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Senate

The Senate met at 10:30 a.m., and was called to order by the President pro tempore (Mr. THURMOND).

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, we praise You in advance for Your presence to strengthen us, Your truth to guide us, and Your courage to inspire us throughout this day. Thank You for the gift of trust. Our trust in You enables us to trust one another as women and men of both parties. But today, Father, we want to thank You especially for the trust of taxpayers throughout our Nation who faithfully support the work of government. Give the Senators a renewed recognition of their accountability to You and to the citizens of States who have elected them and entrusted them with the sacred privilege of leadership. We are so grateful for the millions of Americans who work hard for their income and willingly support the ongoing costs of Government. It is so easy for us to get our priorities mixed up and think that taxpayers exist for us who work in government rather than thinking of our role to serve them. May the Senators and all of us who are privileged to work with them recommit ourselves to be servant-leaders. In the Name of our Lord and Savior. Amen.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The able acting majority leader is recognized.

Mr. HATCH. Thank you, Mr. President.

SCHEDULE

Mr. HATCH. Mr. President, this morning the Senate will proceed to executive session to begin 2 hours of debate on the nomination of three judges on the Executive Calendar: Ann L.

Aiken to be United States District Judge for the District of Oregon, Barry G. Silverman to be United States District Judge for the Ninth Circuit, and Richard W. Story to be United States District Judge for the Northern District of Georgia.

Following that debate, as previously ordered, the Senate will recess from 12:30 p.m. to 2:15 p.m. for the weekly policy luncheons to meet.

As ordered, at 2:15 p.m. the Senate will begin a series of rollcall votes on the aforementioned judicial nominations.

Following those votes, the Senate will be in a period for the transaction of morning business with Senator COVERDELL or his designee in control of the first 90 minutes, and Senator DASCHLE or his designee in control of the next 90 minutes.

As a reminder to all Members, the Senate will not be in session on Friday, and no rollcall votes will occur on Monday, February 2nd.

So I thank my colleagues for their attention.

MEASURE PLACED ON THE CALENDAR—S. 1575

Mr. HATCH. Mr. President, I understand that there is a bill at the desk that is due for its second reading.

The PRESIDING OFFICER (Mr. HAGEL). The clerk will report.

The legislative clerk read as follows:

A bill (S. 1575) to rename the Washington National Airport in the District of Columbia and Virginia as the "Ronald Reagan National Airport."

Mr. HATCH. Mr. President, I object to further proceedings on this bill at this point.

The PRESIDING OFFICER. The bill will be placed directly on the calendar.

EXECUTIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will now

go into executive session to consider en bloc Executive Calendar Order Nos. 454, 486, 488, which the clerk will now report.

THE JUDICIARY

The legislative clerk read the nomination of Ann L. Aiken, of Oregon, to be United States District Judge for the District of Oregon, the nomination of Barry G. Silverman, of Arizona, to be United States Circuit Judge for the Ninth Circuit, and the nomination of Richard W. Story, of Georgia, to be United States District Judge for the Northern District of Georgia.

The Senate proceeded to consider the nominations.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I rise today to support the nomination of Ann Aiken to the federal district bench in Oregon. I know too that my distinguished colleagues from that State, Senators SMITH and WYDEN, wholeheartedly support this nominee.

And it is no wonder that Judge Aiken enjoys their support. She has served as a state district and circuit court judge for nearly a decade. Before that, she worked in private practice and had extensive involvement in Oregon state-house politics. Perhaps most significantly, she is the mother of 5 children. As the father of 6 myself, I can think of no better preparation for the bench than first having served as the referee of a large family.

I plan to discuss in greater detail why I intend to support Judge Aiken's nomination, but first, I would like to address some of the concerns that have been expressed with respect to the Senate's role in the confirmation of federal judges. As Chairman of the Senate Judiciary Committee, one of the most important duties I fulfill is in screening judicial nominees. Indeed, the Constitution itself obligates the Senate to

• This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.



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provide the President with advice concerning his nominees and to consent to their ultimate confirmation. Although some have complained about the pace at which the Senate has moved on judicial nominees, I would note that this body has undertaken its constitutional obligation in a wholly appropriate fashion. Indeed, the first matter to come before the Senate this session are the confirmation of three of President Clinton's judicial nominees. Senator LOTT is to be commended for giving these nominees early attention. As well, the Judiciary Committee has already announced judicial confirmation hearings for February 4 and February 25.

In 1997, the first session of the 105th Congress, the Senate confirmed 36 judges. This is only slightly behind the historical average of 41 judges confirmed during the first sessions in each of the last five Congresses. And, I would note, the Judiciary Committee itself processed 47 nominees—including the three judges we will be considering today.

Keep in mind that the Clinton Administration is on record as having stated that 63 vacancies—a vacancy rate just over 7%—is considered virtual full employment of the federal judiciary. The current vacancy rate—88 vacancies—is a vacancy rate of approximately 10%. Some of those vacancies occurred after the Senate recess last year, however. How can a rise in the vacancy rate—from 7% to 10%—convert “full employment” into a “crisis”? Although we can always do better, this is a record of which I am proud.

I would further add that there are currently 32 vacancies for which the Committee has yet to receive a nomination. As hard as I work, I have never been able to confirm a person that has not yet been nominated. And I have to say that there were more vacancies just up until a few days ago.

This is a point, gone largely unnoticed by the popular press, that Chief Justice Rehnquist recently made in his Annual Report on the Judiciary. In that report he urged, among other things, that certain judicial vacancies be filled. I would ask you to compare today's 88 judicial vacancies with the record of a Democratic Senate during President Bush's presidency. In May 1992 there were 117 vacancies on the federal bench. And, interestingly enough, the Chief Justice made basically the same remarks back in 1992 that he did this past month. The only real difference that I can see, however, is that in the days immediately following the Chief Justice's remarks we have a plethora of media acting as though there were some big crisis developing basically fomented by the White House and some down at the Justice Department. I might say that in the days immediately following Chief Justice Rehnquist's criticism back in 1992 when there was a Democrat Congress, there were only a handful of newspapers who even bothered to

report on the judicial vacancy issue even though there were 117 vacancies during that period of time, and even more. At one time in 1991 there were 148 vacancies, and hardly a peep out of the media, or hardly a peep out of any of the so-called “critics” of today. So it seems that when a Republican President confronted a Democrat Senate on the issue of judicial vacancies the press seemed to be considerably less interested.

That I think is the state of affairs in Washington. We are all used to it. But I just wanted to point that out because I think it is pretty fallacious to blame the Senate when in many instances we don't have any nominees to fill the position, especially when some of the nominees who came over had problems from the last Congress as well.

And the number of vacancies is not nearly as problematic as it might appear, at first blush. In fact, there are more sitting federal judges today than there were throughout virtually all of the Reagan and Bush administrations. As of today, there are 756 active federal judges. In addition, there are 432 senior judges who must, by law, hear cases, albeit with a reduced load but nevertheless taking the burden off of the sitting full-time judges. Ordinarily, when a judge decides to leave the bench, she does not completely retire, but instead takes senior status. A judge who takes senior status, as opposed to a judge who completely retires, must hear a certain number of cases each year. Thus, when a judge leaves the bench, she does not stop working altogether, she merely takes a somewhat reduced caseload. Even in the ninth circuit, which has ten vacancies, only one judge has actually stopped hearing cases; the other have taken senior status and are still hearing cases. The total pool of federal judges available to hear cases is 1,188—a record number of federal judges. So this so-called “crisis” has been fomented, frankly, by partisan people at the White House and some at the Justice Department, and, frankly, it is beneath their dignity to do this. I will say that there is room for improvement, and certainly we on the Judiciary Committee want to do everything we can to improve it. I hope that those who manage the floor will feel the same way and do the same thing.

And some in the media have failed to read completely the Chief Justice's report, or, if they ignored all of the other aspects of the report.

In fact, his report centered on the problem of judicial workload—not judicial vacancies. He went on to compliment the Senate for enacting habeas corpus and prison litigation reform, two of the bills that I have pushed hard for. The Chief observed that these two vital reforms, which I sponsored, will greatly reduce the federal courts' workload. He also asked Congress to curb federal jurisdiction and to provide better pay for federal judges. I think we may be able to make progress on

both those fronts this session in addition to moving qualified judicial nominees.

I was disappointed to read in the Washington Post a week or so ago that the Clinton White House, “galvanized by the critique by Chief Justice Rehnquist,” has tapped communications director Ann Lewis to head a “fullscale political confrontation” over judicial appointments. [Washington Post, Jan. 16, 1998]. According to the Post, part of the so-called “campaign” plan is to paint Republicans as anti-women and anti-minority.

There is no depth to which they will stoop in trying to win political points down there. Frankly, I don't think the American people buy that.

This is certainly a poor way to begin what I hope will turn out to be a cooperative effort to confirm federal judges. We should not play race or gender politics with judges, and I personally resent that. I have never considered, much less kept track of, the race or gender of the nominees that have been submitted for the Committee's approval. And I don't think anyone else does. I oppose, and support, nominees on the basis of their professional qualifications and their commitment to uphold the rule of law—their commitment or lack of commitment. In the final analysis, all that matters is whether a nominee will make a good judge. I hope this is the standard the White House uses as well.

Nor will the Judiciary Committee, under my stewardship, push nominees through just for the sake of filling vacancies. Only recently, after the Judiciary Committee had expeditiously reviewed and held hearings on two nominees, did information surface that caused one of those nominees to withdraw and that places the other nominee's confirmation prospects in jeopardy. There is a good deal of background research that must be done by the Judiciary Committee before we can send a nominee to the floor. If the Committee fails to do the groundwork, it fails the Senate, and prevents this body from fulfilling its constitutional duty.

And it is no secret that Senators rely on us doing this duty in a bipartisan way, and I believe for the most part we have.

The reality, of course, is that the Republican Senate has confirmed the vast majority of President Clinton's judicial nominees. Even the Washington Post expressed dismay over the administration's efforts to politicize the nominations process, writing on its editorial page that the campaign could “grind the nominations process to a halt.”

So I urge the White House to reconsider their plans to politicize the Federal judiciary and the process because, if they do, I think they are going to have nothing but problems up here. I would like to help them. I would like to be cooperative. I would like to make sure that good nominees get through expeditiously and in the best way.

Last year I sought to steer the confirmation process in a way that kept it a fair and principled one and exercised what I felt was the appropriate degree of deference to the President's judicial selections and appointees. It is in this spirit of fairness that I will vote to confirm Judge Aiken.

Conducting a fair confirmation process, however, does not mean granting the President carte blanche in filling the Federal judiciary. It means assuring that those who are confirmed will uphold the Constitution and abide by the rule of law.

Based upon the committee's review of her record, I believe Ann Aiken to be such a person. Now, Judge Aiken likely would not be my choice if I were sitting in the Oval Office, but the President has seen fit to nominate her. She has the bipartisan support of both Senators from Oregon, and the review conducted by my committee suggests that she understands the proper role of a judge in our Federal system and will abide by the rule of law. She has personally assured me that she will, which goes a long way towards obtaining my vote here today.

I will also state that both Senators have actively advocated in her behalf, especially the distinguished junior Senator from Oregon, Mr. SMITH. He has continuously fought for her—fought for her right to have her nomination hearing, fought for her right to be heard in that hearing, and fought for her right to be passed out of the committee and on to the floor. I notice that he is here today to fight for her confirmation on the floor.

Based on the committee's review of the record, I believe that Judge Aiken is a good choice. In fact, when asked whether there were any so-called constitutional rights that existed independent of the Constitution itself, Judge Aiken replied "No, sir. The Constitution is one of the most elegantly written documents. The words of the Constitution are clear. It expresses the rights that are given. I find no need to look beyond those express words and the document itself."

This is precisely the type of answer I would expect of any Federal judicial nominee. Of course, sometimes people say things they do not mean. But I am willing to give this nominee as well as any nominee the benefit of the doubt unless the evidence is overwhelmingly to the contrary.

It is also significant to me that when asked what judge or justice has most influenced her thinking, she replied, "Justice Felix Frankfurter, because of his staunch adherence to the principle of judicial restraint and his reluctance to substitute the inclinations of the court for the express will of the legislature."

She has demonstrated to me that she understands the proper role of a Federal judge in our constitutional system. But more than that, it is important that a judge give more than lip service to principles of judicial re-

straint. Rather, a good judge will internalize and abide by those principles. I have no reason to believe that Judge Aiken will not do precisely that.

Moreover, I do not think anyone seriously believes that Judge Aiken is not qualified to sit on the Federal bench. She is currently a judge on the Oregon circuit court. She attended the University of Oregon both for her undergraduate and juris doctorate degrees, and she received a master's degree from Rutgers University. Prior to her appointment to the bench, Judge Aiken practiced largely in the area of domestic relations law. She focused on child custody, foster care and family preservation cases. As anyone who has ever engaged in the practice of law knows, domestic disputes of this type truly require the wisdom of Solomon.

In sum, I join Senators SMITH and WYDEN in supporting this nominee and once again ask the White House to work with, not against, the Senate in seeking out qualified individuals to serve on the Federal bench.

With that, I notice my colleague, the ranking member on the committee, is here, and I will yield the floor.

Mr. LEAHY. I suggest the absence of a quorum.

Mr. SMITH of Oregon addressed the Chair.

Mr. LEAHY. Mr. President, I do want to respond. If the Senator from Oregon could withhold and let me put this quorum call in for just a moment, I am then going to call it off.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. LEAHY. Mr. President, the Chief Justice of the U.S. Supreme Court has spoken out forcefully on the judicial vacancy crisis that is plaguing our Federal courts. He is correct that: "Vacancies cannot remain at such high levels indefinitely without eroding the quality of justice that traditionally has been associated with the Federal judiciary."

Partisan and narrow ideological efforts to impose political litmus tests on judicial nominees and shut down the judiciary have to stop. They hold no place, whether you have a Democrat as President or a Republican as President. The judiciary should not be part of a partisan or ideological power struggle. And I think that all of us as Senators in the most powerful democracy history has ever known have a stake in keeping an independent judiciary.

Now, we begin 1998 still facing vacancies of about one out of every 10 judgeships. More than a third of these are what are called judicial emergencies. They have been empty for more than a year and a half. Unfortunately, during the last 3 years in the Senate, under the control of my friends across the

aisle, the Senate has barely matched the 1-year total of judges confirmed in 1994 when we were on course to end the vacancy gap.

In the 1996 session, the Senate confirmed only 17 judges, none for the Federal courts of appeals. We began last year with the Chief Justice of the United States Supreme Court expressing in the year-end 1996 report on the Federal judiciary his "hope" that the Senate would "recognize that filling judicial vacancies is crucial to the fair and effective administration of justice."

Through the course of last year, at virtually each meeting of the Judiciary Committee, certainly at each confirmation hearing, and in a number of statements on the Senate floor, I urged the Senate and the Republican leadership and those responsible for holding up much-needed judges to abandon what I saw as ill-advised efforts.

In July, seven national lawyer organizations spoke out. In August, the Attorney General spoke about the "vacancy crisis that has left so many Americans waiting for justice," and "the unprecedented slowdown of the confirmation process" and its "very real and very detrimental impacts on all parts of our justice system."

Last September, the President of the United States pointed out the dangers of partisan politics infecting the confirmation process. He called upon the Senate to fulfill its constitutional duty and end "the intimidation, the delay, the shrill voices."

In his 1997 year-end report, Chief Justice Rehnquist focused again on the problems of "too few judges and too much work." He noted the vacancy crisis and the persistence of 26 judiciary emergency vacancies, and he observed: "Some current nominees have been waiting a considerable time for a Senate Judiciary Committee vote or a final floor vote. The Senate confirmed only 17 judges in 1996 and 36 in 1997, well under the 101 judges it confirmed in 1994."

Last night in his State of the Union Address the President of the United States again returned to the matter of the vacancy crisis and the need to provide the courts with the judges and other resources they need effectively to administer Federal criminal and civil justice across the country. The President did more than talk yesterday. He also sent us another dozen judicial nominees to help fill the vacancies. That brings to 54 the number of judicial nominees that are pending currently before the Senate.

The Senate still has pending before it 11 nominees who were first nominated 2 years ago, including five who have been pending since 1995. We are finally going to vote on one of them this afternoon, Judge Ann L. Aiken.

I see my good friend, the Senator from Oregon, Mr. WYDEN, in the Chamber. I must say, Mr. President, as much as I like Senator WYDEN, it got to the point that I almost hated to see him

coming down the hall because he pounded so often on me: "Let's get this fine woman confirmed." He has been doing this year after year. He has expressed to me and to other Senators and to the leadership of the Judiciary Committee: "Let's get this woman confirmed." And he has expressed to me how well qualified she is, how superbly qualified she is. He has made his case with passion and with integrity, which is his nature. I say to him, while I am always hesitant to predict any vote, I suspect that she is going to be confirmed overwhelmingly today, and I applaud the Senator for not giving up, I applaud the Senator from Oregon for not giving up all those years that he fought so hard to get her here. I know that both he and the other Senator from Oregon, who is also in the Chamber, Mr. SMITH, will be voting for her with great enthusiasm.

But there remains no excuse for the Senate's delay in considering the nominations of such outstanding individuals as Prof. William A. Fletcher, Judge James A. Beaty, Jr., Judge Richard A. Paez, M. Margaret McKeown, Susan Oki Mollway, Margaret M. Morrow, Clarence J. Sundram, Anabelle Rodriguez, Michael D. Schattman, and Hilda G. Tagle.

I mention these people because all of these nominees have been waiting at least 18 months, some more than 2 years, for Senate action.

Last year the Senate confirmed 36 judges, but that has to be seen in relation to the 120 vacancies through the course of the year and the 55 judgeships in addition to the current vacancies that the Judicial Conference urged Congress to authorize in order to meet the workload demand of all of the new laws that we have passed and, of course, a growing country.

Last year's confirmations did not approach the 58 judges confirmed in the 1995 session or even keep up with the vacancies that came from normal attrition.

Last year the President sent us 79 judicial nominations. The Senate completed action on fewer than half of them. The percentage of judicial nominees confirmed over the course of last year was lower than for any Congress over the last three decades, possibly any time in our history. Left pending were 42 judicial nominees, including 21 to fill judicial emergencies.

Last year the Senate never reduced its backlog of pending judicial nominees below 20 and at the end of the year had a backlog of over 40 nominees. With the dozen additional nominees received yesterday, the Senate's backlog of nominees as we begin the year has topped 50. The Administration is demonstrating its resolve to nominate good people to fill these vacancies. They are doing their job.

It is up to the Senate now to do its job. Have the hearings. Vote them up or vote them down. Just don't leave them in limbo. If we don't like the nominee that the President has sent

up, then vote him or her down. We are used to voting around here. We can do that very easily. But don't leave them sitting there never knowing what is going to happen.

In connection with the President's national radio address last September 27, we finally quickened the pace of judicial confirmations, and during the last 9 weeks of the Senate's last session the Senate held five confirmation hearings and confirmed 27 judges. I compliment the chairman of the Senate Judiciary Committee for making that possible.

In response to the criticism of the Chief Justice, though, the chairman has argued that the Senate is on a steady course and making steady progress. But it was only in the last 9 weeks of the last session that we were able to achieve a pace that can make a difference. I urge my good friend, the chairman—and he is my good friend—to help the Senate maintain that pace this year.

If we can maintain the same pace we had in the last 9 weeks of the last session, we can end the judicial vacancy crisis that now threatens the administration of justice by our Federal courts. I will commit myself to work with him in any way he wants to do that—have hearings on weekends, hearings in the evening, whatever he chooses—so that we can go forward and maintain the same pace. I compliment the chairman for the pace of those last few weeks. I urge him to do the same for this year. That is the challenge that lies before us as Congress begins anew.

The Chief Justice compared the past 2 years of Senate inaction to the record of the 1994 session. That was a Democrat-controlled Senate. We worked hard to consider and confirm 101 judges, including a Supreme Court Justice. To make a difference, however, the Senate this year, 1998, need only maintain the pace it reached last fall, 27 judges every 9 weeks. That really should be the measure of the Senate's effort this year. Do what we did at the end of the session last year, do it throughout this year, and we in the Senate can make a difference for the judicial system.

It will be easy to monitor our progress. Any week in which the Senate does not confirm three judges is a week in which the Senate is failing to address the vacancy crisis. Any fortnight in which we have gone without a judicial confirmation hearing marks 2 weeks in which we are falling farther behind.

I am delighted that the majority leader and the chairman of the Judiciary Committee have scheduled three nominees for consideration by the Senate today. I thank the majority leader and thank the Senator from Utah for their cooperation and attention to these matters. I look forward to prompt Senate consideration of the other five nominees if they are still pending on the Senate calendar. I

would also be willing to bet that most of these nominees would not get even a tiny handful of votes against them and that they are going to pass overwhelmingly.

I note that the chairman of the Judiciary Committee has noticed a judicial hearing for next week. This notice, and what is happening today, are positive developments. They are signs that the Senate is taking to heart its constitutional duty to consider judicial nominees without further delay. While I hope it does not hurt him on his side of the aisle, I want to commend the Senator from Utah for his actions. I suspect if the two of us were allowed, without any of the political pressures on either side, to work this out, we could probably move ahead more quickly.

But the warning from the Chief Justice in his year-end report is more than a question of numbers. This is the responsibility every Senator has, Republican or Democrat. Our responsibility first and foremost is to the country, not to individual parties. Our solemn oath is to uphold the Constitution of the United States. That is what should motivate every one of us here. We have to look at this country, the greatest exercise of democracy history has ever seen, the most powerful democracy history has ever known, and recognize that it stays that way because of the checks and balances between the legislative, judiciary and executive branches. A hallmark of that has been the independence, throughout our 200-plus year history, of the Federal judiciary. If we allow this to become a partisan football, this confirmation of judges, then the independence and the integrity of the Federal judiciary is being threatened.

The nominations backlog that perpetuates a judicial vacancies crisis is a function of the targeting of the judicial branch. It was the executive branch that was targeted and shut down 2 years ago. Pressure groups—and it is a fact—within the right wing of the Republican Party have been formed and money has been raised to the cry of "killing" Clinton judicial nominations. That would be just as wrong if the same thing was being done by ideological groups seeking to kill a Republican President's nominations. Constitutional amendments to undercut the independence of the judiciary have been introduced. Ideological impeachments have been threatened. The Republican leadership in the House speaks openly about seeking to "intimidate" Federal judges.

The confirmation process is not immune from politics, but a particularly virulent strain has now infected this body and has politicized the process to the point of paralysis, and this threatens the integrity and the independence of the judiciary. It encumbers the judicial confirmation process. In too many courts, judges delayed means justice denied. Without judges, courts cannot try cases, they cannot sentence the guilty or cannot resolve civil disputes.

