearly 200,000 Greek Cypriots who were forcibly expelled from their homes by Turkish troops are still refugees.

Turkey's pretext for the invasion was an unsuccessful coup by the Greek junta in 1974 against the Cypriot Government led by Archbishop Makarios. Turkey claimed that a 1960 treaty granted it the right to send troops. However, within a week of the coup, constitutional order had been restored on Cyprus, eliminating the need for continued Turkish intervention. Despite numerous calls for withdrawal from the international community, the Turkish occupation continues to this day.

In fact, Turkish policy on Cyprus has supported the creation of a separate and independent Turkish-Cypriot state. Following the 1974 invasion, Turkey pursued a policy of ethnic cleansing aimed at removing Greek Cypriots from the occupied area. Turkey expelled nearly 200,000 Greek Cypriots from their homes and colonized the territory by sending approximately 80,000 Turkish citizens to inhabit the occupied area.

The number of Turkish troops and settlers on Cyprus is now equal to the remaining indigenous Turkish-Cypriot population. Sadly, economic devastation and other problems caused by the 1974 Turkish invasion caused 40,000 Turkish Cypriots to emigrate.

In November 1983, the Turkish-Cypriot leadership unilaterally declared Turkish-occupied Cyprus an independent state. This illegal act was condemned by the U.S. Government and the international community. Instead of joining the global community in condemning this illegal act, Turkey was the only country in the world to recognize the so-called Turkish Republic of Northern Cyprus.

Over the years, the United Nations has repeatedly tried to resolve the problem. Because of Turkish-Cypriot intransigence and Turkey's unwillingness to cooperate, these efforts have been to no avail.

During the past year, the United Nations tried to revive negotiations with confidence-building measures intended

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the people in this matter. They will watch and judge and rightfully hold us accountable for whatever we enact in the way of health care reform. There is no ducking this one. There is no finessing it. This health care legislation will have ramifications for years in every facet of our national life. Too timid a proposal could be hurtful to our people, while too broad a proposal could devastate our economy. Now is the time for thoughtful analysis and calm, reasoned thinking. It is my hope that in the coming days Senators will buy those ear plugs and locate that cave—perhaps in the Allegheny Mountains—until we see the legislation, until we have an opportunity to study and debate it. The Devil is in the details. So I hope that we will stop, look, and listen until we have the CBO estimates and begin a thorough, considered debate about where we are going on this most important and sensitive of measures.

Marcus Manilius, an early first century A.D. poet, once wrote:

(Human reason) freed men's minds from wondering at portents by wresting from Jupiter his bolts and power of thunder, and ascribing to the winds the noise and to the clouds the flame.

Let us inform the American people clearly through our debate and study of just what we are doing to their health care system, and not leave them or us to wonder at portents.

Mr. President, following the battle of Shrewsbury, in which the son of the Earl of Northumberland was killed, the son being Henry "Hotspur" Percy, the rebels gathered to assess the situation, and to determine whether or not and when and where and how they should go about continuing the rebellion against the English King Henry IV.

We find in Shakespeare, part II of King Henry IV, that the Archbishop of York, whose name was Scroop, and three of the Lords—Lord Hastings, Lord Mowbray, and Lord Bardolph—had gathered in the Archbishop's palace to review the situation, following the disaster in which young Hotspur had been killed. And it was Lord Bardolph, who uttered these cautionary words:

When we mean to build,
We first survey the plot, then draw the model,
And when we see the figure of the house,
Then we must rate the cost of the erection;
Which if we find outweighs ability,
What do we then but draw anew the model
In fewer offices, or at least desist
To build at all?

Mr. President, those words of caution might very well be applicable in this health care situation.

Before we begin this journey into the unknown waters of health care reform—and I am not saying we should not move out into those waters, but before we begin that journey—let us have a clear and cogent understanding of the bill. Let us first see the bill. Let us have a clear understanding of just how far we are going to go, of how many other existing programs are going to be loaded onto the boat, and the cost of carrying that extra cargo. The American people and this Senate must have a firm understanding of how the canvas of our poor beleaguered budget is going to be stretched so that our boat will sail and not simply founder on the shoals of overcommitment and the rocks of too many good intentions.

Unless we do this, Mr. President, we may be confronted with the apparition of Banquo's ghost, which would sit at the head of an empty table for years or even decades to come.

I yield the floor.

IMPROVING AMERICA'S SCHOOLS ACT OF 1994

The Senate continued with the consideration of the bill.

Mr. DOLE. Mr. President, the pending business is still the education bill?

The PRESIDING OFFICER. The Senator is correct.

Mr. DOLE. Mr. President, I ask unanimous consent to just speak for 3 minutes on another matter, and not have it interfere with any of the amendments to the pending matter.

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

The Senator is recognized.

JUDGE STEPHEN BREYER

Mr. DOLE. Mr. President, I want to take a few moments to respond to an editorial that appeared in yesterday's New York Times. The editorial, entitled "A Cloud on the Breyer Nomination," suggests that Judge Breyer should have recused himself from certain environmental cases because of his investment in a Lloyd's of London insurance syndicate. The editorial unfairly paints a picture of someone whose personal ethics are open to question.

Judge Breyer has denied any conflict of interest, testifying under oath that he never sat on any case in which he had reason to believe that Lloyd's was an interested party.

During his tenure on the First Circuit Court of Appeals, Judge Breyer also developed an elaborate screening system to prevent conflicts from occurring:

Each year, I am told, he provided the first circuit clerk with a list of his personal investments, including the Lloyd's of London investment. Judge Breyer typically requested that he not be assigned to any case involving any company in which he had an investment. In addition, Judge Breyer personally reviewed cases for potential conflicts and disclosed his Lloyd's investment on his annual financial disclosure report. Since these reports are available to the public, it gave litigants the opportunity to seek the recusal of any judge whom they believed may have had a conflict.

Not surprisingly, several prominent legal and ethics experts have reviewed the Lloyd's investment, and the consensus view is that Judge Breyer complied with all relevant laws and ethical standards.

Mr. President, as someone who worked closely with Judge Breyer when he served as chief counsel to the Senate Judiciary Committee, I know first-hand that he is a man of integrity and good judgment. I cannot imagine Judge Breyer intentionally trying to enrich himself by issuing an opinion favorable to his own financial interests. In fact, throughout the confirmation process, no one has offered any plausible explanation of how Judge Breyer's environmental rulings may have benefited him.

I will not speculate on why the New York Times ran its misguided editorial, but I do know that there are those on the left side of the political spectrum who may not want a thoughtful moderate like Judge Breyer sitting on the Nation's Highest Court.

Unfortunately, if history is any guide, they will go to great lengths to achieve their goals, including trying to smear a good man's good reputation.

Mr. President, I ask unanimous consent to have printed in the RECORD the New York Times editorial of July 26, 1994, entitled "A Cloud on the Breyer Nomination."

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

[From the New York Times, July 26, 1994]

A CLOUD ON THE BREYER NOMINATION

Eager for swift confirmation of the Supreme Court nominee Stephen Breyer, senators of both parties are rushing to a floor vote without fully investigating significant ethical issues connected to the nominee's investments. This irresponsible failure by the senate leaves Judge Breyer with a cloud still hanging over his nomination.

Judge Breyer, who is Chief Judge of the U.S. Court of Appeals in Boston, answered the Senate Judiciary Committee's questions for three days and won unanimous clearance for a floor vote scheduled for tomorrow. But the committee failed to fully explore the judge's participation in pollution cases despite his investment in a Lloyd's of London venture that heavily insured asbestos and toxic pollution risks in this country.

At issue is Judge Breyer's compliance with the Federal recusal statute, which requires judges and justices to disqualify themselves when their impartiality "might reasonably be questioned." In addition, they must sit out cases where they have a financial interest in a party to a lawsuit or any interest "that could be substantially affected by the outcome of the proceeding."

Lloyd's was not a named party in any of the eight pollution cases in which Judge Breyer took part. But what if Lloyd's, famous around the world for insuring all kinds of major risks, were an insurer of a company involved in a pollution lawsuit? Judge Breyer did recuse himself from asbestos litigation but, curiously, not from other major

pollution disputes. Only senator Howard Metzenbaum saw fit to mention this inconsistency; the committee failed to question the nominee in detail about what steps, if any, he took to find out about Lloyd's involvement as an insurer.

Judge Breyer assured the committee that he had not violated the standard that requires recusal from cases that would have a "direct and predictable financial impact" on his investments. Yet Newsday has reported that Lloyd's was one of the insurers of a company involved in one of the eight pollution cases. That sounds like a direct contradiction of Judge Breyer's testimony. It warranted closer investigation. Could the judge have known about Lloyd's involvement? did he investigate the other cases sufficiently to guard against sitting in a case that might affect his financial interest? Again, the committee was not inquisitive, though Senator Arlen Specter has called for re-examining the recusal law with an eye toward having judges disqualify themselves if their investments are even indirectly involved.

As it turned out, Judge Breyer's ruling in that case might actually have gone against any financial interest of his own. But the judge surely showed bad judgment in failing to explore Lloyd's involvement. and the incident leaves one wondering how many other cases Judge Breyer ruled on that might have put his Lloyd's investment at risk.

Judge Breyer, a popular former staff chief for the Judiciary Committee and a moderate liberal, is being rushed through confirmation by democrats trying to please President Clinton and Republicans relieved at the nominee's moderate views. But his possible failure to recuse himself from cases whose outcomes might affect his financial interests has not been thoroughly explored. The Senate is voting on faith and political need, not knowledge. Based on the inadequate record in hand, Judge Breyer has not been shown to deserve the prize that will be awarded him by the Senate.

IMPROVING AMERICA'S SCHOOLS ACT OF 1993

The Senate continued with the consideration of the bill.

AMENDMENT NO. 2417

(Purpose: To create a demonstration program to provide students who attend violence-prone schools with scholarsbips to enable such students to attend safe schools)

Mr. DOLE. Mr. President, I am, along with the distinguished Senator from Indiana, offering an amendment. We have revised the amendment and I am having copies made. But I thought maybe, in the interest of time, we could make our statements and then we will send the amendment to the desk.

I would add that I have discussed this with the Senator from Massachusetts, Senator KENNEDY, and the Senator from Kansas, Senator KASSEBAUM.

It may or may not be that we can vote this evening because one of our cosponsors, Senator LIEBERMAN, is not available. But we will just have to see what happens.

Mr. President, when I read the newspapers these days, it is hard for me to imagine the violence that many students experience in our Nation's schools. I guess you could go back to when we were in school. When I was in school, we had a bully or two. But we did not have armed thugs—ones that would make Kim Il-song cringe—roaming the halls.

Let us not fool ourselves. Violence is not isolated to a few schools. In fact, it is nearing epidemic proportions. It happens in the inner cities, and unfortunately, it is happening in the Heartland and even in Kansas. I am saddened to say that we have had beatings and shootings in Wichita, Topeka, Kansas City, and even in some of our smaller towns like Junction City. These are not statistics. They are somebody's little girl or boy. And sometimes they are teachers and principals.

Earlier this year, Congress helped schools tighten security by passing the Safe Schools Act. That measure was definitely a step in the right direction. It seems to me, however, that more metal detectors will not give parents and their children the peace of mind they are entitled to. Parents deserve more options. They should not be forced to send their children to crime ridden schools.

Mr. President, since we passed the Safe Schools Act, I have found that many of my colleagues shared the same concerns. Over the course of the last several months, my office has worked closely with Senators COATS, LIEBERMAN, DANFORTH, and BROWN to find a way to give parents more alternatives. What we have come up with is Fight or Flight, a demonstration program that would help low-income parents send their children to safer elementary and secondary schools.

Let me give you a summary of what the bill would do.

Fight or Flight is a $30 million demonstration that will target as many as 20 crime prone schools. It will be authorized under Goals 2000. For those States which wish to participate, only students from schools that the Secretary of Education designates as crime-prone will be eligible for educational vouchers that can be spent at both private and public schools.

Eligibility requirements.—Students will be eligible if they attend a violence-prone school and if they qualify for free or reduced priced meals under the National School Lunch Act.

Use of scholarship funds.—Funds can be used for tuition and fees, reasonable transportation costs, and parents can use up to $500 to obtain supplementary academic services for their child. For students attending a private school, any remaining funds will be returned to the State to provide additional vouchers. Public schools, on the other hand, will be able to keep remaining funds.

National evaluation.—This amendment would require the Secretary to compare the achievement of participating and nonparticipating students, and to assess the program's effects on increasing parental and community satisfaction and its ability to foster greater parental involvement.

No loss of Federal funds to public schools.—Public schools which lose students as a direct result of the demonstration may count such children for purposes of receiving funds under any program administered by the U.S. Secretary of Education.

Civil rights protection.—Participating schools may not discriminate on the basis of race. The amendment also stipulates that demonstration projects could not continue if they interfere with desegregation plans.

Finally, Fight or Flight is limited to a 3-year demonstration program.

Some say, "What happens at the end of 3 years? This is going to be another one of those unfunded mandates."

So we have revised our amendment to make certain this is a demonstration project, period. It is not an effort to start something and then leave it up to the States or local communities, what we call an unfunded mandate.

In short, this is a very simple amendment. If your son or daughter attends one of 20 violent schools, you can use fight or flight to send them to a safe school. I think that would make a lot of sense to a lot of parents in inner cities and, as I said, in middle-sized or smaller cities.

I am certain that few of my colleagues will argue that fight or flight will kill off some inner-city schools. Personally, I am more concerned about the students, more concerned about their safety. You can replace buildings, but you cannot replace children. And that is what this amendment is all about.

The bottom line is that students should have safe places to learn. If a school is crime-ridden, I see no reason why children should be forced to go there, especially if the only thing keeping them there is that their families cannot afford to send them to a better school.

Many of us have struggled with the so-called issue of school choice. I for one believe it is a concept worth testing. I am not saying that either public or private schools are inherently better. The point is that all Americans, rich or poor, should be able to choose the best education for themselves and for their children. By introducing an element of competition, we can encourage schools to work harder to provide the best possible education. But that is not what this amendment is about. It is about helping parents protect their children from the violence that seems to run rampant in some of our Nation's schools.

Mr. President, there are strongly held beliefs on both sides of the choice issue. I respect the beliefs of others,

we need a uniform benefit set at the national level, why we need national antitrust rules, why we need national liability rules, that sort of thing. Remember, it is because people do not get their medicine in States, they get it in local communities and those communities overlap—Tennessee and Kentucky; North Dakota and Minnesota; South Dakota and Minnesota, and so on. So people buy their health care in communities, they do not buy it in States. We need national rules so these local markets can provide more and better health services for less money for all of our citizens.

Mr. President, I yield the floor.

Mr. KOHL addressed the Chair.

The PRESIDING OFFICER (Mr. MATHEWS). The Senator from Wisconsin.

NOMINATION OF JUDGE STEPHEN BREYER

Mr. KOHL. Mr. President, I come here this morning to speak in behalf and to support the nomination of Judge Stephen Breyer to the U.S. Supreme Court, and to speak briefly—but critically—about the process that I believe will result in his confirmation.

Judge Breyer came before the Judiciary Committee with a reputation as a brilliant legal scholar and a fair-minded judge.

For the most part, the committee's hearings confirmed these judgments. Judge Breyer impressed us with his ability to simplify complex legal doctrines and cut to the heart of fundamental constitutional questions. His answers revealed that he is a moderate, that he is a reasoned man of principle with a commitment to the rule of law; a man who is likely to strengthen the center of the Supreme Court, rather than polarize it.

Throughout the hearings, two main criticisms were levied against Judge Breyer. First, many charged that Judge Breyer acted unethically because he ruled in cases that may have indirectly affected his investments.

I do not believe Judge Breyer acted unethically and I do not doubt his integrity in the least. If judges had to recuse themselves in every case that presented a possible conflict of interest, our courts would become paralyzed. But Judge Breyer could have taken more significant measures to dispel any appearance of impropiety. I am pleased, therefore, that he has promised, at the very least, to divest himself of all insurance holdings as soon as possible, although it is not clear exactly when that will occur.

It was also suggested that because Judge Breyer has spent most of his life dealing with books and theories, he lacks Justice Blackmun's empathy for "the poor, the powerless and the oppressed."

Well, it is true that Judge Breyer did not have an underprivileged upbringing. And it is true that he has spent much of his life as a legal scholar, rather than a hands-on practitioner. But we should not assume that because Judge Breyer has been fortunate, and enjoys the life of the mind, he is unable to care about others.

Judge Breyer seemed to recognize during our confirmation hearings that his actions as a Judge have very real consequences for the lives of the people the law governs. And he appears to be aware that beyond the marble columns of the Supreme Court is a world in which the politically powerless are entitled to as much justice as those Americans who hire the best lawyers and lobbyists.

It may be that Judge Breyer still has to demonstrate his professed commitment to making the law work for the average person. But I believe our confidence in him will be justified.

Having said this, there was much we did not learn about Stephen Breyer, and—despite my confidence in him—this concerns me. Judge Breyer's eloquence often gave him the appearance of answering questions when, in fact, he actually side-stepped them with sugar-coated generalities.

For example, he would not give an opinion on whether courts should be required, at the very least, to consider public health and safety before allowing for secrecy in civil litigation. And he refused to discuss many subjects, including voting rights jurisprudence, gender-classifications, and his own decision on abortion counseling—Rust versus Sullivan—with any degree of specificity.

Whenever Judge Breyer felt the need to avoid answering a question, he would cloak himself in his black robe and claim that the issue was within Congress' domain or that the question took him out of his role as a judge. Yet, at the same time, he did speak openly and freely on other issues which were just as likely to appear before the Court, or just as easily characterized as issues for Congress rather than the courts.

Why? The answer is by now well known: nominees seem only to answer questions when they want to—or when they feel they need to.

I point all this out not to chastise Judge Breyer, whom I respect. But I cannot ignore a nominee's unwillingness to answer reasonable questions. Indeed, the process demands that we should not.

Mr. President, we all know that because a Supreme Court Justice has life tenure, the confirmation process is crucial—it is the public's only opportunity to learn what is in the heart and mind of a nominee. Of course, we also recognize that there are limits to what a potential Justice of the Supreme Court can say before the Senate.

But these limits do not justify the type of hedging that we have seen from some past nominees—evasion that erodes the Senate's ability to faithfully carry out its advise-and-consent responsibilities.

Judge Breyer was probably more straightforward with the members of this committee than many nominees in recent history. In fact, Senator SPECTER went as far as to coin a new standard for nominees to live up to: the Breyer Standard.

In my opinion, however, we still have a way to go before we achieve the candor that the confirmation process demands and deserves. So I would like to impose an even higher standard on future nominees than perhaps would Senator SPECTER.

In the meantime, I commend President Clinton for nominating Judge Breyer—a man of great ability, who has demonstrated an enduring commitment to public service and to the law. I look forward to his tenure on the Court.

The PRESIDING OFFICER. The Senator from Washington [Mr. GORTON] is recognized to speak for up to 30 minutes.

REAUTHORIZATION OF THE ENDANGERED SPECIES ACT

Mr. GORTON. Mr. President, I join Senator SHELBY today in calling on the Clinton administration and this Congress to move promptly to enact a significant reform of the Endangered Species Act. The act must be changed to require better science in listing decisions, greater protection for private property rights, and more balance between species protection and human impacts.

To many of my colleagues, the reauthorization of this act may seem to be just another policy debate—one that we can tackle whenever space opens up on the Senate calendar. But for many families and communities in the State of Washington and across the Nation, every day that goes by without a reform of the act means more jobs lost, more mills and factories closed, and more demands on social service agencies already under extreme stress.

We simply cannot afford to wait much longer, Mr. President.

Regrettably, the current administration does not share this sense of urgency. President Clinton and Secretary Babbitt have said that the act is flexible enough to provide for the needs of both people and other species. They have suggested that the ESA only needs minor changes.

But the administration's own experience with the ESA contradicts this point of view.

President Clinton came to the Pacific Northwest during his campaign, promising balance in the application of the ESA to the management of timber harvest on Federal lands. He promised to reconcile the needs of the ecosystem

under this act to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency."

And "For the purpose of the section, the terms 'firearm' and 'school' have the same meaning given to such terms in section 921(a) of title 18, United States Code."

This is a serious problem that the amendment is attempting to address, the problem of guns and other weapons appearing in the classrooms and hallways of our Nation's schools. The amendment would require every local educational agency to establish policy requiring school officials to refer to the criminal justice or juvenile delinquency system any student who brings a firearm to school. Possession of a weapon on school property is a crime, and when a crime occurs, the police ought to be notified.

Unfortunately, Joseph Maddox, Chief of Police for the Penn Township Police Department noted in the winter 1994 edition of School Safety Magazine:

Often when crimes occur at school, the decision is made to address the problem by means of school discipline, as opposed to dealing with the criminal justice system.

School discipline is fine, but it is simply not enough. Every thinking American should be outraged by the guns in our schools. And even if the police choose not to make a report or decline to submit the case for prosecution because of the nature of the offense, the police should, nevertheless, be notified.

Individuals who bring dangerous weapons to schools are committing a crime and they ought to be dealt with by our juvenile or criminal justice system. To do anything less is to send a message of tolerance for breaking the law and of a less-than-serious attitude about the safety of other students. This type of odious behavior cannot be tolerated, and we, in this Chamber, have an obligation to do something to ensure that it is not tolerated. We must get the guns out of our schools, and while we are about it, we must also get the individuals that bring the guns out as well. My amendments would help to accomplish both goals.

So let us think about preserving the good apples in the barrel, not just about preventing further spoilage of the bad onee.

Mr. President, one of the most important things we can provide to our young people—those who will soon take up the reins of leadership in our country—is the ability to obtain an education. We owe our young people that. We owe them the chance to learn in a school free from guns and free from violence. We owe our teachers relief from the fear of being shot while they are simply trying to teach a class.

We have come to a sad state of affairs when metal detectors have to be installed at the schoolhouse door. Let us end this climate of violence in our schools by ending the tolerance for lawbreaking students. Let the police deal with these youthful criminals so that our teachers and the good students in our schools do not have to.

UNANIMOUS-CONSENT AGREEMENT

Mr. MITCHELL. Mr. President, as if in executive session, I ask unanimous consent that at 9 a.m. on Friday, July 29, the Senate proceed to executive session to consider the nomination of Stephen Breyer to be an Associate Justice of the Supreme Court; that there be 6 hours for debate to be equally divided between the chairman and ranking member of the Judiciary Committee or their designees; that following the using or yielding back of time, the Senate vote, without any intervening action, on the nomination; that if confirmed, the motion to reconsider be tabled, and the President be immediately notified of the Senate's action; and the Senate return to legislative session.

The PRESIDING OFFICER. Is there objection?

Mr. JEFFORDS. Reserving the right to object, I just say it has been cleared on our side of the aisle and we have no objection to the request.

I withdraw the reservation.

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

Mr. MITCHELL. Mr. President, although not included in the agreement, I wish to state my intention that when the Senate votes on the Breyer nomination tomorrow, it will be the last vote of the day.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I would just like to indicate that I hope the Senate will accept the Byrd amendments. The first amendment requires, as the Senator has pointed out, the collection of data on school violence in elementary and secondary schools and submitting a report to Congress by January 1998.

