SENATE—*Wednesday, February 3, 1988*

(Legislative day of Tuesday, February 2, 1988)

The Senate met at 9 a.m., on the expiration of the recess, and was called to order by the Honorable TERRY SANFORD, a Senator from the State of North Carolina.

PRAYER

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

Let us pray:

Righteousness exalteth a nation: but sin is a reproach to any people.—Proverbs 14:34. *Blessed is the nation whose God is the Lord * * *.*—Psalm 33:12. *I exhort therefore, that, first of all, supplications, prayers, intercessions, and giving of thanks, be made * * * for all that are in authority; that we may lead a quiet and peaceful life in all godliness and honesty.*—I Timothy 2:1-2.

Eternal God, Father of the nations, as people gather in Washington from every State and 130 countries for the National Prayer Breakfast tomorrow, we ask Your blessing upon each one. As a microcosm of the world's people gather in the Grand Ballroom of the Washington Hilton, may Your Holy Spirit move upon them with power and love. Bless President and Mrs. Reagan, all the National, State, local, and international leaders who will be present. Grant that this annual occasion shall be a demonstration of the peace of God that passes understanding and the love of God which is unconditional, universal, and eternal. In the name of the One who incarnates that love. Amen.

APPOINTMENT OF ACTING PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The clerk will please read a communication to the Senate from the President pro tempore [Mr. STENNIS].

The legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, February 3, 1988.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable TERRY SANFORD, a Senator from the State of North Carolina, to perform the duties of the Chair.

JOHN C. STENNIS,
President pro tempore.

Mr. SANFORD thereupon assumed the chair as Acting President pro tempore.

RECOGNITION OF THE MAJORITY LEADER

The ACTING PRESIDENT pro tempore. Under the standing order the majority leader is recognized for not to exceed 5 minutes.

Mr. BYRD. Mr. President, I thank the Chaplain for the Scriptures quoted and for his prayer.

EXTENSION OF VOTING TIME

Mr. BYRD. Mr. President, the vote will occur today at 10:30 a.m. on the Kennedy nomination. There is going to be a parade in town today and traffic will be congested. I came in early to avoid that congestion and found that I was wise to do so because the movements are already beginning. I hope that Members will leave their homes in ample time to reach the Senate for that vote. It is a 15-minute rollcall vote.

I am constrained to ask unanimous consent that that be a 30-minute rollcall vote, inasmuch as it is early in the day and particularly because some Senators may be caught off guard by virtue of this buildup of several thousand or scores of thousands of people who will be in town for this parade.

It is an important nomination, and if there is no objection, I ask unanimous consent that that be a 30-minute rollcall vote to begin at 10:30 a.m. and with the call for the regular order to be automatic at the conclusion of the 30 minutes.

Mr. SIMPSON. Mr. President, reserving the right to object, I certainly will not object. I do appreciate the majority leader's accommodation there. It matches what he expressed to us, that in times of extremity or weather, and I understand that has become a little bit worse, that we would accommodate the Members and I thank him for that.

I will not be involved in the parade. It would be a parade of tears for we poor Bronco fans. I do not think I could stand it out there, but I certainly commend the Washington Redskins. They did a remarkable job of destruction of a fine football team on the other side, which was quite extraordinary. Having played the game in college, which I did, watching it was an awesome exercise. They should be richly commended for a superb performance.

I know tomorrow we will have the prayer breakfast. Let me just say in response to the Chaplain, I have seen some remarkable ones: Bishop Sheen, Billy Graham, the President always, any President always is there and it is a very moving ceremony.

So, with that, Mr. Majority Leader, I certainly do not object and I appreciate that accommodation.

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

Mr. BYRD. Mr. President, I will not be involved in the parade either. I am merely seeking to help our Senators to avoid missing a vote, the circumstances having arisen not too long ago that will create this congestion. So I am very pleased that the distinguished assistant leader agrees with me and that there is no objection.

RESERVATION OF LEADERSHIP TIME

Mr. BYRD. Mr. President, I yield the floor. I ask unanimous consent that I may reserve the balance of my time.

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

Mr. SIMPSON. Mr. President, I, too, reserve the remainder of the time.

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

MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Under the previous order there will now be a period for the transaction of morning business not to extend beyond the hour of 9:30 with Senators permitted to speak therein for not to exceed 5 minutes each.

The Senator from Wisconsin is recognized.

THE COST OF YOUR HOUSE AND THE COST OF STAR WARS

Mr. PROXMIRE. Mr. President, arguing with an SDI supporter about the cost of star wars is like arguing with a teenage son about the cost of a house. You ask the teenager how much he thinks it costs to buy a house. He tells you, "Sure, it costs $6,000." You ask, "Where in the world did you get the nutty idea you can buy a house these days for $6,000?" He replies, "Isn't that what you pay the bank every year for the mortgage?" You explain that $6,000 is just the interest for 1 year on the mortgage. You point out that the mortgage is for $60,000. A month later you ask him

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

how much a house costs. He says, it costs a lot. It costs $60,000. You tell him, "No, Jimmy, $60,000 is just the cost of the mortgage on the house. We also have to pay another $40,000 to pay the previous owner $100,000 for the house." "So," asks Jimmy, "You mean the house costs $100,000? Is that it? Is that the total cost?" Your reply, "Not by a long shot. To buy this house we paid the previous owner $100,000. Over 30 years we will pay about $165,000 in interest to finance the mortgage. That goes to the bank. But that is not all either. As long as we live in this house we will have to pay property taxes of $3,000 per year to the city. In the next 30 years alone we will pay at least $90,000 in property taxes and probably a lot more. Property taxes always go up. They never come down. Then there are repairs and maintenance to the house and the lot. There is fire insurance, theft insurance, liability insurance. All together those repair and insurance charges came to $5,000 last year. That was about an average year. Over 30 years that adds up to at least $150,000 for repairs and insurance and probably much more. So even if we forget about anything extra we do to improve the house what does it cost? You add the $100,000 purchase price, the $165,000 in interest on the mortgage, the $90,000 in property taxes and the $150,000 in repairs and insurance. We will pay more than $500,000 to live in this house for the next 30 years.

"So it is not $6,000 that this house costs. It is more than half a million." And that is the way it is with SDI. In 1988, we will spend $3.9 billion on SDI research. That research cost will grow enormously as the years go on. Development costs will be even greater. Then comes the immense production costs. These costs will depend on what the research finds is feasible. Based on virtually all experience with new technology the cost will almost certainly exceed even the high estimates. How many times have weapon systems that require technology breakthroughs come in anywhere near initial estimates? Answer: Virtually never. Has the cost ever been less than initial estimates? Never. It is always more, usually a lot more.

Antisatellite weapon—air-based. The uncertain technology is in its homing device.

The B-1 strategic bomber. It had many technology related problems.

The MX nuclear missile. In particular its guidance system.

The real trouble with the cost of weapons goes beyond technology. Any weapon is sure to provoke a counterweapon. This is especially true of defensive weapons. And it is absolutely predictable in the case of a defensive weapon like SDI which, if it succeeded, would destroy the credibility of the opponent's deterrent.

One example: The present push is for the employment of space-based kinetic kill vehicles [SBKK's]. The vehicles would orbit the Earth at several hundred miles. There would have to be several thousands of them. With the present technology they would be as vulnerable to Soviet attack as a 3-year-old child wandering in a crime-infested section of a great American city carrying $10,000 in $20 bills in plain sight. The Soviets could pick the time and place to knock out every American SBKKV at will. Talk about sitting ducks. The American SDI battle stations would have a fixed orbit. They would pass through a specific section of the sky many times every day at an absolutely predictable time. At any time it wished the U.S.S.R. could fire antisatellite weapons to destroy the battle stations. Any effort to provide armor plating or "shoot-back" capacity to the battle stations would add enormously to the cost of lifting the battle stations into orbit and keeping them there. Would the attack on the American battle station constitute an act of war? It might. But if there is one clear U.S.S.R. doctrine it is that the sovereignty of nations, especially the Soviet Union, extends to an infinite altitude into space above each sovereign country. So therefore would we not expect the Soviets to consider the thousands of American battle stations deliberately designed to destroy this ICBM deterrent and orbiting directly over their country many times a day an invasion of their sovereignty? Just ask yourself what would be our American reaction if the Soviets were filling our skies with space-based kinetic kill vehicles? Would we take them out, which we easily could? You betcha! we easily could? You betcha!

What does all this mean in the cost and feasibility of SDI? It means that to have any chance of deploying battle stations that could survive in orbit over the U.S.S.R. we have to design space-based kinetic kill vehicles that have heavy armor plating and can intercept and destroy antisatellite type fire. Have we made any progress in researching the kind of armor plating? Have they developed weapons that can intercept and destroy antisatellite fire? The answer is we have not. What would be the cost of researching, developing, producing, and especially lifting and deploying battle stations with this kind of capability? No one knows. Would it add to the cost of SDI? Of course, it would add greatly to the cost of SDI. Cnuld we be reasonably confident that it would work when the Soviets offense could pick the time, the place, and the intensity of the attack? Would they make such an attack on an armada of battle stations orbiting over their country several times a day on regular schedule? What do you think?

This illustrates the wisdom of the answer that former Defense Secretary Harold Brown gave to a question I asked him when he testified before the Defense Appropriations Subcommittee in 1986. I asked Dr. Brown how much he would estimate it would cost annually to maintain, operate, and especially modernize an SDI system to make it effective against U.S.S.R. countermeasures. His answer was that the cost would be between $100 and $200 billion per year every year in 1986 dollars in perpetuity. And, of course, we could never be sure or nearly sure that such modernization would be enough to defeat a Soviet attack on vehicles such as the SBKKV's. And keep in mind that Dr. Brown not only brought the wisdom of a former Secretary of Defense. He also brought the know-how of a world-class physicist and a former head of the Livermore Lab in California where so much of the technical work on SDI has been done.

Estimating the cost of SDI is much harder than estimating the cost of a house. It is like estimating the cost of building, maintaining, and constantly rebuilding a house located in Beirut. This is a house which is conspicuously lavish, obviously undefended, and occupied by rich Americans who revel in teasing terrorists.

Mr. HOLLINGS addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

CONTRA AID

Mr. HOLLINGS. Mr. President, it is unfortunate that concern for American security in the Western Hemisphere has been so trivialized that, on the eve of a decisive and historic vote, the three main national television networks concluded that the President had nothing to say and therefore his speech did not warrant being televised.

Perhaps, Mr. President, the President of the United States will think twice next time before vetoing the fairness doctrine requiring the networks to give balanced exposure to all important issues and points of view. When a President of the United States plans a major address on an issue of major national import, as he did last evening, then, under the fairness doctrine, the networks would carry it and give equal time to the other point of view. But for the networks to determine independently that a crucial Presidential address has no news value demonstrates the final demise of the letter and spirit of the fairness doctrine.

Now, Mr. President, on this momentous issue of aid to the Nicaraguan freedom fighters, we are faced today with a political showdown between the

House of Representatives and the President of the United States.

I have watched this fight evolve over the last several years. It had its origin in the clash between our distinguished colleague, the former Speaker, Mr. O'Neill, and the President, over the Boland amendment. Speaker O'Neill viewed the Boland amendment as a matter of House honor, as a matter of House principle.

I have been in conferences in the Defense Appropriations Committee where those Boland amendments were prepared. On his part, the President gave short shrift to those Boland amendments because his administration was getting aid, little as it was, hither, thither, and yon, to the Contras anyway.

So there has been a terrific ambivalence and rivalry with respect to the Contra program down in Latin America and the assistance that we as the United States of America are willing to give those who are willing to fight for freedom.

This is a sad context now because no one is listening to what is really at issue in Central America.

We know what is at issue in Afghanistan, Mr. President. The public figures as reported by the media shows that we have given Afghanistan, $500 million in 1986 and $690 million in 1987 including $30 million for humanitarian aid and $60 million for refugee aid. Thus, the total of our aid in the last 2 years to Afghanistan is $1.2 billion.

We have similarly been generous with the Philippines. Our aid there has totaled $379.9 million in 1987 and $305 million in 1988—plus $50 million for land reform—a combined level of $735 million in 2 years.

The entire aid to the Contras over the 9-year period that the Sandinistas have been in power has been $231.8 million. A paltry sum in comparison to what we have given to the Philippines and Afghanistan—a very meager amount when compared to Soviet aid to the Sandinistas. We have only given the Contras $14.8 million since the Arias plan was conceived while Soviet aid to Nicaragua has been $300 million.

The big doubt of those Democrats opposing Contra aid is toward lethal aid and they say that they will present a package of humanitarian aid. They are quibbling over $3.6 million.

That is not enough for a good skirmish in any battle. That is not the cost of a turnpike or section of a highway in the United States.

It is outrageous when you consider the ramifications of ceding Central America to the Marxists.

The President has reduced his request to an offer made by the Mafia—an offer that cannot be refused. But in refusing it, many Democrats are determined to win the inside-the-beltway political struggle between House Democrats and the White House. But in having its way, Mr. President, the House will turn its back on a struggle, a real struggle, for freedom that has developed in Nicaragua. The Contras have been successful in recent assaults and they are winning over the Nicaraguan people.

I take issue with my distinguished colleague from Connecticut and his views stated in the Washington Post about the success of the Arias plan. He credits the Arias plan with opening the newspaper La Prensa. In fairness, it was the Contras and their successes that did that.

You understand, Mr. President, that when the Arias plan was submitted, the one thing that the Sandinista and Contra opponents in the Congress jumped on was to use it as a pretext to end any additional aid to the Contras. In other words, let us surrender, but please continue with the Soviet aid.

Incidentally, that raises another point; the amount of Soviet aid. I have cited the figures of the U.S. aid to the Contras—$231 million. I wonder how many people realize that Soviet aid to the Sandinistas since 1979 has been $4.7 billion. It makes you wonder how there are any Contras left. Imagine $4.7 billion in Soviet aid to one side and $231 million in U.S. aid to the other—and Reagan is called the warmonger by many Democrats in Congress.

In any event, the one thing jumped upon under the Arias plan was stop funding to the Contras—extinguish them. But the Contras have continued to march forward.

The key to the Arias plan, as the Sandinistas see it, is for the Contras to disband, to surrender, to quit. We know that with any sign of resistance, once they grant amnesty and lift the emergency, as they say to satisfy peace needs, they will immediately arrest the leaders, who speak out. Well, I contend the peace plan itself has gone awry.

The plan was signed on August 7, and allowed for a 90-day compliance period—or a date of November 7. That date was put off until January 7. On January 7, the Presidents of the five countries who were supposed to verify compliance—and, of course, the Sandinistas did not comply—had the date extended to January 15. On January 15, they found there was no compliance.

If you want to proclaim what the Arias plan has brought to Central America—let's be clear and straightforward. It has given us a mechanism that brings into clear focus what is at issue and we can see very clearly the game being played by Daniel Ortega.

As the distinguished Senator from Connecticut concludes, "The President's aid request does not give the plan a chance. It dooms it."

How could $3.6 million in escrowed aid doom it? That miniscule measure of aid cannot possibly doom the peace. If anything, it belies the pretense that the Arias plan has been responsible for so-called progress by Ortega and his group.

Mr. President, the truth of the matter is that we have been acknowledging the Communist threat to the world but not to our own hemisphere. I want to disassociate myself from the constant headlines proclaiming that Democrats oppose Contra aid. This is one Democrat who favors it, who has been favoring it, and will continue to favor it until the tyranny of the Sandinistas is broken.

I had the occasion to meet with Daniel Ortega in 1979 when the Sandinistas first came to power. I opposed aid to them. Our late colleague, Senator Zorinsky, arranged for Senators Stone, KENNEDY, and several of us to meet with Ortega at that time.

Mr. Ortega said he wanted the same democracy in Nicaragua that we wanted in the United States: free elections, freedom of the press, freedom of religion.

I told him I did not want to offend him or hurt his feelings, I just did not believe him. Nonetheless, I told Ortega I wanted him to prove me wrong. I chose to support early aid to the new Nicaraguan regime. I came down to this floor and supported a generous total of $117 million in direct aid to the Sandinistas. We gave peace a chance. And now they have a Marxist, top-to-bottom totalitarian Communist system down there with countless political prisoners. Some 500,000 Nicaraguans have voted with their feet by fleeing across the border, and another 15,000 to 17,000 anti-Communists are in the field under arms, succeeding in controlling a substantial part of the country after 9 years. So, we know the yearning for freedom. I say to my Democratic colleagues, today, let us give hope a chance. If they vote down this measly $3 million today in the House or tomorrow in the Senate, then we will have extinguished hope. So, do not come running around talking about humanitarian aid. Thank heavens, when the United States got its freedom, France did not limit us to humanitarian aid at the time of our revolution. The freedom fighters are not humanitarians. They are fighting for freedom. They do not have the luxury of being humanitarians in the current atmosphere. It is an atmosphere of violence and repression created by Sandinista Marxists and their Soviet bloc henchmen.

The Cubans are in the driver's seat in Managua, and if we Democrats cannot recognize who the real enemy is in this struggle, then, as a party, we are truly lost.

I will be glad to join in the full-scale debate when the Senate considers Contra aid tomorrow. However, I seek today, to counter the notion that all Democrats oppose Contra aid, because there are many of us who are deeply concerned. I well remember back in 1959, when many said, "Oh, don't worry about that little Caribbean island." Thirty years later, the Cuban mercenaries are in Yemen, they are in Ethiopia, they are in Angola, they are in Nicaragua. They are deployed the world around. And the Soviet Union is dedicated, the Soviet Union is committed, communism is dedicated, communism is committed, yet we in the democratic camp are afraid to commit. We are not dedicated. We are not willing to fight for our beliefs. Freedom is not free. It must be strived for. Let us at least give the Contras, who are willing to fight their own fight, a chance to succeed. We fought for a decade and lost 58,000 boys in Vietnam in a futile search for South Vietnamese who would fight their own fight in Vietnam. In Nicaragua, we are blessed with patriots who are willing to carry the combat burden entirely on their own. All they ask from the United States of America, the great bastion of democracy, is minimal financial assistance. Indeed, today, we are talking about a puny $3.6 million in escrowed lethal aid, yet leaders of this debate say, "If you give them the $3.6 million, peace is doomed." This argument is 180 degrees wrong. The simple fact is that without continued support of the Contras, peace is doomed. Unless, of course, you seek the phony peace of totalitarian control, the deathly silence of a nation and people without freedom or hope.

The ACTING PRESIDENT pro tempore. The additional 5 minutes has expired.

Mr. HOLLINGS. I thank the distinguished leader and the Chair. I ask unanimous consent that two tables be inserted in the RECORD. One illustrating United States aid to the Philippines and Afghanistan and a comparison of Soviet aid to Nicaragua with United States aid to the Contras. The other providing a list of Soviet military hardware delivered to date to Nicaragua and the Sandinista request for equipment for the next several years. If any one believes this equipment is purely for defensive purposes against the Costa Rican police force, then truly all hope is lost.

There being no objection, the tables were ordered to be printed in the RECORD, as follow:

1. U.S. Aid to Philippines

Fiscal year:	Millions
Fiscal year 1987	$379.9
Fiscal year 1988	305
	[1]50

[1] Plus additional $50 million for land reform (conditional).

2. U.S. Aid to Afghanistan

(Open source—press estimated)

Fiscal year:	Millions
Fiscal year 1986	$500
Fiscal year 1987	600

[1] Plus $30 million (humanitarian) and $60 million (refuge).

3. Soviet Bloc Aid to Nicaragua

[In millions of dollars]

	Military	Economic
Fiscal year:		
1986	$590	$580
1987	505	500
Average	[1]45	[1]45

[1] Per month.

4. U.S. Aid to Contras

	Millions
Fiscal year 1987	$100
October 1 to November 10	3.5
November 11 to December 16	3.2
December 16 to February 29 (1988)	8.1
Average	[1]8

[1] Million per month in fiscal year 1987 and $3 million per month in fiscal year 1988.

Cumulative Soviet Bloc Military and Economic Aid to Nicaragua—1979 to 1987 $4.730 billion

Cumulative U.S. Aid to Contras:	Millions
(a) Through end of fiscal year 1985	$117.0
(b) Fiscal year 1986 to fiscal year 1987	100.0
(c) Fiscal year 1988 to date	14.8
Total	231.8
U.S. Aid to Sandinistas	117

Soviet bloc equipment delivered to Nicaragua

Equipment	Defector figures
Air Force:	
MI-25/HIND [1]	12
MI-8/HIP	14
MI-17/HIP [2]	24
MI-2/HOPLITE	5
AN-2TP	17
AN-26	6
Anti-aircraft artillery:	
23mm (ZU-23-2) gun	252
37mm (9M430 M-1939) gun	66
57mm (S-60) gun	18
100mm (KS-19) gun	18
14.5mm ZGU-1 machinegun	264
14.5mm ZPU-2 machinegun	100
14.5mm ZPU-4 machinegun	55-56
SA-7 (C-2M 9P58M) Grail Sam launcher	325
SA-14 (C-3M 9P58M) Gremlin Sam launcher	166
SA-16 (IGLA-1M 9P519-2) Sam launcher	54
Armor:	
T-55 Medium tank	87
T-54 Medium tank [3]	43
PT-76 Light tank	22
BTR-50PU armored personnel carrier	1
BTR-60PB armored personnel carrier	24
BTR-152 armored personnel carrier	90
BRDM-2 armored reconnaissance vehicle [4]	72
Ground artillery:	
122mm (D-30) howitzer	36
152mm (D-20) howitzer	60
B-10 antitank gun (S/R)	9
57mm (M43 ZIS-2-57) antitank gun	354
76mm (M42 ZIS-3) antitank gun	84
100mm (BS-3 M1944) antitank gun	24
82mm (M1937) mortar	625
106.7mm mortar	6
120mm (M1943) mortar	42
107mm rocket launcher	16
122mm GRAD 1P rocket launcher	216
122mm BM-21 rocket launcher	36
Infantry weapons:	
Rifles (AK)	257,595
RPK, RPD, RP-46, PKM, PRT machineguns	6,010
SVD (7.62mm) rifle	460-520
SVDN-1 (7.62mm) rifle	50
M9130 (7.62mm) rifle	200
MAKAROV pistols	20,150
RPG-7 (V&D) grenade launcher	4,132
AGS-17 grenade launcher	254
RPG-70 grenade launcher	200

[1] Of 12 received, 6 were new and 6 had undergone major repairs that degraded engine performance.

[2] Includes six recently received but not yet operational.

[3] One document mentions a total inventory of 133 tanks.

[4] Includes 12 identified by the documents as "chemical reconnaissance vehicles."

MAJOR SANDINISTA REQUESTS FOR SOVIET HARDWARE, 1986–95

Equipment	"Diarangen I" (1986–90) request [1]	"Diarangen II" (1991–95) request	Total inventory if delivered
AIR FORCE			
MIG-21		12	12
MI-25/HIND	3	12	[2]24
MI-17/HIP	8	12	[2]48-52
MI-8/HIP	7 AD	[2]14	
AN-26		8	14
AN-12	N/A	N/A	N/A
ANTIAIRCRAFT ARTILLERY			
23mm (ZU-23-2) gun	126	414	792
100mm gun [3]	24	42	84
57mm (S-60) gun		18	36
14.5mm ZGU-1 machinegun	82		346
14.5mm ZPU-2 machinegun	6		106
SA-7 (C-2M 9P58) Grail SAM	17		346
SA-14 (C-3M 9P58M) Gremlin SAM	471	276 [4]	775
SA-16 (IGLA-1M 9P519-2) SAM	219	276 [4]	411
SA-13 (C-10) SAM		36	36
SA-3 (C-125) SAM	48		48
SA-6 (C-125) SAM		36	36
SA-9 SAM		N/A	N/A
ARMOR			
T-55 medium tank	4	74	[5]208
BTR-70PB Armored personnel carrier	44	174	218
BTR-60PB armored personnel carrier	3		27
GROUND ARTILLERY			
122mm howitzer		108 [6]	144
130mm field gun		36	36
82mm mortar	342	80	1,047
160mm mortar	N/A	N/A	N/A
76mm (M42 ZIS-3) antitank gun [7]		156	240
100mm T-12A antitank gun		114	[8]138
AT-3 Maliutka antitank missile		90	90
122mm GRAD 1P rocket launcher	148	80	444
122mm BM-21 rocket launcher		24	60
INFANTRY WEAPONS			
Makarov pistols	21,481		41,631
Rifles (AK)	118,851	125,000	501,446
RPK and other light machineguns	5,052		+12,000
RPG-7 (V and D) grenade launcher	3,635		+8,000
AGS-17 grenade launcher	272		+600

[1] Figures in this column represent supplementary request for the last 3 years of the 5-year plan.

[2] These figures take into account Sandinista losses through October 1987.

[3] Documents identify current holdings as KS-19 but leave requested guns unidentified. May be substituted with 85mm guns, according to documents.
[4] This figure includes both SA-14 and SA-16 SAM's. Final inventory assumes receipt of half of requested amount of each SAM.
[5] Includes 43 T-54 tanks.
[6] Includes 84 towed (D-30) and 24 self-propelled 122mm howitzers.
[7] May be substituted with 85mm D48 anti-tank gun, according to documents.
[8] Includes 24 identified in documents as 100mm BS-3 antitank gun.

EXTENSION OF TIME FOR MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended 5 minutes.

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

Mr. THURMOND addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. THURMOND. May I take 1 minute?

The ACTING PRESIDENT pro tempore. The Senator has 5 minutes.

CONTRA AID

Mr. THURMOND. Mr. President, we are getting ready to go to the nomination of Judge Kennedy to the Supreme Court, and I just had the opportunity of listening to my able and distinguished colleague, from South Carolina Senator HOLLINGS, on the question of aid to the Contras.

I take this opportunity to congratulate Senator HOLLINGS for the courageous position he has taken in this matter. I realize that so many in his party have taken a different view. It has taken vision, it has taken courage, and it has taken experience like he has had to understand this problem and to come to the right conclusion. I commend him for the position he has taken and the sound reasons he has given in arriving at that conclusion.

Mr. HOLLINGS. I thank my distinguished colleague.

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

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

ORDER OF PROCEDURE

Mr. BYRD. Mr. President, the order provides for 1 hour of debate in executive session on the nomination of Judge Kennedy to fill the vacancy on the Supreme Court. Am I correct?

The ACTING PRESIDENT pro tempore. The Senator is correct. Under the previous order the hour of 9:30 was set that the Senate would go into executive session.

Mr. BYRD. Mr. President, I have a further parliamentary inquiry. Does the vote occur precisely at 10:30 under the order?

The ACTING PRESIDENT pro tempore. The Senator is correct. Under the previous order, the hour of 9:30 was set that the Senate would go into executive session.

Mr. BYRD. Mr. President, I have a further parliamentary inquiry. Does the vote occur precisely at 10:30 under the order?

The ACTING PRESIDENT pro tempore. Under the order there is exactly 1 hour of debate, so the vote would occur at 10:30.

Mr. BYRD. Mr. President, I would not want the yielding back of time, if such would occur, to cause the vote to come earlier than 10:30 today. Therefore, I ask unanimous consent that the vote on the nomination occur at 10:30 a.m., regardless of whether or not time is yielded back.

The ACTING PRESIDENT pro tempore. Is there objection?

Mr. BYRD. I make this request, Mr. President, because Senators have been told that the vote would begin at 10:30. I hope that we would not have the vote start earlier today in particular because it might cause some of those Senators to miss that vote.

Mr. THURMOND addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from South Carolina.

Mr. THURMOND. We are in hearty accord with the statement just made by the able majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator.

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

EXECUTIVE SESSION

SUPREME COURT OF THE UNITED STATES

ANTHONY M. KENNEDY, OF CALIFORNIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The ACTING PRESIDENT pro tempore. Under the previous order, the hour of 9:30 a.m. having arrived, the Senate will now go into executive session to consider the nomination of Anthony M. Kennedy, to be an Associate Justice of the Supreme Court of the United States.

Time for debate on this nomination shall be limited to 1 hour to be equally divided and controlled by the Senator from Delaware, Mr. BIDEN, and the Senator from South Carolina, Mr. THURMOND.

The clerk will report the nomination.

The legislative clerk read the nomination of Anthony M. Kennedy, of California, to be an Associate Justice of the Supreme Court of the United States.

The Senate proceeded to consider the nomination.

Mr. KENNEDY addressed the Chair.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. I ask unanimous consent that I be the designee of the time until the chairman of the Judiciary Committee arrives, the Senator from Delaware.

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

Mr. KENNEDY. I yield such time as I might use.

Mr. President, I will support the nomination of Judge Anthony Kennedy to the U.S. Supreme Court. During his confirmation hearings, and throughout his distinguished tenure on the court of appeals, Judge Kennedy has demonstrated integrity, intelligence, courage and craftsmanship—and a judicial philosophy that places him within the mainstream of constitutional interpretation.

Judge Kennedy believes that the Constitution is not a fossil frozen in the past, but a living document, shaped by experience in our Nation's 200-year history, and capable of responding to contemporary threats to fundamental rights and liberties. In his confirmation hearings, he agreed that the Constitution protects rights beyond those specifically enumerated in its text, including the fundamental right to privacy.

On occasion, he has been a brilliant pioneer, as in his landmark interpretation of the separation of powers doctrine in the Chadha case, which correctly anticipated the direction the Supreme Court would take on this controversial issue.

I was also impressed with Judge Kennedy's commitment to vigorous enforcement of the first amendment's guarantee of freedom of speech. That commitment has been reflected in opinions striking down prior restraints and protecting offensive speech in political debate; and it was evident in the confirmation hearings, when Judge Kennedy indicated his view that the first amendment protects all forms of expression.

Although I support Judge Kennedy's nomination, I am troubled by some of his decisions on the rights of minorities, women, and the handicapped. The Supreme Court rejected restrictive positions taken by Judge Kennedy in three civil rights cases. And his past membership in three discriminatory clubs raises questions about his sensitivity to the subtle forms that discrimination can take in contemporary America.

In the confirmation hearings, I questioned Judge Kennedy about these matters. He made it clear that he now recognizes that the civil rights laws must be interpreted generously—not grudgingly—in order to achieve fundamental purpose of ending discrimination. And he indicated that over the years, he has tried to become more sensitive to the barriers of bias that block women and minorities in our society.

Every day he goes to work—once he becomes Justice Kennedy—he will pass under the four simple eloquent words inscribed in marble above the entrance to the Supreme Court: "Equal Justice Under Law." In a sense, those words define the rule of law in America; and I believe that Justice Kennedy will reflect on them and heed them in all his deliberations.

Obviously, no one can predict with certainty how Judge Kennedy will vote in specific cases as a member of the Supreme Court. That, or course, is as it should be. A justice should be openminded, without an ideological agenda.

Judge Kennedy was not President Reagan's first choice to fill this vacancy. But his nomination demonstrates the genius of our system of constitutional checks and balances. After two false starts, the President heeded the advice of the Senate, and nominated a distinguished judge with mainstream views.

Judge Kennedy is capable of becoming an outstanding Justice of the Supreme Court, and he deserves to be confirmed. I am pleased to support his nomination.

Mr. President, the Senator from Delaware, the chairman of the Judiciary Committee, Senator BIDEN, is ill today. Regrettably, he cannot be here either for the debate or the vote. He has asked me to include his complete statement in the RECORD, and I ask unanimous consent that it be printed in the RECORD after my comments.

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

● Mr. BIDEN. Mr. President, as I said when the Judiciary Committee met last Wednesday, I believe that the Senate should confirm Judge Anthony M. Kennedy to be Associate Justice of the Supreme Court. The process of filling the seat vacated by Justice Lewis Powell has been long and sometimes difficult, but I am confident that the Senate, the Supreme Court, and the Nation as a whole have emerged the stronger for it.

Judge Kennedy's record, as expressed through his more than 400 opinions on the Court of Appeals for the Ninth Circuit, his 20 speeches and his 2 days of testimony, is analyzed in the committee's report. I shall briefly summarize here my evaluation of that record and the reasons I support his nomination.

JUDGE KENNEDY'S JUDICIAL PHILOSOPHY AND APPROACH TO CONSTITUTIONAL INTERPRETATION

Judge Kennedy's judicial philosophy and approach to constitutional interpretation are balanced and are likely to contribute to our evolving understanding of the Constitution. The picture that emerges from Judge Kennedy's record is quite clear: In his words, he is searching for the "correct balance in constitutional interpretation." (Tr., 12/15/87, at 17.) He carefully avoids reliance on a narrow, fixed, or unitary theory of interpretation, testifying that he does not have "a complete cosmology of the Constitution." (Id.)

In Judge Kennedy's view, judges can use the benefit of 200 years of history and the accumulated wisdom of the great justices who have sat on the Court to resolve the difficult questions of constitutional interpretation. He testified:

* * * [T]he Court can use history in order to make the meaning of the Constitution more clear. As the Court has the advantage of a perspective of 200 years, the Constitution becomes clearer to it, not more murky. The Court is in a superior advantage to the position held by Mr. Chief Justice Marshall when he was beginning to stake out the meanings of the Constitution in the great decisions that he wrote.

And this doesn't mean the Constitution changes. It just means that we have a better perspective of it. * * * To say that new generations yield new insights and new perspectives, that doesn't mean the Constitution changes. It just means that our understanding of it changes.

* * * [T]he idea that the Framers made a covenant with the future is what our people respect, * * * and I am committed to that principle. (ID. at 199-200.)

Judge Kennedy seems to recognize, therefore, that, in the words of Chief Justice John Marshall, "the Constitution was intended to endure for ages to come, and consequently to be adopted to the various crises of human affairs." (See untitled speech, Sacramento chapter of the Rotary Club, February 1984, at 6.)

Judge Kennedy has a balanced and thoughtful approach to "original intent." In his words, "original intent is best conceived of as an objective rather than a methodology." (Untitled speech, Ninth Circuit Judicial Conference, August 21, 1987, at 5.) This means that for Judge Kennedy, original intent has a role in constitutional interpretation, but it "does not tell* * * [a judge] how to decide a case." (Tr., 12/14/87, at 223-24.) Accordingly, Judge Kennedy relies on a number of sources in resolving constitutional questions, including "the precedents of the law and the shared traditions and historic values of our people." (1984 Rotary Club speech, at 7.)

In my view, the nominee's opinions on the Ninth Circuit, as well as his testimony before the committee, demonstrate that he is a genuine advocate of judicial restraint. He decides cases based on the facts and the law before him, and he does not reach out for other issues. My review of his opinions indicates that his nominee has no clear ideology or agenda.

A fundamentally important area probed by the committee during the hearings was Judge Kennedy's views on stare decisis—the value of precedent. Judge Kennedy testified about his approach generally to the doctrine of stare decisis and about its role in our system of law. He also discussed the factors upon which he would rely in determining whether a case should be overruled. I have concluded from this testimony that Judge Kennedy has a deep respect for precedent. While he may from time to time seek further movement in the law, there is no evidence of a desire for abrupt departures from carefully developed doctrines or established lines of decisions.

JUDGE KENNEDY'S APPROACH TO LIBERTY AND FUNDAMENTAL RIGHTS

My review of Judge Kennedy's overall record indicates that his approach to liberty and fundamental rights is within the 200-year tradition of Supreme Court jurisprudence exemplified by such Justices as Harlan, Frankfurter, Cardozo, and Powell. Indeed, every one of the past or present Justices on the Supreme Court has refused to read "liberty" as if it were exhausted by the rights specifically enumerated in the Bill of Rights. That tradition establishes, in my view, that the due process clauses of the 5th and 14th amendments protect against governmental invasion of a person's liberty and privacy.

Illustrating Judge Kennedy's view is his statement to Senator HEFLIN that the Constitution provides a means of preventing government from denying individuals their fundamental rights. (Tr., 12/14/87, at 209-10.) Judge Kennedy's record also makes clear that he rejects the view that the people have no liberties except those specifically granted to them by their government. As he said in a recent speech, "[a]s the Framers progressed with their studies, [republican government] came to mean * * * government that emanates from the people, rather than being a concession to the people from some overarching sovereign." ("Federalism: The Theory and the Reality," Historical Society for the U.S. District Court for the Northern District of California, October 26, 1987, at 3.)

Judge Kennedy's testimony suggested that he embraces a view that I share about the creation of our Nation: that the essence of the purpose underlying the Constitution was

the preservation and advancement of individual liberty. In his words:

> The Framers had an idea which is central to Western thought. * * * It is central to the idea of the rule of law. That is that there is a zone of liberty, a zone of protection, a line that is drawn where the individual can tell the government: Beyond this line you may not go. (TR., 12/14/87, at 93.)

Importantly, Judge Kennedy's understanding of the due process clause protects the values of privacy. He testified that "the concept of liberty in the due process clause is quite expansive, quite sufficient, to protect the values of privacy that Americans legitimately think are part of their constitutional heritage." (Tr., 12/15/87, at 42) He also specifically indicated that there is a marital right to privacy protected by the Constitution. (Id. at 42-43.) And Judge Kennedy added that "the value of privacy is a very important part of * * * [the] substantive component" of the due process clause. (Id. at 43-44.)

Judge Kennedy's reasoned and balanced approach to the ninth amendment—which provides that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people"— is consistent with his understanding of "liberty" in the due process clause. Judge Kennedy testified that the ninth amendment is a "reserve clause, to be held in the event that the phrase 'liberty' and the other specious phrases in the Constitution appear to be inadequate for the Court's decision." (Tr., 12/14/87, at 97.)

Finally, Judge Kennedy accepts a clear role for the courts in the fundamental rights area. In his words, "the enforcement power of the judiciary is to ensure that the word liberty in the Constitution is given its full and necessary meaning, consistent[] with the purposes of the document as we understand it." (Id. at 178.) He added that "[t]he Framers had * * * a very important idea when they used the word 'person' and when they used the word 'liberty.' And these words have content in the history of Western thought and in the history of our law and in the history of the Constitution, and I think judges can give that content." (Tr., 12/15/87, at 204.)

The committee did not ask for, of course, nor did it receive, any guarantees as to how a "Justice" Kennedy would resolve future cases involving liberty and privacy issues. Nevertheless, I was encouraged by Judge Kennedy's testimony and believe that it suggested that, if confirmed as the 106th Justice, he would be within the 200-year tradition of Supreme Court jurisprudence.

JUDGE KENNEDY'S CIVIL RIGHTS RECORD

While I will vote in favor of Judge Kennedy's nomination, I am concerned about some of his opinions on the rights of women and minorities. Those opinions, in my view, display an undue deference to established institutions and an insensitivity to systemic forms of discrimination.

Three opinions in particular raise concern for me. First, *Aranda* v. *J. B. Van Sickle*, 600 F.2d 1267 (9th Cir. 1979), cert. denied, 446 U.S. 951 (1980), in which Judge Kennedy filed an opinion concurring in the dismissal of the claims by members of the Hispanic community in the San Fernando Valley that their voting rights had been diluted. Second, *TOPIC* v. *Circle Realty*, 532 F.2d 1273 (9th Cir.), cert. denied, 429 U.S. 859 (1976), disapproved, *Gladstone Realtors* v. *Village of Bellwood*, 441 U.S. 91 (1979), in which Judge Kennedy's majority opinion held that only direct victims of housing discrimination had standing to sue. Third, *Gerdom* v. *Continental Airlines, Inc.*, 692 F.2d 602 (9th Cir. 1979) (en banc), cert. dismissed, 460 U.S. 1074 (1983), in which Judge Kennedy joined a dissent that accepted customer preferences for "attractive" flight attendants as a basis for the airlines' imposition of weight requirements on women but not on men.

Each of these caused me concern because they show a reluctance on Judge Kennedy's part to deal positively with systemic discrimination. In light of this record, I looked carefully at Judge Kennedy's testimony to determine what his views are today on important civil rights issues.

In the end, Judge Kennedy's testimony led me to conclude that he fosters no hostility or antipathy toward the civil rights of all Americans. His testimony also showed that over the years he has come to have a greater sensitivity to all forms of discrimination.

He said, for example, that "indifference to the civil rights of Hispanics, women, and other minorities is unacceptable." (Answer to written question No. 4 from Senator BIDEN.) Judge Kennedy added that civil rights statutes "should not be interpreted in a grudging, timorous, or unrealistic way to defeat congressional intent or to delay remedies necessary to afford full protection of the law to persons deprived of their rights." (Answer to written question No. 8 from Senator SIMON.) And with respect to gender discussion claims under the 14th amendment, he seemed to embrace the Supreme Court's decisions establishing that such claims require some form of rigorous review. Judge Kennedy said, in fact, that it is necessary to "ascertain whether or not the heightened scrutiny standard is sufficient to protect the rights of women, or whether or not the strict [scrutiny] standard should be adopted." (Tr., 12/14/87, at 169.)

I agree, therefore, with long-time civil rights activist Nathaniel Colley, who said that Judge Kennedy "is a grown man, but he is a growing man." (Tr., 12/16/87, at 322.) He is growing, in my view, in sensitivity to the plight and the rights of minorities and other groups facing discrimination in our society.

I reached a similar conclusion with respect to Judge Kennedy's former membership in private clubs with restrictive membership policies. While I would have preferred that Judge Kennedy's reflections with respect to private clubs had evolved more rapidly and with an appreciation that restrictive membership policies are discriminatory, his actions and testimony demonstrate an increased understanding of the issue and its societal importance.

JUDGE KENNEDY'S RECORD IN OTHER SIGNIFICANT AREAS OF THE LAW

Judge Kennedy's record in other significant areas of the law is balanced and devoid of any ideological bias or agenda.

In the criminal law area, for example, his record is moderate and well-balanced. He takes a practical, commonsense approach to criminal cases, and he respects the rights of both victims and defendants.

His opinions and testimony also show that he respects established first amendment values. Judge Kennedy testified that the first amendment "applies * * * to all ways in which we express ourselves as persons. It applies to dance and to art and to music, and these features of our freedom are to many people as important or more important than political discussions. * * * The first amendment covers all of these forms." (Tr., 12/14/87, at 152.) Judge Kennedy also said that he knows "of no substantial, responsible argument which would require the overruling" of the clear and present danger test as formulated by the Supreme Court in *Brandenburg* v. *Ohio*, 395 U.S. 444 (1969).

In the area of separation of powers, Judge Kennedy generally takes a cautious and measured approach. Importantly, he accepts a clear role for the courts in resolving disputes between the branches in appropriate circumstances. He testified, for example, that "it is quite appropriate for the Court to act as an umpire between the political branches of the government." (Tr., 12/15/87, at 197.)

THE QUESTION OF COMMITMENTS

I questioned Judge Kennedy extensively about whether he made any commitments to the administration or to any other party in connection with his nomination or confirmation. Judge Kennedy indicated, in clear and unambiguous terms, that he made no such commitments.

CONCLUSION

In sum, I believe that we have firm grounds to conclude that Judge An-

thony Kennedy's views reflect the core values of constitutional interpretation. His record warrants confirmation by the Senate.●

Mr. KENNEDY. Mr. President, I wish to pay tribute to the chairman of the Judiciary Committee—who, as I mentioned, is necessarily absent because of illness—for the way that the whole series of hearings has been held to date and for bringing us to this stage in the nomination of Judge Kennedy.

I think I speak for all the members of the Judiciary Committee in commending Senator BIDEN for the fairness and the thoroughness of the series of hearings that have been held, and for the judicious way in which the committee conducted itself. As a result of his work, the Senate and the American people have a greater understanding about our constitutional rights and liberties.

I know that he wanted very much to be here today, and it is only because of illness that he is not. I know that I speak for all when I wish him a speedy recovery and take special note of his extraordinary leadership as the chairman of the Judiciary Committee in bringing us to this point.

Mr. THURMOND. Mr. President, I join in the statement just made by the distinguished Senator from Massachusetts. Senator BIDEN presided over the committee in these hearings in a fair and impartial manner and did a fine job. I regret he is not here today.

Mr. KENNEDY. I withhold the balance of my time.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I yield myself 3 minutes, if I take that much. I want to reserve what is not used at this time.

Mr. President, I rise today in support of President Reagan's nomination of Judge Anthony M. Kennedy to be an Associate Justice for the U.S. Supreme Court.

Mr. President, the duty we undertake today, to vote on a nominee to the highest court in the land, was granted to us over 200 years ago by the Constitution of the United States. The Constitution, one of the most magnificent documents ever written, is one that continues to reflect the wisdom and foresight of our forefathers.

Mr. President, I think it appropriate that we take a moment to reflect on the tremendous responsibility this document confers on the U.S. Senate. The Constitution assigns the Senate and the House equal responsibility for declaring war, maintaining the Armed Forces, assessing taxes, borrowing money, minting currency, regulating commerce, and making all laws necessary for the operation of the Government. However, the Senate alone holds exclusive authority to advice and consent on nominations, and this, without doubt, is one of the most important responsibilities undertaken by this body. It is one that takes on an even greater significance when a nomination is made to the Supreme Court.

Mr. President, a member of this Court must be an individual who possesses outstanding qualifications. In the past, I have reflected upon these prerequisites and I will only briefly reiterate, that I feel it essential that a nominee possess: integrity, courage, wisdom, professional competence, judicial temperament, and compassion. An individual with these attributes cannot fail the cause of justice and I believe that Judge Kennedy is such a person.

Judge Kennedy is one of the most eminently qualified individuals to be nominated to this high and extremely important position. He attended Stanford University from 1954 to 1957 and was awarded the degree of bachelor of arts with great distinction in 1958. From 1957-1958, after he had already fulfilled the principal requirements for graduation from Stanford, he attended the London School of Economics and Political Science at the University of London. During this time he studied political science and English legal history, and also lectured in American Government. Judge Kennedy graduated cum laude, from Harvard Law School in 1961 and practiced law for several years before his appointment to the Ninth Circuit. Since 1965 he has been a professor of constitutional law at the McGeorge School of Law, University of the Pacific. In his almost 13 years of service on the U.S. Court of Appeals for the Ninth Circuit, he has displayed the fine qualities that one looks for in a judge and more significantly in a Supreme Court Justice.

Judge Kennedy has vast judicial experience, participating in over 1,400 decisions and authoring over 400 published opinions. A review of his 400 written opinions indicates that he is among the leaders of thoughtful jurisprudence. His published opinions have earned him the reputation reserved for our most distinguished jurists, and furthermore Mr. President, his opinions clearly show that he is an advocate of judicial restraint. An attribute I consider essential for an Associate Justice of the highest court in the land.

He is a judge who examines viewpoints and arguments from all sides. As his opinions and testimony before the Judiciary Committee show, he is a man of intellect, open-mindedness, fairness, and one who demonstrates a keen sense of justice and scholarly approach to the law. Judge Kennedy does not, before hearing the facts and reviewing the appropriate law, develop preconceived ideas about what the ultimate results in a case should be. I have also noted that Judge Kennedy is a man of compassion. While he has upheld tough sentences, he has shown the fortitude to reverse a criminal conviction if an individual has been treated fundamentally unfair or his constitutional rights have been violated.

Mr. President, the Judiciary Committee held 3 days of hearings on the Kennedy nomination. During that time Judge Kennedy responded to questioning from Senators in an honest and forthright manner. The committee also heard from approximately 30 witnesses. Representatives of the American Bar Association's Standing Committee on the Federal Judiciary testified that Judge Kennedy was found to be among the best available for appointment to the Supreme Court and, therefore, the ABA gave him their highest evaluation, that of "well-qualified." The ABA committee's evaluation of the nominee covered his integrity, judicial temperament, and professional competence.

In summary Mr. President, a complete and thorough review of Judge Kennedy's background and experience indicates that he is competent, open-minded, fair and just, and furthermore that he is exceptionally well qualified to serve as an Associate Justice of the U.S. Supreme Court. His vast experience as a practicing attorney, professor of constitutional law, and nearly 13 years of service on the circuit court provide the ideal qualifications for the position to which he has been nominated.

I am confident that Judge Kennedy will have a most successful tenure as an Associate Justice. I congratulate President Reagan for making such a outstanding appointment and I wholeheartedly support it. I urge my colleagues to vote in favor of the confirmation of Judge Anthony Kennedy to be an Associate Justice of the U.S. Supreme Court.

Mr. President, let me repeat that I rise in support of the nomination of Judge Anthony M. Kennedy for the Supreme court of the United States. From every standpoint, Judge Kennedy is well qualified. He graduated from Stanford University in 1958 and received a bachelor of arts degree with great distinction. He attended London School of Economics and Political Science from 1957 to 1958. He graduated from Harvard Law School cum laude in 1961. So he has a very fine foundation, a splendid education to qualify him to begin with.

Then he has had tremendous professional experience. He was in the private practice of law. He has tried cases. He practiced law in San Francisco and also in Sacramento, CA, from 1962 to 1975, a period of 13 years. He has been a professor of constitutional law at the McGeorge School of Law, University of the Pacific, since 1965, a period of 23 years. He has been on the

Circuit Court of Appeals for the Ninth Circuit since 1975, almost 13 years.

Mr. President, I cannot imagine any finer experience of anyone to be on the Supreme Court of the United States than just what I have said about him and his experience, professional experience.

I want to say further that as a circuit judge, he has participated in over 1,400 decisions. Very few judges participate in that many decisions and he has authored himself over 400 published opinions. It shows that he has been very active since he has been on the court. He has had tremendous experience there and in all of this time no one can really raise serious objection to him. One might object to some point he has made at one time or another, in maybe one decision, but taken overall, on balance, I doubt if you will find a man in the United States who would meet more general approval than Judge Kennedy.

Judge Kennedy received the ABA's highest evaluation, a well qualified. That is the highest term rating the ABA gives—the American Bar Association—"well qualified." This is based on three points. One is integrity, another is professional competence, and the third is judicial temperament. On all of these counts Judge Kennedy qualified and received that rating of well qualified.

In closing, Judge Kennedy has demonstrated he is a man of intellect, openmindedness, fairness, and one who displays a keen sense of judgment and scholarly approach to the law. He is an advocate of judicial restraint, which is greatly needed in the courts of this country today.

Mr. KENNEDY. Mr. President, I yield such time as the Senator from Alabama requires.

The ACTING PRESIDENT pro tempore. The Senator from Alabama.

Mr. HEFLIN. Mr. President, I rise today to again vote my support for the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court.

Over the past several months President Reagan has nominated three individuals for a lifetime position on the Supreme Court.

Judge Kennedy has practiced law, taught law, and since 1975 has been a judge on the Ninth Circuit Court of Appeals. While on the bench, Judge Kennedy has written over 400 opinions which show him to be a conservative jurist in the mold of Justices Powell, Harlan, and Frankfurter. Many of Judge Kennedy's opinions have dealt with criminal law. Indeed, Judge Kennedy has become somewhat of an expert on criminal law. Importantly, Judge Kennedy has been tough, but fair, with criminals, and, as a judge, has been willing to consider the rights of victims.

In a recent speech in New Zealand to the Sixth South Pacific Judicial Conference, Judge Kennedy spoke of the need to be concerned about victim's rights. Judge Kennedy said that "the victim of crime, the only person who suffered harm in any immediate physical sense, has been left out of the criminal justice equation." I am in full agreement with his statement in that speech. I believe that the rights of victims should have equal consideration with the rights of the accused.

During Judge Kennedy's nomination hearing, he exhibited a remarkable understanding of our Nation's Constitution and our system of government. His written decisions and speeches reveal a man who is an able and intelligent jurist. He is a man who understands the critical role the Supreme Court plays in our democracy in preserving the rights of all, also understands the need for restraint in the exercise of judicial power.

Judge Kennedy's career on the ninth circuit has been characterized by this sense of restraint. It is evident from his desire to ensure that there is an actual case or controversy before hearing a case, his care in examining whether the parties have standing, and his practice of only deciding those issues necessary to reach a decision, that Judge Kennedy is truly one who believes in the concept of judicial restraint. Furthermore, in his questionaire, Judge Kennedy wrote that, "the courts must insist upon adherence to a set of principled restraints that will confine their judgments to the judicial sphere. Judges must strive to discover and to define neutral juridical categories for decision, categories neither cast in political terms nor laden with subjective overtones. Life tenure is in part a constitutional mandate to the Federal judiciary to proceed with caution, to avoid reaching issues not necessary to the resolution of the suit at hand, and to defer to the political process."

I am in full agreement with and strongly support Judge Kennedy's traditional view of judicial restraint.

While some individuals and groups have opposed Judge Kennedy, I do not believe that their opposition is warranted in light of Judge Kennedy's overall record. While I do not agree with all of his opinions, this disagreement in no way lessens my belief that Judge Kennedy will make an excellent Justice. A most fitting description of Judge Kennedy came from Mr. Nathaniel S. Colley, Sr., who described Judge Kennedy as a grown man but also a growing man.

During the Judiciary hearings on his nomination, Judge Kennedy was questioned about his views on a broad spectrum of constitutional issues. His answers were cautious, but forthright. He showed himself to be a judge who is sensitive to minorities and to the less fortunate. Importantly, Judge Kennedy demonstrated that he had no rigid constitutional theory or formula for deciding all cases.

While Judge Kennedy has no rigid constitutional theory for deciding all cases, his decisions do show the mark of a conservative jurist. He is a man who understands both the good and the evil for which judicial power has been utilized throughout our history and therein lies his philosophy of moving cautiously in this sphere. His conservatism, while pronounced, is not so severe as to prevent him from listening to other points of view or from keeping an open mind while he hears the arguments in a case.

I believe that the Supreme Court and our Nation will benefit from the presence of Judge Kennedy. I believe that he will leave his mark on the Supreme Court and on law in America.

Finally, I should like to take this opportunity to wish Judge Kennedy well in his new position, for I firmly believe that he will be confirmed.

Mr. THURMOND. Mr. President, I now yield 3 minutes to the distinguished Senator from Iowa [Mr. GRASSLEY].

The ACTING PRESIDENT pro tempore. The Senator from Iowa.

Mr. GRASSLEY. I thank the distinguished ranking minority member for yielding 3 minutes to me so that I can tell this body that I am very pleased to support President Reagan's choice of Judge Anthony Kennedy to the Supreme Court.

One week ago in the Judiciary Committee, I announced my reasons for supporting Judge Kennedy's nomination. I will not repeat that rationale here. Instead, I should like to focus on a related and important issue, one that is particularly relevant in the wake of the Bork, Ginsburg, and Kennedy nominations.

That issue is the role the Senate Judiciary Committee has permitted the American Bar Association to play in the Supreme Court nomination process.

As my colleagues know, I am not a lawyer. Those of my many colleagues who are lawyers know the ABA as an association representing about half of the country's practicing attorneys.

But the Judiciary Committee—with the executive branch as its accomplice—has permitted the ABA a role that far exceeds its rightful influence.

The ABA's standing committee on the Federal Judiciary currently conducts an evaluation process which purports to be an objective assessment of professional competence—but, in practice, has become quite vulnerable to partisan politics.

Everything that we stand for in this body and in this Nation—open, not secret, meetings; public deliberation and debate; the opportunity to con-

front one's accusers, and government accountability—all are absent from the ABA process.

The events of recent years have severely undermined the ABA's once unquestioned objectivity on judicial nominees. As one of my colleagues on the committee once concluded allowing the ABA to rate judges is like having "Jack the Ripper determine the qualifications of surgeons in 18th century England."

Mr. President, the time has come to dethrone the ABA. Increasingly, others are coming to the view that this element of the prevailing legal establishment has no special competence to sit in judgment of those nominated to the Federal bench. The January 28 editorial of the Wall Street Journal persuasively argues for an end to the status quo.

During the nomination hearings on Judge Kennedy, Judiciary Committee Chairman BIDEN suggested that perhaps the time had come to take a fresh look at the ABA's role. I am willing and anxious to participate in that reevaluation. As we reconsider the relationship between the ABA, the executive branch and the Senate, let us remember that it is the President's constitutional responsibility to nominate and the Senate's function to "advise and consent." Nowhere in our constitutional structure is there room for the role currently played by the ABA.

Currently, the ABA's Standing Committee on the Federal Judiciary conducts an investigation of the President's nominee and reports its "findings" to the public as: "well qualified," "not opposed," or "not qualified." The committee transacts its business in complete secrecy and offers no substantive legal analysis in support of its conclusions.

The ABA president selects 15 lawyers to serve on the committee, with no apparent requirement that they have any recognized expertise in constitutional law. Committee conclusions are, however, accorded great weight by the news media, which breathlessly awaits and reports the ABA "verdict."

Some on the Senate Judiciary Committee also believe the ABA is indispensable. Last year, our committee delayed hearings on Judge Robert Bork's nomination to the Supreme Court and seemed prepared to delay hearings on the nomination of Judge Douglas Ginsburg, pending completion of the committee's secret evaluation process. It is interesting to note that the committee increased the time taken for its evaluation of Supreme Court nominees from an average of 2 weeks to 2 months, with the coming of the Reagan administration.

