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! Exalt 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 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 $71,000, 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:

<table>
<thead>
<tr>
<th>Position</th>
<th>Average Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chief administrative officer</td>
<td>$71,700</td>
</tr>
<tr>
<td>Controller</td>
<td>$67,000</td>
</tr>
<tr>
<td>Head of computer operations</td>
<td>$74,000</td>
</tr>
<tr>
<td>Head of engineering</td>
<td>$67,000</td>
</tr>
<tr>
<td>Head of legal</td>
<td>$70,000</td>
</tr>
<tr>
<td>Head of personnel</td>
<td>$70,100</td>
</tr>
<tr>
<td>Head of purchasing</td>
<td>$71,400</td>
</tr>
<tr>
<td>Head of research</td>
<td>$71,000</td>
</tr>
</tbody>
</table>

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 disparity in salary. I shall also list the important defense and non-defense functions that officials oversee.

Remember that these are but a sample of our recent executive vacancies:

EXECUTIVE FUNCTIONS

1. Deputy Asst 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 single point of executive responsibility 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 submarines in the Fast & Non-Active Ship Force. (Includes management of all logistics for the Trident Submarine.)

4. Director, Procurement Control & Clearance Division. Directly supervises entire procurement and clearance division which includes the Missile 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 point of contact with Executive Branch.

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, Office of the Acting Director in division assigned to Mr. A. N. W., a staff program.


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 in international energy matters in international fora and bilateral relations.

4. Chief, Analysis and Computation Division, NASA. Directs a staff of 136 in applied research, flight simulations, theoretical and experimental aerospace research.

5. Deputy Assistant U.S. Trade Representative, Exec. Office of the President. The 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 functions include research, 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
and conducts supporting research in wide range of related areas.

I would sum up my statement by re­peating from Congressman Peto's testi­monial a quote made by the Honorable Otto Regensburger 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 growing to have substantial impact upon our ability to carry out the President's program.

Recognize 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 showings, one 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 a time 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 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 sovereignty and sub­stitute a foreign court to try genocide, and then 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 opposed to the Genocide Convention to be self-evident, and they have often failed to sufficiently express their views.

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

Therefore, the convention has not been ratified, even though most Ameri­cans 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 New York, the Foreign Corrupt Practices Act prohibiting the bribery of foreign officials by American companies and placing reason­able accounting requirements on companies to stop such fund bookkeeping.

Mr. President, no case has been made for amending the foreign bribery law. Exports have not been hurt and 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. There's no need for more water.

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

Mr. PROXMIRE. Mr. President, 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 fund to pay off foreign officials and win sales. By making such bribery a criminal offense, threatening executives with jail and establish an extensive 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 for foreign shows would have been easier, too, to make it easy again for companies to hide question­able payments abroad.
Mr. STEVENS. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The bill was 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.

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

The PRESIDING OFFICER. The clerk will call the roll.

Mr. STEVENS. 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 people 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 banned from starting a career 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.

Mr. SCHMITT. Mr. President, the many thousands of people 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 unexpected 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 objectives 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 is true mentioning that last November 4, the American electorate repudiated, in a landslide election, the policies of the past; the tax and tax 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
CONGRESSIONAL RECORD—SENATE

September 21, 1981

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 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 qualified 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 the United States.

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 both the House and the Senate. 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 in the person an individual not held accountable by popular election. Accordingly, we reflected carefully upon the qualifications necessary for one to be an outstanding jurist.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. Is there further morning business? If not, this hour having expired the time for the conduct of morning business has been completed.
JUDGE O'CONNOR is the first nominee to the Supreme Court in 42 years who has served in a legislative body. Her experience as a majority leader in the Arizona State Senate will help her, and through her the other members of the Court, in recognizing and understanding 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, consisting of the Joint Committee, be printed in the Federal Register.

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.


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


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; J.L.B. 1952.

7. List by year: all businesses or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, profit 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. Former County Attorney, San Mateo County, California. General Civil Work for County agencies and schools. 1954-57 Secretary of Quarter-master Market Center, Frankfurt/Main, W. Germany, handling contracts and bid 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.

1964-65 Assistant Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General.

Approxi-mately three months were spent on assignment as administrative assistant at Arizona State Hospital.


1975-79 Judge, Maricopa County Superior Court.

1979 to date Judge, Arizona Court of Appeals.

8. Business Affiliations:

(a) 1937 to date Member, Board of Directors,Lazy B Cattle Corporation. It is a closely held corporation, owned by members of my family. I served for several years during the 1960's and 1965's as secretary.

(b) 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.

9. Partnerships:

(a) 1960-61 Partner in Fennemore, Craig, von Ammon & Uddall, which serves as co-counsel in the case.

(b) 1969-75 Member, Board of Directors, Blue Cross/Blue Shield of Arizona, a non-profit corporation.

10. Civic Activities:

(a) 1958-59 Assistant Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General.

(b) 1964-65 Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General.

(c) 1964-65 Attorney General, Arizona, handling wide variety of matters including contracts, leases, divorces, and criminal matters.

11. Years employed.

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

(b) 1964-65 Assistant Attorney General, Arizona, handling wide variety of matters including contracts, leases, divorces, and criminal matters.

12. 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.


5. Marital status. Include maiden name of wife or husband’s name. List spouse’s occupation, employer’s name and business address(es).


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; J.L.B. 1952.

7. List by year: all businesses or professional corporations, companies, firms or other enterprises, partnerships, institutions and organizations, profit 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. Former County Attorney, San Mateo County, California. General Civil Work for County agencies and schools. 1954-57 Secretary of Quarter-master Market Center, Frankfurt/Main, W. Germany, handling contracts and bid 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.

1964-65 Assistant Attorney General, Arizona, representing various state officers and agencies writing opinions for Attorney General.

10. Business Affiliations:

(a) 1937 to date Member, Board of Directors, Lazy B Cattle Corporation. It is a closely held corporation, owned by members of my family. I served for several years during the 1960’s and 1965’s as secretary.

(b) 1971-74 Member, Board of Directors, First National Bank of Arizona.

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

11. Partnerships:

(a) 1960-61 Partner in Fennemore, Craig, von Ammon & Uddall, which serves as co-counsel in the case.

(b) 1969-75 Member, Board of Directors, Blue Cross/Blue Shield of Arizona, a non-profit corporation.

(c) 1980. Appointed.


Member, Maricopa County Board of Adjustments and Appeals, 1963-65. 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 Re-evaluate the President, 1972. Former Republican Precinct Committee-man, 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, 1966-68. Member, Juvenile Court Referee, 1962-65.
Member, Judicial Fellows Committee, 1991-92. Member, Arizona State Law Enforcement
Member, Mayor's Committee, 1980.
9. Memberships: List all organizations to which you belong, whether such position was elected or appointed, and the dates, branch of service, rank or rate, serial number and present status.
10. Other service.
9. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.
Commencement Speaker, Arizona State University, 1974.
Participant and Speaker, American Assembly, Amherst House, 1976.
Distinguished Achievement Award, Arizona State University, 1980.
10. Bar Associations: List all bar associations, legal or judicial related committees or conference of which you are or have been a member, with dates of 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, (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 on administrative bodies which require special admission to practice.
Supreme Court of California, 1952.
Sonoma County Court, October, 1957.
U.S. District Court, San Francisco, California, 1952.
N.D. District Court of Appeals, 1952.
U.S. District Court, Phoenix, Arizona, 1957.
13. Published Writings: List the titles, publishers, dates of books of books, periodicals, or other published material you have written. You may also list any significant speeches which you feel may be of interest to this Committee.
In 1989, 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, 1976, 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 positions you have held, whether such position was elected or appointed, and a description of the jurisdiction of each such court.
16. State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such position was elected or appointed. State (chronologically) any unsuccessful candidates for elective public office. See Exhibit B.
I have never been an unsuccessful candidate for elective public office.
18. Legal: Chairman, Maricopa County Juvenile Court Study Committee.
Former member, Board of Directors, Colonial State Settlement, 1960-70. Former member, Board of Trustees, Phoenix County Day School, 1960-70. Former member, Maricopa County Juvenile Court Study Committee.
19. Published Writings:
1. Please discuss your views on the following criticism made in the report of the Joint Study Committee of the Federal and State Courts:
"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 critics. Policies that the judicial branch has usurped many of the prerogatives of other branches and levels of government.
Such questions of the characteristics and "judicial activism" have been said to include:
- A tendency by the judiciary toward broad interpretation of laws in order to give greater protection to civil and economic rights.
- A tendency by the judiciary to impose broad, affirmative duties upon governments and society.
II. GENERAL (PUBLIC)
1. 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 critics. Policies that the judicial branch has usurped many of the prerogatives of other branches and levels of government.
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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. BAXLEY 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 ever to 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, but an idea of less or greater effect on all of us who were born out in that marvelous land.

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 beyond the reach of this subcommittee. But, the only other times I had to be near her were in times involving political or legislative work.

Mr. GOLDWATER. The Senator from Arizona, Mr. Goldwater, has the floor.

Mr. GOLDWATER. Mr. President, I would ask how they...
Judge O'Connor repeatedly told the court of her strong opposition to abortion. She stated that she would draw the line of any exceptions very strictly. She believed that abortion was 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 in state specifically, she believes the Court's past abortion cases are wrong, they would have denied themselves the vote of a potentially important judge 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 rights of States to regulate legalities of criminal and civil cases. She made it clear that she is not enough time. The chairman indicated that there was going to be ample time for each opportunity to question the nominee, this particular Senator was granted four opportunities. I daresay the distinguished Senator would agree that if thought it was necessary and there were requests for additional questioning.

As the record will show, the questioning of Judge O'Connor went the verbal 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 Judge O'Connor was nominated, 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 an unanimous vote, with one abstention.

I am hopeful that today on this floor, at 6 p.m., when the final vote is cast, that we see justice. Judicializing the right of any individual in this body to cast a dissenting vote 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, etc., they can be satisfied that Judge O'Connor possesses the qualities that will really be the basis of her performances on the Supreme Court.

The finest hearings that I have seen instituted and carried out by the Senate Judiciary Committee.

At the 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. Whatever opportunities to question the nominee, this particular Senator was granted four opportunities. I daresay the distinguished Senator would agree that if thought it was necessary and there were requests for additional questioning.

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people of Arizona having a native daughter nominated to the Supreme Court of the United States 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 personally much of which 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, Arik, 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.

The assistant legislative clerk proceeded to call the roll.

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

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

The PRESIDENT. Without objection, it is so ordered.

Who yields time?

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

The PRESIDENT. 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 the faced some 10 members of the committee who had a broad range of questions—some of which were very pointed, some of which were very necessary—she acquitted herself with distinction. It was obvious from the very beginning that the Supreme Court of the United States is about to have an addition in the personage of a young Arizona 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 1961, at the age of 21. She ranked high in her class—reportedly, third or fourth in her 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 are unique in the position to see things as she did, that she knows the difference between being a judge and a legislator, and she understands the judicial function to make new 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 Court of the United States only reinterpreted the 14th amendment of the U.S. Constitution. After some 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 if it need only interpret the laws.

I believe this would be the position 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 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 which is applicable 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 not as well prepared for 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 must interpret and take into account. Her experience there, which, again, she can share with her brethren (I believe that is an appropriate label, 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.

Beyond these 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 of the process 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 Senator's lounge in the Russell Building at a large party, where she was carrying forth in a social way and 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 apex of her career.

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 yield 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. It may be said, that to 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 assigned. 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 Supreme Court and, indeed, 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 this 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 a vote on Sandra Day O'Connor in our committee, feel that same responsibility in a way to be here today to express our support for that nomination.

I am very pleased to join my colleagues in commending the distinguished chairman of the committee for his expeditious handling of the O'Connor nomination and, second, to commend all members of the staff, our assistant operation regardless of some differences in point of view.

It seems to me that after lengthy examination of this nominee and her qualifications 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 Kansas, and the other Members of the Judiciary Committee, have 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 of this Chairman 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 level of cabinet officer in the executive branch. However, in the 100 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 candidates for the position, 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 hearing. 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 listened to 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 not the product of some difference in point of view.

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Mr. THURMOND. Mr. President, I wish to thank the able Senator from Kansas. He always speaks with words which are worthwhile 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.

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

The PRESIDING OFFICER. (Mr. (CONGRESSIONAL RECORD—SENATE) 21309

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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 nomination of Sandra Day O'Connor to the Supreme Court.

In my view, Mrs. O'Connor is superbly qualified. She is a vision of 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 her 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 Arizona, 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 earned an 89 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. The Supreme Court's social valuation of its decisions will, at times, affect judicial considerations. Nonetheless, a person's basic scheme of values and personal traits must be considered in our determination of fitness for the Supreme Court.

These traits include integrity, intelligence, fairness, and common sense. 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 for this fine lady who has spent many summers at Iron Springs. In fact, I face concerns 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.

Mr. President, let us examine the record, beginning with the 1980 Republican Party platform adopted at Detroit in August of last year. On that occasion, 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 at hand. They charged that the plank seemed to set aside the judicial function altogether, and substitute a political judgment.

It is true that the platform did raise profound issues concerning 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 1986 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, confidence evaporated to an alarming degree.

In my opinion, public confidence has evaporated because the judiciary is too often seen as bearing down the fundamental social values of our civilization. Instead of reinforcing and supporting them, judges too often seem to pass on their personal views on their interpretations of the law. This is not the role of the judiciary. Rather, the law gets its sanction from the underlying natural law, reflecting the divine order, in our position in our respective communities. If there is a question of judges imposing their personal views on the interpreted law, I believe they are departing from their proper role.

The justices of our Supreme Court are meant to uphold the Constitution as written, not to write the Constitution as they might wish it to be.
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course of 2,000 years. There is a common consensus on what these values are; traditionally, nor is a judge free to disregard the moral absolutes of that consensus.

Too often both lawmakers and judges have confused the search 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 policies 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 philosophers, but they are appalled by the results. They want the fundamental values of our civilization, 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 summed up that sentiment eloquently by the Republican Platform to reward individuals for their personal accomplishments as upholders of family values and the sanctity of life. The intention was to get at the problem of the deterioration of legal interpretation by appointing judges who would use the current law and constitutional views against the law.

Of that consensus.

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, whins, 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 in the light and context of values of our society. It is only in recent years that alien interpretations have been introduced that contradict our social standard and 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 O'Connor for the vacancy in the position 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 8 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 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 was 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, child, and the State is often disrupted 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 at stake. A society without a family, 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 judiciary, she never failed to do 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 Senate Judiciary committee for H.B. 30, 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 abortion laws that the Supreme Court anticipated Roe against Wade by 3 years. Yet Judge O'Connor had no recollection of how she voted until the opponents of that legislation 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 refrains the view of her Senate 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 have increased since 1970. 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 repeal there.

At another point, she suggested that she was aware of how sweeping the bill was in 1970, but felt there was no alternative:

At that time I believed that some change in Arizona statutes was appropriate, and had been proposed, and 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 4 months of pregnancy involving 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 the consent be required for a girl 15 years or younger. 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 mechanism and structure of that bill was workable one.

It appears, therefore, that Judge O'Connor was less candid in explaining her awareness of the probable impact of H.B. 20, and of the alternatives available, in arriving at her understanding of the problem has increased with time—the same kind of development which many of us, including those Senators with medical training, 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 50 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 prosobion lobby appeared to have legislation introduced in the legislature, but concentrated on legal action. However, the statute which Senator O'Connor had sought as a substitute for H.B. 20 was voided in its constitutionality by the State court.

Fifth. In 1973, after Roe against Wade caused the State statutes to fall, a controversy arised 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 was ripe. While it fits the medical personnel, 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 voting. 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 practically 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, as cosponsored, generated a large controversy in Arizona because of the phrase "all medically acceptable family planning methods," a phrase which in the population control organizations was an euphemism for abortions. 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 differ-

enced from abortion even by family planning practitioners. But now the abortion front had developed dishonest terminology in which abortion isn't even discussed in terms of pregnancy but "post-conceptive family planning."

Planned Parenthood used to be described by people who believed contraception was murder, just like abortion. Yet now PF often blurs the distinction even more terribly. Rather than inhibiting abortion, as some oppose supporters of the bill contend, it might make it more widespread.

Why, indeed, is this bill supposed? 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, it provided that the provision was non-germane, as some of the proponents of the bill contend, it might make it more widespread.

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 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?"

As for the issue of parental consent, Judge O'Connor's view today is at considerable odds with the approach taken when the bill was originally proposed. In July 7, 1981, that she was supporting the more radical of the nongermane rider to see whether 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 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 Control, I would say 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, cast any 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 averse to prohibiting abortion.

Final. 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 public demonstrations; the crowd at the State capitol was the largest in Arizona's history. On May 9, 1974, the Planned Parenthood defeated by 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 convince her that it is important that the personal views of people are reflected in 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 Senator O'Connor's vote against the planning bill.

Judge O'Connor testified on this point as follows:

I did not support the memorial at that time, nor in committee or in the caucus. I voted against it, Mr. Chairman, because I was not sure at that time whether the amendment was an exception to what I had understood to be a constitutional amendment to the Constitution of the State of Arizona.

It seems to me, at least, that amendments to the Constitution are very serious matters and should be considered after a great deal of 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 kind of consideration had been given to the measure.

Nor is 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 those 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.
Obviously, nothing in the statute excludes public statements on the issues, so long as no case is actually pending. In the case of Roe against Wade, 401 U.S. 824 (1972), the respondents had urged Justice Rehnquist to disqualify himself because prior to his nomination as a 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 nomination and statements made after nomination, but before confirmation. Judge O'Connor wrote: "He recognized that statements about specific issues made before confirmation might bear on the facts of a case, but of propriety. I would do my best not to have my vote in a particular way."

As for the supposed impropriety, Judge 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 past commitment to vote in a particular way."

Yet it was Justice Blackmun who wrote the Roe against Wade decision, 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 interpretation. 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 past responses 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 problem have increased with the general explosion of knowledge 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 this 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 in the House, she supported legislation that provided on demand until term, that would provide abortion counseling and abortions to women with 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 restrict 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 a separate personal process, that she was trying to make allowances for the views of those who disagreed with her. In my own view, I recognize that the 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 interest. That really is the question. I find that standards are flexible. Where you draw the line as a matter of public policy is really the task of the legislator. I think of the philosophical object to drawing the line to saving the life of the mother? No, I would not. These are things that the legislature will have to do."

In my view, her comments on abortion are certainly more persuasive today than her record as a legislator would indicate. But of course, even Ronald Reagan learned from experience while Governor of California, which I believe, had 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 process I will know a great deal more 10 years from now about the processes in the development of the fetus than we do today. I think I know 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:

"If I have indicated 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, of my own upbringing and my religious training, my background, my sense of family values, and my sense of how my own life might lead my own life. I have had my own personal experience of this sort 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 he made in his farewell address to the American people.

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 legislative process. In my view, if it will. I am encouraged by her record to date, which is one of many individuals, of which she has now participated the Senate. I suggest the absence of a quorum.

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

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, President Reagan, only after careful reflection, there are only two institutions absolutely indispensable to the independence, health, and maintenance of our Republic—legislature, and courts. And it is only with great pride that I express my confidence in Judge Sandra Day O'Connor as the Court's third woman. In furnishing the necessary constitutionality of the law and 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 legislative process. In my view, if it will. I am encouraged by her record to date, which is one of many individuals, of which she has now participated the Senate. I suggest the absence of a quorum.

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

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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 the importance of intelligence and our judicial system. After 3 days of extensive hearings by the committee, I am delighted that my initial impressions of her and her 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 Cardozo 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." 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 raton 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 Judge O'Connor's nomination for the position of Associate Justice of the U.S. Supreme Court.

Mr. President, will the Senate 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 compelling 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 this 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, Mr. HEFLIN, has made a remarkable record of her own right in pursuing the cause of justice throughout her career on the highest court of her sovereign State. I wish to join in the congratulations 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 (Mr. Symms). The Senator from Massachusetts will require.

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

Mr. BIDEN. 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 and civil 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 today, we affirm the would be-tyranny of the new right and reaffirm 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 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 yield to Judge O'Connor the right and they will not be distracted to oppose her nomination on the basis of any one single issue. My view is this, 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 may or should not be confirmed for the Supreme Court and persons up for election to public office 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 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 would very much have appointed 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
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of her judicial temperament, and on an overall basis, is she or is she not qualified to be on the United States Supreme Court? I know that this body today will give a resounding affirmative answer to that question.

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. 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 her 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, not 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 finest 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 the last, by any means, 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 any other candidate when she gave 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 judicial system.

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 her apart and will make her in great stead to serve on the Court.

As a legislator, Judge O'Connor served as majority leader of the Arizona State Senate, as chair 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 questions, the thoughtful questions to the deliberate interrelationship between the 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 judicial activism were beyond the scope, in my opinion, of permissible questions, or at least the questions that should be answered specifically. Judge O'Connor answered these questions to the effect that she would vote on a particular issue which may come before the Court in the future. The Court will not necessarily vote on a particular position which may come before the Court.

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 question to expect a nominee, anyone—Judge O'Connor or otherwise—to answer.