For more than 200 years a strong and independent Federal judiciary has served as a bulwark against overreaching by the political branches of the Government. It has been the protector of our constitutional rights and liberties. True conservatives should want nothing more than a truly independent judiciary, because it is the bulwark of our individual freedoms.

I hope this new year will bring the realization by those who have started down this destructive path of attacking the judiciary and stalling the confirmation of qualified nominees to the Federal bench that those efforts do not serve the national interest. I hope we can remove these important matters from partisan, ideological politics. I hope today will move us forward in the interests of the fair administration of justice.

I yield the floor.

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

Mr. HATCH. Will the Senator yield to me for just a couple of additional remarks, and then I will yield to the distinguished Senator?

Mr. SMITH of Oregon. I will.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I feel I should make a few more remarks here, because I would not want this day to pass without mentioning Barry Silverman, who is one of the judges nominated for the Ninth Circuit Court of Appeals, and, of course, Richard Wayne Story, who was nominated for the Northern District of Georgia. Each of these nominees has the support of his home State Senators and each is well qualified for the Federal bench. So I want our colleagues to know that.

Barry Glen Silverman was nominated for United States Court of Appeals for the Ninth Circuit. He graduated summa cum laude in 1973 and got his J.D. in 1976 from Arizona State University. He is currently a U.S. Magistrate Judge in the U.S. District Court for the District of Arizona. He has served as a Superior Court Judge both in Phoenix and Maricopa Counties, and he has also served as a prosecutor in Phoenix.

He is the recipient of numerous awards including the 1991 Henry Stevens Award, which recognizes trial judges who represent the finer qualities of the judiciary.

His nomination is not the least bit controversial, and he is supported by Senators KYL and MCCAIN.

Richard Wayne Story has been nominated for United States District Court for the Northern District of Georgia. He received his B.A. in English from LaGrange College in 1975, and his J.D. from the University of Georgia in 1978. He is presently a sitting judge on the Superior Court bench in the Northeastern Circuit of Dawson and Hall Counties of Georgia. Prior to that he served as Juvenile Court Judge and as a part-time Special Assistant Attorney General for the State of Georgia. He was also a member of the firm of

Kenyon, Hulsey, and Oliver for eight years.

His nomination is not controversial, and he is supported by Senator COVERDELL and Senator CLELAND.

So I hope that our colleagues will vote for all three of these judges. I think all three of them deserve support. We will move on from there.

I yield to my colleague from Oregon.

The PRESIDING OFFICER. How much time does the Senator yield to the Senator from Oregon?

Mr. HATCH. I yield 10 minutes. How much time is remaining to both Senators?

The PRESIDING OFFICER. Each side has approximately 40 minutes.

Mr. HATCH. I yield such time as the Senator needs, but at least 10 minutes.

Mr. SMITH of Oregon. Mr. President, colleagues, I rise today in support of the nomination of Judge Ann Aiken to the Federal district bench in Oregon.

Before I comment on her nomination, though, I would like to thank and compliment my friend, the distinguished chairman of the Judiciary Committee, Senator HATCH. I have gone to him repeatedly about the three vacancies in the State of Oregon and the challenges they create in our judicial process. Since my time here, against some opposition, Senator HATCH has in every instance acted responsibly, and helped me to move the Oregon nominees along so we can fill these vacancies and get rid of a considerable backlog that we have in our State.

I would also like to thank the majority leader for scheduling a vote today so we can vote up or down on this and other nominations. And I would like to thank my colleague, RON WYDEN, who, before my admission to this body, was laboring here on behalf of Judge Aiken.

To my colleagues on the Republican side, those who may have a question about the qualifications or the decisions or the political leanings of Judge Aiken, I would like to point out to you the impressive list of letters and phone calls I have received from both Democrats and Republicans on her behalf. They include Senator Mark O. Hatfield; Senator WYDEN; Deanna Smith, chair of the Oregon Republican Party; Mark Abrams, the chairman of the Oregon Democratic Party; John Kitzhaber, the Governor of Oregon; Hardy Meyers, Oregon Attorney General; Jack Roberts, Oregon Republican State Labor Commissioner; five former Governors of both parties; 20 former presidents of the Oregon Bar Association; the Oregon Association of District Attorneys; the Oregon State Police Officers Association; the Lane County Peace Officers Association; the Eugene Police Employees' Association; and all the presiding judges under whom Judge Aiken has served. It is an impressive list of people, all attesting to her worthiness and qualification to be a Federal judge.

I believe that they based their decision to support Judge Aiken for the very reason I based mine—on her very

impressive record of public service. She has served the people of Oregon both on and off the bench through her dedication to the health and safety of children in Oregon and throughout our country. She has served on numerous councils and boards of directors. To note a few, she was recently elected to the board of the National Network of Child Advocacy Centers. She is a current member of the National Council of Juvenile and Family Court Judges. She is a current member of the Relief Nursery board of directors. This charitable institution is particularly near and dear to my heart and is a private organization that provides preschool classes, parent education and respite care for families at risk for child abuse. This organization reaches out to all at risk children and families in our communities, and Judge Ann Aiken is a champion of this private-public partnership.

In addition, since 1993 she has been a member of the Task Force on Child Fatalities and Critical Injuries, and a member of the Lane County Domestic Violence Council.

While I have not served on these councils with Judge Aiken, I would like to take a moment to explain why I believe that she is an excellent nominee for the U.S. District Court for Oregon.

I first came to know Judge Aiken in 1994. We were both appointed by a Democratic Governor to serve on the Governor's Commission on Juvenile Justice when I was the Senate Minority Leader in our State legislature. I worked with her on this commission to address the issue of juvenile crime. Among a handful of appointees, she stood out as a superstar. I was impressed with her fairness, her experience, and her insight as to how we can work to help the people of our state, particularly our young children.

Over the course of the next election cycle, I became the Oregon State Senate President. And with her involvement, and the work of this commission, we produced a bill called Senate bill 1. It produced some of the toughest juvenile crime laws in this country.

Since that time, Oregon has revisited the whole issue of crime in a dramatic way through a number of ballot initiatives and legislative actions—and crime is falling in my State. Although these initiatives occurred after 1995, Judge Aiken has been tough on crime throughout her career, and I would encourage my colleagues to review her record of strict sentencing practices.

In 1993, Judge Aiken sentenced a 28-year-old woman who was involved with a brutal beating and murder of a 70-year-old man to 20 years in prison—twice the amount of time as was called for by the Oregon state sentencing guidelines.

In 1995, Judge Aiken sentenced a repeat child molester to the maximum sentence of 58 years in prison.

In 1995, Judge Aiken sentenced a 43-year-old man to 31 years for felony sex

abuse crimes involving two girls aged 7 and 9, invoking a law that permits judges to double the prison term normally afforded by State sentencing guidelines in cases with aggravating circumstances.

Before our recess, my friend and colleague from Wyoming, Senator ENZI, raised some concern about one particular case that troubled him. I will admit to you that it troubles me. But I want Senator ENZI and all of my colleagues to know that their criticism of Judge Aiken in this case should not be of her but of the Oregon law that applied at that time, because she followed the law. And some of my colleagues, frankly, appropriately, criticize judges who become frustrated legislators and use their judicial robes to write new law. Judge Aiken simply did not do that. She followed the Oregon law.

It involved a very horrible case. It involved a circumstance where a man, 26 years old, Ronny Lee Dye, was convicted of first-degree rape of a 5-year-old child and was sentenced to 90 days in jail and 5 years of probation plus the payment of a \$2,000 fine.

With the judicial guidelines that she had to operate within, she had a choice to make. She could send him directly to prison to serve out a 5-year sentence or she could put him in a county facility where he would receive sex-offender treatment. She made a judgment. Her judgment was that the society of Oregon would be better served if this man had treatment. You can call that into question now, but she followed the law.

Later, this man was arrested for drunk driving and ultimately served a 5-year term in prison.

I ask myself in this case, however, would I have made that call? Maybe not. But she did. And she did it according to the direction of the Oregon guidelines that were given to her. But my complaint was with the law that allowed that, not with her discretion in trying to establish what was in the best interests of society and justice.

Finally, Mr. President, I note that one of the reasons that Judge Aiken appeals to me as a person and as a judge is a reason very personal. As I have come to know this woman, I have come to know this mother of five sons, and she is a good mother.

I am one of 10 children. My mother has five sons. And while my mother did not always act perfectly on the issues of justice and mercy, she acted nearly so. And it seems to me that what I see in her are some of the qualities that I would want on the Federal bench. Because a mother of five sons knows how to arbitrate family difficulties and what it means to raise honorable citizens to serve in our society.

So I ask my colleagues to see this woman's record in its totality—not by the outcome of one case. I would never come to this floor and advocate for anyone who was soft on crime. And if this woman's record indicated that, I would not support her in this effort

today. But it does not. It represents a person who is tough on crime, who has served to make her State's laws tougher and who has a record of putting away violent people for a long time.

I wish that one case were different, but it is not. But the man has served prison time and has received sex-offender treatment. And now the issue is, should we confirm Ann L. Aiken to the United States district court? I say affirmatively and with conviction, yes.

I ask for your support of her and thank the President for this time.

I yield the floor.

Mr. WYDEN addressed the Chair.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, from the time controlled by Senator LEAHY, I yield myself up to 15 minutes.

The PRESIDING OFFICER. The Senator is recognized for 15 minutes.

Mr. WYDEN. Thank you very much, Mr. President.

Mr. President, I come to the floor today to speak in support of a superb State judge, a pillar in her community, a devoted mother of five wonderful sons and a personal friend, an individual who I believe will make an outstanding Federal district judge, Judge Ann L. Aiken.

Let me begin by expressing my thanks and gratitude to the Senate Judiciary Committee and particularly to Chairman HATCH and the ranking Democrat, Senator LEAHY. Both Chairman HATCH and Senator LEAHY carry an enormous workload, and I want to express my appreciation to both of them for all the time and good counsel that they have given Senator SMITH and myself with respect to Oregon's needs on the Federal bench.

I especially want to thank at this time my colleague from Oregon, Senator SMITH, for his truly extraordinary efforts on behalf of Judge Aiken. I think this Senate can see from Senator SMITH's eloquence and his commitment to Judge Aiken how strongly he feels about this appointment. He has made extensive efforts with our colleagues to ensure that Judge Aiken would be before the U.S. Senate.

I want to express my appreciation to Senator SMITH for all of those efforts on Judge Aiken's behalf and to join Chairman HATCH in saying that I do not believe we could be here today without the extraordinary work of Senator SMITH. I want him to know how much I appreciate those efforts. He knows Judge Aiken extremely well. Those joint efforts date back for years, as Senator SMITH has stated, and it has been a pleasure to work with him on this, dating back to the days when he was president of the Oregon State Senate.

Also at this time, I want to thank Congressman PETER DEFAZIO, a personal friend of Judge Aiken's who has worked with her on many important community activities. Congressman DEFAZIO has been a vociferous advocate of Judge Aiken's candidacy, and

he has done a good job of keeping the debate focused on getting Judge Aiken to this point. And I want to express my appreciation to him.

Mr. President, Judge Aiken's journey to be considered on the floor of the Senate has been a long one, and not just in terms of the 3,000 miles she traveled from Oregon for those confirmation hearings.

Her journey formally began in 1994, when I put together a bipartisan group of Oregonians to review her qualifications.

In January of 1995, I recommended to President Clinton, with the strong bipartisan support of the Oregon congressional delegation, that Ann Aiken be named to the Federal bench.

As Senator SMITH has noted, Judge Aiken's support for this nomination spans the political spectrum. Liberals are for Judge Aiken, conservatives are for Judge Aiken, moderates are for Judge Aiken, Democrats, Republicans; across all political boundaries, Oregonians have lined up behind this outstanding judge.

It is my view that these many endorsements are pouring in because of the hard work and thoroughness that has marked Ann Aiken's career to date. And I would especially like to reference her work on crime.

Mr. President, and colleagues, this is an especially important issue to me. Before I came to the U.S. Congress, first as a Member of the House, I was co-director of the Oregon Gray Panthers, a senior citizens group. And I found that many of these older folks were afraid to have meetings after 4 or 5 at night because of their fear of crime. And so I vowed, as a Member of Congress, that I would put a specific focus on law-enforcement issues in my service in the Congress.

As a Member of the House, I joined Senator SPECTER in authoring the career criminal law, a law which prescribes tough punishments and no parole sentences for career criminals.

Last Congress, I joined Senator HATCH in his efforts, his yeoman's work, to deal with the scourge of methamphetamines. And I have repeatedly—repeatedly—voted to impose the death penalty on heinous crimes in our society.

So I take a back seat to no individual with respect to support for tough law enforcement. And I want to tell my colleagues in the U.S. Senate that Judge Aiken did not win all that support from law-enforcement groups in Oregon by accident. She won the support of the Association of District Attorneys and the Police Officers' Association because of her toughness on crime.

As my colleague, Senator SMITH, has noted this morning, repeatedly she has sought to impose the toughest possible sentences. And because Judge Aiken has a true mastery of the Oregon sentencing guidelines, she frequently is able to impose sentences that are significantly longer than any other judge on the bench.

She has worked for a new approach to juvenile justice that ensures that young people who commit crimes have to face consequences. It would change the juvenile justice system as we know it. Youngsters would understand that the justice system is based on personal responsibility and individual accountability when they perpetrate those offenses. And the changes that have been made came about because Judge Aiken worked on a bipartisan basis with leaders of our State like Senator SMITH to get that done.

So she did not win all that support from law enforcement by accident. And she would not have the bipartisan support of her two U.S. Senators today were it not for the fact that she took a tough and fair approach with respect to law enforcement.

Judge Aiken is also a person who knows how to squeeze an hour out of a minute. Not only does she maintain a rigorous judicial schedule, but the list of task forces that she has chaired and the boards on which she has served number in the dozens. She has been on the board of directors of Court-Appointed Special Advocates (CASA), a program in which we take special pride in our State because it allows us to advocate for young people in our society and focus on trying to help them get their lives on track.

On top of all this, somehow she finds time to be a caring and involved mother for her five boys. How she manages to juggle all these activities is beyond my comprehension, but the fact that she can serve as a judge, a community leader, and a devoted mom all simultaneously is yet more evidence of her fitness and her ability to serve as an outstanding Federal district judge.

Ann Aiken is also an expert on family law. She has been a leader in the founding of a model program for youngsters known as the Relief Nursery. In that effort, she has brought together leaders from across her community to help families that were about to crack apart. Recently in fact, the successes of the Relief Nursery in keeping families together were profiled by Peter Jennings on World News Tonight.

I am certain that Judge Aiken will bring to the Federal bench the same fairness, toughness and integrity that she has brought to her work as a State judge and a specialist in family law. And I am certain that Judge Aiken will bring to the Federal court the intellect, intensity and drive that has made her one of our State's most respected jurists.

Let me wrap up by saying, as Senator SMITH has touched on as well, this nomination is particularly important since Oregon already has two vacancies on the district bench and will be facing a third in April of this year. Failure to fill these openings in a timely manner is going to put an enormous strain on the Federal courts in Oregon. It is time to act and time to act swiftly.