The second one requires the LEA's to refer to criminal justice or juvenile authority any student who brings a gun to school.

Let me just mention, I hope both amendments will be accepted.

I will take 1 minute of time.

We have in my own State in Lawrence, MA, an enormously interesting program that has been stimulated by the district attorney where they work with the school officials, the youth service, the educators and the social service agencies and have prioritized and ranked the juveniles who are the most threatening and have been the repeaters in terms of violence.

They have accelerated the attention for those who have been the most violent and also have worked with those to free some of them from various gangs and gang activities.

It has had a profound effect and impact on stability in the school and also in terms of incidence of violence within the community.

So this kind of amendment will, one, give information, so if others want to develop not just community policing, this is really a community sort of prosecution, and it has been well accepted and appreciated by all the different community leaders there.

I think the kind of amendment that the Senator has offered can help and assist in getting that kind of information and that kind of awareness for other communities across the country.

So, Mr. President, I urge adoption of the amendment.

The PRESIDING OFFICER. The amendments have not yet been sent to the desk.

Mr. JEFFORDS. Mr. President, I also would like to join in commending the senior Senator from West Virginia for not only the excellent amendment but the excellent discussion on the problem of education. I agree with him wholeheartedly that before we act we must have the information and data necessary to do that. This will help us in that quest.

AMENDMENT NO. 2426

(Purpose: To direct the Secretary to collect data on violence in elementary and secondary schools)

AMENDMENT NO. 2427

(Purpose: To provide that no funds shall be made available under the Elementary and Secondary Education Act of 1965 to any local educational agency unless such agency has a policy requiring referral to the criminal justice or juvenile delinquency system of any student who brings a firearm or weapon to a school served by such agency)

Mr. BYRD. Mr. President, I thank both managers. Inasmuch as they have expressed a willingness to accept the amendments, I send the amendments to the desk. I ask unanimous consent that they be considered en bloc, agreed to en bloc, and that the motions to reconsider be laid on the table en bloc.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

The clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from West Virginia [Mr. BYRD] proposes amendments numbered 2426 and 2427.

Mr. BYRD. Mr. President, I ask unanimous consent that reading of the amendments be dispensed with.

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

The amendments are as follows:

AMENDMENT NO. 2426

On page 874, line 9, strike "The State" and insert "(1) BIENNIAL EVALUATION.—The Secretary", and indent appropriately.

States seat in the Council; (2) allowing the United States and two other industrialized countries, acting in concert, to block decisions in the Council; (3) preventing the Assembly from acting independently of Council recommendations; and (4) establishing a finance committee, including the five largest contributors to the organization's budget, which must make decisions by consensus;

Ensure that future amendments to the regime could not be adopted over United States objections;

Eliminate provisions compelling the transfer of seabed mining technology;

Allow the U.S. acting alone to veto any plan to distribute revenues to states or other entities, such as national liberation movements;

Eliminate the power of the organization to limit production from the deep seabed to protect the interests of land-based producers and, in its place, establish restrictions on subsidization of seabed mining based on GATT provisions;

Grandfather in seabed mine site claims by three U.S.-led multinational consortia on terms "no less favorable than" the best granted to Japanese, French, Russian, Indian or Chinese claimants, which have already been registered;

Eliminate the U.S. $1,000,000 annual fee miners would have had to pay prior to commercial production; and

Constrain the Enterprise by: (1) requiring a future decision by the Council (which the U.S. and a few allies could block) to make it operational; (2) subjecting it to the same requirements as other commercial enterprises; (3) eliminating the requirement that parties to the convention fund its mining activities; (4) providing that it operate through voluntary joint ventures with other commercial enterprises; and (5) eliminating provisions that would compel other commercial enterprises to provide it with technology.

In addition to responding to the specific U.S. objections, the new seabed mining regime will streamline the Authority and emphasize the need to ensure an efficient organization in keeping with the recognition that commercial mining is not imminent.

Mr. DURENBERGER. Mr. President, I understand that I may proceed as in morning business.

The PRESIDING OFFICER. The Senator is correct.

NOMINATION OF STEPHEN BREYER TO THE U.S. SUPREME COURT

Mr. DURENBERGER. Mr. President, I rise in support of the nomination of Judge Stephen Breyer to the U.S. Supreme Court.

I have always taken very seriously my responsibility as a Senator to advise and consent on presidential nominations. In my mind, my role is not to confirm only those nominees who agree with me on political issues. I have never applied a litmus test on any subject, such as abortion and the death penalty for example, even though I have strong convictions about both.

Regardless of the party in the White House, I have always asked three questions to determine whether presidential nominees deserve confirmation. First, does the nominee have the experience necessary to do the job? Second, does the nominee have the temperament to serve honorably? And finally, does the nominee have the character to be entrusted with the responsibility?