Such a statement, if the nominee were to give a definite opinion, would qualify 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 a case as it comes 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 as clear 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 and 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 not what, as a country, that is what we as the Senate, that is what the President as the Chief Executive 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 tradition is a great example of the quality of judicial construction. As highly emotional and important as the issues of today are, and there are many that are highly emotional and important, they will be totally unpredictable matters that could confront the Supreme Court in future years. It takes maturity, it takes the quality of judicial construction. As we understand it, those words of Alexander Hamilton, that they "provide a double check on nominations and the integrity of judicial independence."

In light of this background, the most important qualities for a Justice of the Supreme Court is a keen comprehension of the limits and draftsers 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 Sandra 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 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 Sandra O'Connor.

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In view of the great caseload increase in the federal courts, 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 disabling recovery of attorneys' fees. 22 William and Mary, 801.

She also enunciated well the powers conferred by article III upon the Congress to regulate Federal court jurisdiction. The jurisdiction of state courts to determine whether the 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 not only an excellent grasp of our government both assure me that she understands the Constitution and possesses not only an excellent grasp of our government but 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 have never 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 of 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. Let me first, as a Senator from Tennessee, say how pleased I have been that I have have from the beginning. I look forward to reading her decisions, and I hope that we should have had a woman in the Supreme Court of the United States.

Mr. President, I ask our friends that they not, as Justice O'Connor, will please consider the absence of a quorum. The PRESIDING OFFICER. The clerk will call the roll. Mr. THURMOND. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

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. Her answers were when she appeared before the Judiciary Committee on her own behalf.

The PRESIDING OFFICER. Who yields the floor?

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

The PRESIDING OFFICER. The clerk will 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 suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will 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.
members of the committee, as well as other witnesses, 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—Mr. Grassley of Iowa, Senator Thúrmönd of South 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 the Senate. 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 a 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 finds the law in the State courts, where they have not had a record of their feelings on Federal constitutional issues. I think it is all the more so 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 a judicial person, as a person who has 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 dwell 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 their prestige and, the Supreme Court's respect for their legitimate role in our Federal system of Government, and also to enhance the separation of powers so that the legislatures 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 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 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 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 many of the 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 the 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 to the President, but I am supportive. I have some doubts about that, as I said previously in my comments today, I pursued, in my questioning of the President, 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 question and then that conversation. 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 discuss the President about this nomination. I did not go there with the purpose of talking about this; it was on another issue. I felt that the President 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 all considered and he feels that she is going to respond the way he would have 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 that the President has a mission in my own mind that the President feels as I do on the subject of abortion.

I only say these things, in closing, to what extent does the President meet my expectations? Do I think I can look with some degree of satisfaction by the Senate to see if there is some confirmation in my mind that the President is not honoring statements he made in the election by his performance, as President, do I think I can look with some degree of satisfaction by the Senate to see if there is some confirmation in my mind that the President is not honoring statements he made in the election by his performance, as President. I have to say that I am satisfied—and I say that on this performance specifically as it regards the nomination of Judge O'Connor, for the Supreme Court, 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. FUSMAN.) 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 South Carolina, for her 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 consider 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 support 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 and articulate person, a person who worked hard. This is all the qualities that we want in a judge.

I yield the remainder of my time to the Senator from South Carolina, Senator Thurmond.
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.

But, 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 one person 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. WEICKER. I would be happy to yield to 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 rose 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 intellect 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 President had any doubts about her political savvy, she put herself 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 unfailingly 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 is confirmed a belief that some Members of Congress disagree with.

Once this nominee is confirmed and takes her seat on this Nation's highest court, the Court 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, Judge O'Connor, you cannot make that conclusion or prescribe that remedy. You must support school prayer but not school busing. You must ban abortion but allow capital punishment. We can not 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 painstaking detail, and indeed much of Judge O'Connor's philosophy was brought to light. The Judiciary Committee last week was devolved 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 President Reagan's funding bill, I frequently and continually supported the strictest linguistic 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 judgment, the true question is whether the Court is devoted to yet another reexamination of the branch of government. 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:

"The experiences I have had give me a better understanding of what the law is and with enforcing the law enacted by the legislative branch."

Judge O'Connor's confirmation is placed. They are asking the wrong question. In my judgment, the true question is whether the Court is devoted to yet another reexamination of the branch of government. 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.
function that I am commending to my colleagues. 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 Roe case that she would have dissented in that decision.

Roe against Wade, as is well known, held that a woman's freedom to decide whether 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 the 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 as 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 may not be the kind of judge I would choose, but she is clearly qualified. The Constitution as written in Roe against Wade gives her the power to make that decision, and the law of the land, as set by the Supreme Court, is the law that we are charged with upholding.

What is the point? 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 judicial branch sometimes acts as though it is superior to the legislative power. They are 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 bound by the Constitution, that document that at once makes possible and protects our liberty and prosperity. The three branches were designed as co-equals and as co-equals they should not seek to control or undermine each other.

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

"Hardy 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 interpreting 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 O'Connor's nomination. I listened to Judge O'Connor express on a series of issues and subjects; she described her perspective on the constitution, the role of the Court generally, and such matters as she were 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 my colleagues were basically satisfied; this worried me.

I looked around on that committee and I found my colleagues, with whom I have very important philosophical 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 Boren 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 Court was trying to do. 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 accused of 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.

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.
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 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 here is a distortion—an exaggeration—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 straw constructionist. Today, in the way Judge O'Connor would always use the phrase.

Really, what my friend, Senator East, 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. I do not say that she should be overturning the decisions that they—and I, on occasion—sometimes find odious, obnoxious, or totally reprehensible.

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 philosophical 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 herebefore on civil liberties, has been correct on civil rights.

So, Mr. President, I caution my colleagues to think for themselves. In too tight or weaves 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. Mr. President, I believe 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 that we think she will be, but, first of all, whether she has 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 friend of mine, that 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 is that the Court is one I do 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 believe she can be either or not; she is someone of a good moral character. Either you know the person personally for a long time and can attest to it—and I suspect 80 or 90 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 from 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 know her personally, said not only 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 open-minded, 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 who knew that the possession of the qualifications to be a Supreme Court Justice. Those qualifications, in my opinion, are, in fact, not what her philosophy is and not that we think she will be, but, first of all, whether she has 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.

I hope Sandra Day O'Connor understands the futility of baying and understands that there is, in fact, a logical, constitutional argument for its exclusion from the reason that I give. 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 baying, 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.
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 the duty 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 a historic day in the history of the Court itself, and this moment, because it is a milestone 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 time to do the right time to do it, the right man and the right place.

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

I think President Reagan has demonstrated great vision and a fine sense of historical perspective into the future. He has chosen a woman to fill this vacancy.

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-
institutional 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 in our scrutiny. She 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 wholehearted support of the U.S. Senate on this historic occasion.

Mr. HUMPHREY. Mr. President, I rise today in support of the nomination of Sandra Day 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 which 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, then a well-known and respected judge, it was not to rubber-stamp her nomination. I had resolved to examine her qualifications in the same way that I would examine any other prospective member of the highest court in our land. 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 judicial and legislative authority. 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 temperament, that is, her conservative view of the role of the courts in American government, is essential to the separation of powers, especially between the judiciary and the legislature. I believe that will make her an excellent Justice of the Supreme Court.

On the first woman to serve on that great body. 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. Primary, 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 and to later disqualification when cases arise that are similar to those that led to the establishment of a particular doctrine.

Let me share with you one of the bases 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 important 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 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 myraid 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 ones that 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 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. The Senate 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 personally endorse her 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 the Senate to confirm her as Justice of the U.S. Supreme Court.

Mr. DENTON. Mr. President, the Senate Judiciary Committee has, without question, recommended the confirmation of Mrs. Sandra Day O'Connor as an Associate Justice of the U.S. Supreme Court. The Senate has a responsibility that is now at hand. We must decide whether we are going to make history or not. 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.

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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 mentally disabled—might also be lost in the years to come.

Moreover, biomedical research is quickly producing a whole series of new ethical dilemmas about the nature 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 include the elimination of the fetus, even as scientific advancements were widening the concept of life. The terrible reality of the years to come.

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 a right to speak out on this issue. It seems that once in every century a nation faces a fundamental choice that might mean the survival of millions of others cannot divorce the concept of the right to life from the concept of equal justice under the law.

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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 investigatory body with respect to these nominations—eliciting as thorough and precise responses to specific questions as it possibly can. To that end the Senate can make a fully informed decision on the nomination. The role of the full Senate I would liken to that of the judge-assessing the qualifications 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 the importance of the 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 capacity as a member of the panel. However, not once did she accept the concept of the right to life from the concept of equal justice under the law.

The women of this country have, in the course of a decade, overcome the barriers of prejudice against their gender. Our generation has understood the concept of 'person' as defined in Roe v. Wade. This concept of "person" is frighteningly reminiscent of a frightful reality of the years to come.

Mr. HAYAKAWA. Mr. President, I feel privileged to be a part of the Senate on this historic occasion; I cast my vote in favor of the first woman Justice of the Supreme Court, Sandra Day O'Connor. In addition, I believe the nomination of Mrs. O'Connor, lorn doctors were heard from several sides—of abortion groups. During the confirmation hearings, she carefully addressed 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 overemphasized. Some 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 all lawyers 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, demonstrates an unimpeachable 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 the present issue. But that should not be of paramount concern to the President in making a nomination or to the Senate confirming it. What is important is judicial qualifications put to a committee vote.

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.

Justice is an 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 vote to confirm Judge O'Connor would also be 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, of the development of a “woman's seat” on the Court.

with little hope for other women as long as Judge O'Connor serves.

If the President had to make another nomination next week, I would hope he would feel confident in sending us another woman nominee. I had the impression I had of Mrs. 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 giving her well earned approval, assuming 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 chose 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 historical 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; these qualities that must characterize any nominee to the Court.

Judge O'Connor has amply demonstrated these qualifications 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 may 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 between the President and the legislative branch each contributing to the strength of the judicial branch. But the attempt to condition Judge O'Connor's nomination, or 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 part of a 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 the power parralel to the power that these persons are granted under our Constitution. The exercise of that power has been a potent 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, but 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? Are we going to see no reservations about a lady being appointed, being capable and all, but I frankly was concerned that is might be kind of being used 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 fluidered 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 common sense. 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 great and difficult issues unless they are possessed with a generous amount of common sense that runs through their thought processes and enables them to deal with 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 State which had an unprecedented jurisdiction. It was unlimited in that there was no ceiling all the way through to the graveness crimes or the most important civil suits when 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 condemnation or exonerating cause involving human life was a very serious responsibility. There is nothing more searching than a judgment of guilt or innocence, being required of his qualities of character, of concept of responsibility,
and a desire to do his duty regardless of person.

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 am a member of the American Bar Association, with all deference to them, I think her qualifications in the courtroom, of administering justice, would render the appointment some amelioration 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 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 some 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 to forget all of 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, as I think, and I will 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 which might come before the Court, either in private meetings with public officials or public testimony. Nor did I do so during the process of nomination 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 that the Justices are not immune from particular cases or controversies, and 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," as provided in 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 come to you today to express my views on the wisdom of the solicitude from which Sandra Day O'Connor is characterized. She is one who understands some fundamentals of life and civilization and, more than all of that, the holy concept of having reared a family and, more particularly, having to forget all of attainments of being a mother.

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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 her 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 serve the perceived 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 of judicial temperament, ability, and commitment to equal justice upon which the Supreme Court allocates power, is not to advocate a particular view or philosophy, but it is to act as an unbiased arbiter of the law. To quote Judge Frankfurter:

The highest exercise of judicial duty is to submit an impersonal put results, and to hold a trial to the views of the peer to the law as we all know—those impersonal convictions that make a society a civilized community, and not the vicissitudes 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.

Judge O'Connor 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 as well as a community leader.

On September 21, 1981, Mr. President, much has been written about her qualifications and experience. She graduated from Stanford University Law School magna cum laude, and distinguished herself as a member of the Law Review. Judge O'Connor has served as 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, as a woman, I appreciate Judge O'Connor's role in the advancement of women and the advances women have made in recent years breaking down the barriers which have traditionally restricted their participation in many segments of our society. She is 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 future.

Thank you.
I will deal first with the simplest question to answer, that pertaining to Judge O'Connor's integrity. There is a greater danger to her than any other woman in any of her neighborhoods in Paradise Valley, Ariz. The town council there unanimously adopted a resolution, and I want to thank my colleagues. The resolution urged Judge O'Connor, 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 Goldman 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 on laude. In the 20 years in Arizona politics as a member of her precinct committee, legislative district chairman, assistant attorney general, judge of 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 precedents between the judiciary and the Congress.

Her criminal decisions reflect a fair but stringent 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 striking judicial restraint. Her philosophy and temperament are well suited for the Supreme Court, and she has the potential of becoming a Justice of superb distinction. I want to deal quickly with an issue that some have raised relative to Judge O'Connor's personality. 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 persons in love... marriage is the foundation of the family, mankind's basic unit of society, the hope of the world, the building of the community, the cornerstone of society.

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 historical chorus of the choral groups 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. Thompson), and to the ranking minority member (Mr. Keating), for the 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 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 Supreme Court. Therefore it is important that the 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 1956 and received her law degree from the same institution in 1954. 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 1962 she became an Arizona state senator, serving until 1973 as Senate majority leader. In 1974 she became a judge on the Maricopa Superior Court. From 1973 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 dedication in the 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 law 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 her or his views on specific issues is to 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 will be decided by the Court 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 Senate 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. Judge O'Connor can fill it. She deserves not only my personal support, but the support of this Senate as well.

My daughter, senator, is 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 open 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 whose work is in the field of law and strives for excellence.

This is my first opportunity to participate with the Senate in the confirm-
tion of a Justice to the Supreme Court. As I understand it, our role is one of advice and consent on the President's nominee. I have been asked to examine the nominee's background, character, academic achievement and judicial philosophy based upon his or her past record. Indeed, I have been 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 considerable knowledge and intelligence of the President's nominee, Judge O'Connor, I do not stand in support of this nomination without some unanswered questions.

If, like many of my colleagues, feel very strongly that the Supreme Court's 1973 decision in Roe v. Wade, which legalized abortion by declaring the Constitution not a personal right, 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 approach to the issues of abortion. It simply fashionably announces a new constitutional right for pregnant women, without any reason or authority for its assertion, in conflict with the rights of the States and the people, in every area that I know the least about.

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 abortion. That, I think, is enough for our President.

As a participant in the Arizona State Senate, Judge O'Connor had five votes that could have taken Judge O'Connor to the High Court—4 against Roe v. Wade, which was a total decision in abortion. It simply fashionably announces a new constitutional right for pregnant women, without any reason or authority for its assertion, in every area that I know the least about.

In her explanation, Judge O'Connor states that her knowledge and opinion as a judge. In her words:

I have labored long and hard on the question of whether, in the midst of such unanswered questions, I could vote for the nomination of Sandra Day O'Connor, to be an Associate Justice of the Supreme Court. 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 vote 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 judicial restraint and her claim to be a strict constructionist in her interpretation of the Constitution.

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and legal qualifications which are required of a member of the Nation's highest court.

In the 30 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 apprehension of the judiciary—to adjudicate, not to legislate. Her breadth of perspective which qualifies her for this position.

I congratulate Judge O'Connor, soon to be Madam Justice O'Connor, as she will render her new responsibilities.

Mr. MOYNIHAN. Mr. President, on this day that we are congratulating Judge Sandra Day O'Connor on her nomination, we recall the creation of the United States Supreme Court Justice—and for President Ronald Reagan for nominating her a breadth of perspective which qualifies her for this position.

The current legislative outlook is ominous. A subcommittee of the Senate Judiciary Committee has held a hearing on a bill that would forbid the lower Federal courts to entertain challenges to state antiabortion legislation as threatening 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 38 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 agree that Congress has the power to define and regulate the jurisdiction of all Federal courts including the Supreme Court. For instance, the House has, for example, denied Federal judicial authority in some cases involving lawsuits over the defiance of school boards. But how does one counterbalance to the executive branches of government—a fundamental pillar of the American system—is the power to revise state and lower Federal court decisions in school prayer, abortion and busing cases?

Judge Kaufman, whose career on the bench has spanned 30 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, as follows:

CONGRESS VERSUS THE COURT

[By Irving R. Kaufman]

The first Monday in October, the commencement of the fall term of the Supreme Court term, is normally one of the more exciting dates on Washington's calendar. The long summer recess, in which the members of the Supreme Court wear summer dress, relax, and take some leaves of absence, will also be a time of no little concern for those 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 power of the Federal judiciary and limit its power to interpret the Constitution.

These bills have been introduced by Members of both parties, and represent the efforts of individuals who have been profoundly disturbed by many of the decisions of the current Court. These 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 way to overcome the racial imbalance in public schools. These decisions, all formed on the basis of constitutional principles, have been called the Court for its own and, in my view, is a misjudgment.

The framers, 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. Stood in English parliamentary history, there was the danger of a popular monarchy. James Madison, the principal architect of the Constitution, observed: "The legislative department is everywhere in 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 be only a delegated authority, derived from the people. The Constitution, in contrast, was intended to represent the consent of the people's fundamental and supreme will. Thus, when presented with a case in which a legislative act conflicted with the constitutional mandate, it is the duty of the courts to uphold the latter. "To deny this," as Chief Justice Marshall said, "would be to affirm that the deputy is greater than his principal; that the servant is above the master; that the republic is better for the people are superior to the people themselves."

The Supreme Court has therefore done its job properly, and has been praised for the conflicts with the Constitution ever since the landmark 1803 case of Marbury v. Madison. For example, the Court has invalidated constitutionally offensive state statues as
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well. That duty, scholars insist, is grounded in Article VI of the Constitution, which compels the government and the people 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 deciding the constitutionality of legislation—indeed 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 amendments have been proposed and ratified as a way of nullifying controversial Supreme Court decisions. One amendment, which forbids a suit in Federal court against a state without its consent, was adopted to overturn a 1793 holding by the Federal Circuit Court during the Revolution period following the Civil War. The 14th Amendment was enacted. This amendment, which gives Congress the power to enforce the guarantee that all citizens of the United States are citizens of the United States, with all "rights, privileges and immunities" of citizens of a state. The framers deliberately made this a cumbersome process because they did not want expediency to govern constitutional rights. They believed that any avenue to the constitutional 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.

Heretofore lies the tactical appeal of the withdrawal-of-jurisdiction strategy. Many suppose that the 30 or so divestiture bills now before Congress are simply a device to avoid a decision on the constitutionality of legislation. They are attempting to bypass the amendment process.

The rationale is simple: Since the popular support of the Constitution is required 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 constitutionality of legislation they dislike? In 1964, following the Supreme Court's decision in the landmark reapportionment case of Shapero v. Martin, introduced a bill to withdraw Federal jurisdiction in all reapportionment cases. When asked whether he was attempting to enact a constitutional amendment in the form of a statute, he admitted, "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 admission and revealing of the real agenda behind the withdrawal-of-jurisdiction program, in which Congress had placed 10 of the former Co-Federates states undermill the enforcement of the Constitution of the United States in the Mississippi for the publication of allegedly libelous material. But in 1913, when Senator Dirksen introduced a lower Federal court for a writ of habeas corpus, ordering its release, he asserted that the Reconstruction Acts were unconstitutional. The court denied his application, and he appealed to the Supreme Court. The Court reversed itself and held that the bill of rights of the 14th Amendment to the Constitution was not made applicable to the States under the Fourteenth Amendment. Before the case was decided by the Court, however, Congress repealed that part of the 1875 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 application of the Constitution is given by express words."

Despite this pronouncement, the McCcardle case could still apply for an original writ of habeas corpus in the Supreme Court. But, in 1979, the Court accepted a case involving the Court of Appeals for the Tenth Circuit and the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCardle, that the 14th Amendment habeas relief. The Court concluded as much in the 1890 case of Yerger v. McCa...
this instance, is precisely the same as it was in *Klein,* the circumvention of the Supreme Court by the States Court of Appeals contravenes a constitutional provision. As *Klein* demonstrates, Congress does not have the power to subvert the decisions of the Supreme Court under the guise of regulating the Court's appellate jurisdiction.

Those who read the exceptions— and regulations clause broadly also argue that state courts, which frequently rely on the Federal Constitution as a source of law, could adequately protect constitutional rights without review in the Supreme Court. As James Madison said: "The framers realized that only the Federal Government will govern fairly, impartially and compassionately. All the powers of the Federal Government— even the power of eminent domain— are constrained by its constitutional inability to deprive us of our property without due process of law. As a result, the authority to control jurisdiction is therefore vested in Congress alone. That is the wonder of the American Constitution as it lives and breathes.

Should Congress pass a law allowing states to deviate from the Constitution in ways that the Supreme Court might view as unconstitutional, the law would be immediately and unconditionally declared unconstitutional by the Supreme Court.
ing Congress and the judiciary in conflict. This institutional dissension would continue, until Congress either accepted the Constitution or passed an amendment restructuring the basic relationship between the judicial and legislative branches.