My colleagues, you have before you a tough judge and a fair one, one com-

mitted to seeing that justice is carried out in an impartial way no matter what the accusation is. She is going to make an exceptional Federal judge. She will bring honor to her community and her country. Therefore I urge you, as Senator SMITH has, that the Senate move today on the candidacy of Judge Ann Aiken. She is a judge of extraordinary ability. She has earned this post.

I yield the floor.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Wyoming.

Mr. ENZI. Mr. President, I yield myself up to 10 minutes.

The PRESIDING OFFICER. The Senator is recognized for 10 minutes.

Mr. ENZI. Mr. President, I rise to oppose the nomination of Judge Ann Aiken as the district court judge for the district of Oregon. I asked for a rollcall vote because I want to be on record as opposing this nominee. I put a hold on this nominee before we left on recess, with adequate time, I assure, for a rollcall vote. I made that a public, not a secret, hold. I wanted anyone interested in the case to know that I wanted a rollcall vote. I know that message got out. I was told that a rollcall vote would be OK, and I am sorry that there was not time or sufficient people around to have a rollcall vote prior to the time that we left.

I did make a statement on the judge, and I want to reiterate some of my concerns. While I do not question Judge Aiken's experience or academic qualification to sit on the Federal bench, I do have serious concerns about her judicial philosophy as she applied it as a State trial judge in Oregon.

One particular case has been mentioned this morning, and I appreciate the extra information that has been passed out at this time. That particularly tragic case perhaps best illustrates my concern, and I have looked at five other cases as well that I don't have more information on. In the case of the State v. Ronny Lee Dye, a 26-year-old man was convicted, convicted, of first-degree rape—first-degree rape—of a young 5-year-old girl. Instead of sentencing this convicted rapist to State prison, Judge Aiken sentenced him to 90 days in jail and 5 years probation, plus a \$2,000 fine. The other option was 5 years in prison.

There was concern about whether there would be enough rehabilitation in prison. The option was there for 5 years in prison and the effort to get a rehabilitation program in that prison. If I were the parents of a 5-year-old child that was raped and knew the convicted rapist could receive between 90 days and 5 years, I would have serious concerns about anybody who voted for that judge. Out of a concern for those parents, I am opposed to this nomination. According to the local papers, Judge Aiken did not want to sentence Dye to State prison because the prison did not have a sex-offender rehabilitation program. There are folks out in

my part of the country that would insist on some other kind of rehabilitation. Moreover, she believed that probation following the jail term provided a stricter supervision than the parole that would have followed a prison sentence. Less than 1 year after his conviction for rape, Dye violated his parole by driving under the influence of alcohol and having contact with minor children without permission of his probation officer. I believe Judge Aiken's handling of this case and others illustrates an inclination towards an unjustified leniency for convicted criminals.

Mr. President, I do not pretend to be able to predict with any degree of accuracy how this nominee or any other will rule while on the Federal bench. In exercising our solemn constitutional duty to advise and consent on the President's nominations for the Federal courts, we have only the past action, statements and writings to guide our deliberations. Moreover—and this is one of my big concerns—since Federal judges have life tenure and salary protection for the rest of their lives while they are in office, we have but one opportunity to voice our concerns and disapproval of a judge's record.

Now, I understand that she has been repentant of what she did at an early time in her judgeship. But I have got to tell you that I think that we give out Federal judgeships for service, not for repentance. We talk about law and order. We have to back up that law and order through the court system as well, not just with words in this Chamber.

I, for one, cannot vote to confirm a nominee to the Federal court who I believe is inclined to substitute his or her personal policy preferences to those of the U.S. Congress or any other State legislature. I have strong concerns that Judge Aiken, if confirmed, would be inclined to this type of judicial activism. For this reason, I asked for a rollcall vote.

I appreciate the opportunity for me to go on record as being against the confirmation of Judge Aiken.

I yield the floor.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. SMITH of Oregon. I thank my colleague from Wyoming for this exchange this morning, and appreciate the genuineness of his concern.

I simply rise to say that Judge Aiken has admitted that early in her career that was a judgment she made, under the statute and within the guidelines, and that in hindsight she would have made a different decision. I simply say that to judge her entire career on the basis of this one case would not be fair. It would not be fair to her, would not be fair to my State, and I think would not be fair to the judicial system of the United States.

I think Caren Tracy, who has served as a local prosecutor in many cases in Judge Aiken's courtroom best describes her strict sentencing practices by stating, "With regard to crimes of

violence, violations of trust relationships, and crimes against children, Judge Aiken delivers sentences that include periods of incarceration that are significantly longer than any other judge on the Lane County Circuit Court Bench. She has a mastery of the Oregon sentencing guidelines which enables her to ensure maximum incarceration for individuals deserving of such sentence. Sentences of thirty to forty years for child sex offenders and criminals who commit acts of violence are the norm for her courtroom. I never have any concerns, as a prosecutor, coming before her for sentencings on significant crimes. The bottom line is she is not a light hitter."

I believe that statement reflects Judge Aiken's career in its totality and reflects her commitment to serving justice. I encourage my colleagues to support her nomination and am confident that she will reflect credit upon this country and reflect credit on the criminal justice system.

I yield the floor.

Mr. WYDEN. Mr. President, I ask unanimous consent to speak up to 10 additional minutes on Senator LEAHY's time.

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

Mr. WYDEN. Let me also join in the remarks expressed by my colleague, Senator SMITH, with respect to our colleague from Wyoming. I know he is sincere in his views.

I will talk about what Judge Aiken faced with respect to that Dye case. Judge Aiken had two choices in front of her. Neither were ideal. She chose the one that in hindsight would be different than the one that Senator SMITH and I would have chosen. Both of us have been concerned about the case. To her credit—in my view, to her great credit—Judge Aiken has indicated to Senator SMITH and me that she would have handled that case differently. Her commitment to tough law enforcement has been proven because since that case she has been a tough judge. She has often exceeded the sentencing guidelines, and she has shown that she is going to be capable of great growth as a judge.

I say to our friend from Wyoming, who among us as new Members of the U.S. Senate would not possibly take back a vote early in our career? We are constantly faced with tough decisions in the U.S. Senate, decisions where you have before you a couple of choices, neither of them being ideal. Judge Ann Aiken, in the Dye case, tried to make the call to the best of her ability. In my view, even more importantly, she showed great growth, she showed a willingness to evaluate the facts in light of additional time and additional opportunities to consider her decision.

So we are then faced with the question: Do you throw out the prospect of an outstanding career on the Federal bench because of one case, one case where an individual has said, "If I could do it again, I would have done it

differently"? We wouldn't say a Member of this body should be excluded from the possibility of further service in the Senate because they would have cast one vote differently had they had the choice. We evaluate Members of the U.S. Senate on the totality of their records. On the totality of her record, Judge Aiken is an outstanding individual, an individual who will be tough on crime when she serves on the Federal bench.

Mr. President, I see Chairman HATCH is on the floor. I know he had to leave the floor during our earlier remarks. I express to him my personal gratitude for all of the help and effort he has given Senator SMITH and me on this matter again and again. Chairman HATCH has about as hefty a workload as you can imagine for a human being, but he has made time to assist Senator SMITH and me. We are very appreciative of all the good counsel and help you have given us as new Members of the U.S. Senate.

In closing, I especially want to express my appreciation to him for that help and counsel.

Mr. President, I yield the floor.

Mr. HATCH. Mr. President, I thank my colleague for his kind remarks. They mean a lot to me because this job of being Judiciary chairman isn't all a piece of cake, as anybody can see. I personally appreciate those kind remarks.