Without a doubt, Stephen Breyer has the experience necessary to serve as a Supreme Court Justice. He has had an exemplary career in the executive, legislative, and judicial branches. He has served on the Federal bench for 14 years, and spent the last 4 years as chief judge of the First Circuit Court of Appeals.

On the question of temperament, I believe Judge Breyer is qualified to serve on America's highest court. His decisions on the Federal bench have the reputation of being thoughtful and well-reasoned, without suggesting any particular political agenda. I trust he will continue to apply the law neutrally and fairly.

And finally, based on the evidence that is available, I have concluded that Judge Breyer has the character necessary to be entrusted with a seat on the Supreme Court.

I am aware that questions have been raised about Judge Breyer's membership in Lloyd's of London—a syndicate that underwrites insurance for corporations with potential liability for environmental cleanup costs—at the same time he was reviewing toxic waste cases as a Federal appeals judge.

But there is no evidence that his decisions had a direct impact on any of his investments, and I believe Judge Breyer's assertion that his impartiality was not affected in any of those cases.

Rather than showing a defect in character, I believe this was a case of bad judgment. My distinguished colleague from Indiana, Senator LUGAR, has raised several valid points about the judgment that Judge Breyer exercised with respect to this investment.

However, I have concluded that this single error in judgment should not, in itself, preclude membership on the Supreme Court. I do not think that a reasonable measure of any person is the worst mistake they ever made. Instead, I look at the entire record of accomplishment, his record of reasonable decisions, his record of diligent work for justice, his temperament and his character. By that measure, Stephen Breyer is worthy of a seat on the Supreme Court. That is why I will vote to confirm this nominee.

JUDGE STEPHEN BREYER'S BOOK "BREAKING THE VICIOUS CIRCLE: TOWARD EFFECTIVE RISK REDUCTION"

Mr. DURENBERGER. Mr. President, in 1993 Judge Breyer published a book with the title, "Breaking the Vicious Circle: Toward Effective Risk Reduction." The central premise of his book is that the efforts of the federal Government to reduce risks to public health and the environment are not well focused and produce inconsistent and illogical results.

The cause of this problem in Judge Breyer's view is the disjointed decisionmaking process that we in the Congress and as a nation use to choose the risk reduction policies that are actually imposed. The sources of risk to human health and the environment come to the attention of the public and the Congress one-at-time. They are considered by a multitude of committees and subcommittees in the legislature. They are regulated under a series of statutes with disparate goals and objectives. The statutes are carried out by several departments and agencies of the executive branch.

In Judge Breyer's view, the result is a confusing and wasteful web of regulations that do not achieve the greatest risk reduction for the dollars we invest. He points to a swamp in New Hampshire that is cleaned up to extraordinary levels under the Superfund Program, while Boston Harbor remains polluted. He cites a fivefold discrepancy in risk assessment outcomes between EPA and FDA methods. He reports examples of risk reduction regulations that may actually increase health risks from other sources.

Judge Breyer is not alone in raising these concerns. In 1987, the EPA itself published a study called "Unfinished Business" which suggested that Government and private sector resources were being wasted because Government policy too often regulated low-level risks while larger threats went unaddressed. And in 1990, the Science Advisory Board of EPA came to a similar conclusion in its report, "Reducing Risk."

No one could argue with the proposition that we ought to allocate the resources we devote to risk reduction as carefully as possible. And everyone would agree that decisions based on solid scientific information are usually better than decisions guided by hunches, superstition or bias.

However, we must often make decisions before all the evidence is in. Congress is constantly called upon to make decisions that allocate billions of public and private dollars toward one problem or another often before the science on causes and solutions is settled. We make difficult choices that are criticized from every direction.

Judge Breyer proposes a new superagency with wide-ranging authority to reallocate Government efforts as a solution to these problems. But there is no technical, scientific or bureaucratic fix for our condition. There is no philosopher king or group of senior bureaucrats who can relieve the Congress of the difficult job of setting priorities in a world of competing interests and limited knowledge. And there is no reason to believe that Congress has chosen incorrectly in the past.

A complete response to the concerns that Judge Breyer raises in his book

would fill many pages of the RECORD. I would make just two brief points, today.

First, this is not a technical problem that can be solved by appointing an agency with broader powers and better staff. Allocating budgets, imposing regulatory costs, is an act of expressing values, and in a democracy we do it by voting.

There is not one objective yardstick on which one can rank the relative importance of all these competing objectives. How much do you spend on children' health, before you start spending money to save endangered species? This is a question of preferences that in our system of government is assigned to elected members of the Congress, not appointed members of science boards.

Second, even where one yardstick of risk can be applied, for instance the risk of contracting fatal cancer, it does not necessarily follow that allocating resources to achieve the largest risk reduction is an absolute guide to policy. I believe that the public is more willing to accept small risks widely distributed, than large risks focused on the few. It is not just the absolute mortality, but also the equity, the distribution of the risk, that informs the public's sense of priorities.

The public gets incensed about hazardous waste sites and leaking underground storage tanks because they are immediately devastating to their victims, even if those victims are few in number, and hundreds more could be saved by spending the same dollars cleaning up indoor air quality. Allocating public and private resources to achieve the greatest reduction in risk for each dollar spent is not the best public policy, because it fails to reflect the public's sense of equity and justice. How much an industry should be required to spend to prevent its externalities from imposing unjustified costs on others is, unless one takes an absolutist view, a value-laden decision that can only be made in the context of our entire social experience.

I am all for more science. And the Congress has a fundamental obligation to spend the taxpayers' money as wisely as possible. We often make mistakes. But I do not agree that the anecdotes cited in Judge Breyer's book call into question either the process we have used to select environmental priorities or the allocation of resources now reflected in the budget and regulations of EPA and the other agencies we charged to protect public health and the environment.

Mr. PELL addressed the Chair.

The PRESIDING OFFICER. The Senator from Rhode Island.

CONFIRMATION OF STEPHEN BREYER TO THE SUPREME COURT

Mr. PELL. Mr. President, I am pleased to support the nomination of Stephen Breyer to become an Associate Justice on the United States Supreme Court and I believe that President Clinton has made a wise and timely choice in choosing him for the upcoming vacancy on the Court.

In stating my support for Judge Breyer, I salute President Clinton for his primary role in making this nomination. The President has had two opportunities to fill vacancies on the Supreme Court and he has made outstanding choices in first nominating Ruth Bader Ginsburg last year and now Stephen Breyer. His choices reflect moderation and respect for the Court's role as the supreme arbiter of laws for all citizens in this country, regardless of political leanings and agendas. He has likewise taken the lead in appointing similarly qualified and diverse candidates to the lower courts. The President deserves great credit for carrying out with such attention and care his solemn duties with regard to appointing members of the Judiciary.

Specifically regarding Judge Breyer, he has gone through a confirmation process which has been pleasantly harmonious, and bipartisan. He is much praised for his intellect, moderation, compassion, temperament, dedication to principle, respect for the law, and his ability to forge consensus rather than encourage division. I join in these assessments of his record. I am also confident that he will bring these much-needed qualities to a Supreme Court which has been subject to polarization in recent years. A calm hand and a reasoned voice will be welcome and if history is any guide, Judge Breyer will provide just such an influence.

Accordingly, I wholeheartedly support the confirmation of Judge Breyer for the Supreme Court, congratulate him on the accomplishments of his career, extend every good wish as he assumes the duties and responsibilities of his post, and look forward to a long and distinguished tenure for him on the bench.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Mr. Thomas, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGES FROM THE HOUSE

At 3:01 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4426) making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1995, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. OBEY, Mr. YATES, Mr. WILSON, Mr. OLVER, Ms. PELOSI, Mr. TORRES, Mrs. LOWEY, Mr. SERRANO, Mr. SABO, Mr. LIVINGSTON, Mr. PORTER, Mr. LIGHTFOOT, Mr. CALLAHAN, and Mr. MCDADE as the managers of the conference on the part of the House.

The message also announced that the House disagrees to the amendments of the Senate to the bill (H.R. 4649) making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1995, and for other purposes, and agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon; and appoints Mr. DIXON, Mr. STOKES, Mr. DURBIN, Ms. KAPTUR, Mr. SKAGGS, Ms. PELOSI, Mr. OBEY, Mr. WALSH, Mr. ISTOOK, Mr. BONILLA, and Mr. MCDADE as the managers of the conference on the part of the House.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, which were referred as indicated:

EC-3119. A communication from the Secretary of Agriculture, transmitting, pursuant to law, the report on the Forest Service for fiscal year 1993; to the Committee on Agriculture, Nutrition, and Forestry.

EC-3120. A communication from the Secretary of Housing and Urban Development, transmitting, pursuant to law, the report on the status of multifamily housing; to the Committee on Banking, Housing, and Urban Affairs.

EC-3121. A communication from the General Counsel of the Department of Commerce, transmitting, a draft of proposed legislation entitled "The Marine Navigation Trust Fund Act of 1994"; to the Committee on Environment and Public Works.

EC-3122. A communication from the Secretary of Energy, transmitting, pursuant to law, notice relative to the report entitled "Adequacy of Management Plans for the Future Generation of Spent Nuclear Fuel and High-Level Radioactive Waste"; to the Committee on Environment and Public Works.

EC-3123. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, a draft of proposed legislation entitled "The Advisory Committee Termination Act"; to the Committee on Governmental Affairs.

EC-3124. A communication from the Director of Employee Benefits of the Farm Credit Bank of Baltimore, Maryland, transmitting,