It is understandable that politically vulnerable legislatures would react adversely to judicial nullification of their enactments. Yet the courts in their forceful insistence on their unreviewable authority for their unreasoned and blind application of the Constitution to the present national mood tend to forget that the judicial branch was not the first nor the only body to exercise the discretion of current public opinion. Congress is superfluously adequate for that function, and we cannot say 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, enshrined in the Constitution. And when the people have recognized Congress's 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 realized in the constitutionality of these proposals. And, indeed, there is a glimmer of hope that these doubts will eventually affect the process. The history of Congressional court-curbing measures reveals that the legislative branch has in the past, in fact, recognized the judiciary's duty to interpret the Constitution and has not (at least since passing the statute 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. Reconstruction 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 rejection."

The political risks attending bills to withdraw jurisdiction create another check on the legislative goal of certain Congressmen. Groups of all persuasions have advocated their political causes through attacks on the Court's authority to decide constitutional cases. While it is true that political conservatives are the strongest beneficiaries of current efforts to withdraw jurisdiction, liberal reformers have also utilized this strategy in the past. Emphatically, today's political majority, could it 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 bills, Congress has always, in the end, acknowledged the clear intention of the framers. To preserve the rights of the people, the Constitution must remain intact and apply the Constitution uninterfered by unseemly limitations on its jurisdiction.

The framers of the Constitution are 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 the Constitution." As the days of Monday in October draw near, there is reason to believe that Congress will be influenced by a sense of history shared by the framers 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 Presidency of 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.

We have been able to establish that 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 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 in her 11 years as Arizona's first women judge. Her ethical background is spotless. Her life's record is impressive evidence of the courage, 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 legis­­lative action 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 image of women in America, in that Court will be more real and visible than ever before.

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The O'Connor nomination, and the Senate's vote to confirm that nomination, are also affirmation of that many years of work by the Senate, Congress, and the American people to permit the recognition that women, and women qualified to fill the highest positions on the Federal bench, should not be impeded. For less than a generation ago, the role of women in America was seen as a "Second Class Citizen" and not the "fulfillment of the Constitution" as a woman of the highest standing could achieve. The appointment of Sandra O'Connor to the Supreme Court is a responsibility which we should not, and do not, take lightly.

The approval of a nomination to the U.S. Supreme Court is such a matter. The vote of each of us about to cast will have an indirect effect on the legislation considered by this body. The talents, judgment, and intellectual abilities of their constitutional roles. I am convinced that this nomination is not the culmination of a 200-year effort by many American women to achieve to the accumulating 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 the members of the Court to substitute his or her judgment on the constitutionality of the legislative acts of Congress. Mrs. O'Connor has served on the Nation's highest court.

I must confess a special satisfaction in Mr. DURENBERGER. Mr. President, we have an indirect effect on the development of current public opinion. We are superfluously adequate for that function, and we cannot say 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, enshrined in the Constitution. And when the people have recognized Congress's court-curbing efforts for what they are—assaults on the Constitution itself—they have in every instance rejected them.

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In addition, Judge O'Connor has demonstrated a demeanor and temperament consistent with that of a Supreme Court Justice. I am especially pleased that a jurist of this caliber is being elevated to the Supreme Court.
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 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 full 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 49 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 many reasons. 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. For this reason and because its members have significant responsibility, Sandra Day O'Connor is able to fulfill this responsibility.

To elaborate on her credentials, she graduated in 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, 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. One of the issues concerning women she often took the liberal position and led fights to remove sex-based references from State laws. In addition she advocated 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 1976. 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 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 justice.

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 her confirmation hearings. She clearly and forthrightly outlined her view of the role of the courts and the nature of our federal system, while respectfully demurring 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 personal views influence her rulings 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 nomination 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. The historic importance of this occasion. Last night I spoke on the telephone with my mother, who is now 86 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 ever 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."
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. 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 closing the debate on confirming Judge Sandra Day O'Connor to serve on our United States Supreme Court and 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 feel that we have the opportunity to 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 non-partisan 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 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. Kasembaum.) Who yields time?

Mr. BAKER. Mr. President, 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 on the consideration of this nomination.

I congratulate the entire Senate Committee on this Committee that has 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 marvelled at her equanimity, I admired her judicial 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 be 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 had then unforeseen should come to light.

I followed the hearings carefully, and I observed her day-to-day conduct at the bench, her manner 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 make this country great.

I believe that her philosophical approach to the proper role of the Supreme Court has evolved from her own experiences as a State legislator, as a State legislator, and, most recently, as a State Appellate Court judge, and I would expect, of course, that what she learned from all of these various perspectives has been 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 own personal views on given matters. She should not in advance attempt to state what her position will be, indeed, to try to give a 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 to one's own personal opinion or viewpoint, not according to one's own personal biases and prejudices—we all have them, and time and time again, it is 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 question.

I congratulate Judge O'Connor on maintaining throughout those days of questioning that "we are not judges in the four corners and apply that Constitution to the Constitution 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 precedent 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, and the Constitution, which as she says, thought as they wrote, and what the precedents are that have been handed down from generation to generation in our 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 no longer 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 to yield back the balance of the time for the purpose of discussing this nomination.

The PRESIDENT pro tempore. 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. 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 career 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 common sense.

In general, the hearings disclosed that Judge O'Connor is sensitive to the social issues that have permeated the Supreme Court for millions of families today. She showed a reluctance to justify the intrusion of government power into the intimate details of family life, a good understanding of the delicate nature of our complex civilization. She will have, of course, a responsibility to carry out the promises she showed in the hearing, but she is 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 rather than national levels. I am confident 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 Day 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 little categories.

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's views 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 our President Ronald Reagan, a strong prolife President, who has assured us that we will not be unhappy with this nomination. These endorsements have been taken into account by anyone attempting to evaluate this nomination. Certainly they should be considered at least as important as any other factors: Her 10 years, 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 remain the rule. If her 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 balance.

Mr. THURMOND. Madam President, I wish to take this opportunity to thank Senator Bentsen for allowing several of us on this side to expedite an agreement to give extra time, and I wish to thank him for doing it.

I am so glad that Senator Hawkins got back 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 Bentsen of Delaware, for the fine cooperation he has given throughout the 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 expedite 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 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 the fellow from South Carolina because he had a reputation for being a hardbitten, tough old boy you did not want to get in the hands 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.

A few days ago, Mr. THURMOND was asked whether the nomination of Dr. James C. Miller was appropriate. Mr. THURMOND said:

"I will ask unanimous consent that I withdraw the nomination of Dr. James C. Miller for the position of Chairman of the Federal Trade Commission. I believe that the Senate should have the opportunity to consider the nomination of someone else for this important position."

Mr. THURMOND said that he was concerned about Dr. Miller's lack of experience in antitrust enforcement and offered his preference for someone with a stronger background in the field.

Mr. FORD, the chairman of the Senate Committee on Commerce, Science, and Transportation, responded by saying that he too was concerned about the nomination and had requested additional information from Dr. Miller.

The PRESIDING OFFICER: The nomination of Dr. James C. Miller for the position of Chairman of the Federal Trade Commission is on the desk. I call upon Mr. FORD to make a statement.

Mr. FORD: I have received a letter from Mr. Miller in which he expresses his commitment to the agency's mission and his willingness to work with the Senate to address any concerns.

The preset will be opened to debate at 6 o'clock. This hearing will continue until the nomination has been confirmed or withdrawn."

Mr. THURMOND: I strongly believe that the Senate should have the opportunity to consider the nomination of someone else for this important position. Dr. Miller's lack of experience in antitrust enforcement raises serious concerns, and I urge my colleagues to reject his nomination.

Mr. BIDEN: On the contrary, I believe that Dr. Miller is uniquely qualified to lead the Federal Trade Commission. He has a strong background in antitrust law and has demonstrated a commitment to enforcing the laws administered by the Commission. I urge my colleagues to support his nomination.

The PRESIDING OFFICER: Without objection, the nomination of Dr. James C. Miller is so ordered.

Mr. BRIDGES: Mr. Presiding Officer, I rise to urge the Senate to act promptly to confirm Dr. James C. Miller as Chairman of the Federal Trade Commission.

Mr. BRIDGES: I strongly believe that Dr. Miller is uniquely qualified to lead the Federal Trade Commission. He has a strong background in antitrust law and has demonstrated a commitment to enforcing the laws administered by the Commission. I urge my colleagues to support his nomination.
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 Subcommittees of both the Senate and the House would have oversight hearings. I was told at that time that I was somewhat foolish about putting that into the law, because the FTC is regulated by Congress and they have oversight hearings. I was a little bit smarter than some of those who assailed 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 the that 6-month period, we shall find out if they have accomplished those things they presented to this 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 in the past. Congress has the authority 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 of this agency by your distinguished 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 chair 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, in his many years in the position as Executive Director of the President's Task Force on Regulatory Relief, demonstrates his deep commitment to 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 appropriately applied 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 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 express my full support for oversight hearings 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 redacting and revising the antitrust laws to make them more effective and carry out its mission. There are many challenges waiting to be tackled at the Commission. How- ever, I believe 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. Gordon).

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. Gorton. Madam President, I thank the distinguished 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, is a center on concerns with antitrust laws.

Madam President, the administration, with the consent of the Congress, has earmarked 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 President 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 we deregulate 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 view, we should 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 are determined by the unimpeded operation of 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 raise market prices and reduce output, the administration's commitment to vigorous and virtually certain consequences of any significant relaxation of the antitrust laws in some industries will be highly equivocal.

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 particularly care whether the Sherman 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 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 significant debate. There are and have been several reports summarizing the different viewpoints in full. Highly respected authorities representing the other viewpoint strenuously argue that such an approach would 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 the great care must be exercised to ensure 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, regardless of any approach that amounts to a change in existing law must first come before Congress.

The first specific area where there has been considerable concern is the administration's approach is section 7 of the Clayton Act concerning mergers and acquisitions.

A transition team's report clearly implied a significant relaxation of enforcement approach. It concluded that previous efforts "to restrain vertical mergers are by and large misguided." As for conglomerate mergers, they should
be disallowed only upon “weighing the antilethal impact of the merger against expected efficiency gains.” It was recommended that enforcement concerning large-scale horizontal mergers should be strengthened; but that with smaller horizontal mergers, concern should be limited to cases where “the elimination of a competitor may foster collusion among the remaining firms.” Mr. Baxter, in effect, thereby thought that antitrust was a political or social matter.

Vertical mergers are never anti-competitive and that conglomerate mergers can lessen competition, only if there is already so much competition. And what has been the current merger wave, involving some large individual merger drives, has also so about conglomerate mergers. Although admittedly somewhat less so than the merger field could have serious consequences and resulted in a monopoly that may substantially lessen competition or tend to create a monopoly in any line of commerce.Congress was concerned with the concentration of oligopolies, so long as the administration is convinced that no one firm will obtain monopoly power and that 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 wide berth in its legal efforts concerning vertical mergers will be abandoned totally. I am pleased to report, however, that the administration is suggesting that as a matter of priorities, this is a proper emphasis. But does it 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 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.

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to say that resale price maintenance deprives these buyers of the benefits of antitrust laws. This conclusion involves more than going after cases that reach out and bite you on 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:

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 are toward deregulation, 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 asked unanimously that the transcript of that exchange be printed in the Record.

Dr. MILLER. Sir, let me emphasize that my answer to Senator Ford was my own personal opinion.

Mr. DANFORTH. Madam President, I ask unanimous consent that the transcript of that exchange be printed at this point in the Record.
September 21, 1981

The Administration's formal position is that the best enforcement of the antitrust laws is the current one with shared jurisdiction for the Federal Trade Commission and the Department of Justice.

It was my understanding, last February I think, that Senator Danforth was going to take up the antitrust enforcement of the Federal Trade Commission and to phase it out over a period of time. That is not your position?

Senator Danforth. My recollection is that the original budget that was transmitted from OMB to the FTC for their review was for a complete phasing out, but they commented—the Federal Trade Commission commented adversely to that proposal.

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 refocus the funding and its effect, reduce the FTC or the antitrust effort within the FTC?

Dr. Miller. I believe that the FTC can accomplish a more substantial mission under President Carter's budget.

The second point is that, with respect to monopoly, the direction of not only less regulation but government intervention in the market place. And while big is not necessarily bad, it is important that government does have competition. If competition exists, then the government is going to be more likely to have a strong voice 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 far as funding is concerned, I would have a going review of the antitrust laws and their enforcement to determine whether there are modern in today's society, whether they accomplish what Congress originally intended, and what would be the goals of the antitrust laws. And just what kind of institutional arrangements make sense for public enforcement of the antitrust laws.

Senator Danforth. 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 should be studied. I must say that that does not give me great encouragement that either you or the Administration are interested in an antitrust role or that the Administration is committed to vigorous enforcement of the antitrust laws.

Some feel that the tone of the Administration is 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 upon the expertise within the marketplace being the self-regulator.

And so I have to tell you that I am not encouraged by the Administration. I am not telling you, I am not pointing out that the antitrust laws and the Administration is committed to vigorously enforcement of the antitrust laws. But it is the Administration is a low level of funding.

Dr. Miller. Senator Danforth, I do agree with that.

Senator Danforth. Will you keep us abreast on a continuing basis of what your intentions are in antitrust enforcement?

Dr. Miller. Yes, sir.

Senator Danforth. And it seems 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. Of course, it seems to be doing too much, although I think in terms of—let me put it another way.

I think the FTC 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 the resources to the areas where government intervention is needed to make a lot more sense will not only give more bang for the buck, but I think it would give a larger bang for the buck.

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 as we vote on your confirmation?

Dr. Miller. Yes, sir. I would respond to any question on that.

Senator Danforth. Are you wearing your Adam Smith tie today?

Dr. Miller. Yes, sir. I am.

Senator Danforth. How does that tie fit into your own views on antitrust enforcement?

Dr. Miller. Well, as I read in my open­ly 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.

And 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 government was really in the business of gold and silver that they were able to accumulate, and he was saying, "No, it is the power of the government to control the market to control the market and to bear in a competitive consumer wants." And one conclusion he drew from that was that—TANSTAAFL; that is, there ain't such thing as a free lunch. And what he's pointing out there is government intervention has many ramifications beyond what was originally thought to be the case.

And one thing I would emphasize, if confirmed, is that the analyst at the Federal Trade Commission trace through very thoroughly the full ramifications of market imperfection.

Senator Danforth. Well, analysis and thinking about what you are doing on a more technical level is always laudable. My concern is that the drift of this Admin­istration and perhaps the drift of technical of this country is perhaps to turn the clock back. If not at the time 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 has a role in ensuring that that marketplace is competitive.

And there is a need for full ramifica­tions of market imperfections. And the President of the United States, if confirmed, is that the analyst at the Federal Trade Commission trace through very thoroughly the full ramifications of market imperfection.

Back in 1914 and prior to 1914, in the early 20th Century and the late 19th Century, that it is, you know, predatory practices, the need for rights and a Republican President, the need to have effective Federal Gov­ernment tools to assure a competitive market­place. And while big is not necessarily bad, we can be too 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 think it was 1914, 1915, in this book was the true—terminated its Antitrust Subcommittee. And I'm not on the Judiciary Committee, but it is true—terminated its Antitrust Subcommittee. And I'm not on the Judiciary Subcommittee, but some aspect of the Justice Department is not as aggressive as it should be. And now there is a request by the Administration to phase out the antitrust enforcement of the FTC. And you said that 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.

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 as we vote on your confirmation?
introduce some legislation dealing with it—the question.

Senator Katzen. The FTO transition recently concluded by the Commission critically evaluates the state of certain initiatives and develop guidelines for the staff concerned. I shall point out 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. Has it ever been expressed to you by the Administration that you and I are to be involved in the demise of the antitrust function of the FTC?

Dr. Miller. Absolutely not.

Senator Danforth. There is no understanding that you are to override the term 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.
CONGRESSIONAL RECORD—SENATE 21345

September 21, 1981

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 needed for effective Federal Trade Commission, and especially 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.

Mr. MILLER. Thank you, Senator.

Mr. DANFORTH. Mr. 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 imperative of the Congress in determining the future of the FTC's antitrust efforts, and he has promised to keep the Congress, and I think my colleagues on the other side of the aisle, I might add, to shift the focus of having an antitrust mission even more onto 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 Mr. Miller's nomination to the Federal Trade Commission. 

* * *

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 Mr. 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 imperative of the Congress in determining the future of the FTC's antitrust efforts, and he has promised to keep the Congress, and I think my colleagues on the other side of the aisle, I might add, to shift the focus of having an antitrust mission even more onto 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 Mr. Miller's nomination to the Federal Trade Commission.

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Mr. 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 Commerce Department has earned a reputation for pursuing its investigations with an adequate appreciation for fundamental economic principles. While do not doubt that the Commission's desire, shared by many antitrust scholars, I might add, to shift the focus of having an antitrust mission even more onto 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 Mr. Miller's nomination to the Federal Trade Commission.
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 of moving ahead with antitrust laws to discourage those mergers which would have anticompetitive results. And, I think the Federal Trade Commission should play a role in this area 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 certain aspects of antitrust policy—whether the 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 an appropriate approach to antitrust policy's reauthorisation which resulted in enactment of the FTC Improvement Act of 1980.

During Mr. Miller's nomination hearings, he was asked to define 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 rule-making'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 scholarly view of antitrust and I appreciate his generosity in directing remarks to 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 the 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 last of the river and waterways 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 them.

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 reverting 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 they seem to be very certain about coming to Congress to ask to change the laws that they put somebody in whose views are 180 degrees opposite from that which they really 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 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 rollell, the President would over come the vote, the President would over come "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? This 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 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 the people who are not interested in 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 got up on the FTC. The lobbyists did their work. They were well paid. They presented their arguments and they had a legitimate one today. 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 legislate. Let us legislate and see if we can make it 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 Agriculture Division of the FTC who has never been 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 laws? Does he 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 laws that he didn't like; ignore local mergers and agreements; he would ignore conglomerate mergers; he will ignore predatory pricing and Robinson-Patman Act cases. And I can 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 enumerated 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 because the FTC's consumer protection efforts have been misguided. Sad is the day; we to the consumers of America, the forgotten people of America, the consumer who doesn't count. Do they 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. [9]
As Mr. Miller sees it, if defective products are being sold, then consumers will be aware of the defects and will simply pass on their shopping. If mergers 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 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 the FTC. It is not unusual in that antitrust, which was the creature of members of the Republican Party in days of yore, which had some of the strongest names of our Republican Party, that now it is that very same party that is prepared to dismantle everything that stands for competition, for anybody concept.

The free enterprise system was based upon competitive forces being able to work. This administration does not seem to accept that.

John Sherman, the Senator who introduced and caused to come into being the Sherman antitrust law, was an extreme Free Dealer, if you will, 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. This administration to find this a rather dismal day.

Mr. Miller is prepared to gut a major portion of the FTC's antitrust enforcement. He is prepared to determine that the aggregation of capital is not a concern of our antitrust laws.

Mr. Miller said at his hearing:

"The conviction was universal that the country was in danger from the aggregation of capital in the hands of a few individuals and corporations. The free enterprise system was based upon competitive forces being able to work." This administration does not seem to accept that.

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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 the things that he lacks, 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 I am 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 chastise 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 company.

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 who will not do the right thing. 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 unreliable products. Those who have a greater aversion to risk will be most likely to purchase more expensive, reliable products."

Agency action to impose quality standards interters 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 what to buy, the ones who want to buy 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 believe that the TV barker or the supermarket clerk is not how many cutters 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, and that is what one does a marketed price, and not whatever the market will bear. That thinking is about as fallacious as any man or woman up for confirmation could do, and how that has 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 they do not go out and buy 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 that distraction anymore. 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 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 tinfoil. 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 make it easier for those who are in office, living the better life.

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, we will not care less about you. We are going to change the laws; and when 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 the FTC as a tool to send 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 PTO transition report.
CONGRESSIONAL RECORD—SENATE 21349

September 21, 1981

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, as the result of our findings regarding the FTC's policies and programs, personnel, budget, and FTC-related legislation, is submitted to the President. The report concludes with a set of recommendations as to ways in which, through interagency efforts and the implementation of 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 Senator Bennett, a vacancy on the Commission is not scheduled to become available until September 25, 1981, President Reagan has asked that the new chairman fill this vacancy immediately. We are ordering that the new chairman be named to serve until September 25, 1981. The President's major avenues appear to be: (a) designation of a Commissioner to serve as acting Chairman, or (b) appointment of a new Commissioner to serve as acting Chairman, or (c) review and possible modification of the FTC's budget requirements to permit the FTC to utilize the current administrative structure to the maximum extent possible with respect to oversight hearings and proposed new legislation.

The President's most important responsibility, of course, will be selecting a new permanent chairman, either now (if a regular Commissioner is chosen) or as soon as a seat on the Commission becomes available. The Team members are: Richard T. Broyhill, Esq., John W. Barnum, Esq., Richard Leigh-ton, Professor Richard Posner, Bert W. Rein, Esq., Lewis F. Scalla, Esq., Professor Joseph Kalt, and Richard Williamson, Esq.

The Team's Senior Congressional Advisors are: Senator Robert F. Packwood, Congressman James B. Buckley, Senator William V. Roth, Jr., and Congressman George M. O'Brien. The Team's other Senior Advisors are: Donald Rumsfeld, Alfred A. Alquist, Esq., John W. Barnum, Esq., Richard Leigh-ton, Esq., Professor Yale Brozen, Wesley J. Lieblein, Dr. Donald Martin, Calvin Collier, Esq., Peter K. Pitsch, Esq., Carol T. Crayford, Esq., Professor Richard D'Aveni, Robert W. Rein, Esq., Lewis Engman, Esq., Ed­win S. Rockefeller, Esq., M. Kendall Flee-harty, Esq., Professor Antonin Scalia, Pro­fessor Mark Grady, Governor Raymond Sha-fer, Professor Clark R. Cavigliosta, Joseph Silmar, Esq., Professor Joseph Eait, and Rich­ard Williamson, Esq.

The Team's legal advisor is Marcy Tim-fany, 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 parts of the report and portions of the Appendix. Drafts were circulated among members of the Team, and an almost unbelievable lack of substan­tially different 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 arbiter. Thus, it should be noted that regardless of which Team member authored a section of the report, the 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 are violative of the country's anti­trust laws (e.g., certain types of mergers, certain distributing and collusive arrange­ments, and predatory practices). 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 promote and enforce broad trade regulation rules affecting entire industries. Third, the FTC prepares a variety of economic and statistical report's concerning the organization and perform­ance of U.S. industry.

In addition to these three major responsi­bilities just described, the Commission en­forces a variety of other statutes, dealing with such topics as (a) truth-in­lending, and equal access to credit. (For a complete list of the Commission's legal au­thority and duties, see Appendix A.

The Commission is composed of a Chairman and four members, all appointed by the President, with advice and consent of the Senate. (For more detail, see Appendix 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 that could only work efficiently if it had the "best".Second, that it should be an eco­nomic agency, out to achieve an efficient allocation of the nation's resources. Let us 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, etc. —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 resources to that particular activity. 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 considerable discretion in exercising 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 advances uncertainty consumption) but unless the FTC carefully balances its resources and allocates them to the appro­priate cases, the agency's ability to do public interest will be diminished.

We believe that in allocating its scarce resources among various legislative and regulatory initiatives, the Commission should be guided by the effects of its actions on consumers, or more specifically, the effects on economic well-being. Obviously, this means that a decision to take issue with a particular business practice should be based on a reasonable test of 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 dropped its proclaimed commitment, taking on "new theories" to justify its ac­tions and pressing at the "frontiers" of anti­trust law and practice.

(Here, this chapter only surveys the broad spectrum of FTC activities and their effects. Appendix A provides a more extensive description for the conclusions and recommendations.)

Antitrust

The FTC shares responsibility for antitrust enforcement with the U.S. Department of Justice (DOJ) and with private parties who bring antitrust cases (such as mergers, settlements, and to administer its antitrust activities, the Commission has created a Bureau of Com­petition, which has placed in 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 A.)

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 improving the competitive environment and ultimately improve the well-being of consumers.

Business practices that violate the anti­trust laws are placed in one of three general headings: (a) agreements among competing firms concerning the prices they will charge or other limits on competition, (b) monop­olistic behavior, (c) and distributional restrictions 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 fix prices or restrain other means of competing. Such agreements are per se illegal; that is, miti­gating circumstances cannot justify them. Despite widespread agreement that the application of this per se rule to overt agreements among competitors is correct, the FTC has pursued several worthwhile Initia­tives against explicit collusion, including its recent efforts to expose gulfidion in the wheat trade. We believe that the agency's work in this area is in the public interest and should be expanded.

In an effort to put people out of the habit of for­ frightening 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 effort to do just that, Young, in my view, has applied the ‘market concentration doctrine’, which holds that ‘big is bad’ and applying the ‘market concentration doctrine’ (which holds that the larger a firm, the more it is likely to abuse its market power) to the FTC's apparent perversity reaction to economic efficiencies created by such mergers. A survey conducted in 1970 and repeated by the FTC in 1977 found that in eight out of eighteen cases studied, the FTC was motivated by a desire to force manufacturers to provide better information to consumers and to reduce the total amount of information available.

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, mergers of significant concern are those that actually involve substantial horizontal problems—that is, the perception that one or more firms will dominate an industry susceptible to collusion. On the one hand, conglomerate mergers tend to create such perceptions. It would seem to us that whether a conglomerate merger should be disallowed should turn on the perceived anticompetitive 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 F. T. C. has, confronted 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 efficiency and in increased prices that are lower than those charged by the acquiring firm's old suppliers. The principal argument against Robinson-Patman cases in general is that it would seem to us that 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 quasi-legislative, quasi-judicial, and quasi-executive authority to make the best use of resources. Fortunately, the Commission has devoted few resources to Robinson-Patman cases in recent years through 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 quasi-legislative, quasi-judicial, and quasi-executive authority to make the best use of resources. Fortunately, the Commission has devoted few resources to Robinson-Patman cases in recent years through a reversal of that policy seems evident.

Consumer protection—While the FTC's antitrust efforts scrutinize mergers and acquisitions which potentially affect consumers, the agency's consumer protection efforts scrutinize the direct interactions between businesses and ultimate consumers. Under its mandate to prevent 'unfair or deceptive acts or practices' in commerce, the FTC has pursued cases on a broad front, primarily through extensive rule-making proceedings. Currently, the Commission is engaged in such proceedings, the scope and status of which are summarized in Appendix (This Appendix reviews these arguments in more detail.)

Distribution restraints—Contractual relationships between suppliers and purchasers have often been the subject of FTC interest. Examples include resale price maintenance (i.e., the manufacturer insists that dealers sell its products at a particular price and keep any price differential in the 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 have often been the subject of criticism. In particular, the FTC's investigations of such restraints reflect a fundamental misunderstanding of their effects. Most resale price maintenance occurs in cases where the mere fact that the price is not uniform makes it appear to the consumer that the FTC's enforcement efforts have often been the subject of criticism. In particular, the FTC's investigations of such restraints reflect a fundamental misunderstanding of their effects. Most resale price maintenance occurs in cases where the mere fact that the price is not uniform makes it appear to the consumer that the price is higher than the price that other firms are charging. The agency continues to pursue vertical practices vigorously, particularly resale price maintenance. Examples include high-fidelity sound equipment, hearing-aids, ski bindings, fires, arms, and cookbook or kitchen gadgets. Manu-
We shall discuss the agency's consumer protection efforts under six headings: (a) economic underpinnings, (b) controlling practices, (c) rewriting contracts, (d) occupational regulation, and (e) consumer credit statutes.

The FTC has failed to ground its efforts upon sound economic analysis. It has invested considerable flexibility in stating the form and content of contracts and to impose other regulations regarding wage and rate, unsolicited, 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 consumer welfare.

Fundamental inconsistencies regarding economic analysis emerge among FTC programs. For example, some FTC actions appear to conflict with FTC’s recent initiatives in the commodity market area. The agency states that its objective is to protect consumers, whereas there is no indication that the agency has considered the market’s effect on consumers. In other cases, the FTC’s initiatives may be self-defeating. For example, the FTC’s recent efforts to deregulate an industry on the theory that market forces best protect consumers, while others embody an attempt to improve economic efficiency, at least in part, on a basic distrust of market forces. The agency’s attitude toward economic efficiency is that of the mainstream view of economists. In other cases, the FTC has required that if a firm is to market a product, it must bear the cost of the necessary disclosure. In still other cases, the FTC’s efforts against mainstream economic analysis results from the agency’s belief that consumer welfare is not being served in the market. The FTC has also suggested that the market may produce information that consumers desire.

Another problem is that the FTC has not specified what it means by the term “deceptive.” The FTC’s position is that if information is false or misleading, it will be deceptive. This position appears to be inconsistent with the FTC’s position that the agency has not defined the term “deceptive” as it has defined the term “unfair.”

The FTC has also failed to specify what it means by the term “deceptive” in its recent cases aimed at reducing the anticompetitive effects of commerce. In recent cases, the FTC has failed to define what it means by the term “deceptive” or “unfair.” The FTC has also failed to specify what it means by the term “deceptive” in its recent cases aimed at reducing the anticompetitive effects of commerce.

In the consumer protection area, the FTC has used its power to force disclosure requirements in the presence of monopoly. The FTC has also failed to specify what it means by the term “deceptive” in its recent cases aimed at reducing the anticompetitive effects of commerce.

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state relations. Federalism and decentralized government in general have basic advantages working against severe budgetary problems which is the provision of alternative governments under which citizens may choose to live. If one balances the benefits of a large number of preferred jurisdictions and overcomes the quality of state and local governments.

Despite these fundamental advantages of federalism, however, we must weigh the advantages of the FTC’s preemption rules. General antitrust policy is at conflict with the underlying objectives of federalism and of the FTC cases. The abolition and control operated by the government, but they 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 statute.—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 practices relating to the obtaining of credit, of which the Truth in Lending Act is the most significant. Second, the Commission has a grant and is the source of credit applications, of which the Equal Credit Opportunity Act ("ECOA") is the most significant. Third, those that deal with nonconsumer financial activities and the quality of the service associated with government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention.

Most importantly, perhaps, long-range analysis should be expanded to cover the study of government regulations, compliance and the effects of government regulation on the marketplace. This analysis should assess the most recent market, the imperfections and would recognize that government intervention is justified only when market imperfections and the imperfections associated with government intervention. The real choice that we face is thus not between market imperfections but between market and government intervention.

The FTC’s FY 1982 estimate of $75.8 million for expenses necessary to keep the Commission's recent investigation of the antitrust cases the number by this class number 23 percent leaves $565 million. Although such a budgetary reduction does not require an exacting matching reduction in individual, a 25 percent employee cut would appear to be a good working base and would leave the remaining budget, for example, 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 turnover at an annual rate of 15 to 20 percent, and support employees also frequently leave, although not at as rapid a pace. Thus, the retention of new professional employees to replace the bulk of the recommended staff reductions.

Another FTC data-collection program is the Quarterly Financial Report (QFR). The program was established to provide the Federal Trade Commission with financial information from 15,000 corporations in manufacturing, mining, and trade. A primary objective of the QFR is to supplement the quarterly estimates of the National Income and Product Accounts. This program raises many issues and, therefore, the Line-of-Business program reports, particularly in terms of the quality of the information, the cost of the data collection, and the possibility of transferring it to the Department of Commerce. In addition, there appears to be substantial overlap between the QFR and Line-of-Business program, which may provide additional usable source of budget reduction. This program should also be evaluated in terms of its assessment and budgetary considerations 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 process 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 are the Bureau’s comments on interventions before the International Trade Commission (recommendations against the imposition of tariffs on Japanese automobiles) and the Interstate Commerce Commission (in support of certain of the ICC’s pro-competition initiatives). The Bureau is in an ideal position to analyze the basis and quality of the FTC’s analyses and has generally been quite high.

[Page 214 of the report describe the structure of the FTC.]
support activities such as offices of the General Counsel and Executive Director, rental space, and services.

Because many of the FTC's consumer protection activities involve more than one of these categories, our policy thoughts, estimates of consumer protection cuts are necessarily even rougher. Nevertheless, it seems clear that the aggregates of dollars we have estimated are spent on proceedings involving overregulation of advertising (including rules and investigations) and on actions to improve product quality more than economic analysis would justify, and probably do not even break out the resources spent on these various activities. The exact amounts are indeterminate and would be required by the neighborhood of several hundred thousand dollars annually.

Summary of budget recommendations
The table on the next page contains 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.

<table>
<thead>
<tr>
<th>Mission</th>
<th>FTC request</th>
<th>Team recommendation</th>
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<tbody>
<tr>
<td>Antitrust</td>
<td>127.3</td>
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<td>-2.5</td>
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<td>Economic reports</td>
<td>34.9</td>
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<td>Total</td>
<td>195.7</td>
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V. Legislation
Bolstered by support from the consumer movement, the Federal Trade Commission (FTC) in the 1970's developed a more activist role in antitrust, unfair trade 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 FTC 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 National Federation of Independent Business, among others, in seeking help from Congress.

Additional support was offered by several economists and others who pointed to the adverse impact many FTC activities were having on an already sluggish economy and that market intervention in several areas of FTC activity. Both the academic and the business groups questioned whether 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. Questions that had been raised in this, coupled with the structure of many industries chosen for regulation by the FTC (optometrists, funeral directors and used car dealers are examples), virtually precluded any possibility of budgetary cuts. Nevertheless, the FTC's role in the marketplace, the level of discretionary authority vested in the Commission, and the way the agency has been used, Congressional concern manifested itself in introduction of legislation or otherwise restrict specific FTC activities, and eventually, failure to renew the FTC's authority to require=arraying appropriations, resolutions, and agency transfers. During the ensuing three-year controversy, expiration of many temporary or continuing laws forced the FTC to close down for one day.

In the interim, Congress settled upon the legislative veto as a means to constrain FTC activities believed to be beyond the scope of its legislation. The legislative veto itself became a stumbling block, with the Senate presidentially-required rules and policies. Our figures thus reflect both reductions and increases for these two budget categories.

We recommend no change in budget for the agency's third mission, economic activity. Within the context of the budget, we include primarily industry studies and financial reporting. Although the latter function is not directly involved in antitrust, budget cuts, according to the estimates we must await the results of the studies that we recommend concerning the financial data. We believe that the role of the economists should be significantly increased, but we think this can be accomplished within the confines of the proposed cuts.

Within the context of this 25 percent reduction, we make several specific recommendations. First, we recommend the elimination of the Regional Offices. These offices, which since 1970 have had the power to initiate investigations, have generated controversy both within and without the FTC. Although they spend about 17 percent of the agency's resources, criticisms 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 important, are not to be missed, and that they are inadequately managed.

In the mid-1970's, something of a house-cleaning of the Regional Offices began, a movement that was accelerated, at least at the staff level, under Chairman Fiechter. 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 cost of the Regional Offices is poor, given the geographic and psychological distance between them and Washington. Cutting the FTC's budget requests will require Congress to take an affirmative control, and their checkered history. Moreover, the cases listed in Appendix I contain the public policy cases that, as indicated in Chapter II, seem contrary to the public interest.

We recommend elimination of these offices would reduce the Commission's budget some 10 to 15 percent, with a partially offsetting increase in Washington district, reducing the Washington office's budget to continue worthwhile cases and other activities. (A discussion and elimination of the regional offices is found at Appendix J.)

We propose the two other specific budget reductions. First, we recommend congressional cancellation of consumer protection program appropriation for FY 1982-85,700,000. (Chapter VI evaluates this program in detail. We note that the FTC not only has an Office of Policy Planning, but a significant portion of staff in the two offices required to do this same activity. By consolidating and streamlining these offices, significant savings could be achieved, or at least an effort does not break out the resources spent on these various activities. The exact amounts are indeterminate, but we believe would be required by the neighborhood of several hundred thousand dollars annually.

BUDGET SUMMARY: FTC REQUEST VERSUS TEAM RECOMMENDATION, BY AGENCY MISSION

(Dollar amounts in millions, fiscal year)

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September 21, 1981
CONGRESSIONAL RECORD-SENATE
21535

Current congressional sentiment toward the FTC
General congressional concerns.---Although the 1980 Improvements Act has been discussed as a catalyst for most Congressional concern, and hotly debated by...
FTC, there remains a generalized sense of unease regarding the FTC and its activities. The lack of clear oversight and accountability is perhaps a reflection of congressional frustration over its apparent inability to make FTC proceedings expeditious and staff responsive to the will of Congress.

As Congressional opposition to FTC actions has increased, the FTC has been inclined to intervene in an ad hoc basis, for example curtailing investigatory proceedings in particular industries, rather than develop institutional reforms.

Two different approaches are suggested as appropriate means to deal with these perceived problems: (a) a voluntary, non-statutory approach of ad hoc legislation intervention in specific FTC activities. Another view supports a more discretionary and goal-oriented approach which generally focuses on a realignment of the FTC’s antitrust jurisdiction (most commonly exercised by the Department of Justice and the courts), removal of the FTC’s prosecutorial function to the Justice Department, or thecreation of an independent corporate of administrative law judges. Concern is 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, on the level of detail, and allocation of resources to rulemaking not felt to be of sufficiently high priority to justify the consumer’s interests. (For example, the FTC reportedly is developing a standard for the manufacture of golf ball covers.) Concerns surround the exercise of excessive discretion by the Commissioners. Another general concern relates to the apparent duplication of the investigative and enforcement roles as investigator, charger, and enforcer should not reside in a single agency.

There is a greater diversity of views as to the source of those 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 antitrust. Concern also regarding the FTC overreaching its statutory mandate, that it is imposing unnecessarily burdensome requirements on business, and that the roles regulatory procedures are at odds. Excessive 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 Commission levels. Concerns regarding the FTC’s antitrust mission. Specific concerns expressed regarding the FTC’s antitrust mission generally include a feeling that the FTC does not have its statutory authority, for example in ordering divestitures, and in the development of new antitrust jurisdiction. There is a perception that Congress should examine the apparent duplication of functions between the FTC and the Attorney General. Congressional concerns focus on the ineffectiveness inherent in duplicating and on real or potential conflicts between regulations and inconsistent policies adopted by the two different agencies. Another general concern relates to the FTC’s antitrust mission, a concern heightening by the subject matter of recent investigations and decisions.

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 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 FTC will become effective on the 30th day of publication in the Federal Register if Congress has not passed a resolution of disapproval. Since enactment of the Act, 1981, the FTC has promulgated over 115 final rules, which broadly affect the consumer and small business. Of the 115 final rules, 98 were promulgated by the FTC through the legislative veto procedure. Of the 98, 26 were disapproved by the House and/or Senate Commerce Committees, and 33 were disapproved by the entire Congress. The above figures reflect the FTC’s legislative veto response to the improved FTC Act, which generally feel that the Commission should not 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 judgment, and has authorized as “FTC supporters.” Only those who believe that the Commission should either preempt no individual marketplace decisions, or that its standards for determining when to exercise its antitrust functions are too broadly drawn, and procedures designed to reduce the burden on small business. The Commission’s report was not to be submitted until no later than December 1, 1980. The Improvements Act provides no express provisions for Congressional study of specific matters; no mechanism for Congressional study of specific matters; no Committee to conduct hearings on any such proposed rulemakings.

The Act requires the Commission to submit to the House and Senate Commerce Committees a plan for revision of small business regulatory procedures. That plan would address the FTC’s approach to the insurance industry, absent a specific request from Congress. Should Congress desire a study conducted by the FTC, the Act requires a majority of either the House or Senate Commerce Committee to 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 Commerce, Science and Transportation and the House Committee on Interstate and Foreign Commerce. Ancillary jurisdiction resides in the Senate Commerce Committees and the House and Senate Judiciary Committees.

The Committee in the 97th Congress was chaired by Senator Charles Mathias (R-Md.) and Senator Howard Metzenbaum (D-Ohio). The Antitrust Subcommittee was chaired by Senator Edward Kennedy (D-Mass.). The Antitrust Subcommittee was chaired by the Senate’s ranking Democratic member, Senator Edward Kennedy (D-Mass.). The Antitrust Subcommittee was chaired by the Senate’s ranking Democratic member, Senator Edward Kennedy (D-Mass.).

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examine the Judiciary Committee in the 97th Congress includes the FTC's exercise of its divestiture authority. The FTC's development of innovative monopoly theories, and the Magnuson-Moss Federal Trade Commission Act. In addition, Members of the Committee have expressed interest in studying the role of establishing 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 Committee subcommittee hearing being held in the 97th 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 than the Senate counterpart to be addressed by the Senate Judiciary Committee, with the exception that the House Subcommittee on Antitrust and Monopolies Subcommittee is 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 Committee Chairman Harley Staggers (D-W.Va.), who is being succeeded by Resident Judge John Dingell (D-Mich.) in the 97th Congress. Ranking Republican James Brynhill (R-N.C.), will make the Committee's subcommittee chairmanship subject to the incoming House Speaker. The Committee's ranking Democrat, James Scheuer (D-N.Y.), with Congressman Matthew Rinaldo (R-N.J.), ranking Republican. If the Subcommittee is eliminated, jurisdiction over consumer affairs would most likely be transferred to the Transporation Subcommitte, chaired by James Florio (R-N.J.). No formal decisions will be made until after the new Congress organizes itself in January.

Overseas activities are expected to consume the time of the Committee. The Senate Antitrust Subcommittee is expected to spend on FTC issues in the 97th Congress. The FTC's input to the Senate Commerce Committee is expected to be heard on FTC issues in the 97th Congress. Hearings will be held on the FTC's exercise of its divestiture authority, the FTC's development of innovative monopoly theories, and the Magnuson-Moss Federal Trade Commission Act. In addition, the Senate 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 Committees will be required to examine the unfairness standard for acts and practices as it relates to children's and commercial advertising. In addition, the Senate Commerce Committee will examine the unfairness standard as it applies to all acts and practices. The Senate Commerce Committee already has compiled a hearing record on the unfairness test, and additional hearings will be scheduled.

Both the House and the Senate Commerce Committees have expressed an interest in reviewing the proposed self-regulatory 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 the intervenor's financing, or total elimination of the intervenor financing authority, can be expected in the 97th Congress.

In this chapter, we shall discuss two topics: (a) the Federal Trade Commission's intervenor funding program and (b) the perception of the above actions. The House Judiciary Committee has expressed an interest in 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 the intervenor's financing, or total elimination of the intervenor financing authority, can be expected in the 97th Congress.

Intervention funding
The 1980 Improvements Act mandated changes in the FTC's intervenor funding program, and highly debated Public Participation Program in rule-making procedures. The relevant portion of the FTC's memorandum to staff concerning this matter states: "The Act places limits of $75,000 on the amount a respondent could receive over the course of a rulemaking and $50,000 on the amount a group could receive in any one year. Moreover, the Act 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 objectives: (a) to limit intervention funding, and (b) to make intervenor funding more responsive to the interests of small business. First the Commission has set a limit on the actual compensation rate for attorneys of $60 per hour. The alternative is set a cap on the subsidization of attorney fees, but not the actual fee charged. The unreasonably high dollar limits on potential private sector respondents. Second, the $50,000 per year limitation is construed as placing an ordinance on an applicant group or an intervening counsel as conduits for public interest lawyers able to receive more than $60,000 a year for services to more than one intervenor 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 rulemaking and the views of those not directly affected are considered by the Commission. It is essential that the views of those not directly affected be considered by the Commission.

Conceptually, intervenor funding would seem warranted whenever: (a) an agency's own records or staff investigations were inadequate or unreasonably slow or expensive; or (b) such funding is the most efficient way of acquiring information. Because the FTC promotes competition as another important economic 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 who are experts in the field are not already familiar with the needs of consumers or the public interest, or that the Commission staff is itself unashamed. It is also worth noting that those who are expert in the field are not already familiar with the needs of consumers or the public interest, or that the Commission staff is itself unashamed. It is also worth noting that those who are expert in the field are not already familiar with the needs of consumers or the public interest, or that the Commission staff is itself unashamed.
also important to note briefly that a series of events in recent years have cast a pall on the Commission's reputation for fairness. Possible prejudice, interference in independent examiners' activities, 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. 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 0-1 (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. GOLDBERG.

Mr. GOLDBERG. 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 me in supporting Dr. Miller's nomination.

Mr. KASTEN. Mr. President, I ask for the yeas and nays on the Miller nomination.

Mr. GOLDBERG. 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.

Mr. GOLDBERG. 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, with a master's 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 enforcement of antitrust policies. He served as the 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...
the huge revenues from regulated services to subsidize activities 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 non-up into a company whose only function

I question him about the anticompet­itive effects, one relating to anticompetitive im­pact and the second relating to the

Mr. FORD. How much time re­mains on the various sides for this debate?

The PRESIDING OFFICER. The Sen­ator from Wisconsin asked for an unanimous-consent request a short time ago which was consistent with that order, but for purposes of clarity I should like to state that 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.

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 unan­nounced 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 seeks 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, we are talking about his 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. 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, do 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 propose 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 yielded back and that the next order of business be in order.


Mr. Hayakawa. Is there objection? The Chair hears none, and it is so ordered.

Mr. Ford. Mr. President, do I understand in a correct in understanding that all time that 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.

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' 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 requests, and no issues remained unresolved.

The information that was made available to the committee indicates that Mr. Richards has had a distinguished background. He has served 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 1965 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 position to that of an Inspector General. He was responsible for the successful resolution of many difficult legal disputes in the areas of energy, environmental 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 investigation of the Committee on Governmental Affairs; and third, his past professional association with Secretary of the Interior James Watt, Mr. Richards was 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 no arguable nexus between the respective responsibilities of these two men.

I hope this discussion about Jim Richards' background will dispel any of the allegations which were made 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 the discussion which discusses the Richards' nomination. I hope that all of my colleagues will review that letter before voting.

Mr. Warner. Mr. President, I have consulted with the distinguished Senator from Missouri concerning the allocation of time on this nomination. While the original consent agreement would allow 2 hours 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 for 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 Idaho.

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' past policy views would adversely affect his performance over a hundred thousand career and contract employees. The DOE Inspector General is responsible for the investigation of the direct DOE programs and employees. Secretary Watt, of the Interior, not of the Department of Energy, is responsible to Cabinet-level responsibility for review of broad national policy issues. It is very difficult to demonstrate that past professional associations would impact in any way on Mr. Richards' discharge of his responsibilities as Inspector General.

I hope this discussion about Jim Richards' past policy associations will dispel any of the allegations which were made 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.

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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.

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as Inspector General. The fact is, he would not have a policy position at DOE, nor would he even be an active participant in 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 and that its operations are free from fraud, abuse, and waste. In short, Mr. President,

Fourth, Mr. Richards 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, is 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 propensitv 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, not for that purpose, but for 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 Senate 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 seven 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 sometime 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 actions and does not appear to have a nonpartisan investigative role with a record of neutrality and objectivity on the subject.

Second. He has publicly attacked oil interests, as if he were the Natural Wildlife Federation because of policy differences, but he would need to work with them as Inspector General and command their confidence.

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 policy-makers in the administration. An Inspector General in any agency should not be a team player.

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The PRESIDING OFFICER. Who yields time?
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, as 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 representation 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 firms in general are acceptable.

In particular, Mr. Richards has been accused of taking a biased view of energy and environmental issues. Those who have made these allegations have failed to state precisely what "environmental extremist" groups he has been associated with or for what reason. Mr. Richards has claimed that he is strongly committed to a doctrine of sets 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 it had been used by him. His response was most informative. He defined the phrase "environmental extremist groups" very precisely. He said they were groups that challenged a position that is right, that there is no compromise, and that no other position can be tolerated. Mr. Richards' definition did not relate to all the principles 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, the 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.

Thus, in the words of the Inspector General must be independent of the agency in which he or she serves, not sympathetic to or antagonistic toward the agency's personnel 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 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 why he or she removes any Inspector general from office.

Third, require Inspectors general to review legislation and regulations to judge if they are enforceable; and

Fourth, give the Inspector General general power to protect confidentiality of those within the Department who provide information to Inspectors general.

The amendments were accepted to emphasize the importance of the independence of the Inspector General. The amendments were deemed necessary because of the testimony like that of the General Accounting Office, stressing the need, "to insure that auditors are insulated against internal agency pressure so that they are able to 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 futurity 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 disregarded. In many cases, the audit and investigative units report to the Assistant Secretary for Administration, the person whose public 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 Government Affairs Committee report of 1978, the committee states:

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 insusceptible 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 Recom 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, "zealot, sweetheart disposition; overly favorable terms to zealots, stocked key government offices, and is located in one 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 was 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 zealous, and I admit to it. I pursue my philosophies with a great deal of zeal.

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 accounting were able to keep away from their office.

Mr. Richards: I would probably succumb to those same human fallings. 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 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 Senate 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 is that those groups consists 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 extremist organizations is 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. Richards' 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 successful in having the President 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 Interior. This man 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 if the President wanted to make a career of the position. This is not new to Mr. Richards. He has been named by the President as Cabinet coordinator for energy policy matters.

Finally, Mr. President, Mr. Richards' 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 82 of this transcript, I again told Mr. Richards that he had to be part of a management team in the Department of Energy, a management team.

I 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 personal, and while it has nothing to do with character or integrity, it has everything to do with independence and the appearance of objectivity that Inspectors General should have.

I rise to oppose the nomination of James Richards to be Inspector General of the Interior. This man has been named by the President to be Cabinet coordinator of energy policy matters.

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 staff in the Cabinet, I would consider the appointment of Mr. Richards to be individuals capable of exercising this judgment.

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. This nomination is a departure from 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 threats to do lasting damage to the effectiveness and credibility of the Inspector General Office.

A brief review of the purpose 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 adopted for strong medicine, a substantial departure from "business as usual." The act centralized audit and investigative responsibilities over a broad range of agencies.

But Congress made it clear that the IGs were to be independent from 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 office where they were located.

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The IG's are important actors in the energy and environmental area mirror the views held and policies pursued by key Reagan administration officials. And if Mr. Richards' doctrine views and dedication to the policy goals of the Reagan administration were not disturbing enough for an IG, Mr. Richards' long-standing 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.

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any audit or investigation, or from issuing any report 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 special reports on "any significant problems, abuses or deficiencies"—would go to the agency head, then to Congress, but that the agency head must send the report 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 Inspector 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 intimidating him with requests in certain agencies to divert him from looking at others, this would be an important 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. [Senate report] The rationale for this provision is that if the President is to be described as a chief executive officer, then his power to remove an inspector general should be limited in the same way as the President's removal power is limited in the same way as the President's removal power is limited. This power should not be exercised without the President's reasons for such removal being shared with Congress. (Page 9.)

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.

The 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 states, Congress chose to designate the IG's as part of the head of the establishment for the reason that they occupy a unique position in the Executive branch. They are responsible for the integrity, accountability, and effectiveness of the agencies whose responsibilities they are to evaluate. (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. It was giving the IG's extraordinary independence and power. Congress recognized that, given relatively limited resources and a broad array of programs to oversee, the IG's would necessarily 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.

The 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 policymaking representation in the 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, property rights, and provide reasonable and responsible spokesmanship based on traditional American values.

The legal battles fought by the centers included trying to stop efforts of environmental groups to impose environmental standards on 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 validity of the Price-Anderson Act, which limits liability for nuclear accidents. There is no question that the foundations have uniformly advocated the probusiness, prodevelopment, procompetition, and pro-balanced perspective in the tradition of American values.

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 80 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 16 percent of its 1980 funds, or $138,000 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'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 swing in public opinion toward the center or right of our political spectrum, will substantially increase attacks by movement of the left on the public interest groups. 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 anti-water group as members of the movement of the left, who will continue to receive their public interest funds as the 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. Many of these groups naturally increase when they are in opposition, rooted as some of them are in self-hatred and/or convicted that their leaders created them. The effectiveness of the movement of the left groups is likely to increase because of the influx of 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.

An administration in power is always vulnerable to attack from outside sources, but that vulnerability 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 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 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 not completed. It this pattern continues and a few environmental zealots are allowed to continually obstruct the flow of raw crude oil to the consumer, we will see long gasoline lines and more energy shortages.

Then he goes on:

One last problem bears mention. The current administration (the Carter administration) stockke 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 it may be necessary to get 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 between the memo and the creation of Mountain Defense Council, the National Wildlife Federation, and the National Lawyers Guild. Both Mr. Richards' column and the Capitol Legal Foundation's victory letter.

In 1977, working as a consultant to the NLCPF, Mr. Richards wrote a memo, entitled "Legal Priorities Affecting Development of Energy Resources in the Rocky Mountain West." This memo helped lay the groundwork for the litigation strategy when these government lawyers go back to their former positions in the environmental community.

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Finally, if the Congress gets impatient with obstructive tactics, it has demonstrated an inclination to step in. In 1976, the court enjoined the disposal of sand and blackbirds at Fort Campbell, Kentucky.

Given the seemingly self-canceling aspect of food and fuel decisions, some pundits are suggesting that "the Congress make love—not laws." The series of Court decisions affirming the adequacy of the EIS for the 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 small darter. Hill v. TVA, 390 F. Supp. 806 (E.D. Tenn. 1975), 469 F.2d 1164 (6th Cir. 1973).

In early 1976, Hill and others then filed the present suit to enjoin the project on the grounds that it would destroy the critical habitats of the small 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% completed and the small darter had been discovered the day before impoundment of water was to be begun. The decision, which took place after the EIS was adopted, had been completed, does not support the argument that an EIS is not necessary to protect the environment.

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In general, the Court's statements have been promising. The present hearing on the project had been set to begin June 13. In the meantime, the Environmental Defense Fund filed suit in U.S. District Court alleging that the EIS was not adequate. In EDF v. TVA, 510 F. Supp. 1581 (E.D. Pa. 1979), they obtained an injunction delaying the project for more than a year-end-one. This injunction was affirmed in EDF v. TVA, 510 F. Supp. 1581 (E.D. Pa. 1979) and the Sixth Circuit affirmed, 565 F.2d 1243 (6th Cir. 1977). The EIS was then supplemented and the project was again found to be inadequate. 571 F. Supp. 1004, and the Sixth Circuit affirmed, 562 F.2d 1267 (6th Cir. 1977). In the meantime, a University of Tennessee paleontologist discovered the small 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 and a provision that the suit not be stayed pending an appeal. The Court has been asked to hold the project in abeyance pending an appeal.

Most observers are forecasting that the Congress will not issue the injunction this year, and the President has indicated that he will sign it. Issues such as restoration to original contour, diversion of waste water, and surface owner consent are among the most troublesome from a development point of view. These provisions are finally hammered out in the last days of the bill on the floor during the summer months. However, it was informed that he could not do so until an archeological study was completed. EIS 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 inter-state gas is rigidly controlled, these producers are unable to recover the enormous costs incurred by delays and the hiring of more employees to handle the paperwork. Many of these regulatory burdens are unique to energy resource development. In some cases, operators are unable to proceed more than a few days or a few weeks. In other cases, the project is not approved. Under this system, the owners have not been able to sell their grandchildren's 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 604 (1963).

It has been reported that one major oil company has already adjudicated and converted water rights in Colorado, and another in Western Colorado. Environmental organizations have made attempts to intervene in such proceedings, but generally have been refused. Some have no legal right to the water. That waterwhich enters private ground from irrigation and runs off in a water 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 604 (1963).
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U.S. which was decided traction in water-scarce areas lies beneath such lands. Environmentalists have contended that water reservations, since much of the mineable coal underlying the reservations would be adversely affected. The Court rejected as premature the contention that each water corporation in the area could establish separate EIS, citing Kleppe v. Sierra Club, 96 S. Ct. 2718 (1976).

It has been reported that agreements have been signed which would prevent industrial use of water for mining, recreation or commercial purposes, the Governor and the Commissioner of the Bureau of Land Management. These agreements are considered dangerous precedent, for they could be the basis for consideration of water development, the United States and the navigation with commerce. As a result of the decision this year, the Secretary of the Interior issued an order to do so, he must meet the "prudent man test," i.e., "... while minerals have been in the public domain as a resource, a person or prudent policy would be justified in the further expenditure of public and private funds in the face of a reasonable prospect of success, in developing a valuable mineral..." Castile v. Womble, 18 L.D. 456, 467 (1984).

In an analogous situation, the rejection of offers was cast over every pond and puddle of water. Thus, in the case of the Pueblo of the San Ildefonso, the Supreme Court rejected the Department's attempt to use water for irrigation purposes. In the case of Joeckel made his offer in November of 1976... It was this decision that Judge Fin Keeve reversed in Shell Oil Company and D. Shale, Inc. v. Kleppe, Civil Action No. 74-738, Jan. 17, 1977. Judge Fin Keeve 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 locatior who discovers a valuable mineral right may file his claim and proceed to a patent. In order to do so, he must meet the "prudent man test," i.e., "... while minerals have been in the public domain as a resource, a person or prudent policy would be justified in the further expenditure of public and private funds in the face of a reasonable prospect of success, in developing a valuable mineral..." Castile v. Womble, 18 L.D. 456, 467 (1984).

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CONGRESSIONAL RECORD—SATE 21367

in an unreported opinion 41 U.S.L.W. 2055
(D.O.C. Cir. 1973), aff'd by an equally divided
Court, sub nom. Ft. v. Sierra Club, 412 U.S.
541 (1974). The narrow and limited opinon of the
two-judge panel was still being debated
and interpreted. The Court spoke of the is­
ue as being "non-degradation," i.e., the need to pre­
vent "significantly detrimental" or "poor quality. Obviously these two terms are not sympathetic. EPA is
subjected to court review under Section 52 (4 CFR Section
52, 1974) which were immediately challenged
by the Sierra Club and affected individuals
and caused the filing of Notice of Appeal. After these new
challenges were consolidated in the D.C.
Circuit Court that Court upheld the regula­
tion of Geothermal 54 Fed. Cl. 1114
However, that Court contributed to the
crisis by refusing to overrule the earlier
decision of Sierra Club v. Ruckelshaus, supra.
Environmentalists are insisting that West­
er states, where industrial development is
so far basically confined to the metropoli­
itan areas, classically vitiating the area as Class I—the most restrictive designation. The Act
provides that each State may enact air quality
standard that are more restrictive than the
federal standard which is initially promul­
gated under the CAA or any other law. So the future development of energy resources
would require variances from State authori­
ties—a fact that would rule out the idea
that litigation would be in State rather than Fed­
eral Courts. Congress is currently consider­
ing bills that will not subject the Act to the
focus on automobile emissions.
Another difficult set of issues is posed by a recent decision by the 9th Circuit Court's
Union Electric v. EPA, 900 F. 2d 2816 (1976), holding that economic or technological
information has no bearing on the question of
whether a well is associated gas. The
Court held that there will be opportunities to
consider such factors in hearings on the
Statement Implementation Plans, EPA's drafting
of compliance orders or State applications
for variances. It is anticipated that consider­
able litigation will ensue regarding many of
these actions.

EARTHGERAL RESOURCES

One of the important interpretations of the
Geothermal Act of 1970 (30 U.S.C. Section 1001 et seq.) was recently handed down by the Ninth Circuit Court of Appeals in
California in a case involving Northern Califor­
der that Act the Congress left open the ques­
tion as to whether mineral reservations in
patents previously issued under the Stock-Raising Homestead Act of 1862 (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, 309 F. Supp. 1269 (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 en­
vironmentally significant resource that could
arise in the process of producing electricity. It was also aware that much of the resource was beneath the surface and was not
private parties with a reservation of coal and
other minerals to the United States. Since optical pre-existing rights to other geother­
mal resources are minerals, the Congress
simply provided that they shall be considered
minerals under 1947 acts such as the
Stock-Raising Homestead Act of 1916 for the
first time.

The Court candidly admitted that there
nothing was in the language or legislative
history of that earlier Act to indicate that
the Congress in 1916 had ever heard of geother­
mal 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 with regard to geothermal
resources or pass title to them," Id. at 3.

As recently as 1968, the Interior Depart­
ment had determined that the geothermal
resources were not minerals because they
were basically steam or water. Nevertheless, the Court held those resources are
minerals and were intended to be reserved to
the United States.

The Court reasoning that the Stock-Raising
Homestead Act was designed to provide for
patents for large tracts of semi-arid land for
agricultural and livestock purposes; that
mineral fuels were intended to be reserved,
and that geothermal steam did not contrib­
ute in any way to the agricultural use. Car­
rried to its logical extreme, this might mean
that water is a locatable mineral!

This decision, unless reversed by the Su­
preme Court, will subject any further develop­
ment of geothermal resources beneath lands
originally patented by the Government
by way of Homestead Act. Title 43
Call the particularity arose in areas known as
the geysers in Northern California, or
unlocated mineral resources beneath lands in
Nevada, Oregon, Idaho, Utah and other Western States.

The Court held that the damages to the
surface was left open by the Court on
remand. Thus, Union Oil will be liable for
alleged damages to the surface and the Tri­
be must comply with Government regulations
in exploration and production and will have
to pay a royalty to the Government.

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 5, 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 exceeded his own regula­
tions in approving the leases;
2. There was no compliance with NEPA;
3. The Secretary violated his own responsi­
bility toward the Tribe in allowing strip mining
which would disturb the surface and
resources important to the culture
4. The Secretary acted in a manner
that was arbitrary and capricous,
5. The Secretary has an obligation to
limit the impact of strip mining on
resources;
6. The Secretary has been
expediting some

The Secretary took the position that NEPA did not
apply to leases on the Crow Reservation
and that NEPA was not required on the
reservation.

It now seems pretty well settled that NEPA
does apply to significant developments
on Indian reservations. The courts, the Interior
Department, the Pueblo of Indians of Tesuque in New Mexico, the Secre­
try took the position that NEPA did not apply to the tribe.

As Davis v. Morton, 489 F.2d 593 (10th Cir.
1973), the Court swept aside this argu­
ment.

The Crows and other Tribes have also been
urging the Secretary to approve Indian ordi­
nances that would protect their land from
their own severance taxes on coal and other
mineral development conducted on tribal lands.

Congress has stated that the Secretary has already
has a 30 percent severance tax which it
poses upon companies working on
Indian reservations there, another tax by the
Secretary has established in addition could drive the price of
Montana coal right into the clouds. Such
ordinances, if approved by the Secretary, are
bound to be challenged and held null and void.

The Secretary also has a controversial
Department which is responsible for
the enforcement of the Ordinance. 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 sparse, it cannot be revege­
ded... or whatever else may happen. And
it will be destroyed. In the final analysis,
strip mining may be acceptable to the
Secretary in his discretion. The Secretary 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 environ­
ment area. He has studied, litigated,
opined at great length. Like them or dis­
like them, you 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
can see no possibility that Mr. Richards
will approach this job with the objectivity
Congress envisioned. But for those not
will now proceed. However, the Tribal Federal
problem of the nominee's long-standing
friendship and association with Secretary
Watt. Testifying before the Governor
Watt, Mr. Richards acknowledged that Secretary
Watt wanted him to be Inspector General at
Interior, and that he wanted the job. He
when Watt became Interior Secretary
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 that energy-producing companies would have access to all the papers, documents, records, and other material needed from third parties, like private oil companies but later upheld by the Federal Circuit. With regard to that case, Mr. Richards stated that the Department for failing to disclose the material was that it related to an active investigative file. The second case concerned the exercise of subpena power, which was contested by the Federal 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 memora and letters finding their way to the American Petroleum Institute with monotonous regularity, Mr. Richards favors more disclosure of internal DOE memora. Despite this, Mr. Richards has been generally ineffective in monitoring contractors' performance, and coming down hard on companies access under the Freedom of Information Act to memoranda from DOE regional counsel and DOE auditors. In the Department for failing to disclose the material was that it related to an active investigative file. The second case concerned the exercise of subpena power, which was contested by private oil companies but later upheld by the Federal 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.