Through its unofficial—but powerful—role, the ABA attempts to influence the ideology of the Federal courts. This contravenes the committee's avowed purpose and the ABA model code of professional responsibility, which encourages "lawyers to endeavor to prevent political considerations from outweighing judicial fitness in the selection of judges."

Until 1983, the committee specifically excluded consideration of "political or ideological matter with respect to the nominee." But in response to President Reagan's efforts to appoint qualified conservative lawyers to the courts, the ABA now states:

> The committee does not investigate the prospective nominee's political or ideological philosophy except to the extent that extreme views on such matters might bear upon judicial temperament or integrity.

Recent events illustrate that the exception swallows the rule and that despite its protestations to the contrary, the ABA closely scrutinizes the political views of judicial nominees and bases its evaluation on its perceptions of those views.

For example, when Judge Robert Bork was nominated for the District of Columbia Court of Appeals in 1982, the committee unanimously gave him its highest rating. He served with distinction on the appeals court; not a single one of his more than 100 opinions was overturned by the Supreme Court. His nomination to the Supreme Court in 1987 following this brilliant 5-year record as one of our leading jurists resulted in the most protracted investigation in the committee's history. Incredibly, the ABA's conclusion was divided, with four committee members voting Judge Bork "not qualified" on the basis of his "extreme views respecting constitutional principles."

During the ABA's investigation of Judge Douglas Ginsburg, a committee member disclosed to the press that he, or she—the ABA never revealed who breached its confidential process, had concerns that Judge Ginsburg shared Judge Bork's ideological beliefs. The committee member stated we might be getting little more than "a Borklet," further demonstrating the prejudice and politics of the ABA evaluation, not to mention that the "secrecy" of its process is honored only when the committee finds it convenient.

The ABA must be dethroned. I agree we need a check on the Executive and Senate to ensure that political cronies and favorites are not appointed to the Federal bench. This is as true today as when Alexander Hamilton warned of it in 1787 in Federalist 76. But the ABA has demonstrated a cronyism of its own; they are partial to, as Joseph Goulden in his study, The Benchwarmers, has put it, "men dedicated to the preservation of a milieu in which they have prospered." Traditional establishment lawyers are "in." Legal scholars and intellectuals—particularly conservatives—are "out." Consider the ABA's ratings of three other eminent conservative legal scholars Frank Easterbrook, Richard Posner, and Ralph K. Winter, all of whom now serve with distinction on our appellate courts. As conservative academics, their ABA ranking of "qualified" was the minimal level of acceptability. Clearly, the ABA, at least since 1983 when it expanded the scope of its evaluation to include ideology and philosophy, plays politics.

The ABA must account for its ratings. The unique role it plays requires it be honest with the Judiciary Committee and American public. As Senator Hugh Scott once noted:

> I doubt whether or not any private body should be privileged to exercise a veto over a function to be exercised by Congress; namely, the selection of judges. [For example,] I would not think the American Medical Association should pass on the Public Health Service. * * *

The Judiciary Committee has two choices to resolve this dilemma. First, we can simply discontinue the ABA's preeminent role in Supreme Court nominations. After all, the Judiciary Committee already conducts the same investigation undertaken by the ABA: The nominee's colleagues are interviewed; articles, speeches, and opinions are analyzed; and other legal experts are consulted about the nominee. If we choose this route, the ABA will still be welcome to present its views, as any interested group is, on a particular nominee, but its testimony will be recognized as that of the constituency it represents—lawyers in traditional law firm, corporate or other business setting.

Alternatively, we can continue to utilize the ABA to assess nominees' "competence, integrity, and judicial temperament," as the ABA currently defines its role, so long as the ABA adheres to the provisions of the Federal Advisory Committee Act. This 1972 law requires that, among other things, advisory committee meetings be open to the public. The act, passed to limit the "potential dominance," as Judge Charles G. Richey once phrased it, of advisory groups, clearly applies to the committee. In fact, the ABA views its role as that of an advisor in the nomination process. Lawrence Walsh, a former chairman of the committee, once told the Judiciary Committee:

> We are an advisory group. We do our best to present the facts openly and frankly and fairly to the President and his agents and to the Senate through [the Judiciary] Committee.

At the present time, the deference accorded the ABA gives it the power to undo a person's entire career, as a result of its clandestine and vague process. We must either discontinue the role of the ABA in its present capacity or recognize its advisory status and require it comply with the Federal Advisory Committee Act.

Mr. President, I ask unanimous consent that the Wall Street Journal arti-

cle to which I referred be printed in the RECORD.

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

[From the Wall Street Journal, Jan. 28, 1988]

LEST YE BE JUDGED

As Judge Anthony Kennedy rolls on toward confirmation, the Bork fallout continues, not least in raising the issue of whether the organized bar has any special role to play in judicial selection. For the net result of its split decision on Robert Bork was to give a patina of professional and intellectual respectability to the scurrilous campaign being run against him.

At one time everyone officially recognized Judge Bork's true pre-eminence. When he was appointed to the Court of Appeals for the D.C. Circuit, the ABA rating committee unanimously rated him "exceptionally well qualified." Subsequently he participated in 400 decisions and wrote 100 opinions as a member of the nation's second most important court. Not a single one was reversed, while several of his dissents were upheld on appeal.

After which, the ABA committee approved him by only a 10-4 vote. His nomination drew outright opposition from the Association of the Bar of the City of New York. It is ludicrous to suppose that Judge Bork's professional qualifications in 1987 were less impressive than they were before his five years of service on the bench. What changed was the political context; the political stakes were higher and the Reagan administration was weaker. The Bork-Reagan foes launched a political-advertising campaign against the nomination—at a cost of $10 million to $15 million according to the estimate of Suzanne Garment in her superb article in the current commentary. Suddenly Judge Bork's professional capabilities became a matter of debate within the bar.

What then is the meaning of the bar's supposedly technical and professional judgment? We do not need this judgment when, as in the Anthony Kennedy nomination, there is no controversy. But if at the first smell of blood the bar is going to play politics like everyone else, why should its opinions have any special status? Indeed, is it wise for the bar to lend its name to such an exercise? If a professional assessment becomes mere politics, will not this discredit the notion that there is something more regal to the law itself?

Some in the bar are asking these questions. Indeed, a group of dissenting New York lawyers has sued the City Bar Association seeking an injunction against further ratings of Supreme Court nominees, noting that the group's carefully drafted charter authorizes only the assessment of local judges and federal judges who sit in New York City. Judge Edward Greenfield denied a temporary restraining order, but asked the executive committee to wait until he ruled on the suit's merits before announcing its conclusion on Judge Kennedy.

The association responded by rushing out its recommendation of Judge Kennedy in direct defiance of the judge's request. Such is the respect for the judicial process displayed by the same lawyers who objected to Judge Bork on the grounds of "judicial philosophy." The dissidents will continue their suit, but nothing in the episode suggests that the bar enjoys any status that commands deference from the rest of us.

Several senators expressed similar doubts during the Kennedy hearings, questioning Harold Tyler, head of the ABA federal judiciary committee. They wanted to know, for example, why the committee votes in secret. Why don't the four anti-Bork members go before the public to defend their views, as senators do every day of the week? Indeed, there is a law, called the Federal Advisory Committee Act, which requires that advisory groups reach their recommendations in the full light of day. Mr. Tyler asserted his committee was exempt from the act, and needs confidentiality so that it can interview numerous sources, including sitting judges who would not be able to express themselves in public.

Senators also were testy about an anonymous quote from a member of the ABA committee in the Washington Post, calling Judge Douglas Ginsburg a "Borklet" even before the rating process. The Washington Post's leaker said something interesting: "There are concerns that Ginsburg shares many of the conservative ideological beliefs that doomed the Bork nomination." We certainly would like to know what member of the committee said Judge Bork was defeated over ideology, not professionalism.

On the broader question, Mr. Tyler's explanation was recorded back during the Bork hearings. "We cannot be unrealistic about what we are," he said. "I have admitted to this committee, my committee—they all knew it anyhow—my prejudices or biases as best I can. Others have done the same. But we cannot divorce ourselves and be 15 people who live a neutral, sheltered, irrational, nonworldly life." In other words, the members' assessments can't be counted on to be purely technical and professional after all.

The ABA committee had been shrouded in controversy even before the Bork nomination. The question of its status under the Federal Advisory Committee Act is at issue in two lawsuits pending in Washington. They started back in September 1985, when a Congressional quarterly article reported that the ABA committee gave names of people "under consideration" to Susan Liss, head of the Judicial Selection Project, so that "Member groups such as the NAACP Legal Defense Fund then may conduct their own investigations and send information to the ABA." The Washington Legal Foundation, a conservative legal group that didn't get such supposedly confidential names in advance, asked the ABA why.

The ABA committee said it would stop the practice, but the Washington Legal Foundation filed suit for the group's minutes under the FACA. WLF, joined by Public Citizen Litigation Group, a Ralph Nader affiliate, also has sued the Justice Department for asking a group for its views without enforcing FACA.

We referred to this controversy during the Bork battle, in a 107-word item concerning John D. Lane, a Washington lawyer who served on the ABA committee when the WLF suit was filed, was not reappointed when his term expired, and has again been appointed after a new position was created. This elicited from Mr. Lane a letter full of such words as "false and malicious" and other litigous language we wouldn't have expected from someone who presumes to vet judicial nominees for "judicial temperament." This was followed up by a letter from Mr. Tyler to the chairman of Dow Jones assuring us among other things that Mr. Lane "certainly does not have any desires to sue the Journal or anyone else."

The burden of Mr. Lane's complaint is that we suggested he had been accused of "leaking" the names and had been removed from the committee as a result. Both Mr. Tyler and Mr. Lane assure us he was not "removed" from the committee, and certainly we ought to make clear we hold Mr. Lane no more responsible than other members of the committee for the revelations to Ms. Liss. Our complaint is not with an individual, but with a process that invites politicization, then masks its results under the guise of objective, professional judgments.

The process invites the politicization not only of the bar, but, we are increasingly coming to suspect, also of the bench itself. The ABA committee sought opinions on Judge Bork from 77 Federal Court of Appeals judges and five Supreme Court justices, as well as other lower-court judges. A minority of these sitting judges opposed Judge Bork in these private hearings, no doubt encouraging the minority on the ABA panel, again lending a professional patina to the opposition.

What was the basis for these clandestine judgments? The judges making them offer no opinion that must withstand the scrutiny of either their peers or the public. Is it a good idea even to invite sitting judges to participate in such a process?

The back rooms of the D.C. Circuit Court are still buzzing with an anecdote. Just after Ronald Reagan went on television to announce his surprise Ginsburg nomination, Pat Wald, the liberal chief judge, ushered visitors out of her chambers to take a call from Senator Teddy Kennedy. Judge Wald told us that she took the call "out of courtesy's sake," that it lasted less than a minute and that she told Senator Kennedy that in Judge Ginsburg's "relatively few opinions, his positions were in most cases in conformity with those of the more recent Reagan appointments."

Then Senator Kennedy headed for the floor of the Senate to dismiss Judge Ginsburg as "an ideological clone of Judge Bork—a Bork without a paper trail—instead of a real conservative." This was a very different view than Senator Kennedy took of Douglas Ginsburg in 1986 when he introduced the former Cambridge, Mass., resident to the Judiciary Committee for unanimous approval as a circuit judge.

Several decades of activist judges already have diminished the law in the eyes of many people, who see it as essentially a political exercise in which the legal spoils go to the most effective special interest. The status of the law will be restored by restraint on the bench and by an ABA that restrains itself from claiming special competence to judge nominees. Certainly the executive branch ought not accord the ABA that status. Presidents don't let the American Bankers Association pick Fed chairmen, the Seven Sisters pick energy secretaries or the AFL-CIO pick labor secretaries. Why should lawyers have a quasi-constitutional role in picking judges?

Mr. THURMOND. Mr. President, I now yield 3 minutes to the distinguished Senator from Utah, [Mr. HATCH].

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. HATCH. I thank my distinguished colleague and thank my friend from Ohio for allowing me to go out of turn so that I can get over to the Rules Committee.

Mr. President, today we take the final step in filling this Supreme Court seat which has remained vacant, as far as I am concerned, for far too long. The nominee before us today has demonstrated that he possesses the qualities that are necessary and important in this most taxing of public callings.

I have been very impressed with Judge Kennedy. I think a lot of him. I think everybody does here. And this vote here will make that point, I think, in very, very strong terms.

I might say that the explanations of the majority report failed to reflect, it seems to me, a sound historical or jurisprudential picture of the reasons that Judge Kennedy will be and should be confirmed as an Associate Justice of the Supreme Court. Rather than dwell on the distortions and inaccuracies of this report, however, I prefer to focus on the merits of the individual chosen to succeed Justice Powell on our Nation's Highest Court.

Accordingly, I am honored to express my approval for an individual who is eminently qualified to serve in the highest judicial office of our land. Fourteen years as a practicing attorney, 20 years as a professor of constitutional law, and more than 12 years on the circuit court that defines Federal law for nine States and 37 million people have prepared Judge Anthony Kennedy well for the trust placed in him by President Ronald Reagan. I have no doubt that in coming decades this nomination may be counted as among the most significant actions taken by President Reagan in his two terms at our Nation's helm.

I express this confidence because Judge Kennedy has exhibited the kind of courage that is the hallmark of a great Supreme Court Justice. While on the ninth circuit, Judge Kennedy had the courage to refuse to enforce Federal statutes which failed to comply with the terms of the Constitution. For example, he invalidated legislative veto provisions in the Chadha decision.

This kind of courage will again be required of Judge Kennedy. Even while his nomination was pending, a circuit court in the District of Columbia invalidated the independent counsel law because it violated the separation of powers in the Constitution. I do not presume to know how Judge Kennedy might vote or even if he will be called upon to review that particular law, but I am confident that he possesses the ability and courage to decide whether Federal laws overstep the bounds of the Constitution.

Even more important than the courage to undertake that task, however, is a judge's wisdom and restraint. Judge Kennedy will no doubt become a respected Justice because he will base his decisions on the Constitution and the laws of the Nation. He does not have any political agenda and will not attempt to write his own preferences into law.

Some legal scholars and even some Senators have contended that judges need not base their decisions on the words of the Constitution. Instead they contend that judges are not worthy of service on the supreme Court unless they are willing to reach outside the Constitution to protect human dignity or some other vague and undefined principle. The problem with this notion is that it permits unelected judges to override the democratic laws created by the people without constitutional justification. For example, judges have overturned the capital punishment laws of 34 States even though the Constitution itself mentions the death penalty. This is known generally as judicial activism. In my mind, judges who take upon themselves to overrule the people's laws without clear warrant from the Constitution overstep their authority. Judge Kennedy's years of service on the ninth circuit and his testimony before this committee indicate clearly that he is not this kind of judge.

As he stated, he will practice judicial restraint, which is another way of saying he will refrain from using extraconstitutional principles to decide cases. This is the task of judges—to read the Constitution and to apply it to the facts of specific cases. A judge who reads things into the Constitution is not really acting as a judge, but as a politician in robes.

I recall what Judge Kennedy stated in a speech a year before his nomination: "The imperatives of judicial restraint spring from the Constitution itself, not from a particular judicial theory. * * * The constitutional text and its immediate implications, traceable by some historical link to the ideas of the framers, must govern judges." Judge Kennedy's profound respect for the Constitution is his best qualification to serve on the Supreme Court.

To those who classify judges who practice judicial restraint as conservative, he has the best response. As he states, judicial restraint is neither conservative nor liberal, but a requirement of the Constitution and a natural predicate for the doctrine of judicial review.

Judge Kennedy will be a champion of judicial restraint, like Justices Harlan, Frankfurter, Burger, Stewart, Powell, and many others before him. It is easy to understand why he has won President Reagan's trust. And it is easy to understand why he will win the trust of the American people as well. After all, he will let the people govern themselves, rather than presuming that he knows better than the people what rights and values deserve judicial enforcement.

Let me spend a few moments with my colleagues and examine some of the issues raised during the hearings that reinforce my belief that Judge Kennedy is well qualified for this most important governmental position.

CRIMINAL LAW

Few people realize that no category of case is more often litigated in the Supreme Court than criminal cases. From my point of view, this is entirely appropriate because life and liberty, not to mention the order and safety of our society, are no where more at stake than in criminal trials. Accordingly, I would like to review a portion of Judge Kennedy's record on criminal issues.

Studies have shown that the poor, women, the aged, and minority groups are disproportionately victimized by crime. When our criminal justice system fails, these groups are the first to suffer. Judge Kennedy has indicated that the plight of victims of crime ought to play an important role in the criminal justice process.

In October 1987, the Bureau of Justice Statistics reported that the rate of violent crime dropped 6.3 percent in 1986. Of course, this is no consolation to the victims of crime, but it is important to realize that since 1981, the rate of violent crime has dropped nearly 20 percent. Seven million fewer crimes occurred in 1986 than in the peak year of 1981. This does not mean the battle is being won. I am sure we can find statistics to show that drug abuse and its link to crime is on the rise. Nonetheless we are gaining ground on crime to some degree. Judge Kennedy feels that the courts have a role to play in ensuring that this hard-won progress continues.

In this regard, I would like to discuss one of Judge Kennedy's death penalty cases; namely, Neuschafer versus Whitley. In which an inmate had murdered another inmate. When Judge Kennedy first received the case, he sent it back to the lower court to make sure the evidence—a statement by the accused—was proper. When this was established, the case returned to the circuit court. Although several arguments were made against the State's decision to order the death penalty, Judge Kennedy found them to be insufficient. He found that there were aggravated circumstances that warranted capital punishment and that the penalty was not disproportionate to the crime.

Another capital case was Adamson versus Rickets. This involved the murder of an Arizona newspaper reporter with a car bomb. The defendant had confessed to the murder but escaped the death penalty in his first trial because of plea bargain. In a second trial, after the defendant had breached the plea bargain agreement, the Ninth Circuit Court of Appeals,

with Judge Kennedy dissenting, held that the double jeopardy clause barred a second trial on the issue. The Supreme Court overturned the majority of your court and followed your dissent in finding that the plea bargain should not figure into the double jeopardy clause in this instance. This resulted in the reinstatement of the death penalty for the cold-blooded car bombing.

We should also review a few other aspects of criminal law. For example, some court rulings might deprive the police of tools they need to investigate crime and apprehend criminals. Some courts have applied doctrines which result in convicting evidence being thrown out of court. This could allow a criminal to go free on a technicality. Few things undermine the integrity of the justice system in the mind of the American people any more. In any event, Judge Kennedy has decided several cases affecting the ability of police to fight crime. For instance, he decided in U.S. versus Allen in 1981 that helicopter overflights could be used for the purpose of gathering information of drug dealing.

Few doctrines have been more controversial than the exclusionary rule. This rule excludes any evidence from a trial that the police might have acquired in a flawed manner. In some ways, this emphasizes scrutiny of every minor aspect of police conduct to the exclusion of the search for truth in our courts. Justice Cardozo described this rule as allowing the "guilty to go free becaue the constable blundered." Judge Kennedy has had several opportunities to rule on the exclusionary rule. For instance, in the case of U.S. versus Peterson, he applied the good faith exception to the exclusionary rule to a drug arrest that occurred in the Philippines. He held that the introduction of evidence was permissible where U.S. officers reasonably relied on the assertions of Philippine officers that they had abided by the law, even though the Philippine officers had not. We can ask no more of our police than that they make every good faith effort to comply with the law. One other exclusionary rule case is perhaps worth examination. In U.S. versus Harvey, Judge Kennedy dissented from a ruling that overturned an involuntary manslaughter conviction because the results of a blood alcohol test were admitted into evidence. In that case, the defendant's blood had to be drawn at once or the alcohol content would have diminished. As he said in his opinion, "in this case, the exclusionary rule seems to have acquired such independent force that it operates without reference to any improper conduct by the police."

On the other hand, he seems to be clearly attuned to constitutional protections for defendants as well. For instance, in the case of U.S. versus Jewell in 1976, he dissented because a conviction occurred without ample instruction to the jury about the nature of intent required for a conviction. He was joined in that dissent by conservatives like Judge Wallace and liberals like Shirley Hufstedler. In any event, his record on criminal law issues is, in my mind, exemplary. He balances carefully the rights of law abiding citizens to a safe community and the rights of suspects to a fair trial.

U.S. VERSUS LEON

The press gave wide coverage to Judge Kennedy's dissent in the U.S. versus Leon case involving the exclusionary rule. The majority in that case contended that evidence in a drug case had to be thrown out of court because it was obtained on a warrant that was not supported by probable cause. The majority refused to create a "good faith" exception to the exclusionary rule in the absence of Supreme Court guidance.

In his dissent, Judge Kennedy contended that the warrant was in fact supported by probable cause and that the evidence of the drug transactions was therefore admissible. He, therefore, found it unnecessary to address the "good faith" issue. The Government appealed the case to the Supreme Court and argued for a good faith exception, rather than basing their appeal on the validity of the warrant, which was Judge Kennedy's argument. It would be wrong, therefore, to suggest that he acted without Supreme Court guidance in creating a "good faith" exception to the exclusionary rule.

Judge Kennedy's Leon dissent is noteworthy in its own right, however. In the first place, it seems to me that it demonstrates his judicial restraint. He dissented on the narrowest possible grounds—the validity of the warrant—instead of reaching out into uncharted territory, like the "good faith" exception reasoning. This shows also his commitment to law enforcement and his understanding of the realities of criminal law. As he noted in his dissent, the exclusionary rule becomes too rigid when courts "presume innocent conduct when the only common sense explanation for it is ongoing criminal activity." This case is one further instance of his commitment to an ordered society with ample tools to fight lawlessness.

COMPARABLE WORTH

Mr. President, we heard concerns expressed in the Judiciary Committee hearings from groups such as the National Organization of Women. This group and others had reservations about the legal and jurisprudential merits of Judge Kennedy's ninth circuit comparable worth case, AFSCME versus Washington, 1985. The comments on this particular group, without a clarification, might leave the false impression that Judge Kennedy is not fully supportive of women's rights. I would like to help clarify these issues. In the first place, that 1985 opinion expressed support for the Equal Pay Act, which requires equal pay for equal work.

My reading of Judge Kennedy's cases indicates that he is among the first to vindicate the rights of women who do not receive equal pay for equal work. He has expressed his willingness to enforce the Equal Pay Act.

Next, I would like to turn directly to the issues raised by the AFSCME case. That case presented a vary narrow issue, namely whether title VII of the Civil Rights Act was violated by the State of Washington in light of a study showing a wage disparity between several jobs held mostly by women and comparable jobs held mostly by men. In other words, this was a case requiring a determination of whether title VII defined wage disparities in comparable jobs as sex discrimination.

Because his opinion was based on the language of the statute, nothing in that decision, as I read it, prevents the State of Washington from changing its laws to adopt a compensation system based on comparable worth.

Morever, nothing in that opinion would prevent Congress from making wage disparities in comparable jobs evidence of sex discrimination. In my opinion, this would be a very questionable thing for Congress to do because, as Judge Kennedy stated:

> Neither law nor logic deems the free market system a suspect enterprise.

Nonetheless, Congress has done foolish things before and nothing in the AFSCME opinion would prevent Congress from expanding title VII to include wage disparities in comparable jobs.

I would like to make one further point before we look more closely at the specific reasoning of that opinion. Two circuit courts—the eighth circuit in the 1977 case of Christensen versus Iowa and the 10th circuit in the 1980 case of Lemons versus Denver—had rejected comparable worth arguments even before Judge Kennedy's 1985 opinion. Moreover, another circuit, the seventh, has since decided a comparable worth case and cited his opinion as authority for once again rejecting a comparable worth claim. This was the 1986 case of American Nurses versus State of Illinois.

I would just like to quote from one of those other opinions, the 1977 opinion out of the eighth circuit. This court stated several years in advance of Judge Kennedy's opinion that:

> We do not interpret Title VII as requiring an employer to ignore the market in setting wage rates for genuinely different work classifications.

This language sounds remarkably similar to Judge Kennedy's conclusion that:

> The State did not create the market disparity and has not been shown to have been motivated by impermissible sex-based considerations in setting salaries.

I would like to examine to some degree the methods of analysis Judge Kennedy employed in deciding this case because I think this case is an excellent example of the kind of careful legal analysis we should seek in our Supreme Court Justices. The Supreme Court has acknowledged two theories of employment discrimination under title VII. The first is the disparate impact theory which means that a neutral employment practice may nonetheless be illegal if it has a disproportionate impact on women. The second is the disparate treatment theory which means an employment practice is only illegal if undertaken with a discriminatory intent. Judge Kennedy's opinion analyzed the facts of the case under both theories.

Under the first test or the disparate impact test, Judge Kennedy found that allowing market forces to set salaries was not the kind of specific, clearly defined employment practice to which disparate impact analysis may be applied. To make this clear, he would be likely to apply a disparate impact analysis to a specific employment practice that excluded individuals below a certain weight or height because this would have the effect of excluding women. In fact, this is the situation presented by the Dothard case where the Supreme Court applied the disparate impact test. On the other hand, several courts have acknowledged that broad ranging compensation policies are not well suited to the disparate impact model.

As the Senate knows from considering civil rights legislation in the past, discriminatory intent may be inferred from circumstantial evidence. In Judge Kennedy's analysis of this case, there was not sufficient circumstantial evidence to support a finding of discrimination based on the second test, which requires some showing of discriminatory intent.

The Willis study, which identified the salary disparities in various comparable jobs in the State of Washington, and was offered as evidence in this case, was not evidence of this intent. The study identifies some disparities but it does not show evidence of discriminatory motive in setting those different salary levels. In fact, just the opposite, it shows that the market was relied upon by the State and the market system created some differences. I would just observe that Judge Kennedy's treatment of this very sensitive issue is itself very sensitive. He examined every possible legal theory; he gave every possible advantage to the evidence presented by the plaintiffs; and he finally reached a result.

In addition, this was a unanimous opinion, which was not reheard en banc by the ninth circuit. These facts speak even more persuasively for the efficiency and accuracy of Judge Kennedy's legal reasoning. We have heard that some legal commentators have criticized this opinion in law reviews and other publications. According to my quick search, this case has been the subject of 13 law review articles. It is not correct to say that all of these have been critical. In fact, several have been very complimentary. For example, the Washington Law Review in 1986 contained the following observations:

> Judge Kennedy was correct in holding that AFSCME failed to establish a prima facie case of sex-based wage discrimination, because the use of market wage rates, alone, is not sufficient evidence of discriminatory intent.

Another observer noted that Judge Kennedy's opinion was an "admirable exercise of judicial restraint;" 9 Harvard Journal of Law and Public Policy 253 (1986). Although not noted for legal commentary, the Washington Post editorial of November 22, 1987 seemed a fine summary of this entire subject:

> Judge Kennedy was right. The law requires equal pay for equal work, not comparable work.

I would simply note that Judge Kennedy was not only correct, but he was sensitive and careful in his legal analysis. The care with which he reached his conclusion is just as important as the conclusion itself. I commend the judge for his work on this difficult issue.

CIVIL RIGHTS CASES

Based on a few isolated cases, the impression has been created that Judge Kennedy is not fully sensitive to the rights of minorities and women. I would respectfully suggest that a full reading of his civil rights cases and record clearly yields a very different conclusion. Let me just review with my colleagues a few of his cases that will present a more complete picture of his record on civil rights.

In the 1980 case of Flores versus Pierce, Judge Kennedy heard a suit brought by several Mexican-American restaurant owners who alleged that city officials were racially motivated in protesting their applications for liquor licenses. In his holding, Judge Kennedy found that the protests which were frustrating efforts of these Mexican-Americans to do business were indeed racially motivated. Using both the disparate impact and disparate treatment theories, he found clear evidence of discriminatory intent and upheld the damage award of $48,500 against the prominent city officials who were the defendants. In my mind, this is a classic example of a courageous judge standing up, when the evidence warranted it, for the rights of minorities against the powers of city hall.

In a similar vein, I would like to review the 1984 Jones versus Taber case involving a prisoner who had been mistreated but had foregone any legal claims for a mere $500. This prisoner had been stripped, gagged, chained to a wall, and hosed with cold water, yet without the advice of counsel had accepted $500 in exchange for an agreement not to seek legal redress. Judge Kennedy found that the acceptance of the $500 was not completely voluntary and informed, thus not binding. This had the effect of restoring the prisoner's rights to sue the offending officials. Once again, this must be viewed as an instance of judicial protection of valuable civil rights.

Another 1984 case, McKenzie versus Lamb, raises the same point. In that instance, several turquoise jewelry salesmen were arrested without probable cause. The plain clothes police had no evidence that the defendants were selling stolen property, yet they arrested them anyway. Accordingly, Judge Kennedy permitted a lawsuit against the defendants.

Although many other cases might show a similar disposition to protect individual and minority rights, I will just call attention to one more example—the 1984 case of Bates versus Pacific Maritime. This involved an employer who had certain firm obligations to correct racial discrimination under title VII. The employer sold his business and his successor claimed that he did not need to abide by the obligations to hire minorities. In his opinion, Judge Kennedy held the successor—who had assumed the same operations and kept the same personnel as the offending employer—was bound to meet all the obligations of the remedial consent decree. This vindicated the civil rights of those who had been, or might have been, discriminated against by this firm. Undoubtedly there are many other examples of Judge Kennedy's sensitivity to civil rights, but I selected these few to highlight his larger record.

Moreover, I would suggest that several cases which might be cited for evidence of reluctance to uphold civil rights in fact stand for a much different proposition when viewed carefully. Take, for example, the case of Topic versus Circle Realty dealing with jurisdiction under the Fair Housing Act. The real effect of this 1976 holding did not deny the minority plaintiffs any civil right, but only suggested that the best remedy for the violation might be the administrative conciliation process. In the event the conciliation failed, the plaintiffs could still have returned to court. In other words, this holding denied no rights,

but only sought the best way of vindicating those rights.

In that case, the individuals seeking relief were teams of investigators trying to find out if steering were taking place, although they were not personally seeking housing. Judge Kennedy found that these individuals were entitled to pursue relief under section 3610 of the act which leads to administrative conciliation remedies. He found that these housing testers were not entitled to access immediately into the Federal court system under section 3612 because this latter section was much more narrowly worded and appeared to exclude individuals who had not actually been the victims of discrimination. Direct access to Federal courts was limited to actual victims of discrimination, while any person could get access to the administrative remedy which Judge Kennedy and his colleagues noted might be "not only * * * an adequate, but a superior, remedy." This was a unanimous case that was not reviewed by the Supreme Court.

It is true that the Supreme Court found that section 3610 and section 3612 offer parallel remedies to the same plaintiffs, but this occurred 3 years later in the Gladstone Realtors case. Even this Supreme Court case was split with two Justices dissenting. In any event, this was a complex statutory interpretation case, but Judge Kennedy's holding did not deny anyone the right to fair housing. In fact, his holding specifically stated that anyone who was actually steered away from housing opportunities due to race would get immediate access to court. This is hardly a holding adverse to civil rights.

One final point on Judge Kennedy's reasoning. He reasoned that if everyone could get immediate access to Federal courts, the administrative remedies under section 3610 would become mere surplusage because everyone would circumvent the administrative procedures and go directly to court. His reasoning gave meaning to both sections 3610 and 3612. This, in my mind, was very strong reasoning and probably a significant reason that his ruling was unanimous.

I would next like to turn to the case of Spangler versus Pasadena City which arose in 1977. Judge Kennedy actually decided two cases dealing with the issues involved with court-ordered desegregation in Pasadena schools. The first was a procedural matter concerning whether certain parents could challenge the creation of magnet schools. The second and more important case dealt with whether the district court should relinquish its jurisdiction after more than 10 years of court-ordered busing.

His conclusion that the district court should relinquish its jurisdiction was based on the clear finding that the school board was in full compliance with integration efforts and had committed to maintain the policy.

> The remedy ordered by a federal court to correct racial segregation in a school system may not be more extensive than is necessary to eliminate the effects of the constitutional violation that was the predicate or the court's intervention.

Again, this was a unanimous opinion which was not reviewed en banc or reversed by the Supreme Court. As Judge Godwin stated about this request to declare the desegregation order a success by ending it:

> "If not now, and on this showing, when, and on what showing" will the governance of the school system be restored to the elected officials who are charged with that governance under state law?

In other words, this opinion was little more than a declaration of victory for desegregation and a determination to terminate the burdens of busing in light of the success. Once again, this is hardly a case of insensitivity to civil rights. Judge Kennedy's record on civil rights is one of which he can be justifiably proud.

CLUBS

Mr. President, I would like to revisit for a moment the question of club memberships, and answer a few questions that may still linger. First, let's examine Judge Kennedy's Olympic Club membership. He joined this club in 1962. Despite the club's virtues of public service and charitable activities it also had flaws. At the time he joined, the club was restricted to white males.

We all agree that this racial policy was reprehensible, but we must recall that this was 2 years before the Civil Rights Act of 1964 which outlawed discrimination in public accommodations. In 1962, it is sad to say that many clubs had such policies. That was why Congress enacted the 1964 act. It took a few years for individuals and clubs to learn the full implications of the 1964 enactment, but the Olympic Club removed its racial ban in the late 1960's.

The next important event in this entire saga deals with the events of last summer. Evidently the Olympic Club was the site of the U.S. Open, a great honor for the club. When the press learned that the club, according to its bylaws, was only open to "gentlemen," the reaction was one of tremendous controversy.

It seems to me that this reaction might have been somewhat unexpected. As I understand it, over 1,000 women have privileges at the club and regularly use its facilities. The problem is that they are not members in their own right, but based on their husband's membership. Still, with women at the club regularly, the bylaws were probably not a burning question. I mention this only because some might question why Judge Kennedy did not start to act sooner to remedy the situation. Apparently this heightened scrutiny called the matter to the judge's attention, because it was at this time that he began to discuss with the club leadership his concerns about the club policy. These discussions also included a letter dated August 7, 1987, in which the judge asked to be notified of the results of a poll of the membership. That letter is a clear indication that he intended to take action based on the outcome of the poll. I would like to quote just a sentence from the letter: "The fact is that constitutional and public morality make race or sex distinctions unacceptable for membership in a club that occupies the position the Olympic Club does." Judge Kennedy was strongly urging the club to end discrimination.

One other point is worth repeating. This occurred in the first week of August. At that point, Judge Bork was President Reagan's nominee, hearings had not yet begun for Judge Bork, and most commentators were predicting that it would be a difficult fight, but Judge Bork would be confirmed. Moreover Judge Kennedy's name had not surfaced as one of the leading candidates for a Supreme Court nomination in the way that Cliff Wallace had. I only mention this because we ought to be completely clear that he was acting out of a sense of "constitutional and public morality" as he said, not on the basis of any hint that there might be a higher calling in his future.

Frankly, Judge Kennedy's actions seem to be above reproach. He is no longer a member of the Olympic Club and the most he could be faulted for is not recognizing the problem earlier, but then no one else had either. It was the U.S. Open which brought attention to the issue. Many clubs may have similar policies that have gone unnoticed. I am aware of popular clubs in Washington, DC, for instance, with this kind of policy. In any event, I can not see how his conduct can bring anything more than praise.

The same can be said for Judge Kennedy's involvement with the Del Paso Country Club, the Sutter Club, and the Elk's Lodge. The Del Paso Club also conducts several worthwhile activities and supported worthy community ventures and its membership is open to all persons. In fact, the club has women and minority members according to my understanding. It has had women members since the 1940's according to my records. This might be viewed in some respects as a very commendable record. The concern in this case involved technical language of the bylaws which appeared to favor males. In the late 1970's, at a time when the Supreme Court was an institution Judge Kennedy probably never expected to join, he expressed concern

over the perception problem of the club.

Judge Kennedy's concern prompted changes in the bylaws, however, the perception problem continued to some degree, which prompted the judge to resign. Once again, I can only say that his actions demonstrate nothing but acute sensitivity to any perception of bias. Even when the bylaws might have technically complied with the law, he urged effort to remove any residual sense of difficulty.

Judge Kennedy's attention to his judicial and ethical duties is particularly underscored by his activities with respect to the Sutter Club. He joined this club in 1963, well in advance of the enactment of the 1964 Civil Rights Act. In this case, however, the club's bylaws did not bar women, but the club's practice appeared to exclude females.

His sensitivity to this concern in 1980 is once again a compliment to his moral sense of balance. Even before Reagan was elected President, let alone before he appointed Judge Kennedy in his second term, the judge was aware of the problems in this club's practice and acted to remove himself. He removed himself from this club in 1980, because the practice of the Sutter Club was much more open and clearly in conflict with his judicial duties.

The propriety of his actions with respect to club memberships is bolstered by his actions with respect to the Elks lodge, well known for its charitable and service activities. Again, this organization does not provide membership to women, and in 1978, years before President Reagan was elected, Judge Kennedy responded to the perception problem and resigned. His actions as a whole are very commendable with respect to upholding his ethical duties.

VOTING RIGHTS

Voting rights may well be the central rights of a system of self-governance. By voting, Americans directly shape the laws and rules to which they will be subject. Judge Kennedy has decided one voting rights case—the 1980 James versus Ball case. In that case, he considered an Arizona voting plan that limited votes for a water development project to landowners. The question was whether this particular voting plan fit within an exception to the one-man, one-vote rule which permits a disproportionately affected group to have a larger role in governing a water district.

In his review of the case, Judge Kennedy found that this water district produced power that would go to landowners and nonlandowners alike. Therefore, the Supreme Court disagreed. The Supreme Court holding was 6 to 3 and was essentially just a finding that this particular water district was sufficiently specialized and narrow to fit within the exception.

The Supreme Court did not question Judge Kennedy's reading of the law, only the facts. The higher Court read the facts differently and concluded that this water district was specialized enough to fit within the exception to the one-man, one-vote rule. In any event, no one can question that Judge Kennedy was seeking the broadest possible protection for voting rights.

FIRST AMENDMENT

Few provisions of the Constitution are more important to Americans and our way of life than the free speech guarantees of the first amendment. Judge Kennedy has expressed his view of the importance of the speech clause and its role in our society.

American jurisprudence is a model for the rest of the world because it forbids any prior censureship or restraints on speech except under the most extenuating circumstances. One of Judge Kennedy's cases dealt with an attempt to place a restraint on the broadcast of a TV program. This was the 1979 case of Goldblum versus NBC, where he held that the privacy and fair trial interests of the petitioner, an executive officer implicated in an equity funding scandal, were not sufficient to block broadcast of the TV program.

In my mind, it is significant that the courts, too, can sometimes forget to protect the Constitution's prior restraint doctrine. Fortunately, other courts are available to correct those errors. Although access to government records is not a first amendment speech issue, it is nonetheless related to the access which our citizens have to their government. In that sense it is related to the very principles by which citizens participate in a government run by the people. In this regard, Judge Kennedy, in his 1985 CBS versus District Court case, rejected the Government's effort to suppress the media's access to certain sentencing documents in a case related to the DeLorean trial. His decision was based on "the presumption that the public and the press have a right of access to criminal proceedings in documents filed therein. * * * The right of access is grounded in the first amendment and in common law * * *."

One further first amendment issue arose in his past cases. This involved the operations of the Federal Election Commission. In the 1980 California Medical Association case, he decided that contributions to political action committees are not eligible for the full protections of the free speech clause and may be limited. He held that when people contribute to a PAC, they choose that committee in order to express themselves on political issues and they make the contribution to advocate their views. These donations are analogous to contributions to candidates.

In reaching his decision, Judge Kennedy referred to the Buckley versus Valeo to support his holding. This was a case in which the Supreme Court split 5 to 4 on these issues. They are difficult ones. No doubt the Supreme Court will continue to make important decisions relative to the bounds of the free speech clause and the people's access to information about their government. In light of Judge Kennedy's record, I have full faith that he will weigh the appropriate factors and be guided by the appropriate doctrines.

PRIVACY DOCTRINE

As Judge Kennedy correctly noted in a speech to the Canadian Institute for Advanced Legal Studies last year, "Neither the right [of privacy], nor the word [privacy], is mentioned in the text of the United States Constitution." However this does not mean that the Constitution affords no protection to privacy.

I certainly share Judge Kennedy's view that vital privacy values are protected by the first amendment speech and religion clauses, the fourth amendment search clause, the fifth amendment and so forth. If, however, a court accepts a general notion of privacy protection in the due process clause or elsewhere, how does a court find a principled basis for limiting that protection to marriage and family concerns? How would a court find authority to devise a principle that excludes other privacy concerns, like homosexuality, drug use, and the like?

Few of Judge Kennedy's cases have received more attention than the homosexual rights case, Beller versus Middendorf. As we all know, the Supreme Court has decided a similar issue in the Bowers case where it was asked to determine if the general privacy right embraced homosexual conduct. In his determination of the issue, Judge Kennedy stated: ". . . where the government seriously intrudes into matters which lie at the core of interests which deserve due process protection, then the compelling state interest test * * * may be used."

As we well know, no general right of privacy was recognized for the first 175 years of our Constitution's history, which may cause some to question whether it is indeed fundamental. In that same speech to the Canadian Institute, Judge Kennedy noted that "the Due process clause in not a guarantee of every right that should inhere in an ideal system" and that "* * * judicial independence and its legitimacy is a necessary part of the equation when one debates the legitimacy of a source or method of constitutional interpretation. If we overreach, it is fair to call our commissions in question."

I would only note that in this area one respected legal scholar, Larry Tribe of Harvard, has predicted that

the "eventual unfolding of doctrine in this area" will someday encompass "homosexuality, polygamy, adultery, bestiality, as well as variations such as group sex which are generally dealt with under sodomy and fornication laws." American Constitutional Law at 944-946. I would hope that legal predictions and writing of this nature will not influence the directions of Supreme Court decisions.

ORIGINAL INTENT

During the Judiciary Committee hearings with Judge Kennedy there was much discussion about original intent. In his characterization of what he means when he refers to original intent, Judge Kennedy stated that the term is best viewed "in the sense of what were the legal consequences" of the actions of the legislators. Referring to Congress, he noted: "Your actions have an institutional meaning. One of you may vote for a statute for one reason, and another for another reason, but the courts find an institutional meaning there and give it effect."

Thus our fundamental law is the text of the Constitution as written, not the subjective intents of individuals long dead. Specifically he was asked if statements by the Members of the 39th Congress acknowledging segregated schools meant that the 14th amendment permitted a "separate but equal" reading. Judge Kennedy stated, and I believe he was correct, that the text of the 14th amendment outlaws separate but equal regardless of the statements or subjective intents of some of its authors. Often the framers write into the Constitution a rule which they themselves cannot live. This happened with the 14th amendment. The 39th Congress never completely lived up to the aspirations they included in the Constitution, but we should live by the words of the Constitution, not by the subjective intent or practices of its authors.

In a similar vein, the framers could not anticipate the age of electronics, but they stated in the fourth amendment that Americans should not be subject to unreasonable searches. The words and principles of the fourth amendment govern situations beyond the subjective imaginings of its authors in 1789. Judge Kennedy noted that judges inquire into original intent "to determine the objective, the institutional intent. It is the public acts of the framers—what they said, the legal consequences of what they did, and * * * not their subjective motivations."

The statements of single individuals may be important, but courts should seek for the general consensus of the ratifying society at large. Individual statements are only valuable if they represent that consensus. All historical evidence of original meaning is relevant to the meaning of the text, but none should be given undue weight or taken out of context.

Some have argued that original meaning requires courts to decide cases based on what the framers would have said had today's problems been put to them as an original matter. It seems to me that this overlooks that our modern society is vastly different from the past. We should ask what principle the framers put into the Constitution. Once that is ascertained, it is our job to apply it to modern problems. Trying to guess what the framers might have done places undue emphasis on intent again. The question is what does the Constitution say about modern problems, not what framers might have said if they could have foreseen those problems. We must be true to decisions they did make, not decisions they might have made.

Judge Cooley, a 19th century jurist, stated: "What the Court is to do, therefore, is to declare the law as written, leaving it to the people themselves to make such changes as new circumstances may require. The meaning of the Constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it." Judge Kennedy's statements on this issue indicate that it is his view that courts are indeed called upon to apply the Constitution's set principles to new circumstances. This will develop new doctrines and new applications. But the meaning of the Constitution does not change, only its applications.

STARE DECISIS

Respect for precedent, also known as the doctrine of stare decisis, is an important ingredient of American law. Justice Brandeis expressed the purpose of the doctrine with great power: "Stare decisis is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than that it be settled right. This is commonly true * * * provided correction can be had by legislation. But in cases involving the Federal Constitution, where correction through legislative action is practically impossible, this Court has often overruled its earlier decisions." Burnet versus Coronado Oil (1932). This is a formulation of stare decisis with which Judge Kennedy agrees.

The merits of following past precedent, particularly in statutory interpretation where Congress can make corrections by statute, are predictability and confidence that the law does not change with the personnel of the court. On the other hand, it is wise to overrule an erroneous statutory interpretation when disruption to institutions and the intent of Congress outweigh the need for stability.

The Supreme Court is sworn to uphold the Constitution, not its own case law. We are all grateful that past Courts have taken this view because they upheld the Constitution in overruling Plessy versus Ferguson and the Court's Lochner substantive due process era. Therefore, the occasion may arise when the Court would consider overruling its own constitutional precedent. At the same time, many great jurists have reached the conclusion that some past Supreme Court decisions should not be overruled even if they appear to have been incorrectly decided years ago. The reason given for refusing to revisit settled cases is that they have now become so engrained into our jurisprudence and so many expectations and institutions have been built up around those settled cases that it is no longer prudent to consider a reversal. Judge Kennedy has indicated that he will carefully weigh both of these values as he confronts the issue of stare decisis.

SEPARATION OF POWERS

Our Constitution envisions a National Government of separated powers. Each of the three branches is supreme within its own areas of governance and each is subordinate to others in areas not allocated to it by the Constitution. The judiciary and particularly the Supreme Court has the responsibility to police the bounds which separate the coordinate branches. These points are hallmarks of Judge Kennedy's legal philosophy, as evidenced in his Chadha decision which protected the prerogatives of the executive and judicial branches against Congress' efforts to impose an unconstitutional legislative veto.

The Chadha decision, in a fashion that seems to be characteristic of his thorough approach to cases, considers each of the justifications for a one-house veto and shows how none of them satisfies the Constitution. I would like to go through those briefly to better illustrate how he breaks a case down into smaller issues and resolves those questions.

Immigrants are either deported or not depending on an executive determination by the Justice Department. That executive decision can be appealed to a circuit court. The first argument for a one-house veto was that it was necessary to correct errors made by the executive or judicial branches. Judge Kennedy found this veto to be insufficient as a corrective device because it usurped certain functions central to the executive and judicial branches and disrupted the operations of those other branches. The judiciary, for instance, is responsible to adjudicate cases and controversies, yet this veto rendered the judicial adjudications null and void. Similarly the executive branch's execution of the laws was voided by the congressional interference.

The next justification for the veto was just that Congress was entitled to

share in the administration of a statutory program. The flaw here was that Congress was not attempting to change the course of future administation of a program, which it is entitled to do by changing the law. Instead Congress was meddling in specific facts of past cases without changing the law. This was a congressional attempt to execute the current law, rather than to change it.

Finally it was argued that Congress was just using the veto as a quasi-legislative act, much as it might pass a private bill to affect the outcome of a particular matter. This argument was also found to be insufficient. A one-house veto would not suffice as a legislative act because it did not go through the second house, nor did it gain Presidential approval. This Chadha decision was a courageous judicial act. It is not easy for a judge to risk disagreeing with Congress, yet it is essential to our constitutional system. The best statement of why this kind of courage is essential is found in Judge Kennedy's writings. He states: "The * * * first purpose [of the separation of powers principle] is to prevent an unnecessary and therefore dangerous concentration of power in one branch."

According to my analysis, Judge Kennedy also decided one other important separation of powers case—namely Pacemaker versus Instromedix which dealt with the validity of trials conducted by magistrates with the consent of the parties. This process was upheld. Individuals could allege no harm in trials conducted by magistrates because the parties agree in advance to submit to that jurisdiction. Moreover there is no harm to the constitutional structure because article III judges appoint and can remove magistrates thus assuring that full control of the judicial process remains with life-tenured judges. Several other circuits have considered this issue and have generally agreed with Judge Kennedy's analysis.

The question of the proper balance to be struck in separation of powers issues will be important to the Supreme Court in future years. It seems to me that Judge Kennedy has demonstrated a marvelous grasp of these issues and has indeed been a magnificent defender of constitutional principles in this area.

SUPREME COURT INSTITUTION

There is much value in a unanimous Court. When the Court is unanimous, it tends to put an end to any further debate about the merits of a decision. Supreme Court historians have recounted how Chief Justice Burger labored diligently to get a unanimous Court in the United States versus Nixon case concerning Executive privilege during the Watergate era. Similarly, historians report that Chief Justice Warren worked to get a unanimous Court on Brown versus Board. A Supreme Court Justice is sworn to uphold the Constitution and we should expect Judge Kennedy to do nothing else, but there might be times when unanimity on a ruling is more important than a dissenting view. In his analysis of this particular issue, Judge Kennedy indicated that he has grappled with this issue and has at times "concurred in an opinion simply because [he] didn't think the majority had it right * * * and * * * there is much * * * to commend judges to try to concur in other judges' opinions."

There is another side of this coin—the need to stand courageously alone for principle. Plessy versus Ferguson was the infamous separate but equal case of 1896. As you well know, a single Justice—Justice Harlan—issued a remarkable dissent reminding the Nation that the Constitution ought to be colorblind. Judge Kennedy indicated that if a matter of principle has been ignored, or if a matter of principle affects constitutional rule, or there is a principle that affects the judgment in a case, then a judge "must state that principle regardless of how embarrassing or awkward it may be."

The Supreme Court is an institution which must gauge and protect its own credibility and standing as the leading voice of one of the coordinate branches of government. In recent years, the Court's opinions have become far more complex. Plurality opinions have multiplied. Hardly any opinion is issued without an accompanying flurry of concurrences and dissents. On one hand, this is an important part of the process because arguments are preserved for the future and the law tends to develop more deliberately as the legal and political communities respond to an unresolved mosaic of opinions on a single issue. On the other hand, when the Court issues an opinion which nods to both sides of an issue or which includes a five-prong analysis of complex factors, what the Court has actually done is abdicate. Instead of giving clear guidance, it has left to lower courts to give various kinds of emphasis to various parts of the mosaic.

In order to get shorter, more succinct, and clearer guidance in these opinions, Judge Kennedy indicated that "Justices must be conscious of the duties that they have to the public, the duties they have to the lower courts, the duties they have to the bar—to give opinions that are clear, workable, pragmatic, understanding, and well-founded in the Constitution. * * * [J]udges must be also careful about distinguishing between a matter of principle and a matter that really is dear to their own ego."

SCHENLEY INDUSTRIES ALLEGATIONS

Questions were raised about Judge Kennedy's conduct as a representative for Schenley Industries which is one of the larger liquor distillers in the United States. In fact, the L.A. Times reported on November 12 that he was a lobbyist for the company at a time that it was paying illegal kickbacks to liquor distributors and restaurants in New York. The facts show that this allegation is totally false.

Judge Kennedy stopped representing Schenley when he took a seat on the ninth circuit in 1975. It was not until 1977 that Schenley pled guilty to paying some illegal kickbacks in New York in 1973 and 1975. Judge Kennedy has stated that he never had any involvement with Schenley's business dealings outside of California. Moreover, officials of the intelligence unit of the New York Liquor Authority confirm that there is no record of any involvement of Judge Kennedy in the violations by Schenley.

Upon closer examination, even the L.A. Times article is careful to state that "records give no indication that Judge Kennedy * * * played any role in the illicit schemes, for which Schenley later agreed to pay $79,000 in fines." I only wish this had been the headline. One further point, the California Department of Alcohol Beverage Control affirms that Judge Kennedy's name never arises in connection with any investigatory matters. I hope these facts put any lingering questions about this point to rest.

CONCLUSION

Judge Kennedy has had a distinguished legal career. A review of his decisions on the Ninth Circuit Court of Appeals and his testimony before the Judiciary Committee reveal a man who understands the law and the role of the Supreme Court in upholding the law. He is a man of compassion who will use the Constitution to protect the rights of all citizens. The President has made an excellent decision in submitting the name of Judge Kennedy to this body for its advice and consent, and I would urge all of my colleagues to support this nomination.

I express my remarks for Judge Kennedy and my total support for him and I believe the American people are going to be very pleased and very happy to have this man on the Court.

Mr. KENNEDY. I yield the Senator from Ohio 15 minutes.

The ACTING PRESIDENT pro tempore. The Senator from Ohio.

Mr. METZENBAUM. Mr. President, I am pleased to stand in support of the nomination of Judge Kennedy to be an Associate Justice of the U.S. Supreme Court. Judge Kennedy is eminently qualified by reason of character, temperament and judicial philosophy to serve on the Nation's Highest Court.

Judge Kennedy impressed the entire Judiciary Committee with his intel-

lect, judiciousness, openmindedness, respect for precedent, and capacity for growth. These are the quintessential qualities of judging, qualities which Judge Kennedy possesses in abundance. He is a judge's judge.

While the nominee is well-qualified for a seat on the Court, I am troubled by what appears to be an insufficient sensitivity on his part in the area of civil rights. Though his personal commitment to racial and sexual equality is beyond question, he is not one who, by temperament or outlook, has reacted aggressively and boldly against discrimination, in whatever form it raises its ugly head. In too many cases—the Aranda, AFSCME, and Topic decisions, to name a few—he has tolerated subtle, systemic forms of racial and sexual discrimination. Too often he has upheld discriminatory conduct simply because there was no clear evidence or discriminatory motive or intent. The law, however, is not this narrow; it condemns both intentional and unintentional discrimination. I would hope that Judge Kennedy, when he is Justice Kennedy, will be more receptive to claims of subtle yet very real discrimination, than he has been in the past.

But even if Judge Kennedy has not been quite as sensitive to claims of systemic discrimination as I would have liked him to be, that alone is not a sufficient basis for opposing his confirmation. For as the Judiciary Committee report states, the Senate must not dictate its particular choice to the President. Rather, its constitutional task, before granting its consent to the appointment, is to certify that the nominee's judicial philosophy is sound and poses no threat to constitutionally protected rights enjoyed by all Americans.

I have weighed Judge Kennedy's constitutional and judicial philosophy and found that it is that of a classical mainstream conservative, in the tradition of Justices Powell, Harlan, Black, and Frankfurter. It is a philosophy that recognizes that the right of privacy is an inherent element of individual liberty, that the words of the 14th amendment, "No person shall be denied the equal protection of the law," admits of no exception.

It is a philosophy that recognizes that the Constitution is a living thing, that its meaning changes as, in Judge Kennedy's words, "our understanding of it changes"—an understanding anchored to the fundamental values of the framers, but shaped and reshaped by the history and experience of each succeeding generation.

It is a philosophy that exhibits an abiding and passionate respect for precedent, for a stable, reasoned, evolutionary change in the law and meaning of the Constitution.

It is a philosophy that respects the will of the people, as expressed through their elected representatives, and that is reluctant to thwart their wishes. But it is also a philosophy that will not hesitate to override the popular mood when it threatens to trample upon the constitutional rights and liberties of the minority, the poor, and the powerless.

It is a philosophy that approaches and decides each case one at a time, without any overarching, absolutist view of constitutional interpretation. It is a philosophy that rejects, as an end in itself, the rigid and unworkable doctrine of "original intent" espoused by the previous nominee and repudiated by this body in its rejection of that nominee.

It is a philosophy that recognizes that compassion, pragmatism, and commonsense notions of justice and fairness are valid components of judicial decisionmaking, that recognizes that the great words and clauses of the Constitution—liberty, due process, equal protection—are, in Judge Kennedy's words, "spacious phrases," to be understood and applied flexibly, humanely, from the heart as well as the head.

In short, it is the philosophy of cautious and compassionate judging that has always been the bulwark and genius of our system of jurisprudence, that has built slowly, steadily, inexorably, upon the constitutional foundation laid by our forefathers.

On the great questions of equality and liberty that will come before him, I am satisfied that Justice Kennedy will respond with a devotion to justice and to law, with a humble appreciation of the immense power of the Court, and with the courage and determination to defend the ideals of the Constitution whenever the law and his conscience require him to do so.