I want to compliment both of the Senators from Oregon for their active work on behalf of Judge Aiken. Without their work, I don't think Judge Aiken would be here today. I personally express that so that she will fully appreciate how hard the Senators from Oregon have worked. They have certainly, along with Judge Aiken, convinced me that she will make an excellent judge. I intend to fully support her. I hope my colleagues will also.

Mr. ASHCROFT addressed the Chair.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. ASHCROFT. I rise today to state my opposition to the nomination of Ann Aiken to be United States District Judge for the District of Oregon, and to note my support for the other two judges the Senate will consider today.

My principal basis for opposition to Judge Aiken's nomination is her sentencing decision in *State v. Ronny Lee Dye*. After finding defendant, 26, guilty of raping a 5-year-old girl, Aiken sentenced defendant to 90 days in jail, rather than substantial prison time, which was also an option under Oregon law.

As troubling as this sentencing decision is, her explanation of the decision is worse. She has explained that with a jail sentence she could ensure that Dye would receive psychological counseling, but she could not guarantee counseling if he went to prison. I find this type of social engineering from the bench troubling. The focus on what best serves the convicted rapist's needs should not be the basis of a sentencing

decision. I doubt that this is the kind of decision the people of Oregon want to leave to judges.

This decision is not ancient history or a rookie mistake. Judge Aiken made this unjustifiable sentencing decision in 1993, in the middle of her fifth year on the bench.

Let me be clear about one thing: This is not the worst nominee the President has sent to the Senate. There have been other nominees that pose even greater problems. The Senate will likely consider one in just a few weeks, Judge Frederica Massiah-Jackson of Philadelphia.

Judge Massiah-Jackson has used the language's worst profanity in open court, she has demonstrated leniency in sentencing and hostility to law enforcement, and in recent weeks, she has drawn the opposition of important local law enforcement officers of the Democratic Party, like Lynne Abraham, the Philadelphia District Attorney.

Ann Aiken is not as troubling a nominee as Frederica Massiah-Jackson. But that should not be the standard. We need to raise the bar on the President's judicial nominees. America deserves better. The Constitution vests the Senate with the critical responsibility to advise the President with respect to his judicial nominees and in appropriate cases to give its consent. I take that responsibility seriously.

The President is capable of making quality judicial appointments and, when he does so, he deserves the Senate's consent. The two other nominees we will vote on today—Richard Story (for the Northern District of Georgia) and Barry Silverman (for the 9th Circuit Court of Appeals)—both appear to be well-qualified nominees, and I plan to vote in favor of both.

However, I will vote against the Aiken nomination. For me, the bottom line is this: As we embark on a congressional session in which we plan to put the emphasis on protecting families and cracking down on violent crime, we should not begin the year by confirming a judge who sentenced a child rapist to 90 days in jail. We can demand more of the President's judicial nominees. The people of this country deserve better.

Mr. HATCH. Mr. President, I would like to respond briefly to the comments of Senator ASHCROFT on Judge Aiken's record. Senator SMITH, I believe, has already amply defended Judge Aiken's record. I want to add a few comments of my own here, if I can. My colleagues, Senators ENZI and ASHCROFT, have rightly criticized Judge Aiken for her ruling in the Dye case, in which during her first month on the circuit court bench, she gave the defendant what appears to be a fairly light sentence for the molestation of a 5-year-old girl. I agree with the criticisms of Judge Aiken's decision. She did indicate that she imposed the sentence in order for the defendant to receive treatment. In her opinion,

treatment was the only way she could prevent this individual from repeating his heinous crimes.

I seriously question the wisdom of her decision. But to her credit, Judge Aiken stated that if she had to do it all over again, she would have imposed a lengthy prison term. She recognized her mistake and she learned from it, and it was made in the early tenure of her judgeship.

A review of her record since the Dye case suggests that she has more than learned from this original error. I know, too, that some are troubled by Judge Aiken's comment to a young, violent criminal that he was "a victim of the community's lack of intervention." Well, what often gets lost in this criticism is that Judge Aiken also sentenced this defendant who had robbed people and threatened to kill them to the maximum range of penalties allowed under the Oregon guidelines. Given Judge Aiken's background in family law, her comment was not as unreasonable as some might think it seems.

So the question for the Senate is whether, in the face of a relatively clear record as a State judge and the overwhelming bipartisan support of the Oregon delegation, the Oregon bar, her colleagues on the bench, and the people of Oregon, the Senate should defeat this nominee because of one or two errant cases. I have to say, I think not. I hope none of us are going to be judged on one or two mistakes we might have made in our lifetimes. To the extent that these cases raise questions—and they do raise serious questions—I do not believe a strong case can be made that Judge Aiken has a record of exceeding the proper bounds of judicial authority or that she will attempt to legislate from the bench or act otherwise as an activist judge. Accordingly, I will vote to confirm Judge Aiken, and I urge all of my colleagues to do the same.

Now, in addition, I have had personal conversations with Judge Aiken, and I have to say she has impressed me greatly as someone who I think will act very properly on the Federal district bench. I agree with both Senators that she is going to be a very strong anticrime judge. I think her record shows that, in spite of these what some call "discrepancies," to which I think legitimate criticism can be lodged, I don't know of many judges who have been on the bench very long that somebody can't find some criticism to lodge against them, because judges sit in judgment. They have to "split the baby," so to speak, and make some decisions. In almost every case, somebody is going to be unhappy with their decision. If a judge ever shows leniency in this day and age, they are going to be subject to criticism by some. If the judge is too tough, that judge is going to get criticism from others. One side or the other is always going to find some fault.

But in this particular case, she more than adequately explains the situation.

In the first case, the Dye case, she admitted that if she had to do it all over again, she would have decided the case differently. Keep in mind that all people in the early tenures of their work life generally stumble and make a few mistakes. That is what happened here. But you have to judge these judges, and all nominees who may not be judges, on the totality of their lives' work and the totality of what they have done and not just defeat judges on the basis of one or two things with which we might legitimately disagree, especially when the judge has indicated a willingness to change and do things differently in the future.

There is no doubt that the judge erred in the Dye case. It was wrong to sentence the criminal to only 3 months in prison. But you have to Judge Aiken on her whole record. She has more than adequately explained that, as far as I am concerned.

We are definitely going to have some votes on judges this year where there will be real, legitimate reasons to oppose them, and the administration knows that. They understand that when they send some of these folks up, there might be opposition. But I don't think the opposition is justified against this judge. On the other hand, I respect my colleagues who feel otherwise, but I hope that our fellow Senators will vote for Judge Aiken.

UNANIMOUS CONSENT AGREEMENT

Mr. HATCH. Mr. President, I ask unanimous consent that at 2:15 p.m. today, the Senate proceed to executive session and a vote on the confirmation of the nomination of Calendar No. 454, Ann Aiken. I further ask consent that immediately following that vote, Executive Calendar Nos. 486 and 488 be confirmed and the motions to reconsider be laid upon the table and the President be notified of the Senate's action and the Senate then return to legislative session.

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

Mr. HATCH. All Senators should now be aware that there will be one rollcall vote beginning at 2:15 this afternoon. In order to accommodate a number of Senators' schedules, the remaining nominations will be confirmed without a rollcall vote. I thank all Members for their cooperation in this matter.

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

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

Mr. HATCH. Mr. President, I ask for the yeas and nays on the Aikens nomination.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

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

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

Mr. KYL. Mr. President, there has not been much conversation about one of the judicial nominees pending before us. I did want to make a few comments on his behalf. The reason for the lack of comments is that I believe he has the unanimous, bipartisan support of everyone here in the body. And I appreciate that because I, too, enthusiastically endorse the nomination of U.S. Magistrate Judge Barry Silverman of the State of Arizona to the Ninth Circuit Court of Appeals, and I would like to make a few comments on his behalf at this point.

Judge Silverman brings a proven judicial track record to this position. For the past 2½ years he has served as a magistrate judge on the United States District Court for the District of Arizona, my home State. For over 10 years prior to that, he was a superior court judge in Maricopa County. While on the superior court bench, he rendered superior service in all aspects of his civil, criminal, juvenile and domestic relations assignments.

In addition to his time on the bench, Judge Silverman spent 5 years as court commissioner for the Superior Court of Arizona, Maricopa County.

Throughout his distinguished judicial career, Judge Silverman has earned the respect and admiration of fellow judges and the advocates who have appeared in his courtroom. For example, in 1991, Judge Silverman received the Henry Stevens Award, which is given annually by the Maricopa County Bar Association to the current or former Arizona trial judge "who reflects the finest qualities of the judiciary."

Similarly, in 1994, the Maricopa County Committee on Judicial Performance indicated that Judge Silverman received the highest percentage of superior ratings from lawyers, litigants, witnesses, and court staff in all categories of performance reviewed.

Also, in 1994, Judge Silverman's court division was honored as the judicial division of the year by the Maricopa County Superior Court Recognition Committee.

Incidentally, I should say that Maricopa County is the county in which Phoenix is located, the capital of our State.

In addition to his regular judicial duties, Judge Silverman has advanced the legal profession through service on the Supreme Court of Arizona Judicial Ethics and Advisory Committee, the Committee on Judicial Education and Training, and the Committee on Professionalism. He also chaired a Committee to Study the Criminal Justice

System in the Arizona Superior Court in 1993, and the Governor's Committee on Child Support Guidelines.

Judge Silverman has shown his commitment to the United States Constitution and the rule of law by co-founding the Sandra Day O'Connor Prize for Excellence in Constitutional Law at the Arizona State University College of Law.

Judge Silverman's academic credentials are equally impressive. He graduated summa cum laude from the Arizona State University College of Law in 1976 and was subsequently honored by his alma mater twice, once in 1994, when the college of law presented him with its "Outstanding Alumnus Award," and again in 1997 when he received the prestigious "Dean's Award."

In short, Mr. President, I believe Judge Silverman meets the highest of standards required for our Federal judges, and I have been very privileged to support his nomination as it has proceeded through the process and come to the floor of the Senate. I urge all of my colleagues to support the nomination of Judge Barry Silverman for the Ninth Circuit Court of Appeals.

Allow me to conclude, Mr. President, with this observation. It has been a pleasure to work with the White House on this nomination. From the time that his name came forward, they worked diligently to conclude the FBI process, which does take some time. We received from the White House the Sunday before Congress adjourned in November the file for Judge Silverman and the committee was able to get that file in 1 day, the following Monday.

ORRIN HATCH, the chairman of the Judiciary Committee, who has been criticized for holding up some nominees, I must say, deserves a great deal of credit here for personally conducting the hearing for Judge Silverman. And then the following day—this is now 3 days after we received the file—scheduling an executive session of the committee so that we could send his nomination to the full Senate floor.

Chairman HATCH and I then requested the majority leader on the last day of the session in November to clear this nomination so that the ninth circuit could receive him and have his services. Unfortunately, the democratic leader was not able to clear Judge Silverman on the democratic side and therefore about 2½ months, unnecessarily, the ninth circuit was without a judge in this particular position. But I am particularly pleased that he is before us today and that we will very soon have an opportunity to vote and to confirm Judge Silverman for the Ninth Circuit Court of Appeals.

Mrs. BOXER. Mr. President, I am very glad that we are moving forward with judges today. We all hear, as we are growing up, that, "Justice delayed is justice denied," and we have, in many of our courts, vacancies that have gone on for a year, 2 years, and in many cases it is getting to the crisis level. So I am pleased that we will be

voting. I think, whether the delays are on the Republican side or the Democratic side, let these names come up, let us have debate, let us vote.

In that regard, I am looking forward to having our debate on the nominee I had recommended to President Clinton, Margaret Morrow, who has the strong support of Senator HATCH, many Republicans on the Judiciary Committee, and I am very hopeful we can get that nomination resolved.

I know that our leaders had agreed that vote would take place before the February recess and I will be speaking with both leaders to find out a date certain.

ORDER OF PROCEDURE

Mr. KYL. Mr. President, at this time I ask unanimous consent that immediately following the vote at 2:15 and confirmation of the two additional nominations, there be a period of morning business with Senators permitted to speak for up to 5 minutes each. I further ask unanimous consent that at 3 o'clock p.m. today Senator COVERDELL be recognized as under the previous order for 90 minutes, to be followed by Senator DASCHLE or his designee for 90 minutes.

Mrs. BOXER. Reserving the right to object, will the Senator amend his request to give the Senator from California 5 minutes at this time?

Mr. KYL. Mr. President, I have no objection. If under the previous order that is permitted, it's fine with me.

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

WITHDRAWAL OF COSPONSORSHIP—S. 1028

Mrs. BOXER. Mr. President, I ask unanimous consent that my name be removed from S. 1028 as a cosponsor of that legislation.

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

Mrs. BOXER. Thank you very much, Mr. President. This is a forest bill that is very controversial. After I placed my name on it a study came out that basically, in my opinion, led me to believe that the bill in its current form would not be good for the Nation's forests.

STATE OF THE UNION—1998 AGENDA

Mrs. BOXER. Mr. President, last night we learned from our President that the state of the Union is the strongest it has been in decades. The "misery index," that is inflation and interest rates combined, is at a 30-year low. Inflation is practically nonexistent. The Federal deficit is about to be eliminated. Over 14 million new jobs have been created in the last 7 years. We are seeing the lowest unemployment rate in a quarter of a century at 4.7 percent today. And we have seen the highest home ownership rate in

history, nearly 6 million new homeowners since 1992.

The booming economy and the bright fiscal picture give us a wonderful opportunity to continue to support a balanced budget, but one with a heart and one that makes critical investments in important areas, many outlined by the President—education, health care, health research, the environment, anticrime efforts, child care and, of course, ensuring that Social Security will be fiscally sound well into the next century.

I am looking forward to working hard, on a bipartisan basis, with my colleagues as we write this budget. I am privileged to serve on the Budget Committee where we will take the first crack at crafting a Senate budget. I also sit on other committees that will carry through some of those priorities.

I want to point out just a couple of issues that the President talked about which are very near and dear, not only to my heart but, much more important, to the hearts of the people that I represent, the people of California.

This important issue is after-school care. It is a little-known fact that juvenile crime peaks up at 3 o'clock and begins to go down at 6 o'clock. So, between 3 and 6 our children need something to say "yes" to. They need mentoring. They need help with their homework. The after-school hours are an opportune time for business to come in and teach our young people about business, teach them computers and the many skills that they need to succeed.

I have written a bill that would set up some model after-school programs. I was debating, should I offer it in the context of education or should I offer it in the context of juvenile crime reduction. After-school programs both improve education and reduce juvenile crime.

The President is launching a huge initiative there. He is also calling for and end to social promotion, 100,000 new teachers to help our children, and something that is important, reducing class sizes in the early grades. We need to implement voluntary national standards and we must rebuild our crumbling schools and build the new schools of the 21st century. This President is on his way to being the true education President. I want us to be the true education Senate, and I very much look forward to the time we will spend on this Senate floor debating education.

The President is calling our attention to the current health care crisis. We took a giant step in helping our young people last year, by giving a block grant to the States. They are going to work on making sure our children are insured.

There is a big gap between the ages of 55 and 65, while people are waiting to get into Medicare, and the President proposes a pay-as-you-go system to handle some of those people, to allow