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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 own stores, not really believing 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 frustrate the goals of the Reagan administration by helping to discredit those programs which the administration wants to cut.

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 stinging report estimating that between $3.3 and $7.4 billion was misspent annually at the Department as a result of fraud, waste, and mismanagement. Our colleagues, 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 question that the report did much to undermine support for some of HEW’s programs, both among Congress and the public.

By enacting the Inspector General Act, Congress expressed a sound judgment as to how 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 our energies on personal 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 attentions fastened on the Inspector General’s work will result in stepped-up efforts by the executive branch to prevent and detect 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. MCCLELLAN. 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 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, I ask 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 of the United States Government has 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 testimony and comment to the questions posed to him by members of the Government Affairs Committee. In making those choices, Mr. Richards displayed the courage and self-confidence, qualities that are vitally important for an Inspector General.

Mr. President, in conclusion, we can reasonably presume that Mr. Richards views the Inspector General position with the same degree of rigor he has displayed in advocating his personal views on various issues. If he does, then he will do his job very well.

Mr. McCLELLAN. 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 can tell you, helpfully, 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 against the nomination as having a difference of opinion with Mr. Richards on policy matters, that apparently at one point it was thought that the Senate was 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 ideological 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 too important 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 be, 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. He believed 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. He served in his capacity 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 served as the managing partner 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. Later in 1972, 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.

This 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 of the sort 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 Harold L. Ickes as Director of the Department's Office of Hearings and Appeals. This Office handled all of 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 that can be brought to bear upon this

I know there has been a great deal of interest expressed at a number of 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 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 groups, but 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, he would have squashed 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 if some- body had an affiliation, that would deter 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 conflict should arise, I am sure there will be those who will very quickly point it out and raise that issue with respect to continued qualification to serve in that job.

Until such time as it occurs, that his actions will indeed reveal such conflict, I think we should proceed on the record that he 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 have any information on the 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 any history similar to that 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 involved in that kind of a case and that the task forces under the direction of the U.S. Attorney's Office and the Department of Justice must indeed be very skilled and very capable to carry out their responsibilities.

Mr. Richards would not have been selected for such a role had he not demonstrated the necessary competence and 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 the Inspector General of the Department of Energy. Mr. Richards' prior employment demonstrates a strong background in the investigation of organized crime figures and convicted organized crime figures. Mr. Richards' record also indicates his capability to handle the investigation of fraud and abuse while an employee of the Department of Justice, and the competence to manage the complexity and scope of the Inspector General's responsibilities.

The Congress has in the past indicated its confidence in the Inspector General Act of 1978 by providing an important research grant to the positions for an independent office within the agencies and Departments, and the abuse 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 ability and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration or other professional qualifications."

I, Mr. Richards is a qualified candidate.

However, the Senate went beyond a test of qualifications in determining 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 upon him and the agency, and he may be asked to resign or be reelected for them."

The report goes on to state, "For that reason, the audit and investigative functions of the Inspector General must be independent and the confidentiality of his work protected."

The Senate report elaborates upon this point when it states, "The confidentiality of the Inspector General's work is protected by the provisions of the Inspector General Act which provide that the reports of Inspectors and Auditors General of high ability, stature, and an unusual degree of independence—outstanding Inspectors and Auditor General whose independence is clear ...."

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within the federal government from which the battle against waste, fraud, mismanagement and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. Accordingly, Mr. Richards will not be confirmed unless the Department of Energy and other abuses of government could be waged. 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Senator 3 minutes, not in addition to 2 minutes.

Mr. EAGLETON. Not in addition. Three minutes in lieu of the 3 minutes and 40 seconds. I thank the Senator.

The PRESIDING OFFICER. The Senator from Missouri is recognized.

Mr. EAGLETON. Mr. President, the Senator from Missouri is an indubitable 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, 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 the Inspector General 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 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 approved by this body to be the impartial Inspector General of Energy. The fact that James Edwards holds that office proves that it is what it boils down to.

Striped of all the rhetoric, stripped of all the jargon 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 not only in a general sense, but also in terms of his personal 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 aide 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 identifying and designating any person participating in fraud and abuse.

In light of such duties, Mr. Richards becomes an ideal candidate. He has the legal training, the technical training as an attorney and as a 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 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 legislative 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 join by commending Senators EAGLETON, LEVIN, CHILES, and PAYRO on their outstanding work in bringing to the Senate the very serious issues surrounding the nomination of Mr. James Richards, the nominee to be Inspector General of the Department of Energy. I consider this nomination highly inappropriate and I fully expect votes 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.

The GAO has issued dozens of reports criticizing DOE's management and procurement practices. Time and again, the GAO has pointed to noncompetitive procurements, large costs overruns in DOE-operated facilities and major irregularities in the hiring of contractors. Those irregularities, as Senator PAYRO pointed out in hearings held during the last session of Congress, included the retention of consultants and experts 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 89 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 consultants 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 operations—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 must be "temporary and only when a shortage of personnel exists. But, in fact, consultants have become permanent fixtures at 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, the potential for abuse is truly extraordinary. It should be clear, then, that the postition 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 be able to get down 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 been permitted to go unchecked.

The question before us is whether or not James Richards is the appropriate person to serve in the inspector general position. Should we throw out the answer to that question because we believe that to 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. I believe that his confirmation would damage 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. Richard's work has been associated with an organization called the National Legal Center in the Public Interest. He served first as vice president of its Washington subsidiary, the Capital Legal Foundation, and later as general counsel for NLFCI as a whole.

NLFCI and Capital are public interest law firms that have often sought the Rocky Mountain Legal Foundation, formerly headed by Interior Secretary James Watt, is a public interest law firm. In fact, NLFCI is a subsidiary of NLFCI, just like Capital—and its activities can be described as "in the interest" only if one assumes that the activities of organizations which provide all of its funding are also in the public interest.

What organizations have provided funds for NLFCI 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 "any confidential or classified 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 1986 Tax Act's section 1245d to him, he was able to say thank you to 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, the Scaife Foundation alone owns more than 1.6 million shares of Gulf Oil. 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 1980, the Office of Special Counsel had lodged 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 the $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 to pay attorney's fees.

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 correctly investigate allegations of waste, fraud, and abuse in these contracts without his association with Capital Legal Foundation?

But it is not just Gulf Capital's second largest subsidiary, Fluor Corp., a multinational energy company with sales of more than $4 billion last year. Fluor is involved in every aspect of the development and use of energy, and also owns one of the largest nuclear construction firms in the world. Its chairman, Robert J. Fleur, is the founder and a director of the board of NLFCI. Fluor's executive vice president, Leslie Burgess, is chairman of the board of Capital. Could Mr. Richards credibly investigate 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 the large spending increases requested by the Reagan administration, nuclear programs now make up a large portion of DOE's budget. Mr. Richards, however, was a member of the Government Affairs Committee as an "ideological zealot," has very strong feelings about nuclear power. In 1979, Mr. Richards, on behalf of Capital, testified before 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 million dollars invested in Clinch River and the 79,000 stock in the House Energy and Commerce Subcommittee that 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 by these groups regarding DOE programs?

Mr. President, I could go on and on with examples of why Mr. Richards simply is not the right 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.

But 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 Mr. Richards.

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-conceived nomination.

Mr. SASSER. Mr. President, I join my colleagues on the Governmental Affairs Committee in opposing the nomination of James Richards for the position of Inspector General at the Department of Energy.

The job 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.

Mr. President, I am concerned about the objectivity of the Department. The Inspector General, however, is not a party to a conflict of interest.

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 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 the job of an official who must oppose the nomination of those energy companies, such as the National Wildlife Federation and the Sierra Club are "environmental extremists." Would he be sensitive to any allegations by these groups regarding DOE programs?

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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 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 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 of these overcharges has not been settled and involves a substantial interest for the U.S. Treasury and the American consumer. Let us not turn away from this history, judging the auditing teams unsympathetic 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 the way they handled 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 members of the Governmental Affairs Committee. It is not a question of Mr. Richards' qualifications with regard to public affairs. The Inspector General is an independent agency charged with responsibility for energy price regulation violations and consultant abuse. I believe we could do both Mr. Richards and the Senate a service by holding up 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 about 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 related 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 that he desires 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 told the Committee that, in his opinion, "a zealot...in the post...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 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 Mr. Richards' desire to have 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 PROCEEDURES

Mr. BAKER. Mr. President, if the Senate will permit me, I inquire about the order of floor length and duration of the rollcall votes in the President's name.

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 make the request that I made last night that this request be given the same treatment as the request I made last night that I am entitled to be given the floor for 15 minutes. I believe my colleagues 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 would like to point out that the first vote would be 15 minutes and the subsequent votes back to back would be 10 minutes each, explaining that while this is 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.

Several Senators addressed the Chair.

Mr. McClaure. Mr. President, I yield 1 minute to the Senator from New Mexico (Mr. Domenici).

The VICE PRESIDENT. The Senator from New Mexico (Mr. Domenici).

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 is not simply complaining about the committee's rules requiring submittal of a financial disclosure report and a detailed information statement. I am prepared to reconsider 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 extensive, and sometimes overlap. He supervises and coordinates audits and investigative activities, but he also recommends policies for promoting economy and efficiency in the Department. The Inspector General is charged with preventing fraud and abuse and making sure 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 Committee.

Mr. Richards also told the Committee:

Obviously, the Inspector General is not an active participant in the policy making 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, waste, and abuse. It is this role that Mr. Richards must vigorously pursue my duties and responsibilities in that role.

Mr. President, I am pleased to recommend, with complete approval the Senate's nomination of James R. Richards for the position of Inspector General, Department of Energy.
ROLLCALL VOTES ON NOMINATIONS

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.]

Abdnor
Abraham
Andresen
Armstrong
Baker
Bentsen
Biden
Biden, J. F., Jr.
Borah
Borah, W.
Bradley
Bumpers
Burdick
Byrd
Byrd, Robert C.
Cannon
Chafee
Chiles
Chiles, J.
Cochran
Cooper
Cook
Cranston
DeConcini
DeConcini, J.
Denson
Dixon
Dodd
Dole
Domenici
Douglas
Durbin
Durbin, M.
Eagleton
East
Exon
Ford
Garn
Garn, Mitch.

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 of the confirmation of the nomination.

The VICE PRESIDENT. Without objection, it is so ordered.

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

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 nominations to be considered at this time? Will the Senator from Wisconsin (Mr. BAUCUS) would vote "nay."

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 legal 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 (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
Abraham
Andresen
Armstrong
Baker
Bentsen
Biden
Biden, J. F., Jr.
Borah
Borah, W.
Bradley
Bumpers
Burdick
Byrd
Byrd, Robert C.
Cannon
Chafee
Chiles
Chiles, J.
Cochran
Cooper
Cook
Cranston
DeConcini
DeConcini, J.
Denson
Dixon
Dodd
Dole
Domenici
Douglas
Durbin
Durbin, M.
Eagleton
East
Exon
Ford
Garn
Garn, Mitch.

NOT VOTING—1

Baucus

So the nomination was confirmed.

The VICE PRESIDENT. The majority leader is recognized.

They have indicated they would prefer a rollcall vote.

Mr. BAKER. 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. Without objection, it is so ordered.

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.

Mr. STEVENS. Mr. President, I move to reconsider the votes by which the nominations were confirmed.

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

Mr. STEVENS. 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. WYMAN); and that thereafter there be a roll call on the transaction of routine morning business not to exceed 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.

COMMEMNATION 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 reads 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 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 1961 as a page under the sponsorship of Senator Spessard Holland of Florida. He graduated from the Capitol Page School in 1963 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 office 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 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, he 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 13 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 realignment of our committee positions.

In addition to his regular duties, Joe Stewart has also directed the work of 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, loyalty, and affection; 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 is one 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 vows oaths on to other things.

Mr. President, I ask unanimous consent that the resolution concerning the services of Walter J. Stewart may be printed as a bound volume 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. Stump will likewise appreciate them deeply.

The PRESIDING OFFICER. The question is on agreeing to the resolution.

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: Now, therefore, be it resolved, that the Senate hereby approves his dedicated service as an officer of the Senate, and:

Whereas 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 him the esteem and affection of this body; therefore, be it further 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-
pлементing 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 Accounting Office's travel contract discount program. This executive agency program, which has been in effect since July 1, 1980, has already saved taxpayers between $17 to $18 million. It is impossible to determine an exact saving, however, because we need to determine cost savings to the Senate, but I believe there will be a significant cost-saving measure. For my personal expenses, these savings could total more than $4,000.

I urge the former chairman of the Rules Committee, Senator Pell, in his 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 Federal travelers at least $2.2 million annually in travel costs for the new contract. The airlines also include some of the newest, such as Midway Airlines, some of the oldest, such as Western Airlines, and Air Illinois, a growing commuter airline based in southern Illinois.

I have been assured that the non-Government travelers are not cross-subsidizing these Government travelers. The contract 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 and hotel savings program, which has been in effect since 1972, has now reported its ambitious program that could save the Federal Government over $200 million annually. The program examined 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. Carman, 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 Viechich, 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 Doherty.

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 approved on Friday, July 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 survival is at stake. Given the current economic 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 support 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, but I too would like 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 dim 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, for example, as approved 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.

(Please refer to the end of this message for list of nominations.)

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, 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. 1667. A bill to insur safe 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.

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 imperative.

On June 26, in McCarty against Mc- Carty, the U.S. Supreme Court, in overturning the California Court of Appeals, ruled that Federal law precludes a State court from interfering in military retirement 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 support from their 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 benefits. Thus, when they discover that they were 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 receives the new spouse automatically becomes eligible for medical and survivor benefits, even if she has put no time into the spouse's military or 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 colleagues in the House, Congresswoman Par 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:

1. 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 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.

2. Former Spouse Share or Retiree.—

A former spouse or retired employee may opt out of survivor's benefits already agreed to, without notification of the spouse or former spouse. This legislation would affect former spouses 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 handed down by the problems that devotees 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 the pay packages and fringe benefits which insures the future financial security of both partners in a military marriage will improve morale and incentives.

The current situation devalues the contribution of military spouses, especially the role of most military women as wife and homemaker, and tells her that her role in the family, working, 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 ask unanimous consent that certain articles be printed.

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 benefits. 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 x 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 x 50% or a maximum of one-half the retirement annuity.

Marriage 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 exclude the right to a pro rata share of 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 4. Survivor's Share of Survivor Annuity—

Employer-Spouse Elections.—The former spouse, if any, may use 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 predates the retiree and remarries before obtaining 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 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 not entitled to the survivor's benefits if divorced after the effective date of this Act.

(BY SUSANNE GARMENT)

This has been a crusade more than three years in the making, one announced by a pro-

cessional aide, one staffer who had not de-
serted 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 Con-
gress on the issue of better retirement and

survivors benefits for military ex-wives.
"If we don't start getting these women some protection with legislation, they're all going to be raped," said one woman.

Exposé said its files are bulging with case histories of women "reduced to a nobody after decades devoted to her husband, children and to serving her country." In all, they said, there may be as many as 500,000 ex-military wives who have remarried. But, not everyone thinks the laws should be changed to help these women.

John Shelly, executive vice president of the National Association for Uniform Servicemen, 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. Shelly said, "He has a tremendous obligation to the wife, but it is a personal obligation, not supported by the facts. Married and unmarried military personnel earn the same pay."

Mr. Shelly said there had been cases in which workers who had divorced their husbands had "shopped around" and moved to states with divorce laws favorable to women while their exes were still married. "You've got a man in Korea with a wife in the state 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 caring for the 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 them in the dark.' And that's where we feel we contributed."

The Supreme Court, in its 6-3 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 economic-partner- ship concept that the military and railroad wives out of their husbands' pensions."

"An Economic Partnership"

The Court also said that it was up to Congress to provide more protection for former military residents, "The Court did not have to decide whether the military pension 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."


(By Jane Bryant Quinn)

When husbands and wives approach divorce, the thing that often comes up is property. And the most troublesome property before the courts is pensions.

In a divorce case entitled to a piece of property that was not earned during the marriage, or is she not?

Most state courts say that she is, and state law supposedly rules. But in the only pertinent case to reach the Supreme Court, one on railroad retirement, one on military pensions—the Court overrode traditional state law and said that if Federal law took precedence, the marriage, in most cases, is easy to get, even if one partner can't work. This, of course, is the same as what the courts at all, may last only a few years, until the housewife learns to support herself. All she has to do is to tell the court that her failed mar-riage 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-partner- ship 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.

But when a marriage ends, all the mar- tial property is put into a kitty and divided up. A few states, like California, split the assets 50-50. Others go 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, it 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 economic estate is simple, economic justice. But the Supreme Court's decisions cast marital law back to the days when a husband owned all his and a housewife's work wasn't worth a dime.

A deciding clause in the Railroad Retirement Act of 1937, a law passed by a Congress dominated by male lawmakers, says pension rights are not automatically assigned by right to the worker's spouse. Most state courts say that clause bars a husband behind bars who is suing for a judgment. But the Supreme Court held that it also cuts out any property rights claimed by a spouse. (All private pension plans insured by the Employee Retirement Income Security Act are covered by that same provision.)

In the military case, the court said that the wife is entitled to part of the pension only if Congress specifically grants it. The Special Committee 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, family-law division, disagrees. She said 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. In a Senate vote, the Supreme Court actually meant the decisions "a clear and present danger" to the equitable property division established by state law. But Rep. Pat Schroeder says the bills face tough going, "partly because some opponents have been through bitter divorces and can't look at it this way.

If Congress and the courts deny a wife her share 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 lies in quitting full-time housework and finding another occupation.

MILITARY WIVES SET TO DO BATTLE OVER TORPEDOED PENSIONS
(BY JOANNE E. STARK)
NEW YORK--The U.S. Supreme Court scored military wives last June in a decision that wiped out all their pension rights after they were deserted. But the court didn't 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 have a share in the property accumulated during the marriage. At divorce, her share should apply to her total pension, as well as the part in the property accumulated during the

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 others, husbands are more likely to award wives something less than half. For example, if a marriage lasted 50 years and a property right was $1 million, and the wife is to be, say, 40 percent, she gets 40 percent of the pension accumulated during the years of the marriage (or its equivalent in other property).

The Supreme Court, however, rejected the pension division in the only two cases to come before it so far (one on military pensions, one on railroad retirement). It said these pensions belong solely to the worker, as a personal entitlement.

The husband, in short, is working for his own pension and is not a housewife, as 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 step in the 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. Then, the housewife who fought hard to win rights away from other women, too.

Women who have careers and pensions of their own may be a bit worried 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 this 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 these cases," Vivian Flenmyr, national president of Action for Former Military Wives, told my associate, Virgilina 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 ordered payments by sending her checks directly.

A more sweeping bill from Rep. Patricia Schroeder (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 women.

So far, the military-pension debate has been capturing the attention of only the men and women directly af fected. Male-dominated military organizations uniformly oppose the proposals now in Congress. The Defense Department fought them, but the outcome of this narrow battle could affect marital rights everywhere.

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 the practice of 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 Supreme Court's decision 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 per­

hap is 'fundamental,' it could be limited only by some "compelling State interest," id. at 153. While such an interest could not be based on the inclusion of unborn human life in the "informed consent" test, the Court 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.

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 in cases where it was necessary to prevent a "substantial physical deformity. In only four States was abortion on demand permitted and, in each of these, there were temporal limits to such demand. The most liberal law 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 prohibitions whatever for the unborn fetus during this stage of the pregnancy. During the final trimester of abortion—or approximately at that point at which viability generally is reached—there is 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 that was an exception that consumed the rule. During even the third trimester of the pregnancy, the right to abortion existed whenever the Government sought to protect the life of the fetus 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 School of Law, 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." Private Choices (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 the right are illusory. To quote Professor Noonan again:

"For the first three 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 months of waiting, and she must find an abortist who believed she needed an abortion id. at 12."

No substantial barriers of any kind exist to a woman's right to an abortion 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 policy positions or abortion. In dissent in the Roe and Doe cases, Justice White observed:

"I find nothing in the language or history of the Constitution that requires the Court to declare a right to abortion to exist. The Court simply fashioned and announced a new constitutional right for the promotion of a policy with which it is not unreasonable to agree, but which is, in any event, not required by the Constitution or the Fourteenth Amendment.."

To reach its result the Court necessarily has had to define the scope of the Fourteenth Amendment's protection of the right to abortion. The Court has defined this right in a manner that is essentially completely unknown to the drafters of the Amendment or the Framers of the Constitution.

Prof. Archibald Cox, the former Solicitor General of the United States, remarked on the Roe decision:

"The failure to confront the issue in principle terms leaves the opinion to read like a set of legislative regulations. Neither historian, nor layman, nor lawyer will be persuaded that all the prescriptions of Justice Stewart of the Constitution, Cox, The Role of the Supreme Court in American Government (New York: Oxford University Press, 1970), 118-114.

Prof. John Hart Ely of the Harvard Law School, while taking care to divorce himself from the 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 Irritating Wolf: A Comment on Roe v. Wade 82, Yale Law Journal 920, 947 (1978).

Alexander Bickel, professor at the Yale Law School, described the decision as akin to a "triumph for political correctness". It was a "bewildering at how such a responsible policy 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, 1976), 20.

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" limits. The Fordham Law School attacked the decision as resting upon "multiple and profound misapprehension of law and history;" and the University of Yale Law School viewed Roe as "Pickwickian" and "without mandate;" and Prof. Joseph Spann of the University of Texas Law School described the decision as "unquestionably the most erroneous decision in the history of constitu-
later enacted in response to a Supreme Court decision finding an unapportioned—but 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).

Finally, the 23rd 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).

This discussion at length, federal 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 by Roe v. Wade. That is the object of my proposed amendment. However indefensible these decisions as matters of policy and jurisprudence, they have altered the baseline from which the subsequent decisions clarifying the scope of this right. Each of them have come in response to post-Roe efforts by the States to establish a regime of protection to unborn human life, or to establish some procedure to assure 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 Doe 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 consent of a minor to an abortion, were not unconstitutional only if the requirements were to the reasonable degree of protection to unborn human life, or not unnecessarily burdensome upon the abortion right. See also Freeman v. Ashcroft 584 F.2d 247, affirmed 99 S. Ct. 1410 (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-Dooks, No. 79-5003 (1981), however, the Court upheld a Utah State statute prohibiting physicians, under narrowly defined circumstances, from performing abortions on unem pated minors without parental notification. The statute was drawn extremely narrowly to require such notification “if possible.” The Court held that the minor is living with and dependent upon her parents and has made a showing of unusual merit.

In Colautti v. Franklin, 439 U.S. 379 (1979), the Court ruled that fetal protection statutes were generally unconstitutional, although not overbroad. 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 fuses—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 unrestrictive 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, that now must be protected and its interest 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 States are empowered to restrict the right of the woman to terminate her pregnancy at will.

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 bench, 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 place 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 solutions to the problem of abortion, 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 neither 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 groups, abortion decisions involved a small group of seven individuals who totally ignored the passionately held views of a large number of persons. Although this is 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 standard and intent of 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 not endorsing a policy that would eliminate abortion from American society, nor do I believe that abortion involves the taking of a human life. It is morally, ethically, and—let me—constitutionally wrong. Should my amendment not be enacted, I would be among those seeking the most restrictive State and Federal laws with respect to abortion. When a 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 decision.

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 do not suspect that this 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 the elected representatives of the people in the course of a small elite imposing their own personal views through the pretext of constitutional interpretation.

**LEGISLATIVE OFFICIONS**

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 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 to the Constitution. It does not require any particular treatment of contraceptives, which would not be covered by the amendment—or abortifacients or TUD'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 not enact an unconditional 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 intrusive 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 apprised 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 hospitals;

Sixth. 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.

Fifth. Require some form of parental consent to abortions performed upon minors;
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Eighth. Establish rights of refusal to perform abortions in physicians or nurses, or in hospitals;

Sixth. 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 in 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 evident that there is no constitutionally based right to abortion emanating from any provisional 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 abortion 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 enact laws in this area.

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 for the protection of the lives of fetuses that it chose. Under the supremacy clause of the Constitution, a Federal enactment would take precedence over State enactments in the case of irreconcilable conflict. See, for example, State v. Gauthier 118 A. 380 (1922); State v. Ligarden 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 perhaps State enabling legislation. Given that the judiciary would—properly—be reluctant to force a coequal legislative body to pass legislation, there would likely be a major element of discretion deposed in the legislative branches of Government under even a direct human 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, stockholders, citizens—who want to abide by its provisions. Therefore, it is neither necessary nor desirable to draft with an eye to sly, sophistical, or evasive interpretations that may be made foolproof. There is no language that cannot be distorted by an interpretation given by clever men. It is not hard to show the vulnerability of any form of words to ingenious and insidious incursions. Is the Constitution 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 is this amendment not a concession to Roe against Wade, but it would, arguably, go further by clarifying that Congress, as well as the States, possesses the power to legislate 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 pass this amendment.

Once, however, we can establish in the Constitution the principle that abortion is not an ordinary, routine medical operation, then we must believe that we have an obligation to educate 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, nor during the two world wars, nor during our Nation's history through the 1960's and the 1970's and up until January 22, 1973.

The law is, in fact, a teacher. We must give young people 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 created by this 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 proposed amendment appear at this point in the Record:

Resolved by the Senate and House of Representatives of the United States in Congress assembled, (two-thirds of each
was added as a cosponsor of S. 1238, 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. Donahue), 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. 1392
At the request of Mr. Heftin, the Senator from Arkansas (Mr. Pryor) and the Senator from Ohio (Mr. Metzenbaum) were added as cosponsors of S. 1392, 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. 1399
At the request of Mr. Heftin, the Senator from North Dakota (Mr. Andrews) was added as a cosponsor of S. 1399, a bill to improve the security of the electric power generation and transmission system in the United States.

S. 1401
At the request of Mr. Mathias, the Senator from Michigan (Mr. Levi) was added as a cosponsor of S. 1401, a bill to amend the Voting Rights Act of 1965 to extend certain provisions for an additional 7 years, and for other purposes.

S. 1423
At the request of Mr. Heftin, the Senator from Louisiana (Mr. Johnston) was added as a cosponsor of S. 1423, 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. 1482
At the request of Mr. Heftin, the Senator from Montana (Mr. Mahoney) was added as a cosponsor of S. 1482, a bill to amend title 18 and the Omnibus Crime Control and Safe Streets Act of 1974 and for other purposes.

S. 1492
At the request of Mr. Heftin, the Senator from Louisiana (Mr. Johnston) was added as a cosponsor of S. 1492, 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. 1504
At the request of Mr. Heftin, the Senator from Alabama (Mr. Denton) was added as a cosponsor of S. 1504, a bill for the relief of Christina Bolts Sidders.

S. 1529
At the request of Mr. D’Amato, the Senator from Arizona (Mr. DeConcini) was added as a cosponsor of S. 1529, a bill to exempt certain matters relating to the Central Intelligence Agency from the disclosure requirements of title 5, United States Code.

SEATTLE 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 Observers Week."

SEATTLE 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."

SEATTLE 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.

SEATTLE RESOLUTION 77
At the request of Mr. Heftin, 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 Alisa Ghinis, for departure from the Soviet Union.

SEATTLE 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. Askarawa), the Senator from Florida (Mr. Chiles), the Senator from Oklahoma (Mr. Boren), the Senator from Minnesota (Mr. Dworkin), 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. Weiss), 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. Co- han), the Senator from Nebraska (Mr. Zirkle), the Senator from Rhode Island (Mr. Pell), the Senator from West Virginia (Mr. Randolph), the Senator from Hawaii (Mr. iPhone), the Senator from Dakota (Mr. Aband), 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."

At the request of Mr. Bentzen, 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.

SEATTLE RESOLUTION 213—RESOLUTION AUTHORIZING SUPPLEMENTAL EXPENDITURES BY THE COMMITTEE ON THE JUDICIARY
Mr. T. A. BIDEN, for himself and Mr. ERWIN, added the following resolution, which was referred to the Committee on the Judiciary:

S. Res. 213
Resolved, That section 2 of the Senate Resolution 68, Ninety-seventh Congress, agreed to March 31 (legislative day, February 16), 1981, is amended by striking out the amounts "$4,372,722" and "$172,990" and inserting in lieu thereof "$4,423,590" and "$179,990", respectively.

NOTICE OF HEARINGS
SUBCOMMITTEE ON ENERGY REGULATION
Mr. HUMPHREY, President, I would like to announce that the Senate, the House, and the public that the oversight hearings previously scheduled before the Subcommittee on Energy Regulation for Monday, November 2, and Tuesday, November 3, have been canceled.
Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee 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 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 Schaefer 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 Subcommittee 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 Sinal 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, to hold a hearing to consider the nomination 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.

Mr. STEVENS. Mr. President, I ask unanimous consent that the Subcommittee on Energy Research and Development 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 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.

ADDITIONAL STATEMENTS

THE FARM BILL

Mr. D'AMATO. Mr. President, I must say that with serious reservations about the farm bill proposed 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 benefits bestowed upon the peanut grower, the tobacco harvester, and the sugar cropper.

I have been a consistent supporter of the President's economic program. In so doing, however, I have maintained that the budget restraints and tax cuts must be fair and equitably applied. I have not 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 or pass on 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. In a few short years 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 if 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 many years to come, and should it be applied to the other sectors of the agricultural community, our productivity will be threatened and wish our security.

Mr. President, I fear 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 suggest that subsidized 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 we should hold the peanut and sugar producers.
Dropping the support level to 70 per cent or quality 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 manageable 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 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 106,000 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 total 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 bachelor's degrees at 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 faculty members and 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 science and engineering disciplines. It is essential that prompt actions be taken to resolve the crisis in engineering education.

<table>
<thead>
<tr>
<th>Year ending</th>
<th>Bachelor's degrees</th>
<th>Master's degrees</th>
<th>Doctoral degrees</th>
</tr>
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<tbody>
<tr>
<td>1990</td>
<td></td>
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<tr>
<td>2000</td>
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</tbody>
</table>

Note: NCES estimates exceed the actual count of awarded degrees made by EMC by 10 percent or more.


ENGINEERING DEGREES, ACTUAL AND PROJECTED 1962-67

<table>
<thead>
<tr>
<th>Year</th>
<th>B.S. in engineering</th>
<th>B.S. in technology</th>
<th>M.S. in engineering</th>
<th>M.S. in technology</th>
</tr>
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<tbody>
<tr>
<td>1962-67</td>
<td>34,551</td>
<td>1,519</td>
<td>8,953</td>
<td>1,216</td>
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<tr>
<td>1963-67</td>
<td>33,265</td>
<td>1,567</td>
<td>9,690</td>
<td>1,385</td>
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<td>1964-67</td>
<td>34,913</td>
<td>2,041</td>
<td>10,227</td>
<td>2,132</td>
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<tr>
<td>1965-67</td>
<td>36,506</td>
<td>1,938</td>
<td>12,093</td>
<td>2,133</td>
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<tr>
<td>1966-67</td>
<td>35,952</td>
<td>2,741</td>
<td>13,805</td>
<td>2,619</td>
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<tr>
<td>1967-68</td>
<td>36,868</td>
<td>2,777</td>
<td>15,275</td>
<td>2,933</td>
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<td>1968-69</td>
<td>40,248</td>
<td>4,069</td>
<td>15,372</td>
<td>3,391</td>
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<tr>
<td>1969-70</td>
<td>44,479</td>
<td>4,199</td>
<td>14,945</td>
<td>3,638</td>
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<tr>
<td>1970-71</td>
<td>44,288</td>
<td>5,169</td>
<td>16,443</td>
<td>3,648</td>
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<tr>
<td>1971-72</td>
<td>45,392</td>
<td>5,737</td>
<td>16,828</td>
<td>3,942</td>
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<td>1972-73</td>
<td>46,411</td>
<td>6,034</td>
<td>16,516</td>
<td>4,342</td>
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<tr>
<td>1973-74</td>
<td>47,388</td>
<td>6,444</td>
<td>15,979</td>
<td>4,308</td>
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<td>1974-75</td>
<td>48,388</td>
<td>7,043</td>
<td>16,382</td>
<td>4,621</td>
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<table>
<thead>
<tr>
<th>Year</th>
<th>B.S. in engineering</th>
<th>B.S. in technology</th>
<th>M.S. in engineering</th>
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</tr>
</thead>
<tbody>
<tr>
<td>1976-77</td>
<td>44,930</td>
<td>6,690</td>
<td>18,256</td>
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<td>1977-78</td>
<td>44,900</td>
<td>8,560</td>
<td>18,530</td>
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<td>1978-79</td>
<td>50,490</td>
<td>9,350</td>
<td>18,260</td>
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<td>1979-80</td>
<td>49,900</td>
<td>11,950</td>
<td>18,420</td>
<td>2,740</td>
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<tr>
<td>1980-81</td>
<td>55,100</td>
<td>11,690</td>
<td>18,520</td>
<td>2,590</td>
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<tr>
<td>1981-82</td>
<td>60,950</td>
<td>14,040</td>
<td>18,480</td>
<td>2,650</td>
</tr>
<tr>
<td>1982-83</td>
<td>65,000</td>
<td>14,600</td>
<td>18,490</td>
<td>2,650</td>
</tr>
<tr>
<td>1983-84</td>
<td>69,500</td>
<td>21,000</td>
<td>18,480</td>
<td>2,590</td>
</tr>
<tr>
<td>1984-85</td>
<td>76,000</td>
<td>21,000</td>
<td>19,080</td>
<td>2,590</td>
</tr>
<tr>
<td>1985-86</td>
<td>86,600</td>
<td>21,000</td>
<td>19,080</td>
<td>2,590</td>
</tr>
</tbody>
</table>

Note: NCES estimates exceed the actual count of awarded degrees made by EMC by 10 percent or more.

Source: NCES.
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 Romig Jensen. In introducing the Family Protection Act Senator Jensen has exercised outstanding leadership in bringing the attention of Congress to focus on what is the single 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, Senator Jensen 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 responsibilities as the primary source of endurance 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 down young couples, between parents and children, or setting big government up as the director of social welfare, the Family Protection Act seeks to give families the rightful place as the center of concern.

I am pleased to join with Senator Jepson 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 1961 issue of the Journal of Housing by Mr. Franklin. Mr. Franklin is a student at the University of Connecticut School of Law.

This analysis considers the substantial potential for utilizing the limited equity cooperative approach 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 Connecticut.

In the case 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 situations, 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. 1089, a bill to encourage the development of modest, multifamily rental housing in the case of 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 hope it too will be proposed 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.

The cooperative concept was the text of Mr. Franklin's very insightful article be printed in the Record.

The article follows:

HOUSING COOPERATIVES: A Viable Means of Providing Low-Income Families

By Scott Franklin

The National Housing Act of 1949 announced a goal of creating a suitable living environment for every American family. More than a quarter of a century later, that country is experiencing a nationwide crisis in the low-income housing market. In cities all over the country, both rental and buying 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 this problem. Single-family family dwellings have made home ownership prohibitive to most low-income families. Nevertheless, there are cooperative housing with various forms of public subsidies, state aid, and private nonprofit sponsorship, however, which is the "co-op" and all policy makers agree: 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 arrangements, in the 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 cooperatives 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 principle, a co-operative formula developed in England in 1844.

1. Democratic control by residents. Each member family has one vote regardless of size or number of shares held.

2. Open membership—members have open membership without discrimination.

3. Limited return on membership investment. The cooperative's purpose is to provide housing at a cost as reasonable 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-operative economics and to act upon their use. Soundly managed co-ops provide for either staff or volunteers to tell members, employ- ees, or other staff what the principles, problems, and goals of consumer co-operation. This informs people about local co-op policies and services, and about the regional, national, and international groups to which the co-op belongs.
September 21, 1981

Congressional Record—Senate

21389

also includes consumer education and information.

5. Expansion of services. By establishing cooperative procedures and working together, providers can offer services that otherwise would be impossible.

6. Cooperation among cooperatives. Co-ops rely on each other for information and support. They share ideas, best practices, and resources to help each other succeed.

In summary, cooperatives are a powerful tool for solving the housing crisis. By working together, they can provide affordable, quality housing for all Americans. There is no reason why cooperatives cannot thrive, and do even better than by themselves. The key is cooperation and collaboration.

CONCLUSION

In conclusion, cooperatives are a powerful tool for solving the housing crisis. By working together, they can provide affordable, quality housing for all Americans. There is no reason why cooperatives cannot thrive, and do even better than by themselves. The key is cooperation and collaboration.

Cooperatives also offer many benefits to their members, including:

- Reduced maintenance costs
- Lower taxes
- Higher dividends
- Greater control over their lives and communities
- Increased social and economic stability

These benefits are achieved by pooling resources and working together towards a common goal.

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of becoming a member of that particular community. The "equity" question has plagued cooperatives forever. Many developers maintain an air of considerate discussion. The question is relatively simple: Does a co-op allow members who purchase units in the open market, allow the resale value to rise at the controlled rate, or effectively "freeze" the resale value of a membership? In dealing with this structure, it is important to determine the goals of the co-op. If the primary goal is to provide good housing, then affordable housing will be available to moderate- and middle-income families, some way of limiting return is a must. Even in controlled buying 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. Section 3 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 Section 1(a), it is mandated to make at least 35 percent of its loan outstanding at the end of each fiscal year to cooperatives with members who are primarily 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 elimination of the Consumer Credit Protection Act. Thus, cooperative sponsors most likely will have to search for other means of financing in the future.

Several savings banks, including Citicorp of New York, have begun making loans to cooperatives to cooperate membership, to make it more 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 mortgage, particularly a second mortgage, may find himself or herself lined up behind other creditors and fall to the foreclosed on, with losses and foreclosure proceedings commence. Conventional banks, however, still are willing to take on the risk of 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 New York City, we have been able to obtain funding through federal and state grant and subsidy programs. The federal money generally within directly through the Department of Housing and Urban Development while funds the State makes under directly from HUD through community development funds.

There are four main HUD programs that may be used to provide cooperative housing for low-income families. These programs include mortgage insurance, mortgage assistance, and, or low-interest rehabilitation loans. The programs provide low-interest mortgage insurance to finance co-op housing projects, insures mortgages (up to 90 percent of the amount) for the building, and includes 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 built by individuals members with separate insured mortgages; and construction or rehabilitation of projects that the owners intend to sell to nonprofit co-operatives."

Section 233(d) (3), the below-market interest rate program, provides mortgage insurance to finance cooperative housing for low- and moderate-income families. This program insures 100 percent of project mortgages at FHA ceiling interest rate for nonproduction housing cooperatives. Projects may consist of detached, semi-detached, row, walk up, or elevator structures. Units may qualify if they are 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 a low-income level. The home owner must contribute 20 percent of adjusted income to monthly mortgage payments and must meet 3 percent of the cost of the security. Mortgage limits are $92,000 ($83,000 in high cost areas). The FHA ceiling is 95 percent of the area median income for a family of four, and the sale price may not exceed 125 percent of that price.

While this assistance generally is limited to new or substantially rehabilitated units, existing dwellings in units with 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 spurs unnecessary demolition of basically sound structures. Loans may not exceed 125 percent of appraised value. Applicants must show evidence of capacity to repay the loan and be unable to secure necessary financing from other sources on terms equally attractive. Preference is given to low- and moderate-income applicants and cities have review authority over the Section 312 program.

While these programs still appear on the books, HUD spokespersons indicate that the section is not actively used. While technically remaining active, may not receive additional funding, thus reducing their potential benefit. It is likely that the

Reagan budget-cutting program will further limit these programs.

Nevertheless, HUD programs, even if readily available, are not enough—by themselves—bring them within the reach of low-income families. It is only when combined with other available mechanisms that they become particularly useful.

REDUCING CO-OP COSTS

Several other strategies can help bring down the cost of co-ops. Homesteading programs in the rental of abandoned homes by local governments to home owners who agree to rehabilitate them and can afford to do it 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, down payment 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. This can help bring the cost of co-ops within the financial reach of the potential owner (at least equity), thus reducing outside labor costs. Government subsidized employees can be used to do 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 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 "Endeavor Housing," are available for low-income co-op owners because of the technical classification of co-op ownership as low-income, regardless of the location or value. These are available for low-income co-op member who cannot afford the monthly payments. For census tracts, 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 work. These include the inner-city loan program, the home warranty, the tax assessment system, and the loan program. These methods, which include direct financing through the sale of bonds, the establishment of 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 cost-reducing 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 mortgage-type programs. CASE STUDIES

The Legal Services Foundation of Middletown, Connecticut, has developed a way of providing co-op housing for low-income families with no down payment necessary and with units marketed at $220 per month. This innovative project comprises 19 scattered-site units, mostly (but not exclusively) in the north end of Middletown.

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. These funds are intended to offset the 40 federal real estate mortgage insurance funds to subsidize the rents of the individual tenant owners. In addition, the project received early approval for a 20-year, 3 percent rehabilitation loan from the city for one dollar under the Hartford Authority mortgage and planning aid from the city of Middletown. Equity in Housing has been able to respond adequately to the need for capitalization by placing a ceiling on equity accumulation. Owner/tenants can recoup only that amount of appreciation on their monthly mortgage 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 and the direct fault of the individual tenant. Owners are to be shared pro-rata by all members of the co-op community and be paid on a monthly basis. The repairman, superintendent, and bookkeeper are all members of the co-op community and are paid for nominal monthly salaries.

Finally, the project is kept together by its nonprofit, the Legal Services Foundation, which performs an inordinate number of tasks for a negligible amount of money. The Foundation has gone so far as to underwrite the cost of the legal staff, including his housing as a model. 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 the city of Hartford, has developed 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 home­stead property tax assessment and then applied to HUD and received, under Section 312, a $138,000 20-year, 3 percent rehabilitation loan to renovate the building by paying for building materials and subcontracted work. A signi­fieant amount of the manual labor was performed by members themselves, a fact that became a theme of the annual meeting.

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 five­room apartments priced at $185 and $195 respectively, those features including maintenance and debt service, but not heating costs.

RECOMMENDATIONS

The case studies indicate that, despite HUD's uneasiness about low-income cooperation, cooperative housing is a workable alternative. The 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 co­operatives. Therefore it is important, however, provide affordable home ownership and external benefits such as neighborhood revitalization and stabilization. As men­tioned, there are indications that the Reagan administration is supporting cooperative housing 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 in the speculative market, co-ops for low-income families are not possible without some form of subsidy. Our examination of the HUD's program shows that a deterrent to the success of the program is the limit placed on the mortgage. HUD regulations should not belied on directly to satisfy the needs of aspiring co-op developers. One central reason is the contravening the current funding freeze on major HUD subsidy programs, such as Section 312 and Section 32, of the future of these programs is not promising.

Indirect HUD money, however, in the form of CDBG funds, along with private aid, ap­pears to be the way of the future. Among the programs, which are particularly promising are city­down payment assistance, CHPA­type low-interest mortgages, tax deferrals, and soft cost grants.

It is best to use existing structures for cooperative projects. Buildings acquired for a nominal charge and leased to co-operatives help keep down initial purchase and start-up expenses. Both of which are crucial during the housing cooperative­service. Furthermore, homestead 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 necessary for any low-income co-op housing project. Sponsors are needed to organize and coordinate the co-op funding package and provide the daily operational management. 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 development. The mortgage is 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 resale is contradicted 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 income for the corporation. In conjunction with this, maintenance costs can be kept to a mini­mum if 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 misconception recognizes 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 established the Advisory Council on Economic Opportunity to advise the Director of the Community Services Admin­istration on policy review the effectiveness of the program created by 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.

The third 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 words of the President's own words he 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 in the recession, high interest rates persist. The Council's conclusions are sobering.

The effect of the administration's cuts, 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 program 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 cuts 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 basic assumptions underlying the Presi­dent's budget proposals—what the Coun­cil refers to as "persistent myths about poverty."

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 bears out this conclusion. According to this testimony, the Federal programs do work; they do work to help people set out of poverty; the Federal programs do work; they help people set out of poverty; the Federal programs do work; they help people set out of poverty; the Federal programs do work; they help people set out of poverty.
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 the savings from this reduction in expenditure are national issues, which require national policy and programs and are a part of our national governance, not under that of the Council.

The issue is not federal versus state responsibility; rather, it is the diminishment or avoidance of any national standards of responsibility.

The final and most seductive myth is that the claim by the administration that the poor will be benefited by an overall growth in the economy. The Council concludesthat 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, and households with small children—are rarely hired by the private sector. Because few of these people can be absorbed into the private market without special assistance and support programs, the negative suffering these program cutbacks will bring "cannot be balanced by any credible long-range benefits from the administration's programs, given 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, drugs, alcoholism and mental 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 renounce 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 due to unemployment, inflation 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, unthinkables 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 " feminization 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.
in the Diplomatic Service of the United States of America:

W. Lynn Abbott, of New York.
C. Milton Anderson, of Maryland.
Robert J. Ainslie, of Texas.
Edwin A. Bauer, of Virginia.
James M. Benson, of Virginia.
Richard J. Bishley, of Virginia.
Max F. Bowser, of Virginia.
Evans Browne, of Colorado.
Charles M. Clemons, of Virginia.
John H. Davenport, of the District of Columbia.
Max F. Bowser, of Virginia.
Paul A. Drayzak, of Maryland.
Jon E. Falck, of Virginia.
Odridich Pejar, of Virginia.
Lawrence R. Fouchs, of the United States.
Forrest E. Green, of Maryland.
Alvin E. Gilbert, of Maine.
John A. Giew, of Virginia.
Lawrence E. Hall, of the District of Columbia.
E. H. Hargrave, of the United States.
Ofelia L. Harrell, of the United States.
John T. Hopkins, of Virginia.
Theodore Horschak, of Virginia.
William T. Hoots, of Virginia.
Mollie J. Ier, of Virginia.
James Y. Ise, of California.
John D. Jeter, of Tennessee.
Ronald J. Johnson, of Virginia.
Franklin D. Lee, of Louisiana.
Richard T. McDowell, of Virginia.
Keith E. Murray, of Virginia.
Gordon S. Nick, of Virginia.
Harold L. Norton, of Florida.
Thomas O. O'Connell, of Virginia.
Carlos J. Otega, of Virginia.
Larry L. Pansuk, of Virginia.
Alfred R. Peril, of Virginia.
Frank J. Pissno, of New Jersey.
Shackford Pitcher, of Virginia.
Roger F. Pufferhouse, of Maryland.
Harold Rabhnovitz, of Pennsylvania.
AbdulHamid Ahmad Saleh, of Connecticut.
Lyle James Sebrakez, of Virginia.
Mattie E. Sharpless, of the District of Columbia.
Walter A. Stern, of California.
James B. Swain, of Maryland.
Robert Charles Tetro, of Virginia.
Dale X. Vign, of Arizona.
Frank L. Waddle, of Maryland.
Homer F. Walters, of Florida.
Steve Waskom, of California.
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:

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. Penges, of Illinois.
John H. Wilson, of Virginia.
For appointment as Foreign Service officers of class 5, Consular Officers, and Secretaries in the Diplomatic Service of the United States of America:

Daniel X. Berman, of the District of Columbia.
Larry M. Senger, of Washington.
Natalio A. Solar, of Colorado.

IN THE NAVY

The following named officers of the United States 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 5781, or section 61(a) of the Defense Officer and Civilian Personnel Management Act (Public Law 96-513) and title 10, United States Code, section 624 as added by the same act, asailable subject to qualifications therefor as provided by law:

Abel, Lloyd Vermillion
Abercrumby, Austin Gray
Abrame, Michael Dane
Ackerbauer, Kris Tamerman
Ackerbauer, Michael Dane
Ackerbauer, Lloyd Vermillion
Akins, Joseph Lawrence
Alcorn, Marion Everest
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 Simmonds, Jr
Allnquist, Thomas Victor
Alexandro, Ronald Lee
Alden, Robert William
Amirault, Richard Bradford
Amman, Clement Joseph, Jr
Anderson, Curtis Emerson
Anderson, Darl Richard
Anderson, Eric Blalr
Anderson, Harry Reynolds, III
Anderson, Michael Thomas
Anderson, Timothy J.
Anderson, William Harvey, Jr
Andrews, Kenneth Grant
Aree, Aramond Omar
Archbold, Gary Thomas
Archer, Allen
Armstead, Reesndal Gray, Jr
Arnold, Berthold Klaus
Arnold, Robert Bruce
Arnold, William Glenn
Arrants, Charles Samuel
Arsenault, Arthur John, Jr.
Ashbridge, George, IV
Aten, John.
Aube, Leonard Conrad
Auckland, Bruce Michael
Auld, Jon Franklin
Auguste, Andrews Jullis
Averill, Robert Cameron

Axelrod, William Harold
Baas, Daniel Louis
Babbitt, James Charleton, Jr.
Bagcock, Frederick, Jr.
Bagley, Edward Garland, III
Balles, Michael Scott
Balley, Robert, Jr.
Balley, Steven Everett
Balley, Richard Marcel
Baker, Joe Allen, III
Baker, Rush Emmons, III
Ballard, James Claude, III
Ballard, William Garnet
Bank, Edward Adams, Jr.
Bangs, George Henry
Bankester, Michael Lee
Bannat, Steven John
Barber, Arthur Houghton, III
Barber, Theodore, Jr.
Barbor, Kenneth Bicher
Barela, Maximo Aviluces
Barfield, Curtis Raymond
Barrett, Richard Colm
Barnes, David John
Barnes, Harry Charles, Jr.
Barnes, Leslie William
Barnes, Robert Carroll
Barnes, Timothy John
Barnett, Peter Gres, Jr.
Barnhart, Randall Gay
Barnhill, Arizona Wendell
Barthold, Leonard, Jr.
Barrett, Ralph Clinton, Jr.
Bartron, Robert Patrick
Bassett, Charles William, III
Bato, 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 Pennington, IV
Bechtold, Donald William, II
Beeker, Gregory Harold
Behr, Michael Ray
Behr, Christopher Peter
Behringer, Stephen Edward
Belcher, John Charles
Belden, Robert Clyde
Belco, Richard Hoyt
Bender, Michael Robert
Benedict, William Lance
Benkart, Joseph Albert
Benson, Stephen Eric
Bensur, Robert Cameron
Bentley, Alan Charles
Benniger, Philip Ennes
Beprista, Donald Joseph
Berg, Delano Robert
Bergazzi, Wesley Allen
Bergereh, Leonard L.
Berger, Richard James
Bernasconi, Stephen Joseph
Bertinet, Thomas Richard
Berry, Gaye Vernon
Berry, George Hamilton
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Peters, Kenneth Misell
Peters, Kenneth Warren
Peterson, Theodore William, Jr.
Petrole, John Richard
Petitt, Donald Henry
Petitt, Luther Cleveland
Petty, William Milton
Pfeiffer, Frank Gaines
Pfister, Russell James
Pfueger, Michael Patrick
Phaup, Andrew Lesueur, Jr.
Phelps, Norman John
Phillips, Charles Washington
Phillips, David Shelby, III
Phillips, Larry Col Um
Phillips, James Glenn, III
Phillips, James William
Phillips, John Lenz
Phillips, Donald Maynard
Pickett, Russell Ames
Picuch, John Leon
Pierce, Craig Anderson
Pierson, Carl Robert
Pilcher, Ray C., Jr.
Pistochini, Mark David
Flappett, Russell Frederick
Pledger, James Edgar
Plager, David Charles
Poe, Deen Owen
Polatos, Robert Nicholas
Poirier, Roger Wilfred
Poland, Mark Marier
Poling, Thomas Clinton
Polk, Hardin Scott
Possey, Kelley Gene
Potter, Gary Glen
Powers, Donald Eugene
Powell, James Richard
Powers, Glenn Curtis
Powers, Thomas John
Poulseng, Gregory
Prebul, John Michael
Presel, John Henry, Jr.
Presi, Richard Edwin
Presen, Geoffrey Franklin
Presston, Randall Dall Dille
Preswitz, Ronnie H.
Prince, William Hardy
Proffler, Donald William
Provencher, Ronald Henri
Pstaek, John Wayne
Puccini, Bruce Anthony Joseph
Furciarelli, Gerald Joseph
Purdy, G. James, Jr.
Purington, David Arthur
Quayt, Gary Wayne
Quinn, James Joseph
Quinn, Paul Francis
Quint, Gregory Alton
Rabe, William John
Rader, Michael Thomas
Radney, Richard
Radney, James Carlton
Ramage, Donald Brewster
Rambo, Martin Brian
Ramirez, Gary Wayne
Ramsey, Michael Arthur
Randall, Donald William
Randall, James Duncan
Ransoholm, James Irvine, Jr.
Ranum, Gary Donn
Rapet, Michael Owen
Ratcliff, Ronald Everett
Rath, Bradford Russell
Rauscher, Douglas Alan
Rayhons, George Allen
Rayson, Kent Lee
Recker, Peter Robert
Reece, Jerald Douglas
Redd, Thomas Wood
Rees, Douglas William
Rees, Randy Army
Reeves, Jerry David
Reeves, Terry Dale
Reid, Thomas John
Reighard, Kenneth Stanley, Jr.
Reimann, Otto George
Reinhart, Peter Joseph
Reise, Jeffrey Alan
Relinger, Allen Eugene
Relue, Richard Basil
Remshak, Christopher Jon
Renninger, James Bruce
Rentch, Elwood Andrew, III
Repsboll, Kai Thordord
Re, Charles Michael
Reese, Joseph 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
Rickguar, Charles William
Riess, Robert Eugene
Biggs, Trifton
Biggs, Bernard Allan
Bigot, 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, Lauren Leigh
Roberts, William Howard
Robertson, Michael David
Robinson, Donald Dublstrom
Robinson, Frederick Thomas, II
Robinson, Steven Nourse
Robinson, Thomas Reeder
Rockwell, Richard Thornton
Rodda, Jeffrey Lee
Rode, Alan David
Rodman, William Blount, V
Roehrich, Steven Gary
Rogaski, Wayne Joseph
Rogers, George Carra, Jr.
Rogers, Matthew Joseph
Rogers, Thomas Post

Rogers, William Armstard, Jr.
Roffe, Robert William
Roman, Theodore Robert, Jr.
Romel, Martin
Romme, Steven Lee
Rondstedt, Christian Robert
Rood, Homer John
Rose, Gregory Joseph
Rose, James Wesley
Rosebath, Mark Louis
Ross, Richard James, Jr.
Ross, Thomas Joseph
Rotondo, Michael Jay
Roughead, Gary
Roulstone, Douglas Robert
Rowe, Daniel John
Rowe, Wayne James
Rowland, Michael Lyndon
Rowley, James William
Rubil, William Richard
Rubes, Ernest Mark
Rucker, Harry Joseph
Rucker, Steven Warren
Rudolph, Earle Leighton, Jr.
Ruehe, Frederic Richard
Ruhl, Philip Calvin
Rumyn, Gary Eugene
Rupnik, John Stanley, III
Ruputz, Philip
Rusck, Preston Godfried
Rush, Robert Maque
Russell, James Emmitt
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Ruthaker, Robert Pearson
Rutherford, Lindale Gene
Ruybal, George Nif
Ryan, Francis Perdue, Jr.
Ryan, Paul John
Ryan, Stephen Ignatius, Jr.
Ryder, Curtis Myies
Ryggs, Ronald Fred
Rybak, Dwight Henry
Sadler, David Anthony
Salmon, James Anlon
Salser, William
Sammon, Stephen Michael
Sample, Gregory Lee
Samples, David Olin
Samuels, Richard Gall, Jr.
Sanders, Robert Jesse, Jr.
Sanderson, William Curtis
Sands, Robert Waters
Sanford, Gregory Benson
Sanford, Henry James
Sanatpaoli, Donald Jack
Sare, Michael Joseph
Sarralino, Michael
Satterwhite, Bernard Mason
Scales, Peter Anthony
Scarpelli, Thomas James
Schaaf, Donald Om_ASSUME
Schaeffer, George, III
Schafer, Van Anthony
Schaump, Douglas Arthur
Schaefer, Albert Arthur
Schecter, William Arthur
Schell, Thomas Edward
Schide, Alan Patrick
Schlesier, William Andrew
Schlossberg, John Blake
Schmidt, Jonathan Blake
Schmidt, Wesley Henry, Jr.
Schneer, David Alan
Schneider, Harvey Lee
Schneider, Mark Joseph
Schreiner, Stuart Wayne
Schubert, Jerry Lee
Schultz, George Walter
Schultz, Paul Stuart
Schumacher, Larry Charles
Schwab, Richard Frederick
Schwaller, Charles
Schwartz, Michael Norman
Schwartzel, Joseph Henry
Schwertler, David Alan
Scott, Bruce Robert
Scott, James Robert

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Cummings, Linda Mary
Czabaj, Marlene Bridget
Daehn, Linda Marie
Davis, Evelyn Pearl
Davis, William Michael
Day, Lynne
Day, Marilyn Anita
Dobbs, Gwendra Qualls
Donahue, Mary Helen
Donofrio, Anthony Nicholas
Droz, Cynthia Maravich
Ellis, Jo Caro
Fitzgerald, Kathleen E.
Foraha, Anne Virginia
Gabset, Linda Sue
Gallino, Alice Alberta
Garvey, Geraldine Ann
George, Melissa Ann
Gharagozlo, Ale Sandra Marie
Goeden, Mary Campbell
Goff, Vicki Kristine
Gutowski, Mary M.
Hankel, Elaine Marie
Hart, Dwaine Kenneth
Kosack, Paula Jane
Hayes, Claudia Ann Bouvier
Herzler, Ralph Edmund, III
Hinger, Carol Ann
Hoffman, Mary Helen
Holman, Linda Louise
Hooper, Janet Lynn
Hruby, Margaret Jane
Huber, Joan Marie
Hunter, Juliette Zech
Hutchins, John Wayne, Jr.
Irvine, Linda Jo Ann
Iverson, Halvor Edward, Jr.
Jackson, Royal Hudson
Kaminski, Deborah Young
Kanurick, Ronald Gregory
Kennedy, Kenneth Ann
Kimberly, Ruth Ann
Ko wens, Maureen Doohan
Kuhnly, Jo Beverly
Kupchinsky, Stanley Joseph
Law, Diane Elizabeth
Lawman, Dale D.
Ledonne, Diane Marie
Lee, Amy L.
Lescavage, Nancy
Letz, Max Richard
Lohnan, Judith Ann
Lopes, John Dale
Lousche, Kathleen Mary
Mangan, Martha Young
Manzillo, Arthur Stanley
Markley, Margaret Jan
McCoy, William Doster
McDonald, Mitchell Allen
McKinde, Beth Ann
McManus, Linda Ungarsky
McMullen, Suzanne Theresa
Meltzer, Ronald Lavern
Moo re, Judith Carol
Moran, Janice Weaver
Murphy, Kathrym Ruth
Narbut, Christine Ann
O'Donnell, Katherine Grace
Oswald, Gregory Stephen
Otulokwa, Donna Marie M.
Owen, Nancy Jo
Paller, Patricia Katherine
Patterson, Marla Katherine
Pentecost, William Ronald
Phillips, Danny Roger
Pietrafita, Mary Anne Ebner
Pitman, Robert Ann
Powell, Robert Leroy, Jr.
Price, Roberta Louise
Quinn, Marion
Ramsey, Lorna Jean
Randall, Dale Hughes
Ratliff, Thomas Robert
Richter, William Edward
Riddell, Carol Ann
Robertson, Marilyn Lent
Rottbaltte, Gloria Jean
Rocha, Elizabeth Dennisford
Rodriguez, E. Esperanza
Rychinski, Charlene

Smiley, Janice Starling
Snell, Stanley Pierce
Sousa, Kathleen Anne
Strapp, Margaret Anne
Tarnowski, Laurence Anthony
Thompson, Thomas J.
Trenhaile, Cherie Hilliar
Tucker, Judith Lynn
Turpin, Lorin Ann
Twag, Thomas Warren
Vannest, Ronald Lawrence
Vernosi, Barbara Anne
Verville, Jacqueline Kay
Wahl, Marilyn Jean
Warren, Freda May
Wayne, James Francis
Westland, Paul Daniel
White Theresa Ann
Whittemore, Keneth Robert, Jr.
Williams, Darryl Mead
Williams, Coleen Kay
Wilson, Nancy Darlene
Wolf, Elaine Maureen
Woodworth, Linda Carol
Yarbrough, Patrida 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 6781, 6791, 6911, and 6912, 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, Frazer Leddon
Bailey, Darryl Bryan
Beaut, Harriet Jane
Beaver, Dennis Thomas
Bell, Robert Charles
Bitterwolf, Thomas Edwin
Blickle, Robert Palmer
Bonanno, John W.
Boniface, Lynn Alan
Brady, Patrick Donald
Breedlove, Levy, Jr.
Brown, George Karl, Jr.
Brown, Wayne Douglas
Bryant, Michael B.
Burnup, Roger Kenneth, II
Chiaverotti, Gary Robert
Christiansen, Frank
Clifford, John Daniel
Coffey, Jeffrey Grant
Cook, William Terry
Corrigan, Walter Elliott, Jr.
Cox, Henry Edwin
Cox, Paul Robert
Fox, Paul Stanley
Crawford, Thomas Carl
Dall, Robert Henry
Darnell, Kenneth D.
Davidson, Michael Arthur
Debalso, Michael Fredrik
Demk, Gregory W.
Dugan, Michael Francis
Edwards, Roger William
Fann, William Britton
Farr, Raymond Franklin, IV
Fisher, Robert Benjamin
Gato, David Thomas
Gay, Frederick M.
Grant, Raymond Joseph
Gray, Thomas C.
Green, Melvin Curtis
Guldry, Mark
Gullion, Joseph Milton
Halvorson, John M.
Haycock, Melvin Scott
Hollman, Craig D.
Higgins, John Wayne
Hunt, Jefferson Milo

Barnes, Paula
Beatty, Debra MacNamee
Bessom, Virginia Reed
Beuzelin, Mary Alice
Blitzer, Merlin David
Boberick, Barbara Jeanne
Boone, Carolyn Jean
Boneberg, Cecelia Maeder
Bolger, Carey Thomas
Bonfiglio, Loretta Jean
Brown, Rebecca Sue
Campbell, Julia Celeste
Copp, Joseph Lawrence, Jr.
Cenlito, Marietta Jean
Chapman, Gayland John
Chapman, John M.
Comte, Michele Ann
Condron, Edward Gale, III
Coombs, Shirley Richard
Cornwell, Thomas Lynn

CONGRESSIONAL RECORD—SENATE

September 21, 1981

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<tr>
<td>Zajdowicz, Theodorus Richard</td>
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</tbody>
</table>

**CONFIRMATIONS**

Executive nominations confirmed by the Senate September 21, 1981:

**DEPARTMENT OF ENERGY**


**FEDERAL TRADE COMMISSION**


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.