The confirmation of Judge Kennedy will be a triumph not only of justice but of process. The Judiciary Committee, guided so ably and fairly by Chairman BIDEN, has done its job well. Senators have conducted themselves honorably and courageously, guided by their concept of the Constitution, their consciences, and their sense of duty.

At a time of increasing public concern about the Senate as a working, functioning institution, we can be proud that in these nominations—matters of great current and historic significance—we rose to the occasion and did our duty.

But we must not rest on our success. For this experience to have lasting value, it must become a precedent for the future. Never again must we return to the lazy practice of the past, of rubberstamping nominees to the Supreme Court, of permitting them to evade legitimate substantive inquiry.

While it is not appropriate for the Senate to inquire into how a nominee will vote in a particular case, it is essential that it conduct a searching examination of the nominee's general judicial philosophy, in order to satisfy itself that he or she respects certain inviolate principles and values of our constitutional system of government. That is the standard we have applied in our consideration of the present and previous nominee—a standard fully consistent with the dictates of the Senate's constitutional power of advice and consent. And it is the standard which we should apply to all future Supreme Court nominations.

Judge Kennedy meets this standard, and I join with all of my colleagues today in wishing him a long and distinguished career on the Court.

I yield the floor.

Mr. THURMOND. Mr. President, I now yield 3 minutes to the able Senator from Wyoming [Mr. SIMPSON].

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, I lend my support to the nomination of Anthony Kennedy to be the next Associate Justice of the Supreme Court.

I think we are very fortunate to have this man and to be able to confirm such an outstanding nominee.

I want to also add that the skill and fairness of the Judiciary Committee chairman, the junior Senator from Delaware, was very evident. We held our hearings in a timely fashion and reported to the Senate the nomination with unanimous approval.

I thank the chairman and the ranking member, Senator THURMOND, for his fine work and superb job. This nominee is going to do a superb job, too. He has a history of unanimous approval. For his current post in the ninth circuit, he received unanimous confirmation. It was the unanimous opinion from the ABA that he is "well qualified" for this position, and the Judiciary Committee unanimously recommended him.

When we started this we stated that our inquiry should have been simply whether Judge Kennedy possessed the integrity, temperament, and ability to be on the Supreme Court and whether his judicial philosophy, without consideration of his political philosophy, was worthy of representation on the Court. Through 3 days of hearings, on which I sat, of consideration by the Judiciary Committee, we heard nothing at all that changed our opinion that Judge Kennedy met every one of those tests. He passed every single test.

So as we perform our fulfillment, of our duty of advice and consent, the only troublesome thing we see is we do not really have an objective or uniform standard to which each Senator may look in making his or her decision on such a critically important matter, and indeed that is so troublesome because the tenure of these Justices will

likely far exceed the tenure of those of us who provide the advice and consent.

It is a troublesome thing, not in this situation, but in previous activity in my time on the Judiciary Committee. Senators are free to consider whatever criteria they wish, and that may and certainly has unfortunately included the political litmus test or reaction to an individual or at least the reaction of the most vocal interest groups.

Perhaps we need to review that. We will in the future I know.

So the Court needs the addition of Judge Kennedy for this February term. It requires his addition, and he will assure faithfulness to the Constitution.

A final irony of the proceedings to me was that we were cautioned not to speak about the Bork nomination during the Kennedy nomination, and yet during the hearings in Judiciary, that seemed to be about all I heard.

So hopefully, we put all that aside and will come now to this.

It is good to be able to cast this vote for this remarkable man, and I hope we can do things with our procedures in the future that will avoid things that happened in the previous nomination.

Thank you.

The ACTING PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. KENNEDY. I yield such time to the majority leader as he may require.

The PRESIDING OFFICER (Mr. REID). The majority leader.

Mr. BYRD. Mr. President, I thank the distinguished Senator from Massachusetts, [Mr. KENNEDY].

Mr. President, today is a proud moment in the history of the Senate. Under the simple but remarkable provisions of article II, section 2 of the Constitution, the Senate is completing its advice and consent function in the appointment of a Justice of the Supreme Court. I commend the Judiciary Committee, and its chairman, Senator BIDEN, in particular, for the fair and thorough consideration of the President's nominations for the vacancy created by the resignation of Mr. Justice Powell.

This has not been an easy time for the Senate. It has not been easy to say no to a popular President, to say no to a well-known judge and scholar, and to insist upon a different nominee. But I believe that history will record this as one of this body's great moments. For the Senate has done nothing less than to seek to protect the Constitution itself, by placing the document in the trust of one who views it as protecting, rather than limiting, the liberty of our people, including the right of privacy.

The Senate has sought and hopes to obtain—at least a good many of us have sought and hope to attain—in Anthony Kennedy an Associate Justice who is a conservative devoted to genuine judicial restraint. Judge Kennedy claims no grand ideological scheme of constitutional interpretation, and, as a judge, his practice has been to limit the effects of his decisions to the particulars of each case. He is a man of intelligence and humility. He understands the need for a commonsense approach to criminal law, by considering the rights of society and victims as well as those of the accused. He respects the great institutions of our Government, by showing equal regard for each of its three branches, and acknowledging the occasional need for Congress to appeal to the courts to determine its rights vis-a-vis the Executive.

Judge Kennedy appears to be a true conservative, and the Senate can be proud for its part in achieving his appointment.

Mr. THURMOND. Mr. President, I now yield 2 minutes to the able Senator from Virginia, Senator WARNER.

Mr. WARNER. Mr. President, today the Senate considers the nomination of Judge Anthony M. Kennedy to the position of Associate Justice of the Supreme Court of the United States.

As we proceed to this historic vote, we have very much in mind Judge Bork as well as Judge Kennedy. Speaking for this Senator, while I disagreed with Judge Bork and eventually on the day of the vote cast a vote against him, today I rise to say that nothing in my deliberations with respect to him was intended to be personal or to reflect in any way adversely upon his professional attainments, his character, or that of his family. In fact, I open my remarks today by wishing him well as he steps down from the bench. He fought a courageous battle professionally and personally, and now he and his family have a new venture before them which we all hope will be successful.

The Senate's advise and consent responsibility for Presidential nominees to the judicial branch, most particularly to the Supreme Court, is one of the most important duties given to this body by the Constitution. It requires the collaborative efforts of the Senate as a whole. As do others in this Chamber, I take this responsibility very seriously.

I have had the privilege of meeting with Judge Kennedy, selectively read from his opinions and examined the record of the Judiciary Committee, which, although late, we have had an opportunity to look at. Further, I have had extensive conversations on this nomination with my Senate colleagues, many Virginians, and others whose judgment I value. The extraordinary qualifications of this nominee have brought forth many statements of commendation, but have provoked little debate. This reflects great credibility upon Judge Kennedy.

Judge Kennedy will fill the position on the Court left vacant by the retirement last June of Justice Lewis F. Powell, Jr. Justice Powell, a fellow Virginian, served with great distinction on the Supreme Court. I have been honored to know him, and we all are greatful for his service to the Nation. Over the years his decisions consistently revealed an understanding and sensitivity to the rights and freedoms guaranteed by the Constitution and the traditional role of the Supreme Court in interpreting and protecting those rights. It is a tribute to Justice Powell to appoint as his successor one who the President and the Senate have confidence will continue his traditional approach to service on our Highest Court.

Mr. President, I believe that Judge Kennedy will be such a jurist, and I rise today in support of his confirmation as Associate Justice of the Supreme Court.

Judge Kennedy received a unanimous endorsement of "well qualified" from the American Bar Association. This endorsement is reserved for those who meet the highest standards of professional competence, judicial temperament and integrity.

There is no question of Judge Kennedy's professional competence. An honors graduate of Stanford University and a graduate cum laude of Harvard Law School, he practiced law in his home State of California, and he has taught constitutional law at the University of the Pacific since 1965. He is a 12-year veteran of the Ninth U.S. Circuit Court of Appeals where he participated in over 1,400 decisions and authored over 400 opinions.

Just as important, however, Judge Kennedy exhibits those qualities of judicial temperament and integrity that are so essential for one occupying any judicial position, especially that of Justice on the Supreme Court.

I was privileged to serve as a law clerk for Judge Barrett Prettyman who left an indelible mark on my own concept of judicial temperament. The compassion, sensitivity, and understanding of the pleas of the people shown by that distinguished jurist form the benchmark against which I measure any judicial nominee. These are the standards I adhere to in my consideration of judicial nominations.

It is clear to me that Judge Kennedy accepts those fundamental constitutional values long recognized by the Supreme Court, and he is sensitive to those rights that underlie the great issues that come before the Court. When questioned about any right to privacy inherent in the Constitution, Judge Kennedy replied:

> * * * there is a "zone of liberty" * * * where the individual can tell the government, "Beyond this line you may not go."

Judge Kennedy's numerous criminal law opinions reveal the mind of a fair jurist—fair to the rights of the accused and fair to the rights of society. His decisions concerning the separation of powers indicate an appreciation for the delicate system of checks and balances inherent in our Constitution.

Judge Kennedy's decisions reveal a respect for Supreme Court precedent and a belief in judicial restraint—but not judicial rigidity. At the hearings, Judge Kennedy spoke of a Constitution with a built in capability for growth. In speeches and writings he has stated that no one can plumb all the Constitution's ambiguities to provide definitive answers to the hardest questions it poses—questions as to how far the Supreme Court should go in restraining majority rule, and how powers over foreign affairs should be allocated between the President and Congress. His decisions show a cautious case-by-case analysis of the complexities of law and fact presented rather than an overarching "unitary theory" engraved in stone. Authored decisions show a mind willing to search for the appropriate balance between the rights of individuals and the power of government in a diverse and pluralistic society.

Judge Kennedy has an open, constantly probing mind. The public record of his service to our Nation clearly documents a strong adherence to the fundamental principles of mainstream conservatism. I am hopeful he will carry forward these characteristics and principles in rendering judgment on the important issues he will face in the future.

Thank you, Mr. President.

The PRESIDING OFFICER. The Senator's time has expired.

Ms. MIKULSKI. I ask unanimous consent that I may proceed for 5 minutes.

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

Ms. MIKULSKI. Mr. President, of the thousands of votes I will cast as a Senator, a vote on the confirmation of a nominee for the Supreme Court is among the most important and far reaching. As I see it, the paramount responsibility of the Supreme Court is to protect and preserve the equality and liberty of which the Constitution speaks. It is the Supreme Court that breathes life into the promise of the words in our Constitution.

There are three key criteria I use in evaluating a nominee for the U.S. Supreme Court.

First, is the nominee competent?

Second, does the nominee possess the highest personal and professional integrity?

Third, will the nominee protect and preserve the core constitutional values and guarantees that are central to our system of government, such as freedom of speech and religion, the right to privacy and to equal protection of the law?

I have considered the nomination of Judge Anthony Kennedy using these criteria. There is no question that Judge Kennedy is an able, experienced and very competent jurist. Accordingly, the American Bar Association gave Judge Kennedy its highest rating.

However, there is one aspect of Judge Kennedy's record that I find troubling and I would like the RECORD to show and for Judge Kennedy to keep in mind.

Judge Kennedy has for many years belonged to clubs that discriminate against women and minorities. He maintained membership in such clubs even after the California Code of Judicial Conduct was amended to provide that such membership was inappropriate for a judge. It was only when he was under serious consideration for this nomination that he resigned his membership in the Olympic Club, a club that discriminates against women.

The obvious question such membership raises is whether a judge who belongs to clubs that have discriminatory membership policies—be they based on race, gender, religion, or some other invidious factor—is truly committed to equal justice under law? As regards Judge Kennedy, the record is very unsettled on this critical point.

Judge Kennedy's longstanding membership in discriminatory clubs, at a minimum, gives rise to the perception by minorities, women and others that the judge's impartiality is impaired. A review of the judge's decisions in cases involving the civil rights of minorities and women, where he overwhelmingly has rejected their claims, supports such perception. In 1982, Judge Kennedy dissented from a ninth circuit decision which found that an airline's policy requiring women, but not men, flight attendants to meet certain weight restrictions discriminated against women. Judge Kennedy thought that the company ought to be able to justify its policy based on what it called customer preference for attractive women. Certainly chubby male airline flight attendants were just as offensive as chubby female airline flight attendants. He failed to recognize that both the policy and the supposed business justification were discriminatory. Male flight attendants had as much customer contact as the female attendants.

Equal justice under the law is not just some bumper sticker slogan. It is the central promise of the Constitution. It is the cornerstone of our democracy. The Supreme Court is the guarantor of constitutional rights in the ongoing struggle for equal justice under the law. A Supreme Court Justice's commitment to equal justice must be absolute and unequivocal. And to be meaningful, that commitment must be based on an understanding or discrimination and of the impact of the barriers minorities and women face in their struggle for equality.

Before the Judiciary Committee, Judge Kennedy discussed his club membership and his understanding of the statutory and constitutional protections against discrimination. Eventually, he said the right things. He acknowledged that the "highest duty of a judge is to use the full extent of his or her power where a minority group or even a single person is being denied the rights and protections of the Constitution." He agreed that "civil rights statutes should not be interpreted in a grudging, timorous or unrealistic way to defeat congressional intent or to delay remedies necessary to afford full protection of the law to persons deprived of their rights."

I am going to take Judge Kennedy at his word because I believe he is an honorable man.

Judge Kennedy has promised this Senate, and the American people, that he will vigorously and aggressively enforce our rights under the Constitution. I submit that the American people, in all our diversity, are entitled to nothing less. Based on Judge Kennedy's testimony, the entire record developed by the Judiciary Committee, and on the premise that this nominee is a man of honor who can be taken at his word, I have decided to vote to confirm Judge Kennedy, and hope that he would learn from the process of discussion with the committee that our Constitution and our country is broader than he might have once thought.

I yield back the remainder of my time.

The PRESIDING OFFICER. The Senator has yielded back the remainder of her 5 minutes.

The Senator from South Carolina.

Mr. THURMOND. Mr. President, I now yield 3 minutes to the able Senator from Pennsylvania, Mr. SPECTER.

The PRESIDING OFFICER. The Senator is recognized for 3 minutes.

Mr. SPECTER. I thank the Chair and I thank my distinguished colleague, the ranking member of the Judiciary Committee on the Republican side, the former chairman, Senator THURMOND.

Mr. President, I support the nomination of Judge Kennedy for the Supreme Court because he is well qualified by way of academic experience, a practicing lawyer, and his work as a court of appeals judge. While I do not agree with all of his decisions and have made some comments during the course of the hearings about reservations on minorities' rights and women's rights, I think that his response was very pointed and appropriate on the issue of sensitivity to Hispanic concerns.

I believe that Judge Kennedy is a man who has the capacity to grow and will be an outstanding U.S. Supreme Court Justice.

Mr. President, I believe that the nominating process of Judge Kennedy has been a growing experience for the Senate and for the country as it follows on the heels of the nominating process for Judge Bork and Judge Ginsburg. We have established, I believe, in the 100th Congress a very important precedent that judicial philosophy is relevant and appropriate for Senate consideration. There was a dispute on this issue, significantly, during the confirmation proceedings for Chief Justice Rehnquist and Justice Scalia, but I think that the precedent is now established. In a speech recently, Chief Justice Rehnquist agreed that judicial philosophy was appropriate for consideration. And it is important to note that Judge Bork agreed with that as a matter of principle. And now, with the Judge Bork proceedings and with Judge Kennedy's proceedings, I think that is firmly established.

There is another important consequence, Mr. President, of these nominating proceedings, in my judgment; that is, the impact of the U.S. Senate and of the public concern about the administration of justice as it has an effect on the nominees who come before the Senate. When I had a session with Judge Kennedy in my office, he asked me—and I repeated this on the record during the hearings—he asked me whether I thought the advice and consent function of the Senate included advice to those who were nominated. I said that it would really be up to the nominees as to whether they would take that advice and suggestions from the Senators.

During the course of our proceedings with Judge Kennedy, and as with Judge Bork and other matters, Senators make as many speeches as they ask questions and give their own views as we believe them from our own experience and from our sense of representation of our constituency. I had made the comment to Judge Kennedy that I thought the process was a very useful one, as we heard the judicial philosophy.

I am supporting the nomination of Judge Anthony Kennedy to be an Associate Justice on the U.S. Supreme Court. I think Judge Kennedy is well qualified on the basis of his excellent academic record, his distinguished work as a practicing lawyer, and his balanced record as a judge on the U.S. Court of Appeals for the Ninth Circuit.

Judge Kennedy's record, including his testimony before the Judiciary Committee, demonstrates that he does not wear an ideological straightjacket and that he is devoted to genuine judicial restraint. I do not necessarily agree with all of Judge Kennedy's decisions. In my view, however, the appropriate issue for the U.S. Senate is not whether individual Senators agree with all of a nominee's decisions, but whether the nominee is within the tradition of U.S. Supreme Court jurisprudence. I am convinced that Judge Kennedy is within that tradition.

I was particularly pleased by a response made to a written followup question based upon the testimony of one of the witnesses who appeared before the committee after Judge Kennedy's appearance. Ms. Antonia Hernandez, president and general counsel of the Mexican American Legal Defense and Education Fund, made a very important point when she indicated that she and her group, while not opposing Judge Kennedy's nomination, were genuinely concerned about his sensitivity to issues of importance to Hispanic Americans, and were hopeful that Judge Kennedy would clarify his views and beliefs in a way that could reassure her.

Ms. Hernandez raised concerns about the AFSCME case, the Spangler case, the TOPIC case, and the Aranda case. During the hearings, I had questioned Judge Kennedy about those cases. I believe that Judge Kennedy's response to Ms. Hernandez's testimony shows an appropriate sensitivity and capacity for growth as a judge.

I also am particularly impressed by Judge Kennedy's characterization of the 14th amendment's liberty clause as a spacious one, which can enable a "people [to] rise above its own injustice" to correct "the inequities that prevail at a particular time."

One witness, Mr. Nathaniel S. Colley, Sr., a black civil rights leader from California provided key insights into the nominee's approach to constitutional rights. Mr. Colley had known Judge Kennedy's family for almost 40 years and had known Judge Kennedy himself for 20 years. He testified about Judge Kennedy's solid record on civil rights and minorities' rights, notwithstanding that Mr. Colley disagreed with some of the nominee's specific decisions. And Mr. Colley well summarized Judge Kennedy's record when he characterized Judge Kennedy as a grown man who would grow more.

The Judiciary Committee's and Senate's confirmation procedures over the last 7 months, with three different nominees to the Supreme Court, have been a growing experience for our country.

While today we will end the process of filling the current Court vacancy, I do not think the debate about the nomination process is over. I do think, however, that we have firmly established that judicial philosophy is a relevant and proper issue for the committee and full Senate to consider. Each nominee agreed with this position, and Chief Justice Rehnquist, who was not willing to answer all such questions during his own confirmation hearings 18 months ago, recently said in a speech that he now thinks that questions about judicial philosophy are appropriate.

In closing, I would like to mention an interesting remark that Judge Kennedy made during one of our private meetings which I referred to in the hearings. Judge Kennedy asked me whether I thought the advice and consent clause of the Constitution provided for Senators to give advice to a nominee. My response was the clause does not mandate such advice but that it would be useful, if a nominee was willing to take such advice I believe the Senate can have a significant impact on the thinking of nominees. In our private meetings with nominees, and through our questions—which sometimes resemble speeches—we convey our own views to a nominee. I believe that nominees may emerge from this with a different perspective. This process of interaction and growth is ongoing. In my view Judge Kennedy has grown, the Judiciary Committee and the Senate have grown, and our country has grown—all for the better.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I yield, on behalf of the Judiciary Committee, 5 minutes to the Senator from Vermont.

The PRESIDING OFFICER. The Senator from Vermont is recognized for 5 minutes.

Mr. LEAHY. Mr. President, I thank the Senator from Maryland.

Mr. President, I will vote to confirm the nomination of Judge Anthony Kennedy to be an Associate Justice of the U.S. Supreme Court. I also wish to cast a vote of support for the confirmation process that the Judiciary Committee began and that the Senate completes today. I am proud to be able to cast both votes. I believe that we have fairly established the record by which this body can judge Judge Kennedy, just as we have firmly established the process by which the Senate will scrutinize all future nominees for the Supreme Court.

I think we are at a turning point in Senate history. All nominees for the Supreme Court can expect and should expect rigorous examination of their views and their record of their philosophy before they go on the Supreme Court.

The Senate's duty of advice and consent is, without question, a tremendous responsibility. It is a constitutional responsibility which, by its nature, affects all three branches of our Government. It is a responsibility that we fulfill only by a rigorous confirmation process.

The process we have now established in the Senate is a rigorous one. In three important ways, it follows the

high standards we set several months ago when we considered the nomination of Judge Robert H. Bork.

Our review of Judge Kennedy's nomination, like our review of Judge Bork, has been thorough and extensive. The Judiciary Committee reviewed all of Judge Kennedy's 438 published opinions. We read his public speeches. We examined his private law practice and his extrajudicial activities. Then, in 2 days of hearings, we questioned Judge Kennedy for over 12 hours on a wide range of subjects.

Second, as with Judge Bork, our review of Judge Kennedy's nomination focused on his judicial philosophy: his approach to the Constitution, and to the role of the courts in discerning and enforcing its commands. By rejecting the argument that a nominee's philosophy is irrelevant or inappropriate for Senate consideration, we reaffirm the best traditions of the Senate. As Senator George Norris told this body more than half a century ago:

> When we are passing on a judge . . . we ought not only to know whether he is a good lawyer, not only whether he is honest . . . but we ought to know how he approaches these great questions of human liberty.

No issue is more central to a decision on the nomination of a Justice to the Supreme Court—the Court which is the ultimate arbiter of our constitutional rights—than the nominee's judicial philosophy.

The Judiciary Committee questioned Judge Kennedy at length about his approach to the Constitution, and especially to the critical issues of individual rights—the right to privacy, the right to freedom of speech, the right to equal protection of the laws, the rights of criminal defendants. "The result," as the New York Times later observed, "was an absorbing real-life course in constitutional law in which the nominee and the [committee] learned from each other."

Third, the committee's review of Judge Kennedy's nomination, like our review of Judge Bork, was fair and open. Judge Kennedy himself was given a chance to respond to every question, to address every concern, to put his record into context. Thereafter, the committee heard testimony from 28 public witnesses, both for and against the nomination. And Judge Kennedy was given an opportunity to respond in writing to issues these witnesses raised.

The result is a record on which the Senate may soundly judge the nomination, and a confirmation process that fulfills our duty to the Constitution and to the American people. It is a process of which I think we can all be proud.

What did this rigorous confirmation process tell us about Judge Kennedy, and about whether his nomination should be confirmed?

For one thing, we learned that Judge Kennedy is a man for whom ethics is not a recent discovery. As one of his boyhood friends recounted, "It always seemed to me that when we did something naughty, Tony went home."

We also learned that Judge Kennedy is an excellent professor of constitutional law, whose students often applaud when he completes a lecture. We learned that he is a judge who comes to court prepared and with an open mind, ready to listen to the arguments of both sides in the case before him. He takes each case as it is presented and carefully crafts an opinion that tries to resolve the dispute between the parties.

But most of all, we learned about Judge Kennedy's judicial philosophy—his approach to some of the fundamental issues on which a Supreme Court Justice must rule.

As we probed his thinking, we learned that Judge Kennedy is a case-by-case judge. To use his words, he does not offer "a complete cosmology of the Constitution." He has no "unitary theory of interpretation."

Nor, it appears, does he have an agenda to reverse scores of important Supreme Court decisions. Unlike Judge Bork, he does not promise to "sweep the elegant, erudite, pretentious and toxic detritus of non-originalism out to sea."

Rather, Judge Kennedy has respect for many of the major rulings that the Court has handed down in the last three decades—rulings that go to the heart of the Supreme Court's role a guardian of constitutional rights. As Congresswoman Barbara Jordan so eloquently put it in her testimony to the Judiciary Committee several months ago:

> Many people, particularly weak people, underprivileged, unrepresented, minority people, particularly the outs, have looked to the Supreme Court as the rescuer. The Supreme Court [has] throw[n] out a lifeline when the legislators and the governors and everybody else [has] refuse[d] to do so.

I questioned Judge Kennedy about some of these lifelines—about some of the important cases decided by the Court under the fourth, fifth, and sixth amendments to the Constitution. I found his answers thoughtful and reasonable.

What, I asked, did he think of the Supreme Court's decision in Miranda versus Arizona, the ruling that required police to warn suspects of their rights to remain silent and to be represented by counsel? "It was a sweeping, sweeping rule," he replied. "It went to the verge of the law. * * * But since it is established, it is entitled to great respect. I know of no strong argument to overturn it."

What, I asked, did he think of Mapp versus Ohio, the decision requiring courts to exclude illegally seized evidence? Judge Kennedy answered, "Now that it is in place, I think we have had experience with it, and I think it is a workable part of the criminal system."

What about Gideon versus Wainwright—the decision establishing the right to have counsel appointed in all felony cases—did he have a problem with that? "No," he answered, adding "I know of no really substantial advocacy for its change."

In each of these instances, Judge Kennedy indicated his respect for a landmark decision in constitutional law, and thus his recognition of an important constitutional right. He also indicated an openness to consider arguments that each of these decisions should be overturned, but not without compelling and "substantial" advocacy—a thoroughly fitting view for a member of our Highest Court.

I was also reassured by Judge Kennedy's testimony on the subject of unenumerated rights—fundamental rights not spelled out in the text of the Constitution—and especially the unenumerated right of privacy.

Judge Kennedy testified that "There is a zone of liberty, a zone of protection, a line that's drawn where the individual can tell the Government, 'Beyond this line you may not go.'" That zone of liberty, he later said in response to one of my questions, is "quite expansive, quite sufficient to protect the values of privacy that Americans legitimately think are part of their constitutional heritage."

Judge Kennedy also recognized that it is the role of the Supreme Court to draw the line that protects the zone of liberty, but he declined to specify where exactly the line should be drawn. He would not specify which unenumerated rights the courts may enforce under the Constitution and which rights must be protected by the other branches of Government. He did say, however, that he recognizes a marital right of privacy.

I also appreciated Judge Kennedy's explanation of some of the factors he would look to in deciding whether an unenumerated right is a constitutional right that may be enforced by the courts. "There is a whole list of things," he said, but among them were:

> We look to see the concept of individuality and liberty and dignity that those who drafted the Constitution understood. We see what the hurt and the injury is to the particular claimant who is asserting the right. We see whether or not the right has been accepted as part of the rights of a free people in the historical interpretation of our own Constitution and the intentions of the Framers.

This testimony impressed me favorably. It reflects a philosophy of the Constitution as a living document that is fully capable of responding to the

challenges to our liberties that the future may present.

By contrast, I remain somewhat troubled by Judge Kennedy's record on civil rights and discrimination issues. This record was highlighted by a number of impressive witnesses who testified before the committee. One of the witnesses, Prof. Susan Deller Ross, pointed out that Judge Kennedy has repeatedly rejected discrimination claims by requiring a higher showing of intent to discriminate that the Supreme Court has ever required. She also noted that Judge Kennedy has never ruled for a woman on a substantive sex discrimination issue.

Another witness, Antonia Hernandez of the Mexican-American Legal Defense Fund, eloquently articulated the serious concerns of the Hispanic community about some of Judge Kennedy's decisions. In her view, Judge Kennedy's rulings in several important discrimination cases brought by Mexican-Americans improperly threw the claimants out of court.

There is also the troubling issue of Judge Kennedy's membership in several private clubs that do not accept women and that may discriminate against members of minority groups. It is true that Judge Kennedy made efforts to change the membership policies of two of these clubs, but these efforts did not begin for some time after the American Bar Association passed a rule discouraging judges from membership in discriminatory clubs. Judge Kennedy was a member of these clubs for many years, but he resigned from two of them only on the eve of his nomination. He told the committee he resigned "to prevent my membership from becoming an issue" in the confirmation process.

In his testimony before our committee, Judge Kennedy tried to lay to rest some of these concerns by a frank and simple statement about his commitment to equal rights. He said, "We simply do not have any real freedom if we have discrimination based on race, sex, religion or national origin, and I share that commitment."

I was also reassured by another statement Judge Kennedy made in connection with his membership in the private clubs. He said,

> Over the years, I have tried to become more sensitive to the existence of subtle barriers to the advancement of women and minorities. This [is] an issue on which I [am] continuing to educate myself.

I sincerely hope that Judge Kennedy continues to seek an understanding of the many forms that discrimination can take. In particular, I think he needs to continue what he has described as a process of self-education about the many forms in which the courts may encounter unfair discrimination against women and members of minority groups. But I must say honestly, Mr. President, there is probably not a single Member of this body who could not also undergo that continuing education.

From the measure I have of the man, I believe that he will continue to do so, just as I believe he will strive to perform fairly the duties of a Justice of the Supreme Court.

If Judge Kennedy's nomination to the High Court is confirmed, I am sure that I will not agree with every one of his decisions. But I believe that Judge Kennedy is a man of integrity, intelligence, and balance. He has a sense of history and a sense of the proper role of the Supreme Court. He has, I believe, the capacity to become a distinguished Supreme Court Justice.

This is a nomination to which the Senate should give its consent. I will vote to confirm Judge Kennedy as a Justice of the U.S. Supreme Court.

Mr. President, I wish also to take this opportunity to commend the distinguished chairman of the Judiciary Committee [Senator BIDEN] and the distinguished senior ranking member [Senator THURMOND] for their handling of this nomination and the prior nomination. Everybody had a chance to be heard fairly. Members on both sides of the aisle were heard fairly and then the Senate was able to work its will, as it will today. I think that is because of the cooperation between Senator BIDEN and Senator THURMOND. It is a joy to serve on that committee, knowing that these hearings will be held and have been held as fairly, openly, and honestly as they have.

I yield back whatever time I have remaining.

The PRESIDING OFFICER. The Senator from Nebraska.

Mr. KARNES. Mr. President, like many of my colleagues, I am relieved that the Senate now moves toward a vote on Judge Anthony M. Kennedy to be an Associate Justice of the Supreme Court. Judge Kennedy is a highly respected individual, lawyer, and jurist. He is worthy to fill that position. But, the fact remains that a previous nominee of the President whom I supported failed to survive the confirmation process because of strident attacks on his judicial philosophy. With that experience in mind, I believe all of us have taken even more seriously our constitutional role in confirming an individual to serve on the High Court.

It is with great interest as an attorney that I have engaged in the Supreme Court hearing process and arrived at a set of standards by which I evaluate judicial nominations. I have set out six principles that I will use to evaluate judicial candidates. These being character, integrity, intellect, and the judicial qualities of temperament, legal experience, and philosophy.

I have pursued the same analytical procedure with regard to Judge Kennedy's nomination that I have followed previously. I have evaluated this nomination, as I have other Presidential nominees: with an open mind and without any preconceptions. Only fairness and objectivity have dictated my final decision.

With regard to Judge Kennedy, no evidence has been produced which in my opinion constitutes grounds to oppose his confirmation. The unanimous vote for Judge Kennedy from my colleagues on the Senate Judiciary Committee further attests to his fitness to be a member of the Supreme Court. In the six areas I have used to test judicial nominees, Judge Kennedy has exhibited outstanding qualifications and qualities. He is a man of intellect, with sound values, an excellent academic record, extensive experience as a practicing lawyer, and balanced, well-reasoned opinions and positions as a Federal court of appeals judge on the Ninth Circuit Court of Appeals.

Judge Kennedy does not wear ideological blinders, but has demonstrated judicial restraint in limiting his opinions to the narrow issues of the cases before him without a tendency toward "judicial legislating." He is not a judicial activist. His opinions, speeches, and answers to questions, while showing a capacity for growth, also reveal an appreciation of the fact that our Constitution is a dynamic document which many times must be interpreted to respond to social issues born of changing times. Judge Kennedy has shown that he is capable of interpreting the Constitution to meet those changes without sacrificing the basic principles laid down by the Founding Fathers.

During Judge Kennedy's 2 days of testimony before the Senate Judiciary Committee, he proved himself to be a conservative, but not an extremist nor an activist. He is clearly within the mainstream of American judicial thought. During the hearings he was very open in expressing his judicial philosophy and I was pleased to hear that he has no single, simple constitutional theory for interpreting all cases.

Mr. President, much has been said about the seat Judge Kennedy has been nominated to fill—that of Justice Powell. The concern of some stems from the number of 5-to-4 decisions of the Court during Justice Powell's tenure, where he was in the majority. However, I believe that Judge Kennedy, if confirmed, will approach his service with the same sense of restraint, respect, and humility that Justice Powell exhibited during his tenure on the bench.

The American Bar Association was unanimous in giving Judge Kennedy its highest rating for a Supreme Court nominee—well-qualified. The ABA representative who testified during the hearings commented that he had ques-

tioned almost all of the 27 judges on the Ninth Circuit Court of Appeals that served with Judge Kennedy and that all of them had a deep and abiding respect for Judge Kennedy's sense of justice, for his ability to give everyone a fair hearing, and to make a decision on the facts before him. The ABA spokesman went on to testify that this accolade came from judges who carried a reputation of being liberal and judges who had a reputation of being conservative. Thus, among Judge Kennedy's peers, regardless of ideology, he has received high marks as a lawyer and jurist.

As with any judicial nomination, especially one to the Supreme Court, there may be those who will oppose this nomination just as in the case of Judge Bork. However, the arguments of those opposed to Judge Kennedy while deeply felt, are in my opinion, not supported by the nominee's judicial record or the weight of the testimony in his favor.

Judge Kennedy wrote more than 400 opinions while on the court of appeals. Many of these decisions demonstrate his commitment and sensitivity to civil rights. They also indicate that Judge Kennedy clearly understands the problems faced by law enforcement officials and that he is sensitive to the rights of the victims, as well as those of the accused. I am in complete agreement with the recent speech given by Judge Kennedy where he noted that, all too often in our criminal justice system, the rights of the victims are overlooked.

It is true that Judge Kennedy was noncommittal on some difficult issues like the Roe versus Wade decision, the Miranda decision, affirmative action and the death penalty, but he has given a good defense of his own opinions which were later reversed by the Supreme Court, such as the Washington State case where he rejected the claim for equal pay for jobs of comparable worth.

Mr. President, when I met with Judge Kennedy prior to the hearings, he addressed the issue of original intent, the 9th amendment, the equal protection clause of the 14th amendment, the right to privacy, and criminal law, all issues which have been the focus of great public interest during hearings on previous Supreme Court nominees. I am comfortable with his responses in each of these areas.

Judge Kennedy has a sound understanding of our Constitution and of its history, as well as its applicability in the current era. More importantly, I believe he is committed to safeguarding the U.S. Constitution, that great and most precious possession of American democracy. I believe that Judge Kennedy will work to achieve justice and equality under its provisions and the law. Therefore, I am proud to vote for his confirmation to the U.S. Supreme Court.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. HUMPHREY. Mr. President, amid the wide support for Judge Kennedy's confirmation it is important to keep a critical issue in perspective.

Many Senators who opposed Judge Bork are supporting Judge Kennedy. And some of us who viewed Judge Bork as the ideal nominee are somewhat less enthusiastic about Judge Kennedy, even though we believe he will be a good Justice.

These "cross-currents" should not obscure a fundamental fact. While certain portions of Judge Kennedy's testimony raised concerns for some of us, his overall record demonstrates a strong commitment to judicial restraint and a healthy disdain for judicial activism.

Those of us who greatly admire Judge Bork may take some comfort in the fact that these statements bear a striking similarity to Judge Bork's statements on this same issue—judicial usurpation of the democratic, legislative process. As Judge Bork framed the issue:

> * * * Only by limiting themselves to the historic intentions underlying each clause of the Constitution can judges avoid becoming legislatures, avoid enforcing their own moral predilections, and ensure that the Constitution is law.

And as Judge Bork has further stated:

> When a court becomes that active or that imperialistic, then I think that it engages in judicial legislation, and that seems to me inconsistent with the democratic form of Government we have.

It is this Senator's hope that the similarities between the foregoing observations of Judges Kennedy and Bork on the critical issue of judicial restraint will be reflected in Judge Kennedy's decisionmaking on the Supreme Court.

It is instructive to consider several of Judge Kennedy's statements on the judicial role made before his nomination. These statements provide a more valuable insight into his philosophy than the testimony given under the glare of the television lights.

In discussing the controversial issue of unenumerated constitutional rights developed by judges, Judge Kennedy made the following key points:

> One cannot talk of unenumerated constitutional rights under the U.S. Constitution without addressing the question whether the judiciary has the authority to announce them * * *.
>
> I submit it is imprudent as well to say that there are broadly defined categories of unenumerated rights, and to say so apart from the factual premises of decided cases. This follows from the dictates of judicial restraint * * *.
>
> The imperatives of judicial restraint spring from the Constitution itself, not from a particular judicial theory * * *.

Judge Kennedy summed up these views by pointing out the dangers to our entire democratic process created by improper judicial activism. As he eloquently stated:

> If the judiciary by its own initiative or by silent complicity with the political branches announced unenumerated rights without adequate authority, the political branches may deem themselves excused from addressing constitutional imperatives in the course of the legislative process. This would be a grave misallocation of power * * *. The unrestrained exercise of judicial authority ought to be recognized for what it is: The raw exercise of political power.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, if there is another Senator on the other side of the aisle who wishes to proceed, he may. We do not have another speaker waiting at the moment.

Mr. THURMOND. Mr. President, I yield 3 minutes to the able Senator from California, Senator WILSON.

The PRESIDING OFFICER. The Senator from California, Senator WILSON, is recognized for 3 minutes.

Mr. WILSON. Mr. President, I have the advantage over my colleagues in that in casting this vote I will not only have paid attention to the record, but will have the benefit of 20 years of personal knowledge of Judge Anthony Kennedy.

Mr. President, I have known Tony Kennedy since he was a young lawyer. Of all of the votes that I will cast, the hundreds on the floor of this Senate, few will give me greater pleasure. I will cast few with greater confidence. And I think few will be cast by this body with greater confidence than that which we have today in Tony Kennedy.

He is a man whose entire life and certainly his career in law has inspired confidence by those who have watched him: by adversaries, by jurors, by judges.

Mr. President, I am proud to have been one of the many who brought his name to the attention of the President and recommended that he be appointed to fill this crucial vacancy on the Supreme Court.

Mr. President, I know that personally he is possessed of the intellect, the character, the integrity, the judicial temperament, and the compassion required for a great jurist. He has been a great judge and will be a great Justice.

Mr. President, he has been a student, a practitioner, and a distinguished teacher of the law as well as a discerning judge. When I speak of compassion, I would lay emphasis on the fact that he has been concerned not solely for the rights of the accused as, of course, he must be under our system of justice, but also, he has taken into account and enunciated, as few judges have, the necessity that there be in the law a clear recognition

for the rights of the victims of crimes. In particular, he has made clear that in order for justice to be served and for our system of justice to inspire the confidence required for a people who will take pride in and actually believe in the rule of law, it is necessary that that system of judges be seen as working. It must work. It must be seen to work. To be seen to work, it must adequately look to and compensate the victims of crimes.

He has made that clear not only in speeches and in articles, but in his own decisions. He has never lost sight of the need for the criminal justice system to seek justice for all those affected by crime.

In an eloquent speech in New Zealand last year, he stated forthrightly:

A decent and compassionate society must recognize the plight of its victims.

It is little wonder that victims often fail to report crimes, Judge Kennedy notes.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. WILSON. Mr. President, I will conclude and say only that we can and should expect great things of this judge. He will be a leader, not simply serving the law but also serving this Nation.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Mr. President, I yield myself 1 minute.

Mr. President, it is an interesting situation in the Senate that after months and months of wrangling over who is going to be the next Supreme Court Justice, we find 1 hour of debate, with everybody in complete unanimity, a foregone conclusion that Judge Kennedy will be confirmed.

I think that many lessons were learned from that, not the least of which is that all Presidents must have a sense of history when they appoint a Supreme Court Justice, realizing they are appointed for life, that they extend beyond any President, that they are there to represent all people in this country, not one isolated judicial philosophy.

Also, we have demonstrated, I believe, for all time, that the Senate will not longer be a rubberstamp, but will very carefully look to each nominee and then, when satisfied, reflect really the feelings of the people of this country who also, I believe, are satisfied and happy with his nomination.

The PRESIDING OFFICER. The Senator's time has expired. Who seeks recognition?

If no one yields time, time will be charged equally to both sides.

Mr. LEAHY. Mr. President, I yield 1 minute to the Senator from Colorado.

The PRESIDING OFFICER. The Senator from Colorado is recognized for 1 minute.

Mr. WIRTH. Mr. President, since Supreme Court Justice Lewis Powell, Jr., announced his intention to resign his seat on the Nation's highest court last summer, this Nation has been embroiled in a far-reaching debate over the fundamental principles upon which our democracy was founded. While the difficult and emotional issues raised in this process have regrettably caused some polarization among many of our citizens, in general, I believe that the vigorous debate of the meaning of our constitutional guarantees has served us well.

This national debate has provided Americans with a firsthand look at how the checks and balances, built into the Constitution by our forefathers, work to ensure that no single branch of Government—however popular or currently acclaimed—may wield power without due measure of constraint and scrutiny. In the hearings and the subsequent vote on Robert Bork's nomination, the Senate fulfilled its advise and consent role prescribed by the Constitution in the selection of Supreme Court justices. In so doing, this body pursued its responsibility to examine the judicial temperament, philosophy and experience of nominees with the grave seriousness the democratic process commands.

In considering the qualifications of Judge Anthony M. Kennedy to assume the position of Associate Justice of the Supreme Court, I reviewed the criteria I developed last summer prior to the Judiciary Committee's hearings on Justice Powell's successor. I submit those criteria and ask that they appear in the RECORD at the end of my statement.

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

(See exhibit 1.)

Mr. WIRTH. The evidence presented by Judge Kennedy and by the witnesses indicate that he is a balanced jurist who decides cases based on a strict, but nonideological, interpretation of the laws involved. Judge Kennedy appears to understand both the meaning and the power of our traditions of individual liberty and social equality. He exhibits a willingness to view the Constitution as a tool for correcting injustice and ensuring equity.

In reviewing the records of Federal judges in the 1980's, I think we have to examine issues related to the right of citizens to challenge governmental action. In the course of cleaning our air and water and protecting citizens from exposure to toxic chemicals, the right to have disputes settled in the Nation's courts of law is a precious one—particularly for citizens in my own State of Colorado. Judge Kennedy's record reveals a heartening perspective on the doctrine of standing. His view of the judicial process appears to support the extension of prudent access to the Federal courts as a vital instrument for the protection of environmental values as well as for economic well-being.

Further, Judge Kennedy has exhibited a respect for the continuity of critical Supreme Court decisions and of fundamental American values. Throughout his career, his opinions impress upon the reader a deeply rooted sense of balance, understanding and maturity. This sense of proportion and perspective makes Judge Kennedy's qualifications for the position of Associate Justice that much more compelling.

The placement of a Justice on the Supreme Court is of such consequence that I believe we should only agree to do so when the weight of evidence clearly suggests that the individual is fully cognizant and respectful of the rights and liberties of citizenship which set this Nation apart. Supreme Court Justices sit for life in final judgment on matters of the utmost importance to the American way of life. They are often the last bastion of protection that citizens have against the tyranny and power of organized government and other forces which would curb the rights of individual Americans. No Senator may lightly confirm a Supreme Court Justice.

The distinguished record of Judge Anthony Kennedy, I believe, comports with the fundamental rights and values of the American people and with our system of jurisprudence. His view of the Constitution, judicial philosophy and role of the Supreme Court conforms with that of many of the most distinguished jurists our Nation has known. As a result, I intend to vote for his confirmation as an Associate Justice for the U.S. Supreme Court.

Mr. President, I do concur in the judgments that have been made by my colleagues here today on the fitness of Judge Kennedy for this very important appointment and hope that we confirm him very rapidly, fill out the Court, and get on with our business.

EXHIBIT 1

CRITERIA FOR EVALUATION OF SUPREME COURT NOMINEES

(1) Does the nominee have the intellectual capacity, competence and temperament to be a Supreme Court justice?

(2) Is the nominee of good moral character and free of conflicts of interest?

(3) Will the nominee faithfully uphold the Constitution of the United States?

(4) What is the nominee's vision of what the Constitution means?

(5) Are the nominee's substantive views of what the law should be acceptable with regard to the fundamental rights of the American people?

(6) What are the nominee's views of the role of the Supreme Court and of Supreme Court justices?

(7) Would the confirmation of the nominee alter the balance of the Court philosophically and if so, is that balance in the best interests of the American people?

(8) Are the nominee's views well within the accepted, time-honored and respected views of legal tradition?

Mr. DOMENICI. Mr. President, I rise to support the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court. Judge Kennedy's distinguished legal career, which includes over 12 years of service as a Federal appellate judge, demonstrates that he possesses the intellect, character, and temperament to serve on our Nation's Highest Court.

Judge Kennedy earned his undergraduate degree from Stanford University and was awarded a law degree cum laude from Harvard University.

From 1961 to 1975, Judge Kennedy practiced law in California. Since 1965, Judge Kennedy has taught law part-time at the McGeorge School of Law at the University of the Pacific.

In 1975, President Ford appointed Judge Kennedy to serve on the U.S. Court of Appeals for the Ninth Circuit, which covers the far Western part of the country.

In his 12 years on the bench, Judge Kennedy has authored over 400 opinions and has participated in over 1,400 cases.

Judge Kennedy has played a major role in a number of significant decisions. He authored the appeals court decision in the Chada case, which held the legislative veto to be unconstitutional. He also argued for a "good faith" exception to the exclusionary rule when he dissented from the ninth circuit's opinion in the Leon case. The exclusionary rule has been used by criminal defendants to prevent evidence from being used against them in court because of technical defects in search warrants, even though the police were acting reasonably. In both the Chada and the Leon cases the Supreme Court subsequently agreed with Judge Kennedy.

Judge Kennedy's opinions demonstrate that he is a firm advocate of law and order, yet is sensitive to the constitutional rights of criminal defendants. He respects civil rights and is committed to eliminating discrimination. He also understands the doctrine of separation of powers, that is, the Congress is to make laws, and the courts are to interpret them, and the need for judicial restraint.

The Judiciary Committee, which conducted an exhaustive examination of his background, unanimously recommended that the nomination of Judge Kennedy be approved, and the American Bar Association unanimously gave Judge Kennedy its highest rating of "well qualified." Judge Kennedy has a well-deserved reputation for fairness, open-mindedness, and scholarship. It is obvious to all who have examined his credentials that Judge Kennedy will make an excellent addition to the Supreme Court, and will likely carry on the distinguished tradition of the man he will replace, former Justice Lewis Powell.

Justice Powell's seat has been vacant for 7 months. Because of the vacancy, the Supreme Court has been unable to reach a decision on several important cases that have come before it. Every Member of this body is aware why the vacancy has taken so long to fill, and I shall not recount the details, except to say that it is time to put the episode behind us and return the Supreme Court to its full strength. The parties who bring their cases to the Court deserve a hearing before a full Court, and the people of the United States are entitled to have their laws interpreted by nine members of the Supreme Court.

Judge Kennedy is an excellent choice to fill the vacancy and bring the Supreme Court back to full strength. I encourage all Senators to unite behind this nomination and give Judge Kennedy their full support.

Mr. BUMPERS. Mr. President, I take seriously our responsibility as U.S. Senators to advise and consent to nominations to the Supreme Court of the United States. It is one of our most important functions, and I believe we must discharge our responsibility with vigor and with respect for our great Constitution. It is clear that our Founders intended for the Senate to play a coequal role in the confirmation process.

It is with these thoughts in mind that I come before the Senate this morning to state my support for the nomination of Judge Anthony Kennedy for Associate Justice of the Supreme Court of the United States. I have reviewed his judicial record and testimony before the Senate Judiciary Committee, and am convinced that he is within the mainstream of constitutional jurisprudence in this country. Although I will not agree with him on every issue, just as I frequently find myself in disagreement with current Justices, I believe he is a man of considerable intellect and sound judgment. He will be a consistent adherent to the sound doctrine of judicial restraint, and I commend him for that, but I do not believe he will give the majestic language of our great Constitution a narrow or crabbed interpretation.

Mr. President, I wish soon-to-become Justice Kennedy well as the Supreme Court faces the many contentious issues it must deal with in the months and years ahead.

Mr. KASTEN. Mr. President, I rise today to express my support for President Reagan's nomination of Judge Anthony Kennedy to fill the vacancy on our Nation's Supreme Court.

We've already gone 8 months without a full complement of Justices. Our Nation's judicial needs will not be met until the vacancy created by the retirement of Justice Powell is filled. And I agree with President Reagan that Judge Kennedy would fill this Supreme Court vacancy—and meet those needs—with intellectual vigor and distinction.

Anthony Kennedy has been a distinguished member of the Federal bench since 1975, when President Ford appointed him to the Ninth Circuit Court of Appeals. The record of his 12 years of appellate decisionmaking shows him to be a man of judicial temperament and intellectual clarity.

In the more than 400 decisions in which he has taken part, Judge Kennedy has remembered that it is the role of the judiciary to interpret the laws, not to make the laws. I think the addition of his voice to the Court would help preserve this principle of the separation of powers, so vital to the maintenance of our systems of Government.

The many decisions Judge Kennedy has authored, most notably Chadha versus Immigration and Naturalization Service, make clear his powers of reasoning and his place in the mainstream of American judicial thought. I do not expect to agree with Judge Kennedy on every case; I do have confidence that his judicial opinions on the Court will be founded securely on the rock of the Constitution and legal precedent.

Judge Kennedy also recognizes the primary purpose of our system of criminal law: the preservation of social order through a regime of liberty under law. In numerous criminal-law decisions, Judge Kennedy has sided with America's first line of defense against random thuggery and violence—our local police forces.

In short, Judge Kennedy is an enthusiastic defender of civil rights and civil liberties, and of the measures necessary for their defense.

I urge all my colleagues to join me in seating this man right where we need him—on the U.S. Supreme Court.

Mr. CONRAD. Mr. President, I rise in support of the nomination of Judge Anthony M. Kennedy to be Associate Justice of the Supreme Court.

The task of a Justice of the Supreme Court demands not mere strength of intellect, but a sensitivity to the core values and aspirations of the Constitution. I find in Anthony Kennedy these qualities and more: he is a first-rate constitutional scholar.

His background clearly commends him for the job. A practicing lawyer with a small firm and a teacher of constitutional law, he has been a judge on the Ninth U.S. Court of Appeals for 12 years. The American Bar Association has given him its highest recommendation and the Judiciary Committee has unanimously voted to recomend his confirmation to the Supreme Court.

During his confirmation hearings before the Judiciary Committee, Judge Kennedy was praised for his temperament and character. The committee's review of his decisions showed him to be open-minded; a judge committed to the fair-minded resolution of particular cases, rather than being driven by an overarching, predictable ideology. His decisions while a member of the appeals court are not boldly extreme, but carefully drawn interpretations of the fundamental law. His philosophy, like that of the distinguished Justice Powell, resists easy categorization. Judge Kennedy's measured, case-by-case approach to judicial decisionmaking gives me much greater reassurance than the rigid ideological views of earlier nominees.

To be certain, Judge Kennedy might not have been my first choice for the Supreme Court. But he is the President's choice, and I hope that he will be sufficiently devoted to the judicial protection of liberty and equality.

I will vote to confirm Judge Kennedy, and I applaud the President for the selection of a nominee who brings consensus, and not divisiveness to the nomination process.

Judge Anthony Kennedy is a conservative in the best of our constitutional traditions—he wishes to preserve that which is best, while recognizing that the Constitution is not a static and bloodless document. It will survive and serve our Nation only if it is interpreted with wisdom and common sense.

Mr. MOYNIHAN. Mr. President, when the Senate last debated a vacancy on the U.S. Supreme Court I stated that:

> The right of privacy is a fundamental protection for the individual and the family against unwarranted state intrusion. Its importance is such that I cannot support anyone for a Supreme Court appointment who would not recognize it.

The recently completed Judiciary Committee hearings regarding Judge Kennedy were greatly welcome to me in this regard. Judge Kennedy affirms the existence of a general right to privacy in the Constitution. During the confirmation hearings Judge Kennedy, asked whether he believed there was such a right, responded that:

> I think that the concept of liberty in the due process clause is quite expansive, quite sufficient, to protect the values of privacy that Americans legitimately think are part of their constitutional heritage. * * * It is very clear that privacy is a most helpful noun, in that it seems to sum up rather quickly values that we hold very deeply.

In particular, Judge Kennedy endorsed the Supreme Court's ruling in Griswold versus Connecticut. When asked his views on Griswold Judge Kennedy said:

> I would say that if you were going to propose a statute or a hypothetical that infringed upon the core values of privacy that the Constitution protects, you would be hard put to find a stronger case than Griswold.

Plainly, Judge Kennedy's views on privacy were not fashioned merely to accommodate the confirmation process. For example, in United States versus Penn, Judge Kennedy, in a dissenting opinion, argued against a police practice of offering $5 to a 5-year old child to get her to inform on her mother. He wrote:

> If we can, and do, protect the relation between a dentist and his clients from a disruptive search, certainly we have the authority, and the duty, to protect the relation between a mother and child from such manipulation. * * * Indifference to personal liberty is but the precursor of the State's hostility to it.

Without privacy there can be no liberty, no freedom. Judge Kennedy seems to realize this fundamental notion, one that dates back all the way to English common law. This was surely a concern of the 18th century. It may fairly be said to be the central concern of the 20th. For ours is the century of totalitarianism, and wherever it has come to power, whatever its particular doctrines, the central act of totalitarian Government is to annihilate individual privacy. Thus did Orwell's 1984 become the great political statement of this age. Thus equally are democratic societies put on their guard.

I am sure that Judge Kennedy's views on privacy have reassured many of my fellow New Yorkers. Indeed, the Association of the Bar of the city of New York, headed by Robert M. Kaufman, has recommended that Judge Kennedy be confirmed as a member of the Supreme Court. I concur with the bar association. Though I would not agree with Judge Kennedy on every point, his basic judicial philosophy recognizes that fundamental rights and liberties are protected by the Constutition. For this reason, I support the confirmation of Anthony M. Kennedy as an Associate Justice of the Supreme Court.

Mr. LEVIN. Mr. President, in exercising its advice and consent responsibility with respect to a Supreme Court nominee, the Senate should make a thorough assessment of the nominee's competence character and individual temperament. There are also a few instances where it is appropriate for the Senate to consider a nominee's policy values. For instance, a nominee's policy values are relevent if those values are inconsistent with a fundamental principle or principles of American law. The second instance occurs when the nominee is so controlled by ideology that such ideology distorts their judgment and brings into question a nominee's fairness and open-mindedness.

Judge Kennedy's performance during 13 years on the Federal bench leaves no doubt about his competence or his integrity. And his policy values appear to be neither inconsistent with settled constitutional law, nor a controlling factor in his judicial decisions.

Mr. President, Judge Kennedy does not appear to be a zealot, or a jurist who allows an ideology to dominate his approach toward a particular decision. Rather, he appears to be an open-minded judge who will fairly construe the law in each case that comes before him.

I see nothing in Judge Kennedy's record or testimony to indicate rigidity or inflexibility. One remark Judge Kennedy made during the Judiciary Committee hearings in response to a question by Senator SPECTER is, I hope, indicative of what his approach will be on the Supreme Court.

> It is difficult for me to offer myself as someone with a complete cosmology of the Constitution. I do not have an over-arching theory, a unitary theory of interpretation. I am searching, as I think many judges are, for the correct balance in constitutional interpretation. (Hearing transcript, December 15, 1987, p. 17.)

Although it appears that Judge Kennedy will be fair and open-minded as a Supreme Court Justice, I did have some concerns about his responses to questions about his previous membership in clubs that discriminate against women and minorities.

In a Senate Judiciary Committee questionnaire filled out by Judge Kennedy before his confirmation hearings began, he responded to several questions concerning his membership in business and social clubs. The questions refer to the American Bar Association [ABA] Code of Judicial Conduct, which was amended in 1984 to state that:

> It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin.

The ABA Code does not define what is meant by "invidious discrimination," although it adds that "whether an organization practices invidious discrimination is often a complex question to which judges should be sensitive."

Judge Kennedy made an effort in his answer to the committee questionnaire to define invidious discrimination, explaining that it—

> suggests that the exclusion of particular individuals on the basis of their sex, race, religion or national origin is intended to impose a stigma on such persons. (questionnaire, p. 50).

Responding to Senator KENNEDY during the hearings, he further stated that:

> Discrimination comes from several sources. Sometimes it's active hostility, and sometimes it's just insensitivity and indifference. (transcript, December 14, 1987, p. 137).

