# SENATE—*Monday, September 21, 1981*

*(Legislative day of Wednesday, September 9, 1981)*

The Senate met at 9:30 a.m., on the expiration of the recess, and was called to order by the President pro tempore (Mr. THURMOND).

## PRAYER

The Chaplain, the Reverend Richard C. Halverson, LL.D., D.D., offered the following prayer:

Let us pray.

*Praise the Lord, all nations! Extol Him all peoples! For great is His steadfast love toward us; and the faithfulness of the Lord endures forever. Praise the Lord.*—Psalms 117.

*O give thanks to the Lord, for He is good; His steadfast love endures forever!*—Psalms 118: 1.

We thank Thee O God for Thy gracious providence in our lives. We thank Thee for our families, for our homes, our neighbors, and friends. We thank Thee for the high privilege of working in the Senate, for the faithful service of those who enable the Senators to fulfill their awesome responsibilities to the people.

Help us dear God never to take these privileges for granted or to presume upon the dedicated support of the staffs. Protect us against the seductive influences of privilege, position, prestige and power. Keep us mindful of our frailties, our need for each other, and especially our need for the loving support of spouses and children.

Guide us through this week that our labors may be productive of justice, equity and peace. Let our actions contribute to the general welfare and our lives demonstrate qualities of leadership which inspire confidence and trust. For Thy glory and the benefit of all, we pray. Amen.

## RECOGNITION OF THE ACTING MAJORITY LEADER

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

## THE JOURNAL

Mr. STEVENS. Mr. President, I ask unanimous consent that the Journal of the proceedings to date be approved.

The PRESIDENT pro tempore. Without objection, it is so ordered.

## THE FEDERAL EXECUTIVE PAY CAP

Mr. STEVENS. Mr. President, I wish to address the dilemma the pay cap has caused in the recruitment of qualified, competent executives for the Federal Government. The Government is finding it increasingly difficult to obtain the services of qualified individuals.

When we consider the losses in the executive ranks I have mentioned the past several days, the result is that many important functions of Government are being left in the hands of competent individuals, I am sure, but, nevertheless, those of caretakers. This type of void comes at a time when some very important decisions should be made in the departments and agencies.

I was most fortunate in my hearing on this issue last week to have appear as a witness, Congressman VIC FAZIO. Congressman FAZIO included in his testimony statistics from the Hay Associates, one of the leading management consultants in the field of compensation in the world, comparing the civil service pay of the U.S. Government to other national governments.

Hay Associates reported that in each country pay in the private sector exceeds pay in the public sector. However, in the United States, this difference was by far the largest, especially at the senior executive level.

Hay found that the median pay as of May 1, 1981, for private sector jobs comparable to SES positions averaged $71,688—or over $21,000 a year more than the pay cap for SES positions, which is $50,112.50.

Mr. President, I would like to list some of the average salaries of executives in the U.S. private sector who head major functional areas which Hay Associates found:

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|---|---|
| Chief administrative officer | $71,700 |
| Controller | 67,000 |
| Head of computer operations | 74,000 |
| Head of engineering | 67,000 |
| Head of legal | 75,000 |
| Head of personnel | 70,100 |
| Head of purchasing | 77,400 |
| Head of research | 71,000 |

These salaries, of course, are for positions comparable to our SES members whose salaries are capped at $50,122.50.

Let me list for you some of the executive vacancies which we are in the labor marketplace competing to fill while facing this discrepancy in salary. I shall also list the important defense and nondefense functions these officials oversee. Remember that these are but a sample of our recent executive vacancies:

EXECUTIVE FUNCTIONS

1. Dpty Ass't to Secretary of Defense (Follow-up, Reports and Management). Principally in charge of projects with GAO geared to implement cost savings. Directs DOD reports on fraud, waste and abuse.

2. Technical Director, Space and Satellite Communications Office, USAF. Responsible for Air Force satellite and space communications systems. The incumbent is held solely accountable. "The incumbent is the focal point for the highest level of executive decisions related to specific space and satellite programs . . . for the Air Force."

3. Deputy Director, Submarine Logistics Division. Responsible for maintenance and logistics support, including modernization of all submarines in the Active Fleet & Inactive Ship Force. (Includes management of all logistics for the Trident Submarine.)

4. Director, Procurement Control & Clearance Division. Directly supervises entire procurement control and clearance division which includes the Missiles and Aircraft Group and the Ships and General Contracts Group. This job is the focal point in the Navy for bringing together procurement policy and practices.

5 Director of Finance, Central European Operating Agency. Financial advisor to agency responsible for management of international petroleum pipeline covering all central portions of Western Europe. Agency is also responsible to NATO for this system, and the Director participates in sensitive international negotiations concerning the system.

6. Principal Deputy Assistant to the Secretary of Defense. (Review and Oversight). No. 2 position to Executive No. 1 listed above.

7. Administrative Director, Arms Control & Disarmament Agency. Responsible for policies, procedures, controls, and procurement for the Agency. Directs a staff of 30 employees.

8. Deputy Chief, National Security Division, OMB. No. 2 in division overseas the division's work program, reviews agency requests for appropriations, etc.

9. Assistant Director for Telecommunications and Information Systems, Defense Logistics Agency. Directs the DOD data systems that backup department wide logistics. Directs 130 employees.

DEFENSE AND NONDEFENSE FUNCTIONS

1. Director, Office of International Investment, Dept. of Treasury. Formulates Treasury Dept. policy on international investments and related issues.

2. Director, National Heart, Lung, and Blood Institute. Provides leadership for national program in the field; fosters research and investigations.

3. Director, Office of International Energy Policy, Dept. of Treasury. Formulates and implements Treasury's policy and positions on questions related to international energy policy, Treasury's participation on international energy matters in international fora and bilateral relations.

4. Chief, Analysis and Computation Division, NASA. Directs a staff of 125 in applied research, flight simulations, theoretical and experimental aerospace research.

5. Dpty Assist' U.S. Trade Representative, Exec. Office of the President. Deputy is in charge of trade policy planning, Economic Policy Support Group; also participates directly in international monetary and financial policy issues.

6. Chief, Methodology and Data Branch, Division of Risk Analysis, U.S. Nuclear Regulatory Commission. Directs branch managing reactor safety research programs. Major point of contact with NRC staff, contractors, DOE labs and field offices, foreign research programs.

7. Director, Space Science Laboratory, Geo. Marshall Flight Center, NASA. Assists in development of scientific objectives and spacecraft technology for flight missions. Initiates

● This "bullet" symbol identifies statements or insertions which are not spoken by the Member on the floor.

and conducts supporting research in wide range of related areas.

I would sum up my statement by repeating from Congressman FAZIO's testimony a quote made by the Honorable Otto Regenspurger of the West German Parliament when discussing our Government's executive pay cap:

A Nation that cannot afford to pay its top executives what they deserve should not expect to go forward economically.

Mr. President, I call to the attention of the Senate that the list is a series of vacant executive positions that are going to have substantial impact upon our ability to carry out the President's program.

## RECOGNITION OF SENATOR WALLOP

Mr. STEVENS. Mr. President, I yield the remainder of my time to the distinguished Senator from Wyoming, who has a special order for later.

The PRESIDENT pro tempore. The Senator from Wyoming is recognized.

## REVIEW OF TAPES AND RECORDINGS IN THE MATTER OF SENATOR WILLIAMS

Mr. WALLOP. Mr. President, I thank the acting majority leader. Each day this week, it is my intention to remind Senators of the twice-a-day viewings, on Monday, Wednesday, and Friday, of the television tapes and wire recordings in the matter of Senator WILLIAMS. It can be only fair, both to Senator WILLIAMS and to the Senate itself, in its ultimate reputation as the body of all Senators, that we treat this matter with the care, concern, and respect that it deserves. We are going to meet twice today at 9:15 and 2:15. The presentation will take some 3 hours 20 minutes of Senators' time. It is critical that these tapes be viewed.

Mr. President, it is my suggestion that Senators view first the tapes and then commit themselves to the study of the proceedings and the report of the Ethics Committee. Again, I say that any Senators who have questions may refer them to the committee staff, which will be present at the viewings, or we shall make available to any Senators who want them the wisdom and advice of the special counsel as to the nature of the proceedings, or as to any other questions that Senators may have.

This is going to take more than a small amount of time of Senators and the judgment that we have to make, at the time when that comes before us as an issue, is a serious judgment. It affects the life and professional career of Senator WILLIAMS. It affects the life and professional character of each and every Senator because, as the Senate judges, so shall it be judged by the public. I urge Senators to take advantage of these viewings. They are expensive and cannot be, in all probability, scheduled at whim beyond the six showings that we have now put together.

If Members will look in the RECORD of September 15, they will see the schedule that takes place within those 3 hours. It may not be necessary to commit the full 3 hours at any one time. One can take an hour and a half, 2 hours, an hour, and stop at one point and then go back in and enter them at another point. We have tried to find as many hours as possible to make it achievable for Senators to view them all.

Mr. President, I urge my colleagues from the bottom of my heart to take the time. The room is 457 in the Russell Building every showing day. It has been setup for the convenience of Members. I urge that the Senators take advantage of it because the issue before us is serious and in every respect demands the attention of the Senate.

Mr. President, I thank the acting majority leader and yield back the remainder of my time.

## ORDER OF PROCEDURE

Mr. STEVENS. Mr. President, I yield back the remainder of my time. The distinguished Senator from Wisconsin will manage the minority leader's time at this time.

## RECOGNITION OF SENATOR PROXMIRE

The PRESIDING OFFICER (Mr. ARMSTRONG). The Senator from Wisconsin is recognized.

Mr. PROXMIRE. Mr. President, I thank the distinguished acting majority leader.

## THE POLITICS OF THE GENOCIDE CONVENTION

Mr. PROXMIRE. Mr. President, the Genocide Convention has long been a target of those groups which specialize in alarmism and scare tactics.

I constantly receive phone calls from people raging about the Genocide Convention. They claim it will usurp our constitutional protections, allow American citizens to be tried by international courts, subject our soldiers to trial for genocide, and even lead to the confiscation of property in this country.

Any reasoned reading of the Genocide Convention clearly demonstrates that these charges are light-years from the truth. Legal and constitutional scholars from a wide range of backgrounds and ideological orientations have lined up behind the convention. In addition, numerous professional, civic, and religious organizations support it.

Unfortunately, vocal, though unfounded, opposition expressed by those who are paranoid about the notion of international law itself has so far prevailed. Why has this been the case? I think it has to do with one of the basic characteristics of our democratic system. A highly vocal minority can sometimes prevail over a relatively complacent majority.

Why is this majority complacent? I think it may be that they consider the need for the Genocide Convention to be self-evident, and thus they have often failed to sufficiently express their views.

Therefore, the convention has not been ratified, even though most Americans, if they are aware of the treaty, are in favor of it. We must overcome our own apathy and firmly establish our commitment to human rights around the world. We must drown out the shouts of the tiny minority with the voice of the great majority. We must ratify the Genocide Convention.

## BRIBERY, RAINMAKERS, AND THE LAW

Mr. PROXMIRE. Mr. President, last Thursday, the New York Times in an editorial, made the case for prohibiting bribery both at home and abroad and for not softening the bribery law on the books.

In 1977, in the wake of scandals which rocked our foreign policy in Japan, the Netherlands, and Italy, Congress passed the Foreign Corrupt Practices Act prohibiting the bribery of foreign officials by American companies and placing reasonable accounting requirements on companies to stop slush fund bookkeeping.

Mr. President, no case has been made for amending the foreign bribery law. Exports have not been hurt and our foreign relations have not been sullied by bribery.

I hope every Senator will read and reflect upon this New York Times editorial. Amending the bribery law is serious business. In the words of the Times:

The bribery statute has proved to be strong and useful soap. There's no need for more water.

I ask unanimous consent that the New York Times editorial be printed in the RECORD.

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

BRIBERY, RAINMAKERS, AND THE LAW

The 1977 law forbidding American business to bribe foreign officials has probably saved the United States untold embarrassment.

Since the law was passed, there have been none of the once-common revelations of American companies using million-dollar slush funds to pay off foreign officials and win sales. By making such bribery a criminal offense, threatening executives with jail and establishing tough new accounting requirements, the law has changed the way Americans do business abroad and for the better.

Then why is there such a rush to dilute it?

This week, Republicans on the Senate Banking Committee, cheered on by the Reagan Administration, will try to finish a bill to do just that. The changes they want would again allow businessmen to bribe officials abroad, as long as they were careful to launder the payments through agents. Accounting standards would be changed, too, to make it easy again for companies to hide questionable payments abroad.

All of this would be done, according to Bill Brock, the President's special trade representative, to clean up ambiguities in the statute that have needlessly hindered exports.

Concerns about the effect on exports were voiced speculatively when the act was first introduced. And the statute has probably depressed overseas sales to some extent—but that is by no means obvious. For all its recent strength, the dollar has been weak relative to other currencies in the last few years, and thus total exports have increased enormously since the foreign bribery act was passed in 1977. Exports might well have gone up more if the law contained fewer ambiguities. But if so, that's an argument for making it clear, not weaker. Those who favor dilution have failed to make their case.

A serious appraisal of the bribery law might have sensibly begun by examining whether any such law makes sense in the first place. But that is a question the Administration and its friends in the Senate have chosen not to face.

What is the difference, say, between the payment of illegal bribes to top foreign officials and the payment of legal fees to Washington "rainmakers"—those sophisticated lawyers and lobbyists who can produce results for their clients in Washington, or at least seem to, in the form of lucrative Federal contracts?

If one kind of influence peddling is legal at home, isn't it hypocritical to declare another kind illegal abroad? Theoretically, there may not be much difference. But the fact that it is sometimes hard to draw the line between the distasteful and the illegal is a poor reason to abandon the effort. Otherwise, not even domestic bribery laws would stand.

And there is a fairly clear test to apply. The evil to look for is whether money has been passed to Government officials so they will favor the giver, if so, that is bribery, whether at home or abroad. Americans ought to oppose the one as surely as the other. That some foreign governments do not enforce their own laws against bribery, or do so unevenly, is hardly a validation of crime.

If there are costs deriving from the foreign bribery law—if it means lost export potential—let that be demonstrated. If the law is needlessly vague, let it be adjusted. But the foreign bribery statute has proved to be strong and useful soap. There's no need for more water.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. STEVENS. If the Chair will withhold that, I have a request, Mr. President.

## ROUTINE MORNING BUSINESS

Mr. STEVENS. Mr. President, is there an order for a period now for the transaction of routine morning business in which Senators may speak?

The PRESIDING OFFICER. There is no order.

Mr. STEVENS. I ask unanimous consent that there now be a period for the transaction of routine morning business during which Senators may speak for not to exceed 5 minutes and that the period not last beyond 10 a.m., at which time the Senate will commence the consideration of the nomination of Sandra O'Connor.

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

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

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

## INTEREST RATES MUST BE REDUCED

Mr. HEFLIN. Mr. President, I speak in support of Senate Joint Resolution 104, offered by the senior Senator from Montana, Senator MELCHER. I am pleased to be jointly sponsoring this important measure.

Interest rates continue to soar in the 20-percent range, causing severe damage to the economy and to the economic recovery program that the Senate has adopted.

The problem of high interest rates is the most serious problem facing the American economy today. Because of current high interest rates, housing starts are at record lows, business bankruptcies are at record highs, and unemployment is on the rise.

Because of high interest rates, we may lose an entire generation of farmers. Many farmers are being forced to leave their land because they cannot afford to borrow enough money to plant their crops. Young, aspiring farmers are barred from getting a start in their chosen career because the price of borrowing money is simply too dear.

Because of high interest rates, millions of young couples cannot afford to purchase their own homes and the resulting slump in the housing industry is forcing hundreds of thousands of construction workers into unemployment.

Mr. President, high interest rates are seriously threatening any chance for economic recovery. As did most Senators, I strongly supported the economic revitalization program, and I hope and pray that it will be successful. But if interest rates are not reduced—and reduced quickly and significantly—this plan that we all worked so hard for simply cannot work.

I fully well realize that no one—not Congress, not the President, nor even the Federal Reserve Board itself—can wave a magic wand and cause a reduction of interest rates. However, there are steps that can and must be taken that will reduce interest rates.

This Senate joint resolution instructs President Reagan to begin immediate consultations with the Board of Governors of the Federal Reserve System for the purpose of modifying the Federal Reserve's tight money policy that is the primary cause of high interest rates.

It has been said many times before—in fact, I have said it on a number of occasions myself—that the Federal Reserve's tight money policy is not working. Instead of dampening inflation, it is literally breaking the back of the American economy and is effectively blocking any economic recovery.

The consultations called for in this resolution will include modifications concerning easing reserve requirements and lowering the discount rate for member banks. Further, the consultations should include controlling the Federal Open Market Committee's activities which reduce the money supply and push interest rates up.

The time has come to take immediate action to bring interest rates down.

Mr. President, I believe this resolution, which calls upon President Reagan to take immediate action to bring about a dramatic lowering of interest rates, is an important first step in the right direction.

I commend the senior Senator from Montana for his leadership on this crucial issue, and I urge that Senate Joint Resolution 104 be passed rapidly.

## SOUNDS OF SILENCE

Mr. SCHMITT. Mr. President, the many thousands of persons who came to the Nation's Capital Saturday for a "Solidarity Day" demonstration against the economic policies of the Reagan administration, came, I am sure, with a dedicated purpose. While I personally do not agree with that purpose, I certainly agree with the freedom of assembly and freedom of speech that makes peaceful disagreement the symbol of our great Nation.

We all must continue to examine any unanticipated impacts of economic change and take specific information on such impacts into account as we consider the various measures before us. Such information will always be welcomed and useful.

However, I am afraid the stated objective of Saturday's assemblage has been lost in the rhetoric of certain leaders of that assemblage and certainly distorted by others.

The supposed labor solidarity day turned into an outpouring of the same, tired rhetoric of the past. It warrants mentioning that last November 4, the American electorate repudiated, in a landslide election, the policies of the past; the tax and tax and spend and spend policies of past leadership got us into the economic mess we are currently in. Forty-four States out of 50 swept Ronald Reagan into the White House and sent former President Carter back to Georgia. The voters also changed the leadership and control of the U.S. Senate and gave the Republican Party and conservative philosophies and principles strong gains in the House of Representatives.

This new leadership has cut taxes, has reduced the growth of Federal spending and borrowing, has made important strides toward cutting the fat and fraud and abuse from various Federal programs and agencies and intends to do

more. The American people know how to economize and still keep essentials going, and so does this leadership.

Last February, President Reagan said:

I regret to say that we're in the worst economic mess since the Great Depression.

Little has changed as yet to change the truth of his remarks. Since that time, President Reagan has taken steps, with the assistance and support of Congress, to start getting us out of that mess. The speakers last Saturday were strangely silent on the fact that the inflation rate in 1980 was 13 percent and today it is 7 percent. The speakers last Saturday were strangely silent on the fact that the unemployment rate is lower today than at this same time last year. Even interest rates remain high largely because the Federal Government continues to have to borrow to finance the excesses of past administrations and Congresses. The American people have rejected runaway spending, runaway taxation, runaway regulation and the reckless economic policies of decades of Democratic leadership.

The overwhelming majority of the American people, included labor rank and file, realize that the solution to inflation, high interest rates, and our other economic problems do not lie in the rhetoric of the past heard on a sunny Saturday afternoon. The overwhelming majority of the American people know the cure. Less Government, not more, is part of the cure. More enterprise, not less, is part of the cure. Growth, not stagnation, is the whole cure.

The New York Times noted today, in commenting on the Saturday demonstration:

None of the speakers who addressed the throngs listed specific steps. They turned more to the past, the days of civil rights and anti-war protests, than to the future.

Mr. President, also on Saturday, an estimated three quarters of a million people filled New York City's Central Park to listen to a concert by Simon and Garfunkel—three times the estimated number who filled Washington's Mall to listen to the tired old rhetoric of the past.

The New York audience listened to a beautiful and haunting song entitled "Sounds of Silence." The Washington audience also heard not so beautiful "Sounds of Silence" about the future from leaders of the demonstration.

These "Sounds of Silence" do not represent the thinking of the vast majority of the American people. These "Sounds of Silence" do not represent the courage, the actions, and the programs of the new leadership in Washington. These "Sounds of Silence" do not represent New Mexicans or the American people.

## CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, under the order of the Senate the time for the conduct of morning business has been completed.

## EXECUTIVE SESSION

## NOMINATION OF SANDRA DAY O'CONNOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the hour of 10 a.m. having arrived, the Senate will now go into executive session to consider the nomination of Sandra Day O'Connor of Arizona to be an Associate Justice of the Supreme Court.

Time for debate on this nomination is limited to 4 hours equally divided and controlled by the chairman of the Judiciary Committee and the ranking member or their designees, with 30 minutes of the majority's time to be under the control of the Senator from North Carolina (Mr. HELMS).

The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, today is truly an historic occasion—the Senate of the United States is considering for the first time in the history of our Nation the nomination of a woman to serve as an Associate Justice of the Supreme Court of the United States.

It has been the privilege of the Committee on the Judiciary, and my privilege as its chairman, to meet frequently with Judge Sandra Day O'Connor and to consider and examine in detail her qualifications for the high post to which she has been named. The Committee on the Judiciary undertook a solemn duty to the Senate and to the country when it began its inquiry. The committee has discharged that responsibility. Now, the entire Senate will participate in the ultimate decision.

I am confident that the Senate today will be guided by our highly favorable recommendation.

After careful deliberation, the committee determined and has reported to the Senate that Judge O'Connor is extraordinary well qualifed to serve on the Supreme Court. Our decision was reached after 3 days of intense examination, both of the nominee and of a broad cross section of witnesses.

In the first instance, it is notable that Judge O'Connor enjoyed the full support of the entire congressional delegation of her home State of Arizona, the support of the Governor of the State of Arizona, the support of a large delegation of Arizonans from the Arizona House and Senate, and the support of many distinguished members of the bench and the bar. That support bore witness to her outstanding career and to bipartisan and wide-based respect for her ability. Yet, much more was required.

When the committee began its deliberations, we were keenly aware that any appointment to the Supreme Court is unique because it grants life tenure and because it vests great power in an individual not held accountable by popular election. Accordingly, we reflected carefully upon the qualifications necessary for one to be an outstanding jurist and those essential to the prudent exercise of power by one relatively unchecked in its use. Each member of the committee sought to satisfy himself that this nominee possessed those qualifications. Collectively, we then determined that this nominee does, indeed, meet those high standards.

We sought, first, a person of unquestioned integrity—honest, incorruptible. and fair.

We sought a person of courage—one who has the fortitude to stand firm and render decisions based not on personal beliefs but, instead, in accordance with the Constitution and the will of the people as expressed in the laws of Congress.

We sought a person learned in the law—for law in an advanced civilization is the most expansive product of the human mind and is, of necessity, extensive and complex.

We sought a person of compassion—compassion which tempers with mercy the judgment of the criminal, yet recognizes the sorrow and suffering of the victim; compassion for the individual but, also, compassion for society in its quest for the overriding goal of equal justice under law.

We sought a person of proper judicial temperament—one who will never allow the pressures of the moment to overcome the composure and self-discipline of a well-ordered mind; one who will never permit temper or temperament to impair judgment or demeanor.

We sought a person who understands and appreciates the majesty of our system of government—a person who understands that Federal law is changed by Congress, not by the Court; who understands that the Constitution is changed by amendment, not by the Court; and who understands that powers not expressly given to the Federal Government by the Constitution are reserved to the States and to the people, not to the Court.

In Judge O'Connnor, we believe we found such a person.

During the course of extensive questioning by the committee, Judge O'Connor displayed great intellectual honesty and a degree of fairness that reflected her balanced approach to difficult issues.

She was firm in her insistence that personal belief could not outweigh the mandate of the Constitution or of the law.

She demonstrated remarkable knowledge of constitutional law and of the judicial process.

She displayed consistently an understanding of the measured and compassionate use of judicial power.

She never allowed the intense scrutiny by the committee or the pressure of news media attention to overcome her composure and her calm demeanor.

In every instance, she established clearly that she understands and appreciates the carefully balanced division of authority envisioned by our forefathers when they created our federal system of government.

Judge O'Connor is the first nominee to the Supreme Court in 42 years who has served in a legislative body. Her experience as majority leader in the Arizona State Senate will help her, and through her the other members of the Court, in recognizing and observing the separation of legislative, executive, and judicial powers mandated by the Constitution.

Judge O'Connor is also the first nominee to the Supreme Court in the past 24 years who has served previously on a State court. That experience gives great hope that she will bring to the Court a greater appreciation of the division of powers between the Federal Government and the governments of the respective States.

I must add, finally, that I found Judge O'Connor to be a lady of great personal warmth and a person who is possessed of a friendly and open character in the best tradition of our country.

She has the talents and qualities to make an important contribution to the work of our highest Court and to the vitality and history of our great Nation.

It is my opinion that Judge O'Connor will fulfill well the trust reposed in her by those who recommended her, by the President who nominated her, and by the Judiciary Committee which approved her.

I commend the President for his fine choice and urge the Senate to consent to her nomination.

Mr. President, I ask unanimous consent that the questions propounded by the questionnaire of the Judiciary Committee, which mainly constitutes a résumé, follow my remarks on the nomination of Judge Sandra J. O'Connor.

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

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

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used). Sandra Day O'Connor.

2. Address: List current place of residence and office address(es). List all office and home telephone numbers where you may be reached. Office: Arizona Court of Appeals, State Capitol, Phoenix, Arizona 85007, (602) 255-4828; Home: 3561 East Denton Lane, Paradise Valley, Arizona 85253, (602) 954-6356.

3. Date and place of birth. March 26, 1930—El Paso, Texas.

4. Are you a naturalized citizen? No.

5. Marital status (include maiden name of wife or husband's name). List spouse's occupation, employer's name and business adress(es).

Married. John Jay O'Connor III. Attorney. Fennemore, Craig, von Ammon & Udall, 100 West Washington Street, Phoenix, Arizona 85003.

6. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted. Stanford University, 1946–1952; A.B. 1950; LL.B. 1952.

7. List (by year) all business or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including farms, with which you were connected as an officer, director, partner, proprietor or employee since graduation from college.

Professional, Legislative and Judicial Activities: 1952–53 Deputy County Attorney, San Mateo County, California. General Civil Work for County agencies and schools.

1954–57 Civilian Attorney for Quartermaster Market Center, Frankfurt/Main, W. Germany, handling contracts and bids procedures for acquisition and disposal of goods for the armed forces in Europe.

1958–60 Private practice of law in Maryvale, Arizona, handling wide variety of matters including contracts, leases, divorces, and criminal matters.

1961–64 Primarily engaged in care of my three small children. Handled some bankruptcies as a receiver, and served as a juvenile court referee.

1965–69 Assistant Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General; handling some litigation. Approximately three months were spent on assignment as administrative assistant at Arizona State Hospital.

1969–75 State Senator, Arizona State Senate.

1975–79 Judge, Maricopa County Superior Court.

1979 to date Judge, Arizona Court of Appeals.

Business Affiliations:

c. 1957 to date Member, Board of Directors, Lazy B Cattle Co., an Arizona Corporation. It is a closely held corporation, owned by members of my family. I served for several years during the 1950's and 1960's as secretary.

1971–74 Member, Board of Directors, First National Bank of Arizona.

1975–79 Member, Board of Directors, Blue Cross/Blue Shield of Arizona, a non-profit corporation.

Partnerships:

My husband is a partner in Fennemore, Craig, von Ammon and Udall, the predecessor of the present professional corporation which is now engaged in the practice of law.

My husband is a general partner in Westside Apartments Co. and Westside Investments, which are essentially now passive investments.

My husband and I presently have limited partnership interest in Alvernon Center One, Fourth Geostatic Energy, Orchid Leasing Associates and Virden Valley Investments, Ltd.

By virtue of the community property laws of Arizona, I have an undivided one-half interest in all of the partnerships listed.

Civic Activities:

Member, National Board of the Smithsonian Associates, 1981.

President, Member, Board of Trustees, The Heard Museum, 1968–74, 1976 to date.

Member, Salvation Army Advisory Board—1975 to date.

Member, Board of Directors, YMCA (Maricopa County), 1978.

Member, Vice President, Soroptimist Club of Phoenix, 1978.

Member, Board of Visitors, Arizona State University Law School, 1981.

Member, Liaison Committee on Medical Education, 1981.

Advisory Board and Vice President, National Conference of Christians and Jews, Maricopa County, C. 1977, to date.

Member, Board of Directors, Stanford Club of Phoenix, various times since 1960.

Member, Board of Trustees Stanford University, 1976 to 1980.

Member, Stanford Associates.

Former member, Board of Directors, Phoenix Community Council.

Former 1st and 2nd Vice President, Phoenix Community Council.

Former member, Board of Directors and Secretary, Arizona Academy, 1969–75.

Former member, Board of Junior Achievement Arizona, 1975–79.

Former member, Board of Directors of Friends of Channel 8, 1975–79.

Former member, Board of Directors, Phoenix Historical Society, 1974–78.

Former member, Citizens Advisory Board on Blood Services, 1975–77.

Past President, Junior League of Phoenix, Inc. c. 1966, and member since c. 1960, Member, Board of Directors during 1960's.

Former member, Board of Directors, Golden Gate Settlement, 1960–62.

Former member, Board of Trustees, Phoenix County Day School, 1960–70.

Former member, Maricopa County Juvenile Court Study Committee.

Former member, Board of Directors Blue Cross/Blue Shield of Arizona, 1975–79.

Memberships in Professional Organizations:

American Bar Association.

State Bar of Arizona.

State Bar of California.

Maricopa County Bar Association.

Chairman, Maricopa County Lawyer Referral Service.

Arizona Judges' Association.

National Association of Women Judges.

Arizona Women Lawyers Association.

Chairmanships of Professional Committees and Memberships on Significant Professional Committees:

Member, Anglo-American Legal Exchange 1980.

Chairman, Arizona Supreme Court Committee to Reorganize Lower Courts, 1974–75.

Chairman, Maricopa County Bar Association Lawyer Referral Service, 1960–62.

Member, State Bar of Arizona Committees on Legal Aid, Public Relations, Lower Court Reorganization, Continuing Legal Education.

Juvenile Court Referee, 1962–64.

Chairman, Maricopa County Juvenile Detention Home Visiting Board, 1963–64.

Chairman, Maricopa County Superior Court Judges' Training and Education Committee, 1977–79.

Government Activities:

State Senator, State of Arizona 1969–75. Initially appointed and then elected to two two-year terms; Republican Precinct Committeeman c. 1960–70.

Assistant Attorney General, Arizona, 1965–69. Appointed.

Deputy County Attorney, San Mateo County, California, 1952–53. Appointed.

Member, National Defense Advisory Committee on Women in the Services, 1974–76.

Member, Arizona State Personnel Commission, 1968–69.

Vice Chairman, Select Law Enforcement Review Commission, 1979–80.

Member, Maricopa County Board of Adjustments and Appeals, 1963–64.

Member and on Faculty, Arizona Committee Robert A. Taft Institute of Government.

As a State Senator I served as chairman of the State, County and Municipal Affairs Committee, on the Legislative Council, on the Probate Code Commission, and the Arizona Advisory Council on Intergovernmental Relations.

Co-Chairman, Arizona Committee to Reelect the President, 1972.

Former Republican Precinct Committeeman, District-Chairman & member County & State Committees, 1961–68.

Member, County Board of Adjustments and Appeals, 1963–64.

Member, Governor Fannin's Committee on Marriage and Family Problems c. 1962

and his Committee on Mental Health c. 1964.

Juvenile Court Referee c. 1962–65.

Member, Judicial Fellows Commission, August 1981.

Member, Arizona Law Enforcement Review Commission, 1979–80.

Member, Arizona Criminal Code Commission, 1974–76.

Member, Mayor's Committee, 1980.

8. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and present status.

No military service.

9. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe woud be of interest to the Committee.

Phoenix Advertising Club "Woman of the Year", 1972.

National Conference of Christians and Jews Annual Award, 1975.

Commencement Speaker, Arizona State University, 1974.

Participant and Speaker, American Assembly, Arden House, 1975.

Distinguished Achievement Award, Arizona State University, 1980.

10. Bar Asociations: List all bar associations, legal or judicial related committees or conference of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

See Exhibit A.

11. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list any other organizations to which you belong, (e.g. civic, education, "public interest" law, etc.) which you feel should be considered in connection with your nomination.

Organizations to which I formerly belonged or to which I now belong are listed in Exhibit A.

12. Court Admission: List all courts in which you have been admitted to practice, with dates of admission. Give the same information for administrative bodies which require special admission to practice.

Supreme Court of California, 1952.

Supreme Court of Arizona, October, 1957.

U.S. District Court, San Francisco, California, 1952.

Ninth Circuit Court of Appeals, 1952.

U.S. District Court, Phoenix, Arizona, 1957.

13. Published Writings: List the titles, publishers and dates of books, articles, reports, or other published material you have written. You may also list any significant speeches which you feel may be of interest to this Commitee.

My published writings include the opinions I have written as a member of the Arizona Court of Appeals.

"Trends in the Relationship Between the Federal and State Courts From the Perspective of a State Court Judge," Volume 22, William & Mary Law Review Number 4, Summer 1981.

In 1969, I wrote a booklet for the Arizona Attorney General outlining the powers and duties of public officers and employees in Arizona. I have written several articles for the "Arizona Weekly Gazette", such as "Lower Court Reorganization Can Provide Single Unified Trial Court" on April 29, 1975, and I also wrote a comment in the Stanford Law Review in 1952.

14. Health: What is the present state of your health? List the date of your last physical examination. Excellent. June 1981.

15. Judicial Office (if applicable): State (chronologically) any judicial offices you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

1975–79 Judge, Maricopa County Superior Court. Elected. The Superior Court is the trial court of general jurisdiction.

1979 to date Judge, Court of Appeals, State of Arizona. Appointed. The Court of Appeals is the intermediate court of appeals in Arizona.

16. State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

See Exhibit A.

I have never been an unsuccessful candidate for elective public office.

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EXHIBIT A

Memberships in Professional Organizations:

American Bar Association.

State Bar of Arizona.

State Bar of California.

Maricopa County Bar Association.

Chairman, Maricopa County Lawyer Referral Service.

Arizona Judges' Association.

National Association of Woman Judges.

Arizona Women Lawyers Association.

Chairmanships of Professional Committees and Memberships on Significant Professional Committees:

Member, Anglo-American Legal Exchange, 1980.

Chairman, Arizona Supreme Court Committee to Reorganize Lower Courts, 1974–75.

Chairman, Maricopa County Bar Association Lawyer Referral Service, 1960–62.

Member, State Bar of Arizona Committees on Legal Aid, Public Relations, Lower Court Reorganization, Continuing Legal Education.

Juvenile Court Referee, 1962–64.

Chairman, Maricopa County Juvenile Detention Home Visiting Board, 1963–64.

Chairman, Maricopa County Superior Court Judges' Training and Education Committee, 1977–79.

Governmental Activities:

State Senator, State of Arizona 1969–1975. Initially appointed and then selected to two two-year terms; Republican Precinct Committeeman c. 1960–70.

Assistant Attorney General, Arizona, 1965–69. Appointed.

Deputy County Attorney, San Mateo County, California, 1952–53. Appointed.

Member, National Defense Advisory Committee on Women in the Services, 1974–76.

Member, Arizona State Personnel Commission, 1968–69.

Vice Chairman, Select Law Enforcement Review Commission, 1979–80.

Member, Maricopa County Board of Adjustments and Appeals, 1963–64.

Member and on Faculty, Arizona Committee Robert A. Taft Institute of Government.

As a State Senator I served as chairman of the State, County and Municipal Affairs Committee, on the Legislative Council, on the Probate Code Commission, and the Arizona Advisory Council on Intergovernmental Relations.

Co-Chairman, Arizona Committee to Reelect the President, 1972.

Former Republican Precinct Committee, District-Chairman & member County & State Committees, 1961–68.

Member, County Board of Adjustments and Appeals, 1963–64.

Member, Governor Fannin's Committee on Marriage and Family Problems c. 1962 and his Committee on Mental Health c. 1964.

Juvenile Court Referee c. 1962–65.

Member, Judicial Fellows Commission, August 1981.

Member, Arizona Law Enforcement Review Commission, 1979–80.

Member, Arizona Criminal Code Commission, 1974–76.

Member, Mayor's Committee, 1980.

Civic Activities:

Member, National Board of the Smithsonian Associates, 1981.

President, Member, Board of Trustees, The Heard Museum, 1968–74, 1976 to date.

Member, Salvation Army Advisory Board, 1975 to date.

Member, Board of Directors, YMCA (Maricopa County), 1978.

Member, Vice President, Soroptimist Club of Phoenix, 1978.

Member, Board of Visitors, Arizona State University Law School, 1981.

Member, Liaison Committee on Medical Education, 1981.

Advisory Board and Vice President, National Conference of Christians and Jews, Maricopa County, C. 1977, to date.

Member, Board of Directors, Standard Club of Phoenix, various times since 1960.

Member, Board of Trustees Stanford University, 1976 to 1980.

Member, Stanford Associates.

Former member, Board of Directors, Phoenix Community Council.

Former 1st and 2nd Vice President, Phoenix Community Council.

Former member, Board of Directors and Secretary, Arizona Academy, 1960–75.

Former member, Board Junior Achievement Arizona, 1975–79.

Former member, Board of Directors of Friends of Channel 8, 1975–79.

Former member, Board of Directors, Phoenix Historical Society, 1974–78.

Former member, Citizens Advisory Board on Blood Services, 1975–77.

Past President, Junior League of Phoenix, Inc. c. 1966, and member since c. 1960, Member, Board of Director during 1960's.

Former member, Board of Directors, Golden Gate Settlement, 1960–62.

Former member, Board of Trustees, Phoenix County Day School, 1960–70.

Former member, Maricopa County Juvenile Court Study Committee.

Former Member, Board of Directors Blue Cross/Blue Shield of Arizona, 1975–79.

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III. GENERAL (PUBLIC)

1. Please discuss your views on the following criticism involving "judicial activism."

The role of the Federal judiciary within the Federal government, and within society generally, has become the subject of increasing controversy in recent years. It has become the target of both popular and academic criticism that alleges that the judicial branch has usurped many of the prerogatives of other branches and levels of government. Some of the characteristics of this "judicial activism" have been said to include:

a. A tendecy by the judiciary toward problem-solution rather than grievance-resolution;

b. A tendency by the judiciary to employ the individual plaintiff as a vehicle for the imposition of far reaching orders extending to broad classes of individuals;

c. A tendency by the judiciary to impose broad, affirmative duties upon governments and society;

d. A tendency by the judiciary toward loosening jurisdictional requirements such as standing and ripeness; and

e. A tendency by the judiciary to impose itself upon other institutions in the manner of an administrator with continuing oversight responsibilities.

The Constitution itself establishes the guiding principle of separation of powers in its assignment of legislative power to Congress in Article I, executive power to the President in Article II, and judicial power to the Supreme Court in Article III. This principle requires the federal courts scrupulously to avoid making law or engaging in general supervision of executive functions. As Justice Frankfurther wrote in *FCC* v. *Pottsville Broadcasting Co.*, 309 U.S. 134, 146 (1940), "courts are not charged with general guardianship against all potential mischief in the complicated tasks of government."

The function of the federal courts is rather to resolve particular disputes properly presented to them for decision. In this regard, the jurisdictional requirements that a true "case or controversy" exist and that the plantiff have "standing" help guarantee that the court does not transgress the limits of its authority. The separation of powers principle also requires judges to avoid substituting their own views of what is desirable in a particular case for those of the legislature, the branch of government appropriately charged with making decisions of public policy. To quote Justice Frankfurter again, Justices must have "due regard to the fact that [the] Court is not exercising a primary judgment but is sitting in Judgment upon those who also have taken the oath to observe the Constitution and who have the responsibility for carrying on government." *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U.S. 123, 164 (1951) (concurring opinion).

The fact that federal judges are restricted to deciding only the particular case before them and are not given a broad license to reform society does not mean that general wrongs go unrighted. As Justice Holmes remarked, "it must be remembered that legislatures are ultimate guardians of the liberties and welfare of the people in quite as great a degree as the courts." *Missouri, Kansas & Texas Railway Co.* v. *May*, 194 U.S. 267, 270 (1904).

In the case just cited, Justice Holmes was referred to a state legislature, and our federal system requires the federal courts to avoid instrusion not only on the Congress and the Executive but the states as well.

Judges are not only not authorized to engage in executive or legislative functions, they are also ill-equipped to do so. Serious difficulties arise when a judge undertakes to act as an administrator or supervisor in an area requiring expertise, and judges who purport to decide matters of public policy are certainly not as attuned to the public will as are the members of the politically accountable branches. In sum, I am keenly aware of the problems associated with "judicial activism" as described in the preceding question, and believe that judges have an obligation to avoid these difficulties by recognizing and abiding by the limits of their judicial commissions.

2. What actions in your professional and personal life evidence your concern for equal justice under the law?

In my judgment, the record of a judge will reflect a commitment to equal justice under the law if the judge applies the law even handedly to those who come before the court. The essence of equal justice under the law, in my view, is that neutral laws be applied in a neutral fashion. I believe that my judicial record as a trial of appellate judge attests to this commitment.

As a legislator I worked to equalize the treatment of women under state law by seeking repeal of a number of outmoded Arizona statutes. I developed model legislation to let women manage property they own in common with their husbands. I also successfully sought repeal of an Arizona statute that limited women to working eight hours per day and backed legislation equalizing treatment of men and women with regard to child custody.

As an attorney, I feel a professional obligation to help provide the poor with access to legal assistance and to the courts. I have worked toward this goal through my association with the Maricopa County Bar Association Lawyer Referral Service, of which I was Chairman from 1960 through 1962, and through service on the Arizona State Bar Association Committee on Legal Aid.

I have been concerned with the rights of those who are cared for by the state. From 1963 to 1964 I was Chairman of the Maricopa County Juvenile Detention Home Visiting Board and I have served as a member of the Maricopa County Juvenile Court Study Committee. I acted as a Juvenile Court Referee in various cases between 1962 and 1964. I participated as a panel member in an Arizona Humanities Commission Seminar on law as it relates to mental health problems.

My concern for fostering understanding among disparate groups within my community led to work on the Advisory Board of the Arizona Chapter National Conference of Christians and Jews. In 1975 I received an award for services in human relations from the National Conference of Christians and Jews.

I have served on the Advisory Board of the Salvation Army in Maricopa County, and as chairman of its Senior Citizen's Council. The Senior Citizen's Council operates a very successful center for low income elderly persons, and provides meals as part of the program. It is also constructing a residential facility for the low income elderly.

Through the Heard Museum in Phoenix, as a Trustee and its President, I have worked to foster and encourage understanding and communication with the several Indian tribes and the native Americans in Arizona through various programs and projects.

As a legislator I helped develop amendments to the mental health commitment laws designed to protect the rights of the mentally ill.

I also worked successfully to obtain state facilities for the mentally retarded in Maricopa County, and to improve Arizona's laws for the mentally retarded. I succeeded in obtaining legislation to convert a relatively unused state tuberculosis hospital to a hospital for crippled children.

Mr. GOLDWATER. Will the Senator yield?

Mr. THURMOND. I am very pleased to yield to the distinguished Senator from Arizona (Mr. GOLDWATER).

Mr. GOLDWATER. I thank my friend from South Carolina.

(Mr. QUAYLE assumed the chair.)

Mr. GOLDWATER. Mr. President, during the happy, long years of my life, I have known many moments of great pride, moments that I will not relate here, but they are imbedded deep in the recesses of my mind. Today we are voting on Judge Sandra O'Connor, born in the State of Arizona, raised on a cattle ranch and now being admitted as the first woman to ever sit on the Supreme Court of our land.

Judge O'Connor is not just a good lawyer, not just a good judge, nor is the fact that she was an outstanding legislator entered into this. She was born on the land of the West, she grew up on that land, on a cattle ranch, and her feeling for the land of what we call the Southwest, and particularly Arizona, has grown with her and influenced her through her life.

When a westerner sees that land, it is not just a temporary vision of something beautiful. It is a permanent beauty that he or she has lived with all of his or her life. So it is natural that the land has its effect on all of us who were born out in that part of our country.

I have worked with her for many years on matters affecting the beauty of our land, the culture of our people, particularly the Indians, in anthropological fields because, frankly, not being a lawyer, the only other times I had to be near her were in times involving political or legislative work.

So, as I stand here today, on this historic floor of the U.S. Senate, participating in a great landmark of our history, the admittance of a woman to the Supreme Court, I think my colleagues, yes, not just my colleagues on this floor, but my colleagues who live at home in our native State, can understand my pride, because they share this, too, and every person who calls Arizona his home, looks on this day as one of the great days, not just in the history of the United States, but in the history of our own State.

My very best wishes and most sincere prayers are hers for the great success I know she will have sitting on our Supreme Bench. And, once again, for having had the foresight and the wisdom, first, to name a woman, but more importantly, to name this particular one, I congratulate President Reagan.

Judge O'Connor's brilliant appearance before the Judiciary Committee offers complete assurance that she is fully qualified for a seat on the Nation's highest court. Throughout her testimony, Judge O'Connor revealed an impressive knowledge of constitutional law and legal principles. She ticked off case citations and the dates of important court rulings as easily as most people would recite their birthdates.

Her testimony was calm, reasoned, open, and informed. She displayed great strength of personal character and stood firm to her principles of judicial restraint and strict construction.

In my opinion, she was as forthcoming as any nominee could be in responding to any questions, including her position on abortion. She declared positively that she finds abortion personally abhorrent.

Now, I realize that some dedicated opponents of abortion feel they have been burned with this kind of answer from candidates for political office, who have evaded taking a stand on public policy by hiding behind their personal beliefs.

But I would point out that the position of Supreme Court Associate Justice is not an elective office. It is not a policy-making office, or at least it should not be. Therefore, the same standards cannot be applied to a court nominee that apply to a candidate for legislative office.

I might add that right to life witnesses, who appeared at the hearings on Sandra O'Connor's nomination, commented that abortion was not the issue in 1973 or 1975 that it is today. Dr. Wilke and Dr. Gerster both explained that the National Right to Life Committee did not raise the abortion issue during the confirmation hearings on Justice Paul Stevens in 1975 because abortion "was not such a major issue previously" and was "much less discussed."

This being so, I would ask how they, or anyone else, can reasonably fault Sandra O'Connor for any positions she may have taken as a State legislator in the period from 1970 to 1974, when anti-abortion leaders admit it was not such a prominent issue. Like most of the public, Sandra O'Connor's perceptions of the problems with abortion have increased over the last 10 years, which is what she said in her testimony.

Judge O'Connor repeatedly told the committee of her strong opposition to abortion. She stated that she would draw the line of any exceptions very strictly. She said her rejection of abortion is not a sudden development to win support, but is the result and the outgrowth of what she is. Her position stems from her sense of family values and her religious training.

Moreover, Judge O'Connor reminded the committee of her vote in 1974, as an Arizona legislator, for a prohibition on the use of public medicaid funds for abortions. The sole exceptions allowed were medical procedures to save the life of the mother or to prevent pregnancy after rape or incest. Judge O'Connor said this bill still reflects her views.

Frankly, if she had gone any further in commenting on the subject, she likely would have disqualified herself from ever participating in any cases before the Court relating to the subject. What I am saying is that if the right to life supporters had succeeded in pressing Judge O'Connor to state specifically whether she believes the Supreme Court's past abortion cases are wrong, they would have denied themselves the vote of a potential friend on the Court in the future.

Mr. President, I am far more impressed with Sandra O'Connor's statement regarding her general judicial philosophy and her obvious legal competence, than I can be whatever her answers are on a single-issue subject.

Judge O'Connor plainly stated that she would approach cases with a view to deciding them on narrow grounds and with proper judicial restraint. This should assure anyone concerned that she will not be going out of her way to make rulings, such as the abortion decisions, that create sweeping changes in social policy.

Also, Judge O'Connor was persistent in expressing her concern for preserving the power and rights of States and their ability to function as important parts of our Federal system of Government. Her testimony disclosed that her philosophical attachment to local government comes not only from personal service in all three branches of State government, but from her view of the nature of our form of government and the intent of the Founding Fathers.

Next, I am pleased at the many expressions of concern about violent crime that filled Judge O'Connor's testimony. She testified that crime is one of the major problems in the Nation and that we have an unacceptably high crime rate in this Nation.

Judge O'Connor mentioned that she was personally involved in drafting and voting for legislation in the Arizona Senate reinstating the death penalty as a deterrent to vicious crime. She openly stated her concern about court-written rules of procedures, such as the exclusionary rule, that allow obviously guilty criminals to escape punishment.

She explained the problems she had as a trial judge with certain rules mandated in criminal cases by Congress. She suggested Congress consider changing these requirements. Also, she proposed that courts must resolve criminal cases quickly. She testified there must be some way the courts can more effectively say a case is at an end. She said it would be wise for legislatures to give discretion to trial judges to impose life sentences on career offenders and she recommended that legislatures find a way to compel restitution by the criminal.

She stated her view that rampant crime is also the result of a general breakdown of standards we apply in society that discourage criminal behavior.

On other issues, Judge O'Connor expressed her belief that the religious precepts on which our country was founded are interwoven in our system of government. She said Internal Revenue Service activities affecting church schools raise serious questions about the extent to which the IRS should be a tax collector and the extent it should implement social policies. She also informed the Judiciary Committee that she had prepared legislation in the Arizona Senate to prohibit obscenity in compliance with Supreme Court rulings on the subject, particularly with respect to protecting minors from the distribution of smut material.

Mr. President, from these and other clear statements by Judge O'Connor on the record, I am convinced she is a very decent, moral and religious person. She is a qualified jurist of the highest rank and a woman who possesses one of the most brilliant minds of any lawyer or legal scholar in the country, man or woman.

Sandra O'Connor will enhance the Supreme Court. I believe she will be among the constellation of judicial geniuses who have sat on that Court in the past. And I know she will uphold the Constitution and our unique American contributions to rule by law.

Mr. President, I urge my colleagues to confirm Sandra O'Connor's nomination by unanimous vote.

I thank the chairman of the Judiciary Committee for having yielded to me. I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. DECONCINI. Mr. President, it is a pleasure for me to join my distinguished colleague, Senator GOLDWATER, who has been involved in this process of nominations and who has been actually involved in nominees to the Supreme Court. I am pleased that we could join in our effort to promote this particular nominee from our State.

Judge O'Connor will not be an Arizona judge by any means. She will be a judge for all citizens. I think the statement that the distinguished senior Senator from Arizona has just put into the RECORD spells out exactly why this nominee was chosen and how she performed. When I say that, I use that in the sense of her demeanor and presentation before the Senate Judiciary Committee, being as explicit as she could be in answering very difficult questions for some of the members of the committee, including myself, and stating her beliefs, why her beliefs were what they were, how they happened to come about, and the reasoning behind each one of those decisions, both in the legislative body and in her own personal life.

I think those hearings were some of the finest hearings that I have seen instituted and carried out by the Senate Judiciary Committee.

At this time, Mr. President, I would like to say that the chairman of the Judiciary Committee, the distinguished Senator from South Carolina, conducted those hearings in the most equitable and fair manner that I have seen since I have been here. That includes modestly a few hearings that I have conducted in behalf of the Judiciary Committee. The chairman bent over backward to make clear that this was an open hearing; that there were no questions that could not be brought forward to be presented to Judge O'Connor for her response; that there was going to be ample time for everyone to ask as many questions as they wished.

One member of the committee complained during the process that there was not enough time. The chairman indicated that that person could have another turn and, indeed, a turn after that. Where most Senators only had two opportunities to question the nominee, this particular Senator was granted four opportunities. I daresay the distinguished chairman would sit there today if he thought it was necessary and there were requests for additional questioning.

As the record will show, the questioning of Judge O'Connor went the proverbial menu of soup to nuts. Indeed, there was hardly anything that was not covered in great detail. As Senator GOLDWATER and myself knew from the very beginning when the President made this nomination, she would acquit herself with the greatest of professional expertise and with human value and personality that she has within her to demonstrate to everyone on the Judiciary Committee that indeed this was one of the finest moments for this administration having this nominee approved by the committee by a unanimous vote, with one abstention.

I am hopeful that today on this floor, at 6 p.m., when the final vote is cast, we will see just that, realizing the right of any individual in this body to cast a dissenting opinion and vote the other way. But I think there has been enough time and enough effort put forward and enough opportunity to scrutinize this nominee that regardless of where a Member of this body may come down on a particular issue, whether it be gun control, capital punishment, abortion, prayer in school, busing, et cetera, they can be satisfied that Judge O'Connor possesses the qualities that will really bring about the type of individual to serve on the Supreme Court who can do it with a blindfold over her eyes, looking at the law, interpreting the law, and not with a desire to change this country in a social manner or economic manner, interpreting what is brought before the Court, which I think most of us agree is what it is all about across the street at the Supreme Court.

Many of us have been critical of various decisions that we felt have gone far astray of what was intended by the Founding Fathers by that Court.

The attitude in Arizona is one of thanksgiving. The great pride of the

people of Arizona having a native daughter nominated to the Supreme Court, of course, is one for which we are very pleased and happy. We thank so many Members of this body, so many Arizona citizens, and so many citizens around the country who have come forward in support of Judge O'Connor and who have taken the time to learn something about her. I have received a great deal of mail which is of interest to me pointing out how much they have learned about her. In fact, they were ranchers or had visited Arizona and even had gone to the small town, unbeknownst at the time that there would be a nominee from Duncan, Ariz., and having professional relationship with Judge O'Connor and her distinguished husband. This goes on and on.

The people of this country are extremely well satisfied and elated with this fine nomination.

Mr. President, there will be other Senators who have statements. I may care to make further remarks before time has elapsed on this debate.

Mr. THURMOND. 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. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that the time on the quorum be charged equally to both sides.

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

Who yields time?

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Pennsylvania (Mr. SPECTER).

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I thank the distinguished chairman of the Committee on the Judiciary for this opportunity to speak.

I am pleased to add my voice to those in support of the nomination of Judge Sandra Day O'Connor to be a Justice of the Supreme Court of the United States. The hearings, which were held for 3 days before the Committee on the Judiciary, were characterized as truly historic and, as they unfolded, they lived up to that representation in every sense of the word.

Mr. President, the presence of the first woman nominee to the Supreme Court of the United States was an occasion to make the proceedings historic in and of themselves. As the nominee's judicial views unfolded and as she faced some 18 members of the committee who had a broad range of questions—some of which were very pointed, some of which were very controversial—she acquitted herself with distinction. It was obvious that the Supreme Court of the United States is about to have an addition in the personage of a young, vibrant, well-equipped woman, who has the potential to be on that Court for a generation or beyond.

Judge O'Connor brings to the Supreme Court of the United States a remarkable background. She grew up on a ranch in Arizona. She had a top-flight academic career. She graduated from Stanford Law School in 1951, at the age of 21. She ranked high in her class—reportedly, third among a very distinguished group of legal scholars.

She has been active in the practice of law in a two-man partnership. She has held the position of assistant attorney general. She has served as a State court trial judge. She has served in the legislature of Arizona, rising to the rank of majority leader of the Arizona Senate. She currently occupies a position on the Court of Appeals of the State of Arizona.

With this background, I feel that Judge O'Connor has extraordinary credentials and extraordinary qualifications for the Supreme Court of the United States.

For one thing, her extensive background on the bench and in the legislature puts her in a unique position to say, as she did, that she knows the difference between being a judge and a legislator, and she understands the judicial function to interpret the law, as opposed to the legislative function to make new law.

This has been a question of considerable controversy in the Supreme Court of the United States, going back for decades, and I believe it will continue to be an area of controversy. I believe that Judge O'Connor's position on the Court will bring insight and real balance, and that her legislative experience will stand her in very good stead.

One point of minor disagreement in the questioning by some of us was the responsibility of the Court to examine social policy in situations where the executive and legislative branches had failed to act. The case which was cited for discussion involved school segregation, with Judge O'Connor's statement that in Brown against Board of Education, the Supreme Court of the United States only reinterpreted the 14th amendment of the U.S. Constitution. After some extensive discussion on that point, I believe it accurate to say that there was more than simply a reevaluation of the interpretation of the 14th amendment between Plessy, some 50 years before, and Brown against Board of Education; that, in fact, the Supreme Court had considered social policy, as I believe it must in some extraordinary circumstances.

In her testimony, Judge O'Connor, in effect, threw the gauntlet, albeit in a very polite way, to the other branches of Government. She said in effect, let the legislature accept its responsibility, let the executive accept its responsibility, and the Supreme Court of the United States and the other Federal courts need not consider social legislation or social policy but need only interpret the laws.

I believe that is a good lesson for the U.S. Senate, the Congress generally and the State legislatures. It is their responsibility to correct glaring inequities, so that it is not necessary for the Supreme Court of the United States to consider social policy and perhaps to move toward, if not to cross, the line between legislating and the traditional judicial function.

In Judge O'Connor's background there is also a strong credential with respect to the interpretation of State law, as contrasted with Federal law. Often, the decisions of the Supreme Court raise the question as to what is appropriate for a State court to consider, in contrast with what the Federal courts ought to decide. Given her background as a State court appellate judge, she will have a fine and unique perspective, from years of experience on a State appellate court, to share with her colleagues on the Supreme Court of the United States who have not had that experience, at least not very recently.

Her experience as a State court trial judge is also a unique asset, because the Justices of the Supreme Court of the United States are far removed from the trial courts, far removed from the evidentiary rulings, far removed from the issues of search and seizure and coerced confession and a variety of matters which a trial judge has to consider and take into account. Her experience there, which, again, she can share with her brethren (I believe that is an appropriate term, notwithstanding that she is the first woman on the Court) will greatly enhance the perspective and vantage point of the Supreme Court of the United States.

Finally—and I believe most important—she brings to the High Court the perspective of a woman. It is unnecessary to elaborate upon the differences in viewpoints and experiences she will have in being the first woman to serve on the Supreme Court of the United States.

Beyond those extraordinary talents, Judge O'Connor also brings to the court an attitude of dignity, an attitude of grace, and a remarkable temperament. Of all the characteristics she displayed during the course or some 2½ days of questioning, her composure and her good humor perhaps topped the list. Judicial temperament is a matter of tremendous importance, and she has it in abundance.

The other quality which she displayed, by implication, was her good health as well as her good cheer. She showed stamina in responding to questions during 2 full days of hearings and another half day of questioning.

Beyond that, I saw her at a formal luncheon arranged by the chairman of the Judiciary Committee. On Friday afternoon, I saw her in the Senate caucus room in the Russell Building at a large party, where she was carrying forth in a social way and was being available to people who wanted to see her and wanted to meet her—again, in a great attestation of stamina and good health which mark her general appearance as a young woman at the age of 51.

I believe all of this bodes very well for the future of the Supreme Court of the United States. I consider it a rare opportunity, in my first year in this august body, to have had an opportunity

to participate in the Judiciary Committee and to participate in these deliberations and to speak and, later, to vote in support of the nomination of Judge O'Connor to be an Associate Justice of the Supreme Court of the United States.

Mr. STEVENS. Mr. President, I feel privileged to be able to vote for the confirmation of the nomination of Sandra Day O'Connor to be an Associate Justice of the United States Supreme Court.

Others will point out her distinguished record. I might say that I know of that record, because my wife's uncle had served with her in the Arizona State Senate. I know two of her very close classmates from her days in law school, but I did not know Judge O'Connor personally until she was nominated. I was pleased to meet with her, as was my wife, Catherine. We find her to be a very strong woman, with a quiet calm that comes from the confidence of knowing she can do the job for which she has been selected. To me, that means more than anything else. Mrs. O'Connor knows she is qualified, has proven she is qualified, and I am confident she will be a distinguished member of the Supreme Court.

So, I join those in the Senate today who commend the President for selecting her to be the first woman to serve on the U.S. Supreme Court and, above all, for keeping the commitment he made during the campaign of 1980 to select a woman to serve on the U.S. Supreme Court.

Mr. THURMOND. Mr. President, I ask unanimous consent that the time on all quorum calls made during the consideration of the O'Connor nomination be equally charged to both sides.

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

Mr. DOLE. Mr. President, will the Senator yield?

Mr. THURMOND. Mr. President, I yield to the distinguished Senator from Kansas, a prominent member of the Judiciary Committee and the chairman of the Courts Subcommittee.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. DOLE. Mr. President, in many cases when we have a nomination before the Senate for a very prominent position in the administration we have our statements inserted, but I think this is such an historic occasion that no one wishes to pass up the opportunity to speak.

Those of us who wished to be present for the vote on Sandra Day O'Connor in our committee, feel the same responsibility in a way to be here today to express our support for that nomination.

I am very pleased to join my colleagues, first, to commend the distinguished chairman of the committee for his expeditious handling of the O'Connor nomination and, second, to commend all members of that committee for their cooperation regardless of some differences in point of view.

It seems to me that after lengthy examination of this nominee and her qualification during 3 days of rather extensive questioning by learned members—that does not include this Senator—but learned members of the committee, the chairman, the distinguished Senator from Arizona, and others, that she again demonstrated her ability to cope with the questions candidly and revealed her outstanding qualifications, and I certainly understand why she was selected for this position by the President.

So, Mr. President, although this is the first opportunity I hope it is not the last that we shall have to stand in this Chamber and support the nominations of outstanding women to the Supreme Court and other positions in the judicial system and all other branches of Government.

For a long period in our Nation's history, women had great difficulty in entering the professions, in attaining executive status in business, and in becoming an effective part of the governing process. In recent years, women have joined the professional, executive, and governing ranks in ever greater numbers. They have reached the highest levels of the legislative branch of the Federal Government. They have reached the level of cabinet officer in the executive branch. However, in the 190 years of the Supreme Court's existence, no woman has served on our highest tribunal.

I wish to commend President Reagan for so quickly fulfilling his campaign promise to nominate a qualified woman to the Supreme Court. The women of our Nation represent a vast reservoir of talent which should not go untapped. In choosing a person to sit on the Supreme Court, we must diligently search for the most qualified candidates that are available—we must choose someone with a high level of integrity, leadership, character, judicial competence and temperament, and knowledge of the law.

It is the belief of this Senator, that President Reagan found such a person. Of the potential nominees, male or female, for the Supreme Court seat vacated by Justice Potter Stewart, President Reagan could not have made a better selection than Sandra Day O'Connor.

Last week, the members of the Judiciary Committee, in accordance with their responsibility to advise and consent to presidential nominations, conducted a thorough examination of Judge O'Connor's background, abilities, and qualifications.

As I have previously indicated, her credentials and her qualifications again were demonstrated during the course of the hearing. Her credentials are excellent and she conducted herself superbly during the hearings. Her knowledge of both constitutional and Federal case law, and her knowledge of issues currently being considered by the Congress, were very impressive. During the hearings my colleagues and I inquired into Judge O'Connor's judicial philosophy, her position on problems affecting our judicial system, her views regarding the Constitution, and her position on a number of social issues, including gun control and abortion. The Senator from Kansas appreciated the candor of her responses and respects the fact that she avoided answering some questions as completely as the committee members would have liked in order to avoid prejudging issues which could come before the Court. He is satisfied that Judge O'Connor's views are prolife and not proabortion, and that she views the role of the Court as interpreting the law and not making the law.

Judge O'Connor's lack of experience as a Federal court judge is perhaps a small flaw in her otherwise excellent record—but experience on the Federal bench is not essential to becoming a good Supreme Court Justice. In addition, Judge O'Connor has a great wealth of prior experience which should serve her well on the Court and provide an excellent complement to the prior experience of the eight Justices who are already there. She achieved academic honors as a law student, she has been a practicing attorney, she has been a majority leader in the Arizona State Legislature, and she has served as a State court judge at both the trial and appellate levels.

The Senator from Kansas is pleased to be able to recommend Judge O'Connor to the Members of the Senate today. This Senator hopes that he will be joined by his colleagues in setting aside an unavailing precedent of 190 years' standing in voting for this highly qualified person to be the first woman Supreme Court Justice.

This Senator hopes that we will be joined by everyone else in this Chamber at 6 p.m. this evening to pass a unanimous vote for this nomination.

So, it is time that this is occurring, time long past due. Again I commend the distinguished nominee for the way she has presented herself and responded to questions. Despite some of the accounts I have read, I believe she has tackled some of the very difficult questions, whether it is busing, the death penalty, abortion, or a number of the other controversial issues that seem to find their way to the Chamber from time to time.

In my view she responded as directly as she could without staking out in advance what her position might be in the event such a case or some question involving one of these issues or a host of other issues might come before her as a Justice of the U.S. Supreme Court.

So it is my hope that at the appropriate time later today there will be a unanimous vote for this nomination.

I thank the distinguished chairman for yielding.

Mr. THURMOND. Mr. President, I wish to thank the able Senator from Kansas. He always makes worthwhile remarks and on this occasion he kept his reputation also.

Mr. President, I suggest the absence of a quorum on the basis that we have previously requested.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr.

DURENBERGER). Without objection, it is so ordered.

The Senator from Indiana.

Mr. QUAYLE. Mr. President, I am delighted today to have the opportunity to express my support for the historic nomination of Sandra Day O'Connor to the Supreme Court.

In my view, Mrs. O'Connor is superbly qualified to serve as a Supreme Court Justice. She will bring to the Court a unique blend of experience and talent. Mrs. O'Connor's outstanding record of achievement began at Stanford Law School where she was admitted to the law review and graduated in the top 10 percent of her class. One of her former classmates at Stanford, Justice Rehnquist, gave her a glowing recommendation when President Reagan sought his advice on her nomination. Similarly, lawyers who argued cases before her have testified to her thoroughness and professionalism. During her 6 years on the bench, Mrs. O'Connor consistently earned very high marks for her performance. In 1976, the Phoenix bar rated her at 90 percent. In 1978, she earned an 85 percent approval rate. In 1980, after a year on the Arizona Court of Appeals, Mrs. O'Connor once again earned a 90 percent overall approval from the bar.

Just as important, her personal integrity is unquestioned. Throughout her 6 years as initially a trial, and then an appellate, judge, Mrs. O'Connor never received lower than a 97-percent rating for integrity in carrying out the duties of her office.

In addition to her high level of judicial performance, Mrs. O'Connor has also been an effective State legislator, quickly attaining the post of majority leader of the Arizona State Senate. Those who served with her in the legislature have said that she was chosen for the leadership post as a result of admiration for her intelligence and ability to clarify the issues.

The combination of legislative and judicial experience will make Mrs. O'Connor unique among the sitting members of the Supreme Court. As a former State legislator, trial court judge, and State appeals court judge, there is little doubt that Mrs. O'Connor will bring to the Court a badly needed sensitivity to local concerns. Those of us in Congress who have warned against the dangers of an "imperial judiciary" should take great satisfaction in the nomination of a person who has a strong sense of judicial restraint and balanced Federal-State relations as does Mrs. O'Connor. Read Mrs. O'Connor's statements in this regard and there is no question where she stands. In her appearance before the Senate Judiciary Committee, she said it clearly, "the proper role of the Supreme Court is to interpret and apply the law, not make it."

Of course, the line between "legislating" and "adjudicating" is sometimes very fine, and a judge's political preferences will, at times, affect judicial considerations. Nonetheless, a person's basic scheme of values and personal traits must remain paramount in our evaluation of fitness for the Supreme Court. These traits include integrity, intelligence, fairness and commonsense. I believe that Mrs. O'Connor possesses a full measure of these qualities and is an excellent choice for the highest court in the land.

As a personal aside, Mr. President, it is a proud moment for me to vote this fine lady who has spent many summers at Iron Springs, Ariz.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HELMS. 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. HELMS. Mr. President, many Senators have privately expressed a measure of concern about their responsibility in connection with the nomination of Sandra Day O'Connor to become the first woman to serve on the U.S. Supreme Court.

It is no discredit to Mrs. O'Connor that a substantial national dialog has occurred in recent weeks. The concerns that have been raised are not to be confined to Senators. And it may very well be that the distinguished nominee herself may hereafter face concerns far exceeding any that Senators have felt.

Mrs. O'Connor—Madam Justice O'Connor as she shortly will become—has been chosen by the President of the United States as both the symbol and the reality of an important milestone in our Nation's history. Needless to say, President Reagan himself is likewise a part of it.

I have noted, as have others, the national dialog that has occurred since the President announced his selection of Mrs. O'Connor. Legitimate concerns have been expressed in the absence of any precise knowledge of where the nominee stands on an issue to which President Reagan has made repeated and frequent commitments for years.

The issue, of course, is the abortion issue. Ronald Reagan has been unequivocal in his position on that issue. He is unequivocal today. In his public statements on the O'Connor nomination, and in private conversation with me, the President has made clear that he is not merely satisfied but delighted with the nomination of Mrs. O'Connor. It is fair to assume, therefore, that the President is convinced that Mrs. O'Connor agrees with his position on abortion—which is to overturn the Supreme Court's decision in Roe against Wade.

If such an assumption is not correct, Mr. President, then any burden felt by Senators pales into insignificance when compared with the burden upon both the President and Mrs. O'Connor.

If the President is mistaken, then he must confront the fact that his judgment in this nomination is a contradiction of all that he has said on countless occasions in connection with the abortion issue. In that event, which I have instinctively decided is highly unlikely, Mrs. O'Connor would bear the burden of having failed to make clear to the President any ambivalence she may have regarding the issue.

The circumstances have been such that uncertainty yet exists to some degree. But such uncertainty notwithstanding, I find no suitable option for myself as a Senator. I will vote for the confirmation of Mrs. O'Connor because I have faith in the President, and because I have no valid reason to believe that Mrs. O'Connor would deliberately allow the President to be misled.

So, with her confirmation a certainty later today, I wish both Mrs. O'Connor and the President well, and assure them that I am convinced that both of them have acted in good faith, and that they will continue to do so.

Having said that, Mr. President, I believe it is essential that the record be made clear that those who have expressed concerns have done so in sincerity and on a reasonable basis. Churlish criticism of those who have raised questions has been undeserved.

Mr. President, let us examine the record, beginning with the 1980 Republican Party platform adopted at Detroit in August of last year. The platform, which Ronald Reagan pledged to support as President of the United States, included the following:

> We will work for the appointment of judges at all levels of the judiciary who respect traditional family values and the sanctity of innocent human life.

The inclusion of this statement in the platform immediately raised a debate concerning the nature of the judiciary and even the nature of law. Some critics charged that this promise was a litmus test that violated the independence of the judiciary, and suggested that legal issues be decided by the personal whims of judges, rather than by the intrinsic legal or constitutional merits of the question. Indeed, the suggestion was made that the plank seemed to set aside the law, and substitute a political judgment.

It is true that the platform did raise profound issues about the nature of the judiciary, but it raised them precisely because of a public perception that something has been happening to law and the judiciary in this country that is profoundly disturbing to the national interest. According to a Lou Harris Poll, in 1966 51 percent of the American public had a great deal of confidence in the Supreme Court. In 1980, only 27 percent of the American people said they had a great deal of confidence in the court. Thus in 14 years, public confidence evaporated to an alarming degree.

In my opinion, public confidence has evaporated because the judiciary is too often seen as tearing down the fundamental social values of our civilization, instead of reinforcing and supporting them. It is not a question of judges imposing their personal views on their interpretations of the law, or of following public opinion. Rather, the law gets its sanction from the underlying natural law, reflecting the divine order, in our social order. The values and ethics of our civilization have developed over the

course of 2,000 years. There is a common consensus on what these values are; neither an ordinary citizen, nor a judge, is free to disregard the moral absolutes of that consensus.

Too often both lawmakers and judges have deviated from those principles for the sake of presumed social utility, or in pursuit of equity and justice. Some judges have acted from a desire to institute or promote social change; others have acted as though the law were unrelated to actual life, or to fundamental values. For them, the law is a closed system that is not supposed to be influenced by external considerations.

The American people are not legal philosophers, but they are appalled by the results. They want the fundamental institutions of society supported by the law, not torn down. That grassroots feeling was reflected in the Republican Platform of 1980.

In that platform, Republicans promised to appoint judges who would respect traditional family values and the sanctity of human life. Those two aspects were not chosen at random; they go to the heart of our society. The basic unit of our society is not the individual, but the family. The God-given hierarchy of parents and children is a mystery that sums up in an ineffable way the situation of mankind.

The seventh-century English historian, Bede, once described man as a swallow flying through a shaft of sunlight in a barn; no one could know where the bird came from, or where it went, but while it flew through the beam of light it was illuminated in our sight. So too, human beings arrive on this earth through the medium of the family. It is in the family that the individual is nurtured and developed, and it is through a new family that, interlinked with the old, the stream of life flows on. Human beings, as the carriers of life and developers of civilization, depend upon the institution of the family to survive.

But the hierarchy of family life in no way destroys the individuality and humanity of the person. Each person has his own unique existence and dignity. The dignity of the person surpasses the value of material things precisely because the person possesses life. He participates in life in a way that most Americans believe reflects the life of an infinite God. This goes beyond mere religious belief; it is a deeply rooted awareness of the existence of God. Even our public opinion polls show that the vast majority of Americans believe in God; but it is not just opinion. It is an instinctive principle of action to accept the existence of transcendental reality.

Without the dignity of the person, and the protective framework of the family, our civilization and its values could not long survive. The Republican platform summed up that sentiment eloquently when it pinpointed the judiciary as a center of attention. Laws cannot make people good, but they can remove obstacles to personal and social development, and set up sanctions for those who transgress the traditional ethical system.

In promising to work for the appointment of judges who respect traditional family values and the sanctity of human life, it was not the intention of the Republican platform to reward individuals for their personal accomplishments as upholders of family values and the sanctity of life. It seems obvious that the intention was to get at the problem of the deterioration of legal interpretation by appointing interpreters who would use traditional values as a standard of interpretation. In other words, the platform plank was a promise of judicial reform.

Some critics of that plank asserted that it set up an illegitimate standard for the interpretation of law by introducing personal whim or popular opinion as a guide. Of course, whims, or public opinion, have no place in legal interpretation. No judge has the right to submit a personal view for the view of the law. But the body of our law already reflects the values of our civilization. Where the law is clear, no outside standard of interpretation is needed. But where the law or its intention is unclear, it ought to be interpreted according to the settled values of our society. It is only in recent years that alien interpretations have been introduced that contradict our social standards—with results that have devastated our society.

The Republican platform, therefore, promised a significant judicial reform to reverse the deterioration of law in our Nation.

Of all the courts in the United States, the Supreme Court is obviously the most important one for far-reaching effects of constitutional policy. It was inevitable, therefore, that the platform should become a standard for measuring the nomination of Judge Sandra D. O'Connor for the vacancy left by the resignation of Justice Potter Stewart. In the scrutiny that immediately began, it was discovered to be difficult to ascertain Judge O'Connor's views and legal philosophy. A lawyer with a somewhat limited law practice experience, Judge O'Connor had never argued a case before the Supreme Court of the United States, had no heavy trial experience, had published but a single law review article of note, and while serving 6 years as a judge on an intermediate appellate court in Arizona, had never written what careful jurists would call a noteworthy opinion.

Her judicial record was too meager to reveal any real clues as to her philosophy; and indeed in 3 days of hearings by the Judiciary Committee, there was scarcely any allusion to that record.

On the other hand, Judge O'Connor, previous to her election as judge, had served in the Arizona State Senate, and indeed, served also as the majority leader in that body. Thus her legislative record became the focus of attention.

The issue of abortion is at the center of the family issues. No other problem raises in such a unique way the integrity of the family unit. The relationship of trust and responsibility of mother, father, and child is destroyed by abortion. When the father is not the husband of the mother, the so-called solution which abortion offers simply paves the way for the dissolution of family relationships. The rights of all children, born or unborn, are called into question. And of course, the very meaning of life, the meaning of humanity and personhood, and the rights of all persons die with the aborted child.

Mrs. O'Connor's legislative record shows that whenever she had an opportunity to strengthen the hand of the proabortionists, she did so; conversely, whenever actions were under consideration which would have strengthened the cause of the traditional legal view of abortion, she found a way to avoid supporting those initiatives.

First. On April 30, 1970, Senator O'Connor voted in the Arizona State Senate Judiciary committee for H.B. 20, a bill which would have removed all restrictions from abortions done by licensed physicians without regard to indication or duration of pregnancy. This would have allowed abortion on demand throughout the whole term of pregnancy, a radical departure from the laws of other States, more radical even than the then existing statutes in New York. This anticipated Roe against Wade by 3 years. Yet Judge O'Connor had no recollection of how she voted until the opponents of her nomination began to circulate news accounts of the period which recorded her vote.

During the hearings, Judge O'Connor indicated that she supported the legislation because Arizona abortion law provided only an exception to save the life of the mother, and did not include a rape exception, but at the present time she regrets that vote. She stated:

> I would say that my own knowledge and awareness of the issues and concerns that many people have about the question of abortion has increased since those days. It was not the subject of a great deal of public attention or concern at the time it came before the committee in 1970. I would not have voted, I think, Mr. Chairman, for a simple repealer thereafter.

At another point, she suggested that she was aware of how sweeping the bill was even then, but felt there was no alternative:

> At that time I believed that some change in Arizona statutes was appropriate, and had a bill been presented to me that was less sweeping than House Bill 20, I would have supported that. It was not, and the news accounts reflect that I supported the committee action in putting the bill out of committee, where it died in the caucus.

But in fact, there was a bill less sweeping than H.B. 20, the so-called McNulty bill, S.B. 216, which had been introduced in the Senate on February 6, 1970. The McNulty bill was a less sweeping bill, limiting abortion to the first 4½ months in cases involving rape, incest, or the life of the mother. It required that the embryology of pregnancy be explained to the mother, so that she would have informed consent, and that parental consent be required for a girl 15 years or younger. When Senator DENTON pointed out the conflict in her testimony, she replied:

> Senator Denton, as I recall that bill, it provided for an elaborate mechanism of counseling services and other mechanisms for deal-

ing with the question, and I was not satisfied that the complicated mechanism and structure of that bill was a workable one.

It appears, therefore, that Judge O'Connor was less than candid in explaining her awareness of the probable impact of H.B. 20, and of the alternatives available. While it is reassuring that her understanding of the problem has increased with time—the same kind of development which many of us, including this Senator from North Carolina, would readily admit to—the fact remains that in 1970 she was supporting the more radical of two alternatives for liberalizing abortion in Arizona.

Second. On May 1, 1970, Senator O'Connor voted in the Republican Majority Caucus to send H.B. 20 to the Senate floor, siding with the 10 to 6 majority. But the caucus rules required a two-thirds affirmative vote to send the bill to the floor. Thus, indeed, it died as she testified, but not because of the lack of her support.

Third. During 1971, two bills liberalizing abortion were introduced in the Arizona Senate, but they went to Public Health and Welfare Committee, of which Senator O'Connor was not a member. The bills died in committee.

Fourth. During 1972, the proabortion lobby did not seek to have legislation introduced in the legislature, but concentrated on legal action. However, the statute which Senator O'Connor had sought to repeal with H.B. 20 was upheld in its constitutionality by the State court.

Fifth. In 1973, after Roe against Wade caused the State statutes to fall, a controversy arose in Arizona when nurses were fired for refusing to participate in abortion procedures. Senator O'Connor, in her role as majority leader, had a freedom-of-conscience bill drafted to protect the rights of medical personnel who refused to participate in abortions. But there was no element of the abortion controversy in this bill whatsoever; it went to the rights of the medical technicians, not the rights of the mother or the unborn child. It was passed unanimously 30 to 0, with those on both sides of the controversy supporting it. Therefore, it tells us nothing of Senator O'Connor's then sentiments on the matter.

Sixth. On February 8, 1973, Senator O'Connor cosponsored the Family Planning Act (S.B. 1190). This act provided that "all medically acceptable family planning methods and information shall be readily and practicably available to any person in this State who requests such service or information, regardless of sex, race, age, income, number of children, marital status, citizenship or motive." This act immediately generated a large controversy in Arizona because of the phrase "all medically acceptable family planning methods," a phrase which in radical population control organizations was a euphemism for abortion. Indeed, after Roe against Wade, there could be little doubt that abortion was a legal means of family planning. On March 5, 1973, the Arizona Republic commented in an editorial:

> Only a decade ago, family planning was commonly accepted as referring to contraception, but contraception was sharply differentiated from abortion even by family planning's faithful boosters.
>
> But now the abortion front had developed dishonest terminology in which abortion isn't even described as "interruption of pregnancy" but "post-conceptive family planning."
>
> Planned Parenthood used to be distressed by people who believed contraception was murder, just like abortion. Yet now PP often blurs the distinction even more terribly.
>
> Rather than inhibiting abortion, as some unwise supporters of the bill contend, it might make it more widespread.
>
> Why, indeed, is this bill proposed? The state certainly has no policy of discouraging contraception. The bill appears gratuitous—unless energetic state promotion of abortion is the eventual goal.

The bill was also denounced by religious leaders, and the minutes of the Public Health and Welfare committee reflect the bitter division which it caused. In addition to the abortion question, the bill also provided that the information and procedures authorized in the bill be given to minors without parental consent; in fact, the bill's sponsor, as reported in the committee minutes, indicated that the evasion of parental consent was the underpinning of the whole bill. Indeed, it was on that point that the bill died in committee.

The memorandum of Kenneth W. Starr, counselor to the Attorney General, reported on July 7, 1981, that "she recalls no controversy with respect to the bill, and is unaware of any hearings on the proposed measure."

Despite the fact that there was a controversy, Judge O'Connor testified that—

> I viewed the bill as a bill which did not deal with abortion but which would have established as a State policy in Arizona, a policy of encouraging the availability of contraceptives information to people generally. The bill at the time, I think, was rather loosely drafted, and I can understand why some might read it and say, "What does this mean?"
>
> That did not particularly concern me at the time because I knew that the bill would go through the committee process and be amended substantially before we would see it again. That was a rather typical practice, at least in the Arizona legislature.

Whatever the actual impact of the bill might have been, it is nevertheless plain that today Judge O'Connor does not support the use of abortion in family planning. She testified clearly on this point at the opening session of her hearings:

> I would like to say that my own view in the area of abortion is that I am opposed to it as a matter of birth control or otherwise. The subject of abortion is a valid one, in my view, for legislative action subject to any constitutional restraints or limitations.

As for the issue of parental consent, Judge O'Connor's view today is at considerable odds with the approach taken in the bill she cosponsored 8 years ago. In reply to a question from Senator Denton, she said:

> I would simply say that it is my personal view that I would want to have the child consult the parents and have the parents work with the child on the issue.

While both of her present positions contradict the main features of S.B. 1190, we must allow for growth and maturity of one's views. All of us today have a much clearer understanding of the implications of abortion and of the great legal ramifications which are sometimes drawn from seemingly innocuous words. Indeed, that is precisely why the issue of abortion dominated her nomination hearings.

Seventh. On May 9, 1974, Senator O'Connor was one of nine Senators who voted against S.B. 1245, a bill authorizing the University of Arizona to issue bonds to construct sports facilities, after the bill had been amended by the House to prohibit abortions at any facility operated by the Board of Regents. Senator O'Connor had supported the bill when it had originally passed the Senate. She stated:

> In the House it was amended to add a nongermane rider which would have prohibited the performance of abortions in any facility under the jurisdiction of the Arizona Board of Regents. When the measure returned to the Senate, at that time I was the Senate majority leader and I was very concerned because the whole subject had become one that was controversial within our own membership.
>
> I was concerned as majority leader that we not encourage a practice of the addition of nongermane riders to Senate bills which we had passed without that kind of a provision. Indeed, Arizona's constitution has a provision which prohibits the putting together of bills or measures or riders dealing with more than one subject. I did oppose the addition by the House of the nongermane rider when it came back.

In adopting the view that the abortion provision was nongermane, Senator O'Connor was construing the Arizona Constitution narrowly. The constitution says, in article 4, part 2, section 13:

> Every Act shall embrace but one subject and matters properly connected therewith . . .

Since the issuing of stadium bonds and the performance of abortions were both actions under the authority of the Board of Regents, it could easily be argued that the act embraced but one subject, and the prohibition on abortion was properly connected therewith. Indeed, only one senator, and it was not Senator O'Connor, registered opposition to the bill on constitutional grounds. Despite the opposition, the bill passed, and it was never declared unconstitutional. Each one must draw one's own conclusions as to whether opposition to the bill in those circumstances sprang from a desire for purifying the legislative process or an aversion to prohibiting abortion.

Eighth. On January 22, 1974, 10,000 Arizona citizens gathered at the State capitol to protest the Roe against Wade decision. They submitted petitions signed by over 35,000 registered voters asking that a memorial be sent to the U.S. Congress to pass the Human Life Amendment. Arizonans are not given to large political demonstrations; the crowd at the State capitol was the largest in Arizona's history. House Memorial 2002 passed the Arizona House of Representatives by a 41-to-18 vote. Mr. President, I had a personal interest in this matter since the language of the con-

stitutional amendment sought by the memorial was the language which I had the honor of introducing in the U.S. Senate.

On April 23, 1974, H.B. 2002 passed the Senate Judiciary by a 4-to-2 vote, with the Phoenix Gazette reporting that Senator O'Connor voted against it even after it was amended to include exceptions for rape and incest in addition to an exception for the life of the mother. On May 7, 1974, a Phoenix Gazette article quoted Sandra O'Connor as follows:

I'm working hard to see to it that no matter what the personal views of people are, the measure doesn't get held up in our caucus.

On May 15, 1974, H.B. 2002 failed to pass the majority caucus by one vote. At least one senator who was in the caucus has stated that Senator O'Connor voted against the memorial. It should also be noted that these votes were taking place at exactly the same time as Senator O'Connor's vote against the stadium bill.

Judge O'Connor testified on this point as follows:

I did not support the memorial at that time, either in committee or in the caucus. . . . I voted against it, Mr. Chairman, because I was not sure at that time we had given the proper amount of reflection or consideration to what action, if any, was appropriate by way of a constitutional amendment in connection with the *Rowe* v. *Wade* decision.

It seems to me, at least, that amendments to the Constitution are very serious matters and should be undertaken after a great deal of study and thought, not hastily. I think a tremendous amount of work needs to go into the text and the concept being expressed in any proposed amendment. I did not feel that that kind of consideration had been given to the measure.

It is of interest that the rationale she gives for not supporting the memorial is just exactly the opposite of the rationale she gave for cosponsoring the family planning bill, despite its obvious flaws. In that case, she told the committee that she was not concerned about the bill's shortcomings because she was certain that the bill would be amended in committee; but in the case of the memorial, she could not support it because the text was not yet perfect.

Ironically, a memorial has no legal impact whatsoever; the exact text of such a constitutional proposal is irrelevant since the constitutional amendment itself will be shaped in the Congress, not the State legislature. Supporting or not supporting the memorial was therefore merely a political statement, but one of keen interest in the State of Arizona. Whatever concerns Senator O'Connor may have had about the text as supported by 35,000 Arizonans, the practical effect of her withholding support was to aline herself with the proponents of abortion.

Ninth. In 1974, S.B. 1165, the State medicaid bill was introduced in the Senate. Among other provisions, it said that no benefits would be provided for abortions except when deemed medically necessary to save the life of the mother, or where the pregnancy had resulted from rape, incest, or criminal action. Attention was called to this measure by Judge O'Connor herself during the hearings, since it had been overlooked in the public debate. She said: "I supported that bill, together with that provision." Later Senator DOLE asked whether it was fair to conclude that that bill represented her views on that issue. She replied: "Yes, Senator, it reflected my views on that subject when I voted for that measure." When Senator DOLE pressed her as to whether it represented her views today, she answered: "Yes—in general substance, yes."

Yet her support of this bill tells us little about her attitude on abortion. Antiabortionists would have been displeased with any bill that provided State funding of abortion, although they would have been pleased that some restrictions were included. Proabortionists would have been pleased with any bill that established the principle of State funding of abortions, hoping to ease the restrictions at a later date. We can conclude only that she believes abortion to be a proper object of State legislation; and that, in a legislative framework, she supports restriction of abortion to cases involving rape, incest, or the life of the mother.

Nor was the abortion issue an isolated phenomenon. As is well known, abortion is only one element in a panoply of issues whose partisans describe them as women's issues. Yet, in fact, they are not women's issues as such, but only the issues of a partisan group of women who are promoting a particular view of femaleness that is at odds with the traditional view of the dignity of women. This is not the place to argue that justice of those views, or the extent to which they are actually held among women at large, but merely to point out that, by and large, those views are intolerant of the traditional family values supported by the Republican platform.

Senator O'Connor was perceived as a supporter of that group of issues. In 1970, for example, she sponsored the Equal Rights Amendment ratification in the Arizona Senate, showing none of the reticence she later displayed over memorializing Congress about the human life amendment. When the ERA was killed in the Arizona Senate Judiciary Committee in 1973, she immediately introduced a bill for an advisory referrendum on ERA, in a strategy that was interpreted as attempting to put pressure on her colleagues.

As already noted, she was a cosponsor of legislation giving information on sex education, abortion counseling, and even abortion procedures to minors without notification or consent of the parents. In 1970, she was described in Phoenix magazine as almost alone in opposing publicly State aid to private schools. In 1971, she succeeded in weakening antipornography bills which would have prohibited the public display of explicit sexual material near schools and parks. In 1972, she supported legislation giving 18-year-olds the right to drink alcoholic beverages, legislation that was defeated. In 1973, she supported H.R. 1107, a so-called no-fault divorce bill. In 1974, she was the only Senator to cosponsor H.B. 2190, a State-level version of the Child Development Act vetoed on the national level by President Nixon in 1971 as too great an intrusion into the family.

In 1974, Senator O'Connor was appointed to the Defense Advisory Committee on Women in the Services, DACOWITS, a group of 30 civilians appointed by the Secretary of Defense. DACOWITS became the center of agitation to repeal the laws prohibiting combat roles for women, specifically, the two laws upheld by the Supreme Court on June 25, 1981 as the basis for excluding women from the draft. By 1975, then Judge O'Connor spearheaded efforts in DACOWITS to allow women to enter the military academies and to be assigned to ships and aircraft other than hospital or transport vessels. For example, the minutes of the DACOWITS Subcommittee on Utilization for April 7, 1975 state:

At this point, Judge O'Connor moved the following recommendation, which was seconded by Dean Heyse: That careful analysis and definition of what is meant by "combat duty" and "combat assignment" be undertaken by the Department of Defense in order to clarify many questions which arise within the services relating to this question and in order to set forth a more uniform policy for the several branches of the services with respect to both enlisted and officer status.

Judge O'Connor then moved the following recommendation, which was adopted: That admission to the service academies be open to all qualified candidates to prepare military leaders for service in peace and war. That the Department of Defense alter its present position and take a positive position favoring admission of women to the service academies and implement it forthwith.

Judge O'Connor initiated discussion of Title 10, USC Sec. 6015 relating to the Navy's prohibition against assignment of women to vessels other than hospital or transport vessels. . . . This resulted in the following motion by Judge O'Connor, seconded by Dean Heyse: and agreed upon by all present: That the Department of Defense initiate amendment of Title 10, USC, Sec. 6051 so as to remove the total prohibition against assignment of persons (male and female) to vessels and aircraft in accordance with the qualifications of the person to be assigned and the particular mission to be performed.

It was not for nothing, then, that Judge O'Connor was endorsed for the nomination to the Supreme Court by women's liberation activists such as Eleanor Smeal, president of the National Organization for Women.

Throughout the hearings on her nomination, Judge O'Connor steadfastly refused to comment on Roe against Wade, taking the position the issues in that case would likely come before the Court, and she would have to disqualify herself under the law if she discussed the Roe holding. This was a clever position, but one that was less than candid. The statute governing disqualification of Supreme Court Justices is 28 U.S.C. 455, which provides:

Any Justice or judge of the United States shall disqualify himself in any case in which he has a substantial interest, has been of counsel, is or has been a material witness, or is so related to or connected with any party or his attorney as to render it improper, in his opinion, for him to sit on the trial, or appeal, or other proceeding therein.

Obviously, nothing in the statute excludes public statements on the issues, so long as no case is actually pending. In the case of Laird against Tatum, 409 U.S. 824 (1972), the respondents had urged Justice Rehnquist to disqualify himself because prior to his nomination as a Supreme Court Justice he had publicly spoken about the constitutional issues that were raised in the case. But Justice Rehnquist refused to disqualify himself, sharply distinguishing between public statements about the case itself—which might constitute a discretionary ground for disqualification—and public statements about what the Constitution provides, outside of the specific case involved.

After Judge O'Connor was nominated, I wrote her a letter asking for her comment on Roe against Wade. In her reply, she declined to do so, citing a distinction that Rehnquist had made between statements made before nominations to the Court, and statements made after nomination, but before confirmation. Judge O'Connor wrote: "He recognized that statements about specfiic issues made by a nominee to the bench risk the appearance of being an improper commitment to vote in a particular way."

Thus the question turns not on the issue of disqualification, but of propriety. There are no grounds whatsoever for a Justice to fear the need to disqualify himself or herself, and indeed no Justice has ever done so in the history of the Court. Yet many have commented on past decisions of the Court in their nomination hearings, including Justice Fortas, Justice Marshall, Justice Powell, and Justice Rehnquist himself.

As for the supposed impropriety, the question turns upon whether a comment on a past decision is indeed a promise to vote a certain way in the future. In point of fact, it is not. No one can predict what might be done in the future, and no prospective Justice is going to promise to bind himself or herself before the facts of a case are known, or even before it is known how a case might be presented. Comment on a past decision merely explains the judicial philosophy of the nominee at the present time. Justices often shift, or grow in their thinking, or new facts may be presented. If there were any doubt about impropriety, a nominee could simply disclaim that present comment constitutes a future promise.

The lack of substantive comment on judicial philosophy throughout three days of hearings poses a unique problem with regard to Judge O'Connor. The advise and consent duty which the Constitution imposes upon the Senate is obviously a substantive one. The Senate cannot be supposed to be a rubber stamp for an executive nomination, particularly for the Judiciary. A Justice is not the President's agent, unlike appointments in the executive branch. Yet unless the nominee's judicial philosophy is known, it is difficult for a Senator to fulfill his constitutional function of advise and consent.

Most other nominees to the Supreme Court have had a substantial public record from which their judicial philosophy could be deduced. Judge O'Connor has no such substantial record, aside from her legislative activities. By adopting the same position as a Harlan, or a Frankfurter, whose positions were well known before nomination, Judge O'Connor has all but shut out the Senate from its Constitutional responsibilities.

We are left, then, with what she described in the hearings as her personal views, repeatedly pointing out that she thought it improper to impose personal views in deciding a case. But in point of fact, every judge and justice imposes personal views in making decisions. Nearly every Justice who has appeared before the Senate for hearings has steadfastly affirmed that he believed it to be the function of the judiciary to interpret the Constitution, not to make new laws based upon his personal opinion. For example, Justice Blackmun, at his hearing, said:

> I personally feel that the Constitution is a document of specified words and construction. I would do my best not to have my decision affected by my personal ideas and philosophy, but would attempt to construe that instrument in the light of what I feel is its definite and determined meaning.

Yet it was Justice Blackmun who wrote the Court's opinion in Roe against Wade, which is generally regarded as among the most extreme examples of judicial preference for personal ideas and philosophy over textual and historical sources of constitutional law.

Throughout the hearings, Judge O'Connor repeated several times that she is personally opposed to abortion. Perhaps the clearest and most definite statements on this matter came in an exchange with Senator KENNEDY:

> Senator KENNEDY. In some earlier questions—I think by the Chairman—you were asked your position on birth control and abortion. Have your positions changed at all over the years or are they the same as indicated in your votes and statements or comments?
>
> Judge O'CONNOR. I have never personally favored abortion as a means of birth control or other remedy, although I think that my perceptions and my knowledge of the problems and the developing medical knowledge, if you will, has increased with the general explosion of knowledge over the past 10 years. I would say that I believe public perceptions generally about this particular area and problem have increased greatly over the past 10 years. I would say that I think my own perceptions and awareness have increased likewise in that interval of time.
>
> Senator KENNEDY. Does that mean your position has altered or changed or just that you have developed a greater understanding and awareness of the problem?
>
> Judge O'CONNOR. The latter, I think, Senator, is what I was trying to express.

The interpretation of this passage is difficult. Judge O'Connor says that she never favored abortion as a means of birth control or other remedy. Yet her legislative record implies just the opposite. At the same time that she was supporting abortion legislation that provided on demand until term, that would provide abortion counseling and abortions to minors without parental consent, and that would allow the University of Arizona to provide abortions to students at taxpayers' expense, she was personally opposed to abortion. And while she was personally opposed to abortion, she also opposed efforts by the pro-life movement to restore the traditional legal status for abortion.

Yet there are suggestions in the transcript that Judge O'Connor, as a State senator, tended to view the legislative process as separate from her personal views, that she was trying to make allowances for the views of those who disagreed with her. In my own view, I recognize that the legislative process involves many compromises, but I would not want ever to compromise on basic principles. In my opinion, I believe that Judge O'Connor now looks upon the legislative problem with more maturity.

In an exchange with Senator DENTON, Judge O'Connor in response to a question as to where abortion was offensive, spoke as follows:

> It remains offensive at all levels. The question is, what exceptions will be recognized in the public sector? That really is the question . . . I find that it is a problem at any level. Where you draw the line as a matter of public policy is really the task of the legislator to determine. Would I personally object to drawing the line to saving the life of the mother? No, I would not. These are things that the legislator must decide.

In my view, her comments on abortion are certainly more perceptive today than her record as a legislator would indicate. But of course, even Ronald Reagan learned from experience while Governor of California when he approved ill-drafted legislation on abortion without fully understanding the consequences. In her exchange with Senator Denton, Judge O'Connor took note of the process of interior growth:

> Senator Denton, I cannot answer what I will feel in the future. I hope that none of us are beyond the capacity to learn and to understand and to appreciate things. I do not want to be that kind of a person. I want to be a person who is open-minded and who is responsive to the reception of knowledge.
>
> I must say that I do expect that in this particular area we will know a great deal more 10 years from now about the processes in the development of the fetus than we know today. I think we know a great deal more today than we knew 10 years ago, and I hope that all of us are receptive and responsive to the acquisition of knowledge and to change based upon that knowledge.

Mr. President, there is a suggestion in that statement that Judge O'Connor is moving away from the positions which she supported as a legislator, and is focusing more clearly on her own personal convictions. In her exchange with Senator DECONCINI, she said:

> I have indicated to you the position that I have held for a long time—my own abhorrence of abortion as a remedy. It is a practice in which I would not have engaged, and I am not trying to criticize others in that process . . . But my view is the product, I suppose, merely of my own upbringing and my religious training, my background, my sense of family values, and my sense of how I should lead my own life. I have had my own personal views on the subject for many years. It is just an outgrowth of what I am, if you will.

When the President nominated Judge O'Connor to the Supreme Court, I visited him on that morning at his invitation, and he assured me personally that the

nominee shared his own views on the question of abortion. This is not hearsay. I sat with the President for the better part of a half hour in which he described Mrs. O'Connor as he perceived her.

Under extensive questioning from the Judiciary Committee, the nominee has clearly demonstrated, under oath, that she shares those views. In that sense, the President has fulfilled the commitment of the Republican platform.

Nevertheless, troubling questions remain. With all due respect to Judge O'Connor, I find it disturbing that her legislative record is in direct opposition to the personal views which she has expressed, and to which she testified as being of long standing. It suggests a dichotomy between thought and action that I, as a legislator, cannot comprehend. Yet there are also indications that she regrets the role she played in the Arizona State senate.

I think that the hearing process has focused her attention on these problems in a way which had not previously occurred. I am encouraged by the fact that, over and over again, she emphasized her awareness of the criticisms of Roe against Wade, as an extreme example of judicial activism. I am encouraged by the fact that she emphasized that, in her opinion, Roe against Wade was far from being a settled doctrine, and that she expected it to come before the Court for further review.

On that hope—that I have judged her accurately, and I am instinctively persuaded that I have—I intend to cast my vote for approval. Her testimony is that she is personally deeply opposed to abortion. We are left with the question of whether her personal views will, in fact, influence her decisions in those areas where the Constitution itself is vague or nondeterminative. My instincts, my faith in President Reagan's word, and my respect for Mrs. O'Connor as a person provide the grounds for my supporting her nomination. I wish her well.

Mr. THURMOND. Mr. President, I thank the Senator for the fine statement he has made. I am sure it will be a great contribution to this question.

Mr. HELMS. I thank the Senator.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that the time of the Senator from Alabama be charged against the other side.

The PRESIDING OFFICER. Without objection, the time will be charged to the time of the Senator from Delaware.

The Senator from Alabama may proceed.

Mr. HEFLIN. Mr. President, the task which we are now considering is a most important one. It is the process by which a branch of government renews itself—a regeneration, a pumping of new blood into the life of a great and vital institution.

In my opinion, and I say this, Mr. President, only after careful reflection, there are only two institutions absolutely indispensable to the independence, health, and maintenance of our Republic—a free, fair, and vigorous press, and a strong and independent judiciary. While Presidents may come and go, their faithful execution of the laws is subject to an ultimate check. While great men and women may deliberate and legislate in these very Halls, the laws they pass do not interpret themselves.

The Federal judiciary—the high Court in particular—not only has the last word as to what our laws say, but also as to whether they may permissibly say it. The Court to which this capable jurist has been nominated is the ultimate arbiter of our most sacred freedoms, guardian of our most cherished liberties.

In fulfilling our constitutional duty to advise and consent, the men and women of this body will cast no more important vote in this session of Congress. For we are voting not so much to confirm Sandra Day O'Connor, but to reaffirm our belief in the very concept of justice, and its preeminence among values in a free and thriving republic. As our first President told his Attorney General, Edmund Randolph, some two centuries ago, "The administration of justice is the firmest pillar of government."

If justice is both the ultimate goal and indispensable for the survival of a free republic, we best insure it by the people we select as its custodians. And that is what we are about today—selecting a custodian for our most precious commodity, a trustee for our most valuable resource.

And yet, Mr. President, nowhere is there to be found a set of standards for selecting these custodians of justice. Since Chief Justice John Jay took the oath of office in 1789, 101 Justices have sat on the Supreme Court. While this record should provide some guidance for us, it is of limited assistance, for they have differed as much in their judicial philosophies as in their passion for the law.

Greatness on the Court is neither measurable nor clearly definable. It may derive from a coherent philosophy expressed with unequaled brilliance, as was the case with Justice Holmes, or from a vast currency of experience by the creative mind of a Justice Brandeis. It may stem from an unrelenting effort to restrain judicial activism by a Justice Rehnquist, an unquenchable thirst for liberty, as with Justice Douglas, or the passionate love of free expression of my fellow Alabamian, Hugo Black.

When asked to catalog the criteria for judicial selection, we normally—and somewhat automatically—list legal ability, character, and judicial temperament. To these qualities, I would respectfully add three perhaps more fundamental: First, an understanding of the proper role of the judiciary in our constitutional and Federal scheme; second, a deep belief in, and unfaltering support of, an independent judiciary; and third, an abiding love of justice.

If I might elaborate ever so briefly:

First. Regarding the proper role of the judiciary, it is the constant struggle of all Federal judges and the ultimate issue they must confront to preserve the balance between the powers of the Federal Government and those of the States while, at the same time, protecting the constitutional guarantees of all Americans. It is the supreme test of judicial acumen to preserve that balance, to which an understanding of the proper role of the Federal judiciary is indispensable.

Second. The Framers of the Constitution were painfully aware of encroachments on judicial independence. Indeed, denial to the colonies of the benefits of an independent judiciary was one of the grievances against King George III enumerated in the Declaration of Independence. If the judgment of our highest custodians of justice is at all compromised, if it is based on timidity or hesitation arising from public or political pressure, our legacy of judicial independence will be undermined. Justice compromised is justice aborted.

Third. There must be a passionate love of justice, the great cement of a civilized society, the guardian of all life and liberty. If injustice can divide us—pitting black against white, old against young, have-nots against haves—justice can bring us together as a people, and as a Nation.

Mr. President, against these highest and noblest of standards, I have examined this nominee, and find that she meets them, every one. Judge O'Connor's record of accomplishment, both in public and private life, is exemplary—a seasoned private practitioner; a vigorous prosecutor; skillful legislator; respected jurist; legal scholar; bar, civic and political leader; faithful wife; and devoted mother. The breadth of her service is surpassed only by the excellence with which it was rendered. More important, it enables Judge O'Connor to bring unique qualities to the Court: an abiding respect for the law; a deep understanding of our economic and political institutions; a clear view of the proper role of the judiciary; and a rare appreciation of the values of Americans as a people. I dare say these qualities, and her record to date, are a harbinger of judicial greatness.

When President Reagan nominated Sandra Day O'Connor for the position of Associate Justice of the U.S. Supreme Court, I was one of the few Members of the Senate who had the privilege of prior personal and professional knowledge of Judge O'Connor. I was delighted with the President's selection and was hopeful that the U.S. Senate would confirm this nomination.

Having participated with Judge O'Connor, under the leadership of Chief Justice Burger, in the recent Anglo-American Legal Exchange on Criminal Justice, I learned first-hand of her exceptional intelligence, her hard-working preparation of the issues at hand, and her unswerving adherence to integrity. Based upon my previous experience with Judge O'Connor, I was confident of her

abilities to assume the most crucial position of Associate Justice of the Supreme Court.

During the Senate Judiciary Committee hearing process, Judge O'Connor demonstrated outstanding legal abilities, judicial temperament, a quick and decisive intellect, and a firm understanding of American jurisprudence and our judicial system. After 3 days of extensive hearings by the committee, I am delighted that my initial impressions of her legal and judicial ability were confirmed to the highest extent, and that the members of the Judiciary Committee recognized her outstanding attributes in support of this nomination, with 17 affirmative votes.

I began by saying we are involved in the process of institutional renewal. As Justice Cardoza put it—

> The process of justice is never finished. (it) reproduces itself, generation after generation, in ever-changing forms. Today, as in the past, it calls for the bravest and the best.

I believe his words ring just as true today, and in Sandra Day O'Connor I believe we have "the bravest and the best." I counseled Judge O'Connor during the confirmation hearing to carry indelibly etched in her conscience, and follow as religiously as is humanly possible, the admonition of one of our greatest jurists, Learned Hand, who wrote:

> If we are to keep our democracy there must be one commandment: Thou shalt not ration justice.

I am confident that Justice Sandra Day O'Connor will follow this commandment religiously.

Mr. President, President Reagan's appointment to the Supreme Court will reflect great credit on his administration, the Court itself and, indeed, the Nation at large. I am delighted to vigorously support this nomination, and I encourage each of my colleagues in the U.S. Senate to enthusiastically support the nomination of Sandra Day O'Connor for the position of Associate Justice of the U.S. Supreme Court.

Mr. HART. Mr. President, will the Senator from Alabama yield to me?

Mr. HEFLIN. I yield.

Mr. HART. Mr. President, I congratulate the Senator from Alabama on an extremely eloquent statement.

Too often in this Chamber, we debate the merits of nominations or fundamental legislative issues and miss the more overriding point. The point here is justice, which we do not hear about too much these days. The Senator from Alabama is to be congratulated for bringing the debate back to where it belongs.

The issue on this nomination, to some degree, and in our society at large is justice.

The distinguished Senator from Alabama has made a remarkable record in his own right in pursuing the cause of justice throughout his career on the highest court of his sovereign State. I wish to add a word here of support and congratulation for him and that distinguished career and his efforts in bringing the focus of the U.S. Senate on this issue, as well as other issues of the day, back to the fundamental point—that a society without justice, without justice for all, is not a democracy and certainly is not what the United States of America started out to be.

So I want the Senator from Alabama to know that his colleague has the highest regard for him and for his pursuit of that principle.

Mr. HEFLIN. I certainly appreciate the kind comments of the distinguished Senator from Colorado.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum, and I ask that the time be charged equally to both sides.

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

The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. KENNEDY. 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. KENNEDY. Mr. President, will the floor manager yield?

Mr. BIDEN. I yield as much time as the Senator from Massachusetts will require.

The PRESIDING OFFICER (Mr. SYMMS). The Senator from Massachusetts.

Mr. KENNEDY. I am pleased and proud to support Judge Sandra O'Connor's confirmation as Associate Justice of the Supreme Court.

The Judiciary Committee hearing on her nomination established beyond any doubt her qualifications to sit on the Nation's highest court. At the hearing, she demonstrated the qualities of judicial temperament, excellence in the law, and the personal and intellectual integrity essential in a nominee to this high position. She also demonstrated her commitment to the enforcement of individual rights under the Constitution. Other witnesses at the hearing testified to the respect she has earned in Arizona as a jurist and as a concerned member of her community. I am convinced that Judge O'Connor has the potential to be an outstanding Justice on the Supreme Court.

Judge O'Connor's nomination is a significant victory for the cause of equal rights. It is a significant new step on the road toward equal justice in America. The small number of women on the Federal bench, and, until now, their exclusion from the Supreme Court, has been a particularly troubling reflection of the discrimination that women and minorities still face in our society.

Americans can be proud of this day, as we put one more "men only" sign behind us.

Americans can also take pride in this nomination for another reason. By this vote, the Senate rejects the would-be tyranny of the new right and reaffirms the vital principle of the independence of the judiciary. Single-issue politics has no place in the solemn responsibility to advise and consent to appointments to the Supreme Court or any other Federal court.

As the hearings revealed, no member of the Senate Judiciary Committee completely agrees with Judge O'Connor's views on every major issue which will come before the Court. I do not agree with her present views on the proper balance in the relationship of the Federal courts and the State judiciary in the enforcement of Federal rights. But I am satisfied that her intellectual integrity and her concern for those whose rights have been denied will lead her to a fair evaluation of that balance from the unique perspective of the Supreme Court.

I congratulate Judge O'Connor and I wish her well in the new responsibility she now begins.

Her place is already secure as the first woman in the 200-year history of American law to be nominated to the Supreme Court. But she has the ability and the character to be remembered for even more—as a wise justice who understood and advanced the historic role of the Supreme Court in preserving our country as a nation of equal justice under law.

Mr. President, I yield the remainder of my time. I thank the Senator.

Mr. METZENBAUM addressed the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. BIDEN. Mr. President, I yield as much time as the Senator from Ohio may require.

The PRESIDING OFFICER. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I stand to indicate my support for the confirmation of Sandra O'Connor to the Supreme Court of the United States.

In doing so, I have a special kind of good feeling, a good feeling that the overwhelming majority of this body—and it would not surprise me if the vote were unanimous—will indicate that they will not yield to the pressures of the new right and they will not be distracted to oppose her nomination on the basis of any one single issue.

My view is that, regardless of the merits of the issue, American politics have had enough of single-issue opposition or support and that it is time that those persons up for confirmation in the Supreme Court and persons up for election to public office should not be judged on the basis of any one issue—and there are many of them that are used as the sole determinant in this country.

I believe there is something basically un-American about saying that a person should or should not be confirmed for the Supreme Court or should or should not be elected to public office based upon somebody's view that they are wrong on one issue.

This judge, who has served her State well as a jurist and as a legislator, has a mind of her own. Her views are not my views. If I were doing the appointing, I doubt very much that I would appoint Judge O'Connor to the Supreme Court.

But that is not the question before the Senate of the United States. The question is: On the basis of her legal ability, on the basis of her character, on the basis of her integrity, on the basis

of her judicial temperament, and on an overall basis, is she or is she not qualified to be appointed to the Supreme Court of the United States? I know that this body today will give a resounding affirmative answer to that question.

There are many issues on which I disagree with the judge. On the whole question of access to the Federal courts for the poor, I do not agree with her attitude or some things that she has written about in a magazine article. She believes that the jurisdictional amount on Federal question cases should be a specific amount and I believe that the courts ought to be open regardless of the amount in question. This Congress has already passed on that issue and has arrived at the same conclusion as the Senator from Ohio.

She indicated her opposition to attorneys' fees being paid in section 1983 cases, the original Civil Rights Act, the anti-Ku Klux Klan Act. I take strong issue with that point of view. I do not happen to think that she is right on that score. But would that be a sufficient basis for me to vote against her confirmation? I think not.

She and I disagree with respect to the question of standing requirements in a case. Would that be a sufficient basis for me to vote against her? I think not.

I believe that the role of the court in issues having to do with social justice is, indeed, an important role. This question of judicial activism—what does that really mean? When is a court judicially active? When it is making laws or when it is not making laws? It is all a matter of perspective and all a matter of perception. It is a question of how you interpret the action of the court. I do not think she and I would agree on all matters in that connection, but I still believe she belongs on the Supreme Court, having been appointed by the President of the United States.

I doubt very much that she and I would agree on the issue of capital punishment. I would guess that we might disagree on many issues having to do with criminal procedures.

But her appointment is an appointment that the President of the United States has the right to make under the Constitution and we in the U.S. Senate have an obligation to confirm or refuse to confirm. It pleases me greatly that—after days of hearings, very full hearings, very fair hearings, conducted by the distinguished chairman of the Judiciary Committee, Senator STROM THURMOND, in which everybody was given an opportunity to be heard, in which Senators who felt that they needed an extended opportunity for questioning were given that opportunity—she came out of the Judiciary Committee with a vote of 17 to 0, 1 present.

I hope that today there will not be a single vote cast against her confirmation.

I am particularly pleased about the fact that she will become the first woman Justice of the Supreme Court. I am pleased that I had the privilege of participating in that confirmation process in connection with such an appointment.

But I do not hesitate to say that that would not be a sufficient basis alone for me to vote for her confirmation. I will vote for her confirmation because I think that she will serve the Court well, I think she will serve the American people well, and I think she will serve the cause of justice well. I am glad that we will have the privilege to vote on her confirmation today.

I yield back the remainder of my time.

Mr. DECONCINI addressed the Chair.

The PRESIDING OFFICER. The Senator from Arizona.

Mr. DECONCINI. Mr. President, I rise once again today to discuss for a short period of time the nomination of Sandra O'Connor as an Associate Justice to the U.S. Supreme Court.

This is a monumental time for all of us—the first woman Justice—but, obviously, as many Members have pointed out, she was selected on the basis of her qualifications and her merits.

When Justice Potter Stewart announced his retirement, I submitted Judge O'Connor's name to President Reagan for consideration. Along with other people, some in this body and some other distinguished jurists and scholars, I had the honor of presenting Judge O'Connor, along with my distinguished senior colleague, Senator GOLDWATER, to the Judiciary Committee for the beginning of her confirmation hearings. I am once again here before the entire Senate to proclaim my clear, unequivocal support for this fine jurist, for this fine person, this fine woman, who will be the first woman on the Supreme Court.

I hope that our colleagues will vote a unanimous vote today in her behalf.

I think it is important to set aside a moment to say that though Judge O'Connor will be, in my judgment, the first woman to serve on the Supreme Court, after her confirmation today and her swearing in later this week, that this should not be the last, by any means, and, hopefully, it will just be the beginning. I urge the President, if he has another opportunity, that he fulfill that promise once again to bring into our judicial system the fine, qualified women that have demonstrated the absolute ability to be competent on the court and competent in the legal profession.

This should be just the beginning of a new era and not 200 years or 300 years before we have another woman on the Supreme Court. There are indeed many women qualified to serve in this position. Sandra O'Connor demonstrated that as well as demonstrating her own credibility for this position.

The Senate Judiciary Committee, as we all know, held 3 days of hearings which were conducted in an outstanding manner by the chairman, Senator THURMOND, which comprehensively covered Judge O'Connor's technical qualifications as well as her personal and judicial philosophy. These hearings reveal an individual who is capable of dealing with the intricate, complex issues that will face her and the other members of the Supreme Court in years to come.

Judge O'Connor will bring to the court a unique combination of experience as a legislator, a Government lawyer who served as assistant attorney general for the State of Arizona, a trial judge and an appellate judge. The quality and breadth of her legal background evidence her outstanding credentials for this appointment. As an honor graduate from Stanford University Law School her entire legal career has been a progression of distinguished records of achievements and accomplishments, which I think set very well and will hold her in great stead to serve on the Court.

As a legislator, Judge O'Connor served as majority leader of the Arizona State Senate and as chairman of one of the major committees of that body. She has received numerous awards and honors for her work as an active, private citizen, and has been held in high esteem by members of the Arizona State bar who have tried cases before her while she was serving as a judge.

The mix of these experiences has created in Judge O'Connor a special sensitivity, a sensitivity demonstrated in her thoughtful responses to the Judiciary Committee's question, the nature of American Government to the delicate interrelationship between its separate branches constitute the hallmark of democracy.

Judge O'Connor throughout the grueling confirmation hearings has been shown to be a woman of great depth and intelligence. She acted as a true professional. Questions presented by the Judiciary Committee were intricate and comprehensive. They involved issues of law and of her own knowledge of Supreme Court decisions and her studies of the Constitution. She answered these questions in such a manner so as to show her depth of thought and comprehension of the issues. She answered the questions fully and completely. Judge O'Connor told the Judiciary Committee her full views on judicial activism, stare decisis, and her personal views on many current issues. Questions pertaining to specific U.S. Supreme Court decisions were beyond the scope, in my opinion, of permissible questions, or at least the questions that should be answered specifically. To ask a potential Supreme Court Justice how he or she would vote on a particular issue which may come before the Court is the equivalent of asking that individual to prejudge the matter or to morally commit oneself to a particular position.

Whether or not it was pertaining to reversal of a previously decided case by the Court or a hypothetical set of circumstances or facts that would very likely present itself to a court in the future I think is unquestionably the wrong type of questions to expect a nominee, anyone—Judge O'Connor or otherwise—to answer.

Such a statement, if the nominee were to give a definite opinion, might disqualify the nominee for sitting and hearing such cases in the future. This end result is contrary to the sworn duty of a Justice to decide cases that come before the Court. In light of this basic duty, I feel that I must state my view that Judge O'Connor's statements and answers were full and complete responses to questions posed by members of the Senate Judiciary Committee.

I wish to thank the chairman for his thoughtfulness and that of the members, both Republicans and Democrats, who did indeed pose hard questions to Judge O'Connor but treated her with respect. What we are dealing with today is not a question of an individual's political ideology, but the question of an individual's competence and professionalism, integrity, judicial temperament, and commitment to have equal justice under the law, words that are said often but do we really think about equal justice under the law? That is what we as a country, that is what we as the Senate, that is what the President as the Chief Executive Officer of this land, are asking from Judge O'Connor, equal justice under the law.

I submit that we will get just that. The hearings and the statements made today by our colleagues demonstrate the confidence that Members of this body have in Judge O'Connor.

Our Constitution provides the framework of Government spanning years, decades, centuries. The retention of this framework depends to a great extent on the quality of judicial construction. As highly emotional and important as the issues of today are, and there are many that fit that particular description, there will be totally unpredictable matters that could confront the Supreme Court in future years. It takes maturity, it takes real competence to address those with that equal justice under the law always in the forefront.

It is our role to confirm a Justice who has the intelligence, training, and judgment to span through this period of time.

I am confident that Judge Sandra O'Connor will win full Senate confirmation, and I am hopeful that it will be a unanimous vote. I am equally confident that this Nation's first woman Justice, an Arizonan, will have a long and distinguished career on the Bench.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, with great pleasure, I take the floor today as the Senate prepares to exercise its constitutional function of giving its consent to President Reagan's appointment of Judge Sandra Day O'Connor to fill the Supreme Court vacancy created by the retirement of Justice Potter Stewart. As we undertake this vital task, therefore, we should pause to recall the reasons that the "framers" split the nomination process for Supreme Court judges between the executive and legislative branches. The framers understood the importance of the Supreme Court to the new Republic. Standing before the First Congress to propose that a bill of rights be added to the Constitution, James Madison stated beautifully the purpose of the Nation's Highest Court:

> [The Court] is to be an impenetrable bulwark against every assumption of power in the legislative or executive . . . to resist every encroachment upon rights expressly stipulated for in the constitution by the declaration of rights. 1 Annals of Cong. 457.

The Supreme Court, therefore, holds the lofty responsibility of policing the bounds drawn by the framers of the Constitution. But the framers also understood that even the words of the Constitution could be slippery. They had suffered indignities at the hands of the King's magistrates who often changed the meaning of the law to fit the circumstances rather than upholding an unchanging legal standard. Recognizing that the integrity of the Constitution itself was at stake, therefore, the framers specifically provided for both the President and the Senate to participate in selecting Supreme Court judges. If the enforcement of the Constitution was to be committed to the hands of justices, the framers wanted to be sure, in the words of Alexander Hamilton, that they designed "the plan best calculated * * * to promote a judicious choice of men for filling such offices." Federalist No. 76. Their "advice and consent" plan thus provided a double check on nominations to insure that the Constitution and such words as "due process' or "necessary and proper" means what the authors intended and the people ratified not simply what five appointees might cumulatively concoct.

In light of this background, the most important qualities for a Justice of the Supreme Court is a keen comprehension of the limits drawn by the drafters of the Constitution and an unshakable resolve to those limits honored. With full awareness of the significance of this recommendation for the future of American jurisprudence, I can confidently say that these are qualities possessed by Judge Sandara O'Connor.

Mr. President, throughout the grueling inquiry into her judicial philosophy and personal background, Judge O'Connor consistently displayed a remarkable poise under pressure and a deep grasp of the intent of the authors of our Nation's foundational document. She brings to the Court an ideal set of credentials to carry out the mission described by Madison. Having served in all three branches—executive, legislative, and judicial—of State government, Judge O'Connor understands the checks and balances between them that prevents any single function of Government from overpowering the others. Moreover, her extensive experience with State government gives her an acute appreciation for the traditional principles of dual federalism which protect our individual rights against centralized governance.

In her excellent article in the William and Mary Law Review (vol. 22:801), Judge O'Connor constructed a cogent case for the principle of federalism within the judiciary:

> State courts will undoubtedly continue in the future to litigate federal constitutional questions. State judges in assuming office take an oath to support the federal as well as the state constitution. State judges do in fact rise to the occasion when given the responsibility and opportunity to do so. It is a step in the right direction to defer to state courts and give finality to their judgments on federal constitutional questions where a full and fair adjudication has been given in state court. (At page 814.)

During the hearing, Judge O'Connor was often questioned about her high regard for the ability of State courts to uphold the Constitution and enforce Federal laws. Several members of the Judiciary Committee tried tirelessly to induce her to assign to the Federal courts a preeminent role in adjudication of Federal or constitutional rights. She would not retreat from her full confidence in our Nation's bifurcated judicial system and the ability of State courts. Indeed, her defense of this principle reminded me of a similar defense by Alexander Hamilton to the objections of the anti-Federalists:

> There is not a syllable in the plan (the Constitution) under consideration which directly empowers the national courts to construe the laws according to the spirit of the Constitution, or which gives them any greater latitude in this respect than may be claimed by the courts of every state. Federalist No. 81.

Judge O'Connor's adherence to this principle is just one example of her tenacity in defense of the Constitution as it was drafted by the framers.

On another occasion during the hearing, Judge O'Connor was assailed for stating that the exclusionary rule is a judge-made rule of evidence that could be altered without doing violence to the Constitution. Several members of the Judiciary Committee questioned Judge O'Connor extensively, seeking to induce her to waver on this principle. Again she held her ground. To learn the soundness of Judge O'Connor's reading of the Constitution, we can look at what the Supreme Court itself has said. Justice Black stated in *Wolf* v. *Colorado*, 388 U.S. 25 (1969), that:

> The Federal exclusionary rule is not a command of the fourth amendment but is a judicially created rule of evidence which Congress might negate.

Again, in *Linkletter* v. *Walker*, 381 U.S. 618 (1965), Justice Black iterated:

> The rule is not a right or privilege accorded to defendants charged with crime but is a sort of punishment against officers in order to keep them from depriving people of their constitutional rights. In passing I would say that if that is the sole purpose, reason, object, and effect of the rule, the court's action in adopting it sounds more like law-making than construing the Constitution.

Indeed, more recently, the Chief Justice has said:

> Reasonable and effective substitutes can be formulated if Congress would take the lead, as it did for example in 1946 in the Federal Tort Claims Act. I see no insurmountable obstacle to the elimination of the Suppression Doctrine if Congress would provide some meaningful and effective remedy against unlawful conduct by government officials. *Bivens* 403 U.S. 388 (1971).

Mr. President, Judge O'Connor was on sound footing when she assessed the exclusionary rule. More important than her effective defense of proper constitutional principles, however, was her courage to defend those principles with her own nomination on the line. This is the brand of bravery we need on the Supreme Court.

I could cite a good many more instances of Judge O'Connor both understanding sound constitutional doctrines and resisting the contentions of those who would have driven her away from those doctrines. For example, Judge O'Connor articulated well the reasons Congress must restructure Federal civil relief under 42 U.S.C. 1983:

In view of the great caseload increase in the Federal courts and the expressed desire of the Reagan administration to hold down the Federal budget, one would think that congressional action might be taken to limit the use of 1983. It could be accomplished either directly, or indirectly by limiting or disallowing recovery of attorney's fees. 22 William and Mary 801,810.

She also enunciated well the powers conferred by article III upon the Congress to regulate Federal court jurisdiction:

The jurisdiction of state courts to decide federal constitutional questions cannot be removed by congressional action, whereas the federal court jurisdiction can be shaped or removed by Congress. Id. at 815.

Mr. President, Judge O'Connor's performance before the Judiciary Committee and her rich experience in government both assure me that she understands the Constitution and possesses sufficient courage to carry out its mandate. At the outset of my remarks, I noted that James Madison characterized the Court as a "bulwark against every assumption of power * * * resisting every encroachment upon rights." The strength of the Court as a bulwark depends on the strength of the nine individuals who comprise it. Judge O'Connor, in my opinion should prove to be not simply a "bulwark" but the "impenetrable bulwark" described by Madison. She will be the kind of Supreme Court Justice the Framers of the Constitution had in mind when they drafted article III. I am honored to exercise my constitutional duty as a Member of the Senate in giving my wholehearted consent to President Reagan's appointment of Judge Sandra Day O'Connor to the Supreme Court of the United States of America.

Finally, Mr. President, I have to add that I personally am highly pleased that President Reagan, in his first Supreme Court nomination, knowing that he may have some more in the future, has opted to choose a woman to go on the Supreme Court of the United States. This is a decision that I think is long overdue. I think that we should have had a woman on the Court much before now. There are many great women jurists, women legislators, women attorneys, and women throughout other walks of life, with legal backgrounds, who could serve on the U.S. Supreme Court and who would add balance to the Court. That balance would give at least some solace and some comfort to women all over this country, who feel as though their needs, their feelings, their rights have not been adequately spoken for, debated, or even cared for.

I believe that Judge O'Connor will represent women's rights well. I think that her writings reflect that, her experience as a legislator reflects that. I think her experiences in the executive branch of the Arizona government reflect that well.

I also suspect that she is going to irritate all of us from time to time, as all Supreme Court Justices do. There is no way that anybody nominated to the Supreme Court of the United States is going to please everybody all the time, and there is no way that Judge O'Connor, as Justice O'Connor, will please everybody all the time.

All I can say is that, from her testimony before us, I was really pleased that she is motivated in the ways she is, that she is a student of the Constitution, that she is a strict constructionist, and that she is going to stand for the principles that I believe have made the Supreme Court the great institution it really is in our lives.

I hope that 20 or 30 years from now, perhaps longer, when Justice O'Connor steps down from the bench, the good things we have said about her this day will have been fulfilled and will have been principles of history and matters of history that all of us can look back upon with a great deal of happiness and with gratitude that she was chosen by this great President, who has lived up to another of his campaign promises.

I wholeheartedly support her, as I have from the beginning. I look forward to reading her decisions, and I expect them to be articulate and well-written and well thought out, as I believe her answers were when she appeared before the Judiciary Committee on her own behalf.

The PRESIDING OFFICER. Who yields time?

Mr. HATCH. 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. THURMOND. 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. THURMOND. Mr. President, I ask unanimous consent that quorum calls from now on not be charged to either side.

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

Mr. THURMOND. 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. GRASSLEY. 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. GRASSLEY. Mr. President, I am a member of the Judiciary Committee and from that standpoint have been very much involved in considering the nomination of Sandra O'Connor to the Supreme Court. That started with my answers to press questions about how I considered her nomination at the time the President announced it, through the time that we eventually considered the nomination and voted on it last week.

During that period I had an opportunity to visit with Judge O'Connor in my office for about 40 or 45 minutes. At the end of that meeting with her I had a press conference in which I was asked by members of the media how I would vote on Judge Sandra O'Connor's nomination.

At that time I said I was not going to announce my vote because, in fact, I did not have my mind completely made up as to how I would vote, and that I would make that judgment based on the hearing record.

Throughout the August recess I had an opportunity to be questioned many times by my constituents as I traveled the State of Iowa on how I was going to vote on this nomination. I gave the same answers to my constituents who asked the question as I did to the media in my press conference back in July, that I would make my final decision based upon the record.

We then had 3 days of hearings and a record of those 3 days to review, and even at that point, even though I probably was more sure than ever before as to how I would vote as a result of our personal conversations back and forth on the record not only between Judge O'Connor and myself, but as I listened to every other member of the Senate Judiciary Committee ask her questions and get her answers, and as I listened to her responses to all of us, I said at the end of those 3 days of hearings, when asked by the media how I would vote on this nomination, that I was going to wait and review the record in the same way that I did as I answered the same question in July.

The weekend before last I had occasion to review that record. As you all know, I cast my affirmative vote in support of Judge O'Connor during last week's meeting.

During that review of the record, I have undergone an evolutionary process since the middle of July when I first visited with her, and it has been such a process by which the end result is that it has been very easy for me to cast this positive vote for Judge O'Connor.

I do it enthusiastically and without reservation. If there is reservation in anybody's mind it is probably only because of how the confirmation process is used in the Senate. As I understand it, it is traditional and historical that nominees for the various courts do not answer specific questions to any great extent, particularly as they relate to cases that might come before the Supreme Court.

I had some feelings, and still do, that part of the hearing process could involve how nominees might react to cases that have previously been decided by the Supreme Court. I would not expect any nominee to state how that nominee would decide a case that would come before the Court in the future.

However if nominees would comment on previous cases, it might be helpful in obtaining more thorough knowledge about how they feel. Even though she did not go to the depth that some of us, particularly the new members of the committee, would have liked her to have gone in expressing opinions on previous cases, I can say this: everything I heard in her answers regardless of the subject, and I include abortion, and I would add that I liked the answers she gave. That I basically agree with those answers and it was on this record, made by all the

members of the committee as well as other parties who testified in support of her, that I made a final decision to support Judge O'Connor.

In the process of making this decision, three of us, the Senator from North Carolina, the Senator from Alabama and I, put in the record our feelings of how we felt that the nomination procedure ought to be looked at by the committee and by the Senate to see if there is some way, to find out if there is some way, we can legitimately expect more definitive answers to our questions, again not on cases that might come before the Supreme Court but on cases that have already been adjudicated by the courts and an opinion rendered.

We say that only in the sense that we think it is legitimate for Members of the Senate to have as much knowledge as we can about nominees to the Court and, particularly, in the case of nominees like Judge O'Connor who move up from the State courts, where they have not had a record of their feelings on Federal constitutional issues. I think it is all the more important in those situations.

On the other hand, the absence of that to this point does not in any way detract from my support for Judge O'Connor as I think in many respects though we do not have an extensive record on this to judge her as compared to nominees who have moved up from lower Federal courts, she does have much to offer the Supreme Court that other nominees have not had.

One of those we dwelt upon to a considerable extent is the fact that she previously was a member of a legislative body, the State legislature of Arizona. I think it is great that the President has picked someone who can bring the perspective of a legislator to the Supreme Court and, hopefully, this will enhance respect by the Supreme Court of legislative intent, particularly the intent of State legislative bodies, both to enhance the division of powers, the States and their legitimate role in our Federal system of Government, and also to enhance the separation of powers so that the legislative activity of this Congress will be respected to a greater extent by the Supreme Court.

She brings that background to the Supreme Court. She also brings the background of a State judge to the Supreme Court, and I think again this will enhance respect by the Supreme Court for previous work done by the State courts and, hopefully, will enhance the State courts rule in interpreting the law.

I support Judge O'Connor because I believe she has basic conservative philosophies, both judicial and political.

During the extensive Judiciary Committee hearings she stated her opposition to forced busing and support of the death penalty. Those positions are very satisfying to those of us on the Judiciary Committee and in the Congress as a whole who are looking to President Reagan to give a new direction to the Supreme Court so that we will have a Court that will exercise judicial self-restraint.

It is this sort of person who is going to bring judicial restraint to the Supreme Court and an example of the people whom the President might appoint to the Federal judiciary in future years.

And if it is—and I hope it is—then, I am all the more satisfied that President Reagan is headed in the right direction.

It is because Judge O'Connor basically has conservative views, that I support her. I do not think that there was much about her basic philosophy that I found to disagree with in the 2 months since she has been nominated. I feel more satisfied now as time has passed and I believe that every favorable thought that I had about her conservative philosophy has been reinforced as a result of the hearing process.

I would say that the reinforcement of my preconceptions about her came from those who have known her during her tenure as a member of the Arizona State Legislature. I was impressed by the testimony of Republican and Democrat State legislators who have known her, who said that she was a good person. an active person, a person who worked hard. I think these are qualities that we want in a judge.

Also, in regard to the abortion issue, there was a State representative by the name of Tony West, who was present and testified, who admitted, even though he did not specifically ask her how she might vote upon that issue before the courts, he said very specifically that he would not have been here in Washington that day supporting her unless he thought that she was right on that issue. Implicitly, I read that to mean that she was pro-life on the subject of abortion.

In fact, I have been considering my years in the Iowa Legislature, a small State legislature—and I assume that Arizona can be classified as a small State legislature—and I have been considering, too, as I remember my time there, the camaraderie that grows up among legislators, and that camaraderie transcends party lines more in State legislatures than even in the Congress of the United States. I think as you get to know your colleagues in the State legislature, that is a better record of basic instincts of a person than anything we can get out of the hearing process we had before the Judiciary Committee.

So I want to be supportive of her nomination because I feel that we had at least three members of the legislature there who, on many issues, maybe would not agree with her but on some basic ones that concerned us, they expressed their approval of her.

Finally, let me say to the Senate as a body that I want to be supportive of the President in this nomination—and let me say not blindly supportive, but I am supportive. I had some doubts about that, as I said previously in my comments today. I pursued, in my questioning of Judge O'Connor, how her conversations with the President went when she visited with him. I asked if they had discussed policy questions. She refused to answer that, and I can understand that. A conversation with the President ought to be just between the two people involved.

However, I had an opportunity last week at the White House to talk to the President about this nomination. I did not go there with the purpose of talking about this; it was on another issue. I, too, do not think that I should divulge anything that the President has said to me privately.

But I am satisfied that the President did consider the very same weighty issues that we as committee members considered and he feels that she is going to respond the way he would want his nominee to respond on these issues, but, more importantly, the President finished his statement to me, not about just Judge O'Connor, but about his own feelings on the subject of abortion.

That was the first conversation I ever had with the President specifically on that subject, and I have discussed many policy questions with him both before and after the election, and I am satisfied for the first time in my own mind that the President feels as I do on the subject of abortion.

I only say these things, in closing, to whatever extent they might satisfy some doubts the leaders of the prolife forces in this country may have that the President is not honoring statements he made in the election by his performance as President. I want to satisfy those people—at least I am satisfied—that his performance on this question, specifically as it regards the nomination of Judge O'Connor, is commensurate with his rhetoric.

Mr. SYMMS. Will the Senator yield?

Mr. GRASSLEY. I yield back the remainder of my time.

The PRESIDING OFFICER (Mr. RUDMAN). Does the Senator from South Carolina yield time?

Mr. THURMOND. How much time does the Senator desire?

Mr. SYMMS. One minute.

Mr. THURMOND. Mr. President, I yield to the able Senator from Idaho.

Mr. SYMMS. Mr. President, I thank the distinguished chairman of the Judiciary Committee for yielding to me.

I would like to compliment my friend, the Senator from Iowa, for his very thoughtful consideration of this. I had the opportunity to work with the Senator from Iowa in the House and have known him to be a very careful and thorough member of committees, having served on committees with him.

I am not a member of the Judiciary Committee, but I would like to compliment Senator THURMOND and his entire committee for the very careful approach that they took in working through what I ccnsider to be a very important and responsible part of our responsibilities as Members of the Senate, to advise and consent to the President's nomination to the Supreme Court.

I am supporting President Reagan's nominee for the Supreme Court, Sandra O'Connor.

During Judge O'Connor's confirmation hearings she proved herself to be a very capable, articulate, intelligent individual with a precise legal mind. With her political background as a former legislator in Arizona and her substantial

knowledge of law she will bring to the highest court in this country a good balance of experience.

Judge O'Connor was questioned extensively by members of the Judiciary Committee on a wide variety of topics. For the most part she was forthright in her answers although she avoided some lines of questioning expressing a desire not to specifically commit herself on legal questions she might in the future be called to rule upon as a member of the Court.

I was, however, very pleased that she confirmed a belief that the Federal judicial system should have a limited role in American life. It appears that Mrs. O'Connor will help steer the Court toward its traditional role of interpreting the laws, rather than making them.

President Reagan made a commitment a long time ago to choose Supreme Court justices on the basis of the whole broad philosophy they would bring to the bench and appoint men and women to the Court who respect the values and morals of the American majority. I believe the President met that commitment by choosing Judge O'Connor for this very important post in the judicial branch of our Government.

On balance it appears she has the potential to be a very fine associate justice and I am confident that at some future time we will be able to look back on this appointment as one of the best in the proud history of the Supreme Court.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, we have an abundance of time on this side of the aisle. If the Senator from Idaho would like more time, I would be delighted to yield to him.

Mr. SYMMS. I have completed my statement.

Mr. THURMOND. I yield to the Senator from Connecticut.

Mr. BIDEN. I would be happy to yield on our time. I think the Senator from South Carolina is running low on his time.

Mr. WEICKER. Will the Senator yield me 5 minutes?

Mr. BIDEN. Yes, I yield 5 minutes to the Senator from Connecticut.

Mr. WEICKER. I thank the distinguished Senator from Delaware.

Mr. President, I rise in enthusiastic support of Judge Sandra Day O'Connor's confirmation as Supreme Court Justice. The President has made an excellent choice for our highest court. As someone personally acquainted with Mrs. O'Connor, let me assure my colleagues and the American people that she will grace the Court with her intelligence and integrity.

During her years in the legislature and on the bench, she has exhibited an astute legal mind and a rigorous conscience. And if anyone had any doubts about her political savvy, those were put to rest during her recent appearances on Capitol Hill.

In one-on-one meetings with Members of Congress and long, searching sessions before a Senate committee, Mrs. O'Connor remained unflappably calm and forthcoming in her responses.

Some complained that Mrs. O'Connor should not have to be subjected to such grueling interrogation. But I disagree. Now is the time for Congress to poke and pry into Judge O'Connor's politics. Now is the time for the Congress to address the proper role of the courts as well as the improper role. Now and not next month or next year when Mrs. O'Connor takes a stand on an issue that some Members of Congress disagree with.

Once this nominee is confirmed and takes her seat on this Nation's highest court, those kinds of questions will be out of order. Once she is confirmed, she must be independent, completely and utterly free of interference from anybody, and that includes Members of Congress as well as the President of the United States. That is what our Constitution calls for. That is what is meant by the checks and balances of a tripartite system of government.

We in the Senate will not have the right to look over her shoulder as she writes an opinion and tell her, "No, Justice O'Connor, you can't reach that conclusion or prescribe that remedy. You must support school prayer but not school busing. You must ban abortion but allow capital punishment." We cannot decide that for her. From here on she is on her own.

Is there anyone here who really wants 100 politicians to decide the quality of justice he or she will receive when their day in court comes around? Do any of us want our Supreme Court counting votes on the Senate floor when it decides an issue affecting our civil rights? The answer is no. We all deserve better than that.

In Mrs. O'Connor we have a top-notch nominee. Let us confirm her and then stay out of the way and let her do her job. She will do it exceedingly well.

Today marks our swing at the pitch. And that is proper. What will always be inappropriate is to use the legislative bat as a subsequent club over the heads of the judicial and executive branches.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I suggest the absence of a quorum and I ask unanimous consent that the time not be charged to either side.

The PRESIDING OFFICER. Without objection, it is so ordered. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I yield to the Senator from Missouri.

The PRESIDING OFFICER. The Senator from Missouri.

Mr. DANFORTH. Mr. President, President Reagan has nominated Sandra Day O'Connor to be an Associate Justice of the Supreme Court. When confirmed she will be the first woman to serve on the Court in its history.

I have followed the controversy surrounding her nomination with great interest, a controversy centering on Judge O'Connor's views about abortion. Her record as a legislator in the State Senate of Arizona has been looked at in the minutest detail, and indeed much of Judge O'Connor's testimony before the Judiciary Committee last week was devoted to yet another reexamination of her record and her present opinions on that subject.

Let me say that I have been concerned with the question of abortion for a long time. Throughout the debate on Federal funding for abortion, I have continually supported the strictest language possible, language that would restrict the use of Federal funds only to cases where the mother's life is endangered. My own commitment to human life and my opposition to abortion are fundamental.

Nonetheless, I firmly believe that the preoccupation with her personal views displayed by opponents of Judge O'Connor's confirmation is misplaced. They are asking the wrong question. In my opinion, one's personal views on matters of public policy have little or no bearing on how one comprehends the duties of the judiciary under the Constitution.

We are not electing a legislator when the Senate confirms a man or woman for a seat on the Supreme Court. We are naming a justice. The true question to be addressed and answered regards Judge O'Connor's view of the Court and the role of the judiciary in the governmental system. Does she view a justice as a legislator and the Supreme Court as an institution that creates public policy? Or is the Court charged with determining what the law is and with enforcing the law enacted by the legislative branch.

Judge O'Connor left the Senate in no doubt about her answer to this question. After remarking on her experience as a State legislator and State court judge, she said:

> Those experiences have strengthened my view that the proper role of the Judiciary is one of interpreting and applying the law, not making it.

She repeated this basic belief time and again over 3 days of hearings before the Judiciary Committee.

President Reagan was outspoken in his campaign for the Presidency about his desire to stop overreaching by the Supreme Court. I wholeheartedly agree with him. And yet the position of Judge O'Connor's opponents seems to be that a nominee's personal preferences on issues such as abortion are not only relevant, but that those preferences should be pressed on the Court.

My view and the President's view, on the other hand, is that the Court is not the philosophical arbiter of Government policy. Our view is that the legislatures, both State and Federal, properly make policy decisions. The Court is to interpret the law and to apply it to different sets of facts.

Its task is to do justice, to fill in, as Justice Cardozo said, the interstices of the law. President Reagan and I are against judicial activism, whether it is activism of the right or the left. This is a conservative view of the Court and its

function that I am commending to my colleagues. The opponents of Judge O'Connor are not judicial conservatives, they are judicial activists. They seek to work their own will on the country through unelected judges.

It is easy to understand the unhappiness felt by the opponents of abortion, of whom I am one, with recent Supreme Court rulings. In many cases, most notably Roe against Wade in 1973, the Court has substituted its judgment on questions of domestic relations and public health for the judgment of State legislatures.

It is this practice of the Supreme Court and the lower Federal courts that we in the Senate ought to be working to stop. I believe we will be taking an important step in that direction by confirming Sandra O'Connor.

Judge O'Connor was asked her opinion of Roe against Wade during her confirmation hearings. She properly declined to comment directly on what she would do in any future abortion decision. But I conclude from what she did say about the role of the Court that she would have dissented in that decision.

Roe against Wade, as is well known, held that a woman's freedom to decide to have an abortion is a "fundamental right" protected by the Constitution against State interference. A State's right to proscribe or at least regulate abortions for the health of the mother or because of its interest in protecting the unborn child was judged secondary to a woman's right of privacy.

This right of privacy was expounded by the Court in Griswold against Connecticut in 1965.

While it is not clear from the various opinions in that case precisely what the constitutional basis of this right to privacy is, the effect of its creation and subsequent application in Roe against Wade was to remove from the State legislators decisions previously made by elected representatives.

In Planned Parenthood against Danforth I sought to uphold Missouri's ability to pass legislation preserving and strengthening marriage, an institution which an earlier court called "the foundation of the family and society, without which there would be neither civilization nor progress."

Missouri and I lost our battle, and the unhappiness over this and other abortion decisions explains why Judge O'Connor's nomination faces such an outcry from opponents to abortion.

And yet, to repeat, I think the outcry in this instance is misplaced. Judge O'Connor not only can, but should be part of the solution to a problem that includes the abortion decisions but goes beyond them.

That problem is a Federal judiciary that too often is willing to substitute its will for that of the legislative branch of State and Federal governments.

What we are concerned with is a judiciary that sometimes acts as though it is superior to the legislative power. This is the abuse that we need to stop, one which reaches to the heart of our entire system of government, one that challenges the very operation of a limited government such as ours.

The three branches of our Government are bounded by the Constitution, that document that at once makes possible and protects our liberty and prosperity. The three branches were designed as coequals and as coequals should not seek to control or undermine each other.

This difficulty with the judiciary is a perennial one. As long ago as the 1830's, de Tocqueville, that astute French observer of our national life, remarked that:

> Hardly any question arises in the United States that is not resolved sooner or later into a judicial question.

But, to borrow from the clear eye of Alexander Bickel, to say that the Supreme Court touches many aspects of American life does not mean that it should govern all that it touches. The work of interpeting the law, and ultimately the power to declare unconstitutional a statute passed by the Congress and signed by the President, is so important that the independence of life tenure is granted to the Court's members.

With this freedom from the ordinary demands of political life in this republic, the Court has the responsibility to exercise its power with the utmost discretion and respect for its coequal representative body. To do otherwise the Court risks losing the faith of the American people and their representatives in this Congress.

A substantial loss of faith will inevitably result in an attempt permanently to shackle the Court, either by stripping it of jurisdiction to hear a wide range of cases or by a constitutional amendment that would forever change its nature. There are already such efforts afoot in the 97th Congress.

I have faith after reviewing what Judge O'Connor has said and done in her career that she understands these things. She will not don her robes in order to legislate for partisans of any cause, left or right.

It is the expectation of this Senator that Judge O'Connor will join the Highest Court of this land dedicated to the final responsibility of insuring that our constitutional doctrines will be continuously honored.

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

Mr. BIDEN. Will the Senator withhold that. Mr. President?

Mr. THURMOND. I withhold it, Mr. President.

Mr. BIDEN. Mr. President, I have not taken the occasion this morning to speak about this nomination. Due to the fact that none of my colleagues are on the floor seeking to be heard at this time, I shall now speak about the nomination, if I may.

Mr. President, I, as did my colleague and chairman (Mr. THURMOND), sat through the hearings on the confirmation of Sandra Day O'Connor's nomination. I listened to Judge O'Connor expound on a series of issues and subjects; she described her perspective on the Constitution, the role of the Court generally, and her role, as she saw it, were she to be confirmed on that Court.

I was personally very satisfied with most, if not all, of the answers that Judge O'Connor gave. The strange thing, Mr. President, was that I noticed all of my colleagues were basically satisfied; this worried me.

I looked around on that committee and I found people with whom I have basic philosophic disagreements apparently being as satisfied as I was with Judge O'Connor's answers. And just as, as I am sure, that gave them cause to be concerned, it gave me cause to be concerned.

I am not being facetious when I say that, Mr. President, because if Senator EAST, for example, and Senator BIDEN could agree on what the qualifications of a judge could be, then either we did not understand one another's position or one of the two of us was misreading what the judge had to say. As I began to contemplate what that meant, all of a sudden a thought occurred to me. That same thought was prompted by the speeches made here this morning.

What dawned on me was that no one, Mr. President, in the approximately 200-year history of the Court, has been accurately able to predict what a Justice of the Supreme Court would be like prior to that justice's being appointed to the Supreme Court. It is somewhat of a futile exercise for us to stand on the floor of the Senate, with all due respect to my colleagues on both sides of the aisle, and assure our fellow Senators what this judge is going to be like.

It reminds me a little bit of a kid walking through a graveyard. When I walked through a graveyard to make a shortcut through to get up to my house, I used always to whistle. I used to whistle in the graveyard. It was more to assure myself that everything was all right than anything else. I was not whistling for the dead. I knew I did not believe in ghosts, I knew I was not frightened, but I wanted to let myself know aloud that I was not.

There is a great deal of whistling in the graveyard going on here on the floor of the Senate today. There is a huge amount of whistling in the graveyard about what kind of justice Judge O'Connor will be.

It would be my guess, if I had to guess, that she will be a fairly moderate justice. I do not think she will be significantly different from the man she is replacing. I think, in fact, she will probably be what my friends on the right like to think of as a strict constructionist. But every time we asked her that, she told us how important stare decisis is. She said, "Yes, I do not think judges should make the law, I think they should interpret it. Stare decisis is important." But everybody heard the first part of her comment, not the second part.

Mr. President, what my friends on the right are looking for these days is not a judge who believes strongly in stare decisis—because, a judge who does that relies on precedents, the cases the Supreme Court has already decided.

The Supreme Court has decided, in my humble opinion as a layman, incorrectly in the Roe case, but the fact of the mat-

ter is that the Court has made a decision with regard to abortion. The Court has made a decision with regard to the rights of women. The Court has made a number of decisions with regard to civil liberties and the first amendment. And here we have a judge who says, "I am a conservative; ergo, I will follow precedent."

What is happening on this floor is a strange juxtaposition of what the traditional roles have been and what you seek in a Supreme Court Justice. Really, what the liberals like HOWARD METZENBAUM are looking for is a strict constructionist. He does not even know it, I think. He wants somebody who is going to make sure that they do not overturn the decisions of the Warren Court. That is a strict constructionist today, in the way Judge O'Connor would always use the phrase.

Really, what my friend, Senator HELMS, and my other friends on the other side of the aisle—and some on this side of the aisle—are looking for is an activist on the Court. If Judge O'Connor is not an activist, she has problems, because she is not going to be overturning the decisions that they—and I, on occasion—sometimes find odious, obnoxious, or totally reprehensible.

I guess what I am trying to say, Mr. President, is that I solved the dilemma for myself of why I could sit there with Senator EAST or Senator DENTON and others with whom I have basic philosophic differences and we could both think this judge was going to be the kind of Justice we would appoint or we would be happy with if we had the right to determine who is going to be on the Court. It is because we have all confused, in my humble opinion, what we are looking for. Strict construction today, adherence to precedent today, may be the opposite of what intellectual conservatives would want.

Conversely, an activist justice may be the last thing in the world people like me would want, because I believe that the Court was right heretofore on civil liberties, has been correct on civil rights.

So, Mr. President, I caution my colleagues not to tie themselves in too tightly or weave such a closely knit web for the electorate in defining what this judge is going to be like. We are not seers; it is not our role to determine what she is going to be like. And this gets me to the basic thrust of what I think we should consider in nominees and why I am so ardently in support of Sandra Day O'Connor. That is that she possesses the qualifications to be a Supreme Court Justice. Those qualifications, in my opinion, are, in fact, not what her philosophy is and not what we think she will be, but, first of all, whether or not she possesses the legal skills and capabilities, training, and background to understand, and, in fact, have some possibility of interpreting the Constitution of the United States of America.

In short, does she have a lot of gray matter? Is she very bright? Notwithstanding the now notorious comment of a former colleague of ours, mediocrity on the bench is not something we need. We need superior intellects. This is the most superior of courts, Mr. President, and she has a superior intellect.

The next thing I think we should look for in nominees to the Supreme Court—and I do not know whether we can tell, in a predictable circumstance—that is, whether or not she is someone of moral character. There is only one way that I know of to determine whether or not someone has a good moral character. Either you know the person personally for a long time and can attest to it—and I suspect 99 or 98 of us in this body do not know about Sandra Day O'Connor—or you look at the person's background and all phases of the record. Investigators on the minority side, as on the majority side, went into great detail in investigating Sandra Day O'Connor's background.

We not only had the FBI checking, which they would have done anyway; we had our own people. We interviewed everyone, from people with whom she went to school to those with whom she practiced law and those with whom she served in the legislature, those who knew her family, those who knew her as a child. Across the board, unequivocally, even those who did not like her personally—and there were not many of those—said the woman has a lot of character; she is honest; she is straight; she is an outstanding person.

It seems to me that when you get by those first two tests, there is only one, last test we should be looking at, and that is whether or not the person has judicial temperament to be on the Court. That is almost a term of art, but it is not something that is unimportant. You can be brilliant, you can have great moral character, you can be honest as the day is long and know the Constitution and American jurisprudence better than anyone else and still be a poor judge because you do not have a good judicial temperament—you tend to lose your temper, you tend to lose your objectivity, you are not open-minded enough to see all sides of a question. That is judicial temperament.

Sandra Day O'Connor, from observation and from looking at her record, notwithstanding the fact that she has not had a long record on the bench, has had a long record of being openminded, willing to listen to all sides of an issue, and able to make, in a judicious nature, if you will, a decision based on the facts as she knows them.

So, Mr. President, I do not know what more we can ask of a Justice of the U.S. Supreme Court. We had a President, a great one, Dwight D. Eisenhower, who appointed a man named Earl Warren because he thought Mr. Warren was a mainstream Republican, and President Eisenhower wanted to have a conservative on the Court. Earl Warren turned out to be not the most liberal justice on the Supreme Court—Justice Douglas and others were more liberal—but the most liberal leader of the Court that the Court has known in its 196-year history. Earl Warren revolutionized his court—civil rights, civil liberties, and a huge range of other issues in the U.S. legal spectrum.

At that time, we had a President who appointed a man he thought was of a different philosophy.

We have had Presidents who decided they wanted to appoint very liberal Justices to the Supreme Court. I do not believe anyone is going to accuse Justice White of being the most liberal member of the Court, but we had a famous and known conservative President of the United States appoint him to the Court.

At the risk of overstating the case, I believe these examples from our history should be enough caution to those of us on the floor who are willing, for our own political needs and/or because we think we know, to stop predicting what she is going to be and to underscore the need for us to have more objective criteria to determine whether or not someone should or should not be on the Supreme Court of the United States—that is, their intellectual capacity, their background and training, their normal character, and their judicial temperament.

We cannot be asked to effectively do much beyond that; for, if it were our task to apply a philosophic litmus test beyond that—which is not the constitutional responsibility of this body, in my opinion—it would be a task at which we would consistently fail, because there is no good way in which we can know.

So I believe we should caution the electorate that even if they want us to apply a litmus test, even if they think that is our role, it is not something we can do very well; because once a Justice dons that robe and walks into that sanctum across the way, we have no control, and that is how it should be—we have no control. They are a separate, independent, and equal branch of Government, and all bets are off.

It is unlike the situation with respect to Senators and Presidents, in which the electorate can demand of us what our philosophic background is or what we think about a particular issue; and if we turn out to be different from that which they perceive, as many of us have in the past, they do to us very rapidly what they have a right to do—take back the seat that they own, not we, and say, "We made a mistake. We thought we elected a liberal, and he turned out to be conservative. Goodby." Or, "We thought we elected a conservative, and he turned out to be liberal. Goodby."

You cannot do that with a Justice. So we should not kid our electorate; we should not tell them we know. We can tell them what our hopes are. We can tell them what are desires are.

I hope Sandra Day O'Connor understands the futility of busing and understands that there is, in fact, a logical, constitutional argument for its exclusion from the remedy package. I sincerely hope that. But I have to tell my constituency the truth when they ask me, as they did during the August recess, "Joe, are you for this woman? Are you sure she is against busing, as you are?" They look you straight in the eye. I say, "I don't know. I hope so." It is the same with an entire range of other issues.

Mr. President, the only thing I am sure of today, as I prepare to vote in favor of the nomination of Sandra Day O'Connor, is that she is a woman of competence, intellect, and high moral standing, and has a record of 25 or more years of public

service that reflects a judicial bearing, a judicial temperament.

That is all I can be expected to know. I happen to believe that that is all I have a right to ask. Consequently, when that test is met, I not only feel compelled but also feel very good about exercising my role, my duty in the advice and consent process, and saying, "Yes, Mr. President, the woman you picked should be on the Court; she meets the test, and I enthusiastically support her."

The reason I bothered to take this much time is not merely that no one else wanted to speak and that I had a lot of time remaining. Another reason why I have taken this much time is that this is not the first test we are going to have. We are going to be back up here again, I am sure—perhaps not in the next 3 years, but in the near future, if Father Time has his way, as he does with all of us, and we will be making a similar decision on one, two, three, or four more Justices—soon, in the near term. It will be at least in this decade.

So I hope we do not lock ourselves into boxes which, in order to be consistent with our duties as Senators, we will have to climb out of, to our embarrassment, when the next nominee comes before us.

I find it very interesting that some of my liberal friends say that my conservative friends had no right to ask about abortion. Yet, if the President were to send up the name of somebody who was against the Voting Rights Act, who had a background of having been associated with the Klan or some other group whose ideas were anathema to civil rights, all of a sudden the litmus test would start to be applied.

I have that litmus paper out on this side, and it will be turning pink quickly.

Everyone will be saying, "Oh, no." My friends on the other side of the aisle will be saying it should not be one issue.

So if we have a sense of what obligation is, I think we will do the country a better service, we will do ourselves a serious political service, a good service, and that is not make fools of ourselves, and we will be honest with the public and hope that Sandra Day O'Connor continues to display her intellectual excellence, her moral standing, and her judicial temperament, and even with that we cannot guarantee but we can hope.

With a little bit of help and prayer, and it is likely that past is prologue and her past is exemplary, she is a fine woman, she deserves to sit on the Supreme Court of the United States if the President wants her there. He has a right to make that choice, and we do not have a right to turn it down unless she does not meet one of those standards, in my humble opinion.

Unless one of my colleagues wishes me to yield time to him, I am delighted to yield on our time to the Senator from Washington State.

Mr. GORTON. Mr. President, I had not intended to speak on this nomination, but I should wish to have the record show that I find the statement of the Senator from Delaware to have been thoughtful, to have been very well thought out, to state the duty of the Members of the U.S. Senate in dealing with nominations for the Supreme Court of the United States, in a fair, appropriate, and effective fashion.

I should wish to thank him for that statement which will grace this record and simply to say that I agree with everything which I have heard him say during the course of this talk.

Mr. BIDEN. I thank the Senator from Washington.

Had I known he was going to say that I would have yielded to him much earlier.

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. THURMOND. 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. THURMOND. Mr. President, I yield to the distinguished Senator from Mississippi.

Mr. COCHRAN. Mr. President, I thank the Senator from South Carolina, the distinguished chairman of the Judiciary Committee for yielding to me.

This is indeed an important day in the life of our Republic. The Senate will confirm today the nomination of Sandra O'Connor as Associate Justice of the Supreme Court.

Not only has President Reagan chosen a woman to sit on the highest court in our Government, he has selected a person with outstanding qualifications. She has served with distinction as a State court judge, as an able and diligent legislator, and throughout her life she has been a concerned, caring, active citizen, participating in community and civic activities, helping make her area of the United States a much better place for all of its residents.

She obviously is a person with a keen intellect, whose respect for knowledge and reason will help make her a respected member of the Court. Her allegiance to the law and its importance to our society will serve as a firm basis for making the hard decisions that will be hers to make.

There are many competing and sometimes conflicting interests in our Nation. One of the most important functions of the law, and responsibilities of our courts, is to balance fairly and equitably those legitimate interests that are pressing for recognition. In many cases the law is not well settled. Precedents may not be clearly defined. That is why we have a Supreme Court. It is to this tribunal that the hardest questions are put.

In my mind, the quality and correctness of opinions and decisions and hence the compatibility of the people with their government will depend on the conscientious application of reason and the rule of law by the justices of our highest Court.

I am comfortable in the expectation that Mrs. Justice O'Connor will discharge the important duties of this office in a manner that will make us all proud of the Court and of our system of justice.

In conclusion, Mr. President, I must admit that I am delighted the President has chosen a woman to fill this vacancy. There has been a long wait.

I remember when women were first permitted to serve as members of the jury in civil and criminal cases in our courts. A dramatic impact on trials occurred, as I remember, because of their dedication to their duties and sense of fairness and the seriousness with which most women jurors attempted to comply with the courts' instructions as to the law governing the case. The quality of justice improved greatly in my State as a result of that long overdue change.

I am convinced that the future competence of the Supreme Court is assured by the excellent decision of our President to nominate Sandra O'Connor. It will be my pleasure to vote in favor of her confirmation.

I thank the Senator from South Carolina.

Mr. MATHIAS. Mr. President, this is an historic day in our Nation's history. Today we, in the U.S Senate, will exercise our authority under article II, section II of the Constitution and grant our consent to the nomination of the first woman to the U.S. Supreme Court. It is also an historic day in our Nation's continuing effort to insure women full citizenship in this country.

I think it is important that we savor this moment, because it is a milestone in the history of the Court itself, and there have been only a few of these moments. We should pause and realize that we are at the end of one era and the beginning of another. Sixteen years ago, President Johnson nominated Thurgood Marshall to the Court. We celebrated that appointment too as one of historic dimension. President Johnson said on that occasion:

> I believe that it is the right thing to do, the right time to do it, the right man and the right place.

By changing one word, I think that those words of President Johnson would be just as appropriate today.

I think President Reagan has demonstrated great vision and a fine sense of history in nominating Judge O'Connor for the seat that Justice Potter Stewart has held with such distinction for such a long time. Much reference has been made to the fact that Judge O'Connor comes from the State courts. This may indeed turn out to be an asset by bringing that State perspective into the Supreme Court.

In so doing, she will follow in the footsteps of some of her most distinguished predecessors—Justice Cardozo, Justice Holmes, Justice Brennan—and she will serve in good tradition.

Shortly before Judge O'Connor was nominated, I had an opportunity to meet with her and to discuss at length a variety of legal issues. During that conversation, I got a clear sense that when she is confirmed she will come to the Court as an interpreter of the law rather than as one who originates law. This is a view with which I wholeheartedly concur. We continued our dialog on this issue—and many other relevant con-

stitutional issues, such as freedom of the press—when my colleagues on the Senate Judiciary Committee and I had the opportunity 2 weeks ago to query her on the whole gamut of legal and constitutional issues of concern to us today, we put her through a rigorous and grueling examination. She passed that test with distinction. I have no doubt that Judge O'Connor's nomination will receive the whole-hearted support of the U.S. Senate on this historic occasion.

Mr. HUMPHREY. Mr. President, I rise today in support of the nomination of Sandra O'Connor to the Supreme Court. I met privately with Mrs. O'Connor and also observed her hour after hour in the Judiciary Committee. I have concluded that she is highly qualified to be confirmed by the Senate and intend to vote in her favor.

Let me share with you my observations of Sandra O'Connor wihch led to my decision to vote for her confirmation as a Justice of the Supreme Court. When I met in my office privately with Mrs. O'Connor we discussed judicial philosophy. There is little doubt in my mind that Mrs. O'Connor will be a conservative Justice of the Supreme Court. For instance, when I pointed out to her that the Constitution is only what the Supreme Court says it is, she quickly interjected saying, "No, I don't agree. The Constitution is what the Constitution says it is." In the committee hearings, her responses along this line were much the same. She further indicated her understanding of the difference between legislating and judging. She stated quite simply that, "As a judge, it is not my function to develop public policy."

Mr. President, I am sure most of my colleagues would agree that it is the duty of each member of the Court to put aside personal preferences and reach decisions based purely on the facts, the law and the Constitution. I believe that Mrs. O'Connor's clearly apparent conservative judicial temperament, that is, her conservative view of the role of the courts, and her clear understanding of the separation of powers, especially between the judiciary and the legislature, indicate that she will make an excellent Justice of the Supreme Court.

MRS. SANDRA O'CONNOR WILL SERVE WELL ON THE U.S. SUPREME COURT

Mr. RANDOLPH. Mr. President, it was my privilege to testify in support of Mrs. Sandra O'Connor at her hearing before members of the Senate Judiciary Committee on Wednesday, September 9.

I wish to read to the Senate my statement before the committee:

Mr. Chairman, members of the committee, I appreciate your giving me the opportunity to be heard on this historic occasion.

I am not overstating the case when I refer to this hearing as historic. For the first time in the 205 years of our Republic's existence the Senate is called on to judge the qualifications of a nominee to the U.S. Supreme Court who is a woman. I regret very much that it has taken more than two centuries to acknowledge through this nomination that just as justice should be symbolically blindfolded when determining the facts, we should be oblivious to sex when selecting those who administer justice.

Mrs. Sandra O'Connor will appear before this committee today as the choice of our President, not solely because she is a woman, but because her record appears to qualify her to serve on our Nation's highest tribunal.

I would be naive to believe that if Mrs. O'Connor is confirmed as an Associate Justice of the Supreme Court, her sex will cease to be a factor in her decisions. She will be urged to make feminist rulings; she will be criticized if she makes them or if she resists this pressure.

I look forward to the time when Justices of the Supreme Court are selected and evaluated solely on their experience, their knowledge of the law, and their dedication to the United States as a nation governed by the laws the people impose on themselves.

Mr. Chairman, when Mrs. O'Connor becomes a member of the Supreme Court, we will have succeeded at long last in having a woman occupy virtually every high office our country has to offer. The most notable exception is the White House, and I anticipate the day when the highest office in our land is not exclusively a male preserve.

A breakthrough occurred during the week in March of 1933 in which I first became a Member of the House of Representatives. It was on March 4 of that year that President Franklin D. Roosevelt—the day he took office—broke another precedent by appointing Frances Perkins as the first female cabinet member. During the 12 years that Mrs. Perkins served as Secretary of Labor she repeatedly demonstrated the wisdom of President Roosevelt's action. Her distinguished career made it easier for the other women who have subsequently served in the Cabinet.

Mrs. O'Connor, I wish you well, not only during these hearings, and the Senate confirmation vote, but during the challenging years ahead. You will be called on to make many difficult decisions, but I am confident you will approach them with a spirit of fairness, justice, and equity.

Mr. DOMENICI. Mr. President, today I wish to join the myriad of Senators who have risen to support the nomination of Sandra Day O'Connor to the U.S. Supreme Court.

Throughout the confirmation process, Judge O'Connor has impressed me as a thoroughly qualified, even brilliantly prepared, candidate for the Supreme Court. Her testimony before the Senate Judiciary Committee showed her knowledge of previous Supreme Court decisions, even those most recent ones. She declined, and quite properly so, to state her own personal views on matters that may come before the Court.

I am convinced that Judge O'Connor is a strict constructionist, both of case law and statutory interpretation. She is deeply concerned about crime in this country and has been strict in punishing criminals. She is a strong defender of private property rights and believes in the sovereignty of the States.

During her confirmation hearings, Judge O'Connor showed great strength of character, a calm and reasonable manner, and a remarkable intelligence. Judge O'Connor said that she would approach cases with a view toward deciding them on narrow grounds and with proper judicial restraint. This should assure anyone concerned that she will not be going out of her way to make rulings that create sweeping changes in social policy.

I believe Judge O'Connor will be an excellent Supreme Court Justice, and that she is an outstanding choice as the first woman to serve on that great body. I predict that we will look back on this appointment as one of the major successes of the Presidency of Ronald Reagan. I congratulate him on this superior appointment and I will join with an overwhelming majority of this Senate to confirm her as Justice of the U.S. Supreme Court.

● Mr. DENTON. Mr. President, the Senate Judiciary Committee has, without dissent, recommended the confirmation of Mrs. Sandra Day O'Connor as an Associate Justice of the U.S. Supreme Court. Although I am new to the Senate, I am quite uncomfortable with the point of view so prevalent in the O'Connor hearings regarding the proper role of the committee in the confirmation process.

Primarily, I am troubled by the contention that a nominee need not discuss, endorse, or criticize specific Supreme Court decisions. The basis for this contention is that such discussion would lead to later disqualification when cases arise that are similar to those that led to the establishment of a particular doctrine.

In my view, acceptance of this argument by the committee has created a particularly unfortunate situation in light of this nominee's past actions with regard to legislation on abortion and the limited number of judicial decisions upon which to determine her views on this and other issues. I had regarded as relatively unimportant the nominee's previous voting record on the abortion issue because Judge O'Connor had indicated that she had had a personal change of heart on the subject of abortion. Thus I had hoped to make a decision about her fitness for office on the basis of answers given to questions posed in the committee hearing.

However, the nominee repeatedly declined to answer questions about her view of the legal issues presented in the case of Roe against Wade. Relying upon the argument advanced earlier, she stated that, in her opinion, any criticism of that decision would prejudice her with regard to the abortion question.

Others have reasoned that neither this nor any other "single issue" should stand in the way of the confirmation of the nominee. I respectfully disagree with the notion that the rights of unborn human beings represent a single divisive issue that should not overshadow the otherwise excellent credentials of Judge O'Connor. Abortion—the wrongful taking of a human life—is not simply a political issue; the question of when life begins and of how it should be protected at all stages is essentially a civil rights question, and one which I believe is of immense importance.

The denigration of human life by increasingly relying on subjective meas-

ures of its "quality" or "meaningfulness" rather than on the principle that all life is God-given is frighteningly reminiscent of Hitlerian ideology. If government by judicial fiat removes the protection of the right to life from a class of individuals—in this case the unborn human being—then, the protection guaranteed others—the handicapped, the aged and the terminally ill—might also be lost in the years to come.

Moreover, biomedical research is quickly producing a whole series of new ethical questions about the nature and meaning of life. The Supreme Court's decision in Roe against Wade indicated a judicial willingness to alter fundamental historic protections by defining the concept of "person" so as to permit the elimination of the fetus, even as science was widening the concept of life.

This Nation is currently involved in a dialog that must not cease until it resolves this fundamental question of human rights. The terrible reality of the debate over abortion is that it has divided households, it has divided friends, and it has divided this body. We cannot dismiss the abortion issue when considering judicial nominees simply because the Nation has not reached a consensus. Every public official, and indeed, most citizens should exercise their right to speak out on this issue. It seems that once in every century a nation faces such a pivotal question, and I and millions of others cannot divorce the concept of the right to life from the concept of equal justice under the law.

The Supreme Court in its holding in Roe against Wade asserted final authority over the rights of the unborn fetus. Many argue that the Congress and the States have, in the course of a decade, reached a point at which further legislative remedy of abortion excesses is impossible without the approval of the Court. Prospective Justices cannot argue convincingly that the widespread controversy surrounding this issue makes their public pronouncements any more subject to criticism than the statements of the elected officials who must give advice and consent concerning judicial appointments. Prospective Justices might find that their criticism of a particular doctrine could make confirmation a more difficult process, but it does not mean that they will or should find themselves in violation of the statutes, ethical canons and other judicial renderings governing disqualification of Supreme Court Justices.

However, I recognize that others for whom I have enormous respect, including the chairman of this committee, agree with Judge O'Connor in her caution in replying to questions that attempt to elicit her views as to the correctness of prior decisions of the Court. Many of those same people are highly respected opponents of the abortion procedure. All the same, I do not believe that this committee can properly fulfill its duty to the rest of the Senate regarding any judicial nomination when it lacks an accurate estimate of the nominee's position respecting an issue of overriding importance to the general welfare of the United States.

In this context, I personally view the committee's role as a separate and distinct function from the decision which must now be made by the Senate as a whole. I respectfully contend that the committee should serve as an investigatorial body with respect to these nominations—eliciting as thorough and precise responses to specific questions as it possibly can—in order that the rest of the Senate can make a fully informed decision on the nomination. The role of the full Senate I would liken to that of judge—assessing the committee proceedings and judging the nominee on qualifications, experience, integrity, and opinions on basic legal questions.

This investigatorial responsibility of the committee is even more awesome when considered in light of the fact that this appointment is one of life tenure. This is not a 4-year, assistant secretary appointment. If confirmed, the nominee will have continuous potential for influencing a critically important issue for an indefinite period.

Given my own position on this most basic question of human life, and given the reluctance of Judge O'Connor to address the legal question of abortion in a forthright manner, I could not, in my perceived role as investigator, assent on hope nor dissent on uncertainty, with respect to my vote in the committee.

My vote on the floor of the Senate may well be different because of the way I view my role as committee member specifically and Senator generally—and for some other reasons. As a Senator on the floor, I do not feel obliged to restrict my judgment on the nominee to what was revealed within the committee hearings.

But in the final analysis, I believe the Judiciary Committee may have abrogated, in large measure, part of the responsibility of the Senate's constitutional role with respect to this most important nomination.●

● Mr. SCHMITT. Mr. President, it is with pleasure that I join with my colleagues in enthusiastically supporting the nomination of Sandra Day O'Connor for the position of Justice of the Supreme Court.

I am not a lawyer, so it was with great interest that I followed the Judiciary Committee in its deliberations of her nomination. At times, Judge O'Connor was subjected to difficult and controversial questioning by the distinguished members of the panel. However, not once during her 2½ days of testimony did Judge O'Connor lose her composure, dignity, or sense of humor. In fact, her intelligent and thoughtful responses clearly demonstrated that she is highly qualified to sit on the Supreme Court.

Additionally, Judge O'Connor brings very high academic credentials, very high intellectual credentials, and a record of clear, concise, and interpretive decisions to the Supreme Court. By interpretive decisions, I mean decisions not to make new law but to interpret the law as it is in the Constitution today.

Mr. President, I am proud to be a participant in this historic occasion; to cast my vote in favor of the first woman nominee to the Supreme Court.●

Mr. HAYAKAWA. Mr. President, I feel privileged to be a Member of the U.S. Senate on this historic day as we vote to confirm the first woman Justice of the Supreme Court, Sandra Day O'Connor. The women of our Nation have struggled to gain recognition of their abilities and competence, making great strides in recent years to overcome the barriers of prejudice against their gender. Our actions today provide long overdue recognition of the qualities of women, as well as recognition of the qualities of one particular woman.

However, we must not let the struggle of women overshadow the primary question before us: the confirmation of a highly qualified nominee for the Supreme Court. It is the role of the Senate to determine that a Presidential nominee to the Court is indeed qualified, without regard to sex.

Additionally, the Senate must not be swayed by the demands of any single interest group during the confirmation process. The opinions of any group must be carefully weighed against the requirements for a Supreme Court Justice.

I am confident that my colleagues have not allowed their responsibilities of advice and consent to be clouded by secondary considerations.

Sandra O'Connor finished among the top 10 graduates in the Stanford University Law School class of 1952. In addition to becoming a wife and mother, she practiced law, served as an assistant attorney general, and was elected to the Arizona State Senate—serving as well in the role of majority leader. She was then elected as a trial judge for Phoenix and later appointed to the Arizona Court of Appeals.

Her multifaceted career has given her experience with the law from several different perspectives—as a private citizen, and from within each of the three branches of government. Such a career provides the opportunity to clearly understand the limits and responsibilities of the various roles she accepted and, in particular, the responsibility of a judge.

After President Reagan announced his nomination of Mrs. O'Connor, loud objections were heard from several antiabortion groups. During the confirmation hearings, she carefully stated her feelings of personal repugnance toward abortion. I am more than satisfied by her statements of personal opinion on this subject. I am also confident that she will carefully address this issue, if it comes before the Court, to insure proper interpretation of current law and our Constitution.

An important point about the nominee was brought out during the consideration of her qualifications: Mrs. O'Connor favors greater reliance on our State courts to decide important issues. At a time when the Supreme Court is requested to review thousands of cases—an impossible task in terms of time and manpower—the competence of our State courts cannot be overlooked. When Federal constitutional questions have been fully heard and considered in the State court system, surely it is not necessary to provide a costly review on the Federal level.

She has also proven herself to be tough on criminals. At a time when the rate of violent crime is rising dramatically, we must give notice to the criminal element that they will not be dealt with lightly. The confirmation of Mrs. O'Connor is a signal to those who ignore our laws that they will pay for their actions.

Most importantly, the hearings before the Senate Judiciary Committee allowed us to see that Mrs. O'Connor will be a Justice who will stick to the business of interpreting the law and the Constitution. I personally feel assured that she will not attempt to legislate from the bench, but leave that responsibility with the Congress. It is essential to our system of government that the different branches of government respect the limitations of their authority.

We cannot fully predict the direction of the career of any Supreme Court nominee; nor can we predict the opinions that may be handed down by any potential Justice on future questions that may come before our highest court. We can, however, explore the questions of personal integrity and competence. Mrs. O'Connor, without doubt, deserves the highest marks for her record of integrity and competence. I have no reservations about predicting that her career on the Supreme Court will continue to prove that record.

● Mr. MATTINGLY. Mr. President, I believe Sandra O'Connor has the intelligence, the experience, and the ability to be one of the great Justices of the Supreme Court. She has excelled as a lawyer, a legislator, and as a judge on the Arizona Court of Appeals.

Beyond her obvious qualifications for the position, I believe all Senators were impressed by Judge O'Connor's appearance before the Senate Judiciary Committee. Her answers to the questions were clear, straightforward, and well reasoned. I believe the Supreme Court will greatly benefit from this type of reasoning.

It is so very tempting for some to focus on one current issue. But that should not be of paramount concern to the President in making a nomination nor to the Senate confirming it. What is important is judicial philosophy.

There is no way any of us can predict what the burning issues of the year 2000 will be. Those issues might very well be part of a process that will not begin to occur for another 10 years. Yet Judge O'Connor will very possibly be hearing cases and rendering decisions in the year 2000 and beyond.

She has a firm understanding of the constitutional responsibilities and limitations of the Supreme Court and we will all be proud of the votes we cast today. As a former legislator herself, I believe she will maintain the separation of powers in our Constitution. I hope and believe this appointment may be the beginning of the end for the activist court.

A word should also be said in praise of President Reagan for nominating the first woman to the Supreme Court. He has fulfilled a campaign promise. But this nomination should be the beginning, not the end. I hope we will not see develop a "woman's seat" on the Court with little hope for other women as long as Judge O'Connor is serving.

If the President had to make another nomination next week, I would hope he would feel confident in sending us another woman nominee. If she had the qualifications of Judge O'Connor, she too would receive speedy confirmation.

So, Mr. President, I will proudly cast my vote for Judge O'Connor and join with my colleagues in wishing her well as she assumes this most important position.●

Mr. LEAHY. Mr. President, if I had to choose one moment that explained the most about the way the American system of government worked, it would probably be the moment when we choose a Justice of the Supreme Court.

The Supreme Court has succeeded as the interpreter of the Constitution and the arbiter of great conflicts not only because of the Court's wisdom and sense of history, but because even in the most divided of times, the Court has earned and kept the respect of all Americans. Above all, this has been a Court of fairness and competence. It is these qualities that must characterize any nominee to the Court.

Judge O'Connor has amply demonstrated these qualities. She appeared before the Judiciary Committee and answered some of the most difficult questions put to a Supreme Court nominee in a long time. I think that she answered candidly and thoroughly, within the customary limitations imposed on any nominee, namely the avoidance of conflict regarding matters that might come before the Court. The overwhelming impression of fitness and competence was clear to all and was reflected in the committee vote.

If I were to stop here, I would invite the conclusion that this hearing process was an ideal example of separation of powers at work, the President and the legislative branch each contributing to the strength of the judicial branch. But the attempt to condition Judge O'Connor's confirmation upon her commitment to vote in a given way on given issues should sound a danger signal for all of us. A commitment on a future vote must never be the price of nomination or confirmation. No Justice on the Nation's Highest Court should be held hostage to any commitment, except the one to devote every moment on the Court to upholding the Constitution and the cause of justice.

The President had the right to make an appointment reflecting a philosophy that he agrees with, and he did so. To have asked more of his nominee than this would have been an intrusion by the executive on the independence of the Court. For us to have asked more would have been an equal intrusion.

I do not care if Judge O'Connor is a Democrat or Republican, liberal or conservative, She is a very able nominee, and this Senate should send her to join her colleagues on the Court with our strong support and our hopes for a fruitful and rewarding term on the Court.

Mr. STENNIS. Mr. President, I thank the Senator from Kentucky again for yielding me this time and assisting me in this matter.

In thinking about any nomination for the Supreme Court of the United States, I can think of nothing that is more important under our system of Government—and I do not know of any small group of people anywhere in the free world who are granted anything comparable to the power that these persons are granted under our Constitution. The exercise of that power has been a patent force for 200 years.

The Supreme Court is one of the strongest things I know in public life that generates faith and confidence in humanity when appealed to properly, when humans are appealed to do their best.

After all is said and done about the Court or any member thereof, it has an amazing record, and it gave me great strength and encouragement as a young man studying law and in public life—and I am not referring to any particular Justice; I am talking about the Court as an institution.

So I had some concern when there was a great deal of talk and media reports about "What are you going to do about this appointment of a lady to the Supreme Court?" I had absolutely no reservations about a lady being appointed, being capable and all, but I frankly was concerned that it might be kicked around as a political football by some. When this nomination came in I was pleased with the idea, if the lady was suitable, but I did not have the privilege of knowing her, and I was highly flattered that she came by the office for a visit.

I have never been more abundantly rewarded in public life than I was by the impression I had of Mrs. O'Connor. In the first place I judge her to be a lady of very fine and balanced judgment. I have previously stated the Supreme Court Justices must have an uncommon amount of commonsense. In addition to character that is really the major requirement of membership on that Court.

A Justice cannot make much of a contribution as a member of the Court on sheer book learning or other admirable qualities unless they are possessed with a generous amount of commonsense that runs through their thought processes and their understanding of the problems of government and the problems of human life.

To me there was in great abundance of unmistakable evidence of the lady's great competence in this field.

Another thing that pleased me—and I do not want to make a personal remark—but for several years I had the responsibility of being a trial judge in a court of unlimited criminal and civil jurisdiction. It was unlimited in that there was no ceiling all the way through to the gravest crimes or the most important civil suits where a great deal hung in the balance. The gravity of that experience in ruling on testimony, and the admissibility of it, that might be the deciding factor, on through to passing sentence on prisoners in serious cases involving human life was a very serious responsibility. There is nothing more searching than a judicial officer, I think nothing more searching of his qualities of character, of concept of responsibility,

and a desire to do his duty regardless of person.

So I was pleased with the concept, with the idea, that Mrs. O'Connor had been a trial judge and had had experience in the courtroom, in that way carrying those heavy responsibilities.

I notice by the reference of the American Bar Association, with all deference to them, I think her qualifications in the courtroom, of administering justice, would far outweigh some academic attainment that is measured often by some artificial rule.

So I was highly pleased with her experience and her uncommon amount of commonsense and, more particularly—in a day when the family is being tested and called into question by some of those habits and customs and all that goes to make up the strength of the family, challenged in legislative halls and everywhere else—that Mrs. O'Connor is a mother and has reared a family. That is no reflection on anyone who has not, but she is one who understands some fundamentals of our Constitution. But, more important than that, she understands the fundamentals of life itself and civilization itself and, more than all of that, the holy concept of having reared a family and, more particularly, having that greatest of all attainments of being a mother.

So I am really happy and have a great deal of satisfaction to know that she is willing to undertake this very difficult task, filled with hard work, at best.

There is nothing personal about this. I have said these words with great satisfaction and feel that she will have a splendid record in the Court which will be for the benefit and for the strengthening of our system, the common law of England and the constitutional law of the United States, based upon the family as we know it, and self-government as we try to make it. So the ship of state, for her part, will be in good hands. I am very glad, indeed, to vote in favor of her confirmation.

Mr. LEVIN. Mr. President, during the consideration of the confirmation of the nomination of Sandra Day O'Connor, a number of allegations were made with respect to statements she was reported to have made privately to various individuals relative to her position on substantive issues that might come before the Court. We read reports that, on one issue or another, she had assured one party or another, privately, as to what her position is.

I was very much intrigued by that, and I wrote her the following question:

During your private meetings with public officials since your appointment, did you make any statements relative to your position on the substantive issues which may come before the court? If so, please describe those statements.

Her answer was as follows:

Since my nomination I have not made any statements concerning my position on substantive issues which may come before the Court, either in private meetings with public officials or public testimony. Nor did I do so during the selection process leading up to the nomination

I believe judges must decide legal issues with the judicial process, constrained by the oath of office, presented with a particular case or controversy, and aided by briefs, arguments, and consultation with other members of the panel. I also believe it would be quite improper for a nominee to take a position on an issue which may come before the Court in order to obtain favorable consideration of the nomination.

Mr. President, I ask unanimous consent that soon-to-be Justice O'Connor's letter be printed in the RECORD.

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

Hon. CARL LEVIN,
*U.S. Senate,*
*Washington, D.C.*

DEAR SENATOR LEVIN: I have received from your office the following question: "During your private meetings with public officials since your appointment, did you make any statements relative to your position on the substantive issues which may come before the Court? If so, please describe those statements."

Since my nomination I have not made any statements concerning my position on substantive issues which may come before the Court, either in private meetings with public officials or public testimony. Nor did I do so during the selection process leading up to the nomination.

I believe judges must decide legal issues within the judicial process, constrained by the oath of office, presented with a particular case or controversy, and aided by briefs, arguments, and consultation with other members of the panel. I also believe it would be quite improper for a nominee to take a position on an issue which may come before the Court in order to obtain favorable consideration of the nomination.

Thank you for the opportunity to set forth my views in response to your question.

Sincerely,

SANDRA D. O'CONNOR.

Mr. BUMPERS. Mr. President, the confirmation of the nomination of an Associate Justice for the United States Supreme Court is a momentous occasion. The nine persons who form this Court are the guardians of the precious guarantees provided by the document that holds our Republic together, the Constitution of the United States of America.

James Madison, Alexander Hamilton, and the other primary framers of this solemn document must have been divinely inspired, because they managed to forge an agreement which, along with our Bill of Rights, has kept this Nation free for two centuries. In framing our delicate system of checks and balances, they had an uncanny understanding of the nature of power and the need to assure that it not be used tyranically. For all these years, it has been necessary to amend the basic text only 26 times.

Mr. President, article 1, section 1 places the full legislative power in the Congress of the United States. Article II, section 1, vests the executive power in the President of the United States, and he is also charged with the responsibility under section 3 to "take care that the laws be faithfully executed." Article III, section 1, makes clear that the judicial power is vested in the Supreme Court, and such inferior Federal courts are as established by Congress. The Supreme Court, in our constitutional scheme, is the final arbiter of what the law is and what the Constitution means.

It is true, as Justice Rehnquist recently pointed out in Rostker against Goldberg, that the Members of Congress take the same oath as do Supreme Court Justices to uphold the Constitution of the United States, and most of us take that responsibility seriously.

Sometimes, however, especially on emotionally charged issues, we allow political or other considerations to cloud our constitutional judgment, and the framers of the Constitution knew that this would happen. I, for one, am glad that the Supreme Court exists as the final arbiter on constitutional issues. Over the years, members of that body have usually managed to take a dispassionate view of what the Constitution says and means. They are above the fray. I have not always agreed with their decisions.

In fact, I strongly disagree with many of them, but the point is that it simply makes sense that the final word about what the Constitution means should come from a body which is above the day-to-day political pressures that guide many of our decisions.

Having said all this, let me point out that the Justices are not immune from our system of checks and balances. A potential Justice must be nominated by the President, and all of us know that the process of nomination is always preceded by an elaborate, if informal, screening process. An appointee must be confirmed by a majority vote of this body, and confirmation follows an exhaustive and, as Judge O'Connor can attest, grueling hearing process.

Once confirmed, a Justice will find that the wisdom of her opinions is debated ad infinitum in the press, in law reviews and other scholarly publications, and in Congress, and that kind of searching criticism has value to the Justice in providing a sounding board of thoughtful public opinion. Finally, Justices hold office only "during good behavior" under article III, section 1 of the Constitution, and of course may be impeached if they engage in conduct that renders them unfit for office.

It is against this backdrop that I comment briefly about the candidacy of Sandra Day O'Connor. I am not a member of the Judiciary Committee, but I followed the hearings closely. Judge O'Connor was an impressive witness. She is obviously a person of honesty and integrity. She responded to questions with confidence and sincerity, and she was generally unflappable. She impressed me as a woman of intellect and good commonsense. I do not necessarily agree with all of her opinions, but I am convinced that she will strive to discharge her duties with a high degree of competence and compassion. The office to which she is about to enter is one of awesome responsibility, and I wish her Godspeed.

Mr. COHEN. Mr. President, the confirmation today of Sandra Day O'Connor to be an Associate Justice of the U.S. Supreme Court is, as we all recognize, an historic event. It is one that I am proud to be able to take a part in by casting my vote in support of Judge O'Connor's nomination.

The debate surrounding Sandra O'Connor's nomination has focused almost exclusively on the fact that she will be the first woman to serve on the U.S. Supreme Court. Some view the appointment as significant primarily as providing women with representation on our highest judicial body. In voting on this nomination, I believe we must remember that the Supreme Court, unlike the legislative branch, is not a representative body. We cannot attempt to make it so without endangering the perception and reality of the Court as the preeminent symbol and protector of justice in this country. As George Will expressed it in a recent column:

> The Court, more than any other American institution, depends for its authority on the perception of it as a place where principle reigns. Judicial review is somewhat anomalous in a system of popular government, and its legitimacy depends on the belief that those who exercise it do so only as construers of the text and structure of a document that allocates powers primarily to other institutions. That belief cannot withstand a selection process that suggests that Justices somehow represent this or that group or interest.

The duty of a Supreme Court Justice is not to advocate a particular view or philosophy, but it is to act as an unbiased and detached arbiter of the law. To quote the late Justice Felix Frankfurter:

> The highest exercise of judicial duty is to subordinate one's personal pulls and one's private views to the law of which we are all guardians—those impersonal convictions that make a society a civilized community, and not the victims of personal rule.

Neither, however, should the Supreme Court be the exclusive domain of men—not because it would be unrepresentative of our society but because sex should not be, any more than race, religion or age, a criterion for either choosing or rejecting a candidate for a position on the Supreme Court. Rather, it is those qualities of judicial temperament, ability, and commitment to equal justice upon which we must select the individuals who will serve on our Nation's highest court.

Sandra Day O'Connor is well qualified for the position of Associate Supreme Court Justice and she will bring to the bench those qualities which are sought after in all members of the judiciary—integrity, fairness, and legal ability. She has excelled both academically and professionally, and has had a successful and distinguished career in public service and as a community leader.

Judge O'Connor will also bring to the Court a wide range of experience, having served in both the legislative branch, as a member of the Arizona State Senate, and in the judicial branch, as both a State trial and appellate court judge. In addition to spending several years in private practice, she also served as an assistant State attorney general.

Judge O'Connor's record shows her to be a temperate jurist. During her confirmation hearings, she displayed a thorough knowledge of the law and an appreciation for the respective roles of our branches of Government, and of the State and Federal courts. Characterized by those who have known, worked with, and appeared before her as intelligent, conscientious, objective, and openminded, Judge O'Connor possesses the qualities which will make her a skillful and highly respected member of the Court.

Judge O'Connor's nomination has been highly praised by many across the country. She has received resounding endorsements from individuals with divergent political philosophies and views on the role of the judiciary. I am confident that the expectations of her many supporters will be realized, and that Sandra Day O'Connor will make a significant contribution to the Court.

Mr. President, not only is the confirmation of Judge O'Connor historic in that she happens to be the first woman to sit on the Supreme Court, but it is equally important as a symbol of the advances women have made in recent years in breaking down the barriers which have traditionally restricted their participation in many segments of our society. Judge O'Connor is only the first of many highly qualified and competent women which this country can look forward to seeing serve on the U.S. Supreme Court in the years ahead.

Mr. HEFLIN. Senator BAUCUS is unable to be here this afternoon. He is participating in an investment conference in Montana. However, he did want his statement in support of Judge O'Connor's confirmation as Associate Justice of the Supreme Court to be made part of the record, and for it to be noted that he did vote in favor of confirmation last week at the executive session of the Senate Committee on the Judiciary. Senator BAUCUS' statement follows:

● Mr. BAUCUS. Mr. President, the week before last the Senate Judiciary Committee spent 3 full days conducting hearings on the nomination of Sandra Day O'Connor as Associate Justice of the U.S. Supreme Court. Today we are asked to cast our vote on that nomination.

We are all agreed that we want a Justice of the highest integrity and the utmost competence.

The issue raised by this nomination is the degree to which personal views and judicial philosophy are relevant factors in deciding whether to vote to confirm a Supreme Court nominee. I personally believe such factors are relevant.

In my view, a Senator must be convinced that a nominee's conception of our form of Government, conception of the Constitution, and conception of the role of the Supreme Court are consistent with the best interests of the entire Nation. The advise and consent power of the Senate under article III of the Constitution has little meaning if Senators are not willing to assess whether or not the nominee is dedicated to uphold the basic principles of the Constitution.

This is an appropriate test. The nominee, as a Justice, is likely to make many far-reaching decisions on a wide range of issues during his or her life tenure on the Court. A Senator should be satisfied that the nominee will have the prerequisite sense of fairness and a principled understanding of the Constitution to serve as the basis for that decisionmaking.

It is in this light that I have decided to support the confirmation of Sandra Day O'Connor as Associate Justice of the U.S. Supreme Court.

I know there are some who disagree with her views on specific subjects. I, too, have found myself in disagreement with her in several areas.

However, I believe it is in the best interests of this country to make a decision on her overall philosophy and her overall approach to Government and our Constitution.

No one knows just what decisions Justice Sandra O'Connor will be called upon to make over the decades to come.

Based on her performance at her confirmation hearing, I think we can say that she will bring to that decisionmaking a sensitivity and a commitment to fairness.

As I sat at the hearings I became convinced that if issues concerning my personal property or liberty were before Justice O'Connor, my case would be given a fair and thoughtful hearing.

I would not be able to predict what decision she would render, but I do know I would walk away from the process with a sense that the interests of justice had been served with her participation.

This is the kind of Associate Justice to the Supreme Court I want to vote for. I believe that this is a vote which all of us today will be able to look back upon, not only with a sense of history, but more importantly, with a sense of pride.

Thank you.●

● Mr. RIEGLE. Mr. President, I rise in strong support of the nomination of Judge O'Connor to the Supreme Court, and welcome the chance to be a part of this historic action by the Senate. Judge O'Connor has proven herself to be an able candidate for a position on the Court, and I think that all Americans can take pride in the fact that we will have a person of her caliber serving on our Nation's highest court.

Judge O'Connor is an accomplished legal scholar, as her educational and professional career demonstrate. She graduated from Stanford University Law School magna cum laude, and distinguished herself as a member of the Law Review. Judge O'Connor also became the first woman to serve as majority leader of the Arizona State Legislature, a measure of her leadership ability and her breadth of experience.

Mr. President, much has been written and spoken about the fact that Judge O'Connor will be the first woman to serve on the Court. I find it incredible that it has taken until 1981 for a woman to become a Supreme Court Justice, and I commend this important and historic breakthrough. Judge O'Connor has met the highest standards that we expect from an Associate Justice, and I think that all citizens can be proud of her nomination and confirmation.●

● Mr. BENTSEN. Mr. President, in consideration of the nomination of Sandra Day O'Connor to be an Associate Justice of the Supreme Court, the Senate should seek the answers to three questions: Is her integrity above reproach, is she qualified, and does she have the judicial demeanor and knowledge to apply the law objectively in the cases that will come before the Court.

I will deal first with the simplest question to answer, that pertaining to her integrity. Who would know better than her neighbors in Paradise Valley, Ariz.? The town council there unanimously adopted a resolution, and I want to thank my good friend, the senior Senator from Arizona, for placing that resolution in the RECORD. It said:

Judge O'Connor is possessed of an uncommon intellect, and the highest degree of ability, integrity, and dignity.

Senator GOLDWATER advises that this resolution reflects the views of all the citizens of Paradise Valley. The resolution also urged Judge O'Connor's unanimous confirmation.

Likewise, no serious case has been raised against Judge O'Connor's ability. The words that have been used to describe her—perfectionist, meticulous, hardworking, intelligent—accurately mirror her record of achievement. She entered Stanford University at 17 and left 5 years later with undergraduate and law degrees magna cum laude. She spent 20 years in Arizona politics as a member of her precinct committee, legislative district chairman, assistant attorney general, and as the State of Arizona's Senate majority leader. She spent 6½ years serving in the State judicial system, first on the superior court, and then as a justice on the court of appeals. She received high ratings each time the Arizona Bar Association has reviewed the performance of the members of its bench. In their private conversations with the nominee, I am sure my colleagues were as impressed as I was with her extremely bright mind and judicial perfectionism. She has been an insightful judge with a razor-sharp ability for equal and fair application of the law.

Her judicial record shows her commitment to interpret rather than expand the law. Although given ample opportunity to broaden statutory applications, she has not expanded statutes to situations never contemplated by its drafters. I am confident that as a Justice of the Supreme Court, Judge O'Connor will respect the historic constitutional boundaries between the judiciary and the Congress.

Her criminal decisions reflect a fair but tough approach in balancing the rights of the accused and the compensatory duty of enforcing the criminal laws of this Nation. Her record is one of defending private property rights, preserving State sovereignty, and strict judicial restraint. Her philosophy and temperament are well suited for the Supreme Court, and she has the potential of becoming a Justice of superior distinction.

I want to deal quickly with an issue that some have raised relative to Judge O'Connor's morality. I find it very difficult to believe that a woman with three sons can be called antifamily. Everything that I have read about her personal life indicates a strong enthusiasm for her family.

I am sure that I am not the first to quote her remarks at a wedding of two people she introduced, in which she said that:

Marriage is the single most important event in the lives of two people in love . . . marriage is the foundation of the family, mankind's basic unit of society, the hope of the world, and the strength of the country.

The issue of Judge O'Connor's morality is a false one; above all, she is an individual of very high moral principles.

Mr. President, our debate today about Judge O'Connor's nomination is an historic one. I want to join the chorus in sounding my pleasure with President Regan's fulfillment of his campaign pledge to nominate the first woman to the Supreme Court. In saying that, I do not want to demean her ability, integrity or knowledge.

She enjoys my support for one reason, and one reason only, because she will be a great asset to the U.S. Supreme Court. I join with the good citizens of Paradise Valley in urging the Senate to confirm Judge O'Connor's nomination unanimously.

Mr. PERCY. Mr. President, I wish first to express deep appreciation to the members of the Committee on the Judiciary, to its distinguished chairman (Mr. THURMOND), and to the ranking minority member (Mr. BIDEN). In an expeditious manner, consistent with thoroughness, they have conducted hearings and processed the nomination of Sandra Day O'Connor and are now placing it before this body for our decision. The committee has performed, once again, a great service to the Nation.

I am honored and privileged to address the Senate today on Sandra Day O'Connor, whose name is before this body for consideration to be an Associate Justice of the Supreme Court of the United States.

In considering her nomination, we as Senators will be fulfilling one of our important constitutional responsibilities in deciding whether or not to consent to this nomination. The individual we confirm will participate in and render decisions on some of the most complex and critical issues in the history of the Court. Therefore it is important that this individual is of the highest caliber—one who combines intellect, decency, and experience with judicial temperament, scholarship and integrity.

As her distinguished record clearly indicates, Sandra Day O'Connor is such an individual. She graduated from Stanford University in 1950 and received her law degree from the same institution in 1952. It was also in 1952 that she became deputy county attorney for San Mateo County in California.

In 1954 she traveled to Frankfurt, West Germany, where she served as civilian attorney. She returned to the United States in 1958 to engage in private practice in Arizona. As a wife and mother of three children, she devoted the years from 1961 to 1964 solely to her family. She returned to the law in 1965, this time as assistant attorney general for the State of Arizona. In 1969 she became an Arizona state senator, serving until 1975 as senate majority leader. In 1975 she became a trial judge on the Maricopa Superior Court of Arizona. From 1979 until the present she has served as a judge on the Arizona Court of Appeals.

In reviewing her outstanding legal career, it should be noted that she has served with distinction in all three branches of government—legislative, executive, and judicial. As it is one of the three coequal branches of our Government, the judiciary has the crucial role of applying the laws of Congress and interpreting the Constitution. With experience in all three branches, Judge O'Connor promises to bring to the Supreme Court a thorough understanding of how the Constitution divides authority among them.

In her exercise of judicial authority, Justice O'Connor is neither doctrinaire nor adventurous. She is a judge. Her record on the bench indicates that she sees it as her duty to apply the law, and not to make it.

In response to anyone who may question her views concerning certain issues, let me strongly emphasize that assessing a candidate on the basis of his or her views on specific issues should play no part in the process of selecting a Supreme Court Justice. It would be inappropriate for a judge or a prospective judge to have a preconceived position on something that might be an element in a case which should be decided on its legal merits alone. We must strive for an independent judiciary, one that decides issues solely on their legal merits and not upon some extra constitutional litmus test. I commend Judge O'Connor for taking this position herself during the recent Judiciary Committee hearings.

There can be no dispute that Judge O'Connor's record is an outstanding one. Her experiences as an attorney, legislator, and judge indicate that she is eminently qualified for the position of Supreme Court Justice. She has also demonstrated that she possesses the integrity, intellect, and the temperament so necessary for a Justice of the Supreme Court. I have no doubt that Sandra Day O'Connor is exceptionally well prepared to serve with distinction on the Supreme Court of the United States. A large, empty space exists in the Court. Sandra Day O'Connor can fill it. She deserves not only my personal support, but the support of this Senate as well.

My daughter served as a fellow trustee with Sandra O'Connor at Stanford University for a number of years, and as a result of her outstanding work there has long held her in the highest possible regard from every standpoint.

I hope and fully expect that our vote today will be a unanimous one.

Mr. NICKLES. Mr. President, today I rise in support of the nominee, Sandra Day O'Connor, to be an Associate Justice of the U.S. Supreme Court. I say, with all of my colleagues, that the appointment of a woman to the high court is long overdue. In Judge O'Connor, we have a very bright, articulate, and accomplished judge. I am sure that as an Associate Justice to the Supreme Court, Judge O'Connor will be an example of tremendous commitment and achievement not only to all women, but to everyone who works in the field of law and strives for excellence.

This is my first opportunity to participate with the Senate in the confirma-

tion of a Justice to the Supreme Court. As I understand it, our role is one of advice and consent on the President's nomination. We are asked to examine the nominee's background, character, academic achievement and judicial philosophy based upon his or her past record of activity. We are then asked to decide if the nominee is qualified to serve in the lifetime position of Justice to the Supreme Court.

Because of the magnitude and far reaching influence that a Justice may have on the Supreme Court, the advice and consent function of the Senate is indeed a very serious and important one. I, for one, have given much time and thought to this matter. And in the end, I feel compelled to say that even despite the obvious integrity and intelligence of the President's nominee, Judge O'Connor, I do not stand in support of this nomination without some unanswered questions.

I, like many of my colleagues, feel very strongly that the Supreme Court's 1973 decision in Roe against Wade, which legalized abortion by declaring that the unborn is not a person, was not only a moral fiasco, but a thoroughly unconstitutional court decision. In his dissenting remarks, Justice Byron White stated:

> I find nothing in the language or history of the Constitution to support the Court's judgement. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests the right with sufficient substance to override most existing State abortion statutes.

I stand in total agreement with Justice White's words.

During the confirmation hearings, Judge O'Connor was asked many questions about abortion. From her testimony, I know that she is personally opposed to it. For this I am glad, but, as she pointed out, this should in no way influence her opinion as a judge.

As a participant in the Arizona State Senate, Judge O'Connor had five votes that related to abortion. The first—House bill 20—which came prior to Roe against Wade, sought to totally decriminalize abortion. In her explanation, Judge O'Connor states that her knowledge and perception of this issue has increased greatly in the years following that vote and that if she were a State senator today and this issue were to come before her framed in the exact same way, she would not vote for a total repeal of the Arizona laws prohibiting abortion. However, nowhere could I find, even in a personal visit with the nominee last week, an explanation of what she would support as appropriate public policy in this area. So, what I am left with is some indication that Judge O'Connor has modified her position as to appropriate public policy in regard to abortion, but I have no idea as to what this new position might be.

Thus, from the information available, I can conclude that first, as a person, Judge O'Connor is personally opposed to abortion. Second, as a legislator, Judge O'Connor is against abortion on demand. But, the final and most important area—in fact the only truly important area—is what Judge O'Connor's position as a judge is concerning the constitutionality of Roe against Wade. And, it is precisely in this area that I know the least about Judge O'Connor's position.

I can appreciate the fact that it would be improper for a nominee to the Supreme Court to speculate on cases that might come before the Court during his or her tenure on the Court. However, I do not understand why a nominee cannot respond to questions concerning the constitutionality of cases already decided by the Court, such as Roe against Wade. If the Senate is to perform its advice and consent function, we must be able to determine the judicial philosophy of the nominee. As a Senator, I have a responsibility to represent the concerns and wishes of my constituents. As a human being, I feel it necessary to live within the confines of my conscience. However, to fulfill either of these becomes virtually impossible without the necessary information from Judge O'Connor as to how she will stand as a Supreme Court Justice in her interpretation of the Constitution.

I am also concerned that this refusal to answer questions on past Supreme Court cases will set in stone the precedent for future nominees in their approach to the Senate's confirmational inquiries. If this becomes the precedent, the Senate would then be asked to confirm nominees to the High Court without having any idea as to what their judicial philosophy is and how their appointment will influence generations to come.

I have labored long and hard over whether, in the midst of such unanswered questions, I could vote for the nominee, Sandra Day O'Connor, to be an Associate Justice of the Supreme Court. In the final analysis, I have to say that I do not feel that I have a strong enough basis from which to vote against Judge O'Connor's confirmation. I simply have unknowns. Therefore, I feel forced to resolve this issue based on outside considerations, the greatest of which is the trust, faith, and confidence that I have in the ideals and judgment of our President. I also have confidence in Judge O'Connor's overall judicial restraint and her claim to be a strict constructionist in her interpretation of the Constitution.

So, I stand with my colleagues in support of Judge O'Connor, with much hope in my heart that her appointment to the Supreme Court will herald a new era in the Court's history—one that will be characterized by restraint, wisdom, and devotion to God and to the Constitution which have preserved our freedoms for so many years.

Mr. JEPSEN. Mr. President, I rise today to speak to the question of whether Judge Sandra D. O'Connor should be approved by this body to serve as an Associate Justice to the Supreme Court of the United States.

I intend to vote in support of the nomination of Sandra Day O'Connor. I have no doubts about the capability, intelligence, or judicial temperament of Judge O'Connor. She brings to the Supreme Court the qualities necessary to be a competent jurist.

As a Senator from Iowa, I am pleased to advise the Senate that it was the great State of Iowa that produced the first woman attorney in the United States, Arabelle Mansfield, of Mount Pleasant, Iowa. It was the Iowa education system that trained her. Finally, it was the Iowa Bar Association, one of the oldest bar associations west of the Mississippi, which admitted Miss Mansfield to the bar.

Mr. President, history and time have afforded me the opportunity to represent Iowa and vote today for the first woman to be appointed to the U.S. Supreme Court. I shall vote "aye" for her confirmation.

Mr. CRANSTON. Mr. President, I am extremely pleased that the Senate Judiciary Committee has concluded that Sandra Day O'Connor is extraordinarily well-qualified to be an Associate Justice of the U.S. Supreme Court. She is eminently qualified. I support her nomination.

Judge O'Connor's direct experience with both the legislative and the judicial process augurs well for an outstanding term on the Supreme Court bench.

As a Californian, I am particularly pleased by the prospect of having a southwesterner on the bench. As a lifelong resident of California and Arizona, our sister State to the east, Judge O'Connor is familiar with the special problems of the Southwest such as water, land resources and their uses. These will be important issues before the court in coming years and her knowledge in this area should be most helpful.

President Reagan is to be especially commended for naming a woman to the Supreme Court—the first such nominee in our Nation's history and one that is very long overdue.

Judge O'Connor's nomination is a major step in the battle to eliminate sex discrimination in our society and a major step toward achieving full equality of opportunity for women. Furthermore, Judge O'Connor has displayed sound judicial temperament, brilliant legal scholarship, personal integrity, sensitivity to individual rights and a firm commitment to the principle of equal justice under the law.

Mr. President, I am honored to join my colleagues in support of this history making nomination.

Mr. SASSER. Mr. President, with its action today, the Senate has taken a historic step. Sandra Day O'Connor is the first woman appointed to the Supreme Court—61 years after women were given the right to vote. My own State of Tennessee was the 36th State to ratify the 19th amendment, thereby making it a part of the Constitution and it gives me great pleasure to be able to vote today to confirm Judge O'Connor's nomination.

However, as significant as the appointment of a woman to the Court may be, it must be remembered that once confirmed Judge O'Connor becomes one of nine justices sitting on the Supreme Court. Therefore, the most important question in voting on this nomination is whether the person has the judicial temperament

and legal qualifications which are required of a member of the Nation's highest court.

In the 3 days of hearings conducted by the Judiciary Committee, Mrs. O'Connor's legal philosophy and record were subjected to a searching examination. Her responses showed a proper appreciation for the proper role of the judiciary—to adjudicate, not to legislate. The whole thrust of her responses on whatever topic, demonstrated a clear and well-defined philosophy, consistently applied. In addition, the nominee's experience in private practice, the Arizona State Senate, as well as on the bench give her a breadth of perspective which qualifies her for this position.

I congratulate Judge O'Connor, soon to be Madam Justice O'Connor, as she undertakes her new responsibilities.

Mr. MOYNIHAN. Mr. President, on this day that we are congratulating Judge Sandra Day O'Connor on her nomination and confirmation as Associate Supreme Court Justice—and for President Ronald Reagan for nominating her—I direct the Senate's attention to a serious problem facing our courts of which we are the authors, you might say.

Yesterday's New York Times magazine carried a brilliant essay by Judge Kaufman of the U.S. Court of Appeals for the Second Circuit. Judge Kaufman addresses an issue that has been central to our debates over the past few months—legislation designed to strip the courts of their jurisdiction.

Judge Kaufman, whose career on the bench has spanned 35 years, has written an article that contains lessons which I believe will be of value to all Members of this body. I ask unanimous consent that the article be printed in the RECORD.

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

CONGRESS VERSUS THE COURT

(By Irving R. Kaufman)

The first Monday in October, the commencement of the new Supreme Court term, is normally one of the more exciting dates on Washington's calendar. The long summer recess over, the nine Justices don their black robes and enter the marble and oak courtroom where they will ponder questions of truth and justice. This year, however, Oct. 5 will also be a time of no little concern for these esteemed jurists—as it should be for us all. The reason: The role of the High Court as a counterbalance to the legislative and executive branches of government—a fundamental pillar of the American system—is under attack. Congress currently has before it more than 30 bills designed to sharply restrict the authority of the Federal judiciary and limit its power to interpret the Constitution.

These bills have been introduced by Members of Congress new conservative coalition, individuals who have been profoundly disturbed by many of the decisions the Supreme Court has made over the last two decades. For example, the Court has forbidden mandatory prayer in public schools, upheld a woman's right to abortion during the first three months of pregnancy, and characterized busing as the only constitutionally adequate remedy in some instances of racial imbalance in public schools. These decisions, all formed on the basis of constitutional principle—and constitutional principle alone—undoubtedly appear as obstacles to the social changes the new legislative coalition intends to make in this country now a number of individual liberties, but also the that the political pendulum is swinging in its direction. The way the coalition proposes to overcome these obstacles threatens not only very independence of the Federal courts, an independence that has safeguarded the rights of American citizens for nearly 200 years.

The current legislative outlook is ominous. A subcommittee of the Senate Judiciary Committee has already aproved a bill that would forbid the lower Federal courts to entertain challenges to state antiabortion legislation (even legislation that defined abortion as murder). In the last Congress, the Senate easily passed a proposal to withdraw lower Federal court jurisdiction in school prayer cases. A discharge petition to move the bill from the House Judiciary Committee to the floor failed by only 32 votes. The bill has been reintroduced and its chances for passage are rated better in this year's Congress. Other bills which would take from the Supreme Court the power to revise state and lower Federal court decisions in school prayer, abortion and busing cases, are now wending their way through the Senate-House Judiciary Committees.

Legal experts from all sections of the political spectrum have begun stepping forward to denounce these proposals. The American Bar Association calls them a danger to the fundamental system of checks and balances. And Prof. Laurence H. Tribe, of the Harvard Law School, has gone so far as to characterize one of the bills as "too palpably unconstitutional to permit reasonable persons to argue the contrary." Still, the possibility that some of these bills may be enacted into law cannot be dismissed. If that should happen, the Supreme Court would either have to accept the Congress's mandate or adjudicate the constitutionality of the laws. If the Supreme Court then decided that the laws were, indeed, unconstitutional, it would be up to Congress either to back down or to permanently reduce the Court's power through constitutional amendment.

Such dilemmas have come close to occurring in the past. Today, it is the conservative wing that is attempting to circumscribe the Court's historical role. At other times in the past, the attack against the Court has been led by liberal reformers—while conservatives stood as sentinels guarding the sanctity of the Constitution. In the early 20th century, the Court struck down many pieces of legislation that sought to promote social change, including laws regulating child labor, setting minimum wages and maximum hours, forbidding the use of injunctions in labor disputes, and providing compensation for accident and illness. In response, liberals, and progressive led by Robert M. La Follette, attacked not only the concept of judicial review but the judges themselves. Statutes were introduced in Congress to require the votes of at least six justices to invalidate legislation, and some Congressmen supported constitutional amendments that would have mandated the popular election and recall of Federal judges.

Some years later, after the Supreme Court invalidated much New Deal legislation, President Roosevelt proposed a bill that would have allowed him to increase the Court's membership. Had that bill passed, Roosevelt would have been able to "pack" the Court with political allies, insuring that it would always decide as he saw fit. Fortunately, that plan died in the Senate Judiciary Committee.

Efforts to curb the courts have, if anything, become more frequent in recent years, and they have been proposed by politicians of almost all political stripes. After the Supreme Court's 1954 decision in *Brown* v. *Board of Education*, which declared an end to the purposeful segregation of public schools, a number of bills were introduced in Congress proposing to remove all Federal court jurisdiction in desegregation cases. At about the same time, the call for popular election of Federal judges was renewed. Later, in 1958, at the height of the cold war, serious and widespread support gathered for a bill that would have overturned Supreme Court decisions guaranteeing First Amendment freedoms to political dissidents by removing appellate jurisdiction in cases involving alleged subversive activity. And in 1964, the House of Representatives (but not the Senate) passed a bill that would have deprived the Supreme Court and the lower Federal courts of the power to hear cases regarding enforcement of the Court's new rule of one-man, one-vote for apportionment of state legislatures, a rule that was intended to redress inequities in voting strength caused by racial animus. The reapportionment decisions spurred a furious attack on the Court led by proponents of states' rights, some of whom went so far as to propose that a "Court of the Union," composed of the Chief Justices of all the states, be established to review the decisions of the Supreme Court.

All the bills under consideration this year invoke the concept of jurisdiction, the basic authority of a tribunal to decide a case. Sponsors of the bills cite Article III of the Constitution, which assigns to Congress the power to define and regulate the jurisdiction of all Federal courts including the Supreme Court. Using this power, the Congress has, for example, denied Federal judicial authority in some cases involving lawsuits for less than $10,000. No one questions the legitimacy of that restriction. So why, the sponsors ask, can Congress not also declare, as one bill does, that "the Supreme Court shall not have jurisdiction to review . . . any case arising out of any State statute, ordinance, rule or regulation . . . which relates to abortion?" The answer is not simple. It rests on an understanding of the scope of Congress authority over the jurisdiction of the Federal courts, which, in turn, depends on an understanding of the Constitution and the role the Constitution mandates that the Federal courts play in the American system.

The framers and early expositors of the Constitution did not fear the power of the courts. With no innate authority either to enforce its own judgments or to control the purse strings, the judiciary was expected to be the weakest of the three branches of government. It was rather the legislative branch that the framers felt a need to restrain. Steeped in English parliamentary history, they knew the dangers of legislative tyranny. James Madison, the principal architect of the Constitution, observed: "The legislative department is everywhere extending the sphere of its activity and drawing all power into its impetuous vortex."

The framers set up the Federal court system as one means of checking the Congress. Using the power of judicial review, the courts would invalidate any legislative acts that were inconsistent with the strictures of the Constitution. The theory was, and still is, that Congress should exercise only a delegated authority, derived from the people. The Constitution, in contrast, was intended to represent the actual embodiment of the people's fundamental and supreme will. Thus, when presented with a case in which a legislative act contravenes the constitutional mandate, it is the duty of the courts to uphold the latter. "To deny this," said Alexander Hamilton, "would be to affirm that the deputy is greater than his principal; that the servant is above his master; that the representatives of the people are superior to the people themselves."

The Supreme Court has therefore struck down laws passed by Congress that conflict with the Constitution ever since the landmark 1803 case of *Marbury* v. *Madison*. For almost as long, the Court has invalidated constitutionally offensive state statutes as

well. That duty, scholars insist, is grounded in Article VI of the Constitution, which commands: "This Constitution, and the laws of the United States which shall be made in pursuance thereof . . . shall be the supreme law of the land."

It was inevitable that the judiciary, of the three branches of government, would be charged with the responsibility of assessing the constitutional validity of legislation. To insure the judiciary's ability to perform this sensitive duty faithfully and neutrally, the farmers deliberately shielded the judges from political pressures by guaranteeing them, within the Constitution itself, life tenure, and by further providing that their salaries could not be diminished through legislative act. Their independence, to quote Hamilton again, would insure "that inflexible and uniform adherence to the rights of the Constitution, which we perceive to be indispensable in the courts of justice."

This is not to say that the Federal courts' judgments relating to the constitutionality of legislation—including legislation on such issues as abortion, school prayer and busing—cannot be overridden. An unpopular Supreme Court decision on a constitutional issue can be overturned through a constitutionally prescribed means: an amendment of the Constitution. In fact, three times amendments have been proposed and ratified as a way of nullifying controversial Supreme Court decisions. (The 11th Amendment, which forbids a suit in Federal court against a state without its consent, was adopted to overrule a 1793 holding that the Supreme Court had jurisdiction over a case brought by two South Carolinians against the State of Georgia. In 1858, during the Reconstruction period following the Civil War, the 14th Amendment was enacted. This amendment, which proclaims that all persons born in the United States are full citizens of the United States, with all "rights and immunities" of citizens, overruled the infamous Dred Scott decision of 1857, which had declared that black slaves, as no more than pieces of property, lacked the rights of citizens. Finally, in 1913 the 16th Amendment was adopted to overturn a Supreme Court decision holding that the Federal income tax was unconstitutional.)

Constitutional amendments, however, are not a means most critics of the Court are eager to employ to bring about the changes they seek. Their passage requires a cumbersome procedure of ratification—as supporters of the proposed equal rights amendment well know. The framers deliberately made the amendment process cumbersome because they did not want expediency to prevail over constitutional rights. They believed that any alteration of the fundamental law of the land should enjoy the overwhelming and sustained support of the citizenry. A simple majority in both Houses of Congress, sufficient to pass the ordinary statute, should not be enough to justify permanent changes in the nation's charter of basic freedoms.

Herein lies the tactical appeal of the withdrawal-of-jurisdiction stratagem. Many supporters of the 30 or so divestiture bills now before Congress freely admit that they are attempting to bypass the amendment process. Their rationale is simple: Since the popular support to override Court decisions by amending the Constitution is difficult to garner, why not accomplish the same result with a simple statute restricting the power of the courts to consider the constitutional principles they dislike? In 1964, following the Supreme Court's landmark decision on legislative reapportionment, Senator Everett M. Dirksen introduced a bill to withdraw Federal court jurisdiction in apportionment cases. When asked whether he was attempting to enact a constitutional amendment in the form of a statute, he responded: "[There is] no time in the present [legislative] session to do anything with a constitutional amendment. . . . We are dealing with a condition, not a theory." A candid and revealing response, then as now.

The rationale of our Constitution is not to be lightly ignored. It was designed to protect individual rights by vesting the Federal courts with the final, binding authority to interpret the fundamental law. The only way to override the Constitution as so interpreted is to amend it. The backdoor mechanism of withdrawing the Court's jurisdiction is clearly antithetical to the judiciary's role in the constitutional scheme. If the bills depriving the Court of the authority to hear cases on such topics as abortion, school prayer and busing are considered constitutional, Congress might just as well pass laws depriving the Court of the authority to hear constitutional claims based on such freedoms as speech and religion. The potential consequences are astonishing.

There is another contention being put forward by the proponents of the withdrawal-of-jurisdiction bills that needs to be discussed. These legislators note that the Constitution states that "the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations, as the Congress shall make." The "exceptions-and-regulations" clause, they argue, grants Congress wide-ranging authority to restrict the substantive categories of cases that may be appealed from the state and lower Federal courts to the Supreme Court. But to assert that the framers, who clearly intended the Supreme Court to exercise the power of judicial review, also intended to grant Congress plenary authority to nullify that power is to charge the framers with baffling self-contradiction. Indeed, the history of the exceptions-and-regulations clause suggests that it was never intended to carry the heavy constitutional baggage with which the bill's supporters are now loading it.

The clause originated in the fears of some members of the Constitutional Convention that Supreme Court review of factual determinations (appellate review was to be "both as to law and fact") would impair the right-of-jury trial in the states. Hamilton stated: "The propriety of this appellate jurisdiction has scarcely been called in question in regard to matters of law; but the clamors have been loud against it as applied to matters of fact." Since the practices with respect to appellate review of factual determinations varied so widely from state to state, the framers decided to leave to Congress, in the exceptions-and-regulations clause, the authority to regulate the scope of Supreme Court review of facts.

The clause was never meant to confer a broad control over appellate review of substantive legal issues, including issues of Federal constitutional law. Indeed, the Convention considered and rejected proposed constitutional language that "the judicial power shall be exercised in such manner as the legislature shall direct," far from a mandate to effectively abrogate the vindication of constitutional rights, the clause was intended merely as a way to give Congress the authority to regulate the Supreme Court's docket with reasonable housekeeping measures. Thus, in the Judiciary Act of 1789, Congress restricted the Court's appellate jurisdiction over cases coming from the United States Circuit Courts to those in which the amount in controversy exceeded a prescribed minimum.

On only two or three occasions in its history, has the Supreme Court passed upon the constitutionality of legislation seeking to limit its appellate jurisdiction. Both cases occurred over a century ago and both reveal constitutional defects in the current proposals relating to jurisdiction. In the first case, *Ex parte McCardle*, decided in 1869, the Court upheld a restriction on its appellate jurisdiction. Although relegated to a small niche in history, this case was enormously important in its day, for it involved a challenge to the post-Civil War Reconstruction program, in which Congress had placed 10 of the former Confederate states under military rule. McCardle had been imprisoned by the military government of Mississippi for the publication of allegedly libelous material. Pursuant to a Federal statute passed in 1867, he applied to a lower Federal court for a writ of *habeas corpus* ordering his release. He asserted that the Reconstruction Acts were unconstitutional. The court denied his application, and he appealed to the Supreme Court on the basis of that same Federal statute. Before the case was decided by the Court, however, Congress repealed that part of the 1867 statute which authorized appeals to the High Court. "We are not at liberty to inquire into the motives of the legislature," the Court held. "We can only examine into its power under the Constitution; and the power to make exceptions to the appellate jurisdiction of the Court is given by express words."

Despite this pronouncement, the McCardle case is not ordinarily read as authority for a broad Congressional power to restrict the enforcement of constitutional rights in the Supreme Court. Under the Judiciary Act of 1789, McCardle could still apply for an original writ of *habeas corpus* in the Supreme Court. Therefore, the repealing act actually cut off only one avenue of *habeas* relief. The Court concluded as much in the 1869 case of *Ex parte Yerger*, a case that was in many ways strikingly similar to *McCardle*. Yerger held that the repealing statute did not affect the petitioner's right to apply for an original writ pursuant to the act of 1789. In contrast with the statute under consideration in *McCardle*, the bills that would forbid any Supreme Court review of busing, school prayer and abortion decisions would totally foreclose the possibility of a Supreme Court hearing on a claim of Federal constitutional right. Surely, *McCardle* cannot be considered a precedent for that.

This view is confirmed by *United States* v. *Klein*, decided in 1872, in which the Court struck down a limitation on its powers of appellate review. Klein administered the estate of a cotton plantation owner whose property was seized and sold by Union agents during the Civil War. Under legislation providing for recovery of seized property of noncombatant rebels upon proof of loyalty, Klein sued and won in the Court of Claims, proffering a Presidential pardon as proof of loyalty. The Court had previously interpreted a Presidential pardon as carrying with it a proof of loyalty. But pending the Government's appeal to the Supreme Court, Congress passed an act which legislated that acceptance of a pardon was, on the contrary, conclusive proof of disloyalty and one which, in addition, required the Supreme Court to dismiss for want of jurisdiction any appeal in which the claim for recovery was based on a pardon.

Invalidating that legislation, the Court concluded that Congress had unconstitutionally attempted to interfere with the Court's duty to interpret and give effect to a provision of the Constitution: "The language of the proviso shows plainly that it does not intend to withhold appellate jurisdiction except as a means to an end. Its great and controlling purpose is to deny pardons granted by the President the effect which this Court had adjudged them to have. The proviso declares that pardons shall not be considered by this Court on appeal. We had already decided it was our constitutional duty to consider them and give them effect, in cases like the present, as equivalent proof of loyalty."

In a similar manner, the current withdrawal-of-jurisdiction proposals do "not intend to withhold appellate jurisdiction except as a means to an end." And the end, in

this instance, is precisely the same as it was in *Klein*, the circumvention of the Supreme Court's authoritative interpretation of a constitutional provision. As *Klein* demonstrates Congress does not have the power to subvert established constitutional principles under the guise of regulating the Court's appellate jurisdiction.

Those who would read the exceptions-and-regulations clause broadly also argue that state courts, which frequently rely on the Federal Constitution in striking down state legislation, could adequately protect constitutional rights without review in the Supreme Court. The short answer to this contention is that a Federal constitutional right is of dubious value if it means one thing in Mississippi and another in Minnesota. State courts have at times differed profoundly on the meaning of constitutional provisions. To cite but one illustration, in 1965, the Supreme Judicial Court of Massachusetts concluded that the book "Fanny Hill" was unprotected by the First Amendment. At about the same time, the New York Court of Appeals found that it was. Obviously the need for uniformity in matters of Federal constitutional interpretation is essential, and the appellate jurisdiction of the Supreme Court was designed to meet that important need. Chief Justice John Marshall said in *Cohens* v. *Virginia*: "The necessity of uniformity as well as correctness in expounding the Constitution and laws of the United States, would itself suggest the propriety of deciding, in the last resort, all cases in which they are involved. . . . [The framers of the Constitution] declare that, in such case, the Supreme Court shall exercise appellate jurisdiction."

In connection with this uniformity function, there is an interesting tale concerning one of the most eminent jurists in American history, Judge Learned Hand of the United States Court of Appeals for the Second Circuit. In 1958, at the ripe age of 86, Hand, still nimble of mind and capacious of spirit, was asked by Senator Thomas C. Hennings, Jr. of Missouri, chairman of the Senate Judiciary Subcommittee on Constitutional Rights, to comment upon a then-current bill to remove Supreme Court appellate jurisdiction in cases regarding internal security. Hand promptly responded: "It seems to me desirable that the Court should have the last word on questions of the character involved. Of course there is always the chance of abuse of power wherever it is lodged, but at long last the least contentious organ of government generally is the Court. I do not, of course, mean that I think it is always right, but some final authority is better than unsettled conflict."

It should also be self-evident that the framers saw independent, tenured Federal judges—knowledgeable in Federal law, drawn from all over the country and, as prescribed in the Constitution itself, appointed by the President and confirmed by the Senate—as more appropriate arbiters of conflicts between constitutional and state law than elected state judges, many of whom are popularly elected and who might be partial to state law. The framers realized that only the Federal judges could insure the supremacy of Federal law. As James Madison said: "In controversies relating to the boundary between the two jurisdictions [Federal and state], the tribunal which is ultimately to decide is to be established under the general Government. . . . Some such tribunal is clearly essential to prevent an appeal to the sword and a dissolution of the compact."

The argument for giving Congress the authority to determine the kinds of cases and the types of remedies that the inferior Federal courts may hear is a bit more complicated—if equally unpersuasive. It too is based on Article III of the Constitution, which gives Congress the right to establish "such inferior courts as the Congress may from time to time ordain and establish." Since this provision has been interpreted by many legal experts as giving Congress the right to establish or abolish the lower courts, does it not follow that it also gives Congress the authority to regulate the subject matter of their jurisdiction? The fallacy of this argument is that the framers predicated Congressional discretion on the assumption that litigants would in all cases be able to present their Federal claims or defenses to *some* Federal court, either in the district court or on appeal. And it was further assumed that, even if no lesser Federal courts were created, the Supreme Court itself would serve as the requisite forum by hearing all constitutional cases appealed from the state courts.

Throughout most of the 19th century, this was possible. The Court's docket was almost empty by today's standards and it could ordinarily hear a constitutional case any time one of the parties so desired. But beginning about 1875, the Supreme Court's case load began to grow enormously, giving rise to a series of acts, culminating in the Judges Bill of 1925, which gave the Court the discretion to decide which cases, within certain categories, it would hear. In the process, the Supreme Court was transformed from a general court of appeal into a court which would decide only cases of great constitutional moment or high precedential value.

As the Supreme Court has found itself deciding a progressively smaller percentage of the cases involving Federal, constitutional and statutory law, the role of the lower Federal courts in protecting constitutional rights has expanded to the point of practical and effective primacy. And over the last two decades, a period during which there has been an explosive growth of litigation, the inferior Federal courts have become, in most instances, the only forums in which a litigant could secure a decision on his constitutional claims by a judge life tenured under Article III of the Constitution. If Congress were now to abolish the lower Federal courts, it would effectively cut off almost all opportunity for Federal adjudication of Federal rights. And clearly, the framers did not wish to leave to the states final authority to decide matters of Federal constitutional law. For this reason, the argument that Congress can withdraw jurisdiction over certain classes of Federal cases or rights because it has discretion to abolish the lower courts does not hold up under examination.

Authoritative precedent also strongly suggests that even if Congress had the power to abolish some or all of the lower Federal courts, it may not use its power over lower court jurisdiction to thwart the vindication of constitutional rights. The Court of Appeals for the Second Circuit said in Battaglia v. General Motors Corporation, decided in 1948, that, "while Congress has the undoubted power to give, withhold and restrict the jurisdiction of courts . . . it must not so exercise that power as to deprive any person of life, liberty, or property without due process of law."

The conclusion that can be drawn from all of these arguments is this: Congress does indeed have broad discretion to withdraw jurisdiction from lower Federal courts—where no substantive constitutional rights are at issue. The statutory rights that owe their existence to Congress, as distinguished from constitutional rights, may be taken away either by a repealing statute or by a provision withdrawing Federal court jurisdiction. Where rights embodied in the Constitution are concerned, however, the discretion of Congress is limited. When Congres deprives a Federal court of the authority to hear a litigant's constitutional claims or defenses, it must provide that litigant with another Federal forum in which to seek an adequate remedy. The distinguished legal scholar Henry Hart once decried the use of statutes withdrawing lower court jurisdiction to undermine constitutional rights: "Why, what monstrous illogic! To build up a mere power to regulate jurisdiction into a power to affect rights having nothing to do with jurisdiction! And into a power to do it in contradiction to all the other terms of the very document which confers the power to regulate jurisdiction!"

Applying these lessons to the divestiture bills now before Congress, there can be no doubt that all of them trench upon established constitutional rights. The Supreme Court has determined that busing may be a constitutionally required remedy in an appropriate case for violations of schoolchildren's equal-protection rights to an education in a desegregated public school. Chief Justice Burger has written for the Court: "Bus transportation has long been an integral part of all public educational systems, and it is unlikely that a truly effective remedy could be devised without continued reliance upon it." In the landmark case of *Roe* v. *Wade*, the Court firmly established a woman's constitutional right to an abortion. And for nealy two decades, the Court has found mandatory prayer in the public schools to violate the constitutional principal of separation of church and state.

One may disagree with these decisions; they may even transgress one's deepest moral convictions. But one cannot doubt that they were based upon informed interpretation of the Constitution—and not on the basis of political or ideological expediency. It is worth recalling the pungent words of Chief Justice Charles Evans Hughes: "We are under a Constitution, but the Constitution is what the judges say it is, and the judiciary is the safeguard of our liberty and of our property under the Constitution." Depriving the Federal courts of the power to adjudicate cases relating to such issues as desegregation, abortion and school prayer effectively precludes Federal protection—the constitutionally envisaged and most reliable form of protection—of our cherished constitutional rights.

The result of the proposed legislation would be to deny citizens the protection of constitutional rights that the Supreme Court has declared they possess. It would be strange indeed if Congress could accomplish through a jurisdictional bill what it clearly must not accomplish directly: a reversal of constitutional principle by an act of Congress The law is clear, for example, that Congress has no power to declare racial discrimination in Federal Government employment legal. The "logic" of the arguments raised by the proponents of the divestiture bills would, however, permit Congress to remove from the Federal courts all jurisdiction to hear cases involving racial discrimination against Government employees. The motive, discrimination, would be equally patent in either instance.

If one needs to find language in the Constitution as a source for these restrictions on the power of Congress to control the jurisdiction of the lower Federal courts, it is in the due process clause of the Fifth Amendment. The overarching guarantee of due process is the sacred assurance that the Federal Government will govern fairly, impartially and compassionately. All the powers of Congress—to tax, to make war, to regulate commerce—are constrained by its constitutional inability to deprive us of our rights to life, liberty and property without due process of law. As a power of Congress, the authority to control jurisdiction is therefore restricted by the right of due process. That is the wonder of the American Constitution as it lives and breathes.

Should Congress insist upon restricting the judiciary in ways that the Supreme Court may view as unconstitutional, the Supreme Court might well strike down the withdrawal-of-jurisdiction legislation, leav-

ing Congress and the judiciary in conflict. This institutional dissension would continue, until Congress either accepted the Court's determination or passed a constitutional amendment restructuring the basic relationship between the judicial and legislative branches of government.

It is understandable that politically vulnerable legislators would react adversely to judicial nullification of their enactments. Yet those who criticize the courts for their unresponsiveness to the present national mood tend to forget that the judicial branch was not designed as just another barometer of current public opinion. Congress is superbly adequate for that function, and we ought not to presume that the framers intended the judiciary as an institutional redundancy. In exercising their power of judicial review, the courts have represented the long-term, slowly evolving values of the American people, as enshrined in the Constitution. And when the people have recognized Congressional court-curbing efforts for what they are—assaults on the Constitution itself—they have in every instance rejected them.

It is of no small interest that even some of the supporters of the divestiture bills have begun to question the constitutionality of these proposals. And, indeed, there is a glimmer of hope that these doubts will eventually permeate Congress. The long history of Congressional court-curbing measures reveals that the legislative branch has in every instance ultimately yielded to the judiciary's duty to interpret the Constitution and has not (at least since passing the statue involved in the *Klein* case more than a century ago) challenged the courts with a jurisdictional bill that would impinge upon the fulfillment of that duty. Robert McKay, former dean of the New York University Law School, wrote of bills to withdraw jurisdiction over apportionment cases: "Once again, as so often in the past, when the implications of the proposed legislation were made clear, the Congress would not quite cross the threshold of no return."

The political risks attending bills to withdraw Federal jurisdiction create another check on the legislative goal of certain Congressmen. Groups of all persuasions have attempted to achieve their politcial aims through attacks on the Court's authority to decide constitutional cases. While it is true that political conservatives are the strongest supporters of the current efforts to withdraw jurisdiction, liberal reformers have also utilized this strategy in the past. Employed successfully by today's political majority, it could easily be manipulated tomorrow by a different majority—and to other ends.

In the final analysis then, while the current divestiture bills should be a cause for concern about the ability of our constitutional system to withstand the onslaught of restrictive legislation, there is also room for hope. In the long history of court-curbing efforts, the majority has always, in the end, acknowledged the clear intention of the framers. To preserve the rights of the people, the Federal judiciary must interpret and apply the Constitution unfettered by unseemly limitations on its jurisdiction. The current Congress is a body of distinguished and wise legislators who are unlikely to sacrifice the long-term good of the Republic for speculative and short-term political gain. As the New England poet James Russell Lowell once said, "Such power there is in clearеyed self-restraint." As the first Monday in October draws near, there is reason to believe that Congress will be instructed by the lessons of history and see that the constitutional powers of the highest court in the land—and of other Federal courts—should remain inviolate.

Mr. DURENBERGER. Mr. President, 5 months ago I prefaced the introduction of the Economic Equity Act by noting that in the first 200 years of the American experience only two women had been elected to the Senate in their own right; only 14 women had served on the Federal bench; and that no woman had ever served on the Nation's highest court.

I must confess a special satisfaction in the realization that just 9 months into the new beginning we proclaimed for this country in January, the most significant of those barriers is about to fall.

The nomination and confirmation of Sandra O'Connor is an affirmation of the President's and the Senate's faith in a remarkable woman. Her intellectual ability has been evident in every phase of her life, from law school—where she was third in a class that included Supreme Court Justice William Rehnquist—to her years of service on the Arizona bench. She is an extremely intelligent woman and a very capable jurist. Her command of the law was evident throughout the confirmation hearings. Her ethical background is spotless and her integrity has never been questioned even by her most critical foes. Her life's record is impressive evidence of the competence, intellect, and leadership she will bring to the Nation's highest court.

The nomination of Sandra O'Connor is also an affirmation of faith in every American woman. It is recognition of the fact that every person in this Nation feels the loss when society fails to utilize the talents, judgment, and intellectual capacity of half its people. The decisions reached by the Supreme Court touch the lives of every woman, just as they touch the lives of every man. It is a paradox that a nation born in reaction to legislation without representation should have allowed the same inequity to remain for so long in its judicial system. When Mrs. O'Connor takes her seat on the Supreme Court, the stakehold of every American in that Court will be more real and visible than ever before.

The O'Connor nomination, and the Senate's vote to confirm that nomination, are also reaffirmations of the unique balance of power that underlies our system of government. As I listened to her testimony during last week's hearings, I became convinced that Mrs. O'Connor's greatest qualification for the Court is her perspective on the role a Supreme Court Justice—or any justice for that matter—plays in the formulation to policy. Mrs. O'Connor has served both on the bench and in the legislature. She understands the difference between the judicial and legislative role. Her testimony—like her judicial record—emphasize the primacy of the Congress and the legislatures of the 50 States in defining legislative policy. She well understands that while the courts play an essential role in applying these policies on a case-by-case basis, they cannot preempt the role of policymaker without disrupting the constitutional balance that has supported the federal system for more than two centuries.

There are areas where I agree with Mrs. O'Connor and areas where we take different views. But as we prepare to vote this evening, it is equally essential that every Member of this body bear in mind the limits as well as the responsibilities of the Senate's power to advise and consent on Presidential nominations. That power was never intended as authority for any Senator to substitute his or her judgment for the Presidents on judicial nominations. The issue is not whether I or any other Senator would have chosen Sandra O'Connor from the field of men and women qualified to fill the Stewart vacancy. The responsibility of advise and consent is the limited but essential responsibility to insure that the Presidents choice does fall within that field, that she meets the ethical and intellectual requirements to serve on the highest court. The intellectual and ethical capabilities of this nominee are beyond question, and by making that judgment the Senate has fulfilled its role. The nomination of Mrs. O'Connor should be confirmed.

The vote we are about to cast is truly an historic vote. It is an affirmation of faith in this nominee, and in the millions of American women she represents. It is a reaffirmation of the willingness of the Senate and the members of the Court to accept the limits as well as the responsibilities of their constitutional roles. I am convinced that this nomination is not the culmination of a 200-year effort by American women to add their wisdom to the accumulated wisdom of the Court. It is just the beginning of that process, and it is a privilege to play a role by casting my vote for Sandra O'Connor this evening.

Mr. MITCHELL. Mr. President, since I was sworn in as a U.S. Senator last year, I have missed only a handful of Senate votes. I consider each vote I have cast significant and important. But there are occasions when the Senate considers a matter which is of utmost significance and of the highest importance.

The approval of a nomination to the U.S. Supreme Court is such a matter. The vote each of us is about to cast will have an indirect effect on the development of American law which is far greater than the direct effect of most legislation considered by this body. The confirmation of Judge O'Connor to the Supreme Court is a responsibility which we should not, and do not, take lightly.

I am pleased to be able to vote to approve the appointment of Judge O'Connor. I have carefully reviewed her record as a judge and have read with great interest her intelligent and comprehensive discussions of the law with the members of the Senate Judiciary Committee. I was extremely impressed with her knowledge of Federal law and Supreme Court precedents. She has already established her scholarly qualification for her appointment.

In addition, Judge O'Connor has demonstrated a demeanor and temperament appropriate for a Supreme Court Justice. I am especially pleased that a jurist of this caliber is being elevated to the Supreme Court.

Mr. BRADLEY. Mr. President, Emerson once wrote that "integrity is better than a career." Fortunately with President Reagan's nominee for Supreme Court Justice we do not have to make a

choice between the two. For Sandra Day O'Connor combines a distinguished career with great personal integrity.

I am pleased to say that in this nomination I have found a common ground on which to stand with the Reagan administration. As House Speaker O'NEILL stated in the New York Times of July 9, 1981, "It's the best thing he's (Reagan) done since he was inaugurated." I extend my support to the appointment of Mrs. Sandra Day O'Connor.

As we consider this nomination, I know it is not necessary to remind my fellow Senators that not only is Mrs. O'Connor highly capable, highly skilled and highly educated, but she will be the first woman to sit on the Supreme Court in a nation where women comprise 52 percent of the population. Clearly her qualifications, which are impressive, are more important than her gender. The important point is that it is noteworthy whenever our society becomes more inclusive and truly integrated.

The role of the Supreme Court in American society is an extraordinary one for a group of nine people. The Justices must balance conflicting societal interests to determine what is in the best interests of the American society as a whole.

The Court's impact is not always easy to predict, especially in areas such as the status of minorities and labor management relations. It is also more limited than one might imagine. For instance, criminal penalties are designed to deter people from committing crimes. Civil rights policies are intended to prevent discriminatory behavior. But the behavior of people is not changed that easily. A variety of influences are beyond the reach of government.

The Supreme Court is one of many public and private institutions that shape American society. However, it is clearly a strong force in defining a direction for our society. It is the final assurance that we are a Nation of laws, not men—and women. For this reason, its members have significant responsibility. Sandra Day O'Connor is able to fulfill this responsibility.

To elaborate on her credentials, she graduated among the top 10 of the 1952 class of Stanford Law School. For 3 years she was a civilian lawyer for the Army in Germany. When she returned to Arizona she practiced law for 2 years. When her youngest son entered into school she returned to her legal practice, then became Assistant Attorney General of Arizona and entered Republican Party politics.

She was elected to the Arizona State Senate and later became the majority leader in 1973. Arizona politicians describe her as a conservative which is supported by her record on the abortion issue. But on some issues concerning women she often took the liberal position and led fights to remove sex-based references from State laws. In addition she led the way toward the elimination of job restrictions in order to open more positions for women. Mrs. O'Connor left the Senate and won election as a Phoenix trial judge in 1975. In 1979 she accepted an appointment to the Arizona Court of Appeals from Governor Babbitt, a Democrat.

Naturally, there are those who differ with Mrs. O'Connor because of political affiliation or opinions. I say that Sandra Day O'Connor is an excellent choice because she has the ability needed to do the job. I have every hope that she will consider and decide the issues before her—not as a liberal or conservative, not as a woman, not as a Republican—but based on the facts of the case and the Constitution, which we are all sworn to uphold.

● Mr. WILLIAMS. Mr. President, I am extremely pleased to cast an affirmative vote for the confirmation of Sandra Day O'Connor. While I have my differences with many aspects of the President's program, his fulfillment of his campaign pledge to nominate a qualified woman jurist to our Nation's highest legal forum deserves the praise of every American devoted to equality.

Judge O'Connor has, I feel, impressed every Member of this body and the vast majority of the American people with her cool and reasoned demeanor through an exhaustive hearing examination. She forthrightly outlined her view of the role of the courts and the nature of our federal system, while respectfully demuring when asked to comment on issues which may come before her as an Associate Justice. It is clear that Sandra O'Connor will not let her own personal views interfere with reaching opinions based solely on the facts before the Court and on the law as it presents itself to the Court.

Mr. President, this does not mean that I agree with all of Judge O'Connor's personal views, or that I will necessarily concur with the understanding of the Constitution which emerges in her opinions as a Supreme Court Justice. But that, in my view, is not the proper role of the Senate when presented with an occasion to advise and consent to the nominations of a President. I believe that the President is entitled to those individuals who he, or perhaps someday she, feels is best suited to the position at issue. Our duty as Senators is not to decide whether that nominee agrees with us on any single issue or is in substantial agreement on a wide range of issues. Rather, our job is to ascertain that the individual is qualified by training, experience, and temperament for the post in question, and will abide by the paramount duty to uphold our laws and our great Constitution. The 17-to-0 vote of the Judiciary Committee in favor of reporting this nomination to the Senate tells me that Sandra O'Connor meets and exceeds that criteria of judgment.

In concluding, Mr. President, let me add a personal note which underlines the historic importance of this occasion. Last night I spoke on the telephone with my mother. She is 92 years old, and has personally lived through nearly half of our Nation's history. When I noted that this vote was to occur today on the first woman to be confirmed as an Associate Justice of the Supreme Court, she commented, "You know, I'm so glad that I was able to live to see this day."

Mr. President, when Sandra O'Connor ascends the Supreme Court bench, the words "Equal Justice Under Law" which [illegible] the Court's portals will take on new meaning for our Nation which has indeed waited its whole life for this great occasion.●

Mr. THURMOND. Mr. President, I suggest the absence of a quorum under the same conditions.

The PRESIDING OFFICER. The clerk will call the roll.

The bill clerk proceeded to call the roll.

Mr. THURMOND. 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. THURMOND. Mr. President, I yield to the majority leader such time as he wishes.

The PRESIDING OFFICER. The Senator from Tennessee is recognized.

Mr. BAKER. Mr. President, I thank the Chair.

Mr. President, what is the next order of business under the order previously entered?

The PRESIDING OFFICER. The Senate is to proceed to the consideration of the nomination of James C. Miller III, to be a Federal Trade Commissioner.

Mr. BAKER. Mr. President, is the time for the control of debate for the proponents assigned to the majority leader?

The PRESIDING OFFICER. The Senator is correct.

Mr. BAKER. Mr. President, I assign that to the distinguished Senator from Wisconsin (Mr. KASTEN).

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

Who yields time?

## FEDERAL TRADE COMMISSION

NOMINATION OF JAMES C. MILLER III TO BE A MEMBER OF THE FEDERAL TRADE COMMISSION

Mr. KASTEN. Mr. President, in accordance with the previous order, I call up the nomination of James C. Miller III to become a member of the Federal Trade Commission.

The PRESIDING OFFICER. The nomination will be stated.

The assistant legislative clerk read the nomination of James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner.

The Senate proceeded to consider the nomination.

Mr. KASTEN. Mr. President, there is a time limit on this nomination of 2 hours of debate to be equally divided between the majority and minority leaders, or their designees, and 1 hour will be under the control of the distinguished Senator from Ohio (Mr. METZENBAUM).

Is that the Chair's understanding?

The PRESIDING OFFICER. That is correct.

## THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination of Sandra Day O'Connor to be an Associate Justice.

The PRESIDING OFFICER. The Chair inquires of the chairman of the

Judiciary Committee and the Senator from Delaware whether or not they have yielded back their time on the nomination of Sandra Day O'Connor and whether or not the Senate will now proceed to this nomination?

Mr. BIDEN. Mr. President, the Senator from Delaware at this point has not yielded back the remainder of his time. I wish for this time for the purpose of continuing on the O'Connor nomination to yield whatever time I have remaining to the last person on our side who indicated an interest in speaking, and that is the Democratic leader.

Mr. BAKER. Mr. President, if the Senator will yield to me just for a moment, there are Members on this side, including the majority leader, who wish to speak. I am perfectly willing to do that whenever it is most convenient, but when I was brought to the floor I was under the impression we were prepared now to proceed to the Miller nomination.

The PRESIDING OFFICER. The Chair will advise the majority leader that presently 2 minutes and 26 seconds remain to the chairman of the Judiciary Committee and 22 minutes and 31 seconds remain to the Senator from Delaware.

Mr. BAKER. Mr. President, I am prepared to do it either way the Senator wishes or the minority leader wishes.

Mr. President, I ask unanimous consent that the Miller nomination be temporarily laid aside so that the Senate may resume consideration of the O'Connor nomination.

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

Mr. BAKER. I thank the Chair.

The PRESIDING OFFICER. Who yields time?

Mr. THURMOND. Mr. President, I yield such time as the majority leader desires, and if he desires, if we have time, I have been promised time by the ranking member, Senator BIDEN.

Mr. BIDEN. I would be delighted to yield the time I have left beyond what the Democratic leader will use, but I believe I only have 2 minutes.

The PRESIDING OFFICER. The Senator has 22 minutes.

Mr. BIDEN. I beg your pardon. There is plenty of time.

Mr. BAKER. Mr. President, will the Senator from South Caroina give me a minute and a half and the minority leader whatever time he wishes?

Mr. BIDEN. We have plenty of time for us all.

The PRESIDING OFFICER. The majority leader.

Mr. BAKER. Mr. President, I thank the minority leader for permitting me to proceed at this point, and my thanks to the distinguished ranking member of the Judiciary Committee and, of course, to the distinguished chairman of the Judiciary Committee, the Senator from South Carolina.

Mr. President, today is truly a historic day, a rare historic day, that embraces all three branches of our Federal Government—the executive branch, for President Reagan's courageous decision to nominate Judge O'Connor to the Supreme Court: The legislative branch, for supporting and confirming Judge O'Connor; and for the judicial branch, the new home of the first woman to serve on our highest court and only constitutional court.

I would like to take this opportunity to thank Judge O'Connor for her cooperation with the Senate Judiciary Committee. It seems that the more we get to know her, and the more we come to recognize her judicial prowess, the more honored we become to have her serve on our Nation's Highest Court.

The chairman of the Judiciary Committee, Senator THURMOND, and his entire committee should be commended for their swift and responsible action on this nomination.

I express my appreciation as well to the distinguished ranking member, and all of the members on the minority side of the Judiciary Committee who handled this nomination, in my judgment, in a most responsible and most nonpartisan way.

I expect that Mrs. O'Connor will be confirmed. I hope she is confirmed overwhelmingly, even unanimously, for I believe this is a milestone in the further evolution and development of the democratic process in this great Republic.

My thanks to Judge O'Connor for permitting her nomination to be submitted, my congratulations to the President for making it, and my hope that she will serve with the distinction I feel confident she will bring to our highest court.

The PRESIDING OFFICER (Mrs. KASSEBAUM). Who yields time?

Mr. BIDEN. I yield time to the Democratic leader.

The PRESIDING OFFICER. The Senator from West Virginia.

Mr. ROBERT C. BYRD. Madam President, first of all, I wish to thank the distinguished Senator from Delaware (Mr. BIDEN) for his courtesy, and also to thank him for the fine way in which he has gone about the consideration of this nomination.

I congratulate the entire Committee on the Judiciary for the hearings that have been held, for the questions which have been asked and, most of all, I commend Mrs. Sandra O'Connor for the way in which she succinctly and cogently responded to those questions.

I marveled at her equanimity, I admired her judicious responses to questions, and I think she came through those hearings with flying colors.

Several weeks ago, I had the good fortune of meeting Judge O'Connor shortly after she had been nominated by the President to serve as an Associate Justice of the U.S. Supreme Court. I told her then that I intended to vote for her confirmation unless something of an adverse nature that was then unforeseen should come to light.

I followed the hearings carefully, and I observed her day-to-day conduct at those hearings, her demeanor and her bearing, and I was impressed. Today, I shall cast my vote in favor of her nomination.

I would also like to take the time on this occasion to commend President Reagan for this outstanding nomination. I have been persuaded, both in her testimony at the Judiciary Committee hearings and from the record of her distinguished career in public life, of her commitment to the fundamental values that made this country great.

I believe that her philosophical approach to the proper role of the Supreme Court has evolved from her own experience in State government, as a State's attorney, as a State legislator, and, most recently, as a State Appellate Court judge, and I would expect, of course, that what she has learned from all of these various perspectives has had a great deal to do with the shaping of her present attitude concerning the scope of the Supreme Court.

I trust that she will always be mindful of the necessity of maintaining a proper balance between national and local responsibilities.

I also commend her on taking a position with regard to her very own personal views on given matters. She should not in advance attempt to state what her position will be with regard to any given subject area that might come before the Supreme Court at a future time, and she did not so state.

I commend her on taking a position with regard to one's own personal views. One's responsibility in a position such as serving on the Supreme Court is to interpret and to construe the Constitution of the United States, not according to one's own personal opinion or viewpoint, not according to one's own personal biases and prejudices—we all have them at one time or another—but only in light of the Constitution, which is a living document for all time.

I congratulate the Senators who asked her difficult questions, and I find no fault in those who sought to satisfy their own personal views in asking some questions, hoping the responses would be similar to their own feelings about a given matter.

I congratulate Judge O'Connor on maintaining throughout those days of questioning that she would construe the Constitution on all fours and apply that Constitution to the circumstances as they came before the Court on future matters.

She also stated that the doctrine of stare decisis—let the decision stand—would be a very compelling one with her, but that, nevertheless, there come times when new precedents have to be set and occasionally, in the light of changing circumstances, old precedents have to give way. However, she maintains that precedents will have a very persuasive and heavy weight in her deliberations, and that is the way I think it ought to be.

I am satisfied that when she goes to tend to cases that come before the Court, she will attempt to see beyond her own personal viewpoint, and view cases in the light of what the Constitution says, what the Constitution forefathers thought as they wrote, and what the precedents are that have been handed down from generation to generation in the various constructions and interpretations of that Constitution.

So, Madam President, I would like to express my deep sense of pride in my country and in our elected officials as we have finally reached a moment in our history when gender is not a factor to be considered in the selection of Associate Justices to the Supreme Court of the United States. By force of her intellect, character, integrity, and temperament, Judge O'Connor has brought distinction and honor, not only to the women of this country, but to all of us. And she will continue to do that, I am confident, as she sits on the highest Court of the land.

I am proud to vote to confirm Judge O'Connor as an Associate Justice of the U.S. Supreme Court.

I again thank my ranking member, Mr. BIDEN, for his courtesy in yielding to me.

Mr. BIDEN. I thank the Senator.

I was about to yield back the time, but there has been a request from the distinguished Senator from Florida. She asked whether I would yield her some time. I would be delighted to yield time for the purpose of discussing this nomination.

The PRESIDING OFFICER. The Senator from Florida.

Mrs. HAWKINS. Thank you, Madam President.

Madam President, it is great pleasure to participate in this historic event, the confirmation proceedings of the first woman to be nominated to the Supreme Court. The pleasure is the sweeter in that the nomination was submitted by a Republican President, who is perceived by some as a hidebound conservative. This nomination demonstrates conclusively that conservatism does not imply denigration of women, or less than a full commitment to equal rights for all.

John Ruskin said that there is not a war in this world, nor an injustice, but that women are responsible; not that they provoke them, but that they do not stop them. I have felt the accuracy of that charge all my life, and it is part of the reason I have been active in politics. It is evident to me that Sandra Day O'Connor is moved by the same sense of responsibility. I welcome her to Washington, and will be happy to vote to confirm her as an Associate Justice of the Supreme Court.

There was concern about this nominee, given the intensity of feeling surrounding certain social issues, and her record as a member of the legislature of the State of Arizona. But there was never the slightest hint, that I ever detected, that opposition to her was based on her sex. All of the debate has taken place over policy issues and technical qualifications, and that is as it should be.

The debate has shown that Judge O'Connor is well qualified for this position. Her record as a law student was excellent, leading to academic honors and a spot on the staff of the Stanford Law Review. She practiced law, in both public and private practice, and then held elective office for 5 years, one of the very few judicial nominees to have that kind of important experience. If her judicial experience has not given her the opportunity to break new ground on constitutional issues, it has demonstrated that she has a remarkable degree of legal competence and commonsense.

In general, the hearings disclosed that Judge O'Connor is sensitive to the social issues that are of so much concern to millions of families today. She showed a reluctance to justify the intrusion of government power into the intimate details of family life, and a good understanding of the delicate nature of our complex civilization. She will have, of course, a responsibility to carry out the promise she showed in the hearings, by adhering closely to a doctrine of judicial restraint and true constitutionalism. Our social fabric has been strained in recent decades by an unwarranted judicial activism, and in my view Judge O'Connor has the appropriate view of the proper role of the courts. In many ways, it appears to me that Justice O'Connor will continue to be a part of the recent tendency of the High Court to defer to the political branch of government, and to permit many more decisions to be made at local levels. If she does fulfill that promise, she will be welcome news to those who now oppose her, and a far better justice than they now appear to think she will be.

There is no reason to think that Sandra O'Connor will be a doctrinaire feminist or other sort of judicial activist. During the hearing she was asked if she had experienced sex discrimination herself. Her response was perfectly in keeping with her understanding of the complexity of society and human emotions, and attuned to the differences in attitude that come with the passage of time. Her views appear to coincide with my own on this issue: That it is needlessly divisive and inaccurate to talk about "women's issues," when there are so many "people's issues" that have to be dealt with. We do not have surplus time and energy to waste on breaking people up into separate blocks.

As a strong opponent of abortion myself, I was concerned about the charges that Sandra O'Connor had a proabortion record as a State legislator. In evaluating Judge O'Connor on this issue, one of the most persuasive aspects of the hearing was the appearance of numerous Arizona legislators who know Judge O'Connor well as a fellow legislator. Many of these legislators are strongly antiabortion. One of them, in fact, Tony West, is a leader in the Arizona prolife movement. These legislators endorsed the nomination with great enthusiasm, and that endorsement has to carry a great deal of weight.

In addition, of course, we have the recommendation of President Ronald Reagan, a strongly prolife President, who has assured us that we will not be unhappy with this nomination. These endorsements have to be taken into account by anyone attempting to evaluate this nomination. Certainly they should be considered at least as important as a legislative voting record almost 10 years old, 10 years during which much more has been learned about abortion and the unborn child.

The Court has recently shown some disposition to withdraw from its mode of judicial activism. In several decisions last term there were clear indications that the present membership of the Court feels uncomfortable with the legislative role, and that restraint is likely to be more the order of new term as well. Judge O'Connor, it appears to me, will fit very well with that more restrained attitude. Her opinions and her writings show that she understands the problems created by judicial activism, and her experience as a State legislator certainly gives her the practical exposure to dictation from above that should lead her to shun it.

I expect, then, that in confirming Judge O'Connor as the first woman justice on the Supreme Court, we will be setting the stage for many long years of decisions which will be truly satisfying to those of us interested in defending the family, neighborhood, work, prosperity, and peace. These are the values of our President, and the Republican Party who campaigned on them, and of our constituents. I expect history to show that Justice O'Connor effectively championed these causes, too. Madam President, I yield back the floor.

Mr. THURMOND. Madam President, I wish to take this opportunity to thank Senator BIDEN for allowing several of those on our side extra time. I appreciate his agreeing to give extra time, and I wish to thank him for doing it.

I am so glad that Senator HAWKINS got here to make her speech, because we certainly wanted her to speak on this subject.

Madam President, I also wish to take this opportunity to express my appreciation to the ranking member of the Judiciary Committee. Senator BIDEN of Delaware, for the fine cooperation he has given throughout these hearings.

No one could have cooperated more than he did. I am very grateful to him and those on his side of the aisle for every cooperation extended in expediting these hearings and completing them on time. I just want him to know how much we appreciate it on this side of the aisle.

Mr. BIDEN. I thank the Senator. We are always delighted to expedite excellence, and that is what we have the opportunity to do today.

I notice at one point in the record when the managers of a bill were about to yield back their time any student of the record, as they read it, would assume it is an automatic, mutual admiration society, but I would like to say something, and I mean this sincerely.

I would like to thank the Senator from South Carolina for his judicial demeanor. Quite frankly, when I had the opportunity to become the ranking minority member, I was not sure how the young fellow from Delaware would be able to get along with that older fellow from South Carolina because he had a reputation for being a hardbitten, tough old boy you did not want to get in the way of, and our views are not always compatible.

But I would like to say this to this body; there probably would be a more appropriate time but I may not have it, and I hope he will forgive me for re-

peating a conversation we had in private that he did not expect to be made public.

About a month ago I said:

You know, Strom, it has only been 8 or 9 months that we have been working together. You have been as good as I can ask for. You have been a real chairman. You have even sometimes submerged your own views for the good of the committee in order to expedite movement in the committee, which any leader in this body must do. I am impressed.

We got off the elevator and he turned around as he is wont to do and he put his hand on my arm.

When you talk to STROM, he is not quite like RUSSELL LONG, he does not pull you closely and whisper in your ear. But he put his hand on my arm and said:

Joe, the only thing I want to be known as is the fairest chairman that the Judiciary Committee has ever had.

I must tell all Senators that based on his track record so far he will meet that goal that he has, being known as the fairest chairman the Judiciary Committee has ever had.

I wish I could change his views on many issues. I wish he was as amenable to those changes as he is to being fair. But I guess you cannot have everything.

This really does not have much to do with the nomination, but I wanted to thank the chairman for the gentlemanly way in which he conducts his committee business.

Madam President, I am not prepared at this point to yield back the remainder of my time.

With the permission of the chairman, I will ask unanimous consent that the remainder of the time not have to be yielded back at this point but that we proceed to the Miller nomination so that the few minutes left would be available to anyone who might want to speak about this nomination prior to 6 o'clock.

Mr. THURMOND. Madam President, if the distinguished Senator will yield, I first want to thank him for his kind remarks. I deeply appreciate what he had to say. Also, I presume by now the Senator from Delaware has found that the Senator from South Carolina is younger than he thought.

Mr. BIDEN. That is precisely true. I never doubted that.

Mr. THURMOND. Madam President, since we are now ready to go to another matter, I ask for the yeas and nays on the O'Connor nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. BIDEN. A parliamentary inquiry, Madam President. How much time remains on this nomination?

The PRESIDING OFFICER. The Senator from Delaware has 4 minutes and 12 seconds.

Mr. BIDEN. I ask unanimous consent that that time be made available just prior to the vote at 6 o'clock.

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

## FEDERAL TRADE COMMISSION

### NOMINATION OF JAMES C. MILLER III, TO BE A FEDERAL TRADE COMMISSIONER

The PRESIDING OFFICER. Under the previous order, the Senate will now proceed to the consideration of the nomination of James C. Miller III, of the District of Clumbia, to be a Federal Trade Commissioner. Time for debate on this nomination is limited to 2 hours to be equally divided between majority and minority leaders or their designees, with 1 hour under the control of the Senator from Ohio (Mr. METZENBAUM).

The Senator from Wisconsin.

Mr. KASTEN. Madam President, I rise today to urge the Senate to act promptly to confirm Dr. James C. Miller as Chairman of the Federal Trade Commission.

Jim Miller is uniquely qualified to Chair this important agency. As you know, Madam President, Dr. Miller received a Ph. D. in Economics from the University of Virginia in 1969. He has distinguished himself since that time both in the academic world and working for several Government agencies in the areas of transportation, regulation, and antitrust policy.

Most recently, of course, Dr. Miller has served as Administrator of the Office of Information and Regulatory Affairs at the Office of Management and Budget and as Executive Director of the President's Task Force on Regulatory Relief. In that capacity, Dr. Miller has made a great contribution to President Reagan's regulatory reform initiatives. Under Dr. Miller's leadership, more than 180 potentially unnecessary or burdensome regulations have been withdrawn, modified, or reviewed by the task force, generating a possible one-time savings of $15 to $18 billion and an annual savings of up to $6 billion.

Madam President, I share the view expressed by some of my colleagues both in committee and on the floor, that the antitrust laws should be vigorously enforced.

The Government must actively police competition to preserve its effectiveness. It is with good reason, therefore, that maintaining a vigorous antitrust enforcement effort has been a traditional Republican concern.

At the same time, it is counterproductive to rely only on a limited number of judicial decisions or a certain body of economic thought. To do so would establish an inflexible basis for our Nation's antitrust policy. Economic research constantly adds to our understanding of market operation and competition. Furthermore, American industries is constantly evolving. For example, many American industries are facing increased competition from abroad. Antitrust policy must be reviewed periodically to account for new economic developments, to insure that law enforcement continues to serve consumers in the most effective and efficient way.

This process of review is underway both inside and outside of the administration. Assistant Attorney General William Baxter has announced that the Justice Department merger guidelines are being revised. On August 26, the House Judiciary Committee held a hearing on merger policy. Legislative proposals would provide for the creation of a Presidential Commission to study the international application of our antitrust laws. In addition, we can expect appropriate Senate committees to continue to insure that the antitrust laws are applied in a manner than is consistent with the national interest. This kind of review, the debate that has been initiated, and the concerns that have been expressed are extremely important.

At his confirmation hearing, Dr. Miller committed himself to a vigorous antitrust enforcement effort. He indicated that if confirmed as chairman, he would enforce the laws administered by the Commission, including the Robinson-Patman Act. He repeatedly made clear that there is no understanding of any kind with the administration to "gut" the FTC or phase out the agency's antitrust mission. Rather, he made perfectly clear that he would work through and consult with Congress to achieve any proposed reforms suggested by a broad review of antitrust policy.

I strongly believe in the merits of our antitrust laws, and I want to emphasize as chairman of our Consumer Subcommittee that it is the responsibility of Congress to determine whether and when these laws should be amended. It is not a determination to be made by the executive branch, and it is not a determination to be made through the budget process. If a change is to be made in the substance of the antitrust laws, it should be made by the committees with authorizing jurisdiction, the Commerce Committees and the Judiciary Committees.

For these reasons, and because of his personal qualifications, Madam President, I believe that Dr. Miller is uniquely qualified to assume the chairmanship of this important enforcement agency. His commitment to relieve unnecessary regulatory burdens at the FTC and to modernize antitrust policy does not mean that he is closeminded on broad policy issues, such as dual enforcement, that must be studied in consultation with Congress. Madam President, I am pleased to support Dr. Miller, and I urge the Senate to act promptly to confirm his nomination.

I reserve the remainder of my time, Madam President.

I understand that, at this time, the Senator from Kentucky may wish to make a statement.

The PRESIDING OFFICER. The Senator from Kentucky.

Mr. FORD. Madam President, I thank the chairman of the Consumer Subcommittee for his fine remarks. Let me say that I find myself in the same position as some of my colleagues—wanting to support the view that a President should have those people in the administration that he desires. Some differences of opinion, I guess, as to Mr. Miller's views have

developed in the committee. Hopefully, as my distinguished colleague from Wisconsin has stated, there will be vigorous leadership from this body.

I might say, Madam President, that I was insistent last year that we place in FTC legislation that the Consumer Subcommittee would hold oversight hearings of the FTC once every 6 months. I was told at that time that I was somewhat foolish about putting that into the law, because I would be compelled, then, to have oversight hearings. I was a little bit smarter than some of those who fussed at me, because there is another chairman of the subcommittee and he now is compelled to hold those hearings. I shall encourage him and call that to his attention—that we do look at the FTC at least every 6 months, find out where they are going, how they are going to spend their money, their attitude, the regulations they are about to promulgate and put into the record, and so forth. At the end of that 6-month period, we shall find out if they have accomplished those things they presented to the committee and where they will be going in the next 6 months.

Madam President, I think it is a proper approach, because oversight has not been used as much as it should have been used, as Congress has the ability to do. Hearings on the Bureau of Competition are needed. I think we ought to get into that arena. I look forward to the discussion on the floor this afternoon by my colleagues as it relates to this nomination and to the vote later on.

Madam President, I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time?

● Mr. PACKWOOD. Madam President, as chairman of the Commerce Committee, I want to express my strong support for the nominee whom we are considering today to be Chairman of the Federal Trade Commission. Jim Miller's past record, particularly in his most recent position as Executive Director of the President's Task Force on Regulatory Relief, demonstrates his deep commitment to preserving free-market competition and to reducing excessive Government regulation. His excellent credentials as an economist and his extensive work in the field of Government regulation will serve him well as Chairman of the FTC. Jim Miller has a broad understanding of the problems that can and do result from unnecessary and burdensome regulation, while also appreciating the economic, social, and other benefits gained from both well-designed and properly enforced regulation.

Madam President, I share the view expressed by many of my colleagues that the antitrust laws should continue to be vigorously enforced. I am confident that under the new leadership of Jim Miller, vigorous enforcement of the antitrust laws will continue. I strongly believe in the merits of the antitrust laws and wish to emphasize that it is Congress obligation to determine whether and when these laws should be amended in the best interest of the public. It is the job of the Federal Trade Commission, as an independent agency, and the Department of Justice, as part of the executive branch, to enforce the antitrust laws as Congress directs and intends.

I fully believe that Dr. Miller will bring to the Commission not only a true expertise in the field of economics, but also a strong interest in redirecting and revitalizing the agency so that it more effectively carries out its mission. There are many challenges waiting to be tackled down at the Commission. However, I anticipate that Jim Miller will meet those challenges with the same thoughtful leadership, fairness, and strong commitment that have characterized his past tenure at OMB and other Government agencies.●

Mr. KASTEN. Madam President, I yield such time as he may desire to the distinguished Senator from Washington (Mr. Gorton).

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, I thank the Senator from Wisconsin.

The debate over Mr. Miller's nomination has centered almost exclusively on this Nation's antitrust policies and the role of the Federal Trade Commission in enforcing the Nation's antitrust laws. The distinguished Senator from Wisconsin, ably seconded by the Senator from Kentucky, has already pointed out, however, that the Federal Trade Commission has many other duties as well. That is an appropriate fact to remember during the discussion of this nomination, which, in my case, will center on concerns with antitrust laws.

Madam President, the administration, with the consent of the Congress has embarked on a program to rid the country of excessive, unwarranted and inefficient regulations. This program is a crucial part of the President's program for economic recovery which I have vigorously supported. I am troubled, however, about the administration's position on the antitrust laws. I have the impression that some in the administration, indeed, perhaps even the nominee himself, believe that some of our antitrust laws are excessive, unwarranted, and inefficient.

I am troubled by this attitude for two reasons. First, I would think that, if deregulation is to work, a competitive economy is absolutely essential, and the antitrust laws and their strict enforcement are indispensable in insuring that condition. Second, I am troubled that the administration would consider changing the law by announced policy of selective enforcement, rather than proposing legislative changes to the laws themselves.

In my remarks today, I would like to pose a few questions to the administration in the hope that their answers will eliminate my concerns.

Congress has determined in enacting the Sherman, Clayton, and FTC Acts, that price enhancement can best be prevented by insuring that price and production levels be determined by the unfettered free play of vigorous competitive markets, not by the individual or collective judgment of business firms who participate in those markets. Since it is the natural and proper central goal of business firms in our free enterprise system to maximize profits, which is most likely to result from agreements which limit the scope of competition, the natural and virtually certain consequences of any significant relaxation of the antitrust laws in some industries will be higher prices and less competition.

As I indicated at the time of the Commerce, Science and Transportation Committee's consideration of the President's nomination of Dr. Miller to chair the FTC, I have serious reservations about the administration's commitment to vigorous enforcement of some portions of these laws. The report of the FTC transition team, chaired by Dr. Miller, more recent public statements by Dr. Miller, Mr. Baxter, and other administration spokesmen, and the lack of new filings by the Antitrust Division have contributed to this concern. Although its position has remained rather vague, the administration appears to be sending signals to the business community that it does not agree with some elements of established antitrust law, and that it intends simply to abandon all enforcement activity in those areas. There are some indications that these signals have already reached the business community and have begun to alter business practices. This is alarming.

Any administration disagreement with the current laws must be brought to Congress for full consideration and approval before longstanding policies should be summarily changed. In the meantime, it is the duty of the FTC and the Antitrust Division fully to enforce the laws as they stand. Although executive discretion in the allocation of limited resources for enforcement is certainly necessary, it is improper for the administration to announce a tolerance policy for certain types of law violations, and thus, in effect, amend legislation by fiat.

Madam President, I am also concerned that the economic views underlying the administration's apparent approach are the subject of great dispute. There is an ongoing vigorous debate in antitrust circles concerning the most effective means of antitrust enforcement. The administration seems to be ready to undertake a significant departure from the traditional viewpoints in full. Highly respected authorities representing the other viewpoint strenuously argue that such an approach will lead to serious anticompetitive consequences. I am not particularly an advocate here today of one or the other of these viewpoints; but I do think that great care must be exercised to insure that all points of view and potential economic consequences are fully considered before boldly embarking on such a new approach in law enforcement. In any case, again, any approach that amounts to a change in existing law must first come before Congress.

The first specific area where I have concerns regarding the administration's approach is section 7 of the Clayton Act concerning mergers and acquisitions.

The transition team's report clearly implied a significant change in the enforcement approach. It concluded that previous efforts "to restrain vertical mergers are by and large misdirected." As for conglomerate mergers, they should

be disallowed only upon "weighing the anticompetitive consequences and the expected efficiency gains." It was recommended that enforcement concerning large-scale horizontal mergers should be strengthened; but that with smaller horizontal mergers, the concern should be limited to cases where the "elimination of a competitor may facilitate collusion among the remaining firms." Mr. Baxter has stated unequivocally that—

Vertical mergers are never anti-competitive and that conglomerate mergers can lessen competition only through horizontal effects. (U.S. News & World Report, Aug. 3, 1981, p. 51.

It has been reported that such statements have had a significant impact upon the business community—

Wall Street financiers are being told by their lawyers that almost any merger is apparently worth a try. "Things are being proposed that never would have been proposed" by companies before the Reagan administration took office. (Washington Post, August 23, 1981.)

This is undoubtedly contributing substantially to the merger wave we seem now to be experiencing.

Our economy today is rather highly concentrated. Merger has been the major means of achievement of that concentration. It is unquestionably extremely difficult to deconcentrate an already concentrated market using the antitrust laws. In enacting the Celler-Kefauver amendments to section 7, Clayton Act in 1950, Congress clearly intended to stop the trend toward concentration, using a more vigorous attack on mergers as a major tool. These amendments made it clear that section 7 now prohibits all mergers—horizontal, vertical, and probably conglomerate—that may substantially lessen competition or tend to create a monopoly in any line of commerce. Congress was concerned with the concentration trend in a very broad sense; the commitment was not solely to competition as a self-regulatory process, but also for the desire to preserve local control of business and to protect small business. See *Brown Shoe Co.* v. *U.S.*, 370 U.S. 294, 312–23 (1962) for review of legislative history.

This congressional policy, as reflected by the courts since 1950, has been quite strict about both horizontal and vertical mergers, although admittedly somewhat less so about conglomerate mergers. Possible economies have not been a recognized defense where the proscribed anticompetitive effects are present. (See *FTC* v. *Proctor & Gamble Co.*, 386 U.S. 568, 580 (1967.) I am concerned that the administration is saying that it is its intent unilaterally to retreat from this congressional policy without bothering to amend the current laws or to consult with the Congress; that its statements amount to a signal to the business community that violations of current law will be tolerated in certain areas—a signal that may have already been received and acted upon.

A relaxation of the antitrust laws in the merger field could have serious consequences beyond those strictly relating to antitrust. I am concerned that the current merger wave, involving some large individual merger drives, has already tied up substantial amounts of credit, making it even more unavailable to small businesses which seek to expand, and contributing further to the continuing intolerably high levels of interest rates. Certainly, the acquisition of existing facilities rather than investing in new plants and equipment does not lead to economic growth.

Most of the individual statements by spokesmen of the administration, taken in isolation, may not provide cause to become overly concerned. They may simply be setting an appropriate order of priorities. But the meaning of many of the statements are vague, and collectively they appear to show a pattern of indifference to enforcement of the antitrust laws of the United States in certain areas. Nonetheless I believe it would be useful to set out some of my specific questions.

In the area of horizontal mergers, I am happy to note that there have been strong statements concerning policing large-scale horizontal mergers, at least where monopoly power would be created. The transition team report implies, however, that the sole concern regarding smaller horizontal mergers will be cases where the elimination of a competitor may facilitate industry collusion. My question is: Does this mean that the administration intends to tolerate horizontal mergers even if they may create new oligopolies, so long as the administration is convinced that no one firm will obtain monopoly power and that the likelihood of direct collusion among the remaining competitors will not be enhanced? Such a narrow approach would seem to be an example of a significant unilateral departure from existing law and policy, and could lead to rebirth of the pre-1950 trend toward concentration that alarmed Congress, and resulted in the Celler-Kefauver amendments.

As I noted previously, Dr. Miller and Mr. Baxter have each left a rather strong impression that enforcement efforts concerning vertical mergers will be abandoned totally. I am pleased to report, however, that in his responses to questions which I have previously raised with Dr. Miller, he indicated that he believed that the FTC, in coordination with the Antitrust Division, should carefully review vertical mergers and acquisitions for anticompetitive effects. I hope this indicates that the nominee has rethought some of his previous positions. He qualified his remark, however, by saying his emphasis would be on—

cases against vertical acquisitions which had the effect of diminishing competition among direct competitors.

This latter statement may simply represent a very appropriate indication of Mr. Miller's priorities in this area. It is vague, however, and may also indicate an overly narrow interpretation of existing law, which has treated vertical mergers rather severely.

For instance, I assume Dr. Miller intends to include within the FTC's review of vertical mergers, cases where the effect may be to foreclose customers and potential customers of unintegrated firms which might, therefore, be driven from the market, and even cases where the vertical merger may create a severe supply squeeze for competitor firms. My question is, as a result will the scrutiny also apply to other areas of concern such as: Where the vertical merger may raise barriers to entry by reducing the unintegrated portion of the customer market such that integration becomes a practical necessity for entry at the manufacturer level; and where the vertical merger co-opts the most likely potential new entrants, especially in an already highly concentrated industry?

As I mentioned previously, the congressional intent in passing the Celler-Kefauver amendments included a concern that small locally controlled firms should not be permitted to disappear from the market. In answering one of my questions to him, Dr. Miller stated, that—

Non-economic reasons for concern with market concentration are more appropriately addressed by Congress than by the FTC.

Congress has spoken on this issue. I have been unable to determine whether Dr. Miller means to imply that this particular concern of Congress, reflected in the legislative history, but often termed "a political—or social" matter, is not recognized by the administration as a valid consideration in decisions regarding merger enforcement, including in the areas of vertical and conglomerate mergers.

Concerning conglomerate mergers, the administration has implied that enforcement will occur only when horizontal effects become apparent. I can again agree that as a matter of priorities, this is a proper emphasis. But does it mean to limit enforcement strictly in this regard? Other concerns have been identified, including the social and political issue which I mentioned a moment ago. I am bothered that conglomerate mergers can also lead to enhanced opportunities for predatory pricing. I will address my concern for the administration's position on this subject in a moment.

It is settled law that resale price maintenance—vertical price fixing—is a per se violation of section 1, Sherman Act. The Supreme Court first spoke in this regard in 1911, *Dr. Miles Medical Co.* v. *John D. Park & Sons Co.* (220 U.S. 373) and most recently reiterated this position in 1980, *California Retail Liquor Dealers Assn.* v. *Midcal Aluminum, Inc.* (100 S.Ct. 937).

I am pleased that the administration says that it intends to continue, and even to expand, enforcement in the area of horizontal price fixing. Its statements on this subject have been strong indeed. But, I am alarmed by its statements regarding resale price maintenance. The transition team report said:

In the absence of cartelization of either the manufacturer or dealer levels, there is nothing anti-consumer about this use of retail price maintenance. (FTC Watch No. 117, P. 4 (April 3, 1981)).

A spokesman for Mr. Baxter recently announced that the Department of Justice might seek the vacation of judgments that ban resale price maintenance, contending that such arrangements "almost never hamper competition and can increase efficiency" (Wall

Street Journal, September 2, 1981). One lawsuit filed during the Carter administration involving alleged resale price maintenance has been dismissed by the Department (Mack Trucks, Inc. case). In this regard, Mr. Baxter was reported to say that resale price maintenance is anticompetitive only where it facilitates collusion either at the manufacturing or distribution level.

It would be difficult to imagine a stronger case of the administration unilaterally announcing an intention to tolerate violations of clearly and undisputedly established antitrust laws. This conduct by the chief antitrust law enforcement officials is of serious concern, regardless of whether the economic theories underlying their approach are sound.

Moreover, I question the soundness of these theories. Has the administration considered the effect of product differentiation on the competitive picture? If consumer loyalty has been created by this process, interbrand competition would not seem fully to protect some consumers. In such case, will not resale price maintenance deprive these buyers of the benefits of intrabrand competition among retailers, their only remaining protection against price enhancement? Why should not independent distributors remain free to resell at prices established by their own individual responses to the competitive conditions which they face in the resale market? In setting a price floor the manufacturer may preclude discounters in order to protect full service outlets. In setting a price ceiling, it may preclude promotion and service competition at the retail level or squeeze out smaller neighborhood distributors. Why should we assume that the manufacturer can make better judgments about consumer desires at the retail level in these regards, than a free market could make unfettered? Why should we permit this tampering with the sensitive central nervous system of the free market, when we depend so heavily in our free enterprise system on competition as a self-regulatory process? I would be interested in the administration's response to these questions. But again, I am especially concerned that it is changing policies established by Congress, and interpreted by the Supreme Court without due process.

Finally, the transition team report appears to recommend abandonment of enforcement in the area of predatory pricing. This seems to be based upon a doubt that it really occurs, at least very often, because in theory it is likely to cost the firm using it more than can be gained from it. (FTC: Watch No. 117 p. 3 (April 3, 1981).) It may not occur frequently, but there is a sufficient body of reported cases to indicate that it does, in fact, occur. During the last year, in what I believe to be one of the first cases in my own State to go to a jury under the Washington State equivalent of section 2 of the Sherman Act, the jury found that a form of predatory pricing occurred, driving a small business bankrupt. Evidence showed that this ultimately cost consumers a considerable amount in enhanced prices. (*Consolidated Dairy Products* v. *Bar T Ranch Dairy*, Spokane Co. Sup. Ct. No. 235205 (1980).) Even if it is rare, when this conduct does occur, it is pernicious and without redeeming social value. It is also illegal in most circumstances in which it occurs. It may be wise to allocate it a low priority, but how could it possibly be wise to announce a policy of non-enforcement in this area?

These are my questions and concerns. They are extremely serious ones. I hope that answers which will relieve my fears that in its apparent indifference to antitrust enforcement, the administration is working against its own program for economic recovery that I strongly support will nevertheless be forthcoming. I certainly look forward to working with Dr. Miller toward this end.

As I have stated, conflicting views on antitrust policies are held by equally thoughtful persons on both sides. Dr. Miller and I differ on a number of these issues. There seems to me to have been, however, distinct movement, though not nearly the movement I would have preferred.

I believe that his actions now are somewhat more likely to reflect the vital importance of antitrust laws to the successful operation of the free marketing economy than they would have had these questions not been raised during the course of this confirmation process.

I am frustrated that they were not raised during the confirmation process of Mr. Baxter, as it is the antitrust division of the Department of Justice, which is more central to many of these concerns than is the Federal Trade Commission.

I do wish to do all that I can at this point to facilitate Dr. Miller's ability to move aggressively in the direction of a more activist antienforcement policy than his original views indicated would be the case.

In this spirit, I have decided, with some reservations, to vote in favor of confirming this nomination. Dr. Miller is an exceptionally able person who has done a solid job in leading the President's efforts to reduce regulation as Administrator of the Office of Information and Regulatory Affairs in the Office of Management and Budget. During the Commerce Committee headings, and in his responses to my later questions he repeatedly promised to continually consult with the Committee before undertaking significant changes in the FTC enforcement policy.

We can, I believe, hold him to that promise, and I am convinced if the Senator from Wisconsin in his oversight responsibilities will do exactly that, I look forward to participate in that consultative process.

Mr. DANFORTH. Madam President, I support the nomination of James C. Miller III, to be Chairman of the Federal Trade Commission. During this year I have had the pleasure of working with Jim Miller in his efforts to reduce Federal regulation and Government paperwork. He is a person of ability and imagination. I am confident he will prove to be a strong Chairman of the FTC, and I wish him well in his new job.

My purpose in speaking today is not simply to praise Jim Miller, however, but also to express my hope that during his tenure as Chairman of the FTC, he uses his considerable talents to assure the continued, vigorous enforcement of the antitrust laws.

It should not be difficult to understand the reasons for my concern. One of the first acts of the Reagan administration was to propose an end to antitrust prosecutions by the Federal Trade Commission. And while that initiative was later withdrawn, the proposal proved to be only the first sign of what I can only call a lack of resolve on the part of the administration to uphold antitrust enforcement. I am not talking about particular cases or prosecutions, but the general tone the administration has taken in its statements.

It is all well and good to talk of prosecuting price-fixing cases and bid-rigging cases, as the Attorney General has done in response to criticism, but I should not need to remind the administration that vigorous antitrust enforcement involves more than going after cases that reach out and bite you on the ankle. It means continued vigilance.

Let me explain why I care so much about this. First, as a Republican, I believe that antitrust law lies at the heart of the Republican commitment to a free and open marketplace. If we are to continue efforts toward deregulation—and I hope that we do—we should, if anything, step up antitrust enforcement efforts, not tone them down, in order to assure that the marketplace is competitive. Yet, the rhetoric of the administration has been less than sympathetic to antitrust enforcement—and when it comes to enforcement by the Federal Trade Commission, downright hostile. As a Republican, I think it is ill-advised for the administration to give short shrift to antitrust law. The anticompetitive effects of corporate decisions are often not felt for years—and are not easily undone. The administration would do well to keep this in mind.

Second, as a Member of Congress, I find it necessary to state, as clearly as I know how, that whatever the views of the administration may be respecting the antitrust function of the FTC, and whatever the administration's expectations may be for antitrust enforcement under Dr. Miller's leadership, I expect the Federal Trade Commission to continue to fulfill its mandate to enforce antitrust law—and to enforce it vigorously—unless and until Congress decides otherwise. I questioned Dr. Miller closely on this score during his confirmation hearings, and I ask unanimous consent that the transcript of that exchange be printed at this point in the RECORD.

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

Senator KASTEN. Senator Danforth.

Senator DANFORTH. Mr. Miller, last winter the Administration announced a plan to begin phasing out the antitrust functions of the FTC. Is it my understanding then that the Administration intends, at least as of now, to continue the antitrust functions of the FTC?

Dr. MILLER. Sir, let me emphasize that my answer to Senator Ford was my own personal opinion.

The Administration's formal position I believe, as implied in its formal budget submission to the Congress, was that the antitrust mission at the Federal Trade Commission would continue perhaps at reduced funding.

It was my understanding, last February I think, that they made the decision to phase it out over a period of years. That is not your position?

Dr. MILLER. Senator, my recollection is that the original budget that was transmitted from OMB to the FTC for their review and for their comment contained a phaseout, but they commented—the Federal Trade Commission commented adversely to that proposition.

And based upon those comments and comments of others, the Administration chose not to initiate a complete phaseout of the Bureau of Competition, but instead to ask for a lower level of funding.

Senator DANFORTH. What is your view? Is it your view that you should be an advocate for continued antitrust responsibility in the FTC? Or is it your position that we should reduce the funding and, in effect, reduce the FTC or the antitrust effort within the FTC?

Dr. MILLER. I believe that the FTC can accomplish its mission on less funding, as was envisioned under President Carter's budget.

The second point is that, with respect to my advocacy of a continuing substantial mission for antitrust in the Federal Trade Commission. I am a careful observer of additional data that I would need in order to make a strong decision or to have a strong opinion. I would expect to arrive at a preliminary opinion after subsequent study at the Federal Trade Commission itself.

But as for now, as I indicated to Senator Ford, I think that we should have a thorough going review of the antitrust laws and their enforcement to decide whether they are modern in today's society, whether they accomplish what Congress originally intended, and what perhaps would be the goals of the antitrust laws, and just what kind of institutional arrangements make most sense for public enforcement of the antitrust laws.

Senator DANFORTH. Mr. Miller, last winter the Administration proposed phasing out the antitrust function of the FTC. You believe that the antitrust function can be pursued at a lower level of funding.

And you also believe that the whole matter of antitrust enforcement, the antitrust laws, should be studied. I must say that that does not give me great encouragement that either you are going to be vigorous enforcer of the antitrust laws or that the Administration is committed to vigorous enforcement of the antitrust laws.

Some feel that the tone of the Administration is to a much looser view of antitrust enforcement than has historically been the case. My own view is that if the Administration is going to take the position that it wants to reduce the quantity of regulation—and I certainly support it, as you know, in that effort—then we have to rely to even a greater extent on competition within the marketplace being the self-regulator.

And so I have to tell you that I am not encouraged by what you are telling me, because it seems as though we are headed in the direction of not only less regulation but perhaps less competition as well or at least less policing of the competition by this Administration.

Have I read the situation wrong?

Dr. MILLER. I think you have, sir. My position is that I'm very strongly in favor of enforcement of the antitrust laws. However, I think my reading is that the best enforcement is that which attacks the kinds of relationships that are not only anticompetitive but have substantial economic efficiency costs, that I and the consumers pay in higher prices.

Now those are the kinds of antitrust violations that I would strongly prosecute. The Administration—I share the goal of the Administration in firm and acti e enforcement of the antitrust laws. Where I was demurring, sir, was on the question of whether I am personally, as a scholar, sure, absolutely confident that the most appropriate arrangement for the public enforcement of the antitrust laws is the current one with shared jurisdiction by the Department of Justice and the Federal Trade Commission.

Sir, I realize this is a very sensitive issue, but I am giving you my honest judgment.

Senator DANFORTH. I know you are. I just want to find out what your honest judgment is.

Dr. MILLER. Let me go on to say that the reason I believe that the Federal Trade Commission's mission in the antitrust area can be accomplished at lower funding has to do with the kind of cases that in recent years they have been pursuing. I would give less emphasis to so-called shared monopoly cases, less emphasis to pursuing things on a "bigness is bad" thesis—not that "bigness is bad", but "bigness is not good either." One should be neutral, it seems to me, on this question of bigness. Or if bigness itself is bad, that is something that the Congress should decide. I don't think it should be for the Federal Trade Commission to decide.

And I would also—I believe that many of the Commission's activities in the vertical area have been misdirected. So I think that a number of the things—in summary, I think a number of the antitrust, the Bureau of Competition's efforts have been misdirected. I would put more resources in the horizontal areas. And for that reason, I think it could accomplish its mission at a lower level of funding.

But I will surely come back to you, sir, when I have more knowledge of the funding needs for the Commission and recommend to you those views.

Senator DANFORTH. Now the FTC Act was enacted in, I think, 1914; isn't that correct?

Dr. MILLER. Yes, sir.

Senator DANFORTH. That was 67 years ago. One of the questions we faced when we went through the FTC authorization last year was the role of Congress in determining the jurisdiction of the FTC and the whole question of does Congress set forth the mission before the fact or second-guess the Commission after the fact—was, I think, the essence of the argument a year ago.

But in the field of antitrust, Congress spoke 67 years ago. And I would think that until Congress decides or unless Congress decides that the antitrust mission of the FTC should be in any way diminished, then the role of the Commission and the role of the Chairman should not be on its own motion, so to speak, to diminish that antitrust role.

Would you agree with that?

Dr. MILLER. I do agree with that.

Senator DANFORTH. Will you keep us abreast on a continuing basis of what your intentions are in antitrust?

Dr. MILLER. Absolutely.

Senator DANFORTH. And it seemed to me as you were going through the list of what the FTC was doing in the antitrust field, in most cases you think it is doing too much right now; is that correct?

Dr. MILLER. Well, it's not so much it is doing too much, although I think in terms of—let me put it another way.

I think the American public is not getting a good bang for its buck, and I think trimming away some of the kinds of cases that don't make a lot of sense and transferring some resources from those areas to areas that make a lot more sense will not only give more bang for the buck, but I think it would give a larger bang for smaller bucks.

Senator DANFORTH. Could you give us a list of what areas you think we should be doing less in and what areas we should be doing more in before we vote on your confirmation?

Dr. MILLER. Yes, sir. I would respond to any questions you have.

Senator DANFORTH. Are you wearing your Adam Smith tie today?

[Laughter.]

Dr. MILLER. Yes, sir, I am.

Senator DANFORTH. How does that tie fit into your own views on antitrust enforcement?

Dr. MILLER. Well, sir, as I read in my opening statement, Adam Smith was a firm believer in competitive enterprise, and I think the maintenance of competition is extraordinarily important in this economy for the delivery of goods and services at low prices to consumers. And I plan to pursue that.

But could I just amplify by saying, you know, Adam Smith had some wonderful messages in his book of 200 years ago. It is an extraordinary book because it has so many good ideas in it. But if you recall, the setting of Adam Smith was really a criticism of the proposition that was in vogue then that the wealth of the nation was really the amount of gold and silver that they were able to accumulate, and he was saying, "No, it is the productivity of its citizens and the resources that it brings to bear in satisfying consumer wants." And one conclusion he drew is summed up in the acronym, TANSTAAFL; that is, there ain't no such thing as a free lunch. And what he's pointing out there is, government intervention really has many ramifications beyond what was originally thought to be the case.

And one thing I will insist upon, if confirmed, is that the analysts at the Federal Trade Commission trace through very thoroughly the full ramifications of their proposed remedies and trace through very thoroughly the ramifications of market imperfections.

Senator DANFORTH. Well, analysis and thinking before you act is always laudable. My concern is that the drift of this Administration and perhaps the drift of this country is perhaps to turn the clock back, if not to the day of Adam Smith, then at least to the day of pre-1914, and that one of the hallmarks of Republican doctrine has been a competitive marketplace, that competition has been a necessity in the marketplace, and that government does have a role in assuring that competition exists.

Back in 1914 and prior to 1914, in the early 20th Century and the late 19th Century, with the development of the trusts and of predatory practices, the need was felt by Republican leaders and a Republican President at that time for effective Federal Government tools to assure a competitive marketplace. And while big is not necessarily bad, big can be bad if it is monopolistic and if it is predatory.

And I have to say, as I understand it, our own Judiciary Committee has, I think—I might be wrong in this, but I believe it is true—terminated its Antitrust Subcommittee. And I'm not on the Judiciary Subcommittee, but some say the Antitrust Division of the Justice Department is not as aggressive as it should be. And now there is a proposal by the Administration last winter to phase out the antitrust enforcement of the FTC. And you say that the role should at least be under study.

And all I want to do is to say to you that first of all, I hope that Congress is continually consulted on this and that any decision that is made is made very publicly and very openly, because if the decision is that competition isn't so important or if the government no longer has the role that we considered 67 years ago that it did have and if the FTC is going to start winding down its antitrust enforcement, this Senator wants to know about and talk about and perhaps

introduce some legislation dealing with it—the question.

Dr. MILLER. Senator, it would be the height of folly for me to take a precipitous action like that without close consultation with the Congress. I do not anticipate taking such a precipitous action.

As I indicated, I have strong reservations about some of the kinds of antitrust activity the Commission is engaged in, has engaged in, in the past few years. I have a feeling that other kinds of antitrust activity has been neglected. So I would see a shifting of resources from one type of antitrust activity to another.

Senator DANFORTH. That is the list I would like.

Dr. MILLER. I shall provide that to you, sir.

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ANSWERS OF JAMES C. MILLER III TO QUESTIONS OF SENATOR JOHN C. DANFORTH PRESENTED IN CONFIRMATION HEARINGS JULY 24, 1981

Q. What areas of antitrust enforcement would you emphasize and which would you de-emphasize?

A. Sound antitrust enforcement facilitates competition, increases economic efficiency, creates opportunities for entrepreneurs, and enhances consumer welfare. In general, I would emphasize cases that meet these goals and de-emphasize cases that are wide of the mark, or where the ultimate effects are highly uncertain. I should stress, of course, two things: (a) the Commission is a collegial agency, and decisions about which kinds of cases to bring are reflective of a majority view, and (b) each case that comes before the Commission must be judged on the merits.

Among the types of cases I would emphasize are: (a) acquisitions by one competitor of another, where the result would likely be a substantial diminution in the competitive performance of the industry; and (b) agreements among competitors to limit competition with respect to price, quality of product or service, or markets in which output is sold. I would also be especially interested in cases in which government policy tends to lessen competition.

Types of cases I would de-emphasize include: (a) those based solely on attacking concentration without regard to evidence concerning industry performance; (b) conglomerate mergers, where it is not likely that the competitive performance of direct competitors would be impaired; and (c) vertical practices, except those diminishing competition among direct competitors.

I want to emphasize my commitment to enforcing the nation's antitrust laws. My criticisms are directed not to antitrust enforcement per se, but to the relative emphasis the Commission has recently given to different types of cases.

My answers to policy questions 1, 3, 4, and 7 previously submitted to the Committee provide further elaboration of my views concerning antitrust enforcement.

Q. What do you perceive to be the major shortcomings, if any, of the Federal Trade Commission today? Please be specific.

A. In its antitrust and consumer protection work, the Commission's major goal should be to increase economic efficiency and thereby improve the well-being of consumers. In recent years, the Commission has not served this goal well (although under the leadership of Chairman Clanton the Commission's performance has been improving).

Specifically, with respect to antitrust enforcement, I believe that the Commission has placed too little emphasis on attacking horizontal restraints and too much emphasis on attacking bigness for its own sake. With respect to consumer protection, I believe that the Commission has placed too little emphasis on cases and rules that reinforce market forces and too much emphasis on cases and rules that merely add a layer of costly regulation.

Finally, I would point to two other major shortcomings. First, the agency has adopted an overly adversarial posture with respect to the private community, especially those directly affected by its actions. Second, the Commission has too often inadequately supervised the staff's work, resulting in many ill-conceived proposals. Even when the Commission has eventually declined to follow the staff's recommendation, the costs of many such efforts have been substantial and have been passed on to taxpayers, businesses, and consumers.

Q. What areas of present FTC activity do you believe should be given the highest priority? Please specify the reasons for your choice.

A. As noted in my answer to the first question, I feel that the focus of the Commission should be on economic efficiency and the improved economic well-being of consumers. With this goal in mind, basic antitrust and consumer protection enforcement against horizontal restraints and against fraudulent practices deserve high priority. Moreover, the Commission can serve a very useful function in intervening before other government agencies to present the case for competition, economic efficiency, and the consumer's interest in receiving the benefits of a free market. Also as indicated above, other priorities include reducing the overly adversarial nature of the Commission's relations with Congress and with the business community, and increasing staff supervision.

Q. Are there particular FTC activities that you believe should be redirected or discontinued? Please specify.

In addition to those items previously mentioned, I would emphasize my view that the Commission has too often strayed beyond its goal of buttressing market forces into the realm of regulatory actions that generate more costs to consumers than benefits. For example, in its case selection, the FTC has over-emphasized the importance of market structure. As I discuss in my answer to question 7, concentration is but one of several variables that explain market performance.

Q. Do you believe that a more competitive market structure is always beneficial to the consumer? If not, would you please provide the Committee with specific examples of industries in which oligopolistic or monopolistic structure, due to economies in scale or for other reasons, have provided benefits to the consumer in terms of price and increased quality that should allow such structure to continue without antitrust action from the Federal Trade Commission or the Justice Department?

Under one definition, competition is a process through which producers seek to satisfy the wants of consumers. That, obviously, is of benefit to consumers. On the other hand, if one adopts a structural definition of competition—many producers and many sellers—I disagree. In determining whether an industry is performing well (in an economic efficiency sense), one should address several variables, including conditions of entry, the overall level of concentration, and the extent to which government regulation or private action has limited the competitive process. Therefore, in analyzing any specific industry, I would have to address many facts regarding its particular situation before concluding whether the law was violated. Because I lack sufficient data and because, if confirmed, I will be called upon to evaluate many industries for possible antitrust violations, I respectfully submit that it would be premature for me to comment on the economic performance of any given industry and whether its conduct violates the antitrust laws.

Senator DANFORTH. Thank you very much.

Thank you, Mr. Chairman.

Senator KASTEN. The FTC transition report recommended that the new Chairman critically evaluate the status of certain initiatives and develop guidelines for the staff concerning future proposals. And on the same basic line of questioning that Senator Danforth was talking about with respect to the shared monopoly cases, the report states the following. It said that "these cases have dragged on far longer than would appear warranted. More importantly the economic rationale for such cases is extraordinarily weak and does not command widespread support."

What is the meaning of the statement, "The economic rationale for such cases is extraordinarily weak and does not command widespread support"?

Dr. MILLER. Sir, of course let me emphasize that perhaps I need to emphasize initially that I can't, having been a member of the team, I am really not authorized to discuss anything about the report itself except to stress that it was more or less a consensus document.

I will just take what you read and with your permission just comment on that.

I believe that the case—the shared monopoly case—the economic case is weak. The argument is whether so-called shared monopoly exists and whether it has adverse * * *

The only question that gives me pause is the question of whether the firm—there are some scenarios that one could imagine where a conglomerate merger would have substantial anticompetitive effects, and I would of course stress that. But the residual question, it seems to me, is the bigness issue.

I just don't think the Federal Trade Commission is appropriately equipped to answer that question. It might study it and make recommendations to Congress. But just to decide that a firm is too large—is just too large—I think is an issue that should be addressed by Congress.

Senator KASTEN. Senator Danforth?

Senator DANFORTH. Just one other question, and I don't want to beat a dead horse, but I do want to say this. You now are—you work for Mr. Stockman, don't you; he is your superior?

Dr. MILLER. Yes, sir.

Senator DANFORTH. And he, I believe, has taken the position that the antitrust function of the Federal Trade Commission should be terminated?

Dr. MILLER. Yes, sir.

Senator DANFORTH. And the Assistant Attorney General in charge of antitrust, it is my understanding that he also has said that the antitrust aspect of the FTC should be terminated.

Dr. MILLER. I do not know that for a fact.

Senator DANFORTH. That is what I'm told; I don't know if that is so or not.

Is there a concerted Administration position, to your knowledge, to terminate the antitrust function of the FTC?

Is there any understanding that you have with the Administration that you will be the person who sets in motion the termination of the atni-trust function of the FTC?

Dr. MILLER. Absolutely not.

Senator DANFORTH. Has it ever been expressed to you by the Administration that selecting you and in talking to you about this job that the antitrust function of the FTC is a mistake or that it should be for any reason ended?

Dr. MILLER. Absolutely not.

Senator DANFORTH. There is no understanding of any sort that you are to preside over the demise of the antitrust function of the FTC?

Dr. MILLER. Absolutely not.

Senator DANFORTH. And it is not your intention to do so?

Dr. MILLER. That is correct.

Senator DANFORTH. Thank you, Mr. Chairman.

Senator KASTEN. Thank you, Senator Danforth.

I know that there are questions that will be submitted by other members of the Committee, and they will be submitted to you. We will try to hold the record open for roughly one week. And if you could get back to us with answers to those questions, including Senator Danforth's list, we will then proceed to vote out your nomination.

(Committee insert.)

* * * * *

It is simply my hope, as pointed out by the questions, that his ability will be one that is used for the purpose of having an effective Federal Trade Commission, and espcially one which fulfills its longstanding antitrust mission—rather than one which presides over the demise of that mission.

Thank you.

Senator KASTEN. Thank you, Mr. Miller.

Dr. MILLER. Thank you, sir.

Mr. DANFORTH. Dr. Miller has given me his word that he is not going to the Federal Trade Commission to preside over the demise of the antitrust function of the FTC, that he has no understanding with the administration to that effect, and that he has no intention of attempting to unilaterally disarm the FTC of its antitrust activities. He has assured me that he recognizes the primacy of the Congress in determining the future of the FTC's antitrust efforts, and he has promised to keep the Congress, and in particular the Commerce Committee, abreast, on a continuing basis, of his intentions respecting antitrust matters. I take him at his word, and I look forward to a close and cooperative working relationship with him over the next several years.

Mr. KASTEN. Madam President, I appreciate the comments of the Senator from Missouri and his support for this nominee and also the comments of the Senator from Washington.

I simply wish to point out that while Dr. Miller has frankly acknowledged a desire, shared by many antitrust scholars, I might add, to shift the emphasis of FTC antitrust enforcement efforts toward horizontal acquisitions and agreements and away from conglomerate measures and vertical restraints, he could not have more clearly emphasized his commitment to enforce the antitrust laws in his appearance before our subcommittee.

He said that the current merger wave is cause for concern and that the FTC should scrutinize mergers and increasing concentration carefully.

He stated that he will enforce the Robinson-Patman Act and monitor industry self-regulation. He favors the continuation of FTC antitrust authority, and he has promised to consult with Congress on any proposed changes.

He made clear that he has no agreement with the administration to gut the Commission.

I believe that Jim Miller will enforce the antitrust laws responsibly, carefully, and diligently. I believe that on that basis he should be confirmed.

● Mr. LAXALT. Madam President, I am pleased to rise in support of Dr. Jim Miller's nomination to the Federal Trade Commission.

I have had the pleasure of working with Dr. Miller during the transition and during this session of Congress relative to regulatory reform. I know that his expertise in the area of Government regulation and his outstanding background in economics will serve Americans well at the FTC.

Though I am glad that we will have Dr. Miller at the FTC, I must say I am sorry to see him leave OMB, where he has played a lead role in the President's regulatory relief effort. He has done an excellent job.

I ask my colleagues to join with me in voting for Dr. Miller's nomination.●

● Mr. EAST. Madam President, I stand in support of the nomination of James C. Miller to be a member of the Federal Trade Commission.

In almost 9 short months at the Office of Management and Budget, Dr. Miller has established his qualifications for an important post involving leadership in regulation and government-business relations. His extensive economic training and knowledge of economic analytical tools, such as benefit-cost tests, will insure that taxpayer dollars are spent sensibly at the FTC, where they can do the most to help the consumer.

Madam President and my distinguished colleagues, I am proud to cast my vote to confirm Dr. Miller's nomination to the Federal Trade Commission.●

Mrs. HAWKINS. Madam President, I rise in support of the nomination of James Miller to be Commissioner of the Federal Trade Commission. Over the years, the Commission has earned a reputation for pursuing its investigations with an inadequate appreciation for fundamental economic principles. While I do not doubt that the Commission's employees have always meant well, Mr. Miller's appointment will mean a better day is ahead for both consumers and producers because Mr. Miller's qualifications as an economist are first rate.

In 1969, James Miller earned his Ph. D. in econom'cs from the University of Virginia, an institution whose excellence in economics is recognized nationwide. In the intervening years, he has used his analytical skills to improve the quality of public decisionmaking in a number of different and impressive fora. He was a senior staff economist at the Department of Transportation. And a senior staff economist for the U.S. Council of Economic Advisers. And most importantly, he spent 4 years at the American Enterprise Institute Center for the study cf government regulation as codirector until he became executive director of the Presidential Task Force on Regulatory Relief earlier this year.

This background means that Jim Miller will have the knowledge and experience to serve in his difficult position, at a controversial Commission, with distinction.

It seems to me that some of the rhetoric heard today reflects more on the fact that the Commission is controversial rather than on the qualifications of the nominee before us. If Senators will acquaint themselves with his background, they will rightfully conclude that James Miller is qualified and that is the only question which should concern us today. I yield back the floor Madam President.

Mr. FORD. What is the parliamentary situation at this time?

The PRESIDING OFFICER. The Senator from Kentucky has 56 minutes and 42 seconds remaining.

Mr. FORD. Is it appropriate then to yield to the dist'nguished Senator from Ohio, who has an order for an hour, if he is ready?

The PRESIDING OFFICER. Yes, it would be appropriate. The Senator from Ohio has an hour.

Mr. FORD. Madam President, before I do that, let me say that I have listened with interest to my distinguished colleagues on the other side of the aisle. This discussion points out the lack of clear direction in the administration's antitrust policy. This concerns me as I believe that clear direction in the enforcement of our antitrust laws should be as important as, and indeed a part of, any long-term strategy for the Federal Government to pursue anti-inflationary policies, to reduce the size of the budget deficit, and to bring interest rates down.

I think it is clear that one of the major concerns of Congress and the administration is the high interest rates that continue to linger around 20 percent and play havoc with the Nation's economy. My office has received hundreds of letters from people across Kentucky pleading that something be done about high interest rates. Every weekend I go back to my home State and am beseiged by farmers, realtors, car dealers, and a host of small businessmen who are searching for an answer. They want to know when high interest rates will be brought down and what we, in Washington, are doing to bring them down.

While there have been many suggestions made, most people realize that we are not going to bring interest rates down immediately. The major reason we have high interest rates is the deliberately tight monetary policy of the Federal Reserve Board. The Federal Reserve is trying to control inflation by controlling the growth of the money supply. We have a slowly growing supply of money that is going smack up against a high demand for money. As we all know, when there is a high demand for any commodity and a small supply of that commodity, you are going to see the price go up. One way to confront this problem is by increasing the supply of money, but economists now say that would only encourage inflation and send interest rates up even higher. In any event, the Federal Reserve has remained steadfast in its stringent monetary policy. So we have to look at another approach; we have to look at the demand side of the equation.

One realistic solution is a Senate resolution, introduced by Senator BENTSEN, which I have cosponsored, directing the Federal Reserve Board to discourage bank lending for speculative and unproductive purposes such as giant business mergers. The intent is to ease demand for bank credit and permit interest rates to fall.

I am concerned that banks should reduce the volume of credit made available for speculation or for mergers by

large business concerns. These activities add to credit demand while contributing little to productivity growth or investment in new plants and equipment. A reduction in such lending activity would definitely ease pressure on interest rates.

An analysis of the necessity for such measures to be taken to discourage use of credit for unproductive mergers by large business concerns also points out the necessity for enforcement of the antitrust laws to discourage those mergers which would have anticompetitive results. And, I think the Federal Trade Commission should play a role in this arena by virtue of its antitrust jurisdiction. In the last few months, we have seen a wave of corporate takeovers—not just of small companies, but of some of the largest corporations in this country. This is due, in part, to the administration's policy to take a "hands-off" approach to antitrust issues.

Recently, my colleague, who is the chairman of the Commerce Committee, Senator PACKWOOD, sent a letter to the Appropriations Committee in which he indicated intent to hold thorough oversight hearings on the activities of the Bureau of Competition at the Federal Trade Commission. I want to stress that I am not now making a judgment on current antitrust policy—whether it is right or wrong; whether we need to modify Government antitrust policy. I too think we need to have comprehensive hearings on the subject later in the year.

However, I do hope that Mr. Miller is well aware of congressional concern for the antitrust policy of the Federal Trade Commission, not only because of the historical policy behind antitrust law, but also because of the tight money supply situation we find our economy in today.

Madam President, the Commerce Committee held extensive hearings over the FTC's Bureau of Consumer Protection during the agency's reauthorization which resulted in enactment of the FTC Improvement Act of 1980.

During Mr. Miller's nomination hearing, I was pleased to note his concern about the FTC's future actions in this area—for example, he suggested a return to case-by-case adjudication, rather than initiation of broad rulemaking's which contained an unbounded definition of "unfairness."

I hope that future congressional oversight in this area will find the FTC responding to the new law and to strict congressional intent rather than to its own view of public policy—which may not be the view of the elected representatives.

I yield to the Senator from Ohio.

The PRESIDING OFFICER (Mr. WARNER). The Senator from Ohio is recognized.

Mr. METZENBAUM. Mr. President, I commend the distinguished Senator from Washington for his very erudite and accurate statement concerning Mr. Miller and Mr. Miller's lack of concern for adequate antitrust enforcement. adequate enforcement by the FTC of appropriate measures in this area.

Mr. President, what we have here is again an instance of this administration's appointing people to head up an agency who do not believe in the agency. They appointed Mr. Watts to head up the Interior Department, preside over the lands, forests, rivers, and waters of this Nation, and Mr. Watts does not believe that the people have any rights in those areas, but would like to industrialize all of America.

The administration appointed an orthodontist to run the Department of Energy, and the first thing out of his mouth was that he wanted to eliminate the Department of Energy. Of course, that was up until he came before Congress and then switched his tune. Now the President may be reversing signals on him, and doing exactly that which was talked about originally, and that is closing down the Department, and it might be helpful if he started right at the top.

As you look across this whole galaxy of appointments by this administration you find that where they could not change the laws or had concerns about coming to Congress to ask to change the laws that they put somebody in whose views are 180 degrees opposite from that which the laws were originally intended to do, somebody who wants to turn the clock back totally.

One after the other this administration has been sending appointments of that kind to the Senate to confirm, and because we all recognize the right in the President to have his appointees in position we go along with those appointments. We say, "OK, you have the right to make the appointments." And we abandon our responsibility in the confirmation process because we are somehow afraid to speak up and carry out our own responsibility as Members of the U.S. Senate.

We talk about what is wrong with the appointments and then we wind up voting "Aye," and I can count, and I am aware of the fact that if there were a vote on the floor of the Senate today for this man, which there will be, a rollcall vote, there will be an overwhelming "Aye." Do not speak up against the President, do not challenge his appointments.

Yet I wonder to myself whether or not we are meeting our own responsibilities as Members of this body who have a constitutional obligation to be a part of the confirmation process when we sit and we rubberstamp the President's appointees?

There is only one agency in Government today which speaks for the consumers of this country, and it is not doing too much of that any more. Under Mr. Miller it is going to do a whole lot less. Mr. Miller really does not believe in what the FTC was created to do, and he has made it very clear in his statements time and time again that he does not believe in it.

And, of course, maybe it is logical. He probably would not have gotten the appointment if it looked as if he were going to be a tough leader of the FTC and prepared to provide strong enforcement of the mandates that Congress had given to the FTC over the years.

It is a rather shameful fact of life that there is not, or will not be after Mr. Miller's confirmation, there will not be any agency in this entire Government that is really concerned about the consumers of this country. The FTC tried, and Democrats and Republicans alike ganged up on the FTC. The lobbyists did their work. They were well paid. They presented their arguments and they had the political muscle to prevail, whether Democrats or Republicans.

But, at least, there was some semblance of honesty in that effort, because it was going after the law, it was attempting to change the law. This administration does not want to change the law, it wants to change the players and let the players, by their lack of action, inaction, or contrary action, change the law in that manner.

Well, you find a situation in this country where consumers and small business people are in trouble. They have never had it worse. And what are we saying today? We are saying, "The Government has already abandoned you but we want to be certain that you understand full well that we are appointing Mr. Miller to head up the one agency that might have been out there speaking for you."

There is somebody now heading the Antitrust Division who does not believe in the antitrust laws. If he does not, why does he not go back to the world of academia? Why does he want to head up the antitrust department if he does not believe in enforcing the law?

Now we are placing at the head of the Federal Trade Commission someone who absolutely, by word and mouth and action, has indicated time and again that they are not for the FTC; they are not for the consumer; and they are not for the small business person.

At his confirmation hearings and as head of the FTC transition team, Mr. Miller made it absolutely clear that, as head of the FTC, he would rewrite the antitrust laws; he would ignore vertical mergers and agreements; he would ignore conglomerate mergers; he will ignore predatory pricing and Robinson-Patman Act cases; and he will not even stand four square in support of the FTC's antitrust mission itself.

The distinguished Senator from Washington made these points very clearly when he enunciated them so well.

As a matter of fact, not only may there no longer be dual enforcement of the antitrust laws in this administration, there may not be any meaningful enforcement if Messrs. Miller and Baxter have their way.

Mr. Miller has also made it clear that he thinks the FTC's past consumer protection efforts have been misguided. Sad is the day; woe to the consumers of America, the forgotten people of America. Who cares about the consumers? They do not have any high-priced lobbyist down here. Let us all move in on them, regardless of what the issue is.

If a practice prevails in the marketplace. according to Mr. Miller. it must be because that practice is efficient and Government should not intervene to protect these consumers. Wake up, Mr.

Coolidge; come back from the grave, Mr. Coolidge, and listen to Mr. Miller tell it the way it is.

As Mr. Miller sees it, if defective products are being sold, then consumers will be aware of the defects and will simply pay less for the products. If members of an industry force consumers to contract for services they do not need, then it is simply not efficient for the industry to conduct their businesses otherwise and the Government should not intervene.

How absurd can the man possibly be to advocate such points of view? He, obviously, is an intelligent man. He has to know better. Efficiencies of the marketplace, he talks about, and people would not buy if they are getting rooked. What fantasy land is Mr. Miller living in? I am not sure. I hope that he knows. It is sad. It is enough to bemoan more than in a Senate speech.

Let us make hay with the FTC; let us zero in on antitrust. Is it not amazing that antitrust, which was the creature of members of the Republican Party in days of yore, which had some of the strongest advocates coming from the Republican Party, that now it is that very same party that is prepared to dismantle everything that stands for competition in the free enterprise system? The free enterprise system was based upon competitive forces being able to work. This administration does not seem to accept that reality.

John Sherman, the Senator who introduced and caused to come into being the Sherman antitrust law, was an extremely able member of the Republican Party from my own State of Ohio. My guess is he is turning over in his grave at this very moment, as he sees the dismantling of everything that he fought for during his period of time. And so many other members of the majority party who have stood up and fought for effective antitrust enforcement over the years, all of them have to find this a rather dismal day.

Mr. Miller is prepared to gut a major portion of the FTC's antitrust enforcement mission. On conglomerate mergers, Mr. Miller said at his hearing:

> I really do not perceive it to be the role of the Federal Trade Commission to decide that that so-called concentration of wealth or power is excessive . . . So there are efficiencies that can be gained from conglomerate mergers. That is the focus—the economic efficiency.

On vertical mergers and agreements, Mr. Miller's transition team report says:

> The foreclosure argument erroneously assumes that the merger would not result in increased efficiencies . . . It would seem that agency efforts to restrain vertical mergers are by and large misdirected.

"Sure," says Mr. Miller, "let the oil companies own everything from top to bottom; let them own the producing efforts, let them own the refineries, let them own the pipelines, let them own the marketing facilities, let them own everything across the board. What do we care about the small business person? Drive them right out of business. What right has he or she to stand up for their rights?" "Forget about it," says Mr. Miller. "It would seem that agency efforts to restrain vertical mergers are, by and large, misdirected," says Mr. Miller. Well, I think not.

On predatory pricing and the Robinson-Patman Act, Mr. Miller's transition team report says:

> That price cutting is a serious problem is dubious on both theoretical and empirical grounds.

What wonderland does this man live in? Does he believe anything that business does must be efficient because, otherwise, business would not do it? A business person would never cut prices in order to drive his competitors out, because that would not be efficient. Who is he kidding? And if the consumer gets hurt in the process because these efficient business acts lead to greater and greater concentration of wealth and power, that is not a concern of our antitrust laws?

Mr. Miller says that is simply not what our antitrust laws are all about.

Justice Harlan in the Standard Oil case of 1911, 70 years ago, said:

> The conviction was universal that the country was in danger from the aggregation of capital in the hands of a few individuals and corporations.

Seventy years ago, I repeat, "The conviction was universal that the country was in danger from the aggregation of capital in the hands of a few individuals and corporations."

That is not a quote from some left-wing radical. That is not a quote from a very, very liberal Democrat. That is a quote from Justice Harlan in the Standard Oil case in 1911.

Mr. Miller's supposed efficiencies cannot be measured. Nobody agrees on them. These theories were not what was in the minds of those who passed the Sherman Act, the Clayton Act, the Celler-Kefauver Antimerger Act of 1950.

Woodrow Wilson, whose distrust of concentrated power gave rise to the FTC Act itself, was not concerned about myths about business efficiency. He was concerned about protecting consumers from the ravages of concentrated wealth and power. Let me quote Woodrow Wilson:

> There is a power somewhere so organized, so subtle, so watchful, so interlocked, so complete, so pervasive, that they had better not speak above their breath when they speak in condemnation of it . . . They know that somewhere, by somebody, the development of industry is being controlled.

Continuing the quote of former President Wilson:

> The masters of the government of the United States are the combined capitalists and manufacturers of the United States . . . The government of the United States at present is a foster-child of the special interests.

And with respect to Mr. Miller's views concerning the efficiency resulting from mergers, let us take a look at what some others have said about this very same subject.

In the Harvard Business School studies by Hayes and Abernathy, as well as a recent Wall Street Journal article, there is a suggestion made that mergers do not generally produce efficiency. The Harvard Business School indicated that mergers result from the short-run profit horizon of chief executive officers who are not production men but lawyers and short-run financiers. Short-run thinking, indicated the Harvard Business School, is hurting productivity improvement.

Mergers are not, by nature, efficient. Mergers are only something that somebody works out when they figure out what the price-earnings ratio is of one company as against the other; when they figure out how they can use their dollars and get some leverage. Nobody ever goes out into the shop and asks the people who run the shop, "Do you think we can work out some efficiencies if we put these two companies together?"

The Wall Street Journal said it well on September 10 when they indicated that mergers do not meet expectations and said that all of the following involved heavy losses. Look at them, some of the biggest in the country: Pan American acquiring National Airlines; Mobile acquired Marcor and has been the laughing stock of the market ever since, Marcor which operated Montgomery Ward and continued to do badly in the hands of Mobil; Exxon acquired Reliance Electric in my own community and came before us with a halo around their head and told us how they would save 1 million barrels of oil a day. You know that 1 million barrels a day. Every single proposition that anybody comes forward with around this Congress is going to save 1 million barrels a day. Exxon had a new motor and if they could squeeze it by and purchase Reliance Electric, over the objections of Reliance, they would be able to market this new motor of theirs which was so efficient.

So they went forward and made their acquisition of Reliance Electric. A year later they say, "Oops, sorry about that, old buddy. That great motor we had is not working. We thought it was going to be all right, but it is still a failure." They still wound up with Reliance.

Arco bought Anaconda and Rockwell bought Westcom and oil companies have gone into farming operations. According to the Wall Street Journal, none of them have proven to be successful acquisitions.

The reasons are understandable. It is difficult for the acquiring companies to know how to run their acquired companies better than those who built those companies. They do not have the know-how. All they have is the financial genius in order to cause the acquisition to occur, but not necessarily to make it work once the acquisition is under their belt.

Now we find that Mr. Miller not only wants to rewrite the substantive antitrust laws but he probably will not even support the FTC's traditional antitrust mission.

Mr. Miller said at his confirmation hearings:

> I think the administration and the Congress, perhaps with the participation of the Federal Trade Commission, should initiate a thorough going review of this Nation's antitrust laws and their enforcement. And the question of so-called dual enforcement, the question of proposals to separate the adjudicatory and prosecutorial roles of the Federal Trade Commission should be evaluated in that context.

With all the pressure within the administration to eliminate the FTC Bureau of Competition, who will be the voice for continuing the Commission's

antitrust mission if the head of the Commission itself does not wholeheartedly support that mission?

Mr. Miller, unfortunately, does not feel very strongly about many things that the FTC does. One of those has to do with the whole issue of consumer protection. Mr. Miller brings to the consumer protection area the same view that he brings to antitrust enforcement. If it is happening in the marketplace, if business is doing it, it must be more economically efficient and, therefore, is good.

Living can be beautiful, according to Mr. Miller, if we just have total confidence in the business community.

This Senator does not rise to chastize the business community, and this Senator does not rise to blame the business community for Mr. Miller's appointment. As a matter of fact, if you look over the entire spectrum of businessmen and businesswomen in this country you will find that by and large they are ethical, they are well meaning, and they are trying to do a good job for their companies.

That does not mean that there are not those instances in which someone has to be available and able to speak up for the consumer.

That does not mean, Mr. President, that there are not transgressors; that does not mean that there are not some bad apples in the barrel. What Mr. Miller is saying is we do not need anybody to be the watchdog; the market will take care of itself; the consumer can protect himself or herself.

Consumers benefit, according to Miller, mainly if businesses run efficiently. Let me quote from the FTC transition team report which Mr. Miller headed up:

> Avoiding defects is not costless. Perhaps more importantly, we have products of different degrees of reliability competing with each other in the same market because consumers have different preferences for defect avoidance. Those who have low aversion to risk (relative to money) will be most likely to purchase cheap, unreliable products. Those who have a greater aversion to risk will be most likely to purchase more expensive and more reliable products.
>
> Agency action to impose quality standards intereferes with the efficient expression of consumer preferences that will occur as long as consumers have adequate information . . .

Mr. President, it is a well-known fact that the FTC attempted to get into one area having to do with consumer preferences, having to do with TV advertising for children. Here is Mr. Miller telling us that those little kids who decide which of the cereals they want to buy know what they are doing and they can fend for themselves when they go to the supermarkets with their parents and say, "I want this one instead of that one."

Come on, Mr. Miller. You cannot really believe that yourself.

Mr. President, how naive can he expect us to be? That is not how manufacturers and retailers conduct their business in the real world. If you want to conduct your business in the real world and convince the consumer what he or she should or should not buy, get the best advertising agency in the country. Give them the super hype. Give them the best, slickest ads that are available. They will like the advertising.

Mr. Miller presumes that prices are set only on quality and workmanship and not whatever the market will bear. That thinking is about as fallacious as any man or woman up for confirmation could possibly suggest. It was just unreal.

Nobody is saying, Mr. President, that the FTC is trying to make Chevrolets meet the standards of Cadillacs. What they are saying is that they want to see to it that people just do not get defective Chevrolets. What the FTC was trying to say when all hell broke loose was that when a person bought a used car, that person ought to have some idea of what was wrong with that used car.

What a terrible thing for the FTC to have advocated. Did not those men and women down there know better than to suggest that the people were entitled to know the facts? They should have just let those people go out and buy a car. They can find out what is under the hood.

Yes? How?

The FTC tried to do something about it and Congress raised cain. They will not have to raise any more cain. Mr. Miller will take care of all those problems for them.

Just because somebody can only afford to pay a given amount for a product does not mean that they do not have a right to expect certain performance from that product. Of course they have a right to expect that performance. The question is how are they going to get it? Who is going to protect them when they get the car, when they get the furniture, when they get an appliance or whatever they buy it is shoddy? Who is going to be there to give them assistance? Mr. Miller? Not on your tintype. His door will be slammed shut on the American consumer.

Again, on the contracting issue, Mr. Miller made the incredible assumption that if it is not happening naturally in the marketplace, it is not efficient and therefore does not benefit consumers. For example, the FTC has ordered that all contract provisions be designed to insure that sellers make all disclosures required under the truth-in-lending laws—in other words, finance charges and annual percentage rates. I remember many, many years ago, better than 20 years ago, when I was a member of the legislature in Ohio, we insisted then, back in those historical times, that the consumer had a right to know what he or she was paying and what the amount of the finance charge was and what the annual percentage rate was.

What is wrong with consumers having finance charge information? Are we afraid to share the facts with them? What could possibly be wrong with letting them know the truth?

What is wrong with consumers knowing about the actual credit costs they will have to pay? Not a thing is wrong with that, but I'm afraid Mr. Miller would not agree.

Tell us, Mr. Miller, what is so terrible about that? Are we going all the way back, all the way back with Mr. Miller, to the days of caveat emptor? Caveat emptor did not work in the past and caveat emptor will not work now.

Mr. President, the FTC has not done as good a job as it should have done in the past, but you can be certain it will do a lot worse job in the future. I am afraid that Mr. Miller just does not share the concerns that some Members of this body have about effective antitrust enforcement; about consumer protection; about whether or not the people of this country need some assistance from their Government in finding out not what to buy or what not to buy, but nothing more than just the truth—just the truth.

Mr. President, in the FTC transition report Mr. Miller said the agency sometimes believes that it can prevent consumers from giving away certain rights. Is it not possible these rights are being taken away and the consumers have no say in it?

Let me say in conclusion that, sometime ago, when Mr. Stockman appeared before our committee, I said to him that the budget program, the budgetary cuts of this administration were cruel and inhumane and unfair and unjust. Indeed, the facts are bearing that out. But what we are finding now is that this administration is appointing people, day after day, who, themselves, really seem to be indifferent. There is a certain element of cruelty, a certain element of unfairness, a certain element of unjustness. No concern for people. No concern for those who cannot fend for themselves. No concern for those who do not have the able lobbyists traversing the halls of Congress. Only a concern for the affluent.

We find articles now being written, Mr. President, about the administration and the affluent society. We find spokespersons for parts of this administration talking publicly about the fact that the people of this country are enjoying the affluence of those who are in office, living the better life.

We find them trying to convince us that, although this administration is budget minded, the people of the country really enjoy the fact that they spent several hundred thousands fixing up their new offices and are spending tremendous amounts of money in the new White House.

I think that Mr. Miller's appointment is symbolic. It is the cap upon all of the other efforts that have been made. It is the administration's way of saying "Mr. Consumer and Ms. Consumer, we could not care less about you. We are going to change the laws; and where we cannot change the laws, we are going to cut down the budget. Where we cannot cut down the budget, we are going to change the players."

That, indeed, is what they are doing.

I seriously question whether this administration is using good judgment in sending Mr. Miller to head the FTC. I believe the Nation will rue the day, and it is indeed a sad day for the people of this country.

Mr. President, I ask unanimous consent to have printed in the RECORD, the FTC transition report.

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

FTC TRANSITION REPORT

I. INTRODUCTION

This final report of the Reagan-Bush Transition Team on the Federal Trade Commission (FTC or Commission) sets forth our findings regarding the FTC's policies and programs, personnel, budget, and FTC-related legislation expected in the 97th Congress. The report concludes with a set of recommendations as to ways in which, through internal policy and procedural changes and/or legislative initiatives, the Administration can enhance the FTC's ability to perform its intended consumer protection and antitrust functions more effectively and efficiently.

Because the FTC is an independent regulatory agency and because a vacant seat on the Commission is not scheduled to become available until September 25, 1981, President Reagan's ability to bring about immediate change in the FTC is relatively limited. The President's major avenues appear to be: (a) designation of one of the incumbent commissioners to be interim chairman (presumably one of the two Republicans), (b) discussions with the new chairman concerning policies and personnel, (c) review and possible modification of the FTC's budget request, and (d) consultations with Congress concerning oversight hearings and proposals for new legislation.

The President's most important responsibility, of course, will be selecting a new permanent chairman, either now (if a resignation occurs or if he chooses one of the incumbent commissioners), or as soon as a seat on the Commission becomes available.

The members of the Transition Team are:

Harry Diffendal, James C. Miller III (Captain), Jeffrey A. Eisenach, Timothy J. Muris, Michael Horowitz, and Robert D. Tollison.

The Team's Senior Congressional Advisors are:

Senator Robert Packwood, Congressman James T. Broyhill, Senator Lowell P. Weicker Jr., and Congressman George M. O'Brien.

The Team's other Senior Advisors are:

Donald I. Baker, Esq., Kenneth A. Lazarus, Esq., John W. Barnum, Esq., Richard Leighton, Esq., Professor Yale Brozen, Wesley J. Liebler, Esq., Professor Kenneth Clarkson, Dr. Donald Martin, Calvin Collier, Esq., Peter K. Pitsch, Esq., Carol T. Crawford, Esq., Professor Richard Posner, Richard Davis, Esq., Bert W. Rein, Esq., Lewis Engman, Esq., Edwin S. Rockefeller, Esq., M. Kendall Fleeharty, Esq., Professor Antonin Scalia, Professor Mark Grady, Governor Raymond Shafer, Professor Clark C. Havighurst, Joseph Sims, Esq., Professor Joseph Kalt, and Richard Williamson, Esq.

The Team's legal advisor is Marcy Tiffany, Esq.

In preparing this report, the Team solicited the views of our Senior Advisors and received many helpful comments from them. Second, we received many useful ideas from outside parties. Third, we had fairly extensive contact with Agency personnel—both the Commissioners and agency's general staff. We wish to acknowledge our appreciation for the cooperation we received from the agency and the professional manner in which our dealings were conducted.

Finally, a word on how this report was written. In the course of our work on the project, various Team members took principal responsibility for individual chapters and portions of the Appendix. Drafts were circulated among members of the Team, and comments were received. Though remarkably little disagreement existed among Team members for so sensitive an institution as the FTC, some compromises had to be struck, and in those cases the Team Captain was the final arbitrator. Thus, it should be noted that while each Team member endorses the report's overall thrust, they do not necessarily agree with each and every point.

II. POLICIES AND PROGRAMS

The Federal Trade Commission has three major responsibilities. First, under the Federal Trade Commission and Clayton Acts, the agency scrutinizes business practices it believes to be violations of the nation's antitrust laws (e.g., certain types of mergers, certain distributing and collusive arrangements, and certain discriminatory acts). Second, primarily under the Federal Trade Commission Act (as amended by the Wheeler-Lea Act of 1938), it scrutinizes unfair or deceptive advertising and other business practices concerning the relationships between producers and consumers. Much of this work is pursued under the agency's power, clarified by the FTC Improvements Act of 1975, to promulgate and enforce broad trade regulation rules affecting entire industries. Third, the FTC prepares a variety of economic and statistical reports concerning the organization and performance of U.S. industry.

In addition to the three major responsibilities just described, the Commission enforces a variety of other statutes, dealing with such matters as trademarks, truth-in-lending, and equal access to credit. (For a complete list of the Commission's legal authority and duties, see Appendix A.)

The Commission consists of a Chairman and four members, all appointed by the President, with advice and consent of the Senate. (For more detail, see Chapter III)

The Commission's organization structure is summarized in Figure I on the following page. Within this structure, the agency's policies and programs may be summarized and evaluated under three major topics: (a) antitrust, (b) consumer protection, and (c) economic reporting and analysis. Before discussing each of these areas, however, we shall describe briefly the criteria we think most relevant for evaluating the agency's overall performance.

There are two strongly-held views about the proper role of the FTC. First, that it should be a traditional law-enforcement agency (i.e., the perennial "cop on the beat"). Second, that it should be an economic agency, out to achieve an efficient working of the marketplace, and thus improve consumer welfare. As between these two extremes, we believe the latter is the more appropriate role for the Commission, although we are also of the opinion that the operational distinction between these two views is not as great as would appear at first blush.

To anyone involved in law enforcement, the scarcity of resources has to be of significant concern. For example, a city police chief must decide how various resources under his or her command—foot patrolmen, detectives, research and data processing facilities, et cetera—should be allocated. Simply because crimes are being committed in a particular area is not sufficient reason for this police official to devote all the force's limited resources to that area. Obviously, the police chief must make trade-offs, and to do so intelligently must have in mind some objective he or she is trying to maximize.

It should be quite clear to anyone who has reviewed the FTC's legislative authority that the agency has extraordinarily broad powers. Depending on the interpretations it renders, a plethora of business practices are either legal or illegal. Not only does this create substantial uncertainty in the business community (a factor which increases costs and adversely affects consumers), it also means that unless the FTC carefully husbands its resources and allocates them to the appropriate areas, the agency's impact in the public interest will be diminished.

We believe that in allocating its scarce resources to various programs and activities, the Commission should be guided by the effects of its actions on consumers, or more explicitly the effects on economic efficiency. Obviously, this means that a decision to take issue with a particular business practice transcends the question of legality. One must ask whether the probable effects of the agency's actions would be to improve the functioning of the economy, bring about greater efficiencies, and increase consumer welfare. One must also ask whether these resources might be better used in other areas, where the potential impact might be even greater.

Our understanding of the Commission's purported historic role is that of promoting competition and fostering consumer welfare. As we shall see below, in recent years the Commission has deviated from this goal, taking on "new theories" to justify its actions and pressing at the "frontiers" of antitrust law and practice.

(This chapter only surveys the broad spectrum of FTC activities and their effects. Appendix B provides more detailed support for the conclusions and recommendations.)

*Antitrust*

The FTC shares responsibility for antitrust enforcement with the Antitrust Division of the U.S. Department of Justice (DOJ) and with private parties who bring antitrust cases. In recognition of this function and to administer its antitrust activities, the Commission has created a Bureau of Competition and has placed in it several enforcement programs. (The Bureau's organization, a description of the programs it administers, and the agency's current antitrust initiatives are all described in Appendix C.)

This section evaluates the FTC's enforcement of the antitrust statutes, according to the criteria described above. In brief, we find that the Commission has all too often mischaracterized certain business practices as anticompetitive, and, in making such determinations, has tended to ignore the effects these practices have in lowering costs or otherwise creating efficiencies that ultimately improve the well-being of consumers.

Business practices that violate the antitrust laws may be discussed under four broad headings: (a) agreements among competing firms concerning the prices they will charge or other limits on competition, (b) monopoly behavior, (c) mergers, and (d) distributional restraints between sellers and buyers. We will discuss each in turn and will also separately discuss the FTC's enforcement of the Robinson-Patman Act and problems arising from "dual enforcement" of the antitrust laws by both FTC and DOJ.

Agreements to restrain competition.—The antitrust laws unambiguously prohibit overt agreements among competitors to set prices or restrain other means of competing. Such agreements are per se illegal: that is, mitigating circumstances are irrelevant. There is widespread agreement that the application of this per se rule to overt agreements among ("horizontal") competitors is sound. The FTC has pursued several worthwhile initiatives against explicit collusion, including its recent efforts to expose guildism in the professions. We believe that the agency's work in this area is in the public interest and should be expanded.

On the other hand, under the guise of ferreting out what it believes to be instances of tacit collusion and poor industry performance, the FTC has embarked on a very ques-

tionable course to reshape the structure of American industry. In an apparent belief that "big is bad" and applying the "market concentration doctrine" (which holds that the extent of competition and the number of firms in an industry are highly, positively correlated), the FTC has brought several questionable cases in recent years, the most controversial of which are those defended on grounds that the industry contains a "shared monopoly."

We believe these industry-wide programs are basically flawed. Attacks on industry concentration per se do not enjoy widespread support among those who have researched the problem. At most, concentration is an extremely crude and preliminary indication of the extent of competition one is likely to find in an industry. Moreover, a focus on the level of concentration tends to shift the agency's attention and resources away from problems of horizontal collusion, where the payoffs are both positive and substantial.

Monopoly behavior.—With few exceptions, over the last decade the FTC has been very critical of successful corporations who have increased their market shares. Indeed, the more successful a firm, the more likely was the FTC to look into its operations.

There are two major, contradicting theories about how one or more firms may come to dominate an industry. One is that the firm(s) "monopolize" the industry; by and large, this has been the FTC's view. The other theory holds that firms come to dominate industries because of efficiencies—gains that ultimately redound to the benefits of consumers. Obviously, both theories should be explored and evidence brought before a decision is rendered. But we have observed that, in general, the FTC is unduly skeptical of the proposition that efficient operations can (and usually do) explain the long-standing success of individual firms.

The agency has also brought cases against firms for so-called predatory pricing. Many at the FTC believe that by pricing below cost a firm can easily drive its smaller competitors out of business and thereby attain monopoly profits. That price-cutting is a serious problem is dubious on both theoretical and empirical grounds. The theory is questionable in part because the predator will likely incur disproportionately large losses relative to those borne by its victims. (Besides, it may be less costly to "buy off" competitors through merger or acquisition.) Empirical studies of famous cases of alleged predation corroborate this point, finding successful predatory pricing to be rare, perhaps even non-existent.

Mergers.—There are three types of mergers: first, mergers among competing firms (i.e., "horizontal mergers"); second, mergers among firms not competing directly or not in the same chain of distribution (i.e., "conglomerate mergers"); and third, mergers among potential or actual producers and suppliers (i.e., "vertical mergers").

The type of mergers that should be of substantial concern from the standpoint of public policy are horizontal mergers that create monopoly power or that facilitate industry collusion. Obviously, any policy to restrain monopoly power should look askance at a proposed merger which would give the merged firm the vast majority of the market especially where no rationale for such action other than securing monopoly profits seems to make sense. The FTC's work in policing and evaluating large-scale horizontal mergers should be continued and strengthened.

With smaller horizontal mergers, the problem is that elimination of a competitor may facilitate collusion among the remaining firms. Whether an industry is in fact susceptible to collusion, however, depends upon more factors than the number of firms in an industry or the absolute level of concentration. For example, ease of entry will influence greatly the probability of successful collusion. Nevertheless, the FTC, both in its case-selection criteria and in its litigated decisions, has consistently ignored these other factors and has attacked horizontal mergers between firms with small market shares in markets where successful collusion is highly unlikely.

One final matter with respect to horizontal mergers we find particularly disconcerting is the FTC's apparent perverse reaction to economic efficiencies created by such mergers. A survey of FTC decisions between 1970 and 1977 found that in eight out of eighteen cases studied, arguments that the merger would create efficiencies counted against its legality or that the apparent absence of such efficiency creation counted for the merger. In not one of these 18 cases did the Commission conclude that increased efficiency should count in favor of the merger.

The principal argument against conglomerate mergers is that they may eliminate a potential competitor. Because the number of potential new entrants may be quite large, the factual burden of showing that the acquiring or acquired firms are unique potential entrants is usually quite substantial. Furthermore, conglomerate mergers of significant concern are those that actually involve substantial horizontal problems—that is, the potential entrant acquires one firm in an industry susceptible to collusion. On the other hand, conglomerate mergers tend to create economic efficiencies.

It would seem to us that whether a conglomerate merger should be disallowed should rest on a weighing of the anti-competitive consequences and the expected efficiency gains. On occasion, however, the agency has explicitly abandoned even the pretense of basing its decisions on a weighing of this type of evidence. Instead, in recent years the Commission seems to have been preoccupied with a "big is bad" perspective and has acted accordingly. We believe that questions such as whether "big is bad" should more appropriately be addressed by Congress than by the FTC.

The principal argument against vertical mergers is that they may foreclose competitors. The argument is that the acquiring firm can coerce the acquired firm into purchasing from it while the acquiring firm continues to sell to all of its old customers. But the foreclosure argument erroneously assumes that the merger would not result in increased efficiencies. If as a result of the merger costs fall, then consumers reap benefits. If the merger does not result in efficiency gains, the cost conditions previously limiting the acquiring firm's output and the price and quality conditions previously limiting the acquiring firm's purchases will still apply after the merger. Because neither firm presumably has an interest in acting inefficiently, intrafirm "sales" will only be made that would be justified without the merger. Thus, it would seem that agency efforts to restrain vertical mergers are by and large misdirected.

Distribution restraints.—Contractual relationships between suppliers and purchasers have often been the object of FTC interest. Examples include resale price maintenance (i.e., the manufacturer insists that dealers sell its products at or above a certain price) and vertical market division (i.e., the provision of exclusive territories by the manufacturer to its distributors). The agency continues to pursue vertical practices vigorously, particularly resale price maintenance.

In our judgment, the FTC's enforcement efforts with respect to distributional restraints reflect a fundamental misunderstanding of their effects. Most resale price maintenance cases have involved products appearing to require the production of at least some information on the local level to aid consumers in making informed judgments. Examples include high-fidelity sound equipment, hearing-aids, ski bindings, firearms, and cookware or kitchen gadgets. Manufacturers of such products appear to have used resale price maintenance as a means of fostering the creation and dissemination of such information to consumers. In the absence of cartelization at either the manufacturer or dealer levels, there is nothing anti-consumer about this use of resale price maintenance. The principal effect of FTC orders in these cases was to force manufacturers to use less efficient means of providing information to consumers and to reduce the total amount of information available.

Robinson-Patman.—Perhaps no facet of antitrust law has received as much scholarly and professional criticism as enforcement of the Robinson-Patman Act. A major problem with cases brought under the act is that they tend to ignore the fact that temporary "discriminations" occur in all active markets. With ever-changing supply-and-demand conditions, new profit discrepancies are constantly being created and destroyed. These temporary discriminations provide important signals leading to a better allocation of resources.

Long-term and systematic price differences, on the other hand, are either cost-justified or are a reflection of true monopoly power. In the former case, consumers benefit; in the latter, the problem can be addressed more effectively under other antitrust statutes. In enforcing the Robinson-Patman Act, the Commission has emasculated the cost justification defense and has assumed injury to competition from the existence of price differences. Consequently, its enforcement of the Robinson-Patman Act has tended to chill price competition and impede the efficient allocation of resources. Fortunately, the Commission has devoted few resources to Robinson-Patman cases in recent years, though a reversal of that policy seems evident.

Dual enforcement.—Many have questioned whether public antitrust enforcement should be shared by two agencies, or whether the FTC's activities should be consolidated in the DOJ. The proponents and opponents of the proposed transfer of the FTC's antitrust activities start from different premises, disagree as to the effects of dual enforcement, and draw different conclusions about the desirability of having an independent, administrative agency with broad quasilegislative authority to enforce the antitrust laws. The proponents of the change maintain that the transfer of antitrust authority would eliminate waste and reduce uncertainty (making business planning easier), and they contend that the FTC's administrative role has not produced the desired expertise, but rather has created problems of structural unfairness. The opponents counter that the current system works, that it results in little duplication, that it provides for two separate views on antitrust enforcement, and that the administrative process and the agency's broad authority facilitate the testing and extending of the frontiers of antitrust law and practice. (Appendix D reviews these arguments in more detail.)

### *Consumer protection*

While the FTC's antitrust efforts scrutinize relationships among businessmen that potentially affect consumers, the agency's consumer protection efforts scrutinize the direct relationships between businessmen and ultimate consumers. Under its mandate to prevent "unfair or deceptive acts or practices," in recent years the Commission has pursued cases on a broad front, primarily through extensive rule-making proceedings. Currently the FTC has underway some 19 such proceedings, the scope and status of which are summarized in Appendix (This Appendix also describes the bureau's organization and operations.

We shall discuss the agency's consumer protection efforts under six headings: (a) economic underpinnings, (b) advertising, (c) product quality, (d) rewriting contracts, (e) occupational regulation, and (f) consumer credit statutes.

Economic underpinnings.—Under a variety of specific initiatives, many of which are discussed in the materials that follow in this chapter, the agency has tried to reshape vital parts of the American economy to promote the theoretical vision, policy preferences, and social priorities of the incumbent commissioners and staff. All too often, the FTC has failed to ground its efforts upon sound economic analysis. Moreover, the FTC has manifested a willingness to prescribe the form and content of contracts and to impose other miscellaneous regulations with little justification, unsupported by any clear and consistent concept of what constitutes harm to consumers. In short, much of the agency's work in the consumer protection area has paid little attention to the effect on ultimate consumers.

Fundamental inconsistencies regarding economic analysis emerge among FTC programs. For example, some FTC actions reflect attempts to deregulate an industry on the theory that market forces best protect consumers, while others embody an attempt to impose regulations on industry based, at least in part, on a basic distrust of market forces. The agency's attitude toward economic analysis in the consumer protection area usually takes one of three forms. Sometimes, as in its efforts to deregulate an industry, the FTC concurs with the near-unanimous view of economists. In other cases, the Commission enthusiastically chooses one side in a raging debate among economists, as it appears to be doing in some of its recent initiatives regarding information. However, in these activities the Commission seems to be contrasting an imperfect market with an idealized view of the ability of government regulators correctly to perceive and remedy the market imperfection. In still other cases, the FTC runs against mainstream economic analysis, such as in its downgrading of cost considerations in rulemaking.

Advertising.—Consumers constantly search for the goods and services that best serve their wants. Everything else equal, any device that reduces this search produces consumer benefits. Advertising's main economic justification is that it reduces consumer search costs and makes consumer search more effective. The FTC's three principal standards for regulating advertising are its deception, substantiation, and disclosure doctrines.

Section 5 of the Federal Trade Commission Act does not define "deceptive advertising"; instead, it only declares "unfair or deceptive acts or practices" unlawful. The courts have given the agency considerable flexibility in specifying the kind of advertising that is unlawfully deceptive. The FTC may prohibit any advertising that has a "capacity and tendency" to deceive, by proving that at least a "significant" minority of consumers exposed to it were deceived.

There are major problems with the FTC's deception test. For one, the Commission has considered ads deceptive that would fool only a small number of gullible people, yet convey meaningful information to others. Second, the FTC does not require proof of actual harm to consumers.

In the past decade, the agency has relied less and less on its doctrine of deceptive advertising and increasingly on its new doctrine of substantiation, especially in cases challenging national, as opposed to local, advertising practices. The new doctrine works in the same way as the doctrine of deceptive advertising, except that the agency does not have to prove that the alleged interpretation is false, only that the advertiser did not, before the ad was run, have evidence to substantiate the truth of each interpretation that would be placed on the claim by a nontrivial minority of consumers. As a result of the new substantiation doctrine, many firms are forced to prepare costly "reasonable basis" reports, even for claims that are to be true without prior substantiation. Such costs, of course, are ultimately borne by consumers. The major justification for this requirement is the administrative savings from eliminating the agency's obligation under the deceptive advertising doctrine to prove claims false. It is extremely doubtful that these savings are worth the cost of the many reports that must be prepared needlessly. Not only are costs passed on to consumers, to some extent the agency's doctrine must deter useful advertising, as firms seek to avoid these costs.

Disclosure requirements account for a substantial number, perhaps the majority, of the FTC's recent rulemaking initiatives. Although these might seem relatively innocuous, and even occasionally beneficial when the information market is shown to have failed and consumers are shown to value the information disclosed more than the costs of disclosure, many of the Commission's efforts in this area are subject to question. For one, the FTC has been very lax in requiring a demonstration that the benefits of its disclosure rules exceed the respective costs. Indeed, particularly in its original rulemaking proposals, the agency seemed enamored of the proposals, the agency seemed enamored the idea that if some information is good, more must always be better. Moreover, the agency has been insensitive to the ability of the market to produce information that consumers desire.

Another problem is that the FTC has actually used disclosure requirements to suppress useful information. Occasionally, the FTC has required that if certain information is advertised, other information must be disclosed. The costs of developing and providing the FTC required information can discourage provision of any information. For example, in the vocational schools' rule, when reference to jobs or earnings were made in promotional material the FTC required disclosure of specific, costly-to-gather information on placement and salary data of graduates. Although the courts overturned this rule, presumably many of these firms would have chosen to say nothing rather than meet the agency's disclosure requirements.

Product quality.—Closely related in theory to the problems underlying information disclosure is the area of product quality. In recent years the FTC has expressed concern over quality through such activities as enforcement of the Magnuson-Moss Warranty Act, and its recent cases aimed at remedying product "defects."

The basic theory underlying FTC attempts to improve product quality is that of "asymmetric information." However, the present state of this theory, and especially the relevant evidence, would not appear to justify extensive governmental intervention of the type envisioned by the agency.

It is important to emphasize, moreover, that we should expect to find some imperfect products. Avoiding defects is not costless. Perhaps more importantly, we have products of difference degrees of reliability competing with each other in the same market because consumers have different preferences for defect avoidance. Those who have low aversion to risk (relative to money) will be most likely to purchase cheap, unreliable products. Those who have a greater aversion to risk will be most likely to purchase more expensive and more reliable products.

Agency action to impose quality standards interferes with the efficient expression of consumer preferences that will occur as long as consumers have adequate information about quality. If such information is not available, the answer would seem to be disclosure of product characteristics rather than the imposition of quality standards.

Rewriting contracts.—Some FTC programs in the area of consumer protection are based on a notion of "disparity in bargaining power." For example, the agency alleges that sellers employ their superior bargaining power to "impose" (or "force") take-it-or-leave-it contracts, containing "unfair" terms, upon consumers. The bargaining power thesis has no economic content and is, therefore, analytically defective. It fails to explain why contracts are take-it-or-leave-it and how these contracts harm consumers.

The agency sometimes believes that it can prevent consumers from "giving" away certain rights. This is in essence a restraint on alienation of these rights. The agency's theory seems to be that consumers are forced to give away these rights. But if they are so forced, they must lack alternatives. Alternatives, however, will be absent only in the presence of monopoly. If lack of competition is the problem, restraining alienation does not appear to be the solution.

Moreover, the agency is chagrined about the lack of negotiation. If we do not commonly see negotiation about these rights, then the costs of negotiation to either party —the analysis holds for the debtor as well— are probably greater than the benefit from negotiation. Most take-it-or-leave-it bargaining comes from the fact that transaction costs are too high in relation to the benefits from tailoring the contract to the different preferences of the bargaining parties. Prices would probably rise if bargaining were coerced in situations where it has not occurred as a result of market forces.

This is not to deny that there can be problems in the contract formation process. Such legal doctrines as fraud and duress are the appropriate tools, however, not the overbroad bargaining power approach. When the administrative process can more cheaply remedy these problems than private litigation, the FTC would be justified in taking action. Such distinctions, however, have not been fully appreciated by the Commission in recent years.

Occupational regulation.—Licensure requirements vary from one occupation to the next. They usually include, however, some combination of the following: (a) education, (b) apprenticeship, (c) written or practical examination, (d) good moral character, and (e) citizenship or residency. Under a licensure system the occupational board not only has jurisdiction over entry, but also over such matters as accreditation and permissible forms of competition. While licensing is a means to control the quality of professional services, it has almost invariably resulted in monopolistic practices. While many of these licensing schemes are supported by national organizations of the relevant occupations, in most instances the enabling institution is state law or regulation.

Numerous studies have found that many occupational rules and regulations harm consumers. Building on this evidence, the FTC has invested considerable resources aimed at reducing the anticompetitive impact of occupational regulation. In recent years the Commission has proposed a number of rules, the impact of which would be to preempt certain state economic regulations. These rules were designed to mitigate or eliminate the impact on consumers of state laws which directly fostered monopolistic privileges. Although the program has occasionally been sidetracked by FTC efforts to substitute its own rules for those of the states rather than merely preempt anticonsumer state laws, we feel that this program holds considerable promise for improving the well-being of consumers.

However, the FTC's asserted power to preempt state laws, as yet untested in the courts, raises serious questions of federal-

state relations. Federalism and decentralized government in general have basic advantages worth preserving, by no means the least of which is the provision of alternative governments under which citizens may choose to live. The competition that such citizen choice of preferred jurisdictions engenders improves the quality of state and local governments.

Against these fundamental advantages of federalism, however, we must weigh the advantages of the FTC's preemption rules. Generally, there is no real conflict between the underlying objectives of federalism and of the FTC cases. The abolition and control of monopoly rights granted by state legislatures can only serve to strengthen the principles of consumer sovereignty that underlie federalism. We believe, however, that this issue should be addressed by the FTC with great care, and, in fact, may most appropriately be decided by the Congress rather than the Commission.

Consumer credit statutes.—The Commission has exclusive and, in some cases, joint jurisdiction (essentially with the Federal Reserve Board, but also with other bank regulatory agencies) over credit practices and a variety of credit statutes enacted over the past decade. These statutes broadly divide into three categories. First, those that deal with disclosure of information prior to the obtainment of credit, of which the Truth in Lending Act is the most significant. Second, those that regulate the grant and denial of credit applications, of which the Equal Credit Opportunity Act ("ECOA") is the most significant. And third, those that deal with credit collection practices, of which the Fair Debt Collection Act ("FDCA") is the most significant.

While most of the agency's activities in the area of consumer credit are based on high ideals, a number of shortcomings are evident. First, the agency seems too concerned with technical violations, independent of their impact upon consumers. Second, the Commission has failed to integrate adequately the Bureau of Economics and the Office of Policy Planning in case and project selection. (The agency has a mandate to spend its limited resources wisely, and the expertise of these two staff units appears to be sorely needed in guiding the agency's work in this area.) Finally, because the effect of FTC actions is often to raise the price and reduce the availability of credit, we feel that the agency has given insufficient attention to the credit needs of the poor.

*Economic analysis and reports*

The FTC's Bureau of Economics provides economic support for the Bureaus of Competition and Consumer Protection, engages in long-range analysis, and collects economic data; its activities and organization are described further in Appendix C.

Economic support.—The primary function of the Bureau is to support the Bureau of Competition and the Bureau of Consumer Protection. The emphasis is on providing basic economic analysis as an input to Commission proceedings. Some have said that the primary problem in this area is the need for more involvement of the economists in Commission proceedings. Some points that have been made in this regard are: (a) the need for more contact between the Commissioners and their legal advisors on the one hand and the economists on the other; (b) the need for more direct consultation between the Director of the Bureau of Economics and the Commissioners; and (c) the explicit introduction of economic analysis into the memoranda that go to Commissioners in addition to bottom-line recommendations.

Generally, there is a need to end the isolation of the economists in the agency and to infuse economists and economic analysis at all levels of agency decision making. Some concrete suggestions along these lines are: (a) give the economists a greater role in deciding which proposals are brought before the Commission; (b) add an economist-advisor to each Commissioner's staff; and (c) integrate the Bureau of Economics physically with the rest of the agency. We generally feel that steps to end the isolation of the economists will significantly improve the performance of the agency.

Long-range analysis.—The long-range analytical work of the Bureau of Economics ranges from largely descriptive industry studies to highly technical working papers. The quality of these long-range analyses is generally very good, though some have questioned the relevance of this research for Commission activities. In this regard the following points need to be reviewed: (a) the need for a relevant long-term research agenda and more explicit deadline for the completion of projects; (b) coverage of more basic economic issues related to antitrust matters; and (c) an extension of the economic research agenda to include the economic analysis of legal criteria.

Most importantly, perhaps, long-range analysis should be expanded to cover the study of imperfections in government regulation and of the effects of government regulation on the marketplace. This analysis would supplement the work on market imperfections and would recognize that government intervention is justified only when market imperfections exceed the imperfections associated with government intervention. The real choice that we face is thus not between imperfect markets and perfect government, but between the market and government as two imperfect processes through which we seek to address the problems that confront us. This expansion in the coverage of long-range analysis would be an important input in the suggested expansion of the Commission's program of appearing before other agencies. (See below.)

Finally, some emphasis on long-range analysis should be given to the role of small businesses in the economy. These firms are a crucial part of the competitive order, and their role needs to be better understood and more appreciated.

Collection of economic data.—The bureau's principal responsibility in this area is its Line-of-Business (LB) reporting program, under which the Commission seeks to gather data on the largest corporations by product lines. Some 274 lines have been separated for monitoring, and such data are gathered from over 400 corporations. The reporting requirements are stiff. Firms must list all subsidiaries, allocate costs and revenues to product lines, and be able to reconcile this data with other corporate financial reports. At this point no rigorous estimate of the costs of compliance exists. A small sample of firms yielded a median compliance estimate of $40,000 per firm. The Commission's estimate per firm is $24,000. For some large firms compliance costs easily run into the $100,000-plus range.

Various justifications have been offered for the program. Among the more prominent of these are: (a) promotion of economic research in industrial organization, (b) identifying profitable industries for investors and potential entrants, and (c) providing guidance for the allocation of antitrust resources. Commentators have identified various analytical and conceptual difficulties with this data. These include: (a) the incompatibility of accounting profits and economic profits, (b) the sensitivity of the results to the allocation of joint costs and intracompany transfer, (c) problems of market definition, and (d) whether the data, even if reliable, would serve any useful purpose.

In light of these issues it would seem best at this point to institute a thorough review of the costs and benefits of this program. If the program does not show substantial benefits relative to costs, it should be terminated.

Another FTC data-collection program is the Quarterly Financial Report (QFR). The agency collects and publishes quarterly financial information from 15,000 corporations in manufacturing, mining, and trade. A primary use of the QFR report is in compiling the quarterly estimates of the Gross National Product. This program raises many of the same concerns as the Line-of-Business report program, particularly the reliability of the information, the cost of the data collection, and the possibility of transferring it to other parts of government. In addition, there appears to be substantial overlaps between the QFR and Line-of-Business reporting programs, providing a potential source of budget reduction. This program should also be evaluated with respect to its costs and benefits and consideration should be given to transferring it to the Department of Commerce.

Interventions before other government agencies.—Economists from the Bureau of Economics have played a key role in the past in assisting in preparation of comments filed by the Commission before other government agencies. (See Appendix C for a listing of recent comments.) Particularly noteworthy have been the Commission's recent interventions before the International Trade Commission (recommending against imposing import restraints on Japanese automobiles) and the Interstate Commerce Commission (in support of certain of the ICC's pro-competition initiatives). The Bureau is in many ways ideally suited to such activities, and the quality of the FTC's analyses has generally been quite high.

[Pages 31–46 of the report describe the structure of the FTC.]

BUDGET CUTS IMPLIED BY TEAM'S RECOMMENDATIONS

Using rough, but conservative estimates, our recommended programmatic changes would justify a 50 percent reduction in the agency's current budget. Assuming that our recommendations for increases in certain other activities are followed and giving the current programs the benefit of every reasonable doubt, we recommend a minimum reduction of 25 percent.

To obtain our recommendation, we used as a base the FTC's FY 1982 estimate of $75.8 million for expenses necessary to keep the agency at its current size. Reducing this number by 25 percent leaves $56.9 million. Although such a budgetary reduction does not necessarily require an exacting matching reduction in the number of employees, a 25 percent employee cut would appear to be a good working base and would leave the agency with 1,338 employees, roughly equal to the staffing level prevailing in FY 1971.

It is worth emphasizing that such a reduction in the size of the FTC staff would not require a massive dismissal of current employees. The FTC's professional staff turns over at an annual rate of 15 to 20 percent, and support employees also frequently leave, although not at as rapid a pace. Thus, curtailment of new hiring could accomplish the bulk of the recommended staff reductions.

Because the FTC does not report its budget among the functional lines discussed in our policy chapter, precise estimates of the size of our recommended cuts are impossible. Nevertheless, a good working estimate is that our recommendations would reduce both current antitrust and consumer protection activities by about 50 percent. Starting first with antitrust, at least 20–25 percent of the current budget involves vertical matters. At least a similar amount is spent on matters relying upon a "big is bad" theory, including the agency's misguided challenge to concentration. An additional amount of roughly 10–13 percent is spent on Robinson-Patman and predatory pricing cases. (Our budgetary adjustments for antitrust also include appropriate reduction in

support activities such as offices of the General Counsel and Executive Director, rental space, postage, and telephone.)

Because many of the FTC's consumer protection activities involve more than one of the functional categories in our policy chapter, estimates of consumer protection cuts are necessarily even rougher. Nevertheless, it appears that at least 50 percent of the resources are spent on proceedings involving overregulation of advertising (including requiring of unnecessary disclosures), proceedings to improve product quality more than economic analysis would justify, and proceedings concerning notions of disparity in bargaining power. (Again, we have included concomitant reductions in support services in our figures.)

Rather than halve antitrust and consumer protection, we recommend in Chapter VII several areas for increased emphasis. These include programs dealing with horizontal restraints, with occupational regulation, with interventions before government agencies, with increased use of economic expertise, with efforts to provide the business community with more certain guidance, and with a reevaluation of the Commission's current rules and policies. Our figures thus reflect both reductions and increases for these two bureaus.

We recommend no change in budget for the agency's third mission, economic activity. Within the Commission's budget, this included primarily industry studies and financial reporting. Although the latter function is a potential source of budget cuts, such cuts must await the results of the studies that we recommend concerning the financial data. We do believe that the role of the FTC economists should be significantly increased, but we think this can be accomplished within the current budget.

Within the context of this 25 percent reduction, we make several specific organizational recommendations. First, we recommend the elimination of the Regional Offices. These offices, which since 1970 have had the power to initiate investigations, have triggered controversy both within and without the FTC. Although they spend about 17 percent of the agency's resources, critics question the need for their existence, and assert that they have a disproportionate share of the problems that allegedly plague the FTC, such as delay and lack of priority setting. It is further alleged that their role is inadequately defined, that their activities, while in some cases prodigious, tend to be misguided, and that they are inadequately managed.

In the mid-1970's, something of a housecleaning of the Regional Offices began, a movement that was accelerated, at least at the staff level, under Chairman Pertschuk. Appendix I is a memorandum describing the activities of the Regional Offices and how the current FTC Executive Director believes that their performance and role has improved. Although some of his points would seem overstated, we believe that these offices are now more fully integrated into the Commission processes.

Nevertheless, these offices are difficult to justify on logical grounds. The concept of Regional Offices is poor, given the geographic and psychological distance between them and Washington, the greater cost required for effective control, and their checkered history. Moreover, the cases listed in Appendix I contain more than their share of the type of cases that, as indicated in Chapter II, seem contrary to the public interest.

We estimate that elimination of these offices would reduce the Commission's budget some 10 to 15 percent, with a partially offsetting two to three percent being added to the Washington office's budget to continue worthwhile cases and other activities. (A discussion of procedures for eliminating the regional offices is found at Appendix J.)

We propose the two other specific budget reductions. First, we recommend Congressional elimination of the intervenor funding program appropriation for FY 1982—$750,000. (Chapter VI evaluates this program in some detail.) Second, we note that the FTC not only has an Office of Policy Planning, but a significant portion of staff in the two major bureaus is devoted to this same activity. By consolidating and streamlining these offices, significant savings could be achieved. Because the agency does not break out the resources spent on these various activities, the exact amounts are indeterminate, but would seem to run in the neighborhood of several hundred thousand dollars annually.

*Summary of budget recommendations*

The table on the next page compares the FTC's expenditure requests with the Team's recommendations. In short, we believe that the FTC can do its part in President Reagan's effort to reduce the size of the federal budget.

BUDGET SUMMARY: FTC REQUEST VERSUS TEAM RECOMMENDATION, BY AGENCY MISSION

[Dollar amounts in millions, fiscal years]

| Mission | FTC request | Team recommendation | Difference |
|---|---|---|---|
| Antitrust: | | | |
| 1981 | $32.2 | $29.8 | −$2.4 |
| 1982 | 34.7 | 25.3 | −9.4 |
| Consumer protection: | | | |
| 1981 | 33.3 | 31.1 | −2.2 |
| 1982 | 34.9 | 25.4 | −9.5 |
| Economic reporting: | | | |
| 1981 | 5.5 | 5.5 | 0 |
| 1982 | 6.2 | 6.2 | 0 |
| Total: | | | |
| 1981 | 71.0 | 66.4 | −4.6 |
| 1982 | 75.8 | 56.9 | −18.9 |

V. LEGISLATION

Bolstered by support from the consumer movement, the Federal Trade Commission (FTC) in the 1970's developed a more agressive approach in its regulation of unfair acts, practices and methods of competition. The FTC adopted a particularly activist role in its consumer protection activities, utilizing its new rulemaking authority to initiate industry-wide rules governing a wide array of business practices in industries ranging from the used car business to funeral homes, optometry, and vocational schools. At the same time, the Commission continued to press far-reaching investigations into farm cooperatives and the automobile and oil industries.

Growing concern in the business community over impacts of the FTC's new activism focused on the costs of and benefits to be derived from the FTC's rules and investigations. Particular concern centered on the impact of FTC rules on small businesses. Affected industries were joined by the U.S. Chamber of Commerce, the National Association of Manufacturers (NAM), and the Nat'l. Federation of Independent Business, among others, in seeking help from Congress. Additional support was offered by several economists from the academic world, who pointed to the adverse impact many FTC activities were having on an already sluggish economy, and the dangers of market intervention in several areas of FTC activity. Both the academic and the business groups questioned whether the consumer benefits of various FTC activities would match the costs which would be added to consumer goods to meet FTC requirements.

Tensions between consumer activists on the Commission and the business-academic community were reflected in Congress. Questionable potential of consumer benefit, coupled with the structure of many industries chosen for regulation by the FTC (optometrists, funeral directors and used car dealers are located in virtually every Congressional District) created intense Congressional interest in the FTC's activities. By 1977 a heated controversy had developed over the FTC's role in the marketplace, the level of discretionary authority vested in the Commissioners and the staff, and the way in which that authority had been used. Congressional concern manifested itself in introduction of numerous proposals to prohibit or otherwise restrict specific FTC activities, and eventually, failure to renew the FTC authorization after its expiration at the end of 1976. For the next three years, the FTC existed without a formal authorization, and received funding through a series of continuing appropriations, resolutions, and agency transfers. During the ensuing three-year controversy, expiration of even temporary funding forced the FTC to close down for one day. In the interim, Congress seized upon the legislative veto as a vehicle to restrain FTC activities believed to be beyond the scope of its legislative mandate. However, the legislative veto itself became a stumbling block, with the Senate pressing for a two-House veto, and the House insisting upon a more stringent one-house veto. Compromise finally was reached in the FTC Improvements Act of 1980 (the "Act," the "Improvements Act") which was signed into law on May 28, 1980. (Public Law No. 96–252). The Improvements Act is an omnibus measure which renewed the FTC's authorization through 1982, included a two-House veto provision and several express restrictions and prohibitions against FTC activities affecting certain specific industries.

Although the Improvements Act formally restored the FTC's authorization, it preserved numerous highly controversial issues for subsequent Congressional consideration. Most specific restrictions or prohibitions contained in the bill are of a temporary nature, and industry pressures to extend or finalize the restrictions can be expected. In addition, the legislative veto process may function to stimulate or at least facilitate Congressional intervention in both procedural and substantive aspects of FTC rulemaking in 1980, 1981 and 1982. Industries affected by final rules can be expected to use the veto as a vehicle to obtain relief from implementation of new trade regulation rules. Some industries already have received commitments for such assistance from key members of Congress.

Although the intensity of the controversy may have subsided, industries affected by proposed and final rules promulgated can be expected to marshall support from larger business groups and from the Congress to keep the FTC and its regulatory activities an active battleground in the 97th Congress.

The Federal Trade Commission Improvements Act of 1980 was signed into law on May 28, 1980. The Act authorizes appropriations for the Federal Trade Commission for fiscal years 1980, 1981, and 1982. In addition to authorizing appropriations for the FTC, the Act modifies FTC procedures and administrative operations, and curtails specific rulemaking activities.

The Act substantially increases Congressional involvement in the FTC decisionmaking process through expanded oversight functions and authorization of a two-house legislative veto of any final trade regulation rule promulgated by the FTC. (See Appendix K for a summary of the Act's provisions, and Appendix L for the full text.)

*Current congressional sentiment toward the FTC*

General congressional concerns.—Although the 1980 Improvements Act has been described as a catharsis for most Congressional concerns and hostilities toward the

FTC, there remains a generalized sense of unease regarding the FTC and its activities. This concern, generally not well articulated, is perhaps a reflection of Congressional frustration over its apparent inability to make FTC Commissioners and staff responsive to the will of Congress.

As Congressional opposition to FTC activities has increased in recent years, Congress has been inclined to intervene on an ad hoc basis, for example curtailing investigations or rulemaking in particular industries, rather than develop institutional reforms.

Elevation of Congressman John Dingell to the chairmanship of the House Commerce Committee may signal a change in the Congressional approach to FTC-related problems. Both Congressman Dingell and ranking Republican Congressman James Broyhill have expressed interest in addressing underlying regulatory issues, including the structure and functions of the agency. Congressman Dingell already has initiated a high-level task force group to study issues surrounding government regulation of business, and Congressman Broyhill has expressed interest in examining structural and functional issues during oversight hearings in the next Congress.

Congressional concerns generally include a belief that the FTC is overreaching its statutory mandate, that it is imposing unnecessarily burdensome requirements on business, that its goals often are inconsistent with or otherwise hinder other federal objectives (for example, many rules add significantly to costs of consumer goods), and that the roles of investigator, charger, prosecutor, judge, and enforcer should not reside in a single agency.

There is a greater divergence of views as to the source of these generally recognized problems. Many in Congress feel that the FTC Act and other statutes within the FTC's jurisdiction are either too broadly drawn, vesting excessive authority in the FTC, or that the statutory language simply is not sufficiently precise (thereby permitting the exercise of excessive discretion by FTC staff and Commissioners.

Others in Congress focus on the regulator process as interpreted and applied by the Commission, for example, the use of formal rulemaking and cease and desist powers into areas not intended by the Congress.

Still others believe that neither the statute nor FTC regulatory procedures are at fault, but rather that the problems of recent years are a reflection of the individual Commissioners and staff, their personal missions and goals. According to this view, it would not be desirable to curtail the FTC's broad discretionary authority, which is seen as necessary to enable the agency to conduct its mission properly. Attention instead should focus on eliminating distortions of the FTC's role through personnel changes at both Commissioner and staff levels.

Concerns regarding the FTC's antitrust mission.—Specific concerns expressed regarding the FTC's antitrust mission generally include a feeling that the FTC is overreaching its statutory authority, for example in ordering divestitures, and in the development of new antitrust theories. There is a common perception that Congress should examine the apparent duplication of functions between the FTC and the Department of Justice. Congressional concerns focus on the inefficiencies inherent in duplication and on real or potential conflicts between and inconsistent policies adopted by the two different agencies. Another general concern relates to the FTC's role as investigator, charger, prosecutor, judge, and enforcer, a concern heightened by the subject matter of recent investigations and decisions.

Two different approaches are suggested as appropriate means to deal with these perceived problems. One view supports continuation of ad hoc legislation intervention in specific FTC activities. Another view supports a more generic, institutional approach which generally focuses on a realignment of the FTC's antitrust jurisdiction (most commonly articulated as consolidation of antitrust functions in the Justice Department), removal of the FTC's prosecutorial function to the Justice Department, adjudication of FTC cases in Federal district court, and/or creation of an independent corps of administrative law judges.

Concerns regarding the FTC's consumer protection mission.—If a consensus exists on any aspect of FTC activity, it is an apparent consensus that the FTC has exceeded the reach of its statutory authority, and that it has initiated rulemaking activity in areas felt to be inappropriate for FTC regulation. Criticism focuses specifically on FTC regulation of industries traditionally regulated by the States, regulation to an inappropriate level of detail, and allocation of resources to rulemaking not felt to be of sufficiently high priority relative to protection of consumer interests. (For example, the FTC reportedly is developing a standard for the manufacture of golf balls.) Substantial concern also exists regarding excessive reporting and recordkeeping burdens imposed on business, particularly small business, and the inconsistency of such burdens with the desire for expanded business investment.

So little unqualified support exists for FTC consumer protection activities that those who generally believe that the Commission should preempt individual marketplace decisions only in those areas where a person of ordinary intelligence, "a reasonable man," is unable to make an informed or rational judgement, are characterized as "FTC supporters." Only those who believe that the Commission should either preempt no individual marketplace decisions, or should limit its consumer activities to cases of fraud or deception, are viewed as "opponents."

The two general approaches to remedying perceived problems in FTC consumer protection activities parallel those proposed in the antitrust area. Some Members prefer ad hoc legislative intervention in specific rulemakings. This approach will be facilitated through the legislative veto procedures set forth in the Improvements Act. Advocates of the ad hoc intervention approach have differing views as to the full impact of the legislative veto. Those Members who supported the legislative veto generally feel that it will provide an orderly mechanism for dealing with specific rulemaking issues, removing such issues from the authorizing and appropriations process. Many Members however, remain skeptical about the impact of the legislative veto, and are withholding judgment until Congress has had some experience with the new process.

Other Members of Congress are less inclined to follow the ad hoc approach, and prefer to examine possible statutory revisions, for example reexamination and refinement of the FTC's consumer protection mandate. Such revisions could include a classification of the FTC's authority and more precise definitions of conduct intended by Congress to be deemed illegal.

*Expected congressional involvement in FTC activities*

Mandatory Functions.—Under the new Improvements Act, the Senate Commerce Committee will be required to conduct at least one oversight hearing on the FTC at least once during the first six months, and once during the last six months of each calendar year. Subject of the oversight hearing is within the discretion of the Committee and has not yet been determined. One likely subject is use of the unfairness standard. Hearings may focus on advertising or could examine application of the unfairness standard for all acts and practices.

The FTC authorization expires on September 30, 1982. Thus, the House and/or Senate Commerce Committees may begin consideration of a new authorizing bill sometime during 1981. Final action must be taken by the entire Congress no later than 1982, the Second Session of the 97th Congress.

Discretionary Functions.—The FTC is required under the Improvements Act to submit to the House and Senate Commerce Committees two forms of advance notice of proposed rulemakings: (a) advance notice of intent to develop a proposed rule, and (b) advance notice of proposed rulemaking submitted 30 days prior to publication in the Federal Register. The Committees may, but are not required to, conduct hearings on any such proposed rulemakings.

House and Senate Commerce Committees may, but are not required to, conduct hearings on all final rules submitted pursuant to the Act's legislative veto provisions, and Congress may, but is not required to consider a resolution of disapproval. Final rules promulgated by the Commission may be implemented only after a 90 day period of Congressional review, during which Congress may veto the rule.

The Act requires the Commission to submit to the House and Senate Commerce Committees a plan for revision of small business quarterly financial report forms and procedures designed to reduce the burden on small business. The Commission's report was required to be submitted no later than December 1, 1980. The Improvements Act provides no express provisions for Congressional response to such plans, and no Committee action is required.

The Act prohibits the Commission from initiating a study or preparing a report on the insurance industry, absent a specific request from Congress. Should Congress desire such a study conducted or report prepared, a majority of either the House or Senate Commerce Committee must submit a specific request to the FTC. However, no such action is required.

*Legislation and committee jurisdiction*

Primary jurisdiction over the FTC resides in the Senate Committee on Commerce, Science and Transportation and the House Committee on Interstate and Foreign Commerce. Ancillary jurisdiction resides in the House and Senate Judiciary Committees and the House and Senate Appropriations Committees. Membership of these committees is listed in Appendix M.

Expected Legislative Activity.—In the 96th Congress, the full Senate Judiciary Committee was chaired by Senator Edward Kennedy (D-Mass). The Antitrust Subcommittee was chaired in the 96th Congress by Senator Howard Metzenbaum (D-Ohio). Senator Charles "Mac" Mathias (R-Md.) was the Subcommittee's ranking Republican member. In the 97th Congress, Senator Strom Thurmond (R-S.C.) will chair the full Judiciary Committee, and Senator Joseph Biden (D-Del.) will serve as ranking Democrat. (Senator Kennedy will move to become ranking Democrat on the Labor Committee, but would be free to reassert his rank on Judiciary should Democrats regain control of the Senate.)

In the 97th Congress, the Committee is expected to eliminate the Antitrust Subcommittee, and vest jurisdiction over antitrust matters in the full Judiciary Committees.

Both Republican and Democrat members of the Judiciary Committee have expressed concerns regarding overlapping and duplicative functions of the FTC and the Justice Department. Antitrust areas which could be

examined by the Judiciary Committee in the 97th Congress include the FTC's exercise of its divestiture authority, the FTC's development of innovative monopoly theories, and the impact of the Magnuson-Moss procedures on FTC jurisdiction. In addition, Members of the Committee have expressed interest in studying the possibility of establishing an independent corps of administrative law judges, transferring some FTC antitrust functions to the Department of Justice, and/or transferring the FTC's adjudicatory functions to the federal district courts. The Commerce Committee held hearings in the 96th Congress on a proposal by Senator Howell Heflin (D-Ala.) to establish an independent ALJ corps, and it is likely that the Judiciary Committee on which Senator Heflin also serves will conduct additional hearings in the 97th Congress.

In the House, both the full Judiciary Committee and the Monopolies Subcommittee are chaired by Congressman Peter Rodino. Ranking Republican on the full Judiciary Committee and the Monopolies Subcommittee is Congressman Robert McClory (R-Ill.).

The House Judiciary Committee seems less likely to pursue the range of issues expected to be addressed by the Senate Judiciary Committee, with the exception that the House Judiciary Committee may examine certain issues associated with the FTC's dual function as prosecutor and judge. Additional attention may focus on international antitrust questions, and amendments to the Webb-Pomereme export trade association statute, currently administered by the FTC. Otherwise, the House Judiciary Committee is not expected to deal in any substantial way with the antitrust jurisdiction of the FTC.

Expected consumer protection activity.—The Senate Commerce Committee was chaired in the 96th Congress by Senator Howard Cannon (D-Nev.), and the Consumer Subcommittee was chaired by Senator Wendell Ford (D-Ky.). The Committee's ranking Republican, Senator Bob Packwood, will become Committee Chairman in the 97th Congress, and the Consumer Subcommittee's ranking Republican, Senator John Danforth (R-Mo.), will take over as Subcommittee Chairman. Senators Cannon and Ford will become ranking Democrats on the full Committee and Subcommittee, respectively.

The retirement of House Commerce Committee Chairman Harley Staggers moves the chairmanship to Congressman John Dingell (D.-Mich.) in the 97th Congress. Ranking Republican James Broyhill (R.-N.C.) will remain in that position. However, the Committee may vote to disband the Consumer Subcommittee, which in the 96th Congress was chaired by Congressman James Scheuer (D.-N.Y.), with Congressman Matthew Rinaldo (R.-N.J.) as ranking Republican. If the Subcommittee is eliminated, jurisdiction over consumer affairs would most likely be transferred to the Transportation Subcommittee, chaired by James Florio (R.-N.J.). No final decisions will be made until after the new Congress organizes itself in January.

Oversight activities are expected to consume the bulk of time the House and Senate Commerce Committees can be expected to spend on FTC issues in the 97th Congress. The Senate Commerce Committee is required to conduct at least one oversight hearing on the FTC at least two times per year. Review of proposed and final rules submitted to Congress by the FTC are expected to consume an unknown amount of Committee time. Specific rules and proposals expected to be transmitted in 1981 include those relating to the funeral industry, used cars, mobile homes, eye glasses, proprietary drugs, and FTC ex parte rules to be developed pursuant to the Improvement Act. In addition, the Senate Commerce Committee can be expected to honor its commitment to address FTC activities in the optometric and proprietary drug industries.

Both the House and Senate Commerce Committee will be required to examine the unfairness standard for acts and practices as it relates to children's and commercial advertising. In addition, it can be expected that the Senate Commerce Committee will examine the unfairness standard as it applies to all acts and practices. The Committee already has compiled a hearing record on the unfairness test, and additional hearings will be scheduled in the 97th Congress.

Both the House and the Senate Commerce Committees have expressed an interest in reviewing Magnuson-Moss rulemaking procedures to determine how those procedures have worked, what effect they have had on regulated industries and on the FTC's jurisdiction, and whether additional procedural safeguards are required.

Criticism of the intervenor financing program administered by the FTC resulted in restrictive language in the Improvements Act. However, some additional restriction on intervenor financing, or total elimination of the intervenor financing authority, can be expected in the 97th Congress.

VI. MISCELLANEOUS

In this chapter, we shall discuss two topics: (a) the Federal Trade Commission's intervenor funding program and (b) the perception on the part of many that the agency has been basically unfair in its treatment of those subject to its rules and regulations. Items on the Team Captain's checklist are found at Appendix N.

*Intervenor funding*

The 1980 Improvements Act mandated changes in the Commission's controversial and highly debated Public Participation Program in rule-making proceedings. The relevant portion of the Commission's memorandum to staff concerning this matter states:

"The Act places limits of $75,000 on the amount any group could receive over the course of a rulemaking and $50,000 on the amount a group could receive in any one year. Moreover, the bill sets aside 25 percent of the funds appropriated each year for small business and, in addition, requires the Commission to undertake a small business outreach program."

The present implementation of this policy has two objectionable features. First, the Commission has set a limit on the actual compensation rate for attorneys of $50 per hour. The alternative would be to set a cap on the subsidization of attorney fees, but not the actual fee charged. The unreasonably low dollar limit forecloses many potential private sector respondents. Second, the $50,000 per year limitation is construed as being a limitation on applicant groups only, thereby facilitating the role of such applicants as conduits for public interest lawyers able to receive more than $50,000 a year for services to more than one program applicant.

The above modifications aside, the more basic question is whether the program should be continued, except possibly as a means of assuring that the views of small business and other respondents directly affected by rule makings who are unable to bear the costs of effective representation are heard. Lengthy reviews of intervenor reimbursement programs and the program itself have been undertaken by the Senate and House appropriations committees and need not be repeated here.

Conceptually, intervenor funding would seem warranted whenever: (a) an agency's staff is captured by those who are regulated, or (b) such funding is the most efficient way of acquiring information. Because the FTC covers a broad spectrum of the economy rather than one industry, it is unlikely to be captured. Furthermore, while some information provided under this program is useful, there is no inherent reason why the staff cannot gather it at less cost. Put differently, the case has not been made that those groups have special insight into or nexus with the needs of consumers or the public interest, or that the Commission staff is itself unable to marshall evidence which such "public interest" intervenors now offer.

With appropriate direction the FTC staff could become more expert at representing the public interest. Of course, this role requires that they carefully analyze the costs and benefits of any proposed action. It is worth noting that one important component of that analysis is a sensitivity to whether an action will disproportionately affect small businesses and thereby lessen competition. For example, often regulatory costs are relatively insensitive to volume, meaning that larger firms can spread these costs over more sales. Thus, in seeking to delineate the impact of a proposed action on the public interest, the FTC staff should take special care to determine its effects on small business.

*Institutional fairness*

A host of issues bearing on the institutional fairness of the FTC have been raised in recent years. They include its *ex parte* policy, its accessibility to potential respondents, as well as events bearing on the agency's reputation.

Ex-Parte communications and accessibility. The FTC Improvements Act of 1980 mandated changes in the FTC's rules concerning ex parte communications with Commissioners in rulemaking proceedings. The relevant portion of the Commission's subsequent staff memorandum states:

"The Act requires the Commission to publish a proposed change to its rules of practice within 60 days which will permit outsiders to meet with Commissioners and to have a transcript or summary of the meeting placed on the rulemaking record. The Commission is also required to amend its rules to preclude staff from communicating to the Commission any relevant facts not on the rulemaking record unless that communication is made public."

The Commission has recently adopted new rules of practice which conform to the letter of the Act. The rule still remains controversial in that ex parte, unnoticed contact is still permitted between Commissioners and Commission staff when those contacts do not involve the communication of new facts by the staff members. In other words, staff counsel in rulemaking proceedings may still meet privately with Commissioners to summarize existing records and/or to issue ex parte pleas for rulemaking decisions—and may do so on an unnoticed basis so long as they do not assert the existence of facts which do not appear in the rulemaking record.

The above rule aside, a broader question remains regarding the accessibility of Commissioners to potential respondents. Overall there appears to be the need for more accessibility. In the case of adjudicative matters, the Commission should be open to ex parte meetings with potential respondents, albeit on the record, prior to the issuance of complaints. It should also be receptive to adversary argument prior to its issuance of such complaints. In the case of rulemaking proceedings, the Commission should likewise be more receptive to early respondent petitions, ex parte and otherwise. Occasions when such contact might be invited are the publication of potential Commission initiatives in the Calendar of Federal Regulations and the initiation of staff requests to the Commission for the issuance of subpoenas in order to pursue intended investigations. In the most general terms, what is critical for a new Commission, symbolically and in terms of real policies, is to create a perception on the part of the private sector that its input is respected.

Other institutional fairness issues.—It is

also important to note briefly that a series of events in recent years have cast a cloud over the FTC's reputation for fairness. Possible prejudgment, interference in independent decisionmaking, ex parte staff influences, carelessness with confidential business documents, and blanket investigatory resolutions which give broad authority to the FTC staff to issue subpoenas have cumulatively cast a pall on the Commission's reputation. Exacerbating this problem is the perception that the Commission's Administrative Law Judges (ALJ's) are biased in favor of the staff. The ALJ's are selected for their appointments by the Commission itself. With only rare exceptions in recent years, the ALJ's have been appointed directly from the FTC staff to the position they now hold. Notably, every ALJ now serving at the Commission has held employment elsewhere on the FTC staff.

[Pages 72–86, the Conclusions and Recommendations section, may be found at 999 BNA Antitrust & Trade Reg. Rep. at G–1 (Jan. 29, 1981).]

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KASTEN. I yield such time as he may desire to the Senator from Arizona.

Mr. GOLDWATER. Mr. President, I support the nomination of Dr. James C. Miller III to the Federal Trade Commission.

Dr. Miller will bring to the Commission a strong academic background in economics. His economist's perspective on the effects of Government regulation on the free market has been much lacking at the FTC. Because of his notable background in regulatory reform, I expect that the FTC under his leadership will stop seeking regulations in knee-jerk fashion, and will instead concentrate on pursuing regulations where they are most needed, and where they most help the American consumer.

I respectfully urge my colleagues to join with me in supporting Dr. Miller's nomination.

Mr. KASTEN. Mr. President, I ask for the yeas and nays on the Miller nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered.

Mr. KASTEN. Mr. President, I ask unanimous consent that the vote occur immediately after the vote on the nomination of Sandra Day O'Connor.

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

Mr. KASTEN. I yield to the distinguished Senator from South Carolina, the chairman of the Judiciary Committee.

Mr. THURMOND. I thank the able Senator from Wisconsin for yielding to me.

Mr. President, I support the nomination of Dr. James C. Miller III, who has been selected by President Reagan to serve as Chairman of the Federal Trade Commission.

Dr. Miller is superbly qualified for this position by reason of his educational background, his experience, and, most importantly, because of his philosophy. Dr. Miller received his undergraduate degree in economics from the University of Georgia and was awarded his doctorate from the University of Virginia. He has served as a college professor and is the author of numerous publications dealing with governmental regulatory practices.

Dr. Miller is no stranger to Government service. He has served as Assistant Director for Government Operations and Research for the U.S. Council on Wage and Price Stability, as well as senior staff economist with the U.S. Council of Economic Advisors. In addition, Dr. Miller has worked in the Department of Transportation. Currently, Dr. Miller is Administrator for Information and Regulatory Affairs in the Office of Management and Budget and executive director of the Presidential Task Force on Regulatory Relief.

Mr. President, while Dr. Miller is unquestionably qualified for this appointment in terms of ability and experience, he is the proper choice for this job because of his commitment to the policies of the Reagan administration. In his testimony before the Senate Committee on Commerce, Science, and Transportation, Dr. Miller consistently stated his support for, and his plans to implement, the policies of this administration.

Important principles which Dr. Miller has emphasized are a need to replace the current adversarial relationship between the FTC and regulated industries with a cooperative one and the need to insure that the Commission staff, like every other bureaucracy, is more responsive to the instructions of the American people, as expressed through their elected representatives.

Mr. President, Dr. Miller is an excellent choice for Chairman of the Federal Trade Commission. I commend President Reagan on his selection, and I urge my colleagues to support this nomination.

Mr. KASTEN. I yield such time as he may desire to the distinguished Senator from Pennsylvania (Mr. SPECTER).

Mr. SPECTER. I thank the distinguished Senator from Wisconsin for yielding to me.

Mr. President, I speak at this time to express my concern about the current enforcement of antitrust policies, and I believe that debate on the nomination of Dr. James Miller poses an opportune time for these comments. I am concerned that antitrust enforcement is not sufficiently vigorous at the present time.

The new administration has dedicated itself to the policy of deregulation, and it is essential in order for deregulation to operate in the public interest to have effective competition.

An essential element of a competitive free enterprise system, in my judgment, is vigorous enforcement of the antitrust laws. I am concerned, from the hearings on Mr. Miller's nomination and from other things which are happening in antitrust enforcement, that this enforcement simply is not sufficiently vigorous at the present time.

I was concerned to note that the Office of Management and Budget earlier this year had proposed a phasing out over 3 years of the FTC's antitust mission. I was concerned to learn from Mr. Miller's testimony at his confirmation hearing that while he would not initiate a complete phasing out of the Bureau of Competition, he intended to ask for a lower level of funding. I am concerned that such a lower level of funding may be an indirect way of phasing out the FTC's antitrust function. Such a policy, when viewed in conjunction with what is happening at the Antitrust Division of the Department of Justice, raises very substantial questions about antitrust enforcement in this country at the present time.

I, for one, was very concerned about the efforts of the Department of Justice to delay the Government's suit against A.T. & T. That application had been made by the Assistant Attorney General in charge of the Antitrust Division, was based on the contention that delay was necessary in order to give Congress an adequate opportunity to pass pending legislation on deregulation, and included a representation by the Department of Justice that should that legislation be enacted, the suit would be abandoned.

The trial judge, Judge Greene, denied the application for a postponement and the case has proceeded. Judge Greene has recently denied A.T. & T.'s motion to dismiss, writing—and I believe this is a very important conclusion:

The testimony and the documentary evidence adduced by the government demonstrate that the Bell System has violated the antitrust laws in a number of ways over a lengthy period of time. On the three principal factual issues—whether there has been proof of anticompetitive conduct with respect to the interconnection of customer-owned terminal equipment (Part III), the Bell System's treatment of competitors in the intercity services area (Part IV), and its procurement of equipment (Part IX)—the evidence sustains the governments basic contention, and the burden is on defendants to refute the factual showings made in the government's case-in-chief.

That appears in Judge Green's memorandum opinion of September 11, 1981, at age 73. There is, of course, an opportunity for A.T. & T. to refute those findings and those conclusions. In that litigation which was commenced in 1974 and had proceeded for some 7 years until 1981, I thought it most inappropriate for the Antitrust Division to ask for postponement and to indicate its intention to withdraw from that prosecution, and I said so in a lengthy statement some weeks ago in this Chamber.

I think that the Justice Department's activities in the A.T. & T. case and the attitude of Mr. William Baxter, the Assistant Attorney General, on the A.T. & T. case are especially significant in view of his prior statement. As noted in Newsweek on July 6, 1981, "the Antitrust chief—referring to Mr. Baxter—had taken a tough position on the A.T. & T. antitrust case." Newsweek quoting Mr. Baxter as saying:

I have taught the phone company case for twenty years,

And the article then continues:

Baxter thinks that for a regulated monopoly like AT&T, the temptation is nearly irresistible to undercut competitors by using

the huge revenues from regulated services to subsidize divisions that compete in unregulated markets. The only way to guard against this, he insists, is to break Ma Bell up into a company whose only function is message-transmission services, with any nonregulated activities such as equipment manufacturing and data processing carried out through a new corporate entity. With this principle in mind, he has vowed, he will "litigate the case to the eyeballs."

Given his stated intention to "litigate the case to the eyeballs," which is a widely quoted statement of Mr. Baxter, it seems to me very strange indeed that Mr. Baxter should then appear before Judge Greene in that precise case and ask that it be postponed, and state the Government's intention to abandon that litigation.

I am especially concerned about Mr. Baxter's attitude in light of testimony which he provided in hearings before the Committee on the Judiciary when I question him about the anticompetitive effects of vertical and horizontal mergers. Mr. Baxter commented, as shown on page 17 of the hearings from March 19, 1981, that he, in effect, had less concern about conglomerate mergers and vertical mergers and was concerned only if they had direct horizontal impacts, which I suggested then and suggest now is an unduly restrictive reading of the antitrust laws of this country.

Responding to my questioning about the merger activity, which at that time was much less than what we have seen since March 19, 1981, and which now includes the Dupont-Conoco merger, Mr. Baxter replied that there were two effects, one relating to anticompetitive impact and the second relating to the "massive capital market transactions." He expressed concern only about those limited effects that are anticompetitive in the narrowest sense, as opposed to concern about massive capital market transactions.

My own sense is that matters involving the "massive capital market transactions," as Mr. Baxter put it, are matters of serious concern for the antitrust laws. At a time when we find interest rates extraordinarily high, we find many companies moving into the borrowing markets and reserving some $5 billion of funds for the purchase of another company, as a number of companies apparently did recently in connection with the Conoco takeover attempts. The heavy movement toward mergers which we have at present, characterized widely as merger mania, requires a much more vigorous attitude on the part of the Department of Justice and the FTC than we have seen up until the present time.

I personally believe that there is still great wisdom in the dictum of Judge Learned Hand from 1945:

> Great industrial concentrations are inherently undesirable regardless of their economic consequences.

While conventional wisdom on antitrust seems to shift and change from time to time, the warning that was handed down by Judge Learned Hand still points, in my judgment, to a major area of concern. I believe that concentration of political power is apt to follow the concentration of economic power. We are witnessing such concentration with the extensive and massive merger activity in this country at the present time. We are seeing mergers which are not based even prima facie on efficiency, mergers where the captains of industry are seeking profits from combination as opposed to innovation, and mergers which I believe should be subjected to very careful scrutiny under the antitrust laws of this country.

I think that the confirmation hearings for Mr. Miller pose an occasion and an opportunity when we should pause and focus on the antitrust policy that our Government is pursuing at the present time, both in the FTC, where Mr. Miller has been proposed for chairmanship, and in the Department of Justice's Antitrust Division.

I thank the Senator very much for granting me the floor, and I relinquish the floor at this time.

Mr. KASTEN. Mr. President, a parliamentary inquiry.

The PRESIDING OFFICER. The Senator will state it.

Mr. KASTEN. How much time remains on the various sides for this debate?

The PRESIDING OFFICER. The Senator from Wisconsin has 12 minutes remaining; the Senator from Kentucky has 52 minutes remaining; and the Senator from Ohio has 25 minutes remaining.

Mr. FORD. Mr. President, the Senator from Ohio has authorized me to yield back the remainder of his time.

Therefore, I ask unanimous consent that I may do so.

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

Mr. FORD. Mr. President, I yield back the remainder of the time of the Senator from Ohio.

Mr. STENNIS. Mr. President, will the Senator yield to me?

Mr. FORD. Mr. President, I have 52 minutes. I am glad to yield to the Senator from Mississippi such time as he may desire.

Mr. STENNIS. I wish to speak out of order.

Mr. FORD. Mr. President, we are getting ready to close this out.

Mr. STENNIS. If I am in order fine.

The PRESIDING OFFICER. The Chair recognizes the Senator from Mississippi.

Mr. STENNIS. I thank the Chair.

Mr. President, I just came in the Chamber. I did not know what the parliamentary situation was. I wish some time, frankly 5 minutes, anyway, on the nominee for membership to the Supreme Court.

If I am in order, I wish unanimous consent that I, not having used any time today on any of these nominees, may have 5 minutes for that purpose.

Mr. FORD. Mr. President, I am delighted to yield the Senator 5 minutes on my time on another nomination, but there is some time saved for the minority side prior to the vote on the nomination by the ranking member of the committee.

Mr. STENNIS. Is that on the Supreme Court nominee?

Mr. FORD. Yes.

Mr. STENNIS. I thank the Senator very much.

Several Senators addressed the Chair.

ORDER OF PROCEDURE

The PRESIDING OFFICER. The Chair will restate the understanding with respect to the vote.

The Senator from Wisconsin asked for a unanimous-consent request a short time ago which was consistent with that order, but for purposes of clarity I should wish to state the order in its entirety.

Under the order previously entered, at the hour of 6 p.m. this evening the Senate will vote on the nomination of Sandra Day O'Connor to be an Associate Justice of the Supreme Court of the United States, to be followed immediately thereafter by a vote on the nomination of James C. Miller III to be a Commissioner of the Federal Trade Commission. At present there are orders entered for rollcall votes on both of these nominations. However, on the third nomination to be voted on tonight, namely that of James R. Richards, to be Inspector General of the Department of Energy, there has been no order entered for a rollcall vote.

I thank the majority and minority floor managers.

ORDER FOR YEAS AND NAYS ON THE RICHARDS NOMINATION

Mr. McCLURE. Mr. President, I wonder if there would be an objection on this side of the aisle if I were to ask unanimous consent that it be in order to ask for the yeas and nays on the confirmation of Mr. Richards?

Mr. FORD. I have no objection.

Mr. McCLURE. I make that unanimous-consent request.

The PRESIDING OFFICER. Is there a sufficient second? But first, is there objection to the request of the Senator from Idaho? There being none, it is so ordered.

Mr. McCLURE. Mr. President, I ask for the yeas and nays on the confirmation of Mr. Richards to be Inspector General of the Department of Energy.

The PRESIDING OFFICER. The Senator from California wishes recognition, and I will ask the Senator from California if he wishes to be recognized.

Mr. HAYAKAWA. If the Senator from Idaho will yield to me, are we talking about the Inspector General——

Mr. McCLURE. The Inspector General of the Department of Energy.

Mr. HAYAKAWA. I must enter an objection. I have not yet been sufficiently briefed to vote on this yet.

Mr. McCLURE. I am not asking that we vote now; I am asking that when we get to the vote, that it be by yeas and nays.

Mr. HAYAKAWA. I am perfectly agreeable to that. I have no objection.

The PRESIDING OFFICER. If the Senator from Idaho would restate his request——

Mr. McCLURE. I think we had obtained consent that it be in order to ask for the yeas and nays, am I correct?

The PRESIDING OFFICER. No objection has been lodged.

Mr. McCLURE. I ask for the yeas and nays on that nomination.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second.

The yeas and nays were ordered on the nomination of James R. Richards to be Inspector General of the Department of Energy.

Mr. McCLURE. I thank the Chair and I thank the Senator from California.

Mr. FORD. Mr. President, I understand the distinguished Senator from Wisconsin has no further statements to be made on his side. I have no further statements on my side. I would like to propound a unanimous-consent request, if I may. Mr. President, I ask unanimous consent that at the conclusion of 10 minutes yielded to the distinguished Senator from Mississippi that all time on both sides be yelded back and that the next order of business be in order.

The PRESIDING OFFICER (Mr. HAYAKAWA). Is there objection? The Chair hears none, and it is so ordered.

Mr. FORD. Mr. President, do I understand and am I correct in understanding that the motion says that all time has been yielded back on both sides subject to the 10 minutes by the distinguished Senator from Mississippi?

The PRESIDING OFFICER. That is what I understand.

Mr. FORD. I thank the Chair.

The PRESIDING OFFICER. The Senator from Mississippi.

(The statement of Mr. STENNIS will be found at an appropriate place during the debate on the nomination of Sandra O'Connor.)

## DEPARTMENT OF ENERGY

### NOMINATION OF JAMES R. RICHARDS TO BE INSPECTOR GENERAL

The PRESIDING OFFICER. Under the previous order, the Senate will now turn to the consideration of the nomination of James R. Richards, of Virginia, to be Inspector General, which the clerk will state.

The assistant legislative clerk read the nomination of James R. Richards, of Virginia, to be Inspector General.

The Senate proceeded to consider the nomination.

Mr. McCLURE addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho.

Mr. McCLURE. Mr. President, I rise in support of the nomination of James R. Richards for the position of Inspector General of the Department of Energy. Mr. Richards' nomination, upon receipt by the Senate, was referred to the Committee on Energy and Natural Resources. After a full review of Mr. Richards' background and professional qualifications, and after a hearing held on July 9, the committee unanimously reported the nomination on July 21 by a recorded vote of 17 to 0. Prior to the committee's action, Mr. Richards had fully complied with all of the committee's informational and conflict-of-interest requirements, and no issues remained unresolved.

The information that was made available to the committee indicates that Mr. Richards has had a distinguished career as a highly motivated, effective and objective public servant. I would also note that at no point during the committee's review of Mr. Richards' background was any question raised concerning Mr. Richards' integrity.

Mr. Richards has a distinguished record as a public servant in positions of responsibility which have prepared him and qualified him fully for the DOE Inspector General position. Early in his career, he was an assistant attorney general of Colorado. Later, from 1969 to 1973 he was employed by the U.S. Department of Justice as an assistant U.S. attorney in Denver, Colo; then as Chief of the Organized Crime Strike Force in Buffalo, N.Y.; and later as area coordinator in Washington, D.C., for the Department's Organized Crime Section.

Mr. Richards served from 1974 to 1977 as Director of the Office of Hearings and Appeals in the Department of the Interior. In that position, he had an independent status similar to that of an Inspector General. He was responsible for the successful resolution of many difficult legal disputes in the areas of energy and natural resources.

Unfortunately, as an apparent result of: First, Mr. Richards' most recent employment with public interest legal foundations; second, his testimony in an informal hearing before the Committee on Governmental Affairs; and third, his past professional association with Secretary of the Interior James Watt, Mr. Richards has been declared by some to be an "unsuitable nominee" for the DOE Inspector General position. I must respectfully disagree with such a conclusion.

The Senate has confirmed in this administration, and in the last one, a number of individuals who had been employed by public interest legal foundations and organizations. Some served in positions at the Justice Department with responsibility for enforcing Federal laws. Past employment by a public interest organization should not bar confirmation, particularly where an appropriate recusal has been prepared, as in Mr. Richards' case.

Mr. Richards' testimony before the Committee on Governmental Affairs reveals a man of convictions who was honest and forthright enough to express them candidly to the Senate. That candor and honesty should not render him "unsuitable," nor should his personal views, standing alone, act to disqualify him. Most importantly, Mr. Richards in that hearing reiterated his statement, made earlier before the Energy and Natural Resources Committee, that he would pursue objectively and zealously waste, fraud, and abuse in the Energy Department. That should come as no surprise, since he has done so throughout his distinguished career as a public servant.

Finally, Mr. Richards' past professional association with Secretary Watt should not have any bearing on this matter. DOE has a budget of over $13 billion and over a hundred thousand career and contract employees. The DOE Inspector General is responsible for audit and investigation of the direct DOE programs and employees. Secretary Watt, of the Interior, not of the Department of Energy. He is Chairman of the Cabinet Council on Environment and Natural Resources, with Cabinet-level responsibility for review of broad national policy issues. It is very difficult to demonstrate any arguable nexus between the respective responsibilities of these two men. There is no reason to suggest that their past professional association would impact in any way on Mr. Richards' discharge of his responsibilities as Inspector General.

I hope this discussion about Jim Richards' excellent qualifications and some of the allegations will set the record straight on his nomination. Mr. Richards is well qualified and will make an excellent and effective Inspector General at DOE. I would therefore urge each of my colleagues to support Mr. Richards' nomination.

Mr. President, I will close this portion of the discussion by reiterating what I said earlier: That on July 21, by a recorded vote, the Committee on Energy and Natural Resources unanimously reported the nomination by a vote of 17 to 0.

Mr. President, I call the attention of my colleagues to a letter I have distributed which discusses the Richards' nomination. I hope that all of my colleagues will review that letter before voting.

Mr. President, I have consulted with the distinguished Senator from Missouri concerning the allocation of time on this nomination. While the original consent agreement called for 3 hours, 2 hours to the Senator from Missouri and 1 hour to the Senator from Idaho, with 1 hour and 35 minutes remaining between now and 6 o'clock I ask that that time be allocated 1 hour to the Senator from Missouri and 35 minutes to the Senator from Idaho.

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

Mr. McCLURE. Mr. President, I yield such time as he may require to the Senator from Virginia (Mr. WARNER).

The PRESIDING OFFICER. The Senator from Virginia is recognized.

Mr. WARNER. Mr. President, it appears to me that the opposition to Mr. Richards' nomination is centered on one fundamental argument, which is this: Because he has expressed strong views on a number of policy issues, there is the possibility that he would use the authority and independence of the Inspector General's office to somehow promote those views. For example, some have questioned whether Mr. Richards, in investigating DOE contracts with energy-producing companies, would vigorously pursue those investigations. The suggestion has also been made that he would not be fully responsive to complaints filed with his office by environmental groups.

Mr. President, I cannot accept the notion that Mr. Richards' policy views would adversely affect his performance

as Inspector General. The fact is, he would not have a policy position at DOE, nor would he even be an active participant in the policymaking function at the Department.

His role would be to serve as the internal agency watchdog, to make sure that the Department is run efficiently, and that its operations are free from fraud, abuse, and waste. In short, Mr. President, the concerns expressed about Mr. Richards, in my judgment, are not convincing, because there is an insufficient connection between his policy views and his actual role as DOE Inspector General. We are left with no reasonable basis for doubting the commitment he made when he appeared before the Committee on Energy and Natural Resources, of which I am a member—and I was present at that time—and stated unequivocally that, if confirmed, he intended to vigorously pursue his duties and responsibilities as the Inspector General of the Department of Energy.

Mr. President, it is for that reason and the reason that, in my judgment, he is well qualified to serve in this position, that I provide my unqualified endorsement of Mr. Richards.

The PRESIDING OFFICER. Who yields time?

Mr. EAGLETON. Mr. President, I yield 10 minutes to the distinguished Senator from Arkansas.

The PRESIDING OFFICER. The Senator from Arkansas is recognized.

Mr. PRYOR. Mr. President, the matter before us this afternoon in the Chamber is really a simple one. It relates to James Richards, who may be, and probably is, a nice guy, but he is being nominated for the wrong job.

James Richards is a policy person, Mr. President. He is a self-described ideologue. He is a man who has worked for the last several years, not only as a lawyer on behalf of his client's involvement in energy policies, but also as a columnist writing articles expressing his strong ideas on energy issues. In my opinion, he is a logical candidate for a policy position somewhere in the Government, but demonstrably ill-suited to be an Inspector General.

An Inspector General should be objective and present an appearance of detachment from the emotional dimensions of an issue. Mr. Richards, in his approach and outlook, is inconsistent with this objectivity. Here are some of the problems I have with his nomination:

First. He has an ideological stake in certain energy activities and does not approach his investigative role with a record of neutrality and objectivity on the subject;

Second. He has publicly attacked organizations—if one can imagine this—like the National Wildlife Federation because of policy differences, but he would need to work with them as Inspector General and command their confidence and respect;

Third. He has staked out a position as a "team player" with Secretary Edwards of the Department of Energy, rather than as a watchdog removed from policymakers in the administration. An Inspector General in any agency should not be a team player.

Fourth. He is the choice to become the Inspector General at the Department of Energy of James Watt, who is now the Secretary of the Interior, who, because of his current position, will be interested in the outcome of energy-related program audits and investigations.

Fifth. Mr. Richards would begin his job with serious deficiencies in a Department of Energy having enough problems with waste and mismanagement without the added burden of Inspector General. Should he be appointed, we are simply telling the taxpayers that we will cut Social Security and national defense spending—but we are giving waste in DOE the propensity to continue because we failed to send effective troops into the battle against waste.

Of all departments, the Department of Energy needs a strong Inspector General. It needs one who will look at the contractors spending tax dollars and making policy. Last year, the Governmental Affairs Committee looked at this issue and, as subcommittee chairman, I found the following significant facts:

While the DOE does not know how many employees work for it under contract, the number may well be 10 times the number of civil servant employees;

The Department's recordkeeping is so poor that it is apparently paying out money for contracts for which the official contract office literally lacks any records;

The Department was unable to produce, after repeated requests from my staff, much of the work paid for by taxpayers on millions of dollars in recent and ongoing contracts; and

Contractors today are running the Department of Energy. They prepare basic plans and budget documents, reports to Congress, and congressional testimony. They answer mail from the public and from Congress. They are paid to prepare basic components of their own contracts, and contracts for others as well. They virtually run the contract file room. They prepare the DOE organization charts and job descriptions of civil servants.

The contractors most heavily relied on by the Department are those who publicly boast of their oil and utility clientele.

Mr. President, do we need an Inspector General who might be questionable about looking into the oil and utility clientele of these contractors? Do we need an Inspector General who might be questionable in his or her zest for finding what the relationship of a contractor and the Department might be?

Mr. President, in a Department so rife with mismanagement and discredited because it is out of control, Mr. Richards fails to meet the test of the type of individual we need. Here is a man who seeks to be a prosecutor, an investigator who comes to the job saying unfavorable things about people who may bring investigative information to him. His comments about the National Wildlife Federation—that it is an extremist group—were not made as a lawyer and advocate but as a columnist. And they were made not in the ancient past but as recently as January 1981.

An Inspector General of any agency, especially the Department of Energy, should be so fiercely independent that he frightens policymakers. He must be the advocate for the citizen, the taxpayer. He should be the one person in a bureaucracy who looks under every rock for hidden misconduct, who encourages and supports whistleblowers, and who never settles for the simple and glib answer. He should be ready to fight for the taxpayer against Cabinet members, Presidents, and Congressmen.

Mr. President, let us face the facts: Mr. Richards is being put in this job by James Watt, who is in another Department as Secretary of the Interior. He owes his appointment to Watt and he knows it. He also knows that Mr. Watt heads the Cabinet's energy and natural resources task force. And he probably knows that the administration is considering moving some of the DOE jurisdiction to Interior. It sounds a little bit incestuous, Mr. President. Frankly, I wonder whether a whistleblower on Jim Watt's staff could confide in a Jim Richards, and whether an audit of Jim Watt's proposals could ever be initiated. It raises a question, and it is a serious question.

But the issue is not James Watt, the Secretary of the Interior. The issue is, do we want one of his people, one of his team players, to be a watchdog over the Department of Energy? The same would have been true of a friend of Cecil Andrus as his watchdog. It is in the best interests of everyone, including Secretary Watt, to have a watchdog who is nobody's pet.

In his testimony before our committee, Mr. Richards seemed to downplay the issue of inspector general independence. He made light of it.

In fact, I went over that day to listen to his testimony, not having any questions prepared, and frankly, not having any serious reservations about this man, James Richards. But after I heard the very pointed questions by the Senator from Missouri (Mr. EAGLETON) and the very fine questioning by the Senator from Michigan (Mr. LEVIN), I began to have deep reservations about this appointment.

He told us, in fact, in that hearing, that he wanted to be a team player, that he wanted to join Secretary Edwards' team and work cooperatively in that job. He even said he wants to dig for fraud, waste, and abuse. But he is not independent, and that is the problem. I thought we made very clear that work of this kind is tough to accomplish, if not impossible, except as an independent Inspector General. What we want is someone who will keep an eye on the team, who will challenge that team, and not be a part of it.

Mr. Richards worked for two organizations with close ties to oil and gas interests—the Capital Legal Foundation and the National Legal Center for the Public Interest. Such associations could

certainly lessen the public's perception that his audits would be as demanding, objective, and hard hitting as they should be. Yet, Mr. Richards himself has put us on notice that past associations are appropriate criteria for judging individuals and that officeholders are influenced by such associations.

In my opinion, we should ask the President of the United States to give us another name for the Energy Inspector General's role. This job is too crucial and the tax dollars too great to settle for a bad or a weak choice or for a choice who may not be independent.

I cannot help recalling the words of Henry Clay in this connection:

Government is a trust, and the officers of the Government are trustees; and both the trust and the trustees are created for the benefit of the people.

Mr. President, James Richards is the wrong man for the wrong job. and I cannot think of one reason why anv Member of the Senate would vote for the confirmation of his nomination to this critical job.

Mr. EAGLETON. Mr. President, I thank my colleague for his much deserved praise of me and Senator LEVIN.

Mr. WARNER. Mr. President, I ask unanimous consent to have printed in the RECORD additional material: A biographical sketch of Mr. Richards, and a recusal statement made by this nominee at the time of his hearing.

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

BIOGRAPHICAL SKETCH OF JAMES R. RICHARDS

Mr. Richards was born in Kinderpost, Missouri, on November 21, 1933, and at an early age, moved to Western Colorado. He attended public schools there and upon graduation from Delta High School in 1951 entered Western State College, a small liberal arts college located in Gunnison, Colorado. While there, he was twice all conference in football, President of the Student Body and elected to Who's Who in American Colleges and Universities. In 1955. he received a B.A. degree in History-Political Science and English.

After graduation, Mr. Richards spent the summer as an executive trainee with Goodyear Tire & Rubber Company in Akron, Ohio. He returned to Colorado in the fall of 1955 and became Admissions Counselor at Western State College.

In 1957, he entered the Law School at the University of Colorado where he was a member of Phi Delta Phi and Vice President of his class. He received his LLB in 1960.

After passing the Colorado bar examination, he was appointed Assistant Attorney General for the State and represented the State Highway Department and the State Patrol.

In late 1962, he was asked by U.S. Senator Peter Dominick (R. CO) to join his new Senate staff as Legislative Assistant. He accepted this appointment in January of 1963 and later became Executive Assistant to the Senator, assisting the Senator in his duties with the Senate Banking and Currency. Labor and Public Welfare, and Interior Committees. He also handled various administrative and political duties.

In 1966, he returned to Colorado to open a law practice. For the next three years he was both a sole practitioner and a partner in a small firm.

He decided to accept an appointment as an Assistant U.S. Attorney in Denver in February of 1969. During his two year tenure in that capacity he tried a variety of civil and criminal cases, including a grand jury investigation and litigation involving acts of sabotage in the Denver area. In late 1970, he left Denver to become Chief of the Organized Crime Strike Force in Buffalo, New York. While in Buffalo, he handled investigations and trials of organized crime figures and convicted two legislators of bribery and conspiracy in connection with a proposed $50 million domed sports stadium. In March of 1972, he became an area coordinator of the Organized Crime Section in Washington, D.C., and handled several major investigations and trials throughout the country.

In 1974, he was appointed by then Interior Secretary Morton to be Director of the Department's Office of Hearings and Appeals. This office handled all the quasi-judicial functions for Interior including public lands and energy resource matters.

With the change of Administrations in early 1977, Mr. Richards joined the National Legal Center for the Public Interest as a consultant and authored research on various public interest issues. In early 1978, he continued his work in public interest law and became Vice President of the Capital Legal Foundation, a newly formed non-profit litigating firm in Washington, D.C. In the fall of 1980, he again joined the National Legal Center, this time as General Counsel and Vice President.

Mr. Richards is, single and is a resident of Arlington, Va.

RECUSAL STATEMENT

If confirmed as Inspector General of the Department of Energy, I would recuse myself from participation in, or providing any advice with regard to, (a) any litigation in Federal or State court, and any administrative proceedings (other than the formulation or promulgation of a rule of general application) involving the adjudication of a specific matter, in which the Capitol Legal Foundation was or is a party, or represents a party, and (b) any litigation in which I participated as local counsel for the Mountain States Legal Foundation.

Mr. WARNER. Mr. President, I yield to the Senator from Alaska.

Mr. STEVENS. Mr. President, I join in endorsing James R. Richards as being fully qualified for the position of Inspector General of the Energy Department. The nomination of Mr. Richards was reported by the Committee on Energy and Natural Resources by a vote of 17 to 0, which should indicate great support from those of us having the most direct information on his qualifications.

We know of his extensive experience with the Justice Department and the Department of the Interior. In the Interior Department, as Director of the Office of Hearings and Appeals, he had an independent status much like that required by the Inspector General's position in the Department of Energy.

It seems to me that the attacks on Mr. Richards are primarily associated with his recent employment by public interest legal foundations and his contacts with the Secretary of the Interior, Jim Watt. To me, both arguments are without merit.

I believe we should emphasize that employment in public interest law firms has served as experience for numerous individuals appointed by this administration and prior administrations. The issue seems to be what type of public interest firm is involved.

In particular, Mr. Richards has been accused of taking a biased view of energy and environmental issues. Those who oppose Mr. Richards' nomination have claimed that he is strongly committed to a doctrinaire set of views on a range of energy, environmental, and regulatory issues. Various examples of his views have been provided, including his use of the term "environmental extremist groups" in referring to several major environmental organizations.

Before we draw any conclusions about his use of that phrase, we should hear the rest of the story. In testimony before the Governmental Affairs Committee, he was asked to define that phrase as he had used it. His response was most informative. He defined the phrase "environmental extremist groups" very precisely. He said they were groups that take a position that their position is right, that there is no compromise, and that no other position can be tolerated.

Mr. Richards' definition did not relate to the merits of the positions taken by the environmental groups. He did not suggest that they have extreme positions on issues. Rather, he did nothing more than provide his view of the method of advocacy used by certain environmental groups.

Many would agree with that view. I know that I do. I know that, on the floor of the Senate, I have used the same phrase, "environmental extremist groups," in precisely the same way.

Does Mr. Richards' use of that particular term render him an ideologue who is unsuitable for the position of Inspector General? I hope not, and I hope the Senate will vote for the confirmation of his nomination. I know that I shall.

Mr. EAGLETON. Mr. President, I yield 15 minutes to the distinguished Senator from Michigan (Mr. LEVIN).

Mr. LEVIN. Mr. President, I oppose the appointment of James Richards to be the Inspector General of the Department of Energy.

Like most of my colleagues, I believe that the President should be able to appoint those whom he believes can best meet the goals of his administration, for policy positions within the administration. Most of the positions the Senate is asked to confirm are policy positions, and the President's judgment of a particular individual's qualifications should be of great weight on the confirmation scale. It is our role to assure that the nominee has the integrity to serve the Government with honor and has a basic familiarity sufficient to adequately fill the assigned post.

The position of Inspector General is in somewhat a different category. In England, for example, such a position would be filled by a civil servant who had nothing to do with politics. The office of Inspector General was established because policymakers throughout the Federal Government were not judiciously moni-

toring the operation of their agencies' activities. One of the primary reasons for this was a lack of independence of investigatory and auditing responsibilities from the general administration of Federal departments.

To do the job properly, an Inspector General must be independent of the agency in which he or she serves, not sympathetic to or antagonistic toward the agency or its head, but almost indifferent to its policy goals. Unfortunately, Mr. Richards does not meet this standard. This is not a criticism of Mr. Richards' talents or his character, simply an analysis of his inability to meet this high standard that must be required for all Inspectors General.

During the Senate consideration of the Inspector General Act of 1978, four of the eight amendments offered by the distinguished Senator from Missouri, and accepted by the Senate, were aimed at strengthening the independence of the Inspectors General. All of these amendments are now part of the statute creating Inspectors General. The four do the following:

First, assure that the Inspector General cannot be prohibited from investigating certain areas by the head of the agency;

Second. Require that the President must explain to both Houses of Congress if he or she removes any inspector general from office;

Third. Require inspectors general to review legislation and regulations to judge if they are enforcible; and

Fourth. Give inspectors general power to protect confidentiality of those within the Department who provide information to inspectors general.

These amendments were accepted to emphasize the importance of the independence of the inspector general. The amendments were deemed necessary because of testimony like that of the General Accounting Office, stressing the need, "to insure that auditors are insulated against internal agency pressure so that they can conduct their auditing objectively and report their conclusions completely without fear of censure or reprisal."

As the Government Affairs Committee stated in their report—

The alternative is an exercise in futility where auditors and investigators report to, and are under the supervision of, the very officials whose programs they are supposedly auditing and investigating.

From that same committee report:

In most of the agencies covered by this legislation, this cardinal principle is being violated. In many cases, the audit and investigative units report to the Assistant Secretary for Administration, the person whose broad policy responsibilities are often likely to be questioned and investigated. In general, the lack of independence of many audit and investigative operations in the executive branch is striking.

In that same Governmental Affairs Committee report of 1978, the committee wrote:

The committee wants Inspector and Auditors General of high ability, stature and an unusual degree of independence—outsiders, at least to the extent that they will have no vested interest in the programs and policies whose economy, efficiency and effectiveness they are evaluating.

Finally, from the same report, the Governmental Affairs Committee wrote, in 1978:

Above all, the Inspector and Auditors General created in this legislation would have the requisite independence to do an effective job.

How does this nominee measure up to the standard of independence and objectivity?

First, he describes himself as an ideological zealot, and it was clear from the testimony that this self-analysis was not limited to the zealous pursuit of waste and fraud.

On page 52 of the RECORD Senator EAGLETON asked the following about a column that the nominee wrote:

Senator EAGLETON. Isn't the tone of that column from which I quote, "zealous, sweetheart disposition; overly favorable terms to zealots, stocked key government offices, et cetera," isn't the tone of that column a little bit like the tone of this Reagan victory newsletter from Capital Legal Foundation?

Mr. RICHARDS. I don't think so, Senator. I am a zealot.

Senator EAGLETON. You are?

Mr. RICHARDS. Yes, I am. I pursued the things I was doing with a great deal of zeal.

Senator EAGLETON. Would you consider yourself to be an ideological zealot?

Mr. RICHARDS. In certain matters, yes.

Senator EAGLETON. Would you consider yourself to be an ideologue?

Mr. RICHARDS. Sometimes on certain matters, yes.

On page 57 of that same transcript after Mr. Richards said that he a zealot against fraud, waste and abuse, I asked him:

Senator LEVIN. You are also a zealot on lots of things; lots of ideological issues, even a zealot of fraud, waste and abuse.

And I asked him:

You are a zealot, aren't you, policy-wise?

Mr. RICHARDS. I guess it depends on your point of view, but I am a zealot, and I admit to it. I pursue my philosophies with a great deal of zeal, Senator.

As an Inspector General, as you know, the Inspector General is not generally involved in making policy. That belongs to the Secretary and his line of assistant secretaries.

Senator LEVIN. The question is whether or not you would be able to keep your zealous—in your words—ideological beliefs away from that office any more than the people that you accused the Carter administration of appointing were able to keep away from their office.

Mr. RICHARDS. I would probably succumb to those same human failings, Senator.

Webster's Thesaurus' definition of "zealot" is basically the same as that of other dictionaries, and give the definition of fanatic as the principal meaning of the word "zealot."

For this nominee for Inspector General, whose independence and objectivity is the most critical hallmark, to describe himself as an ideological zealot it seems to me in and of itself reflects an insensitivity to the needs of this job and shows a lack of qualification for this particular job.

Mr. President, his objectivity, his appearance of objectivity, has been influenced by the doctrinaire ideological zealousness that he has shown.

The Senator from Alaska a moment ago said that he does not see any problem in the definition that the nominee has given in terms of groups that he calls environmental extremists, that his definition of environmental extremists in those groups sounds pretty good.

It is the application of that definition that I challenge. It is the conclusion that this nominee reaches, the group such as the Sierra Club, the National Wildlife Federation are environmental extremist groups.

That is what Mr. Richards says about the National Wildlife Federation and the Sierra Club as follows in the transcript. We asked:

Do you consider those two organizations environmental extremist organizations?

And he said:

I think they take some extreme positions on environmental matters.

Senator LEVIN. You described them as environmental extremist organizations. Do you stick by that description?

Mr. RICHARDS. Yes.

First of all, the National Wildlife Federation is known to all of us, and I do not think that federation would be described by any Member in this Chamber as being an environmental extremist organization.

The fact that he, from his ideology, reaches the conclusion that they are says something about the objectivity of this particular nominee.

As a matter of interest, Mr. President, the National Wildlife Federation associate members, according to their own poll, voted 2 to 1 for President Reagan over President Carter in the 1980 election, hardly an indication of an environmentally extreme organization as described by this nominee.

Third, Mr. President, there is other evidence that the nominee does not measure up to the standard of independence we should require of Inspectors General.

He first applied to be Inspector General of the Department of the Interior. However, that was stopped by the White House. The White House rejected this proposal—and these are Mr. Richard's words on page 56 of this transcript:

. . . Because they felt that the relationship between Jim Watt and I was too close and I could not maintain the independent relationship required of an Inspector General.

Then Senator EAGLETON asked him the following question:

Is it not true that Secretary Watt has been named by the President to be the Cabinet coordinator for energy policy matters?

Mr. Richards said yes, he had heard that.

In other words, Mr. President, he was disqualified by the White House for not having the appearance of independence which would be required of the Inspector General of the Department of the Interior because of his close personal

relationship with Mr. Watt, and yet here it is that he is being nominated to be Inspector General of the Department of Energy, and the same Secretary Watt has been named by the President to be Cabinet coordinator of energy policy matters.

The White House logic was good in the first instance in saying that they would not nominate Mr. Richards for inspector General of the Department of the interior because of his close relationship with Secretary Watt. That logic should carry forward and disqualify Mr. Richards for the same inspector generalship in the Department of Energy when Secretary Watt has been named Cabinet coordinator for energy policy matters.

Finally, Mr. President, Mr. Richard's view of the Inspector General's job does not give us much assurance that he understands the independent nature of the job.

On pages 60, 61, and 62 of this transcript over and over again Mr. Richard said that he hoped to be part of a management team in the Department of Energy, a management team.

I would suggest that the Inspector General is supposed to be independent of the management, not antagonistic toward the management of the Department of Energy, but independent of that management.

Mr. President, doctrinaire zealots, partisan ideologues and management team members are not the stuff that Inspectors General should be made of. This is not a personal matter. It has nothing to do with the character or integrity of the nominee. I have no doubt of either. I think he is well qualified for a policy position in this administration.

It has to do with what we believe the Inspector General should do. So while it is not personal, and while it has nothing to do with character and integrity, it has everything to do with independence and the appearance of objectivity that Inspectors General should have.

I thank the Chair and I thank my friend from Missouri for yielding.

Mr. EAGLETON. I yield 5 minutes to the distinguished Senator from Florida (Mr. CHILES).

Mr. CHILES. I thank the distinguished Senator from Missouri.

I rise to oppose the nomination of James Richards. In doing so, I want to remind my colleagues that Inspectors General were intended to be different from executive branch policy positions which require advice and consent from the Senate.

The Congress established different standards for Inspectors General when it passed the Inspectors Generals Act in 1978.

They were to be individuals of demonstrated ability in the areas of audit and investigations—we wanted professionals.

They were to be individuals chosen "* * * without regard to political affiliation * * *." And most importantly they were to be individuals capable of exercising independent judgment.

This quality of "Independent judgment" is crucial if the balance struck in the act between the head of departments and the Congress is to be maintained.

While the act states that an Inspector General shall be under the general supervision of an agency head, it explicitly notes that an agency head shall not prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation. Moreover, the Inspectors General are to report to the Congress every 6 months in carrying out their responsibilities.

Recall the reasons behind why we created Inspectors General. We wanted to put a thorn in the side of agencies. We wanted an irritant in the agency which would point out fraud and waste.

We all know how difficult it is for a Cabinet Secretary to tell on himself. That is a natural human problem. We wanted the Inspectors General to be there unconstrained and free to point out the problems.

The administration itself has pointed to the importance of this independent character for IG's by declaring the President's intent to name people "meaner than a junkyard dog" to these positions.

I know a little something about junkyard dogs. What makes them mean is that they are always hungry. And they fight. I agree that is kind of what we should have as Inspectors General.

But I do not believe Mr. Richards' temperament can be described as hungry or combative. This nominee could be better characterized as a poodle than a junkyard dog. That is not what the Congress intended for this job.

Mr. President, I feel strongly that the Inspectors General, creatures created by the Congress, are important actors in the fight against fraud and waste.

I personally conducted the confirmation hearings on all the Inspectors General nominated after the 1978 act was passed. Some were better than others. But all of them, including those that have been selected by this administration to date, met a basic standard of independent character.

I believe Mr. Richards' selection is a departure from this standard. He might be a fine candidate for this administration in some other capacity. But not as an Inspector General.

During confirmation hearings Mr. Richards stated how the White House believed his potential nomination as Inspector General for Interior was "out of the question." As Mr. Richards put it:

> Because they felt that the relationship between Jim Watt and I was too close and I could not maintain the independent relationship required of an Inspector General.

Changing the position from Interior to Energy does not, in my mind, change the essence of this judgment. Given Mr. Watt's role in energy policy as Chairman of the President's Cabinet Council on Natural Resources and Environment, Mr. Richards' background, and the lack of any real expression by Mr. Richards on the independent character of the Inspector General's Office is just not there, and I will vote against Mr. Richards for this particular post.

(Mr. SYMMS assumed the chair.)

Mr. EAGLETON. Mr. President, today the Senate considers the nomination of James Richards to be Inspector General of the Department of Energy. This is the first time that the Senate has debated an inspector general nomination, and it will be the first time that such a nomination comes to a rollcall vote.

But if we are breaking new ground in debating this nomination, it is because President Reagan has broken new ground by nominating Mr. Richards.

In enacting the Inspector General legislation, Congress stated its clear intention that the IG's must be men and women of ability and professional accomplishment. But Congress also intended that the IG's bring other qualities to their jobs; that they be nonpartisan, impartial, objective, nonideological. One concept runs through the statute and the legislative history: Independence—the independence needed to objectively audit and investigate departmental programs and the performance of departmental officials running those programs.

Against this backdrop, President Reagan has appointed an ideologue, a self-acknowledged "ideological zealot," a man with deeply held, doctrinaire views—on the whole range of energy and environmental issues. Unsurprisingly, Mr. Richards' passionately held views in the energy and environment area mirror the views held and policies pursued by key Reagan administration officials. And if Mr. Richards' doctrinaire views and dedication to the policy goals of the Reagan administration were not disturbing enough for an IG, Mr. Richards' longstanding friendship and working relationship with Secretary Watt compounds the danger of this nomination and erases any hope that he can perform with the independence that Congress expected of the IG's.

As the chief Senate sponsor of the 1978 Inspector General Act, I strongly oppose this nomination. It sets a terrible precedent and threatens to do lasting damage to the effectiveness and credibility of the Inspector General Offices.

A brief review of the history and purpose of the Inspector General Act helps make clear just how inappropriate this nomination is. Congress adopted the Inspector General Act because the executive branch's approach to audit and investigation activities was not working to combat fraud, waste, and mismanagement. In passing the Inspector General legislation, Congress opted for strong medicine, a substantial departure from "business as usual." The act centralized audit and investigative responsibilities in a single high-level official reporting only to the head of the department and to Congress. By doing so, the act eliminated the common practice followed by the agencies of having auditors and investigators reporting to the officials who ran the programs supposedly being audited and investigated.

But Congress also made it clear that the IG's were to have unique independence even from the head of the department. Section 3 of the act provided that the agency head could not—

> prevent or prohibit the inspector general from initiating, carrying out or completing

any audit or investigation, or from issuing any subpoena during the course of any audit or investigation.

Section 5 insured that the reports required of the IG's—both the routine semiannual reports summarizing the office's activities and the reports on "particularly serious or flagrant problems, abuses or deficiencies" would go to the agency head, then to Congress, but that the agency head must send the report along to Congress without change, although the agency head could add such comments deemed appropriate.

The legislation also establishes that the IG's occupy a unique position in the executive branch, even vis-a-vis the President. The legislation takes the unusual step of stating that while an Inspector General—

may be removed from office by the President, the President shall communicate the reasons for such removal to both Houses of Congress. (Section 3(d).)

Congress included these provisions so that the inspectors general would have unique independence. The Senate committee report on the legislation makes these significant observations:

The inspector general's authority to initiate whatever audits and investigations he deems necessary or appropriate cannot be compromised. If the head of the establishment asks the inspector general not to undertake a certain audit or investigation, or to discontinue a certain audit or investigation, the inspector general would have the authority to refuse the request and to carry out his work. Obviously, if an inspector general believed that an agency head was inundating him with requests in certain agencies to divert him from looking at others, this would be the kind of concern that should be shared with Congress. (Page 9.)

* * * * *

Even if the requirement [for the President to communicate his reasons for removal to Congress] places some constraints on his removal power, the Committee believes that the requirement is justified and permissible. [Supreme Court cases] have made it clear that limitations on the removal power are permissible with respect to those offices whose duties require a degree of independence from the executive. The Committee intends for the inspector general to have that measure of independence. (Page 26.)

The provisions already discussed illustrate the institutional relationships and independence that Congress envisioned for the IG. The legislation also includes provisions dealing directly with the personal qualifications of the IG's.

IG's are to be appointed "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration, or investigations".

Unlike most other Presidential appointees, they were prohibited from engaging in partisan political activities.

The overall intent of the legislation is clear beyond dispute. As the committee report indicates, Congress

want[ed] inspectors general of high ability, stature and an unusual degree of independence—outsiders, at least to the extent that they will have no vested interest in the programs and policies whose economy, efficiency and effectiveness they are evaluating (Page 9).

The evident congressional concern about the kind of people who would become IG's is understandable. Congress was making the IG's the cutting edge in the effort to combat fraud, waste, and mismanagement in the Federal Government given their extraordinary independence and power. Congress recognized that, given relatively limited resources and a broad array of programs to oversee, the IG's would inevitably have enormous discretion in setting their priorities and using their powers. Those powers should be exercised by people whose independence and objectivity was beyond question, people who had no personal or ideological axe to grind.

This review of the IG statute and the legislative history should remind the Senate of the full scope of its responsibility today. The IG's occupy a unique place in the executive branch: They are not policymaking officials, in a very real sense, they are Congress men and women as well as the President's. What may be completely adequate for a policymaking official may not suffice for an IG. Moreover, the President is not entitled to the same wide latitude which the Senate grants him in nominations to policymaking posts. No one can quarrel with the idea that the President is entitled to policymakers who reflect his ideological orientation. But the Inspectors General are not policymakers, and these important positions are not appropriate for "ideological zealots."

Which brings us to Mr. Richards.

For the 3 years prior to his nomination, Mr. Richards has been vice president and legal director of two legal foundations: Capitol Legal Foundation and the National Legal Center for the Public Interest (NLCPI). Capitol and NLCPI are a part of a recently established network of affiliated legal foundations. James Watt, the current Interior Secretary, is the best-known alumnus of this network of legal foundations. Mountain States Legal Foundation, which Watt directed, is the best known link in the chain.

According to a June 2, 1980, press release:

NLCPI and its affiliated foundations seek a balanced perspective in the tradition of American free enterprise principles on broad public-interest issues in the courts and regulatory agencies. The Centers undertake legal actions dedicated to the preservation of sound economic growth, equal opportunity, private property rights, and provide responsible and balanced spokesmanship based on traditional American values.

The legal battles fought by the centers included trying to stop efforts of environmental groups to impose environmental impact statements for the United States exports to foreign nations; affirming the use of Puget Sound for unloading Alaskan oil tankers; easing restrictions on nuclear plants and affirming the constitutionality of the Price-Anderson Act, which limits liability for nuclear accidents. There is no question that the foundations have uniformly advocated the probusiness, prodevelopment, antienvironment, antiregulation side of legal disputes. This is not surprising, given the purposes for which the foundations were created. A 1975 NLCPI statement notes that:

Extremists in the environmental movement must be effectively opposed in the courts. Government bureaucrats who persist in their bias against the private sector must be taught the rule of law in the courts if private institutions are to survive.

The positions advocated by the foundations are also not surprising given who funds them. A. O. Sulzberger of the New York Times observed in 1979 that Dow Chemical Company was NLCPI's largest contributor ($25,000) and that 60 percent of the NLCPI budget comes from 330 large and small companies, including the three automakers, such oil companies as Texaco, Exxon, Gulf, and Mobil and a spread of other companies in fields as varied as steel and potatoes.

Capitol Legal Foundation has apparently not had as diversified a funding base. According to a Washington Star report, Capitol received 44 percent of its 1980 funds, or $135,000 from the Scaife Family Charitable Trust, (this trust is the principal stockholder of Gulf Oil), and 13.5 percent or $40,000 from Fluor Corp., a diversified energy holding company, whose vice president has been chairman of the board of Capitol.

A series of statements by representatives of the foundation provide some insight into the ideological zeal of the organizations and their principal players (including Mr. Richards).

Let me read an illustration from the Capitol Legal Foundation's November 12, 1980, newsletter entitled, "Reagan Victory Effect on Public Interest Law Groups." Capitol, of course, is the foundation that Mr. Richards was the vice president and legal director for 2½ years:

Reagan's victory, reflecting in part a substantial shift in public opinion toward the center or right of our political spectrum, will substantially increase attacks by movement of the left public interest law groups on American political, social and economic institutions. This is because:

1. These groups originated in opposition to Republicans in 1970 and flourished better under Republicans than Democrats.

2. Individuals who joined the Carter Administration will return to their public interest folds as the new administration takes office.

3. The Republican victory in the Senate has or will release from Senate staff positions many highly-trained dedicated, even zealous members of movement of the left, who will return to the groups that bred them, and/or housed them.

4. Funding for movement of the left's groups decreased under the Democratic administration, but will increase with the new administration as individual and foundation supporters prepare to oppose the new administration's policies.

5. Energies of many of these groups naturally increase when they are in opposition, rooted as some of them are in self-hatred and/or contempt of the system that created them. The effectiveness of the movement of the left groups is likely to increase because of the influx of experienced Senate and administration's staff.

An administration in power is always vulnerable to attack from outside, through the courts, the media and passive cooperation between second and third-rank members of

the fifth estate, i.e., the bureaucracy. Accordingly, we anticipate that centrists and right-of-center public interest groups will have to play a much more active role in the next four years in order for them to represent their constituency adequately.

Let me read from Capitol Legal Foundation's year end report, January 14, 1981. After reviewing their litigation (at least some of which seems to be quite useful), the report goes on in a section entitled, Nader Network Report:

We completed our report on Nader's network at the end of the year. Several publishing groups and columnists are interested in it. After it has been reviewed by outside counsel, we will endeavor to see that it is disseminated as widely as possible. We believe it will change somewhat the public's perception of Mr. Nader and his myrmidons.

There is evidence that the foundation is quite preoccupied with Mr. Nader. In another letter, the foundation's president writes:

I am pleased to report that the Nader study will be completed in draft form by the first week in October. Portions of the report have already proved useful. For example, the President of Standard Oil will debate Nader on the Donahue show. They were delighted with the complete dossier we supplied them on his organization's finances and compliance with the law. At least two publishing houses have shown some interest in publishing it and I expect it will create more than a little stir when it is published.

These are the organizations where Mr. Richards worked for the past 3 years, and it is fair to attribute to him the views and attitudes that these statements reflect. Mr. Richards was not one lawyer working in a 200-man law firm or a large corporation where he can convincingly disassociate himself from statements made by the top people. Both Capitol Legal Foundation and NLCPI were very small organizations. Capitol, in 1980, grew from one lawyer—that was Mr. Richards—to three full-time lawyers. NLCPI also had a very small staff, numbering eight—four professional and four support, as of 1979.

Moreover, Mr. Richards is no recent law graduate who gravitated to the only job he could find. He was an accomplished lawyer with experience in both Government and private practice who chose to go to work for two new right-wing legal foundations at salaries of roughly $30,000 a year, when he undoubtedly could have earned a great deal more money, because he believed fervently in their causes. Deep convictions are to be admired—I hold some myself—but it cannot be gainsaid that Richards is an ideologue who strongly espouses the same kind of views that we have heard so far.

But we do not have to derive Mr. Richards' views from those of the groups with which he was affiliated. We have his own words in testimony before the Governmental Affairs Committee; in a column entitled. "Legal Jargon" that he contributed regularly to Oil and Gas Reporter, a trade publication for the oil and gas industry; and in other written work.

For example, in a January 1981, column Mr. Richards describes litigation which delayed the completion of a refinery near Portsmouth, Va. He writes:

The end result is that the first oil refinery on the East Coast in almost a quarter of a century is still far from being completed * * * If this pattern continues and a few environmental zealots are allowed to continually obstruct any real progress, we are in for more long gasoline lines and more energy shortages.

Then he goes on:

One last problem bears mention. The current administration (the Carter administration) stocked key government offices with members of these environmental extremist organizations. Thus, the Department of Justice * * * which is staffed by lawyers from the Sierra Club, the Natural Resources Defense Council, the National Wildlife Federation, and similar groups. As a result, in the past four years, we have seen some "sweetheart" settlements of law suits brought by former associates of these Justice lawyers against government agencies * * * Hopefully, with a change of administration, it may not be necessary for this foundation to intervene in order to assure that issues are fairly litigated, but it appears that new life may be breathed into the litigation strategy when these government lawyers go back to their former positions in the environmental community.

I think it is appropriate to note the resemblance in theme and tone between Mr. Richards' column and the Capitol Legal Foundation's victory letter.

In 1977, working as a consultant to the NLCPI, Mr. Richards wrote a memorandum on the subject of "Legal Priorities Affecting Development of Energy Resources in the Rocky Mountain West." This memo helped lay the groundwork for the creation of Mountain States Legal Foundation, headed by Mr. Watt. The memo, and I ask unanimous consent to place it in the RECORD, includes these comments:

Reviewing Hill against TVA, the snail darter case, before it reached the Supreme Court, Mr. Richards commented:

If both the Court's opinion and the proposed regulations are allowed to stand * * * this will mean that the now infamous furbish lousewort (a snapdragon) may kill the Dickey-Lincoln project in Maine. Honorable mention should go to Clokey's thistle in Nevada (a tumbleweed) and unnamed chickweed in Colorado. One only needs to take a look at the current endangered species list, and imagine trying to cope with the Utah Prairie Dog or the Salt Marsh Harvest Mouse.

* * * * *

Other Congressional enactments and their regulatory implementation tend to strangle operators like the independent oil and gas producers.

* * * * *

Much of the low-sulphur coal in the West lies beneath Indian Reservations or ceded lands. Many coal developers have learned that dealing with Indian tribes makes for a very uncertain world. * * *

It is particularly frustrating to be told about the evils of stripmining. If the cover on the land is sparse, it cannot be revegetated. If the cover on the land is adequate, it will be destroyed. In the final analysis, stripmining may be acceptable to the Indian tribes if the price is right, whereas it will never be acceptable to environmental extremists.

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

LEGAL PRIORITIES AFFECTING DEVELOPMENT OF ENERGY RESOURCES IN THE ROCKY MOUNTAIN WEST

INTRODUCTION

The National Legal Center for the Public Interest has commissioned this study to determine, as nearly as possible, the legal priorities affecting the development of energy resources in the Rocky Mountain West. Considerable attention was given to meetings and discussions with industry executives, Federal and State Government officials, attorneys prominent in the energy law field and public interest groups. Based on suggestions and leads gathered in the discussions and independent research, certain general problems and some rather significant legal issues have surfaced.

GENERAL OBSERVATIONS

If we should have learned any lesson from the oil embargo of 1973–74 and the natural gas shortage this past winter, it is that our traditional sources of energy are finite and rapidly dwindling. These crises have tended to focus national attention on energy and, as Emerson once observed: "Bad times have a scientific value. They are occasions a good learner would not miss." Yet to listen to some of the current rhetoric, one doubts that we have learned very much. There still seems to be a rather widely held view that energy fuel shortages are being engineered by a conspiracy among the major oil companies. Some of these people tell us that we have to break up the major oil companies and replace them with a Government owned energy development agency.

Others contend that we must fight a holding action, utilizing conservation methods and fossil fuels while we accelerate efforts toward the development of solar and fusion energy. A vocal few oppose all traditional means of energy development and promote zero growth/population as the answer. The direct personal use of energy to electrify and heat homes or for gasoline for the private automobile, constitutes only about one-third of national energy use. The other two-thirds is less visible and underestimated and misunderstood by the majority of our population. It is little wonder then that we have no national consensus of what our energy policy should be. Given this atmosphere, it is not surprising that our policy (if it is a policy) is to allow the Court to fashion ad hoc solutions on an uncoordinated and seemingly conflicting case-by-case basis.

ATTITUDES AND PROBLEMS

One of the most frequent opinions voiced by those surveyed was that even environmentally sound energy resource development is frustrated because of the myriad of Federal, State and local authorities and laws that must be dealt with. The provisions of the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*, and particularly Section 102(2)(C) thereof, was most frequently mentioned in this regard.

The required Environmental Impact Statement (EIS) often contains a wealth of irrelevant information, sometimes takes years to complete and is oftentimes the beginning of endless litigation. Government agencies think they now have the "hang of it" and tend to overkill the EIS process. On the positive side, many industry representatives have demonstrated a willingness to fully participate in the process, absorb the additional costs and delays, and use the final document as a planning tool. Some Federal Courts are beginning to hold that a relatively brief EIS will pass judicial muster. *See: Save Our Invaluable Land v. Needham,* — F.2d — (10th Cir. 1976) (57 page EIS held adequate); *Upper West Forks River Watershed Assoc. v. Corps of Engineers,* 414 F. Supp. 908 (N.D.W. Va. 1976) (15 page EIS held adequate); *Beaucatcher Mountain Defense Assoc. et al.*

*v. Coleman, et al.*, — F. Supp. — (W.D.N.C. 1976) (EIS briefly but adequately covered the alternatives.

Finally, if the Congress gets impatient with obstructive tactics, it has demonstrated an inclination to step in and exempt a project from the provisions of NEPA. *See:* P.L. 93–153, 87 Stat. 576 exempting the Trans-Alaska Oil Pipeline, and P.L. 94–207 (Feb. 4, 1976) exempting the control of starlings and blackbirds at Fort Campbell, Kentucky.

Given the seemingly self-cancelling aspect of many Congressional actions, some pundits are suggesting that "the Congress make love—not laws." The series of Court decisions involving the snail darter and the Tellico Project in Tennessee lends compelling evidence to this theory. When the third case in five years finally reached the Sixth Circuit Court of Appeals, the Court enjoined the Tennessee Valley Authority from all activities incident to the Tellico Project which might destroy or modify the critical habitat of the snail darter. *Hill v. TVA*, — F.2d — (6th Cir. Jan. 31, 1977). As a result, some ten to fifteen thousand three-inch fish have permanently halted a project that is 80 percent complete at a cost of almost 90 million dollars. The project was initially approved by the Congress in 1966 and construction commenced in 1967. One of the key aspects of the project was a dam which would augment flood control, provide recreation and hydro-electric power on the Little Tennessee River.

In 1971, the Environmental Defense Fund filed suit in U.S. District Court alleging that the EIS was not adequate. In *EDF v. TVA*, 339 F. Supp. 806 (E.D. Tenn. 1972), they obtained an injunction delaying the project for more than a year-and-one-half. This injunction was affirmed in *EDF v. TVA*, 468 F.2d 1164 (6th Cir. 1972). The EIS was then supplemented and the District Court found it to be adequate. 371 F. Supp. 1004, and the Sixth Circuit affirmed, 492 F.2d 466 (6th Cir. 1974). In the meantime, a University of Tennessee ichthyologist discovered the snail darter's presence in the river above the proposed dam. During this same time period, the Congress passed the Endangered Species Act, 16 U.S.C. Section 1531 *et seq*. They conveniently added a provision permitting the bringing of citizen suits. In early 1975, after NEPA had been complied with, the plaintiffs in the current suit petitioned the Interior Department to add the snail darter to the endangered species list. TVA protested this move but they were overruled by Interior and in late 1975 the snail darter was added to the list.

In early 1976, Hill and others then filed the present suit to enjoin the project on the grounds that it would destroy the critical habitat of the snail darter. The District Court refused to issue the injunction but the Sixth Circuit Court in *Hill v. TVA, supra*, reversed and issued the injunction. The Circuit Court went so far as to say that it would have issued the injunction even if the project had been 100 percent completed and the snail darter had been discovered the day before impoundment of water was to begin. Section 7 of the Act, which the Court held dictated the result, had virtually no legislative history. Ironically, the Congress continued to appropriate money for the project during all of the Court proceedings.

The Court also refused to find an exemption for the ongoing project. The U.S. Fish and Wildlife Service has now proposed regulations to implement Section 7 and these proposed regulations do not provide any exemption for an ongoing project. 42 Fed. R. 4868. (Jan. 26, 1977). If both the Court's opinion and the proposed regulations are allowed to stand, anyone finding an endangered species can stop a project at any stage. The Fish and Wildlife Service has also announced its intention to add approximately 1700 plants to the endangered species list. This will mean that the infamous Furbish lousewort (a snapdragon) may kill the Dickey-Lincoln Project in Maine. Honorable mention should go to Clokey's thistle in Nevada (a tumbleweed) and an unnamed chickweed in Colorado. One only needs to take a look at the current endangered species list, 41 Fed. R. 47180–98 (Oct. 27, 1976), and imagine trying to cope with the Utah Prairie Dog or the Salt Marsh Harvest Mouse.

Other Congressional enactments and their regulatory implementations tend to strangle operators like the independent oil and gas producers. Their rather simple operations are getting terribly complicated. They are regulated primarily by two arms of the Interior Department. The Bureau of Land Management (BLM) has responsibility for management of the surface and reclamation on Federal leases while the U.S. Geological Survey (GS) has responsibility for approval of drilling operations and compliance. New notices to lessees (NTL) by GS have dramatically increased the paperwork and reporting by lessees. For example, NTL–4 requires royalty to be paid to the Government for any vented gas on a Federal lease. One lessee had to take the following steps to remit a check for 65 cents on one of his leases:

1. Determine exact volume of gas vented;
2. Prepared statement of volume;
3. Enter volume on two monthly reports;
4. Prepare invoice for accounting purposes;
5. Allocate proportionate share of the 65 cents among his partners on the lease;
6. Mail all items;
7. GS acknowledge checks and send statement of account.

This simple process took approximately 90 days. Another lessee wanted to drill on his lease during the winter months. However, he was informed that he could not do so until archeological clearance was granted. BLM notified him that an archeological survey would not be acceptable while snow was on the ground. This meant he could not drill until summer. Because the price of interstate gas is rigidly controlled, these producers are unable to recover the extra costs incurred by delays and the hiring of more employees to handle the paperwork. Many of these regulatory burdens come at a time when operators are being urged to produce more from their leases and being threatened with cancellation if they do not. At the same time Interior Department has doubled lease rental fees as of Feb. 1, 1977.

Most observers are forecasting that the Congress will pass a strip-mine bill this year and the President has indicated that he will sign it. Issues such as restoration to original contour, disposal of waste material and surface owner consent are among the most troublesome from a development point of view. How these provisions are finally hammered out will have a great effect on the development of low sulphur coal in the West. Ironically, there is still abundant coal in the East which can be mined by traditional underground methods. However, because of its higher sulphur content, it is difficult to burn under current air quality standards. Utilities have been ordered by the Federal Energy Administration to switch from oil or gas to coal. EPA air quality restrictions and the direction to install expensive scrubbers are delaying the conversion.

The recent announcement by the new Secretary of Interior that all new Federal leases must have his personal approval has left Western coal development in a confused state. Some states have enacted new severance taxes which raise the cost of doing business. Montana's 30 percent severance tax is exhorbitant but coal continues to be mined there. These increased costs are passed along to the consumer and, if a highly restrictive strip-mine bill is passed, costs will escalate even further.

Proposed oil shale development is now in limbo. The development plans on tracts Ca and Cb in Colorado and Ua and Ub in Utah were recently granted a suspension by the former Secretary of Interior. Environmental organizations have challenged the suspension in U.S. District Court in Colorado. Developers privately concede that if the suspensions are lifted or found illegal, they will not make any more bonus payments and probably will turn their leases back to the Government. In any event, any meaningful development will require variances from air and water quality standards. A recent announcement that the new Administration will ask Congress for a publicly funded oil shale project may prove to be a mixed blessing. Meanwhile, the Interior Department is working on an EIS for an *in situ* sale on public lands. So far, the *in situ* technology seems to be the most promising.

Some of the significant legal issues were readily apparent while other complaints related mainly to conflicting and burdensome controls which are difficult to reach with traditional legal process. The issues discussed below are listed according to general categories which are determinative or closely related to energy resource development. In the judgment of the author, the resolution of these issues will have national significance.

WATER

Many traditional mining methods for the extraction of energy fuels and the related preparation or refining methods require substantial amounts of water. This is particularly true with respect to oil shale and coal. Water is a scarce and hotly contested commodity in the Rocky Mountain West. The recent drought in that part of the country has highlighted this factor.

Some energy developers have purchased considerable surface and storage water rights from traditional agricultural users. The conversion of these rights to industrial uses is causing thorny legal problems under the water appropriation doctrines of the Western States. Agricultural uses provide a substantial recharge of the ground water table while industrial uses, being more consumptive, do not. Adjudications for the conversion of these rights are in various stages. Generally, junior appropriators have vested rights in the return flow to the extent their rights may be adversely affected by a change in use. *See: Farmers Highline Canal v. Golden*, 129 Colo. 575, 272 P. 2d 629 (1954); *East Bench Irr. Co. v. State*, 5 Utah 2d 235, 300 P. 2d 603 (1956); *Spencer v. Bliss*, 60 N.M. 16, 287, P. 2d 221 (1955); *Quigley v. McIntosh*, 110 Mont. 495, 103 P. 2d 1067 (1940). However, waste water (that water that does not seep into the ground from irrigation and runs off in a waste ditch) is not subject to appropriation and one who has come to expect it acquires no rights to it. *Boulder v. Boulder and Left Hand Ditch Co.* et al., —— Colo. —— (1976) and *Application of Boyer*, 73 Idaho 152 248 P. 2d 540 (1952).

It has been reported that one major oil company has already adjudicated and converted its water rights in the Water Court in Western Colorado. Environmental organizations have made attempts to intervene in such proceedings and have tried to enlist the aid of local water users, city and county planners, hunting and fishing groups, or any others who may assist in blocking any energy development. These adjudications are much more complex than the simple explanations outlined herein. Nevertheless, these proceedings are critical to energy resource development and such decisions will be critical.

The application of Section 404 of the Federal Water Pollution Control Act amendments of 1972 (33 U.S.C. Section 1374) is raising great fears in the West. That Section grants authority to the U.S. Army Corps of Engineers to regulate the disposal of dredged

or fill materials in all the waters of the United States. The Corps was at first reluctant to extend its regulatory jurisdiction but was instructed by the Court to do so in *NRDC v. Calloway*, 392 F. Supp. 685 (D.C.D.C. 1975). The Government did not appeal this decision and it is now thought that a Federal net has been cast over every pond and puddle in the country.

As early as 1865 the Supreme Court equated navigation with commerce in *Gilman v. Philadelphia*, 70 U.S. 713 (1866). This view was expanded upon in *U.S. v. Appalachian Power Co.*, 311 U.S. 377 (1941), where the Court said that the power to protect navigability extends to any activity that has an effect on navigability. Environmentalists are pressing the Corps of Engineers to apply their permit systems to swamps and marshes located on private and public lands in the West in connection with various wetlands programs. If this is done, litigation is bound to follow.

Another round of controversial water decisions will be forthcoming as a result of the decision of the Supreme Court in *U.S. v. Akin*, 424 U.S. 800 (1976), holding that Indian reserved water rights may be adjudicated in State courts. In *Winters v. U.S.*, 207 U.S. 564 (1908), the Supreme Court decided that the United States impliedly reserved water for the Indians when the Indian reservations were created. The Federal Government, through the Secretary of Interior, owns these rights as trustee for its Indian wards, but until *Arizona v. California*, 373 U.S. 546 (1963), it was unclear as to what standard would be used to measure these rights. In that case the Court held:

"We have concluded, as did the Master, that the only feasible and fair way by which reserved water for the reservations can be measured is irrigible acreage." Id. at 600.

The Court later decided that other Federal reserved rights could be adjudicated in States like Colorado in *U.S. v. District Court for Eagle County*, 401 U.S. 520 (1971) and *U.S. v. District Court for Water Division No. 5*, 401 U.S. 527 (1971). Many Indian Tribes are now planning industrial, recreation or other economic developments and are contending that "irrigible acreage" is broad enough to include water for such activities. Many Western States want a strict interpretation of this phrase because otherwise their adjudicated priorities would be adversely affected. Yet to be decided is whether an energy developer with a lease for Indian mineral resources can rely on the Indian reserved water right.

As if to further complicate matters, the Supreme Court in *Cappaert v. U.S.* — *U.S.* — (1976), decided that the Federal creation of Devil's Hole as a detached portion of Death Valley National Monument in 1952, impliedly reserved enough unappropriated ground water to maintain the pool sustaining the desert pupfish. The Cappaerts were enjoined from pumping ground water for agricultural development on their ranch in nearby Nevada. Even more significantly, the Court held that the United States could establish a valid reserved water right without complying with State water laws. Indians will surely attempt to equate their reserved rights with those of the pupfish.

Since most streams in the West are already overappropriated, much litigation is anticipated. Many cases involved Indian Reservations, since much of the mineable coal lies beneath such lands.

In an attempt to block energy development, environmentalists have contended that water from Federal projects cannot be used for industrial purposes. Water from these projects is oftentimes necessary for any energy extraction in water-scarce areas of the West and normally a surplus supply is available. The test case for this theory was *EDF v. Morton*, 420 F. Supp. 1037 (D. Mont. 1976), which was decided late last year. The Court ruled on summary judgment that the Flood Control Act (33 U.S.C. 701–1 *et seq.*), the Reclamation Project Act (43 U.S.C. 485h(c)) and later Congressional language were broad enough to include the use of water for industrial purposes from such projects.

The case involved water option contracts from the Boysen and Yellowtail Reservoirs in Montana and was of great concern to Kerr McGee Corp. and American Metals Climax, Inc., who intervened. The Court rejected as premature the contention that each water option contract required a separate EIS, citing *Kleppe v. Sierra Club*, 96 S. Ct. 2718 (1976).

However, it has been reported that agreements have been signed which would prevent industrial use of water on the Savory-Pot Hook and Dolores Projects in Colorado unless expressly approved by local water users, the Governor and the Commissioner of the Bureau of Reclamation. These agreements are considered dangerous precedent, for they could be the basis for considerable leverage as to what kind of energy development might be permitted.

If the water projects suspended by the Administration are funded by the Congress, some interesting legal action might result if impoundment of the funds is attempted.

OIL AND GAS/OIL SHALE

One of the most frequent protests by independent oil and gas producers was the doubling of the rental rate on non-competitive oil and gas leases from $.50 to $1.00 per acre. This increase was first proposed by the Interior Department on Mar. 18, 1976, to be effective on July 1, 1976. The effective date was later determined to be Feb. 1, 1977. (42 F. Reg. 1032 (Jan. 5, 1977)). The Department cited the Mineral Leasing Act of 1920 (30 U.S.C. 181 et seq.) and Title V of the Independent Offices Act (31 U.S.C. 4836).

In 1960, the Congress amended the Mineral Leasing Act increasing the rental on non-competitive oil and gas leases from $.25 to $.50 per acre. The amendment was approved on Sept. 2, 1960, and those who had filed applications for such leases prior to that date but had not yet been granted leases filed suit to void such increases as to their applications. The Court in *Miller v. Udall*, 115 U.S. App. D.C., 317 F.2d 573 (1963), held that the increases applied to only those whose leases had been granted before Sept. 2, 1960, were exempt. The current increase imposed by Interior appears to be patterned after the 1960 amendment, except it is by regulation rather than by Congressional Act. The Interior Board of Land Appeals (who decided finally for the Secretary) recently held in *Raymond N. Joeckel*, 29 IBLA 170 (March 14, 1977), that the increase now in question has the same validity as a Congressional Act.

The Board cited *Hannifin* v. *Morton*, 444 F.2d 200 (10th Cir. 1971), where a rental fee for sulphur prospecting permits imposed by Departmental regulation was upheld. Mr. Joeckel made his offer in November of 1976 and in response to a notice of rental due, dated Dec. 17, 1976, he tendered the indicated rental computed at $.50 per acre. The Department then published the final regulations on Jan. 5, 1977. On Jan. 18, 1977, the Department notified Joeckel that he would have to tender $1.00 per acre rental fee. Joeckel refused to do this and did not have a lease on the effective date, Feb. 19, 1977. The Courts have held that the filing of an offer, although a prerequisite to the issuance of a lease, does not give an applicant a valid existing right to a lease. *Miller* v. *Udall*, *supra*, and *Hannifin* v. *Morton*, *supra*.

It would seem that innocent offerors who had their applications pending and had tendered the rental fee should not be penalized simply because the Department had not acted upon their applications before the effective date of the increase in rental fees. In an analogous situation, the rejection of competitive bids on the Outer Continental Shelf are reviewable under 5 U.S.C. 701 *et seq.* and are not committed by law to agency discretion. *Kerr McGee v. Morton*, 527 F.2d 838 (D.C. Cir. 1975). If an applicant could produce evidence that everything was in order but that the Department issued other leases applied for later than his, he might be able to show that the failure to act was arbitrary and capricious. Even broad discretion has its limits. *See* e.g. *James A. Krumhausl*, 19 IBLA 56 (1975) and *G. W. Anderson*, 21 IBLA 328 (1975).

A significant decision involving oil shale placer mining claims has recently been issued in the U.S. District Court in Colorado. In *Shell Oil Co. and D. A. Shale, Inc. v. Kleppe*, Civil Action No. 74–F–739, Jan. 17, 1977, Judge Finesilver ruled that Interior had erred by invalidating six oil shale placer mining claims filed before 1920. The effect of the decision potentially extends to about 50,000 old placer mining claims covering at least 500,000 acres of Federal land in Colorado, Utah and Wyoming according to the opinion.

Under the mining laws, a locator who discovers a valuable mineral deposit is entitled to work his claim and proceed to a patent. In order to do so, he must meet the "prudent man" test, i.e. ". . . where minerals have been found and the evidence is of such character that a person or ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success, in developing a valuable mine . . ." *Castle* v. *Womble*, 19 L.D. 455, 457, (1894). This test has been approved several times by the U.S. Supreme Court. The test was later refined to include the "marketability test", i.e., that the mineral can be removed and extracted at a profit. *United States v. Coleman*, 390 U.S. 599, 602–603 (1968). But the Interior Department had ruled in *Freeman v. Summers*, 52 L.D. 201 (1927) that the test for oil shale was essentially whether it constituted a valuable resource for a *future* profitable market. Oil shale had been withdrawn from location by the Mineral Leasing Act of 1920 (30 U.S.C. Section 181 *et seq.*) but literally thousands of claims located prior to Feb. 25, 1920, had been validated and patented by the Interior Department under the Freeman test until 1964, when Interior began contesting the claims. It was as a result of such a contest that the Interior Board of Land Appeals finally ruled in *United States v. Frank W. Winegar*, et al., 16 IBLA 112, 81 I.D. 370, (1974), that the special oil shale test in *Freeman* would be overruled.

It was this decision (Winegar) that Judge Finesilver reversed in *Shell Oil Company and D. A. Shale, Inc. v. Kleppe, supra*. Judge Finesilver revalidated the six claims involved here on several grounds:

a. Congress specifically explored the special test for oil shale after *Freeman* v. *Summers*, *supra*, had been decided and declined to change the test and thus approved or ratified such a test.

b. The Interior Dept. was estopped from overruling *Freeman* on the traditional doctrine of "equitable estoppel".

c. The Interior Dept. did not establish *a prima facie* showing of the invalidity of the claims. The Government will undoubtedly appeal this case to the Tenth Circuit Court of Appeals. The ruling has national significance in the energy and mining field.

AIR QUALITY

Environmental organizations have been using the Clean Air Act of 1970 (42 U.S.C. Section 1857, *et seq.*) to block development of energy resources. The initial attempt by the Environmental Protection Agency (EPA) to implement the "significant deterioration" provisions of the Act was immediately challenged in *Sierra Club* v. *Ruckelshaus*, 344 F. Supp. 253 (D.C.D.C. 1972), *aff'd. per curiam*

*in an unreported opinion* 41 U.S.L.W. 2255 (D.C. Cir. 1973), *aff'd. by an equally divided Court, sub nom. Fri.* v. *Sierra Club*, 412 U.S. 541 (1973). The narrow and confusing District Court opinion is still being debated and interpreted. The Court spoke of the issue as being "non-degradation" but ordered EPA to issue regulations to prevent "significant deterioration" of air quality. Obviously these two terms are not synonymous. EPA issued the final regulations (40 CFR Section 52, 1974) which were immediately challenged by the Sierra Club and affected industries in several Circuit Courts of Appeal. After these new challenges were consolidated in the D.C. Circuit Court that Court upheld the regulations in *Sierra Club* v. *EPA*, 540 F.2d 1114 (D.C. Cir. 1976), U.S. App. pending.

However, that Court contributed to the confusion by refusing to overrule the earlier decision of *Sierra Club* v. *Ruckelshaus, supra.* Environmentalists are insisting that Western states, where industrial development is at present basically confined to the metropolitan areas, classify virtually all areas as Class I—the most restrictive designation. The Act provides that each State may enact air quality standards that are more restrictive than the national standard which is initially Class II under the EPA regulations. If they are successful in accomplishing this goal in States like Colorado, Montana, or Wyoming, most future development of energy resources would require variances from State authorities. It is of little consolation that most litigation would be in State rather than Federal Courts. Congress is currently considering proposed amendments to the Act with the focus on automobile emissions.

Another difficult set of issues is posed as a result of the Supreme Court's decision in *Union Electric* v. *EPA*, 96 S. Ct. 2518 (1976), holding that economic or technological infeasibility may not be considered by EPA in evaluating a state requirement that primary ambient air quality standards be met in the mandatory three years. The Court did indicate that there will be opportunities to consider such factors in hearings on the State Implementation Plans, EPA's drafting of compliance orders or State applications for variances. It is anticipated that considerable litigation will ensue regarding many of these actions.

GEOTHERMAL RESOURCES

One of the important interpretations of the Geothermal Steam Act of 1970 (30 U.S.C. Section 1001 *et seq.*) was recently handed down by the Ninth Circuit Court of Appeals in *U.S.* v. *Union Oil Co. of California, et al.*, — F. 2d. — No. 74–1574, Jan. 31, 1977. Under that Act the Congress left open the question of whether mineral reservations in patents previously issued pursuant to the Stock-Raising Homestead Act of 1916 (43 U.S.C. Section 291 *et seq.*) reserved to the United States the geothermal resources under such lands. The District Court granted the defendants' motion to dismiss, 369 F. Supp. 1289 (N.D. Cal. 1973), but the Ninth Circuit reversed, holding as a matter of law that the mineral reservations in such patents included geothermal resources.

When the Congress passed the Act in 1970 it realized the geothermal steam was an environmentally clean and promising method of producing electricity. It was also aware that much of the resource was beneath the surface of lands that had been patented to private parties with a reservation of coal and other minerals to the United States. Since opinion was divided as to whether geothermal resources are minerals, the Congress simply provided that they shall be considered minerals in the future but whether they were minerals under earlier acts such as the Stock-Raising Homestead Act of 1916 was for the Courts to decide.

The Court candidly admitted that there was nothing in the language or legislative history of that earlier Act to indicate that the Congress in 1916 had ever heard of geothermal resources. In fact, the Court candidly observed:

"Congress was not aware of geothermal power when it enacted the Stock-Raising Homestead Act in 1916; it had no specific intention either to remove geothermal resources or pass title to them." *Id.* at 3.

As recently as 1965, the Interior Department had taken the position that geothermal resources were not minerals because they were basically steam or water. Nevertheless, the Court found that such resources are minerals and were intended to be reserved to the United States.

The Court reasoned that the Stock-Raising Homestead Act was designed to provide patents for large tracks of semi-arid land for agricultural and livestock purposes; that mineral fuels were intended to be reserved; and that geothermal steam did not contribute in any way to the agricultural use. Carried to its logical extreme, this might mean that water is a locatable mineral!

This decision, unless reversed by the Supreme Court, will subject any further development of geothermal resources beneath lands originally patented by the Government to extensive Government regulation. This particular litigation arose in areas known as the geysers in Northern California, but will have an effect on geothermal resources beneath lands in Nevada, Oregon, Idaho, Utah and other Western States.

The question of liability for damages to the surface was left open by the Court on remand. Thus, Union Oil will be liable for damages to the owner of the surface and must comply with Government regulations in exploration and production and will have to pay a royalty to the Government.

COAL

Much of the low sulphur coal in the West lies beneath Indian Reservations or ceded lands. Many coal developers have learned that dealing with Indian tribes makes for a very uncertain world.

In *Crow Tribe v. Kleppe*, CV–76–10, filed Feb. 3, 1976, in U.S. District Court in Billings, Montana, the Crow Tribe is challenging coal prospecting permits and surface mining leases previously approved by the Bureau of Indian Affairs (BIA) and the Secretary of Interior. The Tribe alleges that:

1. The Secretary violated his own regulations in approving the leases;

2. There was no compliance with NEPA;

3. The Secretary violated his trust responsibility toward the Tribe in allowing strip mining which would disturb the surface of much of the Reservation and change the Tribe's culture.

Ironically, most of the development was sought by the Tribe in the late 1960's in order to increase the income yield on reservation lands. Much Indian land and ceded land in Montana is leased to non-Indian agricultural and livestock interest, which provides a much lower income yield than would coal and mineral development. Some of the prospecting permits were issued before the passage of NEPA and some leases were approved at a modest royalty rate before the oil embargo of 1973–74. During and after the oil embargo, interest in and the price of Western coal increased due to it's ready accessability and low sulphur content.

In *Cady v. Morton*, 527 F.2d 786 (9th Cir. 1975), the Friends of the Earth and some owners of ceded lands sued the Crow Tribe and the Secretary to invalidate surface mining leases granted to Westmoreland on the grounds that NEPA had not been complied with. The Tribe and the United States contended that the plaintiffs lacked standing to challenge NEPA because of the unique status of Indians. In its decision, the Ninth Circuit held that there was standing and NEPA did apply. Actually, the Crows had already renegotiated their leases with Westmoreland to reflect a much higher post-oil embargo price and wanted to go through with the deal. A new EIS has now been completed on the Westmoreland leases and presumably surface will now proceed. However, the Tribal Federal Jurisdiction Act (28 U.S.C. Section 1362) allows the Tribe to file suit in U.S. District Court in its own right when the Federal Government refuses to do so.

Thus the Tribe is now suing the Secretary to void the other low royalty leases in *Crow Tribe v. Kleppe, supra*, whereas it had taken the opposite position in *Cady v. Morton, supra.* The real difference between the two situations, one suspects, is that the Westmoreland leases reflect post-oil embargo coal prices whereas the other leases now being challenged do not. The coal developers, who were encouraged by the Tribe and the BIA to submit high bonus bids for the right to prospect, are caught in a none too subtle squeeze. The Tribe has suggested that they might be interested in renegotiating some of the challenged leases at much higher prices and with more control over production. They have not suggested anything about returning any of the bonus bids.

It now seems pretty well settled that NEPA does apply to significant developments on Indians lands. At the urging of the Pueblo Indians of Tesuque in New Mexico, the Secretary took the position that NEPA did not apply because of the unique status of Indians. In *Davis v. Morton*, 469 F.2d 593 (10th Cir. 1972), the Court swept aside this argument and applied NEPA.

The Crows and other Tribes have also been urging the Secretary to approve Indian ordinances permitting the imposition of their own severance taxes on coal and other mineral development conducted on Tribal lands. Considering that the Secretary of Montana already has a 30 percent severance tax which it imposes upon companies working on Indian Reservations there, another tax by the Tribes in addition could drive the price of Montana coal right into the clouds. Such ordinances, if approved by the Secretary, would undoubtedly be challenged in Court. Recently, a Tribe in Montana filed and then withdrew a suit to force this issue. Most assuredly they will be back for another try if the Secretary refuses to approve the proposed ordinance.

It is particularly frustrating to be told about the evils of strip-mining. If the cover on the land is sparce, it cannot be revegetated. If the cover on the land is adequate, it will be destroyed. In the final analysis, strip mining may be acceptable to the Indian Tribes if the price is right whereas it will never be acceptable to environmental extremists.

Mr. EAGLETON. I could go on, but the point should be clear. Mr. Richards has strongly held views on virtually every issue in the energy and environment area. He has studied, litigated, opined at great length. Like them or dislike them. vou know where he stands—on everything. For most positions, that is a real asset. For the Energy Inspector General, it is not.

Given his passionately held views, I see no possibility that Mr. Richards can approach this job with the objectivity Congress envisioned. But for those not yet convinced, there is the additional problem of the nominee's long-standing friendship and association with Secretary Watt. Testifying before the Governmental Affairs Committee. Mr. Richards acknowledged that Secretary Watt wanted him to be Inspector General at Interior, and that he wanted the job. He and Mr. Watt have been friends for years, having worked together as Senate staffers, at Interior. and in the network of legal foundations which included

Capital and Mountain States. However, according to Mr. Richards, the White House said it was "out of the question * * * because they felt that the relationship between us was too close and I could not maintain the independent relationship required of an Inspector General."

I think that the White House was completely right in its concern. And I appreciate Mr. Richards' willingness to advise the committee of how the selection process proceeded. But obviously, the independence problem is not solved by placing Mr. Richards at Energy. There is a significant jurisdictional overlap between the Departments of Interior and Energy, and Mr. Watt plays a leadership role in the whole energy and natural resources area.

The White House went halfway to a good solution; they should have gone all the way.

These concerns about an ideological inspector general, passionately committed to pursuing policy objectives, without the independence and impartiality which Congress envisioned—are these just academic issues, of interest only to the National Academy for Public Administration or Common Cause? In fact I believe that these concerns are very practical and serious.

Testifying before the Governmental Affairs Committee, in response to my questions, Mr. Richards stated that he believes that the energy-producing companies have been "unduly burdened," even "harassed" by the Federal Government (p. 53) and that this overregulation and harassment was certainly a contributing reason for our energy shortage. This is certainly a defensible position, although it is one that I personally reject. Most students of our energy policy over the past 20 years have concluded that the Congress and the White House have been unwisely deferential to the wishes of the oil companies, sometimes, as in 1957 when we placed import quotas to limit cheap foreign oil so as to hold up the price of domestic oil, the results have been tragic. But I recognize that this is arguable. But should the Inspector General have passionate, doctrinaire views on these issues?

As Inspector General, Mr. Richards would have responsibility for auditing and investigating the performance of the energy companies on multimillion-dollar contracts awarded by DOE. Would he do a hard-nosed job of detecting possible cases of fraud, waste, and mismanagement, or would he regard auditing and investigating these contracts as another example of the Government harassing energy producers?

Congress envisioned that the Inspector General would be the focal point for receiving "whistleblower" complaints about fraud, waste, and mismanagement in the Department. Would any midlevel Energy Department employee feel comfortable going to Mr. Richards with evidence of wrongdoing by a high Department official, given his allegiance to the goals of the Reagan administration and his close relationship to Mr. Watt? Would you, Mr. President?

Mr. Richards is a devoted adversary of environmental extremist groups. Could he be responsive to their complaints about fraud, waste, or misconduct at the DOE that they may discover during their service on advisory boards to the Department?

Another deadly serious practical problem arises from another Mr. Richards' columns. As Inspector General, Mr. Richards would have access to all the papers, documents, records, et cetera of DOE, regardless of sensitivity or confidentiality. He would also have subpena power to seek all material needed from third parties, like DOE's contractors, to perform the audit and investigative functions of his office. These are substantial parts of the Inspector General's power, and of course his exercise of discretion.

How would Mr. Richards handle them? He has written a column disturbingly on point, dated April 1980.

In this column, Mr. Richards expressed concerns about two cases involving different aspects of disclosure and protection of business information. In discussing the first case, Mr. Richards said that the Department of Enegry had been overly restrictive in refusing to grant companies access under the Freedom of Information Act to memoranda from a DOE regional counsel and DOE auditors.

One of the reasons cited by the Department for failing to disclose the material was that it related to an active investigative file. The second case concerned the Department of Energy's exercise of subpena power, which was contested by private oil companies but later upheld by U.S. Court of Appeals for the District of Columbia Circuit. With regard to that case, Mr. Richards took the position that DOE's exercise of subpena authority was beyond the construction of statutes and failed to protect the confidentiality of sensitive business information.

In other words, despite the fact that DOE has frequently resembled a sieve in the past, with internal memoranda finding their way to the American Petroleum Institute with monotonous regularity, Mr. Richards favors more disclosure of internal DOE memoranda. Despite the fact that DOE has been generally ineffective in monitoring contractors' performance, Mr. Richards advocates a more restrained use of subpena power by DOE. In his mind, it is just another part of the harassment that the Government continually inflicts on the beleaguered energy producers. Is this an attitude we feel comfortable with in the Inspector General at the Department of Energy?

Since we can assume that Mr. Richards, if confirmed, will not engage in audit or investigative work which might constitute "harassment" in the eyes of the energy producers or the Reagan administration, what will he focus his efforts on at DOE? One possibility is that he might channel the limited resources of his office toward ferreting out fraud, waste, and mismanagement in programs which a person of his philosophical bent dislikes. Through DOE, the Federal Government has made some efforts—not enough—in the area of energy conservation. DOE has responsibility for the Federal Government's underfunded efforts in the developing solar energy and other renewable energy sources. DOE has responsibility for administering the Government's efforts to provide low-income energy assistance and for the weatherization program.

Obviously, these programs are not flawless. A diligent, impartial Inspector General might well uncover problems of fraud, waste, and mismanagement. But these are nickel and dime programs compared to the big research contracts at DOE, particularly in the nuclear area. Given Mr. Richards "ideological zealotry," can Congress—and the public—possibly be confident that Mr. Richards will set priorities and allocate resources strictly on the basis of maximizing the effort against fraud, waste, and mismanagement? Or would Congress and the public fear—with good reason—that Mr. Richards was going easy on matters involving big bucks and big companies, and coming down hard on penny ante programs which he ideologically disliked?

These concerns are not academic or theoretical, Mr. President. They are as real as the front-page story in Friday's Washington Post about the Reagan administration's proposed new round of budget cuts. As my colleagues know, those proposals include an accelerated plan for eliminating the Department of Energy—as well as the Department of Education.

I should digress to say that I have been very critical of DOE in the past, and I am not at all wedded to its current structure. In 1980, I was successful in the Senate in cutting 1,000 slots at DOE, based on the argument that a reduction in DOE's regulatory activities should result in a reduction of the bodies needed in the Department.

But the Post story goes on to say:

> Shutdown of the Energy and Education departments would be largely symbolic in budget-cutting terms, fulfilling Reagan's promise to wipe them out. Their functions would be scattered among other agencies. But real cuts appear to be planned within programs under the two departments.
>
> The proposed cuts in the Energy Department's budget hit virtually everything but nuclear programs, reflecting Secretary James B. Edwards' strong support for these.
>
> Department officials said privately they expect a 45 percent reduction for solar energy, 34 percent for coal and other fossil fuel programs and 63 percent for conservation.
>
> But budget instructions from OMB also direct energy officials as a possible alternate to "prepare a shutdown case" for conservation, fossil and solar programs that would eliminate them in 1983.

Mr. President, as Inspector General, Mr. Richards' statutory responsibility would be to supervise audit and investigative efforts at DOE, impartially, in all the programs established by Congress. But the Reagan administration—this year and next year—will be making the arguments for deep cuts—even shut-

down—in conservation, solar, and other fossil fuel programs. Mr. Richards is a committed supporter of Mr. Reagan's and a philosophical believer in letting the oil and gas companies produce us out of our fix. He does not really believe that the Government has a significant role to play in conservation or solar. The possibility exists—make that the probability—that Mr. Richards would work to further the goals of the Reagan administration by helping to discredit those programs which the administration wants to gut.

Mr. President, the Inspector General's reports can have the effect of discrediting programs or undermining their support in Congress. My colleagues may remember in early 1978 when the first Inspector General Tom Morris of the Department of Health, Education, and Welfare released his stunning report estimating that between $6.3 and $7.4 billion was misspent annually at the Department as a result of fraud, waste, and mismanagement. My colleague (Mr. HARRY F. BYRD, JR.), came to the floor with that report in hand arguing that the Senate should cut HEW's budget at least that much, and others agreed. There is no doubt that the revelation did much to undermine support for some of HEW's programs, both among Congress and the public.

By enacting the Inspector General Act, Congress has made the judgment that we want to know the bad news. That is how this form of Government operates. We believe that "business as usual" has failed and that we must focus and accelerate our efforts to deal with fraud and waste in Government programs. The adverse publicity takes a toll, but in the long run, we believe that the congressional, press and public attention fastened on the Inspector General's work will result in stepped-up efforts by the executive branch to prevent and detect fraud and waste—with eventual gratifying results.

But the Inspector General's resources can be channeled selectively, and the powers of the Office can be abused. That is my real fear about Mr. Richards. I see him as a true believer, deeply committed to his doctrinaire views on energy and environment, passionately attached to the goals of President Reagan and Secretary Watt. Depth of ideological conviction is an admirable trait; I have some deep ideological convictions myself, as do other Members of this body. But it is not a proper calling card for an Inspector General.

Mr. President, the Reagan administration has certain clearcut goals in the energy and environment area. An administration in power should have policy goals, and as politicians, we Democrats can grudgingly admire the harmony with which the Reagan administration policymakers go forward in pursuit of these goals. But the Inspector General is not a foot soldier in the Reagan administration army.

Quite the contrary. In fact, not only is he not a foot soldier for the administration in power; if he does the job Congress envisioned, he may prove to be a pain in the neck for the administration. He may find that programs or policies that the administration likes are in chaos, while those the administration dislikes are serving useful purposes and running well. He may have to tell the Secretary and the Congress that there has been illegal or improper conduct by a high-ranking departmental official. He may have to find that some of the policymakers, in their ideological zeal, are overstepping themselves. He will be hard-pressed to play that role if he is an "ideological zealot" himself.

The Inspector General is not supposed to be a part of the DOE management team, deciding along with Edwards, Stockman, Watt, et cetera, how best to swing the wrecking ball. He has his own responsibilities. They may be less glamorous; they may not appeal to a true believer like Mr. Richards, who wants to be a frontline player in the Reagan revolution. But if that is the case, Mr. Richards should wait for another job. He does not want to be Inspector General as Congress envisioned the position when it established it in 1978.

President Reagan may have his reasons for departing from the high standards which both he and President Carter have followed in making Inspector General nominations. But the Senate has no reason to acquiesce in his decision. We passed the Inspector General legislation; we have told the public that the Inspector General program represents our most significant effort to combat fraud, waste, and mismanagement. We should defend the integrity of the program, and reject this nomination.

Mr. President, I reserve the remainder of my time.

Mr. McCLURE. Mr. President, I yield myself such time as I may consume.

Mr. WALLOP. Mr. President, I support the nomination of Mr. Richards for DOE Inspector General. He is obviously a competent person, and his professional background makes him well qualified for the job.

I have also concluded that this particular nominee has another attribute that is worthy of special mention during this debate. Mr. Richards is exceptionally articulate. He has publicly expressed his personal views on a number of fundamental issues in the areas of energy, environmental protection, and the operation of our Government.

As a direct result of some articles he has written and public statements he has made, Mr. Richards' nomination is now faced with some opposition. To those who oppose him, or are undecided, I pose the following question: To qualify as an Inspector General, must a person have refrained, during his entire professional career, from openly and articulately expressing his personal views on the public issues of the day? We all have strong views on various issues. Undoubtedly, every single Inspector General in the U.S. Government has very strong views on certain subjects. So the issue comes down to the choice of what to do with one's personal views. Are they expressed publicly, or are they locked up or at least limited to strictly private conversations?

Mr. Richards chose to write articles in the American Oil and Gas Reporter. He also chose to provide very direct and straightforward answers to the questions posed to him by members of the Governmental Affairs Committee. In making those choices, Mr. Richards displayed an ample supply of initiative and self-confidence, qualities that are vitally important for an Inspector General.

Mr. President, in conclusion, we can reasonably presume that Mr. Richards will carry out his duties as Inspector General with the same degree of vigor he has displayed in advocating his personal views on various issues. If he does, then he will do his job very well.

Mr. McCLURE. Mr. President, I appreciate the concerns that have been stated by those who have spoken in opposition to the nomination, and I do not intend to belabor that subject.

However, I cannot help noting, in passing, in fairness to the nominee as well as to the organizations he represented, as well as some of the organizations that have been named by those who have argued here against the nomination as having a difference of opinion with Mr. Richards on policy matters, that apparently at one point it was thought that if Mr. Richards were in opposition to several different groups, in each instance he was then an extremist in opposition. I assume, then, that the corollary is that those groups are extremists on the opposite side, which may make the point that Mr. Richards was trying to make, that it is a difference of opinion; and if the difference of opinion is held consistently by people on opposite sides, then people on opposite sides may be described by some as extremists or zealots on an ideologic basis.

Let us not forget to look at not just the record of a specific hearing or just at a single facet of Mr. Richards' career, but to look at the totality of his background. Certainly, the Inspector General's Office is to be an independent Office, to be exercised with diligence and I hope with some obstinacy at times. We look back at a man's record to determine whether or not he will be diligent. Will he, as a matter of fact, stick to a task that he has undertaken and pursue it to the end? Will he be deterred by pressures which may be brought upon him in opposition to what he is saying?

Let us look back at his record for a moment.

After passing the Colorado bar examination, he was appointed assistant attorney general for the State and represented the State highway department and the State patrol.

In late 1962, he was asked by U.S. Senator Peter Dominick to join his new Senate staff as legislative assistant. I believe that was the year that Senator Dominick was elected and came to the Senate. He accepted this appointment in January 1963 and later became executive assistant to the Senator, assisting the Senator in his duties with the Senate Banking and Currency, Labor and Public Welfare and Interior Committees. He also handled various administrative and

political duties as an executive assistant to the Senator.

In 1966, he returned to Colorado to open a law practice. For the next 3 years he was both a sole practitioner and a partner in a small firm.

He decided to accept an appointment as an assistant U.S. attorney in Denver in February 1969. During his 2-year tenure in that capacity, he tried a variety of civil and criminal cases, including a grand jury investigation and litigation involving acts of sabotage in the Denver area. In late 1970, he left Denver to become chief of the organized crime strike force in Buffalo, N.Y. While in Buffalo, he handled investigations and trials of organized crime figures and convicted two legislators of bribery and conspiracy in connection with a proposed $50 million domed sports stadium. In March 1972, he became an area coordinator of the organized crime section in Washington, D.C., and handled several major investigations and trials throughout the country.

That does not sound to me like the record of a man who is so bound by ideological philosophy that he cannot carry out the responsibilities of an office to which he is appointed. It is a record to which no one has pointed with anything less than extreme satisfaction and with the most laudatory comments about the manner in which he conducted those responsibilities.

To continue, in 1974 Mr. Richards was appointed by then Interior Secretary Morton to be Director of the Department's Office of Hearings and Appeals. This Office handled all of the quasijudicial functions for Interior including public lands and energy resource matters.

With the change of administrations in early 1977, Mr. Richards joined the National Legal Center for the Public Interest as a consultant and authored research on various public interest issues.

The debate has centered around Mr. Richards' employment by public interest law firms, described as an interlocking web of such organizations. I point out that an interlocking web of similar organizations has provided a great number of officials for the past administration. I do not recall that at any point it was seriously argued here that members of such public interest law firms should not become members of that administration.

I believe that in one instance, it seemed a little strange that an attorney representing such a public interest law firm, handling litigation against the Government, would then join the Government and be the Government's attorney defending against the lawsuit he had brought on the other side, when he was outside. As a matter of fact, after some such discussion, there was a recusal in which that attorney then did withdraw from consideration of the case which he had been prosecuting on the other side, only after there were threats of disbarment if he continued.

So, as a matter of fact, if we look back just a short 4 years, we will find a great deal more of substance to complain about that can be brought to bear upon this particular appointment.

As a matter of fact, I believe it would be unfortunate if we became so concerned about the policy decisions and policy positions of individuals that we would undertake to cast some aspersions upon the character of Mr. Richards; because I believe the record is complete, the record is without any refutation at all, that his past performances in his various positions have been ones that reflected only with favor upon the issue of his integrity and his diligence in carrying out the tasks assigned to him.

I know there has been a great deal of interest expressed at various times about those who support public interest law firms or public interest groups. Various efforts have been made by certain public figures and public bodies to get at the contributors' lists of Common Cause or to get at the lists of the Natural Resources Defense Council or to get at the lists of the Sierra Club or to get at the lists of others who, by their own definition, are public interest groups.

My point is not to suggest that Ralph Nader at times does not reflect public interest, but to indicate that if somebody has had an affiliation with some group and has been an employee of such group, and if that disqualifies him from public service, we would have disqualified much of the last administration from such public service.

As I recall, the point was made several times that there was an apparent conflict of interest, but that never deterred President Carter, and I suggest that in this instance perhaps what we are seeing is a replay rather than any serious attempt to malign Mr. Richards' character.

I hope that the Senate will indeed confirm Mr. Richards in this job, and I am sure there will be a continuing look at his performance in his duties as Inspector General. If, as a matter of fact, any such conflict should arise, I am sure there will be those who will very quickly point it out and raise that issue with respect to his continued qualification to serve in that job.

Until such time as it occurs, that his actions will indeed reveal such conflict, I do not believe that the record that has been developed thus far indicates that it is likely to happen.

As a matter of fact, all of the record up to this point indicates quite the contrary, that he is qualified to hold this job.

Moreover, I suspect that there are those of us on both sides of the aisle who last year and this year will be looking at the Department of Energy and its various contracting and administrative authorities and wondering whether or not there is any kind of a conflict of interest between the issues of public policy and the administration of that Department.

If a man with the experience and background of Mr. Richards is not capable of dealing with that problem then I suggest we are going to have a very difficult time finding someone who is.

I do not know about organized crime in Buffalo, N.Y. I suspect it is more extensive than it is in my home State of Idaho. I trust that it is because we have not had a great deal of difficulty with that. Although as a former prosecutor, I know and I know that the Senator from Missouri with his background in law enforcement knows, the difficulty in dealing with the investigations into the area of organized crime and that the task forces under the direction of the U.S. Attorney's Office and the Department of Justice must indeed be very diligent and very capable if they are to carry out their responsibilities.

Mr. Richards would not have been selected for such a role had he not demonstrated competence in his previous experience in the U.S. Attorney's Office as well as the attorney general's office in the State of Colorado.

Mr. President, I reserve the remainder of my time.

Mr. EAGLETON. Mr. President, I ask unanimous consent that a series of letters from various organizations including the National Wildlife Federation, et cetera, be printed in the RECORD at this point.

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

NATIONAL WILDLIFE FEDERATION,
*Washington, D.C., September 18, 1981.*

DEAR SENATOR: Mr. James Richards has been nominated to become Inspector General of the Department of Energy. Mr. Richards' prior employment demonstrates a strong background in law and the investigation of fraud and abuse while an employee of the Department of Justice, and the competence to manage an office the size and complexity of the Inspector General's.

The Congress has in the past indicated that candidates for the post of Inspector General were to possess unique qualifications. The Senate Report accompanying the Inspector General Act of 1978 provides an important review of the purposes for an independent office within the agencies and Departments, and the abuses which led to their creation. That Report states that such appointments shall be made "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration or investigations." On these grounds, Mr. Richards is a qualified candidate.

However, the Senate went beyond a test of competence in its explanation of the qualifications for the post of Inspector General. The Senate Report states that one of the purposes of establishing Inspectors General was to overcome the reluctance of agency administrators to report waste, mismanagement, or wrongdoing. It notes two reasons why this occurred. First, such revelations often "reflect on him personally." Secondly, "even if he is not personally implicated, revelations of wrongdoing or waste may reflect adversely on his programs and undercut public and congressional support for them." The Report goes on to state, "For that reason, the audit and investigative functions should be assigned to an individual whose independence is clear. . . ."

The Senate Report elaborates upon this point when it states, "The Committee wants Inspectors and Auditors General of high ability, stature, and an unusual degree of independence—outsiders, at least to the extent that they will have no vested interest in the programs and policies whose economy, efficiency, and effectiveness they are evaluating."

By his own words, Mr. Richards disqualifies himself from consideration for the post of Inspector General. He testified before the Senate Committee on Government Affairs that he is an "ideologue" and an "ideological zealot" who feels that in the post of Inspec-

tor General he will be part of the "management team" at DOE.

It is difficult to accept that Mr. Richards could carry out his duties in an unbiased manner. He has worked in the past for organizations which were supported by the financial contributions of large energy-related corporations. He was not a mere staff member of these organizations, but at different times, General Counsel, Legal Director, and most recently Vice President. He acknowledges taking part in fund-raising activities for these organizations, and that his motivation for working in these positions was to further the goals of these idealogue groups.

Mr. Richards noted that he has had a long-standing personal friendship with the Chairman of the President's Cabinet Council on Natural Resources and Environment which establishes the Administration's energy policy. In fact, he was recommended for the job as Inspector General by the person in charge of defining the Administration's energy policy.

Finally, given the close connection Mr. Richards has had in the past to large energy-related businesses, it is disturbing to realize that he will be responsible for auditing and conducting investigative activities respecting the multi-million dollar contracts which such firms have with the Department of Energy. In questioning before the Senate Committee on Government Affairs, Mr. Richards rejected the notion that he should withdraw himself from matters before his office regarding firms which had contributed to his former organizations. While Mr. Richards may feel that he can maintain objectivity in dealings with his former financial supporters, we can find no compelling reason for the public to extend that trust to him when large amounts of the taxpayers' dollars are at stake.

These aspects of Mr. Richards' background make him an unsuitable candidate for the sensitive position of Inpector General of the Department of Energy. They clearly run counter to the qualifications set forth by the Senate Committee on Government Affairs, when it passed the Inspector General Act after a long period of careful investigation and deliberations over waste, fraud, and mismanagement in federal agencies. It is evident that Mr. Richards is an individual with close personal and ideological relations with the Administration and its policies, which Mr. Richards would be asked to objectively audit and investigate should he be confirmed by the Senate.

We urge you to reject the nomination of Mr. James Richards for this position, and request the Administration propose a candidate with the strong professional credentials of Mr. Richards, and the clear independence to carry out the duties of this position effectively.

Sincerely,

CHRIS PALMER,
*Director, Energy and Environment, National Audubon Society.*
DR. JAY D. HAIR,
*Executive Vice President, National Wildlife Federation.*
BROOKS YEAGER,
*Washington Representative, Sierra Club.*

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PUBLIC CITIZEN,
*September 15, 1981.*

DEAR SENATOR: Later this week the Senate will consider the nomination of James Richards for the position of Inspector General for the Department of Energy (DOE). We believe that neither the federal government nor the public interest will be well served by the confirmation of Mr. Richards to this post and we urge you to oppose his nomination.

The Inspector General Act passed by the Congress in 1978 established a series of posts within the federal government from which the battle against waste, fraud, mismanagement and other abuses of government could be waged. In order to pursue this aim most effectively, the Inspectors General were given unique independence from the leaders, policymakers, auditors and investigators of the agencies subject to each Inspector General's jurisdiction.

To ensure the highest degree of professionalism among the Inspectors General, Congress was quite specific about appointments to the position. The Act specifies that Inspectors General shall be nominated "without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, and financial analysis, law, management analysis, public administration, or investigation."[1]

The nomination of Mr. Richards does not comport with the spirit and the specifications of the Inspector General Act.

From July 1977 to May of this year, Mr. Richards held a number of increasingly important positions within the Capital Legal Foundation and its parent organization, the National Legal Center for the Public Interest, so-called "public interest" groups funded by wealthy conservatives and large corporations. Secretary of the Interior James Watt, instrumental in securing Mr. Richards' nomination, according to congressional testimony, is an alumnus of this conglomerate of advocacy organizations.

During his tenure with these groups—a chronology of Mr. Richards' rise in their ranks is attached—the nominee acted as a determined adversary of what he has described as "extremist groups", environmental and otherwise. In columns he wrote for an energy trade periodical, The American Oil & Gas Reporter, Mr. Richards advocated greatly increased development of energy resources, urged that oil companies be given greater access to DOE internal documents, suggested that DOE authority to obtain information from energy firms be restricted, and railed constantly against judicial enforcement of procedures governing energy and environmental matters.[2]

In testimony before Senate panels considering his nomination, Mr. Richards repeatedly referred to himself as a "zealot" and "idealogue," and blamed harassment of the oil and nuclear industries by government regulation and the press for aggravating America's energy crisis.[3]

While Mr. Richards' credentials might be suitable for other types of public service, his highly political and ideological attitudes toward key energy issues render him unsuitable for a position which requires independent, objective and impartial assessments of activities and programs operated by political appointees and implemented in many cases by members of the energy industry.

Indeed, the nomination of James Richards guarantees the development of conflict of interest between the duties he would assume as Inspector General of DOE and his previous activities on behalf of the Capital Legal Foundation and the National Legal Center for the Public Interest, since a number of energy firms which were major contributors to these organizations do business with or are regulated by the Department of Energy.

Under sharp questioning during his confirmation hearings, Mr. Richards reluctantly divulged the names of some major contributors to the organizations with which he was recently associated (these groups have consistently refused to make public their sources of support). They are: Fluor, Southern California Gas Co., Peters Fuel Corp., as well as AT&T and Chase Manhattan Bank. When asked whether as Inspector General he would disqualify himself from matters before DOE in which some of these contributors were involved, Richards said he "wouldn't feel any compunction to remove" himself from such proceedings.[4]

The DOE acutely requires an independent, politically neutral Inspector General.

With allegations of massive noncompliance by energy companies with DOE regulations, abuse of contracting practices the budget for which runs to the billions of dollars at DOE, and constant criticism of waste and inefficiency in its programs, the Department of Energy urgently requires an Inspector General with no prejudicial or preconceived attitudes toward any of the parties frequently involved in DOE matters: citizen watchdog groups, energy firms, environmental organizations, the press. The DOE Inspector General must be prepared and willing to search for and criticize improper departmental activities or misconduct or abuse by political appointees. Mr. Richards' background raises serious doubts about whether he would be able to carry out these responsibilities.

The last Inspector General of the Energy Department, Kenneth Mansfield, was a scrupulously impartial career civil servant who was nominated to be the first Inspector General for the Bureau of Foreign Assistance of the State Department by President John F. Kennedy in 1962.

A major blow to the independent and nonpartisan nature of the office of Inspector General was struck by President Reagan shortly after his inauguration when he requested the resignations of Mr. Mansfield and every other Inspector General in the federal government. Confirmation of Mr. Richards will complete the process of converting the office of Inspector General to a political appointment. The result can only be a reduction in the efficiency of our government, and a loss of confidence in it on the part of all citizens. We urge you to oppose this nomination.

Thank you for your consideration.

Sincerely yours,

HARVEY ROSENFIELD,
*Staff Attorney.*

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CHRONOLOGY OF JAMES RICHARDS' EMPLOYMENT BY CONSERVATIVE "PUBLIC INTEREST" FOUNDATIONS

(From Senate confirmation hearings)

Early 1977—part-time consultant, National Legal Center for the Public Interest (NLCPI)

July 1977—full-time consultant

Early 1978—Capital Legal Foundation formed; appointed Vice President and Legal Director

September 1980—Appointed General Counsel and Vice President, NLCPI

May 1981—Resigned affiliation with NLCPI

June 1981—Became consultant to DOE Secretary Edwards in anticipation of confirmation as Inspector General

Mr. EAGLETON. Mr. President, I yield myself the remainder of my time.

The PRESIDING OFFICER. The Senator has no time remaining.

Mr. EAGLETON. I had 5 minutes. The Senator from Idaho yielded me 5 minutes; I used 2 minutes and 40 seconds of the 5 minutes. I therefore have 2 minutes and 20 seconds remaining.

He yielded me 5 minutes.

Mr. McCLURE. Mr. President, if there be any doubt concerning that, I yield the

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[1] Inspector General Act of 1978, PL 95-452, 92 Stat. 1101, sec. 3(a).

[2] *See* The American Oil and Gas Reporter, January, March & April, 1981 April 1980.

[3] Senate confirmation hearings, transcript p. 52-54.

[4] *Id.*, p. 34-35.

Senator 3 minutes, not in addition to 2 minutes.

Mr. EAGLETON. Not in addition. Three minutes in lieu of the 2 minutes and 40 seconds. I thank the Senator.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, the Senator from Idaho is a very skilled and able debater and he is that, but I think he misses the point of this debate.

In fact, if one is a skilled debater and the facts are not on one's side, it is a good thing to miss the point of the debate.

Mr. President, Mr. Richards is not only a clone but the clone of James Watt. When his name was submitted to the White House to join Watt as the Inspector General at Interior, even the White House personnel office, which has a pretty strong stomach, said no, they will not fly. One guy like Watt in Interior is enough, and, as the country knows, more than enough. So we will shunt Richards over to Energy and hide him away over there. Of course, Watt is now running Energy as well.

Mr. President, James Richards could probably pass the Senate as the nominee for Secretary of Energy. The fact that James Edwards holds that office proves one does not have to be qualified for anything to be Secretary of Energy. But James Richards is not nominated for Secretary of Energy. He is nominated to be the impartial policeman for the Department of Energy, to look under rocks, to see what is buried in the closet, to see if there are any skeletons hanging around, to oversee the large contracts handed out by the Department of Energy.

I submit a man with his ideological bias, a man who says "I am an ideological zealot"—those are his words—cannot be confirmed by this body to be the impartial, investigative, auditing, operating Inspector General of the Department of Energy. That is what it boils down to.

Stripped of all the rhetoric, stripped of all the language, that is the issue before this body and that is the issue upon which we will have to and must cast our vote.

Mr. McCLURE. Mr. President, I yield to the Senator from Tennessee, the majority leader, such time as he may consume.

Mr. BAKER. Mr. President, I thank my friend from Idaho.

Mr. President, I join my distinguished colleague, the chairman of the Committee on Energy and Natural Resources, in supporting the nomination of James R. Richards.

As we consider this nomination, we should keep in mind two very significant points. First, not one member of the Committee on Energy and Natural Resources voted against Mr. Richards when the committee reported his nomination. Second, Mr. Richards is well qualified to be the Inspector General of the Department of Energy. He is well qualified not only in the general sense, but also in terms of his professional experience and the application of that experience to the responsibilities that he would have as Inspector General.

Mr. Richards is an attorney with substantial experience as both a Federal prosecutor and administrator. From 1969 to 1974 he was employed in the Department of Justice as an assistant U.S. attorney, as chief of an organized crime strike force, and as an area coordinator for the organized crime section here in Washington, D.C. He has also served as the Director of the Office of Hearings and Appeals in the Department of the Interior, and as a legislative aid to former Senator Peter Dominick of Colorado.

Mr. Richards' background enables him to more than handle the primary duties of the Inspector General. The Inspector General supervises and coordinates audit and investigative activities, and he also recommends policies and procedures for promoting economy and efficiency in the Department. The Inspector General is also charged with preventing and detecting fraud and abuse in the Department's programs and with the identification and prosecution of any persons participating in fraud and abuse.

In light of such duties, Mr. Richards becomes an ideal candidate. He has the technical training as an attorney and Federal prosecutor, and he has the administrative experience as the Director of the Interior Department's Office of Hearings and Appeals.

Mr. President, I recommend Senate approval of Mr. Richards' nomination.

Mr. THURMOND. Mr. President, today I am pleased to rise in support of the nomination of Mr. James R. Richards to be Inspector General of the Department of Energy.

Mr. Richards, a native of Colorado, has held many positions which make him well-qualified for the position of Inspector General. As an assistant U.S. attorney in Denver, and later as chief of the organized crime strike force in Buffalo, N.Y., his duties included handling grand jury investigations and trials involving Federal fraud statutes and corruption.

Mr. President, James Richards has had experience in the executive branch during his tenure at the Department of Interior as the Director of the Office of Hearings and Appeals. He also has experience in the legislative branch, where he served as legislative assistant and as executive assistant to the late Senator Peter Dominick.

Mr. President, I believe the record established by Mr. Richards demonstrates that he is able, competent, and well-qualified for the position of Inspector General of the Department of Energy, and I am pleased to support his nomination.

● Mr. METZENBAUM. Mr. President, I want to begin by commending Senators EAGLETON, LEVIN, CHILES, and PRYOR for their outstanding work in bringing to the attention of the Senate the very serious issues surrounding the nomination of James Richards to be Inspector General of the Department of Energy. I consider this nomination highly inappropriate and I join my colleagues in calling upon the Senate to reject it.

Mr. President, if there is one single agency of this Government that most needs a "junkyard dog" in the role of Inspector General, it has to be the Department of Energy.

The GAO has issued dozens of reports criticizing DOE's management and procurement practices. Time and again, the GAO has pointed to noncompetitive procurement, large costs overruns in DOE-operated facilities and major irregularities in the use of outside contractors. Those irregularities, as Senator PRYOR ably pointed out in hearings held during the last session of Congress, included the use of contractors and consultants to perform work that should have been carried out by civil servants at the Department.

In 1980, 75 percent of DOE's budget—a total of $9 billion—went to outside contractors.

"The Department's reliance on contractors is so extreme," a recent report by the staff of the Government Affairs Committee concluded, "* * * that it is hard to understand, what, if anything, is left for officials to do. Reliance on contractors is not limited to a portion of the Department's activities, or to discrete components of DOE. It permeates virtually all of the Department's basic activities—regulation, spending, and internal management—at virtually all levels of the organization chart."

That staff report goes on to point out a number of other problems—problems that constitute an open invitation to waste, fraud, and abuse on a massive scale.

DOE regulations, for example, state that consultants may only be hired temporarily and only when a shortage of personnel exists. But, in fact, consultants have become permanent fixtures at the DOE.

What do these consultants do? The report says that senior DOE officials were unaware that many of them were, in fact, illegally performing essential Government functions, and where literally hundreds of other consultants were concerned, the Department was unable to produce the work product for which taxpayer dollars had been expended.

And finally, Mr. President, the report points out that DOE relies heavily on contractors who also work for major oil companies—and even for the OPEC cartel. Once again, the potential for abuse is truly extraordinary.

It should be clear, then, that the position of Inspector General at DOE is very important.

DOE must have an Inspector General who can and will aggressively investigate waste, fraud, and abuse in every sector of the Department. The Inspector General must not come to the job with preconceived notions about which projects and technologies are good and which are bad. There can be no sacred cows in a Department in which waste has permeated every corner.

The question before us is whether or not James Richards is the appropriate person to fill that position.

I believe that the answer to that question is a clear and unequivocal "no."

I have no intention of questioning Mr. Richard's sincerity when he says that, if

confirmed, he will do his best to carry out his full responsibilities under the law. But the fact is, Mr. President, that Mr. Richards brings with him a set of past associations that raise the most serious doubts about his suitability for this sensitive position.

The Inspector General of DOE must be beyond reproach.

To be effective, he or she must be without potential conflicts of interest.

But, unfortunately, Mr. Richards does not meet those minimal criteria—and I believe that his confirmation would damage in the eyes of the people of this country the credibility of this administration's determination to eliminate waste and fraud in the Federal bureaucracy.

Let us look at Mr. Richards' background. For the past 3 years, Mr. Richards has been associated with an organization called the National Legal Center in the Public Interest. He served first as vice president of its Washington subsidary, the Capital Legal Foundation, and later as general counsel for NLCPI as a whole.

NLCPI and Capital are public interest law firms in the same sense that the Rocky Mountain Legal Foundation, formerly headed by Interior Secretary James Watt, is a public interest law firm. In fact, Mountain States is a subsidiary of NLCPI, just like Capital—and its activities can be described as "in the interest" only if one assumes that the activities of the large corporations which provide all of its funding are also in the public interest.

What organizations have provided funds for NLCPI and Capital? I had a difficult time getting the answer to that question from Mr. Richards.

When I first asked who the contributors were, he said that to disclose that information would be illegal. He erroneously cited a provision in the United States Code prohibiting employees or certain Government officials from divulging this information. After I repeated the question, Mr. Richards stated he did not know who any of the contributors were. Finally, after I read a portion of Capital's 1980 annual report thanking the Fluor Corp. for its "generous contribution," Mr. Richards said he might know, but he was not going to tell me because his former employers had not authorized him to do so.

Did Mr. Richards have something to hide? Well, it turns out that in 1980, Capital Legal Foundation received $115,000—almost half of its budget—from the Scaife Foundation Charitable Trust. According to an article appearing in the July 12, 1981, edition of the Washington Post, the trust is controlled by Richard Mellon Scaife, one of the wealthiest men in America. The article states that Mr. Scaife is the second largest individual shareholder in Gulf Oil Co., and that the Scaife Foundation Trust is composed almost entirely of Gulf Oil Co. stock. In fact, according to the 1980 Corporate Data Exchange Stock Ownership Directory, the Scaife Foundation alone owns more than 1.6 million shares of Gulf.

What is the problem with all of this? At the same time that the Capital Legal Foundation was receiving these hefty contributions from the Scaife Foundation, Capital also was fighting the Office of Special Counsel at the Department of Energy, where Gulf had been charged with more than $500 million in pricing overcharge violations. In 1979, when the Office of Special Counsel began lodging the overcharge allegations, the oil companies attempted to present a united front against settling any of the cases. Yet, when the Office of Special Counsel finally obtained a $25 million settlement with Getty Oil, Capital Legal Foundation and Mr. Richards jumped in to fight the settlement, and to this day Capital has continued its attacks upon this Offi e.

Mr. Richards claims that these corporate contributions would not influence his judgment or his activities as Inspector General. But according to DOE procurement records, Gulf has at least six contracts with the Department, totaling more than $25 million. Could Mr. Richards credibly investigate allegations of waste, fraud, and abuse in these contracts in light of his association with Capital Legal Foundation?

But it is not just Gulf. Capital's second largest contributor has been Fluor Corp., a multinational energy company with sales of more than $4 billion last year. Fluor is involved in every aspect of petroleum exploration and development, and also owns one of the largest nuclear construction firms in the world. Its chairman, Robert J. Fluor, is the founder and the chairman of the board of NLCPI. Fluor's executive vice president, Leslie Burgess, is chairman of the board of Capital. Could Mr. Richards credibly pursue any allegations of waste, fraud, and abuse with regard to Fluor's contracts with DOE? There are six of them for a total of $67 million.

And how about nuclear programs?

Because of the large spending increases requested by the Reagan administration, nuclear programs now make up a large portion of DOE's budget. Mr. Richards, who described himself to the Government Affairs Committee as an "ideological zealot," has very strong feelings about nuclear power. In 1979, Mr. Richards, on behalf of Capital Legal Foundation, sued the Nuclear Regulatory Commission in an attempt to overturn the Carter administration's decision to place a moratorium on nuclear fuel reprocessing. Joining Mr. Richards' suit was almost every major nuclear fuel company in the United States.

Closing the nuclear fuel cycle by reprocessing spent fuel rods is a paramount priority for supporters of breeder technology. In light of his strong advocacy of fuel reprocessing, could Mr. Richards credibly serve as a watchdog with regard to the Clinch River Breeder Reactor? What kinds of questions would a self-described "ideological zealot" ask about the 450 percent in cost overruns that a House Energy and Commerce Subcommittee has identified at Clinch River?

There are more examples of Mr. Richards lack of independence and impartiality.

Mr. Richards has testified that groups such as the National Wildlife Federation and the Sierra Club are "environmental extremists." Would he be sensitive to any allegations of waste or fraud these groups might make regarding DOE programs?

Mr. President, I could go on and on with examples of why Mr. Richards simply is the wrong person for this important position at the Department of Energy. Had the administration nominated him to be an Assistant Secretary, I would not have opposed the nomination. He has a long background in energy, and while I might disagree with him philosophically, I would not have objected to placing him in a policymaking position.

The Inspector General, however, is not a policymaker. His office is supposed to be nonpartisan, charged with assuring that the taxpayer gets a maximum return on each and every dollar expended by the DOE.

That job. Mr. President, is not one for a partisan.

It is not one for a person with conflicts of interest, current or potential.

And it is not, Mr. President, an appropriate position for James Richards.

I urge the Senate to reject this ill-considered nomination.●

Mr. SASSER. Mr. President, I join my colleagues on the Governmental Affairs Committee in objecting to the nomination of James Richards for the post of Inspector General at the Department of Energy.

The post of Inspector General is a very sensitive one. An Inspector General is the main investigator of waste, fraud, and misrepresentation within an agency's operations, and, in the case of the Department of Energy, the Inspector General backs up the Federal Energy Regulatory Commission in monitoring and prosecuting violations of price regulations, and in checking on the adequacy of Federal fine collection. It is because of the nature of the post that I must oppose Mr. Richards' nomination.

I am concerned about the objectivity with which Mr. Richards would execute his duties as a monitor of oil and energy company relations with the Government and with the public as a whole.

Mr. Richards former choice of employment, as legal director with the Capital Legal Foundation (CLF), does not show him to be a man whose qualifications are appropriate for the position of Inspector General. CLF receives funds from a number of energy interests, including Gulf Oil. Gulf Oil is now being investigated for gross price violations of $1.1 billion, of which more than half stems from overcharging the consumer. Would Mr. Richards show due diligence in investigating these interests?

The point is that Mr. Richards' background recommends him for a policy position, but not for a position of public trust in matters that may involve the investigation of those energy interests he once used to serve.

Congress envisioned that the Inspector General would be the focal point of receiving "whistleblower" complaints from employees aware of cases of fraud, waste, and mismanagement. Would a whistleblower who discovered some mis-

conduct of misrepresentation be given an objective hearing by Mr. Richards? I am skeptical that he would, considering Mr. Richards' own testimony at the Governmental Affairs Committee.

By his own words, Mr. Richards disqualified himself from consideration for the post of Inspector General at the Governmental Affairs Committee hearing on his nomination. He testified that he is an "ideologue" and an "ideological zealot" who feels that, in the post of Inspector General, he would be part of the "management team" at DOE.

This view of his role as Inspector General flies in the face of why the job was created in the first place. The Senate report describing the rationale for creating the post of Inspector General states that this post was aimed to overcome the reluctance of agency administrators to report mismanagement that might reflect on either themselves or their agency's programs. The report goes on to state that, "for that reason, the audit and investigative functions should be assigned to an individual whose independence is clear * * *"

Mr. Richards wants to be part of the management team, not an independent auditor and objective prosecutor of mismanagement.

And that brings me to the next problem. Although Mr. Richards is a capable lawyer, he does not have a background as an auditor, nor is he a career civil servant. In the past, virtually all Inspectors General have been distinguished auditors. They have largely been auditors working within the civil service.

As a result, I am not confident that Mr. Richards will carry out the duties of Inspector General with the objectivity and neutrality required of the post.

There is still a place for a strong Inspector General. Of all the oil company overcharges alleged to have occurred while oil prices were controlled, $8.6 billion has yet to be settled on. That involves a substantial interest for the U.S. Treasury and the American consumer. Let us not turn away from this history, just because the administration is sympathetic enough with big oil to appoint a man who worked for those interests which the Inspector General must police.

It is always unfortunate when the Senate finds a nominee exceptionally inappropriate for the post to which he is nominated. I am afraid that this is such a case. I urge the President to look again for a man whose qualifications can win overwhelming support in the U.S. Senate.

Senators EAGLETON, PRYOR, and LEVIN each deserve the gratitude of the Senate for bringing the case of Mr. Richards more fully to the Senate's attention. I hope that their concerns are shared by my colleagues. The Inspector General must protect the public treasury. The Inspector General is the final overseer of energy price regulation violations and consultant abuse. I believe we could do better for the integrity of this post than to confirm Mr. Richards today.

Mr. MOYNIHAN. Mr. President, I oppose the nomination of James R. Richards to be Inspector General of the Department of Energy. I am not questioning Mr. Richards integrity or legal qualifications. He is obviously an experienced lawyer. However, I believe that Mr. Richards' comments of July 29, when he appeared before the Governmental Affairs Committee, raise serious questions as to whether he possesses the necessary temperament and detachment to carry out the duties of Inspector General of the Department of Energy (DOE).

As envisioned by Congress when we established the post in 1978, the Inspector General must conduct and supervise audits and investigations relating to DOE programs, provide leadership and coordination for activities designed to promote economy and efficiency within the Department, and prevent and detect fraud and abuse.

It is not a policymaking position. Yet Mr. Richards, in his testimony, indicated his desire to be part of a "management team" at the Department of Energy. The Inspector General is expected to be fiercely independent, yet in his remarks before the Governmental Affairs Committee Mr. Richards agreed that, in certain matters, he is an "ideological zealot" who believes that oil and gas companies have been "unfairly burdened, even harassed by Government regulations." These beliefs might be acceptable were the Inspector General a policymaking position. Indeed they seem to reflect this administration's energy policies, policies with which I do not always agree. But the Inspector General does not make policy. The position calls not for an ideologue but rather for a nonpolitical person who will faithfully discharge the duties as set forth in the Inspector General Act of 1978.

I am also concerned that Mr. Richards has indicated his unwillingness to disqualify himself from cases involving firms or individuals who had contributed to the law firm with which he was formally associated. Again, I have no quarrel with his associations. Mr. Richards has a right to work for whomever he pleases. But when he refuses to disqualify himself from cases involving former clients, his judgment must be seriously questioned.

I will be voting against the nomination of James R. Richards as Inspector General of the Department of Energy because I agree with those who believe that he is not the right man for the job.

ORDER OF PROCEDURE

Mr. BAKER. Mr. President, if the Senator will permit me, I inquire about the order for the length and duration of the rollcall votes about to occur.

The PRESIDING OFFICER. The first two votes are 15 minutes and the remaining vote on this nomination is 10 minutes.

Mr. BAKER. Mr. President, I must have misspoke myself when I made that request or it got garbled in the transmission. What I intended to say and what I now put, and I am sure that the distinguished minority leader will not object to this, I ask unanimous consent that the first vote be 15 minutes and each succeeding vote 10 minutes in length as those votes are back-to-back.

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

Mr. BAKER. Mr. President, I observe the minority leader is in the Chamber.

I asked the Senate to agree that the first vote would be 15 minutes and the subsequent votes back to back would be 10 minutes each, explaining that while that was not the way that the order now appears, that is the way I intended to put it, and it may have been garbled in the transmission. I hope the Senator has no objection.

Mr. ROBERT C. BYRD. I do not have any objection.

NOMINATION OF JAMES R. RICHARDS TO BE INSPECTOR GENERAL

Several Senators addressed the Chair.

Mr. McCLURE. Mr. President, I yield 1 minute to the Senator from New Mexico (Mr. DOMENICI).

The VICE PRESIDENT. The Senator from New Mexico is recognized.

Mr. DOMENICI. Mr. President, on July 21 the Committee on Energy and Natural Resources, by a vote of 17 to 0, reported the nomination of James R. Richards to be Inspector General, Department of Energy. Mr. Richards' nomination hearing was held on July 9. He has fully complied with the committee's rules requiring submittal of a financial disclosure report and a detailed information statement. I am prepared to recommend Mr. Richards' confirmation.

Mr. Richards is well qualified to be DOE Inspector General. He is an attorney with considerable professional experience as both a Federal prosecutor and administrator.

The duties of the Inspector General are set forth in detail in the Department of Energy Organization Act. During his nomination hearing, Mr. Richards described those responsibilities as follows:

The duties and responsibilities of the Inspector General of the Department are quite specific and somewhat unique. Not only does he supervise and coordinate audit and investigative activities, but he also recommends policies and procedures for promoting economy and efficiency in the Department. The Inspector General is charged with preventing and detecting fraud and abuse in the Department's programs and in the identification and prosecution of any persons participating in fraud and abuse. He reports a summary of his activities annually to the Congress, the Secretary of Energy and the Federal Energy Regulatory Commission.

The Inspector General also immediately reports particularly serious or flagrant problems, abuses or deficiencies relating to the programs and operations of the Department, to the Secretary, the Federal Energy Regulatory Commission, as appropriate, and within 30 days thereafter, to the Congress.

Mr. Richards also told the Committee:

Obviously, the Inspector General is not an active participant in the policy making team at the Department. His role is to serve as the internal agency watchdog, making sure that policies are carried out efficiently and economically and that they are free from fraud, abuse and waste. If confirmed, I intend to vigorously pursue my duties and responsibilities in that role.

Mr. President, I am pleased to recommend Senate approval of the Presidential nomination of James R. Richards for the position of Inspector General, Department of Energy.

## ROLLCALL VOTES ON NOMINATIONS

NOMINATION OF SANDRA DAY O'CONNOR TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The VICE PRESIDENT. All time has expired. The question is, Will the Senate advise and consent to the nomination of Sandra Day O'Connor to be an Associate Justice of the Supreme Court of the United States?

The yeas and nays have been ordered, and the clerk will call the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS), would vote "yea."

The VICE PRESIDENT. Are there any other Senators wishing to vote?

The Chair would remind the galleries that there will be no expressions of approval or disapproval.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 274 Ex.]

YEAS—99

| | | |
|---|---|---|
| Abdnor | Glenn | Moynihan |
| Andrews | Goldwater | Murkowski |
| Armstrong | Gorton | Nickles |
| Baker | Grassley | Nunn |
| Bentsen | Hart | Packwood |
| Biden | Hatch | Pell |
| Boren | Hatfield | Percy |
| Boschwitz | Hawkins | Pressler |
| Bradley | Hayakawa | Proxmire |
| Bumpers | Heflin | Pryor |
| Burdick | Heinz | Quayle |
| Byrd, Harry F., Jr. | Helms | Randolph |
| | Hollings | Riegle |
| Byrd, Robert C. | Huddleston | Roth |
| Cannon | Humphrey | Rudman |
| Chafee | Inouye | Sarbanes |
| Chiles | Jackson | Sasser |
| Cohen | Jepsen | Schmitt |
| Cranston | Johnston | Simpson |
| Cochran | Kassebaum | Specter |
| D'Amato | Kasten | Stafford |
| Danforth | Kennedy | Stennis |
| DeConcini | Laxalt | Stevens |
| Denton | Leahy | Symms |
| Dixon | Levin | Thurmond |
| Dodd | Long | Tower |
| Dole | Lugar | Tsongas |
| Domenici | Mathias | Wallop |
| Durenberger | Matsunaga | Warner |
| Eagleton | Mattingly | Weicker |
| East | McClure | Williams |
| Exon | Melcher | Zorinsky |
| Ford | Metzenbaum | |
| Garn | Mitchell | |

NOT VOTING—1

Baucus

So the nomination was confirmed.

The VICE PRESIDENT. The majority leader is recognized.

Mr. BAKER. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has given its consent to this nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

Mr. BAKER. Mr. President, could I inquire, are rollcall votes ordered on the next two nominations to be considered at this time?

The VICE PRESIDENT. They have been ordered.

Mr. BAKER. If I may have just a moment, could I inquire of the managers of the remaining nominations if they wish to have their rollcalls at this time?

Mr. President, I yield to the Senator from Kentucky.

The VICE PRESIDENT. Will the Senate be in order? The Senator is recognized.

Mr. FORD. Mr. President, let me say to the majority leader there is no desire on the part of the minority, so far as I know, to have a rollcall vote on the FTC nominee.

Mr. BAKER. I thank the distinguished Senator.

Mr. President, could I inquire of the distinguished Senator from Wisconsin if there is any desire for a rollcall vote on the FTC nominee on this side? Will the Senator from Wisconsin (Mr. KASTEN) indicate whether he wants to have a rollcall vote?

Mr. KASTEN. A number of Senators have indicated they would prefer a rollcall vote.

Mr. BAKER. Mr. President, I ask unanimous consent that the next two succeeding rollcall votes be back-to-back and be for not more than 10 minutes each.

The VICE PRESIDENT. Without objection, it is so ordered.

NOMINATION OF JAMES C. MILLER III TO BE A FEDERAL TRADE COMMISSIONER

The question is, Will the Senate advise and consent to the nomination of James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner? On this question the yeas and nays have been ordered and the clerk will call the roll.

(Mr. DANFORTH assumed the Chair.)

The legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS), is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS), would vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber wishing to vote?

The result was announced—yeas 97, nays 2, as follows:

[Rollcall Vote No. 275 Ex.]

YEAS—97

| | | |
|---|---|---|
| Abdnor | Garn | Mitchell |
| Andrews | Glenn | Moynihan |
| Armstrong | Goldwater | Murkowski |
| Baker | Gorton | Nickles |
| Bentsen | Grassley | Nunn |
| Biden | Hart | Packwood |
| Boren | Hatch | Pell |
| Boschwitz | Hatfield | Percy |
| Bradley | Hawkins | Pressler |
| Bumpers | Havakawa | Pryor |
| Burdick | Heflin | Quayle |
| Byrd, Harry F., Jr. | Heinz | Randolph |
| | Helms | Riegle |
| Byrd, Robert C. | Hollings | Roth |
| Cannon | Huddleston | Rudman |
| Chafee | Humphrey | Sarbanes |
| Chiles | Inouye | Sasser |
| Cochran | Jackson | Schmitt |
| Cohen | Jepsen | Simpson |
| Cranston | Johnston | Specter |
| D'Amato | Kassebaum | Stafford |
| Danforth | Kasten | Stennis |
| DeConcini | Kennedy | Stevens |
| Denton | Laxalt | Symms |
| Dixon | Leahy | Thurmond |
| Dodd | Levin | Tower |
| Dole | Long | Tsongas |
| Domenici | Lugar | Wallop |
| Durenberger | Mathias | Warner |
| Eagleton | Matsunaga | Weicker |
| East | Mattingly | Williams |
| Exon | McClure | Zorinsky |
| Ford | Melcher | |

NAYS—2

| | |
|---|---|
| Metzenbaum | Proxmire |

NOT VOTING—1

Baucus

So the nomination was confirmed.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

NOMINATION OF JAMES R. RICHARDS TO BE INSPECTOR GENERAL OF THE DEPARTMENT OF ENERGY

Mr. STEVENS. Mr. President, this will be the last rollcall vote tonight.

The VICE PRESIDENT. The question is, Will the Senate advise and consent to the nomination of James R. Richards, of Virginia, to be Inspector General of the Department of Energy? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Montana (Mr. BAUCUS) is necessarily absent.

I further announce that, if present and voting, the Senator from Montana (Mr. BAUCUS) would vote "nay."

The PRESIDING OFFICER (Mr. DANFORTH). Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 71, nays 28, as follows:

[Rollcall Vote No. 276 Ex.]

YEAS—71

| | | |
|---|---|---|
| Abdnor | Glenn | McClure |
| Andrews | Goldwater | Melcher |
| Armstrong | Gorton | Murkowski |
| Baker | Grassley | Nickles |
| Bentsen | Hatch | Packwood |
| Boren | Hatfield | Pell |
| Boschwitz | Hawkins | Percy |
| Burdick | Hayakawa | Pressler |
| Byrd, Harry F., Jr. | Heflin | Quayle |
| | Heinz | Roth |
| Cannon | Helms | Rudman |
| Chafee | Hollings | Schmitt |
| Cochran | Humphrey | Simpson |
| Cohen | Jackson | Specter |
| D'Amato | Jepsen | Stafford |
| Danforth | Johnston | Stennis |
| Denton | Kassebaum | Stevens |
| Dixon | Kasten | Symms |
| Dole | Laxalt | Thurmond |
| Domenici | Long | Tower |
| Durenberger | Lugar | Wallop |
| East | Mathias | Warner |
| Ford | Matsunaga | Weicker |
| Garn | Mattingly | Zorinsky |

NAYS—28

| | | |
|---|---|---|
| Biden | Hart | Proxmire |
| Bradley | Huddleston | Pryor |
| Bumpers | Inouye | Randolph |
| Byrd, Robert C. | Kennedy | Riegle |
| Chiles | Leahy | Sarbanes |
| Cranston | Levin | Sasser |
| DeConcini | Metzenbaum | Tsongas |
| Dodd | Mitchell | Williams |
| Eagleton | Moynihan | |
| Exon | Nunn | |

NOT VOTING—1

Baucus

So the nomination was confirmed.

Mr. STEVENS. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that it be in order to move to reconsider all these nominations en bloc that have been confirmed.

The PRESIDING OFFICER. Without objection, it so ordered.

Mr. STEVENS. Mr. President, I move to reconsider the votes by which the nominations were confirmed.

Mr. ROBERT C. BYRD. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## LEGISLATIVE SESSION

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate resume the consideration of legislative business.

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

## ORDER FOR PRINTING OF S. 884

Mr. STEVENS. Mr. President, I ask unanimous consent that S. 884, the Agricultural and Food Act of 1981, be printed as passed by the Senate on September 18, legislative day September 9, 1981.

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

## ORDERS FOR TUESDAY

Mr. STEVENS. Mr. President, I ask unanimous consent that the Senate convene tomorrow at the hour of 11 a.m.; that following the recognition of the two leaders under the standing order, there be a 5-minute special order entered in favor of the Senator from Wyoming (Mr. WALLOP); and that thereafter there be a period for the transaction of routine morning business not to extend beyond the hour of 11:30 a.m. with Senators permitted to speak therein.

I further ask unanimous consent that on tomorrow, the majority leader be authorized to proceed to the consideration of any and all of the following four bills, although not necessarily in the sequence stated: Calendar Order No. 233, S. 1365, the Bankruptcy Act: Calendar Order No. 237, S. 1475, the International Energy Agency bill; Calendar Order No. 85, S. 306, the hydroelectric bill; and Calendar Order No. 117, S. 1135, the Defense Production Act.

I further ask unanimous consent that when the Senate completes its business tomorrow, it stand in recess until the hour of 10 a.m. on Wednesday.

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

## COMMENDATION TO WALTER J. STEWART FOR SERVICE IN THE U.S. SENATE

Mr. ROBERT C. BYRD. Mr. President, I send a resolution to the desk and ask that it be stated by the clerk.

The PRESIDING OFFICER. The clerk will state the resolution.

The assistant legislative clerk read as follows:

A resolution (S. Res. 214) commending Walter J. Stewart for his long, faithful and exemplary service to the United States Senate.

Mr. ROBERT C. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the resolution.

The PRESIDING OFFICER. Is there objection to the request of the Senator from West Virginia?

There being no objection, the Senate proceeded to consider the resolution.

Mr. ROBERT C. BYRD. Mr. President, as most of my colleagues are aware, our former secretary for the minority, Walter "Joe" Stewart recently left the Senate to accept a position in private industry. While I will miss Joe, who has been professionally associated with me by working on my personal staff—or working with me in a leadership position, for the past 10 years, I know that we all wish him well in his new endeavor.

Joe Stewart started and, for that matter, has spent his entire governmental career in the Senate. He came to Washington in 1951 as a page under the sponsorship of Senator Spessard Holland of Florida. He graduated from the Capitol Page School in 1953 as president of his class.

In 1954, Joe was appointed to head the staff of the Democratic cloakroom. Several years later, he attained a further promotion as administrative assistant to the secretary for the majority, with duties which included supervising the secretary's staff connected wtih the Senate floor and being on the floor when the Senate was in session to advise Members on pending legislation, as well as performing administrative duties within the secretary's office.

Following graduation from law school and shortly after becoming a member of the District of Columbia bar, Joe was appointed to the professional staff of the Senate Committee on Appropriations. He remained in that position until 1971 when he became my legislative assistant. He served me ably in that position for 6 years.

In 1977, when I was elected majority leader, I named Joe Stewart as assistant to the majority leader for the floor operations. In 1979, it was my pleasure later to nominate him as secretary for the majority of the Senate. He was elected to that position and served in that capacity until January 1981, at which time he was elected secretary for the minority. In June of 1981, he completed a total of 30 years with the U.S. Senate.

As secretary for the majority and later as secretary for the minority, Joe's duties included acting as executive secretary for the Democratic Steering Committee which make Democratic committee appointments and acting in a similar capacity for the Democratic Caucus of all Senators. Earlier this year during the transition from the majorityship to the minority, Joe played a key role in the realinement of our committee positions.

In addition to his regular duties, Joe Stewart has accompanied me and other Members of the Senate on several senatorial and Presidential delegations which have traveled to China, Russia, the Middle East, Europe, and to Panama prior to the passage of the Panama Canal Treaty.

Mr. President, Joe Stewart has always performed his duties here in the Senate with dedication, efficiency, and loyalty, and we shall miss him and his able assistant, Ms. Jeanne Drysdale-Lowe, who will also be leaving the Senate to work with Joe in his new position.

Joe's departure is a real loss for the Senate, but we wish him the very best in his new undertaking.

Mr. STEVENS. Mr. President, I join my good friend, the minority leader, in paying tribute to the services of Joe Stewart. He has been a good friend to all of us, those of us on this side of the aisle, as well as those on the Democratic side of the aisle. He has been a man who is easy to work with, and has always shown consideration for the problems that exist here in the Senate in trying to work our will on pending matters.

I know we all join in wishing him well and hoping he will have a successful career as he vovages on to other things.

Mr. President, I ask unanimous consent that the record of the tributes concerning the service of Walter J. Stewart may be printed as a bound volume and as a Senate document. I further ask that the RECORD remain open for a period of 10 days in order that additional statements may be included in the RECORD.

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

Mr. ROBERT C. BYRD. Mr. President, I thank the distinguished Senator from Alaska, the majority whip and the acting majority leader, for his kind comments, and I know Mr. Stewart will likewise appreciate them deeply.

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

The resolution (S. Res. 214) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 214

Whereas Walter J. Stewart has faithfully served the Senate as an officer of the Senate, the Senate wishes to express its appreciation for his dedicated service as an officer of the Senate; and,

Whereas the said Walter J. Stewart at all times has discharged the important duties and responsibilities of his office with great efficiency, and diligence; and,

Whereas prior to his service as Secretary for the Minority and as Secretary for the Majority he served the Senate in other important capacities for a period of thirty years; and,

Whereas his loyalty, his exceptional service and continuing dedication have earned for him esteem and affection; so therefore, be it

*Resolved*, That Walter J. Stewart is hereby commended for his lengthy, faithful and outstanding service to the Senate.

SEC. 2. The Secretary of the Senate is directed to transmit a copy of the Resolution to Walter J. Stewart.

Mr. ROBERT C. BYRD. Mr. President. I move to reconsider the vote by which the resolution was agreed to.

Mr. STEVENS. Mr. President, I move to lay that motion on the table.

The motion to lay on the table was agreed to.

## RULES COMMITTEE APPROVES AIR TRAVEL DISCOUNT PLAN

Mr. PERCY. Mr. President, I would like to congratulate my valued friend and colleague, Senator MATHIAS, chairman of the Rules and Administration Committee, for his efforts in approving and im-

plementing a plan that will significantly reduce Senate travel expenses.

On July 8, 1981, he officially notified the Senate that we had been included in the General Services Administration's air travel contract discount program. This executive agency program, which has been in effect since July 1, 1980, has already saved taxpayers between $17 to $19 million. It is impossible to determine cost savings to the Senate, but I believe that it will be a significant cost-containing measure. For my personal staff alone, I have been told that savings could total more than $4,000.

I urge the former chairman of the Rules Committee, Senator PELL, in an October 1, 1980, letter, cosigned by the highly respected former Governmental Affairs Chairman Ribicoff, to consider including the Senate in this cost-saving program and a study was then initiated. Under the new contract awarded for the 12-month period beginning this July, 19 airlines have been awarded routes covering 160 direct routes. It is anticipated that the executive branch will save $35 million in travel costs for the new contract. The airlines include some of the newest, such as Midway Airlines, some of the oldest, such as Western Airlines, and Air Illinois, a growing commuter based in southern Illinois.

I have been assured that the non-Government travelers are not cross-subsidizing these Government travelers. The contracting airlines view these lower fares as profitable because of the assurance of a guaranteed revenue from receiving all of the Federal Government's air travel patronage over the routes they were awarded.

In addition, these contract fares would not have been possible without airline deregulation, which I vigorously supported. The airlines are now able to bid for volume business, without interference from the Civil Aeronautics Board.

I am pleased that the interagency travel management improvement project has now reported its ambitious program that could save the Federal Government over $200 million annually. The program emphasizes streamlined procedures, tightened pretravel clearances, and the use of contract fares. This policy has my full support and should be applauded by all who want reduced waste in Government.

I would like to commend those responsible for this landmark cost-saving program, including from the General Services Administration: Gerald P. Carmen, Administrator; Allan W. Beres, Commissioner for Transport and Public Utilities Services; Sean Allan, Director, Transportation and Travel Management Division; Ivan Michael Schaeffer, Assistant Commissioner for Transportation and Travel Management; and Albert Vicchiolla, Assistant General Counsel. From the Rules and Administration Committee, I would like to commend John B. Childers, Deputy Staff Director, who ably served me for many years as my own administrative assistant, and Dennis Dohery.

Senators wishing to participate should contact the Rules Committee.

## THE 1981 FARM BILL

Mr. BUMPERS. Mr. President, I wish to take a few minutes to discuss S. 884, the 1981 farm bill which the Senate passed on Friday, September 18, 1981. This bill will be our basic agricultural legislation for the next 4 years and is extremely important to all Americans, both farmers and consumers.

The farmers of this country, while comprising only about 3 percent of the population, are world leaders in the production of food. Through their efforts not only are the citizens of this country fed, but so are the people of many other countries of the world. Farm productivity in this country has increased by almost 70 percent since 1950, even though agricultural inputs have gone up by only 2 percent. Obviously, our farmers are some of the most productive persons in this country and contribute a great deal to our quality of life.

Even though our farmers have been so productive they are being devastated by soaring costs and extraordinarily low prices. Their very survival is at stake. Given these bleak conditions, Mr. President, the farmers of this country were looking to the Congress to develop strong, effective farm legislation. I am afraid, however, that after they review the provisions of S. 884 as passed by the Senate, they will be sorely disappointed. The bill falls far short of providing adequate price protection for our farmers and I hope the bill can be strengthened when it is considered by the House of Representatives.

Mr. President, our farmers are currently experiencing one of the worst price declines in memory, while at the same time being hit with higher costs, particularly soaring interest rates. I know that many in this body believe that once interest rates come down and inflation subsides, that many of the problems our farmers are experiencing will go away. This might be correct, Mr. President, and I intend to do all I can to get interest rates down. However, I think this body could have written a farm bill which would have also improved the income picture for the farmers of this Nation.

Their problem is vividly demonstrated in a recent study conducted by Data Resources, Inc. The study found that net farm income in 1980 was $20 billion, a decline of 39 percent from 1979 and down 27 percent from 1978. Further, when that figure is adjusted for inflation, net farm income was below $10 billion, the lowest level since 1934. The report concluded:

> The outlook for farm income profitability has gone beyond dismal and would have to be termed catastrophic.

This is a fair statement of the situation our farmers are in today, and I am afraid that S. 884 will do very little to improve their economic plight.

In conclusion, Mr. President, I am opposed to S. 884 in its present form. The bill, as originally reported by the Senate Agriculture Committee, was a fair compromise. However, once the bill reached the floor of the Senate, amendments were added which further eroded the minimal price protection in the bill and I think it is too weak to support.

## MESSAGES FROM THE PRESIDENT

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

## EXECUTIVE MESSAGES REFERRED

As in executive session, the Acting President pro tempore 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.)

## PRESIDENTIAL APPROVAL

A message from the President of the United States reported that on September 17, 1981, he had approved and signed the following joint resolution:

S.J. Res. 62. Joint resolution to authorize and request the President to designate the week of September 20 through 26, 1981, as "National Cystic Fibrosis Week."

## 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–1957. A communication from the Secretary of the Treasury transmitting, pursuant to law, a report on the violation of law involving the expenditure of funds in excess of appropriated amounts by the U.S. Customs Service, to the Committee on Appropriations.

EC–1958. A communication from the Secretary of Agriculture transmitting, pursuant to law, a report on the impact of remote land claims; to the Committee on Banking, Housing, and Urban Affairs.

## REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. THURMOND, from the Committee on the Judiciary, without amendment:

S. Res. 213. Resolution authorizing supplemental expenditures by the Committee on the Judiciary for inquiries and investigations; referred to the Committee on Rules and Administration.

## INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second time by unanimous consent, and referred as indicated:

By Mr. EAST:

S. 1647. A bill to insure equal protection of the laws as guaranteed by the fourteenth amendment to the Constitution of the United States and to deny the jurisdiction of the inferior Federal courts to order the assignment or transportation of students, and for

other purposes; to the Committee on the Judiciary.

By Mr. HATFIELD:

S. 1648. A bill entitled the "Military Spouse Retirement Equity Act"; to the Committee on Armed Services.

By Mr. HATCH:

S.J. Res. 110. Joint resolution to amend the Constitution to establish legislative authority in Congress and the States with respect to abortion; to the Committee on the Judiciary.

## STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTION

By Mr. HATFIELD:

S. 1648. A bill entitled the "Military Spouse Retirement Equity Act"; to the Committee on Armed Services.

MILITARY SPOUSE RETIREMENT EQUITY ACT

● Mr. HATFIELD. Mr. President, a recent Supreme Court decision has made congressional action in the area of pension rights for former spouses of military employees even more imperative.

On June 26, in McCarty against McCarty, the U.S. Supreme Court, in overturning the California Court of Appeals, ruled that Federal law precludes a State court from dividing military retired pay. This ruling has thrown traditional State domestic relations law into chaos, and has effectively deprived States of a tool to provide economic protection to divorced spouses of military personnel.

While the Supreme Court recognized that the plight of an ex-spouse of a retired service member is often a serious one, it concluded that Congress, not the courts, should decide whether more protection should be afforded to military former spouses.

The Supreme Court decision has made legislative action on this issue critical. In some cases, court-ordered payments that are presently being made may be cut off, leaving these divorced military spouses in financial distress.

The plight of the so-called displaced homemaker is becoming well recognized in a society where nearly one of every two marriages ends in divorce. These divorced or widowed women who have devoted many years to maintaining the home and family often suffer serious consequences when they attempt to gain outside employment, or receive their rightful pension or retirement benefits.

Contrary to the popular myth of the merry divorcee, only a few are wealthy. Alimony is received by just 4 percent of divorced women. Furthermore, statistics indicate that while 89 percent of single-parent families are headed by mothers, three-quarters of these women received no child support from fathers. For even this minority of women, alimony and child support are no substitute for a vested pension interest. Both cease with the death of the employed or retired spouse.

Congress began to address this issue by amending the Social Security Act in 1977, providing pension benefits to divorced wives married 10 years or more. However, even these basic protections are not afforded a significant number of women married to civil service or military employees or employees enrolled in many private pension plans. For military and civil service employees, their spouses do not automatically receive social security. Thus, they discover once they are divorced, the wives lose all claim to retirement pay and survivor's benefits, as well as any right to health insurance benefits.

Obviously, this causes tremendous hardships, particularly for older women who have made significant contributions to the family, working inside the home. Many of these women find that the retiree walks away from the divorce with a full retirement plan and health insurance, while the spouse walks away with nothing. If the employee in the military or civil service remarries, the new spouse automatically becomes eligible for medical and survivor benefits, even if she has put no time into the spouse's military/civil service career.

If indeed we are to strengthen incentives for participation in the military, we cannot continue such economic disincentives for the wife of the military employee.

Mr. President, the Military Spouse Retirement Equity Income Act, which I reintroduce today, redresses these inequities in current law. This legislation is already a part of the Economic Equity Act, a bill which my colleagues Senator DURENBERGER and Senator PACKWOOD, as well as 20 other Members of the Senate, introduced on April 8. I introduce this provision as a separate bill to accommodate hearings which are scheduled in the Armed Services Committee.

The Military Retirement Equity Income Act was developed by my able colleague in the House, Congresswoman PAT SCHROEDER. It was through her leadership that a similar provision affecting former spouses of Foreign Service Officers was enacted in 1978.

The legislation would do the following:

Entitle women who were married to civil service or military employees for at least 10 years the right to a pro rata share of the benefits earned during marriage. This provision is subject to court review and modification, depending on the divorce settlement. However, the legislation demands that courts must view pensions as a valid property right. Many have not done so in the past. As a result, many of these women find that the retiree walks away from the divorce with a full retirement plan and health insurance, while the spouse walks away with nothing. Furthermore, even in cases where the courts have awarded partial retirement benefits, no court has considered the survivor's benefit as property to which the former spouse is entitled.

Mandate survivor's benefit unless the spouse and former spouse choose to waive receipt of such. Currently, an employee may opt out of survivor's benefits already agreed to, without notification of the spouse or former spouse. This legislation would require that employee and spouse or former spouse, if any, agree in writing to forgo the survivor's benefit plan.

These proposals will not cost the taxpayer additional funds. Rather, they will allow a fair redistribution of retirement and survivor's benefits between the partners in marriage.

It is ironic that these outdated laws have been hardest on the woman who devotes herself entirely to the role of mother and homemaker. It is unconscionable that they should be "rewarded" in this manner. Certainly, it is time we viewed marriage as an economic partnership.

Morale, motivation, and reenlistment of our Armed Forces depend on more than take-home pay. Long-range benefits which insure the future financial security of both partners in a military marriage will improve morale and increase reenlistment.

The current situation devalues the contribution of military spouses, especially the role of most military women as wife and homemaker, and tells her that all the years of moving, volunteer work, child raising, and emotional support for her husband and family do not merit any recompense. The McCarty decision reinforces this devaluation.

I believe the following articles illustrate well the critical problems facing a small segment of America's fastest growing poverty—the older woman, and I ask unanimous consent that certain articles, along with a section-by-section analysis of the bill be printed in the RECORD.

There being no objection, the analysis and articles were ordered to be printed in the RECORD, as follows:

MILITARY SPOUSE RETIREMENT EQUITY ACT—SECTION-BY-SECTION ANALYSIS

Section 1. Short Title, Military Spouse Retirement Equity Act.

Section 2. Former Spouse Share or Retire or Retainer Pay.—

Pro rata Share. Unless modified by a spousal agreement or court order, a former spouse of a military member, married 10 years or more, is entitled to a pro rata share of the retirement annuity. The amount would depend upon the number of years of marriage that overlap with the creditable years of service toward retirement.

Formula:

Number of years of marriage during creditable service divided by number of years of annuity equals former spouse retirement employment times .50 times total retirement annuity.

For example: If a couple is married for 10 years of 30 years of creditable service, the former spouse would be entitled to 10/30 × 50% or one-sixth of the retirement annuity.

If the couple was married for 30 years, the entire period of creditable service, the former spouse would be entitled to 30/30 × 50% or a maximum of one-half the retirement annuity.

Remarriage Before Age 60. A former spouse shall not be qualified for an annuity if the former spouse remarries before becoming 60 years of age.

Savings Clause.—The 10 year marriage requirement in the bill should not be construed to restrict the right of a state court to divide the retirement annuity or include it as marital property for those married less than 10 years.

Commencement and Termination of Former Spouse Annuity.—The former spouse

annuity commences on the day the member retires or the day the divorce becomes final, whichever is later.

The former spouse annuity terminates the day when the former spouse dies or remarries before becoming 60 years of age.

Section 3. Former Spouse Share of Survivor Annuity.—

Joint Employee-Spouse Elections.—The spouse or former spouse, if any, must sign a notarized waiver agreeing to the retiree's election to opt out of the survivor's benefits or to take a reduced survivor's benefit.

Recalculation of the Retirement Annuity.—If the former spouse predeceases the retiree or remarries before attaining age 60 or a spouse does not qualify as a former spouse upon dissolution of the marriage (having been married less than 10 years), the reduced annuity shall be restored and shall be paid as if it had not been reduced.

Section 4. Survivors Benefits in Case of Divorces before Effective Date.—

Election of Survivors Benefits for Former Spouse.—A member of the uniformed services who on the effective date of this Act has a former spouse shall receive retired pay at a reduced rate and provide a survivor annuity for the former spouse if the member elects by means of a spousal agreement or a court so orders.

If the member has been married for more than one year, an election of a survivor annuity for a former spouse may be made only with the written concurrence of the spouse.

Survivors Benefits When Member Dies before Effective Date.—If a member who died before the effective date of this Act was entitled to retired pay, had the retired pay reduced to pay for a survivors benefit, and died without a beneficiary to the survivors benefits, the former spouse would be entitled to the survivors annuity.

Section 5. Effective Date.—

Effective Date.—This Act becomes effective 120 days after enactment.

Entitlement to a Pro rata Share of Retired Pay.—The provisions in Section 2 shall apply to those who divorce or retire after the effective date of the Act.

Entitlement to Survivors Benefits.—Except to the extent provided in Section 4, a former spouse is entitled to receive survivors benefits if divorced after the effective date of this Act.

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[From the Wall Street Journal, Aug. 21, 1981]

BILLS COMING DUE: MILITARY EX-WIVES PRESENT THEIRS

(By Suzanne Garment)

"This has been a crusade more than three years in the making," announced the congressional aide, one staffer who had not deserted Washington for the month of August. On the contrary, she was hard at work and happy to talk about the push her office is going to make in the coming session of Congress on the issue of better retirement and survivors' benefits for military ex-wives. Military wives' and ex-wives' organizations report that they too, are getting ready for action in the fall. Thus do the building blocks of most of the year's national agenda get hauled into place while the headline makers are out of town.

In the past few years a cluster of women's groups has rallied around the idea that women married to servicemen for many years and then divorced should not lose all their rights to their ex-husbands' retirement benefits. The groups have a champion in House Democrat Patricia Schroeder of Colorado, who has introduced a bill greatly extending the divorcees' pension rights. They have friends like Rep. Kent Hance (D., Texas), who is sponsoring a more limited bill to make it possible for the ex-spouses to collect on any military retirement benefits that a divorce court has awarded them. At least some of this legislation looks like it will make progress this year.

The idea of collective entitlement to retirement benefits has been establishing footholds in federal law for well over a decade. In 1965, ex-spouses were given a right to Social Security retirement and survivors' payments based on the benefits due to their former mates. In 1978 a new law made it possible for a court to hand over a portion of civil service retirement benefits to an ex-spouse as part of a divorce. In 1980 Congress said that foreign service ex-wives are entitled to similar treatment for both retirement and survivors' benefits unless a court orders otherwise in a particular case.

Current law does not allow military retirement pay to become subject to court division in a divorce settlement. Therefore, say the military ex-wives, the law needs changing. Some of the ex-wives' arguments call attention to the specially needy situation of the military divorce. She spends her career years trudging after her husband from one post to another, and thus can not build up vested economic benefits of her own. Then comes the divorce—and she finds herself cut off from the retirement benefits that often constitute a military family's biggest piece of property.

But the divorced wives do not rest their case on need alone. They also want this money as a matter of right. It was they, after all, who maintained the homes and community institutions that freed their husbands for work. They did so at the explicit behest of military authorities. And now they not only get no thanks for their service but have to bear a bitter insult: "The new wife," as one organizer put it, "who hasn't contributed anything to the military, gets all the benefits."

It is impossible not to sympathize with the women making these arguments. Some of them have indeed gotten one of life's raw deals. Furthermore, there does not seem to be any compelling reason in principle why the military retirement benefits shouldn't be as much up for grabs in a divorce as other similar pieces of property are.

It is just as easy, it must be said, to see why you would not want to make extensive presumptions of entitlement into our permanent public policy on the subject. There are ex-wives, especially older ones, who in spite of the Social Security payments are unable to maintain even a modest living: they need a public policy based on some compassion. But no one really knows how many of them there are, or what proportion they form of the divorced, or what effect a new divvying-up of the retirement benefits would have on the military's recruitment and retention problems. And the way some of the-wives talk about wanting to cut their divorced husbands' new families out of the benefits picture smacks less of need or justice than it does of vindictiveness.

But perhaps most interesting of all is that there seems something inexorable about the force still driving such social issues to the top of the legislative heap. First you get the general erosion of traditional values on which military marriages used to rest. Divorce rates soar, individual fulfillment acquires a higher moral standing than communal obligations, sacred bonds become secular contracts. Next the victims of such changes respond by adopting the now-conventional language of the new order. They too, they say, are to be understood as having performed services in the world of work. They too have rights publicly enforceable by the government.

Then finally the apparatus of modern American issue politics moves in to make the new argument into law: pressure groups, politicians delighted to be pressed, journalists hungry for fodder, interviews with Phil Donahue. The opposition may be left with large powers to obstruct, but finds itself without publicly persuasive arguments. Sooner or later, it folds.

The pattern seems to persist despite the disarray of the general liberal ideology that gave rise to it. And it persists in contrast to the social conservatism that has so far had a hard time establishing itself on the Reagan administration's agenda. It is going to take the next couple of congressional sessions to let us know which set of arguments and presumptions will wield political power, which is the piece of nostalgia and which the wave of the future.

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[From the Chicago Tribune, Aug. 16, 1981]

FORMER MILITARY WIVES FIGHT FOR THEIR BENEFITS

(By Janet Cawley)

During the 28 years of her marriage to a Naval officer, Pat Ficci moved more than a dozen times while raising two children and trying to hold together some semblance of family life.

Mrs. Ficci, 49, of Waukegan, is divorced now and the whole world of military benefits that sustained her has vanished.

"I lost all my Navy identification," she said, "all my medical benefits, all my PX privileges, and all my commissary privileges." She said she lost 40 pounds in three months and her blood pressure climbed to stroke level.

All she has managed to retain—after a lawsuit—is half of her husband's retirement pension and she is angry.

"I was with my husband overseas," she said. "I went with him; I kept his children, I raised them, with hopes in time for retirement benefits for both of us. I was with him to protect the flag and all that sentimental jazz, and now I feel like the United States has turned around and cut my throat."

Mrs. Ficci is not alone. There are so many former wives of servicemen left without benefits that they have formed their own organization to lobby Congress for changes in the laws on the benefits.

Ex-Partners of Servicemen (Women) for Equality, known by the acronym expose, was founded 14 months ago and already claims 2,000 members, only two of whom are men (both happily married and simply supporters of the cause, explains cofounder Nancy Abell).

According to a survey compiled by expose, the average age of members is 54; of years married, 26; of moves during the marriage, 13; and of years in the military, 20.

About 73 percent said their husbands had remarried, raising one issue that troubles the women the most: On remarriage, all military benefits are immediately reassigned to the second wife.

Their reasoning is that they traveled the world with their husbands, continually uprooting themselves so they couldn't pursue careers that would allow them to build their own pensions. They counted on financial and medical security from their husbands' military retirement plans. Instead, they are divorced and have discovered that all benefits and pensions belong only to their former husbands.

"Really," said Mrs. Abell, a 47-year-old mother of three from Falls Church, Va., whose divorce from a retired Air Force colonel should be final next month "these women are in desperate straits. They don't deserve to be treated this way.

"If we don't start getting these women some protection with legislation, they're all potential welfare cases."

Expose said its files are bulging with case histories of women "reduced to a nobody after giving years to her husband, children . . . and to serving her country." In all, they said, there may be as many as 500,000 ex-military wives in the country.

But, not everyone thinks the laws should be changed to help these women.

John Sheffey, executive vice president of the National Association for Uniform Services, which claims 26,000 members and former members of all the armed services, said his group is actively lobbying against proposed legislation.

"Basically, the Expose people are a narrow group of truly deserving, mistreated older women," Sheffey said. "But, the proposals before Congress would apply across the board to all (military) divorces and that would create terrible inequities for those divorced early in life. Our position is not that divorecd spouses should not be taken care of, but that the obligation belongs to the husband, not the military.

"These women say they helped earn their husband's pay, but that's nonsense. Both married and unmarried members of the military earn the same pay so I don't see how they can argue the wife earned it.

"The basic idea of having the government assume the obligation for the divorced spouse is just bad policy. It would be unique to the whole economy. General Motors doesn't do it. IBM doesn't do it."

But Mrs. Abell—who said her husband has been "quite fair" in support payments—said: "If we're not entitled, if we haven't earned those benefits, how can they justify giving them to the second wife? We feel we've earned them, not the second wife.

"We have women with cancer and heart problems and kidney ailments who now have no medical coverage and no way to obtain it. It's heartbreaking the way these women are treated.

"We treat our refugees better than we do these women."

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[From the New York Times, Aug. 7, 1981]

DIVORCE AND MILITARY PENSIONS

WASHINGTON, August 6.—In 1945, Elizabeth D. Crandall married a lieutenant in the United States Navy. Twenty-four years and some 17 cross-country moves later, her husband left her. Today, seven years after a no-fault divorce, her former husband, now retired, is refusing to pay the alimony stipulated in the divorce settlement, his wife says. She says his stand is based on the recent Supreme Court ruling that military pension benefits may not become a part of a property settlement in a divorce.

Other women are in similar circumstances. In May 1980 an organization made up of the former wives of retired military personnel, ExPartners of Servicemen for Equality (Expose), was formed to lobby Congress on the members' behalf. They felt, even at that time, that they were treated unfairly regarding the pension, medical care and commissary benefits available to their former husbands.

Expose says it has 2,000 members nationwide and is growing. The organization identified its typical member as 54 year old, female and divorced after 26 years of marriage. (The two male members are sympathetic to the organization's cause.) Most of the divorces occurred immediately before the husband's retirement, according to the organization, which said that 73 percent of the men had remarried.

DEVASTATING RESULTS

Mrs. Crandall said the effects of the pension loss to her had been devastating. "My prospects for permanent, gainful employment at age 59 are not positive," she said. "Because of the frequent moves, there was never an opportunity for me to develop a career or accrue any personal savings or pension benefits of my own. I have honorably and devotedly served my country by promoting, supporting, and encouraging my husband's career as a Naval officer. For these many years, I receive no recognition, benefits or compensations. I now face loss of my home and economic disaster."

The president of Expose, Nancy L. Abell, a 47-year-old mother of three who is separated from her husband, a retired Air Force colonel, said: "There's been a gross miscarriage of justice here. I want to see it corrected. We have women who have been threatened with physical harm by their husbands if they make waves about getting legal retribution."

The organization's vice president, Winnie Cowan, whose former husband is a retired brigadier general, said: "I gave 30 years to the military. We feel betrayed, shortchanged, to have the Supreme Court tell us we're not worth a penny."

ANOTHER GROUP'S VIEWS

A different view was given by John Sheffey, executive vice president of the National Association for Uniform Services, a 26,000-member group of veterans. "The concept that the wife earns part of the pay of the husband is anathema to us," Mr. Sheffey said. "He has a tremendous obligation to the wife, but it is a personal one. It's just not supported by the facts. Married and unmarried military personnel earn the same pay."

Mr. Shelley said there had been cases in which wives planning to divorce their husbands had "shopped around" and moved to states with divorce laws favorable to women while their husbands were assigned overseas. "You've got a man in Korea with a wife in the states deserting him," he asserted.

The Expose officials feel, however, that they and other long-time wives of military men were working for their country, too. "We feel we've contributed to the military and our country," Mrs. Abell said. "The men couldn't have gone off if we had not been home to take care of the children. I don't see the Department of Defense offering 24-hour-a-day child care. We also acted as ambassadors overseas."

Mrs. Cowan recalled, "When the husbands went to air training, the wives were lectured by flight surgeons. "Don't disturb them the night before. Don't bother them. Always keep their morale up." And that's where we feel we contributed.'

The Supreme Court, in its 6-to-3 ruling on June 26, found that a division of military retirement pay had the "potential to interfere with the Congressional goals of having the military retirement system serve as an inducement for enlistment; and as an encouragement to orderly promotion and a youthful military." Rather, said Associate Justice Barry A. Blackmum, the retirement pay should "be the personal entitlement of the retiree."

"AN ECONOMIC PARTNERSHIP"

The Court also said that it was up to Congress to provide more protection for former spouses of military personnel, if it wanted. A House bill, sponsored chiefly by Representative Patricia Schroeder, Democrat of Colorado, would allow former spouses who had been married to military personnel for at least 10 years to receive prorated retirement pay based on length of marriage.

Senators Mark C. Hatfield, Republican of Oregon, David F. Durenberger, Republican of Minnesota, and Bob Packwood, Republican of Oregon, are co-sponsoring what they call "the Economic Equity Act of 1981," which incorporates Representative Schroeder's proposal, saying that "it is time we viewed marriage as an economic partnership."

And Senator Dennis DeConcini, Democrat of Arizona, is sponsoring a bill that simply would return the legal situation to the way it was before the Supreme Court ruling. That would leave jurisdiction in family and property matters to the state courts.

Under all of these proposals, a spouse would pay a former mate what the court settlements called for. However, Representative Kent Hance, Democrat of Texas, has introduced a bill under which money paid a former spouse from a military pension would go directly to the spouse from the pay source.

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[From Newsweek, Sept. 14, 1981]

A HOUSEWIFE'S LOT

(By Jane Bryant Quinn)

When husbands and wives approach divorce, the thing they argue most about is property. And the most troublesome property before the courts is pensions.

Is a divorced wife entitled to a piece of the pension that her husband accumulated during the marriage, or is she not?

Most state courts say that she is, and state law supposedly rules. But in the only pension cases to reach the U.S. Supreme Court—one on railroad retirement, one on military pensions—the Court overrode traditional state supremacy in family law. It held that Federal law took precedence, and the main body of Federal law reserves pensions solely for the worker who earned them.

Cut Out: These two decisions cut only military and railroad wives out of their husbands' pensions. States continue to divide other, private-company pensions as they see fit, and that's where most of the money is. But for housewives demanding economic recognition, these rulings are a bad precedent. If the Supreme Court ever extends them to private pensions, marriage—for women—will become an even riskier choice of career.

The importance of pensions to housewives cannot be overestimated. Divorce, in most states, is easy to get, even if one partner opposes the split. Alimony, when awarded at all, may last only a few years, until the housewife learns to support herself. All she can expect to take away from her failed marriage is a share of the property accumulated while she and her husband were together.

In the recent past, there was no legal concept of mutual accumulation, except in the eight community-property states. But most states have evolved an economic-partnership theory of marriage, under which a wife who cooks, cleans and raises the children is "earning" a share in the marital assets as a matter of right. And what the law creates in the way of property rights, no man shall put asunder.

When a marriage crumbles, all the marital property is put into a kitty and divided up. A few states, like California, split the assets 50–50. Others split them according to such guidelines as how long the marriage lasted and how much each partner contributed, with housework counted as a contribution.

To a wife who works outside the home, and who has established a pension of her own, a share in her husband's pension may not matter very much. But a housewife is more vulnerable. In many marriages, the husband's pension is the major asset. If it

is taken out of the marital kitty, there isn't much property left to divide.

In the view of most state courts, dividing the pension amounts to simple economic justice. But the Supreme Court's decisions cast marital law back to the days when a husband's money was all his and a housewife's work wasn't worth a dime.

A deciding clause in the Railroad Retirement Act says that a third party cannot normally be assigned any right to the worker's pension. Most state courts say that that clause applies only to outside creditors who are suing for a judgment. But the Supreme Court held that it also cuts out any property rights claimed by a spouse. (All private pensions insured by the Employee Retirement Income Security Act are covered by that same, spouse-denying clause.)

In the military case, the court said that the wife is entitled to part of the pension only if Congress specifically grants it.

Special Cases: Howard Lipsey, chairman of the family-law section of the Association of Trial Lawyers, thinks that these two decisions will not spread to private pensions. "These are special cases," he argues. The military-pension decision, for example, was linked to Congress' right to regulate armies. But Doris Freed, who heads the research committee of the American Bar Association's family-lay section, disagrees, calling the decisions "a clear and present danger" to the equitable property division established by state law.

Bills introduced in Congress would guarantee wives the pension rights called into question by the Supreme Court. (Congress permits civil-service and foreign-service pensions to be divided in divorce.) But Rep. Pat Schroeder says the bills face tough going, "partly because some opponents have been through bitter divorces and can't look at the issue objectively."

If Congress and the courts deny a wife her stake in what was expected to be the couple's pension, the message is clear: a housewife is not worthy of her hire. Given the high divorce rate, her only security may lie in quitting full-time housework and finding another occupation.

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MILITARY WIVES SET TO DO BATTLE OVER TORPEDOED PENSIONS

(By Jane Bryant Quinn)

NEW YORK.—The U.S. Supreme Court scorned military wives last June in a decision that wiped out all their pension rights after divorce. This week, those wives will carry their grievances to a Senate Armed Services subcommittee, in what is shaping up as the hottest marital battle in town.

The military wives are carrying the ball, but their success or failure could affect the pension rights of every housewife.

Badly but, the issue is this: Is a housewife a full, economic partner in her marriage? Or is she a charity case whose support in old age depends solely on keeping her husband's goodwill?

If she's a full economic partner, she should be entitled—as a matter of right—to share in the property accumulated during the marriage. At divorce, her share should be hers to keep.

Most state court now accept the economic partnership view of marriage and include pension assets as part of the property.

Housewives are not generally treated as 50–50 partners. Except for California and a few other states, most courts award wives something less than half. For example, if a marriage lasted 20 years and her property rights are determined to be, say, 40 percent, she gets 40 percent of the value of the pension accumulated during the years of the marriage (or its equivalent in other property).

The Supreme Court, however, rejected pension division in the only two cases to come before it so far (one on military pensions, one on railroad retirement). It said these particular pensions belong solely to the worker, as a personal entitlement.

The husband, in short, is working for his own retirement security and the housewife is working for the husband. If the marriage fails, her retirement is her own problem, not his.

That Supreme Court decision created two categories of housewives: one with some measure of old-age protection in divorce and one without. At present, military and railroad-retirement wives are the ones without.

Military wives are trying to persuade Congress to pass a pension-protection law that would undo the Supreme Court decision. Three main proposals are under consideration.

If any of them is passed, it will be an important measure of congressional intent on the property rights of women. It will stand as a precedent in future cases.

If they fail, the Supreme Court might read it to mean that Congress does not want wives to have property rights to their husbands' pensions. That could result in taking hard-won rights away from other women, too.

Women who have careers and pensions of their own may not much worry about the status of their husbands' pensions. But for older housewives, pension rights can make the difference between getting by and getting welfare. Military wives find it particularly hard to earn their own pensions because they must move around too much to stick with any one job.

The simplest pension-rights bill comes from Sen. Dennis DeConcini (D-Ariz.), who wants to return the issue to state jurisdiction. His view is that a military wife, like other wives, should be entitled to whatever property, including pensions, is awarded her under state divorce law.

A bill from Rep. Kent Hance (D-Tex.) carries that principle one step further by dealing with the problem of collecting state-ordered pension distributions as well as alimony and child support awarded against retirement pay. "We need a law providing for a workable payment system for the court orders many of us already have," Vivian Filemyr, national president of Action for Former Military Wives, told my associate, Virginia Wilson.

If a military man moves and quits paying his ex-wife and children, the Defense Department refuses to tell the ex-wife where he is. The Hance bill would guarantee her court-ordered payments by sending her checks directly.

A more sweeping bill from Rep. Patricia Schroedor (D-Colo.) would guarantee military wives married 10 years or more a pro rata share in their husbands' pensions, along with other rights. Such a law would actually put military wives in a more favorable position than other wives.

So far, the military-pension debate has been capturing the attention of only the men and women directly affected. Male-dominated military organizations uniformly oppose the proposals now in Congress. The Defense Department has yet to be heard from, but the outcome of this narrow battle could affect marital rights everywhere.●

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By Mr. HATCH:

S.J. Res. 110. Joint resolution to amend the Constitution to establish legislative authority in Congress and the States with respect to abortion; to the Committee on the Judiciary.

HUMAN LIFE FEDERALISM AMENDMENT

● Mr. HATCH. Mr. President, I am proposing an amendment to the Constitution today—the human life federalism amendment—that would overturn the infamous decision of the U.S. Supreme Court in *Roe* v. *Wade* 410 U.S. 113 (1973). This amendment would restore to the representative branches of Government the authority to legislate with respect to the practice of abortion.

ROE AGAINST WADE

In Roe against Wade, the Court found that the due process clause of the 14th amendment contained a guarantee of a "right to privacy" that was broad enough to encompass a woman's decision "whether or not to terminate pregnancy." Id. at 153. Because the right to personal privacy was a "fundamental right," it could be limited only by some "compelling State interest." Id. at 153. While such an interest could not be based upon the inclusion of unborn human life in the term "person" in the 14th amendment—with respect to which there may be no deprivation of life without due process of law—the Court nevertheless found some measure of State interest in protecting maternal health and in preserving the "potential life" of the fetus. Id. at 148.

In seeking to give expression to these interests, as well as protecting the newly discovered right to terminate one's pregnancy, the Court summarized its holding in the following manner:

(a) For the stage prior to approximately the end of the first trimester of pregnancy, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother. 410 U.S. at 164–165.

The scope of the abortion right set forth by the Court in Roe against Wade on January 22, 1973, was broader than that existing at the time in every one of the 50 States in the Union.

Prior to Roe against Wade, 31 States had statutes on their books that totally protected life from conception. Of the 19 that permitted abortion under certain circumstances, all 19 permitted abortions where necessary to save the life of the mother, 6 permitted abortions in cases of rape, 5 in cases of incest, and 4 in cases where there was likelihood that a child would be born with a substantial deformity. In only four States was abortion on demand permitted and, in each of these, there were temporal limits to such a right. The most liberal provision existed in the State of Massachusetts which permitted abortions without restrictions until the sixth month of pregnancy.

Whatever one's perceptions about

abortion, it is difficult to argue with the proposition that Roe against Wade has created a regime of abortion on demand, a national policy of abortion without restrictions of any significant kind. It is this status quo that would be overturned by the proposed human life federalism amendment.

During the first trimester of the pregnancy, the plenary right to abortion is express. During that period, there is absolutely no governmental authority to intervene in the woman's decision to abort. During the second trimester, a Government interest in abortion does arise—the interest in protecting and preserving maternal health. This interest may be expressed through governmental requirements that such abortions be performed within hospitals, clinics, or other facilities licensed to perform abortions.

There remains an absence of governmental authority, however, to do anything more than insure the safeness of the procedures of abortion. There are no protections whatsoever for the unborn fetus during this stage of the pregnancy.

During the final trimester of abortion—or approximately at that point at which the fetus reaches "viability"—a potential interest arises in protecting the fetus. The Government, finally, was in a position to protect the life of the fetus.

The Court, however, limited even this authority with an exception—and it was an exception that consumed the rule. During even the third trimester of the pregnancy, the right to abortion existed where necessary to protect the life or health of the mother. The critical element here was the health of the mother.

According to the Court in the companion case of *Doe* v. *Bolton* 410 U.S. 179 (1973), whether or not the health of the mother necessitated an abortion was a medical judgment to be made "in the light of all factors—physical, emotional, psychological, and the woman's age—relevant to her well-being." Id. at 192.

In other words, to quote Prof. John Noonan of the University of California Law School, the absolute right to abortion was curbed during the final trimester only by "the necessity of a physician's finding that she needed an abortion." Noonan, "A Private Choice" (New York: MacMillan, 1979), 12. It would be a rare physician who would be incapable of defending an abortion decision on the grounds that, in his best medical judgment, the "well-being" of the mother demanded it.

The abortion right then is a virtually unrestricted right under Roe and Doe. Any significant restrictions on this right are illusory. To quote Professor Noonan again:

> For the nine months of life within the womb the child was at the gravida's (pregnant woman's) disposal—with two restrictions: She must find a licensed clinic after month three; and after her child was viable, she must find an abortionist who believed she needed an abortion. *Id.* at 12.

No substantial barriers of any kind exist today in the United States for a woman to obtain an abortion for any reason during any stage of her pregnancy.

JURISPRUDENCE OF ROE

Apart from the national policy of abortion that it spawned, the Roe decision has been criticized broadly as an exercise in jurisprudence by observers of varying political persuasions and varying perspectives on abortion. In dissent in the Roe and Doe cases, Justice White observed:

> I find nothing in the language or history of the Constitution to support the Court's judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing State abortion statutes. 410 U.S. at 221.

Justice Rehnquist added in an accompanying dissent:

> The decision here to break the term of pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment. . . . To reach its result the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment. 410 U.S. at 174.

Prof. Archibald Cox, the former Solicitor General of the United States, remarked of the Roe decision:

> The failure to confront the issue in principled terms leaves the opinion to read like a set of hospital rules and regulations. . . . Neither historian, nor layman, nor lawyer will be persuaded that all the prescriptions of Justice Blackmun are part of the Constitution. Cox, *The Role of the Supreme Court in American Government* (New York: Oxford University Press, 1976), 113–114.

Prof. John Hart Ely of the Harvard Law School, while taking care to divorce himself from critics of the substantive policy expressed in Roe, concluded:

> It is, nevertheless, a very bad decision . . . It is bad because it is bad constitutional law, or rather because it is not constitutional law and gives almost no sense of an obligation to try to be. Ely, *The Wages of Crying Wolf: A Comment on Roe* v. *Wade* 82, Yale Law Journal 920, 947 (1973).

Alexander Bickel, professor at the Yale Law School, described the decision as akin to a "model statute" and expressed bewilderment at how such a responsibility had come to be vested in the Court:

> One is left to ask why. The Court never said. It refused the discipline to which its function is properly subject . . . *Roe* is derived not from Herbert Spencer's Social Statics, but from fashionable notions of progress . . . this will not do. Bickel, *The Morality of Consent* (New Haven: Yale University Press, 1975), 28.

Prof. Charles Rice of the Notre Dame Law School described the decision as "the most outrageous decision ever handed down by the Court in its entire history"; Prof. Richard Epstein of the University of Chicago Law School referred to Roe as "comprehensive legislation," without "principled grounds"; Prof. Robert Byrn of the Fordham Law School attacked the decision as resting upon "multiple and profound misapprehension of law and history"; Dean Harry Wellington of the Yale Law School viewed Roe as "Pickwickian" and "without mandate"; and Prof. Joseph Witherspoon of the University of Texas Law School described the decision as "unquestionably the most erroneous decision in the history of constitutional adjudication by the Supreme Court." Professor Noonan concluded his analysis of the abortion cases by stating:

> The liberty established has no foundation in the Constitution of the United States. It was established by an act of raw judicial power. Its establishment was illegitimate and unprincipled, the imposition of the personal beliefs of seven justices on the men and women of fifty States. The continuation of the liberty is a continuing affront to constitutional government in this country. Noonan at 189.

OVERTURNING SUPREME COURT

Justice White in his Roe dissent aptly characterized the majority decision when he observed:

> The upshot is that the people and the legislatures of the fifty States are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus on the one hand against the spectrum of possible impacts on the mother on the other hand.

It is this result that the proposed human life Federalism amendment is intended to overcome. The proposed amendment would restore to the States—as well as invest in Congress—the authority to legislate with respect to abortion. While I would personally favor an amendment that would impose a duty upon the States to prohibit virtually all abortions, I must stress that this is not the objective of the present amendment. It is not necessary that there be this duty in order to overcome the Roe and Doe decisions. It is necessary only that the representative branches of the Government no longer be totally limited in their ability to act in restricting or regulating or prohibiting abortion because of some presumed constitutional right to abortion.

There is no such constitutional right to abortion, in my view. It has never existed and there is nothing in the proposed measure that would concede that such a right has ever existed. I recognize, however, that, under our structure of Government, it is the duty of the Court to "say what the law is," *Marbury* v. *Madison* 1 Cranch 137 (1803). For better or worse, the Court has spoken on the issue of abortion in Roe and Doe; it has articulated a constitutional right to abortion emanating from the 14th amendment. There is no alternative now that a constitutional amendment to overcome this result—except to wait for the slim possibility that the Court may some day admit its error and overturn on its own the abortion cases.

There is certainly ample precedent for such a response to a Supreme Court decision. The 11th amendment to the Constitution, prohibiting the Federal judicial power to be exercised in suits by citizens of a State against another State, came in direct response to an action of the Supreme Court in accepting jurisdiction over such a case. *Chisholm* v. *Georgia*, 2 U.S. 419 (1793).

The 14th amendment, in circumstances not dissimilar from the present case, was proposed to the Constitution following the infamous decision of the Supreme Court in the *Dred Scott* case finding that black individuals were nonpersons under the Constitution. 60 U.S. 393 (1857).

The 16th amendment, permitting the imposition of a Federal income tax, was

later enacted in response to a Supreme Court decision finding an unapportioned—by State—tax to be in violation of article I of the Constitution. *Pollock* v. *Farmer's Loan and Trust Co.*, 157 U.S. 429 (1895); 158 U.S. 601 (1895).

Finally, the 26th amendment, according 18-year-olds the right to vote in Federal and State elections, was proposed following the Court's decision that the Congress lacked authority to impose such an obligation statutorily upon the States. *Oregon* v. *Mitchell*, 400 U.S. 112 (1970).

In addition, serious efforts at constitutional amendment were made in response to Court decisions on the subjects of child labor laws, *Hammer* v. *Dagenhart*, 247 U.S. 251 (1918), later overruled in *United States* v. *Darby*, 312 U.S. 100 (1941); and State legislative apportionment requirements, *Baker* v. *Carr*, 369 U.S. 186 (1962).

PROGENY OF ROE

It is not simply the abortion right that was created in Roe and Doe that is the object of my proposed amendment. However indefensible these decisions as matters of policy and jurisprudence, they have been distorted further by a series of subsequent decisions clarifying the scope of this right. Each of them have come in response to post-Roe efforts by the States to accord some measure of protection to unborn human life, or to establish some procedure to insure that the abortion decision was a deliberate, carefully considered one. In virtually every instance, the Supreme Court has struck down these exercises.

In *Planned Parenthood* v. *Danforth* 428 U.S. 52 (1976), the Supreme Court held that spousal consent statutes, which required the consent to an abortion by the father of a fetus, were unconstitutional. See also *Coe* v. *Gerstein* 376 F. Supp. 695 (S.D. Fla. 1974), affirmed 428 U.S. 901 (1976). The Court in Danforth also held that so-called informed consent statutes, which required a physician to obtain the written consent of a woman after apprising her of the dangers of abortion and possible alternatives, were constitutional only if the requirements were closely related to maternal health and not unnecessarily burdensome upon the abortion right. See also *Freiman* v. *Ashcroft* 584 F. 2d 247, affirmed 99 S. Ct. 1416 (1979).

In *Belotti* v. *Baird* 443 U.S. 622 (1979), the Court held that, while parental consent statutes requiring minors to obtain the consent of their parents prior to having an abortion were not unconstitutional per se, the State must also provide alternative procedures for obtaining an abortion in the event that parental consent is not forthcoming or if the minor does not want to request such consent.

See also *Planned Parenthood* v. *Danforth* 428 U.S. 52 (1976). In *H.L.* v. *Matheson* Docket No. 79-5903 (1981), however, the Court upheld a Utah State statute prohibiting physicians, under narrowly defined circumstances, from performing an abortion on unemancipated minors without parental notification. The statute was drawn extremely narrowly to require such notification "if possible" and to apply if the minor is living with and dependent upon her parents and has made no showing or claim of unusual maturity.

In *Colautti* v. *Franklin*, 439 U.S. 379 (1979), the Court ruled that fetal protection statutes were generally unconstitutional by reason of being vague and overly broad. Such statutes, in one manner or another, impose an obligation upon a performing doctor to make reasonable efforts to save the life of an aborted fetus. In Colautti, the Court found that such statutes were permissible only with respect to viable fetuses—who by definition were least in need of such protection—and that they must contain precise standards for determining such viability. See also *Planned Parenthood* v. *Danforth*, 428 U.S. 52 (1976).

Thus, even at the latest stages of pregnancy, the Court refused to find a significant interest in the life of the fetus that could be balanced against the apparently unrestricted right of the woman to terminate her pregnancy at will. It is the progeny of Roe and Doe, as much as Roe and Doe themselves, toward which my proposed amendment is directed. It is these cases which make clear the lengths to which some on the Court are prepared to go in defense of the abortion right.

FEDERALISM AMENDMENT

The proposed amendment would read in its entirety:

> The right to abortion is not secured by this Constitution. The Congress and the several States shall have the concurrent power to restrict and prohibit abortions: *Provided*, That a law of a State more restrictive than a law of Congress shall govern.

It is language that I hope will be scrutinized by my colleagues, by the public, and by participants in the hearing process that will begin next month in the Subcommittee on the Constitution.

In removing the abortion controversy from the Federal judicial branch, the proposed amendment would place the debate within those institutions of Government far better equipped to deal with the issue. By its very nature, the judiciary is the wrong forum to resolve the enormously difficult problem of abortion. Because they cannot control the specific types of cases that come before them, and because they are limited in their ability to fashion compromise solutions to difficult issue, the courts are entirely the wrong place within which to argue about abortion.

The "all or nothing" legalization of abortion-on-demand of Roe and Doe has done nothing but exacerbate the tensions already created by the abortion controversy. Unlike most legislative solutions in which some element of deference is paid to major political or social or occupational groupings, the abortion decisions involved a small group of seven individuals who totally ignored the passionately held views of a large number of the American people. They did this not in response to the unequivocal demands of the operative document of our Nation, but in the course of a decision whose jurisprudence and whose textual and historical foundation in the Constitution is at least as suspect as the policies that it fostered.

Let me be clear about what I am saying. I personally believe that abortion is an "all or nothing" issue. I am irreconcilably opposed to abortion. I believe that abortion involves the taking of a human life. It is morally, ethically, and—I believe—constitutionally wrong. Should my amendment become part of the Constitution, I would be among those seeking the most restrictive State and Federal laws with respect to abortion. When a greater consensus exists in this country on the repugnance of abortion—which consensus I believe will be promoted by this amendment—I will be among those seeking a direct constitutional prohibition on abortion.

That consensus, unfortunately, does not exist yet today. The abortion issue, if it is to be elevated into an issue of constitutional proportions, should be elevated only through the normal consensus-building procedure of the article V amendment process rather than through the process of judicial reinterpretation.

For the present, I believe that it is important to reenfranchise all the people in fashioning a solution to the abortion controversy. That can only be done by placing this issue back within the representative branches of Government where it should have remained all along. I would expect that the result would be difficult legislative compromises, bitter sessions of negotiation and give-and-take, and solutions not entirely satisfactory to any single group or individual, including myself.

Although I would expect to continue personal efforts to secure a total abolition of abortion in this country, I know that I would be able to tolerate a regime that permitted some abortions much better if it were the result of the clear will of the citizenry speaking through their representatives than where it has been the result of a small elite imposing their own personal views through the pretext of constitutional interpretation.

LEGISLATIVE OPTIONS

Because the proposed amendment would only provide authority to the State legislatures and Congress to act on the issue of abortion—without dictating particular legislative outcomes or policies—I would hope that all of my colleagues who can distinguish between abortion and run-of-the-mill medical operations would consider supporting it. Nothing is mandated by this amendment. It does not get involved with any issues relating to "when human life begins." It does not read in "rape" or "incest" or "medical necessity" exceptions into the Constitution. It does not require any particular treatment of contraceptives—which would not be covered by the amendment—or abortifacients or IUD's. No questions of tort law or criminal law or insurance law are inadvertently raised.

All that the proposed amendment would do is to "deconstitutionalize" the issue of abortion. There would no longer be a constitutional right or guarantee of abortion. Congress and the States, it is true, could act under the proposed amendment to totally prohibit abortion.

They could prohibit abortions in all but narrowly limited or defined circumstances. I would personally support this. But, if they chose, they could undertake far less extensive reforms. They could, for example—

First. Choose only to limit the circumstances of late pregnancies alone;

Second. Choose only to impose obligations upon physicians to save the lives of fetuses capable of surviving an abortion;

Third. Place limitations upon the experimental and medical research use of fetuses;

Fourth. Require that women contemplating abortion be fully appraised of the risks of abortion and alternatives to abortion;

Fifth. Require some form of parental consent to abortions performed upon minors;

Sixth. Require some form of spousal consent to abortions performed upon a woman;

Seventh. Establish some minimum waiting period before an abortion could occur or require some form of professional consultation prior to an abortion;

Eighth. Establish rights of refusal to perform abortions in physicians or nurses, or in entire hospitals;

Ninth. Limit the commerce in abortifacient devices;

Tenth. Limit public advertising by abortion clinics and by abortion services.

The Congress and the States, if they chose, could further decide to do nothing about abortion. That, too, would be within their discretion under the proposed amendment.

MISCELLANEOUS ASPECTS

Let me briefly summarize some of the technical aspects of the proposed amendment that I have tried to consider carefully. I will, of course, look forward to hearing testimony on these and other aspects of the amendment during the upcoming Subcommittee on the Constitution hearings:

The "right to abortion" referred to in the first sentence is a right that apparently was derived in Roe from the due process clause of the 14th amendment. There is some suggestion even in Roe, though, that the right may be derived from the ninth amendment. Roe at 153. There is some confusion on this point. The purpose of the proposed amendment is to abrogate this "right" whatever its alleged constitutional basis.

There is some disagreement as far as whether or not each of the individual sentences of the amendment standing alone would effectively overturn Roe. I believe that they probably would, but have chosen to clarify this issue by proposing that each be placed into the Constitution. Together, it should be explicit that there is no constitutionally based right to abortion emanating from any provision of the Constitution that might potentially restrict the ability of Congress or the States to legislate with respect to the subject.

The right to legislate with respect to abortion would, of course, be restricted by other provisions of the Constitution not relating to a right to abortion. It would be a clear violation of the equal protection clause of the 14th amendment, for example, for a State to distinguish between women on the basis of race in permitting or restricting abortions.

The concept of "concurrent" power to legislate with respect to abortions is not dissimilar to the concept of "concurrent" power given Congress and the States to enforce the 18th amendment relating to the manufacture, sale, or transportation of intoxicating beverages. There would be separate and independent—not joint—power in Congress and the States to exercise their territorial limits. *National Prohibition Cases* 253 U.S. 350 (1920).

The question of whether a Federal law enacted under the proposed amendment would conflict with a State law is largely one of statutory construction that cannot be approached mechanically. Similarly, what is more or less "restrictive" in the way of placing limits upon abortion is a matter that cannot be summarized through formulas.

The basic premise of the amendment, however, is this. The Congress would be empowered to establish minimum national standards with respect to abortion, if it chose. Under the supremacy clause of the Constitution, a Federal enactment would take precedence over a State enactment in the case of irreconcilable conflict. See for example, *State* v. *Gauthier* 118 A. 380 (1922); *State* v. *Ligaarden* 230 N.W. 729 (1930); *State* v. *Lucia* 157 A. 61 (1931).

The latter clause of the second sentence, however, would alter this general rule of preemption to the extent that a State enactment was more restrictive of abortion than a congressional enactment.

In some respects, the differences between the more traditional constitutional amendments relating to abortion and the immediate amendment are not as great as appears at first glance. Even a proposed amendment that directly prohibited abortion would not be self-enforcing. It would require Federal and State enabling legislation. Given that the judiciary would—properly—be reluctant to force a coequal legislative branch of government to pass legislation, there would likely be a major element of discretion deposed in the legislative branches of Government under even a direct human life amendment.

Finally, I would note that, because it is a Constitution that we are amending, not a legal code, I have placed a priority on making clear the principle that is being pursued, not on insuring that each and every opportunity for possible circumvention is forestalled. I am not sure that this is possible. In this respect, I quote again from Professor Noonan:

> The Constitution is not addressed to persons of bad will, but to persons—judges, legislators, officeholders, citizens—who want to abide by its provisions. Therefore, it is neither necessary nor desirable to draft with an eye to silly, sophistical, or evasive interpretations. No language can be made foolproof. There is no language that cannot be distorted by evil men or inverted by clever men. It is not hard to show the vulnerability of any form of words to ingenious and insympathetic interpretation. As the Constitution is not addressed to the wicked or the foolish, so it is not addressed to the sophistical. The Constitution, and any amendment to it, speak to the understanding of those who with good will seek to comprehend the purposes of its framers. *Noonan* at 182.

CONCLUSION

Let me conclude by saying to those who would argue that this amendment represents a concession to, or a compromise with, a morally indefensible policy. I do not believe that this is true. Not only would the proposed amendment overturn Roe against Wade, but it would, arguably, go further by clarifying that Congress, as well as the States, possesses authority with respect to abortion. It would restore the status quo prior to the Roe decision—and then some.

While I would personally prefer that we go further, there can be absolutely no doubt in anyone's mind that there is not currently the kind of consensus for this action—either in the country or in Congress—that would permit this to be done. Nor is such a consensus imminent. The longer that abortion on demand continues, the more acceptable that it becomes, the more that it becomes institutionalized. I do not believe that we can permit this to happen.

Once, however, we can establish in the Constitution the principle that abortion is not an ordinary, routine medical operation, I believe that we can begin to reeducate all the American people to the cruel realities of abortion. Acceptance of this principle in the organic law of our land will better enable us to carry on education and information efforts.

The longer that the status quo—unrestricted abortion—continues to be the law of the land, the greater the number of citizens who will grow up in this country oblivious to any other reality, the greater the number of citizens who will forget that there was a time at which abortion was condemned unanimously by the States. Not during the Middle Ages, not during the era of the Founding Fathers, not during the industrial revolution, but during the entirety of our Nation's history through the 1950's and the 1960's and up until January 22, 1973.

The law is, in fact, a teacher. We must give it that opportunity before it is too late, before the lesson goes permanently unlearned.

I urge the support of my colleagues for the proposed amendment—not only those who share the full extent of my concern about abortion, but those as well who are uneasy at any aspect of the structure that has been erected by the Supreme Court, those who are hesitant at the process by which the abortion revolution has been wrought, and those who recognize the social divisions that have been caused this country by a Court that ignored the strengths of the democratic, representative processes of government in resolving differences among citizens.

I ask unanimous consent that the full text of the joint resolution appear at this point in the RECORD:

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

S.J. RES. 110

*Resolved by the Senate and House of Representatives of the United States in Congress assembled, (two-thirds of each*

*House concurring therein*), That the following article is proposed as an amendment to the Constitution of the United States which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE —

"A right to abortion is not secured by this Constitution. The Congress and the several States shall have the concurrent power to restrict and prohibit abortions: *Provided*, That a law of a State which is more restrictive than a law of Congress shall govern.".

## ADDITIONAL COSPONSORS

S. 517

At the request of Mr. BENTSEN, the Senator from New York (Mr. D'AMATO) and the Senator from Iowa (Mr. GRASSLEY) were added as cosponsors of S. 517, a bill to amend the Clean Air Act to provide for further assessment of the validity of the theory concerning depletion of ozone in the stratosphere by halocarbon compounds before proceeding with any further regulation of such compounds, to provide for periodic review of the status of the theory of ozone depletion, and for other purposes.

S. 895

At the request of Mr. MATHIAS, the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 895, a bill to amend the Voting Rights Act of 1965 to extend certain provisions for an additional 10 years, to extend certain other provisions for an additional 7 years, and for other purposes.

S. 953

At the request of Mr. HEFLIN, the Senator from Louisiana (Mr. JOHNSTON) and the Senator from Washington (Mr. JACKSON) were added as cosponsors of S. 953, a bill to create a program to combat violent crime in the United States, and for other purposes.

S. 954

At the request of Mr. HEFLIN, the Senator from Louisiana (Mr. JOHNSTON) was added as a cosponsor of S. 954, a bill to amend title 18 and the Omnibus Crime Control and Safe Streets Act of 1974 and for other purposes.

S. 1142

At the request of Mr. HEFLIN, the Senator from Montana (Mr. MELCHER) was added as a cosponsor of S. 1142, a bill to amend the National Traffic and Motor Vehicle Safety Act of 1966 to authorize the Secretary of Transportation to require tire dealers or distributors to provide first purchasers with a form to assist manufacturers in compiling tire defects if the Secretary determines such notice is necessary in the interest of motor vehicle safety.

S. 1158

At the request of Mr. HEFLIN, the Senator from Alabama (Mr. DENTON) was added as a cosponsor of S. 1158, a bill for the relief of Christina Boltz Sidders.

S. 1235

At the request of Mr. D'AMATO, the Senator from Arizona (Mr. DECONCINI) was added as a cosponsor of S. 1235, a bill to exempt certain matters relating to the Central Intelligence Agency from the disclosure requirements of title 5, United States Code.

S. 1323

At the request of Mr. TSONGAS, the Senator from Maine (Mr. MITCHELL), the Senator from Connecticut (Mr. DODD), the Senator from Michigan (Mr. LEVIN), and the Senator from Montana (Mr. BAUCUS) were added as cosponsors of S. 1323, a bill to amend the Internal Revenue Code of 1954 with respect to the residential energy and investment tax energy credits, and for other purposes.

S. 1378

At the request of Mr. JEPSEN, the Senator from Utah (Mr. HATCH) was added as a cosponsor of S. 1378, a bill to strengthen the American family and to promote the virtues of family life through education, tax assistance, and related measures.

S. 1532

At the request of Mr. HEFLIN, the Senator from Arkansas (Mr. BUMPERS), and the Senator from Ohio (Mr. METZENBAUM) were added as cosponsors of S. 1532, a bill to amend the Federal Rules of Criminal Procedure and the Federal Rules of Civil Procedure with respect to examination of prospective jurors.

S. 1589

At the request of Mr. HEFLIN, the Senator from North Dakota (Mr. ANDREWS) was added as a cosponsor of S. 1589, a bill to improve the security of the electric power generation and transmission system in the United States.

SENATE JOINT RESOLUTION 97

At the request of Mr. MITCHELL, the Senator from South Dakota (Mr. PRESSLER), and the Senator from Oregon (Mr. PACKWOOD) were added as cosponsors of Senate Joint Resolution 97, a joint resolution to designate the second full week in October as "National Legal Secretaries' Court Observance Week."

SENATE JOINT RESOLUTION 105

At the request of Mr. LAXALT, the Senator from Wisconsin (Mr. KASTEN), the Senator from Maryland (Mr. MATHIAS), the Senator from Alabama (Mr. DENTON), the Senator from California (Mr. CRANSTON), the Senator from Louisiana (Mr. JOHNSTON), the Senator from Texas (Mr. BENTSEN), and the Senator from Kansas (Mr. DOLE) were added as cosponsors of Senate Joint Resolution 105, a joint resolution to designate October 1981 as "National PTA Membership Month."

SENATE CONCURRENT RESOLUTION 32

At the request of Mr. MATHIAS, the Senator from Texas (Mr. BENTSEN) was added as a cosponsor of Senate Concurrent Resolution 32, a concurrent resolution authorizing a bust or statue of Dr. Martin Luther King, Jr., to be placed in the Capitol.

SENATE RESOLUTION 77

At the request of Mr. HEFLIN, the Senator from Alabama (Mr. DENTON) was added as a cosponsor of Senate Resolution 77, a resolution relating to the granting of exit visas for Irina and Boris Ghinis and their children, Julia and Allis Ghinis, for departure from the Soviet Union.

SENATE RESOLUTION 199

At the request of Mr. NUNN, the Senator from South Carolina (Mr. HOLLINGS), the Senator from Oregon (Mr. HATFIELD), the Senator from California (Mr. HAYAKAWA), the Senator from Texas (Mr. TOWER), the Senator from Florida (Mr. CHILES), the Senator from Oklahoma (Mr. BOREN), the Senator from Minnesota (Mr. DURENBERGER), the Senator from Pennsylvania (Mr. SPECTER), the Senator from Kentucky (Mr. HUDDLESTON), the Senator from Arizona (Mr. GOLDWATER), the Senator from North Carolina (Mr. HELMS), the Senator from Tennessee (Mr. SASSER), the Senator from Connecticut (Mr. WEICKER), the Senator from Washington (Mr. JACKSON), the Senator from New York (Mr. D'AMATO), the Senator from Michigan (Mr. LEVIN), the Senator from Mississippi (Mr. COCHRAN), the Senator from Nebraska (Mr. ZORINSKY), the Senator from Rhode Island (Mr. PELL), the Senator from West Virginia (Mr. RANDOLPH), the Senator from Hawaii (Mr. INOUYE), the Senator from South Dakota (Mr. ABDNOR), the Senator from Wisconsin (Mr. KASTEN), the Senator from Alaska (Mr. MURKOWSKI), and the Senator from Illinois (Mr. PERCY) were added as cosponsors of Senate Resolution 199, a resolution to authorize "National Productivity Improvement Week."

SENATE RESOLUTION 211

At the request of Mr. BENTSEN, the Senator from West Virginia (Mr. ROBERT C. BYRD) was added as a cosponsor of Senate Resolution 211, a resolution calling on the Governors of the Federal Reserve System to encourage banks to make loans available for productive uses while eliminating loans for speculative and unproductive uses.

## SENATE RESOLUTION 213—RESOLUTION AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY

Mr. T. [illegible] for himself and Mr. BIDEN) sub[illegible] the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 213

*Resolved*, That section 2 of the Senate Resolution 53, Ninety-seventh Congress, agreed to March 31 (legislative day, February 16), 1981, is amended by striking out the amounts "$4,272,722" and "$172,490" and inserting in lieu thereof "$4,425,590" and "$179,990", respectively.

## NOTICE OF HEARINGS

SUBCOMMITTEE ON ENERGY REGULATION

Mr. HUMPHREY. Mr. President, I would like to announce for the information of the Senate and the public that the oversight hearings previously scheduled before the Subcommittee on Energy Regulation for Monday, November 2 and Tuesday, November 3 to consider the implementation of title I of the Natural Gas Policy Act of 1978 have been canceled.

## AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON LABOR AND HUMAN RESOURCES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Labor and Human Resources be permitted to meet during the session of the Senate tomorrow, September 22, at 2 p.m., to hold nomination hearings on the following nominees: Gary Jones, to be Deputy Under Secretary for Planning and Budget in the Department of Education; Jean Tufts to be Assistant Secretary for Special Education and Rehabilitative Services, Department of Education; and Edward Curran, to be Director of the National Institute of Education.

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

COMMITTEE ON GOVERNMENTAL AFFAIRS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Governmental Affairs Committee be permitted to meet twice on Tuesday, September 22 during the session of the Senate, at 10 a.m. to discuss S. 1417, the Presidential Protection Commission Act, and again at 2 p.m. to discuss the nominations of Bruce Chapman for Director of the Bureau of the Census and Charles Girard to be Associate Director for Resource Management and Administration at the Federal Emergency Management Agency.

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

COMMITTEE ON FOREIGN RELATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 22, at 3 p.m., to hold a hearing on the nomination of John Gunther Dean to be Ambassador to Thailand and M. Virginia Schafer to be Ambassador to Papua, New Guinea.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Tuesday, September 22, to hold a business meeting to vote on nominations and to mark up the Sinai Agreement, Senate Joint Resolution 100.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Thursday, September 24, at 2 p.m. to hold hearings on 10 tax treaties.

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

SUBCOMMITTEE ON ENERGY RESEARCH AND DEVELOPMENT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Monday, September 21, to hold a hearing to consider the Department of Energy's photovoltaic program.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Friday, September 25, at 10 a.m., to hold a hearing to consider the viability of the domestic mining and milling industry.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Tuesday, September 22, at 9:30 a.m. to hold a business meeting on pending calendar business.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Wednesday, September 23, to hold a business meeting on pending calendar business.

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

Mr. STEVENS. Mr. President, I ask unanimous consent that the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate on Thursday, September 24, to hold a hearing to consider the nomination of Henry E. Thomas IV, of Virginia, to be an Assistant Secretary of Energy for International Affairs.

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

SUBCOMMITTEE ON INTERGOVERNMENTAL RELATIONS

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Intergovernmental Relations of the Committee on Governmental Affairs be authorized to meet during the session of the Senate on Wednesday, September 23, at 9:30 a.m., to hold an oversight hearing on standard language to be included in all future block-grant legislation.

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

SUBCOMMITTEE ON INVESTIGATIONS AND GENERAL OVERSIGHT

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Investigations and General Oversight of the Committee on Labor and Human Resources be authorized to meet during the session of the Senate on Wednesday, September 23, to hold a hearing pertaining to oversight of occupational safety and health, at 10 in the morning.

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

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## ADDITIONAL STATEMENTS

### THE FARM BILL

● Mr. D'AMATO. Mr. President, I must say that I have serious reservations about the farm bill as passed by the Senate, S. 884. In particular, the dairy price support program adopted by the Senate last week is inadequate to meet the basic needs of the dairy farmer and his family. The pain inflicted upon the dairy farmer is even more cutting when he sees the benefits bestowed upon the peanut grower, the tobacco harvester, and the sugar cropper.

I have been a consistent supporter of the President's program for economic recovery. In so doing, however, I have maintained that the budget reductions and tax cuts must be fair and equitably shared. I have great difficulty in finding the equity and fairness in this farm bill. It is just not there.

The dairy title of this farm bill may very well be a disaster for this Nation's dairy farmers. S. 884 sets a 70-percent parity dairy price support effective October 1, 1981, with no semiannual adjustment. The $13.10 per hundredweight support price will carry over for another year until October 1, 1982, because 70 percent of parity on October 1, 1981, will probably be no more than $13.10. As a result of these provisions, the dairy farmer will have to absorb on his own the burden of inflation and devastating interest rates.

The small, family owned and run dairy farm may soon become an endangered species. New York is one of this Nation's leading dairy States. The dairy farmer is one of this country's hardest workers. He rises before the sun to milk his cows each morning. As my colleagues are aware, this is not an easy task. I for one still adhere to the Jeffersonian ideal that the farmer has a special and chosen way of life.

Where would this Nation be without the agricultural abundance he provides? In what position would our country be put it we had to import our food stuff? Is it fair to say that our national security would be threatened? Should a policy that we have adopted toward the dairy farmers be continued for many years to come, and should it be applied to the other sectors of the agricultural community, our productivity will be threatened and with it our security.

Mr. President, I must also add that I am even more concerned with this Senate action because the dairy industry was the first to come forward last March to do its part for the success of the President's economic program. I voted to support the President at that time and the dairy farmer went without the increase in the support level he had expected on April 1, 1981. At that time I commended the dairy industry for taking the first step on the long and difficult road of fiscal restraint.

However, now the dairy farmer is still being sent down that road, and it is a lonely road in the agricultural community. It is a road paved with inflation and high interest rates, and we are not giving proper direction to the dairy farmer to help him along his travels. At the same time the Senate has seen fit to sugar-coat subsidies for other crops. I believe what is fair for one crop is fair for all, and if the dairy farmer is to sacrifice for the goal of a balanced Federal budget, then so too should the peanut and sugar producers.

Dropping the support level to 70 percent of parity is a serious blow to dairy farmers and will create problems for consumers and farmers alike. I remain committed to a reasonable and fair dairy price support level to insure stable prices and supplies for one of this Nation's most nutritious and healthful products.●

## SCIENCE AND ENGINEERING MANPOWER

● Mr. TSONGAS. Mr. President, we face a critical shortage of science and engineering manpower in the next decade. With the increased emphasis on defense, the shortage of civilian R. & D. manpower will be even more acute. Yet our ability to produce such trained manpower appears to be decreasing. U.S. graduate enrollments in engineering, physics, and chemistry have declined by anywhere from 20 to 40 percent from levels a decade ago—and nearly a third of those enrolled are now foreign students. International comparisons are also telling. Between 1963 and 1977, Japan awarded approximately as many degrees to engineers as did the United States, even though Japan's population is only about half the size of our own.

In the Soviet Union, an estimated 5 million of this year's graduates from secondary schools will have studied 2 years of calculus, compared to only 105,000 U.S. high school graduates who will have taken only 1 year of calculus. The disparity is just as marked in the rest of the mathematics and science curricula. To remain competitive in the international marketplace and maintain our national security, we must be able to draw on a large pool of trained scientific manpower.

A recent study by the American Association of Engineering Societies entitled "Data Related to the Crisis in Engineering Education," clearly identifies the need for additional support for science education. I would hope that when the Senate considers the National Science Foundation budget in the future, that these important points will be included in the debate.

I ask that the executive summary and three tables from the AAES study be printed in the RECORD.

The material follows:

SUMMARY

There is a serious problem in engineering education and research which relates directly to the present position of the United States in the world industrial market. The critical shortage of qualified faculty, the lack of resources necessary to prepare future faculty, and the absence of modern equipment and facilities, if not corrected rapidly, will result in further erosion of the United States position among the industrial powers of the world. A favorable resolution of this problem would strengthen the world position of the United States.

The shortage of qualified faculty for engineering colleges is extremely serious. Faculty salaries have not been responsive to the normal rules of supply and demand, and in many instances the industrial salaries for bachelor graduates are significantly higher than those paid experienced faculty. Thus, the recruitment and retention of faculty is extremely difficult. Indications are that this situation will get worse.

Although engineering colleges have increased their production of baccalaureate degrees by almost 54 percent in the past five years, the production of doctorate degrees has decreased by 13 percent over the same time period. However, the number of engineering degrees produced in the United States is a smaller percentage of the total degrees than for West Germany, Japan, and several other major nations.

Because of the importance of engineering in our technological society, engineering enrollment is at an all-time high. It is anticipated that engineering enrollments will continue to grow as the United States endeavors to strengthen its position in the industrial world. As a consequence, Engineering Colleges are becoming saturated with students while lacking the resources to handle them, causing a real crisis.

Engineering laboratories have deteriorated due to minimal maintenance and replacement budgets, and continuous use by greatly increasing numbers of students. In many cases, engineering laboratory facilities are one or more generations out of date, which affects the quality of engineering education. Immediate capital assistance is essential for the modernization and expansion of these facilities.

Current needs for engineering faculty members outstrip the total new Ph. D. production, yet only thirty-seven percent of the engineering Ph. D.'s are currently engineering faculty members and new Ph. D.'s are highly sought after by industry and government. More engineering doctorates are needed by both industry and university to meet national needs for productivity and innovation in the United States. It is essential that prompt actions be taken to resolve the crisis in engineering education.

U.S. ENGINEERING DEGREES, 1950–80

| Year ending | Bachelor's degrees | | Master's degrees | | Doctoral degrees | |
|---|---|---|---|---|---|---|
| | Foreign nationals | Total | Foreign nationals | Total | Foreign nationals | Total |
| 1950 | (1) | 48,160 | (1) | 4,865 | (1) | 492 |
| 1951 | (1) | 37,887 | (1) | 5,134 | (1) | 586 |
| 1952 | (1) | 27,155 | (1) | 4,132 | (1) | 586 |
| 1953 | (1) | 24,265 | (1) | 3,636 | (1) | 592 |
| 1954 | (1) | 22,236 | (1) | 4,078 | (1) | 590 |
| 1955 | (1) | 22,589 | (1) | 4,379 | (1) | 599 |
| 1956 | (1) | 26,306 | (1) | 4,589 | (1) | 610 |
| 1957 | (1) | 31,221 | (1) | 5,093 | (1) | 596 |
| 1958 | (1) | 35,332 | (1) | 5,669 | (1) | 647 |
| 1959 | (1) | 38,134 | (1) | 6,615 | (1) | 714 |
| 1960 | (1) | 38,808 | (1) | 6,989 | (1) | 786 |
| 1961 | (1) | 35,860 | (1) | 7,977 | (1) | 943 |
| 1962 | (1) | 34,735 | (1) | 8,909 | (1) | 1,207 |
| 1963 | (1) | 33,458 | (1) | 9,460 | (1) | 1,378 |
| 1964 | (1) | 35,226 | (1) | 10,827 | (1) | 1,693 |
| 1965 | (1) | 36,691 | (1) | 12,246 | (1) | 2,124 |
| 1966 | (1) | 35,815 | (1) | 13,677 | (1) | 2,303 |
| 1967 | (1) | 36,186 | (1) | 13,837 | (1) | 2,614 |
| 1968 | ( ) | 38,002 | ( ) | 15,152 | (1) | 2,933 |
| 1969 | ( ) | 39,972 | (1) | 14,980 | (1) | 3,387 |
| 1970 | (1) | 42,966 | (1) | 15,548 | (1) | 3,620 |
| 1971 | 1,565 | 43,167 | 2,930 | 16,383 | 741 | 3,640 |
| 1972 | 1,944 | 44,190 | 2,973 | 17,356 | 773 | 3,774 |
| 1973 | 2,136 | 43,429 | 2,551 | 17,152 | 708 | 3,587 |
| 1974 | 2,436 | 41,407 | 3,099 | 15,885 | 1,014 | 3,362 |
| 1975 | 2,468 | 38,210 | 3,250 | 15,773 | 891 | 3,138 |
| 1976 | 2,799 | 37,970 | 3,628 | 16,506 | 1,060 | 2,977 |
| 1977 | 2,996 | 40,095 | 3,825 | 16,551 | 995 | 2,813 |
| 1978 | 3,084 | 46,091 | 3,720 | 16,182 | 874 | 2,573 |
| 1979 | 3,788 | 52,598 | 4,066 | 16,036 | 923 | 2,815 |
| 1980 | 4,895 | 58,742 | 4,512 | 17,243 | 982 | 2,751 |

[1] Not available.

Source: Data from 1926–52 taken from "Facilities and Opportunities for Graduate Study in Engineering," Amer. Soc. for Engrg. Educ., Washington, D.C., March 1958. Data from 1953–76 supplied by Engineering Manpower Commission, New York, N.Y. Data for 1969–79 from "Engineering Manpower Bulletin No. 50", November 1979, Engineers Joint Council, New York, N.Y. 1980 from Engineering Manpower Commission data.

ENGINEERING DEGREES, ACTUAL AND PROJECTED 1962–87

| Year | B.S. in engineering | B.S. in technology | M.S. in engineering | Doctorate in engineering |
|---|---|---|---|---|
| 1961–62 | 34,551 | 1,519 | 8,953 | 1,216 |
| 1962–63 | 33,285 | 1,687 | 9,666 | 1,385 |
| 1963–64 | 35,013 | 2,001 | 10,857 | 1,705 |
| 1964–65 | 36,586 | 1,928 | 12,093 | 2,133 |
| 1965–66 | 35,615 | 2,357 | 13,717 | 2,315 |
| 1966–67 | 35,952 | 2,741 | 13,986 | 2,619 |
| 1967–68 | 37,368 | 3,173 | 15,247 | 2,933 |
| 1968–69 | 41,248 | 4,269 | 15,372 | 3,391 |
| 1969–70 | 44,479 | 5,199 | 15,723 | 3,691 |
| 1970–71 | 44,898 | 5,148 | 16,443 | 3,638 |
| 1971–72 | 45,392 | 5,772 | 16,960 | 3,671 |
| 1972–73 | 46,411 | 4,854 | 16,619 | 3,492 |
| 1973–74 | 42,840 | 7,446 | 15,379 | 3,312 |
| 1974–75 | 39,388 | 7,464 | 15,348 | 3,108 |
| 1975–76 | 38,388 | 7,943 | 16,342 | 2,821 |
| PROJECTED | | | | |
| 1976–77 | 44,930 | 8,690 | 16,250 | 2,810 |
| 1977–78 | 53,980 | 8,580 | 16,230 | 2,800 |
| 1978–79 | 57,400 | 9,350 | 16,280 | 2,770 |
| 1979–80 | 61,190 | 9,870 | 16,290 | 2,750 |
| 1980–81 | 61,410 | 10,310 | 16,410 | 2,740 |
| 1981–82 | 61,290 | 10,700 | 16,400 | 2,690 |
| 1982–83 | 60,960 | 11,040 | 16,430 | 2,650 |
| 1983–84 | 60,490 | 11,380 | 16,440 | 2,620 |
| 1984–85 | 59,510 | 11,690 | 16,410 | 2,580 |
| 1985–86 | 58,210 | 11,750 | 16,350 | 2,550 |
| 1986–87 | 56,660 | 11,900 | 16,260 | 2,500 |

Note: NCES estimates exceed the actual count of awarded degrees made by EMC by 10 percent or more. Source: NCES.

PERCENTAGE OF ENGINEERING GRADUATES TO TOTAL BACHELOR'S DEGREES

| Country | Total graduates | Engineering degrees | Percent engineering degrees |
|---|---|---|---|
| Bulgaria | 14,661 | 5,880 | 40.4 |
| Czechoslovakia | 22,306 | 7,212 | 32.3 |
| East Germany | 43,205 | 17,356 | 40.1 |
| Hungary | 11,768 | 5,535 | 47.0 |
| Poland | 26,578 | 10,939 | 41.1 |
| Romania | 30,839 | 12,260 | 39.7 |
| West Germany | 60,436 | 22,400 | 37.1 |
| Japan | 315,122 | 65,422 | 20.7 |
| United States | 949,000 | 54,600 | 5.8 |

Source: Latest year available from UNESCO. ●

## THE FAMILY PROTECTION ACT (S. 1378)

● Mr. HATCH. Mr. President, I desire to state my support for S. 1378, the Family Protection Act, introduced by my friend and colleague, the distinguished Senator from Iowa, Senator ROGER JEPSEN. In introducing the Family Protection Act Senator JEPSEN has exercised outstanding leadership in bringing the attention of Congress to focus on what is our greatest source of national strength, the family.

I am in complete agreement with the stated purposes of the Family Protection Act which are:

To preserve the integrity of the American family, to foster and protect the viability of American family life by emphasizing family responsibilities in education, tax assistance, religion, and other areas related to the family, and to promote the virtues of the family.

Too frequently in the past when we have developed public policy we have failed to take into account that when we are dealing with individuals, we are also dealing with families. At times we have adopted policies which, in their attempts to help individuals, have been destructive of families. It is, therefore, very appropriate to begin to reverse our thinking, and once again to bring families to the forefront of our national awareness, and to the attention of Congress as we examine human service issues.

The Family Protection Act looks at a very broad range of issues. Quite correctly it emphasizes that family related concerns span a wide field of congressional activity. Congress is organized into committees that deal with substantive issues. Many of these issues can impact upon a single family. While it is appropriate for the Family Protection Act to address a wide range of issues, I believe we will enact portions of the act as we consider legislation in a wide range of committee jurisdictions.

Mr. President, I hope we will follow the leadership of our distinguished colleague from Iowa in considering families and in strengthening families, as we debate and work on legislative concerns. We need to ask:

First, will this legislation strengthen the role of parents as they work to fulfill their responsibility as the primary source of guidance and support in raising their children.

Second, will this have a positive impact on couples and help to strengthen their marriage.

Third, does this approach recognize and strengthen the role that family members can bring in solving problems or finding solutions to social needs.

I believe the Family Protection Act addresses social concerns with exactly this kind of approach. Rather than trying to put big government between couples, between parents and children, or setting big government up as the director of social welfare, the Family Protection Act seeks to put the family in its rightful place as the center of concern.

I am pleased to join with Senator JEPSEN in offering my enthusiastic support for S. 1378. I hope we are moving into an era that will see families protected from unnecessary Government intrusion, and hurtful Government policy. I trust we are moving into an era which will see families, and family life, promoted and strengthened; because it is my firm conviction that if families are fully functioning and healthy most of the rest of society's problems will be easier to handle—in fact many will disappear.●

## HOUSING COOPERATIVES

● Mr. DODD. Mr. President, I would like to bring to the attention of my colleagues an excellent article from the July 1981 issue of the Journal of Housing by Scott B. Franklin, a student at the University of Connecticut School of Law. This analysis considers the substantial potential for utilizing the limited equity cooperative concept as a viable means of providing homeownership opportunities for lower income families.

At a time when 90 percent of the population cannot afford to purchase a new home and the assisted housing budget for lower and moderate income families is absorbing the single largest budget reduction, I believe we must explore and encourage innovative techniques to provide housing and encourage ownership.

In addition to outlining the benefits of cooperative housing and the limited equity approach, Mr. Franklin presents two case studies in which nonprofit organizations in Connecticut have successfully tapped a variety of public and private resources to better the housing conditions in their respective areas. I applaud the efforts of the Legal Services Foundation of Middletown and El Hogar Del Futuro in Hartford which sponsors the Bethel Street Cooperative Association, Inc. Their progress can serve as positive examples to other organizations throughout the Nation.

In both case studies, it is important to note that various forms of Federal assistance were required in order to leverage private and other commitments in order to bring the ownership opportunities within the means of lower-income families. On April 30, I introduced S. 1069, a bill to encourage the development of modest, multifamily rental housing through the use of second mortgage loans. When this legislation is considered by the Committee on Banking, Housing, and Urban Affairs in the near future, I intend to amend this proposal to allow these loans to be utilized in connection with the rehabilitation or development of lower income, limited equity cooperatives.

I believe the addition of this concept is consistent with my initial intent in advancing this proposal and will improve the range of options available for addressing local housing needs.

Mr. President, I ask that the text of Mr. Franklin's very insightful article be printed in the RECORD.

The article follows:

HOUSING COOPERATIVES: A VIABLE MEANS OF HOME OWNERSHIP FOR LOW-INCOME FAMILIES

(By Scott B. Franklin)

The National Housing Act of 1949 announced a goal of "a decent home and suitable living environment for every American family." More than a quarter of a century later, however, this country is experiencing a nationwide crisis in the low-income housing market. In cities all over the country, the rental housing supply for low-income families is falling into disrepair and ruin as landlords abandon their unprofitable, fully depreciated buildings (or convert them into "profitable" condominiums) rather than bring them up to code standards. Single-family dwellings will not supply the solution to the problem. Skyrocketing costs of single-family dwellings have made home ownership prohibitive to most low-income families. Cooperative conversions coupled with various forms of public subsidies, state aid, and private nonprofit sponsorship, however, comprise an alternate approach to providing housing for low-income families.

THE COOPERATIVE CONCEPT

In a housing cooperative, a corporation owns the housing development in which the resident/members live. Different from condominium ownership where individuals own their units in fee simple, members of cooperatives own the entire project. Each resident owns a share in a nonprofit corporation, and holds an exclusive right to occupy his or her particular unit. In addition, each resident has an equal vote in electing the board of directors that manages the "co-op" and makes all policy decisions.

The interests and rights, as well as the duties and liabilities, of each occupant in the cooperative corporation are defined in the articles of incorporation, the corporate bylaws, and the proprietary lease. Under the proprietary lease, which is normally long-term, the member pays a monthly fee that is his or her pro rata share of the corporation's total financing, operating, and ownership costs. Most co-op charges also include monthly payments to emergency funds that may be needed for future major repairs, or to ease the financial burden on the remaining members if an individual member defaults on his or her monthly payment.

Most housing co-ops follow the Rochdale principles, a co-operative formula developed in England in 1944:

1. Democratic control by residents. Each member family has one vote regardless of investment or number of shares held.

2. Open membership. Cooperatives have open membership without discrimination.

3. Limited return on membership investment. The cooperative's purpose is to provide suitable housing at as reasonable a cost as possible. Co-ops do not exist to make a profit. Because in co-ops people are the concern, return on capital is limited intentionally.

4. Education. It is the responsibility of members to understand the essentials of co-operation and to insist upon their use. Soundly managed co-ops provide for either staff or volunteers to tell members, employees, and the general public about the principles, problems, and goals of consumer co-operation. This includes informing people about local co-op policies and services, and about the regional, national, and international groups to which the co-op belongs. It

also includes consumer education and information.

5. Expansion of services. By establishing cooperative procedures and working together, people are able to provide services for themselves that otherwise would be impossible.

6. Cooperation among cooperatives. Cooperative associations are strengthened by sharing of experience, and by mutual support of each other.

Cooperative housing got its official start in the United States in 1909 when the Amalgamated Clothing Workers Union in New York City followed the model of German and Scandinavian workers and concluded that they too could become their own landlords. This first effort was followed by approximately a dozen new cooperatives in the 1920s. Since then, New York City has continued to be the leader in cooperative conversions. The central reason for this is that New York law views co-op membership shares as stock and not real property, so that co-ops in New York are not subject to the 2 percent conveyance tax that attaches to sales of all other dwellings. (The conveyance tax does attach to condominiums, which further explains why co-ops have been more popular in New York than condominiums.) A further reason is that co-ops are not subject to the consumer protection restrictions of the Uniform Condominium Act. This fact makes co-ops more appealing than condominiums.

A 1974 law, however, restricts warehousing and evictions and raises the percentage of tenants that must agree to purchase their apartments before the plan is declared effective. This legislation has limited co-op conversion.

By 1975, according to the Department of Housing and Urban Development, 150,000 New Yorkers lived in moderate-income co-ops, 45,000 of them in the "Co-op City" project in the Bronx. Today, throughout the country, there are more than 300,000 units of low- and moderate-income cooperative housing.

BENEFITS OF CO-OPS

Co-ops require the correct combination of sponsorship, subsidy programs, and state and private aid to become operational. Once they are operating, they require wise and careful management, a high level of democracy and member participation, accountability of leaders, and adequate financial reserves.

If organized and managed successfully, a co-op will provide many benefits to its members, including:

Protection against rising costs. Since co-op projects are operated on a nonprofit basis, the owners pay monthly only their share of the actual operating costs. Thus, increases in monthly payments are limited to actual increases in operating costs.

Home ownership. Since prices of single-family dwellings are not within the reach of low-income families, co-ops provide an opportunity for home ownership at an affordable price.

Tax advantages. Under Section 216 of the Internal Revenue Code, a co-op owner, similar to the owner of a conventional home, may deduct interest and taxes paid (pro rata) on his or her unit.

Community of interest. Many commentors feel that the most important aspect of the cooperative concept is the high level of democracy and community spirit that develops; members take pride in their property, and join together to make needed repairs and protect their buildings.

Absence of landlord profit. The owners are their own landlords and operate on a nonprofit basis.

Reduced maintenance expenses. Cooperative employees handle all maintenance except for redecorating. These expenses normally are paid for on a pro-rata basis rather than by each individual shareholder. Experience shows that owners maintain their units better than tenants, their maintenance expenses usually are less in a cooperative.

Reduction in move-outs. Owned units tend to turn over less than rental units; this can lead to greater stabilization of neighborhoods.

No fear of being forced out. Unlike renters, whom landlords can force out when their leases expire, co-op members are guaranteed their units as long as they pay their monthly expenses and abide by the bylaws.

Equity accrual. The amount of equity accrual that will be permitted depends on the provisions of the bylaws. Normally, if a co-op is operated successfully, and the bylaws permit accumulation of equity, equity should accrue upon resale.

Right to approve incoming members. This helps to protect the interests of the remaining tenants, and stems from the need for selecting as incoming members those who are willing to participate in the operation of the cooperative.

Along with the advantages of co-ops, however, there are notable disadvantages:

Defaults. Because of the corporate structure of the cooperative, all members are liable under the underlying mortgage. Thus, if one member defaults on his or her monthly payments, the remaining members must pay the delinquent share, or run the risk of the lender foreclosing on the entire cooperative. This remains the most serious disadvantage of the cooperative concept.

Effects of mismanagement. A co-op must be managed properly and effectively to work well. This means, as mentioned, that the members chosen for a cooperative must be screened well so that only those who are willing to put in the time and effort to make the corporation work will be chosen to live there. A further task of management, in addition to screening, is to make sure that members chosen thoroughly understand the cooperative concept and their own individual responsibilities. If the screening process is not effective, and if the members do not understand their responsibilities, the cooperative project will have a lesser chance of succeeding.

Difficulty of financing. A further disadvantage is the difficulty of financing the purchase. Most savings and loan institutions do not accept stock in a cooperative corporation as collateral for a loan.

Restricted sovereignty. A final disadvantage is that the cooperator does not enjoy the same degree of sovereignty that a fee simple owner enjoys.

"CONDOMANIA"

Throughout the 1970s and into the 1980s, as rental housing has become less profitable for landlords, this country has been experiencing "condomania." According to a HUD study, by April 1975, there were already 1.25 million condominium units in the country, compared with 439,000 co-op units. One reason for the current increase in condominiums, instead of cooperatives, is that banks and mortgage loan companies are more willing to loan to condominium projects. Because of the nature of the condominium structure, each tenant has a fee simple interest in his or her unit. The unit owner can negotiate his or her financing arrangements independently, using the fee as security for the mortgage. Thus, the condominium is a way of avoiding the financial interdependence of the cooperative. In addition to his or her unit, the condominium purchaser acquires a proportionate individual interest in the common parts of the land and building, with no right of partition.

Generally, the price of a condominium is out of the reach of most lower-income families. Thus, wide-spread condominium conversion, by taking affordable rental units off the market, has decreased the housing stock available for those families.

Although condominiums and cooperatives are similar in many respects, there are several reasons why co-ops are a more affordable and better means of providing home ownership for low-income families. The initial financing of only the equity portion of a blanket mortgage can reduce substantially the mortgage price below that which an individual must pay on a condominium. For example, if a unit is worth $30,000 and the cooperative mortgage covers 40 percent of the total sales price, then the unit could be offered for a sales price of $36,000. Even though the monthly unit charge would include a payment toward an underlying mortgage, such a payment would be only a pro rata share. Also, it is much easier to finance a $36,000 loan than a $60,000 mortgage. More important, lenders may be more willing to extend the cooperative loan in this instance since it is for a lower amount, and generally at a higher rate of interest.

In a co-op, members pay only their pro-rata share of the actual costs based on nonprofit operation of the entire corporation. In a condominium, each owner is responsible for his or her own repairs, often at higher retail costs. Because there is an existing blanket mortgage that remains intact as cooperative membership changes, financing and transferring of mortgage obligations are less complicated and more easily accomplished in the co-op form.

Because there is only a single mortgage, prospectus, and title policy involved, the resident saves the additional fees normally charged by real estate brokers, title companies, mortgage firms, and attorneys with each settlement. Under a single mortgage, interest rates can remain fixed for all owners, whether new or old. Unlike condominium owners, new co-op owners do not have to pay prevailing interest rates. Under the cooperative form, it is much easier for the single mortgagor (of the underlying blanket mortgage) to raise money than under the condominium form where there are numerous outstanding mortgages. Many owners feel less encumbered owning a co-op than they would with an outstanding mortgage over their heads.

An underlying reason why co-ops are potentially less expensive than condominiums involves the concept of limited, or structured, equity. The National Association of Housing Cooperatives points out three basic approaches to this concept:

1. In the first approach, the value of the membership share does not increase over time. An incoming member purchases a small membership share, usually less than $500. This amount has no real relation to the "value" of the homes the cooperative owns. Upon making payment, the member is granted right of occupancy and a vote in the cooperative corporation. When a member moves out, the membership share or loan is refunded (less any amounts due for charges). An important advantage of this method is that the cost of becoming a member remains the same over the years, so that membership stays within the reach of most people. For this reason, co-ops in this category often have long waiting lists.

2. The second type is a limited value increase membership plan. Under this method, the member's initial payment, which can be as low as several hundred dollars, grows over time according to a formula. Organizers of these cooperatives feel that the potential of future gain must be included as a part of their marketing program in order to attract people who are familiar with the concept of rising home investment values.

3. The third type allows the resale value of the membership share to be determined by market conditions, that is, how much prospective residents will pay for the privilege

of becoming a member of that particular community.

The "equity" question has plagued cooperative organizers for many years and remains an area of considerable discussion. The question is relatively simple: Does a co-op allow the resale of memberships on the open market, allow the resale value to rise at the controlled rate, or effectively "freeze" the resale value of a membership? In determining how this will be structured, it is important to determine the goals of the co-op. If the primary goal is to provide good housing that will always be available to low-, moderate-, and middle-income families, some way of limiting return is a must. Even in controlled rising value co-ops, members have found that after a few years, low- to middle-income families can no longer afford the cost of housing. A limit on equity is the sacrifice that must be made in order to provide affordable home ownership for low-income families.

FINANCING THE COOPERATIVE

The National Consumer Cooperative Bank Act was signed into law by President Carter on August 20, 1978. While many consumer cooperatives expected great things from it, others realized its limited potential effect.

The stated purpose of the act is to make available "necessary financial and technical assistance to cooperative self-help endeavors as a means of strengthening the economy." Under the act, the bank is mandated to make at least 35 percent of its loans outstanding at the end of each fiscal year to cooperatives with low-income members or cooperatives serving low-income people. The act also sets up the Office of Self-Help Development and Technical Assistance, which administers a $75-million self-help development fund over three years. The fund can be used to advance capital to co-ops that are just starting up and to help low-income co-ops meet their interest payments on loans from the new bank.

Those who do not expect much from the act point to the fact that the bank loans money at the market interest rate, with no adequate interest reductions program for low-income families.

In any event, Reagan economics may make these arguments moot. As part of its economic plan, the Administration recently called for the termination of the co-op bank. Thus, cooperative sponsors most likely will have to search for other means of financing in the near future.

Several savings banks, including Citicorp of New York, have begun making loans to cooperatives. Bank loans to cooperatives can be profitable, since they may be at higher interest rates, with shorter terms and lower amounts. While historically banks have been unwilling to make loans to housing cooperatives because of lack of security for the loan, they have overcome the problem by requiring as security a pledge of the corporation stock and an assignment of the lease. The risk factor, however, enters in here. A mortgagee, particularly a second mortgage, may find himself or herself lined up behind other creditors if the co-op fails to meet its expenses and foreclosure proceedings commence. Conventional banks, however, still are unwilling to make high risk loans to co-ops, and thus do not provide an adequate source of funds for low-income borrowers.

Privately donated money frequently is available to produce or support housing cooperatives. Recently, private organizations have begun forming mutual housing associations for the purpose of revitalizing or stabilizing neighborhoods.

In the past, co-ops have been able to obtain funding through federal and state grant and subsidy programs. The federal money generally comes directly through the Department of Housing and Urban Development while much of the state money comes indirectly from HUD through community development block grants.

There are four main HUD programs that may be used to provide cooperative housing for low-income families. Basically, these programs include mortgage insurance, mortgage assistance, and/or low-interest rehabilitation loans. Section 213, which provides federal mortgage insurance to finance co-op housing projects, insures mortgages (up to 95 percent of cost) made by private lending institutions on cooperative housing projects of five or more dwelling units to be occupied by members of nonprofit cooperative ownership housing corporations. These loans, according to the HUD publication, Departmental Programs, "finance new construction, rehabilitation, acquisition, improvement, or repair of a project already owned, and resale of individual memberships; construction of projects composed of individual family dwellings to be bought by individual members with separate insured mortgages; and construction or rehabilitation of projects that the owners intend to sell to nonprofit cooperatives."

Section 221(d)(3), the below-market interest rate program, provides mortgage insurance to finance cooperative housing for low- and moderate-income households. It helps finance construction or substantial rehabilitation of multifamily cooperative housing for low-income families. This program insures 100 percent of project mortgages at their FHA ceiling interest rate for nonprofit and cooperative mortgagors. Projects may consist of detached, semi-detached, row, walk up, or elevator structures. Units may qualify for Section 8 assistance if occupied by eligible low-income families.

Section 235, mortgage insurance and subsidies for low- and moderate-income home buyers, enables eligible families to purchase new homes that meet HUD standards. (Section 235 recently was revised to incorporate the old Section 236 into its provisions. Old Section 236, which terminated in 1973, provided mortgage assistance by subsidizing rental interest payments on low-income co-op housing.) HUD insures mortgages and makes monthly payments to lenders to reduce interest to as low as 4 percent. The home owner must contribute 20 percent of adjusted income to monthly mortgage payments and must make a down payment of 3 percent of the cost of acquisition. Mortgage limits are $32,000 ($38,000 in high cost areas). The income limit for initial eligibility is 95 percent of the area median income for a family of four, and the sale price may not exceed 125 percent of the mortgage limit. While this assistance generally is limited to new or substantially rehabilitated units, existing dwellings are eligible within specified limits, or in certain excepted cases.

Section 312 loans finance, via direct federal loans, the rehabilitation of residential, mixed use, and nonresidential properties. By financing rehabilitation to bring properties up to applicable code, project, or plan standards, the loan prevents unnecessary demolition of basically sound structures. Loans may not exceed $27,000 per dwelling unit. Applicants must show evidence of capacity to repay the loan and be unable to secure necessary financing from other sources on comparable terms and conditions. Priority is given to low- and moderate-income applicants and cities have review authority over the Section 312 loans.

While these programs still appear on the books, HUD spokespersons indicate that the future is not promising. Many programs, while technically remaining active, may not receive additional funding, thus reducing their potential benefit. It is likely that the Reagan budget-cutting process will further limit these programs.

Nevertheless, HUD programs, even if readily available, are not enough—by themselves—to bring the cost of co-ops within the reach of low-income families. It is only when combined with other available mechanisms that they become affordable.

REDUCING CO-OP COSTS

Several other strategies can help bring down the cost of co-ops. Homesteading programs, which involve the transfer of abandoned homes by local governments to homesteaders who agree to rehabilitate them and occupy them for a minimum of three consecutive years, allow the acquisition of potential co-op buildings at a negligible price. This reduces by a significant amount the initial cost of a cooperative.

A large percentage of future federal housing money presumably will come to the state in the form of community development block grants. The CDBG program is a flexible purpose program with a goal of providing housing for low-income persons. It can be used to finance soft costs, such as planning and architectural fees, financial strategies, technical assistance maintenance skills, downpayment assistance, and legal costs involved in setting up a particular low-income co-op project.

Potential cooperative members can save money in the rehabilitation of a building by doing some of the work themselves (sweat equity), thus reducing outside labor costs. Government subsidized employees can be used by co-ops to perform most of the rehabilitation work (except work that must be performed by subcontractors) and further reduce co-op costs. Many cities give tax breaks to upstart community housing groups. These tax breaks, which often take the form of delayed assessment, such as tax deferrals, can help keep monthly payments low.

The Section 8 existing programs, commonly called "finders-keepers," are available for low-income co-op owners because of the technical classification of co-op ownership as a leasehold interest. Section 8 is of obvious benefit to the low-income co-op member who canot afford the monthly payments. For various reasons, Section 8 is permitted only on a limited equity co-op.

Several methods can be used by cities to finance or guarantee financing for rehabilitation, and inner-city building of co-ops. These methods, which include direct financing through the sale of bonds, the establishment of joint mortgage pools and revolving loan funds, tax increment financing techniques, mortgage guarantees, and seed loans and grants, are likely to become increasingly important in the future as the availability of HUD program money decreases.

Thus, HUD subsidies, piggybacked with other costreducing mechanisms under a realistic plan sponsored by a nonprofit group, can provide affordable home ownership for low-income people. In the Hartford, Connecticut, area, two groups in particular have been able to put together innovative and interesting packages of this type.

CASE STUDIES

The Legal Services Foundation of Middletown, Connecticut, has developed a way of providing cooperative home ownership for low-income families with no down payment necessary and with units marketed at $220 per month plus utilities. The cooperative project comprises 19 scattered-site units, mostly (but not exclusively) in the north end of town.

The program, called Equity in Housing, is subsidized through a combination of programs, including $375,000 in CDBG funds—

used to subsidize purchase and rehabilitation of the units—and Section 8 existing program funds to subsidize the rents of the individual tenant owners. In addition, the project received a 9 percent Connecticut Housing Finance Authority mortgage and planning aid from the city of Middletown. Equity in Housing has been able to successfully keep prices down by placing a ceiling on equity accumulation. Owner/tenants can recoup only that amount of appreciation on their monthly payments that goes directly to amortize the mortgage—but only up to a limit of $2,000 over the term of the ownership. This limitation keeps units out of the speculative market.

Equity in Housing also has been able to keep maintenance costs to a minimum. The bylaws provide that all maintenance costs not the direct fault of the individual tenant/owners are to be shared pro-rata by all the cooperative members. Thus, the repair expenses come out of the contingency funds and no one tenant shoulders the entire cost. Most of the maintenance and management is performed on a nonprofit basis. The repairman, superintendent, and bookkeeper all are members of the co-op community and work for nominal monthly salaries.

Finally, the project is kept together by its nonprofit sponsor, the Legal Services Foundation, which performs an inordinate number of tasks for a negligible amount of money. Equity in Housing has become a model program. At the present time, the Legal Services Foundation is looking for other buildings in the area to purchase and integrate into its cooperative community. It should be noted, however, that the Legal Services Foundation is another program in the path of the Reagan budget cutting axe.

The Hartford, Connecticut, Bethel Street Cooperative Association, Inc., a pilot program sponsored by El Hogar del Futuro, a local Hispanic nonprofit corporation, has used an innovative combination of subsidies to provide low-cost, limited equity cooperative housing for low-income families. Different from the Equity in Housing program, the Bethel Street Corporation bought an abandoned six-family building from the city for one dollar under the city's homesteading program. It then applied to HUD and received, under Section 312, a $118,000, 20-year, 3 percent rehabilitation loan to renovate the building. The loan paid for building materials and subcontracted work. A significant amount of the manual labor was performed by the co-op members themselves in the form of sweat equity, and federal CETA money was provided to pay carpenters and remaining laborers.

In addition, the project received CDBG money to pay for architectural, planning, and legal fees, and received a 10-year tax deferral from the city of Hartford.

The result was a functioning low-cost cooperative project with four- and five-room apartments priced at $185 and $195 respectively. Those figures include maintenance and debt service, but not heating costs.

RECOMMENDATIONS

The case studies indicate that, despite HUD's uneasiness about low-income cooperative housing projects and the general public's lack of understanding of the cooperative concept, co-ops may indeed provide a viable means of home ownership for low-income families.

Cooperatives do not work without the diligent efforts of both sponsoring agencies and co-op members themselves. They can, however, provide affordable home ownership, and external benefits such as neighborhood revitalization and stabilization. As mentioned, there are indications that the Reagan Administration will support housing cooperatives as a general concept, despite its call for the end of the co-op bank system.

It has become evident, however, that with double digit inflation and the nature of the speculative market, co-ops for low-income families are not possible without some form of subsidy. Of the various forms of subsidies available, HUD should not be relied on directly to satisfy the needs of aspiring co-op developers or members. One central reason is because of the current funding freeze on major HUD subsidy programs, such as Section 312 and Section 235. The future of these programs is not promising.

Indirect HUD money, however, in the form of CDBG funds, along with private aid, appear to be the way of the future. Among the programs, that are particularly promising are city down payment assistance, CHFA-type low-interest mortgages, tax deferrals, and soft cost grants.

It is best to use existing structures for cooperative projects. Buildings acquired for a nominal cost through homesteading programs help keep down initial purchase and start-up expenses, both of which are crucial during the early life of a housing cooperative. Furthermore, homesteading programs can help revitalize neighborhoods by increasing the housing stock and creating a sense of community.

Sweat equity also should be used to keep down rehabilitation costs and provide a means of future equity, albeit limited, for the low-income member.

Nonprofit sponsorship and good management are musts in any low-income co-op housing project. Sponsors are needed to organize and coordinate the co-op funding package and to oversee the daily operation. Good management is crucial. A co-op cannot function successfully unless the members chosen fully understand both the co-op concept and their role in the particular project. It is the manager's role to screen prospective members carefully, make sure members perform their delegated tasks, and to develop the sense of community and democracy necessary to keep the project functioning successfully. A high level of member participation and a full understanding of membership responsibilities are especially important in a co-op project where all are liable under the mortgage in the event of default and possible foreclosure.

A further necessary ingredient of a successful low-income housing project is the use of the limited equity concept. If a goal of cooperative housing is to provide continued low-price housing, then gain on re-sale is contradictory to that goal. Low-income housing co-ops should not be in the speculative market. The limited equity concept helps keep future costs from snowballing out of the affordable range of most low-income families.

Finally, co-ops must have adequate reserve funds to meet future emergency repairs that may become necessary, particularly in older buildings. These funds, a form of forced savings, can be invested at a high rate of interest to provide additional capital for the corporation. In conjunction with this, maintenance costs can be kept to a minimum if necessary repairs are performed by co-op members themselves.

Cooperative housing projects generally have not been understood by the public and traditionally have been treated as "orphan children" by HUD. It is time to adopt this misunderstood orphan and recognize the cooperative concept as a viable means of providing home ownership for low-income people.●

## ADVISORY COUNCIL'S REPORT

● Mr. KENNEDY. Mr. President 17 years ago, Lyndon Johnson announced his war on poverty. Congress passed the Economic Opportunity Act in an attempt to lift the burdens of poverty borne by millions of Americans and to help these Americans help themselves. Three years later, we created a 15-member National Advisory Council on Economic Opportunity to advise the Director of the Community Services Administration on policy, to review the effectiveness of the programs created under the Economic Opportunity Act, and to report annually to the President and Congress on the Nation's progress in eliminating poverty. Provisions in the Budget Reconciliation Act, passed early last month, repealed the Economic Opportunity Act and abolished the Community Services Administration and the Advisory Council.

In its 13th and final report issued today, the Advisory Council takes exception with the budget proposals and economic program of the Reagan administration. The Council's report echoes the concerns that I and many others have raised over the last few months. Already the initial euphoria with the Reagan administration's budget and tax victories has begun to fade. The economy continues to be stagnant and devastatingly high interest rates persist. The Council's conclusions are sobering.

The effect of the administration's cutbacks, some already adopted and others merely proposed, will be to severely deepen the crisis of poverty in the future and to drive whole segments of our society toward hopelessness and despair. The Council's report cogently undercuts the basic assumptions underlying the President's budget proposals—what the Council refers to as "persistent myths about poverty."

The first myth is that the Reagan programs do not unfairly burden the poor in this country. In fact, the council notes that the Reagan cutbacks in AFDC would reduce the incomes of families headed by women. Moreover, the program cutbacks will eliminate one and three-quarters million jobs currently occupied by those at or near the poverty level. The Council's report leaves no doubt that the groups being asked to bear the greatest burden for the Reagan budget cuts are the most vulnerable segments of our society—the poor, the elderly, the young, minorities and women.

The second myth is that the current system has not and will not succeed in alleviating the burdens of poverty. However, testimony given to the Council over the past several years contradicts this conclusion. According to this testimony, the Federal programs do work; they do help people get out of poverty; the delivery systems are providing the necessary basic human and social services. Programs such as Head Start, legal services, Foster Grandparents, VISTA, Job Corps, community action agencies and

community economic development corporations have successfully delivered services to the people who need help. By 1980, the number of poor had been reduced by 11 million and 11 million more had been kept above the poverty line.

The third myth is that State and local governments through block grants are better able to administer the human and social service programs. In fact, this new system has a track record of being more bureaucratic, less accountable, and more subject to political pressures. It is likely to be less responsive to the need of disadvantaged groups. Even more important is the realization that issues of poverty and deprivation are national issues, which require national policy and programs and are a part of our national purpose. In the words of the Council:

The issue is not federal versus state responsibility; rather, it is the dimuntion or avoidance of any national standards of responsibility and accountability.

The final and most seductive myth is the claim by the administration that the poor will be benefitted by an overall growth in the economy. The Council concludes that this is simply not true. According to the Council, the "new" poor are increasingly a population of those whom the private economy has passed by.

Even in good times, these people—the aged, the disabled, the disadvantaged youth, women heading families with small children—are rarely hired by the private sector. Because few of these people can be absorbed into the private economy without special assistance and support, the "massive suffering" these program cutbacks will bring "cannot be balanced by any credible long-range benefits from the administration's program—even under the most optimistic economic assumptions."

There is a price to be paid for the administration's so-called "economic renewal." That price will be an increase in crime, in the use of drugs, in alcoholism and physical and mental illness, in destabilizing the family and in weakening respect for the law.

Like the Council, I hope that—

After reading this report, Americans will come to the conclusion that as a nation we cannot afford to renege on a commitment that is both symbolic and real. To do so would put an inordinate burden on the more than 25 million poor Americans who are already suffering from inflation, unemployment and inadequate social support services. The dire consequences of our nation's inability to put forth and sustain policies and programs are, for the poor, unthinkable and for our policy makers, unknowable.

I believe that the research and conclusions embodied in this report will be especially instructive in the months ahead as we consider further administration proposals for budget cuts.

The first chapter, "Women in Poverty," discusses the growing "femination of poverty" and the causes of this new trend. The Council's report places the blame squarely on both a dual welfare system and a dual labor market. Together, they ignore the growing number of women who are now in charge of households and are the sole supporters of their children. The Council concludes that our social welfare and labor policies must be changed to end this continuing pauperization of women.●

## APPOINTMENT BY THE PRESIDING OFFICER

The PRESIDING OFFICER (Mr. DANFORTH). The Chair, on behalf of the minority leader, and in accordance with the provisions of Public Law 96–114, announces the following appointment to the Congressional Award Board, vice the Honorable John D. Rockefeller IV, resigned: Hon. John Y. Brown, Governor of Kentucky.

## RECESS UNTIL 11 A.M. TOMORROW

Mr. STEVENS. Mr. President, if there be no further business to come before the Senate, I move that the Senate stand in recess in accordance with the previous order until 11 a.m. tomorrow.

The motion was agreed to; and at 7:04 p.m. the Senate recessed until Tuesday, September 22, 1981, at 11 a.m.

## NOMINATIONS

Executive nominations received by the Senate September 21, 1981:

DEPARTMENT OF STATE

Thomas R. Pickering, of New Jersey, a Foreign Service officer of the class of Career Minister, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Federal Republic of Nigeria.

BOARD FOR INTERNATIONAL BROADCASTING

Mark Goode, of California, to be a Member of the Board for International Broadcasting for a term expiring April 28, 1983, vice Rita E. Hauser, resigned.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Carlos Salman, of Florida, to be a Member of the Board of Directors of the Overseas Private Investment Corporation for a term expiring December 17, 1982, vice James M. Friedman, term expired.

DEPARTMENT OF JUSTICE

Beverly E. Ledbetter, of Rhode Island, to be an Assistant Attorney General, vice a new position created by Public Law 95–598, approved November 6, 1978.

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

Joseph Wentling Brown, of Nevada, to be a Member of the Foreign Claims Settlement Commission of the United States for the term expiring September 30, 1983, vice Francis Leon Jung, term expired.

DEPARTMENT OF LABOR

Malcolm R. Lovell, Jr., of the District of Columbia, to be Under Secretary of Labor, vice John N. Gentry.

John F. Cogan, of California, to be an Assistant Secretary of Labor, vice Arnold H. Packer.

Lenora Cole-Alexander, of the District of Columbia, to be Director of the Women's Bureau, Department of Labor, vice Alexis M. Herman.

PUBLIC HEALTH SERVICE

C. Everett Koop, of Pennsylvania, to be Medical Director in the Regular Corps of the Public Health Service, subject to qualifications therefor as provided by law and regulations, and to be Surgeon General of the Public Health Service, for a term of 4 years, vice Julius Benjamin Richmond, term expired.

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Rosemary M. Collyer, of Colorado, to be a Member of the Federal Mine Safety and Health Review Commission for the term of 6 years expiring August 30, 1983, vice Jerome R. Waldie.

EXPORT-IMPORT BANK OF THE UNITED STATES

James Ernest Yonge, of Florida, to be a Member of the Board of Directors of the Export-Import Bank of the United States, vice Thibaut de Saint Phalle, resigned.

NATIONAL CREDIT UNION ADMINISTRATION

Edgar F. Callahan, of Illinois, to be a Member of the National Credit Union Administration Board for the term expiring August 2, 1987, vice Harold Alonza Black, term expired.

DEPARTMENT OF STATE

The following-named persons in the Department of Agriculture for appointment as Foreign Service officers as indicated, in accordance with section 2105 of Public Law 96–465, approved October 17, 1980:

For appointment as Foreign Service officers of class 1, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Richard L. Barnes, of Virginia.
Alexander Bernitz, of New York.
John M. Beshoar, of Maryland.
James W. Brock, of California.
G. Stanley Brown, of Virginia.
Harry C. Bryan, of Texas.
Anthony N. Cruit, of Maryland.
William L. Davis, Jr., of Arkansas.
Harlan J. Dirks, of South Dakota.
Roger S. Euler, of Virginia.
Paul J. Ferree, of Illinois.
Robert S. FitzSimmonds II, of Maryland.
James K. Freckmann, of Wisconsin.
Guy L. Haviland, Jr., of Virginia.
James R. Hickman, of Texas.
Lloyd I. Holmes, of Virginia.
Kenneth E. Howland, of Maryland.
Norman R. Kallemeyn, of Maryland.
Verle E. Lanier, of Maryland.
James F. Lankford, of Florida.
Gordon H. Lloyd, of Maryland.
Roger S. Lowen, of New York.
Fred A. Mangum, of North Carolina.
Robert M. McConnell, of Virginia.
John C. McDonald, of Virginia.
Leon G. Mears, of Virginia.
Lyle Moe, of Virginia.
Charles J. O'Mara, of Maryland.
Frank A. Padovano, of Virginia.
James V. Parker, of North Carolina.
Norman J. Pettipaw, of Maryland.
Wilferd L. Phillipsen, of Florida.
George J. Pope, of Virginia.
John E. Riesz, of Florida.
James E. Ross, of Florida.
James P. Rudbeck, of Virginia.
Omero Sabatini, of Virginia.
Harold T. Sanden, of Virginia.
William L. Scholz, of Virginia.
Gerald W. Shelden, of Michigan.
Robert J. Svec, of Virginia.
W. Garth Thorburn, of Florida.
Nicholas M. Thuroczy, of California.
Fred W. Traeger, of Wyoming.
Bryant H. Wadsworth, of Virginia.
Cline J. Warren, of Maryland.
Richard S. Welton, of Maryland.

For appointment as Foreign Service officers of class 2, Consular Officers, and Secretaries

in the Diplomatic Service of the United States of America:

W. Lynn Abbott, of New York.
C. Milton Anderson, of Maryland.
Robert R. Anlauf, of Texas.
Edwin A. Bauer, of Virginia.
James M. Benson, of Virginia.
Richard J. Blabey, of Virginia.
Max F. Bowser, of Virginia.
Evans Browne, of Colorado.
Charles M. Clendenen, of Virginia.
John H. Davenport, of Virginia.
Abner E. Deatherage, of Virginia.
John S. DeCourcy, of Virginia.
Pitamber Devgon, of Virginia.
Paul A. Drazek, of Maryland.
Jon E. Falck, of Virginia.
Oldrich Fejfar, of Virginia.
Lawrence R. Fouchs, of Virginia.
Forrest K. Geerken, Jr., of Virginia.
Alvin E. Gilbert, of Maine.
John A. Glew, of Virginia.
Lawrence E. Hall, of the District of Columbia.
Robert E. Haresnape, of Virginia.
Alan K. Hemphill, of Virginia.
Phillip Craig Holloway, of Oklahoma.
John T. Hopkins, of Virginia.
Theodore Horoschak, of Virginia.
William P. Huth, of Virginia.
Mollie J. Iler, of Virginia.
James Y. Iso, of California.
John D. Jacobs, of Tennessee.
Robert W. Johnson, of Virginia.
Franklin D. Lee, of Louisiana.
Richard T. McDonnell, of Virginia.
Kenneth L. Murray, of Virginia.
Gordon S. Nicks, of Virginia.
Harold L. Norton, of Florida.
Thomas B. O'Connell, of Virginia.
Carlos J. Ortega, of Virginia.
Larry L. Panasuk, of Virginia.
Alfred R. Persi, of Virginia.
Frank J. Piason, of New Jersey.
Shackford Pitcher, of Virginia.
Roger F. Puterbaugh, of Maryland.
Harold Rabinowitz, of Pennsylvania.
Abdullah Ahmad Saleh, of Connecticut.
Lyle James Sebranek, of Virginia.
Mattie R. Sharpless, of the District of Columbia.
Walter A. Stern, of California.
James B. Swain, of Maryland.
Robert Charles Tetro, of Virginia.
Dale K. Vining, of Arizona.
Frank L. Waddle, of Maryland.
Homer F. Walters, of Florida.
Steve Washenko, of Virginia.
John A. Williams, of Maryland.
Dalton L. Wilson, of Virginia.
Steven D. Yoder, of Virginia.

For appointment as Foreign Service officers of class 3, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Robert D. Bagley, of Washington.
James R. Brow, of Maryland.
Joseph R. Butler, of Texas.
W. John Child, of Maryland.
Daniel B. Conable, of New York.
Frank A. Coolidge, of Virginia.
Andrew A. Duymovic, of Maryland.
Leonidas P. Bill Emerson, Jr., of Maryland.
N. E. Francis, Jr., of Pennsylvania.
Christopher E. Goldthwait, of New York.
Dale L. Good, of Virginia.
Clyde E. Gumbmann, of Virginia.
Thomas A. Hamby, of Tennessee.
George E. Heslop, Jr., of Kansas.
Michael L. Humphrey, of Virginia.
Marvin Lehrer, of New Hampshire.
Philip Albert Letarte, of New Hampshire.
Margaret Mason, of Illinois.
John E. Patrick, of Vermont.
John J. Reddington, of Virginia.
David W. Riggs, of Maryland.
David I. Rosenbloom, of New Jersey.
Herbert Finley Rudd II, of Oregon.
Hilton P. Settle, of Maryland.
Joseph Frank Somers, of Massachusetts.

For appointment as Foreign Service officers of class 4, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Suzanne Hale of Virginia.
Paul R. Hoffman, of Maryland.
Richard K. Petges, of Illinois.
John H. Wilson, of Virginia.

For appointment as Foreign Service officers of class 5, Consural Officers, and Secretaries in the Diplomatic Service of the United States of America:

Daniel K. Berman, of the District of Columbia.
Larry M. Senger, of Washington.
Natalie A. Solar, of Colorado.

IN THE NAVY

The following-named officers of the U.S. Navy for permanent promotion to the grade of lieutenant commander in the line and various staff corps, as indicated, pursuant to title 10, United States Code, sections 5780, 5782, and 5791, or section 611(a) of the Defense Officer Personnel Management Act (Public Law 96-513) and title 10, United States Code, section 624 as added by the same act, as applicable subject to qualifications therefor as provided by law:

LINE

Abel, Lloyd Vermillion
Abercrombie, Austin Gray
Abrams, Michael Dane
Ackerbauer, Kris Timerman
Adams, Robert Allison
Adams, Robin Lee
Addison, Stoy Wade
Adkins, Philip Sayre
Ahearn, James Vincent, Jr.
Ahlberg, Steven James
Ahlwardt, Elmer Louis, Jr.
Ainsley, William Lowther, III
Akins, Joseph Lawrence
Alcorn, Marion Everet
Aldridge, James Arthur
Alexander, John Lee
Alexander, John Vinson
Alexander, Ronald Keith
Allen, Harry Eugene
Allen, John Bruce
Allen, Paul Stewart
Alley, James Ray
Allin, Robert Wesley
Allison, John Simmons, Jr
Almquist, Thomas Victor
Alsbrooks, Ronald Lee
Alston, Robert William
Amirault, Richard Bradford
Ammann, Clement Joseph, Jr.
Andersen, Lorin Emerson
Anderson, Darl Richard
Anderson, Eric Blair
Anderson, Harry Reynold, III
Anderson, Michael Thomas
Anderson, Timothy J.
Anderson, William Harvey, Jr.
Andrews, Kenton Grant
Arce, Armand Omar
Archibald, Gary Thomas
Architzel, David
Armistead, Reginald Gray, Jr.
Arnold, Berthold Klaus
Arnold, Robert Bruce
Arnold, William Glenn
Arrants, Charles Samuel
Arsenault, Arthur John, Jr.
Ashbridge, George, IV
Aten, John Joseph
Aube, Leonard Conrad
Aukland, Bruce Michael
Ault, Jon Franklin
Auskaps, Andrejs Julijs
Averill, Robert Cameron
Axelrod, William Harold
Baas, Daniel Louis
Babbitt, James Charleton, Jr.
Babcock, Rowland Alvin, Jr.
Bagley, Edward Garland, III
Bailes, Michael Scott
Bailey, Robert Carroll, Jr.
Bailey, Steven Everett
Bailey, Richard Marcel
Baker, Joe Allen, III
Baker, Rush Emmons, III
Ballard, James Claude, III
Ballard, William Garnet
Banek, Edward Adam, Jr.
Bangs, George Henry
Bankester, Michael Lee
Bannat, Steven John
Barber, Arthur Houghton, III
Barber, Theodore, Jr.
Barbor, Kenneth Eicher
Barela, Maximo Avilucea
Barkdull, Curtis Raymond
Barkell, Richard Colin
Barnes, David John
Barnes, Harry Charles, Jr.
Barnes, Leslie William
Barnes, Robert Carroll
Barnes, Timothy John
Barnett, Peter Graham
Barnhart, Randall Gay
Barnhill, Arizona Wendell
Barthold, Lee Girard, III
Bartlett, Ralph Clinton, Jr.
Bartron, Robert Patrick
Bassett, Charles William, III
Batog, John Stanley
Baugh, Dale Eric
Baumstark, Michael Wayne
Bayer, Karl Gustav
Beach, Edwin Franklin
Beal, Stephen Dennis
Bean, Jerry Wayne
Beasley, Lawrence George
Beaver, Robert James
Beazle, John Fennimore, IV
Bechtold, Donald William, II
Becker, Gregory Harold
Behr, Michael Ray
Behre, Christopher Peter
Behringer, Stephen Edward
Belcher, John Charles
Belden, Bruce Edward
Belote, Richard Hoyt
Bender, Michael Robert
Benedict, William Lance
Benkert, Joseph Albert
Benson, Stephen Eric
Bensur, Robert William
Bentley, Alan Charles
Benziger, Philip Ennes
Bepristis, Donald Joseph
Berg, Delano Robert
Bergazzi, Wesley Allen
Bergersen, Leonard L.
Bergren, Richard James
Bernasconi, Stephen Joseph
Bernitt, Thomas Richard
Berry, Gale Vernon
Berry, George Hamilton
Berry, George Zellner
Berry, Reginald Lamarr
Bertin, Michael Stephen
Besal, Robert Eugene
Besancon, Michael David
Beukema, Paul
Bevill, Michael Henry
Biby, Dennis Keith
Bienhoff, Paul Arthur
Bingham, Kenneth Allen
Bisceglia, Stephen Vincent
Bishop, Harold Ralph
Bishop, Stephen Clark
Bixler, Charles Harley
Blackman, Richard Allen
Blackwell, Theodore I, Jr.

Blake, William Robert, Jr.
Blakey, Blake Victor, Jr.
Blanchard, Robert Kevin
Blanton, Gerald Bertram
Blocher, Ayers Haden, III
Block, Newell Frederick
Blomeke, Hugh Douglas
Blunt, James Michael
Bohannan, Gary William
Bohannan, James Guy
Bolan, Gregory Edward
Boland, James Francis, Jr.
Bonewald, Jack Dale
Bonvouloir, Raoul, Jr.
Booker, Robert William
Boone, William Thomas
Booth, Michael Noah
Boroff, Jeffrey Lee
Bossio, Frank Teobaldo
Boughton, Bruce Edward
Boutte, Andre Legras
Bower, Michael Joseph
Bowlin, James Allen
Bowman, Ronald Eugene
Boyd, Sheldon Alexander
Boyer, Pelham Grant
Boyes, Kenneth Wayne
Boyington, John Edward, Jr.
Bozeman, Virgil, III
Braddy, Raymond Francis
Brady, Bernard Galin
Brady, Edward Daniel
Brady, Roger William, Jr.
Brandhuber, Robert Lee
Brannan, Tandy Thomas, II
Branson, James Lee
Brasfield, Randolph Benn
Bray, James David
Breitenbach, Karl Warren
Brendmoen, Jack Vernon
Brengel, Dexter Theodore
Brennan, Michael Eugene
Brennock, Daniel Joseph
Bret, Robert Eugene
Brewer, Craig Walter
Bridges, James Donald
Bridges, Robert Thomas
Brimson, Richard Thomas
Broadley, Timothy Shaw
Broadus, Jimmy Wayne
Broadway, James Henry, Jr.
Brod, Herbert L.
Brodengeyer, James Robert
Brooks, Frederick Martin
Brower, Michael Randolph
Brown, Carradean Lynn
Brown, David Kearney
Brown, Frank Hyatt
Brown, Gary Wilson
Brown, Karl Sanford, Jr.
Brown, Larry Warren
Brown, Martin Richard, Jr.
Brown, Rabon Dempsey, Jr.
Brownsberger, Nicholas Mason
Brucker, Blaine Robert
Bruckman, David Earl
Bruner, Todd Thornton Whitney
Brunstad, William Joseph
Brust, Stephen Ray
Bryant, Franklin David, Jr.
Bryce, Dexter Scott
Buchanan, Bobby Allan
Buchspics, Kenneth Lewis, Jr.
Buck, Bruce Edward
Buck, Larry Wayne
Buckley, Bruce William
Buckner, Jansen Wooldridge
Bueker, Charles Dennis
Bulai, Dennis Michael
Bulfinch, Scott Robert
Bullard, Donald Kenneth
Bullough, Bruce Lynn
Bunevitch, Gary Joseph
Bunn, Warren Lester
Burdett, Peter Scott
Burdette, Allen Leamon, II
Buresh, Jon Alex
Burfening, Stuart John
Burgamy, Kirk Steven
Burkhart, Larry William
Burnett, Joseph Lawrence
Burnette, David Parker
Burroughs, Bruce David
Burton, Fred Ernest
Burtt, Chester Arthur
Bury, Stephen Joseph
Busch, Daniel Edward
Buschmann, Roger Louis
Butler, James Paul
Butler, Lester Edison, Jr.
Butler, William Thomas, Jr.
Butt, Duncan Marshall
Byrd, John Thomas
Byrnes, John Louis
Cady, William Douglas
Cahoon, David Clinton
Calcaterra, Frank Sal
Caldwell, Warren Lee, Jr.
Calhoun, Brian Murray
Callaghan, Terrence Alan
Callahan, Alexander Joseph, Jr.
Campbell, Clifford Bruce
Campbell, Gordon Thomas
Campbell, James Anthony
Campbell, John Francis
Campbell, Richard Pryor
Canavan, Michael Patrick
Candalor, Michael Bruno
Cannon, Miles Joseph, Jr.
Cano, Jose Rolando
Cantfil, Scott Thomas
Capello, Leonard William
Carino, Freddie Fry
Carle, Mark Vearil
Carlile, Gary Loftin
Carlson, Dennis John
Carmichael, John Scott
Carney, Gene Gordon
Carota, Leonard Nicholas, Jr.
Carpenter, Jack Royal, Jr.
Carpenter, John Howard
Carpenter, John Ross
Carrier, Guy Joseph
Carrigan, Michael Andrew
Carrington, David Richard
Carro, Anthony
Carroll, Charles Earl
Carroll, Daniel Marion
Carson, Michael Harold
Carstens, Paul David
Carter, Earl Frederick, Jr.
Carter, James Robert
Carter, Leslie Roy
Carter, Thomas Beeman, Jr.
Carter, Thomas Michael
Carter, William Lee
Casalegno, Lorenzo Peter
Casmer, Dennis Ronald
Casper, David Carl
Cassada, William Paul
Cassidy, Kevin Gary
Cassidy, Patrick Thomas
Castan, William Charles, Jr.
Castaneda, Ruben, Jr.
Caster, Gary Don
Castleman, Bruce Allen
Castleman, Lexie Charles
Cather, Philip Edward
Causey, Lewis Aubry
Cerda, Joe Dale
Cerveny, Alvin Earl
Chambers, Regan Scott
Chanik, Evan Martin, Jr.
Chapman, James Haselden, Jr.
Chapman, Robert Gene
Chapman, Ronald Lee
Chase, Michael Robert
Cheliras, Richard Mark
Cheney, Robert Andrew
Cheshire, Lehman Franklin, III
Chesser, Steven Bruce
Chin, Francis Wai Liang
Chisholm, Peter Carroll
Christensen, Robert Kragh
Christensen, Steven Donald
Ciarula, Thomas Alan
Cillo Richard Charles
Cincotta, Paul Edward
Cirone, Robert
Clair, William Charles
Clarey, Robert James
Clarkson, Danny Leroy
Clawson, Stephen Harvey
Clay, Michael Barrett
Clayman, William Dennis
Clayton, Irving Brodribb, III
Clyde, William Walter
Cochran, Samuel Steve
Cockrell, Kenneth Dale
Coffeen, Robert Curtis
Coggine, Andrew Oscar, Jr.
Coghill, Cortlandt Cassler, III
Cohn, Lewis Michael
Cole, Claude Elbert
Cole, Lonnie William
Collins, James Vincent
Collins, Richard Wayne
Collins, Robert Frank
Colton, Arthur, II
Compitello, Thomas Charles
Condon, Robert W.
Condon, Thomas John
Connell, Guy Louis
Connelly, Joseph Bernard
Connolly Paul Michael
Connor, Charles Dean, Jr.
Connor, John Henry, Jr.
Conrad, Allen Stanley
Conway, Robert Thomas, Jr.
Cook, James Dean
Cook, Larry Earl
Cook, Norman Rhode, III
Cook, Robert Bartlett, Jr.
Cook, William Eckford, Jr.
Cooke, Wilbur Orlean, Jr.
Coombs, Barry Leland
Coome, Barry Allan
Coonan, Robert Paul
Cooper, Charles Grafton, III
Cooper, Michael Robert
Cooper, Ronald Stephen
Corkill, Christopher James
Cornell, David William
Corteville, Douglas Floyd
Cosgrove, Patrick Eugene
Coste, Peter Frederick
Costigan, Kenneth Michael
Cottrell, William Russell
Coupland, Steve Joel
Covert, Harold Duane
Covington, Richard Benjamin
Cox, Patrick George
Cox, Richard Loren
Coyle, Gary Leonard
Crabtree, Charles Scott
Crabtree, Thomas Edward, Jr.
Craig, Michael Christopher
Craig, Peter Allen
Crall, Max Richard
Crandall, Kenneth Duane
Crane, Larry Wayne
Crane, Norman Hitchcock
Cranshaw, William Raymond
Crawford, Bruce Wayne
Crenshaw, Lewis Womack, Jr.
Crews, Jeffrey Wiley
Cross, Raymond Stephen
Crossland, Edward Ernest
Crouch, Marion Leslie
Crouch, Orren Rayburn
Crouse, David Lee
Crowell, Charles Davis
Crowell, Philip Holmes, III
Crowley, Thomas Noble
Crumley, Glenn Doyle
Cullinan, John Francis
Cumings, Kenneth Wilfred, Jr.
Cummings, Darryl Pittmon
Cummings, John Alexander
Currey, Gary Allen

Curtin, Bruce Emmet
Curtsinger, Delbert Anthony
Cutter, David Michael
Cutter, Duane Starr
Dacey, Leo Francis
Dahlquist, Paul William
Dahmen, David Atherton
Dailey, John Coughlan
Dailey, John Lawrence, Jr.
Daley, Michael John
Daling, Michael Ernest
Dalton, Merrill Albert
Daly, Joseph Thomas, III
Damin, David Earl
Danco, Thomas Richard
Danforth, Lawrence Wayne
Daniel, Addison Garland, III
Darling, Ralph Edward
Darton, Terry Heber
Darwin, George Robert
Daugherty, Terry Lee
Davidson, James Edward
Davidsson, Jeffrey John
Davis, John Michael
Davis, Lavern Alone
Davis, Mark Charles
Davis, Richard Earle, Jr.
Davis, Steven Earl
Day, Edward William, Jr.
Day, James Copeland
Dean, Dennis Ross
Dean, Harold Lee
Dean, Robert Murrell
Decker, Geoffrey Foster
Decker, Wilson Banks
Dedom, John Edward
Deemer, Richard Eugene
Delaney, Richard Freeman
Delauder, Roy Allen, Jr.
Deleon, Victor Manuel
Delong, Richard Clair
Demain, William Robert
Demasi, Francis Dominick
Demo, Willard Joe, Jr.
Dempsey, Wayne Raymond
Denari, Mark Edward
Dengler, Robert Joseph
Denham, Stanley Alvin
Denkler, John Michael
Denny, Patrick Leo
Dentico, John Paul
Dentler, John Campbell
Destafney, James Joseph, Jr.
Desue, Anthony
Deuley, Thomas Paul
Deulley, Gary Wayne
Deveer, Stephen Anthony
Dever, John Arthur
Devlin, John Charles
Devries, Robert Donald
Dewald, Ted Edward
Deweese, Joe Dale
Dick, Richard L.
Dickie, John Albert
Dietz, Clyde Praetorius
Digan, Thomas Edward
Dilgren, Glen Alaric
Dillon, David Ray
Dimambro, Ronald Edward
Disy, Edward George, Jr.
Ditzler, Donald Frederick, II
Divine, Michael Dennis
Dodenhoff, Andrew Chandler
Dohse, James Theodore
Dole, Stephen Mark
Dom, Stuart Nevin
Donahue, Conrad James, Jr.
Donihi, Burleson Mills
Donlan, Joseph Anthony
Donovan, Michael Douglass
Doran, Milton Dean, Jr.
Dorsett, Charles Edward
Doswell, Joseph William, Jr.
Dougherty, Michael John
Downing, Mark Stephen
Doyle, Patrick Robert
Doyle, Stephen Douglas
Drake, Patrick Robert
Drake, Stephen Lee
Dreiling, David Lee
Drews, Robert Adam
Driscoll, Joseph Francis
Driscoll, Raymond Michael, Jr.
Droz, Charles Albert, III
Drummond, Thomas Frank
Dubrouillet, Michael
Dudash, Terrence Mark
Duddy, Daniel Francis
Dudek, David Paul
Dufek, David Frank
Duggan, Michael John
Dull, Timothy Jefferson
Dunaway, William Michael
Duncan, Richard Earl III
Dundas, Geoffrey Winn
Dunn, James Patrick, Jr.
Dunn, William Howard
Dunscombe, Bruce E.
Durfee, David Webster
Durmick, William Kenneth, Jr.
Dussman, Thomas Raymond, Jr.
Duvall, Michael John
Dwyer, Dennis Michael
Easton, William R., Jr.
Edmonson, Ronnie Eugene
Edmunds, Charles Allen
Edwards, Charles Terrell
Edwards, Mark Jackson
Efraimson, Allen Arvo
Egeberg, Gerald Wayne
Egolf, Roy Terrance
Eichel, Laurence Alan
Eiland, Garland Bowers, Jr.
Einsidler, Barry David
Eisenstein, Donald Allen
Eklof, Sven Peter
Elam, Harry Bailey
Elder, Alfred
Elliker, John Samuel, Jr.
Elliott, Kenneth McKeller, Jr.
Elliott, Richard Markley
Elliott, William Edward, Jr.
Ellis, Jimmy Lee
Ellis, Robert Bovce
Emmert, Mark Albert
Endicott, David Carlisle
Enewold, Steven Lee
Englehardt, Bruce Bidwell
Enright, Thomas Francis
Ensley, Lee Michael
Enwright, Leo Francis, Jr.
Epley, Lawrence Ernest
Erazo, Luis Ricardo
Erickson, David Paul
Erman, Reginald Joseph, Jr.
Espinosa, William Michael
Espitia, Marcus Louis
Essery, James Evans
Esterlund, Richard Carlton
Estes, William Leonard
Etro, James Francis
Etter, Alan Yancy
Evans, Gary Glen
Evans, Monty Jay
Evans, William Gaylord
Everage, Henry Bud
Everett, Hobart Ray, Jr.
Evers, William Barton
Eyerly, Louis Gardiner
Ezzell, Stephen Michael
Failmazger, Victor, Jr.
Falcona, Samuel Frank, Jr.
Falkey, Mark Steven
Fargo, Dennis Kenneth
Farmer, Linwood Earl, Jr.
Fee, John Francis
Feeks, Thomas Michael
Felshaw, Richard Frederick
Feltz, Gerard Cletus
Fenner, James Henry
Fennessey, Donald Brian
Ferguson, Jerry Francis
Ferguson, Kevin James
Ferguson, Michael Allen
Ferrell, Curtis Lamar III
Ferriter, Edward Chadwick
Fife, Richard Wayne
Filanowicz, Robert Walker
Filbert, Eugene Anton
Finkelstein, Mark Arnold
Finley, Charles Crothers
Finn, Richard Francis, Jr.
Firth, Barry Edward
Fischbeck, Jeffrey Allen
Fisher, Calvin
Fisher, John Walker
Fisher, Rand Hilton
Fisher, Richard John
Fisher, Rory Hilton
Fitzgerald, James Patrick
Fitzgerald, Mark Paul
Fitzgerald, William Robert
Fitzhugh, Gary Lowell
Fitzpatrick, Robert Bruce
Flanigan, Richard Joseph
Fleming, Daniel Eugene
Fleming, James William, Jr.
Fleming, John Leroy
Flenniken, Robert James
Flood, John Thomas, Jr.
Flynn, Edward Carnot
Fondren, Steven Verne
Ford, Robert Dale
Ford, Thom Woodward
Forgy, James Milton
Foster, Thomas Hume II
Foster, William Keith
Foti, Stephen Gino
Fournier, Dean Norman
Fowler, John Darwin
Fowler, Larry Richard
Fox, Donald Clyde
Fox, Martin
Fox, Tally Bernard
Frabotta, Frank Joel
Frahler, Donald Andrew
Frailing, Richard William
Frame, Danny Robert
Francisco, Roger Benton
Frank, Richard Roger
Franken, Daniel Joe
Franklin, Richard Arman
Franklin, Roland Michael
Franz, Lornie Anthony
Frazier, Robert Edward, Jr.
Frederick, Stephen Edmund
Freeland, Newton Forest, Jr.
Frenchi, Paul James
Freund, Bruce Richard
Frevert, Terry Wayne
Frieden, Charles Oscar
Froman, James Clere
Froneberger, James Phillip
Frump, David Arthur
Fry, Norman Joseph
Fulcher, David Otis
Fulham, Thomas Anthony, Jr.
Fuller, Paul Jeffery
Fullerton, John Alan
Funk, Duane Hadley
Funk, Glen Allen
Gabrynowicz, Mark Peter
Gagnon, Donald Robert
Gahnstrom, William Edward
Gaian, Raymond Joseph, Jr.
Gallagher, Thomas Paul, III
Gallic, Frank Michael
Gallup, Frederick Sherer, III
Gammage, Patrick Odell
Gangewere, Robert Russell, Jr.
Garden, George Carrington, Jr.
Garrett, Patrick Martin
Garrish, James Willard
Garrison, Paul Carmichael, II
Gastrock, Martin Deckard, Jr.
Gavett, Wallace Leonard, Jr.
Gay, James Franklin
Gaylor, Steven Charles
Gear, Bud Stanwood
Gebbia, Frank, Jr.
Gedeon, John Allen
Geel, Richard Alan
Geiger, Edward Charles

Geist, Gregory David
Geopfarth, Robert Neldon
George, Joseph James, Jr.
Gerken, William John
Gershon, Joseph Stephen
Geschke, Mark Joseph
Gesell, Ernest Emil, III
Gettys, James Oliver John, Jr.
Getzfred, Lawrence Daniel
Giannotti, Bruce Bennett
Giarra, Paul Severin
Gibbs, Donald McBuel
Gibson, John Benjamin
Gibson, Robert John
Gillespie, Dennis Michael
Gillespie, Michael Roy
Gillespie, Roger Allen
Givens, Joel Dennis
Glaser, Thomas Len
Glass, Joseph William
Glenn, Michael
Glick, Dean F.
Glick, Robert Charles
Gloor, Louis Ortmann
Glover, Grey Allen
Glover, Ronald Burton
Goad, Steven Robert
Goddard, James Reed, Jr.
Godwin, James Basil, III
Goessling, James R.
Goetz, Michael L.
Gogolin, James Henry
Golay, Mark Allen
Goldberg, Marc David
Golden, Kenneth Eugene
Golding, Robert Alfred, Jr.
Goldman, Michael Jeffrey
Goldsby, Richard Earl
Goldstein, Robert Jay
Golisch, James Anthony, Jr.
Golubovs, Paul
Gomez, Daniel Samuel
Gonsalves, John Henry, III
Good, Mark Ivan
Goode, Randall Louis
Goodell, Michael Stephen
Gooding, Brent Baker
Goodwin, Thomas John
Goodwin, William Vernon
Gordon, Douglas Thomas
Gorman, James Francis
Gorman, John Paul
Gorman, Michael Anthony
Gorman, Thomas Francis, Jr.
Gorris, Frederick David
Gossett, Jeffrey Lynn
Gottschalk, John L.
Goulding, William Albert
Graber, Dale Bruce
Grabski, Timothy Martin
Grafton, Thomas Albert, III
Graham, Bryce Lowell
Graham, Richard Morris
Graham, William Lambert
Grant, Geoffrey Edmund
Grant, Jeffery Wayne
Grant, Roderick Campbell
Grassi, Thomas Anthony
Grau, David George
Gravell, William
Graves, Marshall Warren, Jr.
Gray, Gary John
Greanias, George Hampson
Greaser, Donald Charles
Green, David Kell
Green, John Michael
Greene, Gary Lee
Gregor, John Bradley
Gregory, Erik Stuart
Gregory, William Harvey
Griffin, Dana Norton
Griffith, Carl Dean, Jr.
Gripp, Jan William
Grissom, Mark Patterson
Gritzke, Arnold Richard
Groefsema, Gary Gordon
Groenert, Frederick Earl, Jr.
Groff, George Thomas
Groff, Lawrence Lafayette
Grosel, Joseph Jeffery
Groves, Gary Otis
Gruber, James Powell
Guiles, Richard Howland
Gut, Raymond Joseph
Guzauskis, Steven Augustine
Haagensen, Brian Christian
Haberlandt, Frederick Robert
Hacunda, Michael Richard
Haddock, James Max
Hagan, James
Hager, George Whately
Haggart, James Alan
Haines, James William
Haizlip, John Threlkeld
Hale, Christopher Dyer
Haley, Robert Michael
Hall, James Christian
Halsted, David Patrick
Halwachs, James Edward
Hamelin, Gregory Raymond
Hamlin, James Sherrill, Jr.
Hammond, Gary Richard
Hammond, John Thomas
Hampson, Gary Wayne
Hampton, John Joseph
Hampton, John Philip
Hance, Carl Edward
Hancock, William Allen
Handforth, Dwight Warner
Hans, William Francis
Hansell, Dennis Richard
Hansen, Mark Albert
Hanson, Paul Edward
Hardaway, James Hallowell
Harding, Richard Warren
Harding, Ross Miller
Hardman, Andrew Hale
Hare, Robert Lee
Harger, Tommy Charles
Hargrave, Douglas Francis, Jr.
Harman, Howard Milton
Harper, Allen Douglas, III
Harrell, John Brinkley, III
Harris, Craig Hale
Harris, James Daniel
Harris, Jeffrey Bruce
Harris, Russell Eric
Harris, Stephen Andrew
Harrison, Jeffrey Alan
Harrison, John Joseph
Hart, Robert Sheppard
Hartling, Robert Michael
Hartrick, Thomas Frederick
Harvey, Gerald Alan
Harvey, John Collins, Jr.
Hastings, David Canfield, Jr.
Hatcher, Thomas Allan
Hatfield, Douglas Philip
Hathaway, Carmrid Glaston, II
Hathaway, Dennis Alan
Hathaway, Clifford Newton, Jr.
Hatton, Peter Leo
Hawkins, Jeffrey Alan
Hayes, David Lloyd
Hearding, David Warren
Hebdon, David Eugene
Hedden, Charles Robert
Hedderich, Conrad Peter
Hedrick, Michael Keith
Heifner, Robert Jack
Heimgartner, Kenneth Floyd
Heisey, Philip Michael
Hellner, Robert Joseph, Jr.
Helmer, Dale Paul
Helms, Chester Ethane
Hemer, Glenn Alan
Henderson, Craig Brooks
Hendrickson, Scott Lars
Hennessy, Paul Barrett
Henry, Christopher Ryan
Henry, Douglas Gordon
Henry, Michael DeWitte
Herbert, George Arthur, Jr.
Herlin, Peter Davidson
Herman, Richard John
Herr, David Lawrence
Herret, Thomas Roger
Herring, David Lawrence
Hess, Lawrence Edward
Hess, Randall James
Hess, William Curtis
Hessdoerfer, Ronald Carl
Hesser, Neal Patrick
Hessler, Dennis John
Hester, Samuel Gaston
Heuer, Edward David
Hewitt, Robert Alvin, Jr.
Hicks, Gregory Paul
Hicks, Rodney Lee
Hierholzer, Danny Boyd
Hieronymus, Dennis James
Higgins, Kevin Daniel
Higgins, Paul Michael
Hilfer, Roger Terrill
Hill, Clarence Ebbert
Hill, James Allan
Hill, Martin Ray
Hill, Steven Curtis
Hill, William John
Hillenmayer, James Donald
Hilley, Howard Stevens, III
Hinson, Steven Roy
Hinton, Robert Michael
Hirsch, Gerald Richard
Hirst, William Clarence, Jr.
Hixson, Roy Lester, III
Hlavka, Stanford Harold
Hobbie, Richard James
Hobbs, Dennis Albert
Hobbs, Philip Gary
Hobby, Gray Deveaux
Hodgins, Bart Dallas
Hodson, Brian Jay
Hoffmann, Philip Paul
Hogen, David John
Holden, Timothy Aloysius
Holder, Thomas Vincent
Holdredge, Robert Leslie
Holk, George Bertwell
Holland, Howard Michael
Hollands, Christopher Charle
Hollis, Stephen Joe
Holloway, James Curtis
Holmquist, Derek Ervin
Holt, Thomas Hugh
Homan, Billy Bert
Honey, Ronald Dudley
Hoover, James Dwight
Hopkins, James Pennock, IV
Hopkins, Robert Larry
Hopper, James Harris, III
Hopper, William Frank
Horn, Robert Gary
Horner, John Spencer
Horner, Richard Lee
Horstmann, Richard Frederick
Horvath, Joseph John, Jr.
Houde, Paul Leo
Howard, George Raymond
Howard, John Finley
Howard, Walter Gregory, Jr.
Hrenko, John, Jr.
Hubbard, Robert Leroy
Hudspeth, Gary Benton
Huegerich, Thomas Paul
Hughes, Louis Allan
Hughes, Roger Allen
Hughes, Ronald Alan
Hughes, William Robert
Hugill, Joseph Ray
Hull, Roger Leroy
Humble, Alan Dee
Humes, Ellsworth oDnald, Jr.
Humphries, Mark Edward
Humphries, Wofford F., III
Hunter, Stuart McKlveen, III
Hutchison, Jeffrey Alexander
Iler, Robert Walter
Indorf, John William, Jr.
Ingalsbe, Stephen Ramage
Ingram, Alfred Lovered Verno
Ingram, Steven Rodney

Israel, John Ernest
Ivary, Kenneth Richard
Ivy, Samuel Speer
Jack, Gary Michael
Jackson, Andrew Hugh
Jackson, Frank Donald
Jackson, James Gail
Jackson, Jimmie Ray
Jackson, William Pierce, Jr.
Jacobs, Thomas Edward
Jacobson, Jim Harold
Jacobson, Robert Allen
James, Brent Snyder
James, Robert Boe
Jamison, Christopher Prigel
Jankura, Edwin Stephen, Jr.
Jannuzzi, John Leo
Janora, Thomas Edward
Jarosinski, John Michael
Jarrad, Raymond Maynard, Jr.
Jarrell, Richard Patrick
Jarrett Stephen McAllister
Jaskunas, Thomas Michael
Jauernig, Robert Russell
Jenkins, Jerry McKinley
Jenness, William Allan
Jerome, Reed Willis
Jeter, James Doyle
Jewell, Keith Alan
Jewett, Charles Edward
Jobe, Terry Lynn
Jochmans, Steve Wayne
Johns, Stephen Bunnell
Johnson, Arthur Lee
Johnson, Charles Scott
Johnson, Dennis Gregory
Johnson, Jacob Lee, Jr.
Johnson, John Edward, Jr.
Johnson, John Lynn
Johnson, Robert Lowell
Johnson, Walter Reece, Jr.
Johnston, John, Jr.
Johnston, William Richard
Jones, Christopher Stephen
Jones, Edward Lee
Jones, Larry Edward
Jones, Mack Allison
Jones, Norman Robert
Jones, Robert Paul
Jones, Stanley Lloyd
Jones, Thomas Alan
Jones, Wayne Michael
Jordan, James Tolbert
Jordan, Timothy Gaius
Jorgensen, Paul C.
Jorvig, Daniel Alden
Joseph, Alfred Michael
Joslin, William Daniel, Jr.
Kaelin, Charles Martin
Kagy, Rodney Earl
Kallin, Peter Lindel
Kalstad, Kendall William
Kane, James Christopher
Kannapell, Joseph Henry
Karas, John George
Keefe, Daniel Stanton
Keegan, Joseph Wolfe
Keenan, John Joseph, Jr.
Keepper, Robert Harold
Keho, Jeffrey Donald
Keifer, Orion Paul
Keith, Douglas Wayne
Keith, James Stephen
Keith, Michael Glen
Keithly, Thomas Morken
Kellar, Gerald Robert
Keller, Stephen Haddleton
Kelley, Kevin John
Kelley, Michael Charles
Kelley, William Douglas
Kelly, Barry Lee
Kelly, James Dean
Kelly, John Michael
Kelly, Patrick Wayne
Kelso, Jesse Johnston
Kemp, Dieter Karl
Kennedy, Clarence
Kennedy, John Francis
Kennedy, Kristopher Morris
Kenny, John Michael
Keogh, Ronald Jay
Kessler, Paul Kenderson, Jr.
Kester, Lawrence Verne
Key, William Tigner
Keys, James E.
Keys, Ronald Edward
Kibler, Adrian Earl, Jr.
Kidrick, James Grant
Kilcline, Thomas John, Jr.
Kilgore, Brian Joseph
Killoren, Kevin Michael
Killough, Robert Craig
Kim, Theodore Seenoh
Kindel, George Finley
King, Manton Ambrose
King, Martin Ross
King, Robert Dennis
Kinzer, John Francis
Kirk, Bruce Reed
Kirkpatrick, James Reid
Kirkpatrick, William Robert
Klaas, Adrian Leverne
Klaus, Robert Franz
Klein, Glenn Edward, Jr.
Klein, James Michael
Klein, John Weston K.
Klein, Steven Allen
Klingseis, Francis Joseph
Klinker, Patrick Joseph
Kluever, Patrick Robert
Knapp, Glen William
Knight, John Ross
Knight, Robert James
Knolhoff, Larry Edward
Knox, Alvin Francis
Koch, Raymond William
Kodzis, Richard Francis
Koehler, John Adam, III
Koelemay, Maurice Martin
Kohinke, Edward George
Kohlenberg, Clarence Michael
Kohler, David Ryan
Kohler, Gary Anthony
Kohls, Charles Edward, III
Kohne, John Edward
Kohring, Mark William
Konopa, Steven Jeffrey
Konya, Bruce Richard
Koorey, Alfred Joseph, Jr.
Kordis, William Stephen
Korejwo, Henry Allan
Kosakoski, Edward Dwight
Kosiek, Martin Stanley
Koss, Andrew James
Kovacevich, Gary Douglas
Kovach, George Eugene
Kraft, Edward Stephen, Jr.
Krajnik, Joseph Scott
Kraus, John Scott
Kreeger, Theodore Wilbur
Kren, John Joseph
Krenzel, Joseph
Kretzmann, David Frederick T.
Krisiak, Joseph Allan
Krohn, Raymond Lynn
Krupski, Thomas Leon
Kryske, Lawrence Michael
Kuehne, Arthur Perry
Kuehne, Kenneth Wesley
Kujat, Edward Joseph
Kulig, Daniel Adam
Kunkle, Steven Alan
Kupfer, Michael Joseph, Jr.
Kwake, William Eugene
Kyle, Thomas George
Kysar, Billy Dean
Labarge, William Howard
Labrecque, Terence Paul
Lacoss, Terry Lee
Ladd, Ronald Rye
Laedlein, Paul Arthur
LaForce, Don Christian
LaLonde, Larry Warren
Lammers, Carl Henry, Jr.
Lancaster, John Angus, Jr.
Landers, Coleman Arthur
Landers, Paul Kennedy
Lane, Gregory Ben
Lang, John Joseph, Jr.
Langley, William Louie, Jr.
Langston, Marvin J.
Lankford, William Robert
Lanning, Roger Brian
Lannou, Gordon Calvert, Jr.
Lantta, Kenneth David
Larimer, Stephen Walker
Larsen, Thomas Carl
Larson, Larry Edward
Lash, James Harley
Lauderdale, Donnie Aubrey
Lavigne, Roger John
Law, Douglas Jay
Lawson, James Wood
Leahy, Kevin Bernard
Leather, David Michael
Lecroy, Carl Lynn
Ledbetter, James Vann
Lee, Richard Patrick
Lee, Thomas Jenkins
Lees, David Gordon
Leeson, David Webster
Leib, Robert Conrad
Lennon, Michael Alan
Lento, Peter
Leonard, John Edward, Jr.
Leonard, Raymond Earle, III
[illegible] Lawrence
Leverage, Thomas Grason
[illegible]
Lewandowski, Lawrence Anthony
Lewis, David R.
Lewis, Paul Scott
Libera, Daniel Clark
Liechty, John Dale
Lien, Jon Michael
Ligon, Thomas Michael
Lind, David Jeffrey
Lindner, Carl Max, III
Linn, Claud Omer
Lion, Raymond Albert, Jr.
Lipscomb, Gary Edwin
Lipsey, Mark Dillman
Lisner, Charles David
Littke, Richard Henry
Lloyd, Gregory Francis
Loadwick, James William
Lobs, Warren Mercer
Lobue, James Joseph
Lochausen, Vernon C.
Logue, Stephen John
Lombard, Peter Naegele
Long, James Donald
Long, Robert Henry
Long, Stephen Thornton
Long, William Henry, Jr.
Lorberg, Martin Gustav, III
Loser, David A.
Love, John Barrett
Love, Patrick Stephen
Lowell, Robert Owen
Luby, Robert Emmett, Jr.
Lucas, David Wayne
Luczak, Michael Arthur
Lunning, Robert Marshall
Lupton, Stephen Charles
Lussier, Christopher Bernard
Luther, Steven Phillips
Lyman, Rod Guy
Lynch, Vincent Joseph
Lyons, Melvin Charles
Lyons, Scott Kenneth
Maahs, Carl Ernest, Jr.
Mabry, John Paul
MacDonald, Gordon Scott
Mace, Robert Lee
Mack, Stanley John
MacKinnon, David Robert
MacClaren, Donald Ross, Jr.
Macluskie, John Robert
Macon, Richard Thomas
MacPherson, Steven Michael
Madison, Patrick Timothy
Maher, John Dennis

Mahle, Gary George
Major, John Grant
Malay, Jonathan Thomas
Mallon, Paul Joseph
Malone, William Thomas
Manganaro, William Francis
Mansfield, Philip Smith
Manvel, John Talbot, Jr.
Marcado, David Michael
Mardula, Walter James
Maresh, David Joseph
Marinelli, Jay William
Markevicz, John Walter
Markiewicz, Thomas Robert
Marlin, Robert Dan
Marra, Kenneth Joseph
Marsh, Willie Clyde
Marshall, David Warren
Marshall, Robert Edwin, Jr.
Marshall, William James
Marshall, William Jordan, III
Martello, Keith Wallace
Martin, Christopher Bruce
Martin, Colin Leslie
Martino, Nathan Peter
Marvin, George Rowe
Marzluff, Peter Wade
Marzola, David Samuel
Mashburn, Robert Lindbergh, Jr.
Maskell, Robert Emmett
Maslowsky, Robert David
Mason, James Robert
Mason, Lee Charles, II
Massey, Patrick Lee
Mathews, Kirk Alan
Mathis, Don Wade
Mathis, Stanley William
Mathwick, James Elliot
Matyas, Gary Mitchell
Maxwell, Walter Raymond, III
May, Gary DeLoch
Mayes, Larry Leroy
Mayhan, Terence W
McAffee, William Taylor
McArthur, James Drake, Jr.
McAvinia, Thomas Francis
McCallum, Keith Eugene
McCartney, Patrick Loren
McCarville, Patrick Anthony
McClellan, Mark Shelly
McCloskey, John Dennis
McConchie, Robert William
McConkey, David Luther
McCord, Raymond Scott
McCoy, Kenneth William
McCoy, Roger Hinton
McCrory, Ralph Cullin
McCurdy, Russell Alan
McCutchen, John Michael
McDonald, Randal Scott
McDonald, William Philip
McElroy, Daniel Wallace
McFarland, Thomas William
McFetridge, Riley James
McGinn, Leo Francis, Jr.
McGinty, Louis Leon
McGraw, William Lloyd
McHenry, John Stewart
McKearney, Terrance James
McKenzie, Alan Bruce
McLane, Robert Lewis
McLoughlin, William Raymond
McMann, Jeffrey Lynn
McMillen, George McKamie, Jr.
McMillan, Gibson Emery, Jr.
McMorrow, Horace Malloy, Jr.
McNab, Otto Frank
McNally, William John
McNees, Charlton J
McWilliams, Hugh Newton
Mead, Gregory Gower
Mears, George Henry
Measel, Richard Allen
Medved, Richard Carl
Meek, Terry Lynn
Meeley, William Anthony, Jr.
Meenen, Douglas Ernst
Mehnert, Arthur Fred
Meier, David Kirk
Mellor, Martin Warren
Mercker, Eric Edward
Mercurio, Stephen Francis
Mericle, David Dean
Messervy, James Louis
Meyer, Daniel Harry
Meyer, John Gregory
Meyer, Thomas Lee
Meyer, Thomas Leslie
Meyer, Timothy Hugh
Meyers, John Earl
Meyett, Robert Stephen
Miars, Thomas Eugene
Michell, William Robert
Midgett, John Richard
Midland, Phil Lawrence
Mihocik, Robert Andrew
Mikhalevsky, Peter Nicholas
Mikolai, George Anthony
Miller, Charles Henry, Jr.
Miller, David Ross
Miller, Dennis Wayne, Jr.
Miller, Guy Steven
Miller, John Richard
Miller, Michael Harold
Miller, Michael James
Miller, Paul Franklin
Miller, Robert Burton, II
Miller, Terry Robert
Mills, Donald Max
Mills, Jack B.
Mimms, David Terry
Mitchell, Alfred Warren
Mitchell, David Erwin
Mitchell, Joseph Anthony, II
Mocini, Vincent Peter
Molloy, William Earl, Jr.
Monson, Steven Donald
Montgomery, William Morgan, Jr.
Moody, William Vincent
Moon, Eugene Lamar
Moon, Robert Lee
Mooney, James Edward
Moore, Alphonso William
Moore, Bruce Ray
Moore, Charles David, Jr.
Moore, Gary Edward
Moore, John Dennis
Moore, Paul Andrew, Jr.
Moore, Richard Bruce
Moore, William Thomas, III
Morandi, Theodore Raymond
Moranville, Mark Sheridan
Morfeld, James Louis
Morgan, John Gabe, Jr.
Morganthall, Gerald Owen, Jr.
Morin, James Brendon, Jr.
Morral, Dennis Gilbert
Morreale, Bruce Vincent
Morris, William Denton
Morrison, David Michael
Morrison, Thomas Robert
Morrison, William Marcus
Morrissette, Thomas William
Mortison, William Eugene, III
Morton, James Daniel, III
Moseman, James August
Moss, Brian William
Moss, Charles Michael
Mountcastle, David Gerald
Mueller, Robert Ralph
Mulcahey, Kevin Edward
Muldoon, Edward James, Jr.
Mulhall, Daniel Glenn
Mullarky, John Walter
Mullican, James Neal
Mullis, William Ashley, Jr.
Muncie, John Clifton
Munns, Charles Lyndsey
Murphy, Allen Matthew
Murphy, Charles Duncan
Murphy, George Joseph, III
Murphy, Richard Eugene
Murphy, Robert Thomas
Murray, George Michael
Murray, John Joseph
Murray, Michael Kevin
Musgrave, Clyde
Myers, David Edward
Myers, Lawrence Carroll, III
Myers, Michael Stephen
Myers, Philip Alan
Myers, Richard Christian
Myers, Ronald Louis
Myers, Stephen Elliot
Myette, Kevin Milton
Nadeau, Thomas Richard
Nance, James Keith
Naughton, Michael Joseph
Naumann, Keith Carlton
Nava, David
Nayfack, John Charles
Needham, William Donald
Neihart, Charles William, Jr.
Neimeyer, David Ernest
Nelson, David Eric
Nelson, David James
Nelson, Duane Lee
Nelson, Edward Jerome
Nelson, Hugh Douglas
Nelson, James Arthur
Nelson, Jeffrey Robert
Nelson, Patrick Andrew
Nelson, Stanley William, Jr.
Nesbitt, Allan Preston, III
Ness, Christian Quarles
Nestlerode, Robert Norman
Nestor, Don Alan
Newland, Charles Robin
Newport, Paul Thomas
Newton, Danny Ray
Neyer, Ronald Charles
Ni, Randolph
Nibbs, Alan Mcleod, Jr.
Nichols, David Charles, Jr.
Nichols, Steven Ray
Nickerl, Jeffrey Alan
Nickodem, Peter Webb
Nielsen, Jack Svend
Nigro, Vincent John
Nitsche, Wayne Harold
Nitschke, Roy Hugo
Nofziger, Charles Levi
Nolte, Thomas Edward
Norman, James Harvey
Norman, Richard Michael
Norman, Robert Michael
Norrbom, Timothy John
Norris, Donald Owen, Jr.
Norton, Donald Gordon
Norwood, James Douglas
Obermanns, Peter Ernst
Obrien, James Edward
Oconnor, Michael Patrick
Odonohoe, Joseph Patrick, II
Ogden, Stephen Eugene
Ogrady, Arthur John
Ohanlon, Jeremiah
Okamoto, Eugene Yasumitsu
Okeefe, James George
Olechnovich, Paul Jerome, V
Oleszko, Lawrence Anthony
Olsen, Alfred James
Olson, David John
Olson, Donald Theodore, Jr.
Olson, Eric Thor
Omeara, Dennis Jerome
Oneil, Patrick David
Oneill, Robert Gregory
Orbann, Carl Theodore, III
Orchard, Fred Gregg
Orcutt, Robert Edgar, Jr.
Orlando, Theodore Anthony
Orourke, Thomas Quigley
Orr, Paul Larov, Jr.
Ortega, Louis Edward
Osborn, Colin Campbell
Osullivan, Michael Patrick
Oswald, Stephen Scot

Ott, Andrew Anthony
Otto, David Thomas
Over, Nicholaas
Owens, Ronald Lynn
Ozehoski, Edward Mark
Palanca, Rodney Alton
Palmatier, Philip Frank, Jr.
Palmatier, Robert James
Palmer, George William
Palmer, Henry Boberg
Panos, Christopher William
Papin, Gregory Alan
Papineau, Larry Regan
Papworth, Richard Nicholaus
Parish, George Rod, III
Parker, Robin M.
Parks, Ralph Frederick
Parrish, Robert Todd
Parus, John Joseph Eugene
Patterson, Wayne Lynn
Patton, James Wesley
Patullo, Kenneth Emil
Pazik, Joseph John, Jr.
Pearson, Thomas Wayne
Pease, Andrew John
Pease, Michael Wayne
Pebley, James Walter
Peck, Richard Paul
Pence, Derry Thomas
Pence, Donald Milton
Pendleton, Jackie Don
Penn, William Thomas
Pennington, Charles Filmore
Perez, Anthony Herman
Perez, Mark Richard
Pernell, Larry Eugene
Perrich, David Wayne
Perry, Craig Cameron
Perry, Francis Anthony
Perry, James Walter
Perry, John Marcus, Jr.
Perry, Joseph Leland, Jr.
Perry, Robert Paul
Peters, Donald Eugene
Peters, Jon Christopher
Peters, Kenneth Mizell
Peters, Kenneth Warren
Peterson, Theodore William, Jr.
Peticolas, John Richard
Petitmermet, Donald Henri
Pettit, Hubert Cleveland
Petty, William Milton
Pfeiffer, Frank Gaines
Pfister, Russell James
Pefiueger, Michael Patrick
Phaup, Andrew Lesueur, Jr.
Phelps, Norman John
Phillips, Charles Washington
Phillips, David Shelby, III
Phillips, Harry Cullum, III
Phillips, James Glenn, III
Phillips, James William
Phillips, John Lynch
Phipps, Donald Maynard
Pickett, Russell Ames
Piecuch, John Leon
Pierce, Craig Anderson
Pierson, Carl Robert
Pilcher, Ray C., Jr.
Pistochini, Mark David
Flappert, Russell Frederick
Pledger, James Edgar
Ploeger, David Charles
Poe, Deen Owen
Pohtos, Robert Nicholas
Poirier, Robert Wilfred
Poland, Marc Maier
Poling, Thomas Clinton
Polk, Harding Scott
Posey, Kelley Gene
Potter, Gary Glen
Powell, Donald Eugene
Powell, James Richard
Powers, Glenn Curtis
Powers, Thomas John
Pozinsky, Gregory
Prebul, John Michael
Preisel, John Henry, Jr.
Prell, Richard Edwin
Presson, Geoffrey Franklin
Preston, Randall Dills
Prewitt, Ronnie H.
Prince, William Hardy
Prothero, Dennis William
Provencher, Ronald Henri
Ptacek, John Wayne
Puccini, Bruce Anthony Joseph
Purciarello, Gerard Joseph
Purdy, G. James, Jr.
Purington, David Arthur
Quick, Gary Wayne
Quinn, James Joseph
Quinn, Paul Francis
Quist, Gregory Alton
Rable, William John
Rader, Michael Thomas
Radner, Richard
Radney, James Carlton
Ramage, Donald Brewster
Rambo, Martin Brian
Ramirez, Gary Wayne
Ramsey, Michael Arthur
Randall, Donald William
Randall, James Duncan
Ransbotham, James Irvine, Jr.
Ranum, Gary Donn
Raspet, Michael Owen
Ratcliff, Ronald Everett
Rath, Bradford Russell
Rauscher, Douglass Alan
Rayhons, George Allen
Raysin, Kent Lee
Recker, Paul Robert
Reece, Jerrald Douglas
Reed, Thomas Wood
Rees, Douglas William
Reese, Raoul Buryle
Reeves, Jerry David
Reeves, Terry Dale
Reid, Thomas John
Reightler, Kenneth Stanley, Jr.
Reimann, Otto George
Reinhardt, Peter Joseph
Reise Jeffrey Alan
Reisinger, Allen Eugene
Relue, Richard Basil
Remshak, Christopher Jon
Renninger, James Bruce
Renton, Irvine Andrew, III
Repsholdt, Kai Thorvald
Ress, Charles Michael
Resser, Stephen Francis
Reuter, David George
Reynolds, William Wayne
Rhoades, William Andrew
Ricciardi, Robert Nicholas
Rice, Michael Lynn
Richards, James Joseph
Richardson, Jerry Keith
Richardson, Larry Don
Rickgauer, Charles William
Riess, Robert Eugene
Rigas, Trifon
Riggs, Bernard Allan
Rigot, William Laswell, Jr.
Riley, Richard Preston
Rimpau, James William
Rippel, David Allen
Roark, Louis Keith
Robb, James Andrews
Robb, Randolph Roland
Robbins, Frederick Henry
Roberts, Gregory Lee
Roberts, Warren Leigh
Roberts, William Howard
Robertson, Michael David
Robinson, Evan Dahlstrom
Robinson, Frederick Thomas, II
Robinson, Steven Nourse
Robinson, Thomas Reeder
Rockwell, Richard Thornton
Roddahl, Jeffrey Lee
Rode, Alexander Michael
Rodman, William Blount, V
Roehrich, Steven Gary
Rogalski, Wayne Joseph
Rogers, George Carra, Jr.
Rogers, Matthew Joseph
Rogers, Thomas Foster
Rogers, William Armstard, Jr.
Rolfes, Robert William
Roman, Theodore Robert, Jr.
Romeo, Martin
Romine, Steven Lee
Rondestvedt, Christian Robert
Rood, Homer John
Rose, Gregory Joseph
Rose, James Wesley
Rosenthal, Mark Louis
Ross, Nicklous James
Ross, Thomas Joseph
Rotondo, Michael Jay
Roughead, Gary
Roulstone, Douglas Robert
Rowe, Daniel John
Rowe, Wayne James
Rowland, Michael Lyndon
Rowley, James William
Rubel, William Richard
Ruberg, Ernest Mark
Rucker, Harry Joseph
Rucker, Steven Warren
Rudolph, Earle Leighton, Jr.
Ruehe, Frederic Richard
Ruhl, Philip Calvin
Runyon, Gary Eugene
Rupnik, John Stanley, III
Ruputz, Philip
Rusch, Preston Godfred
Rush, Robert Jacque
Russell, James Emmitt
Russell, Roy William
Russell, Thomas Beckwith, III
Russell, William David
Ruthazer, Robert Pearson
Rutherford, Lindell Gene
Ruybal, George Nifi
Ryan, Francis Perdue, Jr.
Ryan, Paul John
Ryan, Stephen Ignatius, Jr.
Ryder, Curtis Myles
Rygg, Ronald Fred
Ryskamp, Robert Henry
Sadler, David Anthony
Salamon, James Anton
Saller, William
Sammon, Stephen Michael
Sample, Gregory Lee
Samples, David Olin
Samuels, Richard Gail, Jr.
Sanders, Robert Jesse, Jr.
Sanderson, William Curtis
Sands, Robert Waters
Sanford, Gregory Benson
Sanford, Henry James
Santapaola, Donald Jack
Sare, Michael Joseph
Sarraino, Michael
Satterwhite, Bernard Mason
Scala, Peter Anthony
Scarpelli, Thomas James
Schaaf, Dean Omen
Schaeffer, George, III
Schaffer, Van Anthony
Schamp, Douglas Arthur
Schaufelberger, Albert Arthur
Scheetz, William Arthur
Scheib, Timothy Edward
Schide, Alan Patrick
Schiesser, William Andrew
Schlossberg, Edwin
Schmidt, Jonathan Blake
Schmidt, Wesley Henry, Jr.
Schneegas, David Alan
Schneider, Harvey Lee
Schneider, Mark Joseph
Schreckengast, Stewart Wayne
Schubert, Jerry Lee
Schultz, George Walter
Schultz, Paul Stewart
Schumaker, Larry Charles
Schwab, Richard Frederick
Schwalier, Charles Dale, II
Schwartz, Michael Norman
Schwartzel, Joseph Henry
Schwiering, David Alan
Scott, Bruce Bob
Scott, James Robert

Scott, Robert John
Scott, Robert Peter
Scott, Winston Elliott
Scudder, Stephen Vincent
Scully, Kirk Raymond
Seaberg, John Roger
Sedivy, Dean Gordon
Seeley, James Robert
Seigel, Thomas Gary
Seiwald, Michael Joseph
Selman, William Winsyl
Sensat, Robert James
Severinghaus, Richard Jordan
Shafer, David Devon
Shalles, Siegfried Lee
Shallies, Kenneth Howard
Shankles, Jackie Wayne
Shaw, John Damon
Shay, Jon Vincent
Shayda, Paul Mark
Sheehan, Kevin Patrick
Sheehy, Patrick Thomas
Sheleheda, Frank Richard, Jr.
Shemella, Paul
Shepherd, William Stinson
Sherk, Glen Eric
Sherland, Paul Garfield
Sherman, John Raymond
Sherman, Vining Alden, Jr.
Sherwin, John Stephen
Sherwood, Roger Raymond
Shields, Robert Bishop
Shirah, Reuben Howell
Shiver, Wayne Stuart
Shoemaker, James Edward
Shoemaker, Terry Lee
Shon, Michael David
Shoop, Darreld Russell, II
Short, William Edward, Jr.
Showalter, Robert Cox
Shurtleff, William Hall, IV
Sidman, Howard Blauvelt
Sieve, Glennon Lambert
Silverio, Stephen Ralph
Silvestri, Michael Julio
Simcoe, Ronald Brian
Simeral, Robert Lee
Simmons, Nathaniel Preston
Simpson, Jeffrey Phillip
Simpson, Michael Doyle
Simpson, William Lee, Jr.
Sisa, Steven Andrew
Skjoldager, Jack Owen
Slagle, Brian Allen
Slagle, Lucian Erle, Jr.
Slaven, George Edward, Jr.
Slaybaugh, Ernest Ray
Sleichter, William Thomas
Slighter, William Jan
Slocumb, Dennis Alexander, Jr.
Sluys, Richard Wesley
Smallwood, James Victor
Smania, David John
Smith, Bradley Phillip
Smith, Charles Derek
Smith, Charles Edward
Smith, Daniel Leon, Jr.
Smith, David James
Smith, Edward Samuel, Jr.
Smith, Frederic D.
Smith, George Randall
Smith, Janvier King
Smith, John Paul
Smith, Kenneth Melvin, Jr.
Smith, Kurt William
Smith, Philip Wayne
Smith, Richard Thomas
Smith, Robert Dale
Smith, Robert Edward
Smith, Russell Lewis
Smith, Scott Temple
Smith, Wayne Edward
Smith, William Dunoon
Smith, William Jackson
Smoot, Marc Lee
Snead, James Clayton
Snead, Leonard Alexander, III
Snodgrass, Dale Oglesby
Snook, Richard Eric
Snow, Terry Dean
Snyder, Stephen Frank
Snyder, Thomas Edward
Snyder, William Lester
Sobieck, Thomas George
Sobray, William Garrett
Somers, James Wilford
Sonn, Bruc Eric
Sonntag, Steven Jay
Sontheimer, Richard Francis
Sorek, Michael Joseph
Sparaco, John Richard
Spearman, Walter Cuthbertson
Spence, Maurice Frederick
Spencer, Sterling Roger
Spencer, William Edward
Spires, Wayne Allen
Springman, Robert Eugene
Stack, John Jacob
Stack, Robert Bryan
Staebler, Francis
Stahler, William Donald
Stalnaker, Steven Dickenson
Standridge, Elmer Lawrence
Staniewicz, Matthew Joseph
Stanley, Marc Thomas
Stanton, Donald Clifford
Stapleford, James Randall
Starling, Harold Denby, II
Staton, Ronald Bruce
Steele, James Frederick
Steele, Scott Leslie
Steffen, Norman William
Stein, Kenneth Merritt
Steinestel, Richard Roy
Stella, John Robert
Stencil, John Craig
Stenroos, Joseph Richard
Stephenson, Walter Wade
Sternberger, Alan Louis
Sterner, Robert Charles
Stettler, Gerald Allen
Stevens, Gene Allen
Stevens, William Ray
Stevenson, John Raymond, Jr.
Stewart, George David, II
Stewart, James Robert
Stewart, Joseph David
Stewart, Melvin Lindell
Stickler, Christopher Allen
Stiegelmeyer, Blaine Warren
Stiffler, Mark Alan
Stiles, Joseph Ellsworth
Stillwell, John Wayne
Stilwell, Joe Ross, Jr.
Stine, Jeffrey Lawson
Sting, John Thomas
Stjohn, Lawrence George
Stocko, Robert Edwin
Stoehr, Dale Erwin
Stone, David Lee
Stone, David Malcolm
Stone, Jeffrey Morris
Stonum, Robert Hale, Jr.
Storm, Bradley Douglas
Strawbridge, Carl Neilson
Streiff, Edward James
Strickler, Richard Wayne
Stricklin, Ted Alan
Striffler, Paul Christian
Stringer, Richard Howard
Strout, Dennis Ray
Stuart, Gary Leland
Stupfer Bruce William
Sturgis, David Herman
Stutzman, Galen D
Sudkamp, Stephen Donald
Sueirro, Allen Michael
Sullivan, William Daniel
Summerall, Daniel Bush
Suplicki, Edward Peter
Sutherlin, Charles Thomas
Swailes, John Hamlin
Swendsen, Gordon Raymond
Swift, Lloyd Francis Knapp
Szoka, Michael Allen
Taber, James Charles
Talbot, Gerald Lloyd, Jr.
Tallent, Hamlin Bruce
Tamburello, Charles
Tanguay, David Reheal
Tankersley, James Deen
Tasch, Eric
Tash, David Louis
Taverniti, Joseph
Taylor, Charles David
Taylor, James Wallace
Taylor, Paul Edwin
Taylor, Peter Walter
Taylor, Timothy Barlow
Temple, Ralph Douglas
Templer, Robert James, Jr.
Teply, John Frederick
Thaeler, Leigh MacQueen, Jr.
Theurer, Roger Fredrick
Thiel, Kurt
Thiesse, Thomas William
Thigpen, Dan Irvin
Thomas, Gerry Steven
Thomas, Henry D
Thomas, Michael Glenn
Thomas, Ronald Milton
Thompson, Clark Frederick
Thompson, Peter Michael
Thompson, Richard Lennon
Thompson, Thomas Allen
Thomson, Alan Douglas
Thomson, Robert John
Thomson, Timothy
Thorne, Silas Owens, III
Thornhill, David Tracy
Thorpe, James William, Jr.
Thralls, Edmund Lee
Tibbs, David Tillman
Tiernay, Terry Wayne
Tilley, John Alvin, Jr.
Tilley, Patrick James
Tilton, Terry Warren
Tindle John Richard
Toalson, Vance Lee
Tobiason, Erik Arnold
Toliver, Lynden Robert
Tomaszeski, Steven John
Toms, Terry Jack
Tornatore, Gary Paul
Torrey, Martin Edward
Trabona, Robert Joseph
Trahan, Charles Ray, Jr.
Traverso, Timothy Joseph
Trayner, Richard Elwood
Treeman, Michael Wade
Trent, Michael Henry
Trenta, Richard Francis
Trice, Jesse Matthew, III
Troxell, Richard Kent
Tuddenham, Read Stapley
Turnblacer, Theodore Charles
Turner, Gary Woodrow
Turner, Geoffrey Whitney
Turner, James Richard
Turner, Terry Allen
Turpin, Dwayne Milton
Tussey, David Alan
Tyler, David Malcolm
Tyson, William Jeanes, III
Tzavellas, Theodore Elefther
Uebelherr, Michael Frederick
Ulrich, Edward Dewayne
Ulvestad, Robert Eugene
Ungvarsky, William Joseph
Updegraff, William Donald, II
Uricoli, Eugene Francis
Ustick, Robert Woodbridge, II
Valdes, James Franklin
Vance, Scott Wallace
Vanhook, Robert Joseph
Varakin, Walter Alexander, Jr.
Vaughn, David Roy
Veatch, James Marshall
Ventgen, Robert John
Vervoorn, Robert William
Vessely, Robert Paul
Vickers, Sammy Lee
Villarreal, John Mark
Vining, Pierre Grigsby
Virgilio, Richard Louis
Visage, Samuel Jackson, Jr.
Visscher, Pieter Arend
Vielker, George Edmund
Vogan, Charles Scott, Jr.

Vogel, Edward William
Vogt, Michael Carl
Volpe, Joseph Michael, Jr.
Voros, Charles Douglas
Voss, Cary Van
Voter, James Conant
Vrabel, George Thomas
Vugteveen, Dana Lyle
Wainionpaa, John William
Wakefield, Robert Dean
Walker, Rickey Ray
Wallace, George Allen
Walmsley, Stephen Robert
Walsh, Daniel Patrick
Walsh, William Aloysius
Walther, Clarence William, Jr.
Ward, David Arthur
Ward, Glenn Howard
Ward, John Joseph, Jr.
Ward, William Howard
Wardlaw, William Eddie
Wardrobe, James Eugene
Ware, Jerry Steven
Warneford, Gregory Mitchell
Warner, Stephen Roger
Warr, Paul Melbourne
Warren, James Marion
Warren, Thomas Early
Watling, John Matthew, Jr.
Watson, Joseph, Adrian
Watterson, Kent Braden
Watts, Robert Darryl
Watwood, William Britt
Waylett, Don Harry
Weatherspoon, Stephen Salve
Webb, T. Ladson, Jr.
Weber, Carl Frederick
Weber, Joel Nathan
Weddel, David Ward
Weideman, Craig Francis
Weigand, Charles John
Weis, Timothy James
Weitz, Charles Arthur, Jr.
Welch, Bryant Earl
Weller, Joseph Dickson, Jr.
Welles, Franklin Griswold
Welsh, Joseph Leo
Werson, Jan Paul
Wessel, Kenneth James
Wessman, Lynn Gammon
West, William Edward
Westover, Steven Bruce
Wetterlin, Harold Jan
Whaley, James Thomas
Wheatley, Charles Dimmer
Wheeler, Christopher Everett
Wheeler, Dennis Ralph
Wheeler, William Gary
Whitaker, Clayton Edmund
Whitaker, Kent Pidge
White, Carroll Leroy
White, James William
White, Joseph Wheeler
White, Richard Oliver, Jr.
White, William Sutton
Whitehead, Oliver Windell
Whitford, Dennis James
Whitworth, Larry Joe
Whitworth, Laurel Woodrow, Jr.
Wigge, Conrad James, III
Wight, Randy Lee
Wilfong, Dallas George, III
Wilhelmy, Mark Desloge
Wilkes, Edward Birks
Wilkinson, Joseph Brooks, Jr.
Willard, Robert Frederick
Willburn, Alan Bruce
Williams, Claven
Williams, John Montgomery
Williams, Michael Wayne
Williams, Peter Andrew
Williams, Robbie Lyn
Williams, Robert Edward, Jr.
Williams, Russell Lee
Williams, Thomas Richard, Jr.
Willis, Leland Stanford, III
Willmann, David William
Wilson, Craig Willard
Wilson, Donald Frederick
Wilson, Eugene Kennon, Jr.
Wilson, Gerald E.
Wilson, Richard Allen
Wilus, Michael Stephen
Winberry, Paul Stephen
Wingo, Theodore Oscar
Winner, Stanley Harry
Winney, Justin William, Jr.
Winstead, Tony Eden
Wiseman, Michael David
Withers, Thomas Roy
Witte, Thomas Michael
Woerman, William Joseph, II
Wolff, Conrad Earle
Wolfsen, Terrence Harold
Woll, Jeffrey Raymond
Womer, Rodney Keith
Wood, Charles Andrew
Wood, David Richard
Wood, James Walton
Wood, Marcelle Elton, Jr.
Woodall, James Mead
Woodhouse, John Hartland, Jr.
Worley, Dennis Lee
Worthing, Lewis Kendell, III
Worthington, John Reid
Wright, Dale Gibson
Wright, David Keith
Wright, Oliver Lee, III
Wright, Richard Lee
Wuethrich, Chris Allen
Wynkoop, Peter
Wyse, Frederick Calhoun
Yackus, John Stanley
Yarrows, Edward Peter
Yates, Ronald Edward
Yeats, Raymond Ritch
Yee, Anthony David
Yelverton, Robert Lee, Jr.
Yepsen, John David
Yerkes, William Mark, Jr.
Yirak, John Lester
Yoe, Louis Edward
York, James Kent
Young, Brian Keith
Young, Charles Selden Backus
Young, Ernest Charles
Young, Gordon Allen
Zanon, Richard John, Jr.
Zavaglia, Ronald Francis
Zeigler, Howell Conway
Zelle, Fred Carl, III
Zeller, Chester Arthur, Jr.
Zimm, Alan Douglas
Zimmerman, Kenneth Ronald
Zink, Thomas Andrew
Zito, Hugh John
Ziine, Terrance William
Zortman, James Milton
Zuber, James Daniel, Jr.
Zuorro, Kenneth Joseph Peter

MEDICAL CORPS

Adams, Clinton E.
Atwell, George W.
Aymer, Albert Louis
Barnebee, James Hosea, III
Bourgeois, Robert S.
Brice, David Alan
Broshears, John R.
Burkhard, Thomas Kinsman
Byrd, Jack P.
Campbell, David C.
Capecci, Louis F. J.
Cassady, Michael A.
Cattau, Edward Leroy, Jr.
Cecil, James A., II
Conwill, David E.
Counselman, Kenneth Herbert
Croslin, Artis R.
Cunningham, Glenn Donald, Jr.
Depoix, Christoper Paul
Diaz, Alberto, Jr.
Dutka, Andrew J.
Field, David R.
Fleming, John C., Jr.
Foster, Robert M., Jr.
Grantham, Herbert G.
Grey, Carlile Robert, III
Hanna, James M.
Harries, Thomas Joseph
Hawley, Thomas A.
Hetz, Robert K.
Hooper, Jon Hollowell
Jones, John P.
Jones, Nancy Elinor
Kaniewski, Wayne Ross
Kendrick, Robert R.
Keyes, Booker T., Jr.
Klingelberger, Carl Ervin
Knight, Melvin J.
Kolakovich, Thomas M.
Kurtti, Daniel R.
Lazoritz, Stephen
Lea, Gary H.
Medbery, Clinton A., III
Mellon, Monte Tim
Minteer, William E., III
O'Grady, Terence Charles
Oldfield, Baird Dewes
Paden, Lindsay Bernard
Page, Caleb Wesley, Jr.
Parker, Gregg S.
Pedrotty, John Richard, Jr.
Peterson, Noel Rae
Petrochko, Nicholas, Jr.
zRoberts, Jerry M.
Sargeant, William Osgood
Schvaneveldt, John A.
Shipton, William E.
Singer, Glen D.
Sise, Michael Joseph
Sladek, Gary G.
Smith, Gary Wayne
Smith, Robert W.
Somerville, Stephen P.
Strominger, Richard D.
Sweeney, John R.
Tallaksen, Robert James
Taylor, Robert Elmore
Vincent, Michael Paul
Warren, Eddie B.
Wilkerson, Leonard A.

SUPPLY CORPS

Adams, Mark Mathew
Alexander, Oran Tyrone
Anderson, James Samuel
Anderson, Stephen F., III
Argue, Arthur Clarke, III
Awtrey, Warren
Balint, David Lee
Bell, William Ronald
Benson, Edwin Roswell, III
Benson, Linwood Earl
Bock, John Henry, III
Boyer, James Charles
Boyle, John Earl
Bullock, David Richard
Bunker, Thomas Allen
Cassano, Anthony John, Jr.
Cavanaugh, John Harold
Coon, Wynn Lewis
Courter, David Earle
Cronauer, Harold Thomas, Jr.
Crowley, Indy Charles
Cummings, Patrick William
Davis, James Clifton, III
Delaurentis, Michael Joseph
Dennis, David Arthur
Douglas, David Bruce
Eastlund, Lon E.
Eller, Jeffrey Michael
English, Robert Lemuel
Feltes, Dale Joseph
Finley, Michael Edward
Flanagan, John Edward, Jr.
Foley, George B.
Foster, Robert Leslie
Fredericks, Kenneth David
Friedel, John Michael
Garot, Otto Leon
Gift, Wendell Jay, II
Grimes, Gary Charles
Hammond, Richard Coleman, Jr.
Hauser, Christopher George
Hayes, Bryan Francis
Henderson, Harold Ernest
Herbert, Raymond John
Hesch, Gerald Frank
Hoffer, Jayme Warren
Hoffman, Lee David
Holy, Theodore Steve
Hughes, Gary Jack

Hunt, Stephen Randolph
Hurley, Joseph Francis, Jr.
Jacobs, George Ross, III
Jamrisko, Steven Francis
Johnson, Johnnie, III
Johnson, Mitchell Charles
Kellam, Steven Lloyd
Kern, Thomas Marshall
Kirk, John Robert
Koehler, Jay Barry
Larue, Stephen Lee
Leather, John Edward
Leclair, Daniel Vincent
Lehman, Ralph N
Leroy, Osborn
Lindsay, David A.
Lowndes, Rawlins
Mallon, Patrick Joseph
Marczynski, Alfons Carl
McDevitt, Harry J., III
McMican, William James
Milligan, Robert Lee
Morrison, Richard E. Paul, Jr.
Neilsen, Gerald Thomas
Orr, William David
Oshier, Daniel Raymond
Peart, Douglas Thomas
Poston, Cary David
Powell, Jeffrey Philip
Reily, James Donald, Jr.
Roesky, Robert John, Jr.
Rountree, James Sumner
Schaffer, John Edward
Schmidt, Colman Arthur
Schrader, Thomas Deidrich
Schwartz, Allen Barry
Seebeck, Robert Niels
Selby, Theodore Joseph
Sheppard, Theodore James
Solis, Armando Raul
Sparks, George Francis
Strunk, Lawrence William
Swanson, Graydon Neil
Teipel, Mark Allen
Tynan, Edward Patrick
Vedder, Hellmuth
Wadsworth, David Barry
Waits, Clifford Holloway, Jr.
Walker, Allan Warren
Ward, John David
Wells, Randolph Robert
Wenzel, Kenneth Edmund
West, Paul Kenton
Wilson, George Wayne
Wingfield, George Russia
Witham, Michael Joseph
Wortman, David Carl
Young, Mark Alan
Zimmermann, Bruce Edward

CHAPLAIN CORPS

Atwater, Jefferson D.
Benner, August William, Jr.
Clements, Don Keith
Darcy, William John
Hamilton, Loy Blane
Kubisiak, Robert P.
May, Charles Henry
Miller, Christine E.
Oddo, Peter Andrew
Peters, Michael
Pyrch, Paul
Rowland, Robert Gene
Woodruff, Mark E.

CIVIL ENGINEER CORPS

Anderson, Lee Lawrence, Jr.
Augustin, James Henry, Jr.
Barrows, William Carey
Berriman, John Wallace
Berry, Michael Gerald
Bittle, James Earle
Blanton, Guy Ivan, Jr.
Boothe, Thomas Mattison
Breitzke, Thomas Carl
Burgoyne, Richard Everett, Jr.
Casey, Michael Francis
Chamberlin, Paul Douglas
Checkovich, James Keith
Clements, Neal Woodson, Jr.
Cornell, Wayne Lester
Costello, Donald Haryford, Jr.
Dalke, Gregory Allen
Daignault, Stephen William
Doyle, John Raymond
Eckels, Robert Turner
Elkins, James Ernest
Fritchen, David Rex
George, David Russell
Goddard, Nelson George
Gorden, David William
Hiller, Paul Warren
Horn, Larry Stewart
Huggins, Howard Heath
Hutchins, Donald Bruce
Interholzinger, Jared Frank
Kendall, James Bruce
Kennedy, Michael Gray
Kolster, William George
Kornegay, Edward Louis
Kraai, Bernard Willard, Jr.
Krochalis, Richard Francis
Kubic, Charles Richard
Leidholt, Deane Edward
Leonard, Donald Burgess
Macfarquhar, James David
Miller, Steven Ridgely
Olszewski, Paul John
Praskievicz, Michael Wallace
Roach, David Gerard
Rodriguez, Glenn Robert
Schiehr, Christopher George
Smith, Loren Woodrow
Sollenburger, Lee Andrew
Steinbrugge, Richard Leonard
Streicher, Burton Loyal
Stryker, Harry Ford
Tornatore, William Paul
Uzarski, Donald Ray
Vandyk, Peter Martin
Veselenak, John Cyril
Wegener, Gary Raymond
Weyrauch, Edwin Frederick
White, Judson Henry, Jr.
Wisehart, Thomas Charles
Ybanez, Robert Enrique

JUDGE ADVOCATE GENERAL'S CORPS

Bridge, Jonathan Joseph
Burnett, Weston D.
Connelly, Thomas Joseph, Jr.
Decicco, William A.
Deschauer, John Joseph, Jr.
Fayle, Patrick Anthony
Friedman, Leonard
Genzler, Patrick Alan
Hardy, David Murff
Hayden, Lawrence E., Jr.
Henebery, John K.
Holcombe, David Patrick
Holt, John Beadle
Hunt, Charles Ronald
Jacobsen, Walter Lindgren
Jakubiak, Thomas F.
McCabe, Sally Jean
McGuire, Michael R.
Monahan, Robert Patrick
Park, James Douglas
Pixa, Rand Redd
Rae, Robert Bruce
Smitherman, William Tennison
Swanson, Ronald Victor
Switzer, David Roe
Tielens, Thomas P.
Weber, Donald Bruce
Winfrey, Ronald Ray
Young, Timothy Clay

DENTAL CORPS

Altman, William E.
Anderson, Maxwell H.
Arendt, Douglas M.
Austin, Gordon Trent
Barrick, Carl L.
Bookwalter, Charles A.
Bennett, Gerald E.
Bramwell, John D.
Conlon, Dennis John
Dern, William M.
Diehl, Mark C.
Durkowski, Jerry S.
Durm, William B., IV
Faivre, Scott R.
Fehling, Alfred W., Jr.
Flanigan, Timothy J.
Gloria, Joseph A.
Goodwin, David A.
Hammond, Frederick W.
Hutto, Robert E.
Jackson, Larry W.
Janes, David C., Jr.
Johnson, Gregory K.
Jones, Gordon K.
Kratochvil, Frank James
Kredich, George W.
Lessmann, Ronald Paul
Mason, Craig A.
McLeod, Eric S.
Meiers, Jonathan C.
Mooneyham, Thomas P.
Mork, Thomas O.
Moss, Stanley D.
Patch, Stanley J., Jr.
Paul, John S.
Pope, Bruce Michael
Ramsey, Harry C.
Reder, Daniel Grant
Robbins, James S.
Robinson, Boyd E.
Rundbaken, Roger P.
Sadori, Peter Stephen
Schuetz, Thomas J.
Smith, Roy D.
Weisenseel, John A.
Whitt, Joseph C.
Wiley, Paul Marshall
Williams, Nathan V.
Wyman, Barry M.
Yorty, Jack S.

MEDICAL SERVICE CORPS

Anderson, Charles Lawson
Anderson, Jerry Thomas
Ayers, Robert Ransome
Benny, Judith Ann
Black, Ronald Wayne
Bolster, Hugh Trout
Bourgeois, August Louis, Jr.
Brent, William Herman
Brickeen, Jerry Wayne
Briere, Gerald Paul
Brocker, Fred Lee
Brodsky, Stephen Michael
Brooks, David Dean
Brown, William Glenn
Caldwell, Craig Robert
Calvin, James Barnard
Carter, Robert Charles, Jr.
Caton, Gene Allen
Cline, Ferdinand Charles
Connors, Charles Vincent
Cox, Tommy Wayne
Crank, Harold Lane
Daniel, David G.
Davidson, Dennis Martin
Davis, Joe Ed
Day, Charles Stattman
Decsipkes, Robert Allan
Derr, John David
Dillard, James Burkett, Jr.
Dillingham, Joe Glenn
Duncan, Carl Franklin
Edgmon, Bobby Ray
Eichelberg, Wallace Christian
Eimers, Orin Kenneth
Epling, Stephen Roger
Estey, Melvyn Adams, Jr.
Evans, William Hector, Jr.
Eyre, Jay Morris
Gammarano, Peter Vincent, Jr.
Garms, Peter Paul
Garrigues, Roy McEndree, III
Gervais, David Royal
Ghent, Ernest Richard
Gibson, George E., Jr.
Glans, Dale Carl, Jr.
Glowacki, David Andrew
Goodloe, Murriel Edward
Hargett, David Allen
Harmon, Layton Oscar
Harris, Steven Dell
Hayes, Betty Lou Wright
Hazzard, Charles Alan
Heisler, Robert Paul
Heltsley, John Richard
Henry, Frederic Hybert
Hughes, Haywood Nance
Jay, George Walter

Johnson, Ronald Allen
Jones, Rudolph
Jose, Lynn Thomas
Kish, Robert J.
Kmet, Joseph Paul
Knight, Michael Graham
Kramer, Jeffrey Allan
Kremser, Gray Lamont
Kunerth, Marshall Grant
Lamb, Martha Jane
Langston, Carl Coleman, Jr.
Lindstrom, Lorel Linden
Littlejohn, Harold Pressley
Lockhart, Ralph Alvis
McCarthy, Judith Anne
McClerklin, Aaron
McCoy, Wendel Thomas
McGann, Dennis Michael
McGinn, Charles Franklin
McNamara, Patrick Francis
Mell, Leroy Dayton, Jr.
Meskill, Gerard Vincent
Meyer, Michael
Mikkelsen, Donald John
Miller, Robert Martin
Mitts, Estill D., Jr.
Moran, William Joseph
Murphree, Garry Wayne
Murphy, Harry Burton
Murphy, Patrick Edmond
Newton, Gary
Norris Henry Hampden, Jr.
Nunn, Thomas Dalton, Jr.
O'Brien, Harriet Ione
Olson, Steven Duane
Parrish, Gerald E.
Pate, George
Peksens, Richard Karl
Peters, Vernon Melvin
Peterson, John Charles
Radmore, Kenneth James, Jr.
Randle, Kenneth Robert
Rendin, Robert Winter
Rosciam, Charles Joseph
Rose, Donald Craig
Sampson, Raymond Norman
Simas, Amance Rezendes
Slobodnik, Bruce Allen
Smedley, Fulton Joseph
Soliday, James Elvin
Sparkman, Thaddeus Henry
Spencer, Charles Adrian
Stein, Carl William
Tittman, Frederick Richard
Todd, Hamilton Smith, Jr.
Vasquez, Jesse Hernandez
Vaughn, Charles Donald
Wallace, Gale Franklin
Ward, Ernest Douglas
Waterman, Cheryl Marie
Webb, John Rhodes, Jr.
Weinberg, Sheila Ray
Wheeler, David Leo
Wilder, Thomas Wiston
Willems, John Paul
Williams, Margaret Eileen
Willis, George Robert, Jr.
Wolfe, Theodore Ernest, III
Wright, Laban Joseph
Zimmerman, John Harvey

NURSE CORPS

Barnes, Paula
Beaty, Debra MacNamee
Beeson, Virginia Reed
Berryman, Mary Alice
Bitzer, Merlin David
Boberick, Barbara Jeanne
Bodnar, Joseph Alan
Boneberg, Cecelia Maeder
Boyle, Carey Thomas
Brastad, Jeannette Ann
Brown, Rebecca Sue
Campbell, Julia Celeste
Cappiello, Joseph Lawrence, Jr.
Centko, Marietta Jean
Chapman, Gayland John
Chonka, Anne M.
Comte, Michele Ann
Condon, Edward Gale, III
Cornell, Shirley Richard
Cornwall, Thomas Lynn
Cummings, Linda Mary
Czabaj, Marlene Bridget
Daehn, Linda Marie
Davis, Evelyn Pearl
Davis, William Michael
Day, Lynn Blair
Day, Marilyn Anita
Dobbs, Gwenda Qualls
Donahue, Mary Helen
Donofrio, Robert Nicholas
Droz, Cynthia Maravich
Ellis, Jo Carol
Fitzgerald, Kathleen E.
Forsha, Anne Virginia
Gabet, Linda Sue
Gallino, Alice Alberta
Garvey, Geraldine Ann
George, Melissa Ann
Gharabaghli, Sandra Marie
Goeden, Mary Campbell
Goff, Vicki Kristine
Gutowski, Mary M.
Hankel, Elaine Marie
Hart, Dwaine Kenneth
Haviland, Rebecca Jane
Hayes, Claudia Ann Bouvier
Herzler, Ralph Edmund, III
Hinger, Carol Ann
Hoffman, Mary Helen
Hofman, Linda Louise
Hooper, Janet Lynn
Hruby, Margaret Jane
Huber, Joan Marie
Hunter, Harriet Zech
Hutchins, John Wayne, Jr.
Irvine, Linda Jo Ann
Iverson, Halvor Edward, Jr.
Jackson, Royal Hudson
Kamin, Deborah Young
Kanurick, Ronald Gregory
Kenney, Patricia Anne
Kimberly, Ruth Ann
Kowba, Maureen Doohan
Kuhnly, Diane Beverly
Kupchinsky, Stanley Joseph
Law, Diane Elizabeth
Lawman, Alene D.
Ledonne, Diane Marie
Lee, Amy L.
Lescavage, Nancy
Lett, Max Richard
Lohman, Judith Ann
Lopez, John Dale
Lousche, Kathleen Mary
Mangan, Martha Young
Manzitto, Arthur Stanley
Markley, Margaret Jan
McColl, William Doster
McDonald, Mitchel Allen
McKinzie, Beth Ann
McMahon, Linda Ungvarsky
McMullen, Suzanne Theresa
Meier, Mardean Elaine
Metzler, Ronald Lavern
Moore, Judith Carol
Moran, Janice Weaver
Murphy, Kathryn Ruth
Narbut, Christine Ann
O'Donnell, Katherine Grace
Oswald, Gregory Stephen
Otlowski, Donna Marie M.
Owen, Nancy Jo
Paller, Patricia Katherine
Patterson, Marla Katherine
Pentecost, William Ronald
Phillips, Danny Roger
Pietarila, Mary Anne Ebner
Pittman, Alice Arndean
Powell, Robert Leroy, Jr.
Price, Roberta Louise
Quinn, Mary Ellen
Ramsey, Lorna Jean
Randle, Dale Hudgins
Ratigan, Thomas Robert
Richburg, William Edward
Riddell, Carol Ann
Robertson, Rosalyn Lent
Robitaille, Gloria Jean
Rocha, Elizabeth Densford
Rodriguez Fe Esperanza
Rychlinski, Charlene
Smiley, Janice Starling
Snell, Stanley Pierce
Stoessel, Kathleen Barbara
Strapp, Margaret Anne
Tarnowski, Laurence Anthony
Thompson, Thomas Neil
Trenhaile, Cherie Hilliar
Tucker, Judith Lynn
Turpin, Lori Ann
Twarog, Thomas Warren
Vannest, Ronald Lawrence
Vernoski, Barbara Klos
Verville, Jacqueline Kay
Wahl, Marilyn Jean
Warren, Freda May
Wayne, James Francis
Wentland, Paul Daniel
White Therese Ann
Whittemore, Kenneth Robert, Jr.
Williams, Darryl Mead
Williams, Colleen Kay
Wilson, Nancy Darlene
Wolf, Elaine Maureen
Woodworth, Linda Carol
Yarbrough, Patricia Kaye
Zukowski, Suzanne M.

The following-named officers of the Naval Reserve for permanent promotion to the grade of lieutenant commander in the line and various staff corps, as indicated, pursuant to title 10, United States Code, sections 5783, 5791, 5911, and 5912, or section 611(a) of the Defense Officer Personnel Management Act (Public Law 96–513) and title 10, United States Code, section 624 as added by the same act, as applicable subject to qualifications therefor as provided by law:

LINE

Allen, Willie Lee
Anderson, Thomas James
Ardan, Nicholas Ivan, III
Askey, Charles Benjamin
Axtell, Stephen P.
Ayers, Frazier Ledonn
Bailey, Darryl Bryant
Beaufort, Barry Wayne
Beaver, Dennis Thomas
Bell, Robert Charles
Bitterwolf, Thomas Edwin
Blickle, Robert Palmer
Bonanno, John W.
Boniface, Lynn Alan
Brady, Patrick Donald
Breedlove Levi, Jr.
Brown, George Earl, Jr.
Brown, Wayne Douglas
Bryant, Michael B.
Burnup, Russell Johnston, II
Chiaverotti, Gary Robert
Christiansen, Frank
Clifford, John Daniel
Coffey, Jeffrey Grant
Cook, William Terra
Corrigan, Walter Elliott, Jr.
Cox, Henri Edwin
Cox, Paul Robert
Cox, Paul Stanley
Crawford, Thomas Carl
Dail, Robert Henry
Darnell, Kenneth D.
Davidson, Michael Arthur
Delbalzo, Michael Fredrik
Demik, Gregory W.
Dugan, Michael Francis
Edwards, Roger William
Fann, William Britton
Farlow, Raymond Franklin, IV
Fisher, Robert Benjamin
Gato, David Thomas
Gay, Frederick Sydney, Jr.
Grant, Raymond Joseph
Gray, Thomas C.
Green, Melvin Curtis
Guidry, Mark
Gullion, Joseph Milton
Halvorson, John Lyle
Haycock, Melvin Scott
Heilman, Craig D.
Higgins, John Wayne
Hunt, Jefferson Milo

Hurley, Allen Lee
Jordan, Clarence Edward
Kalinski, Arthur Alexander
Kauler, Robert D.
Kirkish, Douglas James
Kociemba, Robert Harry
Korbak, Michael, Jr.
Lang, Thomas Michael
Letchworth, Steven Frederick
Lindsay, Michael Edward
Lucas, Bryan Doran
Lugg, Stephen Craig
Lumsden, John C., Jr.
Maughan, Wesley Earl
May, Bruce Edward
McAtee, Thomas Lee
McDonald, Paul Frank
McGuire, John K., Jr.
McMullin, Geoffrey L.
Mercer, Terry Shelton
Miles, Wilson Ashley, Jr.
Mills, John Brian
Mitchell, Jimmy Lee
Monahan, Dennis Gerard
Morrell, James Michael
Morton, Barry Vonberg
Murray, Billy Dennis
Nash, Charles Theodore
Nations, Leslie Rex
Nelms, Danny Charles
Noak, Robert Fred
Obryant, Kenneth Michael
Oelrich, Glen Allen
Palko, Thomas Albert
Parker, Charles G.
Parker, Charles William
Passmore, Robert O.
Peterson, Richard Allen
Phelps, Castle Wright
Pittman, John Charles
Platt, Bruce Leonard
Puzon, Daniel Isaac
Ries, Jerome Roland
Rizy, David J.
Ross, Larry Cecil
Rothwell, Jeffrey Alfred
Ryan, Jeffrey Brice
Saer, Donald McQueen
Saunders, Alexander R., II
Schippereit, Stuart Jonathan
Scholes, Robert Clinton
Schrade, Donald Edward
Senkowski, David Daniel
Shaffer, James Starr
Sheehy, Hugh Francis
Shelton, Connel Michael
Short, Gerald Sheffield
Sigler, Steven Joseph
Skipper, Donald Wiggins
Slayden, Phillip Van Hatton
Smith, Guy M.
Smith, Scott L.
Smith, Thomas Edward
Snurkowski, Charles Stanley
Stanley, Thomas C.
Stanton, Charles David
Stanton, Ronald A.
Streck, Steven Clarence
Swenson, Wayne Frederick
Tindall, Norman J.
Tomich, David B.
Tune, John Ernest
Underwood, Jonathan Charels
Vanbelle, Bruce Thomas
Waas, John Glynn
Walker, Ivey Franklin, Jr.
Walsh, Gilbert Charles, Jr.
Walsh, Thomas M.
Walter, Lonnie Scott
Williams, John Peter
Williams, Scott Kilborn
Wilson, Thomas J.
Witowski, Thomas Stephen
Wold, Norman Nicholi
Wood, Joseph Arthur, Jr.
Wooten, Charles Arthur, III
Word, Frank Brown
Wreski, Edward Joseph
Young, Stephen Scott
Zolla, George Allen, Jr.

MEDICAL CORPS

Adams, Tyrone Lucas
Alcoff, Joel Michael
Amundson, Dennis E.
Anderson, Cynthia Tweeton
Anderson, Michael Jon
Anderson, Thomas Gordon, Jr.
Andrada, Rosalia Corres C.
Andres, Patricio M.
Armstrong, Richard A.
Aronson, Suellen
Arthur, Donald C., Jr.
Asay, Ronald W.
Ault, Wendy C.
Austin, Robert Marshall
Baezsanchez, Jose Angel
Bagnoli, Stephen
Bair, Donald G.
Barde, Susan Holliday
Barot, Amrutlal Jethalal
Bartow, John H.
Bean, Robert R.
Beaty, Robert H.
Berger, Bruce C.
Biermann, Kerry C.
Blacharski, Paul Alexander
Blankenship, Charles L.
Bliziotes, Matthew M.
Block, Julia Ann Dlhopolsky
Block, Robert
Boitano, Marilyn Ann
Bond, Douglas M.
Bonner, Robert Emmett
Boyd, John T.
Brade, Christopher John
Bradfield, James E.
Briggs, Nancy Dee
Brilli, Richard J.
Brooks, Harry W., Jr.
Brown, Edward W.
Brown, William P.
Bryan, Curtis Russell
Busch, Richard Frederick
Canada, Edgar D.
Carden, Dennis M.
Carpenter, Richard M.
Casey, Larry C.
Cella, John A.
Chavous, Donald C.
Chinnery, Martha Steele
Choplin, Neil Todd
Christensen, Gary S.
Christenson, Paul J.
Christiansen, Lance Wallace
Clapp, William L.
Clark, Charles Curtis
Clay, Gerald Lamont
Cleaver, Lloyd J.
Coffey, John M.
Cohen, Bernard M.
Crudale, Angelo S.
Csere, Robert Stephen
Cumming, John G., III
Cunningham, William John
Cusack, John Robert
Daily, James M.
Dalton, Jon N.
Davis, James E.
Defazio, John V., Jr.
Deleon, Elnora Saqui
Deline, Carol Compton
Dennett, Douglas E.
Detert, David G.
Dicapua, Lawrence
Dickie, Thomas A.
Digby, Donald J.
Dumont, Arthur, III
Eder, William Ruppert
Eisley, John Charles
Elder, Paul T.
Ellis, James V.
Etter, Harry S., Jr.
Evans, Kurt J.
Fagan, Steven Joseph
Fagerlund, Robert Waino
Fan, George Chitze
Fellenbaum, Theodore L.
Ferguson, Wilson J.
Fetchero, John A., Jr.
Fichman, Kaye Ruth
Folsom, Kenneth J.
Foor, Jeffrey L.
Fraim, Clifford Jack
Freeman, Charles G.
Freeman, Richard A.
Friedman, Aaron J.
Fritz, Richard T.
Fuller, Robert P., Jr.
Fulroth, Richard F.
Furlow, Terrance Gregory
Gabler, Glen Richard
Gellman, Michael Daniel
Gibbin, Candace Lynn
Godboldt, Anthony
Goetz, Joseph James
Goodman, David L.
Gray, Charles Glenn
Grayson, Howard A., Jr.
Greaney, Richard B.
Gros, Michael L.
Grysen, Bernard C.
Gunn, Dale W.
Haden, Keith W.
Haerr, Robert W.
Halbert, Richard E., II
Halloran, Thomas J.
Hamilton, William C.
Hanser, James A.
Hardage, Robert H., Jr.
Harpold, Gary J.
Harrington, Tracy M.
Harris, Christopher J.
Harris, Martin H.
Harris, Walter D.
Hartman, John Richard
Haskin, Kenneth Barry
Healy, Grant F.
Henbest, Philip Michael
Henderson, Grover C., III
Herddener, Richard Sherman
Herlihy, Charles E., Jr.
Hilaman, Brad L.
Hill, David Michael
Hines, Bill Cornell
Hinz, Michael A.
Hodgens, David W.
Hogan, Kevin P.
Hollaway, Rodney Roy
Holliman, Kenneth E.
Holston, John Seth
Hold, Richard Blaine
House, William Columbus
Hunt, Wesley S.
Hunter, Billy Ray
Hutchinson, Michael Irvin
Iglinsky, William L., Sr.
Irwin, Walter L.
Jacobs, Richard Douglas
James, Lewis P.
Jamieson, Thomas W.
Jensen, Steven R.
Julien, Craig Kenneth
Kao, Yi H.
Karr, Michael A.
Keck, Keith A.
Kidd, Donald David
Kilcheski, Thomas Stephen
Kitagawa, Seiji
Kizer, Kenneth W.
Klein, Michael K.
Klein, Robert Michael
Klim, Philip Anthony
Knapp, Mark Joseph
Krafcik, John M.
Kramer, Steven Frank
Kussmaul, William Guy
Kwiatkowski, Peter Frank
Lachowsky, John Edward
Lancaster, Danny Joe
Lane, Zeph
Lehner, William Edward
Lessmann, Gary P.
Levinsky, Howard
Lew, Sam Wei
Ley, Carl E.
Lipovan, Mircea B.
Livingston, John M.

Lynch, Michael J.
Maano, Rio Rita Mastrili
Macfee, Michael Scott
Macivor, Duncan C.
Macmillan, David T.
Maldonado, Castillas Carmen
Maloney, Martin J.
Mandel, Lee Richard
Mantica, Robert P.
Marshall, C. Perry
Massa, David Anthony
Mather, William Hardeman
Mayer, Frederick W.
McNamara, Brian Joseph
McNiece, Donald Michael
Mehlum, David Lee
Messersmith, Donald P.
Metcalf, John H.
Metildi, Carmen D.
Miller, Stephen A.
Moore, Robert Alan, Jr.
Mosley, Coleman A., Jr.
Moss, Richard L.
Murphy, James P., Jr.
Myers, E. Ann
Neal, George B.
Nelson, David G.
Nelson, Jeffrey Loren
Nicholson, Michael T.
O'Farrell, Kathleen Anne
Omley, Timothy Herbert
Orcutt, Margaret C.
Orndorff, George Robert
Ortegajimenez, Victor M.
Parker, Kim Ellison
Parton, Judy Munyon
Perezpoveda, Jorge Ramon
Perlman, Mark Lewis
Perry, Donna Ruth
Pesce, Richard R.
Pirlo, Andrew F.
Polito, John F.
Porter, Charles Thomas
Posey, Douglas H., Jr.
Powers, Bernard Joseph
Pratt, Allan Thomas
Preston, Ted L.
Prosser, Joseph Stephen
Puckett, Ralph Arthur
Quinn, James E.
Raeber, Kirk John
Ramey, Jack M.
Rash, Francis C.
Reams, Gary Glenn
Reed, Phillip C.
Roberts, Carol Compton
Robertson, Claudia Sue
Robinson, Adam M., Jr.
Rogers, Douglas Melvin
Roland, Peter Sargent
Role, Philip Alan
Ronan, William Vincent
Ropes, Milton B.
Rowley, Dennis Alan
Rudick, James Howard
Ruffer, James A.
Rufleth, Peter W.
Ruiztorres, Ramon Luis
Sakakini, George C.
Sanchez, Phillip Lauren
Savage, Robert M.
Schneider, Paul Gerard
Schneider, Richard J.
Schumacher, Mark P.
Schwartz, John C.
Scott, Richard Lee, II
Scott, Robert Lester
Sears, Thomas Delbert
Segarravidal, Juan Bautista
Shaffer, William Orlon
Shapiro, Alan I.
Shelley, William C.
Sintek, Colleen Flint
Slomka, Charles V.
Smith, Dennis E.
Smith, Larry R.
Solomon, William Curtis
Soper, David E.
Spurling, Timothy J.
Stafford, Perry W.
Stagner, David Lowell
Starling, Jay Craig
Stevens, Jonathan Craig
Steward, John Robert
Super, Mark Anthony
Svarcstambolis, Jasna
Swinney, Tommy Lewis
Tauber, William B.
Thompson, David J.
Thomsen, William B.
Timpone, Michael Jonathan
Tobias, Imelda Victoria
Truchelut, Eugene Anton
Trusewych, Timothy B.
Tyler, Robyn Easton
Underdown, William Edward
Valery, Harold Cardinal
Vanwagnen, Lynn Clark
Vidmar, Dennis Alan
Vukich, David J.
Waack, Timothy Charles
Walter, Richard D.
Warden, Charles Stratton
Weiser, Edward B.
Wellbron, Rober G.
Werner, Sheldon L.
Wesselius, Cassie Lee
Whalen, Thomas V., Jr.
Wickerham, Donald L.
Wilker, John Frederic
Wilkerson, Stephen Young
Williams, David C.
Williams, Joseph James
Williams, Robert Donald
Wittgrove, Alan C.
Wong, Anne Beatrice
Woodruff, Stephen Odell
Wurzel, William David
Yantis, Paul Lester, III
Young, Jeffrey Milton
Yudt, William M.
Zable, Elizabeth Helen
Zahller, Mary C.
Zahller, Steven J.
Zajdowicz, Thaddeus Richard

CHAPLAIN CORPS

Barker, Herbert James
Belanus, Donald G.
Leavitt, Charles H., Jr.
Pierce, R. Bruce
Register, John Dale

CIVIL ENGINEER CORPS

Currie, Harold Dwayne
Hall, Neil Bradley
Haug, James Charles
Lee, Dennis Juen
Parker, William Thomas

JUDGE ADVOCATE GENERAL'S CORPS

Bosch, Gerald R.
Cassell, Martin P.
Longstreet, Lizann Malleson

DENTAL CORPS

Aldrich, David A.
Amaya, Juan A.
Barry, Kenneth Edward
Boyle, John P.
Casella, Michael J.
Chance, Leonard M., Jr.
Cook, Harold E.
Eavis, Anne Marie
Flath, Robert K.
Getty, Paul F.
Gimer, David A.
Harrison, Kenneth Michael
Hill, Thomas Marshall
Huffman, Thomas Dean
Kiernan, Loyd Julian, III
Kozlowski, Gregory George
Nicholson, James Robert
Percival, David Allen
Richardson, Albert Charles
Richardson, William L.
Rogers, Raymond L., Jr.
Sansom, Byron Paul
Santucci, Steven J.
Steenson, Loren James
Strunk, William Milton, II
Turner, Robert Jeffrey
Waterman, Marc Norris
Wheeler, John Wayne

MEDICAL SERVICE CORPS

Mathews, Richard J.

NURSE CORPS

Aponte, Claudia Jean
Benton, Alana Marie
Booher, Terresa Olivia Burks
Bregar, Wendy Lynn
Dickson, Kathryn Turner
Krauel, Barbara Jean
Krieger, Jane Elizabeth
Moreland, Cathleen Susan
Suiter, Phyllis Ann

## CONFIRMATIONS

Executive nominations confirmed by the Senate September 21, 1981:

DEPARTMENT OF ENERGY

James R. Richards, of Virginia, to be Inspector General of the Department of Energy, vice John Kenneth Mansfield.

FEDERAL TRADE COMMISSION

James C. Miller III, of the District of Columbia, to be a Federal Trade Commissioner for the term of 7 years from September 26, 1981, vice Paul Rand Dixon, term expiring.

The above nominations were approved subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.

SUPREME COURT OF THE UNITED STATES

Sandra Day O'Connor, of Arizona, to be an Associate Justice of the Supreme Court of the United States, vice Potter Stewart, retired.