SENATE—*Tuesday, October 2, 1990*

(Legislative day of Monday, September 10, 1990)

The Senate met at 10 a.m., on the expiration of the recess, and was called to order by the Honorable CHARLES S. ROBB, a Senator from the State of Virginia.

The PRESIDING OFFICER. Today's prayer will be offered by a guest chaplain, the Reverend Dr. Donald M. Meisel, Westminster Presbyterian Church, Minneapolis, MN.

PRAYER

The guest chaplain, the Reverend Dr. Donald M. Meisel, senior minister, of the Westminster Presbyterian Church, Minneapolis, MN, offered the following prayer:

Let us pray:

Dear Lord of All, by Your design our lives are a succession of single days. One day we were born. One day we shall take our leave of this planet. All we have for certain is the given day—this day. May we live it well.

May we be sensitive today to those who have preceded us here, who gave their all to the succession of their days—by virtue of which we are much the wiser and profoundly indebted.

May we be sensitive today to those for whom this day is fraught with pain and confusion and uncertainty and want. Wherein it is in our power to fashion a better tomorrow for them, let that be our first order of business.

May we be sensitive today, Lord, to those who have yet to see the light of day. May the world they enter be a better rather than a lesser place because of the decisions made here.

May we be sensitive today to the lingering, persistent shadow of the threat of war. May something as positive as the invasion of Kuwait was negative be added to the mix leading to a better hope for tomorrow for millions of people.

Lord, the men and women in this room are ordinary people with extraordinary responsibilities.

May the day, by Your grace, find them equal to the possibilities that exist.

And may they have some joy in reaching for them.

In the strength of Your name we pray. 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. BYRD].

The assistant legislative clerk read the following letter:

U.S. SENATE,
PRESIDENT PRO TEMPORE,
Washington, DC, October 2, 1990.

To the Senate:

Under the provisions of rule I, section 3, of the Standing Rules of the Senate, I hereby appoint the Honorable CHARLES S. ROBB, a Senator from the State of Virginia, to perform the duties of the Chair.

ROBERT C. BYRD,
President pro tempore.

Mr. ROBB 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.

THE JOURNAL

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

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

SCHEDULE

Mr. MITCHELL. Mr. President, this morning following the time for the two leaders, there will be a period for morning business, not to extend beyond 10:30 a.m., with Senators permitted to speak therein for up to 5 minutes each. During the period for morning business, Senator BIDEN will be recognized for up to 15 minutes.

At 10:30 this morning, it is my intention to seek consent to proceed to Calendar No. 819, S. 3037, the Money Laundering bill. Should consent not be granted, it is my intention to move to proceed to the bill.

The Senate will recess from 12:30 to 2:15 p.m. for the party conferences. Upon reconvening at 2:15 today, there will be a rollcall vote on final passage of Senate Concurrent Resolution 147, regarding the Persian Gulf situation. Once that vote is concluded, the Senate will go into executive session to begin consideration of the nomination of David Souter to be an Associate Justice of the U.S. Supreme Court.

CONGRATULATIONS TO FORMER SENATOR HUGH SCOTT ON HIS 90TH BIRTHDAY

Mr. MITCHELL. Mr. President, on behalf of Senator DOLE and myself, Mr. HEINZ, and Mr. SPECTER, I send a resolution to the desk congratulating former Senator Hugh Scott on his 90th birthday, and I ask for its immediate consideration.

The ACTING PRESIDENT pro tempore. The clerk will report the resolution.

The legislative clerk read as follows:

A resolution (S. Res. 331) to congratulate Senator Hugh Scott on his 90th birthday.

The ACTING PRESIDENT pro tempore. Is there objection to the immediate consideration of the resolution?

There being no objection, the Senate proceeded to consider the resolution.

The ACTING PRESIDENT pro tempore. The question is on agreeing to the resolution.

The resolution (S. Res. 331) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, is as follows:

S. RES. 331

Whereas Senator Hugh Scott of Pennsylvania, was the Senate Republican leader for eight years, and

Whereas Senator Scott was the Senate Assistant Republican Leader for two years, and

Whereas Senator Scott was Chairman of the Republican National Committee 1948-49, and

Whereas Senator Scott was a Member of Congress for 33 years, including eight terms in the House of Representatives and three terms in the Senate, and

Whereas Senator Scott voluntarily retired at the end of his term in January 1977, and

Whereas Senator Scott served his country in the United States Naval Reserve in World War II, and saw duty aboard the carrier *Valley Forge* during the Korean War: now, therefore, be it

Resolved, That the Senate extends its best wishes to Senator Hugh Scott on his 90th birthday, November 11, 1990.

Mr. MITCHELL. Mr. President, I move to reconsider the vote.

Mr. DURENBERGER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

THE RESOLUTION ON THE GULF CRISIS

Mr. MITCHELL. Mr. President, today the Senate will have an opportunity to express itself on the Persian Gulf crisis. The resolution upon which

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

we will vote expresses support for the President in this difficult and dangerous time in the Persian Gulf.

It commends the President for steering the U.N. Security Council toward its strong condemnation of Iraq's unprovoked aggression against Kuwait.

It expresses Congress' approval of the actions taken to date in support of the goals outlined by the U.N. Security Council.

It supports continued American action in accordance with U.N. Security Council decisions and in accordance with our constitutional and statutory processes.

Finally, it calls upon other nations to strengthen enforcement of U.N. sanctions against Iraq and to provide assistance to States adversely affected by sanctions or harboring refugees from the crisis.

That is what the resolution is. Let me now state what I believe the resolution is not.

This resolution is not an authorization for the use of force, now or in the future.

Nor does this resolution represent approval of all future actions taken by the President in the gulf.

This resolution is not a blank check. This resolution is not a Gulf of Tonkin resolution.

Congress cannot responsibly provide such approval in advance. Nor should Congress attempt to do so.

Future actions must be judged on their own merits, in view of the circumstances at the time.

Moreover, constitutional and statutory processes govern the process for making decisions that might lead to war or for formally declaring war.

The War Powers Resolution requires the President to consult with and formally report to the Congress when U.S. Armed Forces are introduced into situations where imminent involvement in hostilities is clearly indicated by the circumstances.

The Constitution makes plain that only Congress can provide a declaration of war.

The President of the United States has no legal authority, none whatsoever, to commit the United States to war.

So the Senate, then, will be involved in future grave decisions should the crisis expand and the shadow of war approach.

I fully expect that the President will follow America's constitutional and statutory procedures for involving Congress in the weighty decisions that might lead to war.

No one of us wants war in the Persian Gulf.

I believe the President has acted wisely in leading the U.N. Security Council toward the strong stance that it has adopted. It is critically important to maintain the unity of the international community in confronting Iraq's belligerence.

I hope that the current course of international economic and diplomatic sanctions will convince Saddam Hussein of the futility of his aggression and demonstrate the power of unity within the United Nations.

I am pleased that this body can express its support for the President's actions in this regard.

RESERVATION OF LEADER TIME

Mr. MITCHELL. Mr. President, I reserve the remainder of my leader time and I reserve all of the leader time of the distinguished Republican leader.

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 10:30 a.m., with Senators permitted to speak therein for not to exceed 5 minutes each.

THE 1990 OCTOBER QUARTERLY REPORTS

The mailing and filing date of the October quarterly report required by the Federal Election Campaign Act, as amended, is Monday, October 15, 1990. All principal campaign committees supporting Senate candidates in the 1990 races must file their reports with the Senate Office of Public Records, 232 Hart Building, Washington, DC 20510-7116. You may wish to advise your campaign committee personnel of this requirement.

The Public Records Office will be open from 8 a.m. until 9 p.m. on Monday, October 15, to receive these filings. In general, reports will be available 24 hours after receipt. For further information, please do not hesitate to contact the Office of Public Records on (202) 224-0322.

Mr. COHEN. Mr. President, may I inquire of the majority leader, would there be any objection to extending the morning hour until 10:35? I know the Senator from Minnesota wants to express some words about the message that was delivered this morning from a minister from his State. Senator BIDEN has 15 minutes, which will take until 10:30, and I would like to make a few comments on the resolution if that will be possible.

Mr. MITCHELL. Mr. President, I am pleased to accommodate the request and, indeed, since there may be other Senators who wish to speak, I will now ask unanimous consent that the period for morning business be extended until 11 a.m.

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

THE RESOLUTION ON THE GULF CRISIS

Mr. DURENBERGER. Mr. President, I am looking forward to the comments of my colleague from Maine on the subject that the majority leader raised. I know my colleague from Maine is going to talk about the War Powers Act, and it is most appropriate, particularly given his understanding and his respect on this issue. I hope that all of us will be cognizant of what our colleague has to say.

THE GUEST CHAPLAIN

Mr. DURENBERGER. Mr. President, this morning it is for me a personal honor and a pleasure to have the Senate session begin with a prayer from my friend Pastor Don Meisel, of Westminster Presbyterian Church of Minneapolis.

I say to my friend Don Meisel that, while there are not many Members on the floor, his inspirational words have gone out throughout the Senate and to a national CNN audience this morning and it actually reaches millions of people via the CONGRESSIONAL RECORD. I am not sure whether that makes him a television preacher or not, but as a very close friend for the last 19 years, I appreciate not only his words but the act of his being here.

I say to my colleagues and to those who are concerned about the chaplain for the day that Don Meisel has been an especially good servant in the highest sense of that word. I can only speak to his service to the people of the Twin Cities for the last two decades. He was born in St. Paul, graduated from Macalester College in St. Paul and was educated at Princeton Seminary and Edinburgh, Scotland, like so many good Presbyterian ministers are.

I came to know Don and his wife Ellie and their family 19 years ago when we moved in almost next door to them in south Minneapolis. He and Ellie are two of the most unique people I have ever met in their relationship, their love for the Lord, and their love for other people; 37 years of a beautiful marriage; four children, Donny, Nancy, Wayne, and Tim, who happens to be an especially close friend of my son David. They have two grandchildren, Robin and Maura, and the grandchildren are a constant source of sermon illustrations for the 3,000 members of Westminster Church.

Pastor Meisel and his congregation of 18 years provide a special service to the downtown community in Minneapolis and also to a much larger community now through the Westminster

town hall forums. And I dare say there are a number of our colleagues, present and past, who have been asked to participate in these very special forums. For 10 years Pastor Meisel and that congregation have brought in outstanding artists, authors, poets, social commentators, and other thoughtful people to provide intellectual stimulation and informed dialog. These forums now are known throughout the region and are broadcast by American public radio.

The people of Minnesota are proud of their serious approach to public issues and ideas. Today we have been blessed not only in the prayer but in the person of Pastor Meisel and, through him, the people of Westminster, who have provided us all the valuable opportunity to learn more about ourselves in the world for which we are responsible.

This opportunity to lead the world's greatest deliberate body in prayer is a fitting tribute to Don Meisel's life, to his family, and to his years of service to the people of Minnesota and elsewhere.

Mr. President, I yield the floor.

THE RESOLUTION ON THE GULF CRISIS

Mr. COHEN. Mr. President, I rise today in support of Senate Concurrent Resolution 147, which expresses support for the President's actions in response to Iraq's invasion of Kuwait. I believe that the President has shown strength and wisdom by pursuing a policy toward Iraq that emphasizes international cooperation and makes clear that Iraq's unprovoked aggression against Kuwait is completely unacceptable. If the President had not reacted in the firm and effective manner that he was, we would be risking the extortion of the civilized world by a ruthless tyrant bent on regional conquest.

In fact, if Saddam Hussein's character appeared in a novel, it might appear to be implausible on the grounds that no human could be so unambiguously evil. Yet it is a matter of record that he has engaged in the use of chemical weapons and of torture against his own people; that he has personally executed opponents; that he has twice launched unprovoked attacks on his neighbors; and that he has bankrupted a country with immense oil reserves through his obsessive efforts to expand his arsenal of weapons of mass destruction and long-range delivery systems. For his neighbors and his opponents, Saddam Hussein has been not only a nightmare but a daymare for many years, but his most recent act of aggression poses a threat that extends well beyond the Middle East. I believe that the entire civilized world has a compelling interest in enforcing international sanctions against Iraq, and I commend the President and the administration for working so skillfully through the United Nations to fashion the broad alliance that now confronts Saddam Hussein.

I also wish to associate myself with the words spoken just a few movements ago by my colleague from Maine, the majority leader, Senator MITCHELL, about what is not in Senate Concurrent Resolution 147. I agree with his interpretation that this does not provide any sort of a legislative record that would give a blank check to President Bush to conduct a war without consulting Congress, indeed without resorting to us for a declaration of war.

I am also rising to express my dissatisfaction with this resolution. I am dissatisfied with the role that has been relegated to Congress in determining our policy toward Iraq. We are left with essentially two options, either to declare war or allow the President to wage war and then just ask Congress to pay the bills. This is simply unacceptable.

The resolution that we are voting on later today is useful in that it will express support for our President and his policies to date. But it is not a resolution pursuant to or even consistent with the War Powers Resolution. We are operating today on the false premise that our troops in the Persian Gulf, facing over 400,000 Iraqi forces in and around Kuwait, are not in imminent danger. I simply do not accept that.

Last week, in the Senate Armed Services Committee, we authorized imminent danger pay for U.S. forces participating in Operation Desert Shield. We did that, I believe, not only because duty in the Persian Gulf is difficult and dangerous, because on that basis we would have had to authorize imminent danger pay for forces in many parts of the globe. We took that action, which I believe the Senate is going to follow and support, because we know that in this instance the potential for war could easily turn upon a small misadventure or miscalculation. We know that Saddam Hussein has weapons of mass destruction, and a vast army, and has demonstrated a will to use them. And he has been absolutely unrepetent and uncompromising regarding his invasion of Kuwait. He has abducted—perhaps even murdered—hundreds if not thousands of individuals in Kuwait. He continues to make bellicose statements regarding the United States and our allies in the region. So I think that the risk of armed conflict remains high and that our troops that in fact in a situation of involving imminent hostilities. In that regard, commenting on this situation, Secretary of Defense Cheney warned last week that Saddam Hussein, "may seek to use military force to break the stranglehold that the embargo has imposed." He also referred to the U.S. commitment in the Persian Gulf as "open-ended."

It seems to me that this extraordinary commitment of U.S. forces to the Persian Gulf, which clearly has the potential to involve the United States in hostilities, is precisely the sort of situation envisioned when the War Powers Resolution was enacted. If it was not intended to bar "open ended commitments and force Congress to either specifically authorize or negate deployments that might involve the United States in a war, then I wonder what was the War Powers Resolution intended to do? And I wonder, how can we, who enact the Nation's laws, subsequently disregard them without undermining respect for the rule of law itself?

At the same time, I could not agree more with those who maintain that the War Powers Resolution has not worked as we hoped it might and it was intended to. The debates that we had during consideration of the Persian Gulf reflagging operation a couple of years ago demonstrated the many problems inherent in current law. But if the law is flawed, as most would agree that it is, then we have an obligation to change it rather than ignore it. Certainly we should repeal it if not change it.

I believe that Congress and the executive branch both need to participate in decisions that could lead to war. That was clearly the intent of our Founding Fathers, who wisely sought to ensure that we have unity at home before we risk conflict abroad. The power to declare war, which our Constitution invests in the legislative branch, is an important safeguard against impetuous presidential action that must be preserved. The existence of nuclear weapons in the arsenals of the superpowers in my view makes that safeguard not irrelevant, but more important than ever, since any overseas involvement contains the potential for escalation. And for those more limited engagements that predominate in the world today, it is necessary for Congress and the President to stand united in order to be effective and minimize the risks to our men and women in uniform.

That is why, Mr. President, I joined with a number of my distinguished colleagues, including Senators BYRD, MITCHELL, NUNN, WARNER, BOREN, and DANFORTH, in introducing a bill, S. 2, to remedy the problems inherent in current law. The measure we have introduced would establish what we hope will be an effective process for consultation between the Presidency and Congress, as well as an effective and clearly constitutional mechanism for Congress to circumscribe U.S. involvement overseas if necessary.

As envisioned in this legislation, the consultative process would involve regular meetings between key congressional leaders and the President, together with his leading advisers. Members of the permanent consultative group would include the leadership of the House and Senate, as well as the chairman and ranking minority members of the Foreign Relations, Armed Services, and Intelligence Committees of both Houses of Congress. In extraordinary cases involving vital U.S. security interests, the President could limit these meetings to the leadership of the House and Senate. It is also important to point out that this legislation preserves the provisions in existing law which require the President to provide written reports to Congress regarding the commitment of U.S. forces to situations involving imminent hostilities, as well as the separate statutory requirements that covert actions be reported to the two Intelligence Committees.

In my view, this approach makes more sense than the one currently in place but bilaterally ignored today. If these consultations succeed in building a consensus, it will ensure either that the United States does not commit forces to situations involving hostilities, or that such forces are committed with the support both of Congress and the President. That is the ideal we should strive toward—discussing and I hope resolving contentious foreign policy issues before we commit our military to situations with the potential for conflict or escalation. That is the optimal approach both from the standpoint of effectiveness and of fairness to our military personnel.

Of course, it may not always be possible to achieve a consensus between the executive and legislative branches, and this legislation provides for that contingency by establishing a flexible and clearly constitutional mechanism for Congress to express itself on issues involving the use of force. By a majority vote of its members, the chairman and vice chairman of the congressional consultative group would be able to introduce a resolution that would be considered under expedited procedures. This resolution might require the President to submit a report. It might withhold funding for a military operation, or specifically authorize such as operation, or place limits on such an operation. It is completely flexible. But it ensures that Congress will have the opportunity to express itself regarding policies that could lead to war. This process would substitute for the current procedure under which U.S. forces must automatically be withdrawn from the area of conflict after 90 days without specific congressional authorization for their continued involvement in hostilities.

It is true, of course, that the President could veto this resolution. But even if his veto is sustained, it will at least be clear that money may not be available in the following budget cycle to continue an operation opposed by a majority in Congress. And unlike the present system, which is tough in theory but weak in practice, this procedure will undoubtedly be constitutional and enforceable. Finally, by setting a high standard, this legislation will mitigate against congressional micromanagment of U.S. foreign policy. In short, I believe this approach makes more sense than the current arbitrary 90-day deadline after which U.S. forces must automatically be withdrawn in the absence of specific congressional authorization.

Mr. President, we cannot guarantee that this approach will be effective, but it has become clear that a new approach is needed. At the present time, we have a ticking bomb lodged in our constitutional system that could explode if tensions increase and support for the President's policies in the Persian Gulf decline in the months ahead. By failing either to comply with the War Powers Resolution or to change it, I fear that we are not resolving this important issue but only delaying it to our disadvantage. If S. 2 is enacted, I believe we can defuse this bomb, sparing our country needless divisions and controversy and increasing the effectiveness of our foreign policy.

In sum, Mr. President, while I support the President's policies, I am very troubled by the predicament we find ourselves in today. I have indicated before that I think the President would serve his own decision and America's cause well by complying with the provisions of the War Powers Act and asking for an explicit vote to authorize Operation Desert Shield as called for by the War Powers Resolution. Unfortunately, the resolution we will be voting on this afternoon is crafted in such a fashion that it does not provide such an authorization. I strongly hope that the administration does not conclude that we as a body do not seek to bear our fair share of the weighty burden involved in decisions that could lead to conflict. I believe that it would be extremely unfortunate if the administration or the American people believed that we are abdicating our legal and constitutional responsibilities.

Mr. President, I believe that this is a matter of great importance, and I hope that in light of the current situation in the Persian Gulf my colleages on both sides of the aisle will give S. 2 careful consideration and support efforts to ensure that it is considered at the earliest opportunity. We need to repair the War Powers Act rather than meekly surrender congressional power to the executive branch. In the meantime, however, I believe that the administration and Congress should comply with the law as written.

I also am advised that the Senator from Delaware [Mr. BIDEN] may offer another statutory approach to this particular issue on war powers. I have not had an opportunity to review it, but I certainly will give it careful consideration.

The final message is that we should enforce compliance, insist on compliance with the War Powers Act as written. If we do not do that, we ought either to modify it or nullify it.

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

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

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

The assistant legislative clerk proceeded to call the roll.

Mr. SIMON. 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.

SENATE CONCURRENT RESOLUTION 147—NO BLANK CHECK

Mr. SIMON. Mr. President, we have and will be voting this afternoon on Resolution 147 regarding the President's action in Kuwait. I think the President has handled it very, very well up to this point and that portion of the resolution which supports what the President has done up to this point I think is excellent.

There is one phrase in here that disturbs me, and I do not know what we can do about it. I understand it would take unanimous consent to modify anything in this resolution and I assume that unanimous consent would be difficult to achieve. But when it says, "the Congress supports continued action by the President," I do not know what that means. And if that is a blank check, I do not want to sign it.

Again, I think what the President has done up to this point has been good. I think the President has handled this exceedingly well. Oh, we might differ on some minor points, any one of us, but I think on balance it has been exceedingly well handled. But no President, no Secretary of State, no Secretary of Defense, should in any way misunderstand what we are doing here. We should not hand a blank check to the President.

When it says in this resolution, "the Congress supports continued action by the President," I do not know what that means. I am concerned about that phrase, and I hope as we enter into debate on this, between now and 2:15 when we vote, there will be some attention to this. My own preference would be that that particular phrase be dropped.

I see two of my colleagues who have been very active in this whole field,

one of whom has been a leader in supporting international law, my colleague from New York, Senator MOYNIHAN, is here.

I am concerned by the words, "the Congress supports continued action by the President." I would like to see that modified and I hope maybe we could get unanimous consent to have that modified.

Everything else in the resolution is fine. The President has handled this exceedingly well. The United Nations has worked as it should work. But for this Senate to pass a resolution that says among other things, "the Congress supports continued action by the President," that concerns me. I do not know what that means. I do not want to give any blank checks to any President, any administration. That is my concern.

The ACTING PRESIDENT pro tempore. The chair recognizes the Senator from California [Mr. CRANSTON].

PATIENCE

Mr. CRANSTON. Mr. President, I urge President Bush to resist the pressures of propaganda and pursue a policy of patience for peace. We should not be pushed into military action by stories of Iraqi atrocities in Kuwait. There probably never was a war in the history of the world in which atrocities were not committed against civilians. That is one of the reasons why war is so terrible and why we should do our utmost to avoid war.

I have seen estimates that American casualties could climb to 30,000 or more if an intensive ground tank war was to break out over the Iraq situation. I feel absolutely certain that, given the choice between 30,000 American casualties or sweating it out until the embargo and the blockade work, Americans would be almost unanimous in urging sweat it out.

I want to respond to the President's reported statement that the plundering of Kuwait may reduce the time we have to allow the embargo to work. I say patience for peace should be America's watchword.

President Bush sent our troops to Saudi Arabia to deter further Iraqi aggression and to prevent a power-hungry dictator from dominating oil supplies vital to the world. But we should not send millions of Americans into a bloody and destructive shooting war, simply because we are repelled by Iraqi atrocities. We cannot, unfortunately, correct all the evils of the world.

I was on a trip in the Middle East recently with other Senators. It was a delegation headed by Senator PELL. Of all the Arab leaders we spoke to, President Mubarak of Egypt was the most optimistic that the embargo could get Iraqi President Saddam Hussein to withdraw from Kuwait. But even President Mubarak talked in terms of months, not days or weeks.

I feel very strongly that the United States should not initiate military action agains Iraq without careful, cautious forethought and without the approval of Congress and without the approval of the United Nations. Going it alone would alienate our friends in and out of the Arab world and destroy whatever good we have accomplished so far. If we get into a war, win or lose, Saddam Hussein could be transformed into a hero in Arab eyes for taking on the U.S. military Goliath.

Mr. President, I support the pending resolution with the very clear understanding that it does not approve any military actions against Iraq without the approval first of Congress and the United Nations.

The ACTING PRESIDENT pro tempore. The Chair recognizes the Senator from New York [Mr. MOYNIHAN].

PERSIAN GULF RESOLUTION

Mr. MOYNIHAN. Mr. President, I rise to say I am in complete agreement with the Senator from California. He and I have spoken about this on the floor now for several weeks, as have the Senator from Illinois and the Senator from Maine. Our resolution says that—

> The Congress supports continued action by the President in accordance with the decisions of the United Nations Security Council, and in accordance with the United States constitutional and statutory processes, including the authorization and appropriation of funds by Congress to deter Iraqi aggression and to protect American lives and vital interests.

I want to speak in a moment about the President's speech yesterday that he addressed to the U.N. General Assembly, which I found very positive. I want to congratulate him for that speech.

It also came as a relief because, very simply, Mr. President, all this weekend a transparently orchestrated series of statements came from what can only be described as "the war party" within the administration. It does not take a great deal of textual analysis to spot 15 people from the Pentagon briefing reporters from the New York Times, Washington Post, and Newsday, and we can just go down the list of national periodicals.

I will give my colleagues an example. On Sunday a New York Times report said: "Kuwaitis Say U.S. Doubts Embargo Will Get Iraq Out." The article said:

> For at least a week, the administration has been giving a bleak prognosis in private discussions with congressional leaders and diplomats.

Then the Washington Post had a story which reported:

> After 8 weeks, the administration remains highly uncertain whether the Persian Gulf crisis will be resolved peaceably or lead to war.

Mr. SIMON. Will my colleague yield?

Mr. MOYNIHAN. I will be happy to yield.

Mr. SIMON. What he is saying is the very thing that concerns me. As my colleagues read this resolution, when we say, though it is qualified, by U.N. action and the U.S. constitutional processes, when we read that, and we read this resolution that says the Congress supports continued action by the President, is this resolution—and I know that my distinguished colleague from New York is a cosponsor of it—but does this in any way give a blank check to the President?

Mr. MOYNIHAN. I will respond to my able, learned, and determined friend, no, it does not.

Mr. SIMON. I thank the Senator.

Mr. MOYNIHAN. And I want to say to those people who are giving these stories, no, it does not give a blank check. One official, we learned from the Washington Post, says: "Bush is preparing the country for possible military action." On Saturday, we were told President Bush had given a "pessimistic assessment of the chances for a peaceful solution."

Another story began with this sentence:

> Iraq will have to be ousted from Kuwait by military action because diplomatic efforts and trade sanctions are likely to have little impact in Iraqi President Saddam Hussein, U.S. Government analysts concluded recently.

Finally, on that point, Mr. President, Michael Kramer, writing in Time, began an article with the sentence: "War by Christmas or perhaps sooner." He says:

> U.S. officials openly discuss the use of tactical nuclear weapons against Iraq.

And then this sentence, a concluding sentence as I recall the article:

> A Bush adviser who countenances tactical nuclear weapons, as easily as the Arab official, says their use has yet to be discussed seriously because everyone is confident that a war against Iraq will resemble a turkey shoot.

That strikes me as the kind of talk that comes from someone who has never been in one of them there turkey shoots, unlike the distinguished Presiding Officer.

And so, Mr. President, I would like to turn, if I may, to the President's address yesterday. I ask unanimous consent for 5 additional minutes.

The ACTING PRESIDENT pro tempore. The Senator's time of 5 minutes has expired. There is no one else seeking the floor. The Senator may extend his time as he may need.

THE PRESIDENT'S SPEECH TO THE UNITED NATIONS

Mr. MOYNIHAN. President Bush's speech yesterday could not have been more consonant with the concurrent resolution which we will be voting on at 2:15. It was described as the most detailed elaboration of his policy in the gulf that he has yet given, and he gave it in an appropriate setting—the United Nations—which has been the locus of the policy we have pursued.

I have several times made the point that under article 25 of the U.N. Charter, member nations are bound to comply with U.N. Security Council resolutions. The charter is a treaty. The treaty is the supreme law of the land. The President need not, in the first instance, explain why he is complying with a Security Council resolution. He needs to, of course, properly explain why our representative on the Council supported the resolution with which we are complying.

He said yesterday:

We're hopeful that the machinery of the United Nations will no longer be frozen by the divisions of the cold war.

He asked:

Can we work together in a new partnership of nations? Can the collective strength of the world community expressed by the United Nations unite to deter and defeat aggression?

And then he said in a nice sentence:

Because the cold war's battle of ideas is not the last epic battle of this century.

He went on to talk about the rule of law. He said:

Let me take this opportunity to make the policy of my Government clear. The United States supports the use of sanctions to compel Iraq's leaders to withdraw immediately and without condition from Kuwait. We also support the provision of medicine and food for humanitarian purposes, so long as distribution can be monitored.

He said:

Our quarrel is not with the people of Iraq. We do not wish them to suffer. The world's quarrel is with the dictator who ordered the invasion.

That is an important statement. We have not yet heard from the President whether food will be part of the embargo. The term "humanitarian purposes" does not quite tell us all we need to know about whether we are going to feed people or not, or allow them to be fed.

He said:

Let me also emphasize that all of us here at the U.N. hope that military force will never be used. We seek a peaceful outcome and a diplomatic outcome.

Mr. President, when we talk in these terms we are not speaking as people who would never contemplate the use of force. More important, we need to recognize that economic sanctions are a use of coercion, and they are not any prettier to contemplate than military action.

We are going to find out whether such sanctions can work. It may be they cannot. They never did under the League. They have not really been effective under the United Nations. Here is the chance. The cold war is over. The Soviet Union, United States, all the permanent members, all the countries of the world—Cuba and Yeman excepted—are united.

The President speaks of a new partnership of nations that transcends the cold war, a partnership based on consultation, cooperation, and collective action, especially through international and regional organizations united by principle and the rule of law, a partnership whose goals are to increase democracy, increase prosperity, increase peace, and reduce arms.

That is not a man talking about a turkey shoot. He should shut those people up. He is Commander in Chief. They are not. They have no business committing the United States to any kind of war until the President has determined it has to be done, goes to the Security Council and comes to the Congress, as the Senator from California said. We support his actions. I think all of us do. He has taken a position of acting through the United Nations. It is not because we are caught up in what my good friend and fellow New Yorker, Henry Kissinger, spoke of over the weekend: the heady glow of internationalism. No, not the heady glow of internationalism. We know exactly what the chances are this will work. They are not that great. But, oh, my God, if it did, would that not be an event in the history of the world, not just another election or anything like that.

The President in my view said the right thing, just as many of his advisers were speaking very differently. I hope it was not a deliberate two-track approach. I think everybody on this floor and the Presiding Officer will know it is not the first time a nice President has said one thing and a bad adviser another. I hope that is not the case. I think the President spoke his true intentions. What he said is so consistent with how he has so far conducted himself that I see no grounds for questioning him.

The Senate will empahsize in this resolution, that we will support what he does through the Security Council and he should consult with the Congress before going to the Security Council on matters so very large import. But there is no blank check. There is no statement to do whatever you want, such as the military steps "informed sources" have been discussing over the weekend. That is not the case.

Mr. CRANSTON. Will the Senator yield?

Mr. MOYNIHAN. I am happy to yield to the distinguished ranking deputy Democratic leader of the Senate.

Mr. CRANSTON. I thank the Senator from New York for his leadership on this virtually important issue. Several of our colleagues have expressed concern about the pending resolution, fearing that it might turn out to be another Gulf of Tonkin resolution that would be interpreted as a blank check.

Does the Senator feel that it has been written strongly enough in expression by him and others on the floor, including myself, to make plain it is not another Gulf of Tonkin resolution?

Mr. MOYNIHAN. I say to my friend that, as he knows, this specific subject came up as we discussed, in our various meetings, what kind of resolution we wanted. This is not a Gulf of Tonkin resolution. It is a resolution that says we have to act in the world. We have principles. We have a U.N. system, and the U.N. system seems to be working, and we will work through the United Nations. That was the great agony of Vietnam, that we were so much and so singularly alone out there. But we are not withdrawing from the world, and we do not think this is a kinder, gentler world that will be nice if we just say nice things. Economic sanctions are not nice things. And things could go beyond economic sanctions. We know that. But we are saying that the President has been acting within the U.N. system and we urge him to continue to do. He said yesterday he will. I do not see why there should be any reason for any ambiguity. There is none in the mind of this Senator. I think there is none in the mind of the Senator from California.

I see the Senator from Maine has risen. Knowing the respect he is held within the Chamber, I would be interested to hear what he says, and also the Senator from Washington.

Mr. CRANSTON. I have another question I want to address to the Senator, but I will wait until the Senator from Maine has had his chance.

Mr. MOYNIHAN. Perhaps the Senator will do it now.

Mr. CRANSTON. It is on a related matter but a little bit separate. The Senator and I agree, and I know others do, that this is not a Gulf of Tonkin resolution, which was interpreted by the President as a blank check to take action that turned out to be military in nature.

There is another question that has arisen over the President's speech of yesterday, and I gather the Senator from New York has had more time to study that speech than I, plus subsequent clarifying statements from the President. But there was some concern after his speech, that he might be suggesting following the Mitterrand line

of some overall negotiations tied to a retreat of Saddam Hussein from Kuwait after he was satisfied that certain things would follow that he would like thereafter, particularly relating to an overall settlement of the Palestinian issue and the problems between the Arab world and Israel. I have not seen it. I gather the President afterwards said he did not suggest any such thing, that there is going to be no discussion of anything with Saddam Hussein until he is out of Kuwait and back to Baghdad. Is that the Senator's understanding of what transpired?

Mr. MOYNIHAN. That is exactly how I would read the speech. He said that we are not going to accept the grim nightmare of anarchy in which the law of the jungle supplants the law of nations. The law of nations says Suddam Hussein must get out of Kuwait.

Mr. CRANSTON. I thank the Senator. That clarifies one point.

Mr. ADAMS. Will the Senator yield for a question?

Mr. MOYNIHAN. I guess the Senator from Maine was first. I am happy to yield.

Mr. COHEN. Will the Senator yield for a question of the Senator from New York?

The Senator from New York, as I understand it, sees this resolution merely as endorsing the actions the President has taken pursuant to various U.N. resolutions.

Mr. MOYNIHAN. That is correct.

Mr. COHEN. It should be made very clear that the President of the United States does not recognize that Congress has any constitutional authority, short of declaring war or appropriating dollars, in this entire process. The President has stated, for example, that he would welcome an expression of support initiated by the Congress but not initiated pursuant to the War Powers Resolution. In other words, the President invites Congress to say it supports his action as it is currently being carried out, but President Bush does not recognize Congress as having any role to play short of a declaration of war. And, of course, there has been no declaration of war since World War II. There were none for Korea, Vietnam, Grenada, or Panama.

So we have the unique situation today in which Congress is left in limbo—either we have the power to declare war, which has not been done for well over 40 years, or we can simply appropriate the dollars necessary to pay the bill for deploying troops to an area which the administration does not recognize as involving imminent hostilities. So we are in somewhat of a no man's land.

I think it is imperative that we move to correct the situation so we do not have this President or some other President point to a resolution of support recognizing his inherent authority to commit 100,000-plus troops to a region that everyone recognizes involves imminent hostilities.

Mr. MOYNIHAN. I must respond tentatively, because I do not have any greater insight than the Senator from Maine as to how exactly we should proceed. I do know one thing: We better be asking the kind of question the Senator from Maine just asked. I do believe—and I do not know if anyone in the Chamber shares this view—that we are in a new region of international behavior. The framers of the Constitution, a 19th century document, had no experience and very little, if any, anticipation of any formal organization of nations. They divided the powers of international affairs deliberately and ambiguously. I am not surprised to find us not quite sure who is responsible for what. It was an invitation to this kind of discussion.

A. U.N. action takes place in a different era, an age where there is a world organization, the second of its kind and one that was designed to try to prevent the failures of the first; where the nations have given an organization, the Security Council, with five permanent members, the power to take action, including military action.

It was specifically contemplated by the United States and by this Congress in the United Nations Participation Act of 1945 that the President would negotiate an agreement with the Security Council that would make forces available to it—let it have on call, shall we say, the 82d Airborne Division—which the Security Council could commit to battle.

Such a commitment of U.N. forces would have to be with the unanimous agreement of the permanent members. Therefore our President would have to agree. Our U.N. Ambassador would have to agree. It is a terrifying thought because I once served in that position.

Congress said that the agreement between the United States and the Security Council would have to be approved by us. No agreement was ever reached. It took 5 years' negotiation.

But the President ought to be thinking, as we ought to be thinking, "All right, if we are acting in this new context, what forms of consultation do we need?"

We are not going to war. It is a peacekeeping action—maintaining the Charter. A declaration of war probably does no more really than change legal status of the belligerant parties, but I do not want to press that point.

But in any event, that is not what we are doing. We are doing something different, which we contemplated we would do. That takes some further thought about how do we do it. We do not want to have an expression of world unity and have a huge division at home. It is the last thing a President should want, any President, or Congress.

Is that at all coherent to the Senator from Maine, that we are in new territory here?

Mr. COHEN. I think clearly we are in new territory. But the Senator from Maine is simply raising the issue of the proper role for Congress within that new area. Is it simply to acquiesce in an action that has already been taken? Is it a consultative process which would then require some kind of expedited review procedure, a voting procedure, to say, "Yes, we specifically authorize this?" Or are we relegated to turning over that authority to the President to act through the United Nations, with the Senate and the House simply funding the decisions made by the President of the United States? That is the kind of question I have.

Mr. MOYNIHAN. That is exactly the right kind of question.

Mr. ADAMS. Will the Senator from New York yield?

I want to follow on the questions of the Senator from Maine. I want to ask the Senator from New York: As we were trying to work on this concurrent resolution we stated specifically, "The Congress supports continued action by the President in accordance with the United States constitutional and statutory processes."

I want to be certain this resolution is specifically sufficient to make clear that if hostilities are eminent, or if the President decides for the launch of a military offensive, this body expects the President to comply with the War Powers Resolutions, and with the Constitution.

I have stated since this is a concurrent resolution, and so stated on September 28, at great length during the debate, that we had a consultative body created between the House and the Senate, to be debatable for consultation before action. The second thing was to create a resolution since we are not under 4(a)(1), which has the 60-day withdrawal provision, which would specifically state that for further actions to take place the President must come to the Congress.

We need to be very certain, and it is certainly this Member's understanding that this is not a Gulf of Tonkin resolution. This is a resolution to approve this debate. And as a member of the Appropriations Committee I certainly intend to exercise whatever powers I may have there that as additional requests are made, and if they were made for offensive action, those would be questioned and it would be tied to the consultative process.

I hope that Senator NUNN will also enter into this debate. I know I have discussed this matter with him. We both are of the opinion—we tried seven times, I say to the Senator, in

the Persian Gulf, to use the War Powers Act. It was blocked each time by the President refusing to send a letter and by our inability to get to the expedited procedures.

So I am prepared to go either way, the War Powers Act to be filed, and with a substantive resolution that would state that we have approved to this point; we may well approve further but that he must come to the Congress for money and for all portions of a War Powers Act, and acts of war are included within that.

So I wanted to take this time with the Senator from New York, because I know there are others who are concerned about this—that this is a Gulf of Tonkin resolution. Let us let the President say so and we will all vote against it. We will vote item-by-item on appropriations.

We have tried to make this a concurrent resolution—this does not have to be signed by the President—which states the position of Congress, which is in support of giving money for the troops that are there now, and the actions of the United Nations, as the Senator from New York has so well stated. But I would like to have the Senator from New York assure me of my question; that this resolution is sufficiently clear where we say in accordance with the U.S. constitutional and statutory processes it does not authorize the President to launch a military offensive when we are out of session, and that this body expects the President to comply with the statutes and with the Constitution as he takes his actions in the Persian Gulf area.

That is my basic question.

Mr. MOYNIHAN. I say to my friend from Washington that I would seek the counsel of our colleagues—that certainly this is not a Gulf of Tonkin resolution. If it were, it would not be on the floor. That we set out not to do.

I have to say I owe complete candor to the body, and to the professionalism of my colleague. I am not prepared to say that the President cannot act in concert with the Security Council before consulting with Congress. Clearly he thereafter has to come to us for appropriations, and clearly, as the Senator from Maine said, he ought to be thinking about a process in which he does. Else appropriations will not be forthcoming and so forth.

But I think that in ratifying the U.N. Charter—a treaty which is the supreme law of our land—we have obligated ourselves as a nation and given the power to act in the first instance to the President through our permanent Representative.

I see the learned Senator from Maryland is on his feet. I would look to him for counsel on that point.

It would be refreshing if somebody from the administration came by to talk with us about these matters. But here we are.

Mr. SARBANES. Will the Senator yield?

Mr. President, first of all I think the Senator from Maine is making a very substantial contribution by asking the kind of questions that he put earlier. This obviously is a new area. There has to be some way for this body to express its support of what the President has done thus far in dealing with this situation in the Middle East, which has commanded a consensus internationally, and I think commanded a consensus domestically.

It seems to me we have to find some way to express support for that without providing some sort of sweeping authorization for the President then to do other things which have not been presented to us. We do not know the circumstances under which they would be proposed to be done. There is no way we can make a judgment, in advance of having a concrete situation, whether in fact we would approve or not.

We should not be put in the position of trying to approve something in advance that we really are not able to understand in concrete terms. I think this resolution is designed to avoid that pitfall, and at the same time express some strong support.

My reaction to the question put by the Senator from Washington was that, leaving aside, for the moment, the working through the United Nations, which the Senator from New York mentioned, I would think any other action by the President would have to meet the criteria that the Senator was enunciating.

Having said that, the question remains on the United Nations. And the Senator from New York, I think, has raised a very interesting theory. If you read the commitment to the charter, it is clear that that action could not be taken by the United Nation, unless it commanded a majority of the Security Council, including all the members thereof who possess a veto, since a single one of their votes could negate any action, even if all of the other 14 are for it.

So you have all the veto-possessing powers, which includes the United States; and a sufficient number of others to constitute a majority. I would want to look further into that before making a definitive judgment.

I think the Senator was wise to put that as a possible commitment that the Nation has undertaken. Putting that to one side, I think any commitment of the court, which the Senator from Washington was talking about, that the President undertook, would be outside of the context of the United Nations on the premise of his question, and would have to meet the standards and the criteria that he put forward.

This is a difficult situation. We want to support—at least I believe we want to support—what the President has done to date, strongly, with a consensus vote. We ought to be able to do that, without somehow being perceived as being in the position of giving the President a blank check. I think this resolution accomplishes that. I do not think it gives the President a blank check for future action. I do think it expresses support for past action.

My own view on past action is that the President has handled the matter thus far with skill, and I particularly commend him for going to the international community and working through the United Nations. And, of course, this concurrent resolution is very strong in emphasizing that aspect of the President's actions. Therefore, I hope this resolution will be supported strongly in this body on that basis.

I noticed the majority leader, when he was on the floor earlier, said that future actions must be judged on their own merits, in view of the circumstances at the time. And that moreover, constitutional and statutory processes govern the process for making decisions that might lead to formally declaring war. He then made reference both to the War Powers Resolution and the war power in the Constitution, and that the President does not have the legal authority to make that kind of commitment absent the participation of Congress.

I must say, I want to commend those who have worked in putting this resolution together, because I understand the difficulties which were involved. The House was considering a joint resolution which seems to be more reaching in its implications. I think it actually passed the House as of yesterday.

I do think this Senate Concurrent Resolution 147 that is before us will accomplish the purpose of not providing a blank check for future action, simply of supporting what the President has done. What we want to do here is to send an important message to the international community that the President finds support in the Congress and, therefore, across the country, for the actions he has taken to date.

The PRESIDING OFFICER (Mr. BRYAN). The Chair informs Senators that the period for morning business has expired.

Mr. MOYNIHAN. Mr. President, the Senator from Maine has been on the floor and on his feet for some time. Is it possible to extend morning business for 5 minues? The Senator from Washington is also here.

The PRESIDING OFFICER. That would be possible by a unanimous-consent request, if the Senator so requests.

EXTENSION OF MORNING BUSINESS

Mr. MOYNIHAN. I ask unanimous consent that we may add 10 additional minutes for morning business so the Senators from Maine and Washington may speak to the matter.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from Maine [Mr. COHEN] is recognized.

Mr. COHEN. Mr. President, I rise again to address a question to my colleagues from New York, Maryland, and Washington.

When we refer to the "appropriate constitutional statutory provision," what are we referring to? Are we referring to the War Powers Act, which we ourselves have apparently decided is unworkable? We have decided it is unworkable, because it is arbitrary in the setting of deadlines. It may very well only lend courage to our adversaries, rather than to our supporters. It is seen as being cowardly on the part of the U.S. Congress, because we have to do nothing, simply let time go by to reverse the President's decision. So we have concluded that it is unworkable.

Well, most Presidents, if not all, have determined that the War Powers Act is unconstitutional, and they are not going to be bound by it. They have not been bound by it, including this President, who does not recognize its constitutionality.

So the question really becomes, what is going to be our role in the future? If, in fact, we do not support the War Powers Act any longer ourselves, should we not be about the business of modifying it, changing it, or expressing our support for nullifying it? To leave a law on the books that we do not recognize as being effective, and say we are going to ignore it, only invites a contempt for the process.

Presidents hold it in contempt. They think that is not a constitutional exercise on the part of Congress. So if we are dissatisfied for a different reason, then why is it on the books? I think we have to be careful in terms of where we go as a body in the future.

The Senator from Washington, when we were reflagging Kuwaiti vessels, tried on, I believe, seven occasions to get a vote pursuant to the War Powers Act. He was frustrated in that regard. I believe he stated earlier, a few moments ago, that the War Powers Act should not be invoked now, because there is no danger of imminent hostilities. I disagree.

I think the current situation in the Persian Gulf, with the commitment of 400,000 Iraqi forces, well in excess of 100,000 American forces, plus the other 25 or so nations currently involved, in a situation in which we have the most massive amount of military equipment confronting each other's forces, is clearly a situation involving imminent hostilities.

The Senator from New York spent 5 minutes detailing statements coming out of the administration to the effect that it looks like we will have to go to war; that this is going to be a turkey shoot. We recently had an Air Force Chief of Staff who was forced to resign because of statements he made.

I think the War Powers Act contemplated precisely the kind of situation that we are in today. We have 100,000-plus forces in the vicinity of the Persian Gulf. Something could happen: A miscalculation; someone strays over the line, and there is a retaliation; or hostages starve to death or are executed. We could easily find ourselves at war.

Where is Congress in this process? We have not, I think, spent enough time debating amongst ourselves exactly what role we intend to have in this process. I think we have to do something before the fact rather than simply complaining about our role after the fact.

Mr. MOYNIHAN. Mr. President, will the Senator yield for a question?

Mr. COHEN. I yield.

Mr. MOYNIHAN. First, a comment. The legal scholar John Hart Ely recently wrote of the War Powers Act that repeal "would greatly improve compliance." Does the Senator not think we ought to hear from the administration what they think the sequence of responsibility is when acting in a security council situation?

Mr. COHEN. I do. I think the administration should state its beliefs with respect to the Security Council and our statutory processes. What does that mean? Does that mean war powers? You say it does not. Does it mean appropriations? I suggest they procedurally view the appropriations process as, "Send us the money to carry out the war if it should come." I do not expect it means anything but that to the administration. I would welcome any clarification on their part.

Mr. MOYNIHAN. Will the Senator entertain the thought "war" may not be the correct word? The "enforcement actions" of the Security Council under the charter is something apart from war. It is designed, in the words of the charter to put an end "to the scourge war." I offer the thought. Will the Senate agree this is something that should be talked about?

Mr. COHEN. I think the Senator from New York has indicated earlier this is an entirely new area that we ought to give considerable focus and attention to, including discussion on the floor.

The PRESIDING OFFICER. The Chair will instruct the time of the Senator from Maine has expired.

The Senator from Washington [Mr. ADAMS].

Mr. ADAMS. Mr. President, I stated on last Friday, when we debated this, that I intend to put in a second concurrent resolution to answer the question of the Senator from Maine. I believe the War Powers Act is constitutional. If the President wishes to challege it in court, he should do so. Four times we have been to court, and four times the court has said it is a political question.

However, what we have started in this process is, first, to have a concurrent resolution that dealt with things up to today and to authorize the appropriation of money and the fact that troops had landed. There is a special provision in the War Powers Act for that, 4(b)(1), and that, to me, is where we are today. That is why I did not file a 4(a)(1) resolution which said you must withdraw troops within 60 days.

The two parts will follow, which I mentioned last Friday and mention again today: Second, we should set up the consultative group—and I intend to introduce that today as a concurrent resolution—set up under the rules of the House and Senate, a consultative group that the President should and must consult with.

The third thing is a resolution that I am prepared to introduce. I would go under the War Powers Act 4(a)(1)—we can do the other—but a resolution that sets forth a system that does not require the withdrawal within 60 days, because I finally round, after resolutions, that was a better way to go about it. But this resolution states clearly the procedures of consultation that must take place before an offensive action other than under the United Nations. There may be U.N. power that exists. But under the powers of the U.S. Constitution and under the statutory powers that exist, this would be tied to two things: First, the consultation, and then this consulting body would have the right to file a resolution, so you would not have the President triggering it and being able to block it up here, but filed within the constitutional bodies, the legislative bodies themselves. The second part would be that appropriation would be based upon that. So the appropriations hammer is used to provide the resolution.

This new system is something that I think could eventually lead to a change in the War Powers Act and provide a better system. We have the God-given opportunity here of a few moments of time to debate and place in position this new type of operation, where it would be a continual consultative body and a body with power to put in the resolution. Otherwise, we are thrown back on the War Powers Act.

I have pleaded with the President, I have pleaded with my colleagues not to force us into that position. We want to be supportive and we can be sup-

portive through a series of actions if it is taken step by step. But, as I stated in my remarks on Friday and I repeat again, the Founding Fathers deliberately avoided the power to wage war from the power to declare war. The power to declare war and the foreign policy implications and the domestic implications of that were given deliberately to the Congress so that no one person, no matter how wonderful as a President, could act with the power of a king and be able to both declare war or start one and then carry it out.

I agree that many times in the history of this Republic the Congress has not done it duties. We have let Presidents do it. There has been a movement of power under the separation of powers from the Congress to the administration. I have served in the administration; I served as a Cabinet officer. I know the powers that are available within an administration to both be persuasive and to move funds around and to move people around. But that is not what it was all about with the founding of the Constitution and our Founding Fathers. That is all I plead with my colleagues, that we have a constitutional responsibility to say to the President, "We will carry out our part of this and we are, with this, approving what you have done to date. But we are not approving"—and I hope we give this message clearly to the President—"that when we leave town you can then proceed under some powers which you call Commander in Chief to carry on a war. This is not the power to carry on. That has to be voted here. Call us back if you want, call us back for resolutions. Call us back for the war powers and, if you want not to fight, we will give you a different kind of resolution that says the troops can be there this long and appropriate this amount of money."

This is the way the system was created. I beg of you, please let us keep that system because, otherwise, we are placed at the mercy of a group of people talking to one another, very good people, very intelligent people, but I know the Senator from Maine has been, just as I have have, in on these meetings of intelligent groups and Joint Chiefs, and so on. Pretty soon you get to talking to yourself rather than talking to the people and talking to the elected representatives. There is in this body a great body of knowledge and experience on wars and their horrors and what happens and how to raise money and with what occurs, and people have served in them, and this experience and this ability should be shared with the President as the Founding Fathers wanted, so that we move together as one.

This does not take a lot of time. This does not prevent action by this Nation. This Nation can move very rapidly, and I cannot think of anything more important than we move together. That was the lesson of the Vietnam war which we do not want to repeat. But I was in a declared war, and it was very comfortable to know that everybody agreed with the declaration of war and we did not have recriminations when we suffered terrible defeats and heavy casualties because we were all in it and all understood it. The problem we have had in past undeclared wars is the people have not all been there and as we have been appropriating moneys and doing things, groups have begun to splinter off.

The PRESIDING OFFICER. The Chair will inform the Senator from Washington the period for morning business has expired.

Mr. ADAMS. I appreciate that. I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, this debate has been informative and important on this resolution that will be voted on at 2:15. I ask unanimous consent that I may be permitted to speak for 5 minutes on the subject.

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

Mr. SPECTER. Mr. President, I was in my office preparing a statement on the subject when I heard the morning business debate and came over.

I commend my colleagues, Senator COHEN, Senator MOYNIHAN, Senator ADAMS, and others for the discussion which has occurred so far because I think it is a very, very important matter. I have a concern that in the course of our debate some, perhaps those in Iraq, may read this as some lessening of our support for the President or some tying of his hands, which I know is not the intent of those who are on the floor today. It is possible that when we talk about the deliberative process and debate on the Senate floor as to a declaration of war, we may be setting the stage for some preemptive action by our opponents in the Persian Gulf. I know we do not intend to have that as our result.

I think that the distinguished Senator from New York [Mr. MOYNIHAN] has raised a very important consideration on a redefinition of war because the U.N. Charter speaks in terms of use of force, and we may be past the day when war is carried out as the complete destruction of our opponents and it is a use-of-force concept and personality.

When my distinguished colleague from Maine, Senator COHEN, raised the issue about the War Powers Resolution and perhaps the desirability of acknowledging that it does not work, I would disagree respectfully on the ground that its constitutionality is uncertain, but it keeps the President and the Congress, both of us, on our toes as to what is going to happen next.

I think it is important to focus on the fact that the War Powers Resolution does not authorize the President to act. It only requires under certain circumstances—hostilities—that the Congress approve the action that has been taken or else the action is a nullity.

So that it is a limitation on Presidential action and it is very important that these issues be considered by this body. We do not wish to give the President a blank check. There have been quite a number of comments about the scope of this resolution not authorizing the initiation of action. But at the same time we do not wish to create a record here which will suggest the tying of a President's hands, and the resolution in its current form is ambiguous, perhaps deliberately ambiguous.

One concern which this Senator has is that aside from brief moments of discussion—and discussion is enhanced very substantially when there are a number of Senators on the floor exchanging ideas, an event which is all too rare on this floor—we have not had the benefit of hearings on the subject to really get into the substantive questions as to where we have gone on the concept of war or on the concept of use of force, and how we make an appropriate balance as to the authority of the Commander in Chief as contrasted with the authority of Congress to declare war.

It would be unseemly and hard to contemplate that we would be debating this kind of an issue while time might be present for a preemptive strike by our opponents in the Mideast.

The pending resolution raises constitutional issues of far-ranging importance. In the light of: First, the undeclared Korean war; second, the undeclared Vietnam war; third, the Gulf of Tonkin resolution which has led some to argue Congress authorized the Vietnam war; and fourth, the War Powers Resolution, it is obvious that there is a very difficult issue in reconciling the sole authority of the Congress to declare war contrasted with the President's authority as Commander in Chief.

We live in a vastly different world from 1787 when those constitutional provisions were adopted. In the modern era, the concept of war where one nation may seek to totally destroy an opponent has given way to the refined concept of "use of force" and the proportionality of such force. The U.N. Charter, for example, repeatedly references "the use of force" as contrasted to a state of war.

Our history provides many precedents for Presidential action under exigent circumstances; but it must be remembered that the War Powers Reso-

lution does not give the President authority to act. Instead that resolution limits Executive authority by requiring congressional approval under certain circumstances in a specified timeframe to permit Presidential action to stand once it has been taken.

It may not be happenstance that 18 years after the adoption of the War Powers Resolution, its constitutionality remains in doubt. This uncertain status of the constitutionality of the War Powers Resolution keeps both the President and the Congress cautiously on their respective toes, leaving substantial flexibility in the system.

Given the precarious position of U.S. military personnel and our allies in the Mideast, it is difficult to contemplate congressional debate on the declaration of war with rollcall votes without inviting a preemptive strike by Iraq.

At the same time, we must remain mindful of the constitutional mandate on Congress' role authority to declare war and we must remain equally mindful of the Vietnam experience that a war cannot be maintained without public support including appropriate congressional action in our representative democracy.

Consultation differs vastly from authorization. Consultation by the President with the Congress necessarily involves limited participation by only some Members of Congress; and consultation may involve little more than notification.

Further complex issues are added by collective action under the U.N. Charter. As a matter of public policy, it is certainly desirable to have collective action by the U.N. on sanctions contrasted with unilateral U.S. action.

Doctrinal authority is present in that treaties—like the U.N. Charter—are the supreme law of the land and action by a majority of the Security Council with the concurrence of the five permanent members is binding on all member nations.

Since the United States has the veto power, that necessarily requires U.S. assent; but that is satisfied by the President's action contrasted with the U.S. constitutional requirement for congressional authorization for war.

I am concerned with the limited consideration which the Congress has given to these important issues. Hearings have not been held on the resolution to probe these complex matters.

Our Senate debate has been limited in time and the all-consuming budget issues which have confronted the Congress simultaneously with the events in the Mideast.

The absence of extensive and intensive debate on these issues may reflect a subconscious desire to avoid explicit consideration. Certainly, no one wants to do anything which would give aid and comfort to the enemy or would make it more difficult to deal with the difficult military issues in the Persian Gulf. Nevertheless, my sense is that in a democracy, all the issues should be confronted, considered, and resolved head on.

Senator PELL, the chairman of the Foreign Relations Committee and floor manager of the pending resolution, summarized the views of many Senators when he stated:

> It is important to add, however, that this resolution does not * * * constitute authority for the President to initiate unprovoked military action against Iraq.

The President has performed extremely well in dispatching U.S. military forces to the Mideast and in his diplomatic successes in stimulating U.N. resolutions for collective action. The pending resolution, subject to the limitation summarized by Senator PELL, is an appropriate step at this time.

Mr. President, I regret that my time is up.

Mr. ADAMS. Will the Senator from Pennsylvania yield for a question?

Mr. SPECTER. Yes.

Mr. ADAMS. I expect to put in—and this colloquy this morning we have had produces this—the concurrent resolution which we discussed, which was to set up a consultative body of the Senate and the House to talk with the President as these matters go along.

Would the Senator support such a step as that as one more step is moving toward having these matters discussed in greater detail and by parties which are well experienced and informed in it before decisions are made?

Mr. SPECTER. With all due respect to my distinguished colleague from Washington, I would not want to answer that question on one foot. I am a little bit suspicious of consultation because when the Executive says they will consult with the Congress, that is a long way from authorization. I have found that consultation frequently has the import of really being limited to notification.

There was a fascinating discussion on this subject when the air strike was ordered on Libya—a strike that I totally concurred with. When the planes were in the air, the congressional leadership—it was a very small group, none of those who are present on the floor today—were meeting with the President and the Secretary of State and others on whether or not the congressional leadership had the standing to disagree, which would have caused the return of the planes.

Mr. ADAMS. I would ask the Senator a further question.

The PRESIDING OFFICER. The Chair would inform the Senator that his 5 minutes has expired.

Mr. ADAMS. I ask unanimous consent to be allowed to continue for 1 additional minute.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

Mr. ADAMS. I would ask the Senator if you were to give this group the power to file the joint resolution which now is often blocked to start the processes of the Congress having an expedited procedure for handling the matter, if the Senator would feel that that consultative group would then be consulted rather than just talked to?

Mr. SPECTER. I would respond to my distinguished colleague by saying that it is hard for me to fashion a process of consultation and a process of congressional action and deliberation while there is an emergency and while some of our opponents somewhere may take preemptive action. Not wishing to answer a question with a question, how would you accommodate——

Mr. ADAMS. I think we are all agreed that with preemptive action, we are certainly entitled to defend ours. We have a minute in time here, a momentary point of time when we have, under 4(b) of the act, troops armed in another country who are not yet in hostilities. That is why this period of time is important in our history where we can debate this before the actual hostilities.

Mr. SPECTER. But the response which I make to my colleague, which I think is very important, is while we are consulting and deliberating, that may set the occasion for someone to take preemptive action which would be disastrous.

The PRESIDING OFFICER. The Chair would inform the Senator the 5 minutes with the limited extension has expired.

PERU: THE TRAGEDY CONTINUES

Mr. CRANSTON. Mr. President, I had the honor a few days ago to receive in my office a delegation from the Human Rights Coordinating Board, a coalition of Peru's major human rights organizations.

The group was in Washington to receive the prestigious "Letelier-Moffitt Memorial Human Rights Award." They met with me to express their concern about the continuing problem of human rights violations in Peru.

Mr. President, I share their worry. For the third year in a row, Peru has had the highest number per capita of forced disappearances of people, according to the United Nations.

Despite this, security force wrongdoing—in the form of hundreds of kidnapings and secret executions of suspected dissidents—has gone unpunished. The Human Rights Coordinating Board was hard pressed to come up with the name of a single military

officer who has been tried for rights violations.

I should mention that the recent surge in violence directed in particular against human rights groups does not come from the military alone. The leftwing fundamentalist guerrilla group Shining Path has also stepped up actions against the rights activists.

Nonetheless, in my office members of the delegation said they wanted particularly to underscore their concern about the recent extension of so-called emergency zones, in which military control is established over civilian authorities, in Peru. Today, some 50 percent of the national territory is under such rule.

Exacerbating the problem, the rights leaders told me, is the increasing tendency to equate the production of coca leaf by peasant smallholders with support for the Shining Path. They worry that United States assistance to the Peruvian military—ostensibly for the purpose of fighting narcotics—will reinforce the trend of confusing peasant producers with guerrilla insurgents, and killing them.

"And that," human rights leader Hortensia Munoz said, "could convert Sendero Luminoso into a so-called national liberation movement when, up to now, they have very little support among the people."

Mr. President, the Human Rights Coordinating Board members told me—and I agree—that the solution to the problem of Peruvian coca production rests in economics and support for civilian law enforcement efforts, not an increase in the militarization of the Andean drug war.

I ask unanimous consent that a statement prepared by the delegation be printed in the RECORD:

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

A REPORT BY THE PERUVIAN HUMAN RIGHTS COORDINATING BOARD

"PERU 1989-1990: NATIONAL COORDINATOR OF HUMAN RIGHTS"

Peru has a population of 20 million inhabitants and more than 1.2 million sq. kms. of territory. As we enter the final decade of the century, Peruvians are faced with an official annual inflation rate of 2,775 percent and a minimum monthly salary of less than $50. Hunger and under-employment are daily occurrences.

In the poorest regions of the country, one out of every eighth child dies before its first birthday, and the death rate of children under five is 53 percent, or 195,000 child deaths per year. In the poorest areas, the life expectancy is less than 50 years for adults.

Moreover, four out of five houses lack water, sewerage and electricity. Forty percent of the population, which includes 60 percent of the country's children, receives less than 10 percent of the nation's income.

In this context, the political violence which has haunted the country since 1980 is unfolding.

The social cost of the political violence is incalculable. In terms of human lives alone, at least 17,763 Peruvians have been killed and more than 3,000 have been disappeared. Material losses due to the violence are more than $17 billion, equal to Peru's external debt.

The increasing damages brought about by these 10 years of violence threaten to destroy, or at least block, the advancement of alternative development projects which respect life, the consolidation of democracy and the viability of a system that guarantees social justice.

1. Violations of human rights in Peru are a permanent and systematic practice

Since December 1982, the subject of greatest concern in Peru is the administration of the armed forces. Their strongest presence is in the departments of Ayacucho, Apurimac and Huancavelica. These are central highland zones with traditional populations of Quechua speaking peasant communities. The per capita income in these departments has been consistently among the lowest in the country.

In May 1980, amidst the process of reintroducing formal democracy to the country, Sendero Luminoso (SL) initiated its violent actions in Ayacucho. The same day as the presidential elections, an SL column assaulted the community of Chuschi and destroyed the electoral ballots. SL declared this as "the beginning of armed conflict."

Since then, SL has maintained its activity in the country via actions which include gross human rights violations; assassinations of unarmed civilians, including old people, children and pregnant women; threats against community and district leaders and the use of terrorist acts against many sectors of the population. SL's terrorist acts have also provoked the systematic destruction of the State's infrastructure.

Since the beginning of SL's activity it has been clear that the State is incapable of articulating a democratic response to confront such subversion.

At first, the State denied the importance of Sendero. Then, following SL's increasing terrorism, the State applied a series of police measures against "common insurgency." Finally, the State virtually abdicated democratic authority over an ever widening area of Peruvian territory to the administration of the armed forces, under the name of "special regimes," under whose control now figure the "Political-Military Commands."

Since November 1982, the date in which the first Political-Military Command was formed, the increase in the number of human rights abuses shows that we are not dealing with isolated and extreme cases of over zealous military personnel assigned to the conflict zones.

Instead, the number of accusations and proofs of abuses show the existence of a policy, effectively designed and applied, which has as its final objective the eradication of subversion, but which in turn uses practices that systematically abuse human rights.

The interference of the Political-Military Commands in the normal administration of justice is public and notorious. Judges assigned to areas under the control of these Commands are systematically prevented from complying with rules of habeas corpus. In order to collect evidence they must obtain permission to travel into the interior. This permission, however, is seldom granted by the military authorities. There have even been cases in which once a disappearance complaint has been successfully made, the judicial authorities are then negated access to the jails in which the illegally held prisoners are kept.

In these circumstances, the right of all citizens to the judicial system is systematically denied by members of the Political-Military Commands.

The military judiciary has covered up all cases in which the civil courts have attempted to bring to trial members of the armed forces for crimes against humanity. This systematic cover-up is against Peruvian law.

According to Article 324 of the Military Justice Code: "Military justice also recognizes that public offenses committed while in service are subject to the civilian Penal Code."

The Supreme Court of the country has also abdicated its functions and, contradicting the specific and clear texts of national laws, has facilitated the military judicial system to try civilian human rights abuse cases.

The processes followed by the military courts in these cases have resulted in minor or suspended military sentences, such as disobedience or abuse of authority, negating the possibility of more severe charges such as murder, rape and torture.

2. Human rights violations during 1989 and 1990: disappearances and extra-judicial executions

According to documents (E/CN.4/1989/19 and E/CN.4/1989/18) of the United Nations Work Group on Forced Disappearances, Peru had the highest number of forced disappearances in 1987 and 1988 (79 and 170 people disappeared in respective years). According to Peruvian human rights organizations, in 1989 no less than 300 people were victims of this criminal practice. From January to May 1990, there have been 160 accusations of detained/disappeared people. Of these, only 44 have reappeared and 116 are still missing. In this period, the department of Ayacucho has registered the highest number of disappeared: 47 people, which is equivalent to 40 percent of the still unknown cases. The armed forces are responsible for 90 percent of the disappearances. Peasants make up 40 percent of those missing.

One recent case is the disappearance of Guadalupe Ccalloccunto, member of the Ayacucho regional office of SERPAJ (Regional Justice and Peace Office) who was detained and disappeared by members of the armed forces in the early morning of June 10, 1990, in the city of Ayacucho. According to family members, military personnel using face masks and heavily armed, violently entered Ccalloccunto's home.

In the presence of her four young children and other family members, she was forcefully taken away. So far, the armed forces deny having detained or imprisoned her. Nonetheless, others who suffered military arrest but managed to get free, have confirmed that they saw Ccalloccunto in the Cabitos Prison in the city of Ayacucho.

Human rights workers have also been the victims of forced disappearance. Angel Escobar Jurado, administrative secretary of the Committee for the Defense of Human Rights in the department of Huancavelica, for example, was detained/disappeared by members of the armed forces on Feb. 27, 1990 in the city of Huancavelica.

The arbitrary executions which go on in Peru increase the responsibility of the State in murder.

In 1988, the United Nations released its special report on summary or arbitrary executions. The report made special reference

to the life of witnesses, from the Cayara massacre—a massacre denied by the armed forces and the Peruvian government—and made an appeal to the government to guarantee the lives of the witnesses (Document E/CN.4/1989/25).

Today, the majority of the witnesses have been killed, one by one. The last was Martha Crisostomo Garcia, a 21-year-old nurse. She was assassinated on September 8, 1989.

Special Prosecutor Dr. Escobar Pinedo, who investigated the massacre and concluded his inquiry by charging a general of the Peruvian army before the civil courts, was fired from his job and forced to leave the country because of numerous death threats.

During this period, lawyer Jorge Huamali was killed in Pasco on Aug. 23, 1989; labor leader Aladino Melgarejo was assassinated on June 17, 1989 and dozens of other people were also killed.

Among all the documented cases, the one which caused the most public outcry was that of the murder of 12 defenseless peasants in the community of Nanrapata, province of Chumbivilcas, Cusco (which had not yet been declared an emergency zone).

According to the accusations, on April 26, 1990, members of the Peruvian army forced members of the community to meet in the town square and then ordered the men, women and children to undress. Some of the women were raped and then the army, with their list in hand, selected 12 people who they savagely tortured in the presence of the rest of the community. These 12 people were later killed in front of the population.

Forensic examinations conducted on 11 of the 12 dead bodies showed multiple internal and external wounds, cigarette and hot water burns, as well as other signs of torture. All but one of the victims, who was poisoned, also showed multiple gunshot wounds.

Despite public outcry and denunciations against the army by members of the Catholic hierarchy of the southern Andes region, the authorities of the State have so far not fulfilled their responsibility to identify the guilty.

3. The use of the civilian population

Ever since the armed forces assumed control of internal order in the declared emergency zone, the military has forced the creation of civil defense committees to be used as civilian patrols in the counterinsurgency campaign.

Although there are parts of the country where these "rondas" have formed on their own initiative in order to ward off SL, it is also undeniable that the military has controlled their development, using the civilian population in this way to "clean" territories with presumed Sendero presence.

In many cases, there have been charges that these civilian patrols have been involved in massacres, usually assisted by the military.

Even a cursory reading of the first reports on the human rights situation in Peru shows the way in which these rondas have been coverted into one of the principal agents of human rights violations in the country (see Amnesty International 1983 letter to President Belaunde).

Since 1989, and especially under the previous rule of Gen. Petronio Fernandez Davila as head of the Political-Military Command of Ayacucho, the military's anti-subversive strategy has increasingly used civilian populations as the front line attack against Sendero.

This new strategy consists of forcing the remaining civilian population in the zone into artificial communities.

These newly created geopolitical entities are organized militarily, based on the model of ronda civil defense units, such that "each zone has its authorities, a lieutenant governor, a civil defense rondas president, a subcommander and a commander." (Chavez, Jorge, "Menos sangre, mas ideologia," La Republica, 7/8/90, page 19).

By this means of regrouping the civilian population, the military is effectively destroying traditional community patterns.

At the same time, the rondas have been accused of committing human rights violations, in particular, extrajudical executions.

For example, at the end of March 1990, ronderos from Naylamp de Sonomoro, in the district of Pangoa, provice of Stipo, Junin, assulated the village of Cajiriari and killed civilians with machetes and old hunting rifles. This operation was carried out with the help of a contingent of police. Days later, in the same town of Naylamp de Sonomoro, a civilian patrol assassinated an entire family of colonizers who they accused of belonging to Sendero.

4. Extension of the conflict zone

The territory under the administration of the armed forces—presumably responsible for the increasing numbers of registered deaths—continues to expand. Since the end of 1989 all the provinces of the departments of Lima, Apurimac, Huancavelica, San Martin, Junin, Pasco, Ayacucho, Huanuco and Ucayali, plus the constitutional province of Callao, have been under emergency military control.

Since Aug. 7, 1990, with the approval of the newly elected government of President Alberto Fujimori, areas under emergency control have increased even further. In addition to those provinces listed above, the provinces of Arequipa, Cusco, Punco, Piura, Trujillo, Chiclayo, Chimbote, Mayns and Huaraz have been added.

Approximately 70 percent ot the Peruvian population is now living under a regime where their basic human rights have been suspended.

There are three Political-Military Commands in charge of the penal system in conflict zones. The oldest, created in December 1982, is in the city of Ayacucho and controls the emergency zones in the southern Andes.

In the last two years, two more Commands have been formed in the central highlands (in the city of Huancayo) and in the Alto Huallaga, an area associated with drug traffic. In addition, the armed forces maintain a strong presence in the emergency zones of San Martin and Ucayali.

That the conflict zones now cover nearly half the national territory shows that the risk of being murdered is one of the realities which represents everyday life in Peru.

5. The permanent, systematic and indiscriminate practice of torture

Torture constitutes a social wound in Peru which gets worse every year, and is practiced every day. The existence of torture in Peru was described in the 1988 U.N. special report on torture and other cruel, inhuman or degrading punishments (Document E/CN.4/1989/15).

Among the many cases denounced in Peru is the case of Carlos Reano, M.D. in September 1989. According to a member of the Medical Association of Peru, Dr. Reano suffered irreversible damage to his right arm.

Another example is that of Alberto Lopez Bautista, who in October 1989, was tortured in the Cabitos prison of Ayacucho. In November of that year, 10 mine workers who were held in army jails in Jauja and Huancayo were medically certified as having been tortured.

6. Persecution of social movements

The unjustified accusations of terrorism, and disturbing the public peace or property, leveled against labor leaders and workers, has become a pretext to use the repressive State apparatus against these people. This has resulted in the indiscriminate use of violence, including arbitrary detentions, torture and dismantling of local unions.

Since 1988, these arbitrary detentions have made it ever more dangerous for the labor movement to organize. In August 1989, 44 miner leaders were arrested during a strike, falsely accused of terrorism. They were then held in jail for two weeks before being released.

During 1989, two Catholic priests, the Rev. Jorge Alvarez Calderon and the Rev. Luis Hernot, were also detained and falsely accused of being involved in terrorist acts.

Three hundred university students from the medical school of San Marcos University were detained in Lima as they were in class.

Also during 1989, there are registered cases in which the national police used small caliber bullets against demonstrators resulting in serious wounds among the victimized population.

At the end of the first six months of 1990, approximately 10,000 people have been subjected to arbitrary mass arrests, a "preventive" practice of the police against "possible" future crime.

7. Human rights violations committed in confronting drug traffic

In Peru, there are drug growing areas which are totally tied to the international traffic of drugs: the Alto Huallaga, which has some 50,000 hectares in coca production, and the Central Huallaga with 30,000 hectares under production. In addition, there are numberous dispersed areas in other parts of the country where coca is grown and eventually converted into cocaine paste.

The ever increasing amount of rural land dedicated to growing coca is the result of the relative comparative advantage this crop provides to an already improverished peasant population, working on small individual plots and with no State assistance. Government agrarian policies provide no profitable alternative.

The substitution of traditional crops of the zone—coffee, cacao, achiote, palm oil, corn, rice and palm—for coca, has been stimulated by international demand for cocaine which is sold to international cartels by intermediaries.

It is true that the production of coca leaves is, for the most part, in the hands of local peasants; small landholders whose crops cover little more than one hectare on average. But, the processing, circulation and distribution of the crop is carried out by intermediaries tied to international drug traffic networks.

This differentiation between a basically peasant economy, which grows coca to supply those who produce the cocaine paste, and the international drug traffic networks which process and distribute the drug, generates a fundamental contradiction in the zone. This contradiction is between the coca growers and marketers who increase their margin of participation through the value added in the process.

The further development of this contradiction will only generate conflicts, which are likely to remain unresolved.

Sendero Luminoso is assuming the role of mediator between coca-growing peasants and the marketers, and is establishing the terms of exchange and agreement fulfillment. With this base, SL has imposed a system of social control based on terror in the zone. Their system includes the systematic and summary executions of those people accused of not accepting the rules of the game.

The presence of SL in the zone implies an eventual radical confrontation with the authorities of the State. Armed SL attacks against police stations are leading to militarization of the area as the State's answer. Already the area is a declared emergency zone, organized in the above referenced Political-Military Command of the Alto Huallaga.

There is enough evidence to show that the increased militarization of the zone implies an increase in the repressive capacity of the State in the area, and the potential that repression will be used against the peasant population, who is erroneously viewed as part of the international drug traffic system on the one hand, and as allied to Sendero, under whom they are subject to a system of social control based on terror, on the other.

It remains clear that this evolving repressive capacity of the State puts into question the existence of guarantees and full vigilance of human rights in the zone, as has already been partially verified by events in 1989—553 violent political murders in the areas of the Alto Huallaga, the central jungle, Ucayli and Loreto. In the first five months of 1990 there have been 453 assassinations.

The militarization of the zone implies, therefore, an increase in the risk of death for the peasant population which grows coca in the area.

All international help—such as that recently offered by the United States in the context of the Bennett Plan—that results in the increased operational capacity of the armed forces in the internal control of the Alto Huallaga area, is only justified when the international community also commits itself to collaborate in guaranteeing the full vigilance of human rights. Such aid should be conditioned in an effective manner to respect the life and dignity of the people living in the region.

It is precisely for this reason that the international community must be prepared to provide the necessary oversight in the future of the evolving operational capacity of the armed forces in the internal control of the coca producing areas.

The international community cannot allow the military of one country to give aid to the armed forces of another when that aid will be used to produce more deaths; to maintain permanent, systematic, indiscriminate and unsanctioned violations against human rights.

We must not forget that in the name of national security, children, old people, pregnant mothers and other innocent civilians in Peru are being killed. Moreover, the principles of democracy have been so distorted that absolute impunity is given to individuals responsible for massacres against the civilian population.

REFORMING IMET WILL HELP FORTIFY EMERGING DEMOCRACIES

Mr. CRANSTON. Mr. President, I rise today to urge the substantive reform of the International Military Education and Training [IMET] Program.

The task is an urgent one, given the current scarcity of funds and the fact that, up to now, programs such as IMET have not always fully reflected U.S. policy concerning democratization and the civilian control of the military.

A remarkable transition to democracy is now underway in Eastern Europe, Latin America, and other parts of the globe.

Autocrats and totalitarian systems are being swept away and replaced by citizens eager to participate in the public life of their nations.

Fully aware that democracy is the result of more than just a collective desire for freedom, the new leaders of these countries are painstakingly crafting practices and institutions to ensure that liberty endures, a process that harkens back to the early years of our own democracy.

To ensure that the trend toward democracy continues, one of the most important changes that must occur is that a nation's military is fully under the control of civilian authority.

At the same time, the armed forces must develop a professional mission that prepares them to defend the Nation's territorial sovereignty, while keeping them at the margins of partisan politics.

Since its inception the IMET Program has provided important linkages between U.S. and foreign military forces. However, as a recent study by the General Accounting Office has noted, the content and impact of the training currently provided has not sufficiently promoted the consolidation of democracy.

It seems to me that what is needed is a program that promotes healthier civil-military relations by empowering representatives of elected civilians with the skills and techniques needed to exercise informed oversight and direction over military forces.

Mr. President, in many—if not most—emerging democracies the corps of civilian managers that forms an integral process of military management in the United States simply does not exist.

In some countries, particularly in Latin America, this is due to a seemingly unending pendular movement from military regimes, to elected governments, then back again.

In others, such as in Eastern Europe, the cadre of civilian democratic managers does not exist because what oversight there was came from the Communist party apparatus.

As former Vice President Walter F. Mondale noted in a recent book, "Towards a New Relationship: The Role of the Armed Forces in a Democratic Government":

> The lack of continuity in democratic political institutions can mean a loss of historical memory, gaps in technical training and an absence of personal ties between military officers and civilians which sustain good will in times of crisis.

Elected legislators, their staffs, members of nongovernmental organizations and personnel from Finance, Foreign Relations, Defense and Presidential ministries should be among the civilian participants of the new IMET Program.

At the same time, a reformed IMET Program would effectively promote the concept of national defense of territory and sovereignty as the sole military mission, thereby discouraging their performance of police functions.

Mr. President, I believe that the IMET curriculum should emphasize that the success and prestige of the American Armed Forces and those of many other nations have been immeasurably advanced by their unquestioned subordination to civilian political authority and their strict adherence to a mission of national defense of territory and sovereignty.

Several initiatives might be taken in this regard, such as the use of exchange programs, joint studies and structured visits to the United States by military and civilian personnel to learn how this country has successfully managed its own civil-military relationship.

There are also professional military ethics and responsibilities that are universal and particularly appropriate for inclusion in IMET training if the 1990's are to be an era in which democracy continues to expand.

First, that the military does not play a partisan political role, and follows the orders of freely elected civilian authority;

Second, that it is a military officer's duty to prevent human rights abuses of civilians or captured or surrendered military personnel, and

Lastly, that professional military strictures are incorporated into their daily routine concerning the constitutional limits on military authority; the proper response to illegal orders, and the misuse of power to further personal goals.

Mr. President, I believe that in the next fiscal year it is important that testing methods should be developed that would help evaluate IMET trainees' attitudes toward professional military ethics and responsibilities. One component would be an evaluation of the program's impact on these attitudes during instruction and in later careers. These testing efforts should

be refined as time goes on in order to improve the curriculum.

The GAO study also raises serious questions about the possible negative effect on civilian authority in developing countries of the training of military forces in so-called nation-building skills. It specifically suggests that in one country surveyed the use of military forces in nation-building was undesirable because of a tenuous civil-military relationship.

The GAO study also pointed out that officials in both the agency for international development and the United States Information Agency in two of the six nations studied indicated that nation-building should be undertaken by the civilian sector, and that their agencies were capable of providing nation-building training to civilians.

Mr. President, this issue is more than an academic debate or a bureaucratic turf-battle. The GAO analysis hearkens back to the 1960's and early 1970's, when the strengthening of foreign militaries' nation-building missions appeared to help tip the balance of power away from elected civilian leaders and toward unelected military rulers in many nations.

According to a 1971 Rand Corp. study by Luigi Einaudi and Alfred Stepan III:

> A rationale sometimes used for certain U.S. military assistance programs is that 'professionalism' contributes to lessened political involvement on the military's part, and to their concentration on exclusively military affairs. Logic, however, suggests that to the extent that military expertise, or professionalism, is increased in areas of counter-insurgency, nation-building and multisector development planning, the military would tend to become more rather than less involved in politics.

By encouraging militaries to take on greater civic action or nation-building responsibilities, the United States gives the militaries legitimacy in assuming roles that put them in direct competition with civilian authorities. As Panama City Mayor Cochez has noted:

> By assigning the military a civic action role the U.S. strengthens their hand. When they build a bridge, the military will get the credit. If a road is constructed, the billboard says, "your National Guard is working for you." Meanwhile, we cash-strapped politicians cannot get financing for our own projects, but are sure to get the blame when things, a lot of times less exciting things, don't get done.

Mr. President, I hope that in instructuring the IMET curriculum in the coming years, these views are taken into consideration. It is clear that nation-building studies conflict with the broader U.S. policy goals of support for democratic leadership. Therefore, I would suggest that, with the exception of mapmaking, such courses should be curtailed.

Further, I would urge that—before scarce training resources are used for nation-building—we are certain that within the country in question there are no civilians qualified for such training, and that no civilian agency, governmental or private, could reasonably expect to undertake the specific task.