He went on to suggest that the discrimination practiced by the clubs he had belonged to was not invidious be-

cause it arose from insensitivity, not from active hostility.

Because I was not sure of Judge Kennedy's basis for determining what was or was not invidious discrimination, I asked him about it, as one of several questions I submitted in writing. I asked him to give some real life examples of when discrimination against women and blacks would not be invidious, and whether he thought that the discrimination against women and blacks practiced by clubs he had belonged to was invidious.

I found his response reassuring in one respect: he said that he did not mean to imply that legalistic interpretations of the phrase "invidious discrimination" could "provide an appropriate basis for individuals or organizations to justify their conduct." He went on to say that "discrimination against women, blacks, or other minorities imposes real injury and is wrong whether it arises from intentional, active bias or from indifferrence and insensitivity." On the other hand, Judge Kennedy also reiterated his belief that the membership practices of the clubs he belonged to "were not invidious in the sense intended by the ABA Code because they were not animated by ill-will."

Judge Kennedy cannot be held responsible for the ambiguity of the ABA Code as to the meaning of "invidious discrimination," and I have written to the ABA seeking clarification on this point. However, I was somewhat troubled by the judge's justification of his previous club memberships based on an interpretation of the ABA Code for which I find no supporting evidence.

My lingering doubts about that matter are outweighed by my overall impression of Judge Kennedy. He appears to be a fair and open-minded jurist who will decide cases based on the specific facts and arguments before the Court, not on the basis of a precast, preformulated, preordained ideological agenda. Therefore, I will vote in favor of his nomination to the Supreme Court.

Mr. CHAFEE Mr. President, it is with pleasure that I vote today to confirm the President's nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court.

It is clear to me, as it was to all 14 members of the Judiciary Committee, that Judge Kennedy is the right person to replace Justice Lewis Powell. In casting my vote today in favor of Judge Kennedy I note that the committee report states, "Judge Kennedy seems to possess the truly judicious qualities that Justice Lewis Powell embodied."

Judge Kennedy's background and career history make him eminently qualified to serve on the Supreme Court. He received his bachelor's degree from Stanford and his law degree from Harvard.

He practiced law in San Francisco and Sacramento for 14 years before President Ford appointed him to the U.S. Court of Appeals for the Ninth Circuit.

Throughout his career, Judge Kennedy has demonstrated his excellent understanding of the law and the role of the courts in the American legal system. In addition, he has shown himself to possess the qualities and character that one associates with the leading names in our judicial tradition. The American Bar Association has given him its top rating, "well qualified," and reports, as noted by the Judiciary Committee, that his "integrity is beyond reproach, that he enjoys justifiably a reputation for sound intellect and diligence in his judicial work and that he is uniformly praised for his judicial temperament."

Mr. President, I would like to underline at this point that Judge Kennedy demonstrated in the hearings on his nomination his firm belief in the tradition of judicial restraint, but also his refusal to turn that approach into an inflexible philosophy or ideology. This is just the point of view that I have been looking for in the individual who would replace Justice Powell.

As the Judiciary Committee's report states, "Judge Kennedy has no single immutable or overarching theory for interpreting the Constitution and thus he pursues a cautious and measured approach."

I agree with Judge Kennedy and with the committee report that rigid ideologies have no place on the Supreme Court. The genius of the Constitution has been, in my mind, its ability to serve our country so well over the last two centuries, years of incredible change. Its protection of freedom of speech, of the right to privacy, of equal protection under the law, and of a great array of individual rights, is owed to the wondrous elasticity of its language.

Our Supreme Court justices have recognized the Constitution as a document meant to be interpreted, not according to a strict literal reading of its words, but according to the broader and wiser intent of the Framers. That intent was to create a document that would serve the Nation as it grew and matured over the years. Judge Kennedy clearly understands this tradition and places himself firmly within it. He has the right combination of intellectual ability and judicial temperament to continue the great tradition.

Mr. HATFIELD. Mr. President, I am pleased to cast my vote in favor of Judge Anthony M. Kennedy to serve as an Associate Justice of the U.S. Supreme Court.

Having reviewed his background, I am convinced that Judge Kennedy possesses those qualities of intellect, scholarship, humility, and a sense of fundamental fairness that will make him one of the great Justices of the Supreme Court.

Born in Sacramento, CA and schooled at Stanford University, the London School of Economics, and Harvard Law School, Judge Kennedy has had a distinguished career as a private lawyer, a professor of constitutional law, and as a Federal judge on the U.S. Court of Appeals for the Ninth Circuit.

Having served on the Federal bench for 13 years, Judge Kennedy has authored over 400 opinions and participated in over 1,400 decisions. His decisions have spanned many areas of law, including criminal law, constitutional law, civil rights, and criminal procedure. The tone of his opinions demonstrates that he is a conservative jurist in the best sense of the word, and in the best tradition of some of the great Justices of the Supreme Court.

Judge Kennedy believes that a judge must base his or her decision on neutral principles, applicable to all parties. Although an advocate of basic tenets of constitutional interpretation such as judicial restraint and the separation of the powers of government, Judge Kennedy has no rigid theory of judicial interpretation. Rather, as he testified before the Judiciary Committee, he is "* * * searching, as I think many judges are, for the correct balance in constitutional interpretation." As his testimony indicates, the judge is a thoughful man, capable of continued growth and evolution in his thinking.

In my private meeting with Judge Kennedy, I was struck not only by his intellectual ability, but by his genuine reverence for the law and the Supreme Court. Judge Kennedy also possesses those intangible, but important, qualities of humility, empathy, and compassion that have displayed themselves in the quality of his legal reasoning and in the fairness of his judicial opinions.

Clearly, Judge Kennedy will make an excellent addition to the Supreme Court and I welcome the opportunity to declare my support.

● Mr. GORE. Mr. President, I would like to take this opportunity to announce my support for the nomination of Judge Anthony Kennedy to the Supreme Court.

The Judiciary Committee conducted careful hearings on Judge Kennedy's nomination—as it must do on all nominations to the Federal judiciary, especially appointments to the Supreme Court. My review of Judge Kennedy's testimony during those hearings satisfies me that he is a careful, conscientious, and openminded judge.

Judge Kennedy is an advocate of judicial restraint—limiting his holdings to those facts before him. Yet he does not feel that the Constitution is an im-

mutable document that yields yes and no answers to all legal disputes. He understands that the meaning of the Constitution today can be ascertained only by careful construction of its text, accurate reading of the historical intentions of the framers, and sensitive application of its principles to the vastly changed society in which we now live. And just as he sees the Constitution as a dynamic document, Judge Kennedy has shown a capacity for growth himself.

I believe Judge Kennedy has demonstrated a growing sensitivity to the plight of the disadvantaged in our society, to minorities, and to women. Along with my vote for Judge Kennedy I make a plea that when he takes his place on the Supreme Court of our Nation, that he be vigilant in his protection of those whose rights are all too often ignored, and that he remember that the Supreme Court is often truly their court of last resort.

Judge Kennedy has shown himself to be conscientious, thoughtful, and openminded. These are the qualities most crucial for a Supreme Court Justice. The ABA committee unanimously found Judge Kennedy to be "well-qualified." The Judiciary Committee was unanimous as well in its endorsement. To this I am happy to add my support.●

Mr. HECHT. Mr. President, I rise today in support of the nomination of Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court. I would like to say, at the outset, that I am pleased with the manner in which this confirmation process has been handled this time around. It should be obvious to everyone who has watched the Kennedy nomination proceed through the Senate, that we have before us an extremely qualified, well-respected, and outstanding nominee, and I feel very confident in saying that in my estimation, Judge Kennedy will serve our country admirably as a member of the U.S. Supreme Court.

Judge Kennedy has served with distinction as a member of the Federal judiciary on the Ninth Circuit Court of Appeals in San Francisco, and through his opinions and writings, he has certainly proved himself to be qualified and consistent. In addition to his service on the bench, Judge Kennedy has been an outstanding law school professor at McGeorge Law School in Sacramento, CA. It did not come as a surprise to me, then, when I received favorable and supportive letters from a number of my constituents who, coincidentally, had been taught by Judge Kennedy. Among these former students, praise of his ability was universal. In fact, to quote Mr. James Jacques, a Reno, NV attorney:

> I found him (Kennedy) to be an absolutely outstanding professor. He is the kind of person that I firmly believe we strongly need on our U.S. Supreme Court.

I couldn't agree more!

Mr. President, we all know by now that Judge Kennedy was given the top rating of "well qualified" by the American Bar Association Standing Committee on the Federal Judiciary, which suggests that the praise of Judge Kennedy's ability is not limited to his former students, but also the praise appears to be consistent from within the legal profession. In this day and age, as my colleagues well know, this type of overwhelming support is indeed very rare, and should be taken as another example of the fact that Judge Kennedy is an exemplary nominee, and should be confirmed unanimously. If the American Bar Association can give him a unanimous recommendation, the U.S. Senate can likewise give him a unanimous confirmation vote.

Mr. President, I would be remiss in my responsibility as a representative of the citizens of the great State of Nevada, however, if I did not make reference, at this point, to the entire process which has taken place in the efforts by our President to fill the vacancy of Justice Lewis Powell's seat on the Court. Specifically, I would like to reiterate my comments of last October regarding the President's first nominee to fill this vacancy, Judge Robert Bork.

Although I would in no way wish to diminish the favorable response given to Judge Kennedy's nomination today, I feel that it is extremely important for my colleagues to remember the absurdity of the confirmation process which proceeded Judge Kennedy. All of us who are privileged enough to serve in this body know that when our constituents feel strongly about an issue they certainly do not hesitate to call or write us. During the hearings and votes on Judge Bork, I can honestly say that I received more calls and letters than on any other single issue since I have been a U.S. Senator.

Mr. President, I was proud to stand here last October and vote in support of Judge Bork because that is how my constituents felt about the issue, and that is, overwhelmingly, the way in which my constituents wanted me to vote. I only wish that there were a few other Senators on that day who had listened to their constituents instead of listening to the overwhelming thunder by those special interest groups who took it upon themselves to determine what was in the public's best interest. As I said back then, the intense and inappropriate political debate surrounding Judge Bork was extremely unethical, and it was certainly an unfortunate blemish upon the legislative record of this historic body.

I am pleased by the fact that Judge Kennedy's nomination has not been surrounded by the whir of inappropriate political debate, but we must never forget the manner in which the previous nomination was handled and make every possible attempt to avoid future situations which lower the quality and the demeanor of the U.S. Senate. Again, I ask my colleagues to join my support of Judge Kennedy and to give him a unanimous confirmation vote.

Thank you, Mr. President.

Mr. BAUCUS. Mr. President, I rise in support of the President's nomination of Judge Anthony Kennedy to become an Associate Justice of the Supreme Court.

I have reviewed Judge Kennedy's testimony before the Judiciary Committee very carefully. I have also reviewed many of the decisions Judge Kennedy wrote during his long and distinguished tenure on the Ninth Circuit Court of Appeals.

While I do not agree with everything Judge Kennedy has said and written, I find Judge Kennedy to be, on balance, an extremely thoughtful and articulate jurist. I believe he is eminently qualified to take a seat on the Supreme Court.

Mr. President, under our constitutional form of government judicial appointments are a responsibility shared by the President and the Senate. The President nominates Supreme Court Justices and the Senate advises and consents on those nominations.

Our responsibility is to insure that the individual nominated by the President is qualified to serve on the Court. In addition, we must assure ourselves that a nominee's view of the role of the Supreme Court is consistent with the best interests of all the American people.

That is the responsibility given to us by the Founding Fathers in article III of the Constitution. It is a judgment not to be made lightly.

These are exactly the same standards I applied to Judge Bork: competence and judicial philosophy. While I had grave misgivings over whether Judge Bork would defend the basic constitutional liberties of the American people, I have no such qualms with Judge Kennedy.

After carefully reviewing Judge Kennedy's record, I believe he easily passes both these tests.

It is clear that Judge Kennedy is qualified to sit on the Supreme Court. He has had a distinguished career on the Ninth Circuit Court of Appeals, which includes my own State of Montana. In addition, the American Bar Association unanimously gave him its highest rating.

It is equally clear to me that Judge Kennedy is committed to the protection of the basic constitutional rights of the American people. In this he stands in marked contrast to Judge Bork.

I am confident Judge Kennedy will decide each case that comes before him individually, on its own merits. He

will not bring to the Court his own pet theory of constitutional interpretation.

Judge Kennedy told the committee that he is still searching for the correct balance in constitutional interpretation. I think that is exactly right.

Whenever a judge stops searching for that precious balance, justice suffers. In my view, a judge who believes he or she has found all the answers should start thinking about a different career.

Judge Kennedy also believes that the American people have a right to be left alone. He finds that right in an expansive interpretation of the word "liberty" in the 5th and 14th amendments. Again, I think that is exactly right.

He said that there is a line beyond which an individual can tell the Government not to go. Certainly that line is not clearly drawn. But, it is a relief to this Senator to know that Justice Kennedy will search for its contours.

Finally, Mr. President, I am convinced that Judge Kennedy is a true judicial conservative in the best sense of the word. He recognizes that the role of the courts is limited. He appreciates the differences between the legislative and judicial functions.

He knows that the Congress is charged with making the laws, while the Court is directed to interpret them. His will be a voice of restraint on the Court.

Mr. President, I sincerely hope my colleagues will join with me in voting to confirm the nomination of Judge Anthony Kennedy to become an Associate Justice of the Supreme Court.

Mr. MITCHELL. Mr. President, I rise in support of the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court.

The Senate Judiciary Committee moved expeditiously in completing its hearings and favorably reporting the nomination to the Senate. I am pleased that the Senate vote was scheduled promptly as well.

The year-end report on the state of the judiciary by Chief Justice Rehnquist last year reflected the fact that caseloads throughout the Federal judiciary are at record or near-record levels. The Supreme Court alone acted on 4,340 cases.

Because the rulings handed down by the Supreme Court are essential for the guidance of the lower courts, it is important that the vacancy left by Justice Powell's resignation be filled as soon as possible.

In this regard, I am pleased that the President nominated Judge Kennedy.

Judge Kennedy has 12 years of experience on the appeals court. He has written and taken part in several hundreds of cases, including some which have been of seminal importance to the Nation.

His ruling in Chadha versus INS, for instance, struck down an enormous range of statutes in which Congress had granted itself the right, by one-house votes, to override the decisions of the executive branch in carrying out statutory law. The Supreme Court upheld Judge Kennedy's ruling that this was an impermissible intrusion of the legislative into the proper sphere of activity of the executive branch.

Judge Kennedy's view as reflected in his record do not mirror mine in every particular, but I do not expect them to do so.

Such disagreements do not, however, constitute a sound reason to reject an otherwise very well-qualified nominee.

In a broader sense, Judge Kennedy's responses to the committee on questions such as respect for precedent, unenumerated rights and constitutional philosophy reflect the measured and thoughtful judgments for which he is known on the bench.

Judge Kennedy has stated he has no overarching philosophy of the Constitution. Instead, he says the role of the court is to reach conclusions of law and fact in each particular case before it. He believes this is the soundest means of developing a body of precedent and law to guide the Nation.

The roles of the President and the Senate in appointing men and women to the courts have been highlighted over the past year. Individuals and groups with different philosophies have sought to persuade all of us of the legitimacy of their claims.

Some say the President's choice must be respected and therefore supported by the Senate.

Others claim that because no truly objective form of judicial reasoning can be demonstrated beyond argument, the Senate has a right to reject nominees on result-oriented grounds.

Neither view is grounded in the Constitution.

There is no single right of appointment to the Supreme Court. The Constitution gives the President the right to nominate. But it explicitly gives the Senate the right to "advise and consent," not merely to rubberstamp.

The sharing of this responsibility arises because the founders recognized that no President should have a free hand in shaping the third branch of Government and that no Senate's partisan tendencies should govern it either. Instead, the two branches—executive and legislative—both have an important role to play.

The Constitution is wiser than many of those who have lived under it. It does not contain criteria for judges any more than for Presidents or Members of Congress. Instead, those criteria are left to the wisdom of the voters in the latter two cases and to the judgment of their elected representatives in the former.

The founders knew what too many of today's political leaders tend to forget—that their wisdom and insights were limited to their own times, just as ours are to our time. So they wove no straitjacket for our political future. Instead, they left us a set of rules by which the political differences of our times must be adjudicated.

We have heard judges labeled "conservative" or "liberal." There are probably as many definitions as there are people making them. But catchall labels are no way to reach a consensus of what we expect in a Supreme Court Justice.

Intellectual brilliance alone is not enough. Neither is long experience. Both are valuable. Neither, taken alone, is sufficient.

The role of our courts is not to dispense moral advice or to correct the moral lapses of the larger society. The role of our courts is to dispense justice according to the law and the Constitution.

That means the Constitution as amended. The courts are not the guardians of the 19th century, or the vanguard of the 21st. They reflect the society in which their presiding judges live, and they dispense justice in accordance with the laws of that society, enacted by the voters' representatives.

The courts occupy a special place in our democratic system. They are the one element of our government which is not democratically selected because they are the element of our government whose function it is to protect the unpopular, the minority against the majority.

When the courts reach too far or fail to reach far enough, redress is the role of the legislative branch or the people themselves through the amendment process. But for the numerically insignificant, or the temporarily controversial, justice not dispensed promptly is justice denied.

That, too, is a particular responsibility of the courts in our system. The judges who sit on those courts must be aware that the unique, the particular—in common terms, the oddball—deserve the full protection of the laws, just as the mainstream does.

Judge Kennedy's emphasis on the goal of seeking justice in the particular facts and the particular case before him reflects a sensitivity to that element of our system which makes him a valuable addition to the Supreme Court.

In choosing Judge Kennedy, the President has selected a nominee of broad and deep experience in the judicial system, with a demonstrated record of careful and judicious reasoning, and personal and public probity.

I am pleased to give this nomination my full support.

Mr. CRANSTON. Mr. President, I will vote to confirm Anthony M. Ken-

nedy to serve as an Associate Justice of the U.S. Supreme Court.

The vote on the confirmation of an individual to serve on our highest court is one of the most important and far-reaching decisions which a Member of the Senate will face in the course of service in this body.

A seat on the Supreme Court is a lifetime position. A Justice can be removed from office only upon impeachment and conviction of the severest of high crimes. It is not uncommon for a Supreme Court Justice to serve for two and sometimes three decades, long after the expiration of the terms of office of the President who made the nomination and the Senators who voted on it.

The framers of the Constitution recognized the great importance of the selection of individuals to serve on the Supreme Court. They deliberately refused to entrust this heavy responsibility to any one branch of government. Instead, they determined that this should be a matter of shared power and shared responsibility.

Senator Robert Griffin, then-Republican Senate whip, aptly described this shared responsibility during the debate on the Haynsworth nomination in 1969:

> Under the Constitution, the President is vested with only half the appointing power. He nominates and the Senate confirms. Accordingly, the Senate's advise and consent responsibility is at least equal to the President's responsibility in nominating. If the judiciary is to be an independent branch * * * it is essential that its members owe no greater indebtedness for an appointment to one particular branch of our government.

In the past year, both the Nation and the Senate have come to understand more deeply the full meaning of that shared responsibility. In its decisive rejection of President Reagan's third nominee to the Court, Judge Robert H. Bork, by a vote of 58-to-42 on October 23, 1987, the Senate assumed and reaffirmed its constitutionally mandated obligation to exercise independent judgment as to whether confirmation of a judicial nomination would be in the best interest of the nation.

In rejecting the Bork nomination, the Senate refused to place upon the Supreme Court a judicial radical with an avowed ideological agenda.

The Senate rejected a nominee who, over the course of several decades, had repudiated, disparaged, and derided a body of law and principles which form the framework for much of the individual liberties and freedoms which Americans enjoy.

The Senate refused to entrust the awesome responsibilities of an Associate Justice of the Supreme Court to a nominee who had given repeated warnings that he was prepared to rewrite settled principles of constitutional law.

In rejecting the Bork nomination, the Senate discharged its responsibilities well and in the best interest of our Nation.

The pending nomination of Anthony M. Kennedy presents a sharp contrast to the failed nomination of Robert H. Bork.

CONTRAST TO JUDGE BORK

Unlike Judge Bork, there is no indication that Judge Kennedy has an ideological agenda he is committed to carrying out once confirmed. On the contrary, the evidence seems clear that Judge Kennedy is predisposed to approach each issue on a case-by-case basis. That pattern appears throughout his decisions during his 12 years on the Ninth Circuit Court of Appeals. As the American Bar Association noted in its report to the Senate Judiciary Committee, practicing lawyers familiar with Judge Kennedy's record and demeanor on the Federal bench uniformly characterize him as utilizing a case-by-case approach without any particular preordained agenda or set philosophical perspective on relevant areas of the law. Judge Kennedy repeatedly affirmed this approach during his confirmation hearings. Testimonials from the numerous students in his constitutional law classes at McGeorge Law School over the past two decades reiterated this perception of Judge Kennedy's analysis of legal issues.

Judge Kennedy's legal and judicial philosophy appears to be well within the mainstream of legal thought. Judge Kennedy's legal philosophy, as illustrated in his opinions on the bench and in his speeches, can best be characterized as moderate, cautious, and restrained, albeit conservative.

Judge Kennedy has indicated his support for the notion of an evolving concept of liberty drawn from both the enumerated and unenumerated rights in the Constitution. Professor Laurence Tribe succinctly observed in his testimony before the Judiciary Committee supporting the nomination:

> Judge Kennedy's opinions reveal a belief in the fundamental constitutional principles that have been of concern to this committee. In particular, they demonstrate the absence of any categorical opposition to a view of the Constitution as an organic, evolving document; dedication to the fundamental role of the courts in our constitutional system as protectors of individuals and minorities from oppressive government; and a commitment to the special place of courts in elaborating and enforcing principles implicit in the Constitution's structure, even when those principles may not be explicitly stated within the four corners of the document.

CONCERNS ABOUT MEMBERSHIP IN DISCRIMINATORY PRIVATE CLUBS AND RESTRICTIVE CIVIL RIGHTS DECISIONS

Mr. President, although the weight of the record on Judge Kennedy indicates that he is a fair-minded and even-handed jurist, there are several issues which have been of concern to me and a number of civil rights organizations.

First is the matter of Judge Kennedy's membership in private clubs which have practiced discrimination in admissions. Judge Kennedy tendered his resignation from two of those clubs when his nomination to the Supreme Court became imminent. A third he resigned from several years ago when, as he described to me in a private meeting, he realized that it was inapropraite for a Federal judge to walk from the courthouse to have lunch in a facility that excluded women and minorities. Judge Kennedy expressed to me his recognition of the impropriety of his continuing membership in that club. Unfortunately, he did not take the same action with respect to his membership in two other private clubs which similarly excluded women or minorities, by policy or practice.

The problem in my view is compounded by the fact that Judge Kennedy sat on the Federal judicial conference committee which worked on the canon of judicial ethics dealing with the problem of membership by members of the judiciary in discriminatory private clubs. The 1984 commentary to that canon states:

> It is inappropriate for a judge to hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion or national origin. Membership of a judge in an organization that practices invidious discrimination may give rise to perceptions by minorities, women, and others, that the judge's impartiality is impaired.

In our discussion of this matter, Judge Kennedy candidly acknowledged his need to be more sensitive on this type of issue in the future.

Mr. President, I hope that the problems that continued membership in discriminatory private clubs pose for individuals like Judge Kennedy who aspire to positions of public confidence will help bring additional pressure upon these organizations to abandon such discrimination. The subtle and not-so-subtle adverse impact that these discriminatory membership policies have upon women and minorities, particularly in their professional relationships with colleagues and business associates, needs to be ended. Judge Kennedy's resignations, although belated, underscores the unacceptability of continuation of this type of discriminatory policy.

There has also been justifiable concern expressed by a number of civil rights organizations, including several leading Hispanic groups in California, about a pattern of decisions rejecting the claims of civil rights litigants, often on procedural or technical grounds. Particularly disturbing is Judge Kennedy's decision in the TOPIC versus Circle Realty case, denying standing to individuals in a

housing discrimination case. That decision, rejected by the Supreme Court in a 7-to-2 opinion authored by Justice Powell, suggests a failure to recognize the importance of rectifying racial discrimination by aggressive enforcement techniques. Similarly, his concurrence in affirming a summary judgment in a key voting rights case, Aranda versus Van Sickle, suggests a failure to afford the plaintiffs the full opportunity to establish their claims of discrimination. The summary disposition of many of the factual issues—found in favor of the plaintiffs by the trial court—in the case involving wage discrimination, AFSCME versus State of Washington, is also of concern. In other discrimination cases, Judge Kennedy has authored opinions barring litigants from pursuing their cases because of procedural problems, for example, EEOC versus Alioto Fish Co.

Nevertheless, balanced against these cases are several civil rights decisions by Judge Kennedy protecting the interests of minority litigants. In particular, Flores versus Pierce, a case involving discrimination by local elected officials against Hispanic restaurant owners, can be cited as an example of Judge Kennedy affirmatively upholding a civil rights complaint.

Mr. President, I am disturbed that Judge Kennedy's application of narrow procedural rules has served in so many cases to bar civil rights litigants from establishing their claims. Yet, as Professor Tribe testified, in none of these decisions is there any "evidence of antipathy to fundamental constitutional principles."

It is my belief that Judge Kennedy needs to become more sensitive to the more sophisticated aspects of discrimination in our society and to become more receptive to the need to implement vigorous enforcement techniques designed to root out and bring an end to the invidious discrimination which continues to plague our Nation. Broad antidiscrimination policies will have little impact if procedural obstacles bar implementation of those policies.

I do, nevertheless, see in Judge Kennedy the capacity to grow and become more acutely aware of these problems and the role that the courts must play in protecting civil rights.

Finally, Mr. President, it should be noted that Judge Kennedy received a unanimous well qualified rating by the American Bar Association—its highest rating.

CONCLUSION

Mr. President, a Senator's task in voting upon a nomination to the Supreme Court is not to determine whether that nominee might be one selected by the particular Senator or whether the nominee is sufficiently "liberal" or "conservative." Nor, indeed, should the vote rest upon an assessment of how the nominee will vote upon any single given issue.

The task is to determine, first, whether the nominee possesses the basic qualities of intellect, objectivity, and temperament required for the High Court, and, then, to ascertain whether the nominee understands and is committed to fundamental constitutional values and principles and appreciates the important role of the judiciary in defending constitutional rights and liberties.

I believe that Judge Kennedy meets each of these tests.

When President Reagan first announced his selection of Anthony Kennedy, I noted that the last Californian to sit on the Supreme Court was Chief Justice Earl Warren, who wrote the unanimous decision in Brown versus Board of Education. The Brown decision brought an end to racial segregation in this Nation and helped set a course for civil rights and individual liberty leading to a better and more just society for all Americans. I said that I hoped that Judge Kennedy's commitment to individual rights and equal justice measures up to the standards set by his predecessor from our great State.

I think Judge Kennedy has the intellect, the compassion, and the courage needed to help move our Nation forward as we confront the great issues ahead. I hope that he will fulfill that role and that history will mark his confirmation as part of a continuing march toward a better and more just society.

Mr. DOLE. Mr. President, it has now been more than 7 months since Justice Lewis F. Powell, Jr., announced his retirement from the Supreme Court. In that period of time, we in the Senate have gone through some amazing maneuvers in attempting to carry out our constitutional obligation of "advice and consent." Some experts say that, for better or for worse, we may have altered forever the way we choose the members of our Highest Court.

It is tempting, at this time, to talk about a nomination that is no longer before us; to question the fairness of a process that rejected an extraordinary scholar and jurist. I, for one, will resist that temptation, because raising those questions again will only detract from the extraordinary accomplishments of the man whose nomination is before us.

When Judge Anthony Kennedy was nominated to fill the vacancy on the Supreme Court, he faced a frightening array of obstacles. Some people openly speculated that no nominee could pass muster under the standards that had been applied to the two previous nominees. Others speculated that even a safe nomination could become hopelessly entangled in election-year politics.

Judge Kennedy, who by that time had compiled an impressive record as a lawyer, a teacher, and a judge, quickly put those doubts to rest. His appearance before the Judiciary Committee was masterful, silencing his early critics with keen thinking, and a clear sense of balance. The Judiciary Committee rewarded him with its unanimous "favorable recommendation," a result that had seemed almost unattainable at the outset of the process.

In my opinion, we cannot confirm Judge Kennedy too quickly. Since it opened its term in October, the Supreme Court has divided evenly on two important cases. More such confusing results may already be in the works. This country certainly deserves better than that.

More particularly, however, Judge Kennedy deserves to sit on that Court. He has proven his qualifications under the most difficult circumstances, and should receive the support and gratitude of every Member of this body.

I urge his unanimous confirmation.

Mr. KERRY. Mr. President, I support the nomination of Judge Anthony M. Kennedy to the Supreme Court of the United States. I do so not because I agree with Judge Kennedy on every issue, but because I believe that he is a thoughtful, moderate jurist who is within the mainstream of American judicial thought. I believe that Judge Kennedy will bring a reasoned, careful, case-by-case approach to the Supreme Court, much like that of his predecessor on the Court, Justice Lewis Powell.

I opposed the nomination of Judge Robert Bork to the Supreme Court because I felt that his writings as a law professor and a judge showed him to be outside the mainstream of American thought on issues of civil rights and civil liberties. His views did not reflect the consensus of the American people on these issues. For these reasons, Judge Bork's nomination was rejected by the Senate by a large margin.

Judge Kennedy, however, is much different in his approach from Judge Bork. One example is the right to privacy. Although not enumerated specifically in the Constitution, the Supreme Court has found an implicit right to privacy in the Constitution. Judge Bork rejected that concept and that precedent. Judge Kennedy respects it. He does recognize a right to privacy as implicit in the Constitution, and he so stated during his confirmation hearings in December. This is a major and important difference between Judge Kennedy and Judge Bork.

I do have some concerns about Judge Kennedy, particularly some of his past decisions in the area of civil rights and civil liberties.

For example, I have questions about his decision in Beller versus Middendorf, where Judge Kennedy authored an opinion upholding the constitution-

ality of Navy regulations providing for the discharge of those who engage in homosexual activities. While I agree with Judge Kennedy that there must be a "reasonable effort to accommodate the needs of the government with the interests of the individual," I am not convinced that this case strikes such a balance.

Also, in U.S. versus Leon, Judge Kennedy dissented from the majority's holding which affirmed the suppression of evidence in a drug case and refused to recognize a so-called "good faith" exception to the exclusionary rule. In U.S. versus Cavanaugh, Judge Kennedy upheld the legality of electronic surveillance by the FBI of an engineer who was suspected of espionage. And in AFSCME versus State of Washington, Judge Kennedy authored an opinion reversing a district court judge who found discrimination by Washington State against its female employees on the basis of "comparable worth."

I might have decided these cases differently than Judge Kennedy. But I believe that, on balance, his decisions were reasonable ones, based on his perception of the merits of each case, and not on some overeaching ideological theory or doctrine. Judge Kennedy's approach is one that I believe is appropriate for a Supreme Court Justice.

Judge Kennedy has been on the Federal bench for 12 years, and has authored over 400 opinions. He enjoys the respect of his colleagues. The American Bar Association has given Judge Kennedy its highest rating. His nomination has been reported out favorably, and unanimously, by the Senate Judiciary Committee. While I am concerned by the fact that respected groups such as Americans for Democratic Action and the National Organization of Women have decided to oppose his nomination, I believe that his nomination is as good as we are likely to get from this administration, and is better than most.

In a 1980 speech on presidential powers, Judge Kennedy said, "My position has always been that as to some fundamental constitutional questions, it is best not to insist on definitive answers. The constitutional system works best if there remain twilight zoners of uncertainty and tension between the component parts of the Government. The surest protection of constitutional rule lies not in definitive announcements of power boundaries, but in a mutual respect and deference among all the component parts."

That is a reasonable and thoughful view of our system of government, one which I can support. Unlike Judge Bork, Anthony Kennedy is not a judicial activist. He does not have a radical agenda. From all that his record permit us to determine, he is a judicial moderate, well within the mainstream of the judiciary. For these reasons, I will vote to confirm Judge Kennedy as an Associate Justice of the Supreme Court.

I ask unanimous consent that an article from the December 1, 1987, New York Times be printed in the RECORD.

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

[From the New York Times, Dec. 1, 1987]

SPEECHES OFFERING INSIGHT INTO JUDGE KENNEDY

(By Stuart Taylor, Jr.)

WASHINGTON, Nov. 30.—Speeches written over the years by Judge Anthony M. Kennedy show that he has expressed cautious skepticism about whether the Constitution protects sexual privacy and other rights not actually spelled out in the text.

Judge Kennedy, President Reagan's Supreme Court nominee, has also questioned some decisions of the Supreme Court headed by Chief Justice Earl Warren expanding procedural protections for criminal defendants and aspects of the Court's handling of the 1974 Nixon tapes case.

But in none of the 20 speech texts obtained by The New York Times has Judge Kennedy stated flatly that the Court's privacy decisions have been wrong, or argued for overruling any of the decisions. His overall tone in the addresses to groups such as fellow judges, graduating law students and Rotary clubs has been one of moderation, subtlety and respect for tradition and precedent.

MOST PREVIOUSLY UNPUBLISHED

The speech texts, which span the period from 1975 to last month and served as guidelines for the judge's remarks, were provided by the Reagan Administration to the Senate Judiciary Committee late today. Most of them have not previously been published. They will provide grist for questioning when hearings on his nomination begin Dec. 14.

Judge Kennedy's speech texts provide the most detailed insights so far into his overall judicial philosophy, and shed new light on his views about issues ranging from judicial enforcement of "unenumerated" constitutional rights to the rights of crime victims and criminal defendants, Presidential powers, federalism, the Bernhard Goetz case and other issues.

In a 1986 speech discussing "unenumerated rights," including the right to sexual privacy, Judge Kennedy said undue judicial activism in this area undermined representative government and the court's claim to be a neutral arbiter.

The speech texts are generally consistent with the image of the 51-year-old Sacramento jurist as a thoughtful, moderate man who is considered likely to win overwhelming Senate confirmation next year.

Judge Kennedy, like President Reagan and Attorney General Edwin Meese 3d, has repeatedly called in his speeches for "judicial restraint" and fidelity to the Constitution's language and history, and has warned against "the raw exercise of political power by courts."

In a 1984 speech, he said: "My own judicial philosophy has been described by others as conservative, and therefore unlikely to accept doctrines which substantially expand the role of the courts. None of us like a simple label to explain our thought, but the description is probably apt as a general rule."

But none of his speech texts mount the kind of broad attack on the modern Supreme Court, or sound the kind of clarion call for a return to the "original intent" of the framers of the Constitution, that marked the writings and speeches of Judge Robert H. Bork, and that contributed to the 58 to 42 Senate rejection of his nomination.

And some of Judge Kennedy's statements contrast with those of Judge Bork, both on particular issues and on broader philosophical approaches to constitutional law.

Judge Bork had worked out an overarching constitutional philosophy that led him to condemn much of modern constitutional law with an air of certitude that some critics called arrogance.

Judge Kennedy's speeches, on the other hand, repeatedly sound the theme that neither he nor, perhaps, anyone else can plumb all the Constitution's ambiguities or provide definitive answers to the hardest questions it poses—such questions as how far the Supreme Court should go in restraining majority rule, and how powers over foreign affairs should be allocated between the President and Congress.

"TWILIGHT ZONES OF UNCERTAINTY"

"My position has always been that as to some fundamental constitutional questions, it is best not to insist on definitive answers," he said in the text of a 1980 speech on Presidential powers.

"The constitutional system works best if there remain twilight zones of uncertainty and tension between the component parts of the government. The surest protection of constitutional rule lies not in definitive announcements of power boundaries but in a mutual respect and deferrence among all the component parts."

In an August 1987 speech to a Federal judicial conference in Hawaii, he observed that "it's necessary to develop a theory of constitutional interpretation" that respects the intentions of the framers of the Constitution and confines judges, but that "it's far easier to point out the defects in someone else's theory than to defend the merits of your own."

Judge Kennedy is said by acquaintances to be widely read in American constitutional history, and there is much evidence of this in his speech texts. They are studded with references to little-known but telling historical details and with apt quotations from the writings of political and judicial figures including James Madison, Alexander Hamilton, George Mason, Oliver Wendell Holmes and others, as well as from literary figures ranging from John Keats to Sigmund Freud to Jeremy Bentham.

According to one former law clerk, Judge Kennedy has typically prepared his speech texts himself, rather than having them drafted by law clerks. He has used them as rough outlines rather than reading them aloud verbatim. And he has declined to publish them in law reviews because he had not polished them to his satisfaction.

STANFORD SPEECH CITED

Judge Kennedy's most detailed discussion of the Supreme Court's decisions enforcing a right to sexual and family privacy came in a 1986 paper prepared in connection with lectures at Stanford University Law School.

Judge Kennedy's Stanford lecture suggests the Court should not "announce in a categorical way that there can be no unenumerated rights" in the Constitution that judges can enforce, and in this and other

contexts he has made seemingly approving references to some of the Court's decisions protecting family privacy.

But in contrast to some liberal jurists, Judge Kennedy stressed "the difficulties encountered in defining fundamental protections that do not have a readily discernible basis in the constitutional text," including sexual privacy, the right to travel and certain voting rights the Court has recognized.

Among those difficulties, he said, are the problem of judicial interference with the responsibilities of elected officials to "determine the attributes of a just society" and the imperative that "the constitutional text and its immediate implications, traceable by some historical link to the ideas of the framers, must govern the judges."

NO SPECIFIC VIEW ON ABORTION

Judge Kennedy's speech texts contain no specific discussion of the Court's decisions protecting rights to abortion and contraception.

One of his recurring themes is, as he put it in his 1986 Stanford lecture: "One can conclude that certain essential, or fundamental, rights should exist in any just society. It does not follow that each of those essential rights is one that we as judges can enforce under the written Constitution. The Due Process Clause is not a guarantee of every right that should inhere in an ideal system."

In other speeches, Judge Kennedy has made these points:

He said in his 1980 speech on presidential powers that "the noble but general phrases of the Constitution do not by themselves provide the answers to the questions whether the Chief Executive has exceeded the bounds of his constitutional authority." He added that the course of history and the necessities of modern life have dictated that "great powers flow to the President in foreign affairs," subject to "the authority of Congress to issue corrective instructions in appropriate cases."

In the same speech, Judge Kennedy said "there is room for argument about the wisdom" of the extraordinary procedure by which the Supreme Court expedited a case pending in a lower court in order to require President Nixon to surrender the Watergate tapes to a special prosecutor in 1974. He suggested it might have been better to wait and let Congress solve "its own problem with the Executive" over Watergate, which was the subject of impeachment proceedings. But he did not say the Court should have upheld Mr. Nixon's refusal to surrender the tapes.

In a March 1987 speech in New Zealand, Judge Kennedy denounced the callousness of the criminal justice system towards the victims of crimes and suggested that while expanding defendants rights in the 1960's the Supreme Court had slighted the problems of victims.

In the same speech, noting the "disturbing" public sympathy for Bernard Goetz, who shot four youths in the subway in fear they might assault him, the nominee said "the public acclaim with which Goetz' actions were received in some quarters indicates that the present criminal justice system breeds disrespect for the rule of law."

In a 1981 law school commencement speech, Judge Kennedy said "some of the refinements we have invented for criminal cases are carned almost to the point of an obsession." He did not specfy which refinements he meant.

EXCERPTS FROM 2 KENNEDY SPEECHES

The imperatives of judicial restrain spring from the Constitution itself, not from a particular judicial theory. The Constitution was written with care and deliberation, not by accident. . . . The constitutional text and its immediate implications, traceable by some historical link to the ideas of the Framers, must govern the judges. . . . If these principies do not provide fixed boundaries for judicial interpretation in constitutional cases, at least two systemic failures become manifest in the operation of checks and balances.

First, the political branches of the government will misperceive their own constitutional role, or neglect to exercise it. If the judiciary by its own initiative or by silent complicity with the political branches announces unenumerated rights without adequate authority, the political branches may deem themselves excused from addressing constitutional imperatives in the course of the legislative process. This would be a grave misallocation of power. . . . The courts must never be an accomplice to a regrime that erodes the initiative or the power of the political elements in the constitutional system.

The second injury to the constitutional order is done to the judiciary itself.

* * * * *

It is a great irony of contemporary history that those who argue most passionately for creative judicial intervention in effect advocate abolition of an independent, nonelected judiciary. The unrestrained exercise of judicial authority ought to be recognized for what it is: the raw exercise of political power. If in fact that is the basis of our decisions, then there is no principled justification for our insulation from the political process.

Finally, I am unconcerned that there is a zone of ambiguity, even one of tension, between the courts and the political branches over the appropriate bounds of government power. Uncertainty is itself a restraint on the political branch, causing it to act with deliberation and with conscious reference to constitutional principles. I recognize, too, that saying the constitutional text must be our principal reference is in a sense simply to restate the question what that text means. But uncertainty over precise standards of interpretation does not justify failing in the attempt to construct them, and still less does it justify flagrant departures.

"Unenumerated Rights and The Dictates of Judicial Restraint," Stanford University, July 1986.

An essential purpose of the criminal justice system is to provide a catharsis by which a community expresses its collective outrage at the transgression of the criminal. It does not do to deny that same catharsis to the member of the community most affected by the crime. A victim's dissatisfaction with the criminal justice system, therefore, represents a failure of the system to achieve one of the goals it sets for itself.

The victim's dissatisfaction with the system is more than a symptom of failure; it is a threat to the system itself. We must rely on victims to report crimes and to testify against criminals. This participation is essential if we are committed to the presumption of innocence. Citizen participation is a necessary counterweight to a pervasive police presence. Yet the fact is that victims often fail to report crimes because they do not expect the authorities to be responsive.

Another, disturbing outgrowth of a system's lack of concern or protection for victims is the temptation of the victim to take the law into his own hands. Perhaps you are familiar with the celebrated case of Bernard Goetz, the subway vigilante in New York City. He had responded with gunfire when four would-be attackers accosted him and requested five dollars. . . . Lost in the nationwide publicity over the event was the fact that Goetz had been mugged three years earlier in another subway incident, and his only communication from the law enforcement authorities was an offer to mediate his dispute with the mugger. Was this the treatment that in Goetz' eyes justified distrust of the criminal justice system to protect his interests? Equally disturbing is that Goetz emerged from the subway incident as a hero in the eyes of a large portion of the citizenry, the victim who finally fought back. If the rule of law means that citizens must forgo the use of private violence in return for the state's promise of protection, then the public acclaim with which Goetz' actions were received in some quarters indicates that the present criminal justice system breeds disrespect for the rule of law.

The focus on the public aspect of criminal justice system was also manifested in the criminal law and criminal procedure revolution of the 1960's. The significant criminal law decisions of the Warren Court focused on the relation of the accused to the state, and the police as an instrument of the state. Little or no thought was given to the position of the victims.

Mr. DIXON. Mr. President, I rise to support the nomination of Anthony Kennedy to be a Justice on the Supreme Court of the United States.

I do not object to the nomination of judicial conservatives to the Supreme Court. I tend to believe that the President is entitled to nominate those that share his philosophy, and I have voted for judicial conservatives in the past. When I voted against the nomination of Judge Robert Bork, I opposed him not because he was a judicial conservative, but because I had serious questions about his views on fundamental constitutional issues: The interaction between the powers of Government and individual liberties and the role he sees for the Court in protecting individual rights guaranteed by our Constitution. I concluded that his view of the Constitution leads to a much more cramped and narrow view in many important areas including civil rights and the right to privacy. These views had no place on the Highest Court of the land responsible for the interpretation of the Constitution.

In contrast, I feel very comfortable with Judge Kennedy's fundamental views on the Constitution and the role it plays in our society. During his confirmation hearing, he stated:

I do not have an overarching theory, or a unitary theory of interpretation. I am searching * * * for the correct balance in Constitutional interpretation.

When commenting directly on the Constitution and the role of the Supreme Court in applying its provisions, he said:

The Court can use history in order to make the meaning of the Constitution more clear. As the Court has the advantage of a perspective of 200 years, the Constitution becomes clearer to it, not more murky * * *. This does not mean the Constitution changes. It just means that we have a better perspective of it * * *. To say that new generations yield new insights and new perspectives, that doesn't mean that our Constitution changes. It just means that our understanding of it changes.

I commend Judge Kennedy for his clearly developed understanding of constitutional interpretation that is consistent with the history and tradition of the Supreme Court and this Nation.

His intellectual and judicial credentials are also impressive. He graduated with distinction from Stanford University in 1958. In 1961, he graduated cum laude from Harvard Law School. Kennedy then practiced law in California until 1975, when President Ford appointed him to the U.S. Court of Appeals for the Ninth Circuit, a position he has held since that time. Over the last 12 years on the court he has participated in more than 1,400 decisions and authored over 400 published opinions.

The American Bar Association's Standing Committee on the Federal Judiciary unanimously gave Judge Kennedy their highest rating of "well qualified." Based on its investigation, the committee stated that his—

Integrity is beyond reproach, that he enjoys justifiably a reputation for sound intellect and diligence in his judicial work and that he is uniformly praised for his judicial temperament.

The committee went on to conclude that Judge Kennedy—

Is among the best available for appointment to the Supreme Court of the United States from the standpoint of professional competence, integrity and judicial temperament.

These are very strong words of praise.

On January 27, 1988, after careful scrutiny of his credentials, the Senate Judiciary Committee voted unanimously to report Judge Kennedy's nomination with a favorable recommendation. This recommendation is a particularly strong testimony of Judge Kennedy's qualifications, given the broad range of political philosophy represented by the committee members.

Mr. President, I firmly believe that Judge Kennedy's record and views warrant his confirmation by the Senate. I believe he will be a very favorable addition to the Supreme Court.

Mr. MURKOWSKI. Mr. President, today this body shall vote on whether to confirm Judge Anthony M. Kennedy as a U.S. Supreme Court Justice in order to fill the seat vacated by Justice Lewis F. Powell, Jr. I ask that my colleagues join me in supporting Judge Kennedy's confirmation.

At 51 years of age, Judge Kennedy has a broad background rich in judicial experience, legal practice, constitutional law, and academic scholarship.

He has attended some of our country's finest schools, earning degrees at Stanford University and Harvard Law School. For 12 years he has been a Federal appeals court judge for the Ninth U.S. Circuit Court of Appeals, having written some 450 legal opinions. Before that time he practiced law for some 14 years in northern California. He has also been a professor of constitutional law since 1965 at McGeorge School of Law in Sacramento, CA.

The American Bar Association has unanimously endorsed Judge Kennedy, giving him its highest rating.

During his tenure as a Federal appeals court judge he has dealt with a myriad of complex legal issues involving fundamental clashes between legitimate Government interests and inherent personal freedoms. Experts who have analyzed these cases have found his decisions balanced, well-reasoned, temperate, and fair. They also have found him difficult to lable or predict. This makes him a fitting choice for what many believe may be a key "swing vote."

Judge Kennedy does not adhere to, or profess to hold any overriding constitutional philosophy. In his own words he is still searching for a "correct balance" of interpretation over the principles of order and liberty. Because he is not so predisposed, those who will come before him can be assured that he will let the facts shape his decisions.

He prefers narrow judicial rulings and seeks to address only the issues necessary to resolve a case. He is also inclined to defer to the political process, if possible. This practice of restraint is consistent with his distain for judges who use cases to make policy or let personal views influence court ruling. It also helps preserve such cherished American principles of separation of powers and checks and balances.

Although Judge Kennedy's views on the first and 14th amendments, and privacy guarantees, do not fall into predictable patterns they are nevertheless in keeping with acceptable traditional notions of proper constitutional interpretation.

He sees the Court's role as paramount in safeguarding personal individual freedoms. He believes privacy is an integral part of liberty protected under the due process clause. He is particulary sensitive to discrimination problems, recognizing that subtle barriers in the form of indifference and insensitivity can often inhibit equality of advancement.

Political speech is viewed by judge Kennedy as central to the democratic process, and that protected speech can take on many forms of expression.

While Judge Kennedy holds no fixed views per se, he places a high premium on the importance of judges adhering to precedent for with it comes stability, an understanding of what is expected, and a respect for law.

Mr. President, I am confident that our country will be well-served by Judge Kennedy as a U.S. Supreme Court Justice. His record, background, and character make ready to take on the challenges of maintaining the delicate balance between order and liberty.

Mr. DODD. Mr. President, I rise to express my support for the nomination of Judge Anthony M. Kennedy to be an Associate Justice of the U.S. Supreme Court.

Like all of my colleagues, I approach the question of the confirmation of Judge Kennedy with enormous seriousness and solemnity. As Senators, we all bear a tremendous responsibility to fulfill our constitutional duty to provide advice and consent to the President of the United States—and to the American people—on judicial nominations.

As I stated some months ago during the debate on the nomination of Judge Bork, a Supreme Court Justice has an unparalleled opportunity to influence the most critical issues facing this and future generations of Americans. Moreover, I believe that the Court now may be at a pivotal point in which the future direction of our law is at stake.

Therefore, the vote on Judge Kennedy's nomination clearly is one of the most important and far-reaching votes that any Member of this body will ever make.

The crucial question for me in considering a Supreme Court nomination always has been whether the nominee is capable of and committed to upholding the Constitution of the United States, and protecting the individual rights and liberties guaranteed therein.

I voted against the confirmation of Judge Bork. I did so not because Judge Bork is a conservative jurist, but because I concluded that his views are totally out of step with many of our fundamental constitutional values and that his confirmation was not in the best interest of the United States.

Judge Kennedy also is conservative. I do not agree with everything Judge Kennedy has said or written, and I fully expect to disagree with some of the opinions he likely would write and votes he likely would cast as a Supreme Court Justice.

However, while he is conservative and possesses views with which I disagree, I believe that Judge Kennedy's considerable intellectual strengths are coupled with a deep and abiding com-

mitment to fundamental constitutional values and principles.

Although I disagree with Judge Kennedy's judicial philosophy in certain areas, such as civil rights protection for women and minorities, I find that his approach to liberty and fundamental rights generally is within the tradition of Supreme Court jurisprudence.

Judge Kennedy has no single, immutable, or overarching theory for interpreting the Constitution but instead, is devoted to a principled search for the correct balance in constitutional interpretation. Throughout his career on the Federal bench, Judge Kennedy has demonstrated that he is open-minded and intellectually flexible.

The picture of Judge Kennedy that emerges as a result of the Judiciary Committee's investigation and hearings is that of a judge who issues well reasoned opinions premised on scrupulously careful analysis of Supreme Court precedents and close attention to factual variations and competing interests. Moreover, his testimony before the committee established that he respects a continuous evolution of constitutional doctrine.

On balance, the evidence I have reviewed indicates that Judge Kennedy would serve with distinction and would work to preserve and protect our fundamental constitutional values, if confirmed as a Justice of the Supreme Court. There is no indication that his approach to the Constitution, or to the Court's role in enforcing it, would unravel the settled fabric of constitutional law.

Thus, despite my differences with some of his views, I urge the Senate to confirm the nomination of Judge Kennedy to be an Associate Justice of the Supreme Court.

Mr. WALLOP. Mr. President, I rise today to express my strong support for the confirmation of Anthony Kennedy to be an Associate Justice of the Supreme Court. This vote today marks the end of a long, often contentious and vindictive struggle to fill this vacancy. We rejected one eminently, superbly qualified man. Another stepped aside.

Now, some 7 months after Justice Powell announced his retirement, we are ready to confirm Judge Kennedy. It is worth noting that by the time the new Justice takes his place on the High Court, nearly half of the cases set for argument this term will have been heard.

Clearly, the time for confirmation of a new Justice has not only come, it is long overdue. I am, however, pleased that the Judiciary Committee and the Senate have heeded President Reagan's call in his State of the Union Message to act quickly on the backlog of judicial nominations by bringing Judge Kennedy's nomination to the floor in a timely manner.

The venom and rancor that characterized the Bork nomination have been mercifully absent from the Kennedy nomination process. Miraculously, the Senate seems to have regained its equilibrium and its common sense since October and is again willing to evaluate a judicial nominee on the basis of a consistent standard of competence for the job, rather than whether he passes the political litmus test of a certain set of interest groups.

I continue to be distressed by the double standard so blatantly adhered to by the Senate in its consideration of that nomination. I am thankful that the Senate has seen fit to exercise its advise and consent role in the Kennedy nomination in a more reasoned manner. I hope that will continue to be the case with future nominations that come before this body.

Judge Kennedy brings to the High Court an impeccable set of credentials, and his relative youth, at age 51, will ensure that he will serve the Court and the Nation for many years to come. He has practiced as a private attorney, has taught at the McGeorge School of Law at the University of the Pacific since 1965 and has served on the Ninth Circuit Court of Appeals for 12 years. He has built a reputation with his colleagues from all walks of life as fair, scholarly, and of unquestioned integrity. He has participated in over 1,400 cases during his tenure on the bench and has authored some 400 opinions.

During the Senate Judiciary hearings, Anthony Kennedy forcefully demonstrated his respect for judicial restraint and his conviction that the law should be interpreted, rather than legislated, by the courts. He clearly has the temperament and the wisdom to serve the Supreme Court with tremendous distinction. I am honored to support this impressive nominee and I urge all of my colleagues to vote in favor of his confirmation.

Mr. SASSER. Mr. President, I rise today to support the nomination of Judge Anthony M. Kennedy for a seat on the Supreme Court.

It is critical that this seat be filled. It is true that the Court can, and has, functioned for fairly long periods of time with less than a full complement of Justices. However, it is always an undesirable situation. A decision by a less than full Court often leaves a gray cloud of uncertainty in important areas of the law.

Plaintiffs and defendants alike are left with doubts as to what the outcome of a case would have been if it had been argued before a full Court. Potential litigants with similar cases are tempted to bring additional cases in the hope that a new Justice will bring a different chemistry to the Court and that they will achieve a different result.

This is particularly true when, as now, the Court is sharply divided on many issues. We have seen numerous cases in the past few years resolved by a one-vote margin. And cases this term which raise important constitutional issues have been decided—if that is the right word—on a tie vote.

So, I am pleased that the President has finally sent us a nominee who can achieve broad support in the Senate.

In keeping with my practice on judicial nominations, I have waited until after the hearings have been completed before announcing my decision. I have carefully reviewed the hearing record and Judge Kennedy's record on the Ninth Circuit Court of Appeals.

I find that his opinions are well-reasoned and firmly grounded in established constitutional doctrine. They show an appreciation for the intent of the Founding Fathers as well as a awareness of 200 years of the American constitutional experience. That does not mean that I agree with every opinion that Judge Kennedy has handed down. However, I do believe that he has shown a commitment to the fundamental rights and liberties that Americans believe are guaranteed by the Constitution—the right to privacy, civil rights, and equal justice under the law.

Judge Kennedy comes to the Senate for confirmation after a long and distinguished record on the bench. He is a graduate of Stanford University and Harvard Law School. He also studies at the London School of Economics. In 1976, he was appointed to the Ninth Circuit Court of Appeals.

During his time on that court, he has authored numerous opinions. The reasoning in some of them was later adopted by the Supreme Court. This shows two things, I believe. First, it indicates that he is firmly in the mainstream of constitutional interpretation and constitutional doctrine. Second, it offers the hope that he will be a Justice that can mold a consensus on the Court.

This latter point is more important than appears at first glance. It is often a critical role on the Court—especially a Court as divided as the present Court has been in recent years. As I said earlier, a sharply divided Court speaks with a divided voice. It leaves Americans unsure of exactly where their constitutional liberties begin and end.

The Supreme Court is a crucial element in our democratic fabric. It is living proof that the bar of justice is open to all. That every citizen may have his or her day in court and the opportunity for the protection of his or her individual rights. For many of our citizens, who may well have exhausted all other means of redress, it is indeed the Court of last resort.

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So, with that, Mr. President, I congratulate Judge Kennedy on his confirmation and I wish him well in the important though difficult work on which he is about to embark.

Mr. KERRY. Mr. President, I support the nomination of Judge Anthony M. Kennedy to the Supreme Court of the United States. I do so not because I agree with Judge Kennedy on every issue, but because I believe that he is a thoughtful, moderate jurist who is within the mainstream of American judicial thought. I believe that Judge Kennedy will bring a reasoned, careful, case-by-case approach to the Supreme Court, much like that of his predecessor on the Court, Justice Lewis Powell.

I opposed the nomination of Judge Robert Bork to the Supreme Court because I felt that his writings as a law professor and a judge showed him to be outside the mainstream of American thought on issues of civil rights and civil liberties. His views did not reflect the consensus of the American people on these issues. For these reasons, Judge Bork's nomination was rejected by the Senate by a large margin.

Judge Kennedy, however, is much different in his approach from Judge Bork. One example is the right to privacy. Although not enumerated specifically in the Constitution, the Supreme Court has found an implicit right to privacy in the Constitution. Judge Bork rejected that concept and that precedent. Judge Kennedy respects it. He does recognize a right to privacy as implicit in the Constitution, and he so stated during his confirmation hearings in December. This is a major and important difference between Judge Kennedy and Judge Bork.

I do have some concerns about Judge Kennedy, most particularly about some of his past decisions in the area of civil rights and civil liberties.

For example, I have questions about his decision in Beller versus Middendorf, where Judge Kennedy authored an opinion upholding the constitutionality of Navy regulations providing for the discharge of those who engage in homosexual activities. While I agree with Judge Kennedy that there must be "a reasonable effort to accommodate the needs of the government with the interests of the individual," I am not convinced that this case strikes such a balance.

Also, in U.S. versus Leon, Judge Kennedy dissented from the majority's holding which affirmed the suppression of evidence in a drug case and refused to recognize a so-called good faith exception to the exclusionary rule. In U.S. versus Cavanaugh, Judge Kennedy upheld the legality of electronic surveillance by the FBI of an engineer who was suspected of espionage. And in AFSCME versus State of Washington, Judge Kennedy authored an opinion reversing a district court judge who found discrimination by Washington State against its female employees on the basis of "comparable worth."

I might have decided these cases differently than Judge Kennedy. But I believe that, on balance, his decisions were reasonable ones, based on his perception of the merits of each case, and not on some overarching ideological theory or doctrine. Judge Kennedy's approach is one that I believe is appropriate for a Supreme Court Justice.

Judge Kennedy has been on the Federal bench for 12 years, and has authored over 400 opinions. He enjoys the respect of his colleagues. The American Bar Association has given Judge Kennedy its highest rating. His nomination has been reported out favorably, and unanimously, by the Senate Judiciary Committee. While I am concerned by the fact that respected groups such as Americans for Democratic Action and the National Organization of Women have decided to oppose his nomination, I believe that his nomination is as good as we are likely to get from this administration, and is better than most.

In a 1980 speech on Presidential powers, Judge Kennedy said, "My position has always been that as to some fundamental Constitutional questions, it is best not to insist on definitive answers. The Constitutional system works best if there remain twilight zones of uncertainty and tension between the component parts of the government. The surest protection of constitutional rule lies not in definitive announcements of power boundaries, but in a mutual respect and deference among all the component parts."

That is a reasonable and thoughtful view of our system of government, one which I can support. Unlike Judge Bork, Anthony Kennedy is not a judicial activist. He does not have a radical agenda. He is a judicial moderate, well within the mainstream of the judiciary. For these reasons, I will vote to confirm Judge Kennedy as an Associate Justice of the Supreme Court.

Mr. ADAMS. On January 27, the Judiciary Committee voted to recommend the confirmation of Judge Anthony Kennedy to fill the vacancy on the Supreme Court. While Judge Kennedy would not have been the individual I would have chosen to replace Justice Lewis Powell, I believe he has the requisite integrity, intelligence and fair mindedness to be a Justice of the Supreme Court.

During the Judiciary Committee hearings, Judge Kennedy was forthright and articulate in expressing his views and describing his judicial philosophy. I do not agree with him on every issue. For example, I believe that his decision in the Washington State comparable worth case, AFSCME versus State of Washington, was wrong. Despite these differences, however, Judge Kennedy has displayed sensitivity to the rights of individuals in our society and the role of the courts in protecting our cherished liberties. For these reasons, I will vote to confirm Judge Kennedy to the Supreme Court.

The advice and consent responsibility of the U.S. Senate requires each Senator to make a searching inquiry into each nominee's qualifications and come to an independent judgment on his or her fitness for the Federal judiciary. I made this inquiry with Judge Bork, who I felt was not qualified to become a Supreme Court Justice, and now with Judge Kennedy. I will continue to exercise my judgment in scrutinizing future Reagan nominations.

The PRESIDING OFFICER. The Senator from South Carolina.

Mr. THURMOND. Mr. President, I believe we have 3 minutes left. I yield that time to Senator WILSON from the home State of the nominee.

Mr. WILSON. Mr. President, it is little wonder that victims of crimes often fail to report crimes, as Judge Kennedy has noted, because the criminal justice system's failure to care about victims has become widely perceived, if not in fact, at least in belief. Too often that belief has inspired public doubt that true justice will be done.

The concern that Judge Kennedy has expressed so eloquently is appropriate not only for those of us entrusted with making the law but clearly for judges who apply it, and certainly appropriate for those whose duty it is to test the law against the Constitution.

I said a moment ago that he would provide leadership. He has done so already. In the Chadha decision, Mr. President, he corrected congressional overreaching and said that the legislative veto that we had enacted intruded upon the province of the other two branches.

In the United States versus Leon, Judge Kennedy's dissent in the ninth circuit in fact became the basis for the majority opinion by the Supreme Court overturning the ninth circuit and establishing as a principle that good-faith errors on the part of law enforcement when they do not invalidate the evidence will not cause it to be excluded. Time and again, he has demonstrated a concern for victims as well as those who in good faith seek to protect society against criminals, set forth in an eloquent style and upheld by an even more important philosophy.

It is not enough, Mr. President, that the Supreme Court have those who will simply serve. It must have people, certainly every now and again, of the caliber of Anthony Kennedy. People

who can, in fact, provide the kind of leadership that is essential to the rule of law in America.

The PRESIDING OFFICER. The time of the Senator has expired.

Mr. LEAHY. Mr. President, we are going to vote soon.

I would note that the chairman of the Senate Judiciary Committee is not here because of an illness. I know how personally disappointing that must be to him. We would not be here at this time without the leadership of Senator BIDEN, who has carefully brought these hearings to fruition, moved them through expeditiously, in a way so that all sides could be heard. I think the fact that this nomination is here in such good shape is a tribute to Senator BIDEN.

The PRESIDING OFFICER. The Senator's time has expired. All time has expired.

The hour of 10:30 having arrived, the question is will the Senate advise and consent to the nomination of Anthony M. Kennedy, of California, to be an Associate Justice of the Supreme Court.

The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. CRANSTON. I announce that the Senator from Tennessee [Mr. GORE] and the Senator from Illinois [Mr. SIMON] are necessarily absent.

I also announce that the Senator from Delaware [Mr. BIDEN] is absent because of illness.

I further announce that, if present and voting, the Senator from Delaware [Mr. BIDEN] and the Senator from Tennessee [Mr. GORE] would each vote "yea."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 97, nays 0, as follows:

[Rollcall Vote No. 16 Ex.]

YEAS—97

Adams	Evans	Lugar
Armstrong	Exon	Matsunaga
Baucus	Ford	McCain
Bentsen	Fowler	McClure
Bingaman	Garn	McConnell
Bond	Glenn	Melcher
Boren	Graham	Metzenbaum
Boschwitz	Gramm	Mikulski
Bradley	Grassley	Mitchell
Breaux	Harkin	Moynihan
Bumpers	Hatch	Murkowski
Burdick	Hatfield	Nickles
Byrd	Hecht	Nunn
Chafee	Heflin	Packwood
Chiles	Heinz	Pell
Cochran	Helms	Pressler
Cohen	Hollings	Proxmire
Conrad	Humphrey	Pryor
Cranston	Inouye	Quayle
D'Amato	Johnston	Reid
Danforth	Karnes	Riegle
Daschle	Kassebaum	Rockefeller
DeConcini	Kasten	Roth
Dixon	Kennedy	Rudman
Dodd	Kerry	Sanford
Dole	Lautenberg	Sarbanes
Domenici	Leahy	Sasser
Durenberger	Levin	Shelby
Simpson	Symms	Weicker
Specter	Thurmond	Wilson
Stafford	Trible	Wirth
Stennis	Wallop	
Stevens	Warner	

NOT VOTING—3

Biden	Gore	Simon

So the nomination was confirmed.

Mr. BYRD. Mr. President, I ask unanimous consent that the President be immediately notified of the confirmation of the nomination.

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

Mr. BYRD. Mr. President, I move to reconsider the vote by which the nomination was confirmed.

Mr. METZENBAUM. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MORNING BUSINESS

The PRESIDING OFFICER. Under the previous order, there will now be a period for the transaction of morning business for not to exceed 30 minutes.

The majority leader.

RECESS UNTIL 11:45 A.M.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 45 minutes.

There being no objection, the Senate, at 11 a.m., recessed until 11:45 a.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SHELBY].

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, what is the pending business before the Senate, if any, at the moment?

The PRESIDING OFFICER. Morning business has expired.

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended for an additional 30 minutes and that Senators may speak therein up to 5 minutes each.

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

SOVIET ARMAMENTS TO ORTEGA—UNITED STATES ARMS TO CONTRAS DOES NOT BRING PEACE

Mr. MELCHER. Mr. President, my continued and consistent opposition to U.S. money for the Contras is based on my strong feeling that throwing money at 15,000 or 20,000 armed troops will not bring peace. I have continuously evaluated President Reagan's Nicaraguan policy, and I have always concluded this policy simply is wrong. As long as we continue to send the Contras money, they will find ways to gobble it up.

Sending more money to solve the mess in Nicaragua ignores the basic problem: as long as Nicaragua receives outside shipments of armaments, the Nicaraguans, with their war, will keep plodding on.

Is there anything wrong with President Reagan telling Gorbachev that the Soviets must stop supplying war materials to the Nicaraguan Government? That government is sick, and the continuous supply of Soviet armaments is the root of their sickness. To match that with U.S. supplies for the Contras does not treat the illness but only spread it.

My prescription is to have President Reagan notify Gorbachev that arms shipments to Nicaragua are unacceptable. That is the best U.S. contribution to the Arias peace plan. If the peace proposal is to succeed, it will be worked out gradually, without outside interference.

We have enough problems at home with a shaky economy that reflects the serious budget and trade deficits. The attention to Ortega and the Contras continually distracts attention from our major economic problems.

Nicaragua has been a continuous drain, both in dollars and time for the President and Congress. Meanwhile, America sinks deeper into its own economic swamp.

To make our position clear, the President should promptly notify the Soviets to halt Nicaraguan arms shipments and then permit the focus of our efforts to be turned to our own problems.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, the two requests I am about to make have been cleared with the distinguished Republican leader.

TRADITIONAL READING OF WASHINGTON'S FAREWELL ADDRESS

Mr. BYRD. Mr. President, I ask unanimous consent that notwithstanding the resolution of the Senate of January 24, 1901, on Monday, February 15, 1988, immediately following the prayer and the disposition of the Journal, the traditional reading of Washington's Farewell Address take place, and that the chair be authorized to appoint a Senator to perform its reading.

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

The Chair appoints the distinguished Senator from North Carolina, Senator SANFORD, for the reading.

AUTHORIZATION FOR SENATOR SHELBY TO SIGN BILLS

Mr. BYRD. Mr. President, I ask unanimous consent that Senator SHELBY, the very distinguished junior Senator from the State of Alabama, who now presides over this august body with the skill and the dignity and fairness that are so rare as a day in June, be authorized to sign the following enrolled bills: Senate Joint Resolution 39 and Senate Joint Resolution 196.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS UNTIL 12:30 P.M.

Mr. BYRD. Mr. President, an attempt is being made to work out a time agreement on a bill. I ask unanimous consent, so that those discussions may proceed in an uninterrupted mode, that the Senate stand in recess until 12:30 p.m. today.

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

Thereupon, at 11:59 a.m., the Senate recessed until 12:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. SHELBY].

SCHEDULE

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. BYRD. Mr. President, there is a possibility that certain bills may be potential, and they are potential, candidates for unanimous consent agreements. Some of those discussions have been under way and will continue. I think the Senate would be well advised at this point not to be in a quorum for a couple of hours but that it stand in recess so as to facilitate further meetings. So I ask unanimous consent that there now be a period for morning business for not to exceed 10 minutes, that Senator HEFLIN be recognized to speak, and that upon the conclusion of his remarks the Senate stand in recess until the hour of 2:30 p.m. today.

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

The Senator from Alabama.

Mr. HEFLIN. Thank you, Mr. President. I thank the majority leader for allowing me to go ahead at this time and make a few remarks as if in morning business.

THE SPACE STATION

Mr. President, today, I am sending a letter to the President of the United States asking him to send to Congress a fiscal year 1988 supplemental appropriations request for the space station.

The United States will not be ready to meet the needs and requirements of the future without a strong and viable space program. The age of space is no longer simply coming. The age of space is before us and staring our Nation directly in the eyes offering a challenge like we have never seen before.

I am concerned that neither the administration, nor some in Congress are taking the challenge of space seriously. In my judgment, space is the greatest adventure of our time and any nation that sees itself as a world leader cannot, and must not, ignore it. Other nations have recognized the treasures space has to offer and are rapidly moving forward with their own space activities while this administration has not shown its devotion and zeal that it once did for America's program.

Mr. President, in my judgment, the cornerstone to any viable space program should be a permanently manned space station. As my colleagues are well aware, our Nation is on the verge of developing such a facility. However, in the final months of the fiscal year 1988 appropriations process and deficit reduction debates, the space station found itself in an unusual and unfortunate situation.

When the budget summit agreements were reached, the Appropriations Committee had to allocate outlay cuts to its subcommittees. Since NASA is funded in the HUD-Independent Agencies appropriations bill which is mostly entitlements, the space research and development programs were forced to take a disproportionate share of the cuts. In that regard, the space station was funded at a level of $425 million—$225 million of that will not be available until June 1. If it had not been for the outstanding efforts of the members and their staffs of the subcommittee on both the House and Senate sides, the space station would not have been funded as high as it was. This funding, along with a small amount left over from last year, will allow the program to continue. However, it will only allow it to slowly move forward and will most assuredly cause program delays as much as a year or more which will add significantly to the total cost of the program.

In my judgment, we cannot allow such significant delays and cutbacks in this program. In that regard, I am sending this letter to the President asking him to request of Congress a supplemental appropriations for the space station. I do not believe this is an unreasonable thing to do since every dollar we have put into the space station is an investment in the future of our Nation. The space station, and the space program in general, is too important to America's future and to the future of science and technology research to stand idly by and let this program become severely crippled or killed. I, therefore, ask unanimous consent that a copy of my letter to the President on the space station be printed in the RECORD at this point.

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

U.S. SENATE,
COMMITTEE ON AGRICULTURE,
NUTRITION, AND FORESTRY
Washington, DC, February 1, 1988.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: Due to the less than adequate funding level for the American/International Space Station for Fiscal Year 1988, I strongly urge that you send to Congress a supplemental appropriations request for this program.

As you know, I share your dream of a permanently manned space station. I believe the Space Station will be a cornerstone of our nation's civilian space program and is critical for promoting the development of space for the benefit of all mankind. This program will mark a turning point in American space exploration, and will open almost limitless opportunities for technological research and discovery.

In recent months, however, I have become alarmed by the increasing attacks which have been lodged against this program that is so important to our future. Thus, I am convinced that, without your personal assistance, the Space Station faces crippling and possibly fatal budget cuts both in the immediate future and for years to come. In 1984, you allowed the dream of the Space Station to become a reality. In that regard, this program could be a part of the legacy of your presidency. If the Space Station is fully under way by the end of your presidency, historians will undoubtedly record it as a great accomplishment in your chapter of history.

Many in Congress greatly support the Space Station and have worked for several years to make it a reality. However, those same supporters have been disappointed and discouraged because you do not appear to support this program like you formerly did. Particularly, in the last year, you and your Administration apparently have not been as vocal in supporting this vital program as you were at one time. But, we have now reached a critical point in which your personal intervention and show of support is necessary in order to allow our nation to reap the benefits of a permanently manned space station in the mid-1990's.

While increases and reallocations were made to boost congressional appropriations, additional funds are needed, nevertheless, in Fiscal Year 1988 to get the Space Station off to a good start. The present funding

level will most assuredly cause serious program delays and will significantly increase the long range total program cost.

I know you will agree that this program is far too important to allow it to become crippled or cancelled by severe budget cuts. In that regard, once again, I strongly urge you to send to Congress a Fiscal Year 1988 supplemental appropriations request for the Space Station program. Furthermore, I urge you to personally intervene in the process in order to ensure its approval.

Thank you for this consideration.

With kindest regards, I am

Sincerely,

HOWELL HEFLIN.

Mr. HEFLIN. Mr. President, I hope that President Reagan will recognize the seriousness of this matter and send to the Congress a supplemental appropriations request for the space station.

RECESS UNTIL 2:30 P.M.

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

There being no objection, the Senate, at 12:35 p.m., recessed until 2:30 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer [Mr. GRAHAM].

The PRESIDING OFFICER. The majority leader.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. BYRD. 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. BYRD. Mr. President, our discussions over the past 2 or 3 hours have been productive and more so than if the Senate had been in session, I think, under the circumstances.

THE CALENDAR

Mr. BYRD. Mr. President, I ask the distinguished assistant Republican leader if the following calendar orders are cleared: Calendar Order Nos. 325 and 499.

Mr. SIMPSON. Mr. President, those two items have been cleared on this side of the aisle.

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate proceed to those two items seriatim.

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

REVISION AND EXTENSION OF CERTAIN BLOCK GRANT PROGRAMS

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 1579) to amend the Public Health Service Act to revise and extend the Block Grant Program, and for other purposes.

There being no objection, the Senate proceeded to consider the bill, which had been reported from the Committee on Labor and Human Resources, with an amendment to strike all after the enacting clause and insert in lieu thereof, the following:

SECTION 1. AUTHORIZATION OF APPROPRIATIONS.

Section 1901(a) of the Public Health Service Act (42 U.S.C. 300w(a)) is amended—

(1) by striking out "and"; and

(2) by inserting before the period at the end thereof the following: ", $128,500,000 for the fiscal year ending September 30, 1988, $133,600,000 for the fiscal year ending September 30, 1989, and $138,900,000 for the fiscal year ending September 30, 1990".

SEC. 2. USE OF ALLOTMENTS.

Section 1904(a)(1)(C) of the Public Health Service Act (42 U.S.C. 300w-3(a)(1)(C)) is amended by inserting before the period at the end thereof the following: ", including programs designed to reduce the incidence of chronic diseases".

SEC. 3. STATE PLANS.

Section 1905 of the Public Health Service Act (42 U.S.C. 300w-4) is amended—

(1) in subsection (c)—

(A) by striking out "and" at the end of paraprah (5);

(B) by striking out the period at the end of paragraph (6) and inserting in lieu thereof "; and"; and

(C) by adding at the end thereof the following new paragraph:

"(7) agrees to provide a description of the manner in which the State will—

"(A) evaluate the progress made in achieving the objectives set forth by the State under subsection (d);

"(B) evaluate the programs, activities, and services conducted with payments made to the State under subsection (a); and

"(C) provide assurances that the State will report periodically to the Secretary on the results of evaluations conducted under subparagraphs (A) and (B).''; and

(2) in subsection (d), by inserting after the first sentence the following new sentence: "The description shall specify the objectives to be attained, the programs and activities to be supported, the activities to be provided, and the numbers and populations of persons to whom the programs, activities, and services will be directed in order to meet the objectives set forth by the State.".

SEC. 4. ESTABLISHMENT OF NATIONAL AND REGIONAL CENTERS.

(a) CENTERS FOR PEDIATRIC EMERGENCY MEDICAL SERVICES.—Section 1910 of the Public Health Service Act (42 U.S.C. 300w-9) is amended to read as follows:

"SEC. 1910. NATIONAL AND REGIONAL CENTERS FOR PEDIATRIC EMERGENCY MEDICAL SERVICES.

"(a) GRANTS.—

"(1) IN GENERAL.—The Secretary shall make grants to States, public and nonprofit private entities, and academic institutions for the development, establishment, and operation of regional centers for pediatric emergency medical services.

"(2) DUTIES OF CENTERS.—Each regional center supported with a grant under this subsection shall—

"(A) train health professionals to provide pediatric emergency medical services, including minority health professionals;

"(B) provide for the appropriate use of bilingual personnel (in the case of centers serving substantial numbers of individuals who are not fluent in English);

"(C) conduct research on the prevention and treatment of pediatric medical emergencies; and

"(D) conduct activities relating to the prevention of pediatric medical emergencies, including activities to disseminate information and provide education to the public through the use of the print and broadcast media.

"(2) PRIORITY.—In making grants under this subsection, the Secretary shall give priority to—

"(A) States and schools of medicine which received grants under section 1910 of this Act (as in effect on September 30, 1987);

"(B) applicants that will provide pediatric emergency medical services in rural areas; and

"(C) States that have only one designated trauma center.

"(3) AMOUNT OF GRANT.—No grant under this subsection for any fiscal year shall be less than $500,000.

"(4) PERIODS OF GRANTS.—A grant under this subsection shall be made for a 1-year period, and may be renewed for two additional 1-year periods.

"(5) APPLICATIONS.—No grant may be made under this subsection unless an application is submitted to the Secretary in such form, at such time, and containing such information as the Secretary shall prescribe. An application under this subsection by a public or nonprofit private health care institution shall contain information demonstrating that the applicant has experience in the delivery of, and the ability to deliver, pediatric medical services.

"(b) FEASIBILITY STUDY.—

"(1) GRANT.—The Secretary shall make a grant for fiscal year 1988 for the conduct of a study to determine the feasibility and advisability of establishing and operating a National Center for Pediatric Emergency Medical Services which meets the requirements of subsection (d) (hereafter in this subsection referred to as the 'National Center').

"(2) APPLICATION.—

"(A) SUBMISSION.—The Secretary shall request the Institute of Medicine of the National Academy of Sciences to submit an application for a grant under paragraph (1).

"(B) ACCEPTABLE APPLICATION.—If the Institute submits an acceptable application for a grant, the Secretary shall make such grant to the Institute.

"(C) NONACCEPTABLE APPLICATION.—If the Institute does not submit an acceptable application for a grant, the Secretary shall request one or more appropriate nonprofit private entities to submit an application for such grant and shall make the grant to the entity which submits the best acceptable application.

"(3) REPORT.—Within 12 months after the date of enactment of this section, the recipient of a grant under paragraph (1) shall prepare and transmit to the Secretary a report describing the results of the study conducted under such paragraph and containing recommendations concerning the feasibility and advisability of establishing a National Center and such other recommendations as the recipient considers appropriate.

"(c) ESTABLISHMENT OF NATIONAL CENTER.—

"(1) IN GENERAL.—If, after reviewing the report required by subsection (b)(3) and after consulting with the American Academy of Pediatrics and the American College of

Emergency Physicians, the Secretary determines it is feasible and advisable to establish a National Center, the Secretary shall make grants for fiscal year 1989 and each succeeding fiscal year to an appropriate public or nonprofit private entity for the establishment and operation of a National Center.

"(2) APPLICATION.—No grant may be made under this subsection unless an application for such grant is submitted to the Secretary in such form, at such time, and containing such information as the Secretary may prescribe.

"(d) DUTIES OF NATIONAL CENTER.—The National Center referred to in subsections (b) and (c) shall—

"(1) develop and disseminate appropriate standards for the provision of pediatric emergency medical care and for appropriate mechanisms to assure the quality of such care;

"(2) conduct activities to facilitate the training of health professionals to provide pediatric emergency medical services, including minority health professionals; and

"(3) develop and disseminate, through the print and broadcast media, information for the public on the prevention of, and appropriate responses to, pediatric medical emergencies, including information on available national, State, and local pediatric emergency medical services.

"(e) AUTHORIZATION OF APPROPRIATIONS.—To carry out this section, there are authorized to be appropriated $5,000,000 for fiscal year 1988, and such sums as necessary for fiscal year 1989 and for fiscal year 1990. Of the amounts appropriated under this subsection for fiscal year 1988 up to $1,000,000 shall be available for the study required under subsection (b).".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect on October 1, 1987.

Mr. KENNEDY. Mr. President, I appreciate the action of the leader and the minority leader in bringing these issues to the Senate this afternoon. These are important programs dealing with vital public health issues. The authorizations expired last September. The legislation reflects, really, the best balanced judgment of members of the committee. We have been able to take a number of different suggestions about how to strengthen this program. I think it reflects the solid contributions that the members of the Human Resources Committee have made.

The PRESIDING OFFICER. If there is no further debate, the question is on agreeing to the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The PRESIDING OFFICER. The question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed.

EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION ACT

The PRESIDING OFFICER. The clerk will report the second measure.

The assistant legislative clerk read as follows:

A bill (S. 1726) to amend the Public Health Service Act to promote employee health and disease prevention, and for other purposes.

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. Is there debate?

Mr. KENNEDY. Mr. President, again, I welcome the opportunity to recommend this legislation to the Senate. This legislation is extremely important to the Public Health Service function and operation. It is basically, as our previous legislation, a result of strong bipartisan support. It is very much necessary to carry forward the Public Health Service function which is a vital function that reaches a wide range of different health issues from immunization to other types of important health services. I urge the Senate to accept this legislation and pass it this afternoon.

Mr. HATCH. Mr. President, I am pleased to join the Senator from Massachusetts [Senator KENNEDY] in supporting the Employee Health Promotion and Disease Prevention Act and Preventive Health Services Block Grant reauthorization. S. 1726 and S. 1579, respectively, these two pieces of legislation will allow us to continue our efforts to prevent disease before it occurs.

Two of every three deaths in this country are premature and most of these deaths could be prevented through appropriate use of preventive services and behavior changes. Heart disease, cancer, and stroke—our No. 1, 2, and 3 causes of death—still take an incredible toll in our society, annually costing an estimated 1.6 million lives and more than $130 billion in medical care and lost productivity. Alcohol abuse cost approximately $140 billion, cigarette use approximately $65 billion, and other substance abuses approximately $40 billion per year. And in 1983, the approximately 1 million teenage pregnancies cost society more than $16.5 billion.

For those who have been keeping count, each year these few preventable diseases I have mentioned cost more than $350 billion. And there are others. This legislation will help us continue existing prevention efforts and will increase Federal efforts to assist employers in setting up health promotion and disease prevention activities for their employees.

I urge my colleagues to join with the Senator from Massachusetts and myself in supporting these bills and I look forward to their rapid passage by the House.

The PRESIDING OFFICER. Is there further debate? If not, the question is on the engrossment and third reading of the bill.

The bill was ordered to be engrossed for a third reading, was read the third time, and passed, as follows:

S. 1726

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Health Promotion and Disease Prevention Act of 1987".

SEC. 2. FINDINGS.

Congress finds that—

(1) there is a developing body of scientific evidence that participation in organized health promotion programs administered in worksite settings improves productivity and reduces health care costs to individuals and employers;

(2) in excess of 50 percent of the work force of the United States is employed by small businesses and over 30 percent is employed in the public sector;

(3) worksite health promotion programs are not generally available to public sector employees or to employees of small businesses; and

(4) employees of small businesses are less likely to have adequate employer-based health and life insurance coverage and are thus more vulnerable to hardships resulting from medical and other costs associated with "preventable" diseases and conditions.

SEC. 3. EMPLOYEE HEALTH PROMOTION AND DISEASE PREVENTION PROGRAM.

(a) IN GENERAL.—Section 1701(a) of the Public Health Service Act (42 U.S.C. 300u(a)) is amended—

(1) by striking out "and" at the end of paragraph (9);

(2) by striking out the period at the end of paragraph (10) and inserting in lieu thereof a semicolon; and

(3) by inserting after paragraph (10) the following new paragraphs:

"(11) undertake and support research and demonstration programs designed to—

"(A) establish worksite based programs for public sector employees to promote healthy behavior and to decrease participation in unhealthy and high risk behavior; and

"(B) develop a better understanding of the special circumstances and problems encountered in providing health promotion and disease prevention programs to employees of small businesses (as defined in section 3 of the Small Business Act (15 U.S.C. 632)); and

"(12) in carrying out the programs referred to in paragraph (11)—

"(A) support at least six 3-year programs;

"(B) perform the programs under the auspices of State and local organizations capable of encouraging the participation of schools, school systems, colleges, universities, community business associations and coalitions, civic groups, insurance companies, and other appropriate organizations;

"(C) make every effort to assure that the programs reflect a variety of regions, States, and community settings (including urban, rural, and minority populations); and

"(D) evaluate the impact of the programs on—

"(i) the health status measurements;

"(ii) the use of primary and acute care health services;

"(iii) absenteeism from work; and

"(iv) reduced health and life insurance costs.".

(b) AUTHORIZATION OF APPROPRIATIONS.—Section 1701(b) of the Public Health Service

Act (42 U.S.C. 300u(b)) is amended by striking out "and $10,000,000 for the fiscal year ending September 30, 1987" and inserting in lieu thereof ", $10,000,000 for the fiscal year ending September 30, 1987, $10,500,000 for the fiscal year ending September 30, 1988, $11,000,000 for the fiscal year ending September 30, 1989, and $11,500,000 for the fiscal year ending September 30, 1990".

SEC. 4. CENTERS FOR RESEARCH AND DEMONSTRATION OF HEALTH PROMOTION AND DISEASE PREVENTION.

Section 1706 of the Public Health Service Act (42 U.S.C. 300u-5) is amended—

(1) in subsection (c)(1) to read as follows:

"(c)(1) During fiscal year 1988, the Secretary shall make grants and enter into contracts for the establishment of five centers under this section and the maintenance and operation of three of the centers established under this section in fiscal year 1987. During fiscal year 1989, the Secretary shall make grants and enter into contracts for the establishment of three centers under this section and the maintenance and operation of the eight centers established under this section in fiscal years 1987 and 1988. During fiscal year 1990, the Secretary shall make grants and enter into contracts for the establishment of three centers under this section and the maintenance and operation of the eleven centers established in fiscal years 1987, 1988, and 1989."; and

(2) in subsection (e) to read as follows:

"(e) To carry out this section, there are authorized to be appropriated $8,000,000 for the fiscal year ending September 30, 1988, $10,000,000 for the fiscal year ending September 30, 1989, and $12,000,000 for the fiscal year ending September 30, 1990.".

Mr. BYRD. Mr. President, I ask unanimous consent that both measures be reconsidered en bloc and that the motion to table the motion to reconsider en bloc be agreed to.

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

Mr. BYRD. Mr. President, I also ask unanimous consent that any Senators who wish to make statements on either of these measures may be permitted to do so up until 5 o'clock p.m. today.

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

Mr. BYRD. Mr. President, I compliment Mr. KENNEDY, Mr. HATCH, and others who have been instrumental in bringing these two measures through the committee and to the floor. I thank Mr. SIMPSON, the assistant Republican leader, for his cooperation in reaching these agreements today. I also thank Mr. HELMS, Mr. KENNEDY, and others who participated in these efforts. I thank the staffs very much, because they have certainly expended a great deal of time and labor, not only today but heretofore, on having both of these bills brought up.

I think the Senate has done good work today in disposing of these two measures.

EXECUTIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate go into executive session to consider the nominations on the Executive Calendar under the Department of Justice. There are two nominations.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the nominations be considered en bloc, that the motion to reconsider en bloc be laid on the table, and that the President be immediately notified of the confirmation of the nominees.

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

The nominations considered and confirmed en bloc are as follows:

DEPARTMENT OF JUSTICE

Robert H. Edmunds, Jr., of North Carolina, to be United States Attorney for the Middle District of North Carolina for the term of 4 years.

Jesse R. Jenkins, of North Carolina, to be United States Marshal for the Western District of North Carolina for the term of 4 years.

LEGISLATIVE SESSION

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

ORDER OF PROCEDURE

Mr. SIMPSON. Mr. President, I, too, want to pay my respects to the majority leader for calling together interested parties in this interim during this recess, at which time we had a very productive time on several issues with several Senators on both sides of the aisle. I particularly appreciate that. That is an important way to do our business. And, as I say, we are dealing with things other than these bills we have just handled, but it was a very productive session with Senator KENNEDY, Senator LEAHY, and the majority leader. As I say, it was an excellent and productive time.

Mr. BYRD. Mr. President, I want to thank the assistant Republican leader. I have had the occasion, many times over the years, to sit down with the Senator from Wyoming and to work out approaches whereby measures could be called up and time agreements thereon, and I have yet to make the effort in which he did not do his very best to expedite the progress thereon. And in practically all the instances that I can remember, he has been successful in helping to bring all sides together and to move legislation along. I am very grateful for that because it is that kind of cooperation that makes this body function and function effectively.

Mr. President, I want to make sure that the Senate did what I asked that it do.

I ask the Chair, as in executive session, did the Senate confirm the nominations of Robert H. Edmunds, Jr., to be U.S. attorney for the middle district of North Carolina, and Jesse R. Jenkins, of North Carolina, to be U.S. marshal for the western district of North Carolina and was the motion to reconsider made on each and was the motion to reconsider laid on the table, and was the President immediately notified in both instances?

The PRESIDING OFFICER. The majority leader is correct on each of those statements.

Mr. BYRD. I thank the Chair for his diligence and fairness and the ability with which he is presiding.

MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that there be a period for morning business not to extend beyond 30 minutes and that Senators may speak therein.

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

The Senator from Massachusetts.

Mr. KENNEDY. Again, Mr. President, I thank the leader for the expeditious way that we have handled these two important health bills this afternoon.

THE ADMINISTRATION'S REQUEST FOR AID TO THE CONTRAS

Mr. KENNEDY. Mr. President, with its latest request for Contra aid, the administration has once again displayed its obsession with military victory in Central America and its disdain for the only real hope for peace in the region—the Arias peace plan.

That plan—signed by five Central American Presidents—has brought the first significant progress toward peace in many years—not just in Nicaragua but throughout Central America. Certainly, the path to peace is fraught with difficulty and nobody trusts the Sandinistas. But the administration's alternative to Arias is unacceptable—it would condemn the people of Central America to wider war, worse repression, greater poverty.

If Congress approves the Contra aid, the responsibility for killing the peace process will be ours, not the Sandinistas. We will be saying "no" to peace not only in Nicaragua—but also in El Salvador, Honduras, and Guatemala, and innocent civilians will continue to pay the heavy price of continued war. The recent assassinations of human rights workers in El Salvador and of witnesses in human rights trials in Honduras are stark reminders of the grave cost of failure of the Arias plan.

The policy of Contra aid has failed, and it is long past time for Congress to end it. Nicaragua today is farther from democracy than it was 7 years ago—despite the $280 million in United States aid for the Contras throughout those

years. Repression of civil and human rights has escalated; the rights and activities of the church, press, and labor unions are all curtailed. Nicaragua is more of a threat to the security of the region than ever before. And as the Miranda report revealed, the Sandinistas have no intention of surrendering to the Contras.

Yet, now for the first time since the Sandinistas came to power, they have suddenly begun a series of reforms. Is that because of pressure from the Contras? No. Is it because of pressure from the Arias plan? Yes. The suspension of the state of emergency, release of political prisoners, and greater freedom of the press are the first substantive steps by the Sandinistas toward democracy in many years.

They have a long way to go—but the progress so far is a direct result of the Arias plan. It is arrogant and preposterous for the administration to claim that Contra aid is responsible for a single reform that is taking place in Nicaragua.

For 7 years of Contra aid—overt and covert, legal and illegal—the Sandinistas' repressive policies escalated continuously. Then, a historic peace accord is signed, and for the first time there is movement in the country toward reform, peace, and democracy. The Sandinistas have responded to pressure from their Central American neighbors—not from Ronald Reagan's paid mercenaries and Somoza rejects.

The correlation between Contra aid and Sandinista repression is undeniable. The Contras began their attacks inside Nicaragua from Honduras in 1981. The Sandinistas began their large-scale relocation of the Miskito Indians from the Rio Coco in January 1982.

CIA support in 1982 for the Contras and the Contras' bombing of bridges preceded the first state of emergency imposed by the Sandinistas on March 15, 1982.

The $27 million in "humanitarian" assistance approved by Congress in 1985 was followed by a crackdown in October 1985—the Sandinistas renewed the state of emergency and arrested several hundred dissidents.

In the spring of 1986, the Congress approved $100 million in aid to the Contras. And in June 1986 the Sandinistas responded by closing down La Prensa, expelling Bishop Pablo Antonio Vega, and blocking the return to Nicaragua of the director of the Catholic radio station, Rev. Bismarck Carballo.

Yet the administration persists in its threadbare claim that 7 years of Contra aid have forced the Sandinistas to the bargaining table. Any progress toward democracy by the Sandinistas is directly linked to pressure from the Contadora nations, the Contadora support group, and their Central American neighbors.

The Latin and Central Americans have urged the administration repeatedly—publicly and privately—to stop Contra aid and start negotiations. President Arias has called for an end to Contra aid. The other Central American nations have called for an end to Contra aid. The 15-member International Verification Commission has called for an end to Contra aid. In its January 15 report to the five Central American Presidents, the Commission criticized the United States support for the Contras in "spite of the exhortations of the Central American Presidents." It urged an end to this policy, saying, "The definitive cessation of this assistance continues to be an indispensable requirement for the success of the peace efforts and of this procedure as a whole."

The Commission concluded that the goals of the Arias peace plan have not been achieved, but progress has been made, and the Arias peace plan remains a valid avenue to peace.

The administration is well aware of the stakes in this request. They know full well that Contra aid is inconsistent with the Arias peace plan and may well kill it. The administration's strategy is all too clear—it is the last gasp of their failed 7-year hardline strategy to achieve the violent overthrow of the Government of Nicaragua, and Congress should have no part of it.

This request is the modest compromise the administration is trying to make. They say they want a little more nonlethal aid to tide the Contras over while we give the peace process a chance. Yet the $36 million in this package works out to an annual rate of over $100 million a year—higher than any previous level of Contra aid, and over three times the current level.

If we include the $14 million already appropriated for this year in the continuing resolution, the "incidental" costs such as $20 million in insurance for plane crashes, and the estimated $3.5 million in electronic countermeasures, the overall request begins to look very much like the administration's initial figure of $270 million. In effect, the administration is asking Congress for a Gulf of Tonkin resolution against the Sandinistas—and the peace process—and Congress should deny it.

President Reagan has made much of his offer to put $3.6 million in military aid in escrow. But in essence, the entire $36 million package is military aid to a military force engaged for military action. The so-called nonlethal portion includes trucks, helicopters, uniforms, airplanes, transportation, supplies, and a variety of logistical assistance.

If the administration had put as much effort into negotiating with the Sandinistas instead of negotiating with Congress, perhaps we would be closer to peace with that country. Yet when Ambassador Philip Habib tried to do just that, the administration gagged him and he resigned in protest. Instead, Reagan sent his new National Security Adviser Colin Powell and Assistant Secretary Elliot Abrams to threaten the other countries of Central America with a cutoff in aid if they did not join in its effort to lobby Congress. And last week, he announced that he would send Secretary of State George Shultz to Central America to accelerate the peace process—but only if Congress approves Contra aid. Such tactics are demeaning to Congress and to the countries of Central America. They demonstrate just how desperate the administration is to scuttle the Arias plan and maintain U.S. military aid.

This week may well be a historic turning point for peace in Central America. I urge the Senate and the House to reject the path of wider war and make the turn toward peace, by denying Contra aid.

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Ms. MIKULSKI). Without objection, it is so ordered.

MORNING BUSINESS

Mr. BYRD. Madam President, I ask unanimous consent that there be a period for morning business until 4 p.m. today and that Senators may speak therein.

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

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

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER. Without objection, it so ordered.

SENATOR INOUYE'S REQUEST FOR APPROPRIATIONS FOR SEPHARDIC JEWISH REFUGEES

Mr. EVANS. Madam President, I recently received, along with my colleagues, a letter from Senator DAN INOUYE, of Hawaii. That letter, I believe, was an act of extraordinary candor.

Madam President, I have served, during the time I have been in the Senate, with Senator INOUYE and during the last year as his vice chair-

man of the Special Committee on Indian Affairs.

The senior Senator from Hawaii, DANIEL K. INOUYE, has, throughout his long and distinguished career, fought tirelessly and courageously for those who do not have a voice in this Chamber. As the vice chairman of the Select Committee on Indian Affairs, I have seen him work, and worked with him, for hundreds of hours on end on behalf of native Americans. As a Senate colleague, I have seen him time and time again support the interests of the downtrodden and desperate.

That is why I am particularly distressed at the criticism he has encountered when he sought to help another group with little influence in this Chamber: Sephardic Jewish refugees.

He may have been right; he may have been wrong in what he did. But I am disappointed with the way critics have distorted the issue. As Senator INOUYE himself pointed out to the Senate earlier this week, the assistance for North African refugees did not come in the dark of night. The amendment was offered in subcommittee; it was approved by the full Appropriations Committee. What is more, the House also agreed to it. At no point during the process was there a single objection. Senator INOUYE should not be singled out and blamed for the collective judgment of the entire U.S. Congress.

Madam President, I do not believe for one instant that he has now or ever pandered to special interest groups. And I believe that it is more than a little disingenuous to assert that he is aiding special interests when the beneficiaries of his aid have no vote. There is not a single Member of Congress, this Senate included, who has not advocated appropriations for special interest projects. Most Members have advocated only those projects which provide special benefits for their constituencies and their own voters. Senator INOUYE, because of his chairmanship of the Foreign Operations Subcommittee of the Committee on Appropriations and Indian Affairs panels, has worked to benefit those whose voice is not counted by him, or, in the case of refugees, by anyone, who is elected to Congress.

In spite of the fact that his recent committee assignments have benefited the people of this Nation and of the world over just the parochial interests of his constituents, he has been reelected by overwhelming margins. Senator INOUYE is the only person who has held major statewide office throughout the three decades since Hawaiian statehood, and he is unquestionably the most popular politician in Hawaii's history.

Over the past year, I have served as vice chairman of the Indian Affairs Committee. This assignment has given me the opportunity to observe DAN INOUYE's selfless demeanor and his dedication to the plight of others less fortunate than himself.

His energy and enthusiasm have transformed the committee into one of the most active in the Senate. In the past year, the committee held almost 30 hearings, every one of which has been attended by the chairman and the testimony of every witness has received his full and complete attention.

The chairman has not advanced a single measure through the Indian Affairs Committee without giving complete and fair attention to the views of every member of the committee. He has approached every issue presented to the committee with prolonged and serious deliberation. And yet, with that extraordinary patience, coupled with persistence, the committee acted on over 25 bills in the first session of the 100th Congress and is prepared to act on nearly 50 more in the second session.

By his own estimate, and probably not to his own political benefit, Senator INOUYE has spent more time consulting with Indian leaders and learning first hand of the plight of Indian people than he has attending to the concerns of his constituents.

In a similar manner, his chairmanship of the Foreign Operations Appropriations Subcommittee has meant that the beneficiaries of his efforts, those in other countries with a need for foreign aid and the help of this country, have not been in a position to repay his generosity, certainly not through their votes.

There are not very many high rollers among Indian people and Third World refugees. There are few rewards for efforts, no matter how heroic, on their behalf. Those who are motivated to pursue their cause are motivated by something other than their own self-interest.

Madam President, I am confident that his unusual kindness and concern for these people is unmatched in this Congress and I, for one, am proud to call him my friend.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

CONTRA AID

Mr. EVANS. Madam President, 150 years ago a fragile confederation grew in Central America. For the first time, the citizens of that part of the world broke away from their Spanish rulers, forming a new confederation devoted to their freedom and their independence. It was a confederation which began in hope, but soon faltered. That part of the world now is split asunder. The five nations which once began together are bleeding, each from a different wound. I fear, Madam President, that today in the House and tomorrow we in the Senate will reveal to citizens of this country and to the world not our unity, our confederation, but rather our divisions.

We must vote on the President's request—today in the House and tomorrow in the Senate—without amendment, without new thinking, without considering new ideas. The vote clearly will be closely fought. But in this Senator's view, we will lose regardless of which way the vote comes out. We will lose because we will have shown to the world, once again, that we are neither unified nor constant in our policies toward Central America.

One side or the other may claim a temporary victory, but is that the best way? Is that the way we are most likely to bring peace to Central America?

Madam President, I have consistently opposed aid to the Contras all the time I have been in Congress. I have done so not because I was enamored of the Sandinista leadership as it has evolved in Nicaragua, but because I felt the policy simply would not do the job.

In a speech on this floor more than 2 years ago, I suggested that there was a multifaceted policy which might work better. That policy was to first recognize the fact that the direction toward peace in Central America has to be a direction devised and led by Central Americans themselves.

I believe that in that statement, I said the path to peace ought to be crafted by those for whom Spanish is a primary language, not by Americans and not by others.

In addition to crafting that kind of peace plan, I felt that we should also fully live up to the responsibility we assumed under the report of the Kissinger Commission.

We were, over an extended period of time, to provide ample economic aid to the democracies of Central America to build their economic strength and to enhance their move toward democracy.

We fulfilled the requirements of the Kissinger Commission Report for 1 year. Then we began to falter, gradually reducing and then even more rapidly reducing, the amount of economic aid we were providing to those nations.

I felt at that time that ideas crossed borders a lot faster than rebels. If we were somehow to build strong and vibrant democracies in Honduras and Guatemala and El Salvador, to couple with the longstanding democracy in Costa Rica; if we were to ensure that their economies were strong and

robust and the people treated justly, then internal rebellion in those nations would certainly diminish.

Moreover, the people inside Nicaragua would see around them the freedom, the economic opportunities, the better government enjoyed by their neighbors, they might then take these things for themselves.

Madam President, things have changed since I presented those remarks a little over 2 years ago—some for the better, some for the worse. The war continues, a war which rages back and forth across peasant villages, disrupting those who probably have no real sense of either Marxism or democracy, but whose major interests are how to feed their families the next day and how to exist in a poverty-stricken land.

There have been some good things which have happened. The Presidents of Central America have gotten together.

President Arias, with his consistent leadership, provided his colleagues with an opportunity to join in a collective effort for peace.

In the intervening years each of us has heard from thousands of citizens—I know I have—in probably the most thoughtful outpouring of their feelings as on virtually any other issue in front of us. I suspect I am just about average in the Senate. I represent a State which is about average in population, and yet the number of letters I receive in a good month will run 15,000 to 16,000. I have to add them up at the end of the month and have my staff tell me which are the top 10 issues so we can get a good idea of what people are writing about and how many are on one side or the other side of the issue. It is fascinating. Usually those top 10 issues appear once in a month and then disappear in the next month. Or there will be 1,000 or 1,500 letters in favor of a certain subject and no one who writes against. All of the 1,000 or 1,500 letters being generated by some organization, some group aimed at a particular interest.

There is one issue which month after month is in the top 10 the letters I receive. These letters are generally not generated by any group. They are individual letters, for the most part handwritten. They are thoughtful, poignant, and an extraordinary number of them are from people of my State who have visited one or several countries of Central America, sometimes for extended periods. They are on both sides or perhaps on several sides of this issue, for they have many ideas as to how we might help bring peace to Central America.

A month and a half ago, I had the opportunity, along with the Senator from Connecticut [Mr. DODD] and the Senator from Kansas [Mrs. KASSEBAUM], to go to Central America on a short trip. We visited four of the nations, talked to four of the Presidents, and visited with the rebels or opposition leaders in several of the countries. We had an opportunity to talk with Cardinal Obando y Bravo, the negotiator between the Contras and the Sandinistas and we talked with a remarkable woman, Violeta Chamorro, who is the publisher of La Prensa in Nicaragua.

Perhaps the highlight—and for me the most interesting part—of that trip was to spend 2½ hours over lunch with President Ortega of Nicaragua. I do not believe President Ortega is any different from anyone else in a position of leadership, particularly in those countries where leadership has come not through popular election but through armed conflict. Survival comes first.

It was apparent, at least to this Senator, that he had no intention of calmly stepping aside for a democratically elected Government in Nicaragua. He was going to do as much as was necessary to follow the peace plan. But he would always have some reason for delay, hoping that in the meantime the one thing he feared, the Contras, would be voted out of existence by the Congress. He would then have much greater freedom of action.

Some say that the peace plan, which is now struggling through its early stages, came into being because the Central American Presidents decided upon it. Through the leadership of President Arias they were able to get together. But to go beyond this and to say that the Contras played no role or no part in the Nicaraguans' willingness to sign the peace plan, which if carried out to its fullest would almost certainly lead to the Sandinistas being removed from office, is just plain nonsense. Of course, the Contras played a role.

It is just as some would suggest and, I think with equal validity, that the continued military strength of the United States and an insistence on maintaining that strength coupled with an insistence on moving ahead on an SDI program were the two elements which ultimately led the Soviets to come back to the bargaining table.

Of course, these things make a difference. Of course, they play a role and, of course, they are the elements that have helped bring us to the point we are now at. And it is a critical point.

It is a different time than 2 years ago or even 1 year ago. The peace plan is now in existence. There are other new facts and it is time to review our policy.

Some suggest that the current difficulties are purely Central American and that America should play no role. I do not, and I think most of my colleagues do not believe that.

America does have an interest in this hemisphere and in this hemisphere's stability. America has an interest most certainly in its own national security as it is affected by events in Central America.

If we are to believe President Ortega and the Sandinistas' promises and if we are confident that the peace plan will be carried out fully, then, of course, we should reject this request for additional assistance for the Contras.

Those Members who reject the kind of leadership the Sandinistas have brought to Nicaragua, who believe that they are simply never going to live up to any peace accord they sign voluntarily, should support continued aid to the Contras.

But there is a third group, and I would put this Senator in that group. A group who are skeptical, maybe even very skeptical, but willing to see a successful peace process through, willing to spend the time and the effort to see if just possibly, maybe even miraculously, this fragile movement toward peace can be successful.

Let us go back to those three categories in which all of us at one time or another must fall. Will those in the first category, who believe that the peace process can go through, that the Sandinistas will live up to it wholeheartedly, and that they can then get rid of the Contras will they vote to send American troops when President Arias calls for help as aggressors come across his border?

I presume all of those who would today vote against Contra aid would feel an obligation to vote to send American troops in such an event.

But if we continue to aid the Contras, who among us will take responsibility for the excesses, occasional, maybe even frequent atrocities and the deaths of innocent Nicaraguan peasants? I suppose that responsibility must fall on those who would vote to continue to support the Contras.

These two assertions may seem harsh but they illustrate devisiveness and the increasing bitterness in America which this issue has spawned. If maybe that they are not very far away from the two alternatives which could occur.

There simply must be a better way, Madam President, a better way which can bring together people of good will.

The Presidents of the four democracies in Central America have spoken forcefully for adherence to their peace plan now. They made a remarkable declaration in San Jose. They want democracy now, in all nations of Central America. They want democracy now in Nicaragua, not at some future undetermined time.

This is not the United States talking. These are the Presidents of Central American republics.

They took back responsibility for verification of that peace plan not wanting others less intimately involved to make the decisions as to whether the plan was being carried out or not. They refused to extend the time for compliance with this plan.

They also declared in a statement, which I think has been missed by many of my colleagues, that the Contra uprising was in response to Sandinista pressures and excesses.

Now these are remarkable statements. I think we ought to listen to them very carefully and attempt to respond to them as well as we can through American policy.

Let us neither reject aid to the Contras outright nor give them additional unfettered funds. Instead, we should set aside a large amount of money, far larger than the $36 million now proposed, put it in escrow, keep it there for a limited period of time, allow the peace process to mature, and then at an appropriate time, let Congress and the President decide whether the peace plan has been adhered to.

The criteria for this measurement are clearly stated. They are set forth in the peace plan and they are reiterated quite clearly in a proposal adopted by the House of Representatives by an overwhelming vote a short time ago.

If there is adherence, it would be time to release these funds and to give economic aid not just to the four nations of Central America, the democracies with whom we have worked, but to the five nations of Central America.

If all have lived up to the peace plan, they all should share in the benefits of economic revival—the people in Nicaragua, as well as the people in the other four nations.

If it becomes apparent that the Nicaraguans simply cannot and will not respond to the peace plan then it is time to release further aid to the Contras to continue the pressure. I suspect that at that time we would have a substantial majority in favor of that course in both Houses.

Madam President, our policy in Central America cannot succeed using only the President's package. We cannot succeed with a Democratic package. We cannot succeed with a Republican package and we cannot succeed with a Senate package.

Somehow, some way, we must find an American package, one that can gain substantial bipartisan support, and one that passes these important tests: first, that it supports the continued movement toward the fulfillment of the peace plan of the Central American Presidents; second, that it recognizes and protects America's legitimate security interests in the Western Hemisphere; third, that it advances democratic governments in all of Central America; and, fourth, that it helps build economic stability and security and democracy in all of those nations.

Madam President, it may be the 11th hour, but we simply must find a more intelligent way out of this morass.

Madam President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Madam President, I believe morning business expires at this moment. I ask the time be extended for 10 minutes, Senators to speak therein.

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

The Senator from Vermont.

COMMENDING SENATOR DAN INOUYE

Mr. LEAHY. Madam President, I will be brief. I have served in the Senate, beginning now my 14th year here. During that time I have had the privilege, and I might say the pleasure, of serving with the distinguished senior Senator from Hawaii [Mr. INOUYE]. In fact, 12 of those 14 years we have served on the Appropriations Committee together, we served a number of years together on the Intelligence Committee, and we have been on various special commissions here.

Like everybody else in the Senate, you know and you like DAN INOUYE. I have dealt with him on occasion after occasion. In the Appropriations Committee we have many, many times agreed on issues. Sometimes we have disagreed. I have always known exactly where he stood. We have voted issues up or voted issues down.

I feel some concern about the way a particular matter that Senator INOUYE asked the appropriations conference to include has been treated in the press. Senator INOUYE said that he assumed that had been cleared through the administration. Apparently concerns were expressed afterward about it. Senator INOUYE had stated exactly why he wanted some money for a particular school in France. But, also because there was controversy, not so much on the merits of the issue but a suggestion that it was a matter that was brought up and passed solely because it was during the conference committee time, Senator INOUYE asked for special legislation to remove the appropriation.

I commend Senator INOUYE for that. He knows full well that, the way things work here, if he had not taken that step, that money would have stayed in there; that the matter that he wanted, for the reasons he stated, would have stayed in there—reasons which would have carried the day, I suspect, on a vote in the committee. But I think Senator INOUYE, as he is wont to do, did the forthright and honest thing, something that I am sure that many others might have hesitated to do. He asked a Member of the other body where appropriations bills begin to put in legislation, which he would support in this body, to remove the project that he had supported.

I commend DAN INOUYE for that. I think it is characteristic of the man. I applaud him for it and I am delighted to see his action.

Madam President, I yield to the Senator from West Virginia.

THE GEORGE WASHINGTON FREEDOM AWARD FOR 1988

Mr. BYRD. Madam President, each year since 1983, the Adjutants General Association of the United States has presented the George Washington Freedom Award to an American who, in its judgment, has made noteworthy contributions to our national defense and security.

To be more specific, the George Washington Freedom Award "recognizes those individuals who have made singularly outstanding contributions on the national level to the freedom of the people of the United States of America * * * through a sustained commitment to our country's defense and security." Such an honoree should have demonstrated leadership ability, character, and persistence in the pursuit of freedom. The award is so named because George Washington represents to the Adjutants General Association the model American citizen-soldier.

Past recipients of the George Washington Freedom Award have been President Ronald Reagan, Congressman G.V. "SONNY" MONTGOMERY from Mississippi, Senator Barry Goldwater from Arizona, and Senator JAKE GARN from Utah.

I am pleased to have been informed that this year's winner of this award is Senator SAM NUNN from Georgia.

I congratulate Senator NUNN on receiving this deserved recognition, and I commend the Adjutants General Association for making a wise choice.

At every level of government and across the country, Senator NUNN is acknowledged to be one of this era's leading experts on military and defense matters. His voice and opinion on matters of national security are respected throughout the Pentagon and

throughout Congress. Few men in the history of the Senate have set before themselves so prodigious a task in mastering the defense area as Senator NUNN has, or so thoroughly succeeded in accomplishing that goal.

Importantly, too, Senator NUNN is an advocate of spending our defense dollars to obtain the most effective, efficient, and workable defense systems and programs possible, and of getting the most defense for the dollars spent.

I congratulate again our distinguished colleague from Georgia on earning this latest recognition for his contributions to our national defense, and I thank him for the devotion that he has shown in helping us all to understand better how to maintain our security and freedom.

Mr. President, I would like to ensure that Members of this body as well as the House of Representatives have an opportunity to read Senator NUNN's acceptance speech as it brings to light the realities that we as citizens of the United States, and as elected representatives of the citizens of the United States, will be faced with this coming year in the area of arms control and foreign policy.

I ask unanimous consent that the remarks of Senator NUNN to which I have referred be printed in the RECORD at this point.

There being no objection, the remarks were ordered to be printed in the RECORD, as follows:

ARMS CONTROL IN THE LAST YEAR OF THE REAGAN ADMINISTRATION

(Senator Sam Nunn)

Thank you Ambassador Smith. Ladies and gentlemen, I am greatly honored to receive the "William C. Foster Award" from your prestigious association.

You are very kind to recognize my activities last year related to the interpretation of the ABM Treaty and the role of the Senate in the ratification process. There are, however, several other individuals whose tireless efforts were essential to our success in this undertaking. Ambassador Smith, you would be at the top of the list, accompanied by senior members of your SALT I Delegation, including Ray Garthoff, John Rhinelander, Sid Graybeal, Royal Allison, and Harold Brown. I also believe that several of my colleagues in the Congress deserve a large portion of this award. In particular, I want to pay tribute to Carl Levin, Bill Cohen, Les Aspin and Joe Biden, whose roles were crucial in the final outcome of this arms control and constitutional debate.

As the Reagan Administration begins its last year in office, the United States stands at a crossroads. Rarely in the post-war era has the dividing line between historic breakthrough and missed opportunity been so finely drawn. Rarely has such a window of opportunity been presented for accomplishing historic improvements in the superpower relationship. Accomplishments that seemed beyond reach during the Administration's first term no longer seem so farfetched.

Indeed, it is conceivable that during 1988, the Senate could have five major arms control agreements placed on its calendar. In addition to the INF Treaty, the Senate could, prior to adjournment next fall, be presented with a START treaty, a new accord on strategic defenses, and new protocols on verification of nuclear testing which could clear the way for ratification of the long-pending Threshold Test Ban and Peaceful Nuclear Explosions Treaties.

Should these extraordinary events come to pass, you might well find yourself—much to your own amazement—presenting the next "William C. Foster Award" to Ronald Reagan. I hasten to add, however, that the odds that such a new dawn could break during the last year of the Reagan Administration are no more than 50/50.

Whether 1988 is the occasion for such dramatic arms control agreements will depend, of course, on unprecedented Soviet cooperation. Under Gorbachev, the Soviets have voiced an apparent willingness to embrace arms control concepts which just a few years ago would have seemed unattainable. These include disproportionate Soviet reductions, on-site inspection, cooperative measures for enhancing national technical means of verification, detailed data exchanges, high-level military meetings, discussions on doctrine and force postures, and important nuclear risk reduction measures. A word of caution is in order:

It is too soon to determine how many of these concepts can be translated into reality. The West must predicate its position on Soviet deeds, not words. In areas such as conventional arms control, we must put Soviet rhetoric to the test with bold and innovative proposals of our own. The Soviet Union's disregard of fundamental human rights and unresolved violations of existing arms control agreements, especially the Krasnoyarsk radar, will continue as large impediments. There is no greater obstacle to improved U.S./Soviet relations than the Soviet Union's continued occupation of Afghanistan.

Nevertheless, the advent of Gorbachev, glasnost and perestroika have undeniably improved the overall climate for the conduct of superpower relations. Whether this opportunity will be realized will in large measure depend on whether the Reagan Administration takes what I call this evening a "cold shower of reality." I believe the Administration must recognize, and act decisively upon, several realities that define the parameters of the current strategic environment.

Reality One: Congress is Not Persuaded by the Administration's ABM Reinterpretation

Reflecting on the acrimonious journey of the Levin-Nunn provision from a committee amendment to enacted law, it is clear that the Administration has failed to make a persuasive case for reinterpreting the ABM Treaty. The ABM battle of 1987, in which your association played such an important role, demonstrated that at this time the Administration does not enjoy majority support in either the House or the Senate for the United States to breach the ABM Treaty as it was approved by the Senate.

Last year's vote on Levin-Nunn was not, however, an explicit referendum on the "broad vs. narrow" interpretation that settled this question for all time. What last year's Levin-Nunn battle does suggest is that the Administration reluctantly recognized that the Congress does have the Constitutional power of the purse and that its explicit approval must be secured before funds could be spent inconsistent with the ABM Treaty as presented to the Senate in 1972.

To me, this debate went far beyond the arcane world of Article V, Agreed Statement "D", and such phrases as other physical principles and tested in an ABM mode. We must never forget that the ABM Treaty, like all treaties, is the supreme law of the land under our Constitution.

If we decide the ABM Treaty jeopardizes our national interest, then the honorable course is to serve notice under the terms of the Treaty and withdraw. When we are confronted with Soviet violations of the Treaty, we are entitled to take proportionate responses if the Soviets fail to correct their non-compliance.

Let me emphasize, however, that manipulating and distorting the law of the land is simply not acceptable. If we are going to have a safer and saner world, the United States must stand for the rule of law. It is not out-moded for America to keep our word of honor—even in dealing with the Soviet Union.

Reality Two: Our Geneva Arms Control Posture and Our ICBM Modernization Policies Are Not In Synch

Clearly, our goal should be a START agreement with sub-limits which, when combined with sensible U.S. strategic force developments, would significantly reduce Soviet first strike incentives. Such an agreement would be in the mutual interests of both sides, since both nations are under growing pressure to allocate less of their GNP to defense and each is nervous about the growing counterforce capability of the other side.

If, however, our ICBM's are to be based only in vulnerable, fixed silos—or deployed in basing modes that require strategic warning—then I believe the degree of stability afforded under our own START proposal would be in serious question. I was pleased to note that on the eve of the Washington summit, Secretary Shultz emphasized the importance of mobile missiles to survivability. He declared that we are prepared to allow mobile ICBM's under START if the Soviets will help us draw up effective verification provisions.

It would be a supreme irony, however, if the United States and the Soviet Union resolved their differences over START, worked out an effective mobile ICBM verification regime, and produced an historic and potentially stabilizing treaty—only to discover that both the Midgetman and the Rail Mobile MX had been killed in an act of domestic political fratricide. If the Administration terminates the Midgetman program, then I think there is a good chance that the House of Representatives will kill the Rail Mobile MX program. If we have no survivable mobile ICBM's to deploy under the START ceilings, then our options for taking advantage of the opportunities for stability afforded by this prospective treaty are greatly reduced. A more stabilizing nuclear environment requires not only a sound arms control regime, it requires our Nation to make sensible strategic deployments.

Reality Three: START Cannot Be Considered In Isolation

The Reagan Administration must recognize that START and SDI are in completely different time frames. The opportunity to achieve historic reductions in offensive forces is now. Realistic deployment options for SDI systems which could satisfy the Nitze criteria—or even scientifically necessary testing that would require breaching the ABM Treaty—remain years in the future. In addition, the number of Soviet warheads which would remain after all the START reductions were accomplished would still be more than double the number

it had deployed at the time the ABM Treaty was signed.

For these reasons, we logically should be able to implement deep cuts in each side's strategic offensive forces while relying on the ABM Treaty to provide predictability as to defensive developments. Unfortunately, the logic of the Administration's approach to SDI is in question.

The current political reality is that some in this Administration have been ardently searching for near-term SDI tests in space that could only be conducted under the broad interpretation and which, if conducted, could trigger a Soviet reaction which could destroy the ABM Treaty. In my view, the motivation for such tests has been driven by ideology, not by scientific judgments.

As long as this attitude prevails then it is impossible to be relaxed about the possibility of a START agreement which is tied to an ABM Treaty whose application to advanced defensive technologies has not been clarified.

In some respects, this could represent the worst case for the United States. The Soviet Union would be relatively free by the Administration's definition to pursue its defensive testing program while in the United States each proposed test would become subject to a raging controversy as to whether it violated the ABM Treaty and whether it would result in termination by the Soviet Union of offensive reductions under START.

I could not be comfortable with an outcome that resulted in the United States eliminating half its strategic deterrent while deep concerns remain as to whether the Administration's policy on SDI may lead to the removal of all restraints on Soviet strategic defenses, an area in which they have current operational experience and near-term technical advantages. I was encouraged by Secretary Shultz's statement during a November TV interview:

"Predictability and stability . . . is just as important for us as it is for them, because probably right at the moment their ability to field what we think of as an inferior form of strategic defense is greater than ours. So we don't want to reduce our offensive system unless we have some notions of stability, just as they don't."

Reality Four: A Sound SDI Policy Cannot Be Based on Simplistic and Misleading Slogans

In the five years since SDI was launched, the Reagan Administration has consistently substituted slogans for objective and technically sound explanations. Too often, SDI has been treated as a theology rather than a scientific research program. Reasonable questions have been met by the political and strategic equivalent of the locker room battle cry, you gotta believe.

President Reagan's latest applause line on SDI—"we will research it, we will test it, and when it's ready, we will deploy it"—raises several SDI questions. First question: what is the "IT" we will research, test and deploy? Is "IT" the President's vision of "a shield that could protect us from nuclear missiles just as a roof protects a family from rain"? Or is "IT" the Joint Chief's goal of a defensive system designed to destroy 50 percent of the Soviet SS-18 force should they launch an all-out first-strike on our land-based systems. Is "IT" intended to replace deterrence, or enhance it?

Second question: assuming the Administration could agree on what "IT" is, when can we reasonably expect to arrive at the point at which we could make a well-informed decision to deploy "IT"? A year ago, some SDI advocates were insisting that we already knew enough to commit to deployment. This prompted the Chairman of the Joint Chiefs, Admiral Crowe, to complain at a January, 1987 hearing that, "I hear so much said and written about it, as if it is out there in the parking lot, and we just do not know where to put it." Admiral Crowe went on to say, "we have not answered all the research questions yet, as a technical proposition, what the cost of them will be, or whether they can be translated into a weapons system."

Third question: how much would "IT" realistically cost? Is the cost in the range of $40-60 billion as estimated by General Abrahamson last spring? Or is it the $100 billion estimated by the Marshall Institute and now supported by General Abrahamson? Or is this projection too low by 300-400 percent, as estimated by highly reputable research organizations?

The wide gap in these cost projections reflects radically different assessments of the Soviet Union's capacity and willingness to respond to a U.S. SDI deployment by proliferating decoy, switching to faster-burn boosters, and improving its ASAT weapons. Ironically, many of those who have traditionally faulted the U.S. Government for underestimating the pace and scope of Soviet strategic nuclear developments are now implicitly arguing that the Soviet response to SDI deployments would be modest and limited. Some fervent SDI cheerleaders, in their effort to sell early deployment, are trying to convince us that we are in a contest with the Little Sisters of Mercy, rather than the Evil Empire.

Fourth SDI question: what are the implications for U.S. military capabilities across the board if, as part of its effort to sell SDI, the Administration grossly underestimates its true costs? Are we prepared to pursue SDI deployments even if it means we have to seriously erode our present conventional defense capability in a post-INF NATO environment?

Fifth SDI question: how do you decide whether "IT" warrants deployment? The so-called Nitze criteria of technical feasibility, survivability and cost-effectiveness at the margin have been endorsed by the President and written into law by the Congress. Most objective and independent analysts agree that a phase-one system based primarily on space-based kinetic-kill vehicles could not satisfy the Nitze criteria. Is the Administration willing to confront the reality that SDI will likely have to go through another generation of development, focusing on directed energy systems, before highly effective defense deployment options become technically feasible?

Final SDI questions: if and when credible SDI deployment options are available, how do we conduct a mutual transition toward a defense-dominant regime in a manner that increases crisis stability? What are the implications for NATO's flexible response strategy if both superpowers are capable of highly effective ballistic missile defenses? How vulnerable would such defenses be to technological breakthroughs by the other side? Would high-performance defenses on both sides give each side an incentive to use their limited penetration capability for the most lucrative targets? Ironically, some analysts have concluded that if both sides have highly-effective defenses it could move us in circular fashion back to explicitly targeting population centers.

Suffice it to say, these are serious questions about SDI which will have to be answered by serious thinkers.

Despite the record of the last five years, I believe it is still possible to bring a coherent national policy out of the stew of politics, physics and metaphysics in which SDI is now deeply immersed. There is still time to make SDI stand for "Sensible Defense Initiative". This will not be easy. Above all, we need to agree that neither offensive nor defensive weapons are inherently more moral than the other. What is moral is that which works to preserve peace and human freedom.

Reality Five: SDI Must Be Placed In A Broader Context Of National Priorities And National Vulnerabilities

As we continue research and development on longer-term comprehensive defense options, we must bear in mind that this goal is not a Holy Grail in and of itself. It is fundamentally wrong to believe that only SDI is designed to protect the U.S. population. Every dollar of our military expenditures must be weighed as to its contribution to protection of our population and that of our allies.

If one looks to our inadequate conventional forces, our vulnerable command and control facilities, our virtually non-existent strategic air defenses, and the fragile infrastructure of our civilian society, one can find a number of vulnerabilities far easier and safer for the Soviets to exploit than an attack by Soviet ICBM's. The Soviets are able chess players, and good chess players rarely gamble their queen when they can wreak havoc with a pawn.

We are increasingly a society of networks—electricity grids, water systems, oil and gas pipelines, telecommunications links—with highly vulnerable nodes to which we have given virtually no thought of protection, even against the simplest efforts to knock them out. One need look no further than Chernobyl, Bhopal and the recent oil spill in Pittsburgh to appreciate the reality of modern society's vulnerability to catastrophic disruption.

If we have a finite amount of money to spend and want to spend it in the wisest ways to protect ourselves, our children and our grandchildren, we must seriously assess whether devoting a very large share of it to deploy comprehensive defenses against ballistic missile attack is the most rational way to proceed.

As one witness before the Armed Services Committee noted wryly, "The Soviets could just put nuclear weapons inside bales of marijuana, since they know we can't prevent that from entering the country."

Or, as a top Soviet official said during the Washington Summit:

"We won't copy you anymore, making planes to catch up with your planes, missiles to catch up with your missiles. We'll take asymmetrical means with new scientific principles available to us. Genetic engineering could be a hypothetical example. Things can be done for which neither side could find defenses or countermeasures, with very dangerous results. If you develop something in space, we could develop something on earth. These are not just words. I know what I'm saying."

My point is this: there is no rule of science that says ballistic missiles will remain the most severe threat to population destruction. There is no reason why our adversaries could not shift the rules of the game from physics to biology. There is no reason Third World countries and terrorist groups cannot

participate in the biological warfare arena. The superpowers have a mutual interest in preventing this development. Our challenge is to identify areas of clear mutual interest between the superpowers to limit potential new threats of the 1990's.

The reality of our society's vulnerability to such threats does not, however, mean that there are no valid goals for defenses. An effective U.S. research program in strategic defense technologies is necessary both to assess their practical potential (including conventional applications) and as a hedge against a Soviet decision to break out of the ABM Treaty.

In addition, I can envision certain defensive deployments which could be in the interest of both our Nation and the Soviet Union. If carefully redirected, our research efforts could produce options for limited deployments to deal with the frightening possibility of an accidental or unauthorized missile launch. Such defensive deployments might be possible within the terms of the ABM Treaty or, at most, require a modest amendment. If properly designed, such a system would not combine with offensive forces, either with or without a START treaty, to pose a first-strike threat. It could be designed so that it would not be destabilizing or prompt the Soviets to avoid or abrogate START.

In Washington, you cannot begin discussing an idea until it has been given an acronym. I might, therefore, suggest that we call this defensive system the "Accidental Launch Protection System"—or "ALPS". Such a limited defense would of course have to be proved both technically feasible and affordable. We would also have to carefully consider the extent to which the other elements of the Nitze criteria would apply.

I believe both superpowers might find common interest in taking out such an "insurance policy." This concept is a logical follow-on to the recent U.S./Soviet agreement on Nuclear Risk Reduction Centers and could be coupled with other imaginative steps to help reduce the risk of accidental or inadvertent nuclear war. For example, President Reagan and General Secretary Gorbachev could agree to make a simple but potentially very important pledge to conduct unilateral comprehensive reviews of each nation's fail-safe mechanisms guarding against accidental or unauthorized launches. This is an area in which I believe far too little attention has been devoted over the last several administrations.

RECOMMENDATIONS

If the Executive Branch is prepared to recognize and act upon these realities, then I believe certain policy prescriptions logically follow.

First, even under the best arms control regime we can now envision, stability will require both continued strategic force modernization and effective investments in research on defensive systems.

Second, we should continue development of both the Midgetman and the Rail Mobile MX ICBM systems until a rational choice can be made based on survivability, stability and cost effectiveness.

Third, we should withdraw our proposal in Geneva for a ban on all mobile ICBM's contingent on agreement on an effective verification regime.

Fourth, we should settle the dispute with the Soviets both over the duration of the ABM non-withdrawal period and on how advanced technologies will be treated during this period for purposes of complying with the Treaty. I believe the Administration should heed Ambassador Nitze's counsel and negotiate with the Soviets on a specific enumeration of what types of SDI devices can and cannot be tested in space during the non-withdrawal period.

Fifth, while maintaining an effective research program, we should set two separate but compatible goals for a redirected strategic defensive effort:

For the near term, we should seriously explore the development of a limited system for protecting against accidental and unauthorized launches. This should be coupled with a rigorous unilateral review by both sides of their respective fail-safe procedures and safeguards.

For the longer-term, our goal should be to pursue research on advanced defensive technologies, principally in the directed energy area, that offer the best prospects for a possible comprehensive defense. This should include much greater emphasis on battle management and system-wide command and control.

However, the United States should not commit any deployment of comprehensive ballistic missile defenses unless:

a. technical feasibility issues are settled;

b. cost/effectiveness at the margin appears attractive;

c. we have a reasonable assurance that highly effective deployments could be maintained in the face of plausible Soviet countermeasures;

d. the transition to such defenses would not undermine stability; and

e. economic and political support for the long haul is assured.

General Omar Bradley once said: "Ours is a world of nuclear giants and ethical infants. We know more about war than we know about peace, more about killing than we know about living. If we continue to develop our technology without wisdom or prudence our servant may prove to be our executioner." In my introduction, I made reference to General George Marshall. General Marshall said: "If man does find a solution to world peace, it will be the most revolutionary reversal of his record we have ever known." Our task remains clear but awesome. We must reverse the record of history.

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

The PRESIDING OFFICER (Mr. LEAHY). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

RECESS FOR 15 MINUTES

Mr. BYRD. Mr. President, I ask unanimous consent that the Senate stand in recess for 15 minutes.

There being no objection, the Senate, at 4:14 p.m., recessed until 4:29 p.m.; whereupon, the Senate reassembled when called to order by the Presiding Officer (Mr. KERRY).

EXTENSION OF MORNING BUSINESS

Mr. BYRD. Mr. President, I ask unanimous consent that morning business be extended 15 minutes and that Senators may speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mrs. KASSEBAUM addressed the Chair.

The PRESIDING OFFICER. The Senator from Kansas.

SENATOR DANIEL K. INOUYE

Mrs. KASSEBAUM. Mr. President, yesterday the Senate approved legislation rescinding the $8 million provided in the continuing appropriations bill for the construction of schools for North African Jewish refugees in France. This legislation was initiated at the request of Senator DANIEL INOUYE, sponsor of the funding provision. I commend Senator INOUYE for his courage in admitting a mistake and for his decisiveness in acting to correct it. His handling of this matter underscores the qualities which have made him a highly respected Member of this body.

The unfortunate thing about all this is that Senator INOUYE is bearing the brunt of public dissatisfaction with all of us. The furor over the Inouye amendment is but the tip of the iceberg of a much deeper public concern about the way in which Congress conducts its business. Certainly, adding a special line-item for a favored project is nothing new around here, and there are undoubtedly numerous other provisions of the continuing appropriations bill which should be rescinded.

More importantly, however, public dissatisfaction lies with the process itself. It is intolerable that we permit a year's worth of work to be crammed into two volumes which no one can possibly examine before casting a vote. Such a process is tailor-made for the enactment of policies which lack both consensus and proper consideration.

The real challenge confronting us has not been addressed by wiping out one provision of one mega-bill. The true test will be whether we can bring some semblance of order and serious deliberation to the work at hand.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

BICENTENNIAL MINUTE

FEBRUARY 28, 1902: SENATE CENSURES MEMBERS FOR FIST FIGHT

Mr. DOLE. Mr. President, under the Constitution the Senate retains the exclusive right to set standards for the conduct of its Members. On seven occasions in its 200-year history, the Senate has found it necessary to censure Members for inappropriate behavior. One of those occasions occurred 86 years ago this month, on February 28, 1902.

On February 22, the Senate had debated a bill providing funding for the recently acquired Philippine Islands. At that time a dispute arose between the two Senators from South Carolina. Senator Benjamin Tillman charged that "improper influences" had been used to change the vote of his colleague John McLaurin on the Philippine Treaty.

Word of Tillman's charges reached McLaurin at a committee session. He raced back to the Senate Chamber and, pale with anger, branded the allegations "a willful, malicious, and deliberate lie." Upon hearing this, the 54-year-old Tillman jumped forward and struck the 41-year-old McLaurin above the left eye. McLaurin returned a punch to his adversary's nose. Both men traded blows until separated by a doorkeeper and several Senators. The Presiding Officer immediately ordered the doors closed and the galleries cleared. The Senate, by unanimous vote, found both Members in contempt and referred the matter to a committee. On February 22, the Senate, after debating the relative guilt of the two, and its authority to suspend Members, censured both men "for disorderly conduct and flagrant violation" of its rules. Each combatant was suspended for 6 days from the time of the fight.

As a consequence of this event, the Senate adopted the regulation we know today as Rule 19. That rule provides that: "No Senator in debate shall, directly or indirectly, by any form of words impute to another Senator or to other Senators any conduct or motive unworthy or unbecoming a Senator."

PRESIDENT GOES EXTRA MILE ON CONTRA AID

Mr. DOLE. Mr. President, later this evening, the House will vote on the President's proposal for continued assistance to the democratic resistance in Nicaragua—the so-called Contras.

As I indicated when I introduced the resolution of approval required to authorize this assistance, this will be a watershed vote. The House tonight, the Senate tomorrow—we will be voting on whether we believe the path to real democracy and peace in Central America lies in keeping the pressure on the Sandinistas, until they comply with the Arias plan; or in just trusting the Sandinistas to live up to their word, before they have taken the steps necessary to comply.

Let me be absolutely clear about my own view. I've met Ortega. He is a Communist. I don't trust him, and I don't trust the Sandinistas. I don't think they will ever comply, if we give them what they want before they do.

The President has done everything possible to craft this package to meet the legitimate concerns of the Congress. The aid requested is at the absolutely minimum level. The military aid component is miniscule—and even then will remain in escrow, pending one last chance for the Sandinistas to comply with the Arias plan.

And now the President has gone yet another mile. In a letter sent today to me and to other congressional leaders, the President has followed through on a pledge he made in his address to the Nation last evening. He has indicated that he will give Congress the opportunity, through a sense of the Congress resolution, to declare whether or not the Sandinistas have complied with the Arias plan—before he certifies the need for release of the military aid. And if Congress through a concurrent resolution declares the Sandinistas in compliance, the President "will refrain voluntarily from making the certification, and the suspension of lethal aid deliveries will continue."

Mr. President, President Reagan has done everything that can reasonably be asked of him. He has virtually turned the votes we take tonight and tomorrow into votes on the nonlethal aid only; giving us the opportunity for a separate vote on lethal aid, before it is released.

President Reagan has indicated his willingness to take every reasonable step he can. He has indicated, and demonstrated, that everything is negotiable but one thing: our basic commitment to the freedom fighters.

He will never abandon them. I will never abandon them. I only pray that the majority of the House and the Senate won't either.

Mr. President, I would like to place in the RECORD the text of the President's letter to me, as well as the text of his speech to the Nation last evening.

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

THE WHITE HOUSE,
Washington, DC, February 3, 1988.

Hon. BOB DOLE,
Republican Leader, U.S. Senate,
Washington, DC.

DEAR BOB: On January 27, I transmitted to the Congress a request for $36.25 million in further assistance for the Nicaraguan democratic resistance. Our goal in Nicaragua is simple—peace and democracy. Our policy has consistently supported the efforts of those who seek democracy throughout Central America and who recognize that the freedom fighters are essential to that process.

Ninety percent of my request is for nonlethal aid, including food, clothing, medicine and transportation. The other ten percent is for ammunition and air defense missiles that would not be available for delivery until after March 31, 1988 pending my certification that:

At the time of the certification, no ceasefire is in place that was agreed to by the Government of Nicaragua and the Nicaraguan democratic resistance;

The failure to achieve such a ceasefire results from the lack of good faith efforts by the Government of Nicaragua to comply with the requirements of the Declaration of the Presidents of the Central American Nations at San Jose, Costa Rica on January 16, 1988; and

The Nicaraguan democratic resistance has engaged in good faith efforts to achieve such a ceasefire.

As I have already stated, I would make that certification only after consulting personally with the Congress and the Presidents of the four Central American democracies, and I would give considerable weight to their views on the question of whether Nicaragua has complied with the San Jose Declaration.

Furthermore, in the event that I find it necessary to make such a certification, I will notify the Speaker of the House of Representatives and the President of the Senate of my intention to do so ten days in advance. If the Congress adopts during that ten-day period a concurrent resolution stating that the Government of Nicaragua is in compliance with the San Jose Declaration, then I will refrain voluntarily from making the certification, and the suspension of lethal aid deliveries will continue.

I believe that this arrangement will afford Congress and the Executive branch the opportunity to address jointly the central question of Sandinista compliance with the commitments made at the San Jose Summit. Accordingly, I strongly urge that the Congress give its approval to my request of January 27, which in my judgment will serve to enhance the national security interests of the United States by strengthening the prospects for democracy in Central America.

Sincerely,

RONALD REAGAN.

ADDRESS BY THE PRESIDENT TO THE NATION ON CENTRAL AMERICA

The PRESIDENT. My fellow Americans, I want to begin tonight by telling a story, a true story of courage and hope. It concerns a small nation to our south, El Salvador, and the struggle of its people to throw off years of violence and oppression and live in freedom.

Nearly four years ago, I addressed you as I do tonight and asked for your help in our efforts to support those brave people against a Communist insurgency. That was one of the hardest-fought political battles of this administration. The people of El Salvador, we heard, weren't ready for democracy; the only choice was between the left-wing guerrillas and the violent right—and many insisted that it was

the guerrillas that truly had the backing of the people.

But with your support, we were able to send help in time. Our package of military aid for El Salvador passed Congress by only four votes—but it passed. Some of you may remember those stirring scenes as the people of El Salvador braved Communist gunfire to turn out in record numbers at the polls and vote emphatically for democracy.

Observers told of one woman, wounded in a Communist attack, who refused to leave the line at the polls to have her wounds treated until after she had voted. They told of another woman who defiantly answered Communist death threats saying, "You can kill me, you can kill my family, you can kill my neighbors, but you can't kill us all." Well, that's the voice of a people determined to be free. That is the voice of the people of Central America.

In these last several years, there have been many such times when your support for assistance saved the day for democracy. The story of what has happened in that region is one of the most inspiring in the history of freedom. Today, El Salvador, Honduras, Guatemala, as well as Costa Rica choose their governments in free and open democratic elections. Independent courts protect their human rights, and their people can hope for a better life for themselves and their children.

It is a record of success that should make us proud. But the record is as yet incomplete. Now this is a map of Central America. As I said, Guatemala, Honduras, El Salvador, and Costa Rica are all friendly and democratic.

In their midst, however, lies a threat that could reverse the democratic tide and plunge the region into a cycle of chaos and subversion. That is the Communist regime in Nicaragua called the Sandinistas—a regime whose allies range from Communist dictator Fidel Castro of Cuba to terrorist-supporter, Qadhafi, of Libya. But their most important ally is the Soviet Union.

With Cuban and Soviet-bloc aid, Nicaragua is being transformed into a beachhead for aggression against the United States—it is the first step in a strategy to dominate the entire region of Central America and threaten Mexico and the Panama Canal. That's why the cause of freedom in Central America is united with our national security. That is why the safety of democracy to our south so directly affects the safety of our own Nation.

But the people of Nicaragua love freedom just as much as those in El Salvador. You see, when it became clear the direction the Sandinistas were taking, many who had fought against the old dictatorship literally took to the hills, and, like the French Resistance that fought the Nazis in World War II, they have been fighting the Communist Sandinistas ever since.

These are the forces of the democratic resistance—the Communist government named them Contras, but the truth is, they're freedom fighters. Their tenacious struggle has helped buy the surrounding democracies precious time and, with their heroic efforts, they are helping give freedom a chance in Nicaragua. A year-and-a-half ago, Congress first approved significant military aid for the freedom fighters. Since then they've been winning major victories in the field and doing what many at first thought impossible—bringing the Communist Sandinistas to the negotiating table and forcing them to negotiate seriously.

From the beginning, the United States has made every effort to negotiate a peace settlement—bilaterally, multilaterally, in other diplomatic settings. My envoys have traveled to the region on at least 40 different occasions. But until this last year, these negotiations dragged on fruitlessly because the Sandinistas had no incentive to change. Last August, however, with mounting pressure from the freedom fighters, the Sandinistas signed the Guatemala Peace Plan.

This time, the leaders of the four Central American democracies refused to let the peace negotiations become an empty exercise. When Nicaragua missed the second deadline for compliance, the democratic leaders courageously stood as one to insist that the Sandinistas live up to their signed commitments to democratic reform. Their failure to do so, said the democratic leaders, was the biggest obstacle to peace in the region.

The Sandinistas are clearly feeling the pressure and are beginning to take limited steps. Yet at this crucial moment, there are those who want to cut off assistance to the freedom fighters and take the pressure off. Tomorrow, the House of Representatives will be voting on a $36-million bill—a support package to the freedom fighters. Ninety percent is for nonlethal support such as food, clothing, and medicine and the means to deliver it. Ten percent is for ammunition. That amount will be suspended until March 31st to determine whether the Sandinistas are taking irreversible steps toward democracy. I'm hopeful this will occur. However, if there is no progress toward a negotiated ceasefire, I will make a decision to release these additional supplies—but only after weighing carefully and thoroughly the advice from Congress and the democratic presidents of Central America.

Now, over the past several days, I've met with many members of Congress, Republicans and Democrats, concerning my proposal. In the spirit of bipartisanship, I will, tomorrow, send a letter to the congressional leadership taking a further step. At the appropriate time, I will invite Congress to act by what is called a sense of Congress resolution on the question of whether the Government of Nicaragua is in compliance with the San Jose Declaration. If Congress adopts such a resolution within 10 days containing this finding, then I will honor this action and withhold deliveries of ammunition in this package.

One thing is clear. Those brave freedom fighters cannot be left unarmed against Communist tyranny.

Now, some say that miltiary supplies aren't necessary, that humanitarian aid is enough. But there's nothing humanitarian about asking people to go up against Soviet helicopter gunships with nothing more than boots and bandages. There's no vote scheduled tomorrow in the Soviet Union on continued assistance to the Sandinistas—that assistance will continue, and it won't be just humanitarian.

Our policy of negotiations, backed by the freedom fighters, is working. Like the brave freedom fighters in Afghanistan who have faced down the Soviet army and convinced the Soviet Union that it must negotiate its withdrawal from their country, the freedom fighters in Nicaragua can win the day for democracy in Central America. But our support is needed now—tomorrow will be too late. If we cut them off, the freedom fighters will soon begin to wither as an effective force. Then with the pressure lifted, the Sandinistas will be free to continue the consolidation of their totalitarian regime, the military buildup inside Nicaragua, and communist subversion of their neighbors.

Even today, with the spotlight of world opinion focused on the peace process, the Sandinistas openly boast that they are arming and training Salvadoran guerrillas.

We know that the Sandinistas, who talk of a revolution without borders reaching to Mexico, have already infiltrated guerrillas into neighboring countries. Imagine what they'll do if the pressure is lifted. What will be our response as the ranks of the guerrillas in El Salvador, Guatemala, even Honduras and unarmed Costa Rica, begin to swell and those fragile democracies are ripped apart by the strain? By then the freedom fighters will be disbanded, refugees, or worse—they won't be able to come back.

Let me explain why this should be and would be such a tragedy, such a danger to our national security. If we return to the map for a moment, we can see the strategic location of Nicaragua. Close to our southern border, within striking distance of the Panama Canal, domination of Central America would be an unprecedented strategic victory for the Soviet Union

and its allies. And they're willing to pay for it. Cubans are now in Nicaragua constructing military facilities, flying combat missions, and helping run the secret police. The Soviet Union and Soviet-bloc countries have sent over $4 billion in arms and military aid and economic aid—20 times the amount that the United States has provided the democratic freedom fighters. If Congress votes tomorrow against aid, our assistance will very quickly come to an end—but Soviet deliveries won't.

We must ask ourselves why the Soviet Union, beset by an economic crisis at home, is spending billions of dollars to subsidize the military buildup in Nicaragua. Backed by some 2,000 Cuban and Soviet-bloc advisors, the Sandinista military is the largest Central America has ever seen. Warsaw Pact engineers are completing a deepwater port on the Caribbean coast—similar to the naval base in Cuba for Soviet submarines—and the recently-expanded airfields outside Managua can handle any aircraft in the Soviet arsenal, including the Bear Bomber, whose 5,200-mile range covers most of the continental United States.

But this is only the beginning. Last October, a high-ranking Sandinista officer, Roger Miranda, defected to this country, bringing with him a series of five-year plans—drawn up among the Sandinistas, Soviets, and Cubans—for a massive military buildup in Nicaragua extending through 1995. These plans, which Major Miranda makes clear are to be put into effect whether the freedom fighters receive aid or not, call for quadrupling the Sandinista Armed Forces—to 600,000 or one out of every five men, women, and children in the country.

As I speak to you tonight, several thousand Nicaraguans are taking courses in the Soviet Union and Cuba to learn to operate new high-tech missiles, artillery, and other advanced weapons systems. Of grave concern is the fact that the Soviets have scheduled delivery of Soviet MIG aircraft to Nicaragua. Now if these were just the claims of one defector, no matter how highly placed and credible, some might still find reason to doubt. But even before Major Miranda's revelations were made public, his old boss, Defense Minister Humberto Ortega, confirmed them in a public speech—adding that if Nicaragua chose to acquire MIGs, it was none of our business.

The introduction of MIGs into Nicaragua would be so serious an escalation that members of both parties in the Congress have said the United States simply cannot tolerate it.

The Miranda revelations can't help but make us skeptical of the recent Sandinista promises to abide by the Guatemala Peace Accord. The argument is made that the freedom fighters are unnecessary, that we can trust the Sandinistas to keep their word. Can we? It's important to remember that we already have a negotiated settlement with the Sandinistas—the settlement of 1979 that helped bring them to power, in which they promised—in writing—democracy, human rights, and a nonaligned foreign policy.

Of course, they haven't kept a single one of those promises, and we now know that they never intended to. Barely 2 months after assuming power, the Sandinista leadership drafted a secret report, called the "72-hour document," outlining their plans to establish a communist dictatorship in Nicaragua and spread subversion throughout Central America. This is the document in which they detailed their deception. It is now part of the public record, available for all to see.

One day after that 72-hour meeting, President Carter, unaware of their secret plans, received Daniel Ortega here in the White House and offered his new government our friendship and help, sending over $100 million in aid, more than any other country at the time, and arranging for millions more in loans. The Sandinistas say it was U.S. belligerence that drove them into the hands of the Soviets. Some belligerence.

A short while later, the Sandinista commandantes made their first official trip to Moscow and signed a communique expressing support for the foreign policy goals of the Soviet Union. But that, one might say, was only the paperwork. Already, Soviet military planners were in Nicaragua, and the Sandinista subversion of El Salvador had begun—all while our hand was extended in friendship.

This is not a record that gives one much faith in Sandinista promises. Recently, Daniel Ortega was up in Washington again, this time talking to Members of Congress, giving them assurances of his commitment to the Guatemala peace process. But we now know that at the same time, back in Managua, the Sandinistas were drawing up plans for a massive military escalation in Nicaragua and aggression against their neighbors.

Now, as the Sandinistas see the vote on aid to the freedom fighters nearing, they are making more promises. Well, forgive my skepticism, but I kind of feel that every time they start making promises, like that fellow in the Isuzu commercial, there should be subtitles under them telling the real story.

One may hope they're sincere this time, but it hardly seems wise to stake the future of Central America and the national security of the United States on it. The freedom fighters are our insurance policy in case the Sandinistas once again go back on their word. The Sandinistas themselves admit that the limited steps they have taken to comply with the peace accords here promised in order to influence the vote in Congress. Was there ever a better argument for aid?

Even now, with the entire world watching, the Sandinistas have harassed and beaten human rights activists and arrested several leaders of the peaceful democratic opposition, including the editor of La Prensa. Before being interrogated, some were sealed for over an hour in metal lockers, three feet square on the floor and seven feet high. Said one comandante of the opposition, they are, quote, "scorpions. They should return to their holes or we will crush them."

Just a short while ago, the Sandinistas made their true intentions clear. Even if they were forced to hold elections and lost, they said they would never give up power. Responding to the estimate that the Sandinistas have no more than 15 percent popular support, another comandante responded by saying, "That's all right. We can hold on to power with only five percent." Now these are not the words, these are not the actions of democratic reformers.

Those who want to cut off the freedom fighters must explain why we should believe the promises the Sandinista communists make trying to influence Congress, but not the threats they make at home. They must explain why we should listen to them when they promise peace and not when they talk of turning all Central America into one, quote, "revolutionary fire" and boast of carrying their fight to Latin America and Mexico.

If we cut off aid to the freedom fighters, then the Sandinistas can go back to their old ways. Then the negotiations can become, once again, what they were before—high-blown words and promises and convenient cover while the Sandinista communists continue the consolidation of their dictatorial regime and the subversion of Central America.

During the last vote in Congress, many who voted for aid to the freedom fighters set conditions on further assistance. They said the freedom fighters must broaden their leadership. They have. They said the freedom fighters must show that they are a viable fighting force and win support from the people. Well, the latest victory in the Las Minas area proved that. For several weeks, nearly 7,000 freedom fighters maneuvered in secret throughout the country—something they could only have done with support of the population. In one of the largest military operations in Nicaraguan history, they overran enemy headquarters, routed army barracks, blew up ammunition dumps, petroleum tanks, and other military targets. At one point they captured a warehouse where grain was being hoarded

for the army. The freedom fighters opened the doors and invited the hungry people of the area to take what they needed.

The freedom fighters are inside Nicaragua today because we made a commitment to them. They have done what Congress asked; they have proven their effectiveness. Can we, as a moral people, a moral nation, withdraw that commitment now and leave them at the mercy of the Sandinista regime? Or turn them forever into refugees—refugees from the country for which they are making such a heroic sacrifice?

What message will that send to the world, to our allies and friends in freedom? What message will it send to our adversaries—that America is a fair-weather friend, an unreliable ally? Don't count on us, because we may not be there to back you up when the going gets a little rough.

By fighting to win back their country, the freedom fighters are preventing the permanent consolidation of a Soviet military presence on the American mainland; by fighting for their freedom, they're helping to protect our national security. We owe them our thanks, not abandonment.

Some talk of "containment," but we must not repeat the mistake we made in Cuba. If "containment" didn't work for that island nation, how much less effective will it be for an expansionist Soviet ally on the American mainland. I will tell you truthfully tonight, there will be no second chances tomorrow. If Congress votes down aid, the freedom fighters may soon be gone and, with them, all effective pressure on the Sandinistas.

Our goal in Nicaragua is simple—peace and democracy. Our policy has consistently supported the efforts of those who seek democracy throughout Central America and who recognize that the freedom fighters are essential to that process.

So, my fellow Americans, there can be no mistake about this vote—it is up or down for Central America. It is win or lose for peace and freedom. It is yes or no to America's national security.

My friends, I've often expressed my belief that the Almighty had a reason for placing this great and good land, the "new world," here between two vast oceans. Protected by the seas, we have enjoyed the blessings of peace—free for almost two centuries now from the tragedy of foreign aggression on our mainland.

Help us to keep that precious gift secure. Help us to win support for those who struggle for the same freedoms we hold dear. In doing so, we will not just be helping them, we will be helping ourselves, our children, and all the peoples of the world. We'll be demonstrating that America is still a beacon of hope, still a light unto the nations.

Yes, a great opportunity awaits us, an opportunity to show that hope still burns bright in this land and over our continent, casting a glow across the centuries, still guiding millions—to a future of peace and freedom.

Thank you, and God bless you.

A GREAT LOSS TO MICHIGAN

Mr. RIEGLE. Mr. President, today I join with the people of Michigan in mourning the loss of a man we all knew and loved—former Governor G. Mennen "Soapy" Williams. He was a man who really made our State, made the Michigan Democratic Party, and made himself an example for those of us in public office to follow.

The death of Soapy Williams is a tremendous loss to Michigan and to the Nation. Soapy had a distinguished career in public service that spanned several decades. He won an unprecedented six gubernatorial races in Michigan. He served as an Ambassador during the Kennedy administration. He later served as the Chief Justice of the Michigan Supreme Court. Thus, Soapy Williams is the only man to head two of the three branches of Michigan State government.

It is significant, I think, that most of the comments on Soapy's long career contain one similar point—that Soapy Williams was a true friend of the people. His drive and determination and that of his wife, Nancy, are legendary in Michigan—they were our leader and his first lady.

Many of us who began our political and public service careers after Soapy had been our Governor have tried to follow his example. We have all been directly influenced by him—I know I have. Soapy Williams was the modern leader of the Democratic party in Michigan and set the tone I hope will last for several more decades.

In Michigan, we talk about the beautiful Mackinac Bridge as "Soapy's bridge." The bridge will always be a monument to Soapy because it provided an important symbolic link between the people of the upper and lower peninsulas. But the real legacy of Soapy Williams stands in the programs and the policies he shaped as Governor of Michigan and as Chief Justice of the Michigan Supreme Court. It is a legacy that is characterized by compassion and a commitment to assuring equal access for all people to the benefits of our system.

Though Soapy Williams life has ended, we in Michigan will proudly carry on his legend and legacy.

U.S. AID TO THE CONTRAS

Mr. LEAHY. Mr. President, I can't think of anything over the past 7 years more harmful to the American peoples' attitude toward their Government than President Reagan's obsession with destroying the Sandinistas.

Nicaragua has been like a corrosive acid eating away at the faith of the American people in the basic decency of their Government.

The Iran-Contra scandal, breaking and evading the law and the Constitution, condemnation of the United States by the World Court, the mining of Nicaragua's harbors, the assassination manual, the "private" supply flights organized by Oliver North, the terrible toll the Contras have taken in civilian lives, the appeals of Central American leaders to be allowed to settle their own disputes—none of this appears to affect the administration.

The White House marches blindly on, ignoring the lessons of the past and the will of the American people, aided by a Congress too weak to stand up and say no.

The President, still convinced that he knows best how to solve the Central Americans' problems, now asks for another $36 million for military aid. He turns a deaf ear to the pleas of President Arias and other Central American leaders that by doing so he will doom the fragile peace process.

How does he justify this latest request?

First, he insists that the Sandinistas would never have lifted the state of emergency, allowed La Prensa to resume publishing, or agreed to negotiate a cease-fire without pressure from the Contras.

That explanation has appeal since it is the only way to justify the huge waste in U.S. tax dollars—more than a quarter of a billion dollars so far—and the human suffering this war has caused.

Second, he warns that while the Sandinistas talk of peace, they and the Soviet Union are really planning a large-scale military buildup—which presumably only the Contras can stop through military victory.

The President has apparently not paid much attention to what has been going on in Central America.

What have 6 years of war achieved?

The Sandinistas have solidified their hold on power.

Soviet and Cuban influence in Central America has grown.

Tensions in a dangerously unstable region have intensified.

Congress and the American people became deeply divided over our policy.

This is leadership?

No, Mr. President, this is failure, a failure even worse than the abject collapse of United States policy in the Middle East after the tragic intervention in Lebanon.

Instead of more aid for a failed war, we should be debating where American policy in Central America goes from here. Our interest is in peace, de-

mocracy, and the prevention of a Soviet or Cuban threat in this region.

What really brought the Sandinistas to the negotiating table?

Not a few thousand Contras waging a hopeless insurgency, but the courageous efforts of President Arias and other Central American leaders.

The Central Americans saw that not only were the Contras not going to win, but that the war was becoming a deadly threat to stability in their own countries.

I am convinced that it was the common interest of all Central American political leaders in stopping these destabilizing conflicts that brought the Sandinistas to the negotiating table. For the first time, it was not the great superpower to the north that was talking about peace while waging war. It was the Central Americans themselves, sharing one of the poorest and most backward regions of the world, who wanted to find a way out of the mess before it dragged them all down.

The Sandinistas have problems far more pressing than the Contras. They are isolated politically and economically. They have almost no access to foreign exchange. The economy is a shambles. Agricultural production is a fraction of what it was in 1979. Food and other commodities are rationed. Half of their budget is spent on the military. Their international support is drying up.

For several years the Sandinistas have wanted to change course. Ever since they accepted the draft Contadora agreement, they have offered to negotiate an end to the war. It was the United States, not Nicaragua, that broke off the bilateral talks aimed at a political solution.

The Sandinistas know a regional peace settlement is in their interests. As long as they remain isolated, preoccupied with the insurgency and their fear of U.S. invasion, they cannot rebuild their country and improve relations with their Latin neighbors and the United States. Their problems will only get worse.

The Sandinistas have great incentive to permit internal reforms and wider participation in the political process. They are confident that they can maintain their position under a peace settlement even if they must open up the system to the political opposition.

That is why ideologues and hardliners in the White House, the Pentagon, and in the Congress have tried to torpedo the Guatemala agreement. They will fight any agreement that does not automatically oust the Sandinistas from power.

Presidents Arias, Cerezo, Duarte and Azcona know that they, too, desperately need an end to the decades of violence that has kept their countries from developing economically and politically. The majority of their people still live in the 19th century. Despite hundreds of millions of dollars in U.S. aid, their economies are declining. They told me a year ago that a political settlement is absolutely vital if they are to have a chance to build lasting democracies.

They have seen how 6 months of negotiations have already achieved more than 6 years of the United States-financed Contra war.

The President has denounced every step the Sandinistas have taken to comply with the Guatemala agreement. First he dismisses them as "cosmetic." Then he says they are proof that the Contra policy works. Now he wants a major increase in military aid to keep up the pressure. This so-called non-lethal aid can include helicopters, jeeps, fuel and any other military hardware except guns and bullets the Contras need to expand the war.

Today the Congress faces the ultimate test. Do we stand aside and let this administration go on with its failed policy for 1 more year?

Even though by doing so we may be destroying all hope for a peaceful end to the conflict?

Or do we for once listen to the Central Americans and stop trying to solve their problems by killing them?

We should reject this aid not just for the Central Americans, but for the United States.

We hurt ourselves by prolonging this war. We hurt our reputation as a nation committed to resolving conflicts peacefully. We hurt ourselves by terrorizing a tiny country of impoverished farmers who know more about the St. Louis Cardinals than about communism.

The United States has legitimate security interests in Central America. We know, as Secretary Shultz has said, that the Nicaraguan people want freedom and dignity. We want to see Nicaragua become a more open, democratic society.

We can fulfill both those interests without supporting a war to oust the Sandinistas. As long as that remains the focus of our policy toward Nicaragua we are inviting failure.

We cannot let the Soviet Union or any hostile nation establish a military presence in Central America from which to threaten the security of this hemisphere. Preventing that possibility should be the cornerstone of our policy toward Nicaragua.

If we can negotiate a verifiable INF Treaty with the Soviets, we, and the Sandinistas, can negotiate a verifiable agreement that the Soviets and Cubans will not pose a military threat in Nicaragua. The Sandinistas have offered to sign such an agreement.

Our other principal security concern is that Nicaragua not support rebel insurgencies in its neighbors. The Guatemala agreement says that an end to aid to insurgencies is "indispensable" to peace. We should support the Central Americans in devising a comprehensive, verifiable agreement on this point. We could help the Central Americans verify Sandinista compliance.

If the United States and Nicaragua can resolve these concerns, we should be able to begin to improve relations on a wide range of issues. That is in the interest of both countries. Without our help, Nicaragua will never get its economy back on track. Its economic isolation and siege conditions leave it little choice but to seek aid from a Soviet Union preoccupied with its own internal problems and not disposed to generosity to a faraway country.

The time for rhetorical denunciations is past. We cannot dictate the outcome of events in Nicaragua, but can influence events in that country in positive ways.

We can do that by treating Nicaragua the same as we do other small countries with governments we do not like. Not by trying to overthrow them, but by offering the people opportunities to travel and study in the United States and learn about our democratic system. And we can do that by offering the kind of help they so desperately need.

By improving trade. By sending doctors, teachers, engineers, and other professionals to improve the standard of living of the majority of Nicaraguans who live in poverty.

By keeping a dialog going, recognizing that like every other country in Central and South America and no matter what we do, Nicaragua's political system will never be just like ours.

Nor can we expect to erase overnight a half century of resentment for our support of Somoza and the Contras. Secretary Shultz has said that successful diplomacy takes time and patience. Patient diplomacy reversed decades of hostility and mistrust between the United States and China. It can do so with a Nicaragua that has plenty of reason to fear and mistrust the United States.

We are at a historic crossroads. We can continue a senseless war and shatter the first glimmer of hope for peace in Central America. Or we can stop the hypocrisy and start talking and acting like we truly want peace. I am convinced that only then will freedom and prosperity finally come to Nicaragua.

A BRAVE SKIER, JEFF PAGELS

Mr. KASTEN. Mr. President, having recently participated in the 1988 Senator's Cup skiing event in Park City, UT, I would like to share with my colleagues the story of a truly brave skier, Jeff Pagels of Ashwaubenon, WI.

Jeff Pagels recently came in third in a downhill ski race in Dubuque, IA. He then went to Vermont to run the Ski for Light Program for disabled skiers. He'll soon be on his way to Minnesota to compete in a 21-mile cross-country race.

He's a pretty impressive skier. And he's disabled. You see, Jeff Pagels uses a wheelchair to get around.

Jeff hasn't let his disability slow him down. While he claims he's not doing this "to be an inspiration to anybody," I think all my colleagues will agree we can learn a lot from his example.

Jeff's story is told in an article in the Milwaukee Journal. I ask unanimous consent that it be entered in the RECORD.

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

[From the Milwaukee Journal, Jan. 25, 1988]

BACK ON THE SLOPES: DISABILITY DOESN'T STOP SKIER

WAUSAU, WI.—Jeff Pagels, 39, is a burly man with wide shoulders, strong arms and a deep, resonant voice to go with his classic, outdoorsman good looks.

The man from Ashwaubenon, in Brown County, acts the part, too: confident, almost to the point of being egotistical.

Pagels also is athletic and has been most of his life. "Very competitive," he says.

The employee of the Wisconsin Department of Natural Resources uses a wheelchair, but he doesn't let that stop him from doing much.

Three weeks ago, Pagels placed third in a downhill ski race in Dubuque, Iowa. At the end of this month, he'll be in Vermont running the Ski for Light program, a clinic for disabled skiers.

Later this winter he'll be in Mora, Minn., competing in the 21-mile Vasaloppet cross country ski race as one of the few disabled skiers in the country who compete in such races.

Pagels and his wife, Jane, and children, Corey, 12, and Chad, 11, ski nearly every winter weekend.

"Skiing is just a great sport," he said during an interivew in the chalet at the Rib Mountain Ski Area here. "It sure beats sitting around."

Pagels was cutting down a tree on a fall day 3½ years ago when the tree fell on him and broke his back. The spinal cord injury robbed him of the use of his legs.

He uses a wheelchair to get around most of the time. At other times, he uses a specially designed sled, which he poles along cross country ski trails, and a mono-ski, a hybrid piece of machinery that allows him to swoosh down the slopes.

"I'm not a hill bomber," he said. "I try to ski reasonably, but I can tear if I want to."

The $1,500 mono-ski is designed for use on regular chairlifts, which is an advantage, he said, because many ski bills are not set up to handle disabled skiers.

"But at least ski hill owners are becoming more tolerant of the disabled skier," Pagels said.

Only Brule in the Upper Peninsula and Devil's head in Merrimac, in Sauk County, have ski rental equipment designed for people in wheelchairs, he said.

But he might soon be able to add Rib Mountain to that list. The Rib Mountain Ski Area in Wausau will be host to downhill ski races as part of the Governor's Cup Series Thursday and Friday. A portion of the proceeds will go to start a program for disabled skiers that will cater to those who are blind, in wheelchairs or mentally retarded.

Pagels is not on a crusade to get more hills involved with programs for disabled skiers, he said, nor is he trying to motivate other people in wheelchairs.

"I don't do this to be an inspiration to anybody," he said. "I'm not out here to impress these people or to try to get people in wheelchairs in Wausau to ski. I'm out here because I like to ski. That's all."

INF TREATY AND SOVIET SPYING

Mr. PRESSLER. Mr. President, now that the Senate has begun its constitutional duty to consider the INF Treaty, we must remind ourselves of the enormous differences between our own open society and the closed Soviet political, economic, and social system.

Much of the enthusiasm that has accompanied the signing of this treaty is centered on its provision for onsite inspections. The INF Treaty is the first agreement between the United States and Russia to provide for such a high level of onsite inspection. Effective verification is an essential component to ensure treaty compliance, and the INF Treaty is a step forward in this area. The Soviet Union strongly resisted the suggestion of foreign technicians roaming freely within their boundaries.

The INF Treaty provides for United States inspection of a limited number of specific facilities in the Soviet Union. Americans will not have broad freedom to move around in the Soviet Union. Thus, we will continue to be compelled to rely on national technical means, or satellite technology, and traditional intelligence measures to determine whether the Soviets are living up to their commitments under the treaty. On the other hand, Soviet citizens and those who live in Eastern European Communist nations enjoy much more freedom to travel around the United States and the other free nations. They have vastly greater opportunities to gather information about us than we have to see what is happening behind the Iron Curtain.

For example, an electronically equipped truck can be a tremendous information-gathering device. In 1984, the Soviets simply parked a specially equipped truck near a military complex in Switzerland. Authorities there say the Soviet truck intercepted NATO coded transmissions. An electronically equipped truck has capabilities that reach far beyond those of satellites or other distance-restricted listening devices. By exploiting the freedom of movement that is accessible to all who live in a democratic society, properly trained and equipped personnel are able to take advantage of us by gathering intelligence that may be crucial to our security.

I spotted another example in a disturbing article in the December 26, 1987, edition of the New York Times. It describes a frightening example of the Warsaw Pact's ability to exploit the freedom of movement in America. From July to December 1987, five Czechoslovakian men—three technicians and two Communist party officials—brought a specially equipped truck and an ultralight collapsible airplane into our country while traveling extensively on United States tourist visas. They were tracked by the FBI as they discreetly examined 17 of our sensitive military installations, between Niagara Falls and Arizona where they crossed into Mexico. Their electronically equipped truck parked for several days outside a sensitive U.S. communications facility near San Diego, CA. The movements of these Czechoslovaks were possible because of the extensive freedom we extend to all in our society. U.S. Customs agents searched the truck for spy equipment at the border in Arizona, but found nothing that would hold up in court. However, American security may have been compromised. Mr. President, I ask unanimous consent that an Associated Press story regarding this incident from the New York Times of December 26, 1987, be printed in the RECORD.

The INF Treaty marks a major step forward in our ability to verify arms reduction treaty compliance. However, we should not be blinded from the fact that the verification it provides is not complete. The millenium of peace is not a reality. As the Czechoslovak agents' bizarre trek across the United States demonstrates, the Warsaw Pact dictatorships continue to spy on us with relative ease. Their countries are still tightly controlled and extensively off limits to foreigners. If genuine freedom and democracy are ever achieved behind the Iron Curtain, the world will become a safer place for all humanity. Meanwhile, let us keep the INF Treaty achievement in perspective.

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

CZECHS IN UNITED STATES TOUR SIGHTED IN 17 STATES NEAR MILITARY BASES

Five Czechoslovaks in a truck equipped with an ultralight airplane and electronic gear have reportedly made a mysterious three-month-long tour of the United States in which they were seen near military bases in 17 states.

The Federal Bureau of Investigation declined Thursday to give substantive comment on the report, which was broadcast Wednesday night by NBC News. Sue Schnitzer, a spokeswoman for the bureau, would say only that the Czechoslovaks had been issued tourist visas and that "the F.B.I. was fully aware of the presence of these visitors."

According to NBC News, the Czechoslovaks, including a military pilot and a nuclear physicist, entered the United States at Niagara Falls, NY, last summer after sailing to Nova Scotia aboard a Soviet freighter. Scores of United States counterintelligence agents followed them on their tour, the network reported, but were apparently unable to uncover their purpose. At one stop the visitors reportedly flew their small, collapsible plane over a Midwestern base that the network did not identify.

The Czechoslovaks told local reporters in Tucson, Ariz., that they were on a goodwill trip on behalf of their Government and a state-operated trucking company. In an interview at a truck stop in Arizona, they told an NBC News crew that they were tourists, not spies. The ultralight plane was packed away under the truck.

NBC News said the Czechoslovaks were allowed to drive into Mexico from Nogales, Ariz., on Dec. 1 after a border search of their vehicle failed to turn up firm evidence of spying.

MESSAGES FROM THE HOUSE

ENROLLED JOINT RESOLUTIONS SIGNED

At 10:34 a.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the Speaker has signed the following enrolled joint resolutions:

S.J. Res. 39. Joint resolution to provide for the designation of the 70th anniversary of the renewal of Lithuanian Independence, February 16, 1988, as "Lithuanian Independence Day"; and

S.J. Res. 196. Joint resolution designating February 4, 1988, as "National Women in Sports Day."

Pursuant to the order of the Senate of today, February 3, 1988, the enrolled joint resolutions were signed by Mr. SHELBY.

At 2:30 p.m., a message from the House of Representatives, delivered by Mr. Hays, one of its reading clerks, announced that the House has passed the following bill and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 3875. An act to amend title 5, United States Code, with respect to appeal rights for members of the excepted service affected by adverse personnel actions and with respect to the Merit Systems Protection Board;

H.J. Res. 196. Joint resolution designating the week of May 8 through May 14, 1988, as "Senior Center Week"; and

H.J. Res. 292. Joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

MEASURES REFERRED

The following bill and joint resolutions were read the first and second times by unanimous consent, and referred as indicated:

H.R. 3875. An act to amend title 5, United States Code, with respect to appeal rights for members of the excepted service affected by adverse personnel actions and with respect to the Merit Systems Protection Board; to the Committee on Governmental Affairs.

H.J. Res. 196. Joint resolution designating the week of May 8 through May 14, 1988, as "Senior Center Week"; to the Committee on the Judiciary.

H.J. Res. 292. Joint resolution designating the week beginning February 1, 1988, as "National VITA Weeka"; to the Committee on the Judiciary.

ENROLLED JOINT RESOLUTIONS PRESENTED

The Secretary of the Senate reported that on today, February 3, 1988, he had presented to the President of the United States the following enrolled joint resolutions:

S.J. Res. 39. Joint resolution to provide for the designation of the 70th anniversary of the renewal of Lithuanian independence, February 16, 1988, as "Lithuanian Independence Day"; and

S.J. Res. 196. Joint resolution to designate February 4, 1988, as "National Women in Sports Day."

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-2454. A communication from the Comptroller General of the United States transmitting, pursuant to law, a report entitled "Deficit Reductions for Fiscal Year 1988—Compliance With the Balanced Budget and Emergency Deficit Control Act of 1985"; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-2455. A communication from the Director of the Office of Management and Budget, Executive Office of the President, transmitting, pursuant to law, an explanation of the circumstances that make it impossible to transmit the President's budget by the date specified in statute; pursuant to the order of January 30, 1975, referred jointly to the Committee on Appropriations and the Committee on the Budget.

EC-2456. A communication from the Assistant Secretary of Defense (Legislative Affairs), transmitting, pursuant to law, a report on support of NATO strategy in the 1990's; to the Committee on Armed Services.

EC-2457. A communication from the Chairman of the Board of Directors of the Panama Canal Commission, transmitting, pursuant to law, the annual report on the operations of the Panama Canal during fiscal year 1987; to the Committee on Armed Services.

EC-2458. A communication from the Assistant Secretary of the Army (Financial Management), transmitting, pursuant to law, a report on the value of property, supplies, and commodities provided by the Berlin Magistrate for the quarter July 1, through September 30, 1987; to the Committee on Armed Services.

EC-2459. A communication from the Deputy Assistant Secretary of the Air Force (Logistics), transmitting, pursuant to law, a report on the conversion of the retail warehouse function at Andrews Air Force Base, Maryland, to performance by contract; to the Committee on Armed Services.

EC-2460. A communication from the Deputy Assistant Secretary of the Air Force (Logistics), transmitting, pursuant to law, a report on the conversion of the computer operations and Telecommunications Center function at Peterson Air Force Base, Colorado, to performance by contract; to the Committee on Armed Services.

EC-2461. A communication from the Chairman of the Commission on Merchant Marine and Defense, transmitting, pursuant to law, the second report containing the recommendations made by the Commissioners; to the Committee on Armed Services.

EC-2462. A communication from the President of the United States, transmitting, pursuant to law, the second annual report on the National Security Strategy of the United States, 1988; to the Committee on Armed Services.

EC-2463. A communication from the Secretary of Commerce, transmitting, pursuant to law, notice of the extension of certain export controls maintained for foreign policy purposes; to the Committee on Banking, Housing, and Urban Affairs.

EC-2464. A communication from the Secretary of Transportation, transmitting, pursuant to law, the annual report on all the National Transportation Safety Board's recommendations regarding transportation safety; to the Committee on Commerce, Science, and Transportation.

EC-2465. A communication from the Secretary of the Interior, transmitting, pursuant to law, a copy of an application from the State of Montana under the Small Reclamation Projects Act; to the Committee on Energy and Natural Resources.

EC-2466. A communication from the Assistant Secretary of the Interior (Water and Science), transmitting, pursuant to law, notice of the approval of a deferment of the 1986 construction repayment installment from Almena Irrigation District No. 5, Pick-Sloan Missouri Basin Program, Kansas; to the Committee on Energy and Natural Resources.

EC-2467. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayments of certain oil and gas lease revenues; to the Committee on Energy and Natural Resources.

EC-2468. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayments of certain oil and gas lease revenues; to the Committee on Energy and Natural Resources.

EC-2469. A communication from the Deputy Associate Director for Collection and Disbursement, Minerals Management Service, Department of the Interior, transmitting, pursuant to law, a report on the refund of overpayments of certain oil and gas lease revenues; to the Committee on Energy and Natural Resources.

EC-2470. A communication from the Administrator of General Services, transmitting, pursuant to law, the annual report regarding the accessibility standards issued, revised, amended, or repealed under the Architectural Barriers Act; to the Committee on Environment and Public Works.

EC-2471. A communication from the Acting Assistant Secretary of Energy (Environment, Safety, and Health), transmitting,

pursuant to law, the annual report on progress in implementing the requirements of the Superfund Amendments and Reauthorization Act; to the Committee on Environment and Public Works.

EC-2472. A communication from the Chairman of the Architectural and Transportation Barriers Compliance Board, transmitting, pursuant to law, the annual report of the Board for fiscal year 1987; to the Committee on Environment and Public Works.

EC-2473. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Superfund—Insuring Underground Petroleum Tanks"; to the Committee on Environment and Public Works.

EC-2474. A communication from the Federal Highway Administrator, transmitting, pursuant to law, a report entitled "Recommended Improvements to Reduce Traffic Congestion for Charlotte Amalie, U.S. Virgin Islands"; to the Committee on Environment and Public Works.

EC-2475. A communication from the United States Trade Representative, transmitting, pursuant to law, a report on the effectiveness of trade remedies under the Trade Act of 1974 in eliminating or reducing unfair foreign trade practices; to the Committee on Finance.

EC-2476. A communication from the Administrator of the Agency for International Development, transmitting, pursuant to law, the annual report on the Private Sector Revolving Fund for 1987; to the Committee on Foreign Relations.

EC-2477. A communication from the President of the United States, transmitting, pursuant to law, a determination and certification relative to efforts to achieve a cease-fire agreed to by the Government of Nicaragua and the Nicaraguan democratic resistance; to the Committee on Foreign Relations.

EC-2478. A communication from the Acting Assistant Legal Advisor for Treaty Affairs, Department of State, transmitting, pursuant to law, a report on international agreements, other than treaties, entered into by the United States in the sixty day period prior to January 22, 1988; to the Committee on Foreign Relations.

EC-2479. A communication from the Director of the Office of Personnel Management transmitting, pursuant to law, the Compensation Report for 1985; to the Committee on Governmental Affairs.

EC-2480. A communication from the Director of the National Science Foundation transmitting, pursuant to law, a report on the system of internal accounting and administrative control of the NSF, 1987; to the Committee on Governmental Affairs.

EC-2481. A communication from the Acting Assistant Secretary of State transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-2482. A communication from the Comptroller General of the U.S. transmitting, pursuant to law, a report on Bid Protest Activity under the Competition in Contracting Act; to the Committee on Governmental Affairs.

EC-2483. A communication from the Administrator of the Panama Canal Commission transmitting, pursuant to law, a report on the Commission's system of internal accounting and administrative control; to the Committee on Governmental Affairs.

EC-2484. A communication from the Administrator of the Veterans Administration transmitting, pursuant to law, a report on an altered Privacy Act system of records; to the Committee on Governmental Affairs.

EC-2485. A communication from the Administrator of AID transmitting, pursuant to law, a report on the statute of internal controls at AID; to the Committee on Governmental Affairs.

EC-2486. A communication from the Director of the Peace Corps transmitting, pursuant to law, a report on the Corps internal controls; to the Committee on Governmental Affairs.

EC-2487. A communication from the NASA Privacy Officer transmitting, pursuant to law, a report on a new Privacy Act system of records; to the Committee on Governmental Affairs.

EC-2488. A communication from the Director of the Office of Personnal Management transmitting, pursuant to law, a report on two altered Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-2489. A communication from the Secretary of Labor transmitting, pursuant to law, a report on Competition in Contracting; to the Committee on Governmental Affairs.

EC-2490. A communication from the Director of the Office of Personnel Management transmitting, pursuant to law, a report on systems of internal accounting and administrative control; to the Committee on Governmental Affairs.

EC-2491. A communication from the Chairman of the Nuclear Regulatory Commission transmitting, pursuant to law, a report on the NRC's system of internal accounting and administrative control; to the Committee on Governmental Affairs.

EC-2492. A communication from the Assistant Secretary of the Air Force transmitting, pursuant to law, a report on a decision to convert the technical training equipment maintenance function at Chanute AFB, Ill. to performance under contract; to the Committee on Governmental Affairs.

EC-2493. A communication from the Director of the USIA transmitting, pursuant to law, the Agency's annual report on Competition Advocacy; to the Committee on Governmental Affairs.

EC-2494. A communication from the Secretary of Health and Human Services transmitting, pursuant to law, a report on the Department's systems of accounting and internal controls; to the Committee on Governmental Affairs.

EC-2495. A communication from the Assistant Attorney General of the United States, transmitting, pursuant to law, a report on four modified Privacy Act systems of records; to the Committee on Governmental Affairs.

EC-2496. A communication from the D.C. Auditor transmitting, pursuant to law, a report entitled "Alleged Pay Raises for University of the District of Columbia Departmental Chairperson, Assistant and Associate Deans"; to the Committee on Governmental Affairs.

EC-2497. A communication from the Chairman of the D.C. Council transmitting, pursuant to law, the a copy of D.C. ACT 7-123; to the Committee on Governmental Affairs.

EC-2498. A communication from the Chairman of the D.C. Council transmitting, pursuant to law, a copy of D.C. ACT 7-131; to the Committee on Governmental Affairs.

EC-2499. A communication from the Chairman of the D.C. Council transmitting, pursuant to law, a copy of D.C. ACT 7-125; to the Committee on Governmental Affairs.

EC-2500. A communication from the Chairman of the D.C. Council transmitting, pursuant to law, a copy of D.C. ACT 7-126; to the Committee on Governmental Affairs.

EC-2501. A communication from the Chairman of the D.C. Council transmitting, pursuant to law, a copy of D.C. ACT 7-124; to the Committee on Governmental Affairs.

EC-2502. A communication from the Chairman of the National Advisory Council on Indian Education transmitting, pursuant to law, the Council's 13th annual report to the Congress; to the Select Committee on Indian Affairs.

EC-2503. A communication from the Chairman of the Administrative Conference of the United States transmitting, pursuant to law, the Conference's 1986 Annual Report; to the Committee on the Judiciary.

EC-2504. A communication from the Chief Immigration Judge, Department of Justice, transmitting, pursuant to law, a list of individuals erroneously sent to Congress under sec. 244(c)(1) of the Immigration and Nationality Act; to the Committee on the Judiciary.

EC-2505. A communication from the Attorny General of the U.S. transmitting, pursuant to law, a certification of a region to the Seventh Circuit Court; to the Committee on the Judiciary.

EC-2506. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report entitled "Drug Law Enforcement: Military Assistance for Anti-Drug Agencies; to the Committee on the Judiciary.

EC-2507. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report on the Department of Defense's compliance with certain provisions of the Anti-Drug Abuse Act of 1986; to the Committee on the Judiciary.

EC-2508. A communication from the Director, Institute of Museum Services, transmitting, pursuant to law, a report concerning the Freedom of Information report for 1987 of the Institute of Museum Services; to the Committee on the Judiciary.

EC-2509. A communication from the Comptroller General of the United States, transmitting, pursuant to law, a report relative to the U.S.-Mexico opium poppy and marijuana aerial eradication program; to the Committee on the Judiciary.

EC-2510. A communication from the Chairman, U.S. Sentencing Commission, transmitting, pursuant to law, a report regarding certain amendments to the sentencing guidelines and commentary which the Commission recently adopted pursuant to its emergency guidelines promulgation authority; to the Committee on the Judiciary.

EC-2511. A communication from the Executive Vice President, National Music Council, transmitting, pursuant to law, a report on the National Music Council's most recent audited financial report; to the Committee on the Judiciary.

EC-2512. A communication from the Secretary of Health and Human Services, transmitting, pursuant to law, 1987 Annual Report on the Status of Organ Donation and Coordination Services; to the Committee on Labor and Human Resources.

EC-2513. A communication from the President of the United States, transmitting, pursuant to law, a report concerning the Biennial Report of the U.S. Institute of Peace; to the Committee on Labor and Human Resources.

EC-2514. A communication from the Executive Secretary, Office of the Secretary of

Defense, transmitting, pursuant to law, a report on the Department of Defense Procurement from Small and Other Business Firms for October 1987; to the Committee on Small Business.

PETITIONS AND MEMORIALS

The following petitions and memorials were laid before the Senate and were referred or ordered to lie on the table as indicated:

POM-396. A resolution adopted by the Council of the County of Hawaii, State of Hawaii, urging passage of the Rural Economy Act; to the Committee on Agriculture, Nutrition, and Forestry.

POM-397. A resolution adopted by the House of Representatives of the Commonwealth of Massachusetts; to the Committee on Finance.

"RESOLUTIONS MEMORIALIZING THE CONGRESS OF THE UNITED STATES TO ENACT LEGISLATION TO CORRECT THE SOCIAL SECURITY BENEFITS DISPARITY KNOWN AS THE 'NOTCH' ACT

"Whereas, the nineteen hundred and seventy-seven change in the Social Security retirement benefit formula has affected all eligible persons born in the 'notch' years: the years nineteen hundred and seventeen through nineteen hundred and twenty-one, whose work records are otherwise similar to work records of those born in nineteen hundred and sixteen or after nineteen hundred and twenty-one, but are penalized by receiving lower Social Security benefits; and

"Whereas, this disparity in benefit amounts is unjust and unfair and has caused great hardship: therefore be it

"*Resolved,* That the Massachusetts House of Representatives urges the Congress of the United States to enact legislation to correct this unfair disparity in Social Security benefits; and be it further

"*Resolved,* That copies of these resolutions be transmitted by the clerk of the House of Representatives to the President of the United States, the Presiding Officer of each branch of Congress and to the Members thereof from this Commonwealth."

POM-398. A resolution adopted by the Westchester County, New York Board of Legislators relating to AFDC special funding needs; to the Committee on Finance.

POM-399. A resolution adopted by the Senate of the Commonwealth of Pennsylvania; to the Committee on Finance.

"RESOLUTION

"Whereas, There are currently 22 states which have established lottery programs to augment state government funds for a variety of worthwhile programs; and

"Whereas, The Pennsylvania Lottery is the nation's leading lottery in terms of ticket sales and cumulative profits over the past three years; and

"Whereas, The Pennsylvania Lottery was established to benefit senior citizens living in this Commonwealth by providing funds for the operation of the Department of Aging, the Property Tax and Rent Rebate Program, the Pharmaceutical Assistance Contract for the Elderly (PACE) Program, the Shared Ride and Free Mass Transit Programs, County Aging Programs, the Older Persons Income Needs (OPIN) Program and reimbursements for nursing homes and medical assistance; and

"Whereas, Various proposals on the Federal level to institute a national lottery would have an extremely adverse effect on the success and profitability of the Pennsylvania Lottery; and

"Whereas, The establishment of a national lottery would impact on the State's liability to fund existing senior citizen programs at their current levels; therefore be it

"Resolved, That the Senate of the Commonwealth of Pennsylvania memorialize Congress to reject any proposal for the establishment of a national lottery, which would compete with and be counterproductive to the continued operation of existing State lotteries, including the Pennsylvania Lottery; and be further

"Resolved, That copies of this resolution be transmitted to the presiding offices of each House of Congress and to each member of Congress from Pennsylvania."

POM-400. A joint resolution adopted by the Legislature of the State of Colorado; to the Committee on Foreign Relations:

"HOUSE JOINT RESOLUTION No. 1010

"Whereas, The preservation of freedom throughout the world is part of the hallowed tradition of the American people; and

"Whereas, The nation of Afghanistan was invaded by the Soviet Union in 1979; and

"Whereas, The Afghan people have waged a valiant seven-year struggle to oust the Soviet invaders; and

"Whereas, The Soviet invasion and consequent war have resulted in the death of over one and one-half million Afghanis, and in injuries to three million others; and

"Whereas, These deaths and injuries involve over twenty-five percent of the prewar population of Afghanistan; and

"Whereas, Of the three million Afghan people who have been injured, over sixty percent are innocent women and children; and

"Whereas, This terrible toll of lives indicates that the Soviet Union is committing genocide in Afghanistan; and

"Whereas, Afghanistan is strategically located near to Iran and other oil-producing countries of the Persian Gulf; and

"Whereas, The free flow of oil through the Persian Gulf is vital to the interests of the United States and the free world; now, therefore,

"Be It Resolved by the House of Representatives of the Fifty-sixth General Assembly of the State of Colorado, the Senate concurring herein:

"That we, the members of the General Assembly, hereby request the United States Congress to:

"(1) Supply humanitarian assistance to the people of Afghanistan living in refugee camps;

"(2) Supply military assistance to the Afghan freedom fighters contesting the Soviet invasion.

"Be It Further Resolved, That copies of this Resolution be transmitted to the President of the Senate and to the Speaker of the House of Representatives of the Congress of the United States, and to each member of Congress from the State of Colorado."

POM-401. A resolution adopted by the House of Representatives of the Commonwealth of Massachusetts; to the Committee on the Judiciary.

"RESOLUTIONS ACKNOWLEDGING THE SEVENTIETH ANNIVERSARY OF THE ESTABLISHMENT OF THE REPUBLIC OF LITHUANIA

"Whereas, the future peace and prosperity of the world depends upon a just and equitable final settlement of the legacy of World War II, whereby each nation and people be granted the freedom to determine its own destiny and future; and

"Whereas, the Government of the United States of America is recognized as an ardent exponent and defender of the national and human rights of small nations; and

"Whereas, the people of Lithuania, by the determined act of national self-determination, on February 16, 1918, in Vilnius, Lithuania, reestablished an independent state—the Republic of Lithuania, which was recognized by the international community of states, including the United States of America in 1922; and

"Whereas, during its twenty-two years of independence, the said republic of Lithuania demonstrated the maturity and progressive spirit of the Lithuanian people in various fields of endeavor, that Lithuania could exist as a viable and progressive sovereign entity; and

"Whereas, this advancement of the Lithuanian people was thwarted by Soviet aggression and forced incorporation into the U.S.S.R. on August 3, 1940; and

"Whereas, on this seventieth anniversary of the establishment of the Republic of Lithuania, the occupied Republic of Lithuania ought to be free and independent, and that as a matter of fundamental international justice express provisions should be made at all future U.S.-Soviet summit conferences for the purpose of granting and guarantying the restoration of independence to the people of Lithuania: Therefore be it

"Resolved, That the Massachusetts House of Representatives acknowledges the seventieth anniversary of the establishment of the Republic of Lithuania; and be it further

"Resolved, That a copy of these resolutions be forwarded by the Clerk of the House of Representatives to the President of the United States, to the negotiators of the United States at disarmament conferences with the Soviet Union and to the Presiding Officer of each branch of Congress and to the members thereof from this Commonwealth."

POM-402. A petition from a citizen of Houston, Texas, praying for a redress of grievances relative to the Federal food and drug laws; to the Committee on Labor and Human Resources.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. KENNEDY, from the Committee on Labor and Human Resources:

Thomas G. Pownall, of Maryland, to be a Member of the Board of Trustees of the Barry Goldwater Scholarship and Excellence in Education Foundation for a term of two years;

The following-named persons to be Members of the National Advisory Council on Women's Educational Programs for terms expiring May 8, 1990:

Esther Kratzer Everett, of New York. (Reappointment.)

Helen J. Valerio, of Massachusetts. (Reappointment.)

Carolyn Reid-Wallace, of the District of Columbia, to be a Member of the National Council on the Humanities for a term expiring January 26, 1992;

Robert Lee McElrath, of Tennessee, to be a Member of the National Advisory Council on Educational Research and Improvement for a term expiring September 30, 1990; and

J. Wade Gilley, of Virginia, to be a Member of the National Advisory Council on Educational Research and Improvement for a term expiring September 30, 1990.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

Mr. KENNEDY. Mr. President, for the Committee on Labor and Human Resources, I also report favorably two Foreign Service lists which have previously appeared in their entirety in the CONGRESSIONAL RECORD of January 26, 1988, and, to save the expense of reprinting them on the Executive Calendar, ask that they lie at the Secretary's desk for the information of Senators.

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

By Mr. PELL, from the Committee on Foreign Relations:

Richard Salisbury Williamson, of Illinois, to be an Assistant Secretary of State;

John R. Davis, Jr., of California, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Poland.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: John R. Davis, Jr.

Post: Ambassador to Poland.

Contributions, amount, date, donee.

1. Self, none.

2. Spouse Helen C. Davis, none.

3. Children and spouses names: Thorp (s), Katherine (dau), and Anne (dau), none.

4. Parents names: John R. Davis and Petronilla Davis (both deceased), none.

5. Grandparents names: (All four deceased), none.

6. Brothers and spouses names: None.

7. Sisters and spouses names: Sister Petronilla, O.P., none.

Leonard H.O. Spearman, Sr., of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Rwanda.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Leonard H.O. Spearman, Sr.

Post: Ambassador to Rwanda.

Contributions, amount, date, donee.

1. Contributions of self and spouse:

$200.00 (check No. 177)—9-30-84—Harris County Council of Organizations.

$130.00 (check No. 302)—1-07-85—Donohoe for State Office.

$30.00 ( )—10-24-85—Elizabeth Spates for Houston Independent School Board.

$75.00 (check No. 1035)—8-16-86—Jack Fields for Congress.

$100.00 (check No. 1101)—10-07-86—Bill Clements Hqtrs. in Black Community.

$700.00 (check No. 1117)—10-29-86—Republican Party of Harris County, Texas.

$370.00 (check No. 1201)—1-05-87—Texas Inaugural Committee.

$50.00 (check No. 1285)—3-02-87—The Texas Committee of 300.

$50.00 (check No. 1286)—3-02-87—Circle R Republican Club.

2. Spouse: Valeria B. Spearman, none.

3. Children and spouses names: Lynn Spearman McKenzie—Michael McKenzie, (none); Charles M. Spearman—Jacinthe D. Spearman (none); Leonard H.O. Spearman, Jr. (none).

4. Parents names: Elvis W. and Tryphenia Spearman (none).

5. Grandparents names: Rosa Lawrence (deceased), Rawn Mitchell (deceased), Adell Spearman (deceased), Rose Spearman (deceased).

6. Brothers and spouses names: Elvis Ohara Spearman—Frankie Spearman (none), Rawn W. Spearman (none), Daisy L. Spearman (deceased).

7. Sisters and spouses names: Viva T. Spearman Coleman and Hyron Coleman (none), Olivia S. Parker and Harrison Parker (none), Agenoria S. Paschal and Alonjo Paschal (none).

Chester E. Norris, Jr., of Maine, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of Equatorial Guinea.

Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nomination and ending on the date of the nomination.

Nominee: Chester E. Norris, Jr.

Post: Ambassador, Equatorial Guinea.

Contributions, amount, date, donee.

1. Self, none.

2. Spouse: Ulla Norris, none.

3. Children and spouses names: None.

4. Parents names: Pauline and Norris, none.

5. Grandparents names: Deceased.

6. Brothers and spouses names: John and Nancy Norris, $300.00—Nov. 86—Joseph Brennan, U.S. Congressman.

7. Sisters and spouses names: Herbert and Betsy Holmes, $100.00—annually—Republican National Committee.

John and Bertha Holmes, $100.00—annually—Republican National Committee.

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to appear and testify before any duly constituted committee of the Senate.)

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 Ms. MIKULSKI:

S. 2031. A bill to amend title 5, United States Code, to include inspectors of the Immigration and Naturalization Service, inspectors of the United States Customs Service, and revenue officers of the Internal Revenue Service with the immediate retirement provisions applicable to certain employees engaged in hazardous occupations; to the Committee on Governmental Affairs.

By Mr. BREAUX (for himself and Mr. WALLOP):

S. 2032. A bill to authorize expenditures for boating safety programs, and for other purposes; to the Committee on Finance.

By Mr. GRASSLEY (for himself, Mr. DOLE, Mr. SHELBY, Mr. BOND, Mr. MATSUNAGA, Mr. CHAFEE, Mr. CHILES, Mr. SYMMS, Mr. BURDICK, Mr. HEINZ, Mr. METZENBAUM, Mr. GRAMM, Mr. GLENN, Mr. DURENBERGER, Mr. KERRY, Mr. GARN, Mr. PRYOR, Mr. WEICKER, Mr. SANFORD, Mr. MCCAIN, Mr. MOYNIHAN, Mr. WARNER, Mr. CONRAD, Mr. LUGAR, Mr. STENNIS, Mr. QUAYLE, Mr. WIRTH, Mr. STAFFORD, Mr. EXON, Mr. MCCLURE, Mr. SARBANES, Mr. THURMOND, Mr. LEVIN, Mr. PRESSLER, Mr. DECONCINI, Mr. COCHRAN, Mr. NUNN, Mr. WILSON, Mr. BRADLEY, Mr. D'AMATO, Mr. GORE, Mr. DANFORTH, Mr. LAUTENBERG, Mr. SPECTER, Mr. KENNEDY, Mr. STEVENS, Mr. CRANSTON, Mr. BOSCHWITZ, Mr. INOUYE, Mr. HEFLIN, Mr. DODD, Mr. SIMON, Mr. HOLLINGS, Mr. ROTH, and Mr. HATCH):

S.J. Res. 250. Joint resolution designating the week of May 8, 1988, through May 14, 1988, as "National Osteoporosis Prevention Week of 1988"; to the Committee on the Judiciary.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Ms. MIKULSKI:

S. 2031. A bill to amend title 5, United States Code, to include inspectors of the Immigration and Naturalization Service, inspectors of the United States Customs Service, and revenue officers of the Internal Revenue Service within the immediate retirement provisions applicable to certain employees engaged in hazardous occupations; referred to the Committee on Governmental Affairs.

EARLY OUT LEGISLATION FOR FEDERAL EMPLOYEES IN CERTAIN HAZARDOUS POSITIONS

● Ms. MIKULSKI. Mr. President, today I am introducing legislation that would extend the early retirement option for Federal employees in hazardous occupations to inspectors of the Customs Service and the Immigration Service, as well as revenue officers in the Internal Revenue Service.

Under current law, Federal employees who work 20 years in a "hazardous" occupation are eligible for retirement at age 50. Currently this classification includes, among others, Federal firefighters and law enforcement officers.

The bill I am sponsoring would expand the job categories designated as "hazardous" to include Customs inspectors, IRS revenue officers and INS inspectors. The dedicated men and women in these three categories of Federal employment are faced daily with extremely stressful and sometimes dangerous situations in service of their country. This stress leads to a high turnover rate in these Federal occupations, that in turn lowers the Federal Government's productivity.

Offering an "early out" retirement option for Customs and INS inspec-

tors, as well as for IRS revenue officers, will help provide positions for longer periods of time. Therefore, the net result of providing such an early out option is a more productive Federal Government, as well as a lower Federal deficit.

For example, a July 1985 study by the IRS' Assistant Commissioner for Collections, estimated that an early out option for IRS revenue officers would reduce annual training costs by over $2 million and result in increased annual revenue collections by nearly $100 million.

Mr. President, this early out legislation for hazardous occupations should be carefully distinguished from other early out bills that have been introduced to shrink the size of the Federal work force. My legislation is designed solely to reward those whose civil service positions entail significant hazards. Unlike other early out bills, it has no provision which prevents an agency from filling a vacated position for 3 years.

In this era of continued high Federal deficits, the Congress should be taking all steps necessary to improve both our Government's productivity and efficiency. The legislation I am introducing today makes a limited, but serious attempt to meet that goal.●

By Mr. BREAUX (for himself and Mr. WALLOP):

S. 2032. A bill to authorize expenditures for boating safety programs, and for other purposes; to the Committee on Finance.

EXPENDITURES FOR BOATING SAFETY PROGRAMS

● Mr. BREAUX. Mr. President, today Senator WALLOP and I are joining to introduce legislation to reauthorize and improve certain boating safety and sport fishing enhancement programs which are funded through the Aquatic Resources Trust Fund, popularly known as the Wallop-Breaux Fund. This fund, established in 1984, is supported entirely by user fees paid by the millions of recreational boaters and sport fishing enthusiasts in the United States. The Wallop-Breaux Fund has been a significant success story, bringing millions of badly needed dollars to every State in the Union to improve State boating safety programs, provide vital support for the U.S. Coast Guard, and enhance sport fishing and boating opportunities.

The legislation we are introducing would extend for 10 years the authorization for appropriations for boating safety and Coast Guard support functions funded through the Wallop-Breaux Fund. The boating safety account within the fund consists of receipts from taxes levied on motorboat fuels. Like taxes paid into the highway trust fund by motorists, these taxes are user fees paid by the boating public. Unlike gasoline taxes paid by motorists, however, boaters had been paying these user fees since 1956 but were not previously receiving the benefits of these fees. In 1984, Congress wisely corrected this inequity and assured that Federal motorboat fuel taxes would be used to enhance boating safety and improve recreational programs that would benefit those who were paying the tax burden. In addition to extending this worthwhile program, our legislation would also codify an agreement among the boating and fishing user groups regarding the allocation of funding for boating safety programs.

Mr. President, the support within the boating and fishing public for the Wallop-Breaux Fund is extremely strong. The millions of people who enjoy these waterborne forms of recreation have willingly and actively supported the use of these funds in constructive ways that improve the safety of our waters and enhance the recreational opportunities that so many enjoy. I know that many of my colleagues have heard firsthand of the successes made possible within their State since the inception of the program, and I hope these colleagues will join us in cosponsoring this important legislation and expediting reauthorization of this valuable program.●

● Mr. WALLOP. Mr. President, today I join with my colleague from Louisiana, Mr. BREAUX in introducing legislation to revise and extend the Aquatic Resources Trust Fund, which is commonly known as the Wallop-Breaux Fund. The trust fund evolved from legislation enacted almost 40 years ago to aid in research and management programs for fisheries. The original program, the so-called Dingell-Johnson Fund, imposed an excise tax on fishing tackle and dedicated the revenues to sport fish restoration projects managed by State fish and wildlife agencies.

The program was funded by fishermen, and the revenues were dedicated to the specific goal of improving the fish populations in our lakes and streams. A successful and popular program, the Dingell-Johnson Fund was subject to demands which exceeded its revenues. So, efforts were begun about 10 years ago to expand the fund. In addition to increasing the tax on fishing tackle, a new excise tax on fishing boats was also considered. After some controversy, a proposal was developed by JOHN BREAUX, as a member of the House Merchant Marine and Fisheries Committee, to utilize a portion of the motorboat fuel tax for an expanded sport fish program. As a member of the Senate Finance Committee, I sponsored this proposal in the Senate.

The new program, the Aquatic Resources Trust Fund, or Wallop-Breaux Fund, was enacted into law in 1984. The new fund included two specific accounts, the sport fish restoration account and the boating safety account. The accounts are true user funded accounts, and involve no general revenues. The sport fish restoration account is funded by the fish tackle excise tax, and as I mentioned earlier, is dedicated to projects undertaken by State fish and wildlife agencies. The boating safety account is funded by the motor-fuel excise tax, and is used for boat safety programs run by the States and the U.S. Coast Guard.

When Congress enacted the Wallop-Breaux Fund in 1984, the proposal contained a specific set-aside from the fuel tax for the Boat Safety Program. The first $45 million in fuel tax revenues was reserved for the Boat Safety Program. Any collected funds above that amount would go to the Sport Fish Restoration Program.

Two years ago, after extended discussion among the user groups, it was suggested that the funding allocation for boat safety programs be increased. Congress responded favorably to the request, and revised the $45 million set-aside to $60 million as an amendment to the Coast Guard authorization bill. Last year, approval was again given to the funding increase. The legislation we are introducing today would make permanent the higher allocation. We would thus avoid having to amend the program every year to provide an allocation agreed to by everyone.

Our bill would also reauthorize the program for 10 years. Last, the bill would revise the list of in-kind contributions the States can make to meet their matching funding requirements under the act.

The Aquatic Resources Trust Fund is an example of a user funded program which serendipitously has a public benefit. The changes we are proposing today will only make a good program better. I would urge my colleague to join in supporting this legislation.●

By Mr. GRASSLEY (for himself, Mr. DOLE, Mr. SHELBY, Mr. BOND, Mr. MATSUNAGA, Mr. CHAFEE, Mr. CHILES, Mr. SYMMS, Mr. BURDICK, Mr. HEINZ, Mr. METZENBAUM, Mr. GRAMM, Mr. GLENN, Mr. DURENBERGER, Mr. KERRY, Mr. GARN, Mr. PRYOR, Mr. WEICKER, Mr. SANFORD, Mr. MCCAIN, Mr. MOYNIHAN, Mr. WARNER, Mr. CONRAD, Mr. LUGAR, Mr. STENNIS, Mr. QUAYLE, Mr. WIRTH, Mr. STAFFORD, Mr. EXON, Mr. MCCLURE, Mr. SARBANES, Mr. THURMOND, Mr. LEVIN, Mr. PRESSLER, Mr. DECONCINI, Mr. COCHRAN, Mr. NUNN, Mr. WILSON, Mr. BRADLEY, Mr. D'AMATO, Mr. GORE, Mr. DANFORTH, Mr. LAUTENBERG, Mr. SPECTER, Mr. KENNE-

DY, Mr. STEVENS, Mr. CRANSTON, Mr. BOSCHWITZ, Mr. INOUYE, Mr. HEFLIN, Mr. DODD, Mr. SIMON, Mr. HOLLINGS, Mr. ROTH, and Mr. HATCH):

S.J. Res. 250. A joint resolution designating the week of May 8, 1988, as "National Osteoporosis Prevention Week of 1988"; referred to the Committee on the Judiciary.

NATIONAL OSTEOPOROSIS AWARENESS WEEK

● Mr. GRASSLEY. Mr. President, I am introducing today legislation which would designate the week of May 8-14, 1988, as National Osteoporosis Prevention Week. I am joined in this by Senators DOLE, SHELBY, BOND, MATSUNAGA, CHAFEE, CHILES, SYMMS, BURDICK, HEINZ, METZENBAUM, GRAMM, GLENN, DURENBERGER, KERRY, GARN, PRYOR, WEICKER, SANFORD, MCCAIN, MOYNIHAN, WARNER, CONRAD, LUGAR, STENNIS, QUAYLE, WIRTH, STAFFORD, EXON, MCCLURE, SARBANES, THURMOND, LEVIN, PRESSLER, DECONCINI, COCHRAN, NUNN, WILSON, BRADLEY, D'AMATO, GORE, DANFORTH, LAUTENBERG, SPECTER, KENNEDY, STEVENS, CRANSTON, BOSCHWITZ, INOUYE, HEFLIN, DODD, SIMON, HOLLINGS, ROTH, and HATCH.

This is the fourth year in which I have had the honor of introducing legislation to call attention to the problem of osteoporosis, one of our major public health problems.

Osteoporosis is a condition in which bone tissue becomes progressively thinner as a consequence of calcium loss. This bone degeneration is associated with aging, low calcium levels, and loss of estrogen. It is a condition which affects primarily older women after menopause, although it can affect older men. Most commonly affected by it are thin, caucasian women, who tend to lose bone mass at a rate twice that of older men.

Osteoporosis is a fairly widespread condition. It affects some 24 million Americans, mainly post-menopausal women and older people.

This condition is a major contributing cause of bone fractures suffered by the elderly. Data provided to me by an Iowa researcher for a hearing of the Subcommittee on Aging during the 99th Congress showed that, at age 68, about half of Iowa's women have a bone mass level that places them at risk of fracture. Needless to say, therefore, this condition is expensive. Bone fractures in the elderly, particularly hip fractures, can lead to institutionalization. Fractures are also associated with higher levels of mortality among those who suffer them—it is estimated that more than 50,000 older women die each year from complications of hip fracture—a number higher than the number who die annually from breast cancer. In 1986, the national expenditures for osteoporosis totaled from $7 to $10 billion.

Many scientists argue that osteoporosis can be prevented. Some studies have shown that as many as 80 percent of bone fractures resulting from thinning of the bones could be avoided with increased intake of calcium and estrogen—and 50 percent with increased intake of calcium alone.

In one sense, osteoporosis is not just an older person's disease. That is because the time in the life cycle to begin to deal with this condition is not old age. Insofar as a certain amount of calcium loss is inevitable with aging, the more bone mass a person has when that loss commences, the more secure a person is from eventual bone deformity or breakage. Thus, the osteoporosis prevention effort should be directed especially at younger women, both in their own right as young women and in their capacity as parents who, with their husbands, can have a decisive influence on the diet and lifestyle of their children, and at children and adolescents. It is therefore entirely appropriate that the theme of this year's prevention week is "build a stronger future".

I must emphasize that, because osteoporosis probably can be prevented, educational efforts, such as this resolution designating a National Osteoporosis Prevention Week, can be particularly helpful in reducing the eventual incidence of this condition. Education and media campaigns during the week designated by this resolution will be conducted in all 50 States. The leaders of last year's educational efforts estimate that over 10 million Americans received information about osteoporosis as a consequence of the educational efforts of the event's many cosponsors around the country. This year, the campaign's goal is to reach at least 50 million Americans.

I ask unanimous consent that the groups and organizations joining the National Osteoporosis Foundation in this effort be listed after my statement.

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

PARTNERS IN PREVENTION

Abbott Laboratories.
American Home Products Corporation.
Coca-Cola Foods.
The Dannon Company, Inc.
Kraft, Inc.
Lederle Laboratories, Division of American Cyanamid Company.
Lunar Radiation Corporation.
Marion Laboratories, Inc.
Mead Johnson Laboratories.
The Merck Company Foundation.
Norwich Eaton Pharmaceuticals, Inc.
Parke-Davis.
The Procter & Gamble Company.
Rorer Pharmaceuticals.
Sandoz Pharmaceuticals Corporation.
Serono Synmposia, USA.
The Upjohn Company.
Warner-Lambert Company.

PREVENTION WEEK COSPONSORS

American Academy of Physical Medicine and Rehabilitation.
American Association of Retired Persons.
American College of Obstetricians and Gynecologists.
American Dietetic Association.
American Home Economics Association.
American Hospital Association.
American Medical Association.
American Medical Association Auxiliary, Inc.
American Medical Women's Association, Inc.
American Physical Therapy Association.
American Red Cross.
American School Food Service Association.
American Society for Bone and Mineral Research.
Association for the Advancement of Health Education.
B'nai B'rith Women.
Camp Fire, Inc.
Food Marketing Institute.
Future Homemakers of America, Inc.
Girls Clubs of America, Inc.
Girls Scouts of the U.S.A.
National Association of Area Agencies on Aging.
National Association of State Units on Aging.
National Consumers League.
National Council on the Aging, Inc.
National Council of Catholic Women.
National Council of Jewish Women.
National Council on Patient Information and Education.
National Dairy Council.
National Extension Homemakers Council, Inc.
National Rural Health Network.
Nurses Association of the American College of Obstetricians and Gynecologists.
President's Council on Physical Fitness and Sports.
Society for Nutrition Education.
U.S. Department of Agriculture, Extension Service.
U.S. Department of Health and Human Services.
Administration on Aging.
Bureau of Maternal and Child Health and Resources Development.
Food and Drug Administration.
National Institute on Aging.
National Institute of Arthritis and Musculoskeletal and Skin Diseases and the National Arthritis and Musculoskeletal and Skin Disease Clearinghouse.
National Institute of Diabetes and Digestive and Kidney Diseases.
Office of Disease Prevention and Health Promotion YMCA of the USA.

FRIENDS OF PREVENTION WEEK

Alleghany Regional Hospital (Low Moor, VA).
Amarillo Hospital District (Amarillo, TX).
Borgess Medical Center (Kalamazoo, MI).
Bradley Memorial Hospital (Cleveland, TN).
Cape Fear Memorial Hospital, Inc. (Wilmington, NC).
Chelsea Community Hospital (Chelsea, MI).
Corning Hospital (Corning, NY).
Cottonwood Hospital Medical Center (Murray, UT).
Elmwood Medical Center (Jefferson, LA).
Hospital for Special Surgery (New York, NY).

Humana Women's Hospital—South Texas (San Antonio, TX).
Lafayette General Medical Center (Lafayette, LA).
LDS Hospital (Salt Lake City, UT).
Lenox Hill Hospital (New York, NY).
Martha Jefferson Hospital (Charlottesville, VA).
Meadville Medical Center (Meadville, PA).
Mesa Lutheran Medical Center (Mesa, AZ).
Metropolitan Medical Center Foundation (Minneapolis, MN).
Mother Frances Hospital (Tyler, TX).
New England Baptist Hospital (Boston, MA).
North Colorado Medical Center (Greeley, CO).
Our Lady of Mercy Hospital (Dyer, IN).
Riverside Hospital (Newport News, VA).
Sacred Heart Hospital and Rehabilitation Center (Norristown, PA).
Saint Joseph's Medical Center (South Bend, IN).
Shadyside Hospital (Pittsburgh, PA).
Southwest General Hospital (Middleburg Heights, OH).
The South Side Hospital (Pittsburgh, PA).
The Staten Island Hospital (Staten Island, NY).
Western Reserve Care System (Youngstown, OH).
Woman's Hospital (Baton Rouge, LA).
Zurbrugg Memorial Hospital (Willingboro, NJ).●

ADDITIONAL COSPONSORS

S. 58

At the request of Mr. DANFORTH, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 58, a bill to amend the Internal Revenue Code of 1986 to make the credit for increasing research activities permanent and to increase the amount of such credit.

S. 794

At the request of Mr. METZENBAUM, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 794, a bill to amend chapter 13 of title 18, United States Code, to impose criminal penalties and provide a civil action for damage to religious property and for injury to persons in the free exercise of religious beliefs.

S. 1370

At the request of Mr. BUMPERS, the name of the Senator from North Carolina [Mr. SANFORD] was added as a cosponsor of S. 1370, a bill to provide special rules for health insurance costs of self-employed individuals.

S. 1395

At the request of Mr. HECHT, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 1395, a bill entitled "The Nuclear Waste Transportation Act of 1987."

S. 1586

At the request of Mr. KERRY, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1586, a bill to provide financial assistance under the Education of the Handicapped Act to assist severely handicapped infants, children, and youth to improve their educational opportunities through the use of assistive device resource centers, and for other purposes.

S. 1670

At the request of Mr. D'AMATO, the name of the Senator from Nevada [Mr. HECHT] was added as a cosponsor of S. 1670, a bill to identify, commemorate, and preserve the legacy of historic publicly owned parks of Frederick Law Olmsted, and for other purposes.

S. 1993

At the request of Mr. D'AMATO, his name was added as a cosponsor of S. 1993, a bill to amend the Small Business Act to improve the growth and development of small business concerns owned and controlled by socially and economically disadvantaged individuals, especially through participation in the Federal procurement process, and for other purposes.

S. 2003

At the request of Mr. GRAMM, the names of the Senator from North Carolina [Mr. HELMS], the Senator from Nevada [Mr. HECHT], the Senator from South Carolina [Mr. THURMOND], the Senator from Georgia [Mr. FOWLER], the Senator from Indiana [Mr. QUAYLE], and the Senator from North Carolina [Mr. SANFORD] were added as cosponsors of S. 2003, a bill to amend the Internal Revenue Code of 1986 to exempt from tax diesel fuel used for farming purposes.

S. 2024

At the request of Mr. BAUCUS, the name of the Senator from Virginia [Mr. WARNER] was added as a cosponsor of S. 2024, a bill to amend the Asbestos Hazard Emergency Response Act of 1986, Public Law 99-519, to extend certain deadlines.

S. 2025

At the request of Mr. MELCHER, the name of the Senator from North Dakota [Mr. CONRAD] was added as a cosponsor of S. 2025, a bill to amend title II of the Toxic Substances Control Act.

SENATE JOINT RESOLUTION 181

At the request of Mr. WILSON, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of Senate Joint Resolution 181, joint resolution designating the week beginning February 1, 1988, as "National VITA Week."

SENATE JOINT RESOLUTION 206

At the request of Mr. DOMENICI, the name of the Senator from Wyoming [Mr. SIMPSON] was added as a cosponsor of Senate Joint Resolution 206, joint resolution to declare Dennis Chavez Day.

SENATE JOINT RESOLUTION 210

At the request of Mr. WILSON, the names of the Senator from Ohio [Mr. GLENN], the Senator from Idaho [Mr. SYMMS], the Senator from Minnesota [Mr. BOSCHWITZ], the Senator from Florida [Mr. CHILES], the Senator from Missouri [Mr. DANFORTH], the Senator from Connecticut [Mr. DODD], the Senator from New Mexico [Mr. DOMENICI], the Senator from Florida [Mr. GRAHAM], the Senator from South Carolina [Mr. HOLLINGS], the Senator from Massachusetts [Mr. KENNEDY], the Senator from Massachusetts [Mr. KERRY], the Senator from Michigan [Mr. LEVIN], the Senator from South Dakota [Mr. PRESSLER], the Senator from Michigan [Mr. RIEGLE], the Senator from North Carolina [Mr. SANFORD], the Senator from Alabama [Mr. SHELBY], the Senator from Illinois [Mr. SIMON], the Senator from Vermont [Mr. STAFFORD], the Senator from South Dakota [Mr. DASCHLE], and the Senator from South Carolina [Mr. THURMOND] were added as cosponsors of Senate Joint Resolution 210, joint resolution to designate the period commencing February 8, 1988, and ending February 14, 1988, as "National Burn Awareness Week."

SENATE JOINT RESOLUTION 235

At the request of Mr. DECONCINI, the name of the Senator from Arizona [Mr. MCCAIN] was added as a cosponsor of Senate Joint Resolution 235, joint resolution deploring the Soviet Government's active persecution of religious believers in Ukraine.

SENATE JOINT RESOLUTION 237

At the request of Mr. DOLE, the names of the Senator from Georgia [Mr. NUNN], the Senator from Missouri [Mr. BOND], the Senator from Ohio [Mr. GLENN], the Senator from Illinois [Mr. DIXON], the Senator from Virginia [Mr. WARNER], the Senator from Arizona [Mr. MCCAIN], the Senator from West Virginia [Mr. ROCKEFELLER], the Senator from South Carolina [Mr. THURMOND], the Senator from Michigan [Mr. LEVIN], the Senator from Alabama [Mr. SHELBY], the Senator from Rhode Island [Mr. CHAFEE], the Senator from North Carolina [Mr. SANFORD], the Senator from Ohio [Mr. METZENBAUM], the Senator from Rhode Island [Mr. PELL], and the Senator from Utah [Mr. HATCH] were added as cosponsors of Senate Joint Resolution 237, joint resolution to designate May 1988, as "Neurofibromatosis Awareness Month."

SENATE JOINT RESOLUTION 247

At the request of Mr. BRADLEY, the names of the Senator from Maryland [Ms. MIKULSKI], the Senator from Michigan [Mr. LEVIN], the Senator from Illinois [Mr. DIXON], and the Senator from Alaska [Mr. STEVENS] were added as cosponsors of Senate Joint Resolution 247, joint resolution to authorize the President to proclaim the last Friday of April 1988 as "National Arbor Day."

SENATE RESOLUTION 260

At the request of Mrs. KASSEBAUM, the name of the Senator from Arizona

[Mr. McCAIN] was added as a cosponsor of Senate Resolution 260, resolution to amend the rules of the Senate to improve legislative efficiency, and for other purposes.

AMENDMENTS SUBMITTED

INDIAN SELF-DETERMINATION ACT AMENDMENTS

EVANS (AND INOUYE) AMENDMENT NO. 1399

(Ordered to lie on the table.)

Mr. EVANS (for himself and Mr. INOUYE) submitted an amendment intended to be proposed by them to the bill (S. 1703) to amend the Indian Self-Determination and Education Assistance Act, and for other purposes:

Mr. EVANS. Mr. President, I am pleased today to file an amendment which I intend to offer to S. 1703, the Indian Self-Determination Act amendments. The Indian Self-Determination Act authorizes tribes to contract with the Secretary of the Department of the Interior and the Secretary of the Department of Health and Human Services to administer previously authorized programs otherwise administered directly by those departments. The amendments already contained in S. 1703 increase tribal participation in the management of Federal Indian programs and to help ensure long-term financial stability for tribally run programs.

The amendments contained in S. 1703 are intended to remove many of the administrative and practical barriers that seem to persist under the Indian Self-Determination Act. The bill represents a profound and thorough reexamination of one of the most important and successful laws affecting Indian people in our Nation's history.

S. 1703 was reported by the Select Committee on Indian Affairs on December 22, 1987. One provision in the bill as reported, section 209, provides a mechanism for consolidated funding to participating Indian tribes. This provision, which was first recommended to the committee by the Department of the Interior, is intended to allow tribes maximum flexibility to use Federal funds to fashion programs for their members.

Mr. President, I am aware that section 209 has been the subject of some concern. I have discussed this provision at great length with tribal leaders from Washington State and from other tribes throughout the country. As I indicated in my additional views in the committee's report on S. 1703, there was room for improvement in section 209. I continue to believe, however, that consolidated funding is a sound policy, and may represent the logical culmination of the self-determination policy which many of us strongly support.

I was pleased to work with tribal leaders and members of the committee to develop improvements to this provision. The amendment I am introducing today builds upon the consolidated funding concept. The amendment, however, is a very different program than the one proposed by the Department of the Interior. The amendment has been developed with the active participation of tribes who have expressed interest in pursuing consolidated funding, and I intend to offer it at their request.

The amendment which I intend to offer deletes section 209 in its entirety and establishes instead a new title III, the tribal self-governance research and demonstration project. This project, which is authorized for 5 years, is divided into three phases. The first phase provides the interested tribes with planning grants for a period not to exceed 2 years. These grants allow the tribes to analyze, design and prepare for consolidated funding. At the same time, the Secretary is directed to compile and analyze pertinent financial and program data available to the tribes. The second phase of the project involves the negotiation of an agreement between the tribes and the Secretary of the Interior to specify the functions and responsibilities of the tribes and the Secretary. This agreement should allow tribes to determine and manage their own budgets and priorities. Nothing in the demonstration project or the written agreement may abrogate or reduce the trust responsibility of the United States to Indian tribes. The third and final phase of the demonstration project is the funding of the tribes to carry out their negotiated agreements.

Ten tribes responded to the Department of the Interior's original inquiry on consolidated funding and they have been specified in the continuing resolution for fiscal 1988 as eligible for self-determination planning grants. These tribes, the Central Council of the Tlingit-Haida Indian Tribes of Alaska, the Rosebud Sioux Tribe, the Jamestown Band of Klallam Indians, the Red Lake Band of Chippewa Indians, the Hoopa Valley Indian Tribe, the Lummi Tribe, the Quinault Indian Nation, the Mescalero Apache Tribe, the Salish-Kootenai Tribes of the Flathead Reservation, the Mille Lacs Band of Chippewa Indians, are the tribes who will begin this experiment.

Mr. President, I believe that tribes, like other units of government, are accountable to their citizens and are fully capable of managing their own affairs to the benefit of the Indian citizenry. Under this amendment, Indian tribes will not be bound to provide the same exact services that the Bureau of Indian Affairs would have provided. The Secretary and tribes are to report to Congress periodically on the progress of this project and to determine the relative costs and benefits, if any, of such consolidated funding. Services and funding to tribes not participating in the demonstration project are held harmless from any project costs or programs.

Mr. President, S. 1703 is a unique piece of legislation in that it was developed with the active participation of Indian tribes throughout the country. The Select Committee on Indian Affairs will schedule a hearing on this amendment in the near future. At that hearing, I look forward to learning from the tribes who participated in the development of this legislation on their views regarding this amendment.

Mr. President, I ask unanimous consent that a copy of the amendment be printed in the CONGRESSIONAL RECORD at the conclusion of my remarks and those of my esteemed colleague and cosponsor of the amendment Senator INOUYE.

There being no objection, the amendment was ordered to be printed in the RECORD, following the remarks of Mr. INOUYE.

Mr. INOUYE. Mr. President, I am pleased to join as a cosponsor of this amendment to S. 1703, the "Indian Self-Determination and Education Assistance Act Amendments of 1987."

One of the perennial shortcomings of Federal policies toward Indian tribes is that those policies are often developed by people who have little knowledge of the actual conditions on Indian reservations and the needs of tribal governments. I am pleased to report that this bill is an outstanding exception to that practice. These amendments were developed with the active participation of Indian tribal leaders from all parts of the country. For the past year, Indian tribal elected officials, finance officers, program planners, and program managers worked diligently with the Committee on Indian Affairs to develop positive and practical amendments to strengthen the Indian Self-Determination Act.

These amendments would: Ensure that tribal contract funds are not diverted to pay for such things as Federal contract monitoring, computers and Federal employee pay costs (section 205).

Ensure that tribal indirect costs associated with self-determination contracts are fully funded (section 205).

Provide that lack of indirect cost funding from agencies other than the BIA or IHS will not result in adverse actions against tribes, including theoretical overrecoveries (section 205).

Forgive tribal indebtedness resulting from theoretical overrecoveries incurred prior to fiscal year 1988 (section 205).

Prevent the BIA and the IHS from reducing tribal contract funds except in direct proportion to congressional reductions in appropriations (section 205).

Reduce contract reporting requirements for "mature" contracts (section 104).

Allow tribes to operate permanent mature contracts, instead of having to reapply for contracts each year (section 204).

Provide that Federal procurement laws and Federal acquisition regulations do not apply to Public Law 93-638 contracts (section 204).

Prevent the BIA and IHS from imposing contracting requirements on tribes except through procedures consistent with the Administrative Procedures Act (section 104 and section 207).

Prevent the BIA and IHS from unilaterally modifying Public Law 93-638 contracts (section 206).

Provide that the Contract Disputes Act and the Equal Access to Justice Act apply to Public Law 93-638 contract disputes (section 206).

Clarify that tribes have the right to contract for trust-related functions (section 201).

Strengthen the rights of tribes to design and operate programs appropriate to the needs and conditions of the tribes and their citizens (section 201 and section 202).

Address problems of Federal personnel displaced as a result of tribal contracting (section 203).

Simplify the regulations applicable to Public Law 93-638 contracts by requiring the BIA and IHS to publish one single set of regulations, developed with the participation of tribes, in title 25 of the Code of Federal Regulations (section 207).

Provide for Federal Tort Claims Act coverage for Public Law 93-638 contractors (section 201).

Authorize tribes to obtain grants for the purpose of planning, designing, monitoring, and evaluating Federal programs serving tribes, including Federal and administrative functions (section 202).

Mr. President, I support the efforts of my colleague Senator EVANS to respond to the recommendations and comments of a broad section of Indian leaders by offering an amendment to delete section 209, the "consolidated contract funding" provision from S. 1703, and in lieu thereof to include a new section 301, the "tribal self-governance research and demonstration project" provision. Section 301 is very different from section 209. Before we proceed to enact legislation to permanently authorize consolidated funding, I prefer to allow those tribes that have expressed interest in the consolidated funding concept to complete a planning process and then to experiment on a temporary basis by actually operating programs with consolidated funding. The new section 301 would authorize that planning and experimental operation. If those tribes subsequently request specific legislative action to permanently authorize consolidated funding, I am certain that the Senate will be willing to consider such legislation.

The Committee on Indian Affairs originally agreed to include section 209 in the bill at the request of Assistant Secretary for Indian Affairs Ross Swimmer for discussion purposes. In its markup meeting on December 9, the committee moved to accept a package of amendments, including an amendment to section 209, with the understanding that the questions that have been raised regarding this section would be resolved before the bill is acted upon by the full Senate.

Subsequent to the December 9 markup, funding was set aside in the fiscal year 1988 Interior appropriation for 10 tribes who volunteered to participate in a planning process to perform necessary legal and budgetary research, and internal tribal government planning and organizational preparation for the purpose of negotiating consolidated funding agreements with the Secretary of the Interior. The Appropriations Committees directed each of the tribes to document obstacles and propose remedies identified with this planning process, to be consolidated into a comprehensive report to the Appropriations Committees by September 1, 1988.

Mr. President, to enact the permanent authorizing legislation contained in section 209 at this time would be premature, given the objectives of the planning process. However, it is clear that the planning process begun with the fiscal year 1988 funding involves many challenging issues regarding the trust responsibility of the Federal Government to the tribes, the financial and programmatic impacts on other tribes, particularly in multitribal agencies, and the methods which could be used by the Bureau eventually to transfer more comprehensive programmatic responsibility along with the necessary financial resources to the tribes. That process should be bolstered by authorizing legislation pursuant to which this committee will work closely with the tribes involved, especially to ensure that there is full cooperation by the Federal agencies.

Therefore, section 301 would propose to continue and build upon the planning process already begun by authorizing a 5-year research and development project. Under this project, upon completion of the planning phase tribes would actually experiment with operating programs in accordance with tribally determined, not Federal, priorities. Consolidated funding would be provided to each of the 10 tribes pursuant to agreements negotiated with the Secretary during the planning process.

Both Senator EVANS and I joined with our other colleagues in the Senate to introduce Senate Concurrent Resolution 76 on September 16, 1987. It reaffirms the continuing government-to-government relationship between Indian tribes and the United States. This resolution was developed in close cooperation with representatives of some of those tribes who now seek to participate in experimental planning and program operation. It is an important step in our mutual efforts to clarify the relationship between tribes and the United States so that it may conform more nearly to the quality of the relationship that existed at the time of the signing of the U.S. Constitution and the treaties with Indian tribes. As tribal governments did then, they should today like other governments, determine for themselves how best to provide for their citizens.

It is important to explore practical ways of implementing the concepts contained in Senate Concurrent Resolution 76 and if section 301, which was developed by a number of tribal experts and officials could further their goal of self-determination, it will have been worth the effort. The research and development project is a next logical step in the important process of self-determination furthered by S. 1703. Perhaps it will take Public Law 93-638 to the next evolutionary stage.

I am willing to honor the tribes' request that I cosponsor an amendment to include the research and development project. I point out, however, that section 301 expressly provides that it shall not reduce the trust responsibility of the United States to Indian tribes nor limit or reduce the services, contracts or funds of any of the nonparticipating tribes.

The committee will closely monitor the research and development project, working both with the tribes and the Bureau of Indian Affairs. It is important to include within the research being undertaken an analysis of all Bureau of Indian Affairs functions with the idea of determining minimum levels below which funding for services should not fall. Particularly in the national resources area, funding levels should be based on a reservation-by-reservation analysis of what is needed. Such funding is a key element in the government-to-government relationship which the United States is pledged to continue and it should not go the way of other well-intentioned efforts such as revenue sharing.

Mr. President, the Select Committee on Indian Affairs will be holding a hearing on this new amendment in the near future to give all interested parties an opportunity to comment. Shortly after this hearing I will be

asking the leadership to schedule Senate action on S. 1703 (S. Rept. 100-274). I urge the Congress to expedite final action on S. 1703. Many tribes are in great need of the remedies and protections offered by S. 1703. The Congress can best respond to the needs of those tribes who have volunteered to experiment with consolidated funding by supporting the study process and postponing action on permanent authorizing legislation until that process is completed. At that time we can evaluate how best to move forward. These tribes have committed themselves to work with the Congress for the speedy passage of S. 1703 and I do not intend, and will not permit, the amendment offered today to delay the enactment of S. 1703.

The amendment is as follows:

AMENDMENT NO. 1399

Section 209 of S. 1703, as reported, is amended by deleting section 209 in its entirety and inserting the following is substituted in lieu thereof:

"SECTION 301. TRIBAL SELF GOVERNANCE RESEARCH AND DEMONSTRATION PROJECT.

The Indian Self-Determination and Education Assistance Act (Public Law 93-638, Act of January 4, 1975, 88 Stat. 2203, as amended) is further amended by adding a new Title III, to the end for the purpose of establishing, for five years from the date of enactment, a research and development project as follows:

(a) Subject to the provisions of this Act, the Secretary of the Interior shall establish a research and demonstration project, the Tribal Self-Governance Project, for the purpose of enabling tribes to determine their own budgets to address tribally determined priorities.

(b) The Secretary is authorized and directed to make research and development planning grants under section 202(e)(2) of this Act to the Indian Tribes who have volunteered to participate in this Project, as evidenced by their eligibility to receive Fiscal Year 1988 Tribal Self-Governance Planning Grants pursuant to the Continuing Resolution for Fiscal year 1988 and the Conference Report thereto.

(1) Such planning grants shall be for a period not to exceed two (2) years from date of appropriation of funds.

(2) Such planning grants shall be used to conduct such research as may be appropriate including internal tribal planning, and planning and preparation for the negotiation of a written agreement between each Tribe identified in subsection (b) and the Secretary pursuant to the requirements of subsection (c) to undertake the demonstration project authorized in subsection (d).

(3) For the period of Fiscal year 1985 through Fiscal year 1987, the Secretary is directed to compile all financial and program data including direct and indirect program accounts relating to the provision of services and benefits to each Tribe identified in this section, at the agency, area, and central office levels of the Bureau of Indian Affairs, and to analyze such data along with all budgets and functions at all levels of the Bureau of Indian Affairs in order to identify budgets and functions in any way related to the provision or administration of services and benefits to such Tribes, and in order to undertake the demonstration projects authorized in subsection (d).

(4) Notwithstanding any other provision of law, the Secretary shall, within 90 days of enactment of this section, make available to each Tribe receiving planning grants, all financial and program data, including the data and analysis compiled pursuant to paragraph (3) of this subsection, and including direct and indirect program accounts, relating to the provision of services and benefits to such Tribe at the Bureau of Indian Affairs agency, area, and central office levels.

(c) Pursuant to subsection (d) the Secretary is authorized and directed to negotiate and enter into separate written agreements with each Tribe identified in subsection (b) for the purpose of the Tribal Self-Governance Demonstration Project for the programs, or portions thereof, for which a Tribe could contract under section 102 of P.L. 93-638, as amended by this Act.

(1) Nothing in the written agreement, the Demonstration Project authorized under subsection (d), or any other provision of this section shall abrogate or reduce the trust responsibility of the United States to Indian tribes.

(2) The functions and responsibilities of both the Tribes and the Secretary relative to the Demonstration Project, including Tribal authority to reallocate funds or modify budget allocations within any project year, shall be specified in agreements entered into pursuant to this subsection.

(3) Agreements shall provide for retrocession of programs or portions thereof pursuant to section 204(d) of this Act; provided that such retrocession shall become effective in no more than one year from the request of the Indian Tribe party to the agreement.

(d) TRIBAL SELF-GOVERNANCE DEMONSTRATION PROJECT.—After a Tribe has completed its planning process under subsection (b), at the request of the tribal governing body of such Tribe, and pursuant to the agreement negotiated in subsection (c), the Secretary shall provide funding for a period not to exceed the authorization of this section, which will pay such Tribe an amount equal to at least the amount that such Tribe would have been eligible to receive under a contract or contracts with the Secretary for the programs, portions thereof, or functions enumerated in the agreement pursuant to subsection (c) for direct program costs and indirect costs, and will pay in addition any and all funds relating to such programs, parts thereof, or functions, at the Bureau of Indian Affairs agency, area, and central office levels.

(1) Recipients of such Demonstration Project funding shall not be entitled to contract for such funds under section 102 of Public Law 83-638, as amended by this Act, for the duration of their Demonstration Project under this subsection.

(2) Recipients of such Demonstration Project funding shall be responsible for the provision of services and benefits as determined by tribal planning and priorities pursuant to agreements under subsection (c); Tribes are not bound to provide the same programs, portions thereof, functions, services or benefits as the Secretary would have provided.

(3) Statutory provisions or regulations pursuant thereto in conflict with this subsection or the agreement under subsection (c) are waived for purposes of the Demonstration Project.

(4) Notwithstanding section 206(d) of this Act, unless the Secretary and the Tribe provide for a distinct dispute resolution mechanism in the agreement under subsection (c) of this section, disputes arising under this subsection between the Secretary and the Tribe shall by written notice of either the Secretary or the Tribe trigger a ten-day period during which the parties in good faith attempt to informally resolve the dispute. At the expiration of the ten-day period, if no resolution is obtained, the Tribe may by written notice require the dispute to be submitted to binding arbitration. Such arbitration award may be enforced pursuant to subsection (a) of section 206 of this Act.

(e) The Secretary shall report semi-annually to the Congress on the relative costs and benefits of programs authorized by this section; such report shall be based on mutually determined baseline measurements jointly developed by the Secretary and the participating Tribes, and such report shall separately include the views of such Tribes.

(f) Nothing in this section shall limit or reduce in any way any services, contract or funds that any other Indian Tribe or Organization is eligible to receive under section 102 of this Act or other applicable Federal law.".

INTEGRITY IN POST EMPLOYMENT ACT

THURMOND (AND OTHERS) AMENDMENT NO. 1400

(Ordered to lie on the table.)

Mr. THURMOND (for himself, Mr. METZENBAUM, Mr. LEVIN, and Mr. SPECTER) submitted an amendment intended to be proposed by them to the bill (S. 237) to amend section 207 of title 18, United States Code, to prohibit Members of Congress and officers and employees of any branch of the U.S. Government from attempting to influence the U.S. Government or from representing or advising a foreign entity for a proscribed period after such officer or employee leaves Government service, and for other purposes; as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

That this Act may be cited as the "Integrity in Post Employment Act of 1988".

SEC. 2. STRENGTHENING AND CLARIFYING THE CURRENT PROVISIONS OF SECTION 207 OF TITLE 18.

(a) OFFENSE.—Section 207 of title 18, United States Code, is amended to read as follows:

"§ 207. Disqualification of former executive and legislative branch employees

"(a) LIFETIME PROHIBITION ON EXECUTIVE BRANCH EMPLOYEES.—It shall be unlawful for any former officer or employee of the executive branch of the United States, including any independent agency, or of the District of Columbia, including a special Government employee, knowingly to represent any other person other than the United States—

"(1) by oral or written communication to, or by physical presence in a formal or informal appearance before, any department, agency, court, or commission of the United States or the District of Columbia;

"(2) in connection with a particular matter involving specific parties—

"(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest; and

"(B) in which the former officer or employee participated personally and substantially while so employed.

"(b) TWO-YEAR PROHIBITION ON EXECUTIVE BRANCH EMPLOYEES.—It shall be unlawful for any former officer or employee described in subsection (a), within 2 years after that former officer's or former employee's employment has ceased, knowingly to represent any other person other than the United States—

"(1) by oral or written communication to, or by physical presence in a formal or informal appearance before, any department, agency, court, or commission of the United States or the District of Columbia;

"(2) in connection with a particular matter involving specific parties—

"(A) in which the United States or the District of Columbia is a party or has a direct and substantial interest; and

"(B) which was actually pending under the former officer's or former employee's official responsibility within 1 year prior to the date that former officer or employee ceased employment.

"(c) PROHIBITIONS ON EXECUTIVE AND LEGISLATIVE BRANCH EMPLOYEES.—It shall be unlawful for any person, other than a special Government employee who serves for less than 60 days in the last 365 consecutive days—

"(1) having been employed as a senior official, within 1 year after such employment has ceased, knowingly to represent any other person other than the United States, by oral or written communication to, or by physical presence in a formal or informal appearance before—

"(A) any department, agency, or other entity in which the person served during the 1 year prior to the termination of such employment as an officer or employee, if that person was employed in the executive branch, including any independent agency, or legislative branch of the United States;

"(B) the Senate, if that person was employed by the Senate; or

"(C) the House of Representatives, if that person was employed by the House of Representatives;

"(2) having been employed as a high level official, within 1 year after such employment has ceased, knowingly to represent any other person other than the United States by oral or written communication to, or by physical presence in a formal or informal appearance before, any department, agency, or other entity of the executive branch, including any independent agency of the United States;

"(3) having been employed as a top level official, within 1 year after such employment has ceased, knowingly to represent any other person other than the United States by oral or written communication to, or by physical presence in a formal or informal appearance before, any department, agency, or other entity of the United States; or

"(4) having been employed as a senior, high level, or top level official, within 18 months after such employment has ceased, to be employed by, represent, or advise a foreign entity for compensation, financial gain, or other remuneration.

"(d) AGENTS COMMUNICATING ON BEHALF OF A FORMER OFFICER OR EMPLOYEE.—It shall be unlawful for any person knowingly, in the course of representing any other person other than the United States, by oral or written communication to any department, agency, or other entity of the executive or legislative branch to communicate to such department, agency, or entity of the executive or legislative branch that such communication is on behalf of a former officer or employee covered under subsection (a), (b), or (c) of this section if such a communication by the former officer or employee is prohibited by subsection (a), (b) or (c).

"(e) COVERAGE.—

"(1) INDIVIDUALS COVERED.—For purposes of the coverage of subsections (a), (b), (c), and (d) of this section—

"(A) the term 'senior official' means any officer or employee of the United States other than those of the judicial branch who is not a high level or top level official (including officers and employees of the legislative branch and officers and employees, including special Government employees, of the executive branch, including any independent agency, commissions, Government corporations, independent establishments as defined in section 104 of title 5, the Postal Service, the Postal Rate Commission, and the District of Columbia), who is—

"(i) compensated at a rate of pay equal to or greater than the basic rate of pay for GS-16 of the General Schedule as prescribed in section 5332 of title 5, or employed in a position listed under sections 105(a)(2)(C) and (D) and 106(a)(1)(C) and (D) of title 3; or

"(ii) on active duty as a commissioned officer of a uniformed service and assigned to a pay grade of O-7 or above as prescribed in section 201 of title 37;

"(B) the term 'high level official' means any officer or employee of the executive branch of the United States, including any independent agency, who is not a senior or top level official and who holds a position listed in section 5314 of title 5 or under sections 105(a)(2)(B) and 106(a)(1)(B) of title 3, or who is paid at an equivalent rate of pay;

"(C) the term 'top level official' means—

"(i) any officer or employee of the executive branch of the United States, including any independent agency, who holds a position listed in section 5312 or 5313 of title 5 or under sections 105(a)(2)(A) and 106(a)(1)(A) of title 3, or is paid at an equivalent rate of pay; or

"(ii) any Member of Congress, including Delegates and Resident Commissioners.

"(2) EXCEPTIONS.—(A) The prohibitions of subsections (a), (b), and (c) shall not apply to any person—

"(i) who is an elected official of a State or local government;

"(ii) who is engaging solely in—

"(I) the solicitation or collection of funds and contributions within the United States to be used only for medical assistance, food or clothing to relieve human suffering, in accordance with subchapter II of chapter 9 of title 22, and any rules and regulations prescribed thereunder; or

"(II) activities furthering the purposes of an international organization of which the United States is a member;

"(iii) whose actions are solely for the purpose of furnishing scientific or technological information if the head of the agency or legislative entity concerned with the particular matter certifies that the person has outstanding qualifications in a technical discipline regarding the particular matter and that the national interest is served by the participation of such person, and publishes such certification in the Federal Register or, in the case of a legislative entity, in the Congressional Record;

"(iv) whose actions concern matters of a personal and individual nature, such as personal income taxes or pension benefits; or

"(v) who is providing a statement which is based on that person's special knowledge, provided that no compensation is received for such statement other than that regularly provided by law or regulation for witnesses.

"(B) The prohibitions of subsection (c) shall not apply to any person—

"(i) who is employed by—

"(I) an agency or instrumentality of a State or local government;

"(II) an accredited, degree-granting institution of higher education, as defined in section 1201(a) of the Higher Education Act of 1965; or

"(III) a hospital or medical research organization, exempted and defined under section 501(c)(3) of the Internal Revenue Code of 1954; or

"(ii) who is appearing as an attorney in a judicial proceeding before a court of the United States.

"(3) SPECIAL RULES FOR DETAILEES.—For purposes of this section, a person covered by this section who is detailed from one department, agency, or other entity to another department, agency or other entity shall, during the period such person is detailed, be deemed to be an officer or employee of both departments, agencies or such entities.

"(f) PENALTIES AND REMEDIES FOR VIOLATIONS.—

"(1) CRIMINAL SANCTION.—Any person who engages in conduct prohibited by subsection (a), (b), or (c) shall be fined not more than $10,000 or imprisoned for not more than 2 years, or both. Any person who willfully engages in such prohibited conduct shall be fined not more than $250,000 or imprisoned for not more than 5 years, or both.

"(2) CIVIL RECOVERY.—The United States may bring in addition to or in lieu of subsection (f)(1) above, a civil action in any United States district court against any person who engages in conduct prohibited by subsection (a), (b), (c), or (d) and may recover twice the amount of any proceeds obtained by that person due to such conduct. Such civil action shall be barred unless the action is commenced within 6 years of the later of (A) the date on which the prohibited conduct occurred, and (B) the date on which the United States became or reasonably should have become aware that the prohibited conduct had occurred.

"(3) ADMINISTRATIVE ACTION.—Upon finding, after notice and opportunity for a hearing, that a person has engaged in conduct prohibited by subsection (a), (b), (c), or (d) the head of the employing department or agency of the executive branch, including any independent agency, may prohibit that person from representing anyone other than the United States before such department or agency, for a period not to exceed 5 years, or may take other appropriate disciplinary action. Any such disciplinary action shall be subject to review in a United States district court. Employing departments or agencies may, in consultation with the Director of the Office of Government Ethics, establish procedures and issue regulations to carry out this subsection.

"(4) INJUNCTIVE RELIEF.—Upon a showing that a person has engaged or will engage in conduct prohibited by subsections (a), (b), (c), or (d) of this section, the United States may obtain an injunction to stop or prevent such conduct.

"(g) PARTNERS OF AN OFFICER OR EMPLOYEE.—Whoever, being a partner of an officer or employee of the executive branch of the United States Government, including any independent agency, or of the District of Columbia, including a special Government employee, knowingly represents any other person other than the United States by oral or written communication to, or by physical presence in a formal or informal appearance before, any department, agency, court, or commission of the United States or the District of Columbia in connection with a particular matter in which the United States or the District of Columbia is a party or has a direct and substantial interest and in which such officer or employee or special Government employee participates or has participated personally and substantially as an officer or employee or which is the subject of his official responsibility, shall be fined in accordance with this title, or imprisoned for not more than one year, or both.

"(h) TESTIMONY.—Nothing in this section shall prevent a person from giving testimony under oath, or from making statements required to be made under penalty of perjury.

"(i) DEFINITIONS.—For purposes of this section—

"(1) The term 'foreign entity' includes—

"(A) the government of a foreign country as defined in section 611(e) of title 22;

"(B) a foreign political party as defined in section 611(f) of title 22; and

"(C) a foreign organization substantially controlled by a foreign country or foreign political party.

"(2) The term 'particular matter' means any investigation, application, request for a ruling or determination, rulemaking, contract, controversy, claim, charge, accusation, arrest, judicial or other proceeding.

"(3) The term 'participated personally and substantially' means an action taken as an officer or employee, through decision, approval, disapproval, recommendation, the rendering of advice, investigation or other such action.".

(b) TECHNICAL AMENDMENT.—The table of sections for chapter 11 of title 18, United States Code, is amended by striking out the item relating to section 207 and inserting in lieu thereof the following:

"207. Disqualification of former executive and legislative branch employees.".

SEC. 3. INCLUSION OF ACTIVITIES IN THE FOREIGN AGENTS REGISTRATION ACT.

Section 2 of the Foreign Agents Registration Act of 1938, is amended by inserting at the end thereof the following:

"(g)(1) In addition to the registration requirements of subsections (a) through (e) of this section, any high level official or top level official of the United States as identified in subsection (e) of section 207 of title 18, United States Code, shall be required in any statement filed under this section to—

"(A) disclose the identity of any foreign principal for which such officer or employee acts as an agent or representative;

"(B) disclose the actions taken or intended to be undertaken to influence Members of Congress, including Delegates and Resident Commissioners, or officers or employees of the legislative and executive branch of the United States on behalf of such foreign principal; and

"(C) include a declaration that the registrant has not disclosed Government information in violation of any law or regulation.

"(2) Whoever knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device, any information required by this subsection to be included in a registration statement, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both.".

SEC. 4. EFFECTIVE DATE.

The amendments made by this Act shall—

(1) be effective six months after the date of enactment of this Act; and

(2) apply to any Member or employee of Congress or employee or officer of the Federal Government, other than those of the judicial branch, employed by any agency, department, or entity of the Federal Government on or after six months after the date of enactment of this Act.

Mr. THURMOND. Mr. President, shortly, the Senate will consider the Integrity in Post-Employment Act of 1987. This legislation strengthens the current law on postemployment activity by former Federal officials.

Regarding the history of this bill, I originally introduced the Integrity in Post Employment Act in the 99th Congress. The distinguished Senator from Ohio, Senator METZENBAUM, immediately joined in this effort. His commitment to this legislation has been substantial from the start. After some revision, the legislation was voice voted out of the Judiciary Committee in June 1986. As no floor action occurred before adjournment, the bill was reintroduced in the 100th Congress. In May 1987, the legislation was again voice voted out of committee without opposition. Recently, the distinguished Senator from Michigan, Senator LEVIN, made several recommendations regarding this legislation. Senator METZENBAUM and I have agreed to some of Senator LEVIN's proposals and we intend to offer a substitute for S. 237 when it is considered for Senate action.

Major provisions of this substitute will:

Provide for an 18-month moratorium on all Government employees with a Civil Service rating of GS-16 or greater, commissioned officers of a uniform service assigned to a pay grade of O-7 or above, and the Government's highest ranking officials—which includes Cabinet members and most of their principal deputies, Members of Congress, and top White House aides—from lobbying or working for a foreign entity after leaving Government service.

Create a three-tiered prohibition on domestic lobbying by former Government employees. Under this provision, those designated high-ranking officials, which include Cabinet members and most of their principal deputies, Members of Congress, and top White House aides, could not lobby any branch of the Federal Government for 1 year after leaving office. Executive level 3 officials could not lobby the executive branch for 1 year after leaving Government service. Individuals holding jobs with a Civil Service rating of GS-16 and above or commissioned officers of a uniform service assigned to a pay grade of O-7 or above, could not lobby their former agency or department for 1 year on behalf of a domestic entity.

I look forward to prompt consideration of this legislation.

NOTICES OF HEARINGS

SPECIAL COMMITTEE ON AGING

Mr. MELCHER. Mr. President, I would like to announce for the public that a hearing by the Special Committee on Aging has been scheduled.

The hearing will take place Monday, February 22, 1988, at 10 a.m. in room 628 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to consider the Social Security "Notch" issue, and possible solutions thereto.

For further information, please contact Max Richtman, staff director, at (202) 224-5364.

COMMITTEE ON SMALL BUSINESS

Mr. BUMPERS. Mr. President, I would like to announce that the Small Business Committee will hold a full committee hearing on Wednesday, February 24, 1988 at 2 p.m. The purpose of the hearing is to examine S. 1929, a bill to create the Corporation for Small Business Investment [COSBI]. The hearing will be held in room 428A of the Russell Senate Office Building. For further information, please call Patty Barker, counsel for the committee at (202) 224-5175.

AUTHORITIES FOR COMMITTEES TO MEET

COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Banking, Housing, and Urban Affairs be allowed to meet during the session of the Senate on Wednesday, February 3, 1988, to continue oversight hearings on the events surrounding the stock market crash of October 19, 1987.

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

COMMITTEE ON RULES AND ADMINISTRATION

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Rules and Administration be authorized to meet during the session of the Senate on Wednesday, February 3, 1988, to receive testimony from the chairmen and ranking minority members of the Committees on Foreign Relations, Labor, Budget, Small Business, Appropriations, and Environment on their committee funding resolutions for 1988.

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

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BYRD. Mr. President, I ask unanimous consent that the U.S. Energy and Natural Resources Committee be authorized to meet during the full committee session of the Senate on Wednesday, February 3, 1988 to conduct business meeting pending calendar business.

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

COMMITTEE ON AGRICULTURE, NUTRITION AND FORESTRY

Mr. BYRD. Mr. President, I ask unanimous consent that the Committee on Agriculture, Nutrition, and Forestry, be authorized to meet during the session of the Senate on Wednesday, February 3, 1988 to receive testimony on the nomination of Wendy Gramm to be Chairman of the Commodity Futures Trading Commission.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 3, 1988, to hold a hearing on intelligence matters.

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

Mr. BYRD. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on February 3, 1988, at 2 p.m. to hold a hearing on intelligence matters.

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

SUBCOMMITTEE ON WATER RESOURCES, TRANSPORTATION AND INFRASTRUCTURE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Water Resources, Transportation and Infrastructure, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Wednesday, February 3, beginning at 2 p.m., to conduct a hearing on S. 1934, a bill to authorize the construction of a building adjacent to Union Station to provide additional office space for the Administrative Office of the U.S. Courts and the Supreme Court.

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

SUBCOMMITTEE ON COURTS AND ADMINISTRATIVE PRACTICE

Mr. BYRD. Mr. President, I ask unanimous consent that the Subcommittee on Courts and Administrative Practice of the Committee on the Judiciary, be authorized to meet during the session of the Senate on February 3, 1988, to hold a markup on S. 951, Federal Courts Study Act.

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

ADDITIONAL STATEMENTS

VIOLENCE AGAINST REFUGEES IN EL SALVADOR

● Mr. BINGAMAN. Mr. President, I rise today on the eve of debate on the administration's request for aid to the Contras in Nicaragua to comment on disturbing news from El Salvador.

Just 1 month ago I inserted into the RECORD a letter from Erica Dahl-Bredine, a young woman from New Mexico who is working as a lay volunteer in El Salvador. Her letter described the difficulties facing the displaced victims of the war in that country. I have recently received another letter from Erica's parents who just returned from a 2-week visit there.

Their letter describes two recent incidents of violence at a refugee camp outside of San Salvador.

On January 16, while the Dahl-Bredines were in El Salvador, 200 Salvadoran soldiers reportedly forced their way into the San Jose de Calle Real refugee camp near San Salvador and attempted to remove 15 persons. The camp is run by the Archdiocese of San Salvador and Erica is a volunteer there. Only the arrival of Bishop Orieste from the Archdiocese averted a more serious incident.

Then, on January 21 or 22 government troops once again surrounded the Calle Real refugee camp and opened fire with machineguns and possibly mortars or grenades, seriously injuring at least one person and endangering the lives of the inhabitants and workers in the camp.

These recent incidents heighten my concern about the overall safety of individuals in El Salvador, particularly refugees. It is clear that the lives and safety of the refugees, and those who work with them, including American citizens, are in danger.

We simply cannot turn a blind eye to these incidents and other acts of violence against the innocent in that country. I have written to the Salvadoran Ambassador to express my deep concern over the situation and the ongoing abuse of power by the military in El Salvador. It is vital to the future of U.S. policy there that President Duarte and the civilian government maintain control over the military. If the military remains free to continue to commit such transgressions, I mourn the future of democracy in El Salvador.

I have also written to Secretary of State Shultz calling for a full investigation of these incidents.

I urge my colleagues to join me in protesting these incidents. It is sadly ironic that each transgression committed by the Nicaraguan Government receives immediate and full-blown attention at the highest level of our government while blatant violations of human and civil rights in El Salvador go virtually unnoticed.

These recent reports of violence strengthen my support for Senator DECONCINI's efforts to grant extended voluntary departure status to Salvadoran refugees in the United States. The intolerable conditions in El Salvador contradict the administration's claims that there is no danger to individuals deported to El Salvador. I am a cosponsor of Senator DECONCINI's bill, S. 332, which was reported favorably by committee last fall. In light of the continued evidence of danger to civilians, including refugees, in El Salvador, I urge consideration of this bill by the full Senate at the earliest possible juncture.

I ask that the texts of the Dahl-Bredines' letter and my letter to Secretary Shultz be inserted in the RECORD.

The letters follow:

SILVER CITY, NM,
January 25, 1988.

Senator JEFF BINGAMAN,
U.S. Court House, Suite 201B,
Las Cruces, NM.

DEAR SENATOR BINGAMAN: My wife and I just returned from a two week trip to El Salvador to visit our daughter who is working as a lay volunteer with the Sisters of the Assumption there. We are extremely concerned for the lives of some American volunteers and Salvadoran citizens because of a situation that developed while we were there.

On Friday, January 15, we received permission from the Catholic Archdiocese of San Salvador to visit the refugee camp run by the Archdiocese outside of the city. It is called "San Jose de Calle Real", and is home for approximately 600 men, women and children, including many recovering amputees, who are victims of war and are recuperating in the camp's clinic. We spent the afternoon talking with these people, learning of their suffering and of their wish to return to their homes in the countryside. Very few have received permission from the government to do so.

We also talked with an American nurse, a friend of our daughter, and with American volunteers from the Jesuit Refugee Service, all of whom work there in the camp.

The following day 200 Salvadoran government soldiers forced their way into the camp and attempted to take 15 people whom they said were on their lists as being sympathizers with the guerillas. The people joined together and would not let them take the 15, saying that the soldiers would have to kill them all if they wanted to take the 15. Their experience told them that if taken, the 15 would likely not be seen alive again. At that moment Bishop Orieste from the Archdiocese arrived also and the troops gave in and left after searching the camp for arms.

We left El Salvador on Thursday, January 21, but received a call on Sunday, January 24, from our daughter recounting the following: On Thursday or Friday, January 21st or 22nd, the Salvadoran government troops surrounded the Refugee camp at "Calle Real" and opened fire with machine guns and some sort of mortars or grenades. The terrified residents tried to hide together on the floor of some of the barracks. One man was shot in the stomach. The Ameri-

can nurse made her way through the gunfire and brought him to safety. Evidently he is still alive.

When our daughter arrived at the camp the next day, the American volunteers recounted how close they had come to being hit, and the people, all unarmed civilians, women, and children, communicated their terror to her. Bullet holes were evident throughout the compound and there was a large hole in the clinic roof caused by mortar or grenades.

We are convinced that the lives of these Salvadoran civilians and of American citizens are in immediate danger. The only thing that might control the Salvadoran military is adverse U.S. public opinion. Yet nothing about this appears in the U.S. press although the Salvadoran press is full of it. Our representatives and officials must communicate quickly with the Salvadoran officials to assure that American and Salvadoran civilians' lives are not lost.

We urge you to take responsibility to see that something is done before it is too late for those involved. We hope and expect your timely cooperation in this urgent matter. More direct information can be gained by communicating directly with the Archdiocese of San Salvador, or by communicating with our daughter, Erica Dahl-Bredine, at 011-503-41-23-68 in Santa Ana El Salvador, or 011-503-22-20-69 in San Salvador.

We look forward to hearing from you promptly.

Sincerely yours,

PHIL and KATHY DAHL-BREDINE.

U.S. SENATE,
Washington, DC, January 28, 1988.

Hon. GEORGE C. SHULTZ,
Secretary of State, Department of State, Washington, DC.

DEAR MR. SECRETARY: I am deeply concerned about the events described in the enclosed letter from two constituents, Phil and Kathy Dahl-Bredine. They recently returned from El Salvador where their daughter, Erica, is working as a lay volunteer with the Sisters of the Assumption. I feel strongly that their letter warrants your immediate attention.

On January 16, while the Dahl-Bredines were in El Salvador, 200 Salvadoran soldiers reportedly forced their way into the "San Jose de Calle Real" refugee camp near San Salvador and attempted to remove 15 persons. The camp is run by the Archdiocese of San Salvador and Erica is a volunteer there. Only the arrival of Bishop Orieste from the Archdiocese averted a more serious incident.

On January 21 or 22 government troops once again surrounded the "Calle Real" refugee camp and opened fire with machine guns and possibly mortars or grenades, seriously injuring at least one person and endangering the lives of the inhabitants and workers in the camp. These recent incidents heighten my concern about the overall safety of individuals in El Salvador, particularly refugees and those, including American citizens, who provide humanitarian support for the refugees. Furthermore, these incidents have only strengthened my support for Senator DeConcini's efforts to provide extended voluntary departure status for Salvadorans in this country.

I request a full investigation of the incidents detailed in the Dahl-Bredines' letter. I urge you to make it clear to Salvadoran officials that such abuse of power by the military is intolerable, and that the U.S. will not turn a blind eye to continued violence against unarmed civilians and refugees. I expect your prompt attention to this matter.

Sincerely,

JEFF BINGAMAN,
U.S. Senator.●

THE MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1987

● Mr. D'AMATO. Mr. President, I rise today as a cosponsor of S. 1993, the Minority Business Development Program Reform Act of 1987. This legislation is an important step in reforming the section 8(a) program which has come under considerable scrutiny over recent years.

Last May, the Senate Small Business Committee held a hearing to examine the results of the survey of the graduates of the 8(a) program. The results of the survey brought to light some of the highlights as well as some of the lowlights of the 8(a) program. Some of the suggestions offered by graduated firms have been incorporated into this legislation.

I am disturbed over the alarmingly high failure rate of the firms that have graduated from the 8(a) program. According to the survey, the out of business rate for these firms was 30 percent. This figure tells us something. It tells us that the section 8(a) program is not effective as it should be and that it is not graduating firms that can survive in the intensely competitive open market.

The purpose of S. 1993 is to restructure the 8(a) program in order to assure that it achieves its congressionally mandated objectives. The bill proposes to meet these objectives by injecting competition into the veins of the program and thus better ensuring a higher success rate of graduated businesses. The administrative reforms outlined in this legislation are aimed at cleaning up SBA oversight and at preventing future abuses within the program itself.

Competition is the basis of our economy. It is what has made this country the world's foremost industrial and economic leader. The authors of this legislation have incorporated measures to boost competition in the 8(a) program. Examples include: Requiring program participants to attain specified percentages of non-8(a) business at various milestones after their initial 3 years in the program; and requiring that a contract be put out for open competition within the 8(a) program if the anticipated award contract exceeds $2 million for supply, service and for leasing of real property contracts, or $1 million for all other types of contracts.

Critics of the 8(a) program argue that the Small Business Administration has become too political. In an effort to depoliticize the SBA, this bill proposes to install a career civil servant as the associate administrator of the program in lieu of a political appointee. The bill also prescribes the activities and transactions of SBA employees—and former employees for 1 year—that would jeopardize the integrity of the program and makes them subject to stiff monetary and harsh prison sanctions if convicted of any wrongdoing.

It is important that we do not lose sight of the original intent of the 8(a) program: to foster the development of minority firms and increase the likelihood of their success in the Nation's economic mainstream. We must not let ourselves get caught up in the complicated politics of this issue. Abuses in the program should be identified and corrected. But while doing so, we must be sure to adhere to the original intent of this beneficial and much needed program.

Overall, S. 1993 is a good bill. It is not without its problems, however. I believe that there exist viable solutions to these problems. I urge my colleagues in the Senate to give their full attention to this important reform bill and to work toward its swift passage.●

GIVING THANKS TO BOB WHITE

● Mr. DOMENICI. Mr. President, this past Friday, January 29, marked the retirement of Mr. Bob White, director of the New Mexico Aviation Division.

A native of Roswell, NM, Bob has served as the director of aviation for the New Mexico Department of Highways and Transportation since 1963. He is the only person who has served in this position.

It is a great credit to Bob's integrity, his leadership, and his vast expertise that he served for a quarter century in this important post.

New Mexico's constitution does not allow a Governor to succeed himself. Yet, Bob has been retained by each new Governor, Republican or Democrat, during that span.

During this period, Bob has been the point man for New Mexico's aviation needs. Our State is the fifth largest in the Nation, by land mass, and aviation is a critical link in the State's transportation network.

Bob has the ability to balance the needs of the State's airports, within the limits of available resources, in a fair manner. When a city contacted Bob in need of funds, whether it be for minor improvements or for a new facility, Bob was as reliable as anybody anywhere at getting positive results.

Let me cite just one example. State and local officials recently accomplished a long-awaited priority—the opening of a new facility near Ruidoso, NM.

Because of its poor location, the airport had been the site of a number of

accidents. The U.S. Department of Transportation had identified the old Ruidoso Airport as one of the Nation's most dangerous. Despite this, selecting a site for the new facility was not an easy task, since so much of the land around Ruidoso is federally owned.

Bob never let this difficulty get in his way. Long before I was elected as a U.S. Senator, Bob was already hard at work trying to get a replacement facility. Federal officials were finally able to agree on a site. This simply would never have occurred without the dedicated efforts of Bob White.

Bob White can look back on a proud career of public service, knowing that he consistently gave a 100-percent effort to our State. His expertise and his professionalism will be sorely missed by everybody.●

FRAUD OF THE DAY—PART 25

● Mr. HEINZ. Mr. President, today's fraud demonstrates that customs fraud does not occur solely in import-impacted manufacturing sectors. Indeed, fraud is growing rapidly in this country and is appearing in virtually all sectors of the economy, including agriculture, as this case illustrates.

The importance of milk and dairy products to the economy and public health of many countries in terms of production, trade, and consumption is easy to recognize. Those who devise schemes to take advantage of the extensive multilateral efforts to regulate the international dairy markets not only abuse the international trading system as embodied in the General Agreement on Tariffs and Trade but also create unwarranted mistrust among trading partners. Moreover, the production of cheese is often a matter of national and regional pride, so when a customs fraud case involves cheese with deliberately mismarked origin labels the issue takes on a personal flavor, as it were.

Recently, a U.S. customs investigation confirmed an international conspiracy to evade and defraud both U.S. Customs and European Economic Community [EEC] laws. Westland Cheese of Bedford, NY, apparently falsely declared cheese it had imported from Australia as originating from the Netherlands in order to evade clearly established United States cheese quotas. Complicating matters further, Westland Cheese attempted to illegally obtain cash rebates from the EEC for the cheese, a scheme that certainly smelled like limburger. Customs, however, saw the holes in the plan and in New York seized shipments of cheese valued at $293,853 because of these illegal activities.

Including a private right of action provision in the omnibus trade bill would not only permit domestic cheese producers to protect themselves against the ravages of fraud, but it would also provide a disincentive to those rats and mice considering ways to evade U.S. customs laws.●

MORIARTY: A MIGHTY FINE TOWN

● Mr. DOMENICI. Mr. President, I should like to tell my colleagues about a cold spell, a bad storm, and a small town's good neighbor policy.

Moriarty, NM is a small city in the Estancia Valley, located about 40 miles east of the city of Albuquerque. While Albuquerque is protected from most severe weather by the Sandia and Manzano mountain ranges, the Estancia Valley commonly receives more than 3 feet of snow during the winter months.

As with many areas of the West, such severe weather comes suddenly, and often comes as a big surprise to those who are traveling through the valley on I-40 toward Albuquerque. Just last month, one of the city's worst storms produced snowdrifts of up to 4 feet to the Valley of Estancia. I-40 was closed by the Albuquerque police, leaving hundreds of motorists stranded.

During December's storm, several residents helped the State police department and the New Mexico National Guard dig out trapped homeowners and plow roads. Owners of four wheel drive vehicles took it upon themselves to help the community get around. Additionally, they cooked meals for those traveling through the city and took them into their homes until they could continue on their way. Community centers, churches, truckstops, and motels were used to provide housing also. Many restaurant owners worked through the night, donating their time and food to the weary travelers. Moriarty's doors were open to the temporary homeless.

To the residents of Moriarty and Estancia, these travelers become guests. Moriarty's fire chief, Carlos Anaya, explained in a recent newspaper interview, "We have no contingency plans for what to do in case of a storm. We just do what has to be done." "Our biggest asset is the people."

These New Mexicans truly benefit from their hard work. The bad weather draws them closer together, which makes this community special. The Moriarty city clerk, Karen Armijo, explained, "We're all friends and everything already, but we've become families with this kind of thing happening."

We here in Washington could learn a lot from Moriarty's good natured acceptance of this occasional burden. Each time a delayed group of travelers scatter back to their homes they are left with good feelings about New Mexico and its people. Their kindness is unique in the sense that they don't expect anything in return for their actions. They give only what they would expect to receive.●

ALAN PAGE

● Mr. BOSCHWITZ. Mr. President, I rise today to pay tribute to one of the most accomplished athletes in Minnesota history, a man who not only excelled on the playing field, but has excelled as well in other parts of life.

Yesterday Alan Page was elected to the Professional Football Hall of Fame, and it is one of life's ironies that a man who refrained from seeking admiration for his football skills should receive the highest honor bestowed on professional football players.

Alan Page's story is a remarkable one that we would all do well to study. Again, there is irony in the fact that a man who insisted football players should not be role models has himself become an outstanding role model for all of us.

As a football player, Alan Page was a tremendous force. He was part of a group of talented players who led the Minnesota Vikings to four super bowls. The quality of his play was such that he still holds the distinction of being the only defensive player ever awarded the NFL's Most Valuable Player Award.

During his time in the football spotlight, however, Alan Page was taking care of the rest of his life as well. Too often we read and hear stories of athletes who have no vision of life beyond the playing field. Athletes who have their entire lives wrapped up in their athletic endeavors. Athletes who fall prey to the hero worship and bright lights that often accompany athletic success.

That was not the path that Alan Page walked. While he had his moments in the spotlight, he was also busy preparing for the time when the spotlight would fade. Between football seasons, he continued his studies and obtained a law degree. After his football career ended, he went to work as a lawyer.

Today Alan Page is an assistant to the Attorney General of Minnesota, a position he has risen to through diligence and hard work. The same skills that made him strong on the football field have made him strong in life as well.

Yesterday, Alan Page's accomplishments as a football player were honored. Today, I want to take notice of his other accomplishments as well and extend my congratulations to Alan and his wife Diane on this well-deserved honor. Just as Alan Page contributed to many successes on Minnesota's football fields, so too is he contributing to many successes in all of Minnesota today.●

TO AMEND THE OCEAN DUMPING ACT

● Mr. CHAFEE. Mr. President, yesterday, my distinguished colleagues from New Jersey, Senators LAUTENBERG and BRADLEY, introduced legislation which will, by 1991, put a halt to the dumping of municipal sludge at the 106-mile dumpsite. I join with my colleagues as an original sponsor of this necessary legislation.

The bill requires New York and New Jersey, States currently utilizing the 106-mile dumpsite, to identify and develop alternatives to sewage sludge dumping. These States will be required to identify the steps being taken by municipalities to implement programs, including sludge pretreatment programs, to facilitate the beneficial use of sewage sludge. Pretreatment removes many of the most harmful toxins in sludge, and renders it useful for landfilling and fertilization.

Congress made its intent regarding ocean dumping very clear when, in 1972, it passed the Ocean Dumping Act, which stated:

> The Congress declares that it is the policy of the United States to regulate the dumping of all types of materials into ocean waters and to prevent or strictly limit the dumping into ocean waters of any material which would adversely affect human health, welfare, or amenities, or the marine environment, ecological systems, or economic potentialities.

Despite this declaration, we are still permitting the dumping of sewage sludge, which contains high levels of heavy metals and is known to be toxic, in our near-coastal waters. I am concerned, and the fishermen of my State and of New England are concerned, that this sludge is already having an adverse effect on the fisheries. One lobsterman stopped by my office to tell me that his take of lobster from an area affected by this sludge is down 80 percent.

Dumping at the 106-mile site has not been going on long enough for the Environmental Protection Agency to assess what impact it will have on the environment. We do know a great deal, however, about the effect of sludge dumping at the 12-mile site which has just been closed. Out of concern for human health, shellfishing in the area around this site has been curtailed. The Food and Drug Administration closed a 150-mile area around the dumpsite to shellfishing due to concern about elevated levels of bacteria from municipal sludge dumping. Fish that are found in this area are usually diseased, and show bioaccumulation of toxins and heavy metals, including mercury and cadmium.

We know that pollution at the 12-mile dumpsite has harmed, perhaps irreparably, a large ocean area. The same fate awaits the 106-mile dumpsite area. However, at the 106-mile dumpsite, the potential for seriously damaging the fisheries of the east coast is much greater. A report by the National Oceanic and Atmospheric Administration characterizes the site as a "highly dispersive environment where waste contaminants will be mixed effectively and transported in unpredictable ways from points of input." In a separate report NOAA estimated the potential area of influence of dumped wastes to encompass 116,000-square kilometers.

The fish and shellfish that inhabit this potential area of influence constitute a significant segment of the commercial and recreational fisheries of the east coast. These fisheries contribute over $1 billion annually to the economies of coastal States from Maine to North Carolina.

Nothing could sink the fishing industry of the United States faster than to have fresh fish associated with contamination.

If dumping municipal sludge in the ocean were the only, or the best alternative, then fine. But EPA has said unequivocally that the States utilizing the 106-mile dumpsite have not fully explored other options. Philadelphia has found innovative methods for dealing with its sludge, and, through pretreatment, is able to utilize sludge products for land reclamation. Cities in the Midwest do not have ocean dumping of sludge as an option, and have found other, more environmentally sound methods for processing sludge.

Yet, for coastal States, the temptation to use the ocean as a dumping site is hard to resist. In the case of municipal sludge, this temptation must be resisted. The legislation we are introducing today sends a clear message that we are serious about protecting our marine habitat. Municipalities utilizing the 106-mile dumpsite must apply themselves in earnest to the development of viable alternatives to the ocean dumping of sludge. We cannot continue to jeopardize the well-being of our fisheries, and the health of our ocean.

It is worth noting that this legislation will require EPA to report to Congress on progress to detect and prevent alleged "short dumping" of sewage sludge. If haulers are intentionally dumping sludge before they reach the 106-mile site, then this practice must be stopped.

I look forward to working with my distinguished colleagues from New Jersey in moving this legislation through the Senate.●

THE CONTRA AID RESOLUTION

Mr. BYRD. Mr. President, the House today will at some point vote on the resolution to provide Contra aid, and the outcome of that vote of course remains to be seen. If the House approves the resolution, that resolution will be over at the desk tomorrow morning and the Senate then would vote at some point during the day to proceed to take up the House-passed resolution. If the House rejects the Contra aid legislation, today, then a vote in the Senate up or down tomorrow would not have any impact one way or the other, the House having previously rejected the President's request.

Nevertheless, it is my intention on tomorrow, to move to take up the resolution dealing with Contra aid. That motion is a nondebatable motion and a yea and nay vote is required on it, whether it is a motion to proceed to the Senate resolution or whether it is a motion to proceed to the House-passed resolution in the event the House does adopt it. That motion would be nondebatable. The yeas and nays are required. A maximum of 10 hours is provided for debate on the resolution if the Senate votes to take it up.

The final vote on the resolution under the law is required to occur at no later than 10 o'clock p.m. tomorrow. A motion to further reduce the time on the resolution is nondebatable and is in order.

No motion to recommit the resolution is in order. No motion to postpone action beyond February 4 is in order. No motion to reconsider the vote on the motion to proceed or to reconsider the vote on the resolution is in order. No motion to table the motion to proceed is in order, because the law requires a yea and nay vote on the motion to proceed.

It is my plan, therefore—and I have discussed this with the assistant Republican leader—to go over today until tomorrow at 2 o'clock p.m., and I will ask for morning business to occur to the hour of 2:30 p.m. At 2:30 p.m., then, I will make the motion to proceed to the Senate resolution or, if, in the meantime, the House has passed the resolution, to proceed to the House-passed resolution.

Any Senator can make the motion to proceed, so it is not a question of whether or not it will be made; there are some Senators who want the motion made. Any Senator can make it. Therefore, I shall make it, and in order that Senators may know when it will be made, so that they will know to be here to vote on the motion to proceed, it being a nondebatable motion, I intend to make that motion at 2:30 p.m. tomorrow. So, Senators have ample time to be notified concerning the vote and to be here.

Mr. President, before I make the request, then, to go over until tomorrow and set the hour by unanimous consent, does the distinguished assistant Republican leader have any observations or questions concerning this proposed schedule?

The PRESIDING OFFICER. The assistant Republican leader is recognized.

Mr. SIMPSON. I appreciate the thoroughness in which the majority leader has expressed this. It is, indeed, true that the motion to proceed can be made by any Member and there are Members on both sides of the aisle who, I think, would make such a motion. There are several on your side and certainly more than several on ours. So that would come, there is no question about that coming. By doing this you are protecting the persons, I think, on both sides of the aisle who wish to be here for that very important vote because, in one sense, that might be the only vote on that issue, being a motion to proceed. I certainly do not mean it is my hope, but that could be.

But, if we were to proceed to the 2 o'clock hour, the 2:30 vote, and if the motion did not carry, that would be the end of our business activity, I would think.

Mr. BYRD. Yes.

Mr. SIMPSON. And if it did carry, then we would go forward and try to, I believe, work diligently on this side of the aisle to see if we could not capsule that time, compress that time, so that we would be aware that during the dinner hour we might get to a final vote.

Is that the understanding of the majority leader, too, I might ask?

Mr. BYRD. Yes, yes. I would hope that the debate would not continue, in any event, to the hour that is provided in the law; namely 10 o'clock p.m.

Mr. SIMPSON. Yes. Mr. President, then if that were the case, then we dispose of our business with an urging to do so within the compressed time, there would be, then, no session on Friday?

Mr. BYRD. There would be no session on Friday.

Mr. SIMPSON. Would that be regardless of the fact as to whether we have reached a time agreement on the so-called lobbying bill, which is the bill of Senators METZENBAUM, THURMOND, and LEVIN? Because at one time that was discussed as being a condition toward no Friday session, but I have that as an inquiry.

Mr. BYRD. Mr. President, I will not make that as a condition. All Members, including the distinguished assistant Republican leader, are trying to work out an agreement on that measure.

Mr. SIMPSON. Indeed.

Mr. BYRD. Our efforts will go forward. I have confidence that we will be able to get an agreement, but that will not be a condition.

I do not think that continued debate after 6 o'clock tomorrow would change any minds around here; therefore, I would hope that we could restrain our debating instincts and bridle them and get out at 6 o'clock, or before 6 o'clock p.m. tomorrow. And then the Senate would not be in on Friday.

Mr. SIMPSON. Mr. President, I think this is a good concept. I know the majority leader will soon propound it formally and I might just add to the leader that a Senate resolution, even though perhaps to some might be quite feckless if the House defeated its measure, could well be the vehicle for the alternative proposal that the House has indicated they would present in the event of defeat of the motion this evening.

So it might be that that would be a reason to press forward on this even though that might have been defeated. I do not have this as an indication of why perhaps we should go forward with this—win, lose, or draw over there.

Mr. BYRD. I am not sure I understand.

Mr. SIMPSON. That this resolution which we would deal with in the Senate would be a vehicle for the alternative package that the House indicated they would send over if they were to defeat this measure tonight. It would mean if we were to be successful here on the vote.

Mr. BYRD. I am not positive of that. I have not pursued the matter. There is nothing to keep the Congress from coming along later and acting on legislation to provide further Contra aid. But if this request of the President is rejected, then there are no expedited procedures on future legislation to deal with the subject matter of Contra aid.

Mr. President, I forgot to say a moment ago that the resolution is also not amendable. I would add that to the litany of actions that I indicated earlier would be precluded.

ORDERS FOR TOMORROW

Mr. BYRD. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in recess until the hour of 2 o'clock tomorrow afternoon; provided further, that after the two leaders or their designees are recognized under the standing order tomorrow, there be a period for morning business not to extend beyond the hour of 2:30 p.m., that Senators may speak therein for not to exceed 5 minutes each; and that at the hour of 2:30 p.m. tomorrow I be recognized for the purpose of making a motion to proceed to the Senate resolution or the House resolution, whichever may be the case.

The PRESIDING OFFICER. Is there objection?

Mr. SIMPSON. Mr. President, reserving the right to object, and I shall not object, for the purpose of my own information, and not in any attempt to try to dazzle anybody with footwork—and I would not do that with the majority leader anyway because I have great respect for him—what I am inquiring about for my own mind is if this House does this and we go ahead and we pass it, that is what I am inquiring about. It seems to me that when the Senate has performed a function, we have passed our portion of it, then I would think that that could become a vehicle for alternative Contra aid activity. That is what I am inquiring about. Would that not be correct?

Mr. BYRD. I would like to pursue this.

Mr. SIMPSON. But without any privilege.

Mr. BYRD. There would be no expedited procedures available.

Mr. SIMPSON. That is right. It is nothing to slow the progress of agreement.

The PRESIDING OFFICER. Is there objection to the request of the majority leader? Without objection, it is so ordered.

Mr. BYRD. Mr. President, I have a delegation of Turkish legislators waiting in my office, so unless the distinguished assistant Republican leader has anything further, I think I will recess under the order.

Mr. SIMPSON. Mr. President, I think that is quite appropriate. We will deal with these other matters tomorrow.

Mr. BYRD. Very well.

ROLLCALL VOTE AT 2:30 P.M.

Mr. President, there will be a rollcall vote at 2:30 p.m. tomorrow. I urge all Senators to be here at the beginning of the vote. Then there is no possibility that they will not be here when the vote ends. If the subway car is broken down, just start walking, or, when the bell rings, start walking. At age 70-plus, I am able to walk from here to the Hart Building where the subway car stops there in something like 4 minutes. I probably could not make it to my office in the Hart Building in 4 minutes, but certainly when the bells ring, I would make it a point, if I were in the Hart Building, to get on my way over here. If the subway car breaks down, I can walk.

Mr. SIMPSON. And if the weather is inclement, ski.

Mr. BYRD. If the weather is inclement, I will stay inside but I will be here in plenty of time.

The PRESIDING OFFICER. May the Chair inquire, in his capacity as a Senator from Georgia—I may have missed it—will the 2:30 vote be a 15-minute vote or a 30-minute vote?

Mr. BYRD. I look at it this way——

The PRESIDING OFFICER. The Chair is not arguing. The Chair is only inquiring.

Mr. BYRD. That is a good question. I was hoping to avoid it. That is the reason I did not say anything about it. I hesitate to start having 30-minute

votes in the Senate at 2:30 in the afternoon, and so I was going to let it go without comment, now that we are completing rollcalls within 15 minutes. On the other hand, this may be a very critical vote tomorrow and I wanted to be in a position, at the end of 15 minutes, if there is a Senator who has gotten his leg caught in the door, to ask the clerk not to hand the Chair that rollcall tally sheet until the Senator can free himself.

The PRESIDING OFFICER. The leader has cleared it up.

Mr. BYRD. Mr. President, I am going to leave it open. I will not ask for an automatic closure in this instance because of the reasons stated. I may call for the regular order at the close of 15 minutes or I may not.

I simply urge Senators not to take any chances. When the rollcall starts, do not wait until the second bells are sounded, because the elevator may break down in the meantime.

I will not ask uanimous consent that the order be automatic this time. I have a feeling that the vote will not be prolonged.

RECESS UNTIL 2 P.M. THURSDAY

Mr. BYRD. Mr. President, if there is no further business and my friend does not have anything further——

Mr. SIMPSON. I have no further business, Mr. President. I thank the majority leader very much.

Mr. BYRD. I move in accordance with the order previously entered that the Senate stand in recess until 2 o'clock tomorrow afternoon.

The motion was agreed to; and the Senate, at 5:21 p.m., recessed until Thursday, February 4, 1988, at 2 p.m.

CONFIRMATION

Executive nomination confirmed by the Senate February 3, 1988:

SUPREME COURT OF THE UNITED STATES

ANTHONY M. KENNEDY, OF CALIFORNIA, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.

DEPARTMENT OF JUSTICE

ROBERT H. EDMUNDS, JR., OF NORTH CAROLINA, TO BE U.S. ATTORNEY FOR THE MIDDLE DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS.

JESSE R. JENKINS, OF NORTH CAROLINA, TO BE U.S. MARSHAL FOR THE WESTERN DISTRICT OF NORTH CAROLINA FOR THE TERM OF 4 YEARS.