Mr. President, because the United States has a highly successful experience in the civilian control of the military, it can provide a valuable model for study for officers and others coming from newly emerging democracies.

For this reason, I urge that immediate action be taken to ensure that a significant part of the IMET curriculum be devoted to the study of democratic institutions and practices.

Among the issues upon which the cirriculum should focus are the close interaction and contract between civilians and military throughout our command and control structure; the scores of nongovernmental agencies which help to inform and to shape military policy and how they operate, and the role played by Congress and other governmental agencies in policy formulation.

The importance of the Posse Comitatus Act, which has helped keep our military from involving itself in partisan political activity by keeping it at the margins of internal security, should also be stressed.

At the same time, I believe it is vital that a certain number of the IMET training slots, 20 percent in the first year, should be earmarked for civilians broadly representative of the political community and nongovernmental organizations in the countries in which IMET is offered.

By seeking to train significant numbers of civilians over time, we will be both empowering civilian managers and assuring an instance of democratic oversight which is sadly lacking in many of these nations.

In expanding the scope of IMET training, I believe that it is important that the administration seek to contract the services of nongovernmental entities to assist both in the training of civilians and in rounding out the curriculums offered to the military.

A variety of these—such as the center for democracy, the National Democratic Institute for International Affairs [NDI], and the Institute for Representative Government—have experience in studying or improving civil-military relations in foreign countries. They should be consulted with during the process of reformulation of IMET.

Similarly, certain countries have an urgent need for this type of training. Certainly the nations of Eastern Europe are candidates, given the heavy legacy of Soviet-trained security forces and domination by local communist parties. Countries such as Argentina, Bolivia, Chile, Brazil, El Salvador, Thailand, the Philippines, Korea, and Nicaragua should also be considered for Democratic military education and training.

The United States has had the good fortune to have enjoyed more than 200 years of Democratic Government. Part of the strength of our system has been the undeniable success with which we have handled our own civil-military relationship. This is perhaps one of the most important lessons we can provide a world still struggling to find its own democratic institutions and procedures. We must do so, and quickly.

Mr. President, I know my good friend and distinguished colleague, Senator LEAHY, chairman of the Foreign Operations Subcommittee with jurisdiction over IMET, has been looking into the issue of reforming IMET as well. I look forward to working with him on this.

SHABAN KASTRATI RELEASED FROM JAIL

Mr. DOLE. Mr. President, about a week ago, I came to the floor and discussed the tragic human rights situation in Kosova, Yugoslavia, which I witnessed when I led a Senate delegation to Yugoslavia. In that statement, I mentioned that the police state created by the Serbian Government in Kosova had not only been abusing the rights of the Albanian population living there, but the rights of American citizens, as well.

I told my colleagues about 19-year-old Shaban Kastrati who was arrested by Serbian authorities on August 29, the day our Senate delegation visited Pristina, the capital of Kosova. According to the State Department, he was sentenced under false charges to 60 days imprisonment.

I can say, after spending just 1 day in Kosova seeing the oppression of the Albanian people there, I cannot even imagine what 60 days in a Serbian prison must be like for an ethnic Albanian.

But happily, after serving 1 month in jail, Shaban Kastrati has finally been released. For 30 days, I along with many of my colleagues, made phone calls, sent cables and letters on Shaban's behalf. Most recently, according to reports, Representative HELEN BENTLEY raised this matter with the President of Serbia, while in Yugoslavia for the weekend.

Some may be inclined to breathe a sigh of relief—thinking that the job is done now that Shaban Kastrati is out of jail. It is not. Yes, Shaban Kastrati is now a free man once again, but the bottom line is that Shaban should not have been put in jail in the first place. He was arrested under false charges, beaten and imprisoned. In other words, Shaban was treated the very

same way that thousands of Albanians have been treated for the past year or two.

In my view, our job here in the Congress is not done until we let the Republic of Serbia know that we are fed up with the Serbian Government bullying not only Americans, but the ethnic Albanians who make up 92 percent of the population in Kosova. We need to let the Serbian authorities know that the free world is fed up with Communist regimes and tyranny aimed at crushing democratic movements and the people who support them. We also need to let the federal government of Yugoslavia know that it is not welcome in world community as long as it is complicitous in perpetuating this human rights nightmare.

Mr. President, I am relieved that Shaban Kastrati has been released. But, I am convinced that we in the Congress must continue to work on behalf of those still suffering in Kosova.

CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER. The period for morning business is closed.

ADJOURNMENT

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate stand in adjournment for 1 minute; that when the Senate reconvenes, the call of the calendar be waived, no motions or resolutions come over under the rule; that the morning hour be deemed to have expired following the second reading of the bills and joint resolution that have been read for the first time; and that the Journal of the proceedings be approved to date.

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

There being no objection, at 11:26 a.m. on Tuesday, October 2, 1990, the Senate adjourned until 11:27 a.m., the same day.

AFTER ADJOURNMENT

TUESDAY, OCTOBER 2, 1990

The Senate met at 11:27 a.m., pursuant to adjournment, and was called to order by the Presiding Officer [Mr. BRYAN].

ACREAGE LIMITATION PROGRAM FOR 1991 CROP OF WHEAT

The PRESIDING OFFICER. The Chair lays before the Senate S. 3018, which was read the first time on the previous legislative day. The clerk will read the bill for the second time.

The legislative clerk read as follows:

A bill (S. 3018), to require the Secretary of Agriculture to announce an acreage limitation program for the 1991 crop of wheat.

Mr. SYMMS. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard. Pursuant to rule XIV, the bill will be placed on the calendar.

MONEY LAUNDERING ENFORCEMENT AMENDMENTS

Mr. MITCHELL. Mr. President, I ask unanimous consent that the Senate proceed to Calendar Order No. 819, S. 3037, the money laundering bill.

The PRESIDING OFFICER. Is there objection?

Mr. SYMMS. I object.

The PRESIDING OFFICER. Objection is noted.

Mr. MITCHELL. Mr. President, I move to proceed to Calendar Order No. 819, S. 3037, the money laundering bill.

The PRESIDING OFFICER. The question occurs on the motion to proceed. The question is debatable. The Senator from Idaho [Mr. SYMMS] is recognized.

Mr. SYMMS. Mr. President, I make this objection not so much for the actual text of the bill, as I am not a member of the committee, and have not had the opportunity to study the bill in detail, but it is my understanding that the objective of the next 2 weeks in this Congress was to try to resolve the question of the Federal budget.

We are operating here under a 5-day rule to waive the Gramm-Rudman-Hollings sequester, and there are many of us that think 5 days is long enough to waive that. There are many of us that believe that the President has the power, inherent in his authority as President of the United States, to waive a sequester on anything that impacts public safety such as air traffic controllers, such as meat inspectors and others; that we probably would serve this Nation about as well as we can serve it by continuing on this railroad track effort for this budget agreement that has been reached by several of our colleagues and the White House, by getting the sequester underway.

I am not advocating we have to do it that way, but it would appear to me that we really do not have time to be talking about a money laundering bill, or most any other bill for that matter, that is of this importance. This may be a bill that I may turn out to be for. However I will have some questions when it finally comes before the floor, and I have asked my staff to find information for me to see if this is another excuse by Congress to get more power to delve into the very private, financial lives of all American citizens in the name of drug war. I do not know the answer to that question, but I think it is a question that does need to be answered.

I note also, by looking at the minority views and additional views of Senators GARN, HEINZ, and BOND—and I call my colleagues' attention to this—that they had a vote in the committee by 11 to 10, where Senator GARN offered an amendment to retain the temporary availability period for local checks. The vote on this amendment was 11 to 10. The closeness of the margin suggests that this issue should be revisited when the legislation comes to the Senator floor.

Mr. President, the Chairman of the Federal Reserve supports the amendment to retain the 3-day availability for local checks which was reduced to 2 days. This obviously needs a full airing here on the Senate floor.

Mr. KERRY. Will the Senator yield for a moment?

Mr. SYMMS. I will be happy to yield.

Mr. KERRY. With respect to the issue the Senator raises on the closeness of that vote, there has now been an agreement worked out with the committee, and the managers jointly are prepared to offer an amendment that is, in fact, not at all contentious.

If I could simply say to my distinguished colleague from Idaho, this bill has a companion bill in the House of Representatives that passed by 406 to 0, and it came out of the Banking Committee unanimously.

The Senate majority leader has informed me there is no issue of time here. We are prepared to debate this all day. We are prepared to debate it tomorrow. The budget is not yet ready to come to the floor so there is really not an issue of time.

I will be happy to discuss the merits of it but this, as I say, is a bill that passed unanimously in the Banking Committee, unanimously in the House of Representatives. There is time to pass this legislation. It is supported by the Senator from Utah, Senator HATCH, Senator GARN. It is supported by Senator D'AMATO. It is supported on our side. It has broad bipartisan support—the Senator from Illinois.

I think in terms of the tools we need to fight a drug war it would be a tragedy if we did not proceed.

Mr. SYMMS. I thank my colleague for his comments. As I said, this Senator has not come to a conclusion on this bill. But both parties are going to go to their caucuses at the hour of 12:30, and when we come back this afternoon, we are going to dispose of the nomination of Judge Souter. I inquire of the manager of the bill, is it his intention to bring it to a vote between now and 12:30?

Mr. KERRY. That depends really on the level of opposition and the level of the amendments that might or might not suddenly appear. It was our understanding there really has not been any objection or any opposition to this bill.

There might be an amendment that might draw some opposition. But the bill as it stands now has, as I said, emerged from the committee with very broad support, bipartisan support. I do not think it is one that would necessarily require even a rollcall vote. Depending on what happens with amendments.

But I urge the Senator to permit us to proceed under the normal process and see if this body cannot pass a piece of legislation that is important to our efforts in the drug war.

Mr. SYMMS. Mr. President, if I might reclaim my time to carry on, I appreciate the concerns my colleague from Massachusetts brings up.

I might say, just as an editorial comment, Mr. President, that just because legislation has passed a committee unanimously—there may have been Senators on the committee who just did not want to go to the trouble to raise certain concerns they had about the bill and therefore they end up not objecting to the vote and it passes without a recorded vote—although there may have been some concerns and apprehension about it. Just because a bill passes the House of Representatives by a unanimous vote, there may be time when people would not want to go on record on a bill. Particularly if it passes on the suspension calendar where there is only 20 minutes per side, 40 minutes equally divided, for debate to fully air what is in a bill, people would not necessarily want to go on record about it.

In this age of perestroika behind the Iron Curtain, where people are trying to deregulate their economies, where the enlightened intelligent people are saying what it is that you in America and the free world have had is so much better than what we have had—I might just say, here we go again. Unanimous votes, bipartisan votes, are what have given the American people $3 trillion worth of debt and excessive burdens of regulation.

There are some things in the savings title of S. 3037 that I think ought to be talked about. In my office a couple of weeks ago we had the chairman of the largest bank in my State. He was in the office and I asked him, how are you folks doing? He said we are doing fairly well as a bank because the agriculture community is doing well; they have paid back their notes, so financially we are doing fairly well. But he pointed out to me the banks are already overwhelmed by a sea of regulation.

In less than 7 years, Congress has passed seven consumer banking regulations relating to expedited funds availability, adjustable rate mortgage caps, credit cards disclosures, Equal Credit Opportunity Act, home equity line disclosures, the Community Reinvestment Act, and the Home Mortgage Disclosure Act. These new regulations are in addition to existing regulations.

The list of consumer legislation alone—what had already passed, these are new things that have been passed in less than 7 years—the Truth in Lending Act, Electronics Funds Transfer Act, Consumer Leasing Act, Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act and the Fair Housing Act.

What that means is it costs more money to run a bank in the United States. Maybe some people wonder why it is most of the big banks in the world are not United States banks any more. I think the concern that I have heard from the bankers in my State is more and more these statutes are unrelated to safety and soundness but they require them to hire additional staff devoted to compliance with more Federal regulations.

One effect of the accumulation of regulations is the additional staff devoted entirely to compliance. Even small banks in country towns must employ an entire staff devoted exclusively to compliance. Some banks have reported, for example, that they employ three or more persons who are devoted entirely to the single regulation, the Community Investment Act.

This costs money. I think before this Congress acts on legislation like this we have pending before us right now, Mr. President, this week, a $500 billion so-called deficit reduction package, of which a great part is going to require that the working men and women in America pay more money for gasoline, more money for a list of other items that they use which will be very costly to these men and women. We are taking money out of the family till, that they would use to raise their families, to pay for an ever-growing Government. The one thing that Washington, DC, inside the Beltway, in the Halls of Congress, never wants to slow down is the ever-growing size and scope and interference of the U.S. Government.

This Senator does not know exactly what this bill does in terms of how far and how intrusive it is. But the money laundering bill, just in title, sounds like it is put out here because it will read good in the newspapers. Congress has solved the problem of the drug launderers.

In the process they take all the other people in America that are law-abiding citizens and probably interfere in their private economic decisions and transactions.

So, in addition to the additional staff devoted to compliance, there is a reduction then when you have to apply your staff to work on compliance with Federal regulators that have nothing to do with the safety and solvency of the bank, we have a reduction in service and products. Truth in savings could have a chilling effect on new product designs. The cost of potential liability and regulatory compliance will inhibit new products. Regulations already in place illustrate this chilling effect. For example, some banks have determined that the disclosure requirements for adjustable rate mortgages are so complicated that they cannot afford to offer them. Consumers are thus denied a valuable, desirable product because of a regulatory burden. I want to repeat that, Mr. President. Some banks have determined that the disclosure requirements for adjustable rate mortgages are so complicated that they cannot afford to offer them.

I think it is unfortunate in this modern day that what we have done is we no longer leave enough time for Members of Congress to go home and run their own businesses. We do not have people in Congress any more who run their businesses so they live under the laws that they pass. I have long been a believer that it would be healthy for America if we had a Congress that met for 6 months every year and were allowed to go out and practice law, if they are a lawyer, or run a bank if they are a banker, so they can keep their hand in the business community, in the real world, if you will, to know just exactly what is going on out in real America, outside the Beltway, outside the hallowed Halls of Congress, here in the cave of the winds, Mr. President.

I think what happens is it is very easy to pass a bill that sounds good on the surface, and maybe this bill will pass this Senate by a unanimous vote, but I do believe that it is a bill that should not be discussed this year. If it is that important that we do it, then I think that it would be something that could be brought up in the next Congress and could be brought before the Congress and deliberated with due time. I do not believe Senators this week will have the opportunity——

Mr. KERRY. Will the Senator yield?

Mr. SYMMS. I want to finish my point and then I will yield to my colleague.

I do not believe the Senators this week in any way will be able to focus attention needed on a bill this important.

I just add again, Mr. President, in the last 7 years, we have had expedited funds availability, adjustable rate mortgage caps, credit card disclosures, Equal Credit Opportunity Act, home equity line disclosures, Community Reinvestment Act, the Home Mortgage Disclosures Act, on top of already Truth in Lending Act, the Electronic Funds Transfer Act, the Consumer Leasing Act, the Real Estate Settlement Procedures Act, the Fair Credit Reporting Act, and the Fair Housing Act, and now we want to add another

layer of regulation on the bank and this is your little country banker who will have to charge your constituents more money to have a bank account in that bank because of more regulatory burden.

While no single regulation, Mr. President, is too burdensome, when you add all this up, the aggregate burden of the litany of banking regulations ultimately affects the banks' operations and their ability to serve customers effectively. The aggregate burden consumes valuable officer and staff time and deprives consumers of products with which the associated regulatory compliance costs are prohibitive. The cost of compliance with consumer regulation adds significant cost to the business of banking with a substantial impact on the bank's bottom line.

We have all been reading in the papers about the situation American banks are in today. One of the big Eastern banks I notice recently laid off 5,000 emloyees in one fell swoop. The regulatory costs ultimately are passed on to consumers in the form of higher fees and lower interest rates on deposit instruments and higher fees and higher interest rates on loans. Elements of the expense which apply to all regulations, now get this, Mr. President, extra costs which apply to all regulation including the Truth in Savings Act, include legal fees for interpretation and implementation, collection and destruction of old forms, devising new forms, labor, meetings, preparation of reports, development of new technology, computer technology, computer resources, printing new forms, postage, handling inquiries and misunderstandings, purchasing compliance education and auditing tools, training and retraining personnel, monitoring compliance and assisting compliance examiners.

While compliance with requirements of truth in savings may appear to be simple and inexpensive, as other earlier statutes have shown, an apparent simple statute translates into an expensive regulation, for example, direct costs of a single provision is estimated to be in excess of $123.8 million. That figure only covers the requirements that the depository institution mail to all account holders and a copy of account schedule fees, terms and conditions of deposit accounts.

It may be that this is a cause that is worthy of spending $123 million for one regulation. It may be, Mr. President, that it is all well and good and it is worthy of that and that is what this Congress ought to do. But I think before we do it, before we leap, we ought to have some serious study and consideration just how much money Congress wants to require of our small, little country bankers to comply with a regulation that may or may not impact and help affect fighting the drug war. I think all Senators would like to see a successful victory in the drug war. There is no question about that. But are we going to do it so we throw the baby out with the bathwater? Are we going to add on more legal fees, et cetera, for these little banks so they can comply with another regulation? That is really a question that I think all Senators should have time to study.

Mr. President, from what some of my banker friends have told me in my State, that is an invitation to expensive litigation. This bill is an open-ended invitation. As the history of the Truth in Lending Act and other consumer statutes have demonstrated, banks and other financial institutions pay dearly for minor and inadvertent compliance mistakes. Such statutes invite expensive class action suits regardless of the merits of the suits.

The truth in savings title presents the same invitation—more unnecessary legislation. That is the final thing my friend from Idaho said to me: "Do we really need more unnecessary legislation just so Members of the Senate and Congress can pass a bill and go home and say we took care of that problem; we have now solved the money laundering problem?"

There is no great outcry from the consumers, I am told, that they are being misled or uninformed about fees, charges and interest rates on deposit accounts. Indeed, most banks already provide disclosures which are substantially similar to those required by the truth in savings title. Nonetheless, if this bill passes, banks will incur significant expenses to do what they are already doing. Banks will be required to pay to review the new regulations and current disclosures, revise and redesign and reprint and mail new disclosures, monitor compliance, and the list is endless on end. This will be one more area where Congress will be overkilling as the benefits do not outweigh the costs of the truth in savings regulations.

Mr. President, I just will say before I yield the floor to my colleagues, and I would like to have an understanding here that this Senator thinks that we should go to our policy luncheons, hash out what we are going to do about the problem with the Federal budget. Are we going to support the majority leader and the minority leader package; are we going to support that package or are we not? That is much, much more important than for us to be diverting our attention from this.

There is another very important issue coming up. Are we going to confirm Judge Souter or not? That is an issue that is very important. The Supreme Court has now convened for their fall session. It would appear to this Senator that it is more important for the Senate to get on with the confirmation process with Judge Souter so that we know whether he is going to be confirmed or not than whether or not the Senate is going to go forward with this legislation.

So I might ask an inquiry of the managers of the bill, Senator GARN and Senator KERRY, is it the intention to agree to this motion before 12:30 today upon the recess?

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. SYMMS. I have the floor. I only ask a question. I did not yield the floor.

Mr. KERRY. I will be delighted to answer the Senator's question. There is no preconceived time, there is no preconceived notion in either Senator GARN's or my head about when a vote would occur.

We are trying to move this forward in the normal fashion that business ought to be conducted on the floor of the Senate. I might simply say I find it somewhat incredible that my colleague suggests that we neither have time nor that we should proceed on a matter that somehow does not have complete agreement prior to coming to the floor. That is precisely what we are supposed to be doing.

I respectfully say to him that the very provision to which he objects has previously passed the Senate as part of the Proxmire Reorganization Act. So the Senate has previously deliberated it. I applaud what he has said with respect to the little person out there who is going to wind up paying more taxes. That is precisely why this is an important piece of legislation. There is $100 billion a year in money laundering going on, and Mr. Seidman has suggested a significant portion of the savings and loan scandal is reflected in money laundering. U.S. attorneys around the country are prosecuting people today for taking the hard-earned taxpayers' dollars and sending them to other countries.

The question here is whether we are going to save the taxpayer money. That is what is at stake in this legislation.

I simply say to my colleagues I would like to proceed and debate it. Let us proceed on the merits. There is no preconceived notion of having a vote before or after the caucus. We want to consider whatever amendments; whatever issues the Senator would like to raise, we would like to debate. But we would not like to have this issue slowed down with the notion that we should not be deliberating it.

Mr. SYMMS. Mr. President, I reclaim my time. I do not think I quite know for sure what the managers of the bill intend to do. If I understand the parliamentary situation, we are on the motion to proceed to the bill; is that not correct?

The PRESIDING OFFICER. The Senator from Idaho is correct.

Mr. SYMMS. I guess what the Senator is saying, Mr. President, is I do not wish us to move forward until after we have had a chance to discuss it in our Policy Committee meetings.

Mr. KERRY. I would be delighted, Mr. President, if the Senator will yield, to agree there is no preconceived notion. If the Senator wants to have some time to discuss with colleagues this legislation, I think that is important. There is no rush to judgment. I would be happy to agree that we would not have a vote, we would proceed to discuss some of the merits of the bill, and pick it up afterward.

Mr. SYMMS. That is the point I would like to make. I would like to have time. I have just been handed another list of concerns for some of my friends in Idaho who are bankers about problems that they have. A survey shows they have aleady spent $129 million to do precisely what Congress is asking for them to do in this bill.

So if my colleagues will give this Senator the assurance that between now and the hour of 12:30 there will be no unanimous-consent agreement agreed to on a time certain to vote on the motion to proceed, and they want to discuss the issue, I will be happy to yield the floor; otherwise, the Senator will be inclined to put in a quorum call.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Idaho has the floor.

Mr. DIXON. Will the Senator yield for a question?

Mr. SYMMS. I will be happy to yield to my friend from Illinois for a question.

Mr. DIXON. If I may say to my distinguished friend from Idaho, I had intended to rise in opposition to his position on this and to articulate my views about why we ought to turn to this legislation. But if I understand the position of my friend from Idaho, he is hopeful that we can consume the time until 12:30 until we go to party conferences and take this up afterward. If that is his position, then I would like to suggest to him that I am glad to take it up after our party conference today.

I would like to then take 5 minutes as though in morning business to introduce a piece of legislation. I have been here since 10:30. I am very much interested in this issue, but if we cannot resolve this I would like to do something else while we have a little time remaining .

Mr. SYMMS. Mr. President, I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts [Mr. KERRY] is recognized.

Mr. KERRY. Mr. President, without losing my rights to the floor, I would like to yield to the distinguished Senator from Utah, who would like to make a unanimous-consent request.

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

The Senator from Utah [Mr. GARN] is recognized.

Mr. GARN. I thank the distinguished Senator from Massachusetts. If I could, without him losing his right to the floor, just assure the Senator from Idaho that there was no intention on the part of either manager to even seek a unanimous-consent agreement. We did not have expectation of passing this bill that quickly, because there are other Senators from the Banking Committee, Senator MACK and others, who wanted to speak. So I can certainly add to the assurance that in the natural course of events that would not have taken place.

PRIVILEGE OF THE FLOOR

Mr. GARN. Mr. President, I ask unanimous consent that Ruth Amberg be given privileges of the floor during the consideration of S. 3037.

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

The Senator from Massachusetts has reclaimed the floor.

Mr. KERRY. Mr. President, I know the distinguished Senator from Connecticut and the distinguished Senator from Illinois would like to speak. I have a number of comments I do want to make at some point. I do not need to necessarily make them right now.

I simply like to say to the Senator from Idaho that the issue he just raised with respect to the CTR's is not contained in this bill. It is not contained in this legislation.

Second, this legislation has been worked on with the support of the banking community and it has the support of the American Banking Association. It does not come to the floor without having run a lot of hoops and a lot of hurdles to date. That does not mean Senators will not have some concerns that do not need to be expressed.

I emphasize to the Senator from Idaho that this legislation does not solve the problem of money laundering but it goes a fair distance toward improving the tools in order to enable us to try to recoup some money that the taxpayer is losing. We have countless banks failing around the country that have been already taken over by the RTC. We are all concerned about that.

There are indictments around the country, a number of indictments of people accused of laundering money out of the savings and loans into other bank accounts. That ought to concern us very deeply.

What this legislation does, with the support of Senator GARN, Senator HATCH, Senator D'AMATO, Senator BOND, and others, is it tries to tighten up the tools available to our enforcers to permit them to be able to represent the taxpayers adequately in court and to be able to try to recoup money as well as to be able to hold accountable those who are robbing this money from our taxpayers.

I cannot think of a better effort in conjunction with the budget efforts right now. I would certainly be willing personally to sit with the Senator from Idaho or any other Senator, as I know Senator GARN would, in an effort to try to work out these differences.

Mr. President, I yield the floor.

Mr. DIXON addressed the Chair.

The PRESIDING OFFICER. The Senator from Illinois [Mr. DIXON] is recognized.

Mr. DIXON. Mr. President, I look forward to engaging in this debate after lunch. I have been here since 10:30. If my colleagues will indulge me, I ask unanimous consent to proceed as though in morning business for not more than 5 minutes to introduce a bill and make a brief statement.

The PRESIDING OFFICER. Is there objection? The Chair hears none. The request of the Senator is agreed to.

Mr. DIXON. I thank the Chair.

(The remarks of Mr. DIXON pertaining to the introduction of S. 3148 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

Mr. KERRY. Mr. President, since we are basically agreed at this point that we are not going to do anything except introductory comments with respect to the legislation prior to the conferees, I will proceed to do that now, as I think will the Senator from Utah, and try to explain what this bill is about a little bit so that colleagues can have a chance to reflect about it during the conferences. Hopefully, we can work out whatever differences might exist.

I would like to thank the distinguished chairman of the Banking Committee, Senator RIEGLE, and the majority leader. I would like to thank Senator GARN, who has worked closely on this legislation. I would like to thank them for trying to get this matter before the U.S. Senate before we face adjournment this year.

I personally believe that the stakes of what is happening with respect to money laundering in this country, and in other parts of the world as a result of what is happening here, that it would really have been irresponsible for us not to consider this prior to leaving, particularly given the overwhelming vote in the House of Representatives in companion legislation. I think it is the overwhelming sentiment of the Banking Committee.

There are several components to this bill. It is not just money laundering. There is the component of title I, which has the money laundering enforcement amendments. There is the

Truth in Savings Act portion, which has been referred to by the Senator from Idaho.

There are some amendments to the Expedited Funds Availability Act which were debated on the floor not so long ago. There is the home equity consumer portion and the Counterfeit Deterrence Act, and finally a Coin Redesign Act; very simple and straightforward.

Let me just quickly discuss each component. I think the most important component, at least to this Senator, is the money laundering component. First, more than a year ago, a subcommittee of the Foreign Relations Committee which I chaired, the Narcotics Terrorism Subcommittee, issued a report based on a hearing that had been held in which it had been found that drug money laundering, with the aid of banks in this country through other countries, was really a very significant factor; and that we ought to consider as a matter of policy whether or not we were willing to revoke the charter of a bank where there was clear evidence that the senior officials or the directors within that bank had knowledge of and had personally participated in the process so that, in effect, you had a corporate policy that was dedicated to the process of money laundering. And we felt that was a de minimis standard which we ought to try to adhere to.

Obvioulsy, the vast majority of bankers in this country are law abiding; the vast majority of banks in this country do not engage in this practice. And there is no effort here to somehow suggest that it is otherwise. But notwithstanding that, money laundering is about a $100 billion-plus problem.

Mr. DODD. I thank my colleague from Massachusetts.

Mr. President, I first of all thank my colleague from Massachusetts, as well as my colleague from Illinois, who is the chairman of the subcommittee that deals with this matter.

For purposes of background, this was a matter that actually originated, as the distinguished Senator from Utah will recall, in the 100th Congress. We passed it then but it was not enacted into law and has been sort of lingering around in the 101st Congress trying to find a proper vehicle on which to work out some of the details. It emerges today as a part of this particular process that is now before us.

The bill before us, frankly, as the Senator from Massachusetts pointed out, whatever controversy surrounded this matter was resolved, I say to my colleagues, to such a degree that we ended up with a unanimous vote out of the committee. Weeks were spent pretty much trying to sort out the problems that the banking community may have had over these pieces.

It worked out to their satisfaction. Certainly, they would have preferred in some cases not to have anything at all. That is nothing new. But to the extent we were going to try to do something here in terms of disclosure, they were satisfied that what we had done here was not going to be onerous or burdensome or create new additional costs that would make it impossible for them to function as institutions.

As a result of weeks of work, this was not a question where we ended up with a 9-to-8 vote, trying to force something on the institution here. Of course, as the Senator from Massachusetts pointed out, a good part of this, I believe, was adopted by the House in the last Congress.

This is not exactly what you would call a highly controversial issue at all. Basically, it comes down to one word and one word only: disclosure. That is the heart of it. There are two basic provisions in here that allow consumers, in trying to make decisions about their financial matters, to have as much information as possible in deciding where to do business. That is all this really amounts to.

So I would like to, at least, for those who may be somewhat confused by the debate and argument—I know our colleague from Idaho went on at some length. Frankly, he is talking about, in good part, things that have been done a long time ago. Whether or not he agreed, though, is another matter.

But frankly, what is included here is nothing more than disclosure. I will take just a couple of minutes to outline, and I will come back again after the recess and go back and debate some of these matters with the Senator from Idaho, or anyone else who cares to, to explain fully what we do in this legislation, and why it enjoyed the kind of unanimous support it received out of the committee; and why it received the same reaction from the House.

The truth in Savings and Investments Act is designed to address the impact of banking deregulation on consumer savings vehicles. The deregulation of interest rates that began in 1980 has resulted in the availability of higher returns for depositors. This benefit, however, has been accompanied by an almost mind-numbing variety of terms and conditions that affect the actual amount earned, provisions that are impossible for consumers to sort out.

You need almost a Ph.D. degree to figure this stuff out. If you sit down with two-income earners and families trying to expedite how they handle the financial matters, we decided here to make it clear to consumers without having to hire a lawyer and an accountant to decide what is the better opportunity, to make it clear what it is. That is all it is.

Let me explain a little bit how it works.

Let me briefly discuss just two of the major provisions. First, a glance through most newspapers will reveal advertisements of returns based on simple interest, APR's and APY's, the annual percentage rates and annual percentage yields. Since each of these methods has a different basis for computation, it is not possible for consumers to know which produces a higher yield.

You really could not draw that conclusion just based on that piece of information. Is 8 percent simple interest higher or lower than 7.9 percent compounded daily for instance? If you only saw those two figures, you would not necessarily know.

In order to correct this problem, the bill requires depository institutions to disclose only one figure—an annual percentage yield to be determined by the Federal Reserve Board by a formula that takes into account the interest rate and the frequency of compounding for a 365-day period.

So it just is a guiding light for consumers; that is all it is. You can go and rant and rave about what it is. All these provisions do is make it clear what is included here so the average consumers today will make the right choice or have a right to make a choice as to which institution they want to do business with.

The result will be much simpler for consumers. Every time they see two or more figures advertised, they will know that the higher number will always produce a higher return for the consumer. That is all they need to know. That will make life easier for the consumer and it will benefit the depository institution that is truly offering the highest return.

It is good for institutions that are competitive; this will assist them as well. Those who complain about it are those who do not want to offer high rates of return and advertise that and do not want to lose the business. It is clear where the opposition is coming from. The institutions that are competitive are for this. They believe the consumer ought to have that kind of information.

A second example is the balance calculation provision contained in section 309 of the bill. It mandates that banks use either an average daily balance method or a day of deposit to day of withdrawal approach. They can choose one or the other. These two methods give consumers their money's worth; balances are calculated on the amount of money they have in their accounts each day. Roughly, 90 percent of all depository institutions use one method or the other. The importance of this provision lies in the fact that some institutions use other meth-

ods that can have very adverse effects on consumers.

So we are dealing with a fraction of those institutions that do not use these other two, and let me explain why they can have an adverse impact. For example, our hearings in 1987—Mr. President, that is how long this debate goes back—revealed that the same interest rates paid on the same balances over a 6-month period produced returns that varied from as much as $75.30 to $44.93, depending upon whether the bank used a day of deposit to day of withdrawal method or a low balance method, one that pays interest on the lowest balance for the month. Section 309 of the bill will outlaw such an unfair result. That may be a burden for some institutions, but be that as it may, that is what it is designed to do. So for those few who are engaging in unfair practices of these, they do not like it.

Before turning to the amendments to other provisions in the bill, I would just like to point out that the problems presented by noncomparable information and the failure to disclose relevant other terms and conditions are especially important in the 1990's when there are more and more two-worker families and people simply do not have the time, as I mentioned a moment ago, needed to identify everything the bankers are not telling them.

With respect to the changes to the Expedited Funds Availability Act, I just want to comment on the provision that would give nonproprietary ATM's an additional 4 years to meet the schedule for local checks. When we enacted this provision, it was designed as a technology-inducing provision. Unfortunately, the technology for nonproprietary ATM's to differentiate local from nonlocal checks has not changed enough to permit them to do so at a reasonable cost. So, therefore, we extended the time to accommodate the banks when they pointed this particular out. By extending the time for these ATM's to meet this schedule, we are maintaining the legislation's goal, which we think is an important one, but recognizing the reality that it cannot be reached by the date in the original legislation.

The banks came to the committee and said, "That is a problem for us. Can you help us?" We said it makes good sense; we can work that out. The legislation already does things the banks clearly needed to have done. By rejecting that legislation, we go back, one could argue, to the earlier provision that required them to meet that earlier standard. The suggestion, however, this is legislation that is totally onerous to the banking communities is patently false.

Finally, I just want to address the rationale for proposing a change to the home equity loan statute so soon after its adoption in 1988. As with the matter I just discussed regarding expedited funds, a problem has arisen that needs attention. In this case, the problem is the result of a misinterpretation of the statute by the Federal Reserve Board and a Federal court. Our main goal in that legislation was to require lenders to disclose the key cost terms to consumers. In variable rate loans, the consumer needs to know two things in order to know what interest rate will be charged—the index that is being used, which is typically some version of the prime rate, and the margin, which is a fixed percentage rate that is added to the index to produce the interest rate. Thus, the 1988 legislation requires the disclosure of "any index or margin to which such changes in the (annual percentage) rate are related."

For example, if a borrower's rate will be based on the Wall Street prime plus a 2-point margin, then I believe, and I think all of us do on the committee, the consumer needs to know both those facts and that is the intention of the legislation. Instead, the Fed did not require disclosure of the margin and the United States District Court for the District of Columbia recently upheld the Fed's viewpoint, holding that:

> In the normal case, the change in the interest rate of a variable HEL is not related to the margin but to the index; the margin is generally a fixed figure which will not be responsible for a change in the interest rate. Accordingly, the lenders would only be required to describe how the interest rate would change over time due to the index.

The Fed's and the court's interpretation vitiate the intention of the provision which was for lenders to disclose what index they were using and what the margin was. Without the disclosure of both of these terms, the consumer cannot determine what interest rate will be applied. That is why this amendment is included in the legislation.

To correct this problem, section 318 of title III requires the creditor to provide, as part of the disclosures given with the application form, the specific margin which applies to the creditor's Home Equity Plan. Mr. President, as they are soliciting business, there is the business they want. So when you are taking the application forms the consumers will have a better idea.

The amendment allows creditors that offer more than one margin to use a single disclosure form so long as the creditor specifies the amount of the credit line to which the margin is tied or clearly sets forth and describes the feature to which the margin is tied. Disclosure of specific margins would not preclude creditors from providing lower margins under certain circumstances.

Mr. President, I realize this is a bit technical, but as is often the case, matters that come before the Banking Committee dealing with financial institutions are technical, and words of art are important here, and this is legislation.

Again, I emphasize and say to my good friend from Idaho, who I know is legitimately concerned about the cost of added burdens, and so forth, that you can complicate these matters and a lot of times a few institutions that are frankly concerned about the purely competitive environment are not going to like some of them. What this is designed to do here is really to make sure that constituents of his and mine who do business with these institutions, when they read the advertisements in the paper, get a good idea so it is not a shell and pea game, so when they say interest rates are such and such, they can count on them, so those two-income families the Senator from Idaho and I have in our States who read that in trying to make a decision to go to bank X or Y they are not going to be fooled by a simple disclosure application. Clearly, when we are trying to encourage competition within the lending institutions and make sure the consumers are getting the deal they think they are getting, these kinds of provisions really should not provoke and have not provoked any controversy at all except for the few institutions that, frankly, do not want to really be competitive when it comes to offering higher yields for people's money.

So when you wade through all of these and read the language, as technical as it is, the bottom line is, do we believe that the consumers in this country ought to know what, in fact, the yields are going to be or not? Or do we want to allow a few institutions to continue to play a game that would require the average person to go out and virtually hire a lawyer to determine what, in fact, the yields are going to be.

I opt for the former. The few pennies it may cost an institution to provide that information is hardly, it seems to me, worth the opposition that is being expressed to this kind of provision in these bills.

I gather we may debate it a little further this afternoon after our caucus luncheons. But I would hope that my colleagues—and I will be delighted to have private conversations with them about the bill, what is in it and so forth, and our staffs will be available.

This was a unanimous vote by the House committee and a unanimous vote by our committee. It is not a controversial matter except for a handfull of institutions that have always objected to disclosure. That is all that is required of this legislation.

I thank my colleague from Massachusetts for giving me an opportunity

to lay out the details of what these two provisions really are in this legislation.

I yield the floor.

Mr. LEAHY. Mr. President, I do not want to interfere with my distinguished colleague from Massachusetts because I always try to give the utmost respect to those Southern States, but I wonder, if he has no objection, if I might be able to proceed for just 3 or 4 minutes on a subject of some major concern.

Mr. President, I thank Senator KERRY. As always he is showing his unfailing courtesy in helping other Senators.

NUTRITION BUDGET

Mr. LEAHY. Mr. President, this past weekend, President Bush joined world leaders at the United Nations in calling for a renewed attack on child hunger and mortality. The words he used reflect my own concern for the world's, in particular for the U.S. children. Indeed, a hungry child is an empty promise. The President is correct in recognizing that.

But I am disappointed to see that the President's budget priorities speak, unfortunately, a lot louder than his words. The administration's budget has put hunger relief on a starvation diet in this country.

Last spring I introduced the Mickey Leland Memorial Domestic Hunger Relief Act in the Senate. We did this to honor the memory of a brave Congressman who was dedicated to the world's desperately poor citizens and, in fact, died on a trip to try to bring food to some of the hungriest of this world. Our bill expanded our domestic nutrition programs to meet the needs of our own hungry, especially the one out of five children in this country who live in poverty.

Think about that when we are talking about the children of the world, Mr. President; one out of five children in the United States lives in poverty. The same one out of five live in hunger in the wealthiest, most powerful Nation on Earth.

The administration opposed this bill. They opposed the Mickey Leland bill right from the beginning. And they continued their opposition for many months. And now this living tribute to Mickey Leland has died because of the budget priorities of the administration.

The Mickey Leland bill is only one of the victims of the administration's starvation budget. This year the administration proposed almost $500 million in cuts for child nutrition programs, including at least $180 million in cuts in the school lunch program. President Bush campaigned for more day care but his proposed budget cut funding for meals provided to children in day care. Cuts of over $280 million for both child and adult day care tell how those campaign promises have come out.

The supplemental food program for women, infants, and children, the WIC Program, has been shown by study, after study, after study, to significantly increase the health of newborn infants. It reduces the cost of child health care. We want to find something in the Year of the Child that helps children, that saves children's lives. WIC does. It saves children's lives. It saves the Nation money at the same time. It is in many ways, Mr. President, the perfect program—if we really mean what we say about helping children.

Now, in the Presidential debates, President Bush strongly supported WIC. Governor Dukakis strongly supported WIC. Everybody strongly supported it. But President Bush had a chance to do something about it, and he did not propose increases in the WIC program. In fact, he refused my offer to support full funding for WIC. And because of this funding shortfall, WIC fails to serve over 40 percent of those women and young children who are eligible.

We have to ask ourselves also, in a year we are talking about this attack on child hunger and mortality, how many children die needlessly at birth because they do not have access to the WIC Program? How many children have health problems for the rest of their lives because they did not have access to the WIC Program?

Why is it that the United States lags so far behind other nations in child mortality statistics, the number of children who die at birth, or are hampered throughout their life, because Of a low birth weight? One reason is we do not fully fund the WIC Program. The President also asked in his budget for a significant cut in the nutrition assistance program for Puerto Rico—over a $100 million cut.

Mr. President, all of us like to give speeches with the flags flying and the bands playing, and with pride and with patriotism we speak of being the richest and most powerful Nation on Earth because, indeed, we are. But sometimes we do not talk about the millions of Americans who go to bed hungry every single night, not by choice, but by necessity. Hunger is not limited to the homeless living on our street corners or in our subway stations. There are Americans in every city and every State who live with hunger every day.

Mr. President, you and I, or any of the other 98 Members of this body could go into any community in this country, whether we had ever been there before or not, and find pockets of hunger in this, the wealthiest, most powerful nation on Earth. We know that poor nutrition and hunger jeopardize the future of our entire Nation. When children go to school hungry, they do not learn. If our Nation's children are not learning, our Nation's future is seriously at risk, and we must not surrender our future. A hungry child is an empty promise.

It is time for the administration to stop pretending that it cares about children and start acting to protect them. Stop giving lofty speeches about the rest of the world, necessary though they might be, and look at the hungry children in America. Statistics show that across our Nation, the rich get richer and the poor get poorer. The gap between rich and poor in our Nation is as wide as it has ever been since World War II.

The budget deal reached by Congressional leaders and the administration takes steps to reduce the income gap as well as the deficit. I applaud the negotiators for their patience and their hard work, patience sometimes in the face of arrogant obstinance. But I cannot agree that merely holding our ground in the fight against hunger is enough. I cannot accept the fact that the most powerful nation in recorded history cannot feed the hungry or heal the sick or provide any Federal employment to the able-bodied. We have to continue the moral struggle against hunger and poverty in the United States.

In conclusion, I would say, Mr. President, that we have to take a leadership role on these issues internationally. As chairman of the appropriations subcommittee dealing with foreign aid, I intend to support those United Nations and other international programs for children. I want to see more funding for UNICEF, for child survival, for AID-supported children's programs. I support the world summit for children. I hope the summit will lead to prompt ratification of the Convention on the Rights of the Child, and I hope this Nation will back up its rhetoric with the necessary money and will back up the symbolism with some substance. It is time to fulfill the promise of the child.

The PRESIDING OFFICER. The Chair informs the Senator from Massachusetts and the Senator from Utah, the floor managers respectively, that under the previous order——

Mr. KERRY. Mr. President, I ask unanimous consent simply to be able to proceed to clarify a number of points, and then I think the Senator and I agree not to delay the Senate at this point.

I ask unanimous consent granted when I originally asked the RECORD not show me interrupted by the previous speaker also not show me interrupted by the Senator from Vermont nor by the recess, and when we reconvene after the recess I be allowed to continue.

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

Mr. KERRY. Mr. President, I understand there is an order for a vote at that time.

I will continue at such time as this bill is resumed in debate and it be shown at that moment.

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

RECESS

The PRESIDING OFFICER. Under the previous order the hour of 12:30 having arrived, the Senate will stand in recess until the hour of 2:15 this afternoon.

Thereupon, at 12:30 p.m., the Senate recessed until 2:15 p.m., whereupon the Senate reassembled when called to order by the Presiding Officer [Mr. SANFORD].

SUPPORTING THE ACTIONS TAKEN BY THE PRESIDENT WITH RESPECT TO IRAQI AGGRESSION AGAINST KUWAIT

BIPARTISAN SUPPORT FOR PRESIDENT'S POLICY IN THE PERSIAN GULF

Mr. DOLE. Mr. President, I am pleased to join the majority leader in offering this resolution. I would also like to affirm that the administration supports the resolution.

The resolution is important for what it says—and equally important for what it does not say.

It does express the strong, bipartisan support in the Senate for the President's leadership, policies, and actions in the Persian Gulf crisis.

In doing that, it will send another strong and important message to Saddam Hussein: The United States is united in its determination to achieve the goals of the President's policies. Saddam Hussein is not going to get what he wants, period; and he surely is not going to get what he wants because of indecision or dissent in the U.S. Senate.

The resolution also includes a strong call to all nations in the world, to keep up the pressure on Saddam; and, at the same time, to respond to the needs of those adversely affected by the enforcement of the sanctions.

As an aside, I might note that I have recently met with a large number of foreign leaders—Presidents, Prime Ministers, and Finance Ministers. Every one of them spoke of their governments' commitment to cooperate in the "squeeze Saddam" strategy, but many of them, too, pointed out the severe costs to their countries of that cooperation.

President Zhelev of Bulgaria, to cite just one example, not only pledge continuing commitment to the embargo of Iraq, but announced that Bulgaria will send some ground units to Saudi Arabia, if asked.

But he also pointed out that Saddam has quit payment on the multibillion dollar debt that Iraq owes Bulgaria, even as Bulgaria—increasingly cut off from Soviet oil and natural gas supplies—must pay much higher costs for those commodities on world markets. So it is a double or triple whammy on many of these countries. And it is important that we acknowledge that in this resolution.

But, as I said, this resolution is also important for what it does not say.

Most importantly, while properly reaffirming the constitutional processes by which our foreign policy is developed and implemented, the resolution does not plunge us into a pointless and damaging confrontation over war powers.

There is a time and a place for everything. And one of these days, we must confront this war powers issue, and get it resolved in a manner that is consistent with the Constitution, preserves the legitimate role of the Congress, and serves the national interest.

But debates here on the floor of the Senate can be misunderstood, when translated into headlines, or soundbites in the media around the country, and around the world.

A debate right now, which could be misunderstood or misreported as evidence of an erosion of support for the President's stance, would serve no one's interest—except Saddam Hussein's.

So this is a good resolution. I commend the administration, which urged us to pursue this resolution, and the majority leader, who has been very involved in working out this draft.

It was a bipartisan process, which has resulted in a bipartisan product. That is the way we ought to deal with these serious foreign policy issues.

I urge all Senators to vote for this resolution.

Mr. PELL. Mr. President, before we cast our votes with respect to this resolution, I wish to bring one matter to the attention of the Senate which is a matter of some concern.

Back in August, while the Senate was still in recess, and after the President's initial deployment of troops to the Persian Gulf region, I wrote to the President asking for certain documents relating to those deployments. I reminded the President, by way of background, that in 1983, when the United States was participating in a multinational peacekeeping force in Lebanon, the Senate Foreign Relations Committee had had the opportunity to examine the exchange of letters between the Governments of the United States and Lebanon which provided the basis for that participation. Accordingly, this past August I wrote with respect to the Persian Gulf deployments—

I assume that in recent days there have been similar exchanges of letters with the Governments of Saudi Arabia, Kuwait and other nations with respect to the military deployments and other actions recently undertaken by the United States. For instance, the official Saudi request was mentioned in your August 9 letter to Congress, and the Kuwaiti request was mentioned in Acting Secretary of State Kimmitt's letter to Congress last week.

As required by the Case-Zablocki Act and consistent with the detailed information the Committee was provided in connection with drafting the Lebanon resolution, I would appreciate your having provided to me copies of any exchanges of letters that the Executive Branch may have had with Saudi Arabia, Kuwait and other Governments, and also the content of any oral agreements.

I have not yet received a reply to my letter, although the State Department has assured us that we will have the requested items next week. I mention this at this time, because at least with respect to the specifics of the arrangements and commitments we might have undertaken with other governments, we are, in a way, operating in the dark. I trust that when we receive the reply, we will find no surprises and not have to revisit the findings contained in this resolution.

Mr. KOHL. Mr. President, I firmly believe that the President's response to the invasion of Kuwait by Iraq has been fundamentally sound. Iraq's behavior has been unjustified and unacceptable. The President's ability to forge an international response to this aggression has been both skillful and effective. The actions he has taken so far have my support and deserve the thanks of the civilized world.

Having said that, Mr. President, I must also say that I am less than pleased with the resolution now before us. To begin with, I believe that the President should have sought congressional approval for the actions he has taken—approval which he would have gotten—as required by the War Powers Resolution. The President may not like the War Powers Resolution but it is the law of the land and one of the issues at stake in the Persian Gulf is respect for the rule of law. The law requires congressional approval of deployment of American forces in situations in which hostilities are imminent. Hostilities are, unfortunately, imminent in the gulf. And that means that the President is required to seek congressional authorization for his actions.

Second, I believe that the President should have been—and should be—working more closely with the Congress in developing our Nation's ongoing response to events in the Persian Gulf. So far, I am afraid, the executive branch is working with the other nations of the world but not with the Congress of our own country. I understand the realities of the modern world: Secrecy is often essential, events take place quickly, responses

have to be almost instantaneous. But planning is going on now. And the Congress, perhaps represented by a leadership group, ought to be aware of what options are developed, and involved in the process of evaluating those choices.

Third, I am concerned about the specific language of the resolution because some may read it as giving the President a blank check for future action. That is simply not the case with this Senator. I do support the actions the President has taken so far. But I cannot signal my support for future actions unless I know what strategy will guide them and what operational details will control them. Of course I support "continued action * * * to deter Iraqi aggression and to protect American lives and vital interests in the region." But what does continued action mean? Military action? Diplomatic action? Capitulation to Iraq? The resolution does not define its terms—and that disturbs me deeply and offends greatly. Military action may be essential at some point. But I do not want to see us take any military action until that point is reached. By committing us to "support continued action by the President" some may see the resolution as a grant of authority to the President. Perhaps it is wishful thinking, but I read the language of the resolution more restrictively; after all, there is at least the requirement that such action be in accordance with the decisions of the United Nations and our own domestic legal processes. That, I hope, is enough to suggest that additional authorization or approval would be required before our actions move in a new direction or shift their current emphasis.

Finally, while I recognize the value of this resolution, I also recognize its limitations. This resolution doesn't really endorse or encompass or create a comprehensive policy in the Persian Gulf; at best it simply speaks to the current crisis. And that is precisely what is wrong with the resolution and with our policy: It only addresses the immediate crisis. Look at some selective recent history: 2 years ago we tilted toward Iraq because they were fighting Iran—now Iraq has tilted against us and who knows where Iran is; 2 months ago Syria was branded a terrorist state—now we invite them to lunch; today we are all frightened by the proliferation of weapons and military might in the region—so we propose to sell an additional $21 billion in arms to Saudi Arabia. Mr. President, over the past few years we have bounced from one policy extreme to another: We have shifted goals, altered alliances, modified the means we are willing to use. It is really time for us to figure out what our policy in the region is going to be. This resolution, as important as it may be, simply does not help us do that.

Despite these concerns, Mr. President, when all is said and done, I will vote for this resolution. I will do so because I agree with what the President has done so far and because I want to send a clear signal of American unity to Iraq and to all other nations. But I also want to send a clear signal to the President of the United States that increased consultation and involvement is necessary if that support is to be sustained and that unity is to be maintained. The American people have a right to fully understand what we are doing; the Congress has an obligation—a legal, constitutional and moral obligation—to be involved in, and give approval to, American action in the gulf. And our nation has a need to develop a comprehensive and consistent policy in the Middle East.

Mr. KERRY. Mr. President, I support this resolution which I believe sends an unequivocal signal to Saddam Hussein that the Senator is in total agreement with the President and the international community in actions taken thus far to force the Iraqi, withdrawal from Kuwait.

In so doing, it should be pointed out that this resolution is not a Gulf of Tonkin resolution on the Persian Gulf. Quite the contrary, this resolution reflects the near unanimity of the global community in condemning this aggressive act by a brutal dictator.

Unlike our experience in Vietnam, the United States is not acting unilaterally in the Persian Gulf. We are not acting in the absence of an international consensus in support of our presence in the region. The emphasis that the President is placing on the role of the United Nations is a critical element of our policy in dealing with this crisis. The President has done a superb job in mobilizing the international consensus, as manifested by the eight resolutions passed by the U.N Security Council in response to the Iraqi invasion.

The success of U.S. policy will be largely contingent upon the maintenance of this international solidarity. It is imperative that the United States continue to operate under the auspices of the United Nations.

While the resolution is not statutorily binding upon the President, I would like to differ with its characterization offered by our distinguished colleague from Oregon [Mr. HATFIELD]. Subsection (b) of the resolved clause expresses support for the President's actions, or continued action, in "accordance with the decisions of the United Nations Security Council and in accordance with United States constitutional and statutory processes, including the authorization and appropriations of funds by the Congress."

Mr. President, I believe this phase appropriately defines the limit of our support. We are telling the administration that Congress will support continued action so long as this action is in accordance with the decisions of the U.N. Security Council, in accordance with the U.S. constitutional and statutory processes. I would submit that since the War Powers Resolution is part of our statutory process, this resolution is covered in the legislation we are considering today.

And quite frankly, if the Congress is so predisposed to correcting a perceived policy miscalculation, the ultimate weapon we have is the power of the purse. As one who fought and bled for my country, the failure of the Congress to cut off funding for the Vietnam war for so many years represented the ultimate derogation of the responsibilities of this institution.

I am a strong supporter and advocate of the War Powers Resolution. But the War Powers Resolution, and its invocation, should not be used as an excuse for not exercising the most effective tool we have to decide these issues—the power of the purse.

Mr. President, I am supporting this resolution because it is my belief that it does not authorize the President to operate unilaterally either apart from the U.N. framework, or without specific authorization from the Congress. The success of the President's policy, thus far, has been the international consensus behind our efforts and those of our allies—a consensus which has contributed to, and strengthened, the broad base of support among the American people.

I would caution anyone in the administration who would be inclined to engage in a twisted or convoluted interpretation of this resolution that we are not giving the President carte blanche to wage offensive military action unilaterally. All our actions must be predicated upon support from the Congress, the American people, and under the continued sanction of the United Nations.

I am concerned that the Iraqi invasion of Kuwait may be an ominous omen of the potential dangers facing the global community in the post-cold war era.

The global community has emerged from 45 years of superpower competition, during which the threat of unclear confrontation was never far from our consciousness. Fortunately, the cold war did not bring our worst fears to fruition.

The end of the cold war era, however, does not mean the world is safe from global catastrophe. The greatest danger to international security and stability can come from traditional regional hot spots which, if left unattended, could be the spark that could turn local confrontations into more widespread conflagration.

Today, we are confronted by a regional power, Iraq, which has attacked a weaker state, Kuwait, for both terri-

torial gain and control of an important resource. The crisis is even more threatening by virtue of the fact that Iraq has developed a chemical weapons capability, and is pursuing a nuclear weapons development program. And Saddam Hussein has demonstrated a willingness to use such weapons of mass destruction in the past, whether in his war against Iran or against his own Kurdish population.

That is why I support President Bush's response thus far to the crisis and our demand—the demand of the international community as manifested through the Security Council resolutions of the United Nations—for the unconditional and total Iraqi withdrawal from Kuwait.

The fundamental issue associated with the Iraqi invasion of Kuwait, in my estimation, has nothing to do with oil prices or who controls how much of the world's petroleum reserves. The fundamental issue has nothing to do with our rushing in to support, or prop up, so-called feudal monarchies in the Persian Gulf.

Even the question of energy independence, or the failure to develop a national energy policy, is peripheral to what should concern us, our Western allies, and our new-found allies in the region.

If local or regional aggressions are allowed to go unchallenged, then the entire global community could open itself up to nuclear and/or chemical weapons blackmail, particularly if a despot's appetite has been whetted by local or regional successes.

That is the potential reality being played out in the Persian Gulf today. Yes, there are risks inherent in the current massive development of U.S. military power in the region. But one has to weigh those risks against what, potentially, could be a more catastrophic outcome. Do we want to risk this possibility?

While the threat of all-out nuclear war between the United States and the Soviet Union has hung so heavily over the world for the past 45 years, there has also been concern for local and regional conflicts escalating into nuclear or chemical wars. We have succeeded, for the most part, in keeping that genie in the bottle. It would be disastrous if that genie were ever allowed to pop out of the bottle. It would establish a precedent that would make it difficult to influence other potential hot spots around the globe.

We are currently in a transition period from the cold war era to an era in which the superpowers no longer have surrogates over whom they could exercise influence in times of crisis. Saddam Hussein has certainly proven that to his former ally, the Soviet Union. There are leaders, such as Saddam Hussein, who will exploit this new reality to pursue their own nefarious ambitions.

Yet, no one nation alone can carry the burden for responding to such threats which could escalate into confrontations with global implications. We need to focus on strengthening the capabilities of the U.N. to meet future aggressions, because, unfortunately, there are other Saddam Husseins lurking in the world's future. The global community has to be prepared to respond quickly and credibly to avert larger catastrophies which might lurk in our future.

We have to get serious about the conventional arms race around the world. Iraq is a frightening example as to the need for the international community to get serious in bringing to an end the proliferation of chemical, biological, and nuclear weapons throughout the world. We have to get serious about nonproliferation.

The current crisis, and the response of the international community to the Iraqi aggression, does provide us an opportunity to strengthen a multilateral capacity to deal with future threats.

The President speaks of a new world order. And to a large degree we are seeing the unfolding of a new world order. But for the principle of collective security to become a functional reality, we have to take the leadership in supporting a system based upon the rule of international law.

If there is one lesson, among many, to be learned from this crisis, it is the fact that the West, and the United States as the leader of the West, has to realize that unilateral action will threaten seriously our own long-term security. In the coming decades, we could find ourselves in a world at least as dangerous and unfriendly as that of the cold war. Only by promoting a truly international security system based on the rule of international law and the United Nations can our Nation hope to promote both our own and wider global security.

The fact that the President has been sensitive to the need for responding to this crisis under the United Nations auspices and framework, has been a very important consideration in my support for his policy. He has been skillful in working with the United Nations to establish an international partnership to respond to this aggression. In the process, I believe the United States is making an important contribution in the long overdue requirement for strengthening multilateral responses to present and future crises which do and will, face this global community of ours.

Mr. BIDEN. Mr. President, 8 weeks have passed since American troops were sent to the Arabian peninsula to deter further aggression by the nation of Iraq.

We have seen the largest buildup of American forces since the Vietnam war—in a fraction of time that it took to make a similar commitment in Indochina, with a fraction of the debate.

It is now October 1, nearly 2 months since the first United States soldiers arrived in Saudi Arabia, and 3 weeks since Congress reconvened after the August recess.

In these 2 months, the U.N. Security Council has approved no less than eight resolutions regarding the gulf crisis.

Yet the Senate has remained, as an institution, largely silent.

A NEW AMERICAN DOCTRINE

The debate on this policy is long overdue. For the deployment of United States Forces in the Persian Gulf is not just, to use the President's words, "a line drawn in the sand."

It is a new American doctrine to justify massive United States intervention in the Middle East.

Ten years ago, in response to the Soviet invasion of Afghanistan, President Carter articulated a doctrine that now bears his name. He said:

> An attempt by any outside force to gain control of the Persian Gulf region will be regarded as an assault on the vital interests of the United States.

The American people understood that we could not accept an alien hand—at the time, a Soviet hand—grabbing control of this essential resource.

But President Bush has responded to a new threat—not from an outside power—but from an Arab aggressor seeking to control Arab oil.

This is a dramatic shift in American foreign policy—a Bush corollary to the Carter doctrine.

We have declared to the world that we will not permit an unfriendly Arab nation to control gulf oil.

A commitment potentially limitless in its scope that at a minimum, could well mean a long-term presence of U.S. Forces—at least Naval Forces—in the Persian Gulf Region.

Congress must play a role in helping to more clearly define this long-term commitment, just as Congress must play a role in the current deployment of U.S. Forces.

To date, Congress has been simply an observer, heartily congratulating the President for his brilliant diplomatic skills and praising American soldiers for their service to the country.

Such praise has not been un-deserved.

The President has done a tremendous job thus far in uniting the world in opposition to Iraq's aggression.

And American forces have been heroic in their rapid deployment to the Middle East and in their commitment to duty under harsh conditions.

But to continue in this sideline role would be not merely an evasion of responsibility, but an abdication of congressional power.

CONGRESS AND THE WAR-MAKING POWER

That Congress has the power to declare war is unambiguous in our Constitution.

But students of the doctrine of original intent would perhaps be surprised to learn that the framers did not intend for congressional involvement in the use of force to end there.

Indeed, an early draft of the Constitution reserved exclusively for Congress the power to make war.

Later this was changed to declare war. But the reason for this change is instructive.

At the Constitutional Convention, James Madison and Elbridge Gerry argued for the amendment for one reason—to allow the President "the power to repel sudden attacks."

In fact, the framers had no interest in the ceremonial aspects of declaring war—which has only been used five times in our history as a nation.

Even then, as Alexander Hamilton noted, "the ceremony of a formal denunciation of war" had "of late fallen into disuse." (Federalist 25).

The real issue was authorization of war, which the framers did not intend to give to the President.

Even so staunch an advocate of Presidential authority as Hamilton emphasized that the President's power as Commander in Chief would be "much inferior" to that of the British King.

Amounting to "nothing more than the supreme command and direction of the military and naval forces" (Federalist 69).

The framers of the Constitution wanted Congress involved, on an equal basis, in any decision on the use of force—the most fundamental decision a nation can make—for two important reasons:

First, to balance power within our Government; and

Second, because congressional support is a sound barometer of a policy's wisdom and a prerequisite of a policy's sustainability.

SUPPORTING THE CURRENT POLICY

Congress must have a role to play in authorizing the current deployment of troops in the Middle East, as well as any further action.

It cannot be merely reduced to providing the funds to continue the military operation, "which as a practical matter is guaranteed, since Congress rarely uses the power of the purse to cut off support when American soldiers are on the brink of war."

The question then becomes: By what form does Congress add its voice to the policy?

I believe the best approach would be to provide a statutory authorization, rather than the hortatory resolution before us today.

In truth, I do have concerns about the resolution now before us.

The best that can be said about it is that it is only a concurrent resolution, and thus has no force of law.

I would be happier if we set down some guidelines for U.S. policy, in order to clarify our objectives in the gulf, and to provide signposts for future actions.

The resolution's ambiguity leaves open the possibiity that the President will interpret this resolution very broadly and consider it as the first and last word of Congress on this matter.

It mentions neither future actions by Congress, nor of the need to seek a declaration of war if hostilities occur.

It merely "supports continued action by the President."

Now we must make declarative statements about the intent of Congress in approving this resolution.

But we must remember that Presidents have not hesitated to ignore legislative history when it suited them.

We need only to recall the Vietnam experience, where the Johnson administration cited the Gulf of Tonkin resolution—enacted in response to alleged North Vietnamese attacks on the U.S.S. *Maddox* and the U.S.S. *Turner Joy*—as an authorization to escalate the war.

Despite the fact the resolution said nothing about authorizing anyone to do anything.

We know these resolutions are subject to selective interpretation—and abuse.

The words of Nicholas Katzenbach are instructive. While serving as Johnson's Attorney General, Katzenbach acknowledged in an internal memorandum that there was some legislative history to indicate that in passing the Gulf of Tonkin resolution, Congress did not intend to approve a large-scale land war in Asia.

But later, as Under Secretary of State, Katzenbach testified to Congress that the Gulf of Tonkin resolution constituted the "functional equivalent" of a declaration of war.

A similarly clever administration official might use this resolution as justification for military action.

Let me read from the operative section of the measure:

The Congress supports continued action in accordance with the decisions of the United Nations Security Council and in accordance with United States constitutional and statutory processes, including the authorization and appropriation of funds by the Congress, to deter Iraqi aggression and to protect American lives and vital interests.

Now I, and many other Senators, take the reference to the U.S. constitutional and statutory processes to mean that the President must continue to seek authorization from Congress.

But because the current administration appears to believe that the Executive's warmaking powers are almost limitless, the reference could be rendered meaningless.

For example, the wording about the authorization and appropriation process might be construed later—if we go ahead and appropriate the funds—as constituting the necessary congressional approval for any military activities which the President decides to undertake.

I hope and expect that President Bush will reject such interpretation.

A STATUTORY AUTHORIZATION

I believe the Congress, the Nation, and the troops sweltering in the Saudi desert would be better served if Congress clarifies American policy in the gulf with enactment of a statutory authorization, which could demonstrate robust support for the President, guide the administration's policy, as well as make clear that Congress has not granted a blank check to the President and that further authorization is necessary for the initiation of hostilities.

Such a resolution would also lay out principles that should govern U.S. policy, providing a framework for action on the part of the President and Congress.

This is well within the range of our responsibilities as the legislative branch.

And it would help ensure public support for this policy.

I have drafted such a resolution, and submit it now in the RECORD for the consideration of my colleagues.

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

STATUTORY AUTHORIZATION

A joint resolution providing statutory authorization for the deployment of United States Armed Forces in the Persian Gulf region to deter and, if necessary, defend against further Iraqi aggression and to participate in multilateral efforts to restore the sovereignty of Kuwait and promote the security and stability of the region

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This joint resolution may be cited as the "Collective Security in the Persian Gulf Resolution".

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that in response to the act of aggression by Iraq against Kuwait, which began on August 2, 1990, the United States has—

(1) participated in decisions of the United Nations Security Council, as follows:

(A) Resolution 660, demanding immediate and unconditional withdrawal of Iraqi forces from Kuwait and restoration of the sovereignty, independence, and territorial integrity of that nation;

(B) Resolution 661, imposing economic sanctions against Iraq;

(C) Resolution 662, declaring null and void Iraq's annexation of Kuwait;

(D) Resolution 664, demanding the release and safe passage of innocent civilians;

(E) Resolution 665, authorizing appropriate measures to halt maritime shipping to and from Iraq and Kuwait as necessary to enforce economic sanctions;

(F) Resolution 666, directing that food supplied to Iraq for humanitarian purposes be conveyed solely through the United Nations;

(G) Resolution 667, condemning Iraq for the violation of diplomatic protections in Kuwait; and

(H) Resolution 670, extending the economic embargo to include material transported by aircraft.

(2) acting in response to the request of threatened nations and in accordance with the United Nations Charter, deployed United States Armed Forces in Saudi Arabia and elsewhere in the Persian Gulf region in conjunction with military deployments by other United Nations member-states, in order to—

(A) deter and, if necessary, defend against further Iraqi aggression; and

(B) assist in enforcing economic sanctions against Iraq pursuant to United Nations Security Council Resolutions 661, 665, and 670.

(b) PURPOSE.—Congress intends this joint resolution to constitute specific statutory authorization for continued United States military participation in collective security actions in the Persian Gulf region.

SEC. 3. GOALS OF UNITED STATES POLICY.

(a) IMMEDIATE GOALS.—The immediate goals of United States policy in the Persian Gulf region shall be:

(1) unconditional withdrawal of Iraqi forces from Kuwait;

(2) restoration of the sovereignty of Kuwait; and

(3) protection of the lives of American citizens held hostage in Iraq and Kuwait.

(b) LONG-TERM GOALS.—Over the long term, United States policy in the Persian Gulf region shall seek to achieve:

(1) the security and stability of the region; and

(2) by unprecedented and effective use of the mechanisms of collective security action, the promotion of a new world order.

SEC. 4. PRINCIPLES GOVERNING UNITED STATES POLICY.

United States participation in collective security actions relating to the Persian Gulf region shall be governed by the following principles:

(1) COLLECTIVE RESPONSIBILITY.—The United States shall continue to emphasize adequate sharing, by countries of the region and of the industrialized world, of the responsibilities, including the costs of military deployments and participation in economic sanctions, associated with collective security actions in the Persian Gulf region.

(2) EMPHASIS ON UNITED NATIONS.—The United States shall continue to emphasize and rely upon the procedures and instrumentalities of the United Nations system in order to sustain effective multilateral support for collective security actions in the Persian Gulf region.

(3) ROLE OF REGIONAL AND OTHER FORCES.—The United States, having taken urgent measures to lead a collective security action in the Persian Gulf region, shall seek to promote—

(A) greater participation in ground-force defense by countries of the region; and

(B) greater sharing of responsibilities, among countries having vital interests in the region, for the deployment and support of armed forces needed for regional stability.

(4) COMPLIANCE WITH THE LAW OF NATIONS.—The United States shall, in cooperation with other nations, seek to achieve substantial compliance by Iraq with the Law of Nations, including:

(A) the United Nations Charter;

(B) the International Covenant on Civil and Political Rights;

(C) the Convention on the Prevention and Punishment of the Crime of Genocide;

(D) the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare;

(E) the Treaty on the Non-Proliferation of Nuclear Weapons; and

(F) the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction.

Accordingly, the United States shall seek effective multilateral participation in such restrictions on trade with the current government of Iraq as may be necessary to ensure a cessation of transfers to that regime of military technology and equipment, including all material and technical assistance that could contribute to the development or employment of ballistic missiles and nuclear, biological, and chemical weapons.

SEC. 5. AUTHORIZATION FOR USE OF FORCE.

(a) AUTHORIZATION.—The President is authorized to continue to deploy United States Armed Forces in the Persian Gulf region—

(1) to deter and, if necessary, defend against further Iraqi aggression;

(2) to respond as may be necessary, proportionate, and effective to any acts of intended harm to American citizens or nationals; and

(3) to participate in collective security actions in the event that the United Nations directs the use of military force to counter threats to regional security posed by the Iraqi regime.

(b) FURTHER AUTHORIZATION.—

(1) Before initiating a use of force against Iraq beyond those uses authorized by subsection (a), the President shall—

(A) consult and seek the advice of the Combined Congressional Leadership Group created pursuant to section 7 of this Resolution;

(B) set forth to Congress and the American people his explanation of the imperatives mandating such use of force in the absence of a United Nations directive; and

(C) seek a declaration of war or other statutory authorization.

(2) In light of evolving developments in and relating to the Persian Gulf, Congress shall from time to time consider further measures of authorization; and authorization for military action shall at no time be inferred from the authorization or appropriation of funds for the Department of Defense.

SEC. 6. REPORTS TO CONGRESS.

(a) REPORT ON PRINCIPLES AND GOALS.—Not later than January 31, 1991, and every three months thereafter for so long as United States Armed Forces continue to participate in collective security actions in the Persian Gulf region, the President shall transmit to the Speaker of the House of Representatives and chairman of the Committee on Foreign Relations of the Senate a report providing a detailed description of such participation, the circumstance requiring the continuation of such participation, and the results of United States efforts undertaken in accord with the goals and principles set forth in sections 3 and 4.

(b) REPORTS ON DEVELOPMENTS IN THE PERSIAN GULF REGION.—In the event of developments in the Persian Gulf region that involve or appear likely to involve the United States Armed Forces in hostilities, the President shall, in accord with the reporting requirements of the War Powers Resolution, report fully and promptly to the Congress on the circumstances and the implications thereof.

SEC. 7. CONGRESSIONAL LEADERSHIP GROUP.

(a) ESTABLISHMENT.—To facilitate congressional deliberation and Executive-Legislative consultation on critical decisions relating to United States participation in collective security actions pursuant to this Resolution, there shall be established in each House of Congress, as an exercise of the rulemaking authority of that House, a Leadership Group which shall be comprised as follows:

(1) in the House of Representatives—

(A) the Speaker, who shall serve as chairman;

(B) the Majority and Minority Leaders;

(C) the chairmen and ranking members of the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence; and

(2) in the Senate—

(A) the Majority Leader, who shall serve as chairman;

(B) the President pro tempore and the Minority Leader;

(C) the chairmen and ranking members of the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence.

(b) COMBINED CONGRESSIONAL LEADERSHIP GROUP.—When the chairmen of the two groups deem it appropriate and practical for purposes of congressional deliberation or Executive-Legislative consultation, they shall arrange for the two Groups to assemble as a Combined Congressional Leadership Group, on which the two chairmen shall act as co-chairmen.

(c) CONSULTATION REGARDING THE USE OF FORCE.—The President shall, unless urgent circumstances do not permit, consult and seek the advice of the Combined Congressional Leadership Group designated pursuant to this section, prior to key decisions relating to the disposition or commitment of United States Armed Forces authorized by this Resolution to be deployed in the Persian Gulf region.

Mr. BIDEN. In my view, this resolution would be preferable:

It specifically authorizes the current deployment of U.S. troops;

It authorizes their use to defend against further Iraqi aggression and to respond, in a proportionate manner, to acts of intended harm to American citizens;

It does not endorse a preemptive strike; it does, however preauthorize American forces to participate in collective security actions in the event that the United Nations directs the use of military force to counter threats to regional security posed by the Iraqi regime;

It also requires the President to seek a declaration of war or other statutory authorization if significant hostilities break out; and

It calls for further measures of authorization by Congress, making clear

that no blank check is being endorsed over to the President.

I hope my colleagues will take a close look at the resolution.

To suggest that the resolution before us is imperfect, as I have, is not to imply that the Senate is on the verge of enacting a 1990 version of the Gulf of Tonkin resolution.

Indeed, the circumstances are far different.

Today we have a clear act of illegal aggression against a sovereign nation, rather than a contrived attack against U.S. naval vessels.

Today we have the United Nations Security Council unanimously condemning the nation of Iraq, rather than the United States acting largely on its own.

Today we have thousands of troops from Arab and Islamic nations alongside U.S. soldiers, rather than a token force of Asian troops providing minimal diplomatic cover for American boys.

Despite my reservations and concerns about this resolution, I intend to vote for it, but only on the assumption that the language does not constitute congressional support in advance for a Presidential decision to use force in the gulf—in the absence of prior authorization by Congress or a decision by the U.N. Security Council under article 42 to undertake a collective action designed to remove Iraqi forces from Kuwait.

In other words, congressional support for "continued actions" does not mean that the President can take any action that does not contradict existing Security Council decisions or that he can use force to implement existing Security Council decisions without seeking authority from Congress.

Mr. HARKIN. Mr. President, I rise to cast my vote in support of Senate Concurrent Resolution 147, but do with the explicit understanding that this resolution will not serve as a blanket authorization for the President to go to war in the Persian Gulf or as approval of the President circumventing the War Powers Act.

Specifically, this resolution does not give the President the authority to conduct military operations against Iraq without additional authorization from Congress. It does endorse the deployment of United States forces for defensive purposes, to deter Iraqi aggression against Saudi Arabia. It does endorse the use of economic sanctions and diplomatic means to pressure Iraq into withdrawing from Kuwait. And it does embrace the United Nations and the five Security Council resolutions which condemn Iraq's aggression in the Persian Gulf.

I support the resolution's expression of support for the actions the United States has taken so far to deter further Iraqi aggression in the Persian Gulf. President Bush has done a masterful job of mobilizing the support of the United Nations through the numerous resolutions approved by the Security Council.

Furthermore, there is unanimous support in the world community—with the exceptions of Iraq and its very small group of allies—for the goals enunciated in those Security Council resolutions, specifically: First, the immediate, complete and unconditional withdrawal of Iraqi forces from Kuwait; second, the restoration of Kuwait's sovereignty; third, the release and safe passage of foreign hostages held by Iraq; fourth, the imposition of economic sanctions against Iraq; and fifth, the maintenance of international peace and security in the Persian Gulf.

I urge that the United States go further in involving the U.N. in the gulf crisis. The United Nations should not be just supporting the United States Armed Forces in Saudi Arabia and the gulf, it should be directing those forces. A multilateral force under U.N. command, including such countries as the Soviet Union, would be the most effective to deter further Iraqi aggression and in persuading Saddam Hussein to withdraw his forces from Kuwait.

Accordingly, I had hoped that this resolution would advocate the option of putting U.S. forces, along with the troops of other countries now stationed in the gulf, under the command of the United Nations.

In addition, the meaning and intent of paragraph (b) of the resolution needs to be clarified so that the President does not interpret it as a blank check for future military action in the Persian Gulf. Specifically, that provision expresses the support of Congress for continued action by the President in accordance with the decisions of the United Nations Security Council and in accordance with U.S. constitutional and statutory processes.

This provision puts the Congress on record in support of U.S. policy and actions to date. It does not endorse the President going to war, or committing U.S. troops into hostilities, in the Persian Gulf.

It also should be established for the record that the phrase U.S. constitutional and statutory processes refers to the War Powers Act. Specifically, in order for U.S. Armed Forces to go to war for longer than 60 days, section 4(a)(1) of the War Powers Act requires that Congress authorize such a commitment, or else troops have to be withdrawn.

No resolution, no matter how loosely drafted, can absolve Congress of its constitutional and legal mandates. Simply put, we have an obligation to approve sending U.S. forces into combat, if that unfortunate situation were to occur.

The American people deserve no less from their elected representatives. After all, we are asking nearly 200,000 of our young men and women to risk their lives in defense of our national interest in the Persian Gulf. The least that Congress can do is fulfill its legal and constitutional responsibilities.

Mr. SANFORD. Mr. President, I intend to vote for Senate Concurrent Resolution 147 because it is a useful expression of support for our policy of working through the United Nations. I approve of the President's immediate deployment of our Armed Forces to block any possible invasion of Saudi Arabia by Saddam Hussein. I also note with approval the emphasis that this resolution places on the actions taken by the United Nations, the goals it has established, and the methods implemented for achieving those goals.

However, I want the record to show that I share the firm position of many Senators that this resolution does not authorize the President to conduct offensive military operations against Iraq without additional and specific authorization from the Congress. The resolution states that the Congress supports continued action by the President in accordance with the decisions of the United Nations Security Council and in accordance with United States constitutional and statutory processes. This does not mean a strained or forced reading of the U.N. resolutions or U.S. law. This is not a Gulf of Tonkin resolution and, if an attempt is made to so interpret it, I will strenuously object.

Mr. NUNN. Mr. President, I rise today as one of the original sponsors of this bipartisan concurrent resolution. I want to emphasize at the outset that this is not legislation, which would be in the form of a joint resolution that would have to be signed by the President or enacted over his veto if he chose to veto it. It is a concurrent resolution. Nevertheless, it is an important measure for a number of reasons.

First, it is important because it expresses the strong approval of the Congress for the leadership of the President in working with the U.S. Security Council. The Security Council has to date passed eight separate resolutions dealing with Iraq's aggression and its violations of the U.N. charter and fundamental principles of international law.

It is also important because it expresses congressional approval of the President's actions in achieving and supporting the Security Council's resolutions and in involving friendly governments.

Finally, and most importantly, the concurrent resolution expresses congressional support for the President's continued action in accordance with the decisions of the Security Council

and in accordance with U.S. constitutional and statutory processes, including the authorization and appropriation of funds by the Congress, to deter Iraqi aggression, and to protect American lives and vital interests in the region.

It is this last point that I would like to discuss briefly this afternoon. The concurrent resolution doesn't express congressional support for every future action by the President. Rather it limits congressional support for the President's actions that are in accordance with the Security Council's decisions and with U.S. constitutional and statutory processes. The Constitution grants to the Congress the power to declare war; to raise and support armies; and to provide and maintain a navy. Additionally, the Constitution provides that "no money shall be drawn from the Treasury, but in consequence of appropriations made by law." Without wanting to get into a prolonged discussion concerning the strengths or weaknesses of the War Powers Resolution, I believe it is worth emphasizing that in the final analysis the Congress can most appropriately and most effectively play its proper role in matters such as this through the power of the purse. For after all is said and done, no President can use the Armed Forces of the United States unless the Congress authorizes and appropriates funds to support and sustain such action.

Secretary Cheney has estimated in testimony before the Armed Services Committee on September 11 that the peacetime presence of U.S. Armed Forces in support of Operation Desert Shield will have an incremental cost of approximately $15 billion on an annual basis during fiscal year 1991. I want to emphasize that it will cost $15 billion in the absence of hostilities. If hostilities should occur, and I fervently hope that the White House goals can be achieved without the use of force, the cost will be far in excess of that amount. In such an event, the President will have to come to the Congress to seek authorization and appropriation of additional funds to support Operation Desert Shield.

I want to point out that the continuing resolution that the Congress passed on Sunday contains a provision, reflecting a bill reported out by the Armed Services Committee, that revises the procedures for accepting and using contributions from foreign countries, and requiring that any moneys, along with the proceeds from the sale of any property received, would be available to the Department of Defense only in accordance with standard congressional authorization and appropriation procedures. That action ensures that all funds, whatever their source, will be subject to the authorization and appropriation process.

In conclusion, then, I want to express my support for the concurrent resolution. I am pleased to note, moreover, that the administration supports the resolution. This is especially noteworthy in view of the emphasis that the resolution places on the constitutional and statutory role that the Congress will have in the event that hostilities should occur in the Persian Gulf.

Mr. DODD. Mr. President, I rise to express my support for the pending resolution regarding the President's actions with respect to Iraqi aggression against Kuwait.

This resolution, in my view, deserves the full backing of both the Senate and the House of Representatives.

The resolution is balanced and appropriate for the occasion. First, this is a concurrent resolution. It is purposefully designed to express a point of view. That's important, to be sure. But that's all it does. By definition this resolution has no legal, binding effect.

Second, this resolution emphasizes support for concerted multilateral action to deal with the Persian Gulf situation. It recognizes President Bush's leadership role in engaging the attention of the United Nations Security Council and securing its approval for a variety of multilateral actions against Iraq, including the establishment of a full economic sanctions regime.

Third, Concurrent Resolution 147 lays down markers with respect to future Presidential actions designed to deal with Iraq's military occupation of Kuwait. It pegs such actions to decisions by the U.N. Security Council and to the requirements of our own constitutional processes and procedures.

Mr. President, there is a strong desire on Capitol Hill to commend the President for his handling of the Persian Gulf situation but to do so without handing him and the administration a blank check on the war powers issue.

I firmly believe Senate Concurrent Resolution 147 strikes the proper balance between these competing requirements. I hope this resolution is adopted overwhelmingly.

Mr. BRADLEY. Mr. President, the American people are about to enter our third month of a full-fledged military, political, and economic commitment to protect the vital interests of our Nation in the Persian Gulf. With this resolution, Congress affirms that we support the President's efforts and his leadership in assembling an international consensus to deter Iraq's aggression toward its neighbors. But neither the administration nor the American people should interpret this resolution as a blank check for military action in the region. Nor should it be interpreted as waiving the War Powers Act. The language of the resolution itself cites the need to defend American interests "in accordance with the decisions of the U.N. Security Council and in accordance with U.S. constitutional and statutory processes, including the authorization and appropriation of funds by the Congress."

Iraq's sudden invasion of Kuwait 2 months ago posed a direct threat of widespread disruptions of world oil supplies, as well as a threat that the balance of power in this vital, oil-rich region would be supplanted by the domination of a hostile dictator. Ever since the invasion, the President and his administration have mobilized an unprecedented coalition of nations who understand the threat and are willing to contribute to the defense of Iraq's neighbors by supporting economic sanctions and aiding the countries that are bearing the heaviest economic costs. But reminding Saddam Hussein that the international community, not just the United States, will oppose his actions, the President has improved the chances that this conflict will end peacefully, as Saddam realizes the magnitude of the challenge he faces. The President further deserves credit for taking full advantage of our changing relationship with the Soviet Union to join in a cooperative effort in the Persian Gulf that would have been inconceivable even a year ago.

At the same time, there is a growing view that, regardless of how well the administration has handled the situation since the Iraqi invasion, they failed to pursue policies that might have deterred Saddam Hussein from invading in the first place. To the extent this failure derives from lack of clarity as to the nature of America's vital interests in the region, it bears not only on which the administration neglected to do to deter Iraq's aggression, but also on our future actions.

Mr. LAUTENBERG. Mr. President, I rise in support of Senate Concurrent Resolution 147, which supports the President's actions to counter Iraqi aggression in the Persian Gulf. It also expresses Congress' support for continued action by the President in accordance with both United Nations resolutions on Iraq, and the United States Constitution and laws, to deter Iraqi aggression, to protect American lives and vital interests in the region.

I am voting for this resolution because the President has done an excellent job in marshaling the world community against Iraqi aggression, and deserves our backing. I also support the resolution because I believe it was right to send American troops in defense of the critically important national interests at stake in the gulf. The President's hand will be strengthened in dealing with Iraq and the world community by having a united Congress behind him.

One issue that has arisen with respect to this resolution is whether it gives the President a blank check to go to war in the gulf, or relieves him of the need to consult, closely and often, with the Congress on our strategy in the gulf. Mr. President, I do not believe it does. The resolution clearly states that the President has our support for continued action, but only within the confines of the Constitution, the authorization and appropriation process, and the U.N. resolutions on Iraq. The resolution thus acknowledges that Congress retains the power of the purse over the gulf operation, and the constitutional power to declare war, which is the basis for the War Powers Act.

This resolution does not authorize the President to go to war. This would require clear congressional authorization, which should be sought under the War Powers Act or through a declaration of war. No President should commit American troops to war without the support of both the Congress and the American people. I am confident that the President would not rush precipitously to war without consulting Congress or without winning our support.

I urge my colleagues to pass this resolution.

YES TO SENATE CONCURRENT RESOLUTION 147, NO TO A UNITED STATES-IRAQ WAR

Mr. HOLLINGS. Mr. President, I will vote for Senate Concurrent Resolution 147 supporting the President's actions in rallying the United Nations and the international community to oppose Iraqi aggression. In a time of crisis, such as we now face in the Persian Gulf, we Americans have only one President, and we must give him the benefit of the doubt. But while I give President Bush the benefit of the doubt, nonetheless the doubt remains. Indeed, let me be very blunt in saying that I vote for this resolution with the gravest of reservations about the wisdom of our evolving policy in the Persian Gulf.

Let's go right to the point of these U.N. Security Council resolutions. Taken in isolation, each one of the eight resolutions is correct and unobjectionable. Of course we demand that Iraq withdraw its forces from Kuwait. Of course we support the international embargo of Iraq. Of course we are outraged by Iraq's violation of foreign embassies and by its abduction of foreign nationals, including thousands of Americans.

But, as history amply demonstrates, Security Council resolutions, in and of themselves, are impotent and innocuous. What deeply concerns me is that the administration has used these Security Council resolutions as sugar coating for what remains, in essence, a unilateral U.S. response in taking on Saddam Hussein. We have willy-nilly committed an extraordinary U.S. expeditionary force, including an air and sea armada not seen since the Vietnam war, to back up President's Bush's assertion that Saddam's aggression "will not stand."

Let me be very clear on the following point. I supported the initial United States deployment for the express and limited purpose of defending Saudi Arabia from the clear and present danger of attack by Iraq. There was a fire raging out of control on Saudi Arabia's border, and the United States had the only available fire brigade. We did what we had to do. But we have now moved beyond that limited purpose. The administration has stated that it is United States policy to compel Iraq to leave Kuwait, and to restore the Kuwaiti emir to his throne and riches. I do not believe—and prior to August 2 the United States Government did not believe—that preservation of Kuwait territorial integrity and the emir's regime is a vital interest of the United States justifying the expenditure of American blood.

Almost as an afterthought to U.S. deployment in early August, the administration cajoled other nations to send troops and treasure to back up the U.S. commitment in the gulf. But, nonetheless, it remains overwhelmingly a U.S. initiative. I am also troubled by the fact that, in order to retain the U.N. imprimatur, we are going to have to yield control of U.S. forces to questionable U.N. policymaking and to questionable U.N. military command.

If there is war in the Persian Gulf, as it now stands it will clearly be a war between Iraq and the United States, not between Iraq and the United Nations. Whether or not we win such a war, it would have catastrophic consequences for future U.S. relations vis-a-vis the Persian Gulf and the nations of the Arab masses. In the wake of a United States offensive against Arab Iraq, so great would be the tidal wave of anti-U.S. reaction that even those Arab governments now favorably disposed toward us would be compelled by public opinion to break with the United States. We would win the war but lose the peace.

In early August, we were the only fire brigade available, but that situation has now changed. We need to recall two lessons from the Vietnam war. The first lesson is that there will be no Gulf of Tonkin resolution this time around. Senate Concurrent Resolution 147 is limited in its scope, and neither explicitly nor implicitly gives license to the President to wage an unprovoked offensive against Iraq. The second lesson from Vietnam is that, this time around, we need to do the "-ization" before hostilities break out. President Nixon came up with his Vietnamization policy only after tens of thousands of American boys had been killed. We must Arabize this present conflict, and we must do so before American GI's are sacrificed by the thousands. Our imperative is Arabize the forces and voices opposing Saddam Hussein.

Bear in mind that Saddam is not primarily our problem. He is the Arab world's problem. Accordingly, it is up to the Arabs, in concert with the Iranians, to deal with him. If they lack the political and military will to contain him, then our own sacrifices would be for nought. An American-Iraq war would be as futile as it would be disastrous for our country.

IRAQI AGGRESSION AGAINST KUWAIT

Mr. CONRAD. Mr. President, I rise to lend my support to the resolution expressing the Congress' approval of the actions the President has pursued thus far in response to Iraq's outrageous aggression against Kuwait.

As so many of my colleagues have said here today, the President has done a good job in responding quickly and firmly to Saddam Hussein's flagrant violations of international law. The President has pursued a firm but careful policy in a dangerous, highly volatile situation. My vote today represents an endorsement of the actions he has taken to date.

My vote is also an expression of support for and pride in the men and women in our Armed Forces who are holding the line in the desert and on the seas against further Iraqi aggression. Theirs is the toughest of missions. They have the prayers and support of us all.

As I cast my vote today, I remain hopeful that the gulf crisis can be resolved without war. I thought the President's address to the United Nations was very helpful, and I urge him to continue to work with our allies and through the United Nations to restore peace and stability to the gulf.

I would also say that while I am supportive of the President's approach in general to this crisis, I remain deeply dissatisfied with our allies' response to our appeals to share the burden. I hope the administration will press even harder on this front. The current allied response is simply unacceptable.

Finally, a resolution like the one we are voting on today cannot help but revive memories of the Gulf of Tonkin resolution. Let me state unequivocally that my vote today should not be construed as unqualified support for any future actions the President may take in the gulf. I reserve the right to pass judgment of future policy through the authorization and appropriations process, and the mechanisms of the War Powers Act.

The PRESIDING OFFICER. Under the previous order, the hour of 2:15 p.m. having arrived, the Senate will now proceed to vote on Senate Concurrent Resolution 147, which the clerk will report.

The bill clerk read as follows:

A concurrent resolution (S. Con. Res. 147) supporting the actions taken by the President with respect to Iraqi aggression against Kuwait.

The PRESIDING OFFICER. The question is on agreeing to the concurrent resolution. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON], is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 96, nays 3, as follows:

[Rollcall Vote No. 258 Leg.]

YEAS—96

Adams	Exon	McClure
Akaka	Ford	McConnell
Armstrong	Fowler	Metzenbaum
Baucus	Garn	Mikulski
Bentsen	Glenn	Mitchell
Biden	Gore	Moynihan
Bingaman	Gorton	Murkowski
Bond	Graham	Nickles
Boren	Gramm	Nunn
Boschwitz	Grassley	Packwood
Bradley	Harkin	Pell
Breaux	Hatch	Pressler
Bryan	Heflin	Pryor
Bumpers	Heinz	Reid
Burdick	Helms	Riegle
Burns	Hollings	Robb
Byrd	Humphrey	Rockefeller
Chafee	Inouye	Roth
Coats	Jeffords	Rudman
Cochran	Johnston	Sanford
Cohen	Kassebaum	Sarbanes
Conrad	Kasten	Sasser
Cranston	Kerry	Shelby
D'Amato	Kohl	Simon
Danforth	Lautenberg	Simpson
Daschle	Leahy	Specter
DeConcini	Levin	Stevens
Dixon	Lieberman	Symms
Dodd	Lott	Thurmond
Dole	Lugar	Wallop
Domenici	Mack	Warner
Durenberger	McCain	Wirth

NAYS—3

Hatfield	Kennedy	Kerrey

NOT VOTING—1

Wilson

So the concurrent resolution (S. Con. Res. 147) was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, reads as follows:

S. CON. RES. 147

Whereas on August 2, 1990, the armed forces of Iraq invaded and occupied the State of Kuwait, too large numbers of innocent hostages, and disregarded the rights of diplomats, all in clear violation of the United Nations Charter and fundamental principles of international law;

Whereas the President condemned Iraq's aggression, imposed comprehensive United States economic sanctions upon Iraq, and froze Iraqi assets in the United States;

Whereas the United Nations Security Council, in a series of five unanimously approved resolutions, condemned Iraq's actions as unlawful, imposed mandatory economic sanctions designed to compel Iraq to withdraw from Kuwait, called on all states to take appropriate measures to ensure the enforcement of sanctions, called for the immediate release of all hostages, and reaffirmed the right of individual and collective self-defense; and

Whereas, in response to requests from governments in the region exercising the right of collective self-defense as provided in Article 51 of the United Nations Charter, the President deployed United States Armed Forces in the Persian Gulf region as part of a multilateral effort: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That (a) the Congress strongly approves the leadership of the President in successfully pursuing the passage of United Nations Security Council Resoltuions 660, 661, 662, 664, 665, 666, 667, and 670, which call for—

(1) the immediate, complete, and unconditional withdrawal of all Iraqi forces from Kuwait;

(2) the restoration of Kuwait's sovereignty, independence, and territorial integrity;

(3) the release and safe passage of foreign nationals held hostage by Iraq;

(4) the imposition of economic sanctions, including the cessation of airline transport, against Iraq; and

(5) the maintenance of international peace and security in the Persian Gulf region.

(b) The Congress approves the actions taken by the President in support of these goals, including the involvement of the United Nations and of the friendly governments. The Congress supports continued action by the President in accordance with the decisions of the United Nations Security Council and in accordance with United States constitutional and statutory processes, including the authorization and appropriation of funds by the Congress, to deter Iraqi aggression and to protect American lives and vital interests in the region.

(c) The Congress calls on all nations to strengthen the enforcement of the United Nations imposed sanctions against Iraq, to provide assistance for those adversely affected by enforcement of the sanctions, and to provide assistance to refugees fleeing Kuwait and Iraq.

SEC. 2. The Secretary of the Senate shall transmit a copy of this concurrent resolution to the President.

EXECUTIVE SESSION

NOMINATION OF DAVID H. SOUTER, OF NEW HAMPSHIRE, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The PRESIDING OFFICER. Under the previous order, the Senate will now go into executive session, and proceed to the consideration of the nomination of David H. Souter, to be an Associate Justice of the Supreme Court of the United States.

The nomination will be stated.

SUPREME COURT OF THE UNITED STATES

The assistant legislative clerk read the nomination of David H. Souter, of New Hampshire, to be an Associate Justice of the Supreme Court of the United States.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, let me begin by suggesting that the committee has worked diligently over the weekend to provide all Members of the Senate with a copy of the committee report laying out in some significant detail the rationale for the committee's position, along with the dissenting view that was put forward.

Mr. President, let me say before we begin this process, that neither Judge Souter nor his chief supporter, my distinguished colleague from the State of New Hampshire, has urged me as chairman of the committee to rush this process. But the President has urged us to rush the process.

The Supreme Court sat for the first time this year, yesterday. Today is the second day of their sitting. And although, God willing, if Judge Souter becomes Justice Souter, he will sit for as long as his predecessor Justice Brennan did, which would mean for another 34 years. A couple days will not make a difference. But apparently it makes a great deal of difference to the President of the United States.

So I would say to my colleagues I do not want to in any way curtail anyone speaking as long as they would like and feel the need to speak on such an important nomination. But there is a rumor drifting around here that, if we do not finish by 6 o'clock, somehow we are not going to get to vote on Judge Souter.

I hope either we finish before 6, or, if we do not, we stay tonight until we finish voting on such an important matter, particularly in light of the fact that the President has publicly gone on television and exhorted me as chairman of the committee to move the process along.

We have waived the 48-hour rule that is ordinarily observed from the time a report on a nominee is submitted to the Senate until the time we take up the nomination. Even those who have opposed Judge Souter, and stated so publicly, have participated and are willing to allow the process to go beyond its ordinary timeframe; that is, move faster than the rules call for.

So with that brief introduction, let me suggest that I hope that my colleagues are prepared to come to the floor to speak on behalf or, if they are opposed, in opposition to Judge Souter so we can move as rapidly as possible.

I have a relatively long, about a 20-minute statement, on behalf of Judge Souter's nomination. But I see that some of my colleagues who wish to speak are here. I will have time to make the statement because I am here for the duration.

So rather than take the time at the outset, I yield to my distinguished colleague from South Carolina, if he wishes to speak first. If not, I would move to recognize one of our colleagues. But I will withhold my state-

ment which I will make at some point today on behalf of Judge Souter.

Mr. THURMOND. Thank you very much.

The PRESIDING OFFICER. The Senator South Carolina.

Mr. THURMOND. Mr. President, today, the U.S. Senate is considering the nomination of Judge David H. Souter to be an Associate Justice of the Supreme Court of the United States. The Judiciary Committee had earlier undertaken its task of holding extensive hearings and reviewing the qualifications of Judge Souter, a most important responsibility.

Last Thursday, the Judiciary Committee considered this nominee. The committee favorably reported this nomination to the full Senate by a vote of 13 to 1. I repeat, a vote of 13 to 1. This vote is certainly a strong recommendation to the full Senate in favor of Judge Souter, an individual who has outstanding qualities to serve on this Nation's highest court.

Briefly, I would like to comment on Judge Souter's confirmation hearings which spanned 5 days. The committee conducted a hearing which was equitable, thorough, and diligent. Judge Souter's 3 days of exhaustive testimony provided the opportunity to carefully examine and review his intellectual capacity, moral character, and personal and professional background. Additional witnesses who testified made a contribution to the committee's consideration of Judge Souter's nomination to this esteemed position. Finally, I would like to commend the distinguished chairman of the Judiciary Committee, Senator BIDEN, for his handling of the hearing on this nominee which was conducted in a fair and equitable manner.

My review of Judge Souter's background convinces me that he possesses the necessary qualities to be an outstanding member of the Supreme Court. His intellectual credentials are impeccable: Phi Beta Kappa, Rhodes scholar, magna cum laude graduate of Harvard, law degree from Harvard, and graduate study at Oxford University. His experience is extraordinary: Currently serving as a judge of the U.S. Court of Appeals for the First Judicial Circuit; formerly an associate justice of the New Hampshire Supreme Court for 7 years; previously served as a judge on the New Hampshire Superior Court for 5 years; served as the attorney general for the State of New Hampshire; held positions as deputy attorney general, assistant attorney general, and practical law in the private sector.

Mr. President, the American Bar Association carefully scrutinized the professional competence, integrity, and judicial temperament of Judge Souter. The ABA determined that Judge Souter deserved its highest rating based on its extensive investigation which included such comments as:

> Judge Souter is highly competent and possesses the scholarly, analytical, and writing skills necessary to serve on the Supreme Court.

As well, Judge Souter had previously received the highest rating from the ABA for his current position on the First Circuit Court of Appeals.

Regarding the hearings on this nominee, Judge Souter's impressive testimony before the committee demonstrates he is a man of keen intellect who is devoted to the law. His thorough understanding of the law and answers to the vast number of probing questions on a wide range of legal topics assures me that he possesses the substantial knowledge and understanding to make an outstanding Supreme Court Justice. Judge Souter showed that he clearly comprehends the majesity of our constitutional system of government and spoke eloquently about the lessons he has learned during his years of service on the bench. The first lesson, he said, is

> Whatever court we are in * * * where we are on a trial court or an appellate court, at the end of our task some human being is going to be affected.

The second lesson, he stated, is

> If * * * we are going to be judges, whose rulings will affect the lives of other people * * * we had better use every power of our minds and hearts and * * * beings to get those rulings right.

I strongly believe that Judge Souter will temper scholarly, knowledgeable decisions with sensitivity for those individuals who will be affected by them.

Many distinguished witnesses testified in favor of Judge Souter. Several of these witnesses have known Judge Souter for years—they are well aware of the outstanding qualities that this individual possesses.

Governor Baliles, who was formerly attorney general and a former Governor of Virginia, stated:

> Judge Souter is an individual who [will] bring objective intellect, integrity, and centered view of judicial procedure to the Nation's highest Court * * * not a populist but a rationalist, one who is moderate in tone and expression.

Ms. Deborah Cooper, a lawyer in private practice in Lebanon, NH, testified:

> I have unshakable confidence that Judge Souter * * * will approach the issues before the Supreme Court * * * not with a pre-established political agenda or ideology, but with superior legal skills, intellect and unparalleled integrity.

A former Attorney General of the United States also testified in his favor.

Members of the law enforcement community strongly endorsed Judge Souter, testifying, he is "extremely well-qualified to serve on the highest court in the United States."

There were certainly many other distinguished witnesses who spoke out strongly in favor of Judge Souter for a position on the Supreme Court. Time does not allow me to reiterate all of that testimony.

Mr. President, the framers of our Constitution created the judicial branch as an impartial, independent branch of government. A member of the Supreme Court must consider hundreds, even thousands of issues during his or her tenure. While any one issue may now be more prominent than others, as times change, so will the issues before the Court. A member of the Supreme Court makes decisions in a vast array of areas and is not put in place to make short-term decisions to satisfy any political constituency, any one individual, or any particular group. This nominee should be judged on his integrity and intellectual and professional qualifications—not on his willingness to endorse the views or position of any one particular person or political constituency.

In summary, this nominee, as does any nominee, comes to the Senate with a presumption in his favor. As the President is called upon under our Constitution to make judicial appointments, I strongly believe it is up to the opponents of a nominee to overcome the presumption in his favor. The burden of proof is not placed on the nominee to prove that he is fit to serve. Clearly, those few who oppose Judge Souter have not overcome the presumption in his favor.

In closing, Judge Souter has been thoroughly scrutinized by the Judiciary Committee. He has received the bipartisan endorsement by 13 of the 14 members of the committee. Without question, he has a keen sense of justice, a clear view of the concept of fairness, and a deep understanding of the impact his decisions will have on the individuals affected by them. Judge Souter will make an outstanding addition to the Supreme Court.

I urge the Members of the Senate to vote in favor of this nominee.

I yield the floor, Mr. President.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I am going to make my statement now, but before I begin, let me acknowledge something I think is probably unique in the annals of American history, although I cannot swear to that at this moment.

The reason that I yielded—in the ordinary processes the chairperson of the committee speaks first on an important matter like this—the ranking member of this committee, Senator THURMOND, has sat on and deliberated over and voted on, I suspect, although I am not certain, more Supreme Court nominations than any other person in the history of the United States of

America. I just want to say that it is an extraordinary pleasure working with him and it is an extraordinary undertaking working with him because you never quite know exactly what he is going to do or say no matter how many of these nominees he has deliberated over. But one thing always is certain, whatever he says always ends up on point.

I think it is 23 appointees, nominees, to the Supreme Court of the United States, that Senator THURMOND of South Carolina has voted on.

And he pointed out to me——

Mr. THURMOND. There were 105 nominees.

Mr. BIDEN. See what I mean? You never know exactly what is going to happen. He just pointed out to me there were 105 nominees in our entire history. So about 20 percent, between 20 and 25 percent of all the nominees, about 20 percent of all the nominees that have ever been nominated for the Court, my friend from South Carolina has voted on them.

We have not always voted the same. I suspect I will be observing him voting on nominees long after I have left this Chamber, and I suspect we will not agree on all the nominees. But we do agree on this one, and we have agreed on more than we have disagreed.

Ten weeks ago, Mr. President, President Bush began the solemn task of filling Justice Brennan's seat on the U.S. Supreme Court by nominating Judge David Hackett Souter to assume that high post. Today, the Senate exercises its constitutionally assigned role in the process by deciding whether we will give our consent to the President's nomination.

Over these past 10 weeks, the members of the Judiciary Committee have devoted literally hundreds of hours to studying Judge Souter's record, his credentials, and his judicial opinions. We held extensive hearings on this nomination—the third longest set of hearings on any Supreme Court nominee in our history.

And most importantly, we used these hearings to question Judge Souter in depth on matters of judicial philosophy and constitutional law. Judge Souter was questioned for the second longest time of any Supreme Court nominee; for almost 20 hours, we had an opportunity to examine this man and his views.

We had the need—the duty—to learn as much about Judge Souter as possible. No nominee in a quarter century had come to this committee with less known about his or her constitutional philosophy than David Hackett Souter. And no nomination—at any time since the 1930's—had come before the Senate at a moment of such importance, in terms of setting the future direction of the Supreme Court, and, I might add, in turn, the United States of America.

At this critical moment—what I called a constitutional crossroads, 3 weeks ago today—I referred to it as that and I contend it is that, a constitutional crossroad—I mentioned to this Chamber that our committee had an obligation to learn all that it could about David Hackett Souter's constitutional philosophy.

And at this critical moment—and where I disagree with my friend from South Carolina—the burden of proof rests, as it always has and always should, on the nominee to demonstrate that he is the person whom we should confirm to sit on the Nation's highest court.

As I see it, Judge Souter has met this burden of proof with respect to some matters; he has failed it with respect to others. His philosophy was neither proven to be wholly inappropriate or wholly acceptable for confirmation.

In my "additional views" in the Judiciary Committee report, I have detailed my personal assessment of what we have learned about Judge Souter's philosophy in nine key areas. Today, I would like to briefly summarize these views, starting with the most positive aspect of Judge Souter's record, at least as far as this Senator is concerned.

First, in the area of freedom of speech, Judge Souter indicated his support for Justice Brennan's landmark precedent of New York Times versus Sullivan; for the Supreme Court's ban on prior restraint of the press; and for the Brandenburg decision that permits speech that urges civil disobedience.

Thus, Judge Souter showed a very strong dedication to the key principles at issue in this area.

In the field of free exercise of religion, Judge Souter indicated that he had "no reason to raise questions about the appropriateness of the strict scrutiny test" for laws that impair religious practice. Thus, Judge Souter suggested that he disagreed with the Supreme Court's recent and restricted decision in Employment Division versus Smith, a decision that in my view undermines religious freedom in our country. And again I found his disagreement with that decision very encouraging.

In the area of stare decisis, Judge Souter detailed a philosophy that shows what I beleive to be a proper respect for precedent. He particularly emphasized that before the Supreme Court reverses, a prior ruling, it should take into account "whether private citizens * * * have relied upon [the precedent] in their own planning to such a degree that * * * it would be a great hardship in overruling it now."

This, in my view, favorably distinguishes Judge Souter from other nominees who said that they would look only at whether the Government structures and social institutions have been built up around a particular decision before deciding to reverse the case, and not whether or not individuals as well had come to rely upon that decision, a distinction with a significant difference, as I read what Judge Souter is saying.

Finally, for this side of the ledger—the ledger where he has, in my view, unquestionably met what I believe to be the burden of proof he must meet—and most importantly, Judge Souter categorically rejected the arch-conservative judicial philosophy of original intent, a philosophy, I might add, were it to be adhered to by the Supreme Court, would require the Court to overturn, as Judge Bork accurately stated, a couple dozen landmark decisions.

And that view of original intent, the view that the meaning to the constitutional provisions should be limited to the specific intentions of the Framers of the Constitution at the time they wrote the Constitution, that is what I mean and most people mean by original intent.

This doctrine—was Judge Souter himself acknowledged—would undermine many of the most important decisions the Supreme Court has given us through the years. To name a few, Brown versus the Board of Education, a decision outlawing, making it illegal, and recognizing as unconstitutional the doctrine of separate but equal; separate facilities for black children in America were no longer deemed to be constitutional.

Another decision where I beleive it would overrule that view of the Constitution is the one person, one vote ruling, those decisions which said that they can no longer allow one part of a State with a very small population to have a disproportionate say in the affairs of that State, giving, in effect, the people in the metropolitan areas less than an equal vote with people in rural areas.

And there are the Court's precedents that outlawed discrimination against women, a whole number of cases that over the past years have recognized that the 14th amendment embraces the notion that when they say equality, we are talking about equality for men and women, equality among the sexes. All of those areas of the Court's decisions would be, in fact, in jeopardy if the doctrine of original intent were adhered to by the Court or this nominee.

And Judge Souter said that this "original intent" doctrine, and I am now quoting him, is "not * * * the appropriate criterion for constitutional meaning."

In a response to my question, and the question I asked was this: "Does

the correct interpretation of a constitutional provision * * * change over time?" Judge Souter responded: "Principles don't change, but our perceptions of the world around us and the need for those principles do."

As a matter of fact, the very thing that gave me heart and gave my friend from Iowa, who is on the floor, cause and pause, the very thing that made me look at Judge Souter and say, "Well, we have a Judge here that will interpret the Constitution, use a methodology that is consistent with the way the Court has ruled in the recent past, and is necessary for the well-being of America," is the very thing that my friend from Iowa very skillfully questioned the Judge about, because it gave him great concern.

In all of these critical respects that I have mentioned, Judge Souter clearly proved that his judicial philosophy was sound and, I would argue, commendable. In all of these critical respects Judge Souter met his burden of proof and then some.

In other areas, though Judge Souter compiled a more mixed record in this Senator's view. And these are the four areas I would like to address for a moment. The first is that there is the first amendment prohibition on the establishment of religion. In that area his record is mixed, in my view. Here Judge Souter criticized the prevailing Supreme Court rule in Lemon versus Kurtzman—which, by the way I might add is not an exceptional view; many people have criticized it—but he did so without indicating what guarantees of religious liberty he would impose in its place. As a result, we are left with a very unclear picture of how Judge Souter approaches this important question. We have very little idea of how high he thinks the wall of separation between church and state ought to be.

The second area that gives me concern is the area of race discrimination. Here, too, some things Judge Souter said were quite hopeful. He called the struggle for racial equality the most tragic problem confronting the Nation, and he suggested that at least some types of affirmative action, some types of affirmative action programs, are permissible, in his view; again giving me reason for hope, giving some of my colleagues pause for concern. Yet aspects of Judge Souter's record as Attorney General and his testimony before our committee were troubling. Again, the record is a mixed one.

Third, there is the area of gender discrimination. Judge Souter criticized the Supreme Court's current middle tier scrutiny for laws that discriminate on the basis of gender and even implied that the basis for his criticism was that the Court's existing standard fails to provide adequate protection for women's rights. As the Chair knows; there are three general tiers of scrutiny. Strict scrutiny—the Court says the State has to have some overwhelming right to be able to justify the existing practice saying women cannot do something men can do. The middle tier level says, we will listen to it, but it better be a pretty strong reason why you are allowing a discrimination between men and women based upon something a woman may want to do. And then there is the rational basis test which basically says, if the State comes up with any reason that is rational. There used to be cases where a woman could not be a bartender, and the rationale was "unless they happened to be married to or the child of the owner of the bar." A rational basis test basically was, it is rational to want women to be home, not in the bar. That is kind of a preposterous notion under our thinking today, if we would say women cannot be a bartender based on that reason. But under a rational basis test, were one in existence, the State would be able to pass such laws.

So, which tier of scrutiny—very high, middle, or low—that the judge would apply in dealing with gender discrimination cases is of great consequence to the people of this country, obviously to the women of this country. Yet I found, notwithstanding the fact he criticized the middle tier and implied that his criticism was based on the fact that one could not be certain enough, that it was not strong enough, he never did tell us what standard he would apply. I found that disappointing, his failure to clearly indicate whether his standards in this area would be in fact more or less rigorous than the current law. The judge's tone suggests that he was headed in the right direction, from my perspective—that is, it should be a very much stronger test the State should have to prove in order to be able to discriminate against women for anything—but we do not know for sure whether he wants a test that is stronger or weaker. I would have felt much more comfortable had he been willing to tell us. And had he told us, he would not in any way be telling us how he would rule in a future case. He would just be telling us what methodology he would apply in order to interpret the facts in any given case.

Finally, there is the area of privacy and reproductive choice, probably the single most significant area that Judge Souter failed to speak to. Choice; here Judge Souter did say some encouraging things. He agreed there is a marital right to privacy and the right of married couples to make choices about procreation, to use his phrase, "at the core of" the fundamental right to privacy. That is, the right to determine whether or not to become pregnant is "at the core of" the right to privacy recognized in the marital right to privacy.

He agreed that the Constitution protects unenumerated rights, unlike some who have come before us in the recent past, and, more specifically, that there is a substantive content in the due process clause of the 5th and 14th amendments, important guarantees of liberty for all Americans.

He even said he would give meaning to the words of the ninth amendment, which was the most refreshing of all that I heard. One recent brilliant nominee said the ninth amendment was little more—and I think I am quoting precisely when I say "little more than a water blot on the Constitution." It was nice to see a justice come along and say there was a ninth amendment and it meant something and it was another potential protection for individual freedoms.

Perhaps most importantly to me, Judge Souter flatly rejected the position being advanced by Chief Justice Rehnquist and Justice Scalia for determining when in the future privacy rights will be recognized by the Court. Judge Souter said that he "could not accept their view." I find that incredibly encouraging.

When we brought that out—I will not take the time of the floor at this moment, but in footnote 6 of the Michael H. case, the very erudite and articulate Justice Scalia set out a rational for the conditions under which the Court should go back in history to examine the social mores of a society to determine whether or not it was ever intended to be protected. But it was a formula for disaster. By taking his rational and applying it, it would be very, very difficult—very difficult—for anyone in the future to find that there were rights of privacy that existed that individuals have. It would have made it very difficult, using Justice Scalia's rationale set out in footnote 6, to have come to the conclusion on a number of cases that are already law. Loving versus Virginia, that outlawed the antimiscegenation laws—applying the rationale as most understand it, set forward by Justice Scalia in footnote 6, it would be very difficult to figure out how anyone, that Court, could have come to the proper conclusion of saying antimiscegenation laws were unconstitutional. So, when Judge Souter, rejected that rationale, it was a significant step, in my view, toward his meeting the burden of proof that I believe he need meet in order to be on the Court.

But at the opposite end of the spectrum, Mr. President, on the privacy area, I found some troubling things. I found most troubling Judge Souter's initial refusal to discuss whether unmarried persons have any fundamental right of privacy and, worse still, his ultimate declaration that whether such rights exist, that is such rights of privacy for unmarried individuals—I

asked whether they existed or not. "Do unmarried individuals have rights to privacy?" His ultimate declaration was that whether such rights exist is an open question.

Mr. President, in my view this is not an open question. Individuals do have a constitutionally protected right of privacy and it is a fundamental right of privacy, and the Supreme Court, in 26 cases written by 10 different Justices over the past 17 years, has recognized this fundamental right. In calling the existence of a right to privacy an open question, Judge Souter, I believe, was plainly wrong.

Mr. GRAHAM assumed the chair.

Mr. BIDEN. Mr. President, yet, between the privacy issues on which Judge Souter met his burden of proof and the issues on which Judge Souter failed is one vital privacy issue which Judge Souter declined to speak to altogether. And that is whether a woman's fundamental right not to be pregnant continues after her birth control fails.

As I explained in detail during the hearings, I felt that Judge Souter could have told us far more about his views in this area without compromising his judicial independence or indicating how he would vote on a request to overrule Roe versus Wade. Judge Souter's refusal to talk at all about his philosophy in this area frustrated Senators and frustrated our ability to exercise one of our constitutional responsibilities and, needlessly so. For example, Judge Souter was not at all reluctant to tell us, at least in what general categories he would apply, what methodology he would apply on gender discrimination cases. Yet, he would not discuss that at all in these other cases.

The real issue here is, in the most fundamental form without speaking to Roe is, if we recognize that a woman has a fundamental right to determine in the first instance whether or not she should become pregnant, and that is basically what the Connecticut case, Griswold, was all about. A married couple said as a married couple, we have a right to use birth control. Connecticut State law, to oversimplify it, said you do not. It went to court. The court said there is a fundamental right to determine questions of procreation. So if a husband and wife decide they do not want to have a child at that moment and use a birth control device and that is recognized as a fundamental right of privacy to use that, what happens when it fails? Does that right vanish the moment a woman becomes pregnant? What constitutes the legal definition of pregnancy? When does that right expire? And does it continue to be fundamental or is it a mere liberty interest, as every justice has acknowledged it could be?

What about contraceptive devices that, in medical terms, impact upon ending a pregnancy after the sperm and the egg meet? What is that? How do you make those distinctions? Someone constitutionally has to do that. We were not asking Judge Souter how he ruled on any particular case, but when does that fundamental right, he acknowledges, exist. How does it expire, if it does?

In sum, he did not speak to that question, and I have not said this before, but I say it now. I believe the reason many of us have given him a bye, if you will, on insisting that he answer every one of those questions, is not because we did not have a right to ask those questions, and we did ask them, but it became clear to me that Judge Souter had concluded that he would not speak to anything, anything at all, that got him remotely close to that issue.

And so, if you look at the sum of his testimony relative to privacy, relative to what he did not speak to, it is a tough decision, and I can see how someone could conclude that on the basis of that, they would not vote for him. I, on the other hand, concluded that on the basis of the whole record, I would vote for him.

So, in sum, today the Senate has before it a nominee who has satisfied his burden of proof with respect to some issues, straddled the line on others, failed in some, and left us with a question mark on still other matters. This mixed picture makes this nomination a very, very hard case; hard for me, as one Senator and as chairman of the Judiciary Committee, to determine what my proper role and responsibilities command me to do. But after weighing the evidence very closely and, believe me, I have read and reread and listened and prepared as well as I possibly could, I believe, and weighed as closely and as fairly as I could, and studied the record as intensely as I could, I on balance have decided to support the confirmation of Judge Souter as an Associate Justice to the Supreme Court.

Taking Judge Souter at his word and rereading those words quite carefully several times, I have come to the belief that Judge Souter is not an ideological rightwing conservative. And I do not mean only that he has proved himself not to be an extremist.

Judge Souter went much further still. He clearly distinguished himself from an even broader school of legal conservatism, including some conservative positions now being taken by members of the current court. He rejected Justice Scalia's cramped formula for determining when fundamental rights and unenumerated rights could be acknowledged. He rejected two key principles of rigid interpretism, saying that the due process clause does protect substantive liberties and that the meaning of the constitutional provisions cannot be limited to the original intent of the framers.

He rejected the Court's recent majority opinion in the Smith case on religious freedom, and he rejected the conservative view that courts must stay out of the realm of addressing profound social problems. Indeed, Judge Souter insisted that the Court must intervene in these areas when a vacuum of responsibility exists.

This repeated rejection of the precepts of modern archconservative leadership of legal interpretism, proved to be what Judge Souter was not; namely, he is not the sort of man who, if confirmed, would run roughshod over the important precedents handed down by the Supreme Court over the past three decades.

But that alone is not enough. Beyond proving what he was not, Judge Souter also proved to me affirmatively that much about his philosophy, about his approach to dealing with the issues of the future merit our consent to his confirmation.

Weighing most heavily on me in this respect were Judge Souter's following statements: That he believed that judges must vindicate rights not explicitly stated in the Constitution; that the due process clause protects unenumerated liberties; that a fundamental right to privacy exists; that he would use a broad and not narrow methodology in deciding when the court should recognize such rights; and, lastly, but importantly, that judges must use the Bill of Rights to protect the rights of minorities.

These statements, of course, give us no clear sense of how Judge Souter is going to rule on any particular case, and I want to emphasize that point. I have no notion how he is going to rule on any particular case. None of us here today, none of us, know how Judge David Souter will rule on any specific case if he becomes Justice Souter. But this is how it should be.

As we emphasized over and over again during our hearings, our committee was not looking for case specific commitments from the nominee. What Judge Souter's statements to the committee do indicate is that he has an approach on most issues far more conservative than I would hope for the court, nonetheless an acceptable one.

I said that this was true of most issues. Unfortunately, Judge Souter's flat refusal to discuss reproductive choice leaves us with no indication at all where he will come out on this issue and, indeed, it leaves us with no indication at all of even how he thinks about this constitutional question.

What Judge Souter did tell us, however, was this: "I have not made up my mind and I do not go on the Court saying that I must go one way or the other."

This statement goes a step beyond refusing to tell us his view on repro-

ductive freedoms and tells us, if Judge Souter is to be believed, and I do believe him—he was under oath—that his mind is open.

I am not undecided on the underlying question to which he would not speak. I strongly believe that a woman's right to choose is a fundamental right, a fundamental right protected by our Constitution.

I believe that any attempts to read that right out of the Constitution are misdirected and, if they were read out of the Constitution, would reflect a mistaken understanding of the true majesty of the liberty clause of the 14th amendment to our Constitution.

But I also known that the President of the United States has a diametrically opposed view to mine. President Bush has pledged to see Roe overruled because he believes it to be wrong. He obviously has no intention of submitting, and will never submit, a nominee who adheres to my very different view on this matter. I know that and we all know that.

It is one thing to reject a nominee who would come to the court opposed to reproductive freedom. If the President attempted to send such a nominee, one who shared his view, he or she would get a serious fight up here. Although it is always dangerous to predict the outcome of this body, I submit that that nominee would have at best an even chance of surviving the advise and consent process of the Senate. That is just one person's view.

But if the Senate goes a step further and also rejects a nominee who genuinely seems to be open minded on this question, neither committed to the President's view nor the opposing view—if we make that a litmus test for confirmation, particularly in light of the fact that the nominee has gone so much further on so many other issues that I have mentioned earlier leading us to the inescapable conclusion that he is not of the school of thought that views the Constitution in such cramped and narrow terms—we will have an eight-member Court for as long as the President is President.

Under the circumstances of sharp division between the White House and the Senate, I believe the best we can hope for is a judge who has an expansive methodology for interpreting privacy rights generally and genuinely—and I emphasize genuinely—has an open-minded view of a woman's privacy right after conception occurs.

Judge Souter is not the sort of judge I would nominate had the President asked me who to nominate, but I think he is about the best that we can expect, from my perspective, from this administration.

With this realistic lens as my perspective, I will vote for Judge Souter's confirmation. I do not so enthusiastically, although I have come to have an incredibly high regard for David Souter as an individual. I do not do so without reservation, for I have stated those reservations as clearly as I know how. But nonetheless, I will support him.

In closing, I express the hope that the administration will not learn the wrong lesson from what will probably be a lopsided vote in Judge Souter's favor today.

Our overwhelming approval, in my view, is not a sign that the Senate intends to be lax about exercising its advise and consent power or intends to use that power only to screen out extremist nominees. Rather, it is a sign that we take this power seriously and that we intend to exercise it responsibly—and in doing so Judge Souter falls within the sphere of candidates acceptable to the Senate.

Based on the statements made, I might add, in the committee when we voted, this vote could have very easily been an 8-to-6 vote instead of a 13-to-1 vote, for there were five other Senators who said this was an incredibly close call for them.

I believe the burden of proof—I will end where I began, and this is where my friend from South Carolina and I differ—I believe the burden of proof is on the nominee. Just as the burden is on the President to convince the American people to vote for him to be President, is on every Senator and Congressperson to convince the people in their State to vote for them to have this power, it is also a burden that is on the nominee to be given such awesome power for a lifetime. Any future nominee who fails to meet that burden—and I emphasize again how close I believe this nominee came to that line—will be vigorously opposed, at least by this Senator. Other nominees possessing a more cramped view of the Constitution and an unwillingness to acknowledge broad, unenumerated rights already recognized, and in the future probably needing to be recognized, could well fall outside the sphere of acceptability. For example, a nominee who criticizes the notion of unenumerated rights or the right to privacy would be unacceptable in my view and I do not believe would pass muster here. A nominee whose view of the 14th amendment's equal protection clause has led him or her to have a cramped vision of the Court's role in creating a more just society for women would be unacceptable in my view. A nominee whose vision of the first amendment's guarantees of freedom of speech and religion would constrain those provisions in their historic scope would I believe be unacceptable to many here.

But Judge Souter is not such a nominee. His vision of the Constitution is not mine, but it is clearly not that of hardliners who believe that the Constitution is meant to be read very narrowly. Neither is he a man whom I would nominate, but he is a man whose nomination I will support.

Today we make a determination that will alter the course of this Nation for decades to come, for if we consent to Judge Souter's nomination we put him in a position of awesome power and responsibility, a position he is almost certain to hold for a long time after most of us are gone from the Senate floor. No one knows, no one can imagine what questions will be before the Supreme Court in the year 2024, the year until which Judge Souter will serve if he is confirmed today and matches Justice Brennan's tenure on the Court.

But if history is any guide, tomorrow's issues, whatever form they will take, will pit government against personal liberty. That has always been the case. It has always been the conflict—government versus personal liberty. It will pit majority tyranny against individual rights. That has always been at issue in our constitutional battles. It will pit the danger of discrimination against the dream of equality for all Americans.

For 200 years, Mr. President, the Supreme Court has served as the court of last resort in the struggles that I have mentioned. For 200 years the Supreme Court has been the final guardian of our fundamental rights. So it was for our parents and our gradparents and so it should be for our children and our grandchildren for decades to come. If we confirm him today, Judge David Souter will decide what our Constitution means for the next generation. It is an awesome power, an awesome power that we are giving one man. While he would not be my choice to exercise that power, I believe he is the best we could hope for from this administration.

Thus, it is with a hopeful heart and with open eyes that I will vote for the confirmation of Judge David Hackett Souter.

I now yield the floor.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I rise in support of the nomination of Judge David Souter. I do so because I believe he understands the proper role of the courts—especially the Supreme Court—in our constitutional system.

To me, this has always been the touchstone of a great justice.

Early in the 19th century, when our great experiment in democratic self-government was still new and fragile, the Supreme Court confronted an important question concerning the power of the central government. The case moved Chief Justice John Marshall to write that the "judicial power, as opposed to the power of the laws, has no existence. Courts are the mere instru-

ments of the law, and can will nothing."

That was the constitutional deal as that great Chief Justice saw it, and as it was universally understood when our system was created. In return for life tenure on the bench, and in the absence of direct intervention by the other branches, the courts were to play a limited and objective role, without any policymaking function.

That is the way it has to be in our constitutional democracy, because nothing in the theory or history of separation of powers would make sense if the courts can simply hijack the power of Congress to legislate, or the power of the Congress, the States, and the people to amend the Constitution. While the executive and the legislative check the excesses of each other, and the judiciary checks them both, there is no direct check on the unconstitutional decisions of the Supreme Court. The only check on these nine men and women is their own sense of self-restraint.

But rather than the restraint of a John Marshall, we have labored under the limitless authority of others, such as a later Chief Justice, who used to ask, of a position advanced before the Court, not if it was constitutional, but merely if it was good. The result: The personal preferences, overriding the people's government, and nullifying the rule of law.

These judges—including some who have served on the Supreme Court—seem to have forgotten that they are appointed, not anointed. Some are so intoxicated with power and good intentions that they forget any sense of restraint. Their actions call to mind the warning of Daniel Webster that—

> Good intentions will always be pleaded for every assumption of power. It is hardly too strong to say that the Constitution was made to guard the people against the dangers of good intentions. There are men in all ages who mean to govern well, but they mean to govern. They promise to be good masters, but they mean to be masters.

The other branches—especially Congress—have been all too willing conspirators in this new order, largely out of self-interest. After all, if we consciously let the courts make all the controversial policy decisions, and allow the courts to enact an agenda that could never pass the legislature, we can tell our constituents to blame the courts, rather than us. But we have paid a heavy price for this conspiracy. For if we are to expect the people to respect and obey court decisions, the people must believe that the courts—and in particular the Supreme Court—are governed by the rule of law, not a rule of man. Unfortunately, many people have lost faith in the judiciary as an impartial, nonpolitical branch. They see the courts not as an umpire, but a partisan player—one that, to cite but one example, intentionally favors a criminal defendant over a victim and the law enforcement.

Over the past 3 weeks, we heard much about rights; rights granted by Government and rights unenumerated. But if our Constitution means anything it means that we have the right to govern ourselves pursuant to the rule of law. That law applies not just to people in Des Moines, or Cedar Rapids, or Council Bluffs in my home State; it has to apply to the Supreme Court as well. The Supreme Court must be every bit as governed by the Constitution as the rest of us are.

Judge Souter has earned my vote to be Justice Souter because I conclude that he understands the limited role of a judge in a constitutional democracy. I believe he understands what Justice Frankfurter meant when the Justice said that nothing new can be added to the Constitution except by the amendment process and nothing old can be removed except through that same process.

Let me underscore this: Irrespective of David Souter's impressive résumé and his great intellect, he would be disqualified to be a Supreme Court Justice unless he is both willing and able to subject himself to the self-restraint which enables him to accept the Constitution as his rule for decision, and makes him refrain from attempting to revise or update that instrument according to his personal views. If David Souter lacked either the ability or willingness to exercise self-restraint, he would not truly support the Constitution, no matter his respect for that document or his oath of office that he will soon take.

Fortunately, in his 12 years as a trial and appellate judge, Judge Souter has many times demonstrated his commitment to judicial restraint and is fidelity to a written Constitution.

Mr. President, I questioned Judge Souter closely on the issue of judicial restraint. I was comforted to hear him state that judges stray from their role when they decide cases according to their own views of public policy rather than according to the dictates of law. When I asked him about the potential of judges to roam over the social landscape to address problems and issues at will, Judge Souter explained that the very legitimacy of judges in a democracy rests on their appeal to a law that is outside themselves, as he testified:

> What we are trying to do to avoid that roving quality, that knight errancy, is to try to find an objective source of meaning which constrains us, as well as the rest of the Republic, which was intended by the people who drafted and the people who adopted the constitutions and the statutes that we are dealing with, because it is only if we try to search for a source of meaning outside ourselves and our preferences or the preferences that may be fleeting at the moment do we really deserve, as members of a judicial system, the respect and the acceptance which ultimately is the foundation for the rule of law in the Republic or in any republic.

Mr. President, I followed up Judge Souter's answer by seeking his reaction to the legal philosophy of Judge Robert Bork, that—to quote Bork:

> In a constitutional democracy, the moral content of law must be that of a framer or legislator, never that of the morality of the judge.

Judge Souter agreed entirely. As he elaborated, quote:

> We have not been placed upon courts, in effect, to impose our will. We have been placed upon courts to impose the will that lies behind the meaning of those who framed and by their adoption intended to impose the law and the constitutional law of this country upon us all.

In the nominee's view, therefore, a judge must follow the law, and not his personal views of morality or policy. In recognizing this fundamental limitation on a judge, Judge Souter has demonstrated that he possesses the single most important qualification for service in the judiciary in our system of divided powers.

Mr. President, a fair amount has been made of Judge Souter's seeming endorsement during the hearings of an activist judiciary when the political branches of Government are slow to act. A close reading of the transcript however, belies this hope on the part of fans of judicial activism.

Judge Souter emphasized that the courts are not super-legislatures, responsible for addressing every social ill or injustice, but rather play the more limited role of protecting those liberties and rights conferred by the Constitution or otherwise retained by the people.

To be sure, I was troubled by his introduction of the concept of legislative vacuums that could be filled by courts when others were slow to act. But upon my further questioning, Judge Souter made an important distinction—that the jurisdiction of the Federal courts can never be derived from perceptions of the moment about what ought to be done. As Chief Justice Hughes wrote:

> Extraordinary conditions do not create or enlarge constitutional power.

Judge Souter agrees. As he put it:

> The Supreme Court should only act and can only act when it has the judicial responsibility under the 14th amendment or any other section of the Constitution.

Judge Souter thus believes that courts may act only when they are empowered to do so, and not simply when they perceive that a social problem has gone unaddressed or unremedied.

This principle of restraint is not, as some argue, a controversial or extreme tenet of "modern arch-conservative legal thought." Rather, it is the cornerstone or our constitutional system. It is the defining characteristic of the

judiciary in our Government of divided powers.

I am therefore encouraged by Judge Souter's view of the properly limited role of the Federal courts.

Mr. President, Judge Souter's 12 years on the bench shows a faithfulness to the text and original meaning of the Constitution and statutes.

This is a most sound and appropriate method of judging. Judge Souter believes that judges must decide cases according to principles of law not their own personal predilections or preferences. For example, in response to another of my questions, Judge Souter said:

> It is essential for us to have some idea of the criterion that we are going to employ to find values which are not simply reflections of our own feelings at the moment and our own feelings about the desirability of the claims that may be pressed before us.

Judge Souter also properly recognizes that a judge must always be on his guard lest he substitute his own views for those of the framers of the Constitution or the Congress. Judge Souter's colloquy with me on this point is revealing, and even reassuring. He said:

> We have not been placed upon courts * * * to impose our will. We have been placed upon courts to impose the will that lies behind the meaning of those who framed and by their adoption intended to impose the law and the constitutional law of this country upon us all.

Mr. President, this original meaning approach is in the best traditions of constitutional adjudication. Its origins come right from the beginning of our Nation. As the great Justice Joseph Story wrote in 1833:

> The first and fundamental rule in the interpretation of all [written] instruments is, to construe them according to the sense of the terms and the intentions of the parties.

To this day, apparently, some insist on mischaracterizing this as an arch-conservative, or discredited philosophy. They are in error when they allege that acceptance of original meaning would freeze the Constitution as it was two centuries ago. No one of the interpretivist school believes this, and the critics know it.

The genius of the Constitution, which was contributed to its longevity, is that it was not meant to be a code of laws covering all situations. The practitioners of original meaning understand this. Rather, they see the document as setting up a structure and a set of principles for governing. And it is these principles that judges like David Souter are faithful to.

Thus, it is wrong to suggest that there is some inconsistency between Judge Souter's approach to Brown versus Board of Education and his dissent in Estate of Dionne. In Dionne, Judge Souter relied on historical evidence—in that instance reaching back to Magna Carta—in order to understand the meaning of a constitutional provision that descended from the Magna Carta.

As Judge Souter explained to our committee, the principle contained in the New Hampshire constitution was in his view a fairly narrow one. He therefore believed that the New Hampshire Supreme Court had no power to broaden it, replacing the Constitution's principle with its own feelings. Whatever the historical merits of Judge Souter's explanation of the text in that case, I agree with him that the court's responsibility was to apply the original principle.

To be perfectly candid, I was not comfortable with every answer from Judge Souter. But I understand and appreciate that our committee hearings have increasingly become matters of political theatre—where nominees are now forced to show allegiance to certain pet theories of Senators. I place more weight on 12 years as a judge, over 3 days as a candidate before the committee. Having said that, I also assume that there will be decisions by Judge Souter with which I will disagree. But no Senator has a right to insist on his own issue-by-issue philosophy, at least not if judicial independence is to mean anything.

You see, to be a "conservative" when it comes to the Court has nothing to do with particular outcomes, or even counteracting the past liberal activism. Conservative activism is no better than liberal activism.

Rather, a true conservative philosophy gives the constitution a full and conscientious interpretation, but where the constitution is silent, leaves the policy struggles to the Congress, the President and the people of the 50 States.

Many, however, who oppose this nominee are frankly not interested in a justice who will respect the people's choices, or even one who will be fair, open-minded, and without a private agenda. Indeed, some are openly hostile to the idea of a Justice who will decide cases as they come, without prejudgment. Rather, they want a judge who will rule their way, every time. No one—Senator or interest group—is entitled to this.

It is gratifying that the Senate is so overwhelmingly rejecting the extremist view, a view that unfortunately predominated during the debate in the fall of 1987.

Finally, Mr. President, I must object in the strongest possible terms to a new idea floated during these hearings, either implicit or explicit, that a nominee must meet a burden of proof to be confirmed.

A nomination is not in any way a trial, nor should it be confused with one through the introduction of such legal terms. To speak in terms of burden of proof begs other questions: Is it the burden of production or the burden of persuasion? Is the burden met only by a preponderance of the evidence or must the nominee prove himself fit beyond a reasonable doubt?

As deployed in the committee report, and that is in the additional views of that report, however, this whole subject becomes clear that a nominee meets his burden only by agreeing with a Senator's views on past precedents or legal philosophy. The burden of proof is thus simply a litmus test by another name. I reject this test and am confident that most Senators do, as well.

Mr. President, I support the nomination, and I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, first of all, I join those who pay tribute to the chairman of the Judiciary Committee for the manner in which he conducted the hearings, the forum of the hearings themselves, the balance that he developed in the presentations of a wide variety of witnesses. Both in regard to this nominee and I must say also with regard to the controversial nomination of Judge Bork, I think all of the members of that committee and all of us in the Senate owe a great debt of gratitude to our chairman, Senator BIDEN, and I think the American people who had the good chance to watch these hearings must also share in that opinion, and I acknowledge the work of Senator THURMOND, as well. This has been a result of a bipartisan effort of both the chairman and the ranking minority member, and I pay tribute to his contribution in developing these hearings.

From the beginning of our Nation, the Senate of the United States and the President of the United States have had a shared responsibility in the appointment of Justices to the Supreme Court.

That responsibility is assigned to the President and the Senate by the specific terms of the Constitution itself.

For 200 years, it has been among the highest responsibilities that any Senator has. Today, it is more important than ever, because of the central place of the Supreme Court in the life and the liberty of our Nation.

In fact, in the original drafts of the Constitution in 1787, the Founders of our country gave the Senate the sole responsibility for appointing Federal judges. But in the final draft, after the great debates that determined the future course of our Nation, the concept of dual or shared responsibility was adopted, as one of the major checks and balances of our system of Government. For two centuries, it has ensured that neither Congress nor the President has excessive influence over the Supreme Court.

Today, as always, our responsibility as Senators is to make our own independent assessment of the qualifica-

tions of Supreme Court nominees. In exercising that responsibility, our chief obligation is to determine whether the President's nominee possesses a sufficient commitment to the core constitutional values at the heart of our democracy. If we have serious doubts about the sufficiency of that commitment, our own responsibility as Senators is clear.

We are not only entitled to reject the President's nominee—we are obliged to do so. No President has a blank check in appointing members of the Supreme Court.

As I stated at the outset of the hearings, Judge Souter has a distinguished background. But aspects of his record on the bench and in the New Hampshire attorney general's office raised troubling questions about the depth of his commitment to the role of the Supreme Court and Congress in protecting individual rights and liberties under the Constitution.

Far from dispelling these concerns, Judge Souter's testimony before the Senate Judiciary Committee reinforced them. In particular, my concerns center on the fundamental constitutional issues of civil rights, the right of privacy, and the power of Congress and the courts to protect these basic rights.

Judge Souter's record and testimony on issues related to civil rights is particularly troubling. As attorney general of New Hampshire, Judge Souter defended Gov. Meldrim Thomson's decision to refuse to provide data on the racial composition of the State government work force required by regulations of the Equal Employment Opportunity Commission pursuant to title VII of the Civil Rights Act of 1964.

Attorney General Souter took the position that it was unconstitutional for Congress to require employers to compile and report such statistics. No other State advanced such a specious argument. His petition to the Supreme Court even took the extraordinary position that the EEOC was violating a worker's constitutional right to privacy by requiring employers to report the overall racial composition of their work force.

Judge Souter repeatedly defended the appropriateness of his actions as attorney general in challenging the EEOC regulation. It was only after repeated questioning that Judge Souter finally admitted that the courts had been correct in rejecting his arguments.

His unenthusiastic after-the-fact endorsement of the Court's decision does not dispel the doubts raised by Judge Souter's reactionary arguments in the case.

Discrimination is a national problem, and Congress is entitled under the Constitution to seek national solutions.

Attorney General Souter's participation and persistence in this case is troubling, because it suggests an extremely narrow view of the power of Congress to end race discrimination or other evils in our society.

As attorney general, Judge Souter was not merely acting as a lawyer for his client, the Governor. True, he had that obligation. But he also had a higher obligation. As part of his oath of office, he also made a commitment to support the Constitution of the United States. Yet in this case, he showed himself willing to make an argument that no other State in the Nation was prepared to make, an argument that the Court flatly refused to accept.

Similarly, in the area of voting rights, Judge Souter was quick to challenge congressional legislation when New Hampshire's opposing practice was at stake. In landmark legislation, the Voting Rights Act of 1965, Congress banned the use of literacy tests in States where the tests had been used for discrimination.

Extending the act in 1970, Congress determined that literacy tests were inherently discriminatory, and banned the use of literacy tests in voting nationwide.

New Hampshire had a literacy test, and in 1970, it refused to comply with the Federal law. So the United States brought suit to prohibit New Hampshire from enforcing its State test for the 1970 elections.

In opposing the suit, Judge Souter represented the State and argued all the way to the Supreme Court that Congress did not have the constitutional authority to ban literacy tests, in the absence of evidence that the specific tests had been used in a discriminatory fashion.

A three-judge Federal court rejected that argument, and struck down New Hampshire's literacy test. In Oregon versus Mitchell, the Supreme Court ruled unanimously—9 to 0—that the ban on literacy tests was a constitutional use of congressional power.

As an assistant attorney general, Judge Souter participated extensively in the litigation over the New Hampshire test. What I find most disturbing about his position on this issue was the conclusion, advanced in his briefs, that citizens who cannot read cannot cast meaningful ballots.

Judge Souter either chose to ignore, or was unaware, of ways in which voters who cannot read can be assisted in casting ballots. In fact, at the time he filed his brief, people who could not read had been voting for years in other States, and blind voters were guaranteed assistance at the polls in New Hampshire.

His insistence that literacy tests could be used to exclude such voters demonstrates a willingness to discriminate against those who have been less formally educated, but who can still make intelligent, well-informed decisions about candidates and issues in elections.

As Father Theodore Hesburgh, Chairman of the Civil Rights Commission, noted in a letter to President Nixon when Congress was considering the Voting Rights Act of 1970:

> The lives and fortunes of illiterates are no less affected by the actions of local, state, and federal governments than those of their more fortuante brethren. Today, with television so widely available, it is possible for one with little formal education to be a well-informed and intelligent member of the electorate.

In fact, when the Federal district court rejected Judge Souter's arguments and issued an order to suspend the literacy test, New Hampshire did establish procedures so that citizens who could not read were still able to vote.

In this case, as in the case involving the EEOC, Judge Souter took the position that Congress did not have the power to deal with a serious national problem. Also, as in the EEOC case, the Federal courts unanimously rejected his view.

Obviously, these are gray areas where plausible arguments can be made that Congress has exceeded its constitutional powers. But in these two cases, Judge Souter's positions were categorically rejected by the Supreme Court.

In effect, in challenging congressional power in these two cases, he was willing to defend the indefensible.

I asked Judge Souter about the literacy case during his confirmation hearings. Defending his view that the votes of people who cannot read would dilute the votes of people who can read, he called it simply "a mathematical statement * * * essentially a kind of statement of math."

The manner with which he dismissed the right of the poor and uneducated in his State to vote is all the more troubling because his response was one of the rare spontaneous moments of the hearing.

Prior to the committee hearing, news reports of a 1976 commencement address at Daniel Webster College by Judge Souter when he was Attorney General had received widespread media attention. According to contemporaneous reports of the address in several newspapers, Attorney General Souter had described affirmative action programs as affirmative discrimination.

When questioned about the remark at his confirmation hearing, Judge Souter replied, "I hope that was not the exact quote because I don't believe that." Judge Souter went on to acknowledge that he had seen the news reports on his speech at the time he gave it, but did not indicate that he denied the statement attributed to

him or sought a correction. During his testimony, Judge Souter never denied making the statement.

Instead, he attempted to defend his remark by arguing that he had been referring to affirmative action programs which were not linked to remedial purposes, but were merely distributing benefits for the sake of reflecting some formula of racial distribution.

Judge Souter's record on sex discrimination also raises troubling questions. Until the 1970's, the Supreme Court applied a weak standard to cases involving claims of such discrimination under the equal protection clause.

The courts accepted any rational basis for laws that treated men and women differently. Under this approach, women were routinely excluded from many occupations and subjected to forms of discrimination that almost all of us would regard as intolerable today. I believe the chairman of our committee reviewed the problems caused by this approach in his statement, for example, women were denied the opportunity to work in bars, and women were prohibited from being on juries in this country.

In the 1970's, however, the Supreme Court began to apply a higher standard of review to classifications based on sex, and struck down laws that discriminated against women. Judge Souter challenged this new standard as Attorney General Souter, and in a 1978 case, he urged the Supreme Court to "define, shape, limit or even eliminate" the standard.

The case involved the New Hampshire statutory rape law. A man convicted under the statute claimed the law was unconstitutional, because it did not apply to women. The Supreme Court refused to review the case, but a few years later, in another case, the Court made clear that under its higher standard of review, statutory rape laws are valid, even if they do not apply to women.

It is disturbing that Judge Souter's brief suggested that the Supreme Court eliminate the higher standard of review in sex discrimination cases. If he were genuinely concerned about the rights of women, the obvious argument to have made was that even under a higher standard of review, statutory rape laws are valid. But he did not take that course. Instead, he suggested that the Court go back to the old law, which had permitted sex discrimination to flourish.

When asked during his testimony before the committee whether legislative classifications based on sex should be accorded heightened or intermediate scrutiny under the three-tier equal protection analysis applied by the Supreme Court, Judge Souter endorsed some type of scrutiny between the weakest level, or rational basis test and the highest level, or strict scrutiny test. But he did not commit himself to a standard for sex discrimination that is at least as exacting as the standard currently used by the Court to invalidate many gender-based laws. Thus, there is significant doubt that Judge Souter will apply a sufficiently rigorous constitutional standard to make protection against sex discrimination a meaningful constitutional right for the women of America.

On the issue of whether the Constitution protects a right to privacy, Judge Souter said he believes that "the due process clause of the 14th amendment does recognize and does protect an unenumerated right of privacy." However, Judge Souter refused to reveal whether he believed there is any fundamental privacy right outside the marital relationship. Specifically, in discussing the constitutional status of abortion, Judge Souter would go no farther than to say that abortion "would rank as an interest to be asserted under liberty."

In his opening prepared statement to the committee, Judge Souter spoke disarmingly about his constant awareness that his decisions as a judge would affect real people.

But when asked at the hearing about the consequences facing women if Roe versus Wade is overruled, he first described the situation as a problem of federalism. Asked a second time about the impact on women, he described it as a law enforcement problem. Finally he observed that "whatever the Court does, someone's lives, and indeed thousands of lives, will be affected, and that fact must be appreciated." Judge Souter said that he had not made up his mind about Roe versus Wade, but these answers are more alarming than disarming.

In fact, Judge Souter's reluctant comments, while ambiguous, suggest that, in fact, he takes an excessively restrictive view of the right to privacy, and that he is likely to side with the Justices on the Court who are prepared to overrule Roe versus Wade, or leave it as a hollow shell.

Judge Souter's reluctance to discuss specific constitutional issues relating to abortion and the right to privacy, contrasted sharply with his willingness to discuss, in great detail, his views on other constitutional issues likely to come before the Supreme Court, including church-state issues and capital punishment.

I am troubled that if Judge Souter joins the current closed divided Supreme Court, he will solidify a 5-to-4 anticivil rights, antiprivacy majority inclined to turn back the clock on the historic progress of recent decades.

If so, literally millions of our fellow citizens will be denied their rights as Americans to equal opportunity and equal justice under law.

I hope I am wrong. But I fear I am right. To a large extent, in spite of the hearings we have held, the Senate is still in the dark about this nomination. And all of us are voting in the dark. The lesson of the past decade of the Senate's experience in confirming justices to the Supreme Court, is that we must vote our fears, not our hopes. If nominees do not meet the test of demonstrating a convincing good-faith, in-depth, abiding commitment to the core constitutional values of the kind so obviously at stake at this turning point in our history. They can—and should—be rejected by the Senate. To apply a lesser standard is to fail our own constitutional responsibility in the confirmation process.

In my view, Judge Souter does not meet that test. In good conscience, I cannot support this nomination.

The PRESIDING OFFICER (Ms. MIKULSKI). The majority leader is recognized.

THE BUDGET RESOLUTION CONFERENCE REPORT

Mr. MITCHELL. Madam President, as in legislative session, I note the presence on the floor of the distinguished Republican leader with whom I had a number of discussions today regarding the procedure with respect to the budget resolution conference report.

I apologize to our colleagues for interrupting this debate. This will just take a few moments.

Because there has been a great deal of interest by the press and, through the press, the public in the procedure that we would use, I thought it would be useful to bring the membership of the Senate up to date on how we are progressing in that regard.

As the Members of the Senate know, we are dealing with a conference report on the budget resolution. The original schedule called for the House to take the matter up first, which would be the case in the ordinary course of events and, following action by the House, to have the matter taken up in the Senate.

It is my understanding that the House is now considering taking the matter up during the day on Thursday, which means that if the conference report were approved in the House, we in the Senate would be taking it up sometime Thursday afternoon. I would like, if I might, to yield to my distinguished colleague for further discussion in that regard.

Mr. DOLE. We had discussed the possibility, maybe, of initiating the action on the Senate side based on the hope that we have the votes on the Senate side, on each side of the aisle, to pass the conference report, and then send it to the House where that may be more in doubt. But there are some procedural difficulties that could be encountered there, as we have dis-

cussed privately, and I would guess for the present are still under review, as I understand it, because there could be a motion to recommit offered; that could be amended. That could present problems.

But the important thing, I think, is that we get to it as quickly as we can and act in a positive way because if not we are going to be faced again on Friday with another continuing resolution and extending the debt ceiling and delaying sequester or letting the Government come to a halt. I hope my colleagues in the Senate and my colleagues in the House fully appreciate the consequences if we do not act in a positive way.

Mr. MITCHELL. Madam President, I have discussed this with the distinguished Republican leader and with the Speaker today, both in person and by telephone. Just for the information of Senators, under the rules of the Senate, conference reports are subject to motions to recommit if the House has not yet acted on the conference report. And of course such motions to recommit could include instructions. The instuctions themselves would be subject to amendment.

By contrast, if the House has already acted, the conference is dissolved and the matter is before the Senate not subject to either motions to recommit or amendment and therefore there would simply be one vote on it.

I want to make very clear we are talking here about the budget resolution which legally binds only as to the aggregate budget figures. The specific law changes which create, in effect, the subparts that lead up to those totals would not be effectively changed as a result of the budget resolution, but rather would be in the reconciliation bill which will follow. And under the agreement that we reached on Sunday, would follow not later than October 19.

At that time, in the Senate the reconciliation bill will be fully open to amendment and debate. So I wanted to make clear we are not attempting in any way to foreclose Senators from offering amendments to the reconciliation bill to change that. That is the relevant and appropriate stage in the process at which amendments can be offered and both the distinguished Republican leader and I fully expect such amendments to be offered. What we are trying to do not is to start the process in motion that will produce a reconciliation bill and that requires as a first step enactment of the conference report on the budget resolution.

So we are going to continue to consider the measure and determine the manner most likely to produce the desired result, which is the adoption of the conference report of the budget resolution, enabling us to proceed to send the matter to the committees who will report back. And then we will have a reconciliation bill on the floor that will include all of the specific law changes and be open to amendment by Members.

Mr. DOLE. If the Senator will yield for 1 additional moment, he put his finger on it in the last sentence or two. The ultimate, the bottom line, is to get the conference report adopted and the reconciliation. The leadership along with the President has committed itself to this course. We want it to be successful. There is a lot riding on it. Not the leadership or not the President, but there are lot of people in the country who I think are looking for leadership on this particular issue, as painful as it may be to some. We have to devise a strategy that will try to make certain that will happen.

We are continuing to review it. The normal procedure would be it would go to the House and come to the Senate. I just urge my House colleagues to think very seriously about the consequences—some of my House colleagues.

Mr. MITCHELL. Madam President, if I might add, in conclusion, I share the concern of the distinguished Republican leader and hope very much that the conference report will be approved in the House and in the Senate.

Again, so Members of the Senate understand that they are not agreeing to a procedure that would prohibit all amendments. When we come back with a reconciliation bill, as we have in the past, that bill would of course be subject to the provisions of the Budget Act, that is the time for debate would be limited and there are certain tests which apply to amendments to that bill under the Budget Act. But within those constraints of the Budget Act which traditionally have applied to the reconciliation bill, Senators would be free to offer their amendments and have them debated and voted on here in the Senate. That is, of course, the appropriate stage in the process to accomplish that.

I am going to continue our discussions with the Republican leader and the Speaker. I merely wanted through this exchange to inform Senators of the current state of the process and summarize it. It now appears that the House will act on the conference report Thursday during the day and then it will come to the Senate and hopefully we will have it on the Senate floor for action during the day on Thursday. That is our present plan. That is of course subject to change. But I will keep Members fully advised as soon as any final decision is made.

I thank the distinguished Republican leader and I thank particularly my friend and colleague from Utah for yielding to permit us to have this exchange.

NOMINATION OF DAVID H. SOUTER, OF NEW HAMPSHIRE, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate resumed consideration of the nomination.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Madam President, I have listened to the remarks made thus far. I do not think any person wants to see anybody go on the bench who is a radical activist judge either on the left or on the right. I think what we want is we want judges who basically are going to be people who I think, frankly, look, act, talk, and think like Judge David Hackett Souter.

He calls himself an interpretist. I would use the term interpretivist. In other words, he indicates he is going to determine the constitutional decisions that come before him, and the legislative decisions and other decisions, based upon the original meaning of those documents.

That does not mean necessarily that he is going to go back into the mind of James Madison and the other Founders. But he will follow the broad meaning, which the Founders anticipated within their language that they used in these various documents.

We are founders today as we pass legislation. Maybe not as significant or as important, but nevertheless our original meaning should be given great weight with regard to constitutional principles.

He knows that by going into the original meaning, that those original Founding Fathers knew that our country was going to grow, it was going to become more modern, it was going to have great inventions, it was going to become more sophisticated. So that comprises a broad set of considerations for anybody who really wants to adhere to the original meaning of the Constitution.

He also understands that the Constitution provides for a means to overcome that which the Constitution does not cover. It provides a number of means, but one in particular is in article V to the Constitution, which provides for a means of amending the Constitution. He understands that if the Constitution is silent on some issue that is of overwhelming importance to the public, that we can amend the Constitution and that is the way you do it. You do not do it by ad hoc activist judicial decisionmaking from one's own viscera. And unfortunately that is what has been going on for too many years.

The right to amend the Constitution is a safety valve that basically allows us to make changes if we want to, or if we have to, if there is an overwhelming support for it. And as we all know

there have been 26 times that that right has been exercised.

Judge Souter understands the need to protect the minority, as well as the majority, within the terms in the original meaning of the Constitution and that which would be naturally extrapolated from that original meaning.

David Hackett Souter, I am convinced—and I think most people who watched the proceedings on television are convinced—is a person of integrity, competency, intelligence, compassion. He is a person who appears to be—and I think anybody watching would have to conclude is—a kind person, considerate of other people. He is a person of considerable eloquence, especially when he is talking about the law of the land.

I think he showed that he is a person of fairness—5 years on the trial bench, 7 years on the Supreme Court of New Hampshire, and 1 year on the First Circuit Court of Appeals—and he is a decent man. He is a person who has the health to do this job. He clearly stood up to all the pressures of those hearings. I think he is a person of humility. He is teachable. He is someone who acknowledges that others might understand things even better than he does form time to time, and he is willing to listen. He is a person of independence.

With humility, he proved himself to be a listener, somebody who was considerate of other people's views. To me, that is pretty important.

He has shown through his lifetime that he is a person of public spirit—serving on hospital boards, serving in his own church and doing other things that were in public spirit and he has given a lifetime to public service—just exactly the type of person with a broad background that we need on the Supreme Court.

I have heard some of the criticisms that have come up. Some of them have come from my good friend from Massachusetts. I hesitate to point out that he stands alone on the Judiciary Committee, as the only one against this nomination made by the President who had the support of 40 States in the last election.

No one who listened to Judge Souter's testimony could believe that he takes a limited view of the ability of Congress to remedy civil rights; no one believes that unless you were not listening or unless you just do not want to listen.

As a matter of fact, he took just the opposite viewpoint, which was very interesting to a lot of people who were there.

There was no objection raised here today that Judge Souter had argued that enlarging the franchise dilutes the votes of those who previously were entitled to vote. That objection is frivolous. Voter dilution cases are standard forms of voting rights challenges recognized by the Supreme Court.

I hasten to point out when he made that statement in his brief, Judge Souter was an advocate, arguing an advocate's position based upon the then current law as established by Justice Byron White and even Justice Hugo Black who made exactly the same statements in opinions of the Supreme Court; yet Judge Souter is now being criticized for, as an advocate, making exactly the same point on appeal.

So I point out that he was an advocate at the time. Literacy tests at the time were legal. No matter how much we dislike them today, they were legal at that particular time. He was sworn to uphold the law, not to remake it. He was advocating for his State at that particular time. He was an assistant attorney general of the State of New Hampshire, advocating a position that had already been advocated by his predecessors and, I might hasten to add, under the then existing law.

So it is not right to go back in hindsight and say he should not have done that; that that shows something wrong with him. Come on, that is what advocates do.

If we are going to start using a nominee's briefs against him in the confirmation process, we are going to be setting a shocking precedent. Every client is entitled to zealous advocacy. It is an advocate's job to make arguments to sway a court, including plausible arguments based on extension of principles established by then current case law. It would be a very, very dangerous message to send to lawyers: If you have any ambition to be a judge, you lawyers, do not represent controversial clients and be careful what you say on behalf of a client because you might be held responsible for the fact that the law was as it was at the time you made the statement.

In my view, positions taken by Judge Souter in any legal brief representing a client are not fair game for inquiry, other than as a reflection of his writing ability and his ability as an advocate. They are pieces of advocacy in fulfillment of his duty as a lawyer to his client. What is, in fact, important is not what he said as an advocate but what he believes the role of the U.S. Supreme Court is or should be in our Federal system.

Suppose the President nominates a criminal defense lawyer to be a Supreme Court Justice? This person may have defended murderers, rapists, drug kingpins—you name it. It would have been his job zealously to advocate their interests, extend the reach of procriminal defense legal theories on the inadmissibility of physical evidence and the inadmissibility of the defendant's own words. He may have harshly cross-examined rape victims; he may have questioned them about their own behavior in ways we might find offensive in retrospect. Should that lawyer be disqualified because of his or her advocacy on behalf of their clients?

Virginia Attorney General Mary Sue Terry has defended the male-only admissions policy at the Virginia Military Institute, a State institution against a legal challenge by the Federal Government. Should this count against her in the nomination process, were she to be nominated to the Federal court or Supreme Court?

One consequence of this trend is that academic writings, even of a speculative nature, even ones where the nominee has since changed his or her mind, can be misused to discredit a nominee.

This can be a double-edged sword. Of course, if the traditional roles of the nomination process are permanently changed, are we now going to witness the misuse of a lawyer's role as an advocate in the nomination process? Will the message be not only do not write anything potentially controversial, but also do not represent anyone or any institution who is controversial or unpopular? Do we wish to discourage lawyers from taking the tough cases, from taking on such clients if they have any, and especially if they have any aspirations to be a judge? I hope not. That, too, in my opinion, is a double-edged sword and something we have to consider.

Mr. President, it seems to me that several of my good friends on the other side of the aisle, particularly on the Judiciary Committee, are rent by self-doubt, angst, and some guilt in voting for Judge Souter. I believe, however, it is fair to say, based on his opinions, and testimony that Judge Souter is clearly well within the reasonable and respectable range of an appropriate nominee. It also seems to me, Mr. President, that today's debate is largely about Judge Souter's nomination and our colleagues, a few of them, are concerned. They are concerned about some of his opinions and his testimony, because it has not fit every niche that they want it to fit.

His nomination has really been conceded for some time, and it should be. He should be overwhelmingly confirmed today. I think everybody knows that.

I want to respect my colleagues who have stood up on both sides of the Judiciary Committee and have stood up for Judge Souter, as they should. I appreciate it. But what we are hearing from some of my thoughtful friends on the other side of the aisle is really an opening salvo in the next round if President Bush has an opportunity to nominate another person. It is pretty much a foregone conclusion that Judge Souter is going to be Justice Souter after today.

Accordingly, we have heard in the last few weeks an exposition of views on various legal and constitutional issues in an effort to characterize and limit the spectrum of constitutional thought. Thus, at length, we have been treated to various legal thoughts: How certain cases should be decided under each school, which school is doctrinaire, which is entirely OK. In my opinion, these are interesting but relatively more edifying as an insight into the views of those who expound them for anything else.

Even more disturbing, some of what we are hearing from the other side appears to be in large part a thinly veiled extraordinary, unfortunate, and, in my view, unconvincing effort to set the parameters on President's Bush's next Supreme Court nomination, if he has the privilege of having one.

It may be that some pundits or interest groups will suggest that if such a future nominee is thought to be clearly "more conservative than Judge Souter," as measured according to many of the notions we are hearing from Judge Souter's reluctant supporters in this body, no matter how reasonable and responsible the nominee's views may be, such nominee is "automatically out of the mainstream."

The committee would be well advised in such a case to determine whether such suggestions themselves emanate from the brackish backwaters, before assuming they constitute the mainstream.

Madam President, it is not easy in this day and age to get a person on the Supreme Court who fills the needs of everybody in this body. In fact, I venture to say that nobody can meet that test. If we are going to adopt litmus tests as the way to determine whether or not a person comes on the Court, and especially a single litmus test, no matter how important it may be, then I think that is a tremendous mistake.

Nobody knows what will happen to these people once they go on the Court, with experience, with time, with facts, with cases, with other problems that come up. Nobody really knows how they are going to rule in the future, and many Presidents have been upset at how some of their nominees have ruled as they have watched both in the remaining years of their Presidency, and after they are retired from the Presidency.

The fact is it is ridiculous to impose any single litmus test on any candidate for this high office, this high position. If we follow the lead of the litmus testers, to preprogram the responses in the judicial process, then the job could be done by computers, and judges would not really be necessary.

Yet what has made the Supreme Court great for over 200 years—what has allowed it to occupy such a distinguished, unique, and important place in American society—a role shared by no court in any other nation in history—is the quality of judgment that has been shown by the persons who have served with distinction on the Court.

Madam President, I did not mean to take this much time. I do not see how anybody who watched the hearings, watched the difficult questions, watched the problems that were raised, and watched Judge Souter in response to those problems and those questions, could conclude that he is not a worthy person to go on the Supreme Court of the United States of the America. I really have difficulty seeing why anybody would feel that way.

On the other hand, I respect the feelings of some of our colleagues who are going to vote against Judge Souter for whatever reason. I do not see a logical reason for it. I do not see a legal reason for it. I do not see a confirmation reason for it. Frankly, I hope that the litmus test mentality is not used in the future, because if it is I can think of at least 150 litmus tests that people feel strongly about around here that would make it almost impossible for any great nominee to make it on the Court.

Judge Souter is a great nominee. He is not just a nominee. I first became acquainted with him when Senator RUDMAN brought him to my attention after the Bork nomination failed. I am fully aware of his career from that point. I have a tremendous and inestimable respect for this man. I expect him to go on to become a Supreme Court Justice who will please the vast majority of people in this society, because as I have said he is honest, he is decent, he is a person of integrity, he is a person of competence, of ability, and all of those other wonderful attributes that I hope we can find in other Judges on any court in this country, let alone the Supreme Court of the United States of America.

Madam President, I hope our colleagues will see fit to vote for Judge David Hackett Souter to be a Justice on the Supreme Court of the United States of America. It is the right thing to do. It is the important thing to do. This is an important office, and it is important that we dignify it with important arguments. I have not seen good arguments used against him yet, either in committee, since the committee has held its hearings, or on the floor today.

Madam President, I hope our colleagues will vote for Judge Souter.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. HEINZ. Madam President, will the Senator from Wisconsin yield for a brief unanimous consent request?

Mr. KOHL. Yes.

VISIT TO THE SENATE BY CHILEAN DELEGATION

Mr. HEINZ. Madam President, as in legislative session, earlier today I notified the leadership that there is present in the Capitol today a delegation of senators from the Republic of Chile.

RECESS

Mr. HEINZ. Madam President, I ask unanimous consent that we might stand in recess for not to exceed 2 minutes. The Senator from New Hampshire has indicated he would yield me 2 minutes, if such was necessary to accommodate the Senate. I ask that no time be taken from the Senator from Wisconsin.

There being no objection, at 4:36 p.m., the Senate recessed until 4:38 p.m., whereupon, the Senate reassembled when called to order by the Presiding Officer [Mrs. MIKULSKI].

NOMINATION OF DAVID H. SOUTER, OF NEW HAMPSHIRE, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES

The Senate continued with the consideration of the nomination.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. I thank the Chair.

Madam President, First, I congratulate Chairman BIDEN for his work on the Souter nomination. The chairman and his staff made a difficult process run smoothly. The hearing was well-focused and illuminating on a host of issues. His impartial and fair handling of the hearing allowed us—on behalf of the American people—to conduct a thorough examination of the nominee.

Madam President, I intend to vote for Judge Souter, but this was not an easy decision. In the course of reviewing the nominee's record and listening to him at the hearing, two different pictures of David Souter emerged: one revealed a conservative New Hampshire attorney general and jurist; the other, a reasurring pragmatist without an ideological agenda. I am voting to confirm the second Judge Souter despite my reservations about the first.

As attorney general—where he was required to be an advocate—Judge Souter took several stands that he acknowledged he would not take today. He defended lowering the American flag on Good Friday; he supported the continued use of literacy tests for prospective voters; and he argued against supplying civil rights data to the Federal Government as required by law. More than that, while on the New Hampshire Supreme Court, he issued a number of troubling rulings and dissents.

In his testimony before our committee, however, we heard a different Judge Souter. He demonstrated admirable personal qualities and expounded moderate judicial views.

Without question, Judge Souter revealed a remarkable intellect, one that equals or even exceeds the traditionally high standards required of a Supreme Court Justice. And he showed a warmth and humor that belied his image as a man out of touch with modern life. In my opinion, Judge Souter clearly has the competence, character, and integrity necessary to sit on our Nation's Highest Court.

At the hearing, Judge Souter's judicial philosophy was reassuring. He displayed an understanding of and respect for the values which form the core of our constitutional system of government.

Judge Souter firmly rejected the doctrine of original intent, which would undermine many of the Court's most important achievements. Brown versus Board of Education, which desegregated public schools, would never have been decided if the Supreme Court had interpreted the 14th amendment using original intent. And our fundamental right to privacy would have been severely cramped had the Court applied this doctrine to the Bill of Rights.

Fortunately, the Judge Souter who testified before our committee does not seem locked to the past. I was heartened by his strong words of praise for former Justice William Brennan, the Court's leading opponent of original intent. David Souter told us:

> Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and ever will have.

And Judge Souter spoke of the need "to make the Constitution a reality for our time." Clearly, these are not the words of a conservative ideologue.

Still, the hearing did not paint an entirely complete picture of Judge Souter's judicial views. I would like to have heard a clearer statement in support of civil rights and the struggle for racial equality.

Similarly, I am concerned that Judge Souter did not explicitly recognize—or even address—a woman's constitutional right to reproductive choice. This fundamental right should not hang by the thread of a shrinking Supreme Court majority. And so I have joined as a cosponsor of the Freedom of Choice Act, which would write into Federal statutory law the abortion provisions on Roe versus Wade.

Let me conclude on this note: It is not just a Supreme Court seat that is at stake here; in my judgment it is also the entire confirmation process. I believe the nominee was candid in his testimony, and I was persuaded by watching and listening to him at the hearing. But if Justice Souter turns out to be a rigid ideologue—and not the moderate that he appeared to be—then both the Senate and the American people will have been deceived. That would call into question the value of having nominees appear before our committee. We might be justified—or even required—to ignore personal presentations entirely, and rely exclusively on the written record.

Madam President, in reaching my decision, I had to determine whether the conservative public servant from New Hampshire matured into the moderate nominee who appeared before the Judiciary Committee. I believe that he has. And while I was troubled by parts of Judge Souter's record, I was impressed by the man himself. And so, despite my reservations, I will support Judge Souter as someone who is capable of personal growth, shows an open mind and rejects ideological extremism. I will vote my aspirations rather than my fears.

Thank you, Madam President.

Several Senators addressed the Chair.

The PRESIDING OFFICER. The majority leader.

Mr. MITCHELL. Madam President, I will shortly propound a unanimous-consent request setting the vote for 6 p.m. I understand that has been cleared on both sides. We are now checking to make absolutely certain that it is agreeable so that no Senator feels he or she has not had the opportunity to speak. I will do that momentarily. In the meantime, I am pleased to yield to other Senators.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SPECTER. Madam President, I have already spoken at some length on the Senate floor on my view in support of Judge Souter. So I will refer anyone who might conceivably be interested in those views to the CONGRESSIONAL RECORD on September 19, 1990, a week ago Wednesday.

But there are a few other comments which I think appropriate to make at this time, that relate to the very important principle, that was established in our hearings, that a nominee should not be required to answer the ultimate question on how the nominee would rule on a case which may come before the Supreme Court even where that question is as important as the nominee's views on what will happen to Roe versus Wade. The issue of choice, the issue of abortion is, I think, the most divisive issue which has confronted the United States since the country's inception perhaps with the exception of slavery, Madam President. There were many who came forward and strongly urged that Judge Souter should be required to say how he would rule on Roe versus Wade.

It is my expectation that there will be a very strong vote in support of Judge Souter today. Certainly the vote on the Judiciary Committee of 13 to 1, where many who voted in favor of Judge Souter were those individuals who were very strongly in favor of upholding Roe versus Wade, established a very important principle that people in our society were willing to abide by the system as to what would happen in the regular context where a case was decided in the context of specific facts, briefing, argument, consultation among the Justices, and that a nominee would not be required to answer a question as to how the nominee would rule on a case yet to come before the Court.

Madam President, I have expressed my view, both on this floor and otherwise, about my support of the choice position. Although I am very much opposed to abortion as a personal matter, I do not think it is something that the Government can regulate. But, notwithstanding my own views on the subject, I took the strong position that Judge Souter should not be compelled to say how he would rule when the issue of Roe versus Wade came before the Court again.

At the same time, Madam President, I think it is important to emphasize, that if the Supreme Court moves further on the road to deciding ultimate positions of public policy as a superlegislature, that the Supreme Court runs the risk of losing its standing, and the nominees run the risk of losing their standing to decline to answer the ultimate questions.

This Senator is very much concerned about a series of Supreme Court decisions illustrated by the Griggs case, the Wards Cove case, the National League of Cities versus Usury, and Garcia versus San Antonio Transit Authority, where the Court has moved in the direction of being a superlegislature.

The Civil Rights Act was passed in 1964, and, in 1971, a unanimous Supreme Court in the opinion written by Chief Justice Burger, not known for any expansive interpretations, defined discrimination in the disparate impact situation. I will not speak at length about what that means, because it is not necessary to illustrate the point.

Eighteen years later, last year, 1989, the Supreme Court of the United States reversed Griggs in Wards Cove and did so with five Justices changing the law in the context where the Congress of the United States had let the Griggs opinion stand for 18 years, giving full force and vitality to what is realistically a conclusive presumption of congressional assent to the Griggs opinion as interpreting congressional intent.

Four of those Justices who reversed Griggs had appeared in the Judiciary Committee during the course of the past decade and put their hands on

the Bible and had sworn not to be judicial activists but to interpret rather than to make the law.

I would suggest, Madam President, that if the Court, if the Justices are to become superlegislators, they will not be immune from stating their positions on such issues, just as candidates for the Senate are not immune from stating our position on matters of public policy.

There is a similar issue involved in the case of National League of Cities versus Usury, where the Supreme Court of the United States in 1975, defined the relations between Federal and State governments, local units of government. That position was reversed in Garcia versus San Antonio Transit Authority, 9 years later, in 1984. In writing in dissent, Chief Justice Rehnquist and Justice O'Connor, in separate opinions, said that the Garcia opinion was really like a railroad ticket. As Justice Roberts said years ago, "this day and this train only." Chief Justice Rehnquist and Justice O'Connor said, when the issue came before the Court, with a change in membership and constituency, the opinion would be reversed.

I was on the point that if the decisions of the Supreme Court on important constitutional doctrines, like Federal and State relations, depend upon the constituency of the court, then I think nominees are going to be asked how they are going to decide these issues on public policy.

On the man himself, Madam President, I think Judge Souter presents a record of qualification. His record, academically, in law school, Rhodes scholar, record as a practitioner, attorney general, trial judge, State supreme court justice, his judicial opinions, his testimony before the committee, was exemplary.

I do not agree with some of my colleagues who have supported Judge Souter, based upon a change in position before the committee. I believe that Judge Souter took expansive views when he testified before the Judiciary Committee, but that is understandable. The opinions of Judge Souter were the basis for my reliance on evaluating Judge Souter, and he was much more restrained and restrictive in those opinions than the testimony he gave before the Judiciary Committee.

Madam President, even in those opinions, in the Richardson case, Judge Souter found a liberty interest. In the criminal law cases, he had a good balance recognizing defendants' rights as well as the interest of law enforcement.

So whether you take the more expansive views of Judge Souter testifying before the Judiciary Committee, or the more restrictive views that he exhibited in his opinions, I believe he is well within the continuum of constitutional jurisprudence and ought to be confirmed.

In view of the limitations of time, although there is much more that could be said, that summarizes my views. I thank the Chair and yield the floor.

Mr. SIMON. Madam President, I rise briefly to explain my views to my colleagues. I think there are three basic points.

One is, does Judge Souter meet the basic standards that we are looking for? In terms of ability, in terms of scholarship, in terms of someone who is willing to listen, it is very clear that he does.

On two points I would like to have seen a stronger nominee. One is, I want someone who is a champion of civil liberties. The second thing I would like is someone who will lead for those less fortunate. Unfortunately, in the Souter record there is no evidence that Judge Souter will be a leader in either of these areas.

The second question then is, if he does not meet these latter two standards, should he be considered? If I were to go solely by the record, candidly, I would vote against him. But his testimony showed an appreciable growth, if you want to make that assumption, or it showed political dexterity, if you want to make that assumption. But his testimony clearly was better than his record. If I had gone just by his record, as I have indicated, I would have voted against Judge Souter in committee, and I would be voting against him now.

In the area of civil rights, at least one statement he made while he was attorney general was a statement that concerned me. But in response to my specific questions, he was more forthcoming and encouraging, though he made one statement that still concerns me; and that is that there is no discrimination in New Hampshire. I wish that were the case in any one of our 50 States. It is more of an indication that his continued growth is still in need.

On the much publicized Roe versus Wade case, my own belief, my own impression, is that he will vote to sustain Roe versus Wade. It is made up of several reasons. One was his counseling of a young woman who was about to have an illegal abortion under Massachusetts law. The second was his vote as a member of the hospital board, where they authorized that hospital to have abortions performed at that hospital. A third came in response to a question by Senator SPECTER, in which Judge Souter said, so far as he knew, the court had never taken away a right that had been given. Finally then, it was the impression that I have from him of great reverence for precedent.

On the basis of those things, I will personally be surprised if he votes to overturn Roe versus Wade, though no one can know the answer for sure.

Finally, we face a very difficult question. That is, is it likely that President Bush will send a nominess with more moderate views than Judge Souter? As you look at the list of those who are considered, I have come to the reluctant conclusion that that is very unlikely. If I were to vote against the nominee, it would be a signal to the President that it does not matter who you send up, you are automatically going to get votes against that nominee from those who want to see the Court as a champion of civil rights and civil liberties.

Finally, I add, Madam President, the departure of Justice Brennan means, unquestionably, no matter what the votes of Judge Souter, the Court is going to be shifting to the right. That means that the basic defense of civil rights and civil liberties, I think inevitably, is going to shift from the Supreme Court to the Senate and the House. It makes our responsibilities more awesome, and I hope we will live up to those responsibilities. I will vote to confirm Judge Souter.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. GORTON. Madam President, this Senator is pleased to report that his impressions have been confirmed. Those are impressions of a man I met over a decade ago, David Hackett Souter, a man who now awaits the advice and consent of the Senate of the United States to confirm him as the 105th Associate Justice of the Supreme Court of the United States.

While I was attorney general of the State of Washington and president of the National Association of Attorneys General, I first met David Souter, who was then attorney general of New Hampshire. I was not happy to meet David Souter under those circumstances, because my friend WARREN RUDMAN had just left that position. He turned it over to an individual whom I did not know, and about whom I knew nothing. But I learned quickly that David Hackett Souter was a thoughtful, courageous, and intelligent man, a man of integrity and steadfast purpose.

The Nation watched as Judge Souter's fitness for a seat on the bench was questioned by the Senate Judiciary Committee for the second longest period of time of any Supreme Court nominee in history.

(Mr. SIMON assumed the chair.)

Mr. GORTON. I believe we observed the courage and independence of a man confronted on each side by those who wanted to hear clear and preconceived notions. I can say that had he told the committee what many of its members wished to hear, he would not gain this Senator's vote today to become Justice David Souter. Presi-

dent Lincoln once observed under similar circumstances, "We cannot ask a man what he will do, and if we should, and he should answer us, we should despise him for it."

Why? Because the Constitution requires of our jurists the impartial balancing on the scales of justice the facts which are presented to them. Our Federal Code states:

Any justice, judge, or magistrate of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. (28 U.S.C. 455(a)).

To be impartial, a judge must divorce his personal feelings from the philosophical analysis which he is charged to employ for the benefit of every citizen. Impartiality is and must be a prerequisite to the grant of the awesome power of this position. Judicial independence fostered by that impartiality is the touchstone by which our law lives.

The report of the Judiciary Committee on this nominee concluded:

We believe that Judge Souter struck an appropriate balance in this testimony; that his testimony and the record before the committee enabled us fully to discharge our constitutional responsibility of advice and consent; and that a requirement of greater specificity would gravely compromise the independence of the judiciary and the separation of powers. Such independence is explicitly mandated by the Constitution, by Federal statute, and by the canons of judicial ethics.

I am proud to have witnessed Judge Souter withstand the test. And I can think of no qualities which are more important for a position on the Supreme Court of the United States than those which David Souter demonstrated in those 20 hours, a constant willingness and ability to listen, to learn, to grow from experience. Judge David Souter has the integrity and the dedication to ideals which made this country great.

Mr. President, I think none of us, even Members of the Senate of the United States, can fully appreciate the awesome and lonesome responsibility of being a member of the Supreme Court of the United States and having the Constitution of this great country in his or her hands. My conviction is that David Souter can take on that responsibility thoughtfully, responsibly, with an open mind, and with the ability to contribute greatly to the development of legal institutions in this country. Judge Souter has earned my vote for his confirmation, and I hope my colleagues will find that he has also earned their vote as well.

The PRESIDING OFFICER. The Senator from Colorado is recognized.

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

I want to spend a few minutes sharing my own thoughts and experiences with my colleagues about my own decision related to Judge Souter and the decision facing the Senate this week.

As you know, I am not a lawyer and I therefore come at this with perhaps a bit of a different window than those who are looking at the record, reading cases, and so on.

I would like to do two things today. One, to talk a little bit about the issue of Roe versus Wade in front of us and, second, sketch what I think is a very interesting and informative profile of David Hackett Souter as I gathered it over the last 10 weeks.

First, the issue of Roe versus Wade is clearly the issue many of us, commentators and observers, have come back to. This is one of the dominant issues of this time, if not the dominant issue on the Court right now. I would hope that David Hackett Souter will be voting to uphold Roe versus Wade. I am sorry——

(Disturbance in the Visitors' Galleries.)

Mr. WIRTH. Mr. President, the issue, as we all know, elicits all kinds of responses and emotions, and it would be my hope that the concern for precedents, the concern for privacy, would lead Justice Souter in this direction. I would also think it is absolutely appropriate for everybody to be asking questions on this front and I am sorry we did not get more specific answers on it but you know that is the judgment that was made by David Souter.

Beyond question, the Supreme Court is now at a crossroads. Judge Souter's role on the bench may well be pivotal. Because I take the advice and consent role of a Senator very seriously, I met with Judge Souter, have reviewed the hearing record and some of his decisions and have spoken with many people associated with him professionally. Given my division with the President on many of the issues the Supreme Court may hear, the best I could hope for would be a skilled judge who comes to the bench with an open mind—I believe Judge Souter does just that.

I do have some reservations, similar to many of my colleagues. Upfront I must admit that I hope he holds fast to the approach he cited when discussing fundamental rights during his hearing. He stated that he would use the approach identified with Justice John Marshall Harlan—that the question of weighing the value of asserted rights cannot be approached without an inquiry into the history and the traditions of the American people, in order to try to find, on a historically demonstrable basis, their commitment to a set of values which either do or do not support the claim that a particular right in question is fundamental.

During his testimony, Judge Souter stated that he has not made up his mind as to whether or not he would vote to uphold Roe versus Wade. Judge Souter did not address the fundamental right to privacy with as much clarity as I would have liked. But he did indicate his commitment to certain matters of privacy, and I hope that during what is expected to be a long term on the bench, he continues to support the fundamental individual rights.

When Judge Souter was asked about the equal protection clause in the 14th amendment, he stated that his approach in interpreting the Constitution would be to determine the meaning or principle that the framers intended—not the specific application they had in mind at the time. Should this be the case, when a question of protecting individual rights of privacy were to come before the Supreme Court, I expect that Judge Souter will set fit to see to decide the case with the breadth of our time, not be limited to the scope our framers had when writing the Constitution.

To go on, Mr. President, let me talk a little bit about what I understand and have learned about David Souter over the last 10 weeks. David Souter and I were in the same class in college. We lived in the same living unit, a very large dormitory kind of unit that had its own dining room, and so on. There were probably 350 undergraduates in this unit. We were in the same class. We did not know each other. We knew who the other person was but did not know each other.

As an aside, I might say a friend of mine came up and said, how could you vote for someone when you did not even know him when you were there? I said he did not know me either. I think that is appropriate commentary on the fact it is a large institution. In any case, I was surprised it came up in the same class.

So soon after his nomination was sent up, became public, I got on the telephone and I made a variety of calls in August and let me flesh out, if I might, the profile that emerged. This was in early August. That profile, and these are my notes that I picked up off my desk the other day in summary of all these conversations. I must have talked to 10 or 15 classmates who knew David Souter.

Smart, courteous, little fastidious, devotion to precedents, extraordinary intelligence, great integrity, a man who puts principle before expediency, a man of old New England values, intensely private. Asked a liberal Democrat, does Bush know any more than we do? How could he? He is an intensely private man, describing David Souter. Devoutly Episcopalian. Another said, no reservations, an individual of great principle and underlying humanity.

Another, without qualification. And then he said, I also am a liberal Democrat. He said my view of George Bush

just jumped up. Sense of many as a person, concerned sense of a person who does not exist any more.

Said one, an individual who is joyous within his own house and his own library. I believe he is truly interested in judicial restraint, not an individual who has commented to me and through the years on politics.

That was a profile in August as I talked to people. All of these individuals were close to David Souter and very positive.

I picked this up again at the beginning of last week and made another round of calls and let me just share these last reactions and I will stop.

From one individual in our class who is a reporter for a major national newspaper: He said, having called around himself—this is a secondary research—my general sense of those who are—this is a man who chooses to live his own life although he is not a hermit by any means, he maintains friendships of individuals who themselves are from moderate and a progressive stripe. The people who are close to him are not ideologs. His friends describe him as being bright, thoughtful and idealistic. This is a profile from our classmate reporter who had talked to other classmates. While he may be cautious, from a conservative State, he is not a Reagan Justice, or someone you would think George Bush would appoint.

None of the people had a conversation with him about Roe versus Wade. I checked and cross-checked them for over an hour. None believed with his own belief in precedents that he will overturn Roe versus Wade, and his own instincts will lead him in the direction of supporting precedent.

Men and women say the same thing. Among the people who know him well I get the same reading. If I were a conservative I would be petrified by this guy. There is no guarantee he will do what they want, not a Scalia clone.

That is the secondary research of this last week from a reporter friend of mine, a classmate who talked to a variety of other individuals. I have done a lot of my own primary research and again let me close with reactions of this week.

None of these people obviously do I want to identify. I asked one gentleman who is again a liberal Democrat, a clergyman and a very, very thoughtful and bright individual whom I knew also 30 years ago. I asked him, would you vote for David Souter? He said, I think I am sure I would vote yes. I was a little surprised by this statement on Brennan; I did not know he would say that. He is very honorable. He simply would not fake it. I was asking what he thought about the Souter testimony on the girl at college, and so on. He said he simply would not fake it. What you see is who he is. When we were undergraduates this classmate said he lived and breathed the Supreme Court and judicial process, so much that we used to call him then Justice Souter. He has great respect for precedent, he is a student of Holmes, did his senior thesis on Holmes and Holmes' judicial philosophy, has a deep abiding interest and respect for the Court and American history; certainly not likely to be an extremist in any way. Nothing would suggest that that is the case. With time, in fact, I believe he will be a coherent force on the Court.

He is a wonderful and amusing friend. "Something I have always wanted to do," said David to me. After I called him when I heard about the appointment, he said, "This is something I have always wanted to do. But if it doesn't work out, I can be blissfully happy on this court in New Hampshire."

It is sort of an accident of fate that someone who is so nonpolitical would be washed up on these shores. As part of the research this last week, let me conclude with this morning's telephone calls, if I might, Mr. President.

"David Souter, simply stated, is one of the greatest individuals I have ever known. He is extraordinarily brilliant, intellectually gifted in an openminded way, not a bully like some who are that smart. He can then carefully and calmly come to a conclusion having put his force of mind to work on it."

And "I am a liberal Democrat. This will be one of George Bush's great appointments."

"On predictability, on the issue that everyone is talking and asking about, and given the caveats of Supreme Court decisions—and having spent so much time with him, as has my wife and daughter; I am a lawyer—I do not think he will kick over the traces. He will get people talking together like Justice Powell."

And, "I imagine he will be a jealous guardian of individual liberties, sort of a New England-like approach to guarding the individual against the State."

And, "Watching the hearings confirmed what I know about him personally. What you see is what you get. He is not partisan. He is not an ideolog. He is not a zealot. I did not vote for Ronald Reagan or for George Bush. My guys have not done very well. But even given the presumption that they can appoint anybody who they want, he is really a fine appointment."

I was very impressed, Mr. President, with this catalog of individuals, the perspective was very broad. Most of them are people who are more progressive rather than conservative. But these are people who have known David Souter for 30 years. What emerges is that profile that I have described. I am going to vote for David Souter. I believe that this profile is one that I can trust. I did the best that I could in the research available to me, read the record, looked at the hearings, watched David Souter testify, and I have talked to the lawyers. But maybe more importantly I have put together this human dimension which I wanted to share with my colleagues and with the country today.

Thank you very much, Mr. President.

I yield the floor.

Mr. ADAMS addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington is recognized.

Mr. ADAMS. Mr. President, I have previously stated my position with regard to the nomination of David Souter in the CONGRESSIONAL RECORD of September 27 at the beginning of that day on S14035.

But I felt that it was necessary during the course of this debate, during this executive session, that I once again make a few very brief remarks to not reiterate what I stated on that day, which I still believe and feel is an important part of this record, but to simply state again the concern and the real lack of substantial position that many of us feel with regard to nominee David Souter concerning his feelings on the right to privacy and in particular the right to privacy contained within the U.S. Constitution as it affects the right of women to make a choice on their reproductive rights.

I was very impressed with the comments of my very good friend, Senator WIRTH, as to the personal integrity and the intelligence of David Souter. I have not doubted this. But it was refreshing to hear his analysis of the people he had talked to and the hope that he has that we will have—from a President who has deliberately stated he wishes Roe versus Wade overturned and has nominated this man—a man that may indeed be another Lewis Powell or a Blackmun and may be his own person on the Supreme Court.

I am opposing the nomination of David Souter because in this position as a Senator of the United States, I am 1 of 100 who give their advice and their consent to the creation, along with the President, of the third branch of Government under this Constitution. In the creation of that branch, we had, during the course of our history, created some good, some bad, some mediocre Supreme Courts.

We have the present situation in the United States where we have a President committed to one position. We have probably a majority of the U.S. Senate committed to another position on this right to privacy as it affects the right to choose of over half of our people. And we have a Supreme Court that has been appointed over a series of years that is either evenly balanced or is balanced in favor of overturning a basic right of privacy.

As a lawyer and as a person who has tried many lawsuits and been involved in both the Congress—the House, the Senate—and in the administration as a Cabinet officer, I take very seriously the duty that we are to give both advice and consent on a person who, in this particular case, gave a very good presentation on nearly all matters.

I think he will make an excellent judge on the first circuit, and after a number of years might well be considered, as he has made decisions on Federal cases involving the Constitution, for a Supreme Court position by this President. And it may well be, as my friend, Senator WIRTH said, that we have gotten lucky and that this is a person that would be far better than any other we might ever get.

But I am struck by the fact that we had testimony—and I followed it carefully—with regard to David Souter's position on the death Penalty. I happen to agree with his position on the constitutional effect of the death penalty. But 2,000 people on death row know where he stands on that and his general philosophy—not a particular case but his general philosophy—and yet over 100 million law-abiding women in the United States of America do not know what his position is on what had been a settled fact of law for over 17 years in Roe versus Wade and a basic right that we very often—98 men in this body, and 8 on the Supreme Court—pass on the rights that we know not all about.

So this is a very important question for a lot of people, and a lot of people view this not as some deep political question but as a deep constitutional question—the fundamental right of privacy. I am always struck by those who would deregulate everything in this country but would regulate a women's most private rights.

I am concerned and, therefore, I shall vote against the nomination of David Souter. I hope that I am proven wrong and that the statement that was just made on the floor that this might be a great surprise to all of us and this might be a person who would vote to uphold, by stare decisis or otherwise, a constitutional interpretation that has existed for 17 years.

The Constitution, Mr. President, of the United States is a shield not a sword. It is a shield for individuals against the power of the State. It is a shield, in this case, for over half of our population, who happen to be female, from having their right of privacy deeply invaded and regulated, whether it be by the State or by the Federal Government. And it is something that very often is debated without their presence being a major factor.

I, therefore, feel in the case of David Souter, this body should wait awhile. Let him show his mettle on the First Circuit. Because an appointment to the Supreme Court is very different than an appointment to any other court in the land. A person appointed need not be a lawyer. A person appointed need not have any particular set of qualifications. A person appointed becomes one of nine, rather than 535, or rather than an individual, as one of the three parts of the U.S. Government.

The decisions that will be made by this appointee will probably last in this country for the next 30 years. The Senate has to give its advice and its consent. My advice is that we appoint someone who will uphold the traditions of the Court and use the Constitution as a shield, particularly as it involves the rights of the women in this country. My consent is withheld because I have not been convinced that this would occur. I hope it will.

As I said in my earlier comments in the CONGRESSIONAL RECORD several days ago, if I am proven wrong and he protects these fundamental rights of the women of our country, I will appear on this floor and I will offer him a personal apology that I misjudged him. But all I have at this point is the judgment that I can render based upon the testimony that he gave, the testimony that others gave, and the record that he has. I must admit that record is very limited so far as the Court is concerned.

So let us all hope David Souter is what he appears to be; according to Senator WIRTH, a person of independence, a person who will follow the traditions of the Constitution, who will treat it as a shield, who believes in the right of privacy and will enforce it and, therefore, will not go to the Court and join a group to overturn a 17-year-old decision.

I realize many if not most of my colleagues may disagree with me on this, but I have felt it very important that the President of the United States understands and that my colleagues understand that many of us, as a matter of conscience, cannot support this nomination.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming is recognized.

Mr. SIMPSON. Mr. President, obviously I am supporting the nomination of Judge David Souter. I think the remarks of Senator WIRTH of Colorado were so appropriate and very moving to talking with regard with the people who know him best. That is the test of any human being. I think that is one of the most impressive relations of support that I have heard on any nomination. And to speak as a classmate of the man, men who knew him, and the other classmates as they remember him, and many happening to be of liberal Democratic philosophy, that I think says it all.

I have a strange view of politics. I always like to see how a person does in his home precinct as he runs for political office. How does he do right there among the people who supposedly know him best? I think that is a pretty good test, and one we should use.

I must also respond to the comments of some who suggest that Judge Souter came to the confirmation process bearing some burden of proof. This is a particularly inappropriate use of that phrase, in my opinion. The Senate Judiciary Committee was not sitting as some omniscient body sitting in judgment of executive nominations. Our proper role, under the advice and consent clause of article II, section 2, of the Constitution, in my view, is to provide an additional, more personal, information gathering mechanism through which our colleagues, the full Senate, may make an informed decision whether or not to confirm a nominee. Our job was to look not only to the nominees paper trail, academic credentials but to also try to see into the nominee's heart. I commented on those perceptions last Thursday and will not restate those here. I am troubled, however, about this perception that a nominee must prove something to the committee and the Senate before he or she is fit to assume a position on the Supreme Court.

I just want to comment briefly on the burden of proof issue that came up, and continues to pop up. It is my personal view there is no burden of proof on a nominee to assure the Senate that he or she will vote in the manner dictated by the particular politics of the moment, either according to some specified political philosophy or to a specific outcome on any particular issue, abortion being a classic example.

I happen to feel that a woman should have the choice, indeed, in that ghastly situation known only to them. But if there is indeed any form of burden of proof, that burden is, in my mind, upon any Senator who comes into the confirmation process with a personal agenda. That is where the burden of proof falls, heavily and clearly.

The burden is on those who would vote against the nominee only because they disagree with the choice made by the American people when they elected the President of the United States. The burden is on those Members who approach the process with a closed mind, or who have made up their mind. It is their burden to prove to the American people that they are discharging their constitutional duties, rather than acting most energetically out of personal bias or purely political motives.

I think it is unfortunate the confirmation process has indeed become overly permeated with politics in the partisan sense. It will always necessarily be present, but not as an overweening component.

We expect our judges and Justices to approach cases with pure objectivity. We demand they shed their personal feelings while sitting in judgment of others and while passing on the important constitutional issues of the day. I am concerned we in the Senate, while considering the equally crucial question of confirmation of a Presidential nominee to our highest Court, appear reluctant to impose upon ourselves an equally stringent standard of objectivity in performing our duties under the advise and consent clause.

So any burdens, I think, are upon those who seek for any reason to destroy the presumption in favor of the President's appointment.

That is not to say we should not be critical. It is not to say we should not question. We do not blindly accept, but we should never demand to know how a future case will be decided as a condition to a favorable confirmation vote, because such conditioning, in my opinion, undermines the basic requirement that our judges approach each case objectively and that their decisions in those cases be based purely on the law.

I hope we will have a successful vote. I know we will, in a few moments. I am convinced that the record leads—and any thoughtful person who reads it will be led—to only one conclusion, the conclusion reached by an overwhelming vote of the committee, by a 13-to-1 vote of my colleagues: That David H. Souter will be one splendid and fine addition to the Supreme Court; and, as Justice Souter, he will not be swayed in his decisions by sheer numbers. He is not afraid to depart from the majority of his colleagues if his interpretation of the law leads to a result different from others. He will listen.

We hear that again and again. That is a key aspect of this man. He will set aside his own personal and political beliefs when deciding cases brought before him. He will not legislate, nor will he be afraid to make the politically unpopular decisions if the law requires a politically unpopular result.

David Souter will be a Justice—a Justice in the purest and finest sense of that word—and our country will be well served by his presence on the Court. He is a most impressive man, a sincere and authentic and kind human being. He will be a tremendous Justice. He is going to make us all very, very proud. I say God bless him in his deliberations on that bench, and in his stewardship of our enduring Constitution.

Go back and look at his opening statement before the committee. That said it more beautifully than I can.

I thank the Chair.

Mr. DECONCINI. Mr. President, there are several major issues of the utmost importance presently facing this body and the American public. The controversy in the Persian Gulf has yet to be resolved and requires our constant attention. The budget summit agreement is on the mind of every Member in this body. Both of those issues involve two of Congress's most important powers: The power to declare war and the power of the purse. Today, Mr. President, we execute a power entrusted to the Senate that can weigh just as heavily as those two other powers. For through our role of advice and consent on Supreme Court nominees, we determine, with the President, which individuals will be interpreting the Constitution for future generations.

President Bush has nominated Judge David Hackett Souter to a position of extraordinary importance in our country. I spent a great deal of time prior to his confirmation hearings studying the record of Judge Souter. I was indeed impressed with his background. As a member of the Judiciary Committee, I with my colleagues questioned him on the great constitutional issues of our day. In the end, I felt secure that Judge Souter would protect the rights embodied in our Constitution that we all so cherish. For that reason I decided to vote to confirm his nomination.

In Judge Souter, President Bush nominated an individual who appeared to possess the intellect, integrity, experience and judicial temperament to serve on the Supreme Court. The committee hearings gave him the opportunity to confirm those impressions.

I was very impressed with Judge Souter's testimony before the committee. I was especially pleased by his openness in answering committee members' questions, He heeded the advice of several of my colleagues and myself to be forthcoming. Yet he drew a reasonable line in his response. Judge Souter adequately and properly protected his need to withhold answers in certain areas that will still come before the Court. At the same time, he discussed at length his approach to constitutional interpretation and his legal opinion on settled law.

The hearings made clear that Judge Souter did not have a hidden agenda he would attempt to impose upon the Court. Instead, Judge Souter is a proponent of judicial restraint. He respects and defers to precedent. He understands the respective powers of the three branches of Government. Most importantly, he understands the role of the Court in our system and its duty to protect individual liberties. He will not attempt to protect the "haves" at the expense of the "have nots."

Mr. President, no one in this body will ever be satisfied with every response of a nominee. I would have liked to have heard Judge Souter's own standard for gender discrimination under the equal protection clause of the 14th amendment. But I feel confident that he will not attempt to dismantle the protections the Court has provided in this area.

We have no absolute assurances how any nominee or sitting Supreme Court Justice would vote. The Constitution does not entitle the Senate to such a guarantee. Our ability to predict a Justice's future decisions is limited. Justices have changed their positions from time to time. Throughout their careers they face constitutional issues never contemplated at the time of their nomination. Thus, the ultimate question we as Senators must ask ourselves is whether we feel secure entrusting him with the tremendous responsibility of protecting the rights embodied in our Constitution. I am confident that Judge Souter will guard these rights judiciously.

Changes in the Court's composition are disruptive but inevitable. Justice Brennan's retirement is indeed a turning point in the history of the Supreme Court. Although I disagreed with some of Justice Brennan's decisions, no one can deny his mark on the Court or his place in history. In that respect, Judge Souter, as he so candidly admitted, has some pretty big shoes to fill. He will, I believe, serve the Court and out country well.

Mr. President, I hope that the Souter nomination will serve as an example for President Bush and future Presidents on the nomination process. President Bush fulfilled his appointment duty by presenting us with a nominee who possesses competence, integrity, judicial temperament, and experience. Through the committee, the Senate fulfilled its role of examining and questioning the nominee on the great constitutional issues of our day. We conclude that duty today by exercising our advice and consent authority. Chairman BIDEN and the ranking member, Senator THURMOND, of the Judiciary Committee should be commended for conducting very thorough hearings. I believe the committee asked extensive but fair questions and I further believe that Judge Souter responded with fair and thoughtful answers.

I have concluded that President Bush chose Judge Souter because he will be an openminded jurist. And, most importantly, as he so often stated during the hearing, he will listen. He was not chosen to turn back the clock on the great constitutional principles of our day. Through the hearings the Senate and the American public heard an individual with a great understanding of the Constitution and the role of the Court in protecting our individual liberties.

Mr. President, today this body will be entrusting Judge Souter with a position of immense power. Soon, he will begin making decisions affecting the lives of each of us far into the future.

His decisions will also impact on our children and their children. We cannot reverse the course that Judge Souter will pursue. Thus, we can only be secure in believing that we made the right decision based on what we know today. I am secure in voting to confirm Judge Souter to the Supreme Court. And I am confident he will fulfill our expectations.

Mr. BIDEN. Mr. President, to bring the Chair and my colleagues up to date here, I think we only have three more people who wish to speak on this nomination. One is on his way, as I speak—Senator CRANSTON—who indicates he would like to speak on the nomination for about 10 minutes. And then I believe the only two people left who indicated a desire to speak on the nomination—I say this for the convenience of my colleagues in determining when the vote is likely to take place—is the distinguished Senator from New Hampshire, the real justice. I should not be so facetious. We have all been kidding him so much because he has an intense interest in and is a close friend of the nominee.

The Senator from New Hampshire is on the floor and, after Senator CRANSTON speaks, he will be the last speaker on the Republican side, and then Senator MITCHELL would like to close. He indicates he has about 7 minutes worth of comments. So if all goes well in the next few minutes, we should be able to be voting on this nomination by 6 o'clock, hopefully maybe as early as 10 minutes of 6. In the meantime, I suggest the absence of a quorum awaiting the arrival of the Senator from California.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. BIDEN. 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, as the Senate deliberates on the nomination of Judge David H. Souter to serve as an Associate Justice of the U.S. Supreme Court, I am reminded of a statement uttered by one of our greatest Presidents, Abraham Lincoln, nearly 136 years ago. Referring to the great strife that was dividing our Nation at that time. Lincoln stated, "No man is good enough to govern another man without that other's consent."

Although circumstances differ, President Lincoln's statement still rings true today. In considering the nomination of Judge Souter to serve on our Nation's Highest Court, we are offering the Senate's consent—the people's consent—to selecting Judge Souter to decide some of the most important and controversial issues that will be coming before the Supreme Court.

This is a very sobering responsibility, and one that I do not take lightly. The cases that will be considered by the Supreme Court this coming year, and the next several years, are sure to be among the most contentious for many decades. During this term alone, the Supreme Court will be deciding cases involving such controversial issues as abortion, sex discrimination, punitive damages, and challenges to the death penalty. Therefore, I am concerned that the individual who receives my consent—indeed, the Senate's consent—brings an open mind and a tempered judicial willingness to thoroughly review the facts and circumstances of these cases.

Mr. President, I have reviewed Judge Souter's background. I am much impressed by his academic and professional credentials. Judge Souter's testimony before the Senate Judiciary Committee indicates that he possesses an agile legal mind and a keen intellect, reflective of a well-reasoned and experienced judicial philosophy. Judge Souter has the background and the legal knowledge that should serve him well in deciding vital constitutional issues of our time. He received the highest judicial rating possible from the American Bar Association's judicial screening panel. Judge Souter's academic record is flawless, boasting two undergraduate degrees—one from Harvard and one from Oxford where he studied as a Rhodes Scholar. Subsequently, Judge Souter earned his law degree at Harvard University, where he was named Phi Beta Kappa.

Judge Souter's professional background demonstrates a commitment to public service that is lacking in many lawyers with his distinguished academic credentials. He served as an associate with the New Hampshire law firm of Orr and Reno for 2 years after graduating from Harvard. He then turned to public service, as both assistant attorney general and associate attorney general for the State of New Hampshire before being named attorney general of that State in 1976. In 1978, Judge Souter was appointed to the New Hampshire Superior Court, and 5 years later, he was appointed to the New Hampshire State Supreme Court. Most recently, Judge Souter was appointed to the First Circuit U.S. Court of Appeals, where he has been serving since this past April.

Mr. President, I do not casually offer my support to any nominee. After much study and review, I am satisfied that this nominee is eminently qualified and will provide a well-reasoned and an aptly tempered approach to the cases that will be coming before him. I approve of Judge Souter because he offers a unique combination of qualities that will serve him well on the U.S. Supreme Court. I recall a statement that he made during his confirmation hearings that a few of us here in the legislative branch would do well to remember. He said, "* * * at the end of our task some human being is going to be affected * * *," and judges, therefore, "had better use every power of our minds and our hearts and our bodies to get those rulings right."

I am certain that Judge Souter will wrestle to the utmost to get those rulings right. His brilliant legal mind, combined with his human approach to the law, will serve our country well. I hope my colleagues will join with me in offering their consent for approval of this nominee.

Mr. DURENBERGER. Mr. President, I rise to support the nomination of David Souter to the U.S. Supreme Court.

Judge Souter will replace a legend, Associate Justice William Brennan, who after 34 great years on our Nation's Highest Court has stepped down. Justice Brennan's powerful intellect, winning personality, and willingness to take on the tough issues have served the Nation well and will be hard to replace. He has left a legacy of wisdom and service that will grow in history. His shoes cannot be filled by anyone, nor should they be.

On July 23, 1990, President Bush nominated David H. Souter to fill Justice Brennan's vacated Supreme Court seat. I believe the President's choice is a wise one and am very glad that he has acted so swiftly to fill the seat. The Court will be asked to address many complicated and important issues this fall and it is very important that all nine chairs be filled.

I take my constitutional role of advising and consenting on judicial nominees very seriously. It is one of the most important responsibilities assigned to each Senator and one that I have devoted a great deal of time to in the last couple months. Accordingly, I have evaluated Mr. Souter's nomination very carefully. I listened to his hearing testimony, and that of other witnesses, read many pertinent documents, and spoken with many Minnesotans about Souter's nomination.

Mr. President, shortly after I was elected to the U.S. Senate in 1978 I was faced with my first appointment. President Jimmy Carter had nominated Congressman Abner Mikva to the U.S. Court of Appeals for the District of Columbia. I grappled with the choice of standards for evaluating judicial nominees. Article II, section 2 of the Constitution provides that the President's power to appoint important public officials is to be exercised "by and with the advice and consent of the Senate." Alexander Hamilton, in No. 76 of the Federalist Papers stated that the purpose of advice and consent was "to prevent the appoint-

ment of unfit characters." Senators have interpreted this power in different ways.

Under one standard, the one I have come to use, it is the Senate's role to evaluate the nominee on the basis of his competence and integrity. This standard is premised on the view that the President, elected by all the people, was empowered by the Constitution to appoint officeholders who would further his philosophy and goals. The other standard, a distinctly minority and different view, was that a Senator would vote his perference on the political views of the nominee. The second standard was, and is, very tempting. Abner Mikva's views were much more liberal than mine. But, after careful analysis I decided that politics did not belong. As I stated at the time:

> The power to "advise and consent" on judicial nominations has never been viewed as authority for the Senate to substitute its judgement for the President's on the qualifications of a nominee. For two centuries that power has been regarded as authorizing rejection of nominees for only two reasons—lack of integrity or lack of competence. No judicial nominee has even been rejected simply because the Senate disagrees with his political views.

So, I swallowed hard and voted to confirm Abner Mikva. I have employed that standard for every judicial nomination since. I did for Judge Bork, and I will apply it to the Judge Souter's nomination today.

In sum, my constitutional advise and consent role is to evaluate a nominee's fitness to serve as a judge. My goal is to insure that members of the Supreme Court are able jurists, honest, and will fairly interpret the Constitution and laws of the land. I do not have a litmus test; such tests are not appropriate. I do not look for a political agenda or philosophical bias. Competence and integrity are what matter.

Mr. President, Judge Souter is competent and has an unblemished history of legal and public service. His career is one of high intellectual achievement and personal integrity. While watching his confirmation hearing before the Senate Judiciary Committee, Judge Souter showed me that he is a man of deep intellectual character; a man who will approach every case presented to the High Court with a willingness to listen carefully to both sides, and then cast his vote based upon the principles embodied in our Constitution. He does not bring a personal or political agenda to the court. The only agenda Judge Souter has is to interpret the Constitution and law consistent with the principles of fairness and justice.

I was most struck by a comment Judge Souter made about the awesome power that any judge must have, especially a member of the Supreme Court. Let me quote Judge Souter when he described his judicial role: "Whatever court we are in * * * at the end of our task some human is going to be affected. Some human life is going to be changed by what we do * * * (therefore) * * * We'd better use every power in our minds and our hearts and our beings to get those rulings right."

Mr. President, I conclude David Souter is fit to serve on the Supreme Court of the United States. This very intelligent, scholarly, and refreshingly private man well understands the imposing authority, power, and responsibility that he will have on the highest court in our land. He will not abuse that awesome power, but will interpret the Constitution of this land fairly and with compassion. These are the essential characteristics of a judge and make him fit to serve, and serve well on the Supreme Court.

Mr. HEINZ. Mr. President, on July 23, 1990, President Bush nominated David Hackett Souter, presently a sitting justice on the U.S. Appeals Court for the First Circuit, to fill the Supreme Court seat left vacant with the retirement of Associate Supreme Court Justice William Brennan.

As is the case with every recent Supreme Court vacancy, Judge Souter's nomination has engendered public debate and public scrutiny. The public has a compelling interest in the character and capabilities of individual justices who would serve on the Supreme Court, the highest court in the land. A nomination to the U.S. Supreme Court is a lifetime appointment, and the nine justices of the Court are, therefore, a select group. Together, they represent the final arbiters of the Constitution, the framework of our democracy and the guarantor of our individual liberties.

Because of the importance of the position, the Senate is required, under the Constitution, to give the President our advice and consent to the nomination. I approach this decision with an especially keen sense of responsibility. The process is demanding and challenging. In the discharge of my duties, I owe to my constituents, and Judge Souter, an impartial and fair decision in casting my vote.

In the 2½ months since the President nominated him, the Nation has learned a lot about David Souter, the person and the jurist. His entire life has been put under a microscope, leaving not a single aspect of his career uninvestigated. The Senate Judiciary Committee and numerous interest groups examined hundreds of his decisions as a member of the Supreme Court of the State of New Hampshire. They probed the actions he took and the briefs he wrote as attorney general and assistant attorney general of New Hampshire. They looked into his finances, his education, and his pastimes. The committee itself questioned Judge Souter for 20 hours in open session—more time spent before the committe by any other Supreme Court nominee in history save one.

Mr. President, the record demonstrates that Judge Souter is eminently qualified to sit on the Supreme Court. As an alumnus of Harvard College and Law School, a Rhodes scholar, private practitioner, New Hampshire attorney general and State supreme court justice, Judge Souter has shown the scholarship, legal acumen, professional achievement, integrity, fidelity to the law and committment to the constitution to serve on our highest court.

A standard I have applied in all nomination considerations is to determine whether the nominee is an extremist or activist. If so, the nominee should be rejected. I believe this test is fair and impartial, preventing extremism of both the right and left, either a conservative activist or liberal activist from joining our highest court. In responding to direct inquiries from committee members, Judge Souter articulated a judicial philosophy that is within the mainstream of constitutional thought. His answers on the issues of original intent, stare decisis, statutory construction and judicial restraint revealed a judge committed to rendering an honest interpretation of constitutional rights and liberties. He strongly and convincingly indicated his commitment to precedent regarding previous interpretations of the Bill of Rights, due process and the equal protection clause of the Constitution.

One of the highly controversial aspects of this nomination revolved around how Judge Souter would rule on cases coming before the Court which challenged the premise of the Supreme Court's decision in Roe versus Wade. Several Senators directly, and some others indirectly, asked Judge Souter his position on this controversial case. Judge Souter declined to answer this line of questioning, as is his perogative, since cases concerning abortion rights are scheduled to be heard by the Supreme Court in the near future. Judge Souter did comment on the constitutional underpinnings to that decision—the right to privacy. He stated that he believed that there is a fundamental if unenumerated right to privacy in the Constitution, and that the right of married couples to make choices about procreation is at the core of that fundamental right. His response may not have satisfied either side of the abortion debate, but it did reveal a person with a scholarly appreciation of the competing constitutional interests and with the integrity to render judgment in accordance with those interests.

Finally, Mr. President, I found this nominee to be both learned and eloquent. In his opening statement, and I recommend it to all my constituents interested in gaining a measure of this

man, Judge Souter acknowledged that the actions of a jurist cannot be rendered without thought to its effect. He recognized that his actions will affect human beings, that some human life is going to be affected in some way. His comments suggest to me a man who is capable of bringing depth and compassion to the Supreme Court.

Therefore, Mr. President, I will vote in favor of the nomination of David H. Souter to the Supreme Court of the United States.

Mr. DOLE. Mr. President, after 3 days of testimony and 18 hours of often grueling congressional questioning, Judge David Souter has demonstrated to America that he deserves a seat on our Nation's highest court.

Throughout his legal career—as New Hampshire attorney general, as an associate justice on the New Hampshire Supreme Court, and as the author of more than 200 judicial opinions—Judge Souter has consistently distinguished himself with his keen intellect, with his evenhandedness, and with his commitment to the rule of law.

Most importantly, Judge Souter understands that in a three-branch democracy such as ours, the role of a Federal judge is to interpret the Constitution strictly, and not to legislate one's own personal or political agenda from the bench.

So, Mr. President, it is no wonder that the American Bar Association has given Judge Souter its highest rating—well qualified.

And it is no wonder that—last week—the Judiciary Committee gave Judge Souter its stamp of approval—for the second time in less than a year.

JUDGES, NOT POLITICIANS

Throughout the confirmation process, Judge Souter has consistently refused to answer specific questions about specific cases now pending on the Supreme Court's docket.

This reticence may disappoint some of the beltway special-interest groups, but it does not disappoint the American people.

The American people have always cherished, and jealously guarded, the independence of their Federal judiciary. And they understand that this independence is endangered—gravely endangered—by the brazen intrusion of special-interest politics into the confirmation process.

To his credit, Judge Souter has gamely resisted these political pressures. And, for this, he has earned the Senate's—and the Nation's—respect and gratitude.

Mr. President, it is my hope that the experience of this nomination will help set the standard for Senate review of future Supreme Court nominees.

Without a doubt, Senators have a constitutional obligation to probe a nominee's judicial and legal philosophy. They have the right to ask tough questions. And they may properly examine personal qualities that are of critical importance to a nominee's fitness to serve—qualities like open-mindedness, integrity, a commitment to equal treatment under the law for all Americans, and an ability to understand real life people and their real-life problems.

These topics are all fair game. And no Senator should feel reluctant to press a nominee hard in these areas, and to reject that nominee if he or she falls short of the mark.

But, Mr. President, no nominee to the Supreme Court—or to any court, for that matter—has the obligation to explain how he or she will vote once confirmed.

Simply put, Federal judges should judge only from the Federal bench. They should not, and must not, prejudge cases from the bench of a Senate confirmation hearing.

In a recent article, former Chief Justice Warren Burger gave us all ample warning about the dangers of transforming Federal judges into politicians.

And I quote:

No nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined in detail before the Supreme Court with all the nuances that accompany a constitutional case. Presidents and legislators have always had platforms and agendas, but for judges the only agenda should be the Constitution and the laws agreeable with the Constitution.

THE SUPREME COURT'S FALL TERM

Mr. President, yesterday, the Supreme Court began its fall term. There are many important cases now pending on the Court's docket—cases involving the death penalty, the right to legal counsel, school desegregation, and the constitutionality of punitive damage awards.

With these important issues now under consideration, the Supreme Court deserves a ninth Justice who has the intellectual capacity to hit the ground running, to make a contribution to the intellectual life of the Court right from the start.

By any standard, Judge Souter has demonstrated an intellectual ability, skills as a lawyer and jurist, and a quiet, but firm, personal and judicial temperament that leave little doubt that he will make a significant contribution to the Court from day one.

Very simply, Judge Souter deserves to be confirmed by the Senate, and he deserves to be confirmed today.

Finally, Mr. President, I want to thank the distinguished chairman of the Judiciary Committee, Senator BIDEN, and the committee's ranking member, Senator THURMOND. They have conducted fair and comprehensive hearings. And they have greatly assisted the Senate in discharging its constitutional responsibilities.

I also want to congratulate my good friend and colleague, Senator WARREN RUDMAN. As most of us know, Senator RUDMAN's interest in this nomination extends beyond "advice and consent" to the bonds that flow from of a long and enduring friendship.

The success of Judge Souter before the Judiciary Committee, and almost certainly before the Senate later today, is as much a testament to the qualities of the Senator from New Hampshire as it is to the considerable qualifications of this fine nominee.

Mr. PACKWOOD. Mr. President, I rise today to discuss the nomination of Judge David Souter to be an Associate Justice of the U.S. Supreme Court.

No duty of a U.S. Senator is more important or deserving of careful consideration than that of a nomination to the Supreme Court. If confirmed, a nominee may well serve for decades, and his or her written opinions and ability to persuade fellow Justices will profoundly affect our lives, and the lives of future generations.

In the days since the Senate Judiciary Committee completed its hearings on Judge Souter, I have given this nomination a great deal of thought.

First, I have examined transcripts of Judge Souter's testimony before the committee.

Second, constituent organizations have shared their concerns with me about this nominee. This input was welcome and helpful in directing my attention to aspects of Judge Souter's record as well as the hearing proceedings.

Third, I have listened with interest to the reasoning of my Senate colleagues as they announced their respective positions on this nomineee.

Ultimately, of course, each Senator must keep his or her own counsel in a matter of this magnitude. I welcome this opportunity to share my decision on this nomination and the thinking which led me to it.

First, and I will not belabor this point because so many other Senators have covered it quite eloquently, Judge Souter has a superb educational background and impressive legal experience. The number of years he served as a State court judge, and State attorney general, leave no doubt of his legal competence.

In addition, those who know Judge Souter personally, gave him positive references almost without exception. This is true of: hearing witnesses; the judge's friends and associates who have been quoted in the media; and individuals of long acquaintance with Judge Souter who personally shared with me their high regard for him.

Judge Souter's associates find him personable, compassionate, and possessed of great integrity.

As important as outstanding professional competence and excellent char-

acter are, those qualities alone do not a Supreme Court Justice make. The Senate's constitutional duty to provide advice and consent in the matter of Supreme Court nominations demands that we look beyond these qualities to the most critical issue: what kind of steward of the Constitution would this nominee be?

There is absolutely no doubt that the next Justice to the confirmed will be the deciding vote on a number of issues of critical importance to Americans.

Keeping this in mind, as well as the duty of Congress to safeguard constitutional rights, I reviewed with particular interest Judge Souter's testimony on privacy, gender discrimination, civil rights, and freedom of religion.

Judge Souter was questioned on freedom of religion by committee members concerned about two of his actions as State attorney general:

First, his defense of an executive order calling for the lowering of flags on Good Friday, and

Second, his statement that the beliefs of Jehovah's Witnesses who refused to display the words "Live free or die" on their license plates were "mere whimsy."

Mr. President, I, too, felt concern about these positions which the judge had taken. Freedom of religion, one of the basic tenets on which our Nation was founded, means nothing if a State can establish one sect as more legitimate by its actions, or prevent the free exercise of religion. I was therefore gratified to note that the hearing record reflects that Judge Souter would apply strict scrutiny to laws that impair the free exercise of religion. His answer about the reasoning he would apply in cases where a State is alleged to violate the establishment clause was somewhat less clear. However, on balance, I am satisfied that the positions he took as Attorney General would not be reflected in his philosophy as a Justice.

Civil Rights is another area I red flagged for careful review, due in part to Judge Souter's now-famous alleged quote that "affirmative action is affirmative discrimination." I was also interested in the novel position he took as State attorney general that employee privacy rights prohibited the State from revealing its minority hiring practices to the Federal Equal Employment Opportunity Commission. However, Judge Souter's testimony again did much to allay my concerns. He did not reject the concept of affirmative action, and indicated that he would find it appropriate in certain circumstances. He also showed, in my view, a sensitivity to the degree that race discrimination affects our Nation, recognizing it as a tragedy. Finally, he left no doubt that Brown versus Board of Education is to him a matter of well-settled law.

On the issue of gender discrimination, Judge Souter indicated dissatisfaction in his testimony, as he has in his writings as an attorney and a judge, with the so-called middle tier of constitutional protection generally used. He is not the first to find fault with this standard. More important to me than his criticism of midlevel scrutiny, is what standard of protection he would apply in gender discrimination cases: Strict scrutiny? The rational basis test? Or a newly fashioned, more acceptable middle tier standard? This issue is of more than academic concern to American women, and I wish the record were more illuminating in this regard.

Finally, let me address the issue of the constitutional right to privacy. In this area of the law, more than any other, Judge Souter was reluctant to discuss his views, and he has been widely criticized for this. Judge Souter agrees that there is a fundamental marital right of privacy as found in Griswold versus Connecticut, which includes the right to use contraceptives. However, he stopped short of expressing his opinion of the reasoning in Eisenstadt versus Baird, in which the court found that the right to use contraceptives extends to unmarried persons.

He did this, I believe, out of an overabundance of caution rather than any desire to frustrate the factfinding efforts of the committee. It is obvious from the record that Judge Souter believed that any discussion of a case coming anywhere near Roe versus Wade in the line of privacy cases might cause him to comment on the merits of Roe. I disagree with his position that answering the committee's questions on Eisenstadt would have been improper. However, each nominee must decide for him or herself what the bounds of propriety are for discussing issues they feel may come before the court.

I also disagree with Judge Souter as to whether the right to choose recognized in Roe is a matter of settled law. However, in the face of my dissatisfaction and disagreement with some of his responses in this area, I keep coming back to one statement he made. In response to Senator KOHL's question: "Do you have an opinion on Roe versus Wade?" Judge Souter replied, "I have not got any agenda on what should be done with Roe versus Wade, if that case were brought before me. I will listen to both sides of that case. I have not made up my mind, and I do not go on the court saying, I must go one way or I must go another way."

My distinguished colleagues, based on what we know of Judge Souter's character, and the totality of his testimony, I take him at his word. And knowing that he is of an open mind on the question of abortion, I find encouragement in his statements about how he would evaluate a claim that a particular right is fundamental. Judge Souter voiced approval for Justice Harlan's approach, taking into consideration the history and traditions of the American people. If he applies that analysis, the right to choose must, I believe, be found to be fundamental because the legal structures against abortion in this country are of comparatively recent origin. Indeed, at the time our Constitution was written, abortion was permitted under the common law.

Further, I am convinced that Judge Souter is cognizant of the legal chaos that would ensue if the right to choose is struck down. He testified that the practical consequence of overturning Roe would be "a range of protection afforded which would raise complicated federalism issues." When asked by Senator METZENBAUM whether he would consider consequences, such as the death of women from botched illegal abortions, in determining whether the right to choose is fundamental, Judge Souter indicated strongly in the affirmative.

Although I take these as encouraging signs that this nominee would recognize that the right to choose is fundamental, I am not so naive as to assume what his decisions in individual cases would be on this or any other issue. To paraphrase an apt statement, which one Senator made in committee, I cannot be accused of making my decision on Judge Souter based on the single issue of abortion, because I do not know where he will come down on that issue. I do not believe we will be sent a nominee in the foreseeable future whose position on Roe and abortion will be easily discerned. Given those circumstances, and based on the totality of the record, I will vote to confirm Judge David Souter to the U.S. Supreme Court.

This does not mean that I believe it is inappropriate to ask nominees where they stand on the right to choose. Nor does it mean that if a nominee clearly indicated that he or she would overturn Roe that I would not mount a vigorous campaign against that nominee's confirmation. However, this nomination is not the occasion to wage that battle. The record simply does not indicate to me that Judge Souter would go to the Court with the intent to overturn Roe, or that he has an agenda to weaken constitutional protection against discrimination or freedom of religion.

Mr. President, I will vote to confirm Judge Souter, believing that the scholarly mind and compassionate heart which he evidenced during the confirmation hearings, will serve him and the American people well in his years on the Court.

39-059 O-91-10 (Pt. 19)

Mr. McCONNELL. Mr. President, I rise today in support of the confirmation of U.S. Court of Appeals Judge David H. Souter as an Associate Justice to the Supreme Court of the United States.

Before addressing the nominee's qualifications, I would first like to speak to the standard by which I examine nominees to the highest court in the land.

Over 20 years ago, as a legislative assistant in the Senate, I began to review and study the intent of our Founding Fathers in this important constitutional process. As a result, I devised a standard that I believe to be the Senate's role in this process. It was during this time that I wrote a law review article on this topic. Mr. President, I request that my article, "Haynsworth and Carswell: A New Standard of Excellence," Kentucky Law Journal (Volume 59, 1970-71), be included in the RECORD at the conclusion of my remarks.

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

[Article not reproducible in the RECORD.]

Mr. McCONNELL. Mr. President, an examination of the Senate's historic role in this confirmation process should begin with the political writings contemporaneous with the drafting and approval of the Constitution. In the Federalist, No. 76, in discussing the nomination process, Alexander Hamilton clearly defines the limits of the Senate's "advice and consent" power:

> To what purpose then require the cooperation of the Senate? I answer, that the necessity of their concurrence would . . . be an excellent check upon a spirit of favoritism in the President, and . . . prevent the appointment of unfit characters from State prejudice, from family connection, personal attachment, or a view to popularity.

Clearly, a test of ideology and politics was not contemplated. Also, the very structure of the proposed government, and the relationship of each branch to the other, supports this view. The framers intended for three separate and independent branches of government. The judiciary was to be free from political influences, insulated from the whims of a changing majority and answerable only to the law and a public that expected the judicial branch to despense justice free from the taint of popular politics. Any attempt to deny confirmation on the basis of a philosophy, that is within the mainstream of American political and judicial thought, is an assault on this tripartite structure of government. It is clear under our form of government that the advice and consent role of the Senate in judicial nominations should not be politicized.

Therefore, from Hamilton's description of the Senate's role in the nomination process, I have identified five basic criteria for reviewing nominations to the Supreme Court: Competence, temperament, judicial propriety, judicial achievement, and personal integrity.

Obviously, there are other theories to apply regarding the correct confirmation test, at various times during the history of Senate confirmation proceedings of Supreme Court nominations, the personal or political philosophy of the nominee has become the principle, and sometimes the only, criteria for fitness to the Court. Most recently, we went through the shameful debacle of the Bork confirmation process. The Bork proceeding was, thus far, the nadir of the 20th-century version of the bitter battles of the 18th and 19th century where judicial nominees were rejected because of partisan and ideological differences. The political judgment of a nominee's fitness for judicial office has found modern day validation in the writings of Yale Law School Professor Charles Black.

In my opinion, Senator KENNEDY stated the correct view during the confirmation of Justice Thurgood Marshall. Justice Marshall's nomination was strenuously opposed by Senate conservatives. The senior Senator from Massachusetts said:

> I believe it is recognized by most Senators that we are not charged with the responsibility of approving a [Supreme Court Justice] only if his views always coincide with our own. We are not seeking a nominee for the Supreme Court who will express the majority view of the Senate on every given issue, or on a given issue of fundamental importance.
>
> We are interested really in knowing whether the nominee has the background, experience, qualifications, temperament, and integrity to handle this most sensitive, important, responsible job.

There is no doubt that fundamental differences continue to exist as to what standards of fitness to apply. However, unlike the competency, integrity criteria, the successful application of the political fitness test requires an environment of intense political activity. As the Bork nomination proved, an extensive record of written achievement can create such a fertile environment.

However, the ideological litmus test may be applied differently when the nominee has neither written nor stated sufficient views on particular issues. Thus, the mechanism for determining whether the candidate will pass the political litmus test, may itself become the test. For example, during the Souter hearings, ideological opposition evolved to opposition based upon the nominee's failure to answer specific questions relating to issues that are most certainly to come before the Court.

With this new approach, those opposed to Judge Souter have tried to apply their political litmus test in a different fashion. Unhappy that the nominee has not provided any so-called controversial material—disagreement with the questioner's position—upon which to oppose the nominee, some would reject him for not commenting on issues of a future case before the Court. It started with general concerns about the open-mindedness of the candidate:

> David Souter must assure the Senate and the public that he has an open mind, is forward-looking and has a vision of the Constitution which respects individual rights. If he fails to meet this burden, the Senate should withhold its consent. (Nan Aron, Director, Alliance For Justice)

Later, the demand for David Souter's personal views on specific constitutional issues arose.

While I agree that a nominee should have an open mind, any questioning beyond a genuine effort to determine this openness is clearly inappropriate. Likewise, any attempt to elicit a specific response regarding an issue which is reasonably expected to come before the Court in the future is fundamentally unfair to any future parties and a violation of the judicial canons of ethics.

Moveover, such tactics begin to impinge upon an even greater principle, the constitutional doctrine of separation of powers. Warren E. Burger, in commenting on what he characterizes as a new assault on the independence of the judiciary, refers to this line of questioning as an inquisition. He states that the practice of calling upon Supreme Court nominees to answer questions in advance of how they would vote on specific constitutional issues is demeaning to, and a corrosive action upon, the Court and its necessary independence:

> Does such an inquisition not demean and undermine our historic separation of powers? If Senators can commit a future justice as to how he or she will decide a particular case, who then is construing the Constitution? Where does this place the high duty of constitutional interpretation?
>
> Now the question is whether the American people are witnessing a confirmation process in which special interest groups have flooded Senators with questions demanding advance commitment from the nominee as to what his or her vote will be on some pet subject.

Justice Burger was further quoted as saying:

> Of course, no nominee worthy of confirmation will allow his or her position to become fixed before the issues are fully defined in detail before the Supreme Court with all the nuances that accompany a constitutional case.
>
> To expect a nominee to make commitments, or even to engage in substantive discussion of a case yet unseen, borders on the preposterous. Judges, like Senators and Presidents, while entertaining general impressions on a subject, have been known to change their minds when they have all the facts and circumstances as distinguished from some hypothetical proposition.

Lloyd N. Cutler, counsel to former President Jimmy Carter, in a written article disapproving of this type of questioning of Judge Souter, wrote:

As Prof. Charles Black has noted, the Court is the great legitimator of our government, the final arbiter of whether or not the executive and legislative branches have exceeded or abused their limited powers. To perform this vital function, the Court must be, and must appear to be, as independent of the President and of the Congress as humanly possible. While the President must appoint and the Senate must confirm or reject the nominee, it is vital to the integrity of the process that neither they nor the rest of us insist on knowing in advance how a new Justice is going to vote in a particular case.

The key to the Court's critical constitutional role lies in the mystery of its future actions. If the Justices appear to have committed their votes to the President, who appoints them, or to the Senate which confirms them, we will no longer trust them as our ultimate authority on the Constitution's meaning.

In August, speaking before the American Bar Association, Supreme Court Justice John Paul Stevens warned against either the executive or legislative branches trying to determine in advance the views of the nominee:

You really wouldn't want a judge who would say in advance how he or she would vote on particular issues. That's not part of the independent judiciary that's such an important part of our tradition and our history.

I continue to believe that the Senate should reject the political litmus test. I also believe the Senate should reject any test requiring a nominee to state in any substantial way how he or she will vote on a particular issue that may come before the Court.

Mr. President, regarding Judge Souter's qualifications, it is quite obvious that after 5 days of hearings and 40 witnesses, Judge Souter's competency is certainly not in doubt. The American Bar Association's standing committee on the Federal judiciary has given him its highest rating, "well qualified." As both a lawyer and judge, his peers have spoken of his brillance and his outstanding intellectual capacity.

As to the second criterion, judicial achievement, Judge Souter is also very qualified. He has served with distinction in the following New Hampshire offices—assistant attorney general, attorney general, State superior judge, and State supreme court judge. Most importantly he has a depth of judicial experience including the hands on experience of a trial judge, a significant skill and perspective to take to the Higher Court. With his current position on the U.S. Court of Appeals, Judge Souter has 12 years on the bench. In fact, he has more judicial experience than all but one of the current Justices had at the time of their confirmation. John Broderick, a former New Hampshire Bar Association president, said of his judicial ability, "he's a judge's judge, extraordinarily talented and impeccably fair."

Judge Souter clearly meets the exacting standard of excellence. Academically, Judge Souter, a Phi Beta Kappa, graduated magna cum laude from Harvard College. Afterward he studied at Oxford University for 2 years as a Rhodes scholar. He completed his academic and professional studies at Harvard Law School. A "first rate scholar," says a former president of the New Hampshire Bar Association.

Last, a thorough examination of his background has found his judicial propriety and personal integrity to be above reproach. Even his most severe critic makes no challenge regarding Judge Souterh's personal or professional honesty. The ABA's standing committee stated that "Judge Souter's integrity, character, and general reputation appear to be of the highest order and without blemish."

In conclusion, Mr. President, under these standards of fitness I will vote to confirm Judge David H. Souter as Associate Justice to the Supreme Court.

Mr. COATS. Mr. President, in the last several years the Senate's constitutional role of advise and consent has lost its way in a thicket of policy debates and partisan agendas. Recent confirmation fights have scarred the process with bitterness and distortion. Senate hearings have become political inquisitions, rehashing the shifting debates of current elections.

But with the nomination of Judge Souter, we have the opportunity to defy the recent past.

To begin with, we must relearn a basic principle, a principle concerning how the Senate should treat the President's Supreme Court appointments. A principle about what the power of nominations means.

This is not a debate we conduct in a vacuum. The doctrine of advise and consent was given considerable attention by the founders. Alexander Hamilton wrote that the Senate should approve a president's nominee unless there were *"Special and strong* [emphasis mine] reasons for refusal." And further, that when the Senate oversteps its proper bounds, the result is "the full display of all the private and party likings and dislikes, partialities and antipathies, attachments and animosities, which are felt by those who compose the assembly."

Senator George Cabot of Massachusetts wrote in 1799, "I have always rejected the idea of non-concurrence with a nomination merely because the nominee was less suitable for the office than thousands of others: He must be positively unfit for office, and the public duty not likely to be performed by him, to justify in my mind the non-concurrence. It has always appeared to me that a departure from this principle would soon wrest from the President altogether the essence of nominating power, which is the power of selecting offices."

A judicial nomination is not properly a political struggle for the direction of the court between executive and legislature. That decision was made in a national election 2 years ago. The president has earned the right to make his choice under the Constitution. The Senate, quite simply, has no political role in this process at all. The criteria for our judgment is character, experience, and intelligence—these minimum standards of fitness. These limited determinations exhaust our appropriate involvement.

But with Judge Souter, we can say more than the undisputed fact he is fit for office. We can say he will bring exceptional talents, temperament, and knowledge to the court. This nominee merits more than grudging acceptance. He deserves our strong support.

His academic record is unexcelled. His service to New Hampshire as attorney general was outstanding. His tenure on the New Hampshire supreme court was distinguished. He is a scholar of the law and an individual of personal loyalty and religious conviction.

But above all, he takes it as his purpose to ensure fidelity to the words of the Constitution and the original intent of the framers. In a 1986 case Judge Souter wrote that "the court's interpretive task is to determine the meaning of * * * [constitutional language] as it was understood when the framers proposed it."

Some have attempted to define this approach as a variety of extremism. But it was once the dominant view of constitutional law.

Justice Nathan Clifford, in 1874, summarized this attitude, "courts cannot nullify an act of the legislature on the vague ground that they think it is opposed to a general latent spirit supposed to pervade or underlie the Constitution. * * * Such a power is denied to the courts, because to concede it would be to make the courts sovereign over both the Constitution and the people, and convert the government into a judicial despotism." Justice Felix Frankfurter, about 90 years later, reflected, "as a member of this court I am not justified in writing my private notions of policy into the Constitution, no matter how deeply I may cherish them or how mischievous I may deem their disregard."

I am convinced that the job of the judge is the application of the law, not the creation of new laws. The Supreme Court should be an instrument to check Federal expansion, not an instrument of Federal expansion. It is a principle, by every indication, that Judge Souter supports.

The alternative is to turn the court into a source of unpredictable interventions in policy debates. Judges become oriented toward political outcomes. Courts become political tribunals, and the consequences for democracy are profound.

Important decisions are taken out of the hands of voters and put into the hands of unelected judges. "If this is all that judges do," wrote Alexander Bickel, "then their authority over us is totally intolerable and totally irreconcilable with the theory and practice of democracy." Justice Hugo Black, who was occasionally guilty of the sin he condemns, warned that the Nation could "cease to be governed by the law of the land and instead become one governed ultimately by the rule of judges." He preferred to put his faith in the words of the written Constitution itself rather than to rely on the shifting, day-to-day standards of the fairness of individual judges." Abraham Lincoln said that under an activist court, "the people will have ceased to be their own rulers, having to that extent practically resigned their government into the hands of that eminent tribunal."

We cannot predict what decisions the court will be forced to make in future years. Issues change from decade to decade, even from year to year. The things that seem most important today may be relegated to footnotes in the dissertations written when the century turns. The most important attribute of a judge is his judicial philosphy and temperament, not his stand on current and shifting political debates.

By this standard, the president has made an excellent choice. He has appointed a candidate of judicial distinction and judicial restraint—a judge who will leave to legislators the business of legislation. And I hope the Senate will respond with its careful consideration and overwhelming support.

Mr. COHEN. Mr. President, the Senate's role in judicial appointments, and particularly the appointment of members of the U.S. Supreme Court, is one of its most important functions. In fulfilling its constitutional duty of advice and consent, the Senate shares with the President the critical responsibility of shaping the quality of the Federal judiciary and, therefore, the quality of justice in our Nation.

Although there may appropriately be a strong presumption in favor of a Presidential nominee, each Senator has an obligation to evaluate the qualifications and competence of those individuals nominated by the President in order to meet the responsibility imposed by the Constitution. After reviewing with some care David Souter's academic and professional qualifications, and his writings and testimony before the Judiciary Committee, I believe that Judge Souter should be confirmed for a seat on the U.S. Supreme Court.

The Judiciary Committee's hearings on the Souter nomination were lengthy and comprehensive. With few exceptions, the members of the committee and those who watched the hearings were impressed with Judge Souter's intelligence, his thoughtfulness and his strong streak of independence. His background is equally impressive, from his notable educational credentials to his experience as a State attorney general, trial judge, and New Hampshire Supreme Court justice.

The Standing Committee on the Federal Judiciary of the American Bar Association unanimously found Judge Souter to be "well qualified," its highest rating. The president of the New Hampshire Bar Association testified that "those of us who have witnessed Judge Souter's judicial performance firsthand can, in good conscience, report to this committee that he possesses * * * a first-rate legal mind, a flexible and curious appetite for the law, an unbiased ear for argument, an uncommon civility and * * * a quiet compassion."

There is, of course, uncertainty on how Judge Souter will rule on issues of considerable importance, particularly the issue of abortion. Many individuals and organizations who support a woman's right to choose, including myself, have reservations about what Judge Souter will do once he is on the Court. However, I am convinced by Judge Souter's testimony that he brings no personal agenda to the Court, and that he will be an open minded, fair and compassionate jurist.

I do not believe that Judge Souter's intelligence, his integrity, his respect for the rule of law and the Constitution, or his commitment to the fundamental principles of justice and equality can be questioned. It is by these standards, together with professional competence, that Judge Souter and other nominees to the Federal judiciary should, in my opinion, be judged. I believe Judge Souter has demonstrated the kind of qualities that will make him a fine addition to the U.S. Supreme Court.

Mr. ROBB. Mr. President, I rise to declare my support for the confirmation of Judge David H. Souter to the Supreme Court of the United States.

I followed Judge Souter's testimony before the Judiciary Committee with interest. He was questioned at great length and, at times, sharply. Yet I did not hear anything which would cause me to vote against his nomination.

Judge Souter's objective academic qualifications are superb. More persuasive, though, was the subjective evidence offered on his behalf by a number of witnesses, including two former Democratic attorneys general of Virginia, one of whom was my successor as Governor.

Many people have raised concerns not about what was said in the Judiciary Committee, but about what wasn't said. While I share the concerns of many about critical issues, including the right to privacy, I was impressed by Judge Souter's apparent willingness to listen to the arguments presented to him. In casting my vote on his behalf, I add my fervent hope that Judge Souter's openness and willingness to listen remain hallmarks of his service as Associate Justice of the Supreme Court.

Mr. HATFIELD. Mr. President, I will vote to confirm the President's nomination of Judge David Souter to the Supreme Court when the Senate turns to this matter later today. Like the majority of my colleagues, I was enormously impressed by Judge Souter's personal decency, intellectual capacity and legal expertise during his recent testimony before the Senate Judiciary Committee. I will cast my vote for Judge Souter with full confidence that his will be a voice of reason and fairness on the bench in the years ahead.

The fact that this nomination comes at a time when our Nation's attention is focused on Roe versus Wade has forced all of us to think long and hard about how we view the Supreme Court and how we approach the Senate's confirmation process. I want to share briefly with my colleagues some thoughts on this nomination, on this process and on the complicated and sometimes polarizing times in which we live.

Undoubtedly, there are organizations and individuals who will accuse those of us who vote to confirm Judge Souter of being insensitive to their concerns and to their depth of commitment. That charge cuts to the heart of what I believe is a very serious misunderstanding of this confirmtion process.

If part of our constitutional responsibility to give our advice and consent regarding a judicial nomination involved making sure that the nominee's views on specific issues match our own, I am afraid I would never be able to support a judicial nomination. I certainly would not be able to support this one. Why? Because I know where Judge Souter stands on an issue I care and feel deeply about: the death penalty. Unlike abortion rights activists whose opposition to this nomination stems from the fact that they do not know where Judge Souter stands on Roe, I know where he stands on the death penalty. He stands firmly on the other side of the issue. As deeply and strongly as some people feel about Roe I feel just as deeply and strongly that the death penalty is not merely wrong but fundamentally immoral.

Perhaps there are those who will argue that my opposition to the death penalty is somehow rendered meaningless by my willingness to confirm a Supreme Court nominee who disagrees with my position—just as there are those who will question the commitment of abortion rights Senators who vote for a nominee whose position on abortion they do not know. But, Mr. President, I do not exaggerate when I suggest that this single-minded vision, if it prevails, could destroy our democracy.

Our population is infinitely diverse in race, ethnic origin, economic status, religion, and personal values. Our States and regions are equally diverse in history, geography, and economic base. This pluralism and individualism argues against our survival as a nation. But we have survived—despite often bitter debate and a bloody Civil War. We have survived because our forefathers gave us a constitutional government based on pluralism and individualism, and a Supreme Court free of daily political pressures.

To apply a single-issue litmus test to a Supreme Court nominee would be to contravene the fundamental principles of American democracy. As the Oregonian stated in its September 20, 1990 editorial "* * * spokesmen for abortion-rights and women's groups are wrong in trying to make Souter's position on Roe versus Wade [sic] the sole test of whether he should be confirmed." I agree and refuse to apply such a test in the case of Judge Souter.

Unfortunately, Mr. President, I am convinced that the highly charged political atmosphere in which Judge Souter has found himself is largely a problem of our own making. On one hand, I give great credit to my colleagues who refuse to allow this nomination, and indeed this entire process, to become a series of political litmus tests. But on the other hand, I am increasingly convinced that the very fact that all judicial nominees are now greeted with more questions about politics than about principles is a direct indictment of us and of what this process has become.

We have allowed this political polarization to occur—indeed we have fostered an environment in which single-issue politics flourishes and prevails—by being more interested in ducking the tough issues than a taking responsibility for them. This legislative paralysis has resulted in people looking to the courts for political activism. That is not only wrong, it is also dangerous.

We live in enormously complicated and increasingly polarized times. But that fact simply underscores the urgent need for both the continued integrity of the Supreme Court and for Congress to take responsibility for the tough issues at hand. Voting to confirm Judge David Souter's nomination will ensure the former. But only we can ensure the latter.

Ms. MIKULSKI. Mr. President, the Constitution requires that Members of the U.S. Senate advise and consent to a Presidential nomination for a vacancy on the Supreme Court.

Once consent is given, a Supreme Court Justice may serve for the rest of his or her life, virtually unaccountable to any person or group.

This is as it should be. We don't want our Supreme Court to be swayed by momentary Presidential passions, or forced to choose between justice and votes.

In return for our consent, however, the Members of the U.S. Senate have a right to know for whom we are voting.

I have no doubt that Judge Souter is professionally competent. Nor do I question his personal integrity.

But I cannot cast my vote to confirm a man who has been silent, vague, or evasive every time he has been asked if he would uphold fundamental constitutional rights—rights of concern to every American and particularly of concern to America's women.

Judge Souter has refused to discuss how the Constitution's guarantee of equal protection under the law protects women against gender discrimination; and he has refused to discuss the fundamental right of privacy.

Through most of the Senate's confirmation hearings, Judge Souter dazzled us with his wit and intelligence. He discussed at great length many areas of the law with which he will have to deal. He spoke on issues of desegregation, the death penalty, and the separation of church and state.

But whenever questioning turned to the constitutional rights of women the eloquent Judge Souter became the intractable and laconic New Englander of legend.

And so today, we do not know if Justice Souter would vote regarding women under the protection of the Constitution.

We don't know if Justice Souter would vote to protect a woman's right to decide when and if to bear a child.

Mr. President, women were not even allowed to vote in this country until 1920. Only 16 women have ever stood on the floor of this Chamber as a U.S. Senator. Only in the last generation have many women truly started to gain control over their lives, their careers, and their families.

And we still have far to go.

We have worked too hard and come to far to accept silence and evasion from a Supreme Court nominee.

The U.S. Senate represents 250 million Americans. We cannot act on their behalf without candor and from men like Judge Souter.

I respectfully submit that it is not acceptable for a Supreme Court nominee to conceal his views of the critical constitutional issues of the right of privacy.

I cannot make a leap of faith for Judge Souter. I will vote against his confirmation.

Mr. KERRY. Mr. President, as I contemplate a vote on this nomination, I know that Judge Souter will be confirmed overwhelmingly. I doubt there will be more than 10 votes against him. So I am voting on a nomination that is not in doubt.

Judge Souter has been impressive in the confirmation process. He is obviously extraordinarily bright and articulate, and worthy of the high regard in which he has long been held by my friend Senator RUDMAN, whom I respect greatly.

There is no question of the potential for Judge Souter to make a significant contribution to the Supreme Court, in the tradition of Justice Harlan—a goal he has set for himself.

He may well be as some have said, "the best nominee we could expect from this President."

But while there is a great deal that commends this nonimee to me and urges me to vote for him, I want my vote to underscore my deep concern about two areas.

On civil rights and on women's rights there are significant questions about Judge Souter which loom large enough to justify a vote against this nominee. This seat is a critical seat on the court at a critical moment in its history.

Many of my colleagues have come to the floor and bemoaned the gaps in their knowledge and in the record about Judge Souter's philosophy in these areas. They have also expressed concerns about some of the things he did say.

For example, in his testimony, Judge Souter distinguished between "marital privacy" which he stated "can and should be regarded as fundmamental" and other privacy, "not every aspect of [which] may rise to a fundamental level."

Judge Souter suggested that in the privacy area, one had to engage in a balancing test, under which any fundamental State interest can be balanced against the fundamental interest of the individual to determine which interest shall prevail—the individual's right of privacy, or the "fundamental right" of the State, which Judge Souter did not define.

There are two problems here, and both are serious.

First, because Judge Souter is vague as to what might constitute a "fundamental interest" of the State, in theory, he might find that almost any interest of the State could be determined to be "fundamental." Judge Souter's balancing test here might be interpreted as requiring only some-

thing more than a rational relationship test. The test implies that Judge Souter might well agree to loosen current constitutional restraints on the ability of Government to intervene in people's private lives.

Second, Judge Souter explicitly, carefully, and definitively distinguished the right of privacy of people who are married from those who are not. The former have a fundamental right, according to Judge Souter, looking back to the intent of the Founding Fathers; the latter have some rights, but these may not be fundamental, Judge Souter testified.

This is an odd and disturbing distinction. Unfortunately, Judge Souter refused to answer other questions which would have more fully explained the practical meaning of the distinction, so it is difficult to understand the meaning of the distinction. Nevertheless, it is a troubling one.

These are examples only, but they suggest why so many of us find this nomination to be, as in the words of Senator BIDEN, "a hard case," requiring a difficult choice.

In the past, I have voted for Justices whose judicial philosophies were far from the approach that I would like to see taken by the Supreme Court, including Justice Scalia and Justice Kennedy.

Today, I have decided to make a different choice to carry out my responsibility of advise and consent. I choose with my vote to express my concern about the future of civil rights and women's rights, and therefore will vote against this nomination.

Mr. HUMPHREY. Mr. President, my remarks will be brief, since Judge Souter's eminent qualifications for confirmation as a Supreme Court Justice have been thoroughly demonstrated and discussed.

Needless to say, New Hampshire is extremely proud of Judge Souter. His legal and judicial accomplishments, and his lifelong commitment to public service, were already well-established before the confirmation hearings began.

But if there were any doubts about Judge Souter's fitness for the High Court, they were demolished by his impressive demonstration of legal knowledge and unflappable judicial temperament during the ordeal of confirmation hearings. Once his testimony was completed, even the skeptics understood what those from New Hampshire have known for years: Judge Souter has the "right stuff" to serve with distinction on the U.S. Supreme Court.

Of course, no nominee for the Supreme Court can be "all things to all people", and Judge Souter is no exception. To his credit, he declined to yield to the demands of those who sought a pre-confirmation commitment on crucial issues that will be coming before the Supreme Court in future cases. Ironically, Judge Souter's demonstration that he would listen with a fair and open mind to the arguments on such issues was attacked as grounds for opposing him by those who demanded a pledge to rule their way in future abortion cases.

I am pleased to see that these blatant assaults on the principle of judicial independence have failed to carry the day. Many of the same groups that conspired to defame Judge Bork 3 years ago have called for the rejection of the moderate Judge Souter because he has declined to endorse their liberal agenda before taking a seat on the Court.

Although a few Members have heeded that call, I am confident that an overwhelming majority of the Senate will reject it. Any other result would cause irreparable damage to judicial independence.

In that regard, it is also important to recognize that portions of Judge Souter's testimony were of little comfort to those who seek a more conservative judiciary. I readily admit that some of his testimony was a bit disturbing to this Senator. For example, I do not share his assessment that Justice Brennan has been a peerless defender of the Constitution—at least not the Constitution that I know. His testimony also indicated that Judge Souter needs to be more sensitive to the dangers of judicial usurpation of legislative powers. I suspect that this may be attributable to the fact that he has spent his judicial career in the relatively sane environment of the New Hampshire courts. After a few months exposure to the excesses of some of the Federal courts, I am confident that he will develop a keener appreciation of this problem.

While Senators on both sides of the aisle may have their individual reservations on various issues, it is clear that Judge Souter is a sound and solid choice for the Supreme Court at this time. The American people entrusted President Bush with primary responsibility for selecting Supreme Court Justices in the last election, and he has chosen well.

Judge Souter has demonstrated a rare combination of qualities which will serve the American people well—a keen understanding of the Constitution coupled with a strong sense of fundamental fairness. I strongly support his confirmation and urge my colleagues to do the same.

Mr. LIEBERMAN. Mr. President, after careful consideration, I have decided to support the nomination of Judge David Souter to the U.S. Supreme Court. This is based upon my own conversations with Judge Souter, the material we have received from both supporters and opponents of his nominations, Judge Souter's testimony before the Judiciary Committee and the committee's report and additional and dissenting views.

I have concluded that Judge Souter is extremely well-qualified for the position of Associate Justice of the U.S. Supreme Court. He has received the highest rating of the American Bar Association's Standing Committee on the Federal Judiciary. His long experience as an attorney general, a trial judge, and a State supreme court justice gives him a great deal of perspective on, and sensitivity to, the effect of his decisions on litigants and the judicial system. He clearly is very intelligent, and capable of rendering well-reasoned decisions solidly grounded in both the facts of the case and the law as he interprets it.

I, of course, have no greater insight than any of my colleagues into what result Judge Souter would reach in specific future cases. I nevertheless will vote to give advice and consent to his nomination because I believe that he will approach the issues before him with an openmind in an attempt to reach a fair and reasoned conclusion. A judge must decide each case in the light of the facts and arguments presented, and the law as it stands at the time judgment is rendered. I believe Judge Souter will do this, that he will not decide these cases in the abstract, and that he will not join the Supreme Court with an agenda to fulfill.

I am comfortable that, in voting to confirm Judge Souter, we will place on the Supreme Court a man who will approach the new legal issues of the next century in a careful, methodical, and analytical manner. I believe Judge Souter will serve with honor and distinction. I will, therefore, vote to confirm Judge Souter as an Associate Justice of the U.S. Supreme Court.

Mr. HEFLIN. Mr. President, I come to the floor today to reaffirm my announced position on the confirmation of Judge David Souter to be Justice on the U.S. Supreme Court. I strongly believe that Judge Souter has the necessary qualities to be a Justice on the Court, and I will vote in favor of his confirmation.

I believe that Judge Souter will bring to the Supreme Court strong credentials will serve him well over the course of his tenure on the Court. His academic background is clearly outstanding, and his legal experience more than adequately qualifies him to sit on this Nation's Highest Court. Further, I believe that Judge Souter will bring the reflected values of a small town that is tightly knitted, that cares about its neighbors, and that reflects traditional American concepts of respect for the rights of others and respect for a fair and just society.

I accept Judge Souter's responses to the committee's questions on a wide range of legal issues. I believe that he will respect precedent and be a faith-

ful guardian of the Constitution. Further, I know that Judge Souter will bring a historical perspective and a clear-headed approach to the analysis of issues which will come before him.

In conclusion, I wish to add my voice to the chorus of support which has followed this nominee, and I urge my colleagues to vote in favor of his confirmation.

Mr. CONRAD. Mr. President, I rise to speak in support of the nomination of David H. Souter to be an Associate Justice of the U.S. Supreme Court.

Judge Souter was nominated by President Bush to replace one of this century's most vigorous defenders of individual liberties, Justice William Brennan. In his 34 years on the Supreme Court, Justice Brennan authored more than 1,200 opinions. He leaves a legacy that extends from Baker versus Carr—a decision that enunciated the one-man, one-vote principle and opened the courts to litigation over voting rights—to the case New York Times versus Sullivan—a case which is the basis for the expansion of first amendment speech and press guarantees that we have seen in this century. Justice Brennan's principled application of constitutional protections has made this country a better place to live for many Americans.

Justice Brennan's departure also means that his replacement will step onto a court fiercely divided over issues like the separation of church and state, the question of exclusion of illegally seized evidence from State and Federal trial proceedings, and the issue of privacy, to name just a few. It is indeed a pivotal time for the U.S. Supreme Court.

Mr. President, in the fall of 1987, the Senate and this Nation experienced one of the most divisive confirmation battles in our history. It was during that year—my first in the Senate—that I realized that there were few Senate responsibilities more solemn than the constitutional duty of advise and consent. Nominees to the High Court face the prospect of deciding cases when every Member of this body is long gone. They may cast deciding votes on issues which we cannot even imagine today. Our decision to approve a nominee cannot be amended. There is no omnibus bill to revisit approval of a nominee. It is a decision we can only make once, and it must be wisely made.

I hold deeply to the view that the Senate has a coequal role in the nomination of Supreme Court Justices. It surprises advocates who argue for Presidential deference to know that in one early draft of the Constitution, the U.S. Senate was the body which chose nominees to the High Court. The current partnership between the Senate and the White House was settled on to provide an appropriate balance between the branches.

While the Constitution confers on the Senate the duty to share the responsibility of nominating a Justice, it does not give guidance on the criteria for evaluation of such nominees. Each Senator must develop his own standards. The nominee must be intelligent, honest, and competent. The nominee must also possess a deep understanding of the constitutional issues that have been crucial in this nation since its inception: State and Federal powers and the rights and liberties of all individuals.

Our duty in this body, then, is to elicit the views and thoughts of Supreme Court nominees. Accordingly, I closely followed the nomination of Judge Souter. I watched or reviewed the tesimony from his confirmation hearings. I solicited the views of members of the bar of my own State of North Dakota. I conferred with Members of this body on the nomination of Judge Souter. And, finally, I was fortunate to have the opportunity to meet and spend some time with Judge Souter.

From this examination, a very clear picture of Judge Souter has emerged: A highly intelligent, dedicated jurist who has an impressive command of the issues that may come before the U.S. Supreme Court.

Judge Souter is clearly qualified to serve on the Supreme Court. His legal career is very impressive, and his experience spans almost all aspects of the legal profession. His decision to dedicate much of his career to public service is laudable. Colleagues who have opposed him in Court, or who have lost cases before his court, have universally applauded his intellect, his dedication to fairness, and his judicial temperament.

His appearance before the Senate Judiciary Committee demonstrated that he possesses an impressive command of modern constitutional issues. He spoke knowledgeably about issues that have occupied the Court in the 20th century, including the separation between church and state; civil rights; Federal affirmative action programs; the guarantees of free speech and the free exercise of religion; the constitutionality of the death penalty; the relationship among the various branches and levels of Government; the powers and limits on powers of the State; and the rights and liberties of individuals.

I will vote to confirm Judge Souter, but I had one concern. While I understand the Judge's personal view that he could not comment on issues which might prejudge cases that could come before the Court, I was dismayed with what I thought was selective application of this principle.

For instance, when asked by Senator SPECTER about his view of the free exercise clause as expressed in the case involving the use of peyote by drug counselors, Judge Souter said:

> On the free exercise question, I have to be circumspect to a point because I believe that the Smith case is subject to a motion for rehearing presently before the Court. But I think there are some things that with a reasonable degree of specificity I can say.
>
> The first is that I do not come here and prior to the decision of that case or after it I have not had personal reason to want to reexamine the strict scrutiny test which has been applied in a lot of cases since Shurbert. I recognize the reasoning of the majority opinion. I mean I can follow it; I understand what the Court was saying in the Smith case. But I also recognize I think the fact that case could also have been examined under the Shurbert standard. As you mentioned or indicated a moment ago, that, of course, is exactly what Justice O'Connor did in her concurring opinion in that case. (Transcript, September 14, pp. 47-48)

This amplification of views on the free exercise clause is utterly appropriate, in my view. And, yet, in response to questions in any way related to Roe versus Wade or the War Powers Resolution, for example, Judge Souter invoked his prohibition on responding. In response to the very next question posed by Senator SPECTER, Judge Souter stated:

> The first is, of course—and I know you recognize this—that because of the reasonable likelihood that the constitutionality of the War Powers Resolution could come before the Court in some guise, I cannot give an opinion on the constitutionality of that.

Judge Souter, in fact, refused to reflect in any way on some key constitutional questions. I agree that he should not have to indicate how he would vote in particular cases, but he could discuss his views on many issues without revealing the way he might vote.

This pattern greatly concerns me because I fear it may betray a lack of candor on issues which might provoke opposition from this body. I oppose the single-issue politics which may have fostered this strategy, yet I believe Judge Souter could have forthrightly replied to many of the questions that he declined to answer without jeopardizing his independence or integrity on the bench. His refusal to answer these questions has left the Senate to consider his nomination without knowing his views on the pivotal issues of civil rights and race and gender discrimination, the right to privacy, Federal powers, biomedical ethics, and many others. He has tried to calm the fears of concerned Senators by assurances that he will listen. I believe that he will listen, but I fear that he has not fully revealed views that should appropriately be discussed.

I hope, Mr. President, that I am wrong and this was not a concerted strategy, but I must agree with my colleagues on the Judiciary Committee

and express my dismay at Judge Souter's unwillingness to answer crucial questions on some major constitutional issues of our day.

Mr. President, despite this concern, I shall support the nomination of Judge Souter to the U.S. Supreme Court. I found him in our meeting together to be an open, learned individual. I believe his statement that he shall listen to those who come before the Court. I believe that he truly understands that millions of Americans' lives may be affected by decisions he renders. This is an awesome responsibility, and he has convinced me that he is worthy of the trust and confidence of the American people.

Mr. NUNN. Mr. President, I rise today to announce my support for the nomination of Judge David H. Souter to the U.S. Supreme Court. I believe that he is a well-qualified individual who will serve with distinction on our Nation's highest court.

Judge Souter has an impressive academic record and a career of distinguished public service. Following his graduation from Harvard College in 1961, he was selected as a Rhodes scholar and attended Magdalen College, Oxford, between 1961 and 1963. He then enrolled in Harvard Law School and was graduated in 1966.

In his first job out of law school, Judge Souter practiced law in a private firm in Concord, NH, and 2 years later began 10 years of service with the State attorney general's office. In 1976, he was appointed attorney general for the State of New Hampshire, a position he held for 2 years until he was appointed to the superior court bench. Five years later, he was named an associate justice of the New Hampshire Supreme Court. Earlier this year, President Bush nominated Judge Souter to the First Circuit Court of Appeals.

I believe that Judge Souter's life time commitment to public service makes him a good candidate for the Supreme Court. From my review of the Judiciary Committee's hearing records and from my conversations with colleagues, I am convinced that Judge Souter will not be an ideologue with an agenda, but rather a temperate jurist. I believe that he has the intellect and integrity to fulfill his constitutional duties as an Associate Justice of the Supreme Court.

Finally, I believe that Judge Souter will not be judicially rigid. Instead, it is my hope that he will decide the cases that come before him with a healthy application of common sense. It is my view that our Founding Fathers intended to set forth general principles which would remain the foundation of our Nation and that they viewed the Constitution as a living document to be interpreted with common sense in light of changing circumstances and conditions. Mr. President, I believe that Judge David Souter will use such a standard and will serve our Nation well.

Mr. DOMENICI. Mr. President, I rise today to express my support of the confirmation of Judge David Souter to be an Associate Justice of the U.S. Supreme Court.

Under the Constitution, the Senate has the duty to offer advice and consent on judicial nominees. Our primary concerns when confirming a nominee for the Supreme Court should not focus on specific issues, but rather on the nominee's ability to serve on our Nation's Highest Court.

The Senate must determine whether the individual that the President has nominated has the competence, integrity, temperament, and respect for the basic principles of our constitutional system necessary to serve as a Justice of the Supreme Court. I am convinced that Judge Souter possesses these qualities.

First, a Justice must be a person who has exhibited exceptional competence in the law: He or she should be learned in the law and have extensive experience in the practice of the law.

Judge Souter graduated magna cum laude and Phi Beta Kappa from Harvard University in 1961. He continued his education as a Rhodes scholar at Oxford University in England and then returned to Harvard, where he earned his law degree.

After 2 years of private law practice, Judge Souter entered public service. He was an assistant attorney general of New Hampshire for 3 years, deputy attorney general for 5, and attorney general—the State's chief law enforcement official—from 1976 to 1978.

In 1978, he was appointed to the New Hampshire Superior Court on which he served for 5 years until he was appointed to the New Hampshire Supreme Court. In 1990, Judge Souter was unanimously confirmed by the Senate to be a judge on the U.S. Court of Appeals for the First Circuit, where he currently serves. With his 12 years on the bench, Judge Souter has more judicial experience than all but one of the current Justices has at the time they were appointed to the Supreme Court.

During his confirmation hearings, Judge Souter demonstrated an impressive knowledge and command of constitutional law. Clearly, by reason of his intellect, his education, and his experience, Judge Souter possesses the competence that the American people demand of their Supreme Court Justices. That is why the American Bar Association gave Judge Souter its highest rating and declared him to be "well qualified" to serve on the Supreme Court.

Second, a Justice must be a person with unquestioned integrity: He or she should be honest, ethical, and fair.

Those who know Judge Souter best—his peers in the legal profession in New Hampshire—are united in their opinion that Judge Souter is an impeccably fair man who adheres to the highest ethical standards of the legal profession. His honesty is beyond reproach.

Third, a Justice must be a person with a judicial temperament: He or she should be even-tempered, firm, compassionate, and able to listen to different points of view.

Judge Souter ably demonstrated during his confirmation hearings that he has the right temperament to serve as a judge. His answers were calm and thoughtful. He engaged in a scholarly discussion with the members of the Judiciary Committee, listening to their viewpoints and explaining his with utmost courteousness. Judge Souter also movingly demonstrated that he is a man of compassion when he related his experience of advising a woman who was confronted with an unwanted pregnancy.

Some would question whether an unassuming man who would rather live in a small town, who enjoys the solitude of nature, who prefers books to television, who goes to church every Sunday, and who is devoted to his family and friends has sufficient real-life experiences to function effectively as a judge.

Frankly, Mr. President, I'm not sure I understand this criticism. In any event, Judge Souter—as an active and involved member of his community and as a practicing lawyer and a judge—has been exposed to a broad spectrum of real-life problems. He knows that deciding a case is not an abstract intellectual exercise, but rather is a serious activity that can potentially affect millions of people. As Judge Souter testified:

> Whatever court we are in, at the end of our task some human being is going to be affected. Some human life is going to be changed and we had better use every power of our minds and our hearts and our beings to get those rulings right.

Fourth, a Justice must be a person who respects the basic principles of our constitutional system: He or she should not be burdened by an ideology that would prevent him or her from being an impartial judge.

During his confirmation hearing and throughout his 12 years as a judge, Judge Souter demonstrated a profound respect for and devotion to the philosophical underpinnings of our American democracy—federalism, separation of powers, freedom of speech and religion, individual rights, equal protection, due process, and the rule of law.

I am convinced that he will adhere to the doctrine of judicial restraint and will interpret and apply the laws, not impose his own political views. He

has an independent mind and has no ideological agenda that he seeks to fulfill, except to preserve the Constitution of the United States.

Mr. President, in the case of Judge David Souter, President Bush has nominated an individual who has demonstrated throughout his lifetime that he possesses those traits. He is extremely well-qualified to sit on the Supreme Court, and I will vote to confirm him.

Mr. BUMPERS. Mr. President, few events in my career have struck as close to home as Justice Brennan's decision to retire. The Senate's duty to advise and consent to a successor to a Justice of such unique stature is especially heavy. That successor will likely be serving out a life term at the top of our third branch of government long after most of us in this body are gone from here. When Justice Brennan announced his retirement, I hoped the President would put aside any ideological agenda and try to find the best qualified person in the country for this job. I have no way of knowing whether Judge Souter is that person or not.

Many things in his record commend him for service on the Court. First, he will be the first former trial judge in recent memory to serve on the Nation's Highest Court. As a former trial lawyer, it gives me great comfort to think that someone who has actually tried lawsuits will be sitting in judgment over important cases. One of the most well-founded criticisms of the Court, it seems to me, is that too often the Justices have little familiarity with the realities of trial practice.

Without belaboring the facts, Judge Souter has an enviable record of accomplishment as a lawyer. He was graduated from Harvard University and Harvard Law School. He has been deputy attorney general, attorney general of New Hampshire, a trial judge and State supreme court justice, and earlier this year he was confirmed by the Senate as U.S. circuit judge for the First Circuit.

My hesitation is not over any qualms about Judge Souter's character. From every report, he is a man of unquestioned integrity and certainly has an outstanding educational and professional background. He appears to be a very traditional New Englander, conservative in his appearance, manner and thinking.

I am somewhat reassured that Judge Souter is highly recommended by a respected Senator on the other side of the aisle, WARREN RUDMAN.

I have studied the record of the confirmation hearings before the Judiciary Committee. It goes without saying that when the Constitution is being discussed I pay attention to what's being said. Judge Souter said little with which I would disagree, and he was genial and accommodating. Frankly, his answers were not very reassuring for the right wing of the President's party.

Yet, still, there are those who say he is a wolf in sheep's clothing who will give a narrow berth to constitutional liberties. There are at least two kinds of conservatives—those who believe the State can do no wrong and those who believe that governmental restraints on the individual must be strongly justified. For too long, the former have dominated the debate. Judge Souter seems to have a Jeffersonion streak about him.

I cannot see into David Souter's mind and know what he will do when faced with issues surrounding Roe versus Wade and its progeny. The Court has already ensured, however, that there will be plenty such cases on the docket. We have seen draconian measures enacted in Guam and Louisiana, and more are sure to come. While I wish I knew more of Judge Souter's true feelings on a number of issues, I think he acquitted himself well enough in his hearings to receive the benefit of the doubt. I will resolve that doubt in his favor.

Mr. KERREY. Mr. President, I plan to vote to confirm Judge Souter as a Associate Justice of the Supreme Court.

This is my first vote on a Supreme Court nomination, and I wish to set out the standards that I believe should guide such decisions. I believe there are three. While I have reservations about Judge Souter's record, which I will discuss, I believe he has met these three standards.

The first standard I would invoke asks whether the nominee has a distinguished judicial record. While Judge Souter's credentials as a nominee do not rise to the level of some of the titans of the Supreme Court's history, his record is nonetheless distinguished. He has served as a State attorney general; a State superior and supreme court justice; and a judge for the Federal court of appeals. He is known in the legal community for an inquiring and exacting legal intellect. He received the highest rating from the American Bar Association's Standing Committee on the Federal Judiciary. His personal integrity and ethical standards are beyond reproach.

The second standard asks whether the nominee is within the Nation's judicial mainstream. Judge Bork was not. Judge Souter is. In the hearings, he accepted certain high standards of protection for the essential freedoms of speech and religion. He indicated his support for certain remedies for racial discrimination. He committed himself to the important concept of deference to precedent, and rejected notions that we should in all cases return to the "original intent" of the Constitution's framers. Judge Souter is, to be sure, a very conservative jurist. But that is hardly surprising or objectionable given that he was nominated by a conservative President.

The final standards asks whether the nominee has the judicial temperament necessary to sit on our highest court. As I will explain, I am concerned about Judge Souter's sensitivity to political, social, and economic minorities. I am troubled he was willing to act as an advocate, as New Hampshire attorney general, for some official initiatives that smacked of intolerance. Yet Judge Souter's judicial record, which I believe is far more important, suggests that he receives the opinions of all parties before him with an attentive, fair, and open mind. The willingness to listen respectfully to diverse arguments is essential to the credibility of our judicial process.

While I will vote for confirmation, it is with reservations. First, I have serious reservations about Judge Souter's position on abortion. My reservation is that I, like the rest of America, do not know what his position is on the right of women to make the most fundamental choices about reproduction. That is a troubling gap in the record. I am troubled that this nominee and the administration that nominated him do not recognize the right to make such a choice as fundamental. I am troubled that on the difficult choice over abortion they are willing to substitute their moral judgments for those of individual Americans.

At the same time, I find it comforting that Judge Souter recognizes an implicit constitutional right of privacy as "fundamental." And I must take Judge Souter at his word when he says he has not made up his mind concerning Roe versus Wade. We can only hope the Court's other eight Justices will approach this divided and divisive issue with equally open minds.

Second, I have reservations about the level of Judge Souter's sensibilities about society's treatment of women, racial minorities, and religious minorities. Our society today is not the society of 1789. One of the journeys of our time has been toward expanded participation in our economy and society by those who had been excluded in the past. Judge Souter's experience and views, to the extent he revealed them during his confirmation hearings, seem remote from that defining American odyssey.

Let me cite one example. At one point in the hearings, Judge Souter said, "the State of New Hampshire does not have racial problems." Perhaps Judge Souter was characterizing what others would say about his home State; there is some possibility of that from the context. Perhaps all Judge Souter meant is that New Hampshire is racially homogeneous in relative terms. I can understand that. I am also from a State that has a relatively

small proportion of residents who are racial minorities.

Yet one of the Constitution's chief missions is to protect those who are not part of the majority. Thus it speaks to the rights of political, social, and racial minorities of all sizes—not just those who are near-majorities. I am aware that even in Nebraska there are racial problems. Yet the record sadly suggests it might surprise Judge Souter to learn, as I did, that over a dozen racial discrimination complaints were brought over the past year to his State's human rights commission, and that his State has seen many serious racial incidents over the years, as the testimony of witnesses during the hearings made clear.

I hope Judge Souter will hear this message from me and others as he takes his seat on the Supreme Court: Racial discrimination, unfortunately, still exists in every town in America. Sexual discrimination and harassment, unfortunately, still exist in every industry. I hope Judge Souter's constitution, like mine, listens for the voices of victims of discrimination and has something to say to their pain.

Subject to those reservations, Mr. President, I will cast my vote in favor of confirming Judge Souter's nomination.

Mr. WARNER. Mr. President, I rise to join in this debate, for a second time, to express my respect for the work done by the Senate Judiciary Committee and to encourage Senators to give their support for this outstanding nominee for the Supreme Court of the United States.

During the consideration of this nomination, I have solicited the views of a wide range of my fellow Virginians. Clearly the majority—a very significant majority—express confidence in Judge Souter's ability to serve our Nation in this position.

Today, I ask the Senate to consider the opinions of a man whom I respect greatly— Andrew Miller, Esq. In 1978 this distinguished former attorney general of Virginia opposed me in the election for the seat in the U.S. Senate I am now privileged to hold. Our campaigns were fair, by today's standard unbelievably fair and honest. I won by a narrow margin, which reflects the confidence and respect many Virginians held, and still hold, for Andrew Miller.

In the time that has ensued, Mr. Miller has worked with me on a number of public issues. He is very successful in the private practice of law and continues to contribute of his time and wisdom for the public betterment of others.

I greatly value his friendship and have confidence in his views on this nomination.

Mr. President, I will now read to the Senate a letter from Andrew Miller to the President of the United States:

WASHINGTON, DC,
September 24, 1990.

The PRESIDENT,
The White House,
Washington, DC.

DEAR MR. PRESIDENT: As a former Attorney General of the Commonwealth of Virginia, I write in support of your nomination of David H. Souter as an associate Justice of the United States Supreme Court. I became acquainted with Mr. Souter shortly after I was sworn in as Attorney General of the Commonwealth of Virginia in January 1970. At that time he was serving as an Assistant Attorney General of the State of New Hampshire. From 1970 to 1975, we worked closely together in representing the interests of the Atlantic Coastal States in the case of *United States* v. *Maine, et al.*, 420 U.S. 515 (1975).

During this period, I became very impressed with Mr. Souter's legal abilities. Not only was he willing to work hard but his intellectual brilliance, scholarly research and thoughtful analysis all contributed to the enhancement of the States' position. While the Supreme Court ultimately decided against the States, the Court had greater difficulty in doing so as a consequence of Mr. Souter's contributions in the drafting of the States' papers. Moreover, on a personal level, I found our association extremely pleasant because of his courteous and considerate demeanor.

While Mr. Souter has held a variety of public offices, in the discharge of his responsibilities he has never been political. Indeed, he has not sought opportunities to exercise legislative or executive authority. As you know, the Attorney General of New Hampshire is appointed, not elected by popular vote. During his tenure in that office, and subsequently on the bench, I know of no instance in which his integrity was questioned. He has chartered his course as a lawyer and judge dedicated to excellence in the performance of duty in the justice system.

As a judge Mr. Souter has understood the role of oral argument in ensuring that issues are fully examined. He also has recognized that not every issue brought before a Supreme Court has constitutional implications. I believe that as an Associate Justice his State background will bring a useful perspective to the Court's deliberations. I am also confident that he will not engage in public rhetoric about his fellow justices or about political leaders, which circumspection should benefit the Court institutionally.

The foregoing views are undoubtedly shared by many others who have known Mr. Souter for an extended period of time. I feel compelled to write this letter of endorsement, however, out of my own experience as Attorney General, in light of some of the concerns expressed in the confirmation process about his performance as Attorney General of New Hampshire. The gist of these concerns appears to be that Mr. Souter as Attorney General defended State policies with which those expressing the concerns did not agree.

If such expressions of concern were intended to be justifiable criticism, they were wide of the mark. All Attorneys General take an oath to uphold the Constitution of the United States and their respective States. What engenders constitutional litigation, of course, are differences of opinion as to the meaning of the Constitution to be upheld. Assuming that the State's policy is not frivolous, an Attorney General has a legal and moral obligation as its chief legal officer to advocate that position, whether established by its legislature by statute or its governor by executive order.

As is the case with any lawyer representing a client, an Attorney General may not on occasion agree with his client's, i.e., the State's, policy. His individual views are not relevant to his obligation to see that the State's position is fairly and effectively presented before the judicial tribunal where it is being challenged. Thus, in defending policies of the State of New Hampshire with which he or others disagreed, Mr. Souter far from breaching his commitment to uphold the Constitution was in fact discharging his constitutional obligation as Attorney General of that State. This is so even though in certain instances the judiciary ultimately decided that the questioned policies of New Hampshire failed to pass constitutional muster.

I respectfully submit that the fact that these State positions did not withstand judicial scrutiny has nothing to do with whether Mr. Souter withstands Senatorial scrutiny. As the confirmation record demonstrates, he has passed personal and professional muster with distinction. Those of us who have worked with him and had the pleasure of this acquaintance over the years are not surprised.

Sincerely yours,

ANDREW P. MILLER.

Mr. President, I will vote for this distinguished American and urge others to do so.

Mr. BIDEN. Mr. President, in the interest of time, but also in the interest of clarity and fairness, this is usually done after the vote takes place, but I would like to do it prior to the vote because these people very seldom get the recognition they deserve.

I would like to recognize for particular thanks staff people who played a key role in putting these hearings together. They devoted hundreds of hours and late nights to making the committee's consideration of Judge Souter's nomination orderly and fair: John Bauer, Jamie Daniel, John Dichtl, Ted Hosp, Kim Kachmann, Lisa Meyer, Ross Mansbach, Anne Rung, Henry Noyes, Phil Shipman, Pam Yonkin, Brooke Thomas, Justin Tillinghast, and Grace Lescelius.

And special thanks to two staff members who put in countless hours to make sure that the hearings went smoothly: Joel Feyerherm and Sally Shafroth, who has done so much for the committee for so long. They really went above and beyond the call of duty.

These attorneys and professionals on the Judiciary staff helped us study Judge Souter's record, assemble that record, and conduct a thoughtful analysis of it. Their intellectual skill and contribution was first rate: Scott Schell, Annette Anthony, Harriet Grant, and Andy Tartaglino.

Five professional staff people deserve particular credit for their contributions:

Paul Bland, our committee's chief nominations counsel, who supervised

our study and review of Judge Souter's record and writings. His performance on this nomination, as with the many others he has worked on, was superb.

David Strauss, a University of Chicago law professor who joined our staff to work on the Souter nomination, and did a fantastic job of working with constitutional scholars and conducting vital research into the complex constitutional questions at issue here.

Chris Schroeder, of Duke University Law School, who volunteered his time to help with briefings, and the preparation of materials for the hearings. As always, Chris' intellectual insights were of great value.

Jeff Peck, our committee's general counsel, who spearheaded my preparation for the hearings. Quite simply, there is no constitutional lawyer anywhere in this country who has thought as intelligently or deeply about the role of the Senate in confirming Supreme Court Justices.

And last, but not least, Diana Huffman, the committee's staff director, who supervised the committee's preparation for the hearings, and the conduct of those hearings. Her tireless and savvy work in putting together the hearings was essential in our success in balancing the committee's need to be thorough with its duty to be fair.

Now I see my colleague from California is here, and I yield the floor.

The PRESIDING OFFICER. The Senator from California is recognized.

Mr. CRANSTON. I thank the distinguished chairman of the Judiciary Committee for his courtesy.

Mr. President, last Monday, September 24, I addressed the Senate at some length on the reasons why I will vote "no" on the nomination of David Souter to succeed Justice William Brennan as an Associate Justice of the U.S. Supreme Court. My view of my constitutional responsibilities to exercise advice and consent to a lifetime appointment to the highest court of the land compels me to vote no. I am not voting against Judge Souter because we disagree on the issue of abortion or on the Supreme Court's decision in Roe versus Wade, since I have no idea what his position is on abortion or Roe versus Wade.

I am voting no because I have no idea what his position is on the level of scrutiny to be applied in right-to-privacy cases. I am voting no because I have no idea what his position is on the constitutional right of individuals, married or unmarried, to use contraceptives. No Member of the Senate, to my knowledge, knows the answer to any of these questions because Judge Souter has declined to answer them. He did not decline to answer questions on other important constitutional issues ranging from the constitutionality of capital punishment to his views on cases involving the religious freedom provisions of the first amendment, but on constitutional issues involving the right to privacy of millions of American men and women, we know little.

Mr. President, Judge Souter told the Judiciary Committee that he did not know how he would rule on any prospective future specific case involving reconsideration of Roe versus Wade and would listen to the arguments made on both sides. That is a position which any judicial nominee is obligated to take. Indeed, any nominee who cannot make that commitment should be rejected out of hand. A commitment not to prejudge an issue prior to hearing the arguments is an essential element of justice. No member of the Judiciary Committee of the U.S. Senate asked Judge Souter to state how he would rule on any prospective case.

I am voting against Judge Souter's confirmation because he has asked us to take him on faith in this critical area of constitutional rights. That I cannot do. Many, many Senators have expressed similar concerns about Judge Souter's refusal to answer questions in this important area of constitutional law. Many who will vote for him have expressed the hope that they are making the right choice and that he will not cast a fifth vote on the Court which will dismantle the long line of cases recognizing and securing the right of Americans to privacy in matters relating to procreation, including the right to abortion.

I intend to do more than just hope for the best. Mr. President, to the millions of American women who fear that by its action today in confirming Judge Souter, as is about to happen, the U.S. Senate is placing their lives in jeopardy, I make this pledge to them: If the unhappy day comes when David Souter casts a fifth and deciding vote to overturn Roe versus Wade, I will take action to bring before the Senate the Freedom of Choice Act. The Freedom of Choice Act is legislation I have introduced which will make freedom of choice Act would have the effect of nullifying a Souter vote to overturn Roe versus Wade. This legislation provides simply that a State may not restrict the right of a woman to choose to terminate a pregnancy before fetal viability, or at any time, if necessary, to protect her life or her health.

Mr. President, Congress has the authority under section 5 of the 14th amendment to the Constitution to enact legislation to protect the liberty interests of Americans where the Supreme Court cannot find a specific right protected under the Constitution.

Many Members of the Senate from both sides of the aisle who are committed to protecting the rights of women to make these most fundamental decisions for themselves free of Government interference have already joined as cosponsors of this important legislation. I hope that other Members who share these concerns will join as cosponsors of this legislation and help us work to ensure that this country does not return to the dark days of back alley abortions and Government interference with private, personal decisions of Americans.

I yield the floor.

The PRESIDING OFFICER. The Senator from Rhode Island is recognized.

Mr. PELL. Mr. President, the Senate will today undertake its constitutional obligation to advise and consent on the nomination of Judge David Souter to be an Associate Justice of the Supreme Court.

Such votes are never easy to cast. Because each Justice has the ability to affect—indeed, to alter—the very fabric of our Nation, I believe that every Senator has a deep responsibility to evaluate thoroughly every nominee before deciding how to vote.

As you know, Mr. President, the Judiciary Committee held 5 days of hearings to examine Judge Souter on his qualifications and record. In addition, numerous distinguished witnesses representing themselves and/or their organizations testified for and against this nominee. In my view, each witness contributed to the mosaic that the Senate has created on the very private Judge Souter.

I must say that I share the frustration of those Senators and witnesses who wanted to learn more. While questions were asked and answers were given, many of us continue to feel uncertain about the real views of a man who could change the course of our history. In particular, I wanted to know more about his views in the areas of privacy—including a woman's right to choose an abortion, racial and gender discrimination, and religious freedom.

In the absence of certainty, Mr. President, I must rely on the two things that a Senator must always rely on: Judgment and experience. During my almost 30 years in the Senate, I have faced votes on more than a dozen different nominees to the Supreme Court. I have also seen those nominees, once on the Court, both please and disappoint the American people and the Senators who voted to confirm them. It is my fervent hope that Judge Souter, whom I believe will be confirmed by the Senate, will bring to the Court and to the Nation compassion, understanding, and wisdom.

In deciding how to vote, Mr. President, I have also looked back on my prior decisions. Over the years, I have voted both for and against various nominees to the Court. I have voted against nominees when it was clear to me that the national interest would be harmed, and I have voted for nomi-

nees—even those who do not share my views or philosophy—when I was confident that the nominee was professionally and personally qualified.

Mr. President, unlike some of my colleagues, I do not subscribe to the theory that Senators should not inquire into a nominee's personal views. Rather, I believe it is incumbent upon each Senator to ensure that the Supreme Court is composed of judges of compassion, intelligence, and integrity. If intensive questioning is the best way—or the only way—to make this determination, then it is fair and necessary that it be done.

Still, it is often difficult to tell, in advance of Senate confirmation, whether a nominee has the qualities that are necessary in a guardian of our constitutional rights and liberties. In this instance, I have concluded—from the Judiciary Committee hearings and a review of the record—that Judge Souter seems to be a person of integrity who has the professional and personal qualifications necessary to sit on the Nation's highest court.

In reaching this decision, I have been cognizant of—and troubled by—the concerns of individuals and organizations who share my views on issues of great consequence to our society. I have weighed carefully those concerns, and I appreciate the effort and commitment of many who have shared their concerns with me. In my view, however, Judge Souter—the nominee of a Republican President who was elected on the coattails of the most conservative President in recent history—is probably the best and most moderate nominee we can expect from this administration.

Mr. President, I think it is entirely possible that Judge Souter will serve this Nation well. I hope that the Judiciary Committee hearings, and the words and advice of concerned Senators and citizens, will help Judge Souter remember every day that he serves on the Court his own eloquent testimony: "if [judges] * * * are going to change * * * lives by what we do, we had better use every power of our minds and our hearts and our beings to get those rulings right."

I wish Judge Souter well, and wish for the country that the Senate is vindicated in its decision to confirm this nominee.

Mr. SYMMS. Mr. President, I rise on this second day of the Supreme Court's 1990-91 term to announce my support for the nomination of U.S. Circuit Judge David H. Souter to be an Associate Justice of the U.S. Supreme Court. President Bush announced his nomination of Judge Souter just 10 weeks ago yesterday, and I am pleased the majority leader and Senator BIDEN, the chairman of the Judiciary Committee, have brought the nomination to the full Senate in time for Justice Souter to be seated for all but a few days of the Court's new term.

I have reviewed Judge Souter's record as a jurist in both the Federal and New Hampshire State courts and, prior to that, as the attorney general of New Hampshire. In addition, I was pleased to be able to watch a good deal of the Judiciary Committee's confirmation hearings.

Clearly, there are a few issues, such as abortion, on which Judge Souter does not have a well-established record of personal opinion or judicial decisions. And that fact probably serves him well in this confirmation process. On the other hand, there are many legal and constitutional issues where Judge Souter's writings from the bench or as attorney general have left a paper trail that was explored in depth during the Judiciary Committee's hearings and by which Senators can garner a pretty clear picture of the kind of jurist this man is likely to be.

As attorney general, Judge Souter was a staunch defender of the right of law-abiding citizens to be protected against society's criminal element. He demanded respect for State law and those who threatened public order were dealt with firmly and fairly. He was a no-nonsense chief prosecutor for the State, and the citizens of New Hampshire benefited greatly by the attention Attorney General Souter paid to the serious responsibilities of his office.

As a judge, he has written numerous decisions involving important constitutional issues such as freedom of association, due process rights, and protection against unwarranted search and seizure and self-incrimination, as well as legal issues relating to important questions of family, labor, and criminal law. What this record establishes clearly is that David Souter is a careful, precise, keenly intellectual jurist who believes in the court's limited constitutional role as the interpreter, rather than the creator, of law. He accepts and applies traditional standards of statutory and constitutional interpretation by referring to "the plan meaning of the language employed," and in constitutional cases, he applies "the clear rule that 'the language of the Constitution is to be understood in the sense in which it was used at the time of its adoption.'"

In a response to a question on the Judiciary Committee's questionnaire regarding his general approach to judging, Judge Souter said:

> The obligation of any judge is to decide the case before the court, and the nature of the issue presented will largely determine the appropriate scope of the principle on which its decision should rest. Where that principle is not provided and controlled by black letter authority or existing precedent, the decision must honor the distinction between personal and judicially cognizable values. The foundation of judicial responsibility in statutory interpretation is respect for the enacted text and for the legislative purpose that may explain a text that is unclear. The expansively phrased provisions of the Constitution must be read in light of its divisions of power among the branches of government and the constituents of the federal system.

Mr. President, in that statement and in terms far more eloquent that I could muster, Judge Souter has aptly described the approach to judging that I look for and highly approved in any nominee to serve on the Federal bench but particularly so for nominees to the Supreme Court. On that basis, I feel confident that David H. Souter is eminently qualified and will be a very able Associate Justice of the Supreme Court. I hope he will be overwhelmingly confirmed.

The PRESIDING OFFICER. The Senator from South Carolina is recognized.

Mr. THURMOND. Mr. President, since we are about to conclude the debate on Justice Souter, I wish to take this opportunity to express my deep appreciation to several members of my staff who have done such a fine job preparing for the hearings, during the hearings, for floor consideration today. They are Terry Wooten, who is chief counsel and staff director on the Judiciary Committee; Melissa Riley, who does outstanding work in connection with the judges on the committee; Duke Short, who is now my chief of staff but formerly was in charge of nominations and continues to take a great interest in this work; and Melinda Koutsumpas, the minority chief clerk whose efforts were very beneficial. I thank them for their good work.

I also commend several members of Senator BIDEN's staff who have been cooperative and helpful during this process: Jeff Peck, Ron Klain, and Diana Huffman.

Senator BIDEN and I have a fine relationship. Our staffs have a good relationship, and it is very nice that we can all work together.

I yield the floor.

The PRESIDING OFFICER. Who seeks recognition? The Senator from Delaware is recognized.

Mr. BIDEN. I believe the Senator from New Mexico has indicated that he would like to speak to this nomination.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

Mr. BINGAMAN. Mr. President, I will vote for the nomination of Judge David Souter for a position on the Supreme Court. My vote is determined by two considerations:

First of all, the information which has come out during the hearings on Mr. Souter's nomination in my view has been favorable to him. Based on his intellectual capacity, education, and his reputation for integrity, he

seems eminently qualified to serve on the Supreme Court.

Second, I firmly believe that the Senate's responsibility is to give its consent to a President's nominee unless there is a basis in the record of the nominee that renders him unfit for the position to which he is nominated.

Many are apprehensive about Judge Souter's views on the right to privacy and, more particularly, about his views on the right of a woman to choose to have an abortion. I share those concerns and I hope that he will have the wisdom to leave established law in place on that extremely sensitive issue.

I believe my duty under the circumstances is to give him the opportunity to exercise his judgment. I fervently hope, as do many of my colleagues, that judgment proves to be good.

I thank the Chair. I yield the floor.

Mr. BIDEN. Mr. President, there is an additional colleague who wishes to speak, and I am told that he is on his way to the Chamber. I believe that will be the last person to speak until we have the closing statements by the distinguished Senator from New Hampshire [Mr. RUDMAN] and the majority leader.

So while we are waiting for the Senator to arrive, I suggest the absence of a quorum.

Mr. THURMOND. Mr. President, if the distinguished Senator will withhold, I would like to take this opportunity to commend Senator RUDMAN for being so active in behalf of Justice Souter. I do not think I have known any Senator in my 36 years here who has taken more interest in a nomination than has Senator RUDMAN. They have been friends for many years. They know each other well. His opinion, I am sure, has had a great influence on many other Senators.

I just want to pay him that tribute and tell him he has done a fine job in connection with this nomination.

Mr. LEAHY addressed the Chair.

The PRESIDING OFFICER. The Senator from Vermont is recognized.

Mr. LEAHY. Thank you, Mr. President. I will not be long, because I know that my colleagues wish to get on with this matter.

Mr. President, as I said earlier in the Senate Judiciary Committee, I will consent to the nomination of David Souter to be the next Justice of the United States Supreme Court. In debating this nomination and Judge Souter's qualifications, the U.S. Senate carries out one of its most profound responsibilities.

The President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint * * * Judges of the Supreme Court."

Those 20 words are in article II of the Constitution, and they lay out the guidance for the President and the Senate as we come together to select members of the Judiciary. In confirming judges, we should neither rubberstamp the President's choice nor make the process partisan.

I think the Judiciary Committee has fulfilled its responsibility with care and deliberation. Chairman BIDEN deserves a great deal of credit for this. Senator THURMOND, too, deserves credit. Others have done a tremendous job as well. Senator RUDMAN went to every one of his colleagues, both Democrat and Republican, who had any question whatsoever about this nomination. He very frankly and honestly filled us in.

Whenever the Senate completes its work of advice and consent, I always ask myself whether we have served the Constitution and the American people in confirming or rejecting a nominee. In this case, we probed deeply into Judge Souter's professional and intellectual qualifications. But we always do.

I will put into the RECORD some of my findings of his qualifications.

I just want to take a moment to talk about "Advice and Consent" because some people lose sight of exactly what that means. There was some grumbling even in the Judiciary Committee that the Senators asked too many questions. I thought the questions were tough and probing, and fair and thorough, as they should be. Some used the time to talk about past confirmations, but most Senators asked significant, difficult, probing, and exhaustive questions.

Advice and consent in the Constitution demand thorough questions. It does not demand excuses for asking them. We demean ourselves and we demean the Constitution if any of us apologizes for asking thorough questions.

The more answers we get, the more the American people know about an individual, especially an individual who will make important decisions about our lives and our country; and the better the Constitution is served. The Court and the Constitution were well served by the Senate hearings on Judge Souter. This body, the U.S. Senate, was also well served and I believe, through it, the American people.

We understand that the framers of the Constitution and the Bill of Rights did not entrust certain fundamental liberties entirely to the good intentions of the executive and legislative branches. For that reason, we have an independent judiciary. And we Senators are the ones who have to make sure that we preserve that.

So let us never make excuses for upholding the Constitution through advice and consent. After all, we take an oath of office to do just that. It is an obligation none of us should ever forget. We want members of the Judiciary Committee to take that to heart in probing the nominee's views on constitutional law. We asked whether Judge Souter will respect the fundamental rights and liberties that Americans have fought for two centuries to preserve.

Over the last 2 months since Justice Brennan resigned, we have reviewed every aspect of Judge Souter's judicial and legal career. We have questioned him about his tenure in the Attorney General's office, his years in the New Hampshire State courts, and his current views on a wide range of legal and social issues. The committee concluded, in a strong bipartisan vote reflecting the thoroughness and quality of the hearings, that Judge Souter should be confirmed.

I will not go back through all of this. I will put that in the RECORD.

I have said before I do not believe that Judge Souter has answered all my questions, to the extent that I wish he had. But he has demonstrated a belief in the Constitution and a willingness to approach issues fairly. He is not, in my mind, an ideologue.

If we offer our consent to President Bush's nominee, as I believe we will, he will be entrusted with the awesome responsibility that Justice Brennan fulfilled so well, so nobly, and so magnificently.

As the honorable man that I believe he is, Judge Souter is not going to forget the valuable lesson he learned as a trial judge, that the decisions he will make will have an impact for the rest of the life on an individual and sometimes on many individuals.

So through us the American people express their faith in Judge Souter's ability to preserve the essence of the American tradition. My vote today represents my faith that he is a nominee worthy of that trust.

The Senate must take great care in asking questions during confirmation hearings because the individual who ascends to the Supreme Court this term will help to mold the course of American jurisprudence well into the next century. As we look ahead we will lose much of that little message on the American penny—E Pluribus Unum, bringing from the many, one; bringing from diversity, a unity of purpose and spirit—if we do not preserve the quality, dignity, and independence of the Supreme Court.

Time after time, throughout our history, when other branches of Government were either unwilling or unable to protect fundamental rights, Americans have turned to the courts and, ultimately, to the Supreme Court. It would be a foolish dereliction of our duty to give any nominee this power without understanding—as fully as we can—where the nominee thinks the Court should go. Our advice and consent structure epitomizes the framers' genius for the separation of powers,

which guarantees the protection of the freedoms in our Constitution.

To maintain this historical role for the Court, it is up to both the White House and this body, walking separate but parallel paths, to chart the future course of judicial selection. Presidents consistently should pick nominees from the very large list of able, experienced, tested, and well-known men and women whose lives make them natural choices as protectors and expositors of the Constitution. The ultimate critics or our advice and consent task are the American people, and their oversight is utterly impossible if this Senate performs nothing more than polite or perfunctory review.

What are the factors the Senate must consider during the advice and consent process?

The threshold qualifications are competence, honesty, and integrity. Judge Souter's record, combined with his performance in 2½ days of testimony, convinces me that he is intelligent, learned, forthright, and honorable. But those attributes are no more than prerequisites for the job, and mark only the beginning of our deliberations.

We must also ask whether Judge Souter will respect the fundamental rights and liberties that Americans have fought for two centuries to preserve.

Does Judge Souter accept the first amendment as protecting our right to speak and worship as we believe, to articulate our grievances and express them to our Government, and to benefit from a free press?

Does Judge Souter respect the freedom from government interference in our private lives that Americans have come to expect and enjoy?

Does Judge Souter commit himself to ensuring that the rights and opportunities that uniquely characterize our society will be equally available to all, regardless of race or gender?

After listening to Judge Souter at the confirmation hearings, examining his writings and speaking privately with him twice, I decided to support his nomination.

Mr. President, that decision was a difficult one. Judge Souter did not give the committee all of the answers—either in content or breadth—to which I believe the Senate is entitled.

I questioned Judge Souter extensively about his views on the establishment clause of the first amendment and remain troubled that he would not commit himself to Jefferson's idea of a "wall of separation" between church and state. I trust that if Judge Souter is confirmed and called upon to consider the establishment clause, he will keep in mind our discussion of the poignant experiences of his friends WARREN RUDMAN and Tom Rath or the similar experience that my friend from Vermont, Jerry Diamond, described in his appearance before the committee.

I trust Judge Souter will understand that government has no business flying flags at half-mast on Good Friday, and will recognize that the moral and religious beliefs of Americans, even small minorities, must not be disparaged by the state as "mere whimsy." The first amendment has made this Nation tolerant, united, and strong. I do not believe that Judge Souter will view this legacy lightly.

I remain troubled by Judge Souter's reticence in answering questions on the scope of fundamental privacy rights. In response to my question about whether Roe versus Wade is settled law, Judge Souter declined to respond, saying he drew "a fine line" at Griswold versus Connecticut.

That line was the wrong line. Although we do not expect a judicial nominee to comment on a specific case before the court, the public we represent should know how the nominee regards fundamental rights.

While he refused to comment on Roe versus Wade, Judge Souter assured us that he would not approach challenges to this important case with any agenda or preconceived ideas about the results. The majority of Americans expect that David Souter will share their view that decisions about reproduction are best left to the individual. This is one realm of life where the State has little interest or right to interfere.

Judge Souter spoke movingly about an incident in which he counseled a young woman who was contemplating a self-induced abortion. I hope Judge Souter learned that day that while abortion decisions are traumatic under any circumstances, abortions in the pre-Roe era were dangerous, beyond the means of most women, and often life-threatening. American women cannot be plunged into the dark ages ever again.

I wish there would never be the need for another abortion, but that is a decision for a woman, not for a legislature or a court. During the hearing, I reminded Judge Souter of my own experience with illegal, pre-Roe abortion. As a prosecutor in Vermont, I received a call from the police. It was 3 o'clock in the morning and a woman in the emergency room of the local hospital had nearly died from a botched abortion.

I prosecuted the man who arranged for this and other women to travel from Burlington, VT to Montreal for abortions performed by a nurse who learned her trade from the SS at Auschwitz. This nurse nearly killed a young woman, who ended up sterile. And this woman was not the only victim. Several other women, after having abortions performed illegally, were blackmailed for money or sex by the man who arranged the dangerous procedure. Quite a racket.

Abortion is not an easy question, but none of us wants women to endure this pain and exploitation again. Let us be realistic, if abortion is outlawed again, women will retreat to back alleys and back rooms where they will be vulnerable to the kind of piranha I prosecuted in Vermont. Judge Souter and I discussed this incident during the hearing. I hope he will not lose sight of its message.

I also believe that Judge Souter will not approach constitutional questions as a strict constructionist. Judge Souter recognizes that the equal protection clause was properly applied in the landmark case of Brown versus Board of Education, that the Constitution protects unenumerated rights, and that changing social attitudes and traditions must be considered in identifying such rights.

Another area that disturbed me was Judge Souter's role as New Hampshire attorney general when 1,414 protesters were arrested at the site of the Seabrook nuclear powerplant in 1977. I questioned Judge Souter about the State's establishment of a private fund to help finance its costs. I was alarmed that the utility donated $74,000 to the fund, while the prosecutions were pending. This arrangement evoked images of "rent-a-prosecutor."

Attorney General Souter—as the chief law enforcement officer in charge of the prosecutions—should have prevented an interested party from influence the judicial process. I welcomed Judge Souter's remarks that he now understands he should have opposed the fund.

Nonetheless, Mr. President, Judge Souter demonstrates that he approaches issues fairly and reveres the Constitution. Once confirmed, Judge Souter will take the seat of Justice William Brennan. Justice Brennan is a remarkable jurist, who will long be remembered for his fierce, unyielding support of individual rights—even in the face of popular prejudice and scorn.

At critical moments in history we have depended on the Supreme Court—and justices like William Brennan—to be our unifier, to being together a divided society, to bridge deep gulfs in understanding, to help explicate complex problems thrust on us by modern times. As Judge Souter acknowledged during his confirmation hearing, "Justice Brennan is going to be remembered as one of the most fearlessly principled guardians of the American Constitution that it has ever had and will ever have."

As a Supreme Court Justice, David Souter will serve as the guardian of the liberty and cherished freedoms of all Americans.

Mr. RUDMAN addressed the Chair.

The PRESIDING OFFICER. The Senator from New Hampshire.

Mr. RUDMAN. I thank the Chair.

Mr. President, first let me say in all sincerity, that I have no words to express my thanks to the chairman of the Judiciary Committee, Senator BIDEN of Delaware, and the ranking member, Senator THURMOND of South Carolina, for their unfailing courtesy through a rather interesting, and I would say, difficult period for my friend, David Hacket Souter.

The conduct of the hearings was scrupulously fair and thorough. I think in many ways, they set a standard on both sides of the dias, for what hearings should be.

I also want to pay a particular note of thanks to two people who also went the extra mile to make it possible for David Souter to get to those hearings, feeling that all of the logistics of the details had been prepared. They are Diana Huffman of Senator BIDEN's staff, and Duke Short of Senator THURMOND's staff. To all others, I give my personal thanks.

To my colleagues, I would say it is a unique situation in which a nominee to the U.S. Supreme Court happens to be one of the dearest and closet friends of a Member of the U.S. Senate. That is a unique situation. To all of my colleagues who came to me to ask questions about the nominee, I tell you now as I told you then, I have tried to be frank and candid and direct, as we expect of each other.

Mr. President, I can only think back to a day 20 years ago when I met a young man as an assistant in my office, when I became attorney general of our State. I recognized how extraordinary he was soon after I met him. And the most extraordinary thing for me standing here today is that in 1973 I had a conversation with him, which I remember very distinctly. After he had done an extraordinary piece of work, I remember saying to him, "I do not know what you your future will be, I do not know what path you have charted for your life, but it seems to me that you ought to have an interest in being on the bench. Hopefully the State bench and maybe someday the Federal bench."

I remember saying very clearly: "And when you get there, as I expect you will, I hope you will aspire to the highest possible place that you can be," never thinking, Mr. President, that I would be given the privilege by the Republican leader, which I appreciate, of giving the closing remarks in behalf of my very dear friend on this very special October day.

Mr. President, David Souter is my friend. I have trusted him, I have respected him, and I like him. He has made all of us, who know him, think, and to laugh, and to reflect. When I became attorney general of New Hampshire, our office was small. He helped me build it to one of the top law firms in the State. He succeeded me and excelled what I did.

He did so by recruiting a staff of extraordinarily talented young men and women, some of them who the committee heard from, who are hired on the basis of talent, not politics or ideology. He had a staff that was the envy of the law firms of the region. Those lawyers today are judges, public servants, and partners in major law firms in New Hampshire and across the country.

David Souter served with great distinction as a judge. Everyone who practiced before him lauded his fairness and his wisdom.

Moveover, I believe that his days as a judge on the trial court impressed upon him some very interesting lessons. One of those, I think struck all members of the committee, when he said it. I will quote it from those hearings. He said:

> When those days on the trial court were over, there were two experiences that I took away with me and the lessons remain with me today. The first lesson, simple as it is, is that whatever court we are in, whatever we are doing, whether we are on a trial court or in an appellate court, at the end of our task some human being is going to be affected. Some human life is going to be changed in some way by what we do.
>
> The second lesson that I learned is that if we are going to be judges, whose rulings will affect the life of other people, we had better use every power of our minds and our hearts and our beings to get those rulings right.

During the hearings, the Senator from Wisconsin [Mr. KOHL] asked David Souter why he wanted to sit on the Supreme Court. After noting with absolute candor that he did not seek the position, David Souter said:

> I want to try the best I can to exercise that responsibility to give the Constitution a good life in the time that it's entrusted to me, to preserve that life and to preserve it for the generations that will be sitting in this room long after you and I are gone.

That struck me as one of the most eloquent statements I have ever heard in my days of public service. His devotion to the Nation and its constitutional principles were made clear when he said this, in answer to a question:

> I would not be true to my own sense of constitutional principle if I did not say that the Senate ought to be looking for someone who, in going through the very difficult process sometimes of seeking constitutional meaning, would seek for something outside that judge's personal views for that moment, who would seek to infuse into the Constitution a sense of enduring value, not of ephemeral value, and who would try to rest the process on as objective an inquiry as can be possible for these massive and magnificent generalities that are committed to us.

Mr. President, that is the kind of a Justice of the U.S. Supreme Court that this Nation sorely needs.

As those of us from New Hampshire have known for many years, and millions of Americans came to realize when he testified before the Judiciary Committee, this is the kind of Supreme Court Justice we will get in David Souter. His life has been rooted in our rocky soil and nurtured by a lifelong commitment to public service. David Souter is a good person—one who will bring honor to the Supreme Court and to our constitutional system.

So, Mr. President, it is with unbounded enthusiasm and with conviction that I consider it a special privilege today to urge my colleagues to join me in voting for this magnificent man from New Hampshire.

I thank the Chair.

Mr. BIDEN. Mr. President, while we are waiting for the majority leader, let me just say that David Souter is indeed fortunate to have such a friend.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. LIEBERMAN). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

The majority leader is recognized.

Mr. MITCHELL. Mr. President, I begin by commending the distinguished chairman of the Judiciary Committee, Senator BIDEN of Delaware, for the fair and thorough manner with which this nomination was considered. And, also, the members of his staff, most especially Ron Klain, who did an outstanding job in organizing the hearings and organizing the prompt action by the Senate.

I also commend my thanks to the distinguished ranking member of the Judiciary Committee, Senator THURMOND, and of course to Senator RUDMAN, whose support for, sponsorship of, and diligent effort on behalf of the nominee, has in my view been a major factor in the reception received by the nominee in the Senate.

I will say in all candor that the fact that Judge Souter has a long history of association with Senator RUDMAN and is strongly endorsed by Senator RUDMAN was an important factor in my own consideration of this matter, and I know the same to be true of all of the Members of the Senate who so respect our distinguished colleague from New Hampshire.

Mr. President, I will vote to confirm the nomination of Judge David Souter to the Supreme Court of the United States.

I do so not because I feel confident that I can predict his future course on the Court. Rather, because I believe that in outlining the broader framework within which he views constitutional protections and the responsibil-

ity of the judiciary to adjudicate cases, Judge Souter reflected a reasoned approach and a sound understanding of the Constitution.

In a discussion with the committee chairman about the development of the Bill of Rights, Judge Souter made the following observation:

> * * * the starting point for anyone who reads the Constitution seriously is that there is a concept of limited governmental power which is not simply to be identified with the enumeration of those specific rights or specifically defined rights that were later embodied in the bill [of Rights].
>
> If there were any further evidence needed for this, of course, we can start with the Ninth Amendment. * * *
>
> * * * it was * * * an acknowledgment that the enumeration [or rights in the Bill of Rights] was not intended to be in some sense exhaustive and in derogation of other rights retained.

I agree with that statement and the approach to the Constitution that it reflects. Our Constitution was not written to prescribe specific remedies for particular problems. It was, rather, intended to prevent a concentration of power by any group or individual so as to preserve the liberties of the people.

In his testimony, Judge Souter acknowledged the responsibility of the Court in fulfilling that purpose. He said, "* * * courts must accept their own responsibility for making a just society." Judge Souter repeatedly acknowledged that the rights of Americans are not exhausted by the specific rights listed in the text of the Bill of Rights, but that they also include rights implicit in the text of the Constitution.

He made it clear that what is implicit in the text of the Constitution is not limited to the particular factors present at the time of writing, but includes broader principles.

His interpretation, as he put it, is not that original intent is determinative, but original meaning.

He said, for example, "If you were to confine the equal protection clause only to those subjects which its framers and adopters intended it to apply to, it could not have been applied to school desegregation," because those who wrote and adopted the 14th amendment lived at a time when segregated schools were the standard.

He went on to say, "What we are looking for, when we look for original meaning, is the principle that was intended to be applied * * *."

The distinction Judge Souter drew between original intent and original meaning is a useful distinction. It permits the underlying principles to be applied to new needs without limiting the broad rights of our people today to the political or social circumstances of the 18th or 19th centuries.

Judge Souter's understanding, in particular, of the significance and reach of the 14th amendment in the constitutional system reflects an understanding of our Nation's history and of the central role that the tragic fact of racial prejudice has played in our history.

Judge Souter said no social problem is "* * * more tragic or demanding of the efforts of every American in the Congress and out of the Congress than the removal of societal discrimination in matters of race * * *." He also said, in response to a question about judicial activism, "The obvious and significant fact of history * * * is the adoption of the 14th amendment."

As we all know, Judge Souter declined to address specifically the question of abortion and the Court's past rulings on that matter. He acknowledged a core right of privacy but would not be drawn into discussion of how broad or how enforceable against government such a right would be.

For that reason, those who are particularly concerned that the Supreme Court may in the near future dramatically tighten or even reverse the right of a woman to choose to terminate a pregnancy have suggested that Judge Souter's nomination ought to be rejected.

I respect the view that this factor is so central that no other factor should be considered. But, on reflection, I do not share that view.

The hearings focused to a substantial degree on the subject of privacy.

That is understandable at a time when developments in medicine and technology are altering our ability to intervene medically to save and prolong life and to intrude technologically into the most private recesses of individual thought and behavior.

There is little doubt that future cases before the Supreme Court will develop the legal boundaries of privacy, individual autonomy, conscience, and related concepts.

Advances in genetics have already raised questions about the legal ownership rights an individual may have to his or her physical body. Advances in voice transmission have raised questions about the expectation of a privacy in conversations conducted over certain telephone equipment. Medical advances have raised the exceedingly difficult issue of the State's relationship to an individual's death from natural causes.

But while this new and expanding area of law will continue to play a central role in the development of constitutional doctrine and the protection of individual rights, we must remind ourselves that the Supreme Court is not the sole source of legal development in the American system.

The Congress and the executive branch also have their responsibilities in meeting the new challenges that face our society.

I said at the outset that I do not have a feeling that I can predict how Judge Souter would vote on cases that may come before him on the Supreme Court.

I have, therefore, rested my decision on his nomination on the approach that he uses to determine the source of individual liberties, the breadth with which he sees constitutional guarantees, the emphasis he places on the structure of the constitutional system and its purpose, and the criteria he would use to determine if an individual liberty is enforceable against the government.

These factors do not give me an infallible guide as to his future rulings. But they do not give such a guide to anyone else either.

Those who argue that Judge Souter should be opposed because they are certain they know how he will vote have no objective basis for that certainty.

But there is one certainty over which there can be no dispute: No matter what the pressing controversy of the moment is, Judge Souter or any other nominee will occupy a seat on the Supreme Court for many years after the hot controversies of today are settled law.

I believe that if Judge Souter brings to those future controversies the breadth of experience, understanding, and the careful judgment which his testimony before the Judiciary Committee reflected, then his decisions in those cases will continue to reflect the fundamental American constitutional tradition.

For those reasons, I shall vote to confirm his nomination.

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

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The PRESIDING OFFICER. The question is, Will the Senate advise and consent to the nomination of David H. Souter, of New Hampshire, to be an Associate Justice of the Supreme Court of the United States? On this question the yeas and nays have been ordered, and the clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. SIMPSON. I announce that the Senator from California [Mr. WILSON] is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 90, nays 9, as follows:

[Rollcall Vote No. 259 Ex.]

YEAS—90

Armstrong	Boschwitz	Coats
Baucus	Breaux	Cochran
Bentsen	Bryan	Cohen
Biden	Bumpers	Conrad
Bingaman	Burns	D'Amato
Bond	Byrd	Danforth
Boren	Chafee	Daschle

DeConcini	Humphrey	Packwood
Dixon	Inouye	Pell
Dodd	Jeffords	Pressler
Dole	Johnston	Pryor
Domenici	Kassebaum	Reid
Durenberger	Kasten	Riegle
Exon	Kerrey	Robb
Ford	Kohl	Rockefeller
Fowler	Leahy	Roth
Garn	Levin	Rudman
Glenn	Lieberman	Sanford
Gore	Lott	Sarbanes
Gorton	Lugar	Sasser
Graham	Mack	Shelby
Gramm	McCain	Simon
Grassley	McClure	Simpson
Harkin	McConnell	Specter
Hatch	Metzenbaum	Stevens
Hatfield	Mitchell	Symms
Heflin	Moynihan	Thurmond
Heinz	Murkowski	Wallop
Helms	Nickles	Warner
Hollings	Nunn	Wirth

NAYS—9

Adams	Burdick	Kerry
Akaka	Cranston	Lautenberg
Bradley	Kennedy	Mikulski

NOT VOTING—1

Wilson

So the nomination was confirmed.

Mr. THURMOND. Mr. President, I move to reconsider the vote.

Mr. JOHNSTON. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

(Disturbance in the Visitors' Galleries.)

Mr. BYRD. Mr. President, may we have order in the Galleries?

The PRESIDING OFFICER. The Galleries will refrain from any noise. Order will be restored.

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

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. FORD. 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. FORD. Mr. President, I ask unanimous consent that the President be immediately notified that the Senate has confirmed the nomination of Judge David Souter.

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

LEGISLATIVE SESSION

Mr. FORD. Mr. President, I ask unanimous consent that the Senate return to legislative session.

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

MORNING BUSINESS

Mr. FORD. Mr. President, I ask unanimous consent that there be a period for the transaction of morning business with Senators permitted to speak therein.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

THE INTERNATIONAL FUND FOR IRELAND

Mr. KENNEDY. Mr. President, the International Fund for Ireland has now been in operation for 4 years. In that time, it has grown from a hopeful idea in the Anglo-Irish Agreement on Northern Ireland in 1985, through a troubled initial phase, to what it has become today, a worthwhile participant in the search for a peaceful settlement of the violence and divisions that have plagued the people of Northern Ireland for over 20 years.

The United States has a substantial interest in promoting this search for peace. After a difficult start, the Fund has turned out to be an effective means for us to help achieve the goal that all of us share for the future of Northern Ireland. Annual appropriations from the United States have played a major role in the Fund's success. An appropriation of $20 million for fiscal year 1991 has strong support in Congress, and I hope that it will be enacted.

From the beginning, the mandate of the Fund was clear—to encourage economic development in the areas most affected by the violence in Northern Ireland. In article 10 of the Anglo-Irish Agreement, the Governments of Ireland and Great Britain pledged to

> Cooperate to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequence of the instability of recent years, and shall consider the possibility of securing international support for this work.

The International Fund for Ireland was subsequently created to carry out this purpose. In the initial phase of its operations, the Fund established seven key programs:

First, two investment companies operating according to strict commercial criteria;

Second, a business enterprise program to stimulate job creation;

Third, an urban development program to revitalize town centers, including 24 towns in Northern Ireland, and 12 in the South;

Fourth, a tourism program to develop one of the region's principal industries;

Fifth, an agriculture and fisheries program to stimulate new enterprises;

Sixth, a science and technology program to emphasize practical research likely to lead to early economic benefits;

Seventh, a wider horizons program to encourage new skills through practical work experience, training, and education overseas.

At the outset, however, the Fund had difficulty in developing and implementing its mission. Projects were funded that were difficult to justify on the basis of the priority intended to be given to areas most affected by the violence. These areas include over a third of the population of Northern Ireland, and are concentrated in West and North Belfast, Derry, and along the border with Ireland. As a result of its missteps, the Fund was legitimately and increasingly criticized, and there were growing doubts in Congress about the desirability of U.S. support.

To its credit, the Fund responded to these concerns. A new series of initiatives was developed with special emphasis on disadvantaged areas, and the Fund has received high marks in the past year for its work in implementing these initiatives.

At a meeting of the Anglo-Irish Intergovernmental Conference on September 14, the conferees noted with particular satisfaction the growing evidence of the Fund's success in promoting economic regeneration to the direct benefit of the entire community, particularly in the most disadvantaged areas.

There is tangible evidence of this success. In all, 1,300 projects have been supported by the Fund; 8,000 jobs have been created; and substantial assistance has been made available to disadvantaged areas, with special emphasis on economic development projects in North Belfast, West Belfast, and Derry.

For the vast majority of the people on both sides of the conflict in Northern Ireland, the Fund has become a symbol of hope for a better future. It is helping to reduce the violence, mistrust, and discrimination that have plagued Northern Ireland for too long. In my view, the Fund deserves credit for resolving its early difficulties. It is coming into its own today, and it deserves continued support from the United States.

Mr. President, a four-part series of articles by Niall Kiely in the Irish Times last August provides an excellent analysis of the Fund. I believe that the articles will be of interest to all of us in Congress, and I ask unanimous consent that they may be printed in the RECORD, along with a subsequent editorial in the Irish Times.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

[From the Irish Times, Aug. 20, 1990]

FUND'S U.S. BACKERS DISAPPOINTED BY DUBLIN

(By Niall Kiely)

Beset by radical critics drawn from the ranks of Sinn Fein supporters in the United States, the International Fund for Ireland could have done without this year's unpublicised differences between the Irish Government and its most important supporters, the Friends of Ireland (FoI) group in the American Congress and Senate.

It was doubly unfortunate that it was the Government's absorption in Ireland's six-month EC presidency that proved instrumental in ruffling feathers on Capitol Hill. As 1992 nears, and the Euro-USA trade disagreements take on more rancorous forms, American aid to Community member-states has become increasingly vulnerable.

Although the Minister for Foreign Affairs, Mr. Collins, finally stepped into the breach in June with a warm speech of thanks to the board of the IFI, some of the fund's staunchest backers in Washington regarded the Minister's effort as rather little, and delivered pretty late in the day. The pressure of local criticisms, however unjustified most of them probably were, had taken its toll of FoI enthusiasm and the image of the fund had been belittled and smeared.

The critics were both forthright and cunning. The campaign was co-ordinated by prominent figures in Noraid, the Irish American Unity Conference and the Ancient Order of Hibernians. Their tactics were standard practice in modern American politics: identify vulnerability, distort some facts if necessary and paint the critical slogans with broad, populist strokes. As tactics go, it can be difficult to counter such have-you-stopped beating your wife attacks, and in the event, the response of the IFI and its official backers proved dilatory and hapless.

In effect, the fund's supporters in Dublin and London were up against the bare-knuckle gougers against whom they fielded nobody with the street-smart nous or official authority to slug back appropriately. British diplomats in Washington have always had difficulties dealing with contentious issues involving the Irish-American community, not least because their accents and perceived cultural values grate on the sensibilities of Americans with green-and-white views on the North. This factor in practical terms left defence of the IFI and its American funding largely to the Irish embassy.

The staff in Washington, particularly the political counsellor, Brendan Scannell, who laboured mightily on the Hill to counteract the efforts of the anti-fund lobbyists, did their best—and to notable eventual effect. Whatever distress signals they sent back to Dublin, however, made little impact on a Government engrossed in its half-year task of Community presidency. The summits, the shuttling and the time-consuming pomp and protocol took apparent precedence over what may have seemed a storm in a Washington teacup.

"The emphasis was all 'Europe,' Europe at the time and whatever it was the embassy did, it didn't get the big guys in Dublin off their asses," says one seasoned observer of Irish-American politics. "It left a clear feeling (in Washington) that the Irish Government hadn't done enough to counteract the charges against the fund and back up its friends. There was also a sense in the States that the Government was taking the Irish-American lobby's support for granted."

Nor could the fund and its operators in Dublin and Belfast escape all the flak. Their intent was admirable when they tried briskly from the start to get money out on the ground and produce results; and it made practical sense to avoid creating an expensive administrative tail, instead piggybacking on existing official networks, North and South. One result, perhaps inevitable, of all this hustle and hurry was that the mesh of IFI's check-and-balance net was never particularly fine.

And there may have been an element of innocence by well-meaning public servants who believe that because they were basically doing good works, such small mistakes as cropped up would be understood, corrected and forgiven: but that was naivety indeed by people who underestimated the determination of the critics who waited in ambush.

It was not just that some specific projects were funded which offered near-perfect material for the critics to exploit, such as the facelift for an AIB frontage in Strabane, or that ventures were assisted which invited apparently reasonable censure on the grounds that they were frivolous, "unsuitable" or already had recourse to private/public cash; it also transpired that the fund's defenders failed to justify with sufficient vim and rigour its *raison d'etre* and operating principles.

"Frankly, the (IFI) secretariat seemed to be clueless when it came to reacting to the criticisms of the fund's work," one well-connected Washington source told *The Irish Times* "You wouldn't have to be paranoid about Noraid to see them coming a mile off. Their connections are public and they certainly would like to destroy the Anglo-Irish Agreement, but the secretariat not alone let them make all the running—they floundered around the place when it came to hitting back."

It was not appreciated in Dublin or London how relatively insignificant an issue the IFI was, even for the committed FoI men, considered in the context of a year in their political lives, the source added. "These guys in the House (of Representatives) and Senate reckoned they'd done their bit by getting the money. Then they found themselves being sniped at—and by other Irishmen!," he explained, "Their attitude was: if the Israelis got another 20 million bucks, you wouldn't get some of them bitching later about how a few thousand was misspent here and there."

[From the Irish Times, Aug. 21, 1990]

TAKING ISSUE WITH THE "WELL-HEELED" AIR OF FUND PROJECTS

It's a long way from Ballymurphy to Stormont. As the crow flies, probably only a handful of miles, but the contrasts are not just the blatant ones. The gulf separating the Rev. Des Wilson and Irvine Devitt has much more to do with background, personal philosophy and Northern nuance.

Devitt is one of the joint directors general of the International Fund for Ireland (IFI). His room in the monolithic former parliament building in east Belfast is beside what used to be the Northern Ireland prime minister's office in pre-1972 days. In Dublin, his counterpart is Donal Hamill of Foreign Affairs who operates from an office in Iveagh House: St. Stephen's Green, Wilson might reasonably argue, is also some distance from Ballymurphy.

The sincerity of all three men could not be doubted, yet they hold diametrically opposed views on the fund and its application. A serious link between their positions is provided in the bulky shape of John McGuckian, who was appointed last autumn to a three-year term as IFI chairman. A successful businessman in his late 40s, McGuckian was once taught by Father Wilson and still admires him.

Sitting in the homely but down-at-heel Springhill community house, set in a west Belfast housing estate where jobless figures are so high as to be almost meaningless as statistics, it is easy to understand how the 55-year-old priest finds much of the IFI's funding priorities anathema. He considers tourism, for instance, to be an already well-heeled and oversubscribed industry "that produces the lousiest jobs and the most anti-social hours;" he is bitter after a lifetime watching funds either misspent or not spent at all in Catholic working-class areas. And he is angry at the fund's refusal to fund a proposed project in the local Conway Mill.

Devitt, whose background was in the textile industry and with the NI Development Board (NIDB) before joining the department of commerce, has a simple explanation: although the IFI's day-to-day operations are independent and impartial, the British and Irish Governments do have an ultimate veto on any project considered unsuitable, and London exercised that veto on the mill. (A House of Commons answer last December stated that the mill had been refused public funds ". . . because of the nature and extent of paramilitary influence within the Mill.")

The "leverage concept" finds its way into much of Irvine Devitt's defence of the fund and its operations. He understands how the Americans in particular appreciate the concept of using public funds to lever further investment from private enterprise and local communities. In the North, the IFI has used its cash to encourage back-up financing from the Local Enterprise Development Unit (LEDU), the local councils, the Departments of Environment (DoE) and agriculture and community groups.

He describes as rubbish the claims of fund critics that most of the IFI spending in the North is east of the Bann, and that funding has favoured the Protestant community disproportionately. "There's no secret about the projects. Thirty-five per cent of the population lives in disadvantaged areas, and about 70 per cent of our spending has gone into those areas," he says. "And I'd reckon myself that the population is 80 to 90 per cent Catholic in the locations involved".

The emphasis has been on promoting an "enterprise culture" in which people who wish to start up or diversify in business can get assistance varying from workspace to training, expert advice to cash. Established and new enterprise centres have taken much of the IFI's Northern spending, with each disadvantaged area receiving £50,000 over two years to pay for a development officer whose role is to help local communities identify and develop suitable projects.

McGuckian believes that the American politicians who were instrumental in securing the initial US funding for the IFI understood perfectly well why the administrators had to concentrate during the first year or so on private enterprise companies and individuals: it was essential to get the money working quickly, and it took time to establish mechanisms through which suitable and realistic community schemes could be found and encouraged. "One of the problems was and still is to get good, viable projects in the disadvantaged areas where they were and are most needed," he says. "But as we got programmes underway and learned more ourselves, we got the development consultants out on the ground to research and recommend the right types of projects."

Devitt stoutly defends tourism projects as justifiable schemes for IFI assistance. "Sure, these schemes are easy targets," he agrees, "but economic regeneration is the name of the game. Take our assistance towards the building of the Plaza "budget" Hotel in central Belfast. The 10 per cent of costs we provided at a crucial stage nudged that project towards reality. Now consider

what that hotel will mean: there will be great employment during construction, it will probably be staffed by people from west Belfast, it will bring visitors to Belfast—and it will bring confidence to the city."

He believes the IFI's work has already begun to have practical effect. "I think the impact is now visible on the economic and social landscape of the North of Ireland. If you look honestly at Derry and Belfast, you'll surely agree that there are signs of confidence in both cities. Because of that, and with the help of our projects, I feel other towns will follow suit."

Last year, five of the IFI's six directors were replaced to coincide with McGuckian's arrival. The likes of Mr. Neil McCann, the Dublin fruit importer; Mr. Paddy Duffy, the Co Tyrone solicitor, Belfast merchant banker, Mr. John Craig; Mr. Pat Kenny, of accountants Deloitte Haughey Boland; retired Stormont civil servant Mr. Denis Calvert, and Fruit of the Loom MD, Mr. Willie McCarter from Buncrana, give of their time unstintingly to the fund.

None does so with more alacrity than McGuckian who also manages clothing and property interests, a farm and is a director of AIB and several other companies including some in the U.S. He is also pro chancellor of Queen's University, Belfast, deputy chairman of Ulster Television and vice-chairman of Laganside Corporation, a government body promoting the development of inner city Belfast.

It is impossible to doubt his conviction when he explains his motivation for devoting two and sometimes three days of his working week to IFI business. "The reason I'm involved is because it seems to be a chance to ease the misery, unemployment and deprivation in the most disadvantaged parts of this country," he says. I'm also hoping to help in a process that may bring peace in Ireland.

[From the Irish Times, Aug. 22, 1990]

FEW ATTACKS ON FUND DISBURSEMENTS STAND UP TO SCRUTINY

The most celebrated and trivial item of notoriety associated with the International Fund for Ireland (IFI) was certainly the cash allocated towards refurbishing the frontage of the Allied Irish Bank branch in Strabane, Co. Tyrone. Typically, Sinn Fein's allies in the United States got it half-right when they alleged that the fund had paid $10,000 to help to pay for the facelift.

In fact, the sum involved was $2,500 and it had seemed justified under the terms of the urban development programme in operation by the IFI at that time (four years ago). It was never used because an embarrassed AIB refunded the money. The grant-aid was ill-advised, perhaps, but scarcely scandalous.

"I'm sure we took some wrong options, and only a fool would say we didn't make some mistakes but we didn't make all that many," says the Co. Antrim businessman, Mr. John McGuckian, who has been fund chairman since last October. "There were very few things we couldn't defend in some way, but with the benefit of hindsight, we could have avoided some difficulties that arose later. Given that we have been or are involved in 1,500 projects, some were bound to be less than perfect.

He will not accept that the fund's checking of applicants has failed because it has steadfastly refused to develop an expensive and cumbersome bureaucracy of its own, relying instead on a secretariat drawn from officials in Dublin and Belfast. "There are other benefits for this arrangement, also, in that people from both sides of the Border at all sorts of levels are working well together," he says, adding with a rare but undisguised sarcasm. "Maybe some people wouldn't like that."

Criticisms of the fund have been most stinging from U.S. sources, mainly emanating from a combination of Irish Northern Aid (Noraid), the Irish American Unity Conference and the Ancient Order of Hibernians, although it is difficult at times to keep track of the cross-affiliations and memberships of various critics.

When examined individually and viewed in the context of overall IFI activities few, if any, of the attacks on fund disbursements really stand up to reasonable scrutiny. A potted selection of examples follows:

That the IFI bought the Townsend Street centre in Belfast from the British government but laundered the money through the Catholic Church to obscure the deal. Facts: the centre was purchased from the Northern Ireland Development Board by the centre's enterprise board, a bona fide community group; the IFI has helped in creating some 200 jobs on the peaceline site.

That the IFI financed foreign "junkets". Facts: true but done as part of the fund's "wide horizons" programme to provide training abroad for religiously mixed groups of young people and done specificially to meet the conditions laid down by Canada on the spending of its Can$10 million contribution.

That the fund bought a fishery vessel for the British government. Facts: true, but a research boat being used by the Northern Ireland Department of Agriculture in collaboration with the Department of the Marine in Dublin for the mutual benefit of both fishing industries.

The U.S. General Accounting Office has been very critical of the IFI's management and accountability. Facts: untrue. The IFI agreed to provide improved economic indicators of achievement, and a Peat Marwick study found that the fund was meeting its intended purpose and donor wishes; and the U.S. Agency for International Development, to which the GAO reports, has confirmed to Congress in each of the past four years that the IFI has carried out its mandate.

America is "propping up the Hillsborough deal scam" with the fund "while starving Eastern Europe and doing nothing for sub-Sahara Africa". Fact: this rather gives the game away with its strong implication that the real target of the critics is the Anglo-Irish Agreement signed in 1985 by Dublin and London. The IFI was indeed set up (in 1986) under the framework of the agreement and to give practical expression to its aspirations "to promote the economic and social development of those areas of both parts of Ireland which have suffered most severely from the consequences of the instability of recent years." The annual U.S. contribution to the fund constitutes one-quarter of one percent of the total U.S. foreign aid budget.

Grants have been given to anti-Catholic employers. Facts: the most recent USAID report to Congress on the IFI, dated March, 1990, stated that "disbursements from the IFI are distributed in accordance with the principle of equality of opportunity and non-discrimination in employment, without regard to religious affiliation, and address the needs of both communities in Northern Ireland."

It is worth mentioning in a general sense also, vis-a-vis the Canadian insistence on youth training expenditures, that the US money was provided with the clear understanding that it would, where possible, be utilized to provide practical momentum towards job creation, i.e., to stimulate private enterprise in the direction of "commercial entrepreneurship". Thus, the fund can justify, if such be needed, its provision of grant-aid to private businesses on the grounds that its seed-money helped prompt entrepreneurial activity.

In this context, one final example. It was alleged in the US that Lacey's wine bar, in Coleraine, Co Derry, had received a grant of $100,000 from the IFI before being sold for $½ million at considerable profit. The facts, not surprisingly, are quite at variance with this tale. The bar, located in a rundown area, did indeed receive $100,000 as 30 percent funding and its development provided 25 jobs and stimulated other economic activity in the vicinity. Its owners are indeed considering selling the business, but any new owners will have to repay the IFI grant in full before they will get legal title to the property.

[From the Irish Times, Aug. 23, 1990]

FUND'S ACTIVITIES GENERATING QUITE A BIT OF HOPE AND OPTIMISM

Even his best friends wouldn't describe Mr. Charles Brett as laid back or hail-fellow-well-met. A 61-year-old Belfast solicitor and architectural historian with a lifetime's involvement in public service and the arts, his style might easily be characterised as autocratic and aloof, although nobody would have doubted his capability or his commitment during a three-year term chairing the International Fund for Ireland (IFI).

It was perhaps as well, however, that a knighthood came after the end of his IFI stint last autumn. The longer than usual hair, the natty dress style and an accent honed at Rugby and Oxford could at times have an unfortunate effect, particularly in the United States: having to address the abrassive IFI chairman as "Sir Charles" might have put the tin hat on it even for the fund's staunchest American supporters.

His successor, Antrim businessman John McGuckian, could scarcely be more different. Separated from the *de rigueur* Mercedes and the sober suits, he might perhaps pass for a cheerful, down-to-earth cattle dealer. There is even a certain enthusiastic naivety to his character, a factor which cost him dearly last April when an ABC television news item on the IFI viciously "edited" a lengthy McGuckian interview in a manner which reflected little credit on the network.

A palpable sincerity has served him well in most respects, however, not least during a briefing delivered last Friday morning in Iveagh House on St. Stephen's Green. The occasion represented something of a coup for the Department of Foreign Affairs and its embassy in Washington, both of which have been fighting a rearguard action to counteract Sinn Fein-inspired critics of the fund in the US. Seven members of the House of Representatives had been persuaded to stop over in Ireland en route to Eastern Europe on a fact-finding trip and all, bar one, were members of crucial appropriations (i.e. fund-dispersing) committees.

The two most important members of the delegation were probably David Obey, a Wisconsin Democrat who is proudly Irish-American (family name originally Aubey) and who chairs the foreign operations subcommittee of the appropriations committee; and New York Democrat Matt McHugh, an-

other appropriations member and staunch Friend of Ireland (FoI). But the other three Democrats, William Lehman (Florida), Les AuCoin (Oregon) and William Lipinski (Illinois), and two Republicans, Connie Morella (Maryland) and John Porter (Illinois) will also have influential roles to play in this autumn's final acts of the appropriations committees' drama.

The politicians had a packed flying trip on Friday, taking in lunch with Northern Secretary Mr. Brooke at Stormont and visiting three of the IFI-funded enterprise centres in Belfast before flying to Shannon. That night in Adare they were impressed by the arrival of Mr. Collins, the Minister for Foreign Affairs, who jetted in from his hectic Middle Eastern mission with the EC's ministerial troika and hosted dinner. The delegates reportedly left Shannon on Saturday with positive impressions.

It was important for the IFI that they did so. Thus far, the U.S. has contributed 80 per cent of the total funding, with $120 million in 1986-'88, another $10 million in 1989 and a further $20 million this year. In addition, the EC has provided ECU45 million for the 1989-'91 period. Canada supplied Can$10 million and New Zealand NZ$0.3 million. For next year the fund hopes to have a budget of some $50 million, made up of $20 million from the US plus the held over cash and other contributions.

Right now, according to Mr. McGuckian, some $60 million is spendable this financial year, bringing to $166 million the amount available to the end of 1990 (the comparable total to the end of 1991 would be $220 million, at least on paper).

Although the US contribution is reducing as a proportion of total funds available, its significance in symbolic and practical terms remains very substantial, not least for the boost its loss would deliver to opponents of the Anglo-Irish Agreement. In the present circumstances, only a brave man would make firm predictions about this autumn's budgeting battle in Washington, but Mr. McGuckian remains reasonably optimistic that the $20 million proposed for 1991 IFI funding will survive the appropriations haggling.

There are inchoate but distinct signs, too, that IFI supporters may be winning the war of attrition in the US. For all the undoubted annoyance of the Friends of Ireland in the House and Senate earlier this year over what they concluded was an offhand, even blasé, assumption, in Dublin that FoI support could be taken for granted, they remain firmly behind the Anglo-Irish Agreement and the Irish Government's approach to the British problem in the north.

No one has been more important in support of this stance than Congressman Brian Donnelly. FoI chairman and one of the more effective gut-politicians of the present generation of elected Irish-Americans—a group of almost incalculable importance to Dublin in that they form the first really effective pro-Ireland political lobby in a country where 40 million claim Irish ancestry, but where extraordinarily effective pro-Israel lobbyists have for decades made a comparative mockery of their relatively insignificant voting aggregate.

Mr. Donnell is also a rising star of whom the Irish Government must take serious notice in coming years. The House of Representatives Speaker, Mr. Thomas Foley will almost certainly appoint his own team this year to succeed that which he inherited from his predecessor, and Mr. Donnelly is well-placed to prosper.

And for all the warning shots the FoI leader has fired across the Irish Government's bow about the IFI's spending policy, he has been going his own combative way about sorting out the Stateside opposition. Very recently, he was pleased to receive a letter from one of his erstwhile foes in the Irish American Unity Conference pledging support for US funding of the IFI, albeit with reservations on the nature of projects supported.

The Ancient Order of Hibernians PRO, Mr. Mike Cummings, whose bitter epistolary attacks on the IFI helped fuel US doubts about the fund, may also be about to lose his power base. In May, the AOH president, Mr. Michael Coogan, was busily disowning Mr. Cummings' letters as not representing the organization's views, but it seemed rather like a belated shutting of the order's stable-door. This summer's biennial AOH convention elected St. Louis man, Mr. George Clough as national president, however, and it is generally assumed that his pro-IFI leadership team will not include Mr. Cummings.

This reporter recently visited randomly selected IFI-supported projects in counties Monaghan, Tyrone, Leitrim, Derry, Donegal and Antrim. The evidence on the ground indicated clearly that the fund is having an impact that is not less than positive in all locations and is strikingly effective in some. And although it is sometimes difficult to measure the effect of certain projects on the spirit and confidence of a disadvantaged community, it was impossible to avoid the conclusion that IFI activities are generating quite a bit of hope and optimism, quite apart from the practical matter of creating jobs. A huge breadth and variety of activities has been covered by the 1,520 projects helped or initiated to date and The Irish Times tour took in a mixed sample. They included a high-tech mushroom-compost plant near Monaghan town which supplies 220 local growers who feed a company most of whose produce is exported to the UK; a business enterprise centre in Omagh with 30 of its 37 units functioning and expert advice available on "outreach" to communities all over Fermanagh and most of Co Tyrone; depressed but picturesque Manorhamilton where £75,000 in IFI cash prompted a further £100,000 of Leitrim county council spending, transformed the town's appearance and sparked local pride to improve shopfronts and homes; resurgent Derry, where IFI seed-money looks set to help create community-based commercial hearts in the windblown housing estates west above the city; Donegal, where development officer Mr. Pat Bolger—white-bearded visionary of the country's co-op movement—was fulsome in praise of the psychological lift the £278,000 IFI spending to date has provided in a county where tourist numbers are only now reaching 1966 peaks again and where "every shrub, every lick of paint helps"; and of course, Belfast, where International Fund money helps stimulate five enterprise centres already busy with local small businesses, manufacturing as well as service industries.

Sitting in the busy offices of the Townsend Street centre which straddles the peaceline between the Falls and Shankill roads, the West Belfast Enterprise Board chairman, Mr. Frank Murphy, spoke with pride of the bustle in the units outside and said simply: "Nothing would have happened here without the International Fund money."

[From the Irish Times, Aug. 27, 1990]

A FUND OF HOPE

It's ironical that any project designed to promote reconciliation on this island should be considered suspect by those who most stridently proclaim their dedication to unity; ironical but, in the nature of things, virtually inevitable.

The International Fund for Ireland is not just any project. It was established by the Irish and British Governments, one of the by-products of the Anglo-Irish Agreement. Its purpose is to channel financial support for the agreement from the United States, Canada, New Zealand and the European Community. Its most substantial contribution so far, $150 million, has come from the United States.

These, in the eyes of its critics, were features of the fund which lent weight to suspicions that were deepened by the tactic of using public funds to lever investment from private enterprise and local communities. And in some instances at least the local projects helped bore the marks of hasty choice. But as Niall Kiely demonstrated in his reports in The Irish Times last week, many of the criticisms were ill-founded or based on distortions emanating from partisan American-Irish opponents of the Anglo-Irish Agreement.

These groups included Noraid, the Irish American Unity Conference and the Ancient Order of Hibernians. In their angry world distance lends disenchantment to any view of Ireland which is not painted in black and white and from which the usual characters from the familiar cast of demons are missing.

The fund's organisers have made mistakes. Some of them might have been avoided if they had given more thought to how their work might appear to people ready to bite any helping hand. They have probably gained from the experience. And Ireland North and South has benefited from a fund which started or helped more than 1,500 projects since 1986—generating, as the last of The Irish Times reports had it, quite a bit of hope apart from the practical matter of creating jobs.

Focusing American attention on the hopeful and practical rather than the tragic in Irish life would be a worthwhile achievement in itself. The fund's energetic new chairman, John McGuckian, is conscious of both the symbolism and the practical results. The Government, which occasionally allows its attention to stray from the fund's potential, would do well to contribute more forcefully to the effort.

TRIBUTE TO BRIG. GEN. WILLIAM H.L. MULLINS

Mr. WARNER. Mr. President, it is with great sadness that I rise today to pay tribute to the late William H.L. "Moon" Mullins, a retired Air Force brigadier general and former corporate vice president for government affairs of General Dynamics Corp. General Mullins died September 29 as a passenger in a restored P-51 Mustang, World War II fighter plane, with the pilot, George F. Enhorning, in Chatham, MA.

General Mullins was a heavily decorated combat veteran of the Vietnam war who led a distinguished military career for 22 years of service to our

Nation. His military decorations included the Distinguished Flying Cross with 4 Oak Leaf Clusters, the Bronze Star Medal, the Meritorious Service Medal with 1 Oak Leaf Cluster, the Air Medal with 12 Oak Leaf Clusters, the Air Force Commendation Medal with 1 Oak Leaf Cluster, and the Air Force Outstanding Unit Award with 1 Oak Leaf Cluster for Valor.

General Mullins was born in Independence, MO, on February 9, 1935. He began his military career in 1957 as a commissioned officer of the U.S. Military Academy at West Point. Following graduation, he attended flight training and received his pilot wings in 1958. As a trained F-100 pilot, he completed his first operational assignment with the 8th Tactical Fighter Wing at Itazuke Air Base in Japan, serving from June 1959 to June 1961. Over the next 2 years, General Mullins was the aide-de-camp to the Commander of the 13th Air Force at Clark Air Base, Republic of the Philippines, while remaining combat-ready in the F-100.

In July 1963, General Mullins served as an F-4 instructor pilot at MacDill Air Force Base, FL, and later at Davis-Monthan Air Force Base in Arizona. Following graduation in 1967 from the Air Command and Staff College at Maxwell Air Force Base, AL, he rejoined the 8th Tactical Fighter Wing in Ubon Royal Thai Air Force Base, Thailand, as the Wing F-4 standardization and evaluation chief. During his years in Thailand, he flew 146 combat missions, 116 of them over North Vietnam.

General Mullins received a master's degree in business administration from the University of Arizona and later served in the Pentagon from 1968 to 1971 as a staff officer for Headquarters, U.S. Air Force, in the Directorate of Operations and the Directorate of Budget. As a graduate of the National War College in 1972, he served as the assistant deputy commander and later as the deputy commander for operations, at the 4th Tactical Fighter Wing at Seymour Johnson Air Force Base in North Carolina.

In 1974, General Mullins distinguished himself as a member of the Six-Man Group for the Chief of Staff of the U.S. Air Force. He retired from the Air Force in 1979, after serving as the Deputy Director of Legislative Affairs, and joined General Dynamics as its deputy director of legislative affairs.

General Mullins is survived by his wife, the former Florine Lucy Magnani, who lives in Alexandria, VA, and their two sons, Dan, a second lieutenant in the U.S. Air Force, who is stationed in Mississippi, and Todd of Alexandria.

Mr. President, we mourn the tragic loss of General Mullins but remember and honor his many years of distinguished military service to our Nation.

NOTIFICATION FROM THE PRESIDENT ON FREE TRADE NEGOTIATIONS WITH MEXICO

Mr. BENTSEN. Mr. Chairman, earlier this week President Bush formally notified me, as chairman of the Finance Committee and pursuant to section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, of his intent to enter into free trade negotiations with Mexico. President Bush further informed me that the United States will be consulting with Canada and Mexico in coming months concerning whether Canada also will participate in the negotiations.

In order to provide all Members with full information on this notification from the President, I hereby request that a copy of the President's letter appear in the CONGRESSIONAL RECORD.

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

THE WHITE HOUSE,
Washington, September 25, 1990.

Hon. LLOYD BENTSEN,
Chairman, Committee on Finance, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: In a letter to me of August 21, President Salinas formally proposed initiation of negotiations for a free trade agreement between the United States and Mexico (copy enclosed). As you know, President Salinas and I had endorsed the objective of a free trade agreement at a meeting in June, and our respective Trade Ministers, Secretary Serra and United States Trade Representative Hills, had so recommended in a joint report of August 8 (copy enclosed).

Mexico is our third largest trading partner, and you are aware of the dynamic, market-oriented reforms undertaken by President Salinas. We see substantial opportunities for mutual benefit in further lowering impediments to bilateral trade in goods and services and to investment.

Accordingly, I welcome the recommendations in the joint report and President Salinas' proposal. Negotiation of a comprehensive free trade agreement is consistent with the efforts of both my Administration and the Congress to eliminate barriers to the flow of goods, services and investment and to protect intellectual property rights.

Therefore, pursuant to Section 1102(c) of the Omnibus Trade and Competitiveness Act of 1988, I am hereby notifying the House Committee on Ways and Means of trade negotiations with Mexico.

I also want to inform you that the Government of Canada has recently expressed a desire to participate in the negotiations, with a view to negotiating an agreement or agreements among all three countries. I welcome the opportunity to work with our two neighbors towards this end. We, with the Canadian and Mexican Governments together, will be consulting in the coming months to explore the possibilities in his regard, which we will also discuss with your committee. I will send a further or revised notice to your Committee as appropriate, depending on the outcome of our consultations.

I want to emphasize that such trilateral consultations will not affect the continued validity of the existing free trade agreement with Canada. Further, in all these discussions, we expect to build on our multilateral negotiating efforts in the Uruguay Round, which is scheduled to conclude at the end of this year.

Ambassador Hills has already begun consultations with your Committee, and the Administration will continue that process throughout the negotiations.

Sincerely,

GEORGE BUSH.

DR. JOHN HARTE

Mr. WIRTH. Mr. President, I rise today to share with my colleagues a recent article about the cutting edge scientific work that is occurring in Colorado under the leadership of Dr. John Harte, a brilliant researcher out of the University of California at Berkeley.

One of our best kept scientific secrets is the Rocky Mountain Biological Laboratory, which is based in Gothic, CO. Every summer, many of the Nation's best and brightest scientific minds gather at RMBL to preside over scientific investigations in Colorado's high country. The cast of characters includes Dr. Harte, the renowned population biologists Anne and Paul Ehrlich, as well as John Holdren, who is probably our foremost nuclear physicist and one of the Nation's best minds. And every summer as I travel through the State, we get together at RMBL and I have the opportunity to learn a great deal about science in those wonderful later afternoons.

I was reminded of this, Mr. President, when I came across the October issue of Discover magazine. Anyone who is concerned about the issue of global warming needs to be aware of the Discover article that details an exciting new experiment that John Harte has established in Colorado. Scientists know a great deal about global warming—that our atmosphere acts like the walls of a greenhouse; that the gases that have the ability to warm the atmosphere are increasing rapidly in concentration; and that the Earth has warmed by about one degree during the past century. On the other hand, the state of science has not advanced to the point where scientists can tell us exactly what will happen as the Earth warms in the future. Dr. Harte's research in the mountains of Colorado will provide important new information about the effect of global warming on our biologic resources.

I highly recommend this article to all of my colleagues. And I applaud the work of Dr. Harte and all of his colleagues at the Rocky Mountain Biological Laboratory.

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

HOT SPOT

(By Glen Martin)

This high mountain meadow in the middle of the Colorado Rockies hardly seems the place for apocalyptic research. Groves of quaking aspen dip down to vales covered with blue-flowered larkspur and a few yellow dandelions. Pea plants called lupines are beginning to unfurl long banners of pink, white, and blue blooms. A creek murmurs nearby, gorged with spring snowmelt and mountain trout. High above, a bald eagle rides the thermals.

And sweating profusely in the bright June sun, John Harte struggles to tighten a web of cables that crisscross a section of the meadow. "This project has really made me admire the engineering skills of spiders," Harte grumbles.

Harte, a 51-year-old ecologist from the University of California at Berkeley, has stretched a 12-foot-high grid of shiny cables above 300 square yards of turf. The cables are supported by four steel towers, one at each corner of the grid. And hanging down from the cables are ten infrared heat lamps, each about three feet long.

By heating up the meadow, this bizarre assemblage is supposed to simulate what many see as the coming apocalypse. "The scientific community is virtually unanimous about global warming," says Harte. "By 2050, if we continue to load trace gases—mainly carbon dioxide—into the atmosphere at our current rate, we can expect Earth's temperature to increase by anywhere from three to nine degrees. The Vostok record confirms that."

That record is a series of cores drilled from the ice in Vostok, Antarctica. The ice has been deposited at various times throughout the past 160,000 years, and bubbles trapped within it give geologists pristine samples of Earth's atmosphere at the time the ice was formed. By comparing the gas in these bubbles with other geologic evidence that indicates how warm or cold Earth's climate was then, researchers can relate greenhouse gases to increased temperatures.

They gauge the change in global temperature from the relative amounts of two isotopes of oxygen, O_{18} and O_{16}, in the fossilized shells of marine animals. During extended cold periods the lighter O_{16}, instead of readily evaporating from the seas and then returning as icemelt or rain, gets trapped in the planet's growing ice caps. Shells formed then thus have higher than normal concentrations of heavy O_{18}. In warmer times, the ratio of the two isotopes is less extreme.

Matching isotope ratios with Vostok bubbles has revealed that atmospheric carbon dioxide levels and global temperatures track each other unerringly: when CO_2 goes up, so does temperature. "But we don't know much about the mechanisms involved," says Harte. And that has led him to his meadow.

Harte is trying to learn whether greenhouse warming could start a vicious cycle that would cause the effects to be even worse than are now predicted. "We know that trace gases—mainly carbon dioxide, methane, and nitrous oxide—heat up the atmosphere," he says. "Now we need to know whether that heat stimulates further trace-gas releases from the soils. It's possible that the increased temperatures can stimulate the activity of soil microorganisms."

When a soil microbe sits down to a hearty meal of such typical soil nutrients as nitrogen and phosphorous, it discharges considerable amounts of carbon dioxide, nitrous oxide, and methane as waste products. What concerns Harte is that warmer soils could mean hungrier microbes and more gas—and thus more heat.

Harte's spider web is designed to reveal whether this is likely to come to pass. He has divided his grid into ten sections, each covering 30 square yards of meadow. Infrared lamps will heat every other section by 2.5 degrees, the increase expected in this part of the Rockies for the middle of the coming century. The unheated sections in between allow researchers to compare the effects of the lamps with the natural state of the meadow.

The experiment will begin this December and run for a minimum of three years. Once a week, Harte will take gas samples from buckets turned upside down for ten minutes at a time on both the heated and unheated strips. He'll draw the samples through fitted nipples at the bottoms of the buckets via syringes, then analyze them with a gas chromatograph. "We'll be able to plot any changes in the meadow very precisely," he says.

Some of those changes could be alterations in the very fabric of the seasons. With a 2.5-degree rise in temperature snow at high elevations might melt up to two months sooner. In Colorado that would mean March instead of May. The result would be soil that is drier and warmer by the time May rolls around "You'd be expanding summer at the expense of winter," says Harte.

That could have particularly grim consequences for specialized plants and animals. In the past, species that favor cool climes have responded to great episodes of global warming by migrating north, or to higher, colder elevations. But these adjustments, Harte points out, "took place over thousands of years. In the current episode of global warming we're talking fifty or sixty years. That's probably not enough time for most plants and animals to adjust."

Harte's "greenhouse meadow" runs along a slope and covers three different zones of vegetation. Species that require dry soil, like sage, thrive at the top, water-loving plants like veratrum grow at the bottom, and moderate-moisture fans—larkspur and lupine among them—favor the middle. Over the next three years, Harte expects, this situation will change. "We expect less biological diversity, although we don't know to what degree," he says. But plants favoring the wettest soil might be knocked out of the picture altogether.

Early warming can have other, more insidious effects. Some plants, such as larkspur, bloom when the snow first melts. But one of larkspur's most important pollinators, the broad-tailed hummingbird, times its migrations by the sun. As the days get longer, the hummingbird follows the sun north, where it finds its favorite flower in full bloom.

"If the atmosphere warms abruptly," says Harte, "we could see the larkspur bloom weeks before the first hummingbirds get to it. That would be harmful for both species." Without flowers to attract the birds, larkspur will have difficulty reproducing. And without larkspur to eat, the birds will starve.

Harte doesn't expect anything dramatic to happen when he turns on the grid in December—the current will simply turn on the infrared lamps. The real drama lies three years down the road, when the results are in. Harte does not expect them to be comforting: "If I had to hazard a guess, I'd say this project will confirm what we suspect—that we don't have any time to waste."

TERRY ANDERSON

Mr. MOYNIHAN. Mr. President, I rise to inform my colleagues that today marks the 2,026th day that Terry Anderson has been held captive in Beirut.

DETERIORATING HUMAN RIGHTS CONDITIONS IN KENYA

Mrs. KASSEBAUM. Mr. President, last Friday the Kenyan Government, under President Daniel arap Moi, banned the Nairobi Law Monthly—a popular and influential journal which had championed political freedom, basic civil rights, and multiparty democracy. This action is the most recent in a series of strong-armed tactics by the Moi regime to stifle its peaceful critics.

The 1989 State Department human rights report described the increasingly repressive political environment in Kenya—including forced deportations, police brutality, detentions, and growing signs of executive manipulation of the judicial system.

During the 1989 markup of the foreign aid authorization bill, I expressed strong concern about the deteriorating human rights situation in Africa and had language included in the legislation linking Kenya's human rights performance to its foreign aid. Since that time, President Moi's policies have only become harsher.

Earlier this summer, President Moi ordered the imprisonment of dozens of prominent lawyers and human rights activists, including Gitobu Imanyara, editor of the now banned Nairobi Law Monthly, and two former Cabinet ministers who had spoken out for democracy, Charles Rubia and Kenneth Matiba. Mr. Rubia and Mr. Matiba remain in jail, held without charge.

As human rights conditions deteriorate, the United States Government continues to supply Kenya with nearly $50 million in aid, the largest amount for a nation in sub-Saharan Africa. For fiscal year 1991, the House has passed the foreign operations appropriations bill which provides $33 million in economic aid and $9 million in military aid to Kenya.

Mr. President, I believe that the situation in Kenya has reached the point where we must send a clear and firm message to the Government in Nairobi that we will not tolerate the continued suppression of basic human rights and civil liberties. In order to convey our strong disapproval of the current policies, I support the cessation of all military aid and economic support funds to Kenya until the human rights situation improves.

Furthermore, I believe that Congress should adopt legislation requiring the administration to notify Congress 15 days in advance of any obligation of aid to Kenya. This position was

supported by the committee in 1989. Through this mechanism, Congress would be able to closely follow the status of human rights in Kenya, and would be able to maintain pressure on the Kenyan Government to respect civil liberties and basic human rights.

This is an encouraging time for those of us who watch events in sub-Saharan Africa. Many former oppressive, one-party African states have opened up—increasing respect for basic civil liberties and political rights. Yet, the Government of Kenya, an important United States ally in Africa, is moving in the opposite direction—closing their society by choking free speech and suppressing civil liberties.

MESSAGES FROM THE HOUSE

At 11:55 a.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the following bills, each without amendment:

S. 1974. An act to require new televisions to have built-in decoder circuitry; and

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances.

The message also announced that the House agrees to the amendment of the Senate to the bill (H.R. 3897) to authorize appropriations for the Administrative Conference of the United States for fiscal years 1991, 1992, 1993, and 1994, and for other purposes.

The message further announced that the House agrees to the amendment of the Senate to the bill (H.R. 5725) to extend the expiration date of the Defense Production Act of 1950.

The message also announced that the House agrees to the amendment of the Senate to the amendments of the House to the bill (S. 647) to amend the Federal securities laws in order to provide additional enforcement remedies for violations of those laws.

The message further announced that the House has passed the bill (S. 916) to authorize appropriations to the National Aeronautics and Space Administration for research and development, space flight, control and data communications, construction of facilities, and research and program management, and for other purposes; it insists upon its amendment to the bill, asks a conference with the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. ROE, Mr. BROWN of California, Mr. NELSON of Florida, Mr. HALL of Texas, Mr. VOLKMER, Mr. MINETA, Mr. TORRICELLI, Mr. NAGLE, Mr. HAYES of Louisiana, Mr. TANNER, Mr. WALKER, Mr. SENSENBRENNER, Mr. LEWIS of Florida, Mr. PACKARD, Mr. BUECHNER, and Mr. CAMPBELL of California as managers of the conference on the part of the Senate.

ENROLLED BILL SIGNED

The message also announced that the Speaker has signed the following enrolled bill:

H.R. 3007. An act to amend the Contract Services for Drug Dependent Federal Offenders Act of 1978 to provide additional authorizations for appropriations.

The enrolled bill was subsequently signed by the President pro tempore [Mr. BYRD].

ENROLLED BILLS AND JOINT RESOLUTION SIGNED

At 12:09 p.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 bills and joint resolution:

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparability allowances;

H.R. 5725. An act to extend the expiration date of the Defense Production Act of 1950; and

S.J. Res. 301. Joint resolution designating October 1990 as "National Breast Cancer Awareness Month."

The enrolled bills and joint resolution were subsequently signed by the President pro tempore [Mr. BYRD].

At 2:42 p.m., a message from the House of Representatives, delivered by Ms. Goetz, one of its reading clerks, announced that the House has passed the bill (S. 198) to amend title 17, United States Code, the Copyright Act to protect certain computer programs; with amendments, in which it requests the concurrence of the Senate.

The message also announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 4567. An act to authorize an exchange of lands in South Dakota and Colorado;

H.R. 5144. An act to provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes; and

H.R. 5316. An act to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

The message further announced that pursuant to the provisions of section 203(b) of Public Law 101-194, the Speaker appoints Mr. Warner Brandt; and the minority leader appoints Mr. William R. Pitts, Jr., to the President's Commission on the Federal Appointment Process.

At 4:18 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 bills and joint resolutions, each without amendment:

S. 1128. An act for the relief of Richard Saunders;

S. 1229. An act for the relief of Maria Luisa Anderson;

S. 1683. An act for the relief of Paula Grzyb;

S. 1814. An act for the relief of Wilson Johan Sherrouse;

S.J. Res. 181. Joint resolution to establish calendar year 1992 as the "Year of Clean Water"; and

S.J. Res. 301. Joint resolution designating October as "National Breast Cancer Awareness Month."

The message also announced that the House disagrees to the amendments of the Senate to the concurrent resolution (H. Con. Res. 310) setting forth the congressional budget for the U.S. Government for the fiscal years 1991, 1992, 1993, 1994, and 1995; it agrees to the conference asked by the Senate on the disagreeing votes of the two Houses thereon, and appoints Mr. PANETTA, Mr. GEPHARDT, and Mr. FRENZEL as managers of the conference on the part of the House.

The message further announced that the Speaker appoints the following additional conferees and modifications in the appointments previously made in the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 2830) entitled "An Act to extend and revise agricultural price support and related programs, to provide for agricultural export, resource conservation, farm credit, and agricultural research and related programs, to ensure consumers an abundance of food and fiber at reasonable prices, and for other purposes":

From the Committee on Foreign Affairs, for consideration of titles IX (except sections 1124, 1125, 1134, 1137, and subtitle E), XXIII (except section 2306), sections 114, 1423, 1551, 1751-60, 1763, and 1765 of the Senate bill, and title XII (except sections 1241 and 1243-46) and sections 415, 1313(a), and 1833 of the House amendment, and modifications committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. SOLARZ, Mr. WOLPE, Mr. CROCKETT, Mr. GEJDENSON, Mr. DYMALLY, Mr. KOSTMAYER, Mr. LEVINE of California, Mr. BROOMFIELD, Mr. GILMAN, Mr. LAGOMARSINO, Mr. LEACH of Iowa, Mr. ROTH, and Mr. BEREUTER.

From the Committee on Foreign Affairs, for consideration of subtitle E of title XI, sections 1931-1935 and 1937-1939 of the Senate bill, and title XXX of the House amendment, and modifications committed to conference: Mr. FASCELL, Mr. HAMILTON, Mr. YATRON, Mr. GEJDENSON, Mr. BROOMFIELD, and Mr. ROTH.

From the Committee on Merchant Marine and Fisheries, for consideration of subtitle E of title XI of the Senate bill, and title XXX of the House amendment, and modifications committed to conference: Mr. JONES of North Carolina, Mr. STUDDS, Mr. HUBBARD, Mr. TAUZIN, Mr. HERTEL, Mr. LIPINSKI, Mr. DAVIS of Michigan, Mr. YOUNG of Alaska, Mr. LENT, and Mr. FIELDS.

From the Committee on Merchant Marine and Fisheries, for consideration of sections 1238, 1286, and 1422

of the Senate bill, and sections 1314 and 1602 of the House amendment, and modifications committed to conference: Mr. JONES of North Carolina, Mr. STUDDS, Mr. HERTEL, Mr. DAVIS of Michigan, and Mr. YOUNG of Alaska.

From the Committee on Ways and Means, for consideration of section 902, those portions of section 1121 adding new sections 101(5), 103(5), 113(c)(2), 114, 204(c)(2)(B), 404-05, 503(b)(3), 504, and 601 (c) and (f) to the Agricultural Trade Act of 1978, sections 1122, 1124-25, 1137, 1716(c), that portion of section 2123 adding a new section 7A(e) to the Cotton Research and Promotion Act, sections 2140, 2155(g), 2178, 2188, 2203, 2306, 2452, and 2454 of the Senate bill, and sections 614, those portions of section 1221 adding new sections 101(4), 105(a), 106, 402 (c) and (f) to the Agricultural Trade Act of 1978, sections 1223(i), 1241, 1243, 1245-47, 1428, 1445(g), 1468, 1475(3), 1485(d) and 1494 of the House amendment, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. JENKINS, Mr. ARCHER, and Mr. CRANE: Except, that, for consideration of sections 2203, 2452, and 2454 of the Senate bill, Mr. JACOBS is appointed in lieu of Mr. JENKINS.

From the Committee on Ways and Means, for consideration of sections 1134, 1721, and 1730A of the Senate bill, and modifications committed to conference: Mr. ROSTENKOWSKI, Mr. GIBBONS, Mr. PICKLE, Mr. JENKINS, Mr. DOWNEY, Mr. PEASE, Mr. RUSSO, Mr. GUARINI, Mr. MATSUI, Mr. ANTHONY, Mr. ARCHER, Mr. VANDER JAGT, Mr. CRANE, Mr. FRENZEL, Mr. SCHULZE, and Mr. THOMAS of California.

From the Committee on Energy and Commerce, for consideration of sections 1761 and 1762 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. SCHEUER, Mr. WYDEN, Mr. SIKORSKI, Mr. BRUCE, Mr. ROWLAND of Georgia, Mr. SYNAR, Mr. HALL of Texas, Mr. ECKART, Mr. LENT, Mr. DANNEMEYER, Mr. WHITTAKER, Mr. TAUKE, Mr. BLILEY, and Mr. FIELDS.

From the Committee on Energy and Commerce, for consideration of sections 1495, 1497, and 1498 J-L of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ROWLAND of Georgia, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of section 1437 of the Senate bill, and section 1367(b) of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ECKART, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of title XVI (except sections 1615-16, 1620 (b), (c), (d), and (f)) and section 1716 of the Senate bill, and sections 1495 95G, 1495 J-95L, 1495M (a), (e), and (g) and 1495 N-95V of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. BRUCE, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of subtitle C of title XVII of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. WYDEN, Mr. LENT, and Mr. BLILEY.

From the Committee on Energy and Commerce, for consideration of section 1773 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. ROWLAND of Georgia, Mr. LENT, and Mr. WHITTAKER.

From the Committee on Energy and Commerce, for consideration of section 1772 of the Senate bill, and section 1376A of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. THOMAS A. LUKEN, Mr. SWIFT, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of section 1948 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. THOMAS A. LUKEN, Mr. SWIFT, Mr. LENT, and Mr. WHITTAKER.

From the Committee on Energy and Commerce, for consideration of sections 2033(3)(F), 2079, and 2081 of the Senate bill, and modifications committed to conference: Mr. DINGELL, Mr. MARKEY, Mr. SWIFT, Mr. LENT, and Mr. TAUKE.

From the Committee on Energy and Commerce, for consideration of sections 1339, of the House amendment, and modifications committed to conference: Mr. DINGELL, Mr. WAXMAN, Mr. TOWNS, Mr. LENT, and Mr. BLILEY.

From the Committee on Agriculture, for consideration of those portions of section 1121 adding new sections 101(5), 103(5), 113(c)(2), 114, 204(c)(2)(B), 404-05, 503(b)(3), 504, and 601 (c) and (f) to the Agricultural Trade Act of 1978, of the Senate bill, and those portions of section 1221 adding new sections 101(4), 105(a), 106, 203 and 402 (c) and (f) to the Agricultural Trade Act of 1978, of the House amendment, and modifications committed to conference: Mr. ESPY, Mr. HARRIS, Mr. SARPAULIS, Mr. EMERSON, and Mr. ROBERT F. SMITH.

From the Committee on Education and Labor, for consideration of sections 1496(b), 1498-1498N, 1965, 1966, 2471, 2474, 2476, and 2479 of the Senate bill, and sections 1382, 1774, 1842(b) of the House amendment, and modifications committed to conference: Mr. HAWKINS, Mr. FORD of Michigan, Mr. GAYDOS, Mr. GOODLING, and Mr. TAUKE.

From the Committee on Science, Space, and Technology, for consideration of sections 1921-30, 1940, and 1944-46 of the Senate bill, and modifications committed to conference: Mr. ROE, Mr. SCHEUER, Mr. MCMILLEN of Maryland, Mr. WALKER, and Mr. SCHNEIDER.

From the Committee on Banking, Finance and Urban Affairs, for consideration of section 1350 of the Senate bill, and modifications committed to conference: Mr. ERDREICH, Mr. KANJORSKI, Mr. CARPER, Mr. BEREUTER, and Mr. ROTH.

In the appointment of conferees previously announced from the committee on Agriculture:

The appointment of Mr. CONDIT is amended by deleting section 1215 from the exception for title XII of the House amendment.

The appointment of Ms. LONG is amended by deleting section 1215.

Mr. ROBERT F. SMITH is appointed in lieu of Mr. MARLENEE for title XII of the Senate bill and title XVI of the House amendment.

Mr. MORRISON of Washington is appointed in lieu of Mr. MARLENEE for title XIII of the Senate bill and title XXIX of the House amendment.

Mr. GRANDY is appointed in lieu of Mr. HOPKINS for all provisions except title VII and section 1962 of the Senate bill, and title VIII and section 1249 of the House amendment, on which Mr. HOPKINS will remain a conferee, and Mr. LEWIS of Florida is appointed in lieu of Mr. HOPKINS for subtitle A of title XVII of the Senate bill and title XIV of the House amendment.

The message also announced that the House has passed the following bills and joint resolutions, in which it requests the concurrence of the Senate:

H.R. 1608. An act to strengthen nutrition monitoring by requiring the Secretary of Agriculture and the Secretary of Health and Human Services to prepare and implement a 10-year plan to assess the dietary and nutritional status of the United States population, to support research on, and development of, nutrition monitoring, to foster national nutrition education, to establish dietary guidelines, and for other purposes;

H.R. 4491. An act entitled the "Coast Guard Omnibus Act of 1990";

H.R. 5063. An act to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona, and for other purposes; and

H.J. Res. 658. Joint resolution to support actions the President has taken with respect to Iraqi aggression against Kuwait and to demonstrate United States resolve.

The message further announced that the House has agreed to the following concurrent resolution, in which it requests the concurrence of the Senate:

H. Con. Res. 329. Concurrent resolution calling for U.S. sanctions against nations which conduct unjustified lethal whale research, and otherwise expressing the sense of the Congress with regard to nations which violate the International Whaling Commission moratorium on commercial whaling by killing whales under the guise of scientific research.

MEASURES REFERRED

The following bill was read the first and second times by unanimous consent, and referred as indicated:

H.R. 4491. An act entitled the "Coast Guard Omnibus Act of 1990"; to the Committee on Commerce, Science, and Transportation.

H.R. 4567. An act to authorize an exchange of lands in South Dakota and Colorado; to the Committee on Energy and Natural Resources.

H.R. 5144. An act to provide for the study of certain historical and cultural resources located in the city of Vancouver, Washington, and for other purposes; to the Committee on Energy and Natural Resources.

H.J. Res. 658. Joint resolution to support actions the President has taken with respect to Iraqi aggression against Kuwait and to demonstrate United States resolve; to the Committee on Foreign Relations.

The following bill, previously received from the House of Representatives for concurrence, was read the first and second times by unanimous consent, and referred as indicated:

H.R. 5746. An act to extend the Export Administration Act of 1979, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

The following concurrent resolution was read, and referred as indicated:

H. Con. Res. 329. Concurrent resolution calling for United States sanctions against nations which conduct unjustified lethal whale research, and otherwise expressing the sense of the Congress with regard to nations which violate the International Whaling Commission moratorium on commercial whaling by killing whales under the guise of scientific research; to the Committee on Foreign Relations.

MEASURES PLACED ON THE CALENDAR

The following bill was read the second time, and placed on the calendar:

S. 3018. A bill to require the Secretary of Agriculture to announce an acreage limitation program for the 1991 crop of wheat.

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 2840. An act to reauthorize the Coastal Barriers Resources Act, and for other purposes.

H.R. 3898. An act to require certain procedural changes in the United States district courts in order to promote the just, speedy, and inexpensive determination of civil acquisitions, and for other purposes.

H.R. 5063. An act to provide for the settlement of the water rights claims of the Fort McDowell Indian Community in Arizona, and for other purposes.

H.R. 5316. An act to provide for the appointment of additional Federal circuit and district judges, and for other purposes.

H.R. 5381. An act to implement certain proposals of the Federal Courts Study Committee, and for other purposes.

ENROLLED BILLS SIGNED

The ACTING PRESIDENT pro tempore (Mr. AKAKA) announced that on September 27, 1990, he had signed the following enrolled bills which had previously been signed by the Speaker of the House:

S. 535. An act to increase civil monetary penalties based on the effect of inflation;

S. 2075. An act to authorize grants to improve the capability of Indian tribal governments to regulate environmental quality;

H.R. 2761. An act to require the Secretary of the Treasury to mint coins in commemoration of the 50th anniversary of the United Services Organization; and

H.R. 4962. An act to authorize the minting of commemorative coins to support the training of American athletes participating in the 1992 Olympic Games.

ENROLLED BILL AND JOINT RESOLUTION PRESENTED

The Secretary of the Senate reported that on today, October 2, 1990, he had presented to the President of the United States the following enrolled bill and joint resolution:

S. 2588. An act to amend section 5948 of title 5, United States Code, to reauthorize physicians comparibility allowances; and

S.J. Res. 301. Joint resolution designating October 1990 as "National Breast Cancer Awareness Month".

REPORTS OF COMMITTEES

The following reports of committees were submitted:

By Mr. BIDEN, from the Committee on the Judiciary, with an amendment in the nature of a substitute:

S. 591. A bill to amend the Federal Rules of Criminal Procedure with respect to the examination of prospective jurors (Rept. No. 101-486).

By Mr. GLENN, from the Committee on Governmental Affairs, with an amendment in the nature of a substitute:

S. 1742. A bill to further the goals of the Paperwork Reduction Act and provide for comprehensive information resources management of Federal departments and agencies, and for other purposes (Rept. No. 101-487).

By Mr. PELL, from the Committee on Foreign Relations, with an amendment in the nature of a substitute:

S. 2436. A bill to amend the Peace Corps Act to extend the authorizations of appropriations for the Peace Corps through fiscal year 1992, to provide for limited exceptions to the limitation on reemployment by the Peace Corps, and to establish a Peace Corps foreign fluctuations account, and for other purposes.

By Mr. PELL, from the Committee on Foreign Relations, without amendment and an amended preamble:

S. Con. Res. 113. A concurrent resolution expressing the sense of the Congress on international nuclear sales to South Asia.

By Mr. PELL, from the Committee on Foreign Relations, with amendments and with a preamble:

S. Con. Res. 141. A concurrent resolution expressing the sense of the Congress regarding the deteriorating human rights situation in Kenya.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. PELL, from the Committee on Foreign Relations:

James O. Mason, of Utah, to be Representative of the United States on the Executive Board of the World Health Organization;

The following-named persons to be Representatives and Alternate Representatives of the United States of America to the Forty-fifth Session of the General Assembly of the United Nations:

Representatives: Thomas R. Pickering, of New Jersey. Alexander Fletcher Watson, of Massachusetts.

Alternate Representatives: Jonathan Moore, of Massachusetts. Jacob Stein, of New York. Shirin R. Tahir-Kheli, of Pennsylvania. Milton James Wilkinson, of New Hampshire.

Katherine D. Ortega, of New Mexico, to be an Alternative Representative of the United States of America to the 45th Session of the General Assembly of the United Nations;

Scott M. Spangler, of Arizona, to be an Assistant Administrator of the Agency for International Development;

Cheryl Feldman Halpern, of New Jersey, to be a member of the Board for International Broadcasting for a term expiring April 28, 1991; and

William H.G. Fitzgerald, of the District of Columbia, to be a Member of the Board of Directors of the African Development Foundation for a term expiring February 9, 1996.

The following-named persons to be Members of the U.S. Advisory Commission on Public Diplomacy for terms expiring July 1, 1991:

William J. Hybl, of Colorado and Richard B. Stone, of the District of Columbia.

Eugene L. Scassa, of Virginia, 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 Belize.

(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: Euguene Luigi Scassa

Post: Ambassador to Belize

Contributions, amount, date, and donee:

1. Self, none.

2. Spouse, none.

3. Children and spouses names, Susan, (wife) David and Eugene (children), none.

4. Parents, both parents are deceased.

5. Grandparents, both deceased.

6. Brothers and Spouses names, Angelo Scassa (brother) and his wife Sylvia, none.

7. Sisters and Spouses, none.

Richard C. Brown, of Maryland, a Career Member of the Senior Foreign Services, Class of Minister-Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Oriental Republic of Uruguay.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nonination and ending on the date of the nomination.)

Nominee: Richard C. Brown

Post: American Embassy, Montevideo

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse Elizabeth Ann Brown, none.
3. Children and spouses names, Tara (daughter) Justin (son), none.
4. Parents names, Helen F. Brown, Charley C. Brown (deceased).
5. Grandparents names, deceased for 20 yrs.
6. Brothers and spouses names, Jerry D. Brown, Billie Brown (spouse),none.
7. Sisters and spouses names, Charlene Larsen, Bud Larsen (spouse), none.

Michael Martin Skol, of Illinois, a Career Member of the Senior Foreign Service, Class of Minister-Counselor, to be Ambassador Extraorinary and Plenipotentiary of the United States of America to the Republic of Venezula.

(Contributions are to be reported for the period beginning on the first day of the fourth calendar year preceding the calendar year of the nonination and ending on the date of the nomination.)

Nominee: Michael Martin Skol.

Post: Ambassador to Venezuela.

Contributions, amount, date, and donee.

1. Self, $200, January 11, 1988 Steven Kramer for Congress (Democratic primary, New Mexico).
2. Spouse, Claudia Serwer Skol, none.
3. Children and spouses names, none.
4. Parents Ted Skol (deceased), Rebecca Skol, none.
5. Grandparents names (Clara Grossman, Al Williams, Max Skolnik, Sophie Skolnik) (all deceased prior to 1986).
6. Brothers and spouses names, David Skol (no spouse), none.
7. Sisters and spouses names, none.

Edward P. Brynn, of Vermont, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to Burkina Faso.

(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: Edward Byrnn.

Post: Ouagadougou.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, Edward Cooke Brynn, Anne Elizabeth Callahan Brynn, Justin Oliver Norsworthy Brynn, Kierman Patrick Flynn, Sarah Frailey Flynn.
4. Parents names, Walter and Mary Brynn (Deceased).
5. Grandparents names, Soeren and Agnes Brynn, Lawrence and Ellen Callahan (Deceased).
6. Sisters and spouses names, Katherine and Charles Walther, Mary Anne and Terrence O'Brien.
7. Brothers and spouses names, Thomas and Claudia Brynn, Lawrence and Heather Brynn, David and Louise Brynn.

Stephen H. Rogers, of Virginia, 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 Kingdom of Swaziland.

(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: Stephen H. Rogers.

Post: Swaziland.

Contributions, amount, date, and donee:

1. Self, 2. Spouse (Joint contributions) $50, January 20, 1986, Democratic Nat'l Comm. (DNC), $50, March 8, 1986, Milliken for Congress, $25, June 16, 1986, Dem. Campaign Comm., $100 ea. on March 28, 1987, August 28, 1988, November 14, 1988 and January 19, 1989, DNC.
3. Children and spouses names, Kryston R. Fischer, $100, 1988, DNC.
4. Parents names, deceased.
5. Grandparents names, deceased.
6. Brothers and spouses names, John W. Rogers (Mrs.) Barbara H. Rogers.
7. Sisters and spouses names, deceased.

Other Children: F. Halsey Rogers—none, Julia L. Rogers—none, John H. Rogers—none.

Arlene Render, of Virginia, a Career Member of the Senior Foreign Service, Class of Counselor, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Republic of The Gambia.

(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: Arlene Render.

Post: Gambia.

Contributions, amount, date, and donee:

1. Self, Arlene Render.
2. Spouse, N/A.
3. Children and spouses names, N/A.
4. Parents names, Oscar Render, Isabella Render, deceased.
5. Grandparents names, Rueben and France Render, deceased. Oscar and Susie Martin, deceased.
6. Brothers and spouses names, Richard Render, Jeffrey Render.
7. Sisters and spouses names, Carol Lockette, Rosalyn Hill.

Herbert Donald Gelber, of Florida, 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 Mali.

(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: Herbert Donald Gelber.

Post: Ambassador to Mali.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, Michael S., Esther L., Miriam.
4. Parents names, deceased.
5. Grandparents names, deceased.
6. Brothers and spouses names, Harvey, Natalie.
7. Sisters and spouses names, none.

Gordon L. Streeb, of Colorado, 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 Zambia.

(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: Gordon L. Streeb.

Post: Zambia.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, Kurt, Kent, Kerry-Lynn Streeb, none.
4. Parents names, Gerhard O. Streeb, none.
5. Grandparents names, Hans and Frieda Streeb, deceased. Alex and Mary Martin, deceased.
6. Brothers and spouses names, none.
7. Sisters and spouses names, Imogene and Alfred Clay, none. Amelia Streeb, deceased.

Harmon Elwood Kirby, of Ohio, 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 Togo.

(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: Harmon E. Kirby.

Post: Ambassador to Togo.

Contributions, amount, date, and donee:

1. Self, none.
2. Spouse, none.
3. Children and spouses names, Caroline P. Kirby, Christopher H. Kirby, none.

Parents names, Julia E. Kirby (Mother), Cecil Kirby (Father) deceased.

5. Grandparents names, John B. Tucker, deceased, John Vance-Kirby, deceased, Sarah Tucker, deceased.
6. Brothers and spouses names, none.
7. Sisters and spouses names, none.

Leonard H. O. Spearman, Sr., of Texas, to be Ambassador Extraordinary and Plenipotentiary of the United States of America to the Kingdom of Lesotho.

(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: Dr. Leonard H. Spearman

Post: Amb. to the Kingdom of Lesotho

Contributions, amount, date, and donee:

1. Self, and
2. Spouse, Valerie B. Spearman:

Reported for 1987 Clearance:

$200.00, Sept. 30, 1984, Harris County Council of Organizations. $130.00, Jan. 7, 1985, Donohoe for State Office, $30.00 Oct. 24, 1985, Elizabeth Spates for Houston Independent School Board, $75.00, Aug. 16, 1986, Jack Fields for Congress, $100.00, October 7, 1986, Bill Clements Hqtrs. in Black Community, $700.00, Oct. 29, 1986, Republican Party of Harris County, Texas, $370.00, Jan. 5, 1987, Texas Inaugural Committees, $50.00, March 2, 1987, The Texas Committee of 300, and $50.00, March 2, 1987, Circle R Republican Club.

New Contributions Reported for 1990 Clearance:

$2,000.00, 1988, George Bush Campaign (Presidential). $1,300.00, Dec. 16, 1988, Republican Senatorial Inner Circle, $41.50, July 1, 1989, Republican Party of Texas, $100.00, July 19, 1989, Congressman Tom DeLay, $100.00, Feb. 13, 1990, Republican Party of Texas, and $1,000.00, March 27, 1990, Senator Phil Gramm.

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 (deceased), Frankie Spearman (none), Rawn W. Spearman (none), Daisey L. Spearman (deceased).

7. Sisters and spouses names, Viva T. Spearman Coleman-Hyron Coleman (none), Agenoria S. Paschal, Alonjo Paschal (none).

(The above nominations were reported with the recommendation that they be confirmed, subject to the nominees' commitment to respond to requests to 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 Mr. DIXON (for himself, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. HEINZ, Mr. HELMS, and Mr. REID):

S. 3148. A bill to condition funding for coproduction with South Korea of the F/A-18 aircraft on receipt by Congress of the relevant Memorandum of Understanding (MOU) and to extend the 30-day congressional review period until the MOU is received; to the Committee on Foreign Relations.

By Mr. HOLLINGS:

S. 3149. A bill to amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fulidized based bed therapy in nursing facilities; to the Committee on Finance.

By Mr. PELL:

S. 3150. A bill to amend the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

By Mr. RIEGLE (for himself, Mr. HEINZ, and Mr. PRYOR):

S. 3151. A bill to amend title II of the Social Security Act to provide for the entitlement of deemed spouses to benefits under such title despite the entitlement of a legal spouse, to waive the 2-year waiting period for entitlement to divorced spouse's benefits, and for other purposes; to the Committee on Finance.

By Mr. GORTON:

S. 3152. A bill to authorize the issuance of certificates of documentation for certain inflatable vessels; to the Committee on Commerce, Science, and Transportation.

By Mr. SIMON:

S. 3153. A bill to assure equal justice for women in the courts; to the Committee on the Judiciary.

By Mr. BIDEN (for himself, Mr. ROTH, Mr. BRADLEY, and Mr. LAUTENBERG):

S.J. Res. 373. Joint resolution granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes; to the Committee on the Judiciary.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. MITCHELL (for Mr. DOLE, (for himself, Mr. MITCHELL, Mr. HEINZ and Mr. SPECTER):

S. Res. 331. A resolution to congratulate Senator Hugh Scott on his 90th birthday; considered and agreed to.

By Mr. HEFLIN:

S. Res. 332. A resolution to refer S. 1301, entiteld "For the relief of Hoar Construction, Inc., of Birmingham, Alabama, to settle certain claims filed against the Small Business Administration" to the Chief Judge of the United States Claims Court for a report thereon; to the Committee on the Judiciary.

By Mr. ADAMS:

S. Con. Res. 149. Concurrent resolution to create a Congressional Leadership Group; to the Committee on Rules and Administration.

By Mr. FORD (for Mr. HARKIN):

S. Con. Res. 150. Concurrent resolution directing the Secretary of the Senate to make corrections in the enrollment of S. 1824; considered and agreed to.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. DIXON (for himself, Mr. BYRD, Mr. D'AMATO, Mr. FORD, Mr. HEINZ, Mr. HELMS and Mr. REID):

S. 3148. A bill to condition funding for coproduction with South Korea of the F/A-18 aircraft on receipt by Congress of the relevant memorandum of understanding [MOU] and to extend the 30-day congressional review period until the MOU is received; to the Committee on Foreign Relations.

CONDITIONS ON SALE OF AIRCRAFT TO KOREA

Mr. DIXON. Mr. President, the administration on Friday, September 7, 1990, sent official notification to the Senate that it had reached an agreement with the South Korean Government on the sale of F/A-18's to that country.

Just 2 weeks ago, I asked the State Department to provide me with a copy of the proposed memorandum of understanding and any relevant side letters of agreement. I was told "No." Word was relayed back that officials would brief me or my staff. We could ask questions, but we could not review the actual documents. I then placed a call to Mr. C. Boyden Gray, White House chief counsel, to request these documents—a simple request. As a Member of the Senate, I think I am entitled to a positive reponse. I made this simple request 10 days ago. I have yet to get any answer.

Mr. President, the Constitution of this great Nation in article 1, section 8, gives Congress the authority to "* * * regulate commerce with foreign nations * * *" South Korea may well be an important ally, but South Korea is still a foreign nation within the meaning of article 1, section 8, of our Constitution.

What we are being asked to do is to allow an agreement between the President of the United States and a foreign government to be approved without anybody elected to the Senate or the House of Representatives being permitted to look at the document.

The President only has the authority to enter into these agreements because Congress permits it. Congress, however, did not abandon its responsibilities. In the delegation of authority provided by the statute, Congress explicitly reserves for itself the right to overturn individual sales that Congress believes are unwise by enacting a joint resolution of disapproval. How can Congress intelligently exercise this power without seeing the terms of the proposed sales as outlined in the memoranda of understanding?

Mr. President, together with Senators BYRD, D'AMATO, FORD, HEINZ, HELMS, and REID, I am today introducing legislation designed to remind the administration of its duties under the law. It does not withdraw the President's authority to negotitate sales agreements. Instead, the bill merely requires the administration to give the Speaker of the House and the President pro tempore of the Senate the actual memorandum of understanding with South Korea, as well as any side letters of agreement. The bill also says that the 30-day period during which Congress has to consider the agreement will not begin until we have received these documents.

Mr. President, I simply want to conclude by saying this is the most remarkable experience I have ever had in public service. The law under the Arms Export Control Act says that those of us in the U.S. Senate and those of us in the Congress passed upon these memoranda of understanding and side agreements that our country enters into with foreign countries, and here is the administration saying to a U.S. Senate Member and other U.S. Senators that they will not let us see the memorandum of understanding and the accompanying papers.

How can any member of the U.S. Senate make an intelligent judgment call on whether it is a good MOU and a good contract without looking at it? I think it is remarkable. I am not passing upon the virtue of this instrument or the subjective or other parts of the agreement itself. I am simply saying we have a right to see this memorandum of understanding.

I yield the floor. I thank my colleagues.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3148

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ADDITIONAL DOCUMENTS REQUIRED FOR PROPOSED COPRODUCTION OF F/A-18 AIRCRAFT.

(a) PROHIBITION.—None of the funds appropriated or otherwise made available by any provision of law shall be available for the export, or the licensing for export, of any items or technology to South Korea in connection with the coproduction of F/A-18 aircraft until at least 30 days after the Congress has received the proposed memorandum of understanding between South Korea and the United States regarding that coproduction and all documentation and background material, including agreements concluded through the exchange of letters, relating thereto.

(b) EXTENSION OF THE CONGRESSIONAL REVIEW PERIOD.—No Presidential certification under subsection (b), (c) or (d) of section 36 of the Arms Export Control Act with respect to the sale or export of items or technology for the coproduction of the F/A-18 aircraft with South Korea shall be deemed to have been received by the Congress until the President submits to the Congress the documents described in subsection (a).

By Mr. HOLLINGS:

S. 3149. A bill to amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fluidized bead bed therapy in nursing facilities; to the Committee on Finance.

MEDICARE COVERAGE OF AIR FLUIDIZED BEAD BED THERAPY IN NURSING HOMES

● Mr. HOLLINGS. Mr. President, today I am introducing legislation which would amend title XVIII of the Social Security Act to provide coverage under part B of Medicare for air fluidized bead bed therapy in nursing facilities. Currently Medicare covers air fludizied bead bed therapy under part A for up to 100 days per spell of illness. My bill calls for placing all patients with medical necessity on air fluidized support beds until they are completely healed, with Medicare B picking up any treatment days not covered under part A.

As many of my colleagues are aware, pressure sores are one of the most devastating problems facing the health care industry from both a patient recovery and financial perspective—an annual estimated cost of $2 to $7 billion. Nursing home patients comprise the largest group for developing pressure sores. All too often, when the covered period expires, a patient is removed from an air fluidized bead bed without due consideration of medical condition or excess costs. Replacement beds are not adequate to completely heal pressure sores, resulting in complications such as sepsis, osteomyelitis, protein loss, and exacerbation of certain co-existing conditions. And, unnecessary costs are incurred when the patient's condition escalates to the point that hospitalization is required and Medicare must pay the higher costs of an acute care facility.

The total estimated cost for curing a single stage 4 pressure ulcer is between $30,000 and $40,000. With the part B coverage for air fluidized bead beds, the treatment costs for patients with pressure sores would decrease substantially because the beds allow them to heal completely and reduce the amount spent on existing sores. Also, the coverage would reduce complications associated with pressure sores because patients would be placed on products that would deter further skin breakdown reducing the worsening of existing sores.

Mr. President, because I am convinced that expansion of air fluidized bead bed therapy is cost effective, my bill also requires that the Secretary of Health and Human Services monitor the impact of total Medicare expenditures of the addition of the air fluidized bead bed therapy furnished to patients in nursing facilities. It is estimated that utilization of this appropriate therapy would reduce the cost of pressure sores in hospitals 36 percent to approximately $7,104—a 10.4 percent reduction in length-of-stay costs alone. The cost reduction will be even more substantial in skilled nursing care facilities where costs are usually less.

The current program of not healing the sores and allowing them to worsen results in astronomical treatment costs in both nursing and hospital settings. Earlier intervention and complete healing of pressure sores will reduce suffering and decrease the cost to the patient and to the Medicare Program.

Mr. President, there simply is no need to continue to spend enormous amounts of money on pressure sores in nursing facilities when this simple change in the law could save us money. I urge my colleagues to lend their full support to my measure.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 3149

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEDICARE PART B COVERAGE OF AIR FLUIDIZED BEAD BED THERAPY IN NURSING FACILITIES TO TREAT PRESSURE SORES.

(a) IN GENERAL.—Section 1861(s) of the Social Security Act (42 U.S.C. 1395(s)) is amended—

(1) by striking "and" at the end of paragraph (15);

(2) by striking the period at the end of paragraph (16) and inserting "; and"; and

(3) by inserting after paragraph (16) the following new paragraph:

"(17) air fluidized bead bed therapy, in accordance with utilization guidelines to be developed by the Secretary, furnished in a nursing facility.".

(b) MONITORING OF COST OF BENEFIT.—The Secretary of Health and Human Services shall study and monitor the impact on total medicare expenditures of the cost of coverage under title XVIII of the Social Security Act of air fluidized bead bed therapy furnished to individuals in nursing facilities.

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall become effective with respect to items and services furnished on or after January 1, 1991.●

By Mr. PELL:

S. 3150. A bill to amend the Merchant Marine Act, 1936; to the Committee on Commerce, Science, and Transportation.

AMENDMENTS TO FEDERAL SHIP MORTGAGE INSURANCE PROGRAM

● Mr. PELL. Mr. President, today I am introducing legislation designed to help the fishing industry through some very difficult times.

When I look at the problems faced by Rhode Island fishermen, it seems to me as if life itself is conspiring against them. Lately, there seems to be nothing but bad news those who make their living at fishing.

The credit crunch. New England is in the midst of a serious economic downturn and these bad times have all but dried up the credit available to fishermen for vessel operation.

The crisis in the Middle East. Events far away from Narragansett Bay have driven the price of energy through the roof and this increase is a significant and unexpected financial burden for fishermen.

Foreign competition. Aggressive or unsound fishing practices employed by foreign-based fishermen are challenging the competitiveness of our domestic fishing industry and this challenge may force some fishermen out of business.

Depleted fishing stocks. Over-fishing of popular fishing stocks along with a lack of expertise in the marketing of underutilized species have hit fisherman hard and placed the future viability of the industry in grave doubt.

All of these forces are working against Rhode Island fishermen. The fishermen are trying to meet these challenges by working longer hours, fixing their boats by themselves, and setting out to sea on days when conditions are potentially hazardous.

There are many ways those of us in Congress can help our fishermen. This week, I received an outstanding suggestion for a good place to start.

The Rhode Island Fisheries Preservation Alliance has asked me to introduce legislation that will change the Federal Ship Mortgage Insurance Program to better meet the needs of fishermen in the 1990's and beyond. I am proud to introduce that legislation here today.

The Federal Ship Mortgage Insurance Program Act Amendments of 1990 will address perhaps the most pressing need of Rhode Island fishermen, the unavailability of credit.

Under this act, the Federal Government will back loans made to fishermen for general working capital needs.

In the current program, loans are only backed if they are for the construction, reconstruction, or reconditioning of fishing vessels.

The legislation I am introducing today would expand the Federal Ship Mortgage Insurance Program to cover loans made for the equipping, maintaining, repairing, or operating a fishing vessel.

In closing, I should emphasize that this new legislation was developed by a group of Rhode Islanders that have made an effort to change the fishing industry for the better. The Rhode Island Fisheries Preservation Alliance was recently formed to bring about real solutions to the problems facing the fishing industry.

The Federal Ship Mortgage Insurance Program Act Amendments of 1990 is a tribute to the perseverance of the men and women that make up this group, including its chairman, Rhode Island State Senator William O'Neill, Mr. Fred Benson, Mr. Norbert Stamps, Mr. John Kilcommons, and Mr. John Kennedy.

Mr. President, as introduced, this is good legislation, but I am open to suggestions for further improvement. For example, it may be desirable to increase the guarantee fee for fishery loans under this program because the risks involved may be somewhat greater than in the existing program. In addition, the Rhode Island Fisheries Preservation Alliance has explicitly recognized that one of the problems confronting the industry is overcapitalization. If safeguards in addition to those already in the program are required to assure that these loan guarantees do not add to the overcapitalization problem, then those additional provisions can be added.●

By Mr. RIEGLE (for himself, Mr. HEINZ, and Mr. PRYOR):

S. 3151. A bill to amend title II of the Social Security Act to provide for the entitlement of deemed spouses to benefits under such title despite the entitlement of a legal spouse, to waive the 2-year waiting period for entitlement to divorced spouse's benefits, and for other purposes; to the Committee on Finance.

ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE

● Mr. RIEGLE. Mr. President, today I am introducing with my distinguished colleagues, Senators HEINZ and PRYOR, a bill that would remedy an injustice that deprives widows and widowers of Social Security benefits—benefits that they may need to survive. Most often affecting widows rather than widowers, current law denies the benefits of a deceased worker to a widow if the deceased worker had a preexisiting common law marriage that was not terminated and the wife from that marriage, the legal wife, applies for dependent benefits on the deceased worker's record. This is true even if the widow had no knowledge of this prior marriage.

These widows, in good faith, believed that they were legally married and relied upon the fact that when they become old, they would be eligible for benefits on their husband's records. As it stands, many of these women have little or no income. Despite long relationships with men they believed to legally be their husbands, they are left without any Social Security coverage when their husband dies. This bill would restore benefits to good faith wives even if the legal wife receives benefits. It would also waive the 2-year waiting period after a divorce for divorced spouses who are eligible for dependent spouse benefits and would continue disability benefits during appeal.

I became painfully aware of the dilemma of good faith wives when Lillian Snowden, a Michigan resident, contacted my regional office. At that time, she requested my assistance regarding entitlement to Social Security widow's benefits on the record of her deceased husband, Mr. Jack Snowden.

Lillian married Jack Snowden ceremonially on November 6, 1950. She remained entirely committed and fully dependent upon Jack for 31 years until his death in 1981. After Jack died, Lillian, who was listed as Jack's wife in his application for retirement benefits, became entitled to widows benefits. For 2½ years, Lillian received the benefits she needed and deserved. The payments enabled her to sustain herself.

In March 1984, Mrs. Snowden received notice from the Social Security Administration that she was no longer entitled to benefits because a woman who had lived with Mr. Snowden for 10 years prior to his meeting Lillian, had applied for widow's benefits. Their relationship was considered a common law marriage and was determined to have remained in effect until Mr. Snowden's death. Therefore, Lillian Snowden's marriage to Jack was deemed invalid, leaving Lillian, who was not responsible, nor aware of this problem, without any survivor's benefits. Jack's previous, common law wife had not lived with him since before 1950 but remains the sole beneficiary of his survivor's insurance.

My office contacted the Social Security Administration immediately to verify the information that Lillian received and was told that the decision to revoke Lillian's benefits was correct and in accordance with their rules and regulations. In addition, they would not even consider a waiver of the divorce requirement. Despite many phone calls, the decision to revoke Lillian's benefits stood.

Mr. President, today Lillian Snowden receives only $281 in SSI benefits per month. Obviously, this is not enough for anyone to make ends meet. To resolve this situation, I am introducing this legislation, to amend title II of the Social Security Act to provide benefits to a widow or widower who in good faith married unaware that their marriage was invalid and who lost their entitlement to benefits because another entitled spouse claimed those benefits.

The plight of Lillian Snowden is tragic, but not unique. Indeed, there are many in this Nation who would benefit from the correction of this injustice. To continue to adhere to the promises of Social Security and to the ideals it professes, we must correct these inequities.

Mr. President, I ask unanimous consent that the full text of the bill be printed in the RECORD immediately following my remarks.

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

S. 3151

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. ENTITLEMENT TO BENEFITS OF DEEMED SPOUSE AND LEGAL SPOUSE.

(a) CONTINUED ENTITLEMENT OF DEEMED SPOUSE DESPITE ENTITLEMENT OF LEGAL SPOUSE.—Section 216(h)(1) of the Social Security Act (42 U.S.C. 416(h)(1)) is amended—

(1) in subparagraph (A)—

(A) by inserting "(i)" after "(h)(1)(A)"; and

(B) by striking "If such courts" in the second sentence and inserting the following: "(ii) If such courts"; and

(2) in subparagraph (B)—

(A) by inserting "(i)" after "(B)";

(B) by striking "The provisions of the preceding sentence" in the second sentence and inserting the following:

"(ii) The provisions of clause (i)";

(C) by striking "(i) if another" in the second sentence and all that follows through "or (ii)";

(D) by striking "The entitlement" in the third sentence and inserting the following:

"(iii) The entitlement";

(E) by striking "subsection (b), (c), (e), (f), or (g)" in the third sentence and inserting "subsection (b) or (c)";

(F) by striking "wife, widow, husband, or widower" the first place it appears in the third sentence and inserting "wife or husband";

(G) by striking "(i) in which" in the third sentence and all that follows through "in which such applicant entered" and inserting "in which such person enters";

(H) by striking "For purposes" in the fourth sentence and inserting the following:

"(iv) For purposes";

and

(I) by striking "(i) and "(ii)" in the fourth sentence and inserting "(I)" and "(II)", respectively.

(b) TREATMENT OF DIVORCE IN THE CONTEXT OF INVALID MARRIAGE.—Section 216(h)(1)(B)(i) of such Act (as amended by subsection (a)) if further amended—

(1) by striking "where under subsection (b), (c), (f), or (g) such applicant is not the wife, widow, husband, or widower of such individual" and inserting "where under sub-

section (b), (c), (d), (f), or (g) such applicant is not the wife, divorced wife, widow, surviving divorced wife, husband, divorced husband, widower, or surviving divorced husband of such individual";

(2) by striking "and such applicant" and all that follows through "files the application,";

(3) by striking "subsections (b), (c), (f), and (g)" and inserting "subsections (b), (c), (d), (f), and (g)"; and

(4) by adding at the end the following new sentences: "Notwithstanding the preceding sentence, in the case of any person who would be deemed under the preceding sentence a wife, widow, husband, or widower of the insured individual, such marriage shall not be deemed to be a valid marriage unless the applicant and the insured individual were living in the same household at the time of the death of the insured individual or (if the insured individual is living) at the time the applicant files the application. A marriage that is deemed to be a valid marriage by reason of the preceding sentence shall continue to be deemed a valid marriage if the insured individual and the person entitled to benefits as the wife or husband of the insured individual are no longer living in the same household at the time of the death of such insured individual.".

(c) TREATMENT OF MULTIPLE ENTITLEMENTS UNDER THE FAMILY MAXIMUM.—Section 203(a)(3) of such Act (42 U.S.C. 403(a)(3)) is amended by adding after subparagraph (C) the following new subparagraph:

"(D) In any case in which—

"(i) two or more individuals are entitled to monthly benefits for the same month as a spouse under subsection (b) or (c) of section 202, or as a surviving spouse under subsection (e), (f), or (g) of section 202,

"(ii) at least one of such individuals is entitled by reason of subparagraph (A)(ii) or (B) of section 216(h)(1), and

"(iii) such entitlements are based on the wages and self-employment income of the same insured individual, the benefit of the entitled individual whose entitlement is based on a valid marriage (as determined without regard to subparagraphs (A)(ii) and (B) of section 216(h)(1)) to such insured individual shall, for such month and all months thereafter, be determined without regard to this subsection, and the benefits of all other individuals who are entitled, for such month or any month thereafter, to monthly benefits under section 202 based on the wages and self-employment income of such insured individual shall be determined as if such entitled individual were not entitled to benefits for such month.".

(d) CONFORMING AMENDMENT.—Section 203(a)(6) of such Act (42 U.S.C. 403(a)(6)) is amended by inserting "(3)(D)," after "(3)(C),".

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

(2) TERMINATED BENEFICIARIES AND DIVORCED DEEMED SPOUSES.—In the case of individuals whose benefits under title II of the Social Security Act have been terminated under section 216(h)(1)(B) of such Act before January 1, 1991, or who would be entitled to benefits under such title for any month after December 1990 as a divorced spouse or surviving divorced spouse solely by reason of the amendments made by this section, the amendments made by this section shall apply only with respect to benefits for which application is filed with the Secretary of Health and Human Services after December 31, 1990.

SEC. 2. WAIVER OF 2-YEAR WAITING PERIOD FOR INDEPENDENT ENTITLEMENT TO DIVORCED SPOUSE'S BENEFITS.

(a) WAIVER FOR PURPOSES OF DEDUCTIONS ON ACCOUNT OF WORK.—Section 203(b)(2) of the Social Security Act (42 U.S.C. 403(b)(2)) is amended—

(1) by striking "(2) When" and all that follows through "2 years, the benefit" and inserting the following:

"(2)(A) Except as provided in subparagraph (B), in any case in which—

"(i) any of the other persons referred to in paragraph (1)(B) is entitled to monthly benefits as a divorced spouse under section 202 (b) or (c) for any month, and

"(ii) such person has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new subparagraph:

"(B) Clause (ii) of subparagraph (A) shall not apply with respect to any divorced spouse in any case in which the individual referred to in paragraph (1) became entitled to old-age insurance benefits under section 202(a) before the date of the divorce.".

(b) WAIVER IN CASE OF NONCOVERED WORK OUTSIDE THE UNITED STATES.—Section 203(d)(1)(B) of such Act (42 U.S.C. 403(d)(1)(B)) is amended—

(1) by striking "(B) When" and all that follows through "2 years, the benefit" and inserting the following:

"(B)(i) Except as provided in clause (ii), in any case in which—

"(I) a divorced spouse in entitled to monthly benefits under section 202 (b) or (c) for any month, and

"(II) such divorced spouse has been divorced for not less than 2 years,

the benefit"; and

(2) by adding at the end the following new clause:

"(ii) Subclause (II) of clause (i) shall not apply with respect to any divorced spouse in any case in which the individual entitled to old-age insurance benefits referred to in subparagrph (A) became entitled to such benefits before the date of the divorce.".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to benefits for months after December 1990.

SEC. 3. CONTINUATION OF DISABILITY BENEFITS DURING APPEAL.

Subsection (g) of section 223 of the Social Security Act (42 U.S.C. 423(g)) is amended—

(1) in paragraph (1)(i), by inserting "or" after "hearing,", and by striking "pending, or (iii) June 1990." and inserting "pending."; and

(2) by striking paragraph (3)●

By Mr. GORTON:

S. 3152. A bill to authorize the issuance of certificates of documentation for certain inflatable vessels; to the Committee on Commerce, Science, and Transportation.

DOCUMENTATION OF CERTAIN INFLATABLE VESSELS

● Mr. GORTON. Mr. President, the bill I am introducing today would provide for a Jones Act exemption for certain small inflatable boats known as Zodiacs which are used by Wilderness Cruise Lines of Seattle, WA.

Wilderness Cruise Lines operates passenger cruise ships from Seattle to Alaska or off the coast of Baja, CA. Zodiacs are used to carry passengers from the cruise ships for sightseeing trips near or on the shore. Each Zodiac can carry up to 15 people and costs approximately $11,000.

The U.S. Coast Guard has recently labeled the use of the Zodiacs as coastwise trade. As the boats are manufactured in Canada, they do not qualify for the needed documentation to obtain a coastwise license. I am therefore introducing a bill to allow these vessels to obtain the necessary documentation.

I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

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

S. 3152

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That notwithstanding sections 12106, 12107, and 12108 of title 46, United States Code, and section 27 of the Merchant Marine Act, 1920 (46 App. U.S.C. 883), as applicable on the date of enactment of this Act, the Secretary of Transportation may issue certificates of documentation for eight inflatable vessels identified, respectively, as follows:

(1) Serial number 3968B, model number J990.

(2) Serial number 4581B, model number J990.

(3) Serial number A501A, model number D989.

(4) Serial number A502A, model number D989.

(5) Serial number 6291C, model number G091.

(6) Serial number 6300C, model number G091.

(7) Serial number 7302C, model number G091.

(8) Serial number 7305C, model number G091.●

By Mr. SIMON:

S. 3153. A bill to assure equal justice for women in the courts; to the Committee on the Judiciary.

EQUAL JUSTICE FOR WOMEN IN THE COURTS ACT

● Mr. SIMON. Mr. President, I rise today to introduce the Equal Justice for Women in the Courts Act of 1990. This bill will address one of the remaining barriers to equal justice in our States and Federal judicial proceedings—gender bias by judges and supporting personnel.

The Equal Justice for Women in the Courts Act would authorize funds for the State Justice Institute and the Federal Judicial Center for use in the development and dissemination of model programs designed to train judges and their personnel on rape laws, sexual assault, domestic violence and other gender-motivated crimes.

Training would include such topics as the physical, economic, and psychological effects of rape and domestic violence on the victim and their costs on society; statistics on the nature and in-

cidence of domestic violence; and the application of rape shield laws and other limits on the introduction of evidence in court. Both the State and the Federal model programs would be developed with the assistance of law enforcement officials, victim's advocates, prosecutors, defense attorneys, and legal and social science experts.

The Federal Courts Study Committee report released in April recognized the crucial need for the type of judicial education and training this bill will provide. The Study Committee noted that studies of many State systems reflect the presence of gender bias in State judicial proceedings. The committee concluded, "[w]e believe education is the best means of sensitizing judges and supporting personnel to their own possible inappropriate conduct and to the importance of curbing such bias when shown by attorneys, parties, and witnesses."

Two years ago, the Illinois State Bar Association, the Illinois Women's Bar Association, and the Chicago Bar Association established the Task Force to Study Gender Bias in the Courts. The task force recently released its exhaustive study of the manifestations of gender bias in domestic relations cases, criminal cases, civil damage awards, and courtroom dynamics in the Illinois system. The report related such specific instances of bias as a judge's comments in a case where a husband engaged in an automobile chase of his estranged wife and her companion. The woman and her companion were killed in the chase. As he sentenced the defendant to probation, the presiding judge stated, "[t]his was no drunken idiot trying to run someone off the road. This was a sober man trying to reclaim his wife."

But this is just one of many examples of blatant gender bias uncovered by the task force. The report catalogs other, far more subtle, instances of bias throughout the justice system and strongly recommends judicial education as an important component in any effort to eliminate such bias.

I too believe that educational training for State and Federal judges on the issues of sexual assault, spousal abuse, and domestic violence is extremely important and necessary in order for judges and court personnel to have a clear sense of the traumatic effects of such crimes on the victims.

The Equal Justice for Women in the Courts Act builds on landmark legislation introduced by Senator BIDEN in April. That bill, S. 2754, the Violence Against Women Act, is a comprehensive measure designed to make our Nation's streets, homes, and college and university campuses safer for women. The bill increases the penalties for sexual assault and creates grants to States to train police and prosecuters. Senator BIDEN's bill also grants interstate enforcement of protective orders and creates a civil rights remedy for victims of sexual assault. This bill has been the subject of extensive hearings in the Judiciary Committee and I am proud to count myself among its bipartisan cosponsors.

Mr. President, statistics compiled by the Judiciary Committee reveal that in 1989, more women were abused by their husbands than the number of women who got married. and since 1974, the rate of assaults against young women age 20-24 has risen 48 percent. In that same period of time assaults against young men age 20-24 dropped 12 percent. In my home State of Illinois, the rate of sexual assaults has risen roughly 18 percent since 1986.

Yet rape is the most underreported of all major crimes—it is believed that only about 7 percent of all rapes are reported to police. One of the reasons they go unreported is the perceived, and often actual, insensitivity of law enforcement officers and officers of the court to the victims of crimes of this nature.

The bill I introduce today will provide meaningful protection of the rights of those who are victimized by sex crimes and other gender-motivated crimes. When the Judiciary Committee considers S. 2754, I intend to offer the Equal Justice for Women in the Courts Act as an amendment. The Equal Justice for Women in the Courts Act will take us all one step closer to realizing equal justice under the law.

Mr. President, I commend this bill to my colleagues and invite their cosponsorship and support.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD following this statement.

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

S. 3153

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 "Equal Justice for Women in the Courts Act of 1990".

TITLE I—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN STATE COURTS

SEC. 101. GRANTS AUTHORIZED.

The Attorney General shall make grants through the State Justice Institute for the purpose of developing, testing, presenting, and disseminating model programs to be used by States in training judges and court personnel in the laws of the States on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

SEC. 102. TRAINING PROVIDED BY GRANTS.

Training provided pursuant to grants made under this title may include—

(1) current data on the nature and incidence of rape and sexual assault by strangers and non-strangers, marital rape, and incest;

(2) current data on the undereporting of rape, sexual assault, and child sexual abuse;

(3) the physical, psychological, and economic impact of rape and sexual assault on the victim, the costs to society, and the implications for sentencing;

(4) the psychology of sex offenders, their high rate of recidivism, and the implications for sentencing;

(5) the historical evolution of law and attitudes of rape and sexual assault;

(6) sex stereotyping of female and male victims of rape and sexual assault, racial stereotyping of rape victims and defendants, and the impact of such stereotypes on credibility of witnesses and other aspects of the administration of justice;

(7) application of rape shield laws and other limits on introduction of evidence that subjects victims to improper sex stereotyping and harrassment in both rape and nonrape cases, including the need for sua sponte judicial intervention in inappropriate cross-examination;

(8) the use of expert witness testimony on rape trauma syndrome, child sexual abuse accommodation syndrome, post-traumatic stress syndrome, and similar issues;

(9) the legitimate reasons why victims of rape, sexual assault, and incest may refuse to testify against a defendant and the inappropriateness of holding such victims in contempt of court;

(10) current data on the nature and incidence of domestic violence;

(11) the physical, psychological, and economic impact of domestic violence on the victim, the costs to society, and the implications for court procedures and sentencing;

(12) the psychology and self-presentation of batterers and victims and the implications for court proceedings and credibility of witnesses;

(13) sex stereotyping of female and male victims of domestic violence, myths about presence or absence of domestic violence in certain racial, ethnic, religious, or socioeconomic groups, and their impact on the administration of justice;

(14) historical evolution of laws and attitudes on domestic violence;

(15) proper and improper interpretations of the defenses of self-defense and provocation, and the use of expert witness testimony on battered woman syndrome;

(16) the likelihood of retaliation, recidivism, and escalation of violence by batterers, and the potential impact of incarceration and other meaningful sanctions for acts of domestic violence including violations of orders of protection;

(17) economic, psychological, social and institutional reasons for victims' failure to report domestic violence or to follow through on complaints, including the influence of lack of support from police, judges, and court personnel; and

(18) recognition of and response to gender-motivated crimes of violence other than rape, sexual assault and domestic violence, such as mass or serial murder motivated by the gender of the victims.

SEC. 103. COOPERATION IN DEVELOPING PROGRAMS IN MAKING GRANTS UNDER THIS TITLE.

The Attorney General shall ensure that model programs carried out pursuant to grants made under this title are developed in conjunction with, and with the participation of, law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the

courts drawn from the legal and social science professions.

SEC. 104. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1991, $600,000 to carry out the purposes of this title. Of amounts appropriated under this section, the State Justice Institute shall expend no less than 40 percent on model programs regarding domestic violence and no less than 40 percent on model programs regarding rape and sexual assault.

TITLE II—EDUCATION AND TRAINING FOR JUDGES AND COURT PERSONNEL IN FEDERAL COURTS

SEC. 201. EDUCATION AND TRAINING GRANTS.

(a) STUDY.—The Federal Judicial Center shall conduct a study of the nature and extent of gender bias in the Federal courts, including in proceedings involving rape, sexual assault, domestic violence, and other crimes of violence motivated by gender. The study shall be conducted by the use data collection techniques such as reviews of trail and appellate opinions and transcripts, public hearings and inquiries to attorneys practicing in the Federal courts. The Federal Judicial Center shall publicly issue a final report containing a detailed description of the findings and conclusions of the study, including such recommendations for legislative, administrative, and judicial action as it considers appropriate.

(b) MODEL PROGRAMS.—(1) The Federal Judicial Center shall develop, test, present, and disseminate model programs to be used in training Federal judges and court personnel in the laws on rape, sexual assault, domestic violence, and other crimes of violence motivated by the victim's gender.

(2) The training programs developed under this subsection shall include—

(A) all of the topics listed in section 102 of title I; and

(B) all procedural and substantive aspects of the legal rights and remedies, for violent crime motivated by gender including such areas as the Federal penalties for sex crimes, interstate enforcement of laws against domestic violence and civil rights remedies for violent crimes motivated by gender.

SEC. 203. COOPERATION IN DEVELOPING PROGRAMS.

In implementing this title, the Federal Judicial Center shall ensure that the study and model programs are developed in conjunction with, and with the participation of, law enforcement officials, public and private nonprofit victim advocates, legal experts, prosecutors, defense attorneys, and recognized experts on gender bias in the courts drawn from the legal and social science professions.

SEC. 204. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated for fiscal year 1991, $400,000 to carry out the purposes of this title. Of amounts appropriated under this section, no less than 25 percent and no more than 40 percent shall be expended by the Federal Judicial Center on the study required by section 201(a) of this title.●

By Mr. BIDEN (for himself, Mr. ROTH, Mr. BRADLEY, and Mr. LAUTENBERG):

S.J. Res. 373. Joint resolution granting the consent of the Congress to amendments to the Delaware-New Jersey Compact, and for other purposes; to the Committee on the Judiciary.

CONSENT OF CONGRESS TO AMENDMENT TO THE DELAWARE-NEW JERSEY COMPACT.

● Mr. BIDEN. Mr. President, I am joined by Senators ROTH, BRADLEY, and LAUTENBERG in introducing legislation to grant congressional consent to amendments to an interstate compact between Delaware and New Jersey. The amendments, which have been passed by both State legislatures, allow the Delaware River and Bay Authority to engage in economic development activity.

The original compact was consented to in 1962. Allowing an interstate authority of this type to engage in economic development is fairly common. In fact, New Jersey already has similar arrangements with interstate authorities it has established with her two other neighbors, Pennsylvania and New York.

The compact explicitly requires that environmental concerns be met before proceeding with any economic development activities. Delaware has long supported strong protective measures for the State's coastline. In approving the compact, Delawareans made sure that the authority would have to comply with strict environmental stanards. In fact, steps that will improve environmental conditions in the Delaware River and Bay are specifically listed as qualifying economic development projects.

The compact amendments enjoyed strong bipartisan support in the Delaware and New Jersey legislatures. I hope that Congress will be able to grant its consent to the compact changes before the end of the session.

I ask that a copy of the joint resolution consenting to the compact be printed in the RECORD.

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

S.J. RES. 373

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, being 53 Laws of Delaware, chapter 145, and Public Law 1961, chapter 66 of the Laws of New Jersey, have provided, subject to the consent of Congress, for a compact, known as the Delaware-New Jersey Compact, establishing "The Delaware River and Bay Authority" for the development of the area in both States bordering the said Delaware River and Bay; and

Whereas the State of Delaware and the State of New Jersey, pursuant to legislative authority adopted by each State, have provided subject to the consent of Congress, for an amendment to the Delaware-New Jersey Compact to authorize the Delaware River and Bay Authority to undertake economic development projects, other than major projects, at its own initiative, and to undertake major projects after securing only such approvals as may be required by the legislation of the State in which the project is to be located, except the Authority is prohibited from undertaking any major project to be located in the Delaware River and Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States: Now, therefore, be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CONSENT OF CONGRESS.

The Congress consents to the amendments to the Delaware-New Jersey Compact which have been enacted by the States of Delaware and New Jersey, so that the Delaware-New Jersey Compact reads substantially as follows:

"DELAWARE-NEW JERSEY COMPACT

"Whereas the States of Delaware and New Jersey are separated by the Delaware River and Bay which creates a natural obstacle to the uninterrupted passage of traffic other than by water and with normal commercial activity between the two States thereby hindering the economic growth and development of those areas in both States which border the River and Bay; and

"Whereas the pressures of existing trends from increasing traffic, growing population, and greater industrialization indicate the need for closer cooperation between the two States in order to advance the economic development and to improve crossings, transportation, terminal, and other facilities of the area; and

"Whereas the financing, construction, operation and maintenance of such crossings, transportation, terminal, and other facilities of commerce and the overall planning for future economic development of the area may be best accomplished for the benefit of the two States and their citizens, the region and Nation, by the cordial cooperation of Delaware and New Jersey by and through a joint or common agency or authority; and

"Whereas the Delaware-New Jersey Compact, enacted pursuant to 53 Laws of Delaware, Chapter 145 (17 Del. C. §1701) and Public Law 1961, c. 66 (C. 32:11E-1 et seq.) of the Pamphlet Laws of New Jersey, with the consent of the United States Congress by Joint Resolution being Public Law 87-678, 87th Congress, H.J. Res. 783, September 20, 1962, created the Delaware River and Bay Authority with the intention of advancing the economic growth and development of those areas in both States which border the Delaware River and Bay by the financing, development, construction, operation, and maintenance of crossings, transportation, or terminal facilities and other facilities of commerce, and by providing for overall planning for the future economic development of those areas; and

"Whereas the economic growth and development of areas of both States will be further advanced by authorizing the Authority to undertake economic development projects, other than major projects, as defined in Article II, at its own initiative, and to undertake major projects after securing only such approvals as may be required by legislation of the State in which the project is to be located, except that the Authority is prohibited from undertaking any major project, to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without the prior approval, by concurrent legislation, of the two States; and

"Whereas the natural environment of those areas in the two States which border the Delaware River and Bay would be better preserved by requiring that the projects, other than crossings, of the Authority shall be in complete compliance with all applica-

ble environmental protection laws and regulations before the Authority may undertake the planning, development, construction, or operation of any project, other than a crossing:

"Now, Therefore, the State of Delaware and the State of New Jersey do hereby solemnly covenant and agree, each with the other as follows:

"ARTICLE I

"SHORT TITLE

"This Compact shall be known as the 'Delaware-New Jersey Compact'.

"ARTICLE II

"DEFINITIONS

" 'Crossing' means any structure or facility adapted for public use in crossing the Delaware River or Bay between the States, whether by bridge, tunnel, ferry, or other device, and by any vehicle or means of transportation of persons or property, as well as all approaches thereto and connecting and services routes and all appurtenances and equipment relating thereto.

" 'Transportation facility' and 'terminal facility' means any structure or facility other than a crossing, as herein defined, adapted for public use within each of the States party hereto in connection with the transportation of persons or property, including railroads, motor vehicles, watercraft, airports and aircraft, docks, wharves, piers, slips, basins, storage places, sheds, warehouses, and every means or vehicle of transportation now or hereafter in use for the transportation of persons and property or the storage, handling or loading of property, as well as all appurtenances and equipment related thereto.

" 'Commerce facility or development' means any structure or facility adapted for public use or any development for a public purpose within each of the States party hereto in connection with recreational and commercial fishery development, recreational marina development, aquaculture (marine farming), shoreline preservation and development (including wetlands and open-lands acquisition, active recreational and park development, beach restoration and development, dredge spoil disposal and port-oriented development), foreign trade zone site development, manufacturing and industrial facilities, and other facilities of commerce which, in the judgment of the Authority, are required for the sound economic development of the area.

" 'Appurtenances' and 'Equipment' mean all works, buildings, structures, devices, appliances, and supplies, as well as every kind of mechanism, arrangement, object, or substance related to and necessary or convenient for the proper construction, equipment, maintenance, improvement, and operation of any crossing, transportation facility or terminal facility, or commerce facility, or development.

" 'Project' means any undertaking or program for the acquisition or creation of any crossing, transportation facility or terminal facility, or commerce facility or development, or any part thereof, as well as for the operation, maintenance, and improvement thereof.

" 'Major Project' means any project, other than a crossing, having or likely to have significant environmental impacts on the Delaware River and Bay, its shorelines or estuaries, or any other area in the State of Delaware or the New Jersey counties of Cape May, Cumberland, Cloucester, and Salem, as determined in accordance with State law by the environmental agency of the State in which the major project is to be located.

" 'Tunnel' means a tunnel of one or more tubes.

" 'Governor' means any person authorized by the Constitution and law of each State to exercise the functions, powers, and duties of that office.

" 'Authority' means the Authority created by this Compact or any agency successor thereto.

"The singular whenever used in this Compact shall include the plural, and the plural shall include the singular.

"ARTICLE III

"FAITHFUL COOPERATION

"They agree to and pledge, each to the other, faithful cooperation in the effectuation of this Compact and any future amendment or supplement thereto, and of any legislation expressly in implementation thereof hereafter enacted, and in the planning, development, financing, construction, operation, maintenance, and improvement of all projects entrusted to the authority created by this Compact.

"ARTICLE IV

"ESTABLISHMENT OF AGENCY; PURPOSES

"The two States agree that there shall be created and they do hereby create a body politic, to be known as 'The Delaware River and Bay Authority' (for brevity hereinafter referred to as the 'Authority'), which shall constitute an agency of government of the State of Delaware and the State of New Jersey for the following general public purposes, and which shall be deemed to be exercising essential government functions in effectuating such purposes, to wit:

"(a) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of crossings between the States of Delaware and New Jersey across the Delaware River or Bay at any location south of the boundary line between the State of Delaware and the Commonwealth of Pennsylvania as extended across the Delaware River to the New Jersey shore of said River, together with such approaches or connections thereto as in the judgment of the Authority are required to make adequate and efficient connections between such crossings and any public highway or other routes in the State of Delaware or in the State of New Jerey; and

"(b) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any transportation or terminal facility within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which facility, in the judgment of the Authority, is required for the sound economic development of the area; and

"(c) The planning, financing, development, construction, purchase, lease, maintenance, improvement, and operation of any commerce facility or development within the State of Delaware or the New Jersey counties of Cape May, Cumberland, Gloucester, and Salem, which in the judgment of the Authority is required for the sound economic development of the area; and

"(d) The performance of such other functions as may be hereafter entrusted to the Authority by concurrent legislation expressly in implementation hereof.

"The Authority shall not undertake any major project or part thereof without having first secured such approvals as may be required by legislation of the State in which the project is to be located.

"The Authority shall not undertake any major project, or part thereof to be located in the Delaware River or Bay, including, without limitation, any deep-water port or superport, without having first secured approval thereof by concurrent legislation of the two States expressly in implementation thereof.

"The Authority shall not undertake any major project or part thereof without first giving public notice and holding a public hearing, if requested, on any proposed major project, in accordance with the law of the State in which the major project is to be located. Each State shall provide by law for the time and manner for the giving of such public notice, the requesting of a public hearing and the holding of such public hearings.

"ARTICLE V

"COMMISSIONERS

"The Authority shall consist of twelve Commissioners, six of whom shall be residents of and qualified to vote in and shall be appointed from the State of Delaware, and six of whom shall be residents of and qualified to vote in and shall be appointed from the State of New Jersey; not more than three of the Commissioners of each State shall be of the same political party; the Commissioners for each State shall be appointed in the manner fixed and determined from time to time by the law of each State respectively. Each Commissioner shall hold office for a term of five years, and until his successor shall have been appointed and qualified, but the terms of the first Commissioners shall be so designated that the term of at least one Commissioner from each State shall expire each year. All terms shall run to the first day of July. Any vacancy, however created, shall be filled for the unexpired term only. Any Commissioner may be suspended or removed from office as provided by law of the State from which he shall be appointed.

"Commissioners shall be entitled to reimbursement for necessary expenses to be paid only from revenues of the Authority and may not receive any other compensation for services to the Authority except such as may from time to time be authorized from such revenues by concurrent legislation.

"ARTICLE VI

"BOARD ACTION

"The Commissioners shall have charge of the Authority's property and affairs and shall, for the purpose of doing business, constitute a Board, but no action of the Commissioners shall be binding or effective unless taken at a meeting at which at least four Commissioners from each State are present, and unless at least four Commissioners from each State shall vote in favor thereof. The vote of any one or more of the Commissioners from each State shall be subject to cancellation by the Governor of such State at any time within 10 days (Saturdays, Sundays, and public holidays in the particular State excepted) after receipt at the Governor's office of a certified copy of the minutes of the meeting at which such vote was taken. Each State may provide by law for the manner of delivery of such minutes and for notification of the action thereon.

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"ARTICLE VII

"GENERAL POWERS

"For the effectuation of its authorized purposes, the Authority is hereby granted the following powers:

"(a) To have perpetual succession.

"(b) To adopt and use an official seal.

"(c) To elect a chairman and a vice chairman from among the Commissioners. The chairman and vice chairman shall be elected from different States and shall each hold office for two years. The chairmanship and vice chairmanship shall be alternated between the two States.

"(d) To adopt bylaws to govern the conduct of its affairs by the Board of Commissioners, and it may adopt rules and regulations and may make appropriate orders to carry out and discharge its powers, duties, and functions, but no bylaw or rule, regulation, or order shall take effect until it has been filed with the Secretary of State of each State or in such other manner in each State as may be provided by the law thereof. In the establishment of rules, regulations, and orders respecting the use of any crossing, transportation, or terminal facility or commerce facility or development owned or operated by the Authority, including approach roads, it shall consult with appropriate officials of both States in order to insure, as far as possible, uniformity of such rules, regulations, and orders with the laws of both States.

"(e) To appoint or employ such other officers, agents, attorneys, engineers, and employees as it may require for the performance of its duties and to fix and determine their qualifications, duties, compensation, pensions, terms of office and all other conditions and terms of employment and retention.

"(f) To enter into contracts and agreements with either State or with the United States, or with any public body, department, or other agency of either State or of the United States or with any individual, firm, or corporation deemed necessary or advisable for the exercise of its purposes and powers.

"(g) To accept from any government or governmental department, agency, or other public or private body, or from any other source, grants, or contributions of money or property as well as loans, advances, guarantees, or other forms of financial assistance which it may use for or in aid of any of its purposes.

"(h) To acquire (by gift, purchase, or condemnation), own, hire, lease, use, operate, and dispose of property, whether real, personal, or mixed, or of any interest therein, including any rights, franchise and property for any crossing, facility, or other project owned by another and which the Authority is authorized to own and operate.

"(i) To designate as express highways, and control public and private access thereto, all or any approaches to any crossing or other facility of the Authority for the purpose of connecting the same with any highway or other route in either State.

"(j) To borrow money and to evidence such loans by bonds, notes, or other obligations, either secured or unsecured, and either in registered or unregistered form, and to fund or refund such evidences of indebtedness, which may be executed with facsimile signatures of such persons as may be designated by the Authority and by a facsimile of its corporate seal.

"(k) To procure and keep in force adequate insurance or otherwise provide for the adequate protection of its property, as well as to indemnify it or its officers, agents, or employees against loss or liability with respect to any risk to which it or they may be exposed in carrying out any function hereunder.

"(l) To grant the use of by franchise, lease, or otherwise, and to make charges for the use of any crossing, facility, or other project or property owned or controlled by it.

"(m) To exercise the right of eminent domain to acquire any property or interest therein.

"(n) To determine the exact location, system, and character of and all other matters in connection with any and all crossings, transportation, or terminal facilities, commerce facilities or developments or other projects which it may be authorized to own, construct, establish, effectuate, operate, or control.

"(o) To exercise all other powers not inconsistent with the Constitutions of the two States or of the United States, which may be reasonably necessary or incidental to the effectuation of its authorized purposes or to the exercise of any of the foregoing powers, except the power to levy taxes or assessments, and generally to exercise in connection with its property and affairs, and in connection with property within its control, any and all powers which might be exercised by a natural person or a private corporation in connection with similar property and affairs.

"ARTICLE VIII

"ADDITIONAL POWERS

"For the purpose of effectuating the authorized purposes of the Authority, additional powers may be granted to the Authority by legislation of either State without the concurrence of the other, and may be exercised within such State, or may be granted to the Authority by Congress and exercised by it; but no additional duties or obligations shall be undertaken by the Authority under the law of either State or of Congress without authorization by the law of both States.

"ARTICLE IX

"EMINENT DOMAIN

"If the Authority shall find and determine that any property or interest therein is requried for a public use in furtherance of the purposes of the Authority, said determination shall not be affected by the fact that such property has theretofore been taken over or is then devoted to a public use, but the public use in the hands or under the control of the Authority shall be deemed superior to the public use for which it has theretofore been taken or to which it is then devoted. The Authority shall not exercise the power of eminent domain granted herein to acquire any property, other than a crossing, devoted to a public use, of either State, or of any municipality, local government, agency, public authority or commission, or of two or more of them, for any purpose other than a crossing, without having first secured the authorization of the holder of the title to the land in question and such other approvals as may be required by legislation of the State in which the project is to be located. The Authority shall not exercise the power of eminent domain in connection with any commerce facility or development.

"In any condemnation proceedings in connection with the acquisition by the Authority of property or property rights of any character in either State and the right of inspection and immediate entry thereon, through the exercise by it of its power of eminent domain, any existing or future law or rule of court of the State in which such property is located with respect to the condemnation of property for the construction, reconstruction, and maintenance of highways therein shall control. The Authority shall have the same power and authority with respect thereto as the State agency named in any such law, provided that nothing herein contained shall be construed as requiring joint or concurrent action by the two States with respect to the enactment, repeal, or amendment of any law or rule of court on the subject of condemnation under which the Authority may proceed by virtue of this Article.

"If the established grade of any street, avenue, highway, or other route shall be changed by reason of the construction by the Authority of any work so as to cause loss or injury to any property abutting on such street, avenue, highway, or other route, the Authority may enter into voluntary agreements with such abutting property owners and pay reasonable compensation for any loss or injury so sustained, whether or not it be compensable as damages under the condemnation law of the State.

"The power of the Authority to acquire property by condemnation shall be a continuing power, and no exercise thereof shall be deemed to exhaust it.

"ARTICLE X

"REVENUE AND APPLICATION

"The Authority is hereby authorized to establish, levy, and collect such tolls and other charges as it may deem necessary, proper, or desirable in connection with any crossing, transportation, or terminal facility, commerce facility or development or other project which it is or may be authorized at any time to construct, own, operate, or control, and the aggregate of said tolls and charges shall be at least sufficient (1) to meet the combined expenses of operation, maintenance and improvement thereof, (2) to pay the cost of acquisition or construction, including the payment, amortization, and retirement of bonds or other securities or obligations assumed, issued, or incurred by the Authority, together with interest thereon, and (3) to provide reserves for such purposes; and the Authority is hereby authorized and empowered, subject to prior pledges, if any, to pledge such tolls and other revenues or any part thereof as security for the repayment with interest of any moneys borrowed by it or advanced to it for its authorized purposes and as security for the satisfaction of any other obligations assumbed by it in connection with such loans or advances. There shall be allocated to the cost of the acquisition, construction, operation, maintenance, and improvement of such facilities and projects such proportion of the general expenses of the Authority as it shall deem property chargeable thereto.

"ARTICLE XI

"COVENANT WITH BONDHOLDERS

"The two said States covenant and agree with each other and with the holders of any bonds or other securities or obligations of the Authority, assumed, issued, or incurred by it and as security for which there may be pledged the tolls and revenues or any part thereof of any crossing, transportation, or terminal facility, commerce facility or development or other project, that the two said States will not, so long as any of such bonds or other obligations remain outstanding and unpaid, diminish, or impair the power of the Authority to establish, levy, and collect tolls

and other charges in connection therewith, and that neither of the two said States will, so long as any of such bonds or other obligations remain outstanding and unpaid, authorize any crossing of the Delaware River or Delaware Bay south of the line mentioned in Article IV(a) of this Compact by any person or body other than the Authority, unless, in either case, adequate provision shall be made by law for the protection of those advancing money upon such obligation.

"ARTICLE XII

"SECURITIES LAWFUL INVESTMENTS

"The bonds or other securities or obligations which may be issued by the Authority pursuant to this Compact, or any amendments hereof or supplements hereto, are hereby declared to be negotiable instruments, and are hereby made securities in which all State and municipal officers and bodies of each State, all banks, bankers, trust companies, savings banks, building and loan associations, saving and loan associations, investment companies and other persons carrying on a banking business, all insurance companies, insurance associations and other persons carrying on an insurance business, and all administrators, executors, guardians, trustees, and other fiduciaries and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of either State may properly and legally invest any funds, including capital, belonging to them or within their control, and said obligations are hereby made securities which may properly and legally be deposited with and shall be received by any State or municipal officer or agency of either State for any purpose for which the deposit of bonds or other obligations of such State is now or may hereafter be authorized.

"ARTICLE XIII

"TAX STATUS

"The powers and functions exercised by the Authority under this Compact and any amendments hereof or supplements hereto are and will be in all respects for the benefit of the people of the States of Delaware and New Jersey, the region and Nation, for the increase of their commerce and prosperity and for the enhancement of their general welfare. To this end, the Authority shall be regarded as performing essential governmental functions in exercising such powers and functions and in carrying out the provisions of this Compact and of any law relating thereto, and shall not be required to pay any taxes or assessments of any character, levied by either State or political subdivision thereof, upon any of the property used by it for such purposes, or any income or revenue therefrom, including any profit from a sale or exchange. The bonds or other securities or obligations issued by the Authority, their transfer and the interest paid thereon or income therefrom, including any profit from a sale or exchange, shall at all times be free from taxation by either State or any subdivision thereof.

"ARTICLE XIV

"JURISDICTION; USE OF LANDS

"Each of the two States hereby consents to the use and occupancy by the Authority of any lands and property of the Authority in such State for the construction, operation, maintenance or improvement of any crossing, transportation, or terminal facility, commerce facility or development, or other project which it is or may be authorized at any time to construct, own, or operate, including lands lying under water.

"ARTICLE XV

"REVIEW AND ENFORCEMENT OF RULES

"Judicial proceedings to review any bylaw, rule, regulation, order, or other action of the Authority or to determine the meaning or effect thereof may be brought in such court of each State, and pursuant to such law or rules thereof, as a similar proceeding with respect to any agency of such State might be brought.

"Each State may provide by law what penalty or penalties shall be imposed for violation of any lawful rule, regulation, or order of the Authority, and, by law or rule of court, for the manner of enforcing the same.

"ARTICLE XVI

"NO PLEDGE OF CREDIT

"The Authority shall have no power to pledge the credit or to create any debt or liability of the State of Delaware, of the State of New Jersey or of any other agency or of any political subdivision of said States.

"ARTICLE XVII

"LOCAL COOPERATION AND AGREEMENTS

"(a) All municipalities, political subdivisions, and every department, agency, or public body of each of the States are hereby authorized and empowered to cooperate with, aid and assist the Authority in effectuating the provisions of this Compact and of any amendment hereof or supplement hereto.

"(b) The Authority is authorized and empowered to cooperate with each of the States, or any political subdivision thereof, and with any municipality, local government, agency, public authority or commission of the foregoing, in connection with the acquisition, planning, rehabilitation, construction or development of any project, other than a crossing, and to enter into an agreement or agreements, subject to compliance with the laws of the State in which the project is to be located, with each of the States, or any political subdivision thereof, and with any municipality, county, local government, agency, public authority, or commission or with two or more of them, for or relating to such purposes.

"(c) The Authority and the city, town, municipality, or other political subdivision in which any project, other than a crossing, is to be located are hereby authorized and empowers, subject to compliance with the laws of the State in which the project is to be located, to enter into an agreement or agreements to provide which local laws, resolutions, ordinances, rules, and regulations, if any, of the city, town, municipality, or other political subdivision affected by such project shall apply to such project. All other existing local laws, resolutions, ordinances or rules and regulations not provided for in the agreement shall be applicable to the project, other than a crossing. All local laws, resolutions, ordinances or rules and regulations enacted after the date of the agreement shall not be applicable to such projects unless made applicable by the agreement or any modification thereto.

"ARTICLE XVIII

"DEPOSITARIES

"All banks, bankers, trust companies, savings banks and other persons carrying on a banking business under the laws of either State are authorized to give security for the safekeeping and prompt payment of moneys of the Authority deposited by it with them, in such manner and form as may be required by and may be approved by the Authority, which security may consist of a good and sufficient undertaking with such sureties as may be approved by the Authority, or may consist of the deposit with the Authority or other depository approved by the Authority as collateral of such securities as the Authority may approve.

"ARTICLE XIX

"AGENCY POLICE

"Members of the police force established by the Authority, regardless of their residence, shall have in each State, on the crossings, transportation or terminal facilities, commerce facilities or developments and other projects and the approaches thereto, owned, operated, or controlled by the Authority, and at such other places and under such circumstances as the law of each State may provide, all the powers of investigation, detention, and arrest conferred by law on peace officers, sheriffs, or constables in such State or usually exercised by such officers in each State.

"ARTICLE XX

"REPORTS AND AUDITS

"The Authority shall make annual reports to the Governors and Legislatures of the State of Delaware and the State of New Jersey, setting forth in detail its operations and transactions, and may make such additional reports from time to time to the Governors and Legislatures as it may deem desirable.

"It shall, at least annually, cause an independent audit of its fiscal affairs to be made, and shall furnish a copy of such audit report together with such additional information or data with respect to its affairs as it may deem desirable to the Governors and Legislatures of each State.

"It shall furnish such information or data with respect to its affairs as may be requrested by the Governor or Legislature of each State.

"ARTICLE XXI

"BOUNDARIES UNAFFECTED

"The existing territorial or boundary lines of the States or the jurisdiction of the two States established by said boundary lines shall not be changed hereby.

"ARTICLE XXII

"ENVIRONMENTAL PROTECTION

"(a) The planning, development, construction, and operation of any project, other than a crossing, shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetlands laws, or subaqueous land laws or natural resources laws, now or hereinafter enacted, or promulgated by the State in which the project, or any part thereof, is located.

"(b) The planning, development, construction, and operation of any project, other than a crossing, to be located in the Delaware River and Bay shall comply with all environmental protection laws, regulations, directives, and orders, including, without limitation, any coastal zone laws, wetland laws, subaqueous land laws or natural resource laws now or hereinafter enacted or promulgated by either State.

"(c) The planning, development, construction, and operation of any project, other than a crossing, located in the coastal zone of Delaware (as defined in Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989), shall be subject to the same limitations, requirements, procedures, and appeals as apply to any other person under the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code,

as in effect on January 1, 1989. Nothing in this Compact shall be deemed to pre-empt, modify, or supersede any provision of the Delaware Coastal Zone Act, Chapter 70 of Title 7 of the Delaware Code, as in effect on January 1, 1989. The interpretation and application of this paragraph shall be governed by the laws of the State of Delaware and be determined by the courts of the State of Delaware.

"(d) The planning, development, construction, and operation of any project, other than a crossing, located in New Jersey, shall be subject to the provisions of New Jersey law, when applicable, including but not limited to the Wetlands Act of 1970, N.J.S.A. 13:9A-1, et seq. and the Coastal Area Facility Review Act, N.J.S.A. 13:19-1, et seq.".

SEC. 2. FEDERAL JURISDICTION NOT AFFECTED.

Nothing contained in the compact set forth in section 1 shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the area which forms the subject of such compact.

SEC. 3. AUTHORITY FOR ADDITIONAL TOLL BRIDGES.

Section 4 of the Act entitled "An Act to authorize the State of Delaware, by and through its State highway department, to construct, maintain, and operate a toll bridge across the Delaware River near Wilmington, Delaware" approved July 13, 1946 (60 Stat 533), as amended by the Act of June 27, 1951 (66 Stat. 91) and the Act of October 3, 1962 (76 Stat. 741-742), is amended—

(1) by striking "and" at the end of paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting "; and", and

(3) by adding after paragraph (4) the following:

"(5) to pay the cost of any project which the Delaware River and Bay Authority is or may be authorized to construct, own, operate, or control, under the Delaware-New Jersey Compact, as consented to by the Congress,".

SEC. 4. REQUIREMENTS OF OTHER LAWS.

In addition to any other requirement of law, any project constructed by the Delaware River and Bay Authority in and over the navigable waters of the United States shall be subject to the procedural requirements of section 2(a) of the Fishing and Wildlife Coordination Act (16 U.S.C. 662(a)).

SEC. 5. CONSTRUCTION.

Nothing in this resolution shall be construed as—

(1) amending or superseding the provisions of the Act of September 27, 1961 (75 Stat. 688); or

(2) granting advance consent of Congress for the performance by the Delaware River and Bay Authority of other functions, as contemplated by Article IV, paragraph (d) of the compact set forth in section 1 or for the assumption by the Authority of additional powers, as contemplated by Article VII of such compact.

SEC. 6. DISCLOSURE OF INFORMATION.

The right is reserved to the Congress or any of its standing committees to require of the Delaware River and Bay Authority the disclosure and furnishing of such information and data as it is deemed appropriate by the Congress or any committee thereof having jurisdiction of the subject matter of this resolution.

SEC. 7. RESERVATION BY THE CONGRESS.

The right to alter, amend, or repeal this joint resolution is expressly reserved.●

● Mr. ROTH. Mr. President, I am pleased to rise today and to join my colleagues Senator BIDEN, Senator BRADLEY, and Senator LAUTENBERG in introducing legislation that amends the Delaware and New Jersey compact which created the Delaware River and Bay Authority. The compact was created to advance the economic growth and development in those areas of both States which border the Delaware River and Bay. The compact, which has been unchanged since 1963, currently empowers the Delaware River and Bay Authority to finance and develop crossings, transportation or terminal facilities in both New Jersey and Delaware. The compact was created by the U.S. Congress by joint resolution, Public Law 87-678, on September 20, 1962.

This year after extensive public hearings, strong bipartisan support, and enactment of legislation by both the Delaware General Assembly and the New Jersey State Legislature, we are asking that the restrictions on the authority's ability to use its toll revenues be lifted. We are proposing that besides crossings other economic development projects may be undertaken by the authority. Of course, any such project shall be in complete compliance with all applicable environmental laws before the authority may undertake the development of the project.

For the compact amendment to become effective, the original joint resolution of Congress approving its creation must be amended by both bodies of the Congress. In the U.S. House of Representatives Mr. HUGHES has introduced House Joint Resolution 657 which would do just that. We are introducing the identical legislation in the Senate today. I urge my colleagues to join us in supporting this legislation.●

ADDITIONAL COSPONSORS

S. 52

At the request of Mr. INOUYE, the name of the Senator from Hawaii [Mr. AKAKA] was added as a cosponsor of S. 52, a bill to amend section 1086 of title 10, United States Code, to provide for payment under the CHAMPUS Program of certain health care expenses incurred by certain members and former members of the uniformed services and their dependents to the extent that such expenses are not payable under Medicare, and for other purposes.

S. 730

At the request of Mr. COATS, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 730, a bill to request the President to award gold medals on behalf of Congress to Frank Capra, James M. Stewart, and Fred Zinnemann, and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 731

At the request of Mr. COATS, the name of the Senator from Minnesota [Mr. BOSCHWITZ] was added as a cosponsor of S. 731, a bill to request the President to award a gold medal on behalf of Congress to Robert Wise and to provide for the production of bronze duplicates of such medals for sale to the public.

S. 1400

At the request of Mr. KASTEN, the name of the Senator from Connecticut [Mr. LIEBERMAN] was added as a cosponsor of S. 1400, a bill to regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

S. 1661

At the request of Mr. PRYOR, the name of the Senator from Michigan [Mr. RIEGLE] was added as a cosponsor of S. 1661, a bill to amend the Internal Revenue Code of 1986 to provide for a tax credit for qualifying disability expenses.

S. 1808

At the request of Mr. BREAUX, the name of the Senator from Pennsylvania [Mr. SPECTER] was added as a cosponsor of S. 1808, a bill to amend section 468A of the Internal Revenue Code of 1986 with respect to deductions for decommissioning costs of nuclear powerplants.

S. 1815

At the request of Mr. BOSCHWITZ, the names of the Senator from South Carolina [Mr. HOLLINGS] and the Senator from New York [Mr. D'AMATO] were added as cosponsors of S. 1815, a bill to amend the Internal Revenue Code of 1986 to exclude the imposition of employer Social Security taxes on cash tips.

S. 2754

At the request of Mr. BIDEN, the name of the Senator from Nevada [Mr. REID] was added as a cosponsor of S. 2754, a bill to combat violence and crimes against women on the streets and in homes.

S. 2767

At the request of Mr. MCCAIN, the name of the Senator from California [Mr. WILSON] was added as a cosponsor of S. 2767, a bill to provide for retention of certain Medicare catastrophic benefits provided by health maintenance organization.

S. 2796

At the request of Mr. COHEN, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 2796, a bill to amend title IV of the Higher Education Act of 1965 to allow resident physicians to defer repayment of their title IV student loans while completing a resident training program accredited by the Accredita-

tion Council for Graduate Medical Education or the Accrediting Committee of the American Osteopathic Association.

S. 2898

At the request of Mr. HARKIN, the names of the Senator from Massachusetts [Mr. KERRY], the Senator from Massachusetts [Mr. KENNEDY], the Senator from California [Mr. WILSON], the Senator from Michigan [Mr. LEVIN], the Senator from North Dakota [Mr. CONRAD], the Senator from Alabama [Mr. SHELBY], and the Senator from Alabama [Mr. HEFLIN] were added as cosponsors of S. 2898, a bill to improve counseling services for elementary schoolchildren.

S. 2925

At the request of Mr. DIXON, the names of the Senator from Iowa [Mr. HARKIN], the Senator from West Virginia [Mr. BYRD], the Senator from Michigan [Mr. RIEGLE], the Senator from California [Mr. CRANSTON], and the Senator from New Mexico [Mr. DOMENICI] were added as cosponsors of S. 2925, a bill to authorize the minting and issuance of coins in commemoration of the quincentenary of the discovery of America and to authorize the payment of the proceeds of the sale of such coins to the Christopher Columbus Quincentenary Scholarship Foundation for the purpose of establishing a scholarship program, and for other purposes.

S. 2959

At the request of Mr. BAUCUS, the names of the Senator from Florida [Mr. GRAHAM], the Senator from Nebraska [Mr. KERREY], the Senator from Ohio [Mr. METZENBAUM], the Senator from Arkansas [Mr. BUMPERS], the Senator from Kentucky [Mr. MCCONNELL], and the Senator from Kansas [Mrs. KASSEBAUM] were added as cosponsors of S. 2959, a bill to amend the Railroad Retirement Solvency Act of 1983 to extend for 2 years the transfer to the Railroad Retirement Account of income tax revenues from tier 2 benefits.

S. 2979

At the request of Mr. MITCHELL, the name of the Senator from California [Mr. CRANSTON] was added as a cosponsor of S. 2979, a bill to protect the public from health risks from radiation exposure from low-level radioactive waste, and for other purposes.

S. 2989

At the request of Mr. HEINZ, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 2989, a bill to amend title XIX of the Social Security Act to provide for an expansion of Medicaid benefits to low-income pregnant women and children, and to raise the tax on cigarettes to fund such Medicaid expansion.

At the request of Mr. HEINZ, the name of the Senator from Alabama [Mr. SHELBY] was withdrawn as a cosponsor of S. 2989, supra.

S. 3076

At the request of Mr. PRYOR, the name of the Senator from Massachusetts [Mr. KERRY] was added as a cosponsor of S. 3076, a bill to provide for permanent extensions of expiring health-related waiver of liability provisions.

S. 3136

At the request of Mr. BURNS, the name of the Senator from Utah [Mr. HATCH] was added as a cosponsor of S. 3136, a bill to amend the Balanced Budget and Emergency Deficit Control Act of 1985 to limit increases in outlays to 4 percent per year, to provide for midyear sequesters in order to assure that deficit and outlay targets are achieved, and to amend the Congressional Budget Act of 1974 to extend the deficit targets.

SENATE JOINT RESOLUTION 351

At the request of Mr. BYRD, the name of the Senator from Ohio [Mr. GLENN] was added as a cosponsor of Senate Joint Resolution 351, a joint resolution to designate the month of May 1991, as "National Trauma Awareness Month."

SENATE JOINT RESOLUTION 363

At the request of Mr. RIEGLE, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of Senate Joint Resolution 363, a joint resolution to designate the week of October 22 through October 28, 1990, as the "International Parental Child Abduction Awareness Week."

SENATE JOINT RESOLUTION 371

At the request of Mr. PRYOR, the name of the Senator from Illinois [Mr. DIXON] was added as a cosponsor of Senate Joint Resolution 371, a joint resolution to recognize the week of October 1-7, as "National Nursing Home Residents' Rights Week."

SENATE CONCURRENT RESOLUTION 149—CREATING A CONGRESSIONAL LEADERSHIP GROUP

Mr. ADAMS submitted the following concurrent resolution; which was referred to the Committee on Rules and Administration:

S. CON. RES. 149

Resolved by the Senate (the House of Representatives concurring),

SECTION 1. CONGRESSIONAL LEADERSHIP GROUP.

(a) ESTABLISHMENT.—To facilitate congressional deliberation and Executive-Legislative consultation on critical decisions relating to United States participation in collective security actions pursuant to this Resolution, there shall be established in each House of Congress, as an exercise of the rulemaking authority of that House, a Leadership Group which shall be comprised as follows:

(1) in the House of Representatives—

(A) the Speaker, who shall serve as chairman;

(B) the Majority and Minority Leaders;

(C) the chairmen and ranking members of the Committee on Foreign Affairs, the Committee on Armed Services, and the Permanent Select Committee on Intelligence;

(D) such other members as the chairman of the Group may designate; and

(2) in the Senate—

(A) the Majority Leader, who shall serve as chairman;

(B) the President pro tempore and the Minority Leader;

(C) the chairmen and ranking members of the Committee on Foreign Relations, the Committee on Armed Services, and the Select Committee on Intelligence; and

(D) such other members as the chairman of the Group may designate.

(b) COMBINED CONGRESSIONAL LEADERSHIP GROUP.—When the chairmen of the two groups deem it appropriate and practical for purposes of congressional deliberation or Executive-Legislative consultation, they shall arrange for the two Groups to assemble as a Combined Congressional Leadership Group, on which the two chairmen shall act as cochairmen.

(c) CONSULTATION REGARDING THE USE OF FORCE.—The President shall, unless urgent circumstances do not permit, consult and seek the advice of the Congressional Leadership Groups or the Combined Congressional Leadership Group designated pursuant to this section, prior to committing United States Armed Forces to hostilities in the Persian Gulf region.

SENATE CONCURRENT RESOLUTION 150—AUTHORIZING CORRECTIONS IN THE ENROLLMENT OF S. 1824

Mr. FORD (for Mr. HARKIN) submitted the following concurrent resolution; which was considered and agreed to:

S. CON. RES. 150

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 1824), an Act to reauthorize the Education of the Handicapped Act, and for other purposes, the Secretary of the Senate shall make the following correction:

(1) In the amendment made by section 405, strike out "631(a)(6)" each place that such occurs and insert in lieu thereof "631(1)(7)".

SENATE RESOLUTION 331—CONGRATULATING FORMER SENATOR HUGH SCOTT ON HIS 90TH BIRTHDAY

Mr. MITCHELL (for Mr. DOLE, for himself, Mr. MITCHELL, Mr. HEINZ, and Mr. SPECTER) submittted the following resolution; which was considered and agreed to:

S. RES. 331

Whereas Senator Hugh Scott of Pennsylvania, was the Senate Republican Leader for eight years, and

Whereas Senator Scott was the Senate Assistant Republican Leader for two years, and

Whereas Senator Scott was Chairman of the Republican National Committee 1948-49, and

Whereas Senator Scott was a Member of Congress for 33 years, including eight terms in the House of Representatives and three terms in the Senate, and

Whereas Senator Scott voluntarily retired at the end of his term in January 1977, and

Whereas Senator Scott served his country in the United States Naval Reserve in World War II, and saw duty aboard the carrier Valley Forge during the Korean war: Now, therefore, be it .

Resolved, That the Senate extends its best wishes to Senator Hugh Scott on his 90th birthday, November 11, 1990.

SENATE RESOLUTION 332—TO REFER THE BILL S. 1301 TO THE COURT OF CLAIMS

Mr. HEFLIN submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 332

Resolved, That the bill S. 1301, entitled "For the relief of Hoar Construction, Inc., of Birmingham, Alabama, to settle certain claims filed against the Small Business Administration" now pending in the Senate, together with all the accompanying papers, is referred to the Chief Judge of the United States Claims Court. The Chief Judge shall proceed with the same in accordance with the provisions of sections 1492 and 2509 of title 28, United States Codes, and report thereon to the Senate, at the earliest practicable date, giving such findings of fact and conclusion thereon as shall be sufficient to inform the Congress of the nature and character of the demand as a claim, legal or equitable, against the United States or a gratuity and the amount, if any, legally or equitably due to the claimant from the United States.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. FORD. Mr. President, I ask unanimous consent that the full committee of the Committee on Energy and Natural Resources be authorized to meet during the session of the Senate 9:30 a.m., Tuesday, October 2, 1990, for a hearing to receive testimony on the key elements of a national energy policy that can effectively address U.S. dependence on oil and the actions Congress must take to implement such a policy.

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

SUBCOMMITTEE ON NUCLEAR REGULATION

Mr. FORD. Mr. President, I ask unanimous consent that the Subcommittee on Nuclear Regulation, Committee on Environment and Public Works, be authorized to meet during the session of the Senate on Tuesday, October 2, beginning at 9:30 a.m., to conduct a hearing on the Federal program for the disposal of spent nuclear fuel and high-level radioactive waste.

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

ADDITIONAL STATEMENTS

NEW STUDY ON WEAPONS COSTS

● Mr. PRYOR. Mr. President, I would like to submit into the RECORD a recent publication of the Project on Government Procurement, a nonprofit organization dedicated to uncovering and eliminating Government waste.

This recent study is entitled "Weapons Unit Costs: Current versus Predecessors and Current versus Future." It attempts to compare the costs of current procurement items in the defense budget with similar items in past budgets. The study uses data supplied by the Defense Department.

The study is provocative and interesting and I recommend it to my colleagues for review.

Mr. President, I ask that the text of the study be printed in the RECORD at this point.

The text follows:

[Project on Government Procurement, June 11, 1990]

WEAPONS UNIT COSTS CURRENT VERSUS PREDECESSORS AND CURRENT VERSUS FUTURE

(Prepared by Greg Williams, Research Associate)

The following tables are meant to illustrate the cost of technology as it is applied to new weapons systems. Obviously, improvements in technology bring benefits as well. For instance, the Mx missile carries three times as many warheads as does the Minuteman III to which it is compared. The questions is—Does this make it worth twelve times as much money?

In an effort to be objective, we have used the Defense Department's own figures as much as possible in the composition of these tables. In Chart I, with the noted exceptions, all of the figures are DoD's own estimates of how much weapons cost. They are taken from DoD's budget requests from the years indicated. They all refer to the acquisition unit costs of the weapons: In other words, how much it would cost to buy a single example of that weapon, not counting the R&D and other associated costs.

The figures in the second chart come from a greater variety of sources, and are specifically footnoted. These figures will be further discussed below that chart.

We have used DoD's approved method of incorporating inflation in the cost of weapons systems. All of the figures are inflated or deflated to 1990 dollars using the Major Commodity Deflators for total obligation authority listed in *National Defense Budget Estimates for FY 1990/1991*. This document is published by the Office of the Assistant Secretary of Defense (Comptroller).

The weapons compared, again, are not meant to be equivalent in performance. They represent consecutive generations of a given class of weapons. For instance, the C-5 and C-17 are both heavy lift aircraft. However, the C-17 is intended to carry material much closer to the front than is the C-5, and to land on shorter airstrips. On the other hand, the C-17 is also significantly smaller. Nonetheless, the C-17 represents the current incarnation of the Air Force's ideal airlifter. Information on all of these weapons systems is too voluminous to include here. The Project staff will be happy to answer any questions you may have on these items.

CHART I.—PRICES DEFLATED WITH DOD MAJOR COMMODITY DEFLATOR

System	Last price	Number bought	Predecessor	Year bought	Number bought	1990 price (millions)	Percent price increase
Mx missile	148.9	12	Minuteman III	75	61	$12.3	1,111
B-1B bomber	180.8	48	B-52G	57	100	46.3	290
F-15E fighter	49.3	36	F-4E	73	48	10.4	374
C-5B cargo plane	102.1	21	C-141	65	284	30.9	230
CG-47 missile cruiser	873.8	5	CGN-41	75	1	673.9	30
SSN-688 Attack submarine	903.9	2	SSN-637	69	2	320.0	182
EA-6B EW plane (refurbish)	104.0	3	EA-6B (new)	89	9	56.7	83
F-14 (refurbish)	70.2	12	F-14 (new)	87	15	46.0	53
Trident II missile	28.1	52	Trident I	84	52	15.5	81
M1 Tank	2.9	481	M60	77	886	1.1	164
AH-64 Attack helicopter	11.7	132	AH-1S	81	15	4.2	179
			AH-1T	88	34	7.4	58
Average							236

All of the above figures are acquisition expenditure requests, taken from DoD testimony submitted to Congress with the following exceptions:

The 100 B-52's purchased were cited in *Weapons and Warfare*, edited by Bernard Fitzsimmons, Phoebus Publishing, 1978. See Vol. 22, p. 2405. The program cost listed is from hearings on the FY 1957 Defense Budget, before the House Appropriations Committee, H.R. 10986, p. 826. This cost included spares and supporting facilities, in addition to the actual aircraft.

The 284 C-141's are listed as having cost $1,783 million in 1965 dollars in *U.S. Military Aircraft Data Book, 1989*, prepared by Ted Nicholas and Rita Rossi of Data Search Associates. Procurement was spread over three years, starting in 1963.

Acquisition costs do not include research, development and support items. Requests are the budgets submitted to Congress by the executive branch. They are a reflection of what the military planned to spend, not

what they actually did spend. These figures are used because they are the most consistent, and widely available.

CHART II.—PAST PROJECTIONS VERSUS CURRENT PROJECTIONS OF FUTURE WEAPONS COSTS

Weapon system	Promised price	Current price	Percent increase	Performance issues
Mx Missile	87.0	148.9	71	
B–2 stealth bomber.	321.6	570.5	77	No testing of its stealth characteristics, or weapons delivery.
Advanced tactical fighter.	80.0	105.3	32	No flight testing whatsoever.
C–17 cargo plane.	115.7	293.7	154	Prototypes have not flown, and computer software is experiencing problems.
DDG–51 destroyer.	873.7	696.6	−20	No active ECM. No testing at sea. Limited antimissile defenses.
SSN–21 Sub: lead.	1,867.7	1,959.0	4	Computer Software problems, and limited weapons carriage. No testing at sea.
Follow-ons..	1,098.7	1,469.1	34	
Trident II missile.	45.2	28.1	−38	Safety concerns.
M1 tank	1.7	4.3	153	Never met its reliability requirements. Not fuel efficient.
Average			52	

The purpose of this chart is to show how weapons system costs often grow beyond early projections. With the exception of the ATF, all of the above systems are included in this year's procurement budget as production items. The prices listed show how those projections line up with the actual budget requests when production starts. Bear in mind, however, in most of the cases listed in this chart, not a single unit has been completed yet. The prices of DDG–51, SSN–21, the C–17 and the Advanced Tactical Fighter could all increase significantly by the time they actually enter service. But even now one can see how far off projections can be.

On the other hand, the costs of these weapons should go down as production continues. However, the M1, D–5 and Mx are all well into production. And the Seawolf SSN–21 "class" price is for the third submarine of that design (the Navy often buys several ships of a new class before the first is completed.). So it is unclear that this "learning curve" will bring weapons costs back to their original projections.

The figures used in the chart above were collected from many sources, including testimony and budget material submitted to Congress by DoD, magazine and newspaper accounts, and military service public affairs officers. Generally, this chart compares past projections of program costs to present projections of acquisition. Program costs include all research and development and other associated costs, in addition to the price paid for the actual equipment. Acquisition costs are the costs only covering the purchase cost of the weapons system itself. This comparison paints a somewhat unrealistically favorable picture of the situation. We arranged the chart in this way because, before a weapon actually enters production, program costs are often the only figures available, and after a weapon is in production, the acquisition cost is the most meaningful figure available. Once a weapons program reaches maturity, it is difficult to separate out what costs are directly connected with the weapon and which aren't. The acquisition cost is the standard DoD price, given in well-defined terms while a weapon is in production. When we have been unable to get the desired figures, we have sometimes substituted program for acquisition costs, or vice-versa. However, we have in no case compared a past acquisition cost to a present program cost. This would be unfair since the additional R&D and other costs would make the price seem to grow more than it actually had. Thus, in the cases in which we have been unable to develop more accurate data, we have given the military the benefit of the doubt.

Specific source citations for these figures are included in the endnotes.●

AMTRAK: CELEBRATING 20 YEARS OF FAILURE

● Mr. ARMSTRONG. Mr. President, the Senate will soon adopt a resolution for the curious purpose of commemorating 20 years of subsidizing Amtrak, so I want to review whether Amtrak has provided, as one supporter hoped at its creation, "a long-awaited answer to the disappearing passenger train dilemma."

The answer should have been evident in 1970, since passenger travel by train had already been on a near continuous decline for over 70 years. The train's heyday was 1895 when trains carried 95 percent of intercity traffic. But, the invention of the automobile and Henry Ford's affordable Model T, and the Wright brothers' discovery of flight signaled the end of the line was near for the passenger train. Railroads' last profitable year for passenger traffic was 1936. By 1970, the Interstate Highway System and jet air service were well-established, and the railroads simply did not have enough people riding trains to offer passenger service any longer.

Congress, though, had high hopes that passenger trains could be revived. Congressional supporters of Amtrak explained, "the number of intercity travelers continues to grow each year * * * rail passenger service can play a valuable role in intercity transportation." They thought the objective could be accomplished with a facelift, "an alert, imaginative program, thoroughly promoted and publicized, can recreate an acceptable image for railroad passenger travel, and bring this mode of transportation back into profitable use." Another proponent thought an answer might lie in the future: "Hopefully new developments in high speed rail technology will enable Amtrak to eventually become solvent." So, Congress provided a $40 million grant and a $100 million loan with high expectations that travelers would soon again flock to the trains.

The subsequent 20 years have been disillusioning for Amtrak's well-intentioned supporters. Cars continue to be the dominant and preferred mode of travel, accounting for 80 percent of intercity travel. In 1978, air travel was deregulated and increased 68 percent over the next 10 years. Now, 17 percent of intercity travel is by airplane. Amtrak, however, continues to lag behind. It accounts for only one-third of 1 percent of intercity travel today, a slight decrease from its one-half of 1 percent share in 1970. In fact, Amtrak can hardly claim to be predominantly an intercity carrier, since about 45 percent of its passengers are commuters.

While Amtrak is a blip in the overall transportation scheme, it has also failed to find a particular market niche. Its rigid, skeletal route structure has less than 500 stops, so it is not a viable alternative for most areas. In fact, Amtrak does not even stop in South Dakota, Wyoming, Oklahoma, Maine, or Alaska. According to a GAO study, Amtrak subsidies compete with bus service, a more important transportation mode in rural areas. Even in the Northeast corridor, where Amtrak ridership is the highest, it carries less than 10 percent of the total intercity traffic among cars, planes, and trains.

Amtrak has failed as a transportation mode despite having a monopoly in passenger train service and being heavily subsidized. Over $14 billion has been spent on Amtrak subsidies since 1970. The resolution says Amtrak hopes to cover 100 percent of its operating costs by the year 2000, but this is probably just more wishful thinking. The resolution does not mention if Amtrak will ever cover its capital costs, and of course it will not. Congress, moreover, recently approved legislation to increase Amtrak's subsidies from $656 million in 1990 to $712 million in 1992. At this rate, taxpayers could be socked for another $7 billion before the end of this century.

Mr. President, trains have a nostalgic appeal, but there is no dilemma about the disappearance of the passenger train; it can't compete with the auto and airplane. There is no more likelihood that passenger trains will become a viable transportation mode today than if the Government had subsidized the steamship and stagecoach at the turn of the last century.●

THE PENSION RESTORATION ACT

● Mr. COATS. Mr. President, I am pleased to be an original cosponsor of S. 3120, the Pension Restoration Act. This bill was introduced to provide partial redress for those unfortunate workers who lost their vested pension benefits when their employers' pension plans terminated with insufficient funds prior to the enactment of the Employee Retirement Income Security Act [ERISA].

On the morning of December 9, 1963, the 11,000 employees at the Studebaker auto plant in South Bend, IN, reported to work only to be told that the company was closing its plant and moving to Canada, and they discovered suddenly that they had not only

lost their jobs, but also their pensions as well.

As a consequence of this experience, and similar disasters that befell retiring workers in other States, the Congress in 1974 passed ERISA. Prior to its enactment employers were legally obligated to pay earned pension benefits up to the limit of the pension plan's assets; if the assets were insufficient to pay the benefits when the plan was terminated, the employees were left high and dry. Under ERISA's pension insurance program, pension plan participants are guaranteed that their basic benefits will be paid by the Pension Benefit Guaranty Corporation should their plan collapse for some reason.

Today some 40 million workers and their surviving spouses are protected by the Pension Benefit Guaranty Corporation. Unfortunately some 46,000 Americans who had their pensions terminated between 1942 and 1974 and lost their vested benefits through no fault of their own were not covered under ERISA. According to the Department of Labor, some 13,000 plans terminated during those years, and 6,000 of those plans did not have sufficient funds to pay the benefits that thousands of workers had worked their lifetimes to earn.

It is a tragic irony that the very people whose losses resulted in the passage of ERISA, including those Studebaker retirees, were overlooked and were left uncompensated pursuant to that act. The Pension Restoration Act of 1990 is designed to provide some compensation for the people who were still left unprotected when ERISA was enacted. Many of these pension losers have died. In 1974 there were 115,000 living individuals who had lost vested benefits despite ERISA. Today the estimated 65,000 survivors are old and aging, living on meager resources, in many cases. Surely justice dictates that finally the Congress should rectify its mistake and provide some restitution for these remaining pre-ERISA pension losers who were overlooked 16 years ago.

Under this bill each individual pension loser would be compensated $75 a year for each year worked under a pension plan. Thus, a retiree who worked 20 years under a plan would receive $1,500 a year. A surviving spouse would receive half that amount. Payments would be made once annually beginning with the effective date of the legislation. The Pension Benefit Guaranty Corporation would administer this program, which would be paid entirely by Pension Benefit Guaranty Corporation premiums.

The estimated cost of this program would be less than $50 million in 1990 to compensate an estimated 26,674 retirees and 14,392 widows and widowers. This cost will continue to decrease each year as the number of beneficiaries decreases. No increase in Pension Benefit Guaranty Corporation premium levels will be required to meet the payments. This is a modest amount to pay compared to the significant benefits lost by these retirees.

Mr. President, I urge speedy consideration of this legislation so that those thousands of pension losers in Indiana and elsewhere will be provided some of the pension funds they earned and were promised but lost through plan termination and congressional oversight, but no fault of their own.

In conclusion, Mr. President, I wish to pay tribute to Odel Duke Newburn, who was three time president of UAW Local No. 5 when Studebaker closed its plant. It is due to the determination of this Hoosier to stir the Congress into action and his tireless efforts to help his fellow former workers at Studebaker that this bill is being proposed today.●

WE NEED TO STOP VIOLENCE AGAINST WOMEN

● Mr. SIMON. Mr. President, Senator BIDEN has introduced a bill, which I am proud to cosponsor, to combat violence against women. The bill is a comprehensive measure designed to make streets safer for women through increased penalties and grants to States and localities for training programs for police and prosecutors. In efforts to diminish violence against women in their own homes—domestic violence—the bill encourages arrests of abusing spouses and grants interstate enforcement of protective orders. Finally, the bill creates a civil rights remedy for victims of sexual assault.

When the bill comes before the committee later this week, I intend to propose an amendment calling for educational training of State and Federal judges on the issue of sexual assault. I believe such training is extremely important and necessary in order for judges to have a clear sense of the traumatic impact of sexual assault on the victim. I have spoken with the National Network for Victims of Sexual Assault, the NOW Legal Defense and Education Fund, as well as the Illinois Coalitions Against Domestic Violence and Sexual Assault, and they strongly support this measure. They believe that lack of education leads to outdated attitudes in sexual assault cases, and that judicial training is needed in order to better protect victims' rights. Additionally, this amendment is consistent with a provision in title II of Senator BIDEN's bill calling for judicial training on domestic violence.

Also is support of judicial education are the findings of a 1990 Illinois Task Force sponsored by the Chicago Bar Association, the Illinois State Bar Association, and the Women's Bar Association of Illinois. Their report documents the need for legal and judicial reform in cases involving women and again stresses the need for judicial education and training. To my knowledge, Illinois is the first State to take such a comprehensive look at gender bias. Their review and recommendations go beyond the legal system. I ask to print the executive summary in the RECORD and urge my colleagues to read it.

The executive summary follows:

EXECUTIVE SUMMARY

In 1988, the Illinois State Bar Association, Chicago Bar Association, and the Women's Bar Association of Illinois established a Task Force to study and report on gender bias in the Illinois courts. The 44-member Task Force was comprised of judges, lawyers, academics, and lay experts from throughout the State of Illinois. Its members were selected with an eye to assuring representation of each judicial circuit, both sexes, the bench, bar and lay communities, and people with different types of both criminal and civil law experience, as well as minorities and different age groups. Subdivided into a number of committees charged with investigating different substantive areas of law, the Task Force carried out its empirical research by means of public hearings, specialized roundtables, interviews, and surveys. The report which follows this Executive Summary represents the results of that research.

The Report is divided into four main areas of particular concern: (1) domestic relations, (2) criminal law, (3) civil damage awards, and (4) courtroom dynamics. One topic—domestic violence—is treated both in the chapter on domestic relations and in the chapter about criminal law, because it involves both civil and criminal remedies. Each section or sub-section contains a lengthy description of the substantive findings concerning that area of the law, followed by a summary of findings and a list of recommendations for reform. A detailed description of the history of the Task Force and the methodology which each committee used is also included in the full report. This Executive Summary describes the main findings contained in each section and also sets forth the recommendations proposed in relation to each area of the law. Preliminarily, however, the Task Force believes that the following procedural recommendations are essential to the success of any reforms which may result from this Report:

(1) The Illinois Supreme Court and the sponsoring bar associations should establish an implementation committee charged with the task of seeing that the recommendations set forth in this Report are implemented as soon as possible.

(2) If it appears desirable after review of this Report, the Illinois Supreme Court and the sponsoring bar associations should convene a "Phase II" Task Force on Gender Bias to investigate additional areas relevant to the issue of gender bias in the courts.

I. DOMESTIC RELATIONS

The investigation of gender bias in domestic relations law focused upon four issues: (1) property distribution, maintenance, and litigation expenses; (2) child support; (3) child custody and visitation; and (4) domestic violence.

Property distribution

Although the Illinois Marriage and Dissolution Act of 1977 mandates an "equitable

distribution" of property upon the dissolution of marriage, the Task Force found that the typical distribution awarded by the courts disadvantages women in a variety of ways. First, many lawyers believe that the courts ignore certain statutorily mandated factors when distributing marital property, such as each party's ability to acquire future assets, the dissipation of assets, and whether property is in lieu of maintenance. Typically, dissolution decrees instead simply divide tangible marital assets and expect that the two spouses will subsequently be independent.

This division works to the advantage of the spouse, usually the husband, who has been actively involved in the work force and to the disadvantage of homemakers, whose efforts have in fact contributed to the creation of their husbands' career assets. Moreover, wives typically request and are awarded the marital home, in order to maintain stability for the couple's children. This results in assigning the majority of the couple's liability, in the form of the mortgage, to the partner who typically earns the smallest amount of the family income. Men, on the other hand, typically retain the majority of the couple's liquid assets, such as stocks, bonds, and business assets, and are thus able to gain a fresh start after marriage with little debt and decreased expenses.

Finally, the Marriage and Dissolution Act does not effectively impose a duty upon the parties to a divorce proceeding to preserve the marital assets during the pendency of that proceeding. Surveys carried out by the Task Force lead it to believe that the courts also fail to take into consideration the dissipation of assets when distributing marital property, thus compounding the problems which the typical distribution of property creates.

Maintenance awards and litigation expenses

Awards of maintenance (formerly called alimony) have become less frequent and of shorter duration under the new Marriage and Dissolution Act. If awarded at all, support is usually limited to "rehabilitative maintenance," that is, support "for the time necessary to acquire sufficient eduction or training to enable the party to find appropriate employment." This change has resulted in serious disadvantages to older women upon the dissolution of marriages of long duration. The reality is that older women who have devoted their lives to homemaking and caretaking of children often cannot find suitable training and employment. The Task Force believes that the homemakers' contributions to their families are inappropriately undervalued, both in the distribution of marital property and in the allocation of maintenance.

Under Illinois' new modified "no-fault" divorce law, moreover, some domestic relations attorneys believe that women have lost a significant source of leverage which helped them attain more favorable settlements in the past, by simply refusing to agree to divorce. This change in bargaining position is aggravated because women typically do not have access to legal representation equal to that of their divorcing spouses. Even if a woman may be entitled to an award of attorney's fees at the end of a dissolution proceeding, courts are reportedly reluctant to award prospective fees during the pendency of that proceeding, making it difficult for some women to obtain adequate representation. Moreover, in many parts of the state, no legal services are available for domestic relations cases involving poor people.

Women's lack of access to legal representation places women at a disadvantage during settlement negotiations, when most domestic relations cases are resolved. Moreover, the fact that attorneys recover their fees earlier in a settlement may have the effect of forcing settlements on terms that are disadvantageous to women.

Finally, one further problem which the Attorney Registration and Disciplinary Commission called to the attention of the Task Force is the incidence of sexual relationships between domestic relations attorneys and their clients. The Task Force is concerned that such relationships, during the pendency of a divorce, may conflict with the attorney's fiduciary responsibility to the client, possibly prevent any reconciliation of the parties, or affect the negotiation of property rights and custody.

RECOMMENDATIONS

A. Legislature

1. As the Illinois State Bar Association has already suggested, the Marriage and Dissolution Act should be amended to provide for an automatic temporary restraining order "freezing" marital property during the pendency of dissolution proceedings and temporary support should be awarded from the proceeds of this property.

2. The Marriage and Dissolution Act should also be amended to require the court to review maintenance awards periodically to determine whether there continues to be a disparity of incomes and whether the spouse receiving maintenance can show due diligence in seeking employment and job training opportunities.

B. Judiciary

1. The courts should adopt an "investment partnership" model of marriage and its dissolution, which would place emphasis not on the equal treatment of spouses at the time of divorce but on each spouse receiving equal benefits of the marriage and thus of all the assets acquired during the period of the marriage.

2. Judges should be required to make findings for the record concerning the factors being used to determine equitable distribution of property, including career assets that take into account the future earning potential of the parties.

3. In order to reduce problems that attorneys and courts may have in placing a value on future earnings, economic formulae should be adopted incorporating principles found in computer models that analyze the long-term consequences of divorce judgments.

4. In cases involving older women who have primarily served as homemakers and caretakers of children in long-term marriages, courts should not be averse to awarding long-term maintenance when justified.

5. If a spouse does not have access to liquid marital property, judges should routinely award prospective attorney's fees early in the proceedings to guarantee adequate legal representation for both parties; and the Illinois Supreme Court should adopt a rule implementing this recommendation.

6. An amendment to the Rules of Professional Conduct should be drafted concerning sexual relationships between attorneys and their clients in pending divorce proceedings, incorporating a presumption that such relationships are inherently unethical and unprofessional.

C. Bar Associations

1. Education concerning the problems and issues raised in this report should be included in programs of continuing legal education.

D. Attorney Registration and Disciplinary Commission

1. The ARDC should use all of its fact-finding powers to investigate each complaint alleging an improper attorney-client sexual relationship, as it would any other complaint.

2. Complaints concerning attorneys-client sexual relationships should be assigned to panels including female and male members, as well as members from fields outside the domestic relations bar.

E. Law Schools

1. Discussion of the problems and issues raised in this report should be included in classes concerning legal ethics and family law.

Child support

Illinois law now provides statutory guidelines for the amount of child support to be awarded upon the dissolution of marriage. However, the Task Force heard testimony that these guidelines, which were intended to be minimum awards, are used instead as maximums; and courts appear reluctant to modify child support awards as children grow older, to adapt to their changed needs.

Moreover, the enforcement of child support awards in Illinois is inadequate to ensure that the custodial parent, usually the mother, has the resources necessary to meet the needs of the couple's children. Statistics reviewed by the Task Force show that the majority of child support awards are paid irregularly, partially, or not at all. Although the adoption of a statutory provision for automatic income withholding in Illinois has resolved enforcement problems in cases were the non-custodial parent works at a regular job, there continue to be significant problems enforcing child support awards against self-employed or irregularly employed fathers.

Witnesses testified at the Task Force public hearings that they were forced to return to court repeatedly to enforce child support awards. Moreover, courts are reluctant to impose even very brief prison sentences on delinquent parents and do not consistently impose interest on past-due child support judgments, although such interest is now statutorily mandated. Finally, the federally funded Child Support Enforcement Program, which provides free legal representation, has apparently not provided or marketed its services statewide. Although Illinois Supreme Court Rule 296, promulgated in 1988, provides for the automatic monitoring and enforcement of child support awards, this program is also not available in all counties.

RECOMMENDATIONS

A. Legislature

1. The legislature should change the law on modification of child support orders to provide cost-of-living increases every three years in certain circumstances or to set forth more clearly the standards for modification of child support orders.

2. The legislature should explore new remedies for enforcement of child support from self-employed parents, including attachment of business assets and suspension of professional licenses.

3. The legislature should fund a program of automatic child support enforcement

under Supreme Court Rule 296 for all persons for whom federal funds are not available.

4. The legislature should implement a quasi-judical process, using hearing officers working in conjuction with judges, to set and enforce child support awards, especially in larger counties.

5. The legislature should add as a remedy under the IMDMA that lost wages may be reimbursed to custodial parents who are required to take time off from work to appear in court to enforce their child support and maintenance awards.

B. Judiciary

1. Judges should receive education and training on the effectiveness of jail as a remedy in child support cases, especially where the delinquent parent is known to have the financial means to comply but repeatedly flaunts the court's orders.

2. Smaller counties should be encouraged to implement Supreme Court Rule 296, which provides for monitoring and automatic enforcement of child support awards.

3. Judges should receive education concerning the cost of quality care, food, and clothing for children.

C. Court Administration

1. The Child Support Enforcement Program, which provides free legal representation to enforce child support awards, should market its services to custodial parents throughout the state.

2. Counties adopting Supreme Court Rule 296, which provides for automatic monitoring and enforcement of child support awards, should market these services as well.

Child custody and visitation

Although the presumption that custody of children should be awarded to their mothers has been abolished by statute in Illinois, custody of children is nonetheless awarded to mothers in the vast majority of cases. This may result either from the preference of the parties or from a continuing judicial preference for maternal custody. An informal continuation of the "tender years" presumption against awarding custody of children under the age of five to the father may also place men at a disadvantage in child custody decisions. In addition, roundtable participants reported that some courts even refused to give overnight visitation rights to fathers of very young children, without considering the capacity of the individual men to care for those children. Finally, some women deny visitation inappropriately in retaliation for their ex-husbands' failure to pay child support.

The Task Force believes that the genuine contributions of each parent to caregiving should be taken into account in decisions about custody and visitation. Moreover, preference should not be given to the parent of superior economic means, thus discriminating, typically, against low-income women.

Domestic relations attorneys who testified at the Task Force roundtables believe that there is now a near-presumption in favor of joint custody in Illinois and that this presumption has become yet another weapon in litigation over property distribution and child support. Non-custodial parents sometimes threaten to seek joint or sole custody in order to reduce their financial obligations to their families or to harass an ex-spouse.

Joint custody may be appropriate in some circumstances, but only where divorced parents are able to communicate and to reach shared decisions about the child's welfare. The courts should carefully scrutinize the facts concerning joint custody in each case; and joint custody should only be awarded when both parties consent and have filed a Joint Parenting Agreement with the court, specifying each parent's rights and responsibilities for all major decisions involving the education and care of the child.

RECOMMENDATIONS

A. Legislature

1. The statute should be amended to provide that joint custody be awarded only when both parents consent.

B. Judiciary

1. Judges should receive training on problems associated with joint custody.

2. The court should carefully scrutinize the facts concerning joint custody in each case, and joint custody awarded only when the parents have filed a Joint Parenting Agreement with the court.

3. Judges should appoint trained guardians ad litem or attorneys for the child to represent the interests of the child and should order family background investigations in contested custody cases.

4. Both violations of child support orders and violations of visitation arrangements should be enforced strenuously, without the need for repeated court appearances which deter parents who cannot miss work or who must hire sitters from pursuing their rights.

5. The courts should be more sensitive to economic disparities between the parties and should correct disparities by increasing maintenance and child support rather than by awarding custody to the wealthier parent.

Domestic violence

Although the Task Force treated domestic violence primarily as an issue for the criminal justice system, a number of related problems were nonetheless mentioned in connection with domestic relations cases. Domestic violence advocates complained that some court clerks refuse to assist women filling out court forms to obtain judicial remedies in domestic violence cases, even though such assistance is statutorily mandated. Courts also frequently, though improperly grant "mutual" orders of protection protecting both parties from abuse by the other in cases where only one spouse has filed pleadings requesting an order of protection. Additionally, mediation is usually required of the parties in domestic relations cases, although it may be counter-productive in cases involving a history of domestic violence. Finally, some judges refuse to order that abusive spouses' visitation of children be subject to supervision, although visitation in such cases may provide an occasion for further abuse of either the children or the abused spouse.

RECOMMENDATIONS

A. Legislature

1. Legislation should be passed to require mediation in which the two parties meet separately and not together in cases where there has been a history of abuse, to help protect the interests of an abused spouse who may be unable to express views conflicting with those of her batterer in his presence.

B. Judiciary

1. Judges should require that visitation be supervised in cases where there has been a history of abuse and the victim requests such supervision.

2. The statute prohibiting the granting of mutual orders of protection where both parties have not filed written pleadings should be strictly enforced.

3. Judges should not require mediation in cases involving domestic violence.

C. Courtroom Administration

1. Court clerks should be directed to comply with the statutory mandate to assist domestic violence victims in filling out the forms to obtain orders of protection.

II. CRIMINAL JUSTICE

In relating to the criminal justice system, the Task Force concentrated on three areas which raise concerns about the possibility of gender bias in the Illinois courts: sexual assault, domestic violence, and criminal sentencing.

Sexual assault

Rape is a crime whose adult victims are almost invariably women. Yet victims may be reluctant to prosecute rape crime, at least in part because of the treatment they receive from the justice system. Lengthy continuances, repeated court appearances, and lack of communication with prosecutors make victims inclined to drop rather than to follow through on charges which, at best, are emotionally difficult to prosecute. In some instances, moreover, victims' names continue to be published in court opinions, potentially deterring prosecution of sexual assault cases.

In 1984, Illinois passed a new law to govern sexual assault, the Criminal Sexual Assault Act. Although this statute has demonstrably increased the number of prosecutions for rape in Illinois, significant problems remain. At least in part because of fear of the treatment which victims receive from the criminal justice system, rape remains a substantially underreported crime. When it is reported, police and prosecutors screen out large numbers of cases. Although the police are reported to take sexual assault complaints more seriously since passage of the new law, only one-half of all cases result in arrest or other closure. Moreover, prosecutors consistently fail to prosecute cases in which the victim was acquainted with or had previously had sex with the offender and are especially reluctant to prosecute cases involving spousal sexual abuse, although the new law also covers those cases.

There also appears to be a continuing suspicion of the credibility of sexual assualt victims on the part of police, prosecutors, judges, and juries. Although rape is rarely committed before eyewitnesses and is often not reported immediately, prosecutors and investigators seek corroboration, including evidence of a "prompt complaint." Judges and juries also expect more corroboration in sexual assault cases than in other cases of a similar class.

Cases involving "date" or "acquaintance rape" are particularly susceptible to dismissal for lack of corroboration, such as evidence of physical force, or because the prosecutor fails to believe the victim. In addition, evidence of the victim's past sexual activity continues to be introduced in these cases, although the "Rape Shield Statute" prohibits its introduction as to prior activity with persons other than the defendant himself. Finally, bail and sentencing appear to be more lenient in cases where the victim was aquainted with her assailant than in cases of "stranger rape."

RECOMMENDATIONS

A. Legislature

1. Additional funding should be appropriated to provide victim advocates and other support services to victims.

2. Enforcement provisions should be added to the Crime Victims' Bill of Rights.

B. Bar Associations

1. Bar associations should coordinate and provide continuing legal education courses for bar members concerning sexual assault and especially about problems of acquaintance rape.

2. Bar associations should discourage attempts to abrogate or circumvent the Rape Shield Statute.

C. Judiciary

1. Education concerning current research on sexual assault, and especially on acquaintance rape, should be included in training and educational programs for judges.

2. Pre-trial continuances in sexual assault cases should be limited, whenever possible, so that victims with work and child care responsibilities will not be deterred from prosecuting sexual assault cases.

3. The same standards should be applied in setting bail and sentencing offenders in acquaintance cases as are applied to cases in which the victim and defendant are strangers.

4. The Rape Shield Statute should be enforced consistently.

5. Judges should discourage and discipline attempts to abrogate or circumvent the Rape Shield Statute.

6. The Illinois Supreme Court should promulgate a rule prohibiting the publication of the names or identities of victims in judicial opinions concerning sexual assault.

D. Law Enforcement (Police, Prosecutors)

1. Education concerning sexual assault, acquaintance rape, and rape trauma syndrome should be mandatory for both police and prosecutors.

2. Investigative techniques used by police and prosecutors should be improved, so as to include victim-sensitive interviewing in sexual assault cases.

3. Police and prosecutors should comply more consistently with the mandates of the Crime Victims' Bill of Rights.

4. Specialized units for the prosecution of sexual assault cases should be established in all jurisdictions, to promote vertical handling of sexual assault cases.

5. Victims of sexual assault by an acquaintance should be treated with the same seriousness as those who are sexually assaulted by a stranger.

6. Statistics should be maintained concerning charging decisions in sexual assault cases, in order to improve enforcement of the sexual assault laws.

E. Court Administration

1. A safe waiting place should be provided for victims of sexual assault during court proceedings, so that they do not need to wait in the same area as their assailants.

2. The publication of victims' names and identifying information in published case opinions should be prohibited.

3. Resource information on the dynamics of sexual assault and educational programs which incorporate current research on sexual assault should be provided to the judiciary.

4. Statistics should be maintained concerning prosecution and conviction rates in sexual assault cases, in order to improve enforcement of the sexual assault laws.

F. Law Schools

1. Courses dealing with current sexual assault laws and on understanding the dynamics of sexual assault should be provided.

Domestic violence

Domestic violence against women is a widespread problem in Illinois, affecting an estimated 253,000 women each year. In 1982, Illinois passed a new Domestic Violence Act, which provides, among other things, for the issuance of an Order of Protection against a domestic violence offender and for criminal sanctions. However, public acceptance of the intent to effectively criminalize acts of domestic violence has been slow, and there remain pervasive problems in the attitudes of those charged with enforcement of the statute.

Although most law enforcement personnel in Illinois now demonstrate a knowledge of the rights of domestic violence victims and concern for those victims, there are still some police who do not regard domestic violence as a serious crime and who enforce the law selectively. Moreover, although a majority of prosecutors are willing to prosecute domestic violence cases, a significant minority of prosecutors still believe that these cases belong in civil court and are very selective about which cases they will prosecute. Domestic violence cases are rarely charged as felonies.

Like sexual assault, domestic violence is an area in which victims are likely to drop charges, both for emotional reasons and for reasons related to court procedure, such as the length of proceedings and number of court appearances. The provision of support services to victims seems to make a difference; but these services are not consistently available throughout the state.

The majority of Illinois judges treat victims of domestic violence with respect and sensitivity and are knowledgeable about their rights, although isolated cases of judicial insensitivity were reported to the Task Force. However, judges rarely sentence domestic violence offenders to time in prison. Instead, the penalty imposed in the majority of cases is simply to require counseling.

Finally, the situation of the battered woman who kills her abusive mate presents special problems for the criminal system. Studies show that women who use deadly force do so only after they have become convinced that they will themselves be killed. However, such women may have a difficult time meeting the legal standard for self-defense, which is based upon an assumption that the antagonists are of equal strength and that the defender strikes back at the moment of being attacked. Thus, battered women convicted of killing their abusers have sometimes received disproportionately severe sentences, which have been relieved only by the exercise of executive clemency.

RECOMMENDATIONS

A. Legislature

1. Additional funds should be appropriated for victim advocate services to provide adequate court support to victims.

2. The privilege protecting the confidential communications between domestic violence victims and their advocate-counselors should be strengthened.

3. The statutory penalty for repeated convictions of domestic violence should be increased.

B. Police

1. Pro-arrest policies should be established for violations of orders of protection, misdemeanors, and felonies in domestic violence cases.

2. Written guidelines should be developed for implementation of the Illinois Domestic Violence Act and Domestic Battery Statute.

3. Specific training guidelines should be established concerning the dynamics of domestic violence and the effect of immediate criminal justice intervention.

4. The proivision of the Illinois Domestic Violence Act which requires notification to victims of their rights under the Act should be strictly enforced.

5. Domestic violence reports should be tracked accurately, in order to improve enforcement of the law.

C. Prosecutors

1. Pro-prosecution policies should be established for domestic violence cases.

2. Either vertical prosecution or a special unit for handling domestic violence cases should be established in all jurisdictions.

3. Specific training guidelines should be established concerning the dynamics of domestic violence and the effect of immediate criminal justice intervention.

4. Mandatory educational programs should be provided to all prosecutors concerning the battered woman syndrome.

5. Dismissals or failures to prosecute domestic violence cases should be tracked, in order to improve enforcement of the law.

D. Defense Attorneys

1. Defense attorneys should educate themselves concerning the battered woman syndrome and the cycle of domestic violence and learn to recognize when domestic violence is a mitigating factor for battered women charged with committing violence against their abusers.

2. Defense attorneys should become knowledgeable about support services for battered women.

E. Judiciary and Court Administration

1. Specific training guidelines should be established about the dynamics of domestic violence and the effect of immediate criminal justice intervention.

2. Safe waiting areas should be set up in the courts to provide protection to domestic violence victims awaiting court hearings.

3. Judges should more frequently mandate counseling for batterers.

4. Judges hearing domestic violence cases should consider the appropriateness of ordering plenary relief, including decisions on custody and finances, in one forum, in order to reduce the number of times a domestic violence victim must appear at court hearings.

5. Where necessary, judges hearing domestic violence cases should issue orders requiring domestic violence defendants to vacate the domestic premises.

6. Judges should consider the appropriateness of imposing sentences involving imprisonment for domestic violence offenders and for violations of orders of protection.

7. The probation department should be required to examine issues of domestic violence in presentence reports.

8. Members of the judiciary should recognize the appropriateness of admitting evidence concerning the battered woman syndrome, where relevant, in cases where a battered woman is on trial for killing her abusive mate.

F. Bar Associations

1. Bar associations should coordinate and provide legal education on the dynamics of domestic violence, the battered woman syndrome, and the use of expert testimony in domestic violence cases.

G. Law Schools

1. Education concerning the dynamics of domestic violence and its effect on the criminal and civil court systems should be included in the curriculum.

Criminal sentencing

Participants in the criminal justice system believe that gender enters into decisions concerning bail and sentencing in Illinois. However, there is disagreement concerning whether the differential treatment works to the benefit or detriment of women. Prosecutors and defense attorneys hold the majority perception which is that female offenders receive lower bail and shorter sentences than male offenders for similar crimes, without regard to their responsibilities for child care. However, groups and individuals who work on a regular basis with convicted and incarcerated female offenders, including court and correctional personnel, hold a minority view. These groups believe that female offenders are treated more harshly than males or, at a minimum, are not given appropriate consideration for their familial responsibilities. Statistics indicate that this is a plausible hypothesis. However, there is no reliable data base in Illinois to prove or disprove either of the conflicting perceptions.

RECOMMENDATIONS

A. The Judiciary

1. Education should be provided for judges in the area of sentencing standards and alternatives, in order to encourage sentences based upon appropriate statutory factors in aggravation and mitigation, and not upon gender alone.

2. The Supreme Court should convene a task force to examine the treatment of juvenile offenders in the juvenile and criminal justice systems.

B. Law Enforcement Personnel

1. Charging procedures and decisions should be reviewed, to ensure that gender alone is not the dispositive factor in enforcing the law.

C. Court Administration

1. A uniform reporting system should be developed and implemented for bail, conviction and sentencing data, which includes data concerning gender, prior criminal history, familial responsibilities, and other significant factors.

III. CIVIL DAMAGE AWARDS

A number of gender-based assumptions appear to enter into the process by which damage awards are determined in civil cases (*e.g.*, personal injury cases) in Illinois. First, both judges and juries are likely to assume that women should receive higher damages for injuries affecting physical attractiveness than men and that men should receive higher damages for injuries affecting physical strength and capacity for manual labor than women. These assumptions, although gender-based, may in fact reflect disparate burdens and expectations which society is perceived to impose upon women and men.

Second, because of assumptions about women's earning capacity and their tendency to leave the work force, at least temporarily, in order to care for children, the typical female plaintiff is likely to receive a smaller award for loss of future income than is a male plaintiff. The application of this assumption to the individual case may produce a gender-biased award if it does not reflect the facts pertinent to the individual female plaintiff. Such assumptions are also gender-biased because they ignore women's non-market services as homemakers in the calculation of lost income.

Third, trial attorneys appear to make a number of gender-based assumptions which can affect the choice and presentation of witnesses, jury selection, and the ultimate award of damages. Some personal injury lawyers assume, for example, that women are more credible witnesses than men with respect to testimony about pain, both their own and that of others. Female jurors are perceived to be jealous of female attorneys who are too "aggressive" and of female attorneys, litigants, and witnesses who are "too attractive." The gender of an expert witness may also enter into the consideration of whether she should be selected to testify at trial, particularly if the litigation "team" includes other females. These assumptions may impact upon the number of female attorneys and experts selected to participate in the trial of personal injury cases.

Finally, the Illinois Pattern Jury Instructions, which are used in almost all civil cases, consistently use male pronouns to describe parties, witnesses, and litigants. Although attorneys may redraft the instructions to reflect the appropriate genders in a particular case, the exclusive use of the male pronoun represents an institutional use of a gender term which may reinforce and perpetuate gender-biased assumptions.

RECOMMENDATIONS

A. The Judiciary

1. The Illinois Supreme Court Committee on Jury Instructions in Civil Cases should revise the pattern jury instructions for use in civil cases to make them gender-neutral.

2. The Illinois Supreme Court Committee on Jury Instructions in Civil Cases should develop a jury instruction which specifies factors to consider to recognize the economic value of a spouse's work in the family.

3. Judges should manage the environment in their respective courtrooms in such a way as not to exhibit or to tolerate gender-biased attitudes in the conduct of a trial.

B. Court Administration

1. The Administrative Officer of the Courts should undertake a review of the materials used for juror education, both videos and hand-outs, to determine whether these materials should include admonitions that jurors should disregard race and gender in reaching their conclusions.

C. Bar Associations

1. Bar associations should hold seminars for lawyers, arbitrators, and judges which address the economic status of women as workers, mothers and wives.

IV. COURTROOM DYNAMICS

The proportion of the Illinois attorney population which is female has increased from 8% in 1980 to 20% in 1989; and women make up more than 40% of the typical law school student body. However, women continue to be underrepresented in the field of litigation and to have less diverse caseloads than men. This may be the result of the fact that women tend more often than men to practice in institutional settings—government, private industry, and legal aid or public defender work—where litigation is less frequent or the case load less varied. Possibly as a result of this imbalance, women make up only 8% of the judiciary in Illinois, a fact which many attorneys and litigants decry.

Although there are indications that overt discrimination against women in the courtroom is diminishing, there is also evidence that more subtle forms of bias persist, affecting women as lawyers, as litigants, and as witnesses. One-third of the female attorneys responding to a survey which the American Bar Foundation designed and administered reported that they had personally experienced some form of derogatory behavior or remarks which judges directed at them within the preceding 12 months. They reported instances of (1) judges' use of informal address or terms of endearment to female counsel, (2) judges' comments on female counsel's dress or physical appearance, (3) less attentiveness to female counsel's statements than to those of male counsel, (4) judicial comments about the proper role of women, and (5) exclusion of female counsel from camaraderie between judges and male counsel. Survey respondents agreed that incidents of judicial bias placed female attorneys at a disadvantage and had an effect on the interests of the parties. However, in the overwhelming majority of cases, the female attorney did not object to the offending conduct, for fear of an adverse effect on her client's interests.

Incidents of derogatory of demeaning behavior on the part of male attorneys toward female attorneys are far more common than such behavior on the part of judges. Fifty-seven percent of the female attorneys responding to the survey reported that they had experienced derogatory treatment by male litigators during the preceding 12 months. They mentioned, for example, forms of address and remarks that denigrated the professional status of female attorneys, as well as conduct which was simply dismissive of female counsel, such as refusing to acknowledge her presence, interrupting her presentation, or monopolizing the physical area in front of the bench. When female attorney's objected and the judge was present, judges were reported to have intervened in the majority of cases. Much of the derogatory behavior directed at female attorney's by male attorneys, however, took place out of the presence of the judge.

Female litigants and witnesses were also reported to have been subjected to derogatory or demeaning treatment which would not have been directed at their male counterparts. Interestingly, female counsel are apparently even more likely than male counsel to use informal forms of address to litigants and witnesses. Male counsel, however, were reported to be more likely to exhibit inattentiveness to female litigants and witnesses, to note their physical appearance, and to make remarks about their appropriate social roles.

Finally, men and women in the legal profession appear to have very different perceptions of gender bias. There are marked disparities in the percentages of men and women attorneys who report that they have observed differential or biased behavior toward women. One likely explanation is that men simply fail to notice instances of derogatory treatment when they occur, because they are not themselves the victims or because they are not sensitive to bias in its more subtle forms. Men also may interpret certain behavior, such as overly solicitous treatment of female attorneys by judges, as helpful to women, while female attorneys experience it as derogatory.

Nonetheless, the Task Force study reveals that a significant portion of the female lawyer population in Illinois believes that the professional community they have chosen to join has not fully accepted them. Moreover, any differential treatment which women do receive in the Illinois courts is a

cause for serious concern, not only because it may potentially affect the outcome of litigation, but also because it may undermine public confidence in the fairness and impartiality of our institutions of justice.

RECOMMENDATIONS

A. The Judiciary

1. The Illinois Supreme Court should direct a policy statement to all judges in Illinois, declaring that all forms of bias, including gender bias, have no place in the courts of Illinois.

2. The Illinois Supreme Court should mandate that training directed to issues of gender-biased conduct by both judges and attorneys be a component of judicial education programs.

3. Judges, who are responsible for the management of their courtrooms, are also responsible for ensuring that gender bias play no role in the courts.

4. As part of their responsibility to ensure that attorneys and litigants are treated fairly in the courts of Illinois, the presiding and chief judges in each district should take a leading role in preventing gender bias from playing any role in the courtrooms within their jurisdictions.

5. The presiding and chief judges should be responsible for becoming aware of gender bias issues in their jurisdictions and should take appropriate action when they become aware of a problem.

6. All judges should be models of unbiased behavior in their own conduct at the bench, at sidebar, and in their chambers.

7. Judges should take care to intervene whenever they see an instance of gender bias by an attorney.

8. Judges should exercise whatever control they have over non-judicial court personnel, to ensure that gender bias does not enter into those employees' conduct toward female attorneys or litigants.

B. Bar Associations

1. The Illinois State Bar Association, Chicago Bar Association, and Women's Bar Association, in conjunction with the Illinois Supreme Court, should establish an ongoing committee composed of representatives of each organization, a judge designated by the Supreme Court, and a law school representative to oversee implementation of the recommendations contained in the Task Force Report.

2. The bar associations should issue a policy statement that gender-biased conduct by attorneys is unacceptable and unprofessional behavior.

3. The bar associations should highlight the Task Force Report and recommendations during 1990-91

4. The bar associations should include attention to issues of gender bias as a component part of all continuing legal education courses.

5. The bar associations should also provide educational activities which focus on values and social policy, including the problem of gender bias in courtroom interactions and in law firms.

6. The bar associations should encourage and assist women and members of minority groups to seek judicial appointments and election.

7. Bar association committees charged with evaluating candidates for judicial office should be sensitive to issues of gender bias.

8. Bar asociations which interview judicial candidates in the course of evaluating them should probe those candidates' understanding of and sensitivity to issues of gender bias.

C. Court Administration

1. In selecting personnel, setting personnel policies, and exercising control over nonjudicial court personnel, the Administrative Office of the Illinois Courts should pay attention to issues of gender bias.

2. The clerk's offices in each district should review and revise the court forms used in their respective areas, in order to eliminate the use of gender-biased language in them.

D. Law Schools

1. Issues of gender bias should be included in law school curricula, not only in legal ethics courses but in other courses as well.

2. Law school professors and deans should be especially sensitive to issues of gender bias and serve as role models for the profession in this respect.

E. Courtwatcher Groups

1. Courtwatcher groups should educate themselves about gender bias issues and should report incidents of gender bias which their members observe to the courts.●

ENVIRONMENTAL POLICY MUST BE GUIDED BY SCIENCE

● Mr. MOYNIHAN. Mr. President, if there has been one point that I have tried to make as a member of the Committee on Environment and Public Works, it is this: environmental policy must be guided by science.

Recent accounts would indicate that the process of making environmental policy may yet be moving in this direction. This past Wednesday, September 26, 1990, Environmental Protection Agency Administrator William Reilly delivered an address before the National Press Club on the occasion of the release of a report by the EPA Science Advisory Board entitled, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection."

What the report tells us, and what Administrator Reilly emphasized, is most significant. Put simply, the Advisory Board recommends that we rank our environmental problems on the basis of risk, and regulate accordingly. Risk to be determined by rigorous, hard, sound science.

I do feel that the very suggestion of such a change in policy is worthy of my colleagues' consideration and attention. To that end, I ask unanimous consent that a copy of Administrator Reilly's speech and related Science article be inserted in their entirety into the RECORD.

The material follows:

[From Science, Aug. 10, 1990]

COUNTING ON SCIENCE AT EPA

(By Leslie Roberts)

William Reilly, the Administrator of the Environmental Protection Agency, and his top advisers are plotting a quite revolution. They have embarked on a process that could fundamentally change the way EPA does business; an attempt to focus the agency's resources on the environmental problems that pose the biggest risks rather than those that have attracted the most political attention. "It's an effort to inject science more prominently into the policy process," says Hank Habicht, deputy administrator of the agency and Reilly's right-hand man.

That may not sound revolutionary, but Reilly is trying to reverse nearly 20 years of piecemeal environmental policy-making. Congress, reflecting public concerns, has written numerous laws instructing EPA to deal with individual environmental problems—hazardous waste one year, toxic substances or pesticides another, and medical wastes still another. The results: EPA's budget and priorities have been shaped more by "what the last phone call from Capitol Hill or the last public opinion poll had to say" than by a scientific assessment of risk, says Frederick Allen of EPA's office of policy analysis.

Now, Reilly has asked his Scientific Advisory Board to tell him which problems pose the biggest environmental or public health threats. The board's analysis, a draft of which has been obtained by Science, reveals that the environmental problems that dominate public concerns—and EPA's budget—are often not those that Reilly's scientific advisers deem the biggest threats (see table below). Radon and climate change, for example, are at the top of the list for EPA but near the bottom in the public's view.

But turning the agency around would be no mean feat, and even within EPA, opinion is divided on whether Reilly can pull it off. Without question, he starts with several strikes against him. For one thing, the EPA administrator has very little discretion in allocating funds: most of the agency's budget is needed to just to implement the major environmental laws, like Superfund, already on the books. And for another, Reilly faces inertia from within EPA, a bureaucracy that has a vested interest in maintaining the status quo. And then there is the public, which EPA is beholden to, whether or not it agrees with the latest scientific study. Reilly's new effort is "laudable," says Richard Morgenstern, director of the office of policy analysis and an old hand at EPA. "I am bullish on it. But I wouldn't bet the store on it."

But Terry Davies, assistant administrator for policy, planning and evaluation and one of the architects of the new plan, voices no doubts. "We're already doing it," he exclaims. "We are changing the way the agency thinks." But not even the optimists expert major shifts overnight. Deputy adminstrator Habicht, for instance, talks about "a rapid evolutionary change, not a revolutionary one," but he is convinced that it will be a different agency—if they can pull it off.

The new effort actually had its origins before Reilly came to EPA, in a much discussed 1987 report, Unfinished Business. In that time, EPA staff tried, for the first time, to take a broad look at all the environmental problems the agency deals with and figure out which pose the greatest risk to human health and the environment. Risk ranking, per se, was nothing new—people often ranked one air pollutant against another, for example. And EPA had even attempted to rank the cancer risks within small geographic areas, like Philadelphia and Silicon Valley. But this was different: it was an attempt to look at toxic air pollutants versus pesticides versus global warming.

The task proved to be a methodological nightmare, given the paltry data, uncertain techniques, and value-laden questions such as how to rank loss of wetlands against, say,

visibility degradation. But Morgenstern, who directed the study, and 75 senior staff plunged in nonetheless using whatever data they could muster and falling back on professional judgment when they couldn't. They ended up with a list of 31 problems, essentially in rank order. To their credit, they never pretended scientific rigor; they never claimed, for instance, that problem number 2 was definitely worse than problem 3, but said that it was certainly worse than 13, and 13 in turn was worse than 26.

Their list showed that the old assumptions were wrong. Many of the things that the public was most concerned about—and that EPA was devoting vast resources to—like hazardous waste and underground storage tanks, posed relatively small risks, while the biggest problems, like radon and climate change, were being virtually ignored. In 1987 the agency was spending several billion dollars for waste cleanup, for example, as opposed to several million for indoor air pollution and climate change.

"*Unfinished Business* revolutionized how people thought," says Jonathan Lash, a former environmental activist with the Natural Resources Defense Council who is now the secretary of natural resources in Vermont.

But while *Unfinished Business* may have changed thinking, it didn't change practice much at EPA, mostly because "you don't turn a tanker on a dime," says Morgenstern. Its impact was also limited by the fact that many in the agency saw the study as an "unscientific" first cut—not the kind of hard analysis on which to force a change in environmental policy.

But the study did influence Reilly. Soon after he was appointed but before he was confirmed as EPA administrator, Reilly was sitting around the World Wildlife Fund/Conservation Foundation headquarters with his colleagues, including Terry Davies and Dan Beardsley, a deputy assistant administrator for policy at EPA who was then on loan to the conservation group, talking about what he should do at EPA, and how. All were frustrated with the "chemical of the month" phenomenon and the sense that EPA was not spending its money as wisely as it could, recalls Davies. They wanted to find a way to focus the agency's resources where they would get the biggest payoff—which means, as Davies says, factoring in not only how risky a problem is but how feasible and costly the various "fixes" are.

They decided upon a two-part strategy: take another look at *Unfinished Business* and the whole issue of comparative risk; and at the same time, get the senior managers at EPA to start thinking about what actions would have the biggest payoff in terms of reducing the most significant problems.

Reilly wasted little time. Soon after he arrived at EPA he asked the agency's Scientific Advisory Board (SAB) to essentially peer review *Unfinished Business*—to go over the data again, see whether they agreed with the methodology and rankings, and, if not, to come up with their own. The board set up a committee of 45 experts, mainly scientists but a few people from state government as well, like Vermont's Johathan Lash and Fred Hansen, director of Oregon's Department of Environmental Quality, to keep the effort focused on political reality. Lash and Raymond Loehr, an environmental engineer at the University of Texas, Austin, cochair the committee.

That committee, in turn, divided itself into three subcommittees: one headed by William Cooper, an ecologist at Michigan State University, to look at ecological, economic, and aesthetic effects; another, headed by Arthur Upton, director of the Institute for Environmental Medicine at New York University Medical Center, to look at health risks; and a third, chaired by Alvin Alm, director and senior vice president of Science Applications International and a former deputy administrator of EPA under William Ruckelshaus, to look at strategies for reducing the major risks.

The SAB committee spent more than a year sifting through studies, all the while bemoaning the scanty data and uncertain analytical techniques, which make accurately characterizing a risk, much less ranking it against another, a tenuous business at best. Though they applauded Unfinished Business for its pioneering work, the committee had lots of problems with it, from the fact that the EPA staff had divided up the universe into problem areas that essentially reflect the agency's existing programs—which "makes no damn scientific sense," says Cooper—to some of its conclusions, which they call "provisional."

But for all their complaints, the SAB committee concluded that Unfinished Business was not that far off in its conclusions. Most of the "baddies" identified in the report—like climate change, stratospheric ozone depletion, air pollution, and radon—still looked bad. The earlier group had, however, overlooked a couple of big ones, habitat destruction and species extinction, which the SAB committee added. And once again, the things the public cares the most about, like hazardous waste, ended up in the middle or at the bottom of the heap.

Not everyone in the group, however, was willing to follow their predesesors out onto a scientific limb and actually rank the problems. Cooper's ecological effects group was perfectly willing to rank them, but Upton's health effects group wasn't, which led to some tussles on the committee. In the end, they agreed to simply list the 11 problems that everyone agreed were high risk—with the caveat that this is not an inclusive list.

Some of these problems, like the loss of biodiversity, do not fit handily into EPA's statutory mandate, but the committee urged EPA to exert leadership anyway. The committee also urged EPA to give greater weight to ecological risks, which they say have been given short shrift while EPA has concentrated on combating pollutants that pose a threat to public health. And perhaps most important, in terms of the agency's overall direction, the SAB committee gave its scientific seal of approval to comparative risk assessment, flawed as it is, as the best way to set priorities. They recommended that EPA set up a permanent process for comparing risks and then make its policy and budgetary decisions, as much as possible, on the basis of those risks. And they said, EPA should move beyond the conventional "end-of-the-pipe" approach and use alternatives, such as pollution prevention and market incentives.

The committee's final report will go to Reilly in late September. At this stage, it is not at all clear how the public and the environmental community will receive it because in the Reagan era, at least, "setting priorities was a euphemism for cutting," says Johathan Lash. "I don't see that happening here," he adds.

But Reilly and his aides have already embraced the report; in fact, they are using it in shaping the agency's 1992 budget. Their problem, of course, is that 80% of the budget is essentially cast in stone, estimates Dan Beardsley of the policy office. EPA must spend these dollars implementing the laws, paying salaries and rent, and so on. The administrator technically has discretion over perhaps 15% of the budget, but in reality, that too is sacrosanct. "You would be out of your political mind to exercise it," says Beardsley, since Congress has clearly indicated, if not insisted on, how that money ought to be spent.

That leaves only 5% of the budget that is truly flexible. While working to wrest more discretion and more flexibility from Congress, Reilly's aides are concentrating on that 5%. Last November, Reilly and Habicht asked the heads of the various programs to submit 4-year plans, describing where they want to go and how they are going to get there. The guiding principle, they were told, should be risk reduction—and not, say, how to meet the latest court-ordered deadline. In identifying the big risks, the program heads were to take direction first from Unfinished Business, and then, when it became available, the SAB report.

By all accounts, the first round "engendered grave suspicions," as Don Barnes, director of the SAB, puts it. "Any time a program is challenged, people wonder if the real goal is to take money away," he says. The plan did cause some resentment, concedes Habicht. But after some initial grumbling most, if not all, have come around.

But if this new thinking is really going to make a difference—if Reilly is really to get the greater flexibility and discretion he wants—then he and his aides will have to change the culture not only at EPA but in Congress and the Office of Management and Budget. Proponents of the effort point to some encouraging signs from Congress, such as rising budgets for global climate change and radon, while funding for hazardous waste has remained relatively steady.

"It is a big agenda, but you have to start somewhere," says Habicht. "We are planting seeds, most of which won't bear fruit until after we have left."

EPA'S TOP 11 (NOT IN RANK ORDER)

Ecological Risks: Global climate change; Stratospheric ozone depletion; Habitat alteration; Species extinction and biodiversity loss.

Health Risks: Criteria air pollutants (e.g. smog); Toxic air pollutants (e.g. benzene); Radon; Indoor air pollution; Drinking water contamination; Occupational exposure to chemicals; Application of pesticides; Stratospheric ozone depletion.

Scientists and the public draw different conclusions about the seriousness of various environmental problems. Above: the worst environmental problems, as identified by EPA's Scientific Advisory Board. Right: the public's top concerns, as reflected in a March 1990 Roper Poll. (Figures in parentheses are the percentages that rated each problem "very serious;" highlighted items also appear on EPA's list.)

PUBLIC CONCERNS (IN RANK ORDER)

1. Active hazardous waste sites (67%)
2. Abandoned hazardous waste sites (65%)
3. Water pollution from industrial wastes (63%)
4. Occupational exposure to toxic chemicals (63%)
5. Oil spills (60%)
6. Destruction of the ozone layer (60%)
7. Nuclear power plant accidents (60%)
8. Industrial accidents releasing pollutants (58%)
9. Radiation from radioactive wastes (58%)

10. Air pollution from factories (56%)
11. Leaking underground storage tanks (55%)
12. Coastal water contamination (54%)
13. Solid waste and litter (53%)
14. Pesticides risks to farm workers (52%)
15. Water pollution from agricultural runoff (51%)
16. Water pollution from sewage plants (50%)
17. Air pollution from vehicles (50%)
18. Pesticide residues in foods (49%)
19. Greenhouse effect (48%)
20. Drinking water contamination (46%)
21. Destruction of wetlands (42%)
22. Acid rain (40%)
23. Water pollution from city runoff (35%)
24. Nonhazardous waste sites (31%)
25. Biotechnology (30%)
26. Indoor air pollution (22%)
27. Radiation from x-rays (21%)
28. Radon in homes (17%)
29. Radiation from microwave ovens (13%)

RANKING THE RISKS PROVES CONTENTIOUS

If the deliberations of EPA's Scientific Advisory Board committee are any indication, then ranking environmental risks, as William Reilly is proposing to do, will not be easy. Indeed, the committee members almost came to academic blows over just how far they were willing to go on admittedly squishy data. The scientists fell out basically along subcommittee lines, with the ecological group taking a bolder or more foolhardy stance, depending on your perspective. But this says as much, if not more, about the personalties of the two subcommittee chairmen as it does about the nature of the problems they were wrestling with.

William Cooper, an ecologist at Michigan State who headed the subcommittee looking into ecological effects, dove right in. His group discarded the methodology of the earlier report, Unfinished Business, as unscientific and divided up the universe in a new way, and then promptly ranked the problems. His group came up with a complex set of matrices for evaluating risk, but the bottom line, says Cooper, is that problems are worse if they affect a broad area and have a long "time horizon"—in Cooper's words, a measure of how long it takes, once you shut off the stress, for the ecosystem to recover. According to their new scheme, global climate change and stratospheric ozone depletion came out way on top, as they did in Unfinished Business, and so did two other problems the earlier biodiversity toxics, toxics in surface water, and pesticides and herbicides.

While Cooper's group bulldozed through the uncertainties, a subcommittee on health effects, headed by Arthur Upton of the Institute for Environmental Medicine at New York Univesity Medical Center, got bogged down early on in the problems of missing data and inconsistent assumptions. The upshot was they declined to rank anything. "It was not scientifically feasible. It was more than a committee of scientists could do on a part-time basis over a few months," says Upton, especially since they were given the unenviable task of somehow combining cancer and noncancer risks. Instead, they laid out in great detail how one would go about ranking risks in a scientiically defensible way, if one had the time and money to do so. And central to that, they say, is separating out individual agents, like lead, instead of lumping it in with other "criteria air pollutants."

Their cautious stance was immensely frustrating to some committee members, like Jonathan Lash, secretary of natural resources in Vermont, and Fred Hansen of Oregon's Department of Environmental Quality, who pointed out that EPA and State agencies do not have the luxury of waiting for the definitive study but have to make decisions now. But Upton sticks to his guns. "In many cases, we simply don't have the data, either on human exposure to various agents or their toxicity." Upton recently chaired the National Academy of Sciences report, known as BIER V, which wrestled over the effects of ionizing radiation. "When you turn to chemicals, the information is even more incomplete," says Upton. "Unless one gets more data, these assessments will remain highly uncertain. Sure, one can rank risks, but the confidence one has in the rankings will not be great." And though Upton thinks comparative risk assessment is a good tool for setting priorities, he cautions that "you can carry it to absurd extremes."

The committee reached a compromise of sorts, with Upton's group identifying seven problems that would rank high by almost any reckoning: criteria air pollutants (for example, smog), toxic air pollutants (for example, benzene), radon, other indoor air pollutants, drinking water, worker exposure to chemicals, and worker application of pesticides. And though the data were "less robust," they threw in stratosphereic ozone depletion as well, because it looms so large compared with other problems. For all of these high-risk problems, the common denominator was direct exposure, says Upton, not something passed up through the food chain.

Upton cautions that this is not the final word; other problems—such as pesticide residues in food or exposure to consumer products, which were described as high risk in the earlier report—might also rank high if more data were available. But until they are, Upton's committee has "no problem" with Reilly giving extra attention to the seven they have identified.[S02OC0-M1]{S14404}dentified.

AIMING BEFORE WE SHOOT: THE "QUIET REVOLUTION" IN ENVIRONMENTAL POLICY

(Address by William K. Reilly, Administrator, U.S. Environmental Protection Agency)

The Bush Administration is now 20 months old. In two months the Environmental Protection Agency will be 20 years old. My message today is relevant to both milestones.

A year ago I spoke here at the National Press Club. Now, almost midway through President Bush's first term, I propose to take stock of where we are.

I am also here today to share a proposal for a way to begin charting a new course for environmental policy. This new course is suggested by a report that I am releasing today, a report by EPA's Science Advisory Board. In drawing attention to this report I want to stimulate a broad national debate on a fundamentally important question: How can our society, or any similarly developed country, most effectively use its resources to achieve the greatest possible benefits to human health and to the planet that sustains us? The answers to the environmental policy questions we pose today will determine just how green the next decade will be.

KEEPING OUR PROMISES: A REPORT CARD

First, I want to ask you to go back in time a year and a half or so ago. You remember where environmental policy was then.

Clean air legislation had been stalemated in Congress for ten years. Now it is on the point of passage, and I sincerely hope that the Congress will soon send the President a cost-effective clean air bill he can sign.

Acid rain was on the research agenda, but no President had ever proposed to do anything about it. Now Congress is close to approving a ten-million-ton reduction of sulfur dioxide, reducing by half the acid rain precursors, and doing so through a highly innovative and cost-effective new emissions trading system that will allow government to set the goals, and leave utility companies and their plant managers to choose the cheapest ways to achieve them.

Toxic air emissions would come down 70 to 90 percent if the Congress passed the President's air toxics initiative.

These proposals came from President Bush. He broke the stalemate.

President Bush has for nearly ten years been a prophetic and pioneering voice for clean fuels. After years in which we ignored the contribution of fuels to air pollution, the President proposed a new thrust, of requiring clean fuels in our most polluted cities. The debate has been fierce—clean fuels do represent a departure from past policies—but his proposal would significantly reduce air pollution in our cities, and also reduce this nation's dependence on foreign oil imports.

We learned from the great Alar/apple controversy and proposed sweeping new food safety reforms, including measures to reduce by half the time it takes to cancel a bad pesticide. I've said before that this nation suspends trading in a bad stock far faster than it stops sales of a bad chemical. The President proposed legislation to address this defect in our food safety laws, and this Congress should act to achieve this long-overdue reform of our pesticide laws.

We proposed to make it unlawful to ship hazardous waste to any nation with which we do not have an agreement that reassures us the waste will be safely disposed of. And we signed the Basel Convention committing the United States to that policy.

We've proposed a 12 percent increase in the crucial operating fund for EPA, added almost 2,000 more personnel bringing us close to 17,000, and begun to increase by 500 the number of staff working on Superfund enforcement.

I've set a new "enforcement first" priority for Superfund and it's no coincidence that last year we issued more administrative cleanup orders and entered into more settlements for responsible party action than in any previous year. And that pace only quickened further in 1990. Through the third quarter of this fiscal year, we issued 47 percent more emergency administrative cleanup orders than in the same period two years ago, and 16 percent more than in 1989. Civil referrals to the Department of Justice for court action for the same period were also up sharply—71 percent higher than two years ago, and 10 percent higher than last year.

We've made a record steady, far-reaching regulatory decisions, some of which had been pending for ten years: We moved to phase out asbestos use, significantly reduced exposure to benzene, proposed cancelling most food crop uses of the pesticide EBDC, set regulations to reduce the volatility of gasoline, required removal of sulfur from diesel fuel, proposed a rule to recapture evaporation from car engines, and proposed another regulation to make recycling

and source separation a condition of approving new incinerators.

Those are a few of our domestic initiatives. Add to them the President's proposal to plant a billion trees a year for the next ten years and to fund the Land and Water Conservation Fund, zero-budgeted in Administration proposals for years, at $250 million. Then there's the delay in drilling on sensitive offshore oil leases in California and Florida, foregoing a half billion dollars in revenues, in order to ensure a full measure of protection for the environment.

A major thrust of our foreign policy has been to give full expression to the nation's environmental priority. We have accordingly established a new Assistant Administrator for International Activities at EPA. At Secretary of State Baker's invitation, EPA is now part of the annual binational meeting with Mexico and we are working on border issues, proposing to fund construction of a new treatment plant for Tijuana, and advising on Mexico City's air pollution.

In July, I began in Ottawa on the President's behalf the process which will culminate in a new accord with Canada on acid rain and other air pollutants. With this accord we will achieve a long-sought objective, removing the one serious issue in contention from an otherwise congenial relationship. Such an accord, as Prime Minister Mulroney reminded me, has been priority of Canadian foreign policy for 15 years. And we will next move with Canada to give a higher priority to getting the toxics, the pesticides and the fertilizers out of the Great Lakes.

The President proposed a new Center on the Regional Environment of Central and Eastern Europe, and last month I represented him at the opening of this center. Known throughout the region as the Bush Center, this initiative represents a new venture in institution-building for the new East European democracies, and it promises to greatly strengthen the environmental policies of the region's countries—all of which seem to feel they are not totally responsible for the problem, since half their pollution comes from their neighbors.

Incidentially, let anyone who doubts the wisdom of pollution control—or who believes there is a conflict between economic growth and environmental protection—let them go to Eastern Europe. Let them see as I have seen, rivers like the Vistula in Poland, so corrosive it is useless over 80 percent of its length even for cooling machinery; let them experience sulfur dioxide levels in Cracow, where 500-year-old statues and monuments have crumbled in just 40 years; let them see the high rates of infant mortality, lung disorders, worker absenteeism and premature deaths, the vast land areas contaminated by heavy mental pollution. Poland's Environment Minister Kaminsky estimates that environmental contamination represents a drag on Poland's gross national product of 15 percent. Policies in Communist Europe designed to stimulate economic development by foregoing pollution controls ended by wrecking the economy and also ravaging the environment.

More than a year ago the President proposed that the United States fully phase out production and use of chemicals that destroy the world's stratospheric ozone, which functions as a shield against skin cancers and cataracts. In June the United States led the way on an agreement to commit the world community to that policy, and agreed to contribute funds to help the developing countries make the transition to subsitutes for CFC's.

In June of 1989 the President announced a ban on imports of elephant ivory. The European Community and Japan later acted also, and as a result, the price of ivory has plummented and the incentive to kill African elephants is diminished. Some 80 percent of East Africa's elephants fell to the poachers' machine guns in the 1980s; now, there is new hope for the elephants, thanks to a President and Secretary of State who believe in animal conservation.

Just last month the President proposed his Enterprise for the Americas Initiative, including a new readiness to renegotiate public debt owed to the U.S. government by Latin American countries and to apply the interest on the new debt to environmental protection and conservation. Altogether Latin American nations owe the United States some $12 billion in public debt. They owe governments in Europe and Japan another $38 billion. This proposal, which has been very warmly received in Latin America, has gone almost unnoticed here at home. And yet the prospects are that the budgets of parks and pollution and forest agencies can be substantially enhanced as a result of this decision. Should other creditor countries follow our example, this major new debt-for-nature commitment could serve to refocus the priorities of countries so rich in forests and species of plants and wildlife, and so burdened by debt.

Concern for the rapid loss of forests worldwide—new data suggest they are being lost twice as fast as had been believed—that concern led the President to propose an agreement on forestry at the G-7 Economic Summit last July. We hope that agreement will be signed no later than 1992, and will help arrest the destruction of the great forest systems, so many of which will be gone, at present rates of destruction, within 10 to 15 years.

Ah, but what about global climate change? When will you get serious about this issue, I often am asked.

In the first place, there is no question that this President clearly places a very high priority on the importance of the global change issue. Early on, he set up a special group under the Domestic Policy Council to address the issue, directing it to use "the best scientific and economic information available." He asked his Science Advisor, Dr. Allan Bromley, to chair that effort to help ensure that we develop our global change policy and actions using the best expertise available. I can tell you from my own participation on that group that some of the most senior Cabinet officers in our government are working hard to find the best approaches for our country to the challenge of the global change issue.

A number of nations have made ambitous commitments to reduce carbon dioxide emisions, or to arrest their increase by the year 2000. I would encourage the press to ask their leaders how they propose to achieve these reductions. I don't doubt for a moment the seriousness of some of these commitments. But I can tell you that answers to questions about specifics are difficult to come by.

Why? Because large reductions are hard to get without substantial new carbon or energy taxes, and without expansion of nuclear energy. The policies of several European nations will no doubt rely on one or both of these measures, with the French nuclear program filling a critical supply requirement.

And while other talk about ambitious—and perhaps unattainable—carbon dioxide emissions reductions in the future, the United States has been spending hundreds of millions of dollars a year—growing to more than $1 billion in the coming fiscal year—to learn more about the scope, causes, effects, and responses to the problem.

Nor are we sitting on our hands waiting for the science to jell. We already are committed to a series of actions that make sense in their own right and will yield benefits should climate change prove to be, as some have suggested, a problem of serious consequence. (It is also possible, as White House Science Advisor D. Allan Bromley points out in a soon-to-be-published article, that other global issues such as ozone depletion, deforestation and loss of genetic diversity "may * * * turn out to be more serious in terms of human impact than global climate change.")

As as a result of proposals we already have made—several pending in the Congress, others likely to be implemented—the United States should be generating no more greenhouse gas emissions in the year 2000 than we did in 1987. By passing a new Clean Air Act, phasing out CFC's, carrying out the President's "America the Beautiful" reforestation initiative, and promoting energy conservation—if all of these steps are taken effectively—we will reduce greenhouse gas emissions by about 25 percent from their projected levels in the year 2000.

Finally, the President has offered to host the opening session of international negotiations next February on a climate change framework convention.

So the next time you feel the urge to write about climate change, you might consider the question: "How many other countries can point to real action on this issue—and back it up?" How many others have laid before the public the details—if these even exist—of how they plan to cut greenhouse gas emissions while maintaining economic growth?

In total, by any objective measure, this Administration is serious, determined, and dedicated to the pursuit of an aggressive, innovative environmental agenda. Public expectations are high, and we have probably raised them further. President Bush has moved the environment from the margins to the mainstream. As a result, the opportunities for genuine environmental progress have never been greater than they are today.

THE COST OF A CLEAN ENVIRONMENT

At the same time, we in this Administration are profoundly conscious of the need to achieve continued environmental progress in harmony with the nation's economic aspirations. The Administration's policies are firmly grounded in the recognition that we do not have to choose between a healthy environment and a healthy economy. We can, and must, have both.

Our country's environmental gains over the past two decades—in cleaner air and water, in strict controls on hazardous waste, in protection of wildlife and valuable ecosystems—have not come cheaply. Our economists are now working on a report entitled, "The Cost of a Clean Environment," showing that total annual costs for pollution control in the United States, in 1986 dollars, went from $27 billion in 1972 to $85 billion in 1987. This is slightly more than any other Western industrialized nation for which we have data. For this year, we estimate that the public and private sectors are spending

more than $90 billion, also in 1986 dollars, for pollution control.

This increase in spending has been accompanied by, has in fact been made possible by, the nation's robust economic growth over much of the same period—a growth of 70 percent in real GNP. This is compelling evidence that environmental quality and economic expansion, far from being mutually exclusive, can go hand in hand. Economic growth financed higher standards of environmental protection. Higher environmental expectations made the growth we achieved good growth.

We also estimate that by the year 2000, pollution control costs from programs now in place will grow to about $155 billion a year, again in 1986 dollars, or about 2.7 percent of GNP. These figures represent only the "cost of clean," without taking into account any of the benefits from this investment; those benefits are, of course, substantial. Our economists are now looking at ways to add up the benefits of pollution control as well.

Most of the growth in costs over the next ten years will not be in the traditional areas of air and water pollution control, but instead will be in expenditures for cleaning up pollution on land—primarily from hazardous waste sites, Federal facilities, and leaking underground storage tanks. (Incidentally, speaking of Federal facilities, we now have in place about 70 new interagency agreements to clean up more athan 80 Federal facility sites on the Superfund list, and within the next six months we expect to have all 115 Federal facilities on that list covered by cleanup agreements. These agreements include cleanup targets, deadlines, enforceable penalties and fines. We are carrying out the President's policy of applying the same requirements to Energy Department and Defense Department facilities as we apply to the private sector. Only one interagency cleanup agreement was achieved prior to 1989.)

PIECEMEAL POLICY-MAKING

Given these substantial and growing costs, it seems only prudent to ask ourselves: Are we spending all this money on the right things? Are we spending it in the most effective possible way? Are society's resources being used in ways that will contribute most directly to the health and well-being of our citizens and our environment?

Not long after my EPA appointment was announced, I made the customary rounds of the members of the Senate Environment and Public Works Committee, to whom it would fall to consider my confirmation.

One of my most memorable visits was with Senator Pat Moynihan; as I expect many of you know, conversations with Senator Moynihan are always memorable.

He sat me in a very nice Windsor chair, about which he said, "This is a Republican chair * * * this is appropriate, I think, for the new EPA Administrator to sit in."

Then he perched his little half-reading glasses down on his nose, and he fixed these two fingers, picador-like, on me. And looking over his glasses, he said, "Above all—above all—do not allow your agency to become tansported by middle-class enthusiasms!"

What he meant was, "Respect sound science; don't be swayed by the passions of the moment."

All too often in the past, I think, the guiding principle for making environmental policy has been what has been referred to as the "ready-fire-aim" principle. Budget Director Dick Darman has described the Federal budget as a great "PacMan," gobbling up resources. Well, I have looked for a video game analogy for how the nation has made environmental policy.

Perhaps some of you have played a somewhat primitive, pre-Nintendo video game called "Space Invaders." In that game, whenever you see an enemy ship on the screen, you blast at it with both barrels—typically missing the target at least as often as you hit it. You never run out of ammunition, so even though you miss a lot you stay committed to the game.

The last two decades of environmental policy in this country have been similar in some ways to that video game: Every time we saw a blip on the radar screen, we unleashed an arsenal of control measures to eliminate it. In the late 1960s we saw that we had an air pollution problem, so we enacted ambitious clean air laws. At about the same time, we became aware of serious water pollution and passd an equally ambitious clean water act. We saw that exposure to toxic chemicals was causing human health problems and passed a sweeping law to control toxic substances. And so it went through the 1970s and 1980s: drinking water, radiation, pesticides, hazardous waste, medical wastes—each problem dealt with essentially in isolation, without reference to all the others.

As I noted, many of those efforts have been successful—up to a point. But the upshot of this piecemeal approach to pollution control has been that we have set our pollutant- and medium-specific goals over the last 20 years without adequately addressing our overall environmental quality objectives. Rarely did we evaluate the relative importance of individual chemicals or individal environmental media. We didn't assess the combined effects on ecosystems and human health from the total loadings of pollutants deposited through different media, through separate routes of exposure, and at various locations. We have never been directed by law to seek out the best opportunities to reduce environmental risks, in toto; nor to employ the most efficient, cost-effective ways of proceedings.

As a result of this fragmentation, today more than 80 congressional committees and subcommittees dip their spoons into the broth of environmental policy. EPA is pulled in many directions at once by Congress, other agencies of government, the public, constituency groups, the courts, and of course the news media. We answer to many taskmasters. Many problems, such as local land-use issues, are not in our jurisdiction, yet we tend to be held responsible for solving them. For its part, the press sometimes tends to focus on the "pollutant of the week," regardless of its importance relative to other environmental problems—or to other social problems, for that matter. This kind of crisis management is certainly not unique to the environment—but when we're dealing with critical issues of public health and safety every day, at significant economic cost, I think it's imperative that we step back from time to time and take a broader view.

SETTING RISK-BASED PRIORITIES

As we gear up to deal with the environmental problems of the 1990s and beyond, I think the time has come to start taking aim before we open fire. In short, we have to find a better way of setting environmental priorities. And this is where sound science comes in. Sound science can help us establish priorities and allocate resources based on risk, to the extent that statutory mandates allow. Obviously there are a number of other important factors that go into shaping our priorities—public values and perceptions, economic constraints—but sound science is our most reliable compass in a turbulent sea of siren songs. Science can lend much-needed coherence, order and integrity to the often costly and controversial decisions that must be made.

Risk is a common metric that lets us distinguish the environmental heart attacks and broken bones from indigestion or bruises. Despite the inherent uncertainties, comparative risk assessment is still one of the best indicators of where we should be directing our resources. I am very pleased that EPA's own efforts to bring more uniformity to our risk assessments are to be reenforced by Allan Bromley's initiative to ensure greater coherence Government-wide in risk assessment.

Four years ago my predecessor, Lee Thomas, recognized the need to do a better job of setting priorities across the range of EPA's programs. He instructed EPA's in-house scientists and environmental managers to look at the problems we deal with and to try to rank them based on risk. The result of this exercise was a brave and visionary report published in 1987 under the title, "Unfinished Business: A Comparative Assessment of Environmental Problems."

One of my first actions as Administrator was to ask EPA's Science Advisory Board, a distinguished and objective panel of independent scientists, engineers, and other technical experts, to review "Unfinished Business," assess its rankings applying the best technical and scientific knowledge available, and suggest ways to improve the comparative risk assessment process.

I also asked them to extend the original analysis and to identify risk reduction strategies that could be particularly effective for specific problems, or that could help to mitigate many problems at the same time.

The science board has done its job with great patience and perseverance, and it has produced a thoughtful and significant contribution to the debate over the future of environmental protection in this country. Let me take a moment to express my special thanks to the co-chairmen of this study: Dr. Ray Loehr of the University of Texas, who is the chairman of the Science Advisory Board, and Jonathan Lash, until recently the Secretary of the Agency of Natural Resources for the State of Vermont and now director of the Environmental Law Center at Vermont Law School.

The new report, which I am releasing today, is called, "Reducing Risk: Setting Priorities and Strategies for Environmental Protection." It builds on the pioneering work of the "Unfinished Business" report in comparing disparate environmental problems according to the degree of risk they pose. But the new report goes well beyond the earlier effort by spelling out a set of fundamental principles for achieving broader, more integrated, and more carefully targeted environmental policy-making. Taken together, these principles provide a basic framework for addressing some of the daunting environmental problems of the 1990s and beyond.

TARGETING RESOURCES FOR RISK REDUCTION

The report's first and most basic recommendation reflects the point I made a moment ago: We must do a better job of setting environmental priorities. We—EPA and society at large—must locate and focus our attention on the most promising opportuni-

ties for reducing risk to the environment and to human health and welfare.

To help us move toward that goal, the Science Advisory Board carefully reviewed the risk comparisons in the "Unfinished Business" study. Within the constraints of the limited information and analytical methodology now available—and we clearly need to do a great deal of work to improve both—the Board identified several problems that continue to pose relatively high risks to human health or the environment despite the progress of the last two decades. The human health risks highlighted in the report, based primarily on overall degree of direct public exposure to known toxic agents, are ambient air pollution, worker exposure to chemicals in industry and agriculture, indoor air pollution, including radon and other pollutants, and drinking water contamination. Additional data, which EPA is now working to gather and analyze, may reveal that other areas also pose high risk.

The report also identifies specific high-risk ecological problems, based especially on their geographic scope and the amount of time it will take to reverse them: habitat alteration and destruction, species extinction and loss of genetic diversity, stratospheric ozone depletion, and global climate change.

Let me be clear: the Science Advisory Board is not suggesting, nor am I, that conventional approaches to environmental problems not cited as high risks, such as hazardous wastes, should be abandoned. EPA is, in fact, firmly committed to continued, intensified enforcement of the environmental laws already on the books, as evidenced by our record enforcement figures last year. But we do need to think carefully about where our limited resources can most effectively be spent.

TOWARD INTEGRATED ENVIRONMENTAL POLICY

That brings me to a second basic principle discussed in the "Relative Risk" report: how we spend our resources is an important as what we spend them on. It's common sense to spend our money where we can do the most good, to best protect health and reduce risk. If we choose to do otherwise, we should at the least know why.

The traditional approach to environmental protection—prescriptive, command-and-control regulations—has brought us a long way. But by themselves, technology-based regulations are no longer sufficient to do the job before us. In some cases, they can actually be counterproductive, serving only to inhibit innovation and to discourage regulated industries from going beyond minimum legal requirements.

We need to take a broader, more integrated look at the range of environmental programs we administer, and the response tools available to us, with an eye toward finding the most efficient and effective ways to reduce risk. Among the tools identified by the Science Advisory Board are research, public education and information, technical assistance, and market incentives. And above all, we need to mobilize a national effort to prevent pollution before it's created in the first place. Based on the industry response so far, it is clear that one of the most effective instruments for reducing toxic air emissions has been the Community Right-to-Know law requiring industries to estimate and publicly announce them, by plant and by chemical.

RETHINKING THE ENVIRONMENTAL AGENDA

I am today, therefore, calling for a broad, robust national dialogue on the Science Advisory Board's findings and recommendations—including hearings before the relevant Congressional committees, and wide-ranging discussions by environmental and industry groups, scientists, academicians, and citizens everywhere. Clearly any effort to set environmental priorities based on relative risk—to rethink the environmental agenda for the 1990s and the 21st Century—is going to be difficult and contentious. There are many uncertainties inherent in such a process. But this report takes an essential first step. Much more information is needed; but now at least we have a better idea of what we do need, as well as some basic principles that can help us to better target our resources.

Changing the nation's environmental agenda will not be easy, and it won't happen overnight—but many of the science board's principles and recommendations already are being adopted by EPA. What Science Magazine recently called a "quiet revolution" in the way EPA does business is in fact well under way.

To further that revolution in our culture, all EPA programs are conducting a broad strategic planning effort which is aimed at focusing our attention and resources on areas of greatest risk and greatest potential for risk reduction.

Our budget decisions already are being guided by the risk reduction principles of EPA's long-term strategic planning process. Pollution prevention has become the slogan for all EPA programs, from municipal wastewater treatment to toxic air pollution to stronger, carefully targeted multi-media enforcement strategies to integrated ecosystem-wide programs, such as our new initiative to clean up the Great Lakes. The Great Lakes program also reflects the agency's stepped-up emphasis on ecology, in recognition of the fact that the health of natural systems is the foundation for economic health and the well-being of society at large.

Economic incentives, highlighted by the Science Advisory Board as an innovative option, have been central to the Administration's efforts to craft a cost-effective environmental policy—for example, in the groundbreaking emissions trading provisions of the President's Clean Air Act amendments.

A COMMITMENT TO RESULTS

Now, let me suggest a far-reaching response to the Science Advisory Board's report. I propose an ambitious strategy of toxics reduction, not just in air or water or land but wherever toxic chemicals may be found. Recently we asked each EPA program to identify the 15 or so toxics of greatest concern to them—the really "bad actors" in terms of health risk. We are now selecting those chemicals that are associated with serious environmental and health problems; the list is likely to include a number of heavy metals such as lead and mercury, as well as certain volatile organic compounds of concern across several programs.

Nationwide, releases of these contaminants are in the range of one billion pounds a year. By coordinating our activities and targeting our efforts, I want to achieve real and measurable reductions in these emissions—and the health risks they pose—over the next year.

I therefore propose the goals of reducing the total releases of these contaminants by one-third by the end of Fiscal Year 1992, and by more than half by 1995, through the most cost-effective methods possible.

These are ambitious goals, but they are within our reach. Our success with the phase-out of CFC's, and most recently our success in securing an industry commitment to reduce butadiene emissions by 80 percent through voluntary actions—accomplished through negotiations with nine chief executive officers of major chemical and petrochemical firms—demonstrates our ability to obtain results through cooperative action with the regulated community. This is not to say that we will in any way abandon our regulation and enforcement responsibilities. To the contrary, these new efforts will only have meaning if there is a credible regulatory and enforcement presence at EPA. But let us not forget that the public is expecting results—and accordingly, when voluntary action can obtain results more expeditiously, it should be employed.

With respect to recycling, I also want results. We have advocated a 25 percent recycling goal by 1992, and our proposed rules on municipal waste combustors and other initiatives should go a long way toward achieving that goal. But our commitment to recycling and solid waste reductions cannot be limited to command-and-control approaches. We need to stimulate demand and to fulfill our Federal role by providing technical assistance to help create markets.

In that spirit, I propose to:

—One, ask the Federal Trade Commission and the U.S. Office of Consumer Affairs to undertake a cooperative effort to begin defining the terms "recyclable," "recycled content," "bio-degradable," and so on, so that the consumer can make intelligent choices;

—Two, establish a nationwide network and clearinghouse to find markets for recycled goods; and

—Three, work with other Federal agencies to ensure that the Federal government uses all its current authority to procure recycled goods.

ENVIRONMENTAL STEWARDSHIP FOR A SUSTAINABLE FUTURE

Last year in this room I asserted that the Bush Administration has a clear, ambitious and unambiguous environmental vision:

—A vision of a nation moving steadily to provide a greater measure of protection for human health and for natural systems;

—A vision of a public informed and knowledgeable about its realistic choices in an industrialized, economically developed society;

—A vision of a people infused with an ethic of environmental stewardship, working to secure the vital link between sound, sustainable economic growth and a healthy, productive environment.

The broad review and re-evaluation of the nation's environmental agenda that I am calling for today can play a central role in turning that vision into reality. The decisions about how best to go about the task of environmental protection and risk reduction must be discussed and debated in the kitchens of American homes, in school classrooms, in the halls of Congress, the boardrooms of industry, the conference rooms of our vigorous environmental groups, in policy councils at all levels of government.

From those discussions and debates will emerge a new approach to environmental policy, and a new generation of environmental programs—programs that will carry the nation forward through the 1990s and into the 21st Century. The great and dramatic environmental battles are between "white hats" and "black hats," and there are still a good many around. But the significant new progress we need is with ourselves—our lifestyles, our energy use, the goods we buy and use and the waste we generate.

The questions we raise today can lead us to the answers we will need to safeguard our environmental legacy to future generations.

Thank you.●

WASHINGTON TOWNSHIP CELEBRATES ITS 150TH ANNIVERSARY

● Mr. LAUTENBERG. Mr. President, I rise today to pay tribute to the 150th anniversary of the incorporation of Washington Township in Bergen County.

Originally settled by the Dutch in the 1600's, Washington Township has a special place in our history. Legend has it that George Washington once stayed in the community, hence the name. The town can take pride in its role in New Jersey history and future. Today, the town is a wonderful place to live, the atmosphere is that of a rural town with all of the luxuries of a big city nearby. The streets are filled with trees instead of traffic. The lifestyle in Washington Township is secure, with friendly neighbors and a school system geared toward providing individual attention. This community remains steadfast in their commitment to remember the past while working toward a better tomorrow.

I extend my warmest wishes to all the citizens of Washington Township and wish them well in the future.●

EDUCATION OF THE HANDICAPPED ACT AMENDMENTS

Mr. FORD. Mr. President, I submit a report of the committee of conference on S. 1824, and ask for its immediate consideration.

The PRESIDING OFFICER. The report will be stated.

The assistant legislative clerk read as follows:

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 1824) to reauthorize the Education of the Handicapped Act, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses this report, signed by all of the conferees.

The PRESIDING OFFICER. Without objection, the Senate will proceed to the consideration of the conference report.

(The conference report is printed in the House proceedings of the RECORD of today, October 2, 1990.)

Mr. HARKIN. Mr. President, I rise today to urge approval of the conference report to S. 1824 which reauthorizes for the next 4 years the discretionary programs of the Education of the Handicapped Act [EHA].

In the 15 years since the passage of Public Law 94-142, the Education for All Handicapped Children Act (part B of EHA), great strides have been made in providing a free appropriate public education for all children with disabilities. Parts C through G of the EHA support discretionary programs to keep our Nation's special education system on the cutting edge. With this reauthorization, we reaffirm our commitment to provide students with disabilities the opportunity to better themselves through quality education programs.

The legislation is responsive to the changing needs of students with disabilities and their families, research findings, and new technological advances which promise to enhance the learning capacity of students. An investment in education for students with disabilities will enable them to take full advantage of the recently passed Americans With Disabilities Act, which affords persons with disabilities increased opportunities to become independent and productive members of society.

I would like to thank Senator DURENBERGER, the ranking minority member of the Subcommittee on Disability Policy, for all his help and guidance in crafting this legislation. I also thank Senators KENNEDY and HATCH for their contributions. Special thanks to Senators DOLE, SIMON, JEFFORDS, COATS, DODD, PELL, METZENBAUM, ADAMS, MIKULSKI, CHAFEE, INOUYE, and KERRY for their cosponsorship.

I would also like to recognize Congressmen OWENS and BARTLETT for their work in developing the House companion bill and in crafting the conference agreement.

In addition, I would like to thank the Consortium of Citizens with Disabilities for their assistance in keeping the Education of the Handicapped Act as cutting edge legislation, Ms. Carla Lawson, director of the Iowa exceptional parents center, Fort Dodge, IA and the other witnesses who testified at the April 1989 hearings.

Finally, I would like to thank my staff, inluding Bob Silverstein, Chris DeGraw, Terry Muilenberg, and Stan Vitello, for their contributions.

The Senate bill addessed the major concerns raised in the testimony presented to the subcommittee. We included provisions to improve the effectiveness and efficiency in the management of discretionary programs. We addressed the immediate need to train a sufficient number of special education teachers and related services personnel, with a requirement to recruit individuals from minority backgrounds. We addressed the repeated plea that more be done to disseminate and translate research findings into classroom practice. We responded to the necessity of improving parent training programs.

In addition, we also recognized the need to strengthen discretionary programs for students with severe handicaps, serious emotional disturbance, and visual impairements. We included numerous provisions which address the important role assistive technology plays in enhancing opportunities for children with disabilities. We responded to the urgent need to develop programs to increase the understanding of, and address the early intervention and preschool needs of children exposed prematurely to maternal substance abuse, including the use of crack cocaine.

Finally, what may be regarded by some as an insignificant matter is the change in the title of the legislation from "The Education of the Handicapped Act" to "The Individuals with Disabilities Education Act." The use of the term "individuals with disabilities" instead of "handicapped" represents our effort to make use of up-to-date, currently accepted terminology. In regard to this legislation, as well as in other contexts, the Congress has been apprised of the fact that to many individuals with disabilities the terminology applied to them is a very significant and sensitive issue.

I am pleased to report that this reauthorization of the EHA, parts C through G, contains all of the major provisions in the Senate bill. Set out below is a more thorough description of the major provisions in the legislation.

GENERAL PROVISIONS

The legislation amends the current definition of the term "children with disabilities" to include children with "autism" and children with "traumatic brain injury."

The legislation also amends current law to clarify the settings in which special education services are to be delivered, including instruction in the classroom, in the home, in hospitals and institutions, and in other settings. The legislation also adds "social work services' under the definiton of related services, and clarifies recreation services to include therapeutic recreation and counseling services to include rehabilitation counseling.

The legislation also adds a definition of transition services. The definition of individualized education program is amended by the legislation to include a statement of transition services for students no later than the age of 16 years and, where appropriate, beginning at the age of 14 years or younger.

Definitions of "assistive technology device" and "assistive technology service" are also added to current law. Over the last few years, assistive technology has emerged as a critical support for many people with disabilities which can assist them in leading lives of dignity, choice, and independence. In terms of education, assistive technology can empower the student with the means to become an active participant in the school. I would like to compliment the office of special education programs for its interpretation

concerning the obligations of public agencies under part B to provide assistive technology to children with disabilities. This interpretation should be broadly disseminated to public agencies to ensure consistent implementation across the country.

One issue that prompted the concern of both bodies of Congress was how to address the developmental disorder now commonly referred to as attention deficit disorder [ADD]. ADD is a developmental disorder which is characterized by marked impairment of attention, often associated with impulsivity or hyperactivity. H.R. 1013 recognized ADD under the subcategory other health impaired in the definition of children with disabilities and included clarifying language in the report accompanying the bill. S. 1824 recognized ADD in report language under the category of "specific learning disability' to be included under the term "minimal brain dysfunction."

The final bill does not adopt either approach. Instead, we have set forth a notice of inquiry and the establishment of a national resource center. The notice will solicit public comments to describe the appropriate components of an operational definition under the Education of the Handicapped Act for the term "attention deficit disorder." I believe that over the coming months a consensus definition will be developed that recognizes the legitimate concerns of the parents with children who have ADD as well as the concerns enumerated by the education and minority communities. The center will help organize, synthesize, and disseminate current knowledge related to ADD.

STATE IMMUNITY

A new section is added to clarify the intent of Congress that a State is not immune under the Eleventh amendment of the Constitution of the United States from suit in Federal court for a violation of the Education of Handicapped Act. Not only does the legislation confer upon children with disabilities an enforceable substantive right to a free appropriate public education, it also explicitly authorizes any aggrieved party to bring an action in State or Federal Court, including an action for tuition reimbursement. This provison overturns the Supreme Court decision in Dellmuth versus Muth.

ADMINISTRATION

The legislation adds a new section increasing the administrative accountability of the Secretary of Education in the implementation of programs. Program plans for implementation must involve a number of special education groups, including parents and professionals. In awarding grants, there must be increased recognition and responsiveness by the Federal Government to the needs and problems in the education of minority populations. Independent evaluations of each program are required. Panels of experts to evaluate grant proposals are to be selected by the Secretary who are competent by virtue of their training and experience. The Secretary is required to conduct at least one site visit for each grant funded at $300,000 or more annually.

To the maximum extent possible, the Secretary is required to develop effective procedures for disseminating information derived from programs and projects funded under parts C through G, as well as information generated from studies and data collection.

EVALUATION

The legislation amends current law to specify the types of evaluations and special studies that are to be conducted to determine progress in implementation, program effectiveness, and studies which provide information for program and system improvement.

REGIONAL RESOURCE AND FEDERAL CENTERS

The legislation amends current law to give the Secretary authority to develop guidelines and criteria for the operation of regional resource and Federal centers. With regard to the regional centers, the priority needs identified by the States are to be addressed and these priorities need not be the same as those in federally mandated areas.

DEAF-BLIND

The legislation amends current law by expanding programs which enhance the adjustment and education of deaf-blind infants, toddlers, children and youth. Services are expanded to provide early intervention and transition from school to work. Preparation for independent living and competitive employment are emphasized. The Secretary is authorized to award a grant to establish a national clearinghouse for children and youth with deaf-blindness for the purpose of identifying, coordinating, and disseminating information on effective practices.

EARLY EDUCATION

The legislation amends current law to encourage an interdisciplinary approach in the delivery of early education programs. In continuing to recognize the important role of parents, the legislation also supports aggressive information dissemination to parents. Programs to facilitate the transition of infants with disabilities from medical care to early intervention programs, and from early intervention to preschool programs are authorized. The Secretary is also authorized to fund programs to promote the use of assistive technology devices and assistive technology services, where appropriate, to enhance the development of infants and toddlers with disabilities. Programs are also to be developed to address the early intervention needs of children exposed to maternal substance abuse.

SEVERELY HANDICAPPED

The legislation amends current law to focus more attention on the early intervention, transportation, and integration needs of infants, toddlers, children, and youth with severe disabilities. Given that instruction for students with severe disabilities must be continuous if they are to attain a level of self-sufficiency, a new section in the law provides for the development and operation of an extended school year demonstration program.

POSTSECONDARY EDUCATION

The legislation amends current law to encourage outreach activities that include the provision of technical assistance to strenghten efforts in the development, operation, and design of model programs that are adapted to the special needs of individuals with disabilities. Another amendment increases the minimum amount of funding for the four regional postsecondary programs for the deaf from $2 million to $4 million.

SECONDARY EDUCATION AND TRANSITION SERVICES

The legislation amends current law to strengthen transition services for youth with disabilities. Provisions not only address the development of job skills to transition into the workplace, but also the development of independent and community living skills to facilitate the full participation of youth with disabilities into community life. In an effort to build a cooperative relationship between special education and rehabilitation groups toward ensuring optimal transition, the legislation authorizes the Secretary to award 5-year grants upon joint State special education and rehabilitation agency application, to improve systems to provide transition services for youth with disabilities.

Another provision authorizes the development and dissemination of exemplary programs that meet the unique needs of students who utilize assistive technology devices and assistive technology services, as such students make the transition to postsecondary education, vocational training, competitive employment—including supported employment—and continuing education or adult services.

SEVERE EMOTIONAL DISTURBANCE

The legislation adds a new section which focuses attention on students with severe emotional disturbance. Projects will be supported to provide these students improvided special education and related services. Included among those projects are the development and demonstration of innovative approaches to assist and to prevent children with emotional and behavioral problems from developing serious emotional disturbance that require special education services.

PERSONNEL TRAINING

In recognition of the shortage of teachers and other special education personnel to serve students with disabilities, the legislation continues to provide support to prepare an adequate number of qualified early intervention, special education, and related services professionals. The need to prepare special education leadership, including administration and research personnel, is also emphasized. The legislation requires greater efforts be made to recruit, prepare, and retain qualified personnel from minority backgrounds, and persons with disabilities. The training of personnel to instruct children of limited English proficiency is also authorized.

PARENT TRAINING

If parents are to participate in providing their children an appropriate education, they must be trained and be provided with needed information. The legislation supports the continuation of existing parent training and information centers in each State, and is amended to establish additional centers in high density urban areas and rural areas serving large numbers of parents of children with disabilities. The importance of parent training and information is reflected in the creation of a separate line item, which significantly increases the authorization for this program.

CLEARINGHOUSES

The legislation continues support for the three national clearinghouses on children and youth with disabilities, postsecondary education, and careers in special education with amendments to expand their function to include: information dissemination, technical assistance, outreach activities, networking with other relevant national, State, and local organization information, and referral resources. Clearinghouses are also to provide for the synthesis of information for its effective utilization by parents, professionals, individuals with disabilities, and other interested parties.

RESEARCH

The legislation is amended to support research to advance and improve the knowledge base and practice of professionals, parents, and others providing early intervention, special education, and related services. Research outcomes are to be directed at providing students with disabilities effective instruction that enables them to learn successfully. To bridge the gap between research and teaching, increased efforts to synthesize and disseminate knowledge are supported.

INSTRUCTIONAL MEDIA

The legislation amends current law to specify that instructional media will be used to eliminate illiteracy among individuals with disabilities. This section is further amended to include the visually impaired as part of the population for whom this section is intended. Under a new section, the Secretary is authorized to bring to the visually impaired an understanding of textbooks, films, television programs, video material, and other educational publications and materials that play such an important part in their general and cultural advancement. The legislation continues the authorization of captioning for the hearing impaired and the awarding of grants to promote the integration of hearing and deaf individuals through shared cultural, educational, and racial experiences.

TECHNOLOGY

Legislation amends current law to include the awarding of grants to advance the use of assistive technology, and to determine how technology can be used more effectively, efficiently, and appropriately, in the education of individuals with disabilities. Another amendment ensures the access and use of assistive technology and other activities authorized under the Technology-Related Assistance Act of 1988.

Mr. SIMON. Mr. President, I am pleased to join my colleagues in support of the conference report for the Education of the Handicapped Act Amendments of 1990. This legislation, S. 1824, takes positive steps forward in our continuing efforts to improve the educational opportunities for children with disabilities.

I am pleased to note that among the amendments agreed to is a change in the name, to the Individuals with Disabilities Education Act. Some of us who have worked for years in this area may need some time to adjust to referring to the IDEA rather than the EHA. But it is not insignificant that we move away from terminology that focuses on a condition rather than a person. As we did in passing the Americans With Disabilities Act, we are recognizing the individual first. This is particularly appropriate in the IDEA since its educational services are designed to meet the needs of the individual.

I congratulate Senator HARKIN and his staff on the Subcommittee on Disability Policy for, once again, achieving consensus on difficult areas of controversy—and in a way that moves us forward. Specifically, I am pleased that agreement was reached on the issue of attention deficit disorder. There is a great deal of evidence indicating that this is a biologically based brain disorder, and that not all children who are educationally handicapped by this disorder, are receiving appropriate services.

This legislation requires the Secretary of Education to publish a notice of inquiry in the Federal Register to solicit comments on the appropriate components of an operational definition for attention deficit disorder under the IDEA. The inquiry will seek comment on aspects of the definition, the appropriate qualifications of those determining the existence of the disorder and what steps may be needed to ensure that racial, ethnic, and linquistic minorities are not misclassified under this definition. The summarized comments will be available to us when we reauthorize part H of the act next year.

In addition, this legislation calls for the establishment of a center or centers to gather and disseminate information on attention deficit disorder.

In a hearing I held in Springfield, IL, in July 1989, it became clear that there are a number of areas in which we need improvement in the implementation of part B of this act, the permanently authorized Public Law 94-142. Through the amendments to the discretionary parts of the act, S. 1824 responds to those areas of need. These include attention to the critical shortage of personnel in special education and to the specific problems faced by minority group children. I am concerned, for example, that misclassification and overclassification of African-American children appears to be continuing. In Springfield, for example, 3 of 10 African-American children are labeled as handicapped; nationally, about 1 child in 10 is classified as handicapped. In Chicago, a retesting of Educable Mentally Handicapped [EMH] children found 2,300 who did not belong in that category. These are children who were taken out of the regular classroom and placed in inappropriate settings.

In regard to Hispanic children, testimony at the hearing indicated that they are severely underidentified, underserved and inappropriately served. Although about 25 percent of the school population in Chicago is Hispanic, we were told that only 46 of the 3,500 special educators is Hispanic. The provisions of this current legislation that increase the involvement of minorities in all aspects of the Individuals with Disabilities Education Act should help to solve some of these remaining difficult problems, but it is an area that I will want to continue to watch for improvement in the future.

In these and other crucial areas such as services for the severely emotionally disturbed, this legislation covers new important ground and should be significantly helpful. Again, I commend Senator HARKIN and his hardworking staff for their diligent and successful work on this legislation.

Mr. KENNEDY. Mr. President, during this Congress we have reached several significant milestones in mainstreaming people with disabilities. By passing the Americans With Disabilities Act, the most sweeping civil rights legislation to be enacted since the Civil Rights Act of 1964, we began a new era of opportunity for the 43 million Americans who had been

denied full and fair participation in our society.

The Education of the Handicapped Act, which we are reauthorizing today, is another milestone in mainstreaming people with disabilities. This legislation reauthorizes the discretionary grants program of the EHA and ensures that a free and appropriate public education will continue to be the right of all children, regardless of their special needs.

One of the most contentious issues during the reauthorization was whether attention deficit disorder [ADD] should be recognized as a handicapping condition in order to qualify children for special education services. While some school systems have admitted ADD children to special education classes, others have not. The advocates of ADD children say that the only way to remedy this exclusion is for ADD to be explicitly recognized in the statute as a handicapping condition, thereby entitling them to a free and appropriate education under Public Law 94-142.

Opposition to including ADD as a handicapping condition arose from minority and child advocate organizations. They argued that the inclusion of ADD would lead to mislabeling and over-referral of minority, poor, and limited-English proficient children, thus exacerbating an already pervasive condition. As the House committee found, more minority children continue to be served in special education than would be expected from their percentage in the general school population; poor African-American children are 3½ times more likely to be classified as mentally retarded; and the limited-English school population with potential handicapping conditions are not well served by special education.

After much discussion with ADD experts and parents of ADD children, with child advocacy and civil rights groups, and with school professionals and administrators, the conferees adopted a compromise that directs the Secretary of Education to solicit public comments regarding an operational definition of ADD and permits the establishment of a center or centers to organize, synthesize, and interpret current knowledge relating to the disorder. That information will be available for use by the Congress when we reauthorize part H of the Education of the Handicapped Act next year.

It is the intent of the conferees that in both the notice of inquiry to be conducted by the Department of Education, and in congressional consideration thereafter, no perspective on the issue of ADD should be excluded, and that the potential benefits of identifying children as having ADD should be weighed against potential harm of misidentifying children when they do not.

Our Nation needs the skills and talents of all its people. The reauthorization of the Education of the Handicapped Act ensures that children and youth with disabilities receive a free and appropriate public education to enable them to participate fully in society.

Mr. HATCH. Mr. President, I am pleased that we have an agreement on this bill which provides for the education of children with disabilities. Both sides of the aisle have worked cooperatively to ensure that children would be able to receive an appropriate education in an environment which is best suited to their needs. I am proud of this legislation.

One of the more difficult issues we had to wrestle with in conference was the issue of children with attention deficit disorder. All of us agree that children should receive services that are needed. However, in our struggle to determine whether or not these services are appropriate for these children and, if so, what criteria should be used, we finally concluded that we needed more information. I hope that this study will help us make decisions about how we can best serve this group of children.

I also want to express my appreciation to the many teachers who work with children with disabilities. Congress can pass a lot of excellent legislation to ensure that children with disabilities receive services; but, it is ultimately the warm, caring teacher in the classroom who helps these children and creates an educational system that enables them to achieve their full potential. I salute those teachers in Utah and elsewhere who serve this Nation as teachers of young citizens with disabilities.

Mr. JEFFORDS. Mr. President, I rise in support of the conference agreement on S. 1824, the reauthorization of Education of the Handicapped Act [EHA] of 1989. The bill before us reauthorizes the discretionary programs under EHA and represents one of the most far-reaching programs for children with disabilities.

The discretionary programs provide support for research and demonstrations, dissemination, technical assistance, and training. The main goal is the improvement of the educational and related services provided to handicapped infants, children, and youth.

S. 1824 is the tangible evidence of the compromise reached between the House and Senate and the leadership provided by the chairman of the Subcommittee on Disability Policy, Senator HARKIN. I wish to commend him for his hard work and dedication to this bill.

Although I am pleased to see the final passage of this important bill, I must express my concern regarding one critical issue: the possible inclusion of attention deficit disorder [ADD] as a separate category under the statutory definition of "handicapping condition." Because of the confusion existing among professionals in the field as to the definition, prevalence, and even the very existence of this disorder, the conference committee agreed to require the Department of Education to gather professional input on this issue through the publication of a "Notice of Inquiry." Although I am pleased that the notice of inquiry will give us more time to gain expert, professional guidance on ADD, I do not believe that the language contained in the inquiry addresses the primary policy question: Is a change in EHA necessary to meet the needs of children with ADD?

Many experts, including psychologists, special education teachers, and others contend that students with ADD who require special education and related services are eligible for those services under other definitions, such as learning disability and serious emotional disturbance. We must ask ourselves, do students who do not qualify for services under the existing definitions belong in special education? Are we really helping a child when we give him/her a label and put him/her in special education when that child can and should be served by regular education? Clearly, a child must be adequately served, regardless of the disability—and I hope there is no question of that goal. However, does placing a child under a separate category actually help?

As we all know, once we give a child a label, it does not go away—that child has it for the rest of his/her school career. In Vermont, our schools are working hard to develop innovative methods for helping children, as much as possible, remain and succeed in the regular classroom. Rather than labeling children who are at risk of failing as handicapped in order to get them services, we have schools that are trying to provide children with the services they need in the regular classroom before they fail.

At this time, our schools must work to move forward and provide services to our growing at risk population in the regular class. Adding another category to EHA, when it may not be necessary to meet the needs of students believed to have ADD, will only take us backward—toward the unnecessary labeling and stigmatizing of children. Instead we should concentrate our efforts on educating students, not labeling them.

Mr. DURENBERGER. Mr. President, I rise in support of the conference report on S. 1824 the reauthorization of the discretionary programs under the Education of the Handicapped Act.

The discretionary programs under the Education of the Handicapped Act

supports a wide variety of programs that include research and demonstrations, personnel training, technical assistance, and dissemination of information. This reauthorization process has given us the opportunity to reassess these programs to make sure they are doing what they were intended to do.

We found, Mr. President, that for the most part, these programs were working well. And the bill before us reflects that position. The conference report makes important improvements, however, in the parent training centers, minority participation, personnel preparation, and adds new programs to address gaps in current service levels for children with serious emotional disturbances and for transitional services between school and work or other postsecondary options. I think these are important improvements that will help assure the vitality of the entire special education program.

I would like to take a moment to speak about the one issue that caused the most controversy during the conference, that is the issue of including attention deficit disorder within the definition of disabling conditions As you are aware, the House provision included statutory language that added ADD under the definition of "other health impaired." The Senate did not contain a similar provision. A number of questions were raised during the conference about how ADD could be added to the act to ensure that only those with severe ADD would be served, the medical feasibility to make such a diagnosis, what the addition of ADD would mean to the rest of the special education program, what special services are needed for ADD children, and whether or not the addition of ADD would lead to a disproportionate number of minority students being classified as ADD. These were just a few of the questions facing the committee.

It was our inability at this time to answer these questions to the satisfaction of all the members that lead us to reject the House provision and to propose an alternative that would require the Department of Education to publish a "Notice of Inquiry" in the Federal Register to gather information on ADD and to report back to Congress within 6 months. It is my hope that this notice of inquiry will be all inclusive so as to provide Congress with the best available information for which to base future decisions on the inclusion of ADD under Public Law 94-142. Mr. President, the issue of whether or not to include ADD under the act has been a very difficult one. But I think the bill before us strikes a reasonable balance that will allow us the time and provide us with the information to make the decision that will be in the best interest of all children with disabilities and their parents.

Again, Mr. President, I would like to thank all the members and their staffs who have worked so hard on this bill. I urge my colleagues to support the conference report.

The PRESIDING OFFICER. Is there further debate on the conference report? If not, the question is on agreeing to the conference report.

The conference report was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote by which the conference was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

CORRECTIONS IN THE ENROLLMENT OF S. 1824

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of the concurrent resolution I now send to the desk on behalf of Senator HARKIN directing the Secretary of the Senate to make technical corrections in the enrollment of S. 1824.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A concurrent resolution (S. Con. Res. 150) directing the Secretary of the Senate to make corrections in the enrollment of S. 1824.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the concurrent resolution?

There being no objection, the Senate proceeded to consider the concurrent resolution.

The PRESIDING OFFICER. Is there debate on the concurrent resolution? If not the question is on agreeing to the concurrent resolution.

The concurrent resolution was agreed to.

The preamble was agreed to.

The concurrent resolution, with its preamble, is as follows:

S. CON. RES. 150

Resolved by the Senate (the House of Representatives concurring), That, in the enrollment of the bill (S. 1824), an Act to reauthorize the Education of the Handicapped Act, and for other purposes, the Secretary of the Senate shall make the following correction:

(1) In the amendment made by section 405, strike out "631(a)(6)" each place that such occurs and insert in lieu thereof "631(a)(7)".

Mr. FORD. Mr. President, I move to reconsider the vote by which the concurrent resolution was agreed to.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

TEMPORARY EXTENSION OF THE AUTHORITY FOR THE EXECUTIVE EXCHANGE PROGRAM

Mr. FORD. Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5643, regarding a temporary extension of the authority for the Executive Exchange Program, just received from the House.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

A bill (H.R. 5643) to grant a temporary extension on the authority under which the Government may accept the voluntary services of private-sector executives; to clarify the status of Federal employees assigned to private sector positions while participating in an executive exchange program; and for other purposes.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

Mr. STEVENS. Mr. President, I urge passage of H.R. 5643, a bill passed by the House under suspension of the rules on September 28.

The purpose of this bill is twofold—to grant a temporary 90-day extension of the Executive Exchange Program Voluntary Services Act of 1986 and to clarify that Federal executives participating in this program are on detail rather than leave-without-pay status.

The Executive Exchange Program was established to allow Federal executives to work for 1 year in the private sector, and private sector executives to work for 1 year in the Federal Government. The benefits to both groups can be great.

However, the disparity between private sector salaries and Government salaries created problems. Most of the private sector executives who were very interested in participating in the program would have to take a significant reduction in salary in order to do so.

The Voluntary Services Act established an experimental program to allow the private sector employer to reimburse the Government for the salaries of these executives during their detail to the Federal Government. The authority for the Government to accept this reimbursement for the services of these executives expires on September 30, 1990.

Mr. President, the September 30 expiration of this program will result in the early termination of the services of several executives, some of whom are serving overseas. This bill would simply extend the termination of this experimental program for 90 days in order to allow them to complete their assignments.

Section 2 of this bill clarifies that Federal executives who participate in this program are considered to be on detail from their employing agencies rather than on leave-without-pay status. This would allow these Federal executives to continue to receive full benefits during that year. This is only fair. Our employees should not be disadvantaged because they are selected to gain additional knowledge and expertise from the private sector which they will then use when they return to the Federal Government.

Mr. President, I urge immediate passage.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5643) was ordered to a third reading, was read the third time, and passed.

Mr. FORD. Mr. President, I move to reconsider the vote by which the bill was passed.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES PLACED ON CALENDAR—H.R. 3898, H.R. 5316, AND H.R. 5381

Mr. FORD. Mr. President, I ask unanimous consent that the following bills received from the House be placed on the Senate Calendar: H.R. 3898, the Civil Justice Court Reform Act; H.R. 5316, the Federal Judgeship Act, and H.R. 5381, the Federal Courts Study Commission Implementation Act of 1990.

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

ACQUISITION OF ADDITIONAL LANDS FOR KNIFE RIVER INDIAN VILLAGES NATIONAL HISTORIC SITE

Mr. FORD. Mr. President, I ask that the Chair lay before the Senate a message from the House of Representatives on S. 1230.

The PRESIDING OFFICER laid before the Senate the following message from the House of Representatives:

Resolved, That the bill from the Senate (S. 1230) entitled "An Act to authorize the acquisition of additional lands for inclusion in the Knife River Indian Villages National Historic Site, and for other purposes", do pass with the following amendment:

Strike out all after the enacting clause and insert:

SECTION 1. ACQUISITION OF ADDITIONAL LANDS.

(a) The Secretary of the Interior is authorized to acquire by purchase with donated or appropriated funds, donation, or exchange the lands comprising approximately 465 acres and described in subsection (b) as an addition to the Knife River Indian Villages National Historic Site, North Dakota: *Provided,* That no such lands may be acquired without the consent of the owner thereof unless the Secretary determines that, in his judgment, the property is subject to, or threatened with, uses which are having, or would have, an adverse impact on the archaeological, historical, or other values for which the site was established.

(b) The lands referred to in subsection (a) are those lands depicted on the map entitled "Proposed Boundary Knife River Indian Villages National Historic Site" numbered 468-80,039A and dated July 1990.

SEC. 2. ADDITIONAL AUTHORIZATIONS.

Section 104(c) of Public Law 93-486 (88 Stat. 1462) is amended by striking "$600,000" and inserting in lieu thereof "$1,000,000" and by striking "$2,268,000" and inserting in lieu thereof "$4,000,000".

Mr FORD. Mr. President, I move that the Senate concur in the House amendments.

The motion was agreed to.

Mr. FORD. Mr. President, I move to reconsider the vote.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

REGARDING RETIREMENT OF MEMBERS OF CAPITOL POLICE

Mr. FORD. I ask unanimous consent that the Senate proceed to the immediate consideration of H.R. 5641, regarding retirement of members of the Capitol Police just received from the House.

The PRESIDING OFFICER. The bill will be stated by title.

The assistant legislative clerk read as follows:

A bill (H.R. 5641) to amend title 5, United States Code, with respect to retirement of members of the Capitol Police.

The PRESIDING OFFICER. Is there objection to the immediate consideration of the bill?

There being no objection, the Senate proceeded to consider the bill.

The PRESIDING OFFICER. The bill is before the Senate and open to amendment. If there be no amendment to be proposed, the question is on the third reading and passage of the bill.

The bill (H.R. 5641) was ordered to a third reading, was read the third time, and passed.

Mr. FORD. I move to reconsider the vote.

Mr. GARN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

MEASURES PLACED ON CALENDAR—H.R. 4299, H.R. 5390, H.R. 2840

Mr. FORD. Mr. President, I ask unanimous consent that the following be placed on the calendar when received from the House: H.R. 4299, regarding Great Lakes Fisheries; H.R. 5390, regarding zebra mussels; and H.R. 2840, the coastal barriers bill.

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

DISCHARGE AND REFERRAL OF S. 2948

Mr. FORD. Mr. President, I ask unanimous consent that the Energy Committee be discharged from further consideration of S. 2948, regarding certain lands in Illinois as wilderness, and that the measure be referred to the Agriculture Committee.

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

APPOINTMENT BY THE PRESIDENT PRO TEMPORE

The PRESIDING OFFICER. The Chair, on behalf of the President pro tempore, pursuant to Public Law 99-498, reappoints Lynn M. Burns, of Rhode Island, to the Advisory Commission on Student Financial Assistance.

ORDERS FOR WEDNESDAY, OCTOBER 3, 1990

Mr. FORD. Mr. President, on behalf of the majority leader, I ask unanimous consent that when the Senate completes its business today it stand in recess until 10 a.m. Wednesday, October 3; that following the time for the two leaders, there be a period for morning business, not to extend beyond 11 a.m., with Senators permitted to speak therein for up to 5 minutes each; and that the Senate stand in recess from 12:30 to 2:30 p.m. on Wednesday.

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

INTENT TO PROCEED TO S. 1379, THE DEFENSE PRODUCTION ACT

Mr. FORD. Mr. President, the majority leader asked me to announce for the information of Senators that on tomorrow at 11 a.m., he will seek consent to proceed to the consideration of Calendar No. 697, S. 1379, the Defense Production Act bill, and that if consent is not granted, it would be his intention to move to proceed to the bill.

RECESS UNTIL 10 A.M. TOMORROW

Mr. FORD. Mr. President, if there is no further business to come before the Senate today, I ask unanimous consent that the Senate now stand in recess under the previous order until 10 a.m. on Wednesday, October 3, 1990.

There being no objection, the Senate, at 7:07 p.m., recessed until Wednesday, October 3, 1990, at 10 a.m.

CONFIRMATION

Executive nomination confirmed by the Senate October 2, 1990:

SUPREME COURT OF THE UNITED STATES

DAVID H. SOUTER, OF NEW HAMSPHIRE, TO BE AN